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## Modification of various provisions of the Assembly's Rules of Procedure

Report<sup>1</sup>

Committee on Rules of Procedure, Immunities and Institutional Affairs

Rapporteur: Mr Egidijus Vareikis, Lithuania, Group of the European People's Party

### *Summary*

Some provisions of the Assembly's Rules of Procedure need to be clarified, supplemented or reviewed in order to better correspond to parliamentary practice. This report therefore contains proposals regarding in particular:

- the conditions for the formation and the disappearance of political groups;
- the status of the immediate past President of the Assembly;
- the terms of reference of the Committee on the Election of Judges to the European Court of Human Rights and the procedure for the election of candidates for the European Court of Human Rights;
- the election of bureaux of committees;
- the conditions for the appointment of committee rapporteurs;
- the procedure for considering motions for resolutions and recommendations submitted by members of the Assembly or committees;
- questions to guest speakers with regard to the chair of the Committee of Ministers and the Secretary General of the Council of Europe.

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<sup>1</sup> Reference to committee: References 4316 of 9 October 2017, 4346 and 4347 of 24 November 2017

## A. Draft resolution<sup>2</sup>

1. Considering that its actions and decisions must be founded on clear, consistent and effective parliamentary rules and procedures, the Parliamentary Assembly intends to continue with the process of updating its Rules of Procedure. It points out that it has regularly amended its rules in recent years in order to accommodate the changes in parliamentary practice, clarify the rules and procedures where their application or interpretation has raised difficulties or to address specific problems. It therefore intends to take due account of the proposals submitted by its members, national delegations, political groups and committees, particularly in the context of the work of the Bureau's Ad hoc Committee on the role and mission of the Parliamentary Assembly, and make the necessary adjustments in its Rules of Procedure.

2. Accordingly, the Assembly decides to amend its Rules of Procedure as follows:

2.1. with regard to the *conditions for the formation and dissolution of a political group*, amend Rule 19 as follows:

“19.1. Representatives and substitutes may form political groups **according to their political affinities**. To be acknowledged by the Bureau, political groups shall **undertake, in particular in their political charter, statutes and activities, to promote and respect** the values of the Council of Europe, notably political pluralism, human rights and the rule of law.

19.2. A political group shall have no fewer than ~~twenty members~~ **5% of the members composing the Assembly** and shall consist of representatives or substitutes of at least ~~six~~ **eight** national delegations. No Assembly member may belong to more than one political group.

19.3. At the time it is formed, each political group shall submit to the Bureau of the Assembly a statement which shall include the name of the group, the list of its members, the composition of its bureau, **a political charter setting out the purpose of the group, and its statutes or rules of procedure, which shall conform to the European Convention of Human Rights. All members of the group shall declare in writing in an appendix to the statement that they share the same political and ideological affinities.**

Each group shall notify the Bureau of any subsequent changes as soon as possible.

**Any political group which does not satisfy the conditions set out in Rule 19.2 shall cease to exist. This shall be notified to the Bureau by the Secretary General of the Parliamentary Assembly. The Bureau shall take note thereof at its subsequent meeting.”**

*(no changes to 19.4, 19.5 and 19.6);*

2.2. with regard to the *status and prerogatives of members of the Assembly not belonging to any political group (non-registered)*, and the allocation of seats in certain committees, amend Rule 44.3 as follows:

“44.3.b. The Bureau shall appoint two **additional** members to the Committee on Rules of Procedure, Immunities and Institutional Affairs from among the representatives and substitutes of the Assembly who do not belong to any political group. The political groups shall nominate the members with a view to ensuring a fair representation of national delegations **where applicable**.”;

2.3. with regard to the *status of the immediate past President of the Assembly*, amend Rule 20.3 as follows:

“20.3. For as long as he or she remains a representative or substitute in the Assembly, and provided that **he or she has not resigned as President** or has not been dismissed from office pursuant to Rule 54, the immediate past **elected** President shall be an *ex officio* member of the Committee on Political Affairs and Democracy, the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) and the Committee on Rules of Procedure, Immunities and Institutional Affairs. Rule 44.6 shall not apply to him or her.”;

2.4. with regard to the *procedure for the election of judges to the European Court of Human Rights*:

2.4.1. amend paragraph 4 i. of the *terms of reference of the Committee on the Election of Judges to the European Court of Human Rights* as follows:

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<sup>2</sup> Draft resolution adopted unanimously by the committee on 19 March 2019.

~~“4.i. The committee shall vote by a majority of the votes cast.; however, a~~ A decision to reject a list of candidates ~~or a decision to consider a single-sex list of candidates~~ **in exceptional circumstances** shall require a two-thirds majority of the votes cast. The committee shall vote on candidates by secret ballot. Only members who have attended in full the interview procedure for a post of judge may vote. **Members of the committee from the country whose list is under consideration shall not have the right to vote in the committee, either on the possible rejection of their country’s list or on the expression of preferences among candidates.** For any other decision, voting shall take place by a show of hands. However, voting may be by secret ballot if requested by at least one third of the members present. The chairperson shall be entitled to vote.”

2.4.2. amend the additional provisions on Candidates for the European Court of Human Rights by amending Resolution 1366 (2004), modified, as follows:

– replace paragraph 3 by the following:

“3. The Assembly decides not to consider lists of candidates where:

i. the areas of competence of the candidates appear to be unduly restricted;

~~ii. the list does not include at least one candidate of each sex, except in circumstances as prescribed by paragraph 4;~~

**ii. not all of the candidates fulfil each of the conditions laid down by Article 21, paragraph 1, of the European Convention on Human Rights;**

iii. **one of the candidates** does not appear to have an active knowledge of one of the official languages of the Council of Europe and a passive knowledge of the other;

~~or, do not appear to be of the stature to meet the criteria in Article 21, paragraph 1, of the European Convention on Human Rights.~~

**iv. the national selection procedure did not satisfy the minimum requirements of fairness and transparency;**

**v. the Advisory Panel was not duly consulted.**

**In such cases, the Committee on the Election of Judges shall decide on a proposal to reject a list of candidates by a majority of the votes cast. This proposal shall be endorsed by the Assembly in the Progress Report of the Bureau of the Assembly. The Assembly’s endorsement of the proposal to reject a list entails its definitive rejection; the State concerned is invited to submit a new list. Rejection by the Assembly of the committee’s proposal to reject a list shall entail the referral of the list back to the committee.”;**

– amend paragraph 4 as follows:

“4. **Moreover**, the Assembly decides to consider single-sex lists of candidates when the candidates belong to the sex which is under-represented in the Court (i.e. the sex to which under 40% of the total number of judges belong), or in exceptional circumstances where a Contracting Party has taken all the necessary and appropriate steps to ensure that the list contains candidates of both sexes meeting the requirements of paragraph 1 of Article 21 of the European Convention on Human Rights.

Such exceptional circumstances must be duly so considered by a two-thirds majority of the votes cast by members of the Committee on the Election of Judges to the European Court of Human Rights. **If the required majority has not been achieved, the committee shall recommend that the Assembly reject the list concerned.** This position shall be endorsed by the Assembly in the Progress Report of the Bureau of the Assembly.”;

– add after paragraph 5 the following new paragraph:

**“The Chairperson or a representative of the Advisory Panel shall be invited by the Chairperson of the Committee on the Election of Judges to explain the reasons for the panel’s views on candidates, during the briefing sessions scheduled before each set of interviews.”;**

2.5. with regard to *the election of bureaux of committees*, amend Rule 46.2 as follows:

**“Until the chairperson of the committee is elected or, in the absence of agreement among the political groups or of any candidate put forward for the position of Chair, until the vice-chairpersons are elected**, the meeting shall be chaired by the oldest member present, under whose chairpersonship no subject other than the election of the **bureau of the committee** ~~chairperson~~ may be considered.”;

2.6. with regard to *committee rapporteurs*, amend Rule 50.1, fourth sentence, as follows: “**A rapporteur must have been a member of the committee for at least one year.** A member of the Assembly who is simultaneously rapporteur for ~~five~~ **three** reports or opinions under preparation, **including a mandate as general rapporteur**, on behalf of one or more committees, may not be appointed rapporteur. **He or she may not be rapporteur for more than two reports or opinions per committee. A member of the Monitoring Committee may be rapporteur for only one report or opinion of this committee** [footnote: Reports or opinions under preparation are those which have still not been debated by the Assembly or the Standing Committee]”.

