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RIGHTS AND RESPONSIBILITIES OF THE OPPOSITION IN A PARLIAMENT

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I. INTRODUCTION

Democracy lives from the relations between parliament and government, their cooperation but also their tensions and confrontations. This is particularly true in parliament for the relationship between the majority and the opposition. According to a study published by the Venice Commission of the Council of Europe (CoE) the idea of opposition is thoroughly linked to political freedoms¹. Furthermore, the recognition of an opposition by a political regime appears as a defining difference between democracies and authoritarian systems. The term opposition² is applied here to the party or parties whose elected members do not support the government of the day and who offer themselves to the voting public not just as individual candidates but as organised and disciplined political groups/parties. The form parliamentary opposition takes depends to a large extent of the politico-constitutional regime of a country and its political culture. With very few exceptions (such as Portugal and Lithuania), constitutions and laws of European States do not define the role of the opposition³. However, in practically all national parliaments, there are provisions acknowledging the role of the opposition or the parliamentary minority in their dimension as political groups or individual parliamentarians not supporting the government. While in parliamentary law the notion of minority rights is generally more frequently used than opposition rights, the society, particularly political circles, the media or the interested public, speak of the opposition.

For some years, parliamentary opposition issues have been increasingly dealt with in the CoE and its bodies. Improvements concerning the rights of the parliamentary minority/opposition are reported from several national parliaments of its 47 member states⁴. Furthermore, in some European parliaments, relations between majority and opposition parties remain problematic.

This document will briefly recall the importance attached by the European Founding Fathers to the right to form an opposition and describe the current efforts of the CoE to achieve more democracy throughout Europe by promoting the rights and responsibilities of parliamentary opposition. It will then, on the basis of the main proposals made by the Parliamentary Assembly of the CoE on this subject, present elements for good practice. In this connection, developments in national parliaments will be taken into account.

¹ See Study no.497 of 5 June 2009, CDL-DEM (2009)003, draft report on the role of the opposition, on the basis of contributions from Ms Nussberger and Mr Özbudun, p.4.

² There are in some parliaments minorities that occasionally support governments. In other parliaments a government may not face one but several oppositions; the moment of truth for the minority/opposition comes when the programme of a new government or a motion of non-confidence are put to the vote.

³ In France the parliamentary reform of 2006 intended to create an obligation for political groups to declare their affiliation with either the majority or the opposition. In June 2006 the French Conseil Constitutionnel declared this proposal as incompatible with the French Constitution.

⁴ The interest in opposition issues is also illustrated by a number of comparative requests on this issue by the participating parliaments of the European Centre for Parliamentary Research and Documentation set up in 1977 by the European Conference of Presidents of Parliament.

II. THE RIGHT TO FORM AN OPPOSITION IN THE PROJECT OF THE EUROPEAN FOUNDING FATHERS AND IN THE PARLIAMENTARY ASSEMBLY'S PROPOSALS FOR A EUROPEAN CONVENTION ON HUMAN RIGHTS

The projects for European union since 1945 and particularly since 1948 were conceived as an association for the defence of democratic institutions. Furthermore, it was supposed that the nations to be associated would remain democratic. One essential element for the success of parliamentary democracy, in contrast with authoritarian systems, is an effective and responsible opposition⁵. Its protection is an essential feature of any democratic state.⁶

It was therefore not surprising that, in the view of the European Founding Fathers the basic provisions for building Europe should pay tribute to the role played by the opposition. This resulted in the inclusion in the political resolution adopted by the Congress of Europe, held from 7 to 11 May 1948, in The Hague, of the following passage:

"Considers that the resultant Union or Federation should be open to all European nations democratically governed and which undertake to respect a Charter of Human Rights and resolves that a Commission should be set up to undertake immediately the double task of drafting such a charter and of laying down standards to which a State must conform if it is to deserve the name of a democracy. Declares that in no circumstances shall a state be entitled to be called a democracy unless it does in fact, as well as in law, guarantee to its citizens liberty of thought, assembly and expression as well as the right to form a political opposition."⁷

