



Strasbourg, 14 September 2011

CDDH-SC(2011)R1

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

AD HOC WORKING GROUP ON NATIONAL PRACTICES FOR
THE SELECTION OF CANDIDATES FOR THE POST OF
JUDGE AT THE EUROPEAN COURT OF HUMAN RIGHTS
(CDDH-SC)

REPORT

1st meeting

7 – 9 September 2011

Item 1: Opening of the meeting, adoption of the agenda and order of business

1. The Ad hoc Working Group on national procedures for the selection of candidates for the post of judge at the European Court of Human Rights (CDDH-SC) held its first meeting in Strasbourg from 7-9 September 2011 with Mrs Isabelle NIEDLISPACHER (Belgium) in the chair. The list of participants appears at Appendix I. The agenda, as adopted, appears at Appendix II.

Item 2: Election of a Vice-chairperson

2. The Working Group elected Mr Rob LINHAM (United Kingdom) as its Vice-chairperson.

Item 3: Terms of reference, expected results and working methods

3. The Working Group examined its terms of reference and exchanged views on the results it expected to achieve and the best working methods for achieving them. It agreed that some preliminary identification of standards was necessary in order to be able to determine whether specific national practices could be considered good. It also agreed that, whilst a compendium of best practices was undoubtedly of interest, it may not be the most effective means of achieving a real impact. For this, a non-binding instrument of the Committee of Ministers, codifying and clarifying existing norms and standards, would be a more valuable result. It noted, however, that such a result went beyond its existing terms of reference.

4. In pursuit of its terms of reference, therefore, the Group proceeded to elaborate a document consisting of three parts, the first relating to the criteria for composing lists of candidates, the second to the features of a procedure that would be fair, transparent and consistent and the third to the question of how to attract potentially suitable applicants.

Item 4: Examination of existing national practices and identification of best practices

5. In accordance with the approach described above, the Group examined existing national practices, as revealed in the responses given to the questionnaire and information provided during the meeting, and identified the best from amongst them.¹

6. The Group heard from Mr John DARCY of the Registry, who explained that typically around two-thirds of documents before Chambers were in English only and one-

¹ It being noted that not all member States responded to the questionnaire.

third in French only; judges must therefore be able to read and assimilate technical, complex and nuanced texts in both languages. They must also be able to work effectively with more experienced colleagues and be operative as judge rapporteurs. The language proficiency was clearly important to the credibility of the Court from the point of view of other courts, lawyers, applicants and the general public. Each new judge should therefore have sufficient linguistic proficiency to be able to participate fully in the Court's activities either immediately or very soon, after a short period of training in the weaker language.

7. The results of the Group's work can be found at Appendix III.

Item 5: Exchange of views with the Secretary of the Advisory Panel of Experts on candidates for election as judge to the European Court of Human Rights

8. The Working Group held an exchange of views with Mr Manuel LEZERTUA, Secretary of the Advisory Panel of Experts on candidates for election as judge to the European Court of Human Rights. Recalling the provision of Resolution CM/Res(2010)26 on the establishment of the panel, he described its mandate, composition, operation and working methods. He noted that although its procedure was in principle written, the Panel had so far held two familiarization/ preparatory meetings, in addition to having examined two lists of candidates.

9. Mr LEZERTUA underlined notably the confidential nature of the Panel's work and the particularly short deadlines to which the procedure is subject. The Panel considered that the deadline for its work was not triggered until all documents had been submitted in the correct form, which, for candidates' CVs, it took to mean in the form prescribed by the Parliamentary Assembly, and for the same reason of ensuring comparability. It had also adopted the practice of requesting the initial documents from High Contracting Parties at least six weeks before the date set by the Assembly for submission of the list of candidates to the Assembly, so as to ensure that any advice could be made available in good time.

10. The mandate set by the aforementioned Resolution limited the examination of candidatures by reference to the criteria set by Article 21(1) of the Convention. The Panel was developing an approach aimed at refining the application of these criteria to candidates.

