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

Report[1]
Committee on the Election of Judges to the European Court of Human Rights
Rapporteur: Ms Petra BAYR, Austria, Socialists, Democrats and Greens Group

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1. Reference to committee: Doc.16011, Reference 4820 of 28 June 2024.

A. Draft resolution[2]

1. The European Convention on Human Rights (ETS No. 5, hereafter “the Convention”) enshrines the human rights values at the heart of Europe's post-Second World War peace project as legal norms, and has made an extraordinary contribution to maintaining democratic security and improving good governance on our continent for over 75 years. At a time when the Convention system is facing unprecedented challenges, it is more important than ever to strengthen the authority of the European Court of Human Rights (hereafter “the Court”), ensuring that all its judges possess the highest level of competence, independence and impartiality, and that the procedure for electing them is fair, transparent and efficient.

2. The election of judges to the Court is a multi-stage procedure with a clear distribution of roles: it is the responsibility of the High Contracting Parties, assisted by the Advisory Panel of Experts (hereafter “Advisory Panel”), to nominate three candidates, each of whom must fulfil the eligibility criteria laid down in Article 21.1 of the Convention; and it is for the Parliamentary Assembly, assisted by its Committee on the Election of Judges to the European Court of Human Rights (hereafter “Committee on the Election of Judges”), to elect one of the three candidates, in accordance with the exclusive competence conferred on it by Article 22 of the Convention. As underlined by the 2018 Copenhagen Declaration, the Committee of Ministers and the Assembly should “work together, in a full and open spirit of co-operation in the interests of the effectiveness and credibility of the Convention system, to consider the whole process by which judges are selected and elected to the Court with a view to ensuring that the process is fair, transparent and efficient, and that the most qualified and competent candidates are elected”.

3. The Assembly honours this responsibility by being fully aware that its role in the procedure provides a measure of democratic legitimacy to the Court, and is a unique feature which distinguishes it from all the other international judicial bodies, including the Court of Justice of the European Union.

4. The current procedure for the election of judges has been developed through a number of Assembly resolutions and recommendations, which have been adopted over a period of more than thirty years. The last changes were introduced in 2018 (Resolution 2248 (2018) “Procedure for the election of judges to the European Court of Human Rights”) and 2019 (“Resolution 2278 (2019) “Modification of various provisions of the Assembly’s Rules of Procedure”).

5. Over time, the Assembly has paid increasing attention to the fairness and transparency of national selection procedures, taking into account the Committee of Ministers’ Guidelines on the selection of candidates for the post of judge at the European Court of Human Rights, adopted in 2012 (CM(2012)40). The Assembly has for example rejected lists on procedural grounds when the Advisory Panel had not been duly consulted, when the national selection procedure had been heavily dominated by representatives of the government, when the procedure had not been sufficiently transparent, or when it could not be presumed that the members of the selection body were free from undue influence. The Assembly takes note of the Committee of Ministers’ decisions of 7 and 8 February 2024, inviting the Assembly, when rejecting a list on procedural grounds, to consider publishing its conclusions and reasoning. In this regard, the Assembly stresses that the specific reasons for rejections on procedural grounds are transmitted to the government concerned and indicated in a succinct and non-country-specific manner in the memorandum prepared by the Secretary General of the Assembly, which is updated regularly. This should enable States Parties to identify how the Assembly applies the Committee of Ministers’ guidelines in practice, with a view to improving their selection procedures.

6. The Advisory Panel has also identified a number of challenges, shortcomings and practices that fall short of the required standards regarding national selection procedures. These include inadequate publicity, a low number of people responding to the public calls for candidates, unbalanced or politicised composition of selection bodies, lack of transparent decision making or unjustified exclusion of highly qualified applicants.

7. The Assembly, while conscious that States Parties have a certain latitude in organising national selection procedures, stresses that the Committee of Ministers’ guidelines, as well as its own relevant resolutions, should be fully implemented. The explanatory memorandum of the guidelines and the Advisory Panel’s activity reports provide examples of positive practices that should be considered. The Assembly has also identified examples of good practice in recent national selection procedures that could help States Parties to make their own procedures fairer and more transparent, while taking into account their legal, constitutional and political specificities. These include the following requirements:

7.1. a minimum period of one month is given for submission of applications;

2. Draft resolution unanimously adopted by the committee on 12 January 2026.

7.2. the executive does not dominate the composition of the national selection body, with the majority of its members coming from outside the governmental structure, for instance from the judiciary, the ombudsperson's office, bar associations and academia;

7.3. the nominal composition of the national selection body is disclosed in advance and made public;

7.4. the general composition of the national selection body and details on the procedure are set out in the relevant regulation (statutory law or governmental decree) and not left to the discretion of the relevant minister;

7.5. measures are taken to ensure that national selection bodies are as gender-balanced as possible, as previously recommended by the Assembly;

7.6. civil society, legal professions' representatives and independent institutions are entitled to be present during the interviews as observers;

7.7. the national selection body seeks advice from former judges at the Court in respect of the country concerned;

7.8. candidates' linguistic abilities are tested in written and orally during the interviews;

7.9. if the final decision maker considers deviating from the national selection body's recommendation, it must ask the selection body for an opinion on any applicants who were not shortlisted;

7.10. relevant documents from the Council of Europe on the election of judges are translated into the national language and made available to all members of the national selection body.

8. As regards the substantive criteria for candidates under Article 21.1 of the Convention, the Assembly emphasises the need to ensure the authority of the Court and the confidence in the quality and independence of its judges. Candidates must therefore possess the relevant professional experience and independence to exercise such a high judicial function on an international court. The Assembly's practice shows that rejections of lists on substantive grounds, because not all of the candidates fulfil the criteria, are necessary to preserve the freedom of choice conferred on the Assembly, which it must exercise in the interests of the proper functioning and authority of the Court. The Assembly notes with concern the conclusions of the Advisory Panel in its activity report of 5 November 2025, according to which it had come to a negative conclusion on a relatively significant proportion of candidates (16% from July 2022 to July 2025) and that some governments had a tendency to present younger and less experienced candidates. This shows that there is still room for improvement in attracting and submitting highly qualified candidates, particularly those with extensive judicial experience at the highest national courts. In this context, the Assembly underlines the importance of addressing the situation of judges after the end of their mandate, including by formally recognising their service as judge within their domestic legal systems, facilitating their professional reintegration and their inclusion in national pension schemes. Such measures would increase the attractiveness of the post and contribute to the implementation of the Convention at national level.

9. The Assembly also stresses the importance for candidates to have knowledge of the national legal system of the member State in respect of which they would be elected. Since they will often have to sit in cases against this State and adjudicate on how its national authorities and courts apply the Convention, it is important that they have an in-depth understanding of the relevant domestic legal system and are able to brief the other judges on the judicial formation concerned (Chamber or Grand Chamber). Competence and experience in the field of human rights, although not strictly derived from Article 21.1 of the Convention, should also be taken into account in the overall assessment of candidates. At the same time, the Assembly underlines the value of diversity among the Court judges in terms of specific legal expertise and professional profiles.

10. Regarding gender balance, the Assembly regrets that women are under-represented at the Court, as they make up less than 40 % of the total number of sitting judges. In this context, it accepts the recent submission of all-female lists by some States and reiterates that it strictly applies the "exceptional circumstances" threshold to justify exceptions to the rule that the lists submitted should contain at least one candidate of the underrepresented sex.

11. The Assembly is deeply concerned by the delays in the presentation of lists of candidates by some States Parties, including those that need to replace one or more candidates following a rejection by the Assembly. This situation results in the *de facto* extension of the mandate of the sitting judges (in some cases far) beyond their term of office by virtue of Article 23.2 of the Convention or in the absence of a sitting judge in respect of that State. This not only creates inequality among the sitting judges, problems and uncertainty for

the workload of Court and the judges concerned but also goes against the spirit of the non-renewable term of office of nine years introduced by Protocol No. 14 to the Convention (CETS No. 194, entered into force in 2010). The Assembly considers that the time has come to introduce a mechanism to discourage this phenomenon and put pressure on the States Parties concerned to submit appropriate lists of candidates in due time. This could be achieved by amending Article 23.2 of the Convention allowing a maximum of one additional year for a sitting judge after the term of nine years.