2.7. with regard to *speaking time in sittings*:

2.7.1. amend paragraph 1 of the additional provisions relating to Assembly debates on speaking time as follows: “Speakers registered for a debate shall have ~~four~~ **three minutes**’ speaking time”;

2.7.2. amend paragraph 4 of the additional provisions relating to Assembly debates on speaking time as follows: “For the chairpersons of committees submitting a report, the time for reply shall be ~~two~~ **three minutes**”;

2.7.3. amend Rule 53.4 as follows: “A current affairs debate may not exceed one and a half hours. It shall be opened by one of the members who requested the debate, chosen by the Bureau. He or she shall be allowed ten minutes; ~~other speakers shall be limited to four minutes.~~”;

2.8. with regard to *the communication from the Chairmanship of the Committee of Ministers and that of the Secretary General of the Council of Europe*, amend the guidelines for questions to guest speakers:

– by supplementing Chapter A. on “Questions to the Chairperson-in-office of the Committee of Ministers”, by adding a paragraph 1 worded as follows:

**“In order to enable members of the Assembly to put their questions to the Chairperson of the Committee of Ministers and to hear the replies, the presentation of the report on the activities of the Committee of Ministers may not exceed one third of the total time allotted for the communication from the Committee of Ministers.”;**

– by supplementing Chapter B. relating to “Questions to other guest speakers” by adding a paragraph 7 worded as follows:

**“Representatives and Substitutes may put written questions to the Secretary General of the Council of Europe for oral answer. They must enter their names on the appropriate register and submit the text of the question at least one week before the opening of the part-session. Written questions on the same subject or related subjects may receive a joint answer. This exercise requires the consent of the Secretary General.”;**

2.9. with regard to the *publication of speeches which could not be delivered in the sitting*, amend paragraph 3 of the additional provisions relating to Assembly debates concerning the organisation of debates, by replacing the last sentence with the following: “The text, **in electronic format and no longer than 400 words**, shall be submitted to the Table Office no later than four hours after the list of speakers is interrupted.”;

2.10. with regard to *the title in French for the Presidential Committee*, in the French text of Rules 14, 20.1 and 46.3, replace “Comité des présidents” by “Comité présidentiel”.

3. Furthermore, with regard to *improving the procedure for considering motions for resolutions and recommendations tabled by members of the Assembly or committees*, the Assembly calls for observance of the provisions set out in Rules 26.3 and 26.4 of the Rules of Procedure and reiterates that, in stipulating that proposals for references, transmissions to committees or no further action must be ratified by the Assembly, the Rules of Procedure lay down a principle that such ratification implies a final and irrevocable decision. It further calls on the Bureau of the Assembly to ensure compliance with the regulatory provisions relating to the lapse of references to committees and to approve and implement the procedural guidelines drawn up by the Secretary General of the Assembly set out in his memorandum of 20 November 2017, when considering new motions for a resolution or a recommendation.

4. With regard to the provisions relating to *requests for an urgent or current affairs debate*, the Assembly calls on the Bureau of the Assembly to lay down criteria for the admissibility and selection of requests for debates under the urgent procedure and current affairs debates, updating the criteria it had approved in 2007.

5. With regard to participation in the three committees whose members are appointed by the political groups, the Assembly asks the latter to take the necessary robust measures to ensure an appropriate level of participation and to replace in the committees concerned the members they have appointed who have a poor attendance record, by introducing a rule of principle, for example to replace members after three consecutive or five non-consecutive absences.

6. The Assembly decides that the amendments to the Rules of Procedure contained in this resolution shall enter into force upon their adoption. As transitional measures, political groups which do not fulfil the conditions laid down in Rule 19.2 shall cease to exist on 30 June 2019. Rapporteurs will be required to comply with the new provisions of Rule 50.1 at the opening of the 2020 Ordinary Session of the Assembly.

7. The Assembly wishes to clarify the consequences of the disappearance or dissolution of a political group and considers that, once a group has ceased to exist, members of that group automatically become non-registered members; committee chairpersons and vice-chairpersons elected in respect of that group shall retain their term of office until it expires; members of the Monitoring Committee, the Committee on Rules of Procedure and the Committee on the Election of Judges to the Court shall immediately lose their seats; members of an ad hoc committee for the observation of elections shall also immediately lose their seats.

## **B. Explanatory memorandum, by Mr Egidijus Vareikis, rapporteur**

### **1. Background to the present report**

1. A number of questions relating to a modification of the Parliamentary Assembly's Rules of Procedure were successively referred to the Committee on Rules of Procedure, Immunities and Institutional Affairs, for report. These were:

– Amending Rule 19 of the Rules of Procedure on political groups (Reference 4316 of 9 October 2017), including the question of members of the Assembly not belonging to any political group (Bureau decision of 23 November 2017);

– Amending Rule 20.3 of the Rules of Procedure on the status of the immediate past President of the Assembly (Bureau decision of 23 November 2017 and Reference 4346 of 24 November 2017);

– The possible improvement of the procedure for considering motions for resolutions and recommendations (Bureau decision of 23 November 2017 and Reference 4347 of 24 November 2017).

2. The committee therefore decided, at its meeting on 25 January 2018, to merge all these references into a single report on the modification of various provisions of the Assembly's Rules of Procedure. Having been appointed rapporteur on the first reference on 10 October 2017, the committee decided to confirm me as rapporteur on all of these issues.

3. In addition, the Rules Committee was once again tasked with making further amendments to the Assembly's Rules of Procedure as part of the follow-up to be given, at regulatory level, to the proposals made by national delegations and the political groups in the context of the work of the Ad hoc Committee of the Bureau on the role and mission of the Parliamentary Assembly.<sup>3</sup>

4. More specifically, at its meeting on 29 June 2018, the Bureau of the Assembly decided to refer to the Rules Committee, for report:

- *proposals aimed at streamlining the Assembly work;*
- *proposals aimed at maintaining, changing or supplementing the Rules governing ratification or challenging of credentials and/or representation or participation rights of national delegations for report at the October 2018 part-session of the Assembly;*
- *proposals regarding the voting rights of members or the voting procedures of the Assembly for report at the October 2018 part-session of the Assembly;*<sup>4</sup>
- *other proposals aimed at modifying the Assembly's Rules of Procedure*";

specifying that the Bureau "*decided to continue its dialogue with the Committee of Ministers, as appropriate, on all proposals aimed at enhancing the Assembly's role vis-à-vis the Committee of Ministers or improving the dialogue between the two statutory organs*".<sup>5</sup>

The Bureau also decided to "*refer proposals aimed at reforming the overall monitoring system of the Assembly or the current working methods and internal procedures of the Monitoring Committee on the basis of Resolution 1115 (1997) for consideration to the Monitoring Committee and the Committee of Rules of Procedure, Immunities and Institutional Affairs which should act in concert*".

5. Lastly, in accordance with well-established practice, the committee is ready to consider proposals for amendments to the Rules of Procedure which relate to procedures which need to change or be adapted to parliamentary practice, or to rules which need to be clarified.

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<sup>3</sup> See the revised memorandum of the President of the Assembly (document AS/Bur/MR-PA (2018) 06 rev, 5 June 2018, declassified) and the ad hoc committee's report (document AS/Bur/MR-PA (2018) 08, 28 June 2018).

<sup>4</sup> The proposals put forward based on the work of the ad hoc committee relating to challenges to or reconsideration of the credentials of national delegations, their representation and participation rights and members' voting rights and the Assembly's voting procedures were considered by the Rules Committee as part of the report on "Strengthening the decision-making process of the Parliamentary Assembly concerning credentials and voting", Doc. 14621 (rapporteur: Ms Petra De Sutter, Belgium, SOC).

<sup>5</sup> The Committee on Political Affairs and Democracy has also been tasked with following up the ad hoc committee's report. See the report currently being drafted on "Role and mission of the Parliamentary Assembly: main challenges for the future" (rapporteur: Mr Tiny Kox, Netherlands, UEL).

## 2. Status and prerogatives of political groups: amending Rule 19 of the Rules of Procedure

6. Political groups in the Assembly are, from a regulatory point of view, parliamentary bodies, constituting an organised structure for the political parties and formations represented in the national delegations to the Assembly. The Assembly's Rules of Procedure contain provisions governing the creation and prerogatives of groups (Rule 19),<sup>6</sup> leaving it to the groups themselves to establish, in full independence, the rules relating to their organisation and methods of operation.

7. The debate surrounding the formation and recognition of a sixth political group in the Assembly - the Free Democrats Group (FDG) - in September 2017, a discussion in which the Committee on Rules of Procedure has been closely involved, has highlighted certain gaps in the legal and regulatory framework governing political groups - in particular the criteria and conditions for establishment or dissolution of a political group, as well as their functioning having regard to the reference date of 30 June (see Memorandum on the interpretation of Rule 19 of the Rules of Procedure of the Parliamentary Assembly, document AS/Pro (2017) 19 def of 21 September 2017).