This idea was taken up about a year later in the proposals of the European Movement for a European Convention of Human Rights (ECHR) and by the Assembly of the CoE in its Recommendation 38 of 8 September 1949 to the Committee of Ministers of the CoE. It is worded as follows: "The Convention shall include the undertaking by member states to take no action which shall interfere with the right of criticism and the right to organise a political opposition." However, in the end, it was not possible to have such a provision inserted in the convention or in its first additional protocol. The main objections of governments were that an article ensuring the protection of the democratic institutions would go outside the framework of the convention. Furthermore, the right to organise a political opposition could raise constitutional questions and create political difficulties. However, Article 3 of the first additional protocol to the ECHR is worded as follows: "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature. "The basic European texts of the EU and also those of the OSCE do not mention the opposition or political parties. The only exception is the Copenhagen document of the OSCE which refers to political parties in its paragraph 5.4.

III. ACHIEVING MORE DEMOCRACY IN EUROPE BY THE COUNCIL OF EUROPE's PROMOTION OF THE RIGHTS AND RESPONSIBILITIES OF PARLIAMENTARY OPPOSITION

i. At the level of the Parliamentary Assembly

Because of the absence of any explicit reference to the rights and responsibilities of the opposition in the major official texts of the CoE, this issue has in the past mainly been dealt with at the level of the Parliamentary Assembly on the occasion of debates on democratic institutions⁸ and also during its Strasbourg Conferences on parliamentary democracy (1983-1991). As a contribution to cooperation programmes with certain new democracies in Eastern Europe, the Parliamentary Assembly's Committee on Rules and Procedures and Immunities organised a hearing on the role of opposition in a democratic parliament. The conclusions of the hearing led to a debate in the Assembly and the adoption of Resolution

⁵ Interestingly, already the Peace Treaties of Paris of 10 February 1947 with several European countries, following World War II, contained the following clause: "... shall take all measures necessary to secure to all persons under its jurisdiction the enjoyment of human rights ...including freedom ofpolitical opinion and of public meeting".

⁶ That is why democratic regimes have been described as régimes with "assured opposition" (see Venice Commission, comments on the role and legal protection of the opposition by Angel Sanchez Navarro (CDL-DEM (2007) 002 rev).

⁷ According to the proceedings of the Congress of Europe (see Council of Europe Publishing, April 1999), it was Mr Drapier (head of the Private Office of the then Prime Minister Spaak) from the Belgian delegation who submitted to the Political Committee of the Congress the proposal to refer to the political opposition (see p.88). Anthony Eden presented the report of the Political Committee to the plenary session of the Congress.

⁸ See the debate on the future of democratic institutions in Europe and Resolution 572 (1974).

1601 (2008) on procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament. The

Assembly's first annual debate on the state of democracy and human rights in Europe (2007) also offered an occasion to raise the rights of the opposition⁹. In addition, opposition issues play a role in the Assembly for the examination of credentials of national delegations to the Assembly and also in the procedure concerning the honouring of obligations and commitments by member states of the CoE (monitoring procedure).

ii. Examination of credentials and representation of the opposition

The examination of credentials is to a certain extent, "a test of democratic legitimacy". Already in connection with the preparatory work for the CoE in 1948/49 it had been proposed that national delegations to the Assembly should reflect the political composition of their parliaments. However, no explicit provision to this end was included in the Statute of the COE or the Assembly's Rules of Procedure. In September 1985, because of the dispute between the two major political parties of a member state, the respective parliament sent a one-member delegation to Strasbourg consisting of the Speaker of the House. It was contested as it was not a multi-party delegation and in particular did not include representatives of the opposition. The problem was however overcome by the appointment of a full bi-partisan delegation in January 1986. It was because of this incident that the Assembly's Rules of Procedure were modified and stipulate that national delegations to the Assembly must be so composed as to ensure a fair representation of the political parties or groups in their parliaments.¹⁰

Since that time, problems of the adequate representation of the opposition in national delegations to the Parliamentary Assembly including those of special guests, were regularly raised at Assembly level. For example, there were two cases in the last 12 months¹¹.

iii. Assembly's monitoring procedure

Since the introduction of that procedure in 1993/94 - which has undergone several modifications - guaranteeing the rights of the opposition has become an increasingly more important item in the work of the Assembly's Monitoring Committee. The existence of an efficient and solid opposition in national parliaments is checked, when appropriate, in the reports of the Monitoring Committee. This has contributed to strengthening the rights of the opposition in the parliaments concerned.