12. The Assembly notes that its rules and procedures on the election of judges have constantly evolved over the years. Those currently applicable to the Committee on the Election of Judges have allowed the committee to effectively fulfil its role of interviewing candidates and assisting the Assembly in electing the most qualified judges to the Court, while protecting the reputation of all shortlisted candidates. Since the creation of the committee in 2015, the Assembly has almost always followed its recommendations, which must be seen as a sign of trust and respect for its members, all of whom must have a legal background. The Assembly considers, however, that the following modifications to the procedure for the election of judges ought to be made in order to improve certain aspects and codify certain practices:

12.1. the chairperson or a representative of the Committee on the Election of Judges should have the right to speak in the debate on the progress report of the Bureau and the Standing Committee, to present the committee's recommendations when necessary;

12.2. the list of candidates for the election of a judge to the Court, once submitted to the Assembly, can only be withdrawn or modified by the government concerned as long as the deadline set for its transmission – as specified in the letter from the Secretary General of the Assembly – has not yet expired. After the expiry of the deadline, the government can no longer withdraw or modify the list of candidates on its own initiative;

12.3. the Assembly should interrupt the election procedure if one of the three candidates on the list withdraws before the recommendation of the Committee on the Election of Judges is made public. It should then ask the government concerned to complete the list of candidates, by replacing the candidate who has withdrawn. This will be followed by another hearing of all three candidates by the committee. The withdrawal of a candidate after the publication of the committee's recommendation is not possible.

13. Furthermore, the Assembly:

13.1. calls on the States Parties to the Convention to follow and implement the Committee of Ministers' Guidelines on the selection of candidates for the post of judge at the European Court of Human Rights, as well as the Assembly's resolutions on the election of judges and the guidance and opinions of the Advisory Panel, bearing in mind the good practices identified;

13.2. calls on the governments of the States Parties to submit the lists of candidates to the Assembly in due time, providing full details on national selection procedures, including the composition of the national selection bodies, when transmitting the names and curricula vitae of the candidates;

13.3. calls on the national parliaments of the States Parties, as well as national human rights institutions, to inform themselves of their ongoing national selection procedures and to raise awareness of the selection and election of judges to the Court at the national level;

13.4. encourages national human rights institutions, civil society and legal professional associations to closely monitor national selection procedures and contribute to their ongoing improvement;

13.5. invites the Advisory Panel to maintain and enhance its ongoing co-operation and dialogue with the Committee on the Election of Judges, including through the current participation of its chair or a representative in the committee's briefing sessions to present the Advisory Panel's views before the interviews take place, and through joint annual meetings to discuss issues of common interest;

13.6. invites the Advisory Panel to clearly indicate any shortcomings it has identified regarding specific national selection procedures in its opinions to governments and its written observations to the Assembly;

13.7. invites the Court to strengthen its dialogue with the Committee on the Election of Judges on issues of mutual interest, including those relating to judges' active time in office;

13.8. welcomes the latest changes to the Rules of Court regarding ad hoc judges and invites the governments of the States Parties to apply the same procedural requirements to the selection of elected and ad hoc judges alike, noting that ad hoc judges must also possess the qualifications required by Article 21.1 of the Convention;

13.9. reiterates that former judges are covered by the Court's Resolution on Judicial Ethics and that they should accordingly refrain from expressing themselves in a manner which may undermine the authority and reputation of the Court;

13.10. invites the Secretary General of the Council of Europe, the Secretary General of the Assembly and the Registry of the Court to consider organising an information campaign on the election procedure and the office of judge at the Court, with the aim of enhancing visibility and knowledge of these issues among the general public and potential candidates, in line with the Committee of Ministers' decisions of 7 and 8 February 2024;

13.11. invites the Committee on Rules, Ethics and Immunities 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.

B. Draft recommendation[3]

1. The Parliamentary Assembly draws the Committee of Ministers' attention to Resolution...(2026) "Procedure for the election of judges to the European Court of Human Rights", which reiterates the importance of electing highly qualified judges to the European Court of Human Rights, through fair, efficient and transparent national selection procedures and a rigorous and thorough election process in the Assembly.

2. The Assembly takes note of the Committee of Ministers' decisions of 7 and 8 February 2024 as well as of the report by the Steering Committee for Human Rights (CDDH) on issues relating to judges of the European Court of Human Rights adopted at its meeting held from 28 November to 1 December 2023 and the CDDH report on the first effects of Protocol No. 15 (CETS No. 213) to the European Convention on Human Rights (ETS No. 5) adopted on 26 June 2025.

3. The Assembly recommends that the Committee of Ministers:

3.1. draw up an amending protocol to the European Convention on Human Rights to exclude the automatic and indefinite extension of the mandate of sitting judges beyond their term of office by virtue of Article 23.2 of the Convention. Judges should only be able to remain in office for up to one additional year after the expiry of their nine-year term, in the event that a new judge has not yet been elected;

3.2. consider revising its Guidelines on the selection of candidates for the post of judge at the European Court of Human Rights (CM(2012)40), adopted in 2012, with a view to further refining the requirements for national selection procedures based on good practice recently identified by the Advisory Panel of Experts and the Assembly, as well as the criteria for the establishment of lists of candidates;

3.3. revise its Resolution CM/Res(2010)26 on the establishment of an Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights, adopted on 10 November 2010, with a view to providing the panel with an explicit mandate to advise the States Parties on whether their national selection procedures comply with the Committee of Ministers' guidelines and good practice;

3.4. draw up a recommendation on the issue of post-mandate recognition of service to complement and further develop its Declaration on the protection of judges of the European Court of Human Rights from threats and reprisals and on the recognition of their service, adopted on 15 January 2025. Such a recommendation should provide clearer guidelines, based on good practice, to ensure that, after their mandate, judges can return to posts comparable to those previously occupied, or accede to posts commensurate with the office they have held, for instance a judicial post in the highest domestic courts and tribunals;

3.5. provide the Advisory Panel of Experts with the necessary resources to enable it to exercise its functions effectively.

3. Draft recommendation unanimously adopted by the committee on 12 January 2026.

C. Explanatory memorandum by Ms Petra Bayr, rapporteur[4]

1. Introduction

1. The present report is based on a motion for a resolution tabled by the Committee on the Election of Judges to the European Court of Human Rights on 17 June 2024, which was referred to it for report on 28 June 2024. The committee appointed me as rapporteur at its meeting on 16 September 2024.

2. The motion reiterated that the Parliamentary Assembly needs to ensure that the qualifications for being a judge of the European Court of Human Rights ("the Court"), as set out in Article 21.1 of the European Convention on Human Rights (ETS No. 5, "the Convention") are duly met. It is therefore of utmost importance that both the national selection procedure to produce the list of three candidates, with the assistance of the Advisory Panel of Experts ("the Advisory Panel") established by the Committee of Ministers in 2010, and the election procedure in the Assembly are fair, transparent, and fully in line with the Convention. Although much progress has been made in this respect over the past decade, both in terms of procedural improvements and the interpretation of the eligibility criteria under Article 21 of the Convention, new proposals have been recently put forward, notably in the report of the Drafting Group on issues relating to judges of the European Court of Human Rights (DH-SYSC-JC) working under the authority of the Steering Committee for Human Rights (CDDH). The CDDH adopted this report at its 99th meeting (28 November-1 December 2023)[5] and the Committee of Ministers took note of it at its meeting of 7-8 February 2024.

3. The motion also called on the Assembly to further consolidate and improve its practice on the election of judges to the Court, by addressing issues such as the assessment of national selection procedures; the interpretation of the criteria laid down in Article 21.1 of the Convention; [6] the requirement of independence and impartiality of the candidates, including the avoidance of potential conflicts of interest during their mandate if elected; the language skills required; the residence requirement; the procedure for the appointment of ad hoc judges; the procedure before the committee and the Assembly, including issues such as the format of the interviews with candidates, the content of the committee's public recommendations addressed to the plenary, voting rights and the announcement of the election results in the plenary; the issues of post-mandate recognition of service of judges; extension of the term of office of sitting judges due to delays in the election of a new judge; compliance with ethical standards by former judges; and further improvements in the co-operation and communication between the Assembly, the Court and the Advisory Panel.

4. The motion also reflected the outcome of exchanges of views held by the Committee on the Election of Judges to the European Court of Human Rights with the Advisory Panel (joint meeting held in Vienna on 13 May 2024) [7] as well as with the former President of the Court, Ms Siofra O'Leary (Paris? 10 June 2024). The quality of the discussions held during these exchanges helped the committee to identify the issues that need to be reviewed with a view to refining and further improving the election of the best possible judges to the Court, having also in mind the attractiveness and current challenges of being a judge at the Court. I would like to thank former President O'Leary and members of the Advisory Panel for their extremely valuable contributions and views.

