

Secretariat memorandum on the admission of Greece to the Council of Europe (14 October 1974)

Caption: In this memorandum dated 14 October 1974, the General Secretariat of the Council of Europe, having regard to the readmission of Greece to the organisation, recalls the stages of the procedure of admission to be followed by the organs of the Council of Europe, and examines the legal consequences of such an admission, in particular Greece's position in respect of the conventions and agreements concluded before its withdrawal.

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Memorandum by the Secretariat of the Council of Europe (Strasbourg, 14 October 1974)

Admission of Greece to the Council of Europe. Procedure and legal consequences

Introduction

In its memorandum CM (74) 201 of 6 September 1974, the Secretariat has set forth the legal, financial and administrative aspects of the possible admission of Greece to the Council of Europe. In the present document it supplies additional details, in the light of subsequent events, as regards, firstly, the procedure to be followed by the Committee of Ministers in this matter, and, secondly, certain legal consequences of such admission.

A. Procedure

1. At the 236th meeting of the Deputies in September 1974 the Committee of Ministers adopted Resolution (74) 27 on the situation in Greece. In that text, the Committee of Ministers :

- "Considers that the will clearly shown by the Greek Government rapidly to complete the present process of democratisation and the first steps taken for this purpose should enable Greece to resume her place in the Council of Europe as soon as possible.

- Invites, in consequence, the Consultative Assembly to inform it of its opinion on Greece's readmission to the Council of Europe as a matter of urgency."

2. On 27 September 1974 the Consultative Assembly, after debating the situation in Greece and hearing a statement followed by questions and answers from Mr AVEROFF, acting Greek Minister for Foreign Affairs, adopted Resolution 578 in which the Assembly :

- "Wholeheartedly welcoming and encouraging the recent efforts of the Greek Government towards the restoration of human rights and the rule of law, the installation of a democratic constitution and the announcement of free elections for November 1974 ;

- Expresses the conviction that in this way Greece, which was a member state of the Council of Europe, will soon fulfil the remaining statutory requirements for joining the Council of Europe again, particularly the holding of free parliamentary elections ;

- Notes with satisfaction that the President of the Assembly has declared his intention of calling, as soon as a new parliament is elected in Greece, an urgent meeting of the Standing Committee in order that it may give, in accordance with Statutory Resolution (51) 30, its opinion on Greece's readmission to the Council of Europe, as requested in Resolution (74) 27 of the Committee of Ministers."

3. Having regard to the foregoing, it is appropriate to recall the various stages of the procedure for the admission of Greece as set forth in doc. CM (74) 201 :

a. The Greek Government would make known that it would like to be invited by the Committee of Ministers to become a Member of the Council of Europe and would show proof of its ability and readiness to comply

with the provisions of Article 3 of the Statute. This stage was completed by the Greek Foreign Minister's letter of 31 August 1974.

b. The Committee of Ministers would consider the request submitted to it and deal with the matters referred to in Article 6 of the Statute, whereby before issuing the invitation provided for in Article 4, the Committee of Ministers shall determine the number of representatives on the Consultative Assembly to which the proposed Member shall be entitled and its proportionate financial contribution. This procedure was already started by the Committee of Ministers when, at the 236th meeting of the Deputies, and on the initiative of the Representative of France, it adopted Resolution (74) 27, (Article 25 (a) of the Rules of Procedure of the Committee of Ministers).

c. The Committee of Ministers would seek the opinion of the Consultative Assembly. This request was made in its Resolution (74) 27. Although Resolution (51) 30 of May 1951 provides for this consultation of the Assembly by reference to Article 4 of the Statute only, it is customary to consult the Assembly also regarding the number of seats to be determined in application of Article 6.

d. The Assembly would give its opinion to the Committee of Ministers. Under Rule 42 of the Rules of Procedure of the Assembly, the Standing Committee may act on its behalf. Assembly Resolution 578, although it constitutes a reaction by the Assembly to the Ministers' request for an opinion, could, in view of the wording of its final paragraph, only with difficulty be regarded as a formal reply to this request. In that paragraph the Assembly reserves the right to return to this question as soon as a new parliament is elected in Greece and notes in that connection that the President will be prepared, at the appropriate time, to call an urgent meeting of the Standing Committee in order that it may give its opinion on this subject.

e. The Committee of Ministers would discuss the terms of a resolution inviting Greece to become a Member of the Council of Europe, determining the number of seats to which it would be entitled in the Assembly and its proportionate financial contribution, and instructing the Secretary General to transmit its decision to the Greek Government. Under Article 20 (c) of the Statute, the resolution would need to be adopted by a two-thirds majority of all the representatives entitled to sit on the Committee of Ministers; if it were adopted at Deputy level, it would require unanimous adoption by the Deputies taking part in the vote and a majority of the Deputies having the right to vote. (Article 9, para 1 (f) of the Rules of Procedure for meetings of the Ministers' Deputies.)

f. The Secretary General would then transmit the invitation of the Committee of Ministers to the Greek Government.

g. Lastly, Greece would deposit with the Secretary General an instrument of accession to the Statute and thus become a Member of the Council of Europe.