In the 90s and the first years of the current decade, the Monitoring Committee dealt in particular with the opposition in connection with its involvement in discussions on constitutional reform, revision of the electoral law, national public broadcasting laws and similar subjects¹².

More recently, the Assembly has expressed criticism at the fact that, in several member states, opposition is not given a role and that it does not have adequate rights.¹³ The Monitoring Committee has also addressed explicit recommendations to different member states under monitoring procedures with a view to strengthening the rights of the opposition or to avoiding further polarisation of the climate between the majority and the opposition.

It has for example:

- invited a state to reform its current political system, as it excludes opposition from all effective participation in the decision-making process in the country¹⁴;

⁹ See the debate on the annual report on human rights and democracy (April 2007) and adoption of Resolution 1547 (2007) and Recommendation 1791 (2007).

¹⁰ See article by Heiner Klebes on Human Rights and Parliamentary Democracy in the Parliamentary Assembly, in: F.Matscher/H.Petzold: Protecting Human Rights: The European Dimension-Studies in honour of Gerard Wiarda, Carl Heymanns Verlag, 1988, pp 307 to 316.

¹¹ See Assembly Resolution 1686 (2009) and Assembly decision of 26 January 2010 (AS (2010) CR 4).

¹² See e.g. Assembly Resolution 1303 (2002).

¹³ See see with respect to five member parliaments, paragraph 4.1 of Resolution 1619 (2008) on progress of the Assembly's monitoring procedure, the Resolution noted that in a sixth parliament political dialogue would have to be promoted between the majority in power and the opposition.

¹⁴ See paragraph 6.1 of Resolution 1609 (2008).

- invited opposition members of another parliament to take their seat in parliament and to stop boycotting partial elections¹⁵;
- succeeded in a further state that, in order to resolve a political crisis, an agreement was reached between the majority and the opposition in parliament on reforming the electoral system.¹⁶

An interesting proposal is contained in Parliamentary Assembly Resolution 1456 (2005), namely to include the rights of opposition in training seminars for members of parliament.

In the context of a current monitoring procedure, the Assembly adopted in January 2010 Resolution 1709 (2010) which urged the respective government and the opposition to put an end to the political crisis in the country and assume their responsibilities in order to proceed with the vitally needed reforms. In particular, the Assembly urged the government to set up, without further delay, a parliamentary inquiry committee into the June 2009 elections that will respect the relevant Constitutional Court ruling on the parliamentary inquiry committees and, at the same time, it urges the opposition to return to parliament and fully participate in its work. Following a meeting of the Assembly's Presidential Committee with the political leaders in the respective country and a round-table convened by the President of that country with the leaders of the majority and the opposition, the latter returned to parliament on 26 February 2010.

Sometimes, opposition parties in Council of Europe member states appeal to the Organisation and its Assembly. In one member State five opposition parties adopted a text on 18 December 2009 connected with the state of freedom of speech and press in the country, amendments and alterations to the electoral code, freedom of assembly and execution of commitments taken before the COE by the government.

iv. European Court of Human Rights

The European Court of Human Rights has, in a significant number of cases, dealt with legal issues concerning parliaments or parliamentarians (e.g. parliamentary privilege, elections and electoral law, ...) ¹⁷ By the end of February 2010, the Court has referred to parliamentary opposition in thirteen decisions/judgments, albeit in general terms.¹⁸

v. Venice Commission

The European Commission for Democracy through Law (Venice Commission) of the CoE has stepped up its activities on legal issues involving parliaments, including the rights of the opposition. In June 2007, it adopted an opinion on the Ukrainian draft law on the parliamentary opposition. In this connection the Spanish substitute member of the Venice Commission, Angel Sanchez Navarro, prepared a general note (comments) on the role and legal protection of the opposition¹⁹. In June 2009, the Venice Commission published study No497 on the role of the opposition²⁰.

vi. Forum for the Future of Democracy

From 13 to 15 June 2007, the Swedish authorities hosted a meeting in Stockholm / Sigtuna of the CoE Forum for the Future of Democracy. The Forum also addressed the subject of the role and responsibilities of the opposition²¹ and noted in particular that:

- every country has a government; only democracies have an opposition;
- establishing a fair legal framework and material conditions enabling the opposition parties in parliament to have the means to fulfil their functions is a prerequisite for the good functioning of parliamentary democracy;

¹⁵ See paragraph 18 Doc.11628.

