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Fair representation of the political parties or groups of national parliaments in their delegations to the Parliamentary Assembly

Report[1]
Committee on Rules of Procedure, Immunities and Institutional Affairs
Rapporteur: Mr Tiny KOX, Netherlands, Group of the Unified European Left (UEL)

Summary

The concept of fair representation of political parties or groups in national delegations to the Parliamentary Assembly needs to be clarified. The Committee on Rules of Procedure, Immunities and Institutional Affairs has prepared principles which are derived from the reports and the practice of the Assembly relating to the verification of national delegations' credentials, to be used to assess whether political parties or groups are "fairly represented" in national delegations.

Parliaments of the member states are invited to abide by these principles when appointing their national delegations. The same principles will also apply when the Assembly is assessing compliance with the principle of fair representation of political parties or groups in connection with a challenge to a delegation's credentials.

1. 2011 - March Standing Committee

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A. Draft resolution[2]

1. The Parliamentary Assembly has reiterated on many occasions, in particular at its biennial debate on the situation of democracy in Europe, its commitment to promoting democracy and political pluralism in Europe as well as to developing common standards and practices designed to ensure that national parliaments operate in accordance with pluralist principles.

2. Under the Assembly's Rules of Procedure, fair representation of political parties or groups represented in the national parliaments is one of the requirements for the credentials presented by national delegations to be considered valid.

3. Yet the Assembly has never provided any official interpretation of what is meant by "fair representation". However, in the course of 2010, national delegations' credentials were challenged in the Assembly under Rule 7.2 on the specific ground that the composition of the delegations concerned failed to meet the requirement of fair political representation.

4. When it met in Limassol (Cyprus) from 10 to 12 June 2010, the European Conference of Presidents of Parliament mentioned that "national parliaments should ensure that delegations engaged in inter-parliamentary activities reflect a pluralist composition and that opposition members can actively and effectively take part in them".

5. The Assembly considers it necessary to clarify the concept of fair representation of political parties or groups in national delegations and it therefore invites the parliaments of the member states to abide by the following principles when appointing their national delegations. The same principles will also apply when the Assembly is assessing compliance with the principle of fair representation of political parties or groups in connection with a challenge to a delegation's credentials.

Principles to be used to assess whether political parties or groups are fairly represented in national delegations to the Parliamentary Assembly

6. The following principles, which are derived from the reports and the practice of the Assembly in connection with the verification of national delegations' credentials, apply when an assessment is being made as to whether political parties or groups are "fairly represented" in national delegations to the Parliamentary Assembly:

6.1. As "fair" is not as such defined in the Assembly's Rules of Procedure, it is reasonable to use the usual meaning: honest, impartial, just, equitable, non-discriminatory when examining the question of a "fair representation";

6.2. It is the national parliaments which decide upon the composition of their delegation to the Parliamentary Assembly. As there are no standardised procedures for national parliaments to appoint delegations to the Assembly, the national parliaments' political discretion must, in general, be respected. The Assembly should avoid becoming involved in a detailed analysis of the political composition of a delegation;

6.3. Parliaments' decisions on appointments must respect national procedural rules and be, on the whole 'fair': that is to say, honest, impartial, just, equitable and non-discriminatory. The national procedural rules should also be in accordance with the Council of Europe's fundamental values (rule of law, respect for human rights and pluralistic democracy);

6.4. On the basis of information received from parliaments on the methods used to allocate seats on their delegation, the Assembly assesses merely whether the representation of the political groups of the parliament is fair, not whether it is proportionate;

6.5. According to Rule 6.2.a of the Assembly's Rules of Procedure, each national parliament informs the Assembly of the methods used to appoint seats on the delegation. The Assembly's Table Office examines the credentials of a delegation from a procedural point of view, before forwarding them to the Assembly (or the Standing Committee) for ratification;

6.6. In case of difficulties, the Table Office may seek clarification from the secretariat of the national delegation concerned. The Table Office informs the President of the Assembly if there is a potential problem which needs to be addressed;

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2. Draft resolution adopted unanimously by the committee on 10 January 2011.

6.7. Both representatives and substitutes are taken into account when determining the political balance of a national delegation in order to assess “fair representation”;

6.8. In the case of bicameral parliaments, fair representation is assessed at the level of the delegation as a whole (not the members of each chamber);

6.9. Parliaments with many political groups but with a limited number of seats in the Assembly may justifiably invoke difficulties in fulfilling the condition of “fair representation” (Rule 6.2.a: “Insofar as the number of their members allows ...”);

6.10. Where a parliament is made up mostly of two major political groups, representing the majority and the opposition, and several very small opposition parties, it is preferable not to distribute the seats equally among the two “bigger” groups” but to include other groups in the delegation to make it more pluralistic. For the duration of the legislature, the possibility of annually rotating membership of the delegation may be contemplated for small political groups;

6.11. Where there are problems appointing the members of a delegation, the political group(s) supporting the government might be asked to make “compromise efforts”, in particular to promote a better representation of the opposition. Candidates proposed by a political group should in general be accepted as members or substitutes if they meet the criteria of the national procedural rules;

6.12. If, because of the limited number of seats of a delegation and the small size of the opposition parties, it is not possible to appoint at least one member of the opposition as a representative on the delegation, it should be ensured that opposition members who are substitutes can travel to Strasbourg and that they are given the opportunity to replace representatives on their delegation;

B. Explanatory memorandum by Mr Kox, rapporteur

1. Introduction

1. At the meeting of the Bureau of the Assembly on 25 January 2010, issues relating to the credentials of national delegations were raised. As a result, the Bureau instructed the Committee on Rules of Procedure, Immunities and Institutional Affairs to submit an opinion on the criteria by which to ascertain whether the parties or political groups in national parliaments are fairly represented in the national delegations (Rule 6.2.a of the Assembly's Rules of Procedure).

2. The committee adopted an opinion on 26 April 2010 and forwarded it to the Bureau of the Assembly. At its meeting on 30 April 2010, the Bureau instructed the committee to prepare a report on "fair representation of political parties or groups in national delegations to the Parliamentary Assembly".

3. This report presents measures taken to ensure fair representation of political parties and groups in national delegations, recalls their origin, and provides information on how they are interpreted and put into practice in the Assembly. It also submits a proposal to the national parliaments and the Assembly itself, setting out the principles to be taken into account when assessing the pluralistic composition of national delegations.

2. Current provisions and their origin

2.1. Background

4. The Council of Europe's Statute says nothing about the political composition of national delegations to the Assembly. However, the need to observe the democratic principles enshrined in the preamble to the Statute of the Council of Europe places a moral obligation on member states to ensure that the composition of their parliaments' delegations to the Assembly are "pluralistic". The Assembly's Rules of Procedure formalised this obligation[3] by laying down detailed criteria for the composition of national delegations.

5. On the subject of their political composition, the current Rule 6.2.a states:

> *"Insofar as the number of their members allows, national delegations should be composed so as to ensure a fair representation of the political parties or groups in their parliaments. … Each parliament shall inform the Assembly of the methods used to appoint seats on the delegation."*[4]

6. A national delegation's still unratified credentials may be challenged on procedural grounds based on "the principles in Rule 6.2, that national parliamentary delegations should be composed so as to ensure a fair representation of the political parties or groups in their parliaments …" (Rule 7.1.b).

2.2. Origins of Rule 6.2.a[5]

7. The rule on the political composition of national delegations was first added to the Assembly's Rules of Procedure in 1989 and was amended twice thereafter, in 1996 and 1999.

8. In 1989, Resolution 932 (1989) amended Rule 6.5 as follows:

> *"Credentials which give rise to an objection or are contested shall be referred without debate to the Committee on Rules of Procedure. In every case where there is an objection or credentials are contested, the reasons shall be stated and shall be based upon one or more of the relevant provisions of the Statute (in particular Articles 3, 25 and 26), including the democratic principles set out in the preamble to the Statute, notably the principle that national parliamentary delegations should reflect the various currents of opinion within their Parliaments."*[6]

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3. See paragraph 5 of Doc. 6101, a report by the Committee on Rules of Procedure on the composition of national delegations, and Resolution 932 (1989).
4. The rules contain a similar provision for special guests (Rule 58.5) and for partners for democracy (Rule 60.4).
5. See the appendix for a detailed description of the origins of the Rules of Procedure.
6. Paragraph 13 of the report on which Resolution 932 (1989) is based (Doc. 6101) stipulated as follows: "In order to ensure that this new provision is respected its terms should be communicated to the national parliamentary authorities responsible for appointing the members of the delegations to the Assembly. Subsequently, when credentials are forwarded, the covering letters should confirm that this requirement has been met".

9. In 1994 and 1995, the Bureau discussed problems relating to the methods of selecting members of national delegations, including the non-representation in national delegations of certain political groups present in national parliaments. The Bureau therefore asked the Committee on Rules of Procedure to examine the rights of minority groups within the national parliaments to be represented in the delegation to the Assembly. Resolution 1104 (1996) on the designation of national delegations to the Assembly, which was adopted as a result, enhanced the Assembly's means of monitoring compliance with the principle of pluralistic composition of national delegations by amending Rule 6 as follows:

> *"5. In so far as this is possible, given the number of their members, national delegations of the Assembly should be composed so as to ensure an equitable representation of the political parties or forces present in their parliaments.*
>
> *6. When a parliament of a member state appoints a new delegation to the Parliamentary Assembly at the opening of the latter's parliamentary year or following parliamentary elections, it shall indicate the methods for the distribution of seats on the delegation between the political groups existing within it."*

10. The current wording of Rule 6.2.a (see paragraph 5 above) was adopted when the Assembly's Rules of Procedure were revised in November 1999 (Resolution 1202 (1999)).

11. It is worth noting that, in the successive texts it adopted between 1989 and 1999, the Assembly used different forms of wording to reflect the principle it wished to establish of fair political representation in national delegations to the Parliamentary Assembly:

– in Recommendation 1027 (1986) delegations were to "fairly represent the political forces present in parliament";

– in Resolution 932 (1989) delegations were to "reflect the various currents of opinion within their parliaments";

– in Recommendation 1104 (1996) delegations were to "ensure equitable representation of the political parties or forces present in their parliaments";

– in Resolution 1202 (1999) delegations were to "ensure a fair representation of the political parties or groups in their parliaments".

3. The interpretation and practical use by the Assembly of the expression "fair representation" in Rule 6.2.a

3.1. Background

12. The procedure followed by national parliaments to appoint their national delegation to the Assembly is determined by the respective parliament and so it can vary from one country to another. Methods include appointment by the political parties or groups themselves in proportion to their numbers, appointment by common consent among political groups and appointment by the speaker of the parliament after consultation with groups or parties.

13. The concept of "fair representation" has not been officially interpreted by the Assembly and it has not established any detailed criteria by which to assess whether a national delegation fairly represents the political parties or groups which make up its parliament.[7]

14. It is quite clear from Rule 6.2.a that the Assembly applies a concept of fairness rather than mathematical proportionality to determine whether the composition of delegations is politically fair. As stated in the rules ("in so far as this is possible, given the number of their members …"), national parliaments enjoy a degree of discretion when it comes to the composition of delegations.[8] Obviously, a parliament's political groups cannot be accurately represented in the Assembly when there are more groups than seats to be filled in the Assembly.[9] Furthermore, it has been the Assembly's longstanding practice that both Representatives

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7. There is very little specialised literature on the subject of "fair representation". Examples include F. Benoît-Rohmer and H. Klebes, *Council of Europe Law, Towards a pan-European legal area*, 2005, and M. Wittinger, *Der Europarat: Die Entwicklung seines Rechts und der "europäischen Verfassungswerte"* (in particular pp. 485-88); according to Wittinger "fair representation" means that all relevant political forces (including the opposition) must be represented (p. 486).

8. During the discussion on 29 January 1986, one member already pointed out that small countries with a large number of political parties could not send delegations in which every political party was represented because of their limited number of seats in the Parliamentary Assembly (Official report of debates (1986) – 25th Sitting of the 37th Ordinary Session, p. 823).

and Substitutes in a national delegation are taken into account for establishing whether a national delegation is politically balanced. Where both chambers of a member parliament are represented on the Assembly delegation, it will be ascertained whether the delegation as a whole (and not the "sub-delegations" of each chamber) ensures a fair representation of the respective political parties or groups.

15. In exceptionally circumstances, and for a short period of time, the parliament of a member state is sometimes represented by an incomplete delegation because no (overall) agreement could be reached among the political groups in the parliament or because a political group entitled to one or more seats in the delegation was not in a position at that time to make appointments. Such situations do not cause any problem provided they do not last for too long. The Assembly has ratified incomplete delegations' credentials on several occasions.[10]

16. Other major considerations concerning the interpretation of "fair representation" are to be found in the three reports which form the basis of Recommendation 1027 (1986) and Resolutions 932 (1996) and 1104 (1996) (see below). The absence of "fair representation" has been raised several times in connection with the ratification of credentials and has also been referred to on occasion in the Bureau of the Assembly. These cases will be analysed below.

3.2. The discussions in the Assembly on 29 January 1996 and in the Standing Committee on 7 November 1996, and the relevant reports

17. The reports on which Recommendation 1027 (1986) and Resolution 932 (1989) were based indicated that the Assembly should avoid any involvement in a detailed analysis of the composition of delegations from national parliaments. The Assembly was simply to ensure that the main political currents present in a parliament were represented and, in particular, that the delegation included opposition parties (Doc. 5497, paragraph 7 and Doc. 6101, paragraph 11).

18. In the Assembly's debate on 29 January 1986 on the amendment of Articles 14 and 25 of the Statute of the Council of Europe, the rapporteur said that "this does not mean that the membership of delegations should be determined with the exactitude of a medical prescription but that we should be given the assurance that delegations to the Assembly are truly representative of their parliaments and of the political spectrum in their respective home countries. ... This is a very important provision that will help to enable us truly to speak on behalf of our own countries."[11] Other important statements were made during this debate:

– a proposal to replace the expression "fair representation" by "proportional representation" by two members of the Committee on Legal Affairs and Human Rights, which had been asked for an opinion on the report, had been rejected by the committee because it felt that there was no difference in meaning between the two words;

– it was pointed out that there is always a danger when a Substitute on a delegation represents a small party, which is not entitled to, and does not enjoy, a full member's place, that this Substitute member will not get the opportunity to speak in the Assembly;

– attention was drawn to the need to ensure that each delegation includes Representatives of the opposition parties.[12]

19. The report on which Resolution 1004 (1996) on the designation of national delegations to the Parliamentary Assembly is based (Doc. 7627) describes the methods for appointing national delegations, including the special measures in the case of bicameral parliaments. It contains several important passages:

– There are no standardised national procedures for appointing delegations to the Assembly (paragraph 1);

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9. See the report on the designation of national delegations to the Parliamentary Assembly (Doc. 7627, paragraph 24); it was proposed at the time that this problem could be alleviated by a rotation system to be agreed by the political groups concerned for the duration of the legislature.

10. See the report on the challenge on procedural grounds of the still unratified credentials of the parliamentary delegation of Moldova (Doc. 12044), paragraph 14.

11. Official report of debates (1986) – 25th Sitting of the 37th Ordinary Session, p. 818.

12. Ibid., pp. 818 and 821.

– In general, the seats in a delegation to the Assembly are divided between the national parliament's political groups either on a proportional basis or as the result of an agreement among the political groups; the parliaments (chambers) elect the members or approve the agreement; in some parliaments, electoral lists comprising less than 5% of the members are not considered for membership of the Parliamentary Assembly (paragraph 8);

– The Assembly has always maintained that national parliaments have a considerable degree of discretion in the appointment of their delegation; it should avoid involving itself in a detailed analysis of the political composition of a delegation (paragraph 15);

– At the same time, through the procedure of verification of credentials, the Assembly is requested to uphold the Council of Europe's fundamental values (rule of law, respect for human rights and pluralistic democracy) (paragraph 16);

– Except in urgent cases, the Assembly should not intervene until domestic remedies have been exhausted (namely, appeal to the relevant authorities of the national parliament or constitutional appeal) (paragraph 17);

– It would be problematic for the Assembly to stipulate that if one of a national parliament's political groups (which can claim, under the internal rules, to be represented in the delegation to the Assembly) puts forward the requisite number of candidatures, the parliament must automatically accept the candidature(s) (paragraph 23);

– Accurate representation of all political forces can never be ensured in member parliaments which have a limited number of seats in the Assembly and possess more political groups than there are seats to be filled (paragraph 24);

– However, the Assembly cannot remain indifferent to designation conflicts in national parliaments (paragraph 25) and it may consider the possibility of making recommendations to any national parliaments experiencing difficulties in appointing its delegation's members (paragraph 28).

20. When presenting this report to the Standing Committee on 7 November 1996, the rapporteur said that the aim of the resolution was to ensure fair participation of all political groups or forces in the national delegations of the Assembly (AS/Per (1996) PV 4, item 16.a). The point was not to prescribe the method for designation but to ask each parliament to inform the Assembly of the method used so that the latter could verify it.

3.3. Role of the Assembly's Table Office when credentials are received and before they are submitted to the Assembly for ratification

21. It is the role of the Assembly's Table Office to advise the President of the Assembly on all issues of procedure, including credentials. Credentials sent to the President according to Rule 6.1 of the Rules of Procedure are therefore first examined from a procedural point of view by the Table Office before they are forwarded to the Assembly (or the Standing Committee) for ratification.

22. This examination consists, in particular, of ascertaining that the method used to allocate seats on a national delegation (of which the Assembly has to be informed by the respective parliaments under Rule 6.2.a) has been applied fairly and without discrimination. In the event of difficulties, the Table Office may seek further clarification from the secretariat of the national delegation concerned. This has often made it possible to settle problems before credentials were examined in plenary session. In other cases, the President is informed that there may be a problem to be addressed.

3.4. Challenge of credentials concerning fair representation

23. On six of the eight occasions[13] when credentials of national delegations were challenged for procedural reasons, the fair representation criterion (Rule 6.2.a of the Assembly's Rules) was referred to directly or indirectly. In the three most recent cases (Albania, Armenia, Moldova), unbalanced political representation was the main stumbling block:

– right of a group to be represented in the delegation by a Representative and not a Substitute (Armenia);

13. Cyprus (Doc. 1762, paragraph 9), United Kingdom (Doc. 6610), Turkey (Doc. 7994), Ireland and Malta (Doc. 10051 and Resolution 1360 (2004)), Albania (Doc. 11809 and Resolution 1650 (2009)), Moldova (Doc. 12044 and Resolution 1686 (2009)), Albania (AS/Pro (2010) 05 def), Armenia (AS/Pro (2010) 06 def).

– appointment of a (incomplete) delegation in contradiction with national provisions (formation of the delegation from the parliamentary groups on the basis of proportionality) (Moldova);

– reduction in the number of seats allocated to Representatives of the major opposition party (Albania).

3.4.1. Challenge of the credentials of the delegations of Albania, Armenia and Moldova

3.4.1.1. Albanian parliamentary delegation

24. In January 2010, the Committee on Rules of Procedure, Immunities and Institutional Affairs was asked to look into the composition of the Albanian delegation. The Albanian Parliament had six political groups and four seats for Representatives and four for Substitutes in the Parliamentary Assembly. The main political group supporting the Albanian Government had about 48% of the seats in the parliament and the main opposition political group had about 46%, while the four other political parties shared about 6%. However, the main political group in the majority held two Representatives' seats and two Substitutes' seats in the Assembly delegation while the main opposition party held a single Substitute's seat (and the two seats that were still vacant, one for a Representative and one for a Substitute) and one Representative's seat had been allocated to a fourth political group in the Albanian Parliament which was not a member of the government.

25. The Committee on Rules of Procedure, Immunities and Institutional Affairs held that this composition complied with Rule 6 given that the two vacant seats were reserved for the opposition. It considered it appropriate to grant a second opposition group a seat on the delegation, thus making it more pluralistic. In purely arithmetical terms, this was disadvantageous for another political group, the third in respect of the number of seats in the Albanian Parliament, but that group was part of the government majority.

3.4.1.2. Armenian parliamentary delegation

26. In January 2010, the Committee on Rules of Procedure, Immunities and Institutional Affairs was also asked to clarify the interpretation of the Rules on the place of the parliamentary opposition in connection with the composition of the Armenian parliamentary delegation. The committee noted that the opposition held two of the eight seats in the Armenian delegation (one of the four Representatives' seats and one of the four Substitutes' seats) and found that the composition of the delegation was in compliance with Rule 6.2 despite the fact that a member of the opposition who had been a Representative in 2009 had been made a Substitute in 2010. In arriving at this conclusion, the committee applied the principle that political balance should be assessed in the light of the total number of delegation members regardless of their status.

3.4.1.3. Moldovan parliamentary delegation

27. Lastly, regarding the credentials of the Moldovan delegation, the Assembly was asked, in September 2009, to examine whether the granting of three Representatives' seats and one Substitute's seat to the four political groups supporting the government and two Representatives' seats to the political group forming the opposition in parliament was compatible with the concept of fair representation. Moldova has 10 seats in the Parliamentary Assembly (five Representatives and five Substitutes). In the Moldovan Parliament, the four majority parties held 53 seats while the opposition held 48. The committee found that this situation complied with Article 6.2. As to the other objection raised, namely the fact that the Moldovan delegation was incomplete, the committee pointed out that this was not an exceptional situation and that the Assembly had ratified the credentials of incomplete delegations on several occasions. It did, however, invite the Monitoring Committee to instruct its co-rapporteurs for Moldova to ask the Moldovan parliamentary authorities, as a matter of urgency, to specify their intentions in regard to the four vacant seats for Substitutes on the Moldovan delegation.

3.4.2. Challenge of the credentials of the United Kingdom delegation

28. The report of 1992 on the credentials of the United Kingdom delegation (Doc. 6610) contains important information on the subject of fair representation. Admittedly, it was drafted when the decisive provision in the Rules of Procedure, Immunities and Institutional Affairs had a weaker wording than at present ("... the principle that national parliamentary delegations should reflect the various currents of opinion within their parliaments"). In paragraph 12 of the report it is stated that the Committee on Rules of Procedure has no authority to examine the detailed political balance within the United Kingdom delegation or, for that matter, within any other delegation in the Assembly. In the rapporteur's view, the relevant provision deliberately does not require the balance of parties and opinions in the parliament to be reflected exactly in the composition of the delegation. The rapporteur also refers to the principle that the Assembly should seek to avoid interfering in the internal political composition of a national delegation. To do so might be invidious in more cases than one.

3.4.3. Challenge of the credentials of a special guest delegation (Armenia)

29. A parliament with special guest status must appoint a delegation reflecting the various currents of opinion within it. In 1998, the credentials of the special guest delegation from Armenia were challenged on the ground that the largest opposition faction, consisting of 50 out of a total of 149 members of the Armenian parliament, had been excluded from the delegation to the Assembly. The Committee on Rules of Procedure, Immunities and Institutional Affairs concluded that a delegation which omitted from its ranks a representative of the main opposition faction could not be considered to reflect the various currents of opinion of that parliament; it recommended that the Assembly should ratify the delegation's credentials on the condition that a seat would remain vacant for a Representative of the opposition.[14] In a second report, prepared following a visit to Armenia (Doc. 8292, Addendum I), it was pointed out that it was not the rapporteur's role under the Assembly's Rules to repair perceived injustice in the composition of the delegation in the past or take account of the composition of the delegation of the Armenian Parliament to other international organisations. Any evaluation of the representativeness of the Armenian delegation had to be made on the basis of figures available for the current parliament as it stood. It may be noted that both reports referred to "main" opposition and "main" currents of opinion.

4. Summary and proposals

30. Appointment by the parliament of a Council of Europe member state of a delegation to the Parliamentary Assembly in which the political parties or groups in that parliament are fairly represented is an important duty. In principle, the national provisions concerning this appointment ensure that political parties or groups are proportionally represented on delegations to the Assembly which are elected or approved by the parliament.

31. However, experience in the Assembly shows that there are often conflicts – albeit limited to some member states – concerning the appointment of delegations in national parliaments, in which the Assembly has to get involved.

4.1. The Assembly's scope for intervention

32. It is difficult to establish the extent to which the Assembly may "monitor" how national parliaments have fulfilled the condition of "fair representation" of political parties and groups in the delegations. This difficulty is due to the need to balance two competing principles which come into play.

33. On the one hand, the Assembly is entrusted by the Statute of the Council of Europe (Article 28.c.iv) with the examination of credentials. Due to the strong commitment of the Council of Europe to European values (the rule of law, respect for human rights and the principle of pluralistic democracy), it goes without saying that the Assembly will also wish to uphold these values with respect to its members' credentials. Their examination is a test of democratic legitimacy. Furthermore, the Assembly cannot remain indifferent to designation conflicts in national parliaments which, over and beyond the tensions normally existing between political groups, betray a certain "malaise" regarding the way in which pluralism is practised as well as deficiencies in the method of designating the members of certain parliaments' delegations.

34. On the other hand, since there are no provisions in the Statute of the Council of Europe or other European texts concerning the details of the appointment of national delegations to the Assembly by national parliaments, parliaments have a wide degree of discretion in this respect. The delegations to the Assembly are generally elected by national parliaments and thus have considerable legitimacy.[15]

35. Consequently, prime responsibility for ensuring fair representation of the political parties and groups of a national parliament in the delegation to the Parliamentary Assembly lies with the national parliament. Through its verification of credentials, the Assembly has an important but nevertheless subsidiary role in this respect. In the event of problems with the appointment of delegations, all possible national remedies should be exhausted before the matter is raised at Parliamentary Assembly level.

14. See reports transmitted to the Bureau, documents AS/Pro (1998) 11, paragraph 9, and AS/Pro (1999) 03.
15. See paragraph 17 of document AS/Bur (1995) 128.

36. This limits the Assembly's scope for intervention. However, the Assembly should have, and has taken, the liberty of expressing its views whenever there are formal or procedural deficiencies because of non-compliance with national procedural provisions and where manifestly unfair and indefensible decisions have been taken concerning delegations. If, in particular, there are no opposition members in a delegation, its credentials cannot be ratified.

37. In the case of problematic credentials, it would be useful if the Assembly could more frequently ask the parliaments concerned to provide information and address more recommendations to any national parliaments experiencing difficulties in designating its delegation's members. In such cases, the Monitoring Committee has been put in charge of the relevant procedures.

4.2. Other measures

4.2.1. Information to be provided when credentials are submitted

38. The provision in Rule 6.2.a, under which "each parliament shall inform the Assembly of the methods used to appoint seats on the delegation" is not followed strictly by all parliaments as some of them fail to provide this information when they submit new delegations' credentials. It would be useful if the Secretary General of the Assembly could draw this situation to the attention of the delegations concerned.

39. It would also be very useful if, when submitting credentials to the President of the Assembly, parliaments stated whether political groups were members of the majority or the opposition in the state concerned. Their correspondence could also describe any problems they had in appointing a full delegation or provide any other information likely to help the Assembly to understand their choices when appointing delegations (for example, balancing of the delegations sent to other international bodies).

4.2.2. Guarantees as to the participation of Substitutes in Assembly and committee work

40. An additional problem which has emerged in connection with the composition of delegations is ensuring that members of the opposition, when they are represented in the delegation only by Substitutes, can participate in plenary sessions and committee meetings[16] and that they are given the opportunity to replace Representatives during plenary sessions and committee meetings, thus enabling them to speak and vote.

41. Substitutes can only make their voices heard in the Assembly if their travel expenses to Strasbourg are covered. There is a danger that more and more parliaments will contemplate no longer paying for the attendance of Substitutes at plenary sessions in Strasbourg and at Assembly committee meetings. Already in 2009, the Committee on Rules of Procedure, Immunities and Institutional Affairs expressed its concern at the idea that a delegation may not fill its whole quota of seats for budgetary reasons.[17]

42. For the time being, such considerations are still negligible, and the Assembly has not yet reached the point where it has to determine whether a national delegation fairly represents the political parties or groups in its parliament on the basis of Representatives alone. Obviously, if the current budgetary restrictions in parliaments were to prompt them to reduce the participation of their members in the Assembly's work, the Assembly would have to ensure that this was not restricting the proper participation of Representatives of opposition parties.

4.3. Draft principles designed to ensure that political parties or groups are fairly represented in national delegations

43. In view of the Assembly's limited scope for intervention (see paragraphs 32-36 above) and the need for flexibility when ascertaining whether the political parties and groups in a national parliament are fairly represented in a national delegation to the Assembly, it would not be appropriate to add strict provisions to the existing rules on how "fair representation" is to be ensured.

44. A wiser approach would be for the Assembly to lay down certain principles to be taken into account when ascertaining fair representation of political parties and groups in national delegations. These could ultimately be included in the complementary texts to the Assembly's rules.

16. Discussion in the Bureau on 26 April 2010.
17. See Doc. 12044, paragraph 16.

45. The following principles, which are derived from the reports and practice of the Assembly (described in paragraphs 12-29 above) relating to the verification of national delegations' credentials, shall apply when an assessment is being made as to whether political parties or groups are "fairly represented" in national delegations to the Parliamentary Assembly:

45.1. As "fair" is not as such defined in the Assembly's Rules of Procedure, it is reasonable to use the usual meaning – honest, impartial, just, equitable, non-discriminatory – when examining the question of a "fair representation".

45.2. It is the national parliaments which decide upon the composition of their delegation to the Parliamentary Assembly. As there are no standardised procedures for national parliaments to appoint delegations to the Assembly, the national parliaments' political discretion must, in general, be respected. The Assembly should avoid becoming involved in a detailed analysis of the political composition of a delegation.

45.3. Parliaments' decisions on appointments must respect national procedural rules and be, on the whole, "fair": that is to say, honest, impartial, just, equitable and non-discriminatory. The national procedural rules should also be in accordance with the Council of Europe's fundamental values (rule of law, respect for human rights and pluralistic democracy).

45.4. On the basis of information received from parliaments on the methods used to allocate seats on their delegation, the Assembly assesses merely whether the representation of political groups of the parliament is fair, not whether it is proportionate.

45.5. According to Rule 6.2.a of the Assembly's Rules of Procedure, each national parliament informs the Assembly of the methods used to appoint seats on the delegation. The Assembly's Table Office examines the credentials of a delegation from a procedural point of view, before forwarding them to the Assembly (or the Standing Committee) for ratification.

45.6. In case of difficulties, the Table Office may seek further clarification from the secretariat of the national delegation concerned. The Table Office should inform the President of the Assembly if there is a potential problem which needs to be addressed.

45.7. Both Representatives and Substitutes are taken into account when determining the political balance of a national delegation in order to assess "fair representation".

45.8. In the case of bicameral parliaments, fair representation is assessed at the level of the delegation as a whole (not the members of each chamber).

45.9. Parliaments with many political groups but with a limited number of seats in the Assembly may justifiably invoke difficulties in fulfilling the condition of "fair representation" (Rule 6.2.a: "Insofar as the number of their members allows ...").

45.10. Where a parliament is made up mostly of two major political groups, representing the majority and the opposition, and several very small opposition parties, it is preferable not to distribute the seats equally among the two "bigger" groups alone but to include other groups in the delegation to make it more pluralistic. For the duration of the legislature, the possibility of annually rotating membership of the delegation may be contemplated for small political groups.

45.11. Where there are problems appointing the members of a delegation, the political group(s) supporting the government might be asked to make "compromise efforts", in particular to promote a better representation of the opposition. Candidates proposed by a political group should in general be accepted as members or Substitutes if they meet the criteria of the national procedural rules.

45.12. If, because of the limited number of seats of a delegation and the small size of the opposition parties, it is not possible to appoint at least one member of the opposition as a Representative on the delegation, it should be ensured that opposition members who are Substitutes can travel to Strasbourg and that they are given the opportunity to replace Representatives on their delegation.

46. National parliaments are invited to take account of the above principles relating to the interpretation of the concept of fair representation when appointing their national delegations.

Appendix – Origins of Assembly Rule 6.2.a

Background

1. The examination of credentials is, in some respects, "a test of democratic legitimacy".[18] Already in connection with the preparatory work for the Council of Europe in 1948-49 it had been proposed[19] that national delegations to the Parliamentary Assembly should reflect the political composition of their parliaments. However, no explicit provision to this end was included in the Statute of the Council of Europe or the Assembly's Rules of Procedure.

2. The need to observe the democratic principles enshrined in the Preamble to the Statute of the Council of Europe places a moral obligation on member states to ensure that the composition of their national parliament's delegations to the Assembly is "pluralistic".[20] Although this moral obligation has become a kind of unwritten rule in the Assembly's practice, it has sometimes raised major problems. In this connection it should be recalled that, for reasons other than the political composition of the national delegation, Cyprus was not represented in the Assembly for nineteen years (1964-83) while Turkey was absent for three years (February 1981-January 1984). Because of a dispute between Malta's two major political parties, its representation in the Assembly was interrupted in April 1983. It was only in September 1985 that the Maltese Parliament decided to send a one-member delegation to Strasbourg consisting of the Speaker of the House. Its credentials were challenged as it was not a multi-party delegation and, in particular, it did not include representatives of the opposition. The problem was finally resolved in January 1986, when a full bi-partisan delegation was appointed.

Origins of Recommendation 1027 (1986) and Resolution 932 (1989)

1. In September 1983, these problems prompted several Assembly members to table a motion for a resolution on amendments to Articles 14 and 25 of the Statute of the Council of Europe (Doc. 5139), in which it was proposed, among other things, to add a new paragraph (d) to Article 25 of the Statute, to be worded as follows: "The membership of members' delegations must fairly represent the political forces present in their parliaments."

2. The report drawn up following the referral of the motion to the relevant committees led to the adoption of Recommendation 1027 (1986) relating to Article 25 of the Statute, which proposed that a new paragraph (d) be added to Article 25, worded as follows: "The delegation of each Member must fairly represent the political forces present in its parliament".

3. The main purpose of Recommendation 1027 (1986) was:

– to strengthen the pluralistic and democratic nature and, accordingly the representativeness of the Assembly, thereby strengthening its role within the Council of Europe;

– to codify the Assembly's practice[21] in relation to Article 25 of the Statute;

– to react to a series of negative experiences in the Assembly.

4. The Committee of Ministers replied in January 1987 (Doc. 5680), stating that it shared the Assembly's concerns in the matter but did not have a sufficient majority to amend Article 25 of the Statute as proposed, since most of its delegations considered that there were other means of implementing this proposal, for example by amending the Assembly's Rules of Procedure. Following a request from the Political Affairs Committee of 3 November 1988 the Bureau instructed the Committee on Rules of Procedure, Immunities and

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18. See Heinrich Klebes, "Human Rights and Parliamentary Democracy in the Parliamentary Assembly" in F. Matscher and H. Petzold (eds), *Protecting Human Rights: The European Dimension, Studies in Honour of Gerard Wiarda*, Cologne: Carl Heymanns Verlag, 1988, pp. 307-316.
19. In its recommendations of 28 February 1949 on the composition and organisation of the Assembly (paragraph 4), the International Council of the European Movement recommended that parliamentarians should (subject to their undertaking to give loyal support to the creation of a united democratic Europe) be appointed in such a way as to ensure that the parties (political groups) set up within each parliament concerned were properly represented (see Doc. 7627, paragraph 14).
20. See Doc. 6101, paragraph 5.
21. According to the 1983 edition of "The Parliamentary Assembly: procedure and practice" (p. 51): " The balance of political parties within our national delegations reflects the proportions in which the various partners sit in their national parliaments."

Institutional Affairs to amend the Rules along the lines of Recommendation 1027 (1986). On 16 November 1989, the Standing Committee adopted Resolution 932 (1989), which amended paragraph 5 of Rule 6 of the Assembly's Rules of Procedure as follows:

> *''Credentials which give rise to an objection or are contested shall be referred without debate to the Committee on Rules of Procedure. In every case where there is an objection or credentials are contested, the reasons shall be stated and shall be based upon one or more of the relevant provisions of the Statute (in particular Articles 3, 25 and 26), including the democratic principles set out in the preamble to the Statute, notably the principle that national parliamentary delegations should reflect the various currents of opinion within their Parliaments.''*

Origins of Resolution 1104 (1996)

1. Problems relating to the methods of selecting members of national delegations, including the non-representation in national delegations of certain political groups present in national parliaments, were discussed by the Bureau at its meetings on 27 June 1994 (AS/Bur (1994) PV 8) and on 25 and 29 September 1995 (AS/Bur (1995) PV 14 and PV 15).

2. On 8 November 1995, the Bureau asked one of its members (Mr Schieder) to prepare a memorandum examining the rights of minority groups within the national parliaments to be represented in the delegation to the Assembly in accordance with the relevant appointments. In his memorandum (AS/Bur (1995) 135 rev), Mr Schieder described his terms of reference as follows: "... submitting some proposals capable of serving as guidelines for national parliaments in the matter and in order to ensure, in due course, the fairest possible representation of a parliament's political parties or forces and the application of common rules of procedure regarding appointments. At present each parliament chooses its own designation procedure and the time has no doubt come to try to lay down some common rules."

3. On 22 January 1996, the Bureau of the Assembly requested a report on the matter from the Committee on Rules of Procedure, Immunities and Institutional Affairs, and on 7 November 1996 the Standing Committee adopted Resolution 1104 (1996) on the designation of national delegations to the Parliamentary Assembly. By amending Rule 6 of the Rules of Procedure, Resolution 1104 (1996), enhanced the Assembly's means of monitoring compliance with the principle that the composition of national delegations should be pluralistic:

> *"5. In so far as this is possible, given the number of their members, national delegations of the Assembly should be composed so as to ensure an equitable representation of the political parties or forces present in their parliaments.*
>
> *When a parliament of a member state appoints a new delegation to the Parliamentary Assembly at the opening of the latter's parliamentary year or following parliamentary elections, it shall indicate the methods for the distribution of seats on the delegation between the political groups existing within it."*

4. The current wording of Rule 6.2.a (see paragraph 5 of the explanatory memorandum) was adopted when the Assembly's Rules of Procedure were revised in November 1999 (Resolution 1202 (1999)).