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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

OPINION ON
THE RULES OF PROCEDURE OF THE ASSEMBLY
of “the former Yugoslav Republic of Macedonia”

adopted by the Venice Commission
at its 79th Plenary Session
(Venice, 12-13 June 2009)

on the basis of the comments by

Mr Hubert HAENEL (Substitute Member, France)
Mr Koen MUYLLE (Expert, Belgium)

I. Introduction

1. *By letter dated 21 November 2008, Mr Sergei Holovaty, Chairperson of the Committee on the Honouring of Obligations and Commitments by member states of the Council of Europe (Monitoring Committee), requested an expert opinion from the Venice Commission on the Rules of Procedure of the Assembly of "the former Yugoslav Republic of Macedonia".*
2. *Mr Haenel (Substitute Member for France) was appointed as rapporteur. The Parliamentary Assembly's Monitoring Committee itself proposed that Mr Koen Muylle (legal adviser (référéndaire) at the Constitutional Court of Belgium) be appointed as co-rapporteur.*
3. *The present opinion is prepared on the basis of comments by Mr Haenel (CDL(2009)077) et de Mr. Muylle (CDL(2009)078). The rapporteurs worked on an english version of the Rules of procedures of the Assembly of the Parliament of the "the former Yugoslav Republic of Macedonia (CDL(2009)076).*
4. *This opinion was adopted at the 79th Plenary Session of the Venice Commission (Venice, 12-13 June 2009).*

II. General observations

5. It should be pointed out that this opinion on the Rules of Procedure of the parliament of "the former Yugoslav Republic of Macedonia" is based solely on an analysis of the wording of the rules themselves and takes no account of how they are implemented or of parliamentary practice.
6. The following opinion has been drawn up in the light of Resolution 1601 (2008) of the Parliamentary Assembly of the Council of Europe, "Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament".¹ This resolution expressly calls on the parliaments of member states to take into account the guidelines when they propose to "reform or update their rules on the rights of the opposition or parliamentary minority".²

¹ See also Resolution 1154 (1998) on the "Democratic functioning of national parliaments", paragraph 6 iv. (the Assembly considers that national parliaments should "give the opposition a status enabling it to play a responsible and constructive role, inter alia by being allowed to secure the setting up of a committee of enquiry and to be consulted before any decision leading to the dissolution of parliament") and Resolution 1546 (2007) on a "Code of good practice for political parties", paragraph 13.4 (the Assembly considers that the code should concern good practices for opposition political parties:

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

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

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

13.4.4. encouraging the opposition to establish a "shadow" programme;").

² Resolution 1601 (2008), paragraphs 9-10.

7. These guidelines reflect general principles of parliamentary law common to the member states of the Council of Europe, namely:

- Independence: Parliamentarians must exercise their mandate independently and must not be bound by any instruction or receive a binding mandate. (Guideline 1)
- Equal treatment: Equal treatment of members of parliament, both individually and as members of political parties, must be guaranteed regarding all aspects of the exercise of their mandate and of the activities of parliament. (Paragraph 5 of Resolution 1601 (2008))
- Effectiveness: In accordance with this principle all members of parliament must be able to participate in an effective and active manner in the activities of their legislative assembly, whether they belong to the majority or the opposition. (Paragraph 5 of Resolution 1601 (2008))
- Freedom of expression: This principle entails that all parliamentarians should be able freely to express their ideas. (Guideline 2.1)
- Proportional representation: This principle entails that the representation of the various political groups within parliament should be taken into consideration when forming the assembly's various bodies (Bureau, committees, interparliamentary delegations), when designating the President, Vice-Presidents, Committee Chairs and Vice-Chairs and rapporteurs, and when determining each political group's share in the assembly's activities, for example when allotting speaking time (see Guidelines 2.2.9, 2.3.1, 2.5.1 and 2.5.5).
- Rights of the opposition: The key role played by the opposition in a parliamentary democracy is to be underlined. A balance must be struck between the majority's legitimate desire to press ahead and implement the programme on which it was elected and the possibility for the opposition to express its opinions on bills tabled by the government, so as to have an impact on legislation to be adopted. (Resolution 1601 (2008), paragraph 3 and Guideline 2)

8. On the whole, the Rules of Procedure of the Assembly of "the former Yugoslav Republic of Macedonia" largely implement and comply with the above-mentioned principles and guidelines.