5. The election of judges is one of the most important roles that the Assembly has been entrusted with, under Article 22 of the Convention. The scrutiny that the Committee on the Election of Judges to the European Court of Human Rights applies to lists and candidates for election as judge to the Court is intended to ensure that the most highly qualified, independent and impartial judges are elected by the Assembly to sit on the Court's bench, following the criteria laid down in Article 21 of the Convention. It can be observed that the committee has become gradually stricter in applying these criteria. This also applies to the national selection procedures which are subject to the Guidelines of the Committee of Ministers on the selection of candidates for the post of judge at the European Court of Human Rights and the Assembly's own resolutions and practice. It is important in this context to recall that the Convention has laid down a co-decision procedure for the election of judges with a clear division of roles between the different actors involved: it is up to the High Contracting Parties, assisted by the Advisory Panel, to submit three candidates, each of whom must fulfill the eligibility criteria laid down in Article 21; and it is for the Assembly, assisted by its Committee on the Election of

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4. The explanatory memorandum is drawn up under the responsibility of the rapporteur.
5. Report of the steering committee for human rights (CDDH), "Issues relating to judges of the European Court of Human Rights".
6. "The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence".
7. AS/Cdh(2024)PV04: minutes of the joint meeting with the Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights, held in Vienna on 13 May 2024.

Judges, to elect the most qualified of the three candidates. It is not my intention to redefine this clearly established division of roles, but to make proposals on how the overall selection and election procedure could be improved, including by increasing transparency, co-operation and mutual trust between all the bodies involved.

6. In the context of the preparation of this report, the Committee on the Election of Judges to the European Court of Human Rights held an exchange of views with the Bureau of the Court on 28 January 2025 and a hearing with experts (two former judges, Sir Nicolas Bratza and Mr Yonko Grozev, and a university professor, Ms Laurence Burgorgue-Larsen) on 24 March 2025. I have also had bilateral exchanges with the current President of the Court, Mr Mattias Guyomar, as well as with members of the Advisory Panel and other stakeholders (during the seminar marking the 15th anniversary of the Advisory Panel on 27 November 2025).

7. In my report, I will first summarise the latest reports of the Assembly and changes to the procedure for the election of judges, the recent CDDH report, and the main takeaways of the exchanges and hearings held by the committee. I will then identify the existing challenges that need to be addressed in relation to different topics mentioned in the motion for a resolution and analyse a number of proposals to modify the existing rules and procedure, including any possible amendments to the Convention. A table on the latest national selection procedures of all 46 member States can be found here.

2. The latest Assembly reports and changes to the procedure for the election of judges to the Court

8. In 2018 (Resolution 2248 (2018))[8] and 2019 (Resolution 2278 (2019)),[9] the Assembly introduced several clarifications and improvements regarding the procedure for the election of judges, including by codifying certain existing practices, namely that:

– a list shall be rejected when the national selection procedure did not satisfy the minimum requirements of fairness and transparency or when the Advisory Panel was not duly consulted (what is called, “rejection on procedural grounds”);

– a list shall be rejected when not all of the candidates fulfil each of the conditions set by Article 21.1 of the Convention (what is called, “rejection on substantive grounds”);

– the committee shall decide on a proposal to reject a list by a simple majority of the votes cast, thus reducing the previously required majority of two-thirds (with the exception of a decision to take into consideration single-sex lists, which continues to require a two-thirds majority);[10]

– as a reflection of the closer co-operation with the Advisory Panel, the chairperson or another representative of the panel is invited to explain the reasons for the panel’s views on candidates, during briefing sessions scheduled before the discussion on each list of candidates;

– members of the committee from the State whose list is under consideration do not have the right to vote, neither on the possible rejection of their country’s list nor on the expression of preferences among candidates.

9. Following discussions in a specific case in 2019, the committee also decided that it would no longer consider lists of candidates when no interviews had been carried out during the national selection procedure. This position was explicitly announced in the Committee of Ministers by the then Secretary General of the Assembly.

10. Since then, the Assembly and the committee have been applying the rules mentioned above. The committee also pays increasing attention to the Committee of Ministers’ guidelines, particularly with regard to national selection procedures and the composition of national selection bodies. The practice shows a

8. Based on a report of the Committee on the Election of Judges to the European Court of Human Rights (Rapporteur: Mr Boris Cilevičs, Latvia, SOC), Doc. 14662.

9. Based on a report of the then Committee on Rules of Procedure, Immunities and Institutional Affairs (Rapporteur: Mr Egidijus Vareikis, Lithuania, EPP/CD), Doc. 14849.

10. Any list must have candidates of both sexes except when the candidates are of the gender that is underrepresented among the judges of the Court, or when there are “truly exceptional circumstances” justifying an exception (where a Contracting Party has taken all the necessary and appropriate steps to ensure that the list contains candidates of both sexes meeting the requirements of Article 21.1 of the Convention) which must be duly considered by a majority of two-thirds of the committee, failing which the committee proposes to the Assembly to reject the list concerned. The committee’s proposal must be endorsed by the Assembly in the progress report of the Bureau and the Standing Committee.

gradually stricter and more refined application of the rules and guidelines, as can be observed from the memorandum prepared by the Secretary General of the Assembly, which contains specific examples of rejections of lists and is being regularly updated.[11]

11. As regards the election as such by the Assembly (after the committee has published its recommendation on the preference among candidates addressed to the Assembly, usually on the Wednesday before the part-session), the only recent change in the practice is that the second round (in case no candidate obtains the absolute majority of the votes cast in the first round, which usually takes place on Tuesday morning) takes place in the afternoon sitting, not the day after.

12. The committee has also developed a more formal dialogue with the Advisory Panel, particularly following changes made to the Assembly Rules of Procedures in 2019. Since 2022, it has regularly held joint meetings with the panel with a view to further clarifying some issues, including regarding the interpretation of the eligibility criteria under Article 21 of the Convention and the required fairness and transparency of national selection procedures. This takes place in parallel with a more informal dialogue between the respective secretariats, for the sake of better co-ordination and timely examination of lists of candidates.

13. It is also important to note that the Assembly did not retain in 2018 some of the reform proposals that had been put forward at the time, including those by the CDDH in its 2017 report, such as changing the rules on the composition of the committee and nomination of its members and introducing sanctions for non-attendance of its meetings; integrating a representative of the Advisory Panel of Experts in interviews with candidates; giving more detailed reasons for the committee's recommendations and making them public before the election; the committee sending to the Assembly lists of two candidates or even only one when not all candidates are considered as sufficiently qualified; and extending the duration of interviews by the committee. The reasons for not accepting these proposals were well explained in the 2018 report[12] prepared by Mr Boriss Cilevičs (Latvia, SOC).

3. The 2023 report of the Steering Committee for Human Rights and its follow-up

14. In 2022, the CDDH instructed its drafting group (DH-SYSC-JC) to prepare a "report evaluating the effectiveness of the system for the selection and election of the Court's judges and the means to ensure due recognition for judges' status and service on the Court and providing additional safeguards to preserve their independence and impartiality". During its mandate DH-SYSC-JC held five meetings. It held exchanges of views with sitting judges, academic experts, as well as with the then chairpersons of the committee on the Election of Judges to the European Court of Human (Mr Titus Corlăţean, Romania, SOC) and of the Advisory Panel, Sir Paul Mahoney.[13] Our secretariat also provided regular input on issues related to the election procedure. The final report, which was adopted by the CDDH at the end of 2023, covers five main areas: the national selection procedure; the election procedure; issues related to judges' active time in office; post-mandate recognition of service on the Court; and ad hoc judges.