4. In the light of the above, the remaining arrangements for the admission of Greece may be described as follows :

i. Elections to the Greek parliament will be held on 17 November 1974. After that the Standing Committee will be able to give its opinion on the admission of Greece; a meeting of that committee has already been called for 27 November, ie on the eve of the 55th session of the Committee of Ministers sitting at Foreign Minister level (28 and 29 November 1974).

ii. To avoid any further loss of time, the Deputies may wish to proceed immediately with their consideration of the arrangements for the admission of Greece, as provided for in Article 6 of the Statute (number of seats in the Consultative Assembly and proportionate financial contribution) together with the text of a draft resolution to be submitted, if appropriate, for adoption by the Committee of Ministers at their 55th session in November 1974. A suitable preliminary draft resolution will be prepared by the Secretariat. As regards the proportionate financial contribution the preliminary draft will be based on the indications given in doc. CM (74) 201, part B and Appendices. So far as the number of seats in the Assembly is concerned, the Secretariat suggests reverting to Greece's entitlement when she was formerly a Member of the Council of Europe, viz 7. It will be recalled that, in practice, consultation of the Assembly on the admission of a new Member is not confined to the principle of such admission but is also concerned with the number of seats to which Greece would be entitled in the Assembly. In a desire to speed up the procedure, the Committee of Ministers may wish to ask for the opinion of the Assembly on the question of the number of Assembly seats, simultaneously with the communication of its views on the general principle of admission.

iii. On the assumption that the Assembly's opinion is positive and that the Committee of Ministers, in the light of its Resolution (74) 27, will pronounce in favour of readmitting Greece to the Council, the Committee of Ministers might consider that it should take the formal and definitive decision on this matter when it meets at Foreign Minister level, at the 55th session to be held on 28 and 29 November 1974, through the adoption of a resolution on the lines of a draft to be prepared by the Secretariat. On the same assumption, and in order that Greece may be able to return to the Council of Europe at the earliest possible moment, the Greek Foreign Minister might be informed in advance of the imminent decision of the Committee of Ministers, allowing him sufficient time to take the necessary internal steps for depositing the instrument of Greece's accession as soon as possible after that decision or perhaps even during the committee's 55th session. Once that instrument had been deposited, the Minister for Foreign Affairs could immediately take his place on the committee.

iv. After this, it will be necessary to amend Article 26 of the Statute (number of seats apportioned to Greece on the Consultative Assembly), in accordance with the procedure laid down in Article 41 (d) of the Statute, which calls for formal approval both by the Committee of Ministers and by the Assembly, as recorded in a certificate drawn up by the Secretary General.

B. Legal consequences

5. Greece's return to the Council of Europe, apart from the fact that Greece will again obtain all the rights and reassume all the obligations flowing from the Statute of the Council for each of its Members, will have a number of other legal consequences, in particular Greece's position in respect of the conventions and agreements concluded within the Organisation. Certain problems in this field also arose when Greece withdrew on 31 December 1970; at the time these were explained in Resolution (70) 34 of the Committee of Ministers on the legal and financial consequences of that withdrawal. Similarly, should Greece be readmitted, the Committee of Ministers would have to pronounce on Greece's new position in these same matters once she was again a Member of the Council.

6. With regard to those conventions and agreements which Greece had not yet signed when she was a member of the Council or which were opened for signature by member states after her withdrawal, there can be no doubt that Greece, once again a Member, can sign and ratify them on the same terms as any other member state of the Organisation.

7. With regard to conventions and agreements signed but not yet ratified by Greece when she was a Member of the Council, it may reasonably be accepted that Greece can ratify them without having to sign them once more. In doc. CM (70) 121 which served as a basis for Resolution (70) 34, the Secretariat expressly stated that "as long as Greece remains outside the Organisation, its signature of these conventions and agreements is to be regarded as suspended; if Greece were to become once again a member state of the Council of Europe, these signatures could again produce the effects attributed to them under the texts in question" (Para 29).

