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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.

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:

"1. 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.

2. The same procedure shall be followed to complete the Court in the event of the accession of new High Contracting Parties and in filling casual vacancies".

4. Article 23, paragraph 1, stipulates: *"The judges shall be elected for a period of six years. They may be re-elected. However, the terms of office of one-half of the judges elected at the first election shall expire at the end of three years".*

5. Article 23, paragraph 5, stipulates: *"A judge elected to replace a judge whose term of office has not expired shall hold office for the remainder of his predecessor's term".*

6. Article 23, paragraphs 6 and 7 stipulate: “*The terms of office of judges shall expire when they reach the age of 70*” and “*The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration*”.

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

7. The Assembly decided to improve its own procedure for choosing between the three candidates nominated by each Contracting Party. To this end, it adopted [Resolution 1082 \(1996\)](#) and [Recommendation 1295 \(1996\)](#) in April 1996 and [Resolution 1200 \(1999\)](#) in September 1999.

8. In these texts, the Assembly expressed the view that it would be useful if the information to be provided by the candidates were presented on broadly similar lines to facilitate comparison between the candidates. For that reason a standard *curriculum vitae* was sent out (see appendix I to Resolution 1200 (1999)). The Assembly also decided to ask candidates to participate in a series of personal interviews. The Committee on Legal Affairs and Human Rights established a special Sub-Committee to conduct the interviews.¹

9. The Assembly confirmed the system of interviews in its Resolution 1200 (1999) on the election of judges to the European Court of Human Rights. In its [Recommendation 1429 \(1999\)](#) it made proposals for nominating candidates at national level. 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*”.

10. 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. Resolution 1366 (2004) was subsequently modified by [Resolutions 1426 \(2005\)](#) and [1627 \(2008\)](#) by which single-sex lists of candidates would only be considered if the sex is under-represented (under 40 % of judges) and if exceptional circumstances exist to derogate from this rule.² It decided not to consider lists of candidates not fulfilling those criteria.

Criteria recommended for submission of lists of candidates for the office of judge

11. Paragraph 19 of Assembly Recommendation 1649 (2004) specifies:

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

- i. that a call for candidatures has been issued through the specialised press;*
- ii. that candidates have experience in the field of human rights;*
- iii. that every list contains candidates of both sexes³;*

¹ This was an *ad hoc* sub-committee until October 2007. It is now a permanent sub-committee: see footnote to Rule 48.6 in [Rules of Procedure of the Assembly](#), Strasbourg 2008, p.72.

² 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 26, below.

³ 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 § 10, above). Paragraph 5, 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*”.

- iv. *that the candidates have a sufficient knowledge of at least one of the two official languages;*
- v. *that the names of the candidates are placed in alphabetical order;*
- vi. *that as far as possible no candidate should be submitted whose election might result in the necessity to appoint an ad hoc judge”.*

12. A report has recently been drawn up within the Committee on Legal Affairs and Human Rights on “Nomination of candidates and election of judges to the European Court of Human Rights” which may lead to some amendments and additions to these criteria in the near future⁴

Results of the interviews

13. 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

14. On the basis of the candidatures transmitted to it, the Assembly elects the judges to the European Court of Human Rights during its part-sessions⁵. The candidate having obtained an absolute majority of votes cast is declared elected a member of the Court. If no candidate has obtained 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.

Partial renewal of the Court

15. Article 23 of the ECHR specifies that, in so far as possible, the terms of office of one-half of the judges are renewed every three years. In fixing the terms of office in the present (re)election process, the Assembly has taken account of the provision, in Protocol No. 14 to the ECHR, which provides for a single term of office of nine years (see also paragraph 27, below).

Timetable envisaged for future elections, pending entry into force of Protocol No. 14 ECHR

Election foreseen in January 2009

16. For judge in respect of San Marino (term in office expires on **31 October 2013**):
- | | |
|------------|---------------------------------|
| San Marino | <i>seat vacant</i> ⁶ |
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Election foreseen in October 2009

17. For judge in respect of Italy, when the incumbent's term in office expires on **25 March 2010**:
- | | |
|-------|---------------------------------------|
| Italy | Mr Vladimiro ZAGREBELSKY ⁷ |
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⁴ PACE [Doc. 11767](#) of 01.12.2008.

⁵ Modalities for the election procedure can be found in the Appendix to Resolution 1432 (2005), reproduced in [Rules of Procedure of the Assembly](#), Strasbourg 2008, at p.160.

