Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 2248 (2018)[1]

Procedure for the election of judges to the European Court of Human Rights

Parliamentary Assembly

1. The Parliamentary Assembly considers that the election of the best qualified judges to the European Court of Human Rights ("the Court"), based on clear criteria and following a fair and objective procedure, is one of its most important tasks. The quality of the selection procedure at national level and of the election procedure before the Assembly has a direct impact on the independence and impartiality of the judges, which in turn ensure public confidence in the Court; and it conditions the judges' democratic legitimacy as the guardians of fundamental rights and freedoms in Europe.

2. The Assembly recalls that Article 22 of the European Convention on Human Rights (ETS No. 5, "the Convention") lays down a co-decision procedure for the election of judges: it is up to the High Contracting Parties, assisted by the Advisory Panel of Experts ("Advisory Panel"), to submit three candidates, each of whom must fulfil the eligibility criteria laid down in Article 21; and it is for the Assembly, assisted by its Committee on the Election of Judges to the European Court of Human Rights ("Committee on the Election of Judges") to elect the most qualified of the three candidates.

3. The Assembly notes that considerable progress has been made regarding national selection procedures. It welcomes, in particular, the contribution of the Advisory Panel set up by the Committee of Ministers in 2010 (Resolution CM/Res(2010)26) to assist the High Contracting Parties in establishing shortlists of three qualified candidates. In addition, the Committee of Ministers adopted the Guidelines on the selection of candidates for the post of judge at the European Court of Human Rights (CM(2012)40), which lay down a set of reasonable procedural requirements and selection criteria.

4. The Assembly's own procedures have also evolved considerably, in particular through the establishment of a dedicated committee on the election of judges, the extension of the duration of interviews, and through the clarification of selection criteria and procedural rules and requirements, regarding, in particular, gender balance and language skills.

5. The European Court of Human Rights, in two Advisory Opinions in 2008 and 2010, recognised the Assembly's right to stipulate additional requirements for the selection of judges, in particular those on gender balance and language skills, in the interest of the proper functioning of the Court. The Court also underlined in its 2008 Advisory Opinion that the Assembly must "ensure in the final instance that each of the candidates on a given list fulfils all the conditions laid down by Article 21 § 1, in order for it to preserve the freedom of choice conferred on it by Article 22, which it must exercise in the interests of the proper functioning and the authority of the Court".

6. The current framework for the election of judges is laid down in a number of Assembly resolutions and recommendations, which were adopted over a period of more than twenty years:

– Recommendation 1295 (1996) and Resolution 1082 (1996) on the procedure for examining candidatures for the election of judges to the European Court of Human Rights;

1. *Text adopted by the Standing Committee*, acting on behalf of the Assembly, on 23 November 2018 (see Doc. 14662, report of the Committee on the Election of Judges to the European Court of Human Rights, rapporteur: Mr Boriss Cilevičs).

– Recommendation 1429 (1999) on national procedures for nominating candidates for election to the European Court of Human Rights;

– Resolution 1200 (1999) on the election of judges to the European Court of Human Rights;

– Recommendation 1649 (2004) and Resolution 1366 (2004) on candidates for the European Court of Human Rights;

– Resolution 1426 (2005) on candidates for the European Court of Human Rights;

– Resolution 1432 (2005) on the procedure for elections held by the Parliamentary Assembly other than those of its President and Vice-Presidents;

– Resolution 1627 (2008) on candidates for the European Court of Human Rights;

– Resolution 1646 (2009) on the nomination of candidates and election of judges to the European Court of Human Rights;

– Resolution 1764 (2010) on national procedures for the selection of candidates for the European Court of Human Rights;

– Resolution 1841 (2011) The amendment of various provisions of the Rules of Procedure of the Parliamentary Assembly – implementation of Resolution 1822 (2011) on the reform of the Parliamentary Assembly;

– Resolution 2002 (2014) on the evaluation of the implementation of the reform of the Parliamentary Assembly.

7. Possible further improvements of the procedure for the election of judges to the Court have recently been discussed both at intergovernmental level, under the auspices of the Committee of Ministers, and in the Assembly's Committee on the Election of Judges. These proposals aim at strengthening co-operation between the Committee on the Election of Judges and the Advisory Panel; at improving the functioning of the Committee on the Election of Judges, including by increasing the transparency of proceedings and by codifying substantive selection criteria in more detail; and at streamlining the election procedure in the Assembly in different ways.

8. In view of these proposals, but mindful also of the fact that the election procedure, as it has evolved over time, has generally resulted in the election of highly qualified and well-respected judges, the Assembly considers that the following modifications of the procedure for the election of judges should be made:

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.

9. The Assembly invites:

9.1. the Committee on Rules of Procedure, Immunities and Institutional Affairs 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;

9.2. the Secretary General of the Assembly to publish, upon completion of the above-mentioned revision process (paragraphs 8.1 and 8.2), a consolidated information document reflecting the election procedure before the Committee on the Election of Judges and the Assembly.