8. Similarly, the request for recognition made on 21 January 2019 by the Group of New European Democrats/Europe of Nations and Freedom (NED/ENF) prompted the Bureau of the Assembly to ask the Committee on Rules of Procedure about the procedure defined in Rule 19.1, concerning compliance, by groups and their members, with the fundamental values promoted by the Council of Europe.

### 2.1. The conditions for the formation of political groups

9. In the first place, the committee wondered whether it was necessary to supplement Rules 19.1, 19.2 and 19.3 of the Rules of Procedure as to the conditions for the formation of a political group, in particular by adding a new criterion, namely that all the members of the same political group should have a common ideological and political identity. In this respect, it was recalled that the members of the Assembly belong to a national political party, which is generally affiliated, at European level, to a specific political group. The members of the Assembly must respect the commitments of political affiliation of their national party and belong to the political group to which their political party is affiliated at European level, when this is the case.<sup>7</sup>

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<sup>6</sup> "19.1. Representatives and substitutes may form political groups. To be acknowledged by the Bureau, political groups shall commit themselves to respect the promotion of the values of the Council of Europe, notably political pluralism, human rights and the rule of law.

19.2. A political group shall have no fewer than twenty members and shall consist of representatives or substitutes of at least six national delegations. No Assembly member may belong to more than one political group.

19.3. At the time of its formation, each political group shall submit to the Bureau of the Assembly a statement which shall include the title of the group, the list of its members and the composition of its bureau. It shall notify the Bureau of any subsequent changes as soon as possible.

19.4. Chairpersons of political groups shall be ex officio members of the Bureau and the Standing Committee with the right to vote.

19.5. Chairpersons of political groups are ex officio members of the Committee on Political Affairs and Democracy, the Committee on Legal Affairs and Human Rights, the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) and the Committee on Rules of Procedure, Immunities and Institutional Affairs. Rule 44.6. shall not apply to them.

19.6. For each ordinary session, the date of 30 June of the previous year will serve as a reference date for establishing the number of members of each political group, which is necessary for calculating their budgetary allocation, the allocation of committee chairmanships and seats on the Monitoring Committee, the Committee on Rules of Procedure, Immunities and Institutional Affairs and the Committee on the Election of Judges to the European Court of Human Rights and for establishing the order of speakers in debates."

<sup>7</sup> By way of comparison, Article 32 of the Rules of Procedure of the European Parliament on the establishment and dissolution of political groups provides that:

"1. Members may form themselves into groups according to their political affinities.

Parliament need not normally evaluate the political affinity of members of a group. In forming a group together under this Rule, the Members concerned accept by definition that they have political affinity. Only when this is denied by the Members concerned is it necessary for Parliament to evaluate whether the group has been constituted in accordance with the Rules.

2. A political group shall consist of Members elected in at least one-quarter of the Member States. The minimum number of Members required to form a political group shall be 25.

...

5. The President shall be notified in a statement when a political group is set up. That statement shall specify:

- the name of the group,

The affiliation of a member of the Assembly to a political group within the Assembly should therefore be dictated by his or her membership of a national political party and his or her membership of a political family sharing the same ideology.

10. The European Parliament recently took a decision on the statute and funding of European political parties and European political foundations (see Resolution P8\_TA(2018)0098 adopted on 17 April 2018). In particular, “for reasons of transparency and in order to strengthen the scrutiny and the democratic accountability of European political parties”, the European political parties shall publish their political programme, and they “should respect certain principles and fulfil certain conditions ..., in particular in their programme and in their activities, the values on which the Union is founded, as expressed in Article 2 TEU, namely respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities”.<sup>8</sup>

11. In a context of fragmentation of politics and party allegiances which could fuel, in the Assembly, a temptation to increase the number of groups for reasons which are clearly political but undoubtedly also strategic, opportunistic and material, it is essential to have a politically representative, credible and effective Parliamentary Assembly that must be able to act, debate and decide on the basis of ideas and positions expressed by the representatives of the major European political families.

#### **– Discussion points**

12. The committee should consider whether it is necessary to strengthen the conditions and criteria for forming a political group, and in particular whether there is a need to:

- specify that members must belong to the political group to which their national party is affiliated and that they must be part of a common political identity;
- specify that the statement that political groups must submit to the Bureau at the time of their formation and recognition must include their political programme and/or their statutes or rules of procedure;
- revise the minimum number of members and delegations to form a group;
- provide for an additional condition relating to the composition of the group in order to avoid a situation where a group is made up of a very large majority of substitute members of delegations (and who would not therefore necessarily be able to take an active part in the work of the Assembly).

13. The committee may therefore consider it advisable to supplement the conditions laid down in Rule 19 of the Assembly’s Rules of Procedure so as to include the obligation to table a political programme, a charter or a political statement specifying the group’s objectives and its statutes or its rules of procedure.

#### **2.2. Political groups’ prerogatives: immediate or deferred exercise**

14. Under the Rules of Procedure and the complementary texts, political groups in the Assembly have the following rights which they exercise in their own right or through their chairpersons:

- political groups are represented on the Bureau (Rule 14.3), the Presidential Committee (Rule 14.4), the Standing Committee (Rule 17.3) and the Joint Committee (Rule 58.2) by their Chairperson or their representative;
- they have a role in the composition of the bureaux of committees (Rule 46.3) and the allocation of committee chairmanships;
- they appoint members of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), Committee on Rules of Procedure,

- 
- a political declaration, setting out the purpose of the group, and
  - the names of its members and bureau members.

*All members of the group shall declare in writing in an annex to the statement that they share the same political affinity.”*

<sup>8</sup> This provision was included in Regulation (EU, Euratom) No. 2018/673 of the European Parliament and of the Council of 3 May 2018 amending Regulation (EU, Euratom) No. 1141/2014.

Article 3 of Regulation (EU, Euratom) No. 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations, concerning the conditions for registration of European political parties provides that:

*“A political alliance shall be entitled to apply to register as a European political party subject to the following conditions:*

*...*

*c) it must observe, in particular in its programme and in its activities, the values on which the Union is founded, as expressed in Article 2 TEU, namely respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities; ...”.*

Immunities and Institutional Affairs and the Committee on the Election of Judges to the European Court of Human Rights (Rule 44.3);

- they appoint members of the ad hoc committees (or missions) to observe elections and chair them on a rotating basis;
- their chairpersons are *ex officio* members of four committees (Rule 19.5);
- they may request an urgent debate (Rule 51.1) or a current affairs debate (Rule 53.2);
- they may appoint a spokesperson in each debate in the Assembly (first round of the list of speakers), including a spokesperson to ask a question to the Chair of the Committee of Ministers and other invited guests;
- they may appoint an observer for elections in the Assembly (elections of judges to the European Court of Human Rights, the Commissioner for Human Rights, the Secretary General and Deputy Secretary General of the Council of Europe, and the Secretary General of the Parliamentary Assembly).

15. Most of these prerogatives can be exercised by a new political group from the date on which it is recognised by the Bureau of the Assembly. Exercise of other rights, referred to in Rule 19.6, however, is staggered and is dependent upon the numerical representativeness of each group, assessed at 30 June of the previous year, namely:

- the receipt of a budgetary allocation for operational expenses;
- participation in the allocation of chairmanships and vice-chairmanships of the nine committees;
- appointment of members in the three committees whose composition is made up of the political groups (the Monitoring Committee, the Rules Committee and the Committee on the Election of Judges to the European Court of Human Rights);
- inclusion on the list of speakers in Assembly debates;<sup>9</sup>
- and, in line with the consistent practice based on an agreement between political groups, the appointment of members to ad hoc committees (or missions) to observe elections and the alternating chairpersons of these committees or missions.

16. This means that a political group which would be constituted and recognised after the date of 30 June of year *n*, will be able to profit from the rights listed above only at the opening of the session of year *n*+2, on the basis of its representativeness on 30 June of year *n*+1. Members of the committee therefore considered that it was not fair for a new group to be deprived, for more than a year, of the practical means of functioning, on the ground that it was constituted after 30 June.

17. It should be recalled, however, that the date of 30 June was decided upon as a reference date in order to take into account the constraints relating to the granting of the rights of political groups to a budget allocation. Allocations to political groups are included in the Assembly's budget, which is prepared and finalised as part of a procedure and in accordance with a timetable established for the entire Council of Europe, under the responsibility of the Secretary General of the Council of Europe. On the other hand, it is possible that the exercise of the other rights mentioned in Rule 19.6 should no longer be contingent on this reference date.