⁶ Judge Mularoni has recently left the Court. Resignation took effect on 1 October 2008.

⁷ Judge to reach the age of 70 on 25.03.2010.

Elections foreseen in April 2010

18. The judges whose term of office expire on **31 October 2010** are the following:

Belgium	Ms Françoise TULKENS
Bosnia and Herzegovina	Ms Ljiljana MIJOVIĆ
Croatia	Ms Nina VAJIĆ
Czech Republic	Mr Karel JUNGWIERT
Estonia	Mr Rait MARUSTE
Finland	Mrs Päivi HIRVELÄ
France	Mr Jean-Paul COSTA
Germany	Ms Renate JAEGER
Greece	Mr Christos ROZAKIS
Iceland	Mr David Thór BJÖRGVINSSON
Ireland	Mrs Ann POWER
Lithuania	Ms Danuté JOČIENE
Netherlands	Mr Egbert MYJER
Norway	Mr Sverre JEBENS
Poland	Mr Lech GARLICKI
Portugal	Mr Ireneu CABRAL BARRETO
Russian Federation	Mr Anatoly KOVLER
Serbia	Mr Dragoljub POPOVIC
Slovak Republic	Mr Ján ŠIKUTA
Sweden	Ms Elisabet FURA-SANDSTRÖM
United Kingdom	Sir Nicolas BRATZA

Election foreseen in April 2011

19. For judge in respect of Switzerland, when the incumbent's term of office expires on **3 October 2011**:

Switzerland	Mr Giorgio MALINVERNI ⁸
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Election foreseen in January 2012

20. For judge in respect of Monaco, when the incumbent's term of office expires on **26 June 2012**:

Monaco	Mrs Isabelle BERRO-LEFÈVRE
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Election foreseen in April 2012

21. For judge in respect of Liechtenstein, when the incumbent's term of office expires on **31 August 2012**:

Liechtenstein	Mr Mark VILLIGER
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Elections foreseen in April 2013

22. The judges whose term of office expires on **31 October 2013** are the following:

Andorra	Mr Josep CASADEVALL MEDRANO
Armenia	Ms Alvina GYULUMYAN
Austria	Ms Elisabeth STEINER
Azerbaijan	Mr Khanlar HAJIYEV
Denmark	Mr Peer LORENZEN
Latvia	Mrs Ineta ZIEMELE
Luxembourg	Mr Dean SPIELMANN
Romania	Mr Corneliu BÎRSAN

⁸ Judge to reach the age of 70 on 3.10.2011.

Slovenia
Ukraine

Mr Boštjan ZUPANČIČ
*seat vacant*⁹

Elections foreseen in June 2013

23. The judges whose term of office expires on **31 January 2014** are the following:

Albania	Mr Ledi BIANKU
Cyprus	Mr George NICOLAOU
Georgia	Mrs Nona TSOTSORIA
Hungary	Mr András SAJÓ
Spain	Mr Luis LÓPEZ GUERRA
"the former Yugoslav Republic of Macedonia"	Mrs Mirjana LAZAROVA TRAJKOVSKA

Elections foreseen in October 2013

24. For judge in respect of Montenegro, when the incumbent's term of office expires on **14 April 2014**:

Montenegro	Mr Nebojša VUČINIĆ
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25. The judges whose term of office expires on **30 April 2014** are the following:

Bulgaria	Mrs Zdravka Vladimirova KALAYDJIEVA
Moldova	Mr Mihail POALELUNGI
Turkey	Mrs Ayşe Işıl KARAKAS

26. 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).¹⁰ Subsequently, the Maltese authorities were asked to forward a list of candidates to the Assembly.

27. Protocol No 14 to the Convention, opened for signature on 13 May 2004, establishes a single (non-renewable) term of office for judges of nine years. It has not yet entered into force. To date, it has been ratified by 46 States Parties and signed by one (the Russian Federation). This Protocol contains transitional provisions concerning the term of office of judges serving on the Court on the date of entry into force of the Protocol. According to Article 21 of the Protocol, the term of office of judges serving their first term of office on the date of entry into force of the Protocol shall be extended *ipso jure* so as to amount to a total period of nine years. The other judges shall complete their term of office, which shall be extended *ipso jure* by two years.

⁹ The election process has not yet been completed with respect to Ukraine.

¹⁰ As explained in § 10, above. See also, in this connection, PACE [Resolution 1627 \(2008\)](#), of 30.09.2008 and PACE Doc. [11682](#) of 4 July 2008.