

**ADVISORY PANEL OF EXPERTS ON CANDIDATES  
FOR ELECTION AS JUDGE TO THE EUROPEAN COURT  
OF HUMAN RIGHTS**

*The Secretariat*



Advisory Panel (2019)REV

31 July 2019

**Fourth activity report for the attention of the Committee of Ministers**

**1) Introduction**

1. This is the fourth activity report of the Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights (“Panel”). The first activity report covered the period from the creation of the Panel on 10 November 2010 to 31 December 2013 (document Advisory Panel (2013) 12 of 11 December 2013). The second activity report covered the period from 1 January 2014 to 31 December 2015 (document Advisory Panel (2016) 1 of 25 February 2016). The third report covered the period from 1 January 2016 to 30 June 2017 which was the end of the mandate of four members of the Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights and contains in the conclusions a *bilan* of six years of operation (document Advisory Panel (2017) 2 of 30 June 2017, paragraphs 56 and seq.). The present report covers the period from 1 July 2017 to 7 May 2019 which was the end of the mandate of the chairperson of the Panel.
2. During that period from 1 July 2017 to 7 May 2019, the Panel considered the *curricula vitae* of 36 candidates (taking into account replacement candidates). Notwithstanding the challenging nature of this workload the Panel, (whose work is entirely voluntary) succeeded in maintaining the quality of its scrutiny and evaluation of the candidates as well as respecting often very tight deadlines.

**2) The Panel’s mandate and role in the election procedure**

3. The Panel was created by Committee of Ministers’ Resolution CM/Res(2010)26 of 10 November 2010. This decision was part of the implementation of the Interlaken Declaration of 19 February 2010 that called on the High Contracting Parties to ensure “*full satisfaction of the Convention’s criteria for office as a judge of the Court, including knowledge of public international law and of the national legal systems as well as proficiency in at least one official language.*”

4. According to Resolution CM/Res(2010)26 the Panel's mandate is to advise the High Contracting Parties whether candidates for election as judge to the Court meet the criteria stipulated in Article 21(1) ECHR which reads as follows:

*“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.”*

The Panel is also required to send its opinions concerning the candidates on each list to the Parliamentary Assembly of the Council of Europe ("PACE").

5. In order to obtain the Panel's opinion, the governments shall provide the Panel with the names and *curricula vitae* of the three candidates selected at national level prior to their submission to the PACE. After having given its opinion to the government concerned, the Panel subsequently informs the PACE of its opinions.
6. The Panel addresses its views primarily to the High Contracting Parties and functions independently from the PACE which according to Article 22 ECHR elects the judges. However, by providing that the Panel's views are also transmitted to the PACE, Resolution CM/Res(2010)26 makes it clear that the PACE and in particular its Committee on the Election of Judges should benefit from the Panel's expertise to the fullest extent possible by taking into account the Panel's views. Taking full account of the Panel's views should be seen as complementary to the PACE's prerogatives for the election of judges under the Convention. The Panel assists in ensuring that the PACE has three candidates who fully satisfy the Convention criteria from which to elect a new judge. The presentation of three such fully qualified candidates in each list is what the PACE (and indeed the Convention) demands.

### **3) Members of the Panel**

7. The following members served during the period under consideration:

**Ms Nina Vajić (Croatia) (Chairperson)**

**Mr Christoph Grabenwarter (Austria)**

**Ms Lene Pagter Kristensen (Denmark)**

**Ms Maria Gintowt-Jankowicz (Poland)**

**Mr Bernard Stirn (France);**

**Mr Maarten Feteris (Netherlands);**

**Sir Paul Mahoney (United Kingdom).**

8. On 5 July 2017, the Ministers' Deputies reappointed **Mr Christoph Grabenwarter (Austria)** and appointed **Mr Bernard Stirn (France); Mr Maarten Feteris (Netherlands) and Mr Paul Mahoney (United Kingdom)** to sit on the Advisory Panel for a full term ending on 30 June 2020.

9. On 12 October 2018, the Ministers' Deputies reappointed **Ms Lene Pagter Kristensen (Denmark)** for a second full term of three years ending on 8 October 2021. On 13 February 2019, the Ministers' Deputies reappointed **Ms Maria Gintowt-Jankowicz (Poland)** for a second full term of three years ending on 30 March 2022.
10. To replace **Ms Nina Vajić** (renewed already once so no possibility for re-appointment), the Committee of Ministers launched a call for proposals for appointment in April 2019.
11. Given the expiry of the term of the Chair of the Panel **Ms Nina Vajić** on 7 May 2019 and the impossibility for its further renewal, the Panel elected at the end of its meeting in Zagreb in April 2019, **Mr Christoph Grabenwarter** as the new Chair and **Sir Paul Mahoney** as the new Vice-Chair.
12. The Panel members welcome the fact that letters inviting candidates to fill a vacancy mention explicitly the requirement of good knowledge of at least one of the two official languages of the Council of Europe (English and French) and passive knowledge of the other. This reduces costs because it makes translation and interpretation superfluous and facilitates the organisation of telephone conferences.
13. Unlike members of other independent expert bodies in the Council of Europe, the Panel members do not receive any honoraria while working at home or otherwise. They are reimbursed expenses only while on mission in the exercise of their functions.

