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Amendment of Article 25 (a) of the Statute and concerning the revision of Rules 7, 42 and 45

Report[1]
Committee on Rules of Procedure, Immunities and Institutional Affairs
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1. 1952 - 4th Session - Second part

A. Explanatory Memorandum

1.

This Report has a strictly limited purpose. It is a supplement to the Report made by the Committee on Rules of Procedure and Privileges in December, 1951 (see Third Ordinary Session, 1951 : Doc. 90). That Report was the result of a prolonged study and review of the Rules of Procedure of the Assembly, and contained a draft Resolution in which the Rules, revised and re-arranged in the light of experience gained during the three years of the Assembly's existence, were laid before the Assembly for approval.

This Resolution was considered by the Assembly on 8th December, 1951. The broad scheme of revision was approved, and the Resolution containing the revised Rules was agreed to. Objection was made, however, to the Committee's draft of Rule 7 (Duration of term of office of Representatives and Substitutes) and Rule 42 (Procedure in Committees). Amendments were proposed by Representatives to these two Rules, and as some of these were in direct conflict with the texts submitted by the Committee, the Assembly left out of the Draft Resolution Rules 7 and 42 and referred them back to the Committee. The present Report contains revised texts of Rules 7 and 42 which take into account the views expressed and the Amendments moved in the Assembly.

In addition, the Committee of Ministers in its Report to the Assembly (Fourth Session, 1952 : Doc. 2, paragraph 12) stated that it had amended Rules 17 and 18 of its Rules of Procedure in order to enable Ministers who were not Members of the Committee of Ministers to take part in the Debates of the Assembly. It seemed desirable therefore that the Assembly should consider an Amendment of its own Rule 45 (Access to the Assembly and Committees). Accordingly the Committee on Rules of Procedures and Privileges now submit a revised draft of this Rule.

The Report is divided into three parts :

1. Rule 7 : Duration of Term of Office of Representatives and Substitutes.
2. Rule 42 : Procedure in Committee.
3. Access to the Assembly and Committees.

2. I - Rule 7

Duration of Term of Office of Representatives and Substitutes

In its Report (Third Session, 1951 : Doc. 90) the Committee proposed to the Assembly a text based on the principle that the term of office of a Representative could not be of longer duration than that fixed by the Member State which he represented. According to this principle, the mandate of a Representative is derived in the first instance from the fact that he is a Member of his National Parliament. If, therefore, as a result of an election, he loses his seat, the Member State to which he belongs should be entitled to replace him as a Representative of the Consultative Assembly.

During the debate in the Assembly, an Amendment was presented (Doc. 90, Amendment No. 3) in which a contrary principle was asserted. Under its provisions, a Representative who lost his seat as a result of a General Election to his own Parliament would continue to sit in the Committees of the Assembly until new Members of such Committees had been appointed by the Assembly, that is, until the beginning of the next Ordinary Session or part of a Session. The Amendment implied that the mandate of a Representative in the Assembly continues for its allotted period, irrespective of either general elections or the rights of the Member State.

Text of Committee's Report.

1. Representa tives and Substitutes shall remain in office until the opening of the next Ordinary Session except that, in the event of general elections to their respective Parliaments, Members shall be entitled to make changes among their Representatives, in accordance with the provissions of Article 25 of the Statute.

Text of the Amendment.

No change.

Text of Committee's Report.

2. During the periods between Sessions or parts of a Session new Representatives or Substitutes shall, with the agreement of the Bureau and until such time as their credentials have been verified, be provisionally entitled to fill seats which have fallen vacant in Committee.

Text of the Amendment.

2. Representatives and Substitutes who have been replaced as the result of General Elections to their respective Parliaments shall continue to sit in Committees until such time as new Members of Committes have been appointed by the Assembly.

The Committee, after considering these two texts, explored, first of. all, the possibility of fixing the terms of office of all Representative, whatever their nationality. They studied a table prepared by the Secretariat showing the procedure followed by Member States in appointing Representatives to the Assembly. This procedure is extremely diverse. Some Member States appoint their Representatives for one year, others from the beginning of one Ordinary Session to the opening of the next Ordinary Session. In some instances, a member's mandate is considered to expire in the event of a dissolution of the national Parliament : in others it continues for a year notwithstanding an election or even the loss by a Representative of his seat in his Parliament.

The Committee concluded that it would be desirable to achieve greater uniformity in the definition of a Representative's mandate, not only in the interests of continuity in the work in the Assembly and its Committees, but also to avoid the possibility of disputes over the validity of mandates. It would not, however, be sufficient simply to write such a definition into Rule 7 (as the Amendment cited above proposes), for this by itself would not have binding force on Member States. They best way of obtaining from all Member States some degree of uniformity would be to amend Article 25 (a) of the Statute.

Proposed Amendment of Article 25 of the Statute

Under the provisions of Article 41 (d) of the Statute, certain articles can be amended by agreement between the Assembly and the Committee of Ministers without the need for the amended Statute to be ratified by the Member States. Article 25 can be amended in this way. Moreover, there are precedents for so amending the Statute : for example, in December, 1951, at the instance of the Committee on General Affairs, the Assembly proposed, and the Committee of Ministers concurred in, the amendment of Article 26 of the Statute to increase the number of Representatives to which certain Member States were entitled. The proposal to amend Article 25, therefore, presents no inherent procedural difficulty.