9. However, with regard to proportional representation and the rights of the opposition, the Rules of Procedure raise a number of problems and concerns, which are addressed in the specific observations set out below.

10. At a constitutional level, in their wording and in general, the Rules of Procedure appear to be consistent with the provisions of the Constitution of the Republic, in particular Articles 61 to 75 of the Constitution dealing specifically with the Assembly, its organisation and its prerogatives. Other articles of the Constitution refer to powers of the Assembly, such as Article 87 on initiating a procedure for determining the accountability of the President of the Republic, Article 90 on election of the government, Article 92 on a vote of no-confidence in the government, Article 109 on the election of judges of the Constitutional Court and Article 124 on declaration of a state of war.

III. Observations as to substance – Specific questions

A. Proportional representation

11. A number of articles of the Rules of Procedure provide for a minimum representation of the political parties present in the Assembly within parliamentary committees, working bodies and organs.

12. For instance, as regards the composition of the Verification Committee (Article 12) and the Committee on Elections and Appointments (Article 20), the Rules of Procedure make due mention of the need for representation of the various political parties.

13. In the same way, the Vice-Presidents of the Assembly must be elected from among the various political parties represented in the Assembly (Article 21.2), and the third paragraph of Article 21 specifically provides that one of the Vice-Presidents shall belong to the biggest opposition party in the Assembly. If the Assembly decides to elect its President by secret ballot, the Chairperson (President *ad interim*) must be assisted, inter alia, by three members of the Assembly "elected by the Assembly upon a proposal by the Chairperson, from among the members belonging to different political parties represented in the Assembly." (Article 24.2)

14. The principle of proportional representation can also be seen to apply for the election of the Chairs, Vice-Chairs, members and substitute members of the Assembly's working bodies, the heads, members and substitute members of permanent parliamentary delegations to international parliamentary assemblies and the heads and members of the Assembly's groups for cooperation with other parliaments, as Article 108.2 requires the Committee on Elections and Appointments to submit a proposal ensuring appropriate representation of members of parliament who do not have a parliamentary group.

15. In addition, the opposition can put forward the name of a "scientist or expert" to participate, without the right to vote, in the Assembly's working bodies (Article 119.2).

16. Lastly, the Rules of Procedure provide that the committee responsible for assessing the grounds for initiating a procedure for determining the accountability of the President of the Republic must adequately represent the members of the parliamentary groups and the members of the Assembly not organised in parliamentary groups (Article 206.2).

17. Although these articles are consistent with the principle of proportional representation, some additional comments must be made.

18. Firstly, the criterion of "appropriate/adequate representation" applied in Articles 20 (election of the Committee on Elections and Appointments), 108 (election of the Assembly's working bodies, permanent parliamentary delegations and groups for cooperation with other parliaments) and 206 (initiation of a procedure for determining the accountability of the President of the Republic) is vague.

19. From a legal standpoint, this criterion does not in itself guarantee that all the political groups will be represented according to their number of seats. It would therefore be fitting to use a more precise criterion, such as that of proportional representation.³

³ It can nonetheless be considered that the criterion of "appropriate representation" can be utilised to permit a political group to be represented within a working body even though proportional representation in the strict sense would not entitle it to a seat.

20. Although paragraph 2 of Article 108 guarantees the political groups and members not belonging to a political group "appropriate representation" within the Assembly's working bodies, under paragraph 1 it is the Committee on Elections and Appointments which proposes candidates for the functions, inter alia, of Chair or member of a working body "on the basis of a list proposed by the parliamentary groups" (Article 108.1). This implies that the committee could suggest someone other than a member proposed by a given political group.

21. This is not a satisfactory solution in so far as these posts are usually distributed among an assembly's political groups, and the holders to a certain extent represent their political group within the body under consideration. It should therefore be for the political group to propose its candidate directly to the Assembly.