#### 4) Working methods

14. The procedure to elect a judge starts with a letter by the Secretary General of the PACE inviting the High Contracting Party concerned to submit a list of three candidates by a certain time-limit. The PACE communicates the letter up to fourteen months in advance before the election of the judge. This letter also draws the High Contracting Parties' attention to the existence of the Panel. Copies of those letters are sent to the Advisory Panel's Secretariat.
15. Upon receipt of the PACE's letter, the Panel immediately sends out a separate letter recalling the Panel's tasks and working methods and inviting the High Contracting Party to submit to it the names and *curricula vitae* of candidates as well as information on the national selection procedure.
16. According to the Panel's Operating Rule (vi), the Panel is to inform the High Contracting Parties of its views no later than four weeks after the submission of the *curricula vitae*. In order to allow sufficient time to request additional information, if necessary, the Panel invites the Governments to submit the *curricula vitae* at least three months before the expiration of the time-limit for the submission of the lists of candidates to the PACE. The Panel Secretariat collaborates with the PACE Secretariat with a view to coordinating, wherever possible, the submission of the Panel's views with the timetable of meetings of the PACE's Committee on the Election of Judges.
17. Point (iii) of the Panel's Operating Rules stipulates that the Panel's procedure shall be a written one. However, point (iv) provides for the possibility of organising meetings "where [the Panel] deems it necessary to the performance of its function".

18. Immediately after the receipt of the *curricula vitae* and information on the national selection procedure, the Secretariat forwards the documents to the Panel members with a request for comments within at the latest five working days. If needed, videoconferences or conference calls are organised.
19. The Panel seeks to adopt its final views on the candidates as far as possible by consensus. If this proves impossible, decisions are taken by a qualified majority of five votes (see point (ii) of the Panel's Operating Rules).
20. Point (viii) of the Panel's Operating Rules provides that the Panel may seek additional information or clarification from the High Contracting Party in relation to any candidate under its consideration. Should the members require additional information from the High Contracting Party, such information is normally requested within the next five working days.
21. According to Point VI of the Guidelines of the Committee of Ministers on the selection of candidates for the post of judge at the European Court of Human Rights, a Government, when sending its list of candidates to the Panel, should also submit information on the national selection procedure followed. While the Panel is not expressly called on to review the details of the national selection procedure, it is evident that the requirement of submitting such information cannot be devoid of purpose. In particular, it cannot be the position that the Panel is to take no account at all of the information in the discharge of its task. Consequently, at its meeting on 28-29 April 2019 the Panel decided that, where appropriate, it would draw attention to aspects of the information provided by the Government on the national selection procedure, notably with regard to fulfilment of the minimum requirements of fairness and transparency, as indicated by the PACE Standing Committee in paragraph 8.2.2 of its Resolution 2248 (2018) (quoted at paragraph 27 below in this report). The Panel is naturally also ready to provide the PACE Committee on the Election of Judges in the context of the procedure described in paragraph 8.1 of Resolution 2248 (2018) with any relevant explanations under this head.
22. If the Panel considers all candidates qualified, it informs the High Contracting Party of its view without further comment, as stipulated in Article 5(2) of Resolution CM/Res (2010)26. Further information on other issues such as the national selection procedure may be added in writing as well as explained at the briefing session with the PACE Committee.
23. If the Panel members have doubts as to a candidate's qualifications, the Panel requests either additional information or clarifications from the Government concerned. Requests are invariably made in writing.
24. In cases where the Panel considers one or more candidates not suitable, the High Contracting Party is expected to submit new candidates to the Panel. In that context, the question arises whether the High Contracting Party needs to reopen the whole national selection procedure in order to identify suitable replacement candidates or whether it may simply present (an)other candidate(s) from the previous selection procedure. This question cannot be answered in the abstract. Depending on the national selection procedure and the quality of candidates participating, it may in certain cases be justified not to start a new procedure, in particular if only one candidate has to be replaced. In this context, it may be recalled that the CDDH had "suggested to have at least one 'reserve'

candidate standing by in case the original list meets with objections from the Advisory Panel. Whilst recognising that this may not always be acceptable to legal personalities of high repute within their jurisdictions, the CDDH nevertheless recommends that States Parties consider adopting such a practice should circumstances allow” (CDDH report on the review of the functioning of the Advisory Panel of experts on candidates for election as judge to the European Court of Human Rights, CM(2013)175, paragraph 39). In other cases, in particular if two or three candidates were not found qualified, it is difficult to imagine that other candidates from the same selection procedure will be more qualified than the ones chosen and subsequently rejected by the Panel (unless more meritorious candidates had been discarded for extraneous motives, which in itself would be an indicator of serious flaws in the initial selection procedure). It has to be noted that, during the last few years, when stating the ground for rejecting a candidate, the Panel has referred more frequently to the principles formulated in its Activity Reports.