#### **– Discussion points**

18. Should the rights of political groups be revised in order to allow them to enjoy the rights provided for in Rule 19.6 without the exercise of these rights being conditional upon their representativeness as at 30 June, but at a reference date closer to the opening of the annual session?

19. The committee may wish to propose that entitlement to the rights provided for in Rule 19.6 be established at the opening of the annual session in year *n*+1 on the basis of the representativeness of the groups at a more recent date (for example, 1 December of year *n*) - with the exception of the receipt of the budgetary allocation which must remain set with a reference date of 30 June in year *n*.

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<sup>9</sup> The committee, however, considered that the recognition of a political group should not interfere with the full exercise of the individual rights of members of the Assembly, Rule 19.6 dealing with the rights of political groups themselves and not with the rights of their members in their individual capacity, in particular the right to speak in plenary session of the Assembly and therefore to register in advance on the lists of speakers. See the Memorandum on the interpretation of Rule 19 of the Rules of Procedure of the Parliamentary Assembly (Acknowledgment of a new political group (Free Democrats Group): date of effect), document AS/Pro (2017) 19 def of 22 September 2017.

### 2.3. *The disappearance or dissolution of a political group*

20. The Assembly's Rules of Procedure do not deal with the question of the "disappearance of a political group", namely the consequences of a reduction of members below the minimum number required. The committee therefore decided in September 2017 to revise Rule 19 on this point.

21. There is no need for the Assembly to have a complex procedure.<sup>10</sup> Accordingly, and given the fact that political groups are required to notify the Bureau of the Assembly "of any subsequent changes as soon as possible" (Rule 19.3), a political group whose number of members falls below the required 20-member threshold, or which no longer comprises members from at least six national delegations, shall cease to exist. The Secretary General of the Parliamentary Assembly must officially notify the Bureau of this and the Bureau will take note thereof at its next meeting.

#### **– Discussion points**

22. In 2017, the committee had decided that Rule 19 of the Rules of Procedure should make express reference to a "notification" procedure for the disappearance or dissolution of a political group.

23. In addition, the committee must also consider the practical consequences of the disappearance of a political group. The committee is therefore invited to stipulate that, as soon as a political group ceases to exist:

- members belonging to the dissolved political group automatically become non-registered members (pending, if applicable, their affiliation to another group);
- committee chairpersons and vice-chairpersons elected in respect of that group shall retain their term of office until it expires;
- members of the Monitoring Committee, the Committee on Rules of Procedure and the Committee on the Election of Judges to the Court shall immediately lose their seats;
- members of an ad hoc committee for the observation of elections shall also immediately lose their seats.

### 2.4. *The status and prerogatives of members of the Assembly not belonging to any political group (non-registered)*

24. In accordance with the current Rules of Procedure, members not belonging to any political group do not enjoy certain rights of participation and representation which are directly related to membership of a political group (see paragraph 15 above). In particular, they can be members of only seven committees out of nine (six committees under their national delegation, two seats are reserved on the Rules Committee for non-registered members), and cannot be elected to the bureaux of the committees, or participate in election observation missions.<sup>11</sup>

25. At present, 82 members of the Assembly are not affiliated to any political group (14%). The committee could therefore consider changing the status of these non-registered members, either in terms of "collective" rights,<sup>12</sup> or in terms of individual rights (appointment to the Monitoring Committee and the Committee on the Election of Judges, in accordance with the terms and conditions of the Rules Committee; possible submission of candidatures to the committees' bureaux).

#### **– Discussion points**

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<sup>10</sup> The European Parliament is undoubtedly the only interparliamentary assembly to include in its Rules of Procedure a precise procedure. Rule 32.3 provides that:

*"If a group falls below one of the required thresholds, the President, with the agreement of the Conference of Presidents, may allow it to continue to exist until Parliament's next constitutive sitting, provided the following conditions are met:*

- *the members continue to represent at least one-fifth of the Member States;*
- *the group has been in existence for a period that is longer than a year.*

*The President shall not apply this derogation where there is sufficient evidence to suspect that it is being abused."*

<sup>11</sup> The question of their participation in election observation missions was considered by the Bureau of the Assembly as part of the revision of the Guidelines for the observation of elections by the Parliamentary Assembly in May 2018.

<sup>12</sup> In the Parliament of Andorra, members of parliament who are not part of any parliamentary group form a Mixed Group. The participation of the Mixed Group in the parliamentary activities is analogous to that of the other parliamentary groups (Article 25 of the Rules). The Lithuanian Parliament has similar provisions.

26. The committee has considered the need to change the rights of Assembly members who are not affiliated to any political group. At the meeting of 4 September 2018, the vast majority of the members of the committee felt that there was no merit in setting up a mixed group of non-registered members, a “technical” group, in view of the very diverse nature of the political parties to which non-registered Assembly members are affiliated, since such a group was not based on any political rationale given the very different positions held by these members.

27. However, the members of the committee did not immediately rule out the possibility of non-registered members being granted seats on the Monitoring Committee and the Committee on the Election of Judges to the European Court of Human Rights, in the same way as for the Rules Committee, which reserves two seats for non-registered members.<sup>13</sup>

#### **– Proposed amendment to the Rules of Procedure**

28. The committee proposes to amend Rule 19 as regards the conditions of formation and disappearance of a political group, as follows:

“19.1. Representatives and substitutes may form political groups **according to their political affinities**. To be acknowledged by the Bureau, political groups shall **undertake, in particular in their political charter, statutes and activities, to promote and respect** the values of the Council of Europe, notably political pluralism, human rights and the rule of law.

19.2. A political group shall have no fewer than ~~twenty members~~ **5% of the members composing the Assembly** and shall consist of representatives or substitutes of at least ~~six~~ **eight** national delegations. No Assembly member may belong to more than one political group.

19.3. At the time it is formed, each political group shall submit to the Bureau of the Assembly a statement which shall include the name of the group, the list of its members, the composition of its bureau, **a political charter setting out the purpose of the group, and its statutes or rules of procedure, which shall conform to the European Convention of Human Rights. All members of the group shall declare in writing in an appendix to the statement that they share the same political and ideological affinities.**

Each group shall notify the Bureau of any subsequent changes as soon as possible.

**Any political group which does not satisfy the conditions set out in Rule 19.2 shall cease to exist. This shall be notified to the Bureau by the Secretary General of the Parliamentary Assembly. The Bureau shall take note thereof at its subsequent meeting.”**

*(no changes to 19.4, 19.5 and 19.6)*

### **3. The status of the immediate past President of the Assembly: amending Rule 20.3 of the Rules of Procedure**

29. Rule 20.3 provides that: *“The immediate past President, as long as he or she remains a representative or substitute in the Assembly without interruption and provided that he or she has not been dismissed from office pursuant to Rule 54, shall be an ex officio member of the Committee on Political Affairs and Democracy, the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) and the Committee on Rules of Procedure, Immunities and Institutional Affairs. Rule 44.6 shall not apply to him or her.”*

30. It should be recalled that since 2002, when the Assembly granted the outgoing President of the Assembly the status of *ex officio* member of the Political Affairs Committee, his or her status has been upgraded several times, so that, at present, in the three committees concerned where he/she is an *ex officio* member, the immediate past President of the Assembly enjoys the same rights as the other members of the committee (right to vote, right to be a member of the committee’s bureau, right to be a member of the sub-committees and their bureaux, right to be a candidate for a rapporteurship, etc.).

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<sup>13</sup> It should be noted, however, that in 2016, the committee had already considered the question of the composition of the Monitoring Committee and had decided not to act on the proposal to appoint members not belonging to any political group (see the report of the committee on amendments to the Assembly’s Rules of Procedure (Doc. 13986), Chapter 2.2).

31. On the initiative of the Bureau of the Assembly, the Committee on Rules of Procedure was asked, in a very specific context (resignation of the President of the Assembly in 2017 before the end of his term of office), to give a detailed interpretation of Rule 20.3 and the concept of “outgoing President”.<sup>14</sup>

32. The committee noted, in particular, that, as the Rules currently stood, Rule 20.3 confers a privilege on the outgoing President of the Assembly, which applies automatically – unless the President is no longer a member of the Parliamentary Assembly or has been dismissed. A President who resigned from office remains the holder of this privilege and is automatically an *ex officio* member in the three committees concerned, until the President of the Assembly who has been elected to succeed him/her becomes outgoing President. The committee therefore considered that Rule 20.3 should be amended in this regard.

33. Moreover, members of the committee considered that the membership of the immediate past President of the Assembly in three committees should not be automatic but require that he/she expresses the wish and is actually willing to participate in their work. Some members also questioned the capacity of a President who has carried out a short and incomplete term of office to assert in these three committees the “considerable political experience and expertise” he/she is supposed to have acquired during that time in office.

