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Incompability of a paid office under the Council of Europe with parliamentary membership

Report

Committee on Rules of Procedure, Immunities and Institutional Affairs

Rapporteur: Mr Jacques BICHET, France



A. Draft Resolution¹

The Assembly,

Having been seized of the question " whether a Representative to the Assembly should or should not be qualified to accept nomination to an office of profit or paid employment under the Assembly ",

Resolves :

1. Under the terms of Article 36 (d) of the Statute, the holding of paid office under the Council of Europe is incompatible with the position of Representative to the Consultative Assembly or member of a national parliament.
2. À perso n who has been a Representative to the Consultative Assembly or member of a national parliament shall be debarred from holding paid office under the Council of Europe until two years have elapsed since the termination of his mandate.
3. A Representative to the Consultative Assembly shall be at liberty to become a member of the European Commission of Human Rights.

1. See 25th Sitting, 25th October, 1955 (Referred back to the Committee on Rules of Procedure and Privileges for reconsideration).

B. Explanatory Memorandum presented by M. BICHET, Rapporteur

On 9th July, 1954, the Standing Committee referred to the Committee on Rules of Procedure and Privileges (Reference No. 49) the question raised by Mr. Morrison "whether a Representative to the Assembly should or should not be qualified to accept nomination to an office of profit or paid employment under the Assembly." M. Rolin asked that the position of Representatives who were members of the European Commission of Human Rights should be looked into.

Mr. Morrison's question brings up the problems of incompatibility and of ineligibility

The question of incompatibility is settled in principle, at least so far as the Council of Europe is concerned, by Article 36 (d) of the Statute, which reads : " No member of the Secretariat shall hold any salaried office from any government or be a member of the Consultative Assembly or of any national legislature or engage in any occupation incompatible with his duties ".

Though this text lays down expressly the principle of incompatibility, it does not solve the problem of ineligibility. A member of the Consultative Assembly or of a national parliament may, in fact, apply for paid office under the Council of Europe (as Secretary-General or Clerk of the Assembly), and may be elected thanks to his friendship with Representatives or the influence of his position. All he need do then is to resign his seat, and Article 36 of the Statute is observed in the letter. But to satisfy fully the requirements of Article 36 no member of the Consultative Assembly or of a national parliament should even be eligible for paid office under the Council of Europe.

Examples of such ineligibility exist in member countries. They are normally of two kinds, absolute and relative.

The difference lies in the extent of the area to which ineligibility applies. If absolute, it applies to all electoral constituencies, but it may be relative, applying only to some.

It would be out of place here to dwell upon the texts which deal with this matter except to point out that in all cases of relative ineligibility—which election to office under the Assembly may be said to resemble—the person concerned may become eligible at the end of a certain period after resigning the post or position which rendered him ineligible.

The principle of incompatibility which is established in Article 36 (d) of the Statute should be supplemented by a ruling concerning ineligibility. The incompatibility between paid office under the Council of Europe and the position of Representative to the Consultative Assembly or of a member of a national parliament ceases to exist when parliamentary office is no longer held. But ineligibility should continue so long as the factors which operate in favour of the candidate subsist. Some Representatives had considered that ineligibility should be permanent. There are reasons for thinking this unfair. Holders of the office of Secretary-General and of Clerk of the Assembly may sometime be professional diplomats. A diplomat may be elected to a national parliament and to the Consultative Assembly; he may later lose his seat and resume his diplomatic career. He may then present himself as a candidate for one of the posts in question. In the opinion of the Committee, a period of two years should be regarded in this case as sufficient for the factors operating in his favour to have lost their force.

In spite of certain legal and political aspects of the duties devolving upon a member of the European Commission of Human Rights, the appointment of a member of the Consultative Assembly to that commission would not appear to be incompatible with his position as a Representative.

In the first place, the members of the European Commission of Human Rights are not appointed by the Assembly; they are elected by an absolute majority of the Committee of Ministers from a list of names recommended by the Bureau of the Assembly. Each national group of Representatives to the Assembly nominates three candidates, of whom two at least are nationals of the country concerned.

Furthermore, the members of the Commission receive no remuneration, but simply an expense allowance. Finally, they sit on the Commission in their personal capacity.

The question was asked whether in view of Mr. Morrison's and M. Rolin's queries, this enquiry should not be taken a stage further, whether it would not be judicious to provide for other possible cases of incompatibility, for example :

- A Representative to the Consultative Assembly may become a member of his Government. Is there not incompatibility between the two functions? fonctions?

- A man may hold a high executive or administrative position in a commercial concern, subsidised or otherwise, favoured by the E. C. S. C. or the Council of Europe or other European organisation. Is his position compatible with that of Representative to the Consultative Assembly?

It would be preferable, however, to consider for the moment only the specific questions raised and deal with other possible cases of incompatibility or ineligibility as and when they, arise.

The Committee accordingly resolved to submit to the Assembly the foregoing draft Resolution, which was agreed to unanimously.