

Resolution 1674 (2009)¹

Reconsideration on substantive grounds of previously ratified credentials of the Ukrainian delegation (Rule 9 of the Assembly's Rules of Procedure)

Parliamentary Assembly

1. Judges on the European Court of Human Rights (the Court) are elected by the Parliamentary Assembly on the basis of a list of three candidates provided to it by each state party to the European Convention on Human Rights (the Convention, ETS No. 5). Candidates who withdraw from the list must be replaced by the state. This the Ukrainian authorities refused to do after a candidate had withdrawn in late 2007. Instead, Ukraine has transmitted a new list of three candidates which the Assembly decided not to accept since there exist no exceptional circumstances to justify this.
2. Article 22, paragraph 1, of the Convention requires each state party to submit a list of three candidates to the Parliamentary Assembly to enable the Assembly to elect a judge in respect of the state concerned. The persistent refusal by the Ukrainian authorities to provide the Assembly with the name of a third candidate has so far prevented the election of a judge in respect of Ukraine. It may also constitute a serious violation of the Organisation's basic principles mentioned in the preamble to and Article 3 of the Statute of the Council of Europe (ETS No. 1).
3. The appointment, in the meantime, of ad hoc judges, for a prolonged period of time, not elected by the Assembly, is an abuse of a procedure that has been specifically set up to provide democratic legitimacy to the judges of the European Court of Human Rights who are elected by the Assembly. To so circumvent the election procedure foreseen by the Convention threatens to undermine the credibility of the Court.
4. It is incumbent, in particular, upon the authorities of Ukraine and its parliamentary delegation, as well as the statutory organs of the Council of Europe, the Committee of Ministers and the Parliamentary Assembly, to ensure that this situation is resolved without further delay.
5. As the Assembly indicated in [Resolution 1646 \(2009\)](#) on the nomination of candidates and election of judges to the European Court of Human Rights, it is crucial to ensure that the authority and credibility of the Court are not put at risk by ad hoc and politicised interventions in the nomination of candidates. In the same vein, the Assembly has established clear rules preventing the partial or complete modification by states of lists of candidates once submitted, unless the Assembly finds exceptional reasons that can justify such modification (as specified in paragraph 1 of the appendix to Assembly [Resolution 1432 \(2005\)](#) on the procedure for elections held by the Parliamentary Assembly other than those of its President and Vice-Presidents).
6. Moreover, the Assembly considers that the blocking by the Ukrainian authorities of the election of a judge in respect of Ukraine, the failure to communicate the name of a third candidate and the appointment of ad hoc, unelected judges who have been performing the duties of judge in the Court in respect of Ukraine since January 2009 in lieu and place of a judge duly elected by the Assembly seriously calls into question the Assembly's electoral competence as provided for in the Convention.

1. Assembly debate on 23 June 2009 (21st Sitting) (see [Doc. 11963](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Marty; and [Doc. 11965](#), opinion of the Committee on Rules of Procedure, Immunities and Institutional Affairs, rapporteur: Mr Lintner). Text adopted by the Assembly on 23 June 2009 (21st Sitting).



7. The Assembly notes that the Ukrainian authorities have decided to inform the President of the Assembly that they have requested that the Committee of Ministers, by virtue of Article 47 of the Convention, seek an Advisory Opinion from the European Court of Human Rights on the right of a state to withdraw a list of candidates once submitted. This question should enable the Court to determine whether Ukraine's refusal to provide the name of a third candidate is in conformity with the requirements of the Convention.

8. Consequently, the Assembly decides not to annul and therefore to confirm the credentials of the Ukrainian parliamentary delegation on the understanding that Ukraine will take without further delay all necessary steps to finalise the election of a judge of the European Court of Human Rights in respect of Ukraine in compliance with its obligations under the Convention and the Organisation's statute and in line with the advisory opinion of the European Court of Human Rights, if there is one.