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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

**REPORT
ON PARLIAMENTARY ASSEMBLY RECOMMENDATION 1676 (2004)
ON WOMEN'S PARTICIPATION IN ELECTIONS**

based on comments by

Mr François LUCHAIRE (Member, Andorra)

Ms Hanna SUCHOCKA (Member, Poland)

Introduction

1. *At its fourth part-session in 2004 (Strasbourg, 4-8 October 2004), the Parliamentary Assembly of the Council of Europe adopted Recommendation 1676 (2004) on women's participation in elections.*

2. *At its 900th meeting (20 October 2004), the Committee of Ministers took the following decision:*

“The Deputies ... concerning Recommendation 1676 (2004) ... decided to communicate it to the European Commission for Democracy through Law (Venice Commission) for opinion by 31 January 2005”.

3. *This report has been drawn up in response to this request. It is based on the observations of Mr François Luchaire (member, Andorra) and Ms Hanna Suchocka (member, Poland) (CDL (2004) 112 and 127). At its 61st plenary session (Venice, 3 and 4 December 2004), the Commission ratified these observations and instructed the Secretariat to prepare the present consolidated opinion in co-operation with the Rapporteurs.*

I. General observations

4. Upon becoming a member of the Council of Europe, every state pledges to live up to existing standards in the realm of election rights. That can be achieved by introducing the proper provisions into the Constitution, particularly those guaranteeing universal suffrage on the basis of equality and secret ballots, and subsequently developing those provisions in ordinary legislation. But the analysis of a constitution alone does not provide grounds for an honest appraisal of women's participation in the election process. Certain behaviour occurs outside the realm of general constitutional principles. That was probably the reason behind the preparation of this Recommendation.

5. Established custom, rooted in the traditions and practices of a given state as well as in the general view of a woman's role in political life, is of cardinal importance and exerts a major influence on the implementation of general voting-rights principles. In spite of numerous achievements in the field of increased electoral rights for women (see Recommendation, point 1), much still remains to be done.

6. For that reason, the Parliamentary Assembly of the Council of Europe proposes that the Council of Ministers should draw up a Charter of Electoral Equality, in which Council of Europe member-states would subscribe to concerted action to guarantee women's electoral rights and to improve the electoral participation of women.

7. The Charter would essentially concentrate on two issues that constitute a real threat to effective female participation in elections. These are:

- What is known as ‘family voting’, when some women are being prevented from casting their own vote (see Recommendation, point 3, specifying such situations);
- Inadequate representation of female candidates on the ballot at every level.

8. Although the two above-cited issues differ, they both have a common basis. In both cases, it is a question of breaking down a certain tradition, a certain general mind-set that continues to exist despite guarantees of universal and equal suffrage.

9. The general aim is obviously to improve women's participation in elected assemblies; however, it would be better to replace "women's participation in elections" with "encouraging equal access by women and men" and parity "in elective office".

II. Eliminating family voting (paragraph 6.i)

10. 'Family voting' must be eliminated. This involves going against cultural traditions and/or social relationships existing in certain states, where men play a particular role in both political and public life. That is reflected by electoral law in the practice of a male family member collecting ballot papers belonging to one or more women relatives and marking those papers as he sees fit. Owing to the strength of tradition, that practice is not even regarded as a violation of democratic electoral rights. Even though women are not formally deprived of the right to vote, such a system does not allow a women to vote freely and make a choice in accordance with her own convictions. The Charter of Electoral Equality may help to break down such a behaviour. Such a charter could play an important educational role both vis-à-vis voters as well as vis-à-vis election officials. From that point of view, the efforts specified in point 6.i.a-c of the Recommendation are of crucial importance, by underlining that certain behaviour violates democratic election rights. It is equally important to train election commission members to react during the vote itself.

11. It would seem, however, that caution should be exercised when introducing the sanctions mentioned in paragraph 6.i.d into the Charter, and they should be limited by certain provisions. There would seem to be no point in imposing a sanction such as invalidating votes in cases when 'family voting' was an isolated phenomenon. Such a sanction could be imposed when 'family voting' in various forms was a mass phenomenon. In such cases, the invalidation of votes seems to be the only way to proceed.

12. The Charter can therefore play an important role in eliminating what from the standpoint of democratic elections is the phenomenon of 'family voting'.

13. Nevertheless, the proposal set out in (e) to outlaw proxy voting must be rejected, because electors who are absent from their place of residence on the day of the elections should obviously not be deprived of their voting rights. It would be sufficient to specify that proxy voting is permissible only if the voters in question have provided a judicial body with prior proof of and acceptable reasons for their absence from their place of residence on the day of the election. Moreover, the number of proxies held by each voter must be limited¹.

III. The 40% objective – gender parity (paragraph 6.ii)

14. The issue of balanced gender representation or indeed of gender parity, on representative bodies is more complicated. It is an "evergreen" subject in all discussions on gender equality. The parity objective may infringe the equality principle where an individual with less ability

¹*Code of Good Conduct in Electoral Matters, Venice Commission (CDL-AD (2002) 023 rev.), para. I.3.2.v.*

than someone else is selected on the basis of his/her gender. This does not, however, alter the fact that parity must be the main ultimate goal².

15. Parity must be an objective rather than a strict obligation. Furthermore, the aim should be not a 40% level of female representation but rather a minimum level of 40% elected representatives of each gender. All the proposals in the Recommendation should be amended accordingly.

16. It does not seem that the phenomenon of increasing female representation in representative organs can be resolved by simply requiring the appropriate number of women on the ballot (paragraph 6.ii.b). A change in that area requires broader awareness modification, and that cannot be accomplished through regulations alone. Regulations can play a stimulating role, and the Venice Commission appreciates their significance and sees the possible inclusion in the Charter of the points proposed in the Recommendation. Hence, the reservation contained in paragraph 6.ii.f stating that quotas should be time-limited and proportionate is correct. The conviction of political parties that the proper proportion of women should be included on the ballot alongside male candidates is insufficient. That also requires breaking down voting habits and building the conviction that female candidates should also be voted for.

17. Even in those states, where political parties agreed to include the proper proportion of women on the ballot, experience has shown that that did not ultimately translate into the same proportion in the elected representative bodies. That would indicate that it is not the mere presence of female candidates on the ballot that makes women vote for them, nor is their absence from the ballot the reason women do not get elected. Frequently women do not get elected because of a conviction that there is no need for them to play such a role. In many states, probably even more often in the 'old democracies', there exists a kind of habit of voting for men, and that includes electing them to responsible posts in international organisations.

18. With the aforementioned reservations, proposals (a), (b), (c), (e), (f), (g) and (i) can be accepted.

19. Proposal (d) should be submitted to the Parliaments themselves rather than to their Presidents.

20. Proposal (h) cannot be accepted for posts held by a single person, such as the office of mayor, because it would prevent electors from voting for the official of their choice.

21. Proposal (j) should not be exclusively applied to women because it would suggest that they were less intelligent than men; it would be better to develop training packages for young people of either gender.

IV. Awareness-raising/monitoring of elections (paragraphs 7 and 8)

22. Education is the key to changing the situation. Parity must be explained to children already at school. If one were to regard the Charter as one of the elements playing an essential role in the education process, then it should be disseminated in particular in the schools. Paragraph 7 proposed in the Recommendation is important in that regard; it calls on all Council of Europe

²*Code of Good Conduct in Electoral Matters, Venice Commission (CDL-AD (2002) 023 rev.), para. I.2.5.*

member-states to undertake awareness-raising measures, including gender education, in order to bring about a lasting change of attitudes and traditions to ensure the full participation of women in elections at all levels and in all respects.

23. It should be noted that in many cases it is social relations rather than “attitudes and traditions” that limit women’s involvement in the political field. In fact, the English version uses the word “attitudes”, as opposed to the French “mentalités”.

24. No comment on paragraph 8.

Conclusion

25. The Parliamentary Assembly’s Recommendation on women’s participation in elections is to be welcomed. The adoption of a Charter on Electoral Equality geared to eliminating family voting and aspiring to gender parity on elected bodies would help make gender equality in this field a practical reality.

26. Some of the points of detail mentioned in the present opinion, including the issue of proxy voting, could be clarified or revised during the preparation of the Charter.