3.1. Conclusions and proposals regarding the election procedure before the Assembly

15. As regards the election procedure before the Assembly, the CDDH report took stock of the key decisions and measures adopted by the Assembly since the last review process of 2018-2019, analysing the progress achieved and the new challenges arising. It concluded that the practice of the Committee on the Election of Judges to the European Court of Human involves assessment of the lists of candidates on substantive, procedural and gender representation grounds, before the interviews take place. A standard and well-established procedure for the interviews and certain safeguards have been put in place to preserve the reputation of candidates when the committee's recommendation to reject a list or its indication of preference is submitted to the Assembly. In addition, the CDDH welcomed the Assembly's stricter scrutiny of national selection procedures and its enhanced dialogue with the Advisory Panel. It considered however that when the Assembly rejects lists on procedural grounds "a publication of its conclusions and its reasoning in a succinct manner would potentially encourage reflection not only in the State Party concerned but also other State

11. SG-AS(2025)01, 20 October 2025.
12. Doc. 14662, op. cit.
13. https://rm.coe.int/summary-of-the-exchange-of-views-on-issues-of-selection-and-election-o/1680aae8b8.
Mr Corlăţean not only presented the Assembly and its committee's practice on the election procedure, he also made several observations regarding the extension of the term of office of sitting judges due to delays in the presentation of acceptable lists by governments and its consequences.

Parties regarding the improvement of national selection procedures". The CDDH finally suggested that the Council of Europe consider organising an information campaign on the election procedure, noting some concerns as to the lack of detailed information about the election stage.[14]

16. The Committee of Ministers, in its decisions of 7-8 February 2024, endorsed these two recommendations regarding the election procedure, inviting the Assembly, "when it rejects a list on procedural grounds, to consider publishing its conclusions and reasoning", and the Secretariat (of the Council of Europe) "to consider organising an information campaign on the election procedure".[15] In my view, the regular update of the memorandum of the Secretary General of the Assembly regarding the election procedure, with specific examples of rejections on procedural grounds (with a succinct reference to the grounds) in a non-country-specific manner, is sufficient for the sake of transparency and with a view to helping all States Parties to improve their selection procedures. I believe there is no need to provide any additional reasoning in the committee's public and country-specific rejection, bearing in mind that a reference to the specific reasons and the year of rejection is already included in the memorandum of the Secretary General of the Assembly.[16] With this information, it is easy to identify the country whose list was rejected and on which grounds. The latest activity report of the Advisory Panel also includes non-country-specific overview of the national procedures recently reviewed (July 2022 to June 2025)[17], with the aim of identifying emerging trends, drawing attention to areas in need of improvement and highlighting good practices. This report should be read together with the memorandum of the Secretary General of the Assembly in order to identify problematic practices across member States, without signalling specific countries.

17. I fully support the proposal made by the Committee of Ministers and the CDDH to consider organising an information campaign on the election procedure, addressed to the general public and potential candidates. This could be co-organised by the Secretariat of the Council of Europe (relevant Directorate), the Secretariat of the Assembly, and the Registry of the Court, provided that sufficient resources are allocated. At the same time, the presentation of the election procedure and the mandate of the judges of the Court on the websites of the Assembly, the Council of Europe and the Court (including the links between the different stages and stakeholders involved) could be improved further.

3.2. Conclusions and proposals regarding other issues covered by the report of the Steering Committee for Human Rights

18. I will only set out the main proposals made by the CDDH regarding other issues covered by its report:

– as regards national selection procedures, the CDDH proposed that the Committee of Ministers review its guidelines, with a view to ensuring their consistency with Protocol No. 15 to the Convention (CETS No. 213) (new age limit for candidates), and that it invite the Advisory Panel to publish its views on national selection procedures in an anonymised and non-country-specific manner;[18]

– as regards issues related to judges' active time in office, the CDDH invited the Council of Europe to address some practical issues encountered by judges in Strasbourg (schooling for children, language training, private health insurance, etc.) and concluded that there was no convincing reason to change the current term of office of nine years to twelve, as had been suggested by former President of the Court, Mr Robert Spano;

– as regards incompatible activities during the term of office and the recusal of judges, the CDDH simply noted the ongoing process of amendment by the Court of Rule 28 of the Rules of Court and reiterated the Committee of Ministers' previous position that it was not for the Committee of Ministers to take any action about the Court's rules on recusal;[19]

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14. Both proposals at par. 43 of the report.
15. CM/Del/Dec(2024)1488/4.2.
16. See for instance par. 8 of the memorandum of the Secretary General of the Assembly, referring to different rejections on procedural grounds since 2016. It is also interesting to note that the Committee of Ministers, in its decisions of February 2024, invited the Advisory Panel to publish its views on national selection procedures "in an anonymised and non-country-specific manner". This is justified by the principle of confidentiality that governs the communication between the panel and the governments concerned. Mr Cilevičs, in his 2018 report, also rejected the idea of giving more detailed reasons for the committee's recommendations, due to the chilling effect on potential candidates and the practical difficulties for the committee to agree on the exact wordings of such recommendations.
17. 6th Activity Report of the Advisory Panel, 1 July 2022 to 30 June 2025.
18. The report notes at the same time that the Advisory Panel's views on national selection procedures are also included in its letter addressed to the Secretary General of the Assembly and that the dialogue between the Advisory Panel and the Assembly has been strengthened.

– as regards the post-mandate recognition of service and threats and reprisals against judges, the CDDH proposed that the Committee of Ministers promote more robust and complete recognition of service as judge of the Court by means of a decision or declaration calling on States to take action in this respect while also addressing the issue of threats and reprisals against judges during or after their terms of office;

– and finally, as regards the appointment of ad hoc judges, the CDDH welcomed the changes to the Rules of Court on the extension of the period for which they are appointed and the automatic appointment of elected judges to serve as ad hoc judges when State Parties have not submitted their lists of ad hoc judges in advance.[20]

19. The Committee of Ministers, in its decisions of February 2024, agreed to revise its guidelines (to make them consistent with Protocol No. 15 as regards the new age limit);[21] invited the Advisory Panel to publish its views on national selection procedures in an anonymised and non-country-specific manner; and invited its Rapporteur Group on Human Rights (GR-H) to prepare a draft declaration on the protection of judges from threats and reprisals, and on recognition of service as a judge of the Court. On this last issue, on 15 January 2025, the Committee of Ministers adopted a Declaration on the protection of judges of the European Court of Human Rights from threats and reprisals and on the recognition of their service.[22] The declaration notes that the recognition of service as a judge of the Court after the end of their mandate is important to guarantee both the attractiveness of the Court for highly qualified candidates and the independence of the Court. It calls on member States to "take appropriate measures to allow judges the possibility to be granted leave of absence from their former posts, where possible" and "where possible, take appropriate measures to allow judges to regain their former or similar posts, or the possibility to accede to posts at a level that is commensurate with the office that they have exercised and the experience gained at the Court in order to pursue their careers, should they so wish". The Committee of Ministers also addressed the issue of pension rights of judges, calling on States to permit judges to remain in the national pension system; ensure adequate consideration of their terms of office and any benefits accrued; and where possible, permit their reintegration into the relevant national pension scheme at the end of their mandate. It further called on member States to "take appropriate measures to prevent and effectively address situations in which judges of the Court, both during and after their mandate, are subject to threats and reprisals because of their appointment, service or activity as a judge of the Court".

20. In parallel to the follow-up to its 2023 report, the CDDH created a new drafting group to evaluate the first effects of Protocols No. 15 and No. 16 to the Convention (DH-SYSC-PRO).[23] The CDDH considered the reports prepared by the DH-SYSC-PRO during its meeting in June 2025.[24] The report on the effects of Protocol No. 15 examines the effects of Article 2 of the Protocol which introduced a new age limit for candidates (less than 65 years of age at the date by which the list has been requested by the Assembly) and removed the upper-age limit of 70 for termination of office. The modification of this age limit aimed at enabling highly qualified judges to serve the nine-year term of office, thereby reinforcing the consistency of the membership of the Court. It was considered no longer essential to impose an upper-age limit of 70. The CDDH report notes that while 15 judges had to leave the Court upon reaching the age of 70 between 1998 and 2021 (date of entry into force of Protocol No. 15) and one judge currently in office will still have to leave the Court before nine years due to reaching the age of 70 (since he was elected before the entry into force of the Protocol), none of the judges elected after the entry into force of Protocol No. 15 will reach the age of 70 before the end of their terms of office. This can be explained by the fact that these judges are generally

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19. The amendment to Rule 28 on the recusal of judges entered into force on 22 January 2024: https://hudoc.echr.coe.int/eng-press?i=003-7856029-10912505.

20. It is important to recall that the Assembly and its Committee on Legal Affairs and Human Rights had raised concerns in the past about the exclusion of the Assembly from the appointment procedure of ad hoc judges (Doc. 12827 – Information report "Ad hoc judges at the European Court of Human Rights: an overview"). According to Assembly resolutions and recommendations (in particular Recommendation 1649 (2009) "Candidates for the European Court of Human Rights"), as far as possible, no candidates to judge should be submitted whose election might result in the necessity to appoint an ad hoc judge. This is also somehow reflected in the guidelines of the Committee of Ministers.