25. In accordance with Article 5(4) of Resolution CM/Res(2010)26, the Secretary of the Panel informs the Secretary General of the PACE of the Panel's final views on the candidates. If candidates are presented whom the Panel had rejected, the reasons given by the Panel for their rejection to the High Contracting Party are reproduced in the letter addressed to the Secretary General of the PACE and, since the participation of the Chair or a representative of the Panel in the briefing session with the PACE Committee on the Election of Judges, may also be explained during that meeting. In the case of candidates whom the Panel had considered qualified, only this conclusion is communicated, without providing any further comment, as stipulated in Article 5(2) of Resolution CM/Res(2010)26.
26. On 23 November 2018 the PACE Standing Committee adopted Resolution 2248 (2018) and a report by Mr Boriss Cilevičs on the Procedure for the election of judges to the European Court of Human Rights.
27. According to this Resolution:
  - “8.1. the Chairperson or a representative of the Advisory Panel shall be invited by the Chairperson of the Committee on the Election of Judges to explain the reasons for the panel’s views on candidates, during the briefing sessions scheduled before each set of interviews;
  - 8.2. a list of candidates shall be rejected when:
    - 8.2.1. not all of the candidates fulfil all the conditions laid down by Article 21.1;
    - 8.2.2. the national selection procedure did not fulfil minimum requirements of fairness and transparency;
    - 8.2.3. the Advisory Panel was not duly consulted;
  - 8.3. the Committee on the Election of Judges shall decide on a proposal to reject a list of candidates by a majority of the votes cast;
  - 8.4. members of the Committee on the Election of Judges from the country whose list is under consideration shall not have the right to vote in the committee, either on a possible rejection of their country’s list or on the expression of preferences among candidates.”

28. In the same Resolution the PACE Standing Committee also invited the Committee on Rules of Procedure, Immunities and Institutional Affairs to consider those proposed changes in the election procedure before the Assembly that would require amendments to the Rules of Procedure. The PACE Resolution 2278 (2019) in its paragraph 2.4 amended its rules of procedure with regard to the procedure for the election of judges to the European Court of Human Rights (see text in Appendix 3).
29. The Council of Europe Ministers' Deputies at its 1317th meeting on 30 May 2018 instructed its Rapporteur Group on Human Rights (GR-H) to follow the measures to be taken under the Copenhagen Declaration on Securing the long-term effectiveness of the system of the European Convention on Human Rights. The GR-H discussed this issue in five meetings in 2018 and transmitted the draft decisions to the Deputies for adoption. The Ministers' Deputies adopted the Decisions at its 1333rd meeting on 9 January 2019.
30. In paragraph 4 of the Decisions the Ministers' Deputies "welcomed as a positive development the decision taken by the Parliamentary Assembly to reject a list of candidates when the Panel was not duly consulted". Paragraph 5 of the Decisions recalled the importance of the expert opinion given by the Panel and encouraged the States Parties to enhance consultation and dialogue with the Panel before transmitting the list of candidates to the Parliamentary Assembly. Paragraph 6 of the Decisions called on States not to forward the list of candidates to the PACE if the Panel has expressed a negative opinion in relation to one or more candidates and noted with satisfaction that, in such cases, the Panel's views are increasingly taken into account by the PACE. In paragraph 7 of the Decisions, the Ministers' Deputies welcomed the participation of the Chairperson or a representative of the Panel in the briefing sessions of the Assembly's Committee on the election of Judges. They also encouraged the PACE and the Panel to further develop their interaction.

## **5) Sources of information**

31. In addition to the *curricula vitae* and any further information provided by the Governments upon the Panel's request, the Panel has received on several occasions unsolicited information from various sources (e. g. non-governmental organisations and individuals). The Panel does not actively seek information from such sources.
32. It should be emphasised that the Panel has never rejected a candidate as not qualified based on information received from a different source than the Government. The Panel does not systematically have regard to unsolicited information. However, in accordance with the policy of previous years, it does not exclude putting questions to a Government in the light of unsolicited information insofar as that appears appropriate in order to fully confirm that a candidate has the requisite competences and qualifications. In any case, the Panel's final assessment of a candidate's suitability will only be based on material supplied by the Government concerned, including the responses to such questions.