8. Among the conventions and agreements ratified or signed without reservation as to ratification by Greece when it was a Member of the Council, a distinction should be drawn between those which are open to accession by non-member states and those which are of a "closed" character, ie those to which only member states of the Council may be Contracting Parties. As regards the first category, Greece has remained a Contracting Party despite its withdrawal from the Organisation in 1970 (Resolution (70) 34, Item I.7); its readmission to the Council of Europe thus, in principle, in no way affects its status as a Contracting Party to these instruments. Nevertheless, it should be pointed out that the situation of Greece will be changed in relation to one of these conventions, namely the European Cultural Convention: in Resolution (70) 34 (Item I.10), the Committee of Ministers stated that Greece, since it remained a Contracting Party to that convention, could continue to sit on the Council for Cultural Co-operation (CCC), exercising the functions which fell upon it under the terms of the said convention, but that Greece would be bound to contribute to the Cultural Fund under the same terms as the other non-member states of the Council of Europe which had acceded to the convention. Once it again has the capacity of a member state, Greece will of course be obliged to contribute to the Cultural Fund under the terms laid down for the Council's Members.

9. Before withdrawing from the Council, Greece had been a Contracting Party to two Council of Europe conventions having a "closed" character, namely the European Convention on Human Rights and the European Convention on Establishment; by withdrawing from the Organisation in 1970, Greece was no longer qualified to be a Contracting Party to these two conventions. If, should she again become a Member of the Council, Greece wishes to be once more so qualified, the situation, in the Secretariat's opinion, is different with regard to each of these two instruments.

a. European Convention on Human Rights

Before withdrawing from the Council of Europe, Greece was a Contracting Party to the Convention for the Protection of Human Rights and Fundamental Freedoms dated 4 November 1950 and to the Protocol of 20 March 1952. In addition, it had signed, but not yet ratified Protocol No 3 of 6 May 1963, amending Articles 29, 30 and 34 of the convention. When it withdrew from the Council, Greece denounced the convention and the protocol by notification which took effect on 13 June 1970. If Greece again wishes to become a Contracting Party to the convention and its 1952 protocol, she must fulfil a new procedural act on her own initiative, ie deposit one or more new instruments of ratification. This new ratification can be appended to the signatures which she had already added to the instruments in question when she was a Member of the Council, in accordance with the explanation given above concerning the value of the signatures given by Greece during her former membership. It should be recalled however, that during the period following Greece's withdrawal, on 20 December 1971, the Human Rights Convention was once more amended by the coming into force of Protocol No 5 of 20 January 1966, modifying Articles 22 and 40 of the convention, which protocol Greece had neither ratified nor signed when she was still a Member. Consequently, when again ratifying the Human Rights Convention, Greece will also have to accept Protocol No 5 by fulfilling the same procedural acts as those which she fulfilled in respect of the convention itself and of its Protocol No 3, namely ratification preceded by signature. As a result, if Greece wishes once again to become a Contracting Party to the Human Rights Convention, she

- may be considered as having validly signed the convention and Protocol No 3;

- must sign Protocol No 5;
- must deposit an instrument of ratification expressing her consent to be bound by the convention as amended by Protocols 3 and 5.

b. European Convention on Establishment

By leaving the Council of Europe in 1970, Greece ceased to be a Contracting Party to this convention, not of her own free will but by the sole fact of Article 33 para 3 of the convention, as the Committee of Ministers found in its Resolution (70) 34 (Item I.8). The Secretariat therefore considers that, if she is again to become a Contracting Party to this convention, Greece, which will have resumed the capacity whose loss excluded her from the group of Contracting Parties, will not necessarily be required to fulfil a procedural act on her own initiative, such as deposit of an instrument of ratification: all that should be needed, in response to a question put to it by the Committee of Ministers, is that the Greek Government confirm its intention of resuming its capacity as Contracting Party to the Convention on Establishment, with all the rights and obligations flowing therefrom, preferably with effect from the date of its readmission to the Council of Europe.

10. Certain special problems might possibly arise vis-à-vis Greece's position with regard to the instruments governing the privileges and immunities of the Council of Europe, all of which she ratified when formerly a Member, viz :

- i. General Agreement on the Privileges and Immunities of the Council of Europe, dated 2 September 1949;
- ii. Protocol dated 6 November 1952;
- iii. Second Protocol (Provisions relating to members of the European Commission of Human Rights) dated 15 December 1956;
- iv. Third Protocol (Resettlement Fund) dated 6 March 1959;
- v. Fourth Protocol (Provisions relating to the European Court of Human Rights) dated 16 December 1961.

On the subject of these instruments (with the exception of the Third Protocol, concerning the Resettlement Fund, for which the departure of Greece raised no particular problem since she could continue to be a member of the Fund), Resolution (70) 34 stipulated that Greece would continue to be bound by the obligations placed on the Contracting Parties to the extent to which she would remain involved in the activities of the Council of Europe or activities exercised in connection with it. The Committee of Ministers thus expressed the view that these instruments did not become void in relation to Greece by reason of her withdrawal from the Organisation. The Secretariat therefore considers that upon her return to the Council of Europe Greece must be regarded as wholly resuming her capacity as a Contracting Party to the above-mentioned instruments, without the need for any formal act on her part. It might however appear expedient at the appropriate moment to inform the Greek Government of this position in order to request its agreement.