¹⁶ See paragraph 77 of Doc.11628.

¹⁷ See e.g. judgments of 17.12.2002 (A. v. the UK), 30.01.2003 (Cordova v. Italy), 05.04.2007 (Kavakci, Silay and Ilicak v. Turkey) 27.09.2001 (Demicoli v. Malta) and of 24.01.2006 (Marchiani v. France).

¹⁸ See e.g., Kart v.Turkey, 8917/05 of 3.12.2009; Mandole and others v. Moldova, 13 936/02 of 17.9.2009, Christian Democratic People's Party v. Moldova, 25 196/04 of 2.2.2010.

¹⁹ See documents CDL- AD (2007) 019 (opinion Venice Commission) and CDL-DEM (2007) 02 rev (note by Mr Sanchez Navarro).

²⁰ Doc. CDL-DEM (2009) 003.

²¹ See conclusions by the General Rapporteurs MM. Gross, Whitmore and Tarschys, pp. 2 and 3.

- the opposition should continuously evaluate government action as this contributes to the quality of political debate and thereby improves the government's capacity to manage public affairs;
- the lack of a strong opposition in parliament may lead to a form of extra-parliamentary opposition in which protests may be expressed in violent forms in the streets; one means of avoiding situations in which opposition is essentially extra-parliamentary is to lower the thresholds for parliamentary representation; in a developed democracy thresholds should be low, in order for the rights of all citizens and all political views and interests to be represented in parliament.

IV. PROPOSALS OF THE PARLIAMENTARY ASSEMBLY CONCERNING THE RIGHTS AND RESPONSIBILITIES OF THE OPPOSITION

The Parliamentary Assembly's Committee on Rules and Procedures and Immunities organised a hearing on the role of the opposition in a democratic parliament. The conclusions of the hearing led to the preparation of a report which was debated in the Assembly and followed by the adoption of Resolution 1601 (2008). This resolution included guidelines on the rights and duties of the opposition in a democratic parliament. Interestingly, several national parliamentary administrations have followed up this work in the framework of the European Centre for Parliamentary Research and Documentation (ECPRD), which is managed jointly by the Secretariat of the European Parliament and the Parliamentary Assembly. They have sent out, via the ECPRD network, questionnaires to national parliaments asking for additional information on some aspects raised in Resolution 1601²². This is particularly the case of a comprehensive request from the Norwegian Storting of February 2010, which is to a great extent based on Resolution 1601. Up to the present time, 30 chambers have replied to this questionnaire. On the basis of these replies, the Secretariat of the Storting will organise a seminar in May 2010.

Before presenting elements for a list of good practice concerning parliamentary minority/opposition based on Resolution 1601 it is useful to give an overview of both new developments and the state of play concerning the main minority rights under discussion in the parliaments throughout Europe.

i. Some new developments in national parliaments concerning rights of the opposition/ the minority in parliament

Because of the increase in parliamentary business, its complexity and the speed often required for parliaments to keep pace with the economy and international politics, reform proposals are regularly on the parliamentary agendas in Europe. Directly or indirectly, they often have consequences for the rights of the opposition/parliamentary minority. Currently, reforms and modernisation (working methods and procedures) also affecting the rights of parliamentary minorities, are under way in Switzerland²³, United Kingdom²⁴ and, on a more limited scale (concerning laws on parliamentary inquiries), in Luxembourg²⁵, Austria²⁶ and Albania²⁷.