11. In addition to the initial documents and any subsequent additional information or clarification received from a High Contracting Party, the Panel considered that it had the possibility of gathering information on candidates also from other sources.

12. The Panel was not directly concerned by national selection procedures: it would be reassured by a sound procedure at national level but this by itself would not be sufficient; the Panel would expect both the procedure to be sound and all candidates on

the list to be suitable. It would also expect that the same list of candidates be presented to the Assembly as had been examined by itself.

13. The Panel had recently written to the High Contracting Parties, aiming particularly at those with respect to which elections of judges were imminent, reminding them of its existence and informing them of its working methods. It had also decided to publish an annual report containing statistics, including how many candidates had been considered unsuitable and for which reasons, although without naming them or the relevant States.

Item 6: Possible proposals for optimising national selection procedures

14. On the basis of its discussion of working methods and expected results, the Working Group decided to propose to the CDDH that it be given terms of reference to meet with a view to preparing a draft non-binding Committee of Ministers' instrument, codifying and clarifying existing norms and standards and accompanied by an explanatory report and guide to good practice. It recalled that the preparatory work for pursuing such terms of reference had already, in effect, been accomplished at its present meeting. Should such terms of reference be given, the Group recalled the urgency of the matter, given the imminence of a considerable number of elections. For this reason, the Group expressed the wish to hold any further meeting at the very earliest opportunity.

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Appendix I**List of participants / Liste de participants****ALBANIA / ALBANIE**

Mr Oltion Toro, State Advocate, State Advocature, Ministry of Justice

ARMENIA / ARMENIE

Ms Varduhi MELIKYAN, Deputy to the Permanent Representative, Permanent Representation of Armenia to the Council of Europe, 40, allée de la Robertsau, 67000 Strasbourg

BELGIUM / BELGIQUE

Mme Isabelle NIEDLISPACHER, **Chairperson of the CDDH-SC / Président du CDDH-SC**
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CROATIA / CROATIE

Ms Silvana KUSTEC, Head of Department for mutual cooperation, Ministry of Justice

Ms Štefica STAŽNIK, Ministry of Justice of the Republic of Croatia, Government Agent before the ECHR and other European Courts
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DENMARK / DANEMARK

Mr Anders AAGAARD, Head of Section, The Danish Ministry of Justice, EU Law and Human Rights Division, Slotsholmsgade 10, DK-1216 Copenhagen K

ESTONIA / ESTONIE

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FINLAND / FINLANDE

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GERMANY / ALLEMAGNE

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GREECE / GRECE

Mme Kyriaki PARASKEVOPOULOU, membre du Conseil Juridique de l'État, affectée au service juridique du Ministère des affaires étrangères, 3, rue Akadimias, T.K. 10671 Athènes

ICELAND / ISLANDE

Excused / excusé

IRELAND / IRLANDE

Mr Peter WHITE, Assistant legal advisor, Department of Foreign Affairs and Trade, Legal Division, 80 St Stephen's Green, Dublin 2

LATVIA / LETTONIE

Ms Inga REINE, Representative of the Government before International Human Rights Organisations, Ministry of Foreign Affairs, Brivibas blvd, 36, Riga LV1395

LUXEMBURG / LUXEMBOURG

Ms Anne KAYSER-ATTUIL, Deputy to the Permanent Representative, Permanent Representation of Luxemburg to the Council of Europe, 65, allée de la Robertsau, 67000 Strasbourg

MOLDOVA

Mr Lilian APOSTOL, Head of Government Agent's Division, Ministry of Justice of Moldova, 82, 31 August str. 2012 Chisinau

THE NETHERLANDS / PAYS-BAS

Ms Joyce DREESSEN, Human rights advisor, Ministry of Security and Justice, Schedeldoekshaven 100, 2511 EX Den Haag

Ms Liselot EGMOND, Deputy Government Agent, Ministry of Foreign Affairs, PO Box 20061, The Hague NL-2500

POLAND / POLOGNE

Mr Jakub WOLASIEWICZ, Government Agent, Ministry of Foreign Affairs, Warsaw 00580