The amendment proposed by the Committee to Article 25 does not alter in any particular the existing provisions of that Article. It would merely add to paragraph (a) two new subparagraphs. The first of these two sub-paragraphs lays down that the term of office of Representatives shall date from the opening of the Ordinary Session immediately following their appointment and that it expires at the opening of the next Ordinary Session, or of a later Ordinary Session. This alternative date of expiry was inserted by the Committee in order to preserve the right of a Member State to appoint its Representatives for a period of two or more years, if it thinks fit. A proviso entitles Members to make new appointments, in the event of elections to their respective Parliaments.

The second sub-paragraph states that, when vacancies caused by death or resignation or elections are filled by Member States, the term of office of such new Representatives shall date from the first Sitting of the Assembly following their appointments. Thus, for example, if a Representative loses his seat in his national Parliament in the interval between parts of Sessions of the Assembly, and if a new Representative is appointed by the Member State, the mandate of the newcomer would date from the first Sitting of the Assembly after his appointment, and would from that time supersede the appointment of the old Representative.

The text of the Committee's proposal is as follows :

" The term of office of Representatives thus appointed will date from the opening of the Ordinary Session following their appointment; it will expire at the opening of the next Ordinary Session or of a later Ordinary Session, except that, in the event of elections to their Parliaments, Members shall be entitled to make new appointments.

If a Member fills A'acancies due to death or resignation, or proceeds to make new appointments as a result of elections to its Parliament, the term of office of the new Representatives shall date from the first Sitting of the Assembly following their appointments. "

Amendment to Rule 7

Within the ambit of the proposed amendment to Article 25 of the Statute, the Committee prepared a revised text of Rule 7. As the Rule is entitled " Duration of term of Office of Representatives and Substitutes ", it was appropriate to repeat in the first paragraph the statement of the normal term of office, with provisions similar to those used in the amendment to the Statute. This paragraph was agreed to unanimously by the Committee.

Disagreement arose, however, over the second paragraph. The following text was considered by the Committee :

" 2. Representative s and Substitutes who have been replaced as a result of elections to their Parliaments shall continue to sit in Committees until the first Sitting of the Assembly following the appointment of such new Representatives or Substitutes.

This text meets the objections which had been made when Rule 7 was debated in the Assembly in December, 1951. It has the advantage of ensuring continuity in the membership of the Committees, notwithstanding the incidence of parliamentary elections. It is also in general harmony with the principle included in the Committee's amendment to the Statute-—that the mandate of a Representative who is displaced in elections to his national Parliament shall continue until the first Sitting of the Assembly thereafter, when he may be superseded by a new Representative. Finally, it meets a further objection involved in the problem of credentials. If the term of office of a new Representative, appointed •—while the Assembly was not sitting—as the result of an election in his country, was to date from the moment of his appointment, there would be no means of examining his credentials before he filled the vacancy of a displaced Representative on a Committee. The suggestion that the Bureau should provisionally appoint such a Representative to a Committee was not looked upon with favour during the Debate in the Assembly in December, 1951.

This text of paragraph 2 was challenged in the Committee. An amendment was moved to make the paragraph read as follows : " Representatives and Substitutes who have been replaced as a result of elections to their Parliaments may, with the approval of their Member States, continue to sit in Committees until the first Sitting of the Assembly following the appointment of such new Representatives and Substitutes ".

This Amendment, in effect, applied to Rule 7 the principle that the mandate of a Representative is derived ultimately from the fact that he is a member of a national Parliament. When he loses his seat, his mandate from his electorate is abruptly terminated, and therefore a Member State should retain the right to change its representation in the Assembly, if it thinks fit. This would not rule out | the return to a Committee of the Assembly of j a Representative who had lost his seat, it would J merely preserve the entitlement of the Member State to make a change.

This amendment was put to the vote. The result was : Ayes 5, Noes 5, with two abstentions. Therefore the amendment was negatived. The paragraph was agreed to in its original form.

Paragraph 3 empowers the Bureau, when the Assembly is not sitting, provisionally to fill the seats in Committee which, through death or resignation, have fallen vacant. Under this paragraph, however, the Bureau is restricted in its choice to Representatives or Substitutes whose credentials have already been examined by the Assembly. This paragraph was agreed to unanimously.

3. II - Rule 42

Procedure in Committee

Paragraphs 4 and 7 only were the subject of amendments during the debate in the Assembly in December, 1951.

As regards paragraph 4, a compromise has been found between the former text of the Committee and the text of the amendment proposed in the Assembly. The provisions of the amendments have been largely retained by the Committee, in particular those providing, first, that votes in Committees shall always be by an absolute majority and, secondly, that elections shall take place by secret ballot.

As regards paragraph 7, the Committee decided to maintain their former text and rejected the amendment proposed.