22. Similarly, although it is to be welcomed that, under Article 108.3, the Committee on Elections and Appointments is required to propose members of the opposition for the offices of Chair and Deputy Chair of the Standing Inquiry Committee for the Protection of Citizens' Freedoms and Rights, it would be preferable for the opposition groups themselves to be able to designate their own candidates for these posts.

23. Furthermore, it must be noted that the Rules of Procedure provide merely that the Committee shall propose members of the opposition, and there is no guarantee that they will effectively be elected.

24. Concerning the Vice-Presidents, Article 21.2 provides not only that members of the "various political parties represented in the Assembly" shall be entitled to hold office as Vice-President, but also that the Assembly shall determine the number of Vice-Presidents. These two questions are, however, linked, as the lower the number of Vice-Presidents, the less chance political parties have of obtaining a post.

25. Accordingly, when the Assembly determines the number of Vice-Presidents it should take into account the decision's implications for the representation of all the political parties at Vice-President level.

26. In addition, the compatibility of Article 21, paragraph 2 with the procedure for electing the Vice-Presidents laid down in Articles 27 and 28 appears to pose problems. This is because, under Article 27, the provisions relating to election of the President of the Assembly also apply to election of the Vice-Presidents. Those elected must therefore score a majority of the total number of members of the Assembly. It also follows that a candidate for the office of Vice-President must be proposed by either the Committee on Elections and Appointments or twenty members of the Assembly. As a result, a political group with less than twenty members could not put forward its own candidate; in this case it would be for the committee to ensure that there are candidates from the various political groups. It would nonetheless be unfortunate if a political group could not propose its own candidate.

27. At the same time, the applicability of Article 28 raises doubts in so far as there is no guarantee that the Assembly will elect Vice-Presidents from the various political parties by a majority of the total number of its members. Electing Vice-Presidents originating from the various political parties would seem to be even more difficult if the Assembly decides to hold a secret ballot in accordance with Articles 24 and 27 read in conjunction.

28. With regard to Article 24.2, although it requires the Assembly to elect three members "belonging to different political parties represented in the Assembly" to assist the Chairperson when the Assembly decides to elect its President by secret ballot, no provision is made for these three members to include a member of the opposition. In theory, the three posts could indeed be assigned to majority parties, should the majority be composed of at least three parties. This provision's interest therefore largely depends on the Assembly's good judgment.

29. Furthermore, it also seems difficult to guarantee that the three members elected will effectively belong to different parties represented within the Assembly, since, when submitting his/her proposals, the Chairperson is merely required to take this requirement into consideration.

30. With regard to the procedure for replacing the President of the Assembly in his/her absence, the second paragraph of Article 61 provides that the President shall be replaced by one of the Vice-Presidents "in accordance with a previously determined schedule and ensuring equitable involvement of the Vice-Presidents." To permit Vice-Presidents belonging to opposition parties fully to perform their role, the possibility of their replacing the President should be expressly foreseen, for example in the schedule.

31. In conclusion, although the Rules of Procedure rightly contain a number of references to compliance with the principle of proportional representation and to adequate representation of the Assembly's various political groups, due to the lack of clarity and the complexity of certain provisions and procedures, particularly regarding posts within the Assembly, the opposition groups are not guaranteed a seat on the Assembly's various bodies.

B. Rights of the opposition

32. From a legal standpoint, the Rules of Procedure provide that members of the opposition shall be authorised to ask questions. Under Article 40.2 it is for the President of the Assembly, in agreement with the political groups' coordinators, to determine the order of questions in such a manner as to ensure that members of the Assembly from different groups can pose parliamentary questions. In the same way, with regard to interpellations, under Article 49.3 the President, in agreement with the coordinators, must ensure that members of the Assembly from different parliamentary groups can take part in the debate.

33. The same requirement for a consensus can be found in Article 63 of the Rules of Procedure, which lists the decisions that the President (and Vice-Presidents) can take with the parliamentary group's coordinators.