PORTUGAL / PORTUGAL

Excused / excuse

ROMANIA / ROUMANIE

Mr Dragos DUMITRACHE, Deputy to the Permanent Representative, Permanent Representation of Romania to the Council of Europe, 64, allée de la Robertsau, 67000 Strasbourg

RUSSIAN FEDERATION / FEDERATION DE RUSSIE

Mr Dmitry SHISHKIN, Legal referent, Office of the Russian Representative at the ECHR, 119991 Moscow, Zhitnaya 14,

SERBIA / SERBIE

Mr Slavoljub CARIC, Agent of the Republic of Serbia before the ECHR, Government of the Republic of Serbia, Office for Human and Minority Rights, Bulevar Mihajla Pupina 2, Novi Beograd, 11070

SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE

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SWITZERLAND / SUISSE

Mr Adrian SCHIEDEGGER, Agent suppléant du Gouvernement suisse devant la Cour européenne des droits de l'Homme et le CAT, Département fédéral de justice et police DFJP, Office fédéral de la justice OFJ, Représentation de la Suisse devant la Cour européenne des droits de l'Homme et le CAT, Bundesrain 20, CH-3003 Berne

UKRAINE

Mr Yevhen PERELYGIN, Head of the Department of European Integration, Administration of the President of Ukraine, 11, Bankova St., Kiev

UNITED KINGDOM / ROYAUME-UNI

Mr Rob LINHAM, **Vice-Chairperson of the CDDH-SC / Vice - Président du CDDH-SC**
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PARTICIPANTS**Parliamentary Assembly/Assemblée parlementaire**

Excused / excusé

Directorate of Legal Advice and Public International Law / Direction du Conseil Juridique et du droit international public

Mr Manuel LEZERTUA, Director / Directeur; Secretary of the Advisory Panel of Experts on candidates for election as judge to the European Court of Human Rights / Secrétaire du Panel consultatif d'experts sur les candidats à l'élection de juges à la Cour européenne des droits de l'homme

Mr Jörg NOBBE, Administrator / administrateur

Registry of the European Court of Human Rights / Greffe de la Cour européenne des droits de l'homme

Mr John DARCY, Conseiller du président et du greffier / adviser to the President and the Registrar, Private Office of the President, European Court of Human Rights, Cabinet du Président, Cour européenne des droits de l'Homme

Committee of legal advisers on public international law / Comité des Conseillers juridiques sur le Droit international public (CAHDI)

Ms Hélène FESTER, Administrator / administrateur, Public International Law and Anti-Terrorism Division

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SECRETARIAT

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Chef de la Division de la coopération intergouvernementale en matière de droits de l'Homme,
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Mr David MILNER, Administrator / Administrateur, Human Rights Intergovernmental
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l'Homme, Secretary of the CDDH-SC / Secrétaire du CDDH-SC

Mme Virginie FLORES, Lawyer / Juriste, Human Rights Intergovernmental Cooperation
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Mme Szilvia SIMOND Assistant / Assistante, Human Rights Intergovernmental Cooperation
Division / Division de la coopération intergouvernementale en matière de droits de l'Homme

INTERPRETERS/ INTERPRÈTES:

Mr Christopher TYZCKA

Ms Chloé CHENETIER

Ms Bettina LUDEWIG

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Appendix II

Agenda (as adopted)

Item 1: Opening of the meeting, adoption of the agenda and order of business

Background documents

- Draft Annotated Agenda of the 1st meeting of the CDDH-SC (9-11 March 2011) CDDH-SC(2011)OJ001
- Report of the 72nd meeting of the CDDH (29 March – 1 April 2011) CDDH(2011)R72

Item 2: Election of a Vice-chairperson

Background document

- Resolution Res(2005)47 on committees and subordinate bodies, their terms of reference and working methods [Resolution Res\(2005\)47](#)