#### – Discussion points

34. The committee is invited to consider the question of amending Rule 20.3:

– it should be clearly stated that a President of the Parliamentary Assembly who has resigned from office, while still a member of the Assembly, shall not be an *ex-officio* member of the committees concerned;

– it should be made clear that only the Presidents of the Assembly who have been elected by the Assembly have the status of immediate past President of the Assembly; the acting President, i.e. the most senior Vice-President (or the next most senior Vice-President) who fulfils the duties of President of the Assembly until the election of a new President at the following part-session does not have the status of immediate past President of the Assembly;<sup>15</sup>

– further consideration may be given to the need to amend other provisions of Rule 20.3, in particular to authorise the outgoing President to be an *ex officio* member of three committees provided that he or she has served at least one full term.

#### – Proposed amendment to the Rules of Procedure

35. The committee proposes to amend Rule 20.3 as regards the status of the immediate past President of the Assembly as follows:

“For as long as he or she remains a representative or substitute in the Assembly, and provided that **he or she has not resigned as President** or has not been dismissed from office pursuant to Rule 54, the immediate past **elected** President shall be an *ex officio* member of the Committee on Political Affairs and Democracy, the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) and the Committee on Rules of Procedure, Immunities and Institutional Affairs. Rule 44.6 shall not apply to him or her.”;

#### 4. Possible improvement of the procedure for considering motions for resolutions and recommendations

36. The Secretary General of the Assembly had been invited by the Bureau of the Assembly to “draft a memorandum on the procedure applied by the Assembly when considering motions for resolutions and recommendations and its possible improvement”. At its meeting on 24 November 2017, the Bureau took note of this memorandum (document AS/Bur (2017) 81 rev) and referred the matter to the Rules Committee.

37. It should be recalled that the Bureau’s initiative was aimed more specifically at the issue of requests for changes to references or extensions of references from committees, it being understood that the decisions taken by the Bureau to refer or transmit motions to committees or to take no further action, are, pursuant to the regulations, subject to ratification by the Assembly, but once those decisions had been

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<sup>14</sup> See the Memorandum on the interpretation of Rule 20.3 of the Assembly’s Rules of Procedure, document AS/Pro (2017) 21 def of 16 November 2017.

<sup>15</sup> *Ibid.*

ratified, they became final. From a regulatory point of view, any subsequent request for changes to a reference, or for the extension of a reference, is clearly inadmissible. In practice, the regulatory constraints have tended, to a certain extent, to be ignored.

38. Motions for resolutions or recommendations tabled by members of the Assembly are first examined by the Presidential Committee, which is responsible for preparing meetings of the Bureau. The proposals of the Presidential Committee for follow-up to the motions are then sent to the Bureau of the Assembly for decision. The chairpersons of the committees are members of the Bureau and can therefore state the position of their committee before the Bureau takes a decision. Decisions taken by the Bureau on referring motions for resolutions or recommendations to committees, transmission for information or for no further action, are subsequently submitted to the Assembly for ratification on the Monday and Friday morning of a part-session (in the Progress Report of the Bureau and the Standing Committee or its addendum) or to the Standing Committee. They may be contested on this occasion.

#### 4.1. *Position of the Rules Committee*

39. In June 2014, the Rules Committee, at the request of the Bureau of the Assembly, was asked to clarify the matter of references to committees approved by the Bureau and challenges to those references in plenary (Rules 26<sup>16</sup> and 33<sup>17</sup> of the Assembly's Rules of Procedure)<sup>18</sup>. The committee pointed out that "the Rules of Procedure quite explicitly provide that proposals for reference or transmission to a committee or for no further action decided upon by the Bureau must be submitted to the Assembly for ratification. That is why the agenda of each part-session, under the item 'Debate - Progress report of the Bureau and the Standing Committee', clearly indicates '[possibly] Vote'. The members of the Assembly therefore receive formal notice of the possibility of a vote being held on any of the questions raised in the progress report which might be the subject of a challenge in plenary sitting".

40. On that occasion, the Rules Committee felt that it would be worthwhile expressing its opinion first on the subsequent modification of references of motions - subsequent to the Assembly's ratification of the references - i.e. requests for extensions of references and for modifications to references, and second, on the time-frame for the Bureau to consider motions before reaching its decision.

41. With regard to **requests to modify already ratified references**, the Rules Committee stated in 2014 that "in stipulating that proposals for references, transmissions to committees or no further action must be ratified by the Assembly, the Rules of Procedure lay down a principle that such ratification implies a final and irrevocable decision. That is also the purpose of the procedure enabling the Bureau's decisions in that regard to be challenged in sittings – for example, by proposing a reference for report to another committee, reference to a committee for an opinion, reference for report instead of forwarding for information, etc." The committee commented that this procedure was, in practice, very rarely used and that it was not uncommon for the Bureau to receive requests for modification of a reference originating from the committees, which

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<sup>16</sup> "26.1. The Bureau shall reach a decision on all documents mentioned in Rule 24.2.c. [motions tabled by representatives or substitutes] and, if appropriate, h. [any documents deemed to be official documents by the President of the Assembly], if necessary after consulting one or more committees, and may decide that the documents shall be referred to one or more committees, forwarded to one or more committees for information, or that no further action be taken. A document forwarded for information may not give rise to a committee report to the Assembly.

26.2. The Bureau may refer a specific matter to a committee for a report to the Assembly, particularly as part of the action to be taken on an adopted text, provided that the matter has not already been referred to it.

26.3. The Bureau shall submit these decisions for ratification as soon as possible, either by the Assembly or the Standing Committee. These decisions shall become available to members through the Progress Report of the Bureau and the Standing Committee or in a separate document. Rule 33.5. second and third sentences, shall apply mutatis mutandis. A document may be referred to only one committee for report, though it may be referred to any other committee for an opinion.

26.4. A reference to committee shall lapse in two years or, at the request of the committee concerned, by a decision of the Assembly."

<sup>17</sup> Rule 33.5 provides that "The Progress Report of the Bureau and the Standing Committee may contain a special section or an appendix listing the decisions to be ratified by the Assembly, in particular decisions taken on the basis of Rule 26 concerning official documents. Adoption of a motion by a member to change a Bureau decision shall require a majority of the votes cast. On any such motion only the mover, one speaker against and the rapporteur of the Bureau shall be heard."

<sup>18</sup> See the information memorandum on "References to committees approved by the Bureau and their contestation in plenary sitting (Rules 26 and 33 of the Assembly's Rules of Procedure)", prepared by the committee secretariat, document AS/Pro (2014) 11.

ought normally to have been made at the proper time in the Chamber when the Bureau's proposals were to be ratified.<sup>19</sup> The committee considered that "changes to references are nothing more or less than a way of circumventing Rule 26 of the Rules of Procedure" and reiterated the need to comply with "the prescribed procedure as it now exists, according to which it should no longer be possible to go back on a decision ratified by the Assembly".

42. With regard to **requests for extension of references**, the Rules Committee reiterated the wording of Rule 26.4 of the Rules of Procedure ("A reference to committee shall lapse in two years or, at the request of the committee concerned, by a decision of the Assembly"), inserted in the Rules of Procedure in 2000. The committee commented that in practice, this provision was "not strictly observed since the committees regularly approach the Bureau for time extensions of references, backed by a variety of justifications, for example a change of rapporteur, the need for additional research or extra time to finalise the report".<sup>20</sup> The committee stated that "the Assembly saw fit to give the proceedings of committees a time-frame in order that they reply in reasonable time to the questions put to them for consideration" and that the practice of extending references decided upon by the Bureau of the Assembly – with such extensions not being ratified by the Assembly – was in breach of the existing regulatory provisions.

43. In conclusion, the committee stated that the practice whereby the Bureau grants extensions to the references to committees beyond the two-year time-frame stipulated in the Rules of Procedure, or reconsiders decisions to refer a motion to a committee, transmit for information or take no further action, where such decisions have been duly ratified by the Assembly, is contrary to the Rules and fails to comply with the requirements of the principle of transparency of decisions.

44. Similarly, the aforementioned memorandum also raised the question of the time-frame for consideration of motions before the Presidential Committee and the Bureau, noting that no time-frame was stipulated in the Rules of Procedure, with the result that several weeks could pass without any action being proposed for a particular motion and, in a few very rare cases, no action being proposed at all.

#### *4.2. Proposals of the Secretary General of the Parliamentary Assembly*

45. In his aforementioned memorandum, the Secretary General of the Assembly stresses that the procedure provided for in the Rules of Procedure concerning consideration of motions for a resolution or a recommendation tabled by members of the Assembly or committees is clear as regards their consideration by the Bureau of the Assembly, ratification of the Bureau's decisions in this regard by the Assembly and the possibility of challenging those decisions at the time ratification is being debated in plenary.

