



Strasbourg, 29 May 2009

Opinion no. 508/2008

CDL(2009)078*
Eng. Only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**COMMENTS ON THE
RULES OF PROCEDURE
OF THE ASSEMBLY
OF “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”**

by

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1. Introduction

1. Following the fact-finding visit to "the former Yugoslav Republic of Macedonia" that Mr HOLOVATY, Chair of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) made within the framework of the post-monitoring dialogue, he suggested that the Monitoring Committee would ask the Assembly to make a legal appraisal of the Rules of Procedure of the Assembly of "the Former Yugoslav Republic of Macedonia". At its meeting in Paris on 19 November 2008, the Committee endorsed that suggestion and instructed the Secretariat of the Assembly to prepare, within the framework of the parliamentary co-operation programme, a legal appraisal of the aforementioned Rules of Procedure of the Assembly.

2. In his information note on the fact-finding visit he made¹, Mr HOLOVATY listed, as far as the functioning of the Parliament is concerned, several problems concerning the rights of the opposition. He regretted that the Assembly's Rules of Procedure were adopted in the absence of the opposition. Although he acknowledged that the new Rules provide for an increased protection of the rights of the opposition, he was told by the representatives of the opposition that the practical implementation of these new protective provisions remained problematic and that the powers of the Speaker of the Parliament were too broad and enabled him, in practice, to block the initiatives of the opposition. It is with this information in mind that I analysed the Assembly's Rules of Procedure, using an English translation that has been published on the Assembly's website².

3. At this stage, I based my analysis solely on the text of the Rules of Procedure. However, it has to be stressed that the text of the rules of procedure of a parliamentary assembly doesn't say everything. A purely textual analysis does not learn how these texts are applied in practice. These preliminary observations may therefore have to be completed or revised on the basis of additional information I would gain by meeting representatives of the Parliament's administration and of the main political representatives. The analysis also does not concern the way the new Rules of Procedure were adopted³. It is with this reservations in mind that one should read the following analysis.

2. Rights and responsibilities of the opposition in a democratic parliament

4. Considering that the main focus of this analysis concerns the rights of the opposition in the Assembly of "the Former Yugoslav Republic of Macedonia", it has to be pointed out that Parliamentary Assembly of the Council of Europe has recently adopted a resolution on this subject matter (Resolution 1601 (2008) ("Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament")⁴. The resolution provides for a

¹ Post-monitoring dialogue with "the former Yugoslav Republic of Macedonia", Information note on the fact-finding visit by the Chair of the Committee (2-5 November 2008), Rapporteur Mr Serhiy HOLOVATY, AS/MON (2008) 31 rev., 20 November 2008.

² <http://www.sobranie.mk/en/default.asp?vidi=delovnik>.

³ In his information note, Mr Holovaty points out that the new Rules were adopted "without any debate and in the absence of the representatives of the opposition" (paragraph 9).

⁴ See also Resolution 1154 (1998) of the Parliamentary Assembly of 20 April 1998 on the « democratic functioning of national parliaments », paragraph 6, iv (The Parliamentary Assembly believes that member parliaments should « give the opposition a status enabling it to play a responsible and constructive role, inter alia by being allowed to secure the setting up of a committee of enquiry and to be consulted before any decision leading to the dissolution of parliament »; Resolution 1547 (2007) of the Parliamentary Assembly of 17 April 2007 on a « code of good practice for political parties », paragraph 13.4 (The Parliamentary Assembly considers that the code of good practice for political parties should « embrace good practices for the political parties in the

number of guidelines which Council of Europe member states, and their parliaments, “should take into account” (paragraph 10 of resolution 1601 (2008)) when reforming the rules on the rights of the opposition or a parliamentary minority (paragraph 9 of resolution 1601 (2008)).