## **6) Organisation of meetings, budget and secretariat**

33. From 1 July 2017 to 7 May 2019, the Panel held four meetings. Appendix I contains the list of all meetings. All meetings were used both for the evaluation of lists of candidates and for agreeing on the Panel's working methods and considering ways to further improve relations with the PACE's Committee on the Election of Judges, as well as for reflecting

upon ways to strengthen the role of the Panel in the (s)election process of ECtHR Judges. Meetings were also occasions for new Panel members to present themselves and become familiar with the Panel's working methods.

34. The Panel members recognised that while an exchange of information as well as the transmission of opinions may be, and is, carried out effectively in writing, a meaningful and fruitful exchange of views can in certain circumstances only take place during a meeting. This has been especially so in cases of complex matters, such as the criteria for the assessment of candidates' qualifications, the relationship with the other stakeholders in the election procedure or the examination of lists of candidates which give rise to exceptional difficulties. The Panel has not and does not propose to organise meetings at regular intervals, but only if it is justified both in terms of the workload and the importance of the issues to be discussed. In most cases, the Panel members have reached their final views exclusively through written procedure.
35. In order to organise meetings in the most economical manner, thanks to its members from the respective countries the Panel members met in venues put at its disposal free of charge, such as in Paris at the invitation of the French *Conseil d'Etat*, in Vienna, at the invitation of the Austrian Constitutional Court, or in Zagreb, at the invitation of the Faculty of Law of the University of Zagreb. All meetings have been carried out without interpretation because all members present had at least a passive knowledge of both official languages. The meetings have also been organised in a way to reduce the number of overnight stays, as far as possible, to one night.
36. The Chairperson also held a number of bilateral meetings with major stakeholders in the election process, such as the President of the European Court of Human Rights, the Secretary General of the PACE, the Chair of the Committee on the Election of Judges and the Chair of the Committee of Ministers. The Chairperson valued these exchanges because they provided important opportunities to explain the Panel's approach and evaluation criteria as well as gaining enhanced appreciation of the parliamentary process.
37. On 7 March 2018 and 27 March 2019, the Chairperson had a fruitful exchange of views with the Committee of Ministers. The text of both interventions is contained in Appendix II. The Chairperson took also part in an exchange of views with the GR-H Rapporteur Group on Human Rights of the Committee of Ministers in Strasbourg on 18 October 2018.
38. Budgetary appropriation for the Panel in the Council of Europe's ordinary budget for 2018-2019 amounted to €37,800 per year. The Directorate of Legal Advice and Public International Law (DLAPIL) provides secretariat services to the Panel in addition to its statutory functions and without any compensation.

## **7) Criteria for the evaluation of the qualifications of the candidates**

39. According to Article 21(1) ECHR, the judges "*shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or to be jurisconsults of recognised competence*". The Panel has continuously reviewed the application of this provision in the light of its experience. In doing so, it pays due regard 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.<sup>1</sup> As can be seen, the provision reflects

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<sup>1</sup> CM(2012)408

the notion that a person may achieve the level of competence or experience envisaged by Article 21(1) ECHR through two main career avenues:

(i) judicial experience and (ii) recognition as a jurisconsult

40. Before referring further to these two avenues of qualification for the position of judge on the Court, it is appropriate at this point to briefly mention the requirement of “high moral character” as referred to in Article 21(1) ECHR, although during the period described in this report the Panel has not had to deal with any issues in this connection. Indeed, it seems that in general this criterion has rarely arisen as an issue. In its First Activity Report (December, 2013) the Advisory Panel stated (at paragraph 28) that “in [its] discussions, qualities such as integrity, a high sense of responsibility, courage, dignity, diligence, honesty, discretion, respect for others and the absence of convictions for crimes were mentioned as key components of this requirement, as well as (obviously) independence and impartiality”.<sup>2</sup> Of course the Panel must assume that a judge or jurist presented as a candidate by a Government is of high moral character, absent any objective element, such as a record of a disciplinary or criminal offence, in the material provided to it. As the Panel also observed in its previous report, it is not expressly empowered to convene candidates for interviews and, in those circumstances, it is in any event difficult to make judgments concerning the character of candidates unless it is otherwise manifestly apparent.
41. The other two criteria provided for in Article 21(1) ECHR, although very general in their terms, fall to be understood and applied in the context of the Convention as a whole. The object and purpose of the Convention, as an instrument intended to guarantee rights which are practical and effective rather than theoretical and illusory, should accordingly be taken into account in their interpretation and application. The effectiveness of the Convention is influenced by the willingness of national authorities to follow the judgments of the Court. They would readily do so if the quality of the reasoning is high and if the reputation of the Court is beyond question. The process of establishing and maintaining the reputation of the Court is something which occurs over the long term and is, to a large extent, dependent on the quality and experience of the judges. The Court itself has emphasised the importance of the quality of judges for its own authority.<sup>3</sup> Having as judges at the Court persons who come from positions at a high level in the Member States obviously will have positive repercussions for the reputation of the Court. If it were to pass, for example, that a disproportionate number of judges were relatively young, lacking in extended experience and had not reached a prominent position in the national judicial system or in the academic world, then acceptance of the Court’s case-law could be negatively influenced. In short, to fulfil the object and purpose of the Convention, the Court should enjoy authority and respect with national judiciaries at the highest level and in Member States generally. Apart from the importance of this for the standing and reputation of the Court as such, it also promotes a respectful dialogue between the Court and the highest national courts. This is important for the enforcement of Convention rights at national level in accordance with the jurisprudence of the Court, which in turn is liable to contribute to a reduction in the volume of cases coming before the Court.