46. The Bureau must ensure compliance with Rule 26.4 of the Rules of Procedure on the lapse of references to committees and with Rule 26.3 in the event of requests to modify references already ratified by the Assembly. Accordingly, the Bureau should:

- place greater emphasis on consulting committees at an earlier stage;
- undertake to consider proposed references and reach a decision in a shorter time-frame;
- focus closer attention on the substance of motions, and their importance in the light of the Assembly's previous decisions and the committees' work programmes.

47. Consequently, the Secretary General of the Assembly invited the Bureau of the Assembly to establish and respect the following procedure when considering new motions for a resolution or a recommendation, which the Bureau took note of at its meeting on 23 November 2017:

1. New motions – following their tabling and provided they are in order – shall be submitted to the nearest meeting of the Presidential Committee. The Presidential Committee shall consider motions and make proposals to the Bureau of the Assembly on possible follow-up.
2. Proposals of the Presidential Committee shall be subsequently distributed to committee chairpersons for information in time before the second Bureau meeting following the Presidential Committee meeting mentioned in paragraph 1.

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<sup>19</sup> For information, 12 requests to modify references were submitted in 2018, 10 in 2017, 14 in 2016, 4 in 2015 and 9 in 2014.

<sup>20</sup> For information, 25 requests to extend references were submitted in 2018, 10 in 2017, 14 in 2016, 26 in 2015, 14 in 2014, 22 in 2013, 12 in 2012, 21 in 2011, 15 in 2010, 11 in 2009. Some requests are unquestionably excessive in view of the provisions set out in the Rules, and some have led the Bureau, ultimately, to grant a committee as much as seven years to produce a report.

3. The Bureau, at its second meeting following the said Presidential Committee meeting, shall consider and take position on all motions, and decide on their reference for report, transmission for information to committees, or that no further action is needed (in line with Rule 26). The Bureau may also decide to refer a motion to a committee to be taken into account in the preparation of an ongoing report.
4. Titles of motions tabled cannot be modified by the Bureau. However, the Bureau may decide to merge several motions concerning the same or a similar subject under a new title.
5. The Bureau decisions on references shall be submitted to the nearest sitting of the Assembly or meeting of the Standing Committee for ratification.
6. If a decision taken by the Bureau on a motion is successfully challenged in the Assembly or the Standing Committee, the motion will be referred back to the Bureau for reconsideration.
7. References – once ratified by the Assembly/Standing Committee - cannot be subsequently challenged or modified (except in the case of an additional reference to a committee for opinion).
8. Delays or postponements in consideration of references by the Presidential Committee or the Bureau shall not be allowed (a request for a consultation by the committee concerned before the decision on a reference is taken by the Bureau shall not be considered as a postponement; the decision of the Bureau, taken on Monday morning meeting during a part-session, to postpone consideration of the references initially scheduled on that day to its meeting of Friday morning the same week, will also not be considered as a postponement).
9. References shall remain valid for the time provided for in the Rules of Procedure (Rule 26.4). The Bureau of the Assembly shall not accept any request for the prolongation of the validity of references.
10. When considering new motions, the Presidential Committee and the Bureau shall comply with the following guidelines:
  - a. the motion must fall within the scope of the Council of Europe's competences;
  - b. the relevance of a motion should be taken into account, especially when it concerns new issues and challenges or would help to enhance the political relevance and visibility of the Assembly;
  - c. consideration shall be given to the previous work of the Assembly in the field concerned;
  - d. the existence of previous motions tabled which are still under consideration by the committees shall also be taken into account.

4.3. *Proposals by national delegations and political groups in the context of the Bureau's Ad hoc Committee on the role and mission of the Parliamentary Assembly*

48. A number of specific proposals have been made to streamline the Assembly's work. Among these, it was suggested that the Rules of Procedure be amended to introduce a higher threshold (currently only 20 signatures are required) for the tabling of a motion for a resolution or recommendation. It was also suggested that the committees be given responsibility for selecting which motions should result in a report, with the Bureau simply checking whether they meet the formal criteria.

– ***Discussion points***

49. The committee is invited to examine the procedure for reference to committees and to approve the proposals of the Secretary General of the Assembly as guidelines (paragraph 47); the Bureau of the Assembly should be called to abide by these when considering new motions for resolutions or recommendations.

**5. Reforming the Assembly's overall system for monitoring the honouring of obligations and commitments or the current working methods and internal procedures of the Monitoring Committee**

50. A number of proposals from national delegations and political groups made as part of the work of the Bureau's Ad hoc Committee on the role and mission of the Parliamentary Assembly focused on the working methods and procedures relating to the Assembly's monitoring function. However, the aim of these proposals was not to amend the Rules of Procedure as such, but rather they reflected a wish to either reform the Assembly's monitoring procedure or at the very least to streamline the Monitoring Committee's working methods in this area. The Monitoring Committee closely examined these proposals and produced a detailed

analysis and conclusions.<sup>21</sup> With regard to the length of the monitoring procedure, it decided to draw up clear and uniform criteria for the evaluations and closure of the monitoring procedure and the post-monitoring dialogue; the rapporteurs will also be responsible for drawing up, for each country subject to a full monitoring procedure or engaged in a post-monitoring dialogue, a clear list of specific issues to be addressed and action to be taken with a precise timetable in order to move the monitoring procedure forward. Moreover, in response to criticisms of the lack of equal treatment between member States, the Monitoring Committee decided to no longer submit periodic reports on the honouring of obligations entered into by States, in alphabetical order, but to select the States subject to such examination on substantive grounds, while maintaining the objective of conducting periodic examinations of all member States in due course.

51. Resolution 2261 (2019) made some minor changes to the committee's terms of reference in order to reflect the conclusions of the Monitoring Committee's deliberations. I do not think that the Committee on Rules of Procedure has any further points to add at this stage, apart from the discussions on the number of reports for which an individual member can be rapporteur (Section 7.2.2).

## **6. Implementation of Resolution 2248 (2018) on the procedure for the election of judges to the European Court of Human Rights**

52. In Resolution 2248 (2018) which seeks to strengthen the framework for the election of judges and improve the election procedure, the Assembly calls on the Rules Committee to "*consider those proposed changes in the election procedure before the Assembly that would require amendments to the Rules of Procedure and to submit any such proposals to the Assembly in due course; and to consider ways and means to guarantee high attendance in the Committee on the Election of Judges*" (paragraph 9.1)

53. Regarding the first point, Resolution 2248 (2018) proposes the following changes to the procedure:

*"8.1. the Chairperson or a representative of the Advisory Panel shall be invited by the Chairperson of the Committee on the Election of Judges to explain the reasons for the panel's views on candidates, during the briefing sessions scheduled before each set of interviews;*

*8.2. a list of candidates shall be rejected when:*

*8.2.1. not all of the candidates fulfil all the conditions laid down by Article 21.1;*

*8.2.2. the national selection procedure did not fulfil minimum requirements of fairness and transparency;*

*8.2.3. the Advisory Panel was not duly consulted;*

*8.3. the Committee on the Election of Judges shall decide on a proposal to reject a list of candidates by a majority of the votes cast;*

*8.4. members of the Committee on the Election of Judges from the country whose list is under consideration shall not have the right to vote in the committee, either on a possible rejection of their country's list or on the expression of preferences among candidates."*

54. The Committee on the Election of Judges reiterates that it may reject a list of candidates only for certain duly specified reasons and that, as long as the national procedure fulfils the Assembly's requirements and the three candidates are in principle eligible, the Assembly has no choice but to carry out the election. The Resolution now states the principle that one of the grounds stipulated should systematically lead the committee to recommend that the Assembly reject the list and that the majority required for the committee to adopt a recommendation to reject should also be reduced to a majority of the votes cast and no longer require two thirds of the votes cast (with the exception of a decision to take into consideration single-sex lists).

55. The Rules Committee therefore has the simple task of incorporating into the complementary texts the Assembly's decision to amend the Assembly election procedure set out in Resolution 2248 (2018), while preserving its clarity and consistency and ensuring that it is in full compliance with the provisions of the Rules of Procedure.