Item 3: Terms of reference, expected results and working methods

Background documents

- Terms of reference of the Ad Hoc Working Group on national practices for the selection of candidates for the post of judge at the European Court of Human Rights (CDDH-SC) CDDH(2010)R72
Appendix V
- Interlaken Declaration (adopted at the High-level Conference on the Future of the European Court of Human Rights, Interlaken, Switzerland, 18-19 February 2010) CDDH(2010)001
- Izmir Declaration (adopted at the High-level Conference on the Future of the European Court of Human Rights, Izmir, Turkey, 26-27 April 2011)

Item 4: Examination of existing national practices and identification of best practices

Background documents

- Questionnaire on national practices for the selection of candidates for the post of judge at the Court CDDH-SC(2011)001
- Compilation of replies to the Questionnaire (prepared by the Secretariat) CDDH-SC(2011)002
REV.2
- Summary and preliminary analysis of the replies to the Questionnaire (prepared by the Secretariat) CDDH-SC(2011)003
REV.

- Parliamentary Assembly Recommendation on candidates for the European Court of Human Rights Rec1649(2004)
- Committee of Ministers' Reply to Recommendation 1649(2004) CM/AS(2005)Rec1649 final
- Parliamentary Assembly Resolution on candidates for the European Court of Human Rights Res1426(2005)
- Parliamentary Assembly Resolution on candidates for the European Court of Human Rights Res1627(2008)
- Parliamentary Assembly Resolution on the nomination of candidates and election of judges to the European Court of Human Rights Res1646(2009)
- Report on the nomination of candidates and election of judges to the European Court of Human Rights, Committee on Legal Affairs and Human Rights of the Parliamentary Assembly PACE doc. 11767

Item 5: Exchange of views with the Secretary of the Advisory Panel of Experts on candidates for election as judge to the European Court of Human Rights

Background document

- Committee of Ministers' Resolution on the establishment of an Advisory Panel of experts on candidates for election as judge to the European Court of Human Rights CM/Res(2010)26

Item 6: Possible proposals for optimising national selection procedures

Background documents

- Terms of reference of the Ad Hoc Working Group on national practices for the selection of candidates for the post of judge at the European Court of Human Rights (CDDH-SC) CDDH(2010)R72 Appendix V
- Interlaken Declaration (adopted at the High-level Conference on the Future of the European Court of Human Rights, Interlaken, Switzerland, 18-19 February 2010) CDDH(2010)001
- Izmir Declaration (adopted at the High-level Conference on the Future of the European Court of Human Rights, Izmir, Turkey, 26-27 April 2011)

Appendix III

PRELIMINARY SPECIFICATION OF STANDARDS AND IDENTIFICATION OF RELEVANT BEST PRACTICES

PART I – CRITERIA FOR INCLUSION OF CANDIDATES ON A LIST

The following criteria define the standards (some mandatory, others not) relevant to the selection of candidates² and composition of lists of candidates for the post of judge of the Court.

1. *Applicants are of high moral character.*

Source: Article 21 ECHR

Status: binding standard (treaty provision)

Meaning: an applicant's behaviour and personal status must be compatible with holding judicial office. A certain flexibility must be permitted in interpreting this criterion.

Examples of best practice: applicants are asked to declare whether anything they have said, written or done, should it be made public, would be capable of bringing the Court into disrepute (UK).

2. *Applicants possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.*

Source: Article 21 ECHR

Status: binding standard (treaty provision)

Meaning: candidates must be professionally competent to exercise the office of judge at the Court. This may be reflected in requirements for specific qualifications or a certain length of experience, possibly fixed. A certain flexibility must be permitted in interpreting this criterion.

Examples of best practice:

- applicants must have at least a Master's degree in law and practical experience in legal affairs (Estonia);
- applicants must show a high level of achievement and experience (Ireland);
- applicants must be either: [a legal expert at least 40 years old;]³ qualified to be a judge and have held judicial office for at least 15 years; qualified as a lawyer with at least 20 years' practice; or a university law lecturer elected as associate professor (Slovenia);
- candidates must meet the requirements for appointment to higher national courts or be of equivalent professional standing (UK).

