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## **Sub-Committee on the election of Judges to the European Court of Human Rights**

*Committee on Legal Affairs and Human Rights*

## **Procedure for electing judges to the European Court of Human Rights**

### **Information document prepared by the Secretariat**

#### **Introduction**

1. According to [Protocol No 11](#) to the [European Convention on Human Rights](#) (hereinafter "ECHR"), in force since 1 November 1998, the European Court of Human Rights operates on a permanent basis and is made up of full-time professional judges permanently resident in Strasbourg. The number of judges is equal to that of High Contracting Parties. Amending Protocol No.14 to the Convention, which will enter into force on 1 June 2010, does not change these provisions. It does, however, institute a single term of office of nine years for judges elected to the Court and sets out transitional provisions for the *ipso jure* extension of the term of office of sitting judges at the time the Protocol enters into force.

#### **Criteria for office**

2. Article 21, paragraph 1, of the ECHR stipulates:

*"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".*

#### **Procedure for electing judges**

3. According to Article 22 of the ECHR<sup>1</sup>:

*"The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party".*

4. Article 23, paragraphs 1 to 3<sup>2</sup>, stipulates:

*"1. The judges shall be elected for a period of nine years. They may not be re-elected.*

*2. The terms of office of judges shall expire when they reach the age of 70.*

*3. The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration."*

<sup>1</sup> As amended by Protocol No.14 to the Convention (entry into force on 01.06.2010).

<sup>2</sup> As amended by Protocol No.14 to the Convention (entry into force on 01.06.2010).

## Steps taken by the Parliamentary Assembly to improve the procedure for examining candidatures for the election of judges to the European Court of Human Rights

5. The Assembly decided to improve its own procedure for choosing between the three candidates nominated by each Contracting Party. To this end, it adopted a number of texts: [Resolution 1082 \(1996\)](#) and [Recommendation 1295 \(1996\)](#) in April 1996, [Resolution 1200 \(1999\)](#) in September 1999, and, more recently, [Resolution 1646 \(2009\)](#) in January 2009.

6. The Assembly is of the view that information provided by candidates should be presented on broadly similar lines to facilitate comparison between the candidates. For that reason a standard *curriculum vitae* is sent out (see appendix to Resolution 1646 (2009), also appended to the present document). The Assembly also invites candidates to participate in a series of personal interviews. The Committee on Legal Affairs and Human Rights has a special Sub-Committee to conduct such interviews.<sup>3</sup>

7. In its [Recommendation 1429 \(1999\)](#), the Assembly made proposals for nominating candidates at national level, recently reiterated in [Resolution 1646 \(2009\)](#).<sup>4</sup> By its [Order 558 \(1999\)](#), it instructed its Sub-Committee on the election of judges “to make sure that in future elections to the Court member states apply the criteria which it has drawn up for the establishment of lists of candidates, and in particular the presence of candidates of both sexes”.

8. In January 2004, the Assembly adopted [Resolution 1366 \(2004\)](#) and [Recommendation 1649 \(2004\)](#). In these texts, it confirmed the necessity to keep the procedure of selection which had been set up. It also emphasised the need to receive candidates all having the required level to exercise the function of judge as well as the need for gender balance. It decided not to consider lists of candidates not fulfilling those criteria. Resolution 1366 (2004) was subsequently modified by [Resolution 1426 \(2005\)](#) and [Resolution 1627 \(2008\)](#) by which single-sex lists of candidates would only be considered if the sex is under-represented (under 40 % of judges) or if exceptional circumstances exist to derogate from this rule.<sup>5</sup>

## Requirements for submission of lists of candidates for the office of judge

9. Paragraph 4 of Assembly Resolution 1646 (2009) specifies:

*“[...] the Assembly recalls that in addition to the criteria specified in Article 21 § 1 of the Convention, as well as the gender requirement, states should, when selecting and subsequently nominating candidates to the Court, comply with the following requirements:*

*4.1. issue public and open calls for candidatures;*

*4.2. when submitting the names of candidates to the Assembly, describe the manner in which they had been selected;*

*4.3. transmit the names of candidates to the Assembly in alphabetical order;*

*4.4. candidates should possess an active knowledge of one and a passive knowledge of the other official language of the Council of Europe (see model curriculum vitae appended hereto<sup>6</sup>), and*

<sup>3</sup> This used to be an *ad hoc* sub-committee until October 2007. It is now a permanent sub-committee: see footnote to Rule 47.6 in *Rules of Procedure of the Assembly*, Strasbourg 2010, p. 64.

<sup>4</sup> The last two sentences of paragraph 2, in [Resolution 1646 \(2009\)](#), specify “In the absence of a real choice among the candidates submitted by a State Party to the Convention, the Assembly shall reject lists submitted to it. In addition, in the absence of a fair, transparent and consistent national selection procedure, the Assembly may reject such lists”.

<sup>5</sup> In [Resolution 1627 \(2008\)](#) such “exceptional circumstances” are defined as being “where a Contracting Party has taken all the necessary and appropriate steps to ensure that the list contains a candidate of the under-represented sex, but has not been able to find a candidate of that sex who satisfies the requirements of Article 21 § 1 of the European Convention on Human Rights” (paragraph 4). See also, in this connection, paragraph 13 below.