5. These guidelines reflect a number of general principles of parliamentary law that the Council of Europe member states have in common:

- **independence**: elected representatives of Parliament must exercise their mandate independently and cannot be bound by any instruction or receive a binding mandate (guideline 1).
- **equal treatment**: equal treatment of MPs, both as individual members and as members of a political group, has to be ensured in every aspect of the exercise of their mandate and of the operations of parliament (paragraph 5 of resolution 1601 (2008)).
- **effectiveness**: each MP is entitled to participate in an effective and active manner in the activities of the legislative assembly where he belongs, irrespective of the fact whether he is a member of the majority or of the opposition (paragraph 5 of resolution 1601 (2008)).
- **freedom of expression**: all MPs must be able to express their ideas freely (guideline 2.2).
- **proportional representation**: when the different bodies of the assembly are set up (bureau, committees, interparliamentary delegations), when officers of parliament are elected (speaker, vice-presidents, committee presidents and vice-presidents, rapporteurs) and when determining the share of each political group in the activities of the assembly (allocation of speaking time), account must be taken of representation of the different political groups within Parliament (guidelines 2.2.9, 2.3.1, 2.5.1 and 2.5.5).
- **opposition rights**: the important role of the opposition in a parliamentary democracy has to be underlined: A balance has to be struck between, on the one hand, the legitimate will of the majority to go forward and to bring about the program on the basis of which they were elected, and, on the other hand, the possibility for the opposition to express its views on the bills tabled by the government in a way that allows them to influence the texts that are to be adopted (paragraph 3 of resolution 1601 (2008) and guideline 2).

3. Observations on the Assembly’s Rules of Procedure

a) General observations

6. One can find in the Rules of Procedure of the Assembly of "the Former Yugoslav Republic of Macedonia" provisions that implement some of the aforementioned principles and guidelines. Although I will highlight some provisions of the Rules of Procedure may give cause to concern, taking into account these principles, it should therefore be acknowledged that, for many parts, the Assembly’s Rules of Procedure are in accordance with the principles set out in Resolution 1601 (2008).

opposition:

13.4.1. recognising the role of the opposition as having a beneficial effect on the democratic process;

13.4.2. enhancing dialogue between governing and opposition parties and reinforcing the principle that the most important duty of the opposition is to hold the government to account;

13.4.3. fostering conditions that ensure that the role of opposition parties is not merely confined to criticising those in power;

13.4.4. encouraging the opposition to establish a “shadow” programme; ».

b) *Proportional Representation*

7. Several articles of the draft rules of procedure provide for a minimal representation of the political parties present in the Assembly in committees, working bodies or parliamentary offices. *Per* article 12, the Verification Committee shall be composed of a president and four members *from among the Members of the Assembly belonging to various political parties represented in the Assembly*. According to article 20, “an adequate representation shall be ensured in the Committee [on Elections and Appointments] of Members belonging to the political parties represented in the Assembly”. The Vice-Presidents of the Assembly “shall be elected from among Members belonging to various political parties represented in the Assembly” (article 21, second paragraph). One of the Vice-Presidents shall be elected from among the Members belonging to the biggest opposition party represented in the Assembly (article 21, third paragraph). If the Assembly decides to hold a secret ballot when electing its Speaker, the Provisional Chairperson shall be assisted by, *inter alia*, three members “elected by the Assembly upon a proposal by the Chairperson, from among the Members belonging to different political parties represented in the Assembly” (article 24, second paragraph). For the election of chairpersons and members of working bodies of the Assembly and of their deputies; of heads, members and deputy members of the permanent parliamentary delegations in international parliamentary assemblies, and of chairpersons and members of the Assembly's groups for cooperation with other parliaments “Appropriate representation of Members of Parliament from parliamentary working groups and Members of Parliament who do not have their parliamentary group shall be ensured in the proposal of the Committee [on Election and Appointment Issues]” (article 108, second paragraph). Moreover, “the Chairpersons and the Deputy Chairperson of the Standing Inquiry Committee for Protection of the Freedoms and Rights of Citizens shall be proposed from among the Members of the Assembly from the opposition” (article 108, third paragraph). The opposition may also propose one “expert and scientific member” within the working bodies (article 119, paragraph 2), who shall be able to take part in the work of the working body concerned, without the right to vote. The Committee for assessing the grounds of a proposal for initiating a procedure to determine the accountability of the President of the Republic should adequately represent “the members of parliamentary groups and the Members of the Assembly that are not organised in parliamentary groups” (article 206, second paragraph).