² For the purposes of this document, "applicant" is taken to mean a person applying at national level to be a candidate for election as judge of the Court and "candidate" is taken to mean an applicant successful at national level whose candidature has been transmitted to the Parliamentary Assembly.

³ Several States have indicated that their domestic legal systems may have difficulty with imposition of a minimum age-limit for applicants.

3. *Applicants have knowledge of public international law and of the national legal systems.*

Source: Interlaken Declaration, para. 8.a.

Status: non-binding declaration of the States Parties

Meaning: although this criterion does not supersede Article 21 ECHR, a certain level of knowledge in these fields should be taken as an implicit requirement for applicants as judge at the Court and relative levels of knowledge could be taken into account when choosing between applicants of otherwise equal merits. Although the Court's composition benefits from a range of legal expertise, it is generally advantageous that applicants have expertise in human rights, notably the Convention and the Court's case-law.

Examples of best practice:

- applicants must have knowledge of public international law and of the national legal system (Albania);
- applicants must possess a good knowledge of national law and a solid training and practical experience in the field of European human rights protection (Monaco);
- applicants should in principle have judicial experience and a thorough knowledge of the ECHR (The Netherlands).

4. *Judges must be under 70 years of age when taking office.*

Source: Article 23 ECHR (implicit)

Status: binding standard (treaty provision)

Meaning: this implies as a minimum that successful applicants must be able to take office before their 70th birthday. Member States should nevertheless avoid proposing candidates who, in view of their age, would not be able to hold office for at least half the nine-year term before reaching the age of 70.⁴

Examples of best practice:

- between applicants of equal merit, preference would be given to the applicant who would be able to serve all or at least more of the term of office (The Netherlands);
- applicants who would be unable to serve a full term may be asked whether they feel they would nevertheless be able to make a significant contribution to the Court's activities (UK).

5. *Applicants must undertake to cease, should they be elected and for the duration of their term of office, to engage in any activity incompatible with their independence or impartiality or with the demands of a full-time office.*

Source: Article 21 ECHR (implicit)

Status: binding standard (treaty provision)

Meaning: although this criterion does not relate to the quality of an applicant, it is relevant to whether an applicant may qualify to fulfil the requirements to be a judge of the Court. It should be recalled that the Court is the final authority to determine whether or not the requirements of Article 21 are met.

Examples of best practice:

⁴ See the Explanatory Report to Protocol No. 14 ECHR, para. 53.

- applicants are asked to complete and sign a form including a provision stating that there are no obstacles to their taking office as judge at the Court (Russian Federation);
- applicants make a declaration accepting nomination as candidate, implying *inter alia* a willingness to cease any incompatible activities (Slovakia);
- applicants may be asked at interview whether they currently engage in any potentially incompatible activities and, if so, whether they would be willing to cease doing so should they be elected (UK).

6. *As an absolute minimum, applicants must be proficient in at least one official language of the Council of Europe (i.e. English or French). They should possess an active knowledge of one official language and a passive knowledge of the other.*

Source: first element: Interlaken Declaration para. 8.a.; second element: PACE Resolution 1646(2009)

Status: first element: non-binding declaration of the States Parties; second element: non-binding standard proposed by the Parliamentary Assembly

Meaning: the Court's working methods require that judges be able, without difficulty, to read and assimilate technical, complex, dense and nuanced documents in both official languages upon taking office. They must be able to direct and supervise the drafting of such documents in one of the official languages. Their language abilities must be such as to inspire confidence on the part of their colleagues, national judges, lawyers, applicants to the Court and the general public. Information on this requirement could be made public well in advance of the launching of the selection procedure, so as to allow the possibility to develop any required additional language skills in the meantime.⁵

Examples of best practice:

- applicants must have advanced proficiency in one official language and at least passive knowledge of the other (Estonia);
- applicants must have a good command of written and spoken English or French and, as a minimum, the ability to read and understand the other (Norway);
- applicants must be fluent in at least one official language; fluency in both is an advantage (Serbia).