<sup>6</sup> The text of the model *curriculum vitae* is appended to the present document.

4.5. *that, if possible, no candidate should be submitted whose election might result in the necessity to appoint an ad hoc judge.*"

10. This text consolidates and reinforces the recommendations made to states in 2004 when governments were asked to ensure, *inter alia* "that a call for candidatures has been issued through the specialised press" and that "every list contains candidates of both sexes"<sup>7</sup> (paragraph 19 of Assembly Recommendation 1649 (2004)). Resolution 1646 (2009) is based on a report which emphasises the need for more fairness and transparency in national selection procedures, the need for candidates to possess a number of years of relevant (judicial) work experience and a knowledge of both working languages of the Council of Europe.<sup>8</sup>

### Results of the interviews

11. The Sub-Committee considers the candidates not only as individuals but also with an eye to a harmonious composition of the Court, taking into account, for example, their professional backgrounds and a gender balance. It formulates a recommendation to the Bureau of the Assembly, which the Bureau forwards to the Assembly members and may decide to declassify (make public).

### Election by the Assembly

12. On the basis of the candidatures transmitted to it, the Assembly elects the judges to the European Court of Human Rights during its part-sessions.<sup>9</sup> The candidate having obtained an absolute majority of votes cast is declared elected a member of the Court. If no candidate obtains an absolute majority, a second ballot is held, after which the candidate who has obtained a relative majority of votes cast is declared elected. Election results are publicly announced by the President of the Assembly during the part-session.

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<sup>7</sup> See, in this connection, [Resolution 1366 \(2004\)](#) as modified by [Resolutions 1426 \(2005\)](#) and [1627 \(2008\)](#) concerning single-sex lists if the sex is under represented (as explained in paragraph 8, above). Paragraph 4.vi of this Resolution reads "that one of the criteria used by the sub-committee should be that, in case of equal merit, preference should be given to a candidate of the sex under-represented". See also, in this connection, paragraph 49 of the Explanatory Report to Protocol No 14 to the ECHR which reads: "It was decided not to amend the first paragraph of Article 22 to prescribe that the lists of three candidates nominated by the High Contracting Parties should contain candidates of both sexes, since that might have interfered with the primary consideration to be given to the merits of potential candidates. However, Parties should do everything possible to ensure that their lists contain both male and female candidates".

<sup>8</sup> See PACE [Doc. 11767](#) of 01.12.2008, report of the Committee on Legal Affairs and Human Rights, Rapporteur Mr Chope, *passim*.

<sup>9</sup> Modalities for the election procedure can be found in the Appendix to [Resolution 1432 \(2005\)](#), reproduced in Rules of Procedure of the Assembly, Strasbourg 2010, at p. 156.

## Timetable envisaged for elections in 2010-2011

### Election foreseen in April 2010

**Ukraine**

Seat vacant

### Election foreseen in June 2010

The term of office of the judge elected in respect of Germany expires on **30 December 2010**:

**Germany**

Ms Renate JAEGER<sup>10</sup>

### Elections foreseen in October 2010

The term of office of the judge elected in respect of Portugal expires on **5 February 2011**:

**Portugal**

Mr Ireneu CABRAL BARRETO<sup>11</sup>

The term of office of the judge elected in respect of Greece expires on **17 May 2011**:

**Greece**

Mr Christos ROZAKIS<sup>12</sup>

### Elections foreseen in April 2011

The term of office of the judge elected in respect of Switzerland expires on **3 October 2011**:

**Switzerland**

Mr Giorgio MALINVERNI<sup>13</sup>

The term of office of the judge elected in respect of France expires on **3 November 2011**:

**France**

Mr Jean-Paul COSTA<sup>14</sup>

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13. The term of office of the judge elected in respect of Malta (Mr Giovanni BONELLO, who reached the age of 70 on 11 June 2006) expired on 31 October 2004. The Maltese authorities were asked to forward a new list of three candidates subsequent to the rejection, by the Assembly, of the list submitted to it in September 2006. In July 2007, at the request of the Maltese Government, the Committee of Ministers asked the European Court of Human Rights for an Advisory Opinion on certain legal questions concerning single-sex lists of candidates submitted to the Assembly. The Court delivered its [Opinion](#) on 12 February 2008. The Assembly, in October 2008, adopted Resolution 1627 (2008) introducing an amendment to its Resolution 1366 (2004).<sup>15</sup> The list was subsequently rejected by the Assembly. It is understood that a new list will soon be submitted by the Maltese authorities.

<sup>10</sup> Judge to reach the age of 70 on 30.12.2010.

<sup>11</sup> Judge to reach the age of 70 on 05.02.2011.

<sup>12</sup> Judge to reach the age of 70 on 17.05.2011.

<sup>13</sup> Judge to reach the age of 70 on 03.10.2011.

<sup>14</sup> Judge to reach the age of 70 on 03.11.2011.