Although these provisions thus reflect the principle of proportional representation, some remarks have to be made.

8. Articles 20, 108 and 206 of the rules of procedure use the “appropriate/adequate representation”-criterion. This criterion is particularly vague and does not contain, in itself, a guarantee that all political groups will be represented in accordance with their number of seats. It may be useful to use a more precise criterion, such as proportional representation⁵.

9. As far as the Vice-Presidents is concerned, article 21, second paragraph of the rules of procedure does not only provide that “various political parties represented in the assembly” are entitled to an office of Vice-President, but also that the Assembly determines the number of Vice-Presidents. The two issues are, however, related: the fewer offices of Vice-President there are, the fewer political parties shall be able to obtain such an office. When the Assembly thus determines the number of Vice-Presidents, it should therefore take into account the effects its decision will have on the representation of all political parties at the lever of the Vice-Presidents.

⁵ On the other hand, the “appropriate representation”-criterion may be used to enable a political group to be represented in the working bodies although, using strict proportional representation, it is not entitled to a seat.

The question arises how to ensure that article 21, paragraph 2, is complied with, taking into account the articles 27 and 28 of the rules of procedure, which determine the procedure to elect the Vice-Presidents. According to article 27, the provisions concerning the election of the President also apply to the Vice-Presidents. The candidate(s) with obtain a majority of the total number of MPs are elected. This seems to imply that either the Committee on Election and Appointment Issues or 20 Members may propose a candidate for the office of Vice-President. A small political group with less than 20 Members will thus not be able to propose its own candidate. In that case, the Committee will have to ensure that there are candidates from the "various" political groups. It would, however, be regrettable if a political group would not be able to propose its own candidate. As far as article 28 is concerned, one wonders how one can be sure that the Assembly will elect, with a majority of the total number of members, Vice-Presidents belonging to various political parties. This seems even more difficult if the Assembly would to decide to hold a secret ballot (article 24 *juncto* article 27 of the draft rules of procedure).

Moreover, article 61, paragraph 2 of the rules of procedure provides that, when the President is absent, he or she shall be replaced by a Vice-President "according to a previously determined schedule and ensuring equitable involvement of the Vice-Presidents". In order to enable Vice-Presidents belonging to opposition parties to enjoy their office to the full, they too should be entitled to a possibility to replace the Speaker. This schedule should thus also contain a spot for Vice-Presidents belonging to opposition parties.

10. As far as article 24, paragraph 2, of the rules of procedure is concerned, although this provision requires the Assembly to elect three members "belonging to different political parties represented in the Assembly" to assist the Chairperson when the Assembly decides to elect its Speaker using a secret ballot, it does not guarantee that there is a member of the opposition amongst those members. As there are only three offices available, they could, at least in theory, all be assigned to majority parties (provided the majority consists of at least three parties)⁶. The usefulness of this provision will thus depend on the wisdom of the Assembly.

11. As has been explained above, article 108, paragraph 2, of the rules of procedure guarantees the political groups, as well as Members not belonging to a political group, an "appropriate representation" within the Assembly's working bodies. It is, however, the Committee on Election and Appointment that proposes the candidates for the offices of *inter alia* Chairperson and Member of a working body "on the basis of a list proposed by the parliamentary groups" (article 108, paragraph 1 of the rules of procedure). This would enable the Committee to propose someone else than the Member proposed by a group. This is not desirable: as these offices are divided amongst the political groups, the Members concerned in a way represent their political group in the body concerned. It should therefore be for the group to propose his candidate directly to the Assembly.