7. *Should an applicant eventually be elected, this should not foreseeably result in a frequent need to appoint an ad hoc judge.*

Source: (Based upon) PACE Recommendation 1649(2004), which the CM has invited member States governments to make every effort to meet

Status: non-binding standard proposed by PACE & supported by CM

Meaning: (this criterion creates a serious dilemma between attracting the largest possible number of applicants, on the one hand, and not appointing judges who will be forced often to recuse themselves, on the other. This dilemma would have to be addressed at any future stage of work. There may also be other aspects, such as a successful candidate not being available to take office immediately upon the previous judge's departure, unless for legitimate reasons.)

Examples of best practice: n/a

⁵ Potential applicants may find it useful were the required level of language proficiency to be expressed by reference to the European Language Passport.

8. *Lists of candidates should as a general rule contain at least one candidate of each sex, unless the sex of the candidates on the list is under-represented (under 40% of judges) or if exceptional circumstances exist to derogate from this rule.*

Source: first element: CM reply to PACE Recommendation 1649(2004); second element: PACE Resolution 1426(2005); third element: PACE Resolution 1627(2008), adopted following the Court's Advisory Opinion No. 2 ⁶

Status: non-binding PACE-proposed standard (Recommendation-based element supported by CM)

Meaning: the Assembly's criterion sets the general rule that lists of candidates should contain persons of both sexes. There are two possible exceptions. The first exception arises if, when the list is presented, less than 40% of judges on the Court are of one sex, in which case the list of candidates may be composed only of persons of that sex. The second exception arises if there are exceptional circumstances which justify derogation from the general rule.

Examples of best practice:

- the selection is carried out respecting the principle of equity of genders (Albania);
- the call for applicants specifically mentions women (Belgium);
- the selection commission must produce a long list including both sexes: if there are two possible candidates for third place on the list, the candidate of the otherwise unrepresented sex is preferred. If there is no candidate of the sex under-represented (<40%) on the Court, the list is accompanied by a note explaining the procedure and reasons for a single-sex list (Czech Republic);
- every list should contain candidates of both sexes (Denmark);
- the attention of the independent selection panel is brought to the PACE requirements (Ireland);
- the call for applicants includes information on the PACE requirements for gender balance (Slovakia);
- the call for applicants states that the list must contain at least one man and at least one woman; the selection panel is asked to bear the PACE requirement in mind (UK).

PART II – PROCEDURAL FEATURES

As a general requirement, the procedure should display specific features such as the following, intended to ensure that it responds to the criteria of fairness, transparency and consistency.⁷

Features contributing to the transparency of the procedure

⁶ See Parliamentary Assembly [Resolution 1627 \(2008\)](#), para. 4, which defines “exceptional circumstances as being “where a Contracting Party has taken all the necessary and appropriate steps to ensure that the list contains a candidate of the underrepresented sex, but has not been able to find a candidate of that sex who satisfies the requirements of Article 21(1) ECHR.”

⁷ The Committee of Ministers has specified that “national procedures should respond to criteria of fairness, transparency and consistency” (see the Committee of Ministers’ Reply to Parliamentary Assembly [Recommendation 1649 \(2004\)](#), [doc. CM/AS\(2005\)Rec1649 final](#), para. 5).

The procedure is stable and established, including through codification, e.g. in legislation or administrative practice (this may be a standing procedure or a procedure established in the event of each selection process).

Examples of best practice:

- Czech Republic, Estonia, Finland, Latvia, Moldova, The Netherlands, Poland, Russian Federation, Slovakia, Ukraine

Details of the procedure are publicly accessible and its outcome (the final list of candidates presented to the Parliamentary Assembly) should be publicised.

Examples of best practice:

- Belgium, (Hungary), Lithuania, The Netherlands, Slovakia

The call for applications should be widely publicly available, in such a manner that it could reasonably be expected to come to the attention of all or most potentially suitable candidates.

Examples of practices that may be employed, in combination, to achieve this result:

- publication in the official journal/ other official publications;⁸
- publication on Government websites;⁹
- publication in national newspapers;¹⁰
- publication in the specialised legal press;¹¹
- dissemination via judicial bodies (e.g. presidents of the highest courts, judicial council, association of judges);¹²
- dissemination via lawyers' professional associations;¹³
- dissemination via Ombudsmen/ national human rights institutions;¹⁴
- dissemination via universities.¹⁵

There may be the possibility, depending on national context, of applicants being proposed by third parties, which may be specified.