21. Point 5 of paragraph II of the guidelines of the Committee of Ministers now states: "Candidates shall be less than 65 years of age at the date by which the list of three candidates has been requested by the Parliamentary Assembly, further to Article 22 of the Convention".

22. Declaration by the Committee of Ministers on the protection of judges of the European Court of Human Rights from threats and reprisals and on the recognition of their service (adopted by the Committee of Ministers on 15 January 2025 at the 1516th meeting of the Ministers' Deputies).

23. Protocol No. 16 is not pertinent here since it does not affect the election of judges.

24. Addendum 2 - CDDH Report on the first effects of Protocol No. 15 to the European Convention on Human Rights, 26 June 2025.

younger than the ones that were elected before; indeed, all of these judges were under 60 years of age when they were elected. Although this means that the new rule has not had any practical effect on the mandate of the judges currently in office, I understand that extending in theory the age limit from 70 to 74 has at least ensured that the pool of potential candidates aged 60–65 is not limited. It is also important to note that the new age limit is fully taken into account in the practice (letters) of the Secretary General of the Assembly when inviting the States Parties to submit lists of candidates.

4. Key takeaways from the exchanges of views with different stakeholders

21. On 13 May 2024, the Committee on the Election of Judges to the European Court of Human Rights met in Vienna with a delegation of the Advisory Panel of Experts, at the invitation of the Austrian delegation to the Assembly and the President of the Constitutional Court of Austria, Mr Christoph Grabenwarter (chairperson of the panel between 2019-2020). This was an excellent opportunity to openly discuss issues of common interest regarding the national selection procedures, the interpretation of the criteria for office laid down in Article 21 of the Convention and co-operation between the two bodies. The main takeaways from the discussions can be summarised as follows:

– on national selection procedures: it was noted that the Advisory Panel was taking stock of current practices with a view to compiling good practices across member States. The exchanges with the Advisory Panel (through chairpersons or secretariat) on national selection procedures should be enhanced. The committee would also appreciate if the Advisory Panel could look into the issue of gender balance of national selection bodies. It was also important to advise governments to choose one or more reserve candidates. The Advisory Panel would also try to include views on national selection procedures in its activity reports and in its short guide, in line with the recent decisions of the Committee of Ministers;

– interpretation of the criteria for office laid down in Article 21 of the Convention: if the Advisory Panel considered that a candidate combined elements of both criteria under Article 21.1 (“possess the qualifications required for appointment to high judicial office” and “jurisconsults of recognised competence”) whilst the threshold of either of the criteria is not met, it should disclose which candidate is concerned and include human rights knowledge/sensibility and Convention experience among the elements to be taken into account as a compensating factor. A section on human rights experience has been reintroduced in the new curriculum vitae format. It was also proposed that the panel gives the committee a brief overview of the hierarchy of the courts of the country concerned. With regard to the independence and impartiality of candidates, including when national civil servants and government agents were put forward, the consensus was that this issue should be examined on a case-by-case basis.

– co-operation between the committee and the Advisory Panel: it was agreed that a joint meeting between both bodies should be held at least every two years and when there was a new activity report by the panel in between.

22. The exchange of views with the former President of the Court on 10 June 2024 had a wider scope. It did not only deal with the election procedure and the interpretation of the criteria for office, but it also touched upon issues such as the independence and impartiality of judges during the term of office and the updated recusal rule in the Rules of Court; recent procedural reforms including the revised Rule 39 (indication of interim measures to States Parties in the case of imminent risk of irreparable damage) of the Rules of Court; post-mandate recognition of service for career and pension purposes: practical difficulties related to the term of office and life in Strasbourg (residence requirement); language requirements; extension of the term of office due to the non-election of a new judge; and public statements of former judges. As regards the issue of the extension of the term of office in cases of non-election of a new judge in due time, President O’Leary reiterated that the Convention did not provide for a solution at present but that the 9-year non-renewable mandate should be applicable equally across member States. The question of the post-mandate situation of judges, interlinked with that of the independence of judges and the attractiveness of the post, had been addressed several times in the past (including by the Committee of Ministers and the Assembly), with no tangible results. She indicated that she had repeatedly emphasised before the Committee of Ministers the need to tackle this issue once and for all, stating that judges need to have their service on the Court recognised for employment and pension purposes when reintegrating their national systems.[25]

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25. Exchange of views with the Committee of Ministers, 10 April 2024. President Síofra O'Leary stated before the Committee of Ministers that “if potential candidates fear that they will not return to their lives and a livelihood after their mandate, they will not come to Strasbourg.”

23. There was general agreement that exchanges between the committee, and the President of the Court should be held regularly, for instance every two years; and that the President of the Court could also be invited to address the plenary Assembly once a year or at least once during their mandate. President O'Leary invited the committee to visit the Court and exchange with the President and the Bureau of the Court.

24. These proposals have been successfully implemented. For example, in January and June 2025, Presidents Bošnjak and Guyomar both addressed the Assembly in the context of two debates: "The need for a renewed rules-based international order" and "The European Court of Human Rights: rising to the challenges of our times". On 28 January 2025, the committee met with the Court's Bureau to discuss issues such as the attractiveness of the judge position, national selection procedures, criteria for office, and the election procedure. All participants agreed that these joint meetings should be regular and longer. I intend to invite the Bureau of the Court to one of our upcoming meetings in Paris for a half-day session.

25. I should also briefly present some of the proposals discussed by the former judges and experts that we heard at the hearing held on 24 March 2025:

– a more robust text might be needed to address the issue of post-mandate recognition (not only a declaration of the Committee of Ministers);[26]

– there are no reasons to change the current term of office (from 9 years to 12 years);[27]

– the composition of national selection committees should not be dominated by the executive branch and should include a variety of representatives from the judiciary, lawyers, civil society, academia, and former Court judges (of a different nationality). The committee could play a significant role in imposing harmonisation of the composition of national selection committees;[28]

– civil society should play a greater role in the evaluation of candidates, which should be more transparent, following the examples of the Inter-American and African systems, including through more media attention;[29]

– the requirement for competence/knowledge in international human rights law should be expressly mentioned in the Convention as it is in the American Convention on Human Rights[30] and the Ouagadougou Protocol.[31] At the very least, this should be a central element of the candidates' assessment in practice;[32]

– the committee's interviews with the candidates should be longer and focus on assessing how the candidates' views align with European standards of protection, following the approach used by the panel of experts (from academia and civil society) in the Inter-American system; [33]

– the presence of diversified profiles on each list of candidates should be ensured (for example a career judge, an academic and a lawyer);[34]

– when electing judges, the Assembly should take into account the different political situations and contexts in each State, including the growing pressure on the judiciary in some countries, as well as the risk of some States influencing the selection of judges who align with their governments;[35]

– the post-mandate situation of judges should be properly addressed, as it is a risk factor for the independence of Court's judges, who are generally elected now at a younger age;[36]

– qualifications such as knowledge of the second language limit the pool of potential candidates.[37]

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26. Sir Nicolas Bratza.
27. Id.
28. Professor Burgorgue-Larsen.
29. Id.
30. Article 52: "The Court shall consist of seven judges, nationals of the member states of the Organization, elected in an individual capacity from among jurists of the highest moral authority and of recognized competence in the field of human rights, who possess the qualifications required for the exercise of the highest judicial functions in conformity with the law of the state of which they are nationals or of the state that proposes them as candidates."
31. Article 11.1: "The Court shall consist of eleven judges, nationals of Member States of the OAU, elected in an individual capacity from among jurists of high moral character and of recognized practical, judicial or academic competence and experience in the field of human and peoples' rights".
32. Professor Burgorgue-Larsen.
33. Id.
34. Id.
35. Mr Yonko Grozev.
36. Id.
37. Id.

– the Assembly could force governments to take responsibility and go "head hunting" for highly qualified candidates and to arrange issues related to status and post-mandate recognition, by using its power to reject lists;[38]

5. Proposals to modify the existing procedure and rules and to further improve the election of judges to the Court

26. The importance of maintaining the highest quality of judges selected and elected to the Court is central to the success of the Convention system and the authority and legitimacy of the Court. Although the committee's and the Assembly's procedures concerning the election of judges have been significantly improved over the years, the time has come for the Assembly to review and refine, if necessary, certain aspects of its practice and/or rules. It should also formulate new recommendations on the different aspects relating to the election of judges to the Court and its different stages.