12. The fact that per article 108, third paragraph, the Committee on Election and Appointment has to propose members from the opposition from the chairpersonship and the deputy chairpersonship of the Standing Inquiry Committee for Protection of the Freedoms and Rights of Citizens is commendable, although, as pointed out above, it would be preferable that the opposition groups would themselves nominate their candidates for these positions. Moreover, the rules only provide that the Committee has to *propose* opposition members. There is no guarantee that they will be effectively elected.

⁶ Moreover, the question once more arises how to ensure that those three members belong to the various parties represented in the Assembly, as they are elected. It seems that the Chairperson, who proposes them, should take into consideration this requirement when making his proposal, i.e. proposing members belonging to different political parties.

c) *Opposition rights*

13. The information note of Mr Holovaty points out that the new Rules “allow the opposition to suggest items to be put on the agenda, which the Speaker of the Parliament is obliged to include in the agenda of the first subsequent sitting of the Parliament” (paragraph 11), but adds that “the practical implementation of these new protective provisions remained problematic and that the powers of the Speaker of the Parliament were too broad and enabled him, in practice, to block the initiatives of the opposition” (paragraph 12).

14. As far as questions are concerned, the rules of procedure provide indeed for a mechanism to ensure that members of the opposition are able to put forward a question. According to article 40, second paragraph of the Rules of Procedure, the President of the Assembly shall determine the order of the parliamentary questions, *in agreement with the Parliamentary Group Co-ordinators, in such a manner that will ensure that Members of the Assembly from different parliamentary groups pose parliamentary questions* (article 40, second paragraph). This should give the opportunity to Members of Parliament from the opposition to put parliamentary questions. The same applies to the rule laid down in article 49, paragraph 3, of the rules of procedure according to which when the Assembly debates on an “interpellation”, the order of Members of the Assembly by parliamentary groups and Members who are not organised in parliamentary groups and who shall participate in the debate, shall be determined by the President of the Assembly in agreement with Coordinators of Parliamentary Groups, in such a manner that will ensure that Members of the Assembly from different parliamentary groups shall take part in the debate. Moreover, article 63 of the rules of procedure lists a number of decisions the President is to take together with the Vice-Presidents and the co-ordinators of the political group. According to the second section of that article, “the President of the Assembly works with the Vice-Presidents and Co-ordinators of Parliamentary Groups *on the basis of reaching agreement of position*”. This provision seems to imply a consensus-requirement.

15. However, the matters whereupon the President, the Vice-Presidents and the co-ordinators of the political group have to agree are described in a very vague manner (The President of the Assembly, together with the Vice-Presidents and Co-ordinators of Parliamentary Groups shall, *inter alia*, “review issues important for improvement of the work of the Assembly and its working bodies” and “review issues and initiatives related to the work of the Assembly;”). Matters such as the determination of the agenda of the Assembly seem to be missing from that list. Per article 69, paragraph one⁷, the establishment of the draft agenda seems to be the sole responsibility of the President of the Assembly⁸. However, the second paragraph of that article provides that “the President of the Assembly *shall* include in the draft agenda the issues that have fulfilled the relevant conditions determined with these Rules of Procedure”, which seems to imply an obligation to include *inter alia* opposition bills⁹. However, if he fails to do so, an opposition member is, apart in case of urgency¹⁰, unable to propose to add an item on the agenda which the President would have omitted.

⁷ “The President of the Assembly shall propose the agenda for the sessions, and the Assembly shall decide thereon at the beginning of the session”.

⁸ Moreover, in a case of emergency, the President proposes the agenda only “at the very session”. One would imagine that the emergency that justifies the sitting of the Assembly would also determine its agenda. It seems therefore preferable that the President informs the Members of the agenda as soon as he convenes the sitting. In any event, in case of urgency, he will still be able to add an item to the agenda (**article 68, section 1, of the draft rules of procedure**).

⁹ Once the President has ruled that they are in accordance with the provisions of the rules of procedure (article 136 of the rules of procedure).

¹⁰ In “cases of urgent and pressing matters”, a member of the Assembly may propose to add items to the agenda “until the decision is made on the Agenda for the session” (article 70, paragraph 1).

16. Considering the above, it seems preferable that the establishment of the draft agenda would no longer be the sole responsibility of the President and that the Vice-Presidents and the co-ordinators of the political groups would assist him in this task. Moreover, in order to ensure the opposition the possibility to have a debate on their own proposals, one could – along the lines of article 48 of the French Constitution¹¹, provide for a session whereby priority is given to the agenda determined by the opposition.

17. The Rules seem to ensure that members, including opposition members, will be able to take part in the debate in the plenary. *Per* article 112, paragraph 2, the President of the Assembly shall determine the order of Members of the Assembly in the debate in a manner that ensures participation in the debate of Members of the Assembly from the different parliamentary groups represented in the Assembly. The speaking order of Members of the Assembly in parliamentary groups and Members of the Assembly who do not belong to any parliamentary group and who shall take part in the debate, shall be determined in an agreement between the President of the Assembly and the coordinators of parliamentary groups prior to the beginning of the session (article 216, paragraph 2). However, *per* article 165, the President of the Assembly may conclude a debate on a law proposal, amendments or other acts within the competence of the Assembly, and set a date and hour for the vote when the Assembly shall pronounce itself. The Assembly shall pronounce itself on law proposals, amendments or other acts within the competence of the Assembly without a debate. In that case, the right for opposition members to speak does no longer seem to be ensured.

4. Provisional conclusions

18. It seems that in terms of the rights of the opposition, the main problem seem to lie in the right of the President to determine on his own the draft agenda of a session. This is particularly problematic, considering the fact that, except for urgent matters, Members are not entitled to propose additional items to be added to the agenda.

¹¹ Article 48 of the French Constitution, prior to the entry into force, on March 1, 2009? of the constitutional law n° 2008-724 of July 23, 2008, provides: "Without prejudice to the application of the last three paragraphs of article 28, priority shall be given on the agendas of the Houses, and in the order determined by the Government, to debating Government Bills and Private Members' Bills accepted by the Government.

At one sitting a week at least priority shall be given to questions from Members of Parliament and to answers from the Government.

At one sitting a month priority shall be given to the agenda determined by each House". After the entry into force of the aforementioned constitutional law, article 48 of the French Constitution will provide: "*Without prejudice to the application of the last three paragraphs of article 28, the agenda shall be determined by each House.*

During two weeks of sittings out of four, priority shall be given, in the order determined by the Government, to the consideration of texts and to debates which it requests to be included on the agenda.

In addition, the consideration of Finance Bills, Social Security Financing Bills and, subject to the provisions of the following paragraph, texts transmitted by the other House at least six weeks previously, as well as bills concerning a state of emergency and requests for authorization referred to in article 35, shall, upon Government request, be included on the agenda with priority.

During one week of sittings out of four, priority shall be given, in the order determined by each House, to the monitoring of Government action and to the assessment of public policies.

One day of sitting per month shall be given to an agenda determined by each House upon the initiative of the opposition groups in the relevant House, as well as upon that of the minority groups.

During at least one sitting per week, including during the extraordinary sittings provided for in article 29, priority shall be given to questions from Members of Parliament and to answers from the Government".

19. Apart from that, although several articles of the rules seem to provide for an adequate representation of the political groups represented in the Assembly, the vague terminology that is used and the mechanisms to appoint the Assembly's officers do not guarantee opposition groups that they will have a seat in the different organs of the Assembly.

20. At this stage, these are the two main reservations that I have concerning the Assembly's rules.