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<sup>2</sup> The Panel also made reference to the resolution on judicial ethics adopted by the Plenary of the European Court of Human Rights in 2008.

<sup>3</sup> [See Advisory opinion 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 \(12 February 2008\).](#)



42. Although the Panel has continued to reflect and examine **the criteria envisaged by Article 21(1) ECHR** from different perspectives in the light of its actual experience in evaluating a large number of candidates over the last years, the fundamentals of the criteria to be applied, as explained in the First Activity Report, remain essentially the same. **In the broadest terms these include professional experience of long duration at a high level.** The Panel endeavours to obtain a comprehensive picture of the candidates and carries out a global assessment of all the qualities of a candidate, whatever his or her professional career path, with a view to determining whether a candidate has an aptitude for exercising the judicial function at a high level which is appropriate for a constitutional or international court (of which knowledge of human rights law is only one, albeit important, component).
43. The European Court of Human Rights, by its nature, status and pan-European role, assumes that its members already have, on election, **all the fully developed judicial qualities that come from long experience.** It would appear unlikely to find such qualities in a candidate of a relatively young age. However, many countries find it difficult to attract three candidates of an equally long professional experience. It is, therefore, even more important that the High Contracting Parties widely advertise calls for candidatures at national level in order to ensure having the highest number of qualified candidates possible.
44. Long professional experience is also of particular importance in an international court where its members are elected for one fixed term of just nine years. Moreover, it takes significant time for even the most experienced judge to induct him or herself into the practices and day to day functions of a judicial institution such as the Court.
45. For present purposes the foregoing considerations have been necessarily expressed in the most general terms, but they do indicate that High Contracting Parties when presenting a list of candidates, and the PACE when deciding which candidate to elect as a member of the Court, should acknowledge that their decisions in this regard are of quite a momentous importance, requiring thorough consideration so as to ensure that candidates proposed are of **mature professional experience and unquestionable qualifications for the exercise of a high judicial function.**

*Qualifications for appointment to high judicial office*

46. The Panel has of course to base its views on the wording of Article 21(1) ECHR, that is on the expression “high judicial office”. This expression would seem to include judges who have held office in national supreme and constitutional courts, whereas it would seem to exclude judges of lower national first-instance courts unless they otherwise qualify as jurisconsults. The provision must be given a substantive interpretation, consistent with its purpose, in the light of the requirement of professional experience of long duration at a high level (par. 42 above) and not a purely formal one. Given the wide diversity of national rules on access to constitutional and supreme courts, even in the case of candidates holding office in a highest national court, the Panel’s view is that such persons would not, for that reason alone, be automatically considered qualified to be candidates for election to the Court. Nonetheless, actual service for a significant number of years on a Supreme Court should mean that a judge is qualified. The publication of important books or articles may also be an important factor when considering a candidate’s qualifications,

in addition to long experience as a professional lawyer or significant length of judicial service at a high level.

47. In this context it should be borne in mind that national judicial structures vary considerably. For example, in some countries a person may be nominated to a Supreme Court (often consisting of many members) at a relatively young age because of his or her innate ability, but nonetheless with limited judicial experience. This limited experience can be accommodated in various ways in a national structure and over time the judge will acquire standing within the national court as his or her judicial skills and experience mature. On the other hand, some national systems require experience as a judge of at least ten to fifteen years minimum before being eligible for appointment to the highest court. Consistent with the global appreciation of a candidate's qualities, account is obviously taken of the entire judicial career of a candidate, including whether he or she sat on a court concerned with, directly or indirectly, enforcing human rights or complex interpretative issues of law.
48. The Panel reiterates its concern about the fact that there is still a considerable number of candidates without long lasting judicial experience. While the Panel has considered many excellent candidates contained in the various lists, it continues to be disappointed at the relatively low number of candidates with long judicial experience at a high, and in particular highest, court at national level. The Panel is of the view that the High Contracting Parties should take every reasonable step possible to encourage a greater number of very experienced judges from the highest courts to make themselves available as candidates for election to the Court.