5.1. National selection procedures

27. The key requirements for the fairness and transparency of national selection procedures are contained in the guidelines of the Committee of Ministers (sections III-VI).[39] Basing itself on these guidelines, the Assembly (and the committee) have gradually placed a greater emphasis on this issue. The committee has rejected lists on procedural grounds when the Advisory Panel had not been consulted properly, or there was no clear national selection procedure at all. The committee also decided not to accept any more lists where candidates were not interviewed at the national level. It has also rejected a list on procedural grounds where the national selection procedure, whilst elaborate and transparent, had been heavily dominated by representatives of the government. More recently, the committee has rejected a list on the ground that the national selection procedure had not been sufficiently transparent, as the possibility of presenting candidates to the selection body was limited to a number of official entities and it was not clear how these entities had made their initial selection. It has also rejected a list because it could not be presumed that the members of the selection body were free from undue influence.

28. The Advisory Panel, in its assessment of lists of candidates, has also identified a number of challenges, shortcomings and practices that fall short of the required standards. According to its latest activity report (the sixth one) the panel identified concerns in relation to the national selection procedure in at least 15 of the 35 lists examined during the period concerned (July 2022-June 2025). The issues identified by the panel concern: insufficient number of candidates; lack of sufficient publicity of calls and too short deadlines to apply; lack of balanced composition of national selection bodies; excessive role for the executive or the president of the republic; lack of clarity of the evaluation criteria and final decision making; excessive political influence and exclusion of highly qualified candidates: lack of effective interviews and evaluation of language skills; and insufficient information provided to the panel. While the panel does not have the mandate to reject lists or give a negative opinion on a list only on the basis of the procedure, it can address specific questions on procedural issues to the respective government before issuing its opinion. It can also highlight in its opinion its concerns about the procedural shortcomings identified, while giving a positive substantive assessment on the candidates. In its recent practice, the panel has referred to procedural issues more frequently in its opinions transmitted to the committee. For example, in one opinion, it was noted that a new nationality requirement (excluding dual nationals) had a negative impact on the pool of potential candidates.[40] In another case, the panel noted the decisive role played by a commission composed exclusively of officials from the president's office, which was also the only body to conduct interviews, with the exclusion of the judicial body which had participated in the shortlisting process.

29. The recent practice by the panel and the committee reveals that procedural challenges remain. In some instances, the panel and the committee do not share the same concerns as regards a specific procedure. It would therefore be useful to further clarify and revise the guidelines of the Committee of Ministers in relation to the requirements applicable to national selection procedures.[41] For instance, the guidelines could clarify what is exactly meant by "balanced composition" of the selection body and how to ensure that the body is "free

38. Id.

39. The guidelines of the Committee of Ministers incorporated in turn some of the recommendations concerning national procedures made over the years by the Assembly. The Assembly had formulated recommendations in Recommendation 1429 (1999) "National procedures for nominating candidates for election to the European Court of Human Rights"; Resolution 1646 (2009) "Nomination of candidates and election of judges to the European Court of Human Rights"; and Resolution 1764 (2010) "National procedures for the selection of candidates for the European Court of Human Rights".

40. The committee did not share these concerns and proceeded with the election procedure in respect of the country concerned.

from undue influence". In this respect, the explanatory memorandum to the guidelines states that the selection body "is generally established under the authority of the government and contains members drawn from the administration, and thus cannot be considered independent in the strict sense of the word. It should nevertheless be free from undue influence since the composition of the final list of candidates must not be, and must not appear to be a result of political patronage or preference". Based on best practices, the guidelines could for example indicate that as a general rule members of the selection body should be drawn from the ombudsperson's office, the judiciary, the bar association, academics or human rights experts, besides the relevant ministries and the executive. The government-appointees should not dominate the composition of the selection body, and a significant proportion or the majority of its members should come from outside the governmental structure. This would reinforce the appearance of independence of proposed candidates vis à vis the government nominating them. This is in fact what can be found in the majority of national procedures reviewed (see appendix): in at least 32 countries, it appears that the national selection bodies do not have a majority of governmental representatives.[42]

30. The revised guidelines could also stipulate that the composition of the selection body should be disclosed in advance, not only for the candidates but also for the public, for the sake of transparency. The general composition should be set out in the relevant regulation (statutory law or government decree) and not left to the discretion of the relevant minister, for the sake of predictability. Member States should also ensure gender balance within national selection bodies, as previously requested by the Assembly.[43] The role of civil society, even if only with an observer capacity, could also be further encouraged, as suggested by some experts. However, civil society representatives should be sufficiently qualified in order to participate in selection panels. Another important issue is that all candidates should be treated equally in the national selection process. For instance, if one candidate is offered an online interview, this should be made available to all candidates who request it.

31. Other examples of good practice that have been identified in recent national procedures include:

– representatives of civil society, legal professions or independent institutions are present in the interviews (Bulgaria, Poland);

– the national selection body seeks advice from former judges at the Court in respect of the country concerned (Norway, Sweden) or includes one among its members (Greece, Italy, Liechtenstein, Netherlands, Republic of Moldova);

– if the final decision maker considers deviating from the selection body's recommendation, it must ask the selection body for an opinion on the applicants who were not shortlisted (Norway);

– relevant documents from the Council of Europe on the election of judges are translated into the national language and made available to the national selection body (Poland).

32. In the absence of a revision of the guidelines of the Committee of Ministers, or pending such a revision, the Assembly could invite member States to draw inspiration from some of these examples as a means of ensuring their full implementation and of preventing some of the above-mentioned shortcomings.

5.2. Substantive criteria for office

33. The substantive criteria for the election of judges are laid down in Article 21.1 of the Convention, which states that "judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence".

34. The Assembly has over the years given further indications as to the qualities it expects from candidates. These include the requirements that the areas of competence of candidates shall not "appear to be unduly restricted"[44] and that the candidates have "experience in the field of human rights"[45] either as practitioners or as activists in NGOs working in this area.[46] Another requirement that can be found in the

41. In 2023, the CDDH considered a possible revision of the guidelines as a means of strengthening national selection procedures. However, in the end it only recommended revising them to ensure consistency with the new age limit introduced by Protocol No. 15. Previous CDDH reports had suggested an update of the guidelines or the elaboration of a recommendation stating the essential characteristics which every national selection procedure should present.

42. This is irrespective of whether the non-governmental members are appointed by the relevant minister, as in many cases it is the relevant minister or the government as a whole which sets up the selection committee and appoints its members.

43. Resolution 1646 (2009), paragraph 5. See the good practice of Norway in the appended table.

44. Resolution 1366 (2004), paragraph 3.1.

45. Recommendation 1649 (2004), paragraph 19.2.

Assembly's texts is that as far as possible no candidate should be submitted whose election might result in the necessity to appoint an ad hoc judge.[47] This requirement is however not always applied when it comes to candidates who have previously acted as judges in the highest courts of their countries. The Assembly also requires an active knowledge of one of the official languages and (at least) a passive knowledge of the other,[48] although this does not strictly derive from Article 21.1 of the Convention.

35. The guidelines of the Committee of Ministers (paragraph II) reproduce the criteria laid down in Article 21.1 of the Convention and the language requirement. They also state that "candidates need to have knowledge of the national legal system(s) and of public international law. Practical legal experience is also desirable". They do not refer to knowledge or experience in the field of human rights.

36. Over the years, the Advisory Panel has applied the criteria under Article 21.1 of the Convention, having due regard for the guidelines of the Committee of Ministers. Its 2025 activity report provides an excellent summary of how it has interpreted the two alternative professional qualifying conditions provided for in this provision: possessing "the qualifications required for appointment to high judicial office" or being "jurisconsults of recognised competence".[49] In both cases, it requires professional experience of long duration at a high level. Knowledge of human rights law is only one component of the assessment, as the acquisition of qualifying professional expertise is also possible in other legal fields such as constitutional, European or public international law. Candidates with an international background are expected to have sufficient familiarity with their national legal system. Extensive and sufficiently high-level experience of practice of the law opens the door to legal professionals other than judges and academics (under the heading "jurisconsults of recognised competence"), such as practicing lawyers, legal advisors or civil servants of public bodies and international organisations. In some cases, the Advisory Panel seeks to identify whether legal professionals who fall short of the required level of experience have any compensating factor, such as experience in the field of human rights. On the basis of an overall assessment of the curriculum vitae, the panel may also accept that a combination of elements falling under the two professional categories mentioned in Article 21.1 of the Convention renders the expertise sufficient.