34. It must nonetheless be noted that the substance of the decisions requiring an agreement in accordance with Article 63 is extremely vague: "review issues important for improvement of the work of the Assembly and its working bodies" or "review issues and initiatives related to the work of the Assembly", whereas more specific and possibly more important issues, or recurring ones such as the Assembly's agenda, are apparently not covered and are accordingly not subject to this requirement of a consensus with the parliamentary groups' coordinators.

35. Under the first paragraph of Article 69 the agenda is the President's sole preserve. Furthermore, it is the President alone who is responsible for determining whether bills tabled by the opposition comply with the Rules of Procedure (Article 136), before deciding whether or not to include them on the agenda. It is apparently not possible for a member of the opposition to have an item added to the agenda, except in cases of emergency.

36. In the light of the above, so as to enhance protection of the rights of the opposition and enable it to have its own bills debated, it would be preferable that the agenda should be drawn up not by the President alone, but that the President should share this responsibility with the Vice-Presidents and the political groups' coordinators. Inspiration might even be drawn from Article 48 of the French Constitution, which makes provision for one parliamentary sitting during which priority is given to an agenda drawn up by the opposition.⁴

⁴ Article 48 of the French Constitution, as amended by Constitutional Law No. 2008-724 of 23 July 2008: "Without

37. In addition, with regard to interpellations, as provided for in Article 49, it would be more appropriate to provide that all the political groups can participate in the debate rather than requiring, as does this article, that the President ensure, in agreement with the political groups' co-ordinators, that members of the Assembly from different political groups take part in the debate. As far as debates in plenary session are concerned, the rights of members of the opposition seem to be significantly undermined.

38. This is because, although the Rules of Procedure require the President to determine the speaking order in debates so as to ensure the participation of members from the different parliamentary groups (Article 112.2) and to agree beforehand with the political groups' coordinators on participation by members who do not belong to a political group (Article 216.2), Article 165 permits the President to conclude a debate on a bill, amendments or other instruments within the competence of the Assembly by setting a time for the Assembly's vote. The Assembly may in this case vote on legislation without having debated it. In these circumstances opposition members' entitlement to take the floor is in no way guaranteed.

C. "Governance" of the Assembly: the roles of the political groups, the President and the Vice-Presidents

39. As mentioned above under the headings "Proportional representation" and "Rights of the opposition", the Rules of Procedure provide that the political groups, especially their coordinators, are to play a particularly important role in a number of instances.

40. However, it can but be noted that all decisions are ultimately taken by the President of the Assembly, albeit after coordination with the political groups.

41. This is completely unsatisfactory. The solution might be to establish a "Conference of Presidents".

42. The Vice-Presidents' duties could also be described with greater precision. It might indeed be useful to stipulate the tasks that can be delegated to them in a straightforward way, for instance chairing sittings, as is moreover provided for in Article 71, or receiving visitors, and those that cannot be delegated, for instance convening a parliamentary session.

43. In addition, it might be envisaged to establish posts of secretary or quaestor, that is to say members of the Assembly who specialise in assisting the President with certain administrative tasks, beside the Vice-Presidents, naturally while preserving a balance among the political groups.

prejudice to the application of the last three paragraphs of Article 28, the agenda shall be determined by each assembly.

Two weeks out of every four weeks of sittings shall be reserved, by priority and in the order determined by the government, for discussion of bills tabled by the government and of matters which it has asked to have placed on the agenda.

In addition, discussion of finance bills, social security financing bills and, subject to the provisions of the following paragraph, instruments transmitted by the other assembly at least six weeks previously, and of bills on states of emergency and requests for authorisation under Article 35 shall, at the government's request, take priority on the agenda.

One week out of every four weeks of sittings shall be reserved, by priority and in the order determined by each assembly, for oversight of the government's action and policy evaluation.

A one-day sitting per month shall be reserved for discussion of an agenda determined by each assembly at the initiative of the relevant assembly's opposition groups and minority groups.

At least one sitting per week, including during the extraordinary sessions provided for in Article 29, shall be reserved, by priority, for members' questions and the government's replies."

44. Lastly, and more specifically, Article 33 provides that a parliamentary group shall be composed of at least five members of the Assembly belonging to one or more political parties. Rather than requiring membership of a political party, the condition might simply be that the group must be composed of five members who have signed a political declaration. This would give the group greater cohesion and would not prevent parliamentarians who are independent of any political party from forming groups.