*Jurisconsults of recognised competence*

49. Article 21(1) ECHR also refers to "jurisconsults of recognised competence". Obviously, those who are judges and those who are jurisconsults have an equally important role to play as members of a court such as the European Court of Human Rights. It is a question of achieving a balance of background and experience. In his letter of 9 July 2010 to the Ministers' Deputies, the then President of the Court, Jean-Paul Costa, wrote: "To be a 'jurisconsult of recognised competence' requires extensive experience in the practice and/or teaching of law, the latter generally entailing publication of important academic works. One objective indication of this requirement would be the length of occupation of a professorial chair". Experience of working in teams at international level would be an important asset, as judges need to be able to work in a collective judicial body which operates in an international environment representing different legal traditions.
50. Once again, inherent in these observations, is the **importance of electing to the Court persons of mature professional experience**. In accepting the description of the former President of the Court, the Panel would consider that the level of "recognised competence" of a jurist is normally reached when a person has been a professor at a university of standing for many years and has published important works, including work relating to the protection of human rights and the relationship between those rights and the constitutional functions of States. Thus, **being a "jurisconsult" means more than just having good qualities and expertise as a lawyer at a certain level. One may have acquired good knowledge of human rights and the Convention by attending courses on the subject and listening to lectures. However, without long academic or other professional experience and important publications a lawyer may fail to qualify as a**

**“jurisconsult of recognised competence”, notwithstanding a solid knowledge of Convention law.** Very many post-graduates of ability with modest experience would have a solid knowledge of such law. Similarly, a professor in a relevant field of law could not be said to automatically meet the criteria of Article 21(1) ECHR if his or her appointment was of recent origin and professional experience was limited. It would also be relevant to identify whether such jurists have any experience in advising or appearing in cases involving the protection of such rights or other constitutional cases before national or international tribunals.

51. It is convenient to explain at this point that many, if not most, of the candidates which the Panel have found not to meet the criteria of Article 21(1) ECHR were excellent experts in the law and, no doubt, in good standing with their professional peers but nonetheless, being at a fairly early stage of their careers, **had not yet the length or breadth of experience from which it could be said they had acquired all the qualities necessary for election.** Article 21(1) ECHR is concerned with the election of persons as judges, not simply the search for good experts.
52. While the experience of a jurisconsult in the field of Convention law, or fields of law relevant to it, are highly material factors to be taken into account, it must be kept in mind that the essential qualifications to judge Convention issues can be acquired in a number of ways other than working with such issues on a day-to-day basis. It may be said that a professor of European and/or public international law might normally be regarded as having competence in the field covered by the jurisdiction of the Court, even if he or she has not specialised in human or fundamental rights and the same would be true for professors of constitutional law. **Professors** in these and other fields, however, should show some real engagement during their career with questions of human rights related to their field of law, e.g. a professor of criminal law may have dealt with the right to freedom, rule of law, fair trial, and so forth. **The selection of persons other than professors, such as advocates, legal professionals in the public (including political) or private domains, particularly where they have, through long experience, professional intimacy with the functioning of courts, is also possible as long as those persons by virtue of a mature professional experience qualify as “jurisconsults of recognised competence”.**
53. It is also the case that a judge who may not meet the criteria of Article 21(1) ECHR as someone qualified “for appointment to high judicial office” may, because of a parallel academic career with important publications in relevant fields of law, meet the criteria of jurisconsult “of recognised competence”.

#### *Other relevant factors*

54. The Panel also has regard to the requirement as to gender balance, although the High Contracting Parties have during the period covered by this Activity Report consistently respected this by including at least one female candidate in their lists. On one occasion, the Panel considered and accepted a single-sex list of candidates since the candidates (female) belonged to the sex which is under-represented in the Court (i.e. the sex to which under 40% of the total number of judges belong).