Information available through the network of the European Centre for Parliamentary Research and Documentation²⁸, the Commonwealth Parliamentary Association, the institutions of the "Francophonie", the Interparliamentary Union and from other sources²⁹, shows that discussions and proposals concerning the opposition/minority in parliament are focused on about seven issues. It must be underlined that, in the existing surveys of the situation in national parliaments, information concerning the parliament of at least three major European countries is missing. The main opposition/parliamentary minority issues under discussion are:

²² See comparative requests nos. 760 and 848.

²³ "Armer le parlement fédéral pour l'avenir" - motion déposée par H.Stadler au Conseil des Etats on 24.9.2009 Doc. 09 38 96 ; the motion is currently examined by the competent committee.

²⁴ See House of Commons Reform Committee.

²⁵ See Chamber of Deputies, Doc. Nr 5331(5) , Ordinary Session 2009-2010.

²⁶ See Austrian reply to ECPRD request no.1394.

²⁷ In late February 2010, the main opposition party in Albania tabled a bill in parliament to amend the law on inquiry committees whereby opposition should chair parliamentary investigations.

²⁸ See comparative requests 199, 321, 421, 760, 848 and 1394 (2010).

²⁹ See e.g. 53rd Commonwealth Parliamentary Conference in New Delhi, workshop on role, rights and responsibilities of the opposition (27 September 2007); guidelines on the rights and duties of the opposition in parliaments adopted by the participants at the IPU seminar on relations between majority and minority parties in African Parliaments (Libreville, Gabon, 17-19 May 1999); Bamako Symposium of the International Organisation of the Francophonie (May 2000) sur la vie politique, report on "garanties et éventuels statuts de l'opposition en Afrique".

- convocation of special sittings of parliament,
- parliamentary minority and agenda-setting (including urgent and topical matters),
- parliamentary minority and legislative initiatives,
- organisation of question time,
- parliamentary inquiries,
- organisation of hearings and functioning of committees (composition, chairs, rapporteurs, reports),
- possibility for the minority to have adopted laws checked by the Constitutional Court and to submit requests to the Court /Board of Auditors.

In some countries, it is proposed to give these rights to a relatively low quorum of members (e.g. 25%³⁰) or, more rarely, to single opposition political groups. Not only do written texts grant such rights, they are based frequently on parliamentary practice or agreements between the political groups represented in parliament. Occasionally, Speakers of parliament have the possibility to grant opposition groups rights on an informal or customary basis³¹, particularly with respect to procedural motions, speaking time, organisation of debates, etc.

ii. Situation in parliaments in Europe concerning selected minority rights

This overview, which is not exhaustive, also takes into account inasmuch as information is available, the second chambers of parliaments. Often second chambers do not have the same powers as the first chamber and this also has a consequence on the rights of parliamentary minorities³².

a. Convening of parliament

A distinction has to be made for the convocation of extraordinary sessions and of special sittings. Obviously, the conditions for the former are more rigid. From the information available, on average 1/4 of the members are required or, more rarely one or two political groups. Furthermore, the Speaker is often given a role for convening extra sessions/sittings. An important aspect is that the convening only can take place when a draft agenda is established. From the point of view of the opposition, it is important to ensure that a quorum of ¼ of members may not only initiate a request, but also enforce it. Opposition uses the possibility of extra sessions to discuss urgent problems/issues.

However, the right for minorities to request and obtain extra sessions has also been subject to criticism³³. In particular, there has been an objection to too many such requests of which a non-negligible quantum was devoted to party propaganda. Therefore, it has been suggested that extra sessions/sittings should only be allowed if they are to discuss legislation, finance/budget matters and urgent problems.

There are still a number of parliaments where only the majority can request extra sessions.

b. Parliamentary minority and agenda-setting (including urgent and topical matters)

To privilege parliamentary opposition, the most frequently used method is to allow it to propose business for special sitting days of parliaments. However, there are differences concerning the number and frequency of such days³⁴. The items proposed can sometimes include bills tabled by minority groups (see below under legislation).

³⁰ Another innovative procedure is reported from the Norwegian parliament. In case a major initiative of the opposition/minority in committee (e.g. on the organisation of a hearing or on fixing a time for debating in plenary a report by the committee) meeting a certain quorum (one third) is defeated by the majority, there is a right of appeal to the Praesidium (Presidential Committee), which takes the final decision.