Examples:

- federal courts, the Office of the federal Public Prosecutor General, the Bar Association and the Institute for Human Rights are reminded that they are free to invite persons to apply or to nominate them themselves (Germany);

⁸ As in e.g. Belgium, Estonia, Finland, Lithuania, Portugal, Serbia, Slovenia, "The former Yugoslav Republic of Macedonia," Ukraine.

⁹ As in e.g. Czech Republic, Denmark, Estonia, Finland, Germany, Ireland, Norway, Portugal, Russian Federation, Serbia, Slovakia, Slovenia, Ukraine.

¹⁰ As in e.g. Estonia, Finland, Germany, Ireland, The Netherlands, Lithuania, Portugal, Bosnia-Herzegovina, Slovakia, Switzerland, "The former Yugoslav Republic of Macedonia."

¹¹ As in e.g. Denmark, Germany, Ireland, The Netherlands, Norway, Russian Federation, Slovenia.

¹² As in e.g. Belgium, Czech Republic, Germany, Ireland, Norway, Portugal, Slovakia, Switzerland.

¹³ As in e.g. Czech Republic, Denmark, Estonia, Germany, Ireland, Lithuania, Norway, Portugal, Slovakia, Sweden.

¹⁴ As in e.g. Germany, Ireland, Norway.

¹⁵ As in e.g. Belgium, Czech Republic, Ireland, Lithuania, Norway, Slovenia.

- the Supreme Court, the Office of the Attorney-General, the Norwegian Centre for Human Rights and the Norwegian Bar Association are encouraged to put forward the names of one woman and one man (Norway).

A reasonably period of time should be given for submission of applications.

Examples of best practice: a minimum period of two months following the call for applications is allowed for applications (Czech Republic).

Applicants should be able to obtain information concerning the examination of their application, where this is consistent with general principles of confidentiality in the context of the national legal system.

Examples of best practice: an applicant who is interviewed but not successful is usually able to obtain reasons, usually from the chair of the selection body (Belgium, UK).

Features relating to the composition of the selection body

The composition of the selection body must be such as to attract respect and confidence and be free from undue influence: its composition should contain sufficient technical knowledge, be sufficiently pluralistic to ensure variety of background and political/institutional interest and consist of individuals of similar professional and personal standing to ensure their equal status within the body. Members of the selection body should be of sufficient standing to be able effectively to examine and interview applicants of the requisite level.

Depending on national circumstances, members of the selection body may be drawn from some of, for example, the following:

- Office of the Prime Minister;¹⁶
- Ministry of Justice;¹⁷
- Ministry of Foreign Affairs;¹⁸
- Office of the Attorney-General/ Prosecutor-General;¹⁹
- Government Agent;²⁰
- Parliamentarians (member of relevant parliamentary committee);²¹
- Highest national court(s), judicial council, other judiciary;²²
- Academics or human rights experts;²³
- Ombudsmen;²⁴

¹⁶ As in e.g. Finland, Lithuania.

¹⁷ As in e.g. Czech Republic, Estonia, Finland, Lithuania, Russian Federation, Sweden, "The former Yugoslav Republic of Macedonia," Ukraine.

¹⁸ Czech Republic, Estonia, Finland, Lithuania, Russian Federation, Serbia, Sweden, "The former Yugoslav Republic of Macedonia," Ukraine.

¹⁹ Finland, Ireland, Portugal, Norway.

²⁰ As in e.g. Belgium, Czech Republic.

²¹ As in e.g. Belgium, Lithuania, Slovenia, Switzerland, "The former Yugoslav Republic of Macedonia," Ukraine.

²² As in e.g. Belgium, Czech Republic, Estonia, Finland, Lithuania, The Netherlands, Norway, Portugal, Slovakia, Slovenia, Switzerland, "The former Yugoslav Republic of Macedonia," Ukraine.