<sup>15</sup> As explained in paragraph 8 above. See also, in this connection, PACE [Resolution 1627 \(2008\)](#) of 30.09.2008 and PACE [Doc. 11682](#) of 04.072008.

## APPENDIX I

### Model curriculum vitae for candidates seeking election to the European Court of Human Rights<sup>1</sup>

In order to ensure that the members of the Parliamentary Assembly of the Council of Europe have comparable information at their disposal when electing judges to the European Court of Human Rights, candidates are invited to submit a short curriculum vitae on the following lines:

#### I. *Personal details*

Name, forename

Sex

Date and place of birth

Nationality/ies

#### II. *Education and academic and other qualifications*

#### III. *Relevant professional activities*

a. Description of judicial activities

b. Description of non-judicial legal activities

c. Description of non-legal professional activities

(Please underline the post(s) held at present)

#### IV. *Activities and experience in the field of human rights*

#### V. *Public activities*

a. Public office

b. Elected posts

c. Posts held in a political party or movement

(Please underline the post(s) held at present)

#### VI. *Other activities*

a. Field

b. Duration

c. Functions

(Please underline your current activities)

#### VII. *Publications and other works*

(You may indicate the total number of books and articles published, but mention only the most important titles (maximum 10))

#### VIII. *Languages*

(Requirement: an active knowledge of one of the official languages of the Council of Europe and a passive knowledge of the other)

Language	Reading			Writing			Speaking		
	very good	good	fair	very good	good	fair	very good	good	fair
a. First language: ..... (Please specify)	..	..	..	..	..	..	..	..	..
b. Official languages:									
– English	..	..	..	..	..	..	..	..	..
– French	..	..	..	..	..	..	..	..	..
c. Other languages:									
.....	..	..	..	..	..	..	..	..	..
.....	..	..	..	..	..	..	..	..	..
.....	..	..	..	..	..	..	..	..	..

<sup>1</sup> This text is taken from the Appendix to Parliamentary Assembly [Resolution 1646 \(2009\)](#). Also available on the Parliamentary Assembly website: <http://assembly.coe.int/CommitteeDocs/2009/ModelCVEN.doc>.

***IX. In the event that you do not meet the level of language proficiency required for the post of judge in an official language, please confirm your intention to follow intensive language classes of the language concerned prior to, and if need be also at the beginning of, your term of duty if elected a judge on the Court.***

***X. Other relevant information***

***XI. Please confirm that you will take up permanent residence in Strasbourg if elected a judge on the Court.***

## APPENDIX II

### End of judges' terms of office upon entry into force of Protocol No 14 to the ECHR<sup>1</sup>

<b>30 December 2010</b>	Judge elected in respect of Germany (age limit reached)
<b>5 February 2011</b>	Judge elected in respect of Portugal (age limit reached)
<b>17 May 2011</b>	Judge elected in respect of Greece (age limit reached)
<b>3 October 2011</b>	Judge elected in respect of Switzerland (age limit reached)
<b>3 November 2011</b>	Judge elected in respect of France (age limit reached)
<b>12 September 2012</b>	Judge elected in respect of Belgium (age limit reached)
<b>31 October 2012</b>	Judges elected in respect of Croatia, Czech Republic, Estonia, Poland, Russian Federation, Sweden, United Kingdom
<b>18 May 2013</b>	Judge elected in respect of Bosnia and Herzegovina
<b>31 October 2013</b>	Judges elected in respect of Iceland, Lithuania, Netherlands, Norway, Slovak Republic
<b>16 December 2013</b>	Judge elected in respect of Romania (age limit reached)
<b>3 April 2014</b>	Judge elected in respect of Serbia
<b>20 May 2014</b>	Judge elected in respect of Denmark (age limit reached)
<b>31 August 2015</b>	Judge elected in respect of Liechtenstein
<b>10 September 2015</b>	Judge elected in respect of Monaco
<b>16 September 2015</b>	Judge elected in respect of Cyprus (age limit reached)
<b>31 October 2015</b>	Judges elected in respect of Andorra, Armenia, Austria, Azerbaijan, Latvia, Luxembourg, Slovenia
<b>31 December 2016</b>	Judge elected in respect of Finland
<b>31 January 2017</b>	Judges elected in respect of Albania, Georgia, Hungary, Spain, "the former Yugoslav Republic of Macedonia"
<b>2 March 2017</b>	Judge elected in respect of Ireland
<b>30 April 2017</b>	Judges elected in respect of Bulgaria, Moldova, Turkey
<b>26 August 2017</b>	Judge elected in respect of Montenegro
<b>20 September 2018</b>	Judge elected in respect of San Marino
<b>24 March 2019</b>	Judge elected in respect of Italy

<sup>1</sup> Judges in respect of Malta and Ukraine are still to be elected. With respect to the latter see Assembly [Resolution 1674 \(2009\)](#) and [Recommendation 1875 \(2009\)](#) on the reconsideration on substantive grounds of previously ratified credentials of the Ukrainian delegation (Rule 9 of the Assembly's Rules of Procedure), of 23.06.2009, and the [Advisory Opinion](#) delivered by the European Court of Human Rights on this subject on 22.01.2010.