³¹ e.g. in Norway with respect to speaking time, if so proposed by the committee whose report is debated.

³² an interesting situation may arise when majorities and minorities in both chambers are different.

³³ e.g. in Switzerland see NZZ of 25 February 2010.

³⁴ In the Bulgarian National Assembly, each group except the biggest one may propose a draft resolution to be discussed on the first Wednesday every month. Items are included on the agenda according to the strength of the groups. There is a rotation system among groups for the following months. The Assembly must discuss the substance of these proposals.

It occasionally happens that parliaments grant minorities a general right to make proposals for subjects to be discussed during the plenary. In a South East European country, the Speaker places on the agenda one issue proposed by each opposition group.

Another group of parliaments allow all members, within certain deadlines, to submit motions concerning the agenda and the parliament (chamber) then decides whether to follow it up³⁵.

Several parliaments allow a limited number of members (e.g. 30 members, 5 members, or one political group) to request an urgent debate or a short debate on topical affairs.

In one parliament it is possible to transform a question ("interpellation") to the Government into a debate at the end of which a resolution is adopted.

c. Parliamentary minority and legislative initiatives

Different models are available for minority initiatives. In the parliaments of some middle-sized countries, all draft laws including those of the opposition are discussed in committee and at least once in plenary. In another category of parliaments, bills may be discussed during plenary sittings reserved for the parliament³⁶ (and not the government) or for individual members' bills³⁷. Furthermore, some parliaments have special schemes³⁸.

An interesting question is to know what are the results of draft bills tabled. In a parliament of a major member state, seven draft bills from the minority were discussed during a parliamentary year and six rejected (2005-2006).³⁹ However, in a parliament of a non-member State of the EU about 20% of national legislation is based on private members' bills. Sometimes criticism is expressed concerning the important number of individual members' bills. It is argued that their treatment uses significant resources of parliaments. In addition, it is observed that legislative initiatives of individual members should rather be used for amending punctually existing bills but not for enacting bills on new subjects.⁴⁰

d. Question time

Question time is a classical means for the opposition to demonstrate its dynamism. Differences in the management of question time in the parliaments of Europe are mainly due to different solutions found concerning replies to the following questions:

- who establishes the order of questions taken,
- who starts question time (majority or opposition),
- what is the order of members called (is the minority privileged or not),
- who replies to the questions (Prime Minister, Ministers, other persons).

In principle, the Speaker (President) establishes the order of speakers and has a certain latitude in this respect. The parliamentary minority may be privileged in certain respects. It (generally the largest opposition group) may be authorised to open question time often when the Prime Minister speaks. It may be given the opportunity to ask more questions than the majority or be given the same time as the majority. In some newer

Every month, one sitting if the French National Assembly is reserved for business of parliament; such sittings are shared among political groups according to the order fixed by the Presidential Committee, with a minimum of one sitting for each group; these sittings may be used for a debate or the discussion of a motion to establish a committee for inquiry. During the parliamentary year 2005-2006, eight sittings took place on the initiative of the National Assembly, three of which were proposed by the opposition and five by the majority.

³⁵ See also in this connection the proposal of the House of Commons Reform Committee that a committee of backbenchers be set up who would schedule non-ministerial business and join with government and opposition representatives in a House Business Committee in drafting a weekly agenda to be put to the House for decision.

³⁶ In the French National Assembly attempts are sometimes made to use passages of individual members' bills as amendments for governmental drafts on similar subjects.

³⁷ In the House of Commons, 13 Friday sittings are devoted to draft legislation promoted by backbench members; furthermore the creation of a backbench business committee has been proposed.

³⁸ In both chambers of the Italian parliament, before amendments to a draft legislative text are examined, any alternative texts proposed by political groups are discussed and put to the vote both in committee and in the plenary.

³⁹ Recent information concerning this parliament (2007-January 2010) shows that only a handful of drafts went further than the discussion stage.

⁴⁰ See NZZ of 25 February 2010.

democracies, questions may also be asked to personalities other than ministers elected by parliament (with the exception of judges). In a significant number of parliaments, the opposition is not privileged during question time.

e. Parliamentary inquiries

Regularly, constitutions, laws or Rules of Procedure of parliaments allow them to set up committees of inquiry. In some parliaments, it is up to general committees to carry out inquiries. The particular advantages of special committees of inquiry are that they may have a different composition, chair and working methods than general committees. A disadvantage may be the exceptional character of committees of inquiry⁴¹. In most cases, 1/3 of the members of a parliament (chamber) may request the setting-up of a committee of inquiry. However, this does not automatically mean that the creation can be enforced if such a quorum is obtained. This is subject to criticism in political circles as the majority would be able to avoid that an inquiry takes place and this would not enhance the efficiency and credibility of parliament. The trend with respect to the composition of committees of inquiry is that the majority and the minority are equally represented. The Chair is mostly offered to the opposition. Sometimes, the chair and rapporteurship are distributed alternately to the majority and the minority.

f. Hearings and functioning of committees (composition, chairs, rapporteurs, reports)

From information resulting from the afore-mentioned requests in the framework of the European Centre for Parliamentary Research and Documentation, it would appear that not all committees organise (public) hearings (with experts). Surprisingly, quite important hurdles for holding hearings exist in some parliaments, such as the necessary support of 1/2 of members, approval by the Bureau (Presidential Committee) or the President. The trend allows 1/3 or 1/4 of members (of the responsible committee or the plenary) to have a hearing with experts.

Regularly, the composition of committees and the distribution of their chairs are based on proportionality. The required arrangements are found by political groups according to their strength. A good practice is that at least one general committee is chaired by the opposition. Furthermore, for several years the tendency can be observed that the chairs of strategically important committees with monitoring tasks are given to the opposition/minority. This is the case for budgetary committees, control committees of security and secret services and committees on audit.

Rapporteurships are generally attributed according to proportionality, but sometimes further aspects are taken into account such as workload or practical considerations. Obviously, committee reports reflect the opinions expressed both by the majority and the minority. In some parliaments, there are more far-reaching possibilities for the opposition. In the Italian Parliament, alternatively to the report of the majority in committee, opposition groups may appoint rapporteurs of the minority who prepare minority reports.

g. Constitutional review of draft/adopted laws and possibility to apply to a Court (Board) of Audit

In principle, minority groups may avail themselves of this instrument either before the adoption of a law or afterwards. In practice, the latter means plays a greater role. It allows the minority to submit the majority and the supporting governments to a check of the constitution's respect. Since this possibility was granted to parliaments in some countries, it has been a great success with the opposition⁴².

Where Constitutional Courts exist, sometimes, a majority decision of parliamentarians (chambers) is required to initiate a procedure. However the tendency is to allow a percentage of members (generally one third or less of members) or a requisite number of members (e.g. 50 out of 264/350) to do so.

In some parliaments, a certain number of members may ask that the Court of Auditors carry out audits. Other parliaments which do not have this possibility have regular contacts with audit bodies. In a further category of parliaments, a minority may demand special audits of public administration.

iii. Good practice concerning the rights of the parliamentary opposition

⁴¹ See Le Monde of 4 October 2007.

⁴² See information given in some replies to comparative request No.848 of the ECPRD.

In January 2008, the Parliamentary Assembly proposed procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament (Resolution 1601 (2008)). On the basis of these proposals and in the light of the situation in and new developments at the level of European parliaments, the attached elements for good practice were prepared.

V. RESPONSIBILITIES OF PARLIAMENTARY OPPOSITION

During its January 2008 debate on parliamentary opposition the Parliamentary Assembly concluded that opposition/minority members cannot only claim rights and means, but should also show willingness to use them and make their best efforts to enhance the efficiency of parliament as a whole and not only to carry out their natural but perhaps insufficient role of criticism. In giving rights to the opposition it is at the same time made responsible.

According to proposals made mainly at the level of the Commonwealth Parliamentary Association⁴³, parliamentary minorities should in particular:

- show political maturity and exercise responsible and constructive opposition,
- not seek to hinder pointlessly the action of the majority but offer positive counter proposals, take initiatives of their own and make the majority aware of the minority views in a critical but constructive way.

How the opposition/minority discharge their functions is important in democracies as they are leading participants in the national political debate in and out of parliament. They promote in parliament the alternative policies demanded by their voters and offer the political choice required in a properly functioning political system. Furthermore, it is important for the efficient functioning of parliament that majority and minority cultivate dialogue and cooperation and maintain informal channels in case of heated political debate.

However, in practice these responsibilities and duties are sometimes subordinated to considerations of realpolitik. What is decisive for minorities/opposition is that their voice is heard among the many other political actors and that the results on polling day are acceptable. For tactical reasons, minority groups and parties sometimes envisage a form of total opposition, exploiting all opportunities to damage the majority. As indicated above, the possibility of a boycott of parliament still exists in a handful of parliaments in Europe. Procedural obstruction still is a reality in parliaments, as is shown by the replies to corresponding requests of the European Centre for Parliamentary Research and Cooperation (ECPRD)⁴⁴.

The majority also has obligations vis-à-vis the minority. It has to respect the minority's right to disagree with the majority's opinion and to promote alternative policies. The majority should also renounce torpedoing secured rights of the minority. For instance, members of the majority should not leave the chamber when it is opposition day with respect to parliamentary business.

VI. FINAL REMARKS

One major objective in parliamentary democracies is to create a situation where there is a shared commitment to the essentials of democracy by the majority and minority and a common desire to make "their" parliament work properly for the civil good. There is still a long way to go before this objective will be reached in the wider Europe. An important step in this direction would be to enhance both the rights and responsibilities of the parliamentary minority/opposition. A strengthened position of minorities in parliaments would be beneficial for the system of checks and balances in democracies. Although there are considerable differences in the political and institutional cultures and components of European states, it would be helpful if the Presidents of European parliaments, at their 2010 Conference in Limassol, could discuss good practice concerning the rights and responsibilities of the parliamentary minority/opposition.

⁴³ See overview paper presented by the Commonwealth Parliamentary Association (CPA) at the workshop in Trinidad and Tobago from 25-27 July 2005 and report on the discussions of the CPA workshop E in New Delhi on 2 September 2007 in: *The Parliamentarian*, pp. 307 to 309.

⁴⁴ See comparative request No.1042 (2008) and one question included in request no.1394 (2010).

APPENDIX

ELEMENTS FOR GOOD PRACTICE CONCERNING THE RIGHTS OF THE MINORITY/OPPOSITION

Plenary sessions

- fix a quorum of less than ½ of the members (or corresponding number of political groups represented in parliament) to obtain under certain conditions (e.g. fixing of a substantive agenda), the convening of a plenary session;
- provide during a parliamentary year for an appropriate number of days where opposition/ minority groups determine the agenda, give them the opportunity to choose texts or subjects to be debated (and, if appropriate, foresee incentives for ensuring a fair participation of members);
- fix a quorum of less than ½ of members (or corresponding number of political groups) to request holding a topical or urgent debate;
- in case there are mini-topical debates (e.g. for one hour, with statements of not more than 5 minutes), fix a quorum of under 2/5 of members to obtain it;
- concerning question time, provide for the same speaking time for both opposition and governmental majority; privilege opposition for the order of speakers;
- fix a low quorum for the tabling of laws by individual members (5% or less); arrange for the possibility that at least a certain percentage of them is discussed in committee and submitted to vote in plenary.

Committees

- concerning chairs and rapporteurs of committees, allocate them proportionally; for strategically important committees, ("oversight/control committees" such as budget committees, committees to control secret services, defence, ...), allocate the chair to the opposition;
- fix a quorum of less than ½ of the members to obtain the setting up of an inquiry committee (or a similar body such as a "mission d'information");
- allocate the chair or rapporteurship of inquiry committees to the minority (or alternate majority-minority);
- secure for these committees a representation based on parity rather than on proportionality of political groups;
- allow minority groups to present an appropriate contribution for committee reports.

Other

fix a quorum of less than ½ of the members (or corresponding members of political groups):

- . to enforce the right to submit an adopted law for review to the Constitutional Court;
- . to ask for an inquiry of the Court (Board) of Auditors.