4. III - Rule 45

Access to the Assembly and Committees

In view of the amendments made to their Rules by the Committee of Ministers, the Committee proposes that Rule|45 should take into account the possibility that Ministers who are not Members of the Committee of Ministers should be enabled to take part in the Debates of the Assembly and Committees.

In conclusion, the Committee unanimously proposed to the Assembly the adoption of the following Resolutions :

B. Draft Resolution for the amendment of Article 25 of the Statute in order to determine the term of office of Representatives to the Consultative Assembly

The Assembly,

Taking into account Article 41 (d) of the Statute;

Considering that under the provisions of Article 25 (a) of the Statute, Representatives of each Member are elected by its Parliament of appointed in such manner as that Parliament shall decide;

Considering, however, that the duration of a Representative's term of office should be.precisely defined;

Adopts the following amendment, which will be submitted to the Committee of Ministers for their approval :

" The two following sub-paragraphs are added to paragraph (a) of Article 25 of the Statute of the Council of Europe :

" The term of office of Representatives thus appointed will date from the opening of the Ordinary Session following their appointment; it will expire at the opening of the next Ordinary Session or of a later Ordinary Session, except that, in the event of elections to their Parliaments, Members shall be entitled to make new appointments.

" If a Member fills vacancies due to death or resignation, or proceeds to make new appointments as a result of elections to its Parliament, the term of office of the new Representatives shall date from the first Sitting of the Assembly following their appointment. "

C. Draft Resolution concerning the revision of Rules 7, 42 and 45

Rules 7 and 42 detached from the revised draft rules of procedure, and Rule 45 are modified and re-drafted as follows :

Rule 7

Duration of term of office of Representatives and Substitutes

1. Representatives and Substitutes shall remain in office until the opening of the next Ordinary Session, except that in the event of elections to their Parliaments, Members shall be entitled to make new appointments.

2. Representatives and Substitutes who have replaced as a result of elections to their Parliaments shall continue to sit in Committees until the first Sitting of the Assembly following the appointment of such Representatives or Substitutes.

3. In the event of a seat being vacated through death or resignation, the Bureau may, during the periods between Sessions or parts of Sessions, fill provisionally the seats which have fallen vacant in Committee with other Representatives or Substitutes.

Rule 42

Procedure in Committee

4. A Committee shall meet when convened by its Chairman of at the request of the President of the Assembly, either during or between Sessions.

5. A Committee may, in the interest of its work, appoint one or more sub-committees, of which it shall at the same time determine the composition and competence.

6. Any two or more Committees or sub-committees may hold a joint meeting for the examination or subjects coming within their competence, but may not reach a joint decision.

7. The Rules adopted for the Assembly concerning the election of the President and Vice-Presidents (Rule 9), the Minutes of Proceedings (Rule 21), amendments (Rule 29), right to speak (Rule 31), procedural motions (Rule 32), and methods of voting (Rule 34), shall apply to the proceedings of Committees subject to the following provisions :

a. A Committee shall vote by show of hands, unless any Representative shall demand a vote by roll call. The vote on a report considered as a whole shall, however, always be by roll call. The roll shall be called alphabetically beginning with the letter "A". Elections shall take place by secret ballot. The formal proposal of candidates is optional.

b. Voting in Committee shall be by absolute majority of the votes cast; provided that elections shall be by relative majority at the second ballot, if necessary.

c. A Committee may deliberate when one-third of its members are present, but the vote on a Report considered as a whole shall not be valid unless the majority of the members of the Committee are present.

8. The Chairman of the Committee may take part in discussions and may vote, but without having a casting vote.

9. Any Representative, being a member of a Committee, who is prevented from attending a meeting of that Committee, may arrange to be replaced by another Representative or Substitute of the same nationality himself. He must give notice to the Chairman, who will in turn inform the Committee. The Representative or Substitute who replaces him and has been nominated in due form shall.have the same rights in Committee as the member himself. - A member of a Committee who is unable to attend several Committee meetings should be replaced on each occasion by the same Representative or by the same Substitute, provided that in special cases he may, with the consent of the Chairman of the Committee, arrange to be replaced by another Representative or Substitute of the same nationality as himself.

10. Committee meetings shall be held in private. Unless a Committee decides to the contrary, Representatives and Substitutes may attend meetings of the Committees of which they are not members but they may not take part in their discussions. - A Representative or Substitute, who has moved a motion which has been referred to a Committee, may however be invited by that Committee to take part in its discussions, without the right to vote.

11. Minutes of Proceedings shall be drawn up for each Committee meeting. In addition, a summary record of the proceedings shall be compiled to which Representatives may have access but which will not be distributed.

12. Unless the Committee decides otherwise, the only texts which shall bo made public shall be the reports which have been adopted, as well as statements issued on the responsibility of the Chairman.

Rule 45

Access to the Assembly and Committees

Representatives on the Committee of Ministers or any other Minister of the Government of a Member State having a mandate from or being authorised by, the Committee of Ministers, shall have the right of access to the Assembly and its Committees. They shall be given the right to speak whenever they wish. They may not vote.