37. In the majority of cases, the Committee on the Election of Judges gives particular weight to the panel's opinions on whether the candidates comply with the substantive criteria. For example, it has now become established practice for the committee to reject lists without interviews when the panel has issued a negative opinion on at least one candidate and the government concerned has nevertheless submitted the list to the Assembly. Differences in assessment between the panel and the Assembly may occasionally arise, particularly in dubious cases. This is explained by the fact that the panel may deem all candidates acceptable "on paper", but the committee may find after the interview that one or more candidates do not comply with the minimum requirements. In recent years, there have also been cases where the panel has accepted a candidate and the Committee on the Election of Judges rejected him/her without even conducting an interview, on the sole basis of the curriculum vitae.[50] Discrepancies cannot be completely avoided as the two bodies have different compositions and roles, but their regular joint meetings should help to clarify, as far as possible, the interpretation of the substantive criteria provided for in Article 21.1.

38. In light of the relatively well-established interpretation and application of the somewhat general eligibility criteria under Article 21.1, I see no reason to amend the text of this Convention provision, as some experts have suggested.[51] The criterion of the experience in the field of human rights, which is expressly mentioned in the Assembly's template curriculum vitae, can form part of the overall assessment of the candidates' professional career, without expressly mentioning it in the Convention. Article 21.1 is sufficient to identify the standards that must be met and the possible professional career paths that may lead to them. However, I suggest we include this criterion explicitly in our new resolution, and that the Committee of Ministers includes it in its guidelines if and when they are updated.

39. I also suggest that the new resolution should highlight the need for candidates to have knowledge of, or at least be familiar with, the national legal system of the State that is putting forward their candidacy. Former and current judges of the Court have emphasised the important role of "national" judges in the Court's judicial

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46. Recommendation 1429 (1999), paragraph 6.2.
47. Resolution 1646 (2009), paragraph 4.5; see also the guidelines of the Committee of Ministers, paragraph II.7.
48. Resolution 1646 (2009), paragraph 4.4.
49. 6th Activity Report, pp 16- 22. The statistics show that the lists of candidates submitted to the Advisory Panel during the period concerned (2022-2024) were composed of approximately 41% judges, 26% university professors, 11% practicing lawyers and 22% others.
50. Four times in 2024.
51. Drawing from the examples of the Inter-American and African human rights systems.

formations. Recent elections involving small-sized and other countries have demonstrated that the nationality of the candidates is not as important as their connection to and familiarity with the relevant national legal system.

40. Another suggestion made during our expert hearing was to introduce a binding rule in our texts or practice that governments should put forward a balanced list of candidates with different professional profiles (e.g. one career judge, one lawyer and one academic). In my view, this would be too rigid and further complicate the pre-selection process for States. However, I suggest that we emphasise the importance of diversity among the Court's judges in the draft resolution, bearing this in mind when examining lists of candidates.

5.3. Gender balance

41. Unfortunately, women are still under-represented at the Court, accounting for less than 40% of the total number of judges.[52] I note with satisfaction that some States (Andorra, Cyprus) have recently submitted all-female lists, something which is fully in line with the Assembly's rules as codified in 2011.[53] In this scenario, the Assembly strictly applies the "exceptional circumstances" high threshold to justify exceptions to the rule that the lists submitted must contain at least one female candidate. While the Committee on the Election of Judges had previously accepted all-male lists on this basis (on two occasions in 2012), in 2022 it rejected an all-male list despite the explanations provided by the relevant minister. This demonstrates the Assembly's commitment to addressing the issue of gender balance and the ongoing under-representation of women at the Court.

42. Having regard to our strict approach to this matter, I do not consider it necessary at this stage to propose an amendment to Article 22 of the Convention to incorporate the requirement of gender balance for the submission of lists in the Convention itself, as the Assembly had done years ago.[54]

5.4. Post-mandate recognition of service

43. The Assembly has consistently expressed concern about the post-mandate situation of judges of the Court.[55] Many stakeholders in the Convention system have noted the risks posed by the professional uncertainty the judges face after the end of their mandate to their perceived independence and the attractiveness of the post of judge. These considerations may weigh heavily when potential candidates of the highest professional standing make up their minds about whether or not to apply for the post of judge at the Court, which would require them to interrupt their national careers for nine years if elected. Former judges may face a number of significant difficulties, whether as a result of prolonged absence from the domestic legal system or even arising out of the exercise of their mandate. Some former judges have been unemployed or given no opportunity to resume their career at the national level.

44. Following the CDDH recommendations, the Committee of Ministers adopted a declaration on this matter on 15 January 2025 (see paragraph 19 above). It is doubtful whether a declaration will be sufficient, given the differences in national legal systems and the leeway that the declaration leaves to States Parties, by using the term "where possible" or "where appropriate" in most of its recommendations. My view is that a more robust text in the form of a Committee of Ministers' recommendation with more concrete guidelines would best fit the purpose. The Assembly should therefore invite the Committee of Ministers to supplement the declaration with a future recommendation addressed to member States, containing more concrete guidelines and based on best practices from member States. This work could use the information on the recognition of service as a judge of the Court provided to the DH-SYSC-JC in 2023 as a starting point.[56]

5.5. The election procedure before the Assembly

45. The 2023 CDDH report did not make any substantial recommendation to modify the procedure in the committee or in the plenary Assembly. The only new proposal concerned the invitation to the Assembly to publish its conclusions and its reasoning when rejecting lists on procedural grounds (see my position on this in paragraph 16 above). The current procedure is explained in detail in the memorandum prepared by the Secretary General of the Assembly (SG-AS(2025)01).

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52. Currently there are 16 women out of 45 judges, amounting to 36% of the total number of sitting judges.
53. Resolution 1841 (2011).
54. Recommendation 1649 (2004), par. 21. See also the reply of the Committee of Ministers of 22 April 2005.
55. Resolution 1914 (2013), Resolution 2009 (2014) and Recommendation 2051 (2014).
56. DH-SYSC-JC(2022)03REV2.

46. During the preparation of this report, the committee has again discussed some of the issues that were raised in 2018, such as the extension of the duration of the interviews and the voting rights of committee members from the State whose list is under consideration. There was a clear consensus to maintain the current practice on these matters.

47. However, I propose to introduce certain changes to our rules in order to address unforeseen problems that have recently arisen. Where necessary, the chairperson of the committee or another committee representative (for example a vice-chair) should be entitled to speak in the debate on the progress report of the Bureau and the Standing Committee. This would be rather exceptional, used only to present the committee's recommendations in specific cases, for instance when there is an attempt to challenge the committee's recommendation to reject a list in the plenary. The chairperson could explain why the committee decided to reject a list, particularly in cases where such a rejection was on procedural grounds or due to non-compliance with the gender balance rule. It would not be appropriate to do the same concerning rejections on substantive grounds, as any explanation in the plenary could affect the reputation of the candidates concerned.

48. Another aspect that needs revising is the possibility for candidates to withdraw from the list at any moment before a vote by the Assembly (see Appendix to Resolution 1432 (2005)). This scenario recently occurred, blocked an election at the last minute (Cyprus, 2025). While candidates may have their own reasons for doing so, this results in the suspension of the procedure until the candidate is replaced by the government, and the repetition of interviews for the remaining candidates, with the possibility that the committee's recommendation may change after the second round of interviews. We could clarify that the Assembly shall only interrupt the election procedure if the withdrawal takes place before the committee's recommendation is made public. In such a case, the government shall be invited to replace the candidate who has withdrawn, who will have to be assessed by the Advisory Panel and interviewed by the committee, together with the other candidates who remained on the list. After the publication of the committee's recommendation, the election procedure will in any case proceed, on the basis of the list of three candidates originally submitted. It is important to underline that according to the wording of Article 22 of the Convention the Assembly shall elect "from a list of three candidates nominated by the High Contracting Party". The Assembly could also codify the existing practice that the list of candidates, once submitted to the Assembly, can only be withdrawn or modified by the government before the expiry of the deadline given by the Secretary General of the Assembly. After the expiry of such deadline, the government can no longer withdraw or modify the list on its own initiative. It can only replace candidates who have withdrawn.[57]

5.6. Delays in the submission of lists and automatic extension of the mandate of the sitting judge beyond the term of office

49. Delays in the presentation of lists by some States Parties, including those that need to replace one or more candidates following a rejection by the Assembly, may result in the automatic extension of the mandate of the sitting judges beyond their term of office. Article 23.2 of the Convention clearly states that "the judges shall hold office until replaced". If the sitting judge has decided to leave (for private or professional reasons), it may result in the absence of a sitting judge in respect of that State, with the consequence of having to appoint ad hoc judges for each case against that State. This situation does not only create problems and uncertainty for the Court and the sitting judges concerned, including in terms of workload distribution, composition of sections and private life, but also fundamentally goes against the logic and spirit of the nine-year non-renewable term of office introduced by Protocol No. 14. The issue was raised by the Vice-President of the Court Ms Ivana Jelić at the seminar marking the 15th anniversary of the Advisory Panel on 27 November 2025. The most extreme case is the situation of the sitting judge in respect of Bosnia and Herzegovina, who has remained in office beyond the end of his term of office in 2021, due to the non-submission of a list by his State. He is not the only case in the history of the Court.

