Parliamentary Assembly
Assemblée parlementaire
https://pace.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 11532
11 March 2008

Candidates for the European Court of Human Rights

Motion for a resolution[1]
tabled by Ms Marie-Louise BEMELMANS-VIDEC and other members of the Assembly

This motion has not been discussed in the Assembly and commits only those who have signed it

In January 2004 the Assembly adopted Recommendation 1649 (2004) and Resolution 1366 (2004). In these texts, it confirmed the necessity to keep the procedure of selection which had been set up in 1996. It also emphasised the need for candidates to posses the required level to exercise the function of judge by virtue of Article 21 of the European Convention on Human Rights (ECHR) as well as the need for gender balance. In March 2005, Resolution 1366 (2004) was amended by Resolution 1426 (2005) by which single-sex lists of candidates would be considered if the sex was under-represented (under 40% of judges).

In its reply to Recommendation 1649 (2004), the Committee of Ministers indicated that "circumstances may *exceptionally* arise in which, as a result of the correct application of the other five criteria [enumerated in paragraph 19 of the recommendation], a contracting party may find itself obliged to submit a list containing candidates of only one sex in derogation from that rule.... In this context, the Committee draws attention to the danger that such an obligation could under certain circumstances give rise to difficulties in satisfying the requirements of Article 21 of the Convention" (Doc. 10506, emphasis added).

The Committee of Ministers therefore invited the Assembly "to consider the possibility of modifying its own rules in order to allow *exceptional derogation* from the rule where the authorities of the contracting party concerned present convincing arguments to the Committee of Ministers and the Assembly to the effect that, in order to respect the requirements concerning the individual qualifications of candidates, it could not do otherwise than to submit a single-sex list" (again, emphasis added).

On 17 April 2007, a draft resolution presented by the Committee on Legal Affairs and Human Rights (Doc. 11208) aimed at amending paragraph 3.ii of Resolution 1366 (2004), as amended by Resolution 1426 (2005), was rejected by the plenary Assembly.

On 17 July 2007, the Committee of Ministers requested the European Court of Human Rights to give, in accordance with Article 47 of the ECHR, an advisory opinion in particular on the question of the refusal by the Assembly to consider a list of candidates for the post of judge at the Strasbourg Court solely on the basis of gender-related issues.

On 12 February 2008, the Court came to the conclusion that "in not allowing any exceptions to the rule that under-represented sex must be represented, the current practice of the Parliamentary Assembly is not compatible with the Convention" and that "exceptions to the principle that lists must contain a candidate of the under-represented sex should be defined as soon as possible".

1. Referred to the Committee on Legal Affairs and Human Rights, for report, and to the Committee on Equal Opportunities for Women and Men, for opinion: Reference No. 3434 (18th Sitting, 18 April 2008).

Under these circumstances, the Assembly decides to re-examine the present practice regarding consideration of lists of candidates submitted to it by states parties to the ECHR.

Signed (see overleaf)

Signed[2]*:*

BEMELMANS-VIDEC Marie-Louise, Netherlands, EPP/CD
ACKETOFT Tina, Sweden
CILEVIČS Boriss, Latvia, SOC
DÄUBLER-GMELIN Herta, Germany
GARDETTO Jean-Charles, Monaco, EPP/CD
GROSS Andreas, Switzerland, SOC
HOLOVATY Serhiy, Ukraine, ALDE
IVANJI Željko, Serbia, EPP/CD
KELEMEN András, Hungary
KUKAN Eduard, Slovak Republic
LEUTHEUSSER-SCHNARRENBERGER Sabine, Germany, ALDE
MARTY Dick, Switzerland, ALDE
MÜRI Felix, Switzerland, ALDE
ROWEN Paul, United Kingdom, ALDE
SASI Kimmo, Finland, EPP/CD
SHARANDIN Yuri, Russian Federation
STRÄSSER Christoph, Germany, SOC
TÜRKEŞ Tuğrul, Turkey, EDG
UNGUREANU Vasile Ioan Dănuţ, Romania
VAKSDAL Øyvind, Norway

2. ALDE: Alliance of Liberals and Democrats for Europe
EDG: European Democrat Group
EPP/CD: Group of the European People's Party
SOC: Socialist Group