## **8) Examination of *curricula vitae* of candidates in 2017-2019**

55. During the period from 1 July 2017 to 7 May 2019, the Panel examined 11 lists of candidates and was always duly consulted.
56. Lists of candidates were composed of approximately 41% judges, 30% university professors, 19% practising lawyers and 8% others (e.g. senior civil servants with a legal background).
57. In respect of five country lists the Panel considered all candidates to be qualified within the meaning of Article 21(1) ECHR without requesting further information.
58. In the case of all other lists the Panel requested additional information on one or more of the nominated candidates and the national selection procedure (requests for additional information have become the rule rather than the exception). In respect of five lists, the Panel subsequently came to the final conclusion that the candidates met the requirements of Article 21(1) ECHR. In two cases the Panel expressed a negative opinion on candidates. These candidates were replaced by the Government. In one case the candidate withdrew but the replacement candidate was again considered as non-qualified.
59. In one case the Panel could not reach the required majority on one candidate, who was subsequently not replaced by another candidate in the list submitted to the PACE.
60. The Panel notes some delays in the submission of the list of candidates: two months in one case and one month in two cases. In one case no list or any other information has been submitted at all, entailing to date a delay of seven months. While the Panel makes every effort to process the lists received rapidly, it obviously can only give an opinion once the list has been received.
61. Despite a heavy workload in 2017 - April 2019, the Panel has provided its first views within the time-limits foreseen by Resolution CM/Res(2010)26 (four weeks). However, since in 80% of the cases additional information was required, the average time for communicating the final opinion was six weeks. The delays of one and two months mentioned previously were compensated by speedy proceedings before the Panel and the elections at the PACE took place as originally scheduled.

## **9) Conclusions and outlook**

62. “The system will fail if judges do not have the necessary experience and authority”, wrote Jean-Paul Costa, then President of the Court, on 9 July 2010 to the Committee of Ministers. Six months later, the Committee of Ministers established the Advisory Panel to “advise the High Contracting Parties whether candidates for election as judges of the European Court of Human Rights meet the criteria stipulated in Article 21§1 of the European Convention on Human Rights” (see paragraphs 3 and 4 above).
63. The only armour of a court is the cloak of public trust. The Committee of Ministers itself has repeatedly emphasised that the overall success of the Convention system depends on confidence in the judicial authority of the Court. The common minimum standards for the protection of human rights in Europe are defined by the Court and must be fully observed by all High Contracting Parties, in particular at governmental and judicial level. This in

turn means that it is crucial that the Court is composed of judges with the necessary breadth and depth of professional experience, so that their judgments can attract the respect and confidence of its peers in national supreme and constitutional courts.

64. During its nine years of existence the Panel has examined 57 lists of candidates (17 lists during the first three years of its existence, 17 lists in 2014-2016, 12 lists in 2016 – June 2017 and 11 lists in 2017- April 2019) in respect of 43 member states. Based on this unique experience, the Panel is satisfied that, in broad terms the quality of candidates who have come forward has improved because, at least in part, of the existence of the Panel. The Panel has required Governments to focus on the issue of the quality of candidates in a way that perhaps some of them have not done before.
65. Overall, compliance with the Panel's views has improved over the years. The Panel has received certain excellent lists which did not require much scrutiny. It has by now become an almost regular practice to request clarifications or additional information in relation to some candidates. The Panel welcomes that such requests have usually been swiftly followed-up by the Governments, which provided comprehensive information. The Panel members are motivated by this very good cooperation that allows them the possibility of entering into a real dialogue with Governments in the context of the examination of the lists of proposed candidates. More importantly, the candidates who have not been considered suitable by the Panel have been replaced by Governments. This is tangible evidence of the trust that Governments have in the Panel and its competence to evaluate candidates.
66. It has to be noted that the Panel contributed substantially to the Report of the Steering Committee for Human Rights (CDDH) (CM(2018)18-add1) on the process of selection and election of judges at the European Court of Human Rights which was issued in March 2018. In addition, in May 2018 the Committee of Ministers instructed their Rapporteur Group on Human Rights (GR-H) to follow the measures to be taken under the Copenhagen Declaration on *Securing the long-term effectiveness of the system of the European Convention on Human Rights*. This led to the adoption by the Ministers' Deputies of their Decisions of 9 January 2019 (see paragraphs 29 and 30 above). The Panel also contributed to this process through an exchange of views between its Chairperson and the GR-H Rapporteur Group on Human Rights of the Committee of Ministers in Strasbourg on 18 October 2018.
67. The Panel particularly welcomes the adoption of the recent decisions of the Committee of Ministers and of the PACE Resolution 2248 (2018). According to this Resolution, the Chairperson or a representative of the Advisory Panel shall be invited by the Chairperson of the Committee on the Election of Judges to explain the reasons for the Panel's views on candidates during the briefing sessions scheduled before each set of interviews; and a list of candidates shall be rejected when the Advisory Panel has not been duly consulted (see paragraphs 26-28 above).
68. The Panel also welcomes that its views are increasingly taken into account by the Assembly's Committee on the Election of Judges. However, the Panel notes that PACE Resolution has not included in the list of grounds for systematic rejection the fact that the Panel has considered a candidate as insufficiently qualified.
69. Obviously, the primary responsibility lies with the High Contracting Parties to fulfil their obligations by selecting only candidates who, in a substantive way, fully meet the criteria

stated in Article 21(1) ECHR. A vacancy on the Court is a vacancy for a judicial position, and requires the election of a person who, *inter alia*, can exercise sound judgment based on mature professional experience. When, after evaluating the candidates proposed by the Contracting States, it from time to time finds that certain candidates, notwithstanding certain professional merits, do not meet the criteria of Article 21(1) ECHR, the Panel is simply fulfilling the functions conferred on it by the Committee of Ministers. It should therefore be stressed that there is a clear need to have three equally qualified candidates presented on a list.