50. There is consensus within the committee that the Assembly should propose introducing a new mechanism to prevent these situations and put pressure on the States Parties concerned to submit acceptable lists in due time. This could be achieved by amending Article 23.2 in a way that sitting judges would only be able to remain in office for up to one additional year after the expiry of their nine-year term, namely for a total of ten years. After the tenth year, the country concerned would not have a sitting judge on

57. See SG-AS(2025)01, par. 13. This practice reflects the Court's second Advisory Opinion of 22 January 2010 "on certain legal questions concerning the lists of candidates submitted with a view to the election of judges to the European Court of Human Rights", pars. 49 and 55-57.

the Court if a new judge has not yet been elected. The Court could still continue to process cases against that State, as it could appoint ad hoc judges in accordance with its own Rules, including sitting judges elected in respect of other States Parties.[58]

51. I am aware that an amending protocol to the Convention requires consensus at the intergovernmental level and could take many years to be agreed upon and come into force.[59] I am of the view that the Assembly should however launch the proposal in its new recommendation to the Committee of Ministers, also to signal to governments that judges' terms of office should not be *de facto* extended in this way and that this creates problems for the functioning of the Court.

5.7. The Advisory Panel and its co-operation with the Assembly

52. The functioning of the Advisory Panel and its recent co-operation with the Assembly is described in the panel's last activity report. In 2010, the Assembly welcomed the initiative to establish a panel of experts to advise governments before lists of candidates are submitted to the Assembly.[60] Since then, and even more so since the creation of a fully-fledged Assembly committee in 2015, the two bodies have endeavoured to co-operate as closely as possible while recognising the different roles they play in the process. Since 2019, and as a reflection of the closer co-operation, the chairperson or a representative of the panel has been invited to explain the reasons for the panel's views on lists during briefing sessions scheduled before the discussion on each list of candidates. More joint meetings were also held to discuss issues of common interest. The respective secretariats also co-operate more closely to avoid misunderstandings and prepare the briefing sessions. However, there is still room for improvement.

53. When it comes to national selection procedures, the panel has been traditionally cautious when addressing this issue in its own opinions to governments, which are also shared confidentially with the committee. The mandate given to the panel is to advise States on whether candidates meet the criteria for office under Article 21.1 of the Convention and paragraph II of the guidelines of the Committee of Ministers, therefore excluding the criteria stipulated in paragraphs III-V of the guidelines relating to the national selection procedures. Under the terms of paragraph VI.2 of the guidelines of the Committee of Ministers, when sending its list of candidates to the panel, a government should also submit information on the national selection procedure followed. The panel has deduced from this requirement that, while it has no express power of review in this domain, in its final views on the candidates it may, where appropriate, draw attention to aspects of the national selection procedure. In recent times, the panel has referred to procedural issues more frequently in its opinions transmitted to governments, including in its written opinions sent to the Secretary General of the Assembly. The panel's views on the selection procedures are extremely useful, since they help the committee in its own assessment of these procedures. The panel has the opportunity to clarify issues and put questions to the governments concerned at an earlier stage, before the list is submitted to the Assembly. For these reasons, I suggest that we include in the draft recommendation a proposal to revise the Committee of Ministers' resolution on the panel, giving the panel an explicit mandate to advise governments on national selection procedures. During the seminar marking the 15th anniversary of the panel, one of its members raised the possibility of going even further by giving the panel the power to sit on national selection bodies as observers. I think that this requires careful consideration, particularly with regard to the budgetary and practical issues involved.

54. In the meantime, the committee will continue to explore ways to enhance its co-operation with the panel, including through more effective and timely ways to share information and avoid misunderstandings.

6. Conclusions

55. The authority and legitimacy of the Court depend on the quality and independence of its judges. At a time when the Court is being criticised for certain aspects of its case law, including from top politicians, and when the Convention system and the international legal order are facing new and unprecedented challenges, it is crucial that all stakeholders, including the governments, assisted by the Advisory Panel and the Assembly, ensure that the judges elected to the Court are of the highest calibre, through the best possible national selection procedures and a rigorous and consistent election process in the Assembly. This is central to the continuing success of the Convention system, which has a history spanning 75 years, and to which member

58. See Rule 29 of the Rules of Court.
59. A possibility to accelerate things would be an agreement on the provisional application of the amending Protocol (see for instance the Madrid agreement of 2009 on the provisional application of certain provisions of Protocol No. 14 pending its entry into force).
60. Resolution 1764 (2010).

States recommitted only three years ago at the Reykjavik Summit. Critics of the Court should be reminded that its judges are elected democratically by a political body composed of members of national parliaments. The Court's democratic legitimacy derives from the fact that its judges are elected by a body that reflects the prevailing political trends across member States. That is why opposing the Court and its supposedly far-reaching interpretation of the Convention, and democratic governments and parliaments, is not justified. The system is based on the principles of subsidiarity and shared responsibility, as well as the democratic legitimacy given to the Court by the Assembly.

56. The procedure leading up to the election of the judges of the Court must be beyond reproach, both at the level of national selection procedures and of the Assembly. This is important for the credibility of the Court as well as for attracting the interest of candidates with the requisite high level of professional qualifications and experience. In order to attract candidates of the highest calibre, it is necessary to ensure that they are in a position to have confidence in the quality, consistency and fairness of the selection process at national level and the election process at the Council of Europe level. Considerable improvements have been made over the past decades at both levels, including through new tools created by the Committee of Ministers (guidelines of the Committee of Ministers, Advisory Panel) and the consolidation and strengthening of the election procedure in the Assembly, including the procedure before the Committee on the Election of Judges.

57. However, there is always room for improvement. Following in-depth discussions on possible reforms with various stakeholders and within the committee, I propose certain changes to the rules and procedures, as well as proposals and recommendations directed at different stakeholders, including the States Parties, the Committee of Ministers, the Advisory Panel and the Court. These are reflected in the draft resolution and draft recommendation. The main changes and proposals are as follows:

– the codification of examples of good practice in recent national selection procedures that could help States Parties to improve the fairness and transparency of their own procedures;

– the invitation addressed to the Committee of Ministers to consider revising its guidelines to include these examples as best practice with a view to refining the requirements;

– the reference to the knowledge of the national legal system and the experience in the field of human rights as qualities that the Assembly will take into account when assessing candidates;

– the recommendation addressed to the Committee of Ministers to supplement and develop its January 2025 Declaration on the protection of judges of the Court from threats and reprisals and on the recognition of their service with a more robust text, namely with a recommendation based on good practice;

– the proposal to amend the Convention in order to prevent the lengthy extension of the mandate of a sitting judge beyond the term of office, and to limit it to one year after the end of the nine-year term in case he or she has not yet been replaced (total of ten years);

– the proposal to give the panel an explicit mandate to advise governments on national selection procedures;

– the chairperson of the Committee on the Election of Judges should have the right to speak in the debate on the progress report of the Bureau and Standing Committee, to present the committee's recommendations when necessary;

– the election procedure should be interrupted if one of the three candidates withdraws only if the withdrawal takes place before the committee's recommendation is made public, not after;

– the invitations addressed to the panel and the Court to maintain and enhance their dialogue and co-operation with the committee.

Appendix – Comparative table on national procedures for the selection of candidates to the post of judge at the European Court of Human Rights

Link to the table: Comparative table on national procedures for the selection of candidates to the post of judge at the European Court of Human Rights