²³ As in e.g. Finland, The Netherlands, Russian Federation.

²⁴ As in e.g. Czech Republic, Estonia, Norway, Ukraine.

- Bar association or other professional legal association or senior practicing lawyer(s);²⁵
- Non-governmental organisation(s).²⁶

Selection body has an odd number of members, in case of majority decision.

Examples of best practice: Belgium, UK

Features relating to the procedure before the selection body and subsequent stages

All serious applicants should be interviewed unless impracticable on account of their number, in which case a shortlist, drawn up by the selection body on paper, may be interviewed.

Examples of best practice: clearly unsuitable applications are excluded administratively; the selection body is then asked whether it wishes to interview all remaining applicants or prepare a shortlist of applicants for it to interview (UK).

Interviews should generally follow a standardised format, with the same core issues raised with each applicant; specific supplementary questions may follow.

Examples of best practice: Belgium, Croatia, Russian Federation

Information and/ or advice may be sought from an outside source, where the composition of the selection body and/ or national circumstances make this desirable.

Examples:

- all members of the Committee are entitled to consult with the institution that they are representing and ask for an expert opinion (Estonia);
- the Committee may, if necessary, liaise with the relevant international bodies (Finland);
- the selection body may consult with whomsoever it sees fit; for example, the bar association (The Netherlands);
- the Committee may seek advice from relevant external actors and should seek advice from former Norwegian judges at the Court (Norway).

There should be an assessment of applicants' linguistic abilities, preferably during interview; presentation of certificates alone is otherwise necessary but may not be sufficient.

Examples of best practice: applicants are asked at interview to translate an extract from a Court judgment within a certain time-limit and are subsequently interviewed in English or French on issues relating to their legal experience and knowledge of the ECHR (Russia); language is also tested at interview in countries including Belgium, Germany and Hungary.

All members should be able to vote, with equal weight.

Examples of best practice: Belgium, Croatia, The Netherlands, UK

²⁵ As in e.g. Czech Republic, Finland, Ireland, Norway, Portugal.

²⁶ As in e.g. Russian Federation, Ukraine.

Limitations on the role of the final decision-making body, in theory and in practice.**Examples of best practice:**

- the Ministry of Justice takes the final decision on the list of candidates; if it considers deviating from the selection committee's proposal, it must ask the committee for an opinion on any applicants who were not on the committee's short-list (Norway);
- in theory, the government has the power to make its own choice of candidates; in practice, it would almost always follow the selection body's ordering of applicants and if deciding to deviate from that order, would at least be limited to choosing from amongst persons interviewed (UK) (also Belgium, where the government may only choose from amongst the first five on the selection body's ordered list of applicants);
- [if the President is not satisfied with the outcome of the competition, he may ask the selection committee to rerun the procedure (Ukraine).]²⁷

PART III – HOW TO ATTRACT POTENTIALLY SUITABLE APPLICANTS

The following measures, if necessary, may be considered appropriate in order to insure that a sufficient number of applications are received to allow the selection body to propose a satisfactory list of candidates.

- maximum transparency in the selection procedure;
- awareness-raising on the work and life of a judge in Strasbourg, including with a view to correcting misconceptions about the conditions of employment:
 - o public lectures;
 - o articles in relevant journals;
 - o interviews and articles in the wider media (e.g. legal sections of national newspapers);
 - o speeches and interventions by the sitting/ former judge;
- transmitting information about the imminent call for applicants to legal networks, including the women's barristers' network:
 - o providing support to relevant events organised by such networks;
- particular measures aimed at increasing applications by persons from backgrounds that are historically less likely to produce applicants;
- asking relevant independent persons/ organisations to encourage potentially suitable persons to apply;
- use of new media, including government websites;
- taking measures to ensure suitable professional opportunities for former judges upon leaving office.

²⁷ Further clarification would help to allow confirmation of this as a best practice, notably in relation to the circumstances and the number of times the President may exercise this power in relation to the same appointment procedure.