



Recommendation 1649 (2004)¹

Candidates for the European Court of Human Rights

Parliamentary Assembly

1. An independent judiciary is indispensable for the protection of human rights and fundamental freedoms.
2. In order for the European Court of Human Rights to continue to inspire confidence, it is vital that the process by which judges are selected and appointed also inspire confidence.
3. The Parliamentary Assembly insists that the process of appointment must reflect the principles of democratic procedure, the rule of law, non-discrimination, accountability and transparency.
4. It is the Assembly's statutory responsibility to elect a judge in respect of each Contracting State to the European Convention on Human Rights on the basis of a list of three candidates submitted to it by the high contracting parties.
5. In order to improve its own procedures for the election of judges to the Court, the Assembly decided in 1996 to draw up a model curriculum vitae to be sent to all candidates, and resolved to invite the candidates to interviews to be held by an ad hoc sub-committee of the Committee on Legal Affairs and Human Rights.
6. In light of the enlargement of the Council of Europe and the increasing workload of the European Court of Human Rights, the Committee of Ministers established on 7 February 2001 an evaluation group to examine means of guaranteeing the Court's future effectiveness.
7. Discussion of the necessary reforms to the Court and its procedures has been fruitful and is still ongoing.
8. The Assembly notes that non-governmental organisations have made an important contribution to this debate and encourages all those with an interest in the promotion of human rights to participate.
9. The ability of the Court to act without fear or favour will be strengthened by ensuring for its judges the appropriate status and remuneration, terms and conditions and security of tenure until the mandatory retirement age or expiry of the fixed term of office.
10. The Assembly believes it has a legitimate role to play in contributing to the enhancement of employment conditions that will enable judges to work more efficiently. It is necessary to:
 - 10.1. ensure that the status and remuneration of judges is commensurate with the dignity of their profession and burden of responsibilities;
 - 10.2. provide adequate support staff and equipment to ensure that judges can act efficiently and without undue delay;
 - 10.3. take all necessary measures to ensure the safety of judges, including the presence of security guards on Court premises or providing police protection for judges who are, or may become, victims of serious threats;

1. Assembly debate on 30 January 2004 (8th Sitting) (see [Doc. 9963](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr McNamara; and [Doc. 10048](#) Text adopted by the Assembly on 30 January 2004 (8th Sitting).



10.4. ensure that judges of the Court are entitled to freedom of expression and association, providing that they exercise these rights in a manner that preserves the dignity of their office, impartiality and independence.

11. The Assembly notes that the Working Group on the Status of Judges found that current pension arrangements and other social security arrangements for judges and their families are inappropriate when compared to other international courts, to senior Council of Europe staff or national judges, and that negotiations are now in progress.

12. The Assembly notes that terms of office of one-half of the judges elected at the first election shall expire at the end of their six-year term of office in November 2004 and consequently that it is necessary to begin the process of selection and election in November 2003.

13. The Assembly considers that a nine-year term of office would contribute to the greater efficiency and continuity of the Court and would consolidate its independence. Measures should be taken in order to preserve the rights of judges in office.

14. The Assembly again draws the attention of members of the Court to the duty of all judges to retire upon reaching the age of 70. Further, it urges all Contracting Parties to the Convention to ensure that, where a vacancy may be foreseen, arrangements be put in place to ensure continuity and that a new list of candidates be submitted six months prior to the requirement for replacement.

15. The Assembly reiterates that in any situation when a post falls vacant, for reasons of resignation, death or other circumstance, it is the responsibility of the high contracting party to initiate the process of by-election by submitting a list of three candidates according to the prescribed rules.

16. The Assembly endorses the procedure adopted by the Committee on Legal Affairs and Human Rights for by-elections to the Court

17. The Assembly notes that the Committee of Ministers has been reluctant to comment on the decision-making process in member states for the nomination of candidates; recalling that the national procedures for selecting candidates are not always satisfactory, it urges member states to publish their procedures for the selection of candidates for the Court.

18. In particular, the Assembly believes that it is not satisfactory merely to assert that the gender balance of the Court reflects the under-representation of women in the judiciary of the member states. It is in the interest of impartiality and of the Court's effectiveness for the Committee of Ministers, the Assembly, and the high contracting parties to address the issue of the gender imbalance of the Court by considering – and where necessary, improving – the procedures for the appointment of judges.

19. In addition to the moral qualities and experience rightly expected of candidates, laid down in Article 21, paragraph 1, of the Convention, the Assembly recommends that the Committee of Ministers invite the governments of the member states to meet six other criteria before submitting lists of candidates for the office of judge in the European Court of Human Rights, namely to ensure:

19.1. that a call for candidatures has been issued through the specialised press;

19.2. that candidates have experience in the field of human rights;

19.3. that every list contains candidates of both sexes;

19.4. that the candidates have a sufficient knowledge of at least one of the two official languages;

19.5. that the names of the candidates are placed in alphabetical order;

19.6. that as far as possible no candidate should be submitted whose election might result in the necessity to appoint an ad hoc judge.

20. The Assembly also urges the governments of member states to notify their parliaments and their appropriate committees of their procedures and timetables when drawing up lists of candidates for the Court.

21. It invites the Committee of Ministers, on the occasion of the forthcoming revision of the Convention, to introduce the following amendments: "Article 22 – Election of judges 1. (...) containing at least one candidate of each sex. [otherwise unchanged] 2. (...) 3. The same procedure shall apply to the replacement of a judge who is compelled to withdraw. [otherwise unchanged] Article 23 – Term of office . Judges shall be elected for a term of nine years, including those elected to fill casual vacancies. They may not be re-elected." [otherwise unchanged]

22. The Assembly urges all parties involved in the Working Group on the Status of Judges to reach a speedy and mutually satisfactory conclusion.
23. The Assembly invites non-governmental organisations to put forward suggestions for procedures and potential candidates.