D. Parliamentarians' prerogatives

45. According to the Rules of Procedure only oral questions are permitted when the Assembly is in session (written outside of sessions). This seems to be at variance with the Constitution, Article 72 of which would seem to allow written questions even during sessions.

46. In addition, Article 39 of the Rules of Procedure permits a member to ask only three questions per session, which constitutes a restriction compared with the provisions of Article 72 of the Constitution. Although the desire to rationalise the organisation of parliamentary proceedings is understandable, permission to submit written questions, as a complementary measure, could solve this difficulty.

47. With regard to plenary sessions, Article 69 stipulates that the President shall propose an agenda and the Assembly shall decide on this agenda at the beginning of the session. Article 70 states that a member of the Assembly or the government can, in case of urgency, propose the inclusion of a new item on the agenda before the decision on the agenda is taken. The last paragraph of this article adds that, after the convening of a session, a member of the Assembly or the government may propose postponing or withdrawing agenda items. It should be specified whether this possibility is available only before the Assembly's decision or whether an agenda item can be postponed or withdrawn after the vote on the agenda, for example to take account of the progress of debates. In this case a further vote by the Assembly would be necessary.

48. Lastly, Article 116 makes it obligatory for the President of the Assembly, the Vice-Presidents, the head of the government, ministers and judges of the Constitutional Court to swear a "solemn oath" before the Assembly prior to taking office. This oath entails swearing to perform the duties of the office conscientiously and to comply with the Constitution and laws of "the former Yugoslav Republic of Macedonia". This oath does not pose any problem of substance, but it can be noted that Article 81 of the Constitution makes it compulsory solely for the President of the Republic and it accordingly has no legal basis as regards the other persons mentioned in the Rules of Procedure.

E. Examination of legislation

49. The procedure for examining draft legislation is dealt with in Articles 139 to 171 of the Rules of Procedure, that is in more than thirty articles.

50. The provisions are not at variance with the Constitution, which says nothing about the number of readings of bills before the Assembly.

51. They are, however, fairly complex. The point of prescribing three successive readings of the same piece of legislation by the same Assembly is not apparent, and this provision could be reconsidered.

52. Moreover, although the urgent procedure for examining draft legislation, as laid down in Article 169, wisely groups together the second and third readings during the same session, it precludes holding a general debate, which is most unfortunate. This lack of a general debate is all the more regrettable in that the urgent procedure can be adopted "in order to prevent and

avoid major disturbances in the economy or when this is required for the interest of the security and defence of the Republic or in cases of major natural disasters [or] epidemics...". It would be entirely conceivable to require the holding of a general debate in such cases, which should by their very nature be limited, even if its duration were to be reduced.

53. Lastly, the Rules of Procedure include articles relating to the implementation of the constitutional provisions on amendment of the Constitution.

54. Article 204 also provides that the President of the Republic, the government or at least 30 members of the Assembly may propose the adoption of a constitutional law for the purpose of implementing the Constitution. A law of this kind must be passed by a two-thirds majority of the members of the Assembly. It should nonetheless be noted that Article 133 of the Constitution stipulates that the constitutional law must be proclaimed by the Assembly and enter into force simultaneously with the Constitution's entry into force. These provisions should probably be coordinated.

F. Working bodies

55. Under Article 119 of the Rules of Procedure, parliamentary working bodies can include two members, without voting rights, who are scientists or experts, one elected upon a proposal by the majority parties and the other upon a proposal by the opposition parties.

56. Although this is to be welcomed from the standpoint of proportional representation (see paragraphs 10 -16 above), the fact remains that this procedure may be complex to implement or even prove a source of conflicts of interest, should the persons concerned be affected in some way by the parliamentary work in progress.

57. It would accordingly be more appropriate to specify, as does Article 122, that the working body may decide that qualified experts shall participate in its work, without voting rights.

58. Moreover, Article 127, providing that working bodies may establish working groups including members of the Assembly, scientists and professionals, public officials and representatives of the administration or other bodies, which shall submit reports to the principal working body, confirms that there is no risk of a shortage of scientific expertise.

