

Memorandum on the procedure for Portugal's accession to the Council of Europe (Strasbourg, 3 May 1976)

Caption: In this memorandum dated 3 May 1976, with a view to Portugal's forthcoming accession to the Council of Europe, the Secretariat of the Committee of Ministers sets out the terms and procedure for the accession of a new state.

Source: Committee of Ministers of the Council of Europe - Secretariat. Portugal (Item 4): Procedure for admission of a state to the Council of Europe, Secretariat memorandum prepared by the Directorate of Legal Affairs. 58th Session. restricted CM (76) 119. Strasbourg: 3 May 1976. 5 p.

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Portugal – Procedure for admission of a state to the Council of Europe (Strasbourg, 3 May 1976)

Secretariat memorandum prepared by the Directorate of Legal Affairs

The conditions and procedure for admission of a state to the Council of Europe are as follows:

Basic conditions

1. Article 4 of the Statute of the Council of Europe stipulates that "any European state which is deemed to be able and willing to fulfil the provisions of Article 3 may be invited to become a Member of the Council of Europe by the Committee of Ministers".

This means that the invitation to become a Member of the Council of Europe is subject to two conditions:

i. the state in question must be capable, in the Committee of Ministers' view, of complying with article 3 of the Statute;

ii. it must be willing to comply with the said article.

2. Article 3 of the Statute stipulates that every Member of the Council of Europe must accept "the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms" and must undertake to collaborate sincerely and effectively in the realisation of the aim of the Council as specified in Chapter I.

Article 1 states that "the aim of the Council of Europe is to achieve a greater unity between its Members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress".

In this connection, it should be remembered that the Preamble to the Statute speaks of "the spiritual and moral values which are the common heritage" of Council of Europe member states, and which are "the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy".

Procedure

3. Article 6 of the Statute stipulates that before issuing an invitation under 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". ⁽¹⁾

4. It should be noted that statutory Resolution (51) 30, adopted by the Committee of Ministers in May 1951, also stipulates that, before inviting a state to become a Member of the Council of Europe, the Committee of Ministers "shall first consult the Consultative Assembly in accordance with existing practice" (text incorporating its verbal amendment as approved at the 40th meeting of the Ministers' Deputies (June 1956)).

5. Normally, the procedure for admission of a state to the Council of Europe would follow the course described below:

a. the government of the state in question would signify that it wished to be invited by the Committee of Ministers to become a Member of the Council of Europe and would furnish proof that it was both able and willing to fulfil the provisions of Article 3 of the Statute.

b. the Committee of Ministers would examine the wish expressed to it and consider the practical details referred to in Article 6 of the Statute ⁽²⁾.

- c. the Committee of Ministers would seek the opinion of the Consultative Assembly. Although statutory Resolution (51) 30 of May 1951 refers to such consultation only in connection with Article 4 of the Statute, it customarily applies, too, to the number of representatives in the Assembly, as provided for in Article 6.
- d. the Assembly would transmit its opinion to the Committee of Ministers. Under Rule 42 of the Assembly's Rules of Procedure, the Standing Committee may act on the Assembly's behalf.
- e. the Committee of Ministers would draft and adopt a resolution inviting the state in question to become a Member of the Council of Europe and instructing the Secretary General to inform its government of this decision, together with the details concerning the application of Article 6. In accordance with Article 20 (c) of the Statute, this resolution would require a two-thirds majority of all the Representatives entitled to sit on the Committee of Ministers. ⁽³⁾
- f. the Secretary General would convey the invitation of the Committee of Ministers to the government of the state concerned.
- g. the government would then deposit with the Secretary General an instrument of accession to the Statute which would take effect immediately.
6. Any modification in the number of seats in the Assembly calls for an amendment to Article 26 of the Statute. Under Article 41 (d) of the Statute, any such amendment must be approved by the Committee of Ministers and the Consultative Assembly. The amendment would come into force on the date of the Secretary General's certificate, transmitted to member governments and certifying that the amendment in question had been so approved.

This procedure does not delay execution of the first procedure, and the invitation provided for in (e) and (f) above may be issued before Article 26 has been formally amended.

Appendix I

Extract from the Conclusions of the 256th meeting of the Ministers' Deputies, held in Strasbourg from 5 to 14 April 1976 (Item VII).

The Secretary General made the following statement:

"At the request of the Portuguese authorities and with the agreement of the Ministers' Deputies the Secretariat organised a seminar on 29 and 30 March on the European Convention on Human Rights, which was attended by the Portuguese Minister of Justice, Mr Pinheiro Farinha, his State Secretary, Mr Bacelar, two senior officials from the Ministry of Justice and the Portuguese Consul General in Strasbourg. During this seminar the European Convention on Human Rights was examined in depth, article by article, taking into account the opinions of the European Commission and the case law of the European Court. Throughout this examination, reference was made to the new Portuguese Constitution, which was adopted on 2 April 1976.

...

The Portuguese Minister of Justice mentioned that his authorities were most anxious that Portugal should soon become a full Member of the Council of Europe. The legislative elections are to be held on 25 April and the Presidential elections on 27 June. Thereafter there would be a new government and it would be up to this new government to make known its desire that Portugal should become a full Member. A request in this sense can be expected, the Minister said, in the course of the summer.

Mr Farinha also mentioned that Portugal would, in all likelihood, wish to accede to the European Convention on Human Rights at the same time as it becomes a full Member of the Council of Europe."

Appendix II

Statement made by Mr Karl Czernetz, President of the Assembly of the Council of Europe, on 26

April 1976

"The Portuguese people have again shown their democratic maturity in the calm and orderly way their elections were held yesterday.

Portugal now clearly belongs to the great family of European democratic nations and I am confident that a consensus will emerge during the debate the Assembly will hold on 7 May next that the way is open for Portugal to become the nineteenth Member of the Council of Europe. The procedure could, in my opinion, be settled in a matter of months."

(1) Resolution (74) 25, adopted in June 1974, stipulates in para 3, that "new Members' contributions shall be calculated in accordance with the rules laid down in paragraph 4 of Appendix I" of that resolution.

(2) In this connection, Article 25 (a) of the Rules of Procedure of the Committee of Ministers stipulates that: "Consideration of the admission to the Council of a Member or Associate Member must be initiated by a proposal put forward by at least one representative. The proposal must have been included in the agenda of the session at which it is discussed."

(3) If this decision were taken at Deputy level, it would require a unanimous vote of the Deputies casting a vote and a majority of the Deputies entitled to vote (Article 9, point 1 (f) of the Rules of Procedure for the meetings of the Ministers' Deputies).