56. Accordingly, paragraph 4.1 of the terms of reference of the Committee on the Election of Judges could be amended as follows:

*"The committee shall vote by a majority of the votes cast.; ~~however, a~~ A decision to reject a list of candidates or a decision to consider a single-sex list of candidates **in exceptional circumstances** shall require a two-thirds majority of the votes cast. The committee shall vote on candidates by secret*

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<sup>21</sup> See the report by the Monitoring Committee on "The progress of the Assembly's monitoring procedure (January-December 2018)" (Doc. 14792, Part 1), Chapter 5.

ballot. Only members who have attended in full the interview procedure for a post of judge may vote. **Members of the committee from the country whose list is under consideration shall not have the right to vote in the committee, either on the possible rejection of their country's list or on the expression of preferences among candidates.** For any other decision, voting shall take place by a show of hands. However, voting may be by secret ballot if requested by at least one third of the members present. The chairperson shall be entitled to vote."

57. It is also proposed to amend the additional provisions on candidates for Judges to the European Court of Human Rights by amending Resolution 1366 (2004), modified, as follows:

– replace paragraph 3 by the following:

"The Assembly decides not to consider lists of candidates where:

i. the areas of competence of the candidates appear to be unduly restricted;

~~ii. the list does not include at least one candidate of each sex, except in circumstances as prescribed by paragraph 4;~~

**ii. not all of the candidates fulfil each of the conditions laid down by Article 21, paragraph 1, of the European Convention on Human Rights;**<sup>22</sup>

iii. **one of the candidates does not appear to have an active knowledge of one of the official languages of the Council of Europe and a passive knowledge of the other;**

~~or, do not appear to be of the stature to meet the criteria in Article 21, paragraph 1, of the European Convention on Human Rights.~~

**iv. the national selection procedure did not satisfy the minimum requirements of fairness and transparency;**

**v. the Advisory Panel was not duly consulted.**<sup>23</sup>

**In such cases, the Committee on the Election of Judges shall decide on a proposal to reject a list of candidates by a majority of the votes cast. This proposal shall be endorsed by the Assembly in the Progress Report of the Bureau of the Assembly. The Assembly's endorsement of the proposal to reject a list entails its definitive rejection; the State concerned is invited to submit a new list. Rejection by the Assembly of the committee's proposal to reject a list shall entail the referral of the list back to the committee."**

– amend paragraph 4 as follows:

**"Moreover,** the Assembly decides to consider single-sex lists of candidates when the candidates belong to the sex which is under-represented in the Court (i.e. the sex to which under 40% of the total number of judges belong), or in exceptional circumstances where a Contracting Party has taken all the necessary and appropriate steps to ensure that the list contains candidates of both sexes meeting the requirements of paragraph 1 of Article 21 of the European Convention on Human Rights.

Such exceptional circumstances must be duly so considered by a two-thirds majority of the votes cast by members of the Committee on the Election of Judges to the European Court of Human Rights. **If the required majority has not been achieved, the committee shall recommend that the Assembly reject the list concerned.** This position shall be endorsed by the Assembly in the Progress Report of the Bureau of the Assembly."

– add after paragraph 5 the following new paragraph:

**"The Chairperson or a representative of the Advisory Panel shall be invited by the Chairperson of the Committee on the Election of Judges to explain the reasons for the panel's views on candidates, during the briefing sessions scheduled before each set of interviews."**

58. In addition, the Committee on the Election of Judges asked the Rules Committee to examine the possibility of "modifying the rules governing the functioning of the committee in such a way that incentives

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<sup>22</sup> Article 21 – Criteria for office

"1. The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence."

<sup>23</sup> To help ensure candidates are fully qualified, an advisory panel of experts offers governments confidential advice on potential candidates before the final list of three is sent to the Assembly.

<https://www.coe.int/en/web/dlapil/advisory-panel>

are created for more regular attendance of members”, including by considering possible sanctions against political parties whose members do not attend committee meetings on a regular basis as well as against the members themselves.

59. This issue of member participation is of general interest to all Assembly committees, but it is undoubtedly more pressing for the three committees whose members are appointed by the political groups, particularly in view of the fact that two of them do not have substitutes. However, the participation statistics for recent years do not show any significant differences between the committees made up of national delegations and those appointed by the political groups.<sup>24</sup> In line with the view of the rapporteur of the Committee on the Election of Judges, I note that it is the responsibility of the political groups to draw the appropriate conclusions from the statistics on individual participation – which are forwarded to them each year - and to take the necessary steps to replace, in the committees concerned, any members they have appointed who have a poor attendance record. I also consider that sanctions would not be an appropriate solution. If the political groups took robust measures in this regard, such as replacing members after a certain number of absences (three consecutive or five non-consecutive absences for example), this would undoubtedly have an immediate effect on the participation rate in the three committees concerned.

## **7. Proposed amendments to the Rules of Procedure arising from discussions in the Ad hoc Committee of the Bureau on the role and mission of the Parliamentary Assembly**

### *7.1. Stepping up the dialogue with the Committee of Ministers*

60. Several proposals have been made by national delegations and political groups within the framework of the Bureau's Ad hoc Committee on the role and mission of the Parliamentary Assembly as regards improving the political dialogue between the Assembly and the Committee of Ministers, and ensuring greater respect for the Assembly's work by the Committee of Ministers. Drawing conclusions from the exercise, the Bureau "decided to continue its dialogue with the Committee of Ministers, as appropriate, on all proposals aimed at enhancing the Assembly role vis-à-vis the Committee of Ministers or improving the dialogue between the two statutory organs."

61. I nevertheless note that some proposals, which do not fall within the scope of political relations between the two organs,<sup>25</sup> have already been studied by the Committee on Rules of Procedure in the past - in particular improving the content of the Committee of Ministers' replies to the Assembly's recommendations in order to make these replies more substantial - and that others could be considered in the context of this report, in particular:

- increase in the time allocated to the questions and answers exercise with the Chair of the Committee of Ministers, following his or her introductory speech when presenting his or her communication at each Assembly part-session;
- the possibility of inviting the Secretary General and/or the Chair of the Committee of Ministers to report and answer questions on a specific theme or on the follow-up given by the Committee of Ministers to the Assembly's recommendations;
- better preparation of the dialogue with the Secretary General of the Council of Europe during the Assembly's part-sessions, in particular the questions and answers exercise (on the basis of written questions).

62. Some of these proposals could lead to changes in the relevant regulatory provisions therefore (see below).

### *7.2. Streamlining the Assembly's work*

63. Other proposals have been made, again within the framework of the Bureau's ad hoc committee, with a view to streamlining the work of the Assembly.

#### *7.2.1. Organisation of debates*

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<sup>24</sup> See the document produced each year by the Rules Committee on Participation of members in Parliamentary Assembly plenary sessions and committee meetings (AS/Pro (2019) 01 def of 24 January 2019, Appendix VI).

<sup>25</sup> The report being prepared by the Committee on Political Affairs and Democracy entitled "Role and mission of the Parliamentary Assembly: main challenges for the future" (Rapporteur: Mr Tiny Kox, Netherlands, UEL) contains a more detailed analysis of the proposals made within the framework of the ad hoc committee as regards enhancing the dialogue between the Assembly and the Committee of Ministers.

– *Speaking time during sittings*

64. The fact is that the speaking time allotted to speakers, which is currently four minutes, is systematically reduced, in practice, to three minutes for the vast majority of debates, with Friday morning debates being the exception. It is therefore proposed that the provisions on the organisation of debates be amended to set the speaking time for speakers at three minutes (Rule 53.4 and paragraph 1 of the additional provisions relating to Assembly debates – speaking time). The speaking time allotted to the chairpersons of committees submitting a report, which is currently limited to two minutes, could also be brought into line with this. It goes without saying that, in practice, the Bureau of the Assembly enjoys a degree of flexibility and may propose that the Assembly increase the speaking time during sittings to four minutes for certain debates (Friday morning or even Thursday afternoon sittings).

– *Provisions relating to requests for an urgent or current affairs debate*

65. Some proposals made within the framework of the Bureau's ad hoc committee seek to restrict the thematic and geographical scope of requests for urgent or current affairs debates and to limit them to matters within the competence of the Council of Europe.

66. In my view, there is no need to formally amend Rule 51.1 on urgent procedure in the Assembly, Rule 52.1 on urgent procedure in the Standing Committee or Rule 53.2 on current affairs debates, in order to include specific criteria as to the admissibility of such requests. I note that in 2007 the Bureau approved "criteria for selection of requests for debate under urgent procedure" (document AS/Bur (2007)73), which would no doubt need to be updated.

– *Communication from the Chair of the Committee of Ministers and the Secretary General of the Council of Europe*

67. Question and answer sessions with the Chair of the Committee of Ministers when presenting his or her communication at each part-session of the Assembly or with the Secretary General of the Council of Europe attract undoubtedly members' interest, who are not afraid to express their frustration when, because of the limited amount of time available, the guest speakers concerned are able to answer only a small number of questions.