70. For the Panel to be effective and fulfil its *raison d'être*, it is important that all Governments give due and full weight to the opinions which the Panel is obliged to express. For the same reason, it is equally important that the Parliamentary Assembly has due and sufficient regard to the views of the Panel. The Panel after all serves the interests of the Assembly by endeavouring to ensure that the three candidates submitted to it for each vacancy are fully qualified within the meaning of Article 21(1) ECHR. The presence of a member of the Panel at the briefing sessions of the PACE Committee and the rejection of a list if not all candidates fulfil all the conditions laid down by Article 21.1 (cf. par.27 of this report) are therefore examples of good practice in this direction.
71. In an ideal world the existence of the Panel might not be necessary. Nonetheless, most national systems have an independent process for evaluating the suitability of persons to be appointed to high judicial office and it would seem logical that, in one form or another, such a mechanism should exist at pan-European level in respect of the Court.
72. The Panel notes the recent positive developments and stands ready to continue its active participation in this process if so requested by the Committee of Ministers or the Parliamentary Assembly. There are various avenues and ideas that need to be carefully considered, weighted and assessed in order to ensure that the Court retains its high credibility and output. A consistently high quality of candidates for election as judge can only be ensured via a robust selection and election procedure and through the expertise of a Panel with a stronger role in the procedure.
73. The Panel members are grateful for all the support they have received from the Committee of Ministers. They look forward to continued good cooperation with the Committee of Ministers and the Parliamentary Assembly.

## **Appendix I – Meetings of the Advisory Panel**

28-29 January 2018, meeting held at the seat of the Council of Europe in Strasbourg

3-4 June 2018, meeting held at the Conseil d'Etat in Paris

9-10 December 2018, meeting held at the Constitutional Court of Austria in Vienna

28-29 April 2019, meeting held at the Faculty of Law of the University of Zagreb in Zagreb

## **Appendix II**

### **Intervention by Ms Nina Vajić at the 1309th meeting of Ministers' Deputies on 7 March 2018**

Mr Chair,

Ministers' Deputies,

Let me preface my remarks by thanking the Committee of Ministers on behalf of the Panel for giving me this opportunity to talk with you today. This is in fact the sixth exchange of views between the Committee of Ministers and a chairperson of the Council of Europe's Advisory Panel of Experts. Speaking for myself, this is the first time I have had the honour of addressing you. I was elected Chairperson in May 2017 and confirmed in January 2018 by the Panel, as newly constituted.

The purpose of my statement today is to outline recent developments and the Panel's experiences and activities since the last exchange of views with the Committee of Ministers in March 2017.

Allow me to begin by citing a few statistics regarding the Panel's activities since last March. Over the past twelve months, the Panel has met twice, in Vienna and Strasbourg, and reviewed the curricula vitae of 20 (twenty) candidates. The Panel has successfully endeavoured to meet the response times set out in Resolution CM/Res (2010)26.

I am pleased to report that, generally speaking, the Panel's opinions have been taken on board by governments and candidates who were not considered suitable have been rejected. In this context, let me answer a question that is sometimes asked of us: if a government wishes to replace a candidate, does it have to reopen the national selection procedure in order to identify suitable alternative candidates or can it simply put forward another candidate from the previous selection procedure?

There is in fact no single answer to this question. Depending on the national selection procedure and the calibre of the participating candidates, it may, in some instances, be appropriate not to open a new procedure, especially if only one candidate has to be replaced. It is worth noting in this connection that, as far back as its 2013 evaluation report, the CDDH suggested having at least one "reserve" candidate in case the initial list drew objections from the Advisory Panel. In other cases, especially where two or three candidates are deemed unsuitable, it is hard to see how other candidates from the same selection procedure might be more qualified than those who have been selected by the government and then rejected by the Panel.

I would also like to address the issue of the relationship between the Panel and the Parliamentary Assembly's Committee on the Election of Judges. I wish to take this opportunity to express my appreciation and thanks to the Secretary General of the Parliamentary Assembly, Mr Sawicki, who has put a great deal of effort into forging closer ties between the Panel and the Committee on the Election of Judges. Co-operation between these two entities is essential because, as you all know, the selection and election of judges to the Court is instrumental in ensuring the quality of judgments and the work of the Court in general, i.e. the protection of human rights in the member states. Given the complex issues dealt with by the Court and the impact of its judgments at national level, it is imperative that the judges who sit in the Court be of a very high calibre.

It is thanks to Mr Sawicