Opinion 165 (1993)[1]

Institutional reform of the Council of Europe

Parliamentary Assembly

The Assembly received a communication from the Committee of Ministers on the institutional reform of the Council of Europe (Doc. 6748) containing a request for an opinion on three draft statutory resolutions.

It makes the following observations:

A. Method

In the Assembly's view, the purpose of revision is to make provision in the Statute for the Council of Europe's new pan-European vocation. The Summit of Heads of State and Government to be held in Vienna in October 1993 is an opportunity to assert this commitment by member states. It is therefore important from a political point of view that a revised Statute should be adopted in Vienna.

The adoption of the draft statutory resolutions must consequently be regarded only as a provisional step. The Assembly asks the Committee of Ministers to state its firm commitment to a comprehensive revision of the Statute. As it has done in the past for other statutory resolutions ((49) 20, (51) 30 D, (55) 29), the Committee of Ministers must include in the preamble to the three draft resolutions, the words "pending the amendment of the Statute".

B. Terminology

It should be pointed out that the draft statutory resolutions refer merely to the "Assembly". Accordingly, in line with its request made repeatedly since 1974, the Assembly insists that the Committee of Ministers use the title "Parliamentary Assembly" in the statutory resolutions.

For several years the Committee of Ministers has de facto used the title "Parliamentary Assembly" which was formally accepted in the protocol amending the European Social Charter of 21 October 1991 (see Article 6 amending Article 29 of the Charter).

C. Draft statutory resolution on observer status

Paragraph I of this draft resolution provides only for consulting the Assembly, which suggests that the Committee of Ministers is not bound by Assembly opinions.

This choice of words is a retreat from established practice of very long standing; where the admission of new members is concerned, the Committee of Ministers awaits the Assembly's concurring opinion before deciding.

The Assembly therefore asks the Committee of Ministers to use the words "subject to the Parliamentary Assembly's concurring opinion".

Paragraph I should also include a reference to the principle of democracy.

Paragraph V should be qualified by adding at the end the words "unless a specific decision has been taken by one of these organs", to bring it into line with the Assembly's Rules of Procedure (Rule 55).

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1. See Doc. 6789, report of the Committee on Rules of Procedure, Rapporteur: Lord Finsberg. Text adopted by the Standing Committee, acting on behalf of the Assembly, on 26 March 1993.

In paragraph IX of this draft resolution consultation of the Assembly is provided for in relation to the withdrawal of observer status but not its suspension. It is difficult to agree with the justification given for making this distinction, namely the delays which consulting the Assembly would lead to. Suspension of observer status is sufficiently serious not to be decided hastily, and express provision should therefore be made for the Parliamentary Assembly to be consulted.

D. Draft statutory resolution on majorities required for decisions of the Committee of Ministers

The proposed resolution sets out to reduce the number of cases where unanimity is required for Committee of Ministers' decisions, which is in keeping with the wishes of the Assembly. The Assembly therefore gives a favourable opinion on this draft statutory resolution. In the same spirit it would like to mention two further aspects.

The draft resolution makes no mention of the question of the majorities required for the adoption of the Committee of Ministers' written replies to Assembly recommendations and to the written questions of Assembly members. It is therefore not clear if unanimity is also required in these areas.

The second question concerns the confidentiality of the Committee of Ministers' activities since under the terms of Articles 20.a.iii and 21.b of the Statute a single state can block the publication of a press statement or resolution adopted by the Committee of Ministers. This situation seems to be a retreat from the position expressed by the Committee of Ministers for greater transparency in its work. However, as a statutory resolution must remain compatible with the Statute, no proposal is made in this opinion. The Assembly will follow up the matter of confidentiality in connection with the revision of the Statute.

The Assembly therefore recommends that the Committee of Ministers extend the draft statutory resolution by providing that decisions relating to written replies to Assembly recommendations (and, if appropriate, opinions) and to written questions of Assembly members, should be taken by a two-thirds majority of the representatives casting a vote and of a majority of the representatives entitled to sit on the committee.

E. Draft statutory resolution on partial and enlarged agreements

The Assembly gives a favourable opinion on this draft statutory resolution.