68. The committee could explore the proposal to increase the total amount of time allocated to this exercise (and increase it to one and a half hours instead of one hour for the Chair of the Committee of Ministers), along with the proposal to limit the time allocated to the introductory speech in order to allow more time for questions and answers.

69. The possibility of organising question time with the Secretary General of the Council of Europe during part-sessions around written questions requires the prior agreement of the Secretary General.

70. In order to follow up these proposals, the guidelines for questions to guest speakers should be amended:

– by supplementing Chapter A. on "Questions to the Chairperson-in-office of the Committee of Ministers" by adding a paragraph 1 worded as follows:

**"In order to enable members of the Assembly to put their questions to the Chairperson of the Committee of Ministers and to hear the replies, the presentation of the report on the activities of the Committee of Ministers may not exceed one third of the total time allotted for the communication from the Committee of Ministers."**

– by supplementing Chapter B. on "Questions to other guest speakers" by adding a paragraph 7 worded as follows:

**"Representatives and substitutes may put written questions to the Secretary General of the Council of Europe for oral reply. They must enter their names on the appropriate register and submit the text of the question at least one week before the opening of the part-session. Written questions on the same or related subjects may receive a joint answer. This exercise requires the approval of the Secretary General."**

– *Free debate*

71. Increasing the amount of time devoted to the free debate was mentioned by one delegation in the course of the ad hoc committee's work. Rule 39 of the Rules of Procedure stipulates that the Assembly may hold only one free debate during a part-session and limits the duration of the free debate to one hour. I have observed from experience that many of those who are down to speak do not actually get the opportunity to take the floor. In view of the numerous debates which appear on the agenda of any part-session, and which themselves often attract large numbers of speakers, it is not easy for the Bureau of the Assembly to satisfy everyone. In practice, when there has been room on the agenda, the free debate has been allowed to continue for an hour and a half or even spread over two sittings, with the Friday morning sitting being used to hear the remaining speakers on the list.

72. I therefore propose that the existing regulatory framework not be amended and that the Bureau of the Assembly be given the necessary leeway when adopting the draft agenda for Assembly part-sessions.

#### *7.2.2. Multiple rapporteurships held by the same parliamentarian*

73. The question of whether parliamentarians should be allowed to take on more than one role of rapporteur in the committees of which they are members has been raised on several occasions in the past. It was mentioned again in the Bureau's ad hoc committee discussions, with several delegations wishing to encourage greater diversity in terms of rapporteurs and the involvement of a greater number of parliamentarians in the drafting of reports. The following proposals were made:

- limit the number of reports assigned to the same member of the Assembly,
- no member should be responsible for more than one report at a time, even if he or she is a member of several committees;
- the rapporteurs of the Monitoring Committee should not be rapporteurs on other subjects at the same time;
- the rapporteurs must have been members of the committee for at least one year.

74. In Resolution 2002 (2014) on the evaluation of the implementation of the reform of the Parliamentary Assembly, based on a committee report, the Assembly decided to limit to five the number of reports or opinions for which the same parliamentarian may be responsible at any one time (Rule 50.1 of the Rules of Procedure). At the time, the committee's rapporteur had proposed limiting to three the number of reports or opinions for which the same parliamentarian could be responsible, for all committees combined. Fresh consideration could be given to this proposal.

75. The committee could therefore propose that the total number of reports for which the same parliamentarian may be simultaneously responsible, for all committees combined, be limited to three reports or opinions, including a maximum of two reports or opinions per committee - with the exception of the Monitoring Committee, where a member may be rapporteur for one report only. The mandate of general rapporteur should count towards this limit.

76. It is proposed that Rule 50.1 of the Rules of Procedure be amended accordingly, by amending the fourth sentence as follows: "**A rapporteur must have been a member of the committee for at least one year.** A member of the Assembly who is simultaneously rapporteur for **three** reports or opinions under preparation, **including a mandate as general rapporteur**, on behalf of one or more committees, may not be appointed rapporteur. **He or she may not be rapporteur for more than two reports or opinions per committee. A member of the Monitoring Committee may be rapporteur for only one report or opinion of this committee** [footnote: Reports or opinions under preparation are those which have still not been debated by the Assembly or the Standing Committee]".

## **8. Various changes necessitated by parliamentary practice**

### *8.1. Election of the bureaux of committees*

77. Under Rule 46 of the Rules of Procedure on bureaux of committees, when committees hold their first annual meeting, that meeting is chaired by the oldest member present "until the chairperson of the committee is elected". The candidates for the office of chairperson or vice-chairperson of a committee "must belong to the political group to which the Chair or a Vice-Chair has been allocated on the basis of an agreement reached among the political groups within the Presidential Committee".

78. In January 2018, however, the failure of the political groups to agree and to nominate candidates in some committees paralysed the work of those committees, which were unable to discuss the business at hand as, under the Rules of Procedure, until the chairperson of the committee is elected, no subject other than the election of the chairperson may be considered.

79. The Rules of Procedure should therefore be amended to stipulate that, in the absence of agreement between the political groups or if no nominations are sent to the committee secretariats in good time before the first meeting of the committee a committee may continue its work with the oldest member acting as Chair and proceed to the election of its vice-chairpersons.

80. Rule 46.2 should be amended as follows therefore:

“46.2. Until the chairperson of the committee is elected **or in the absence of agreement among the political groups or of nominations for the office of Chair until the vice-chairpersons are elected**, the meeting shall be chaired by the oldest member present, under whose chairpersonship no subject other than the election of the **bureau of the committee** ~~chairperson~~ may be considered”

### 8.2. *Non-delivered speeches*

81. As the processing and publication of records of sittings are set to evolve in the course of the year, it is now vital to amend the additional provisions relating to Assembly debates, on the organisation of debates, with regard to non-delivered speeches, which will in future have to be submitted to the Table Office in electronic format. Likewise, if the Assembly decides to reduce the speaking time to three minutes, the length of undelivered speeches will need to be reduced proportionally. Paragraph 3 of the relevant complementary text should therefore stipulate that non-delivered speeches must be “**submitted in electronic format and be no longer than 400 words**”.

### 8.3. *Title in French for the Presidential Committee*

82. In the French version of the Rules of Procedure, the title “Comité des présidents” should be changed to “Comité présidentiel”, notably in Rules 14, 20.1 and 46.3. As well as being closer to the English version, this title is arguably also less sexist.

## 9. Conclusion

83. At its meeting on 18 March 2019, the Rules Committee examined the proposals for amendments that might be made to the Rules of Procedure, as recommended herein, and decided, *inter alia*, to:

- amend Rule 19 of the Rules of Procedure in order to *complete the conditions for the formation of political groups* – in particular as regards the minimum number of members and delegations required to form a group, the prerequisite documents, and the need to be part of a common political identity - and *to establish the conditions for the disappearance of a political group*; in addition, the committee specified the consequences of the disappearance or dissolution of a political group on its members;
- amend Rule 20.3 to supplement the conditions for the *immediate past President of the Assembly* to be an *ex-officio* member of the Committee on Political Affairs and Democracy, the Monitoring Committee and the Committee on Rules of Procedure;
- amend the terms of reference of the *Committee on the Election of Judges to the European Court of Human Rights* and the procedure specified in the additional provisions on candidates for the European Court of Human Rights, in order to incorporate the changes decided by the Assembly in Resolution 2248 (2018);
- amend Rule 46.2 of the *election of bureaux of committees*, in order to allow committees to continue their work at their first meeting during the January part-session, in the absence of a Chair;
- amend Rule 50.1 in order to reinforce the provisions for *preventing multiple rapporteurships*;
- modify the additional provisions relating to Assembly debates as regards the *speaking time in the plenary sittings*;

– amend the guidelines for *questions to guest speakers*, in order to stimulate the exercise of the questions/answers to the *Chair of the Committee of Ministers and the Secretary General of the Council of Europe*.

84. With regard to improving the *procedure for considering motions for resolutions and recommendations* submitted by members of the Assembly or committees, the Bureau of the Assembly is invited to ensure compliance with the provisions of the Rules of Procedure relating to the lapse of references to committees and to approve and implement the procedural guidelines prepared by the Secretary General of the Assembly, set out in his memorandum of 20 November 2017, when considering new motions for resolutions or recommendations.

85. The Bureau of the Assembly is also invited to set criteria for the admissibility and selection of *requests for debate under urgent procedure and current affairs debates*, by updating the criteria it had approved in 2007.

86. Lastly, with regard to the implementation of the amendments to be made to the Rules of Procedure, the draft resolution proposes that these amendments enter into force upon their adoption. However, transitional measures are needed in order to give additional time to the political groups concerned by the new conditions stipulated in Rule 19.2, and to the rapporteurs, who will have to comply with the new provisions of Rule 50.1.