59. The participation of government representatives in the work of the Assembly and of its working bodies, provided for in Articles 211 and 212 of the Rules of Procedure, may pose problems as the provisions stand, particularly with regard to meetings of committees of inquiry. These provisions should be clarified.

60. More generally, the functioning of the working bodies is not set out with sufficient clarity. The Rules of Procedure solely make express mention of the Legislative Committee. Details as to the number and competence of the other committees are cruelly lacking.

61. With specific regard to committees of inquiry, the Rules of Procedure should say more about their role and working methods and conditions.⁵

⁵ For example, the French Senate's Rules of Procedure include 17 articles on parliamentary committees.

IV. Observations as to form

62. The Rules of Procedure are a particularly lengthy document, comprising 240 articles. By way of comparison, the Rules of Procedure of the French Senate include only 110 articles.

63. The length and complexity of certain articles, and also the existence of some repetitions, make the document as a whole relatively illegible.

64. Some of the provisions are indeed highly technical and would have been more appropriate for inclusion in a document setting out general instructions. This applies to Article 19 of the Rules of Procedure, concerning issuance of identity cards and electronic voting cards, and to Articles 100 to 102, which set out the details of voting procedure, going so far as to stipulate that it is necessary to encircle the number preceding a candidate's name, or the word "for" or "against" when voting on a proposal.

65. Other more important provisions, such as those concerning election of the President of the Assembly, could pose problems on account of their complexity. Under Article 22 of the Rules of Procedure candidates for presidential office can be proposed either by a Committee on Elections and Appointments, which is itself elected upon a proposal by at least ten members of the Assembly, or directly by a group of at least twenty members of the Assembly. It is not clear what is the point of a dual procedure of this kind.

66. In addition, it should be specified whether the provision stipulating that a member of the Assembly can propose only one candidate applies to members of the Committee on Elections and Appointments.

67. Lastly, other provisions, such as Article 36, allow members to organise themselves in "clubs"; this is not really a matter for the Assembly's Rules of Procedure, which should not deal with issues extraneous to parliamentary activities.

68. Consequently, the Rules of Procedure would gain in clarity and practicality if the length and complexity of certain provisions, the repetitions and the existence of provisions not relevant to parliamentary activities were reviewed.

V. Conclusions

69. The Rules of Procedure of the Assembly are satisfactory overall and generally consistent with democratic principles and the country's constitutional provisions.

70. A number of reservations must nonetheless be made.

71. Although the Rules of Procedure rightly contain a number of references to compliance with the principle of proportional representation and to adequate representation of the Assembly's various political groups, due to the lack of clarity and the complexity of some provisions and procedures, particularly regarding certain posts within the Assembly, the opposition groups are not guaranteed a seat on the Assembly's various bodies.

72. In addition, so as to safeguard the rights of the opposition and enable it to have its own bills debated, it would be preferable that the agenda should be drawn up not by the President alone but that the President should share this responsibility with the Vice-Presidents and the political groups' coordinators.

73. The powers vested solely in the President of the Assembly appear to be too vast. A significant improvement would be to make express provision for coordination with the parliamentary groups, especially concerning adoption of the agenda.

74. The Assembly's governance could be improved by making provision for delegation of powers in a greater number of cases and by clarifying the role of the Vice-Presidents.

75. Reviewing the conditions governing parliamentary questions and specifying in clearer terms that all the political groups can participate in debates would also constitute improvements.

76. It would be desirable to say more about the composition, number, functioning and competence of the Assembly's working bodies, particularly with regard to committees of inquiry.

77. Lastly, with regard to examination of draft legislation, it is essential to reconsider the complexity and length of the general examination procedure and also the urgent procedure, which should at least allow the possibility of holding a general debate.

78. With regard to form, the Rules of Procedure could be shortened, and it is strongly recommended that their clarity be enhanced by avoiding complex formulations, repetitions and the technicalities found in some articles and that provisions on matters extraneous to parliamentary activities be deleted.

79. The Venice Commission is at the national authorities' disposal to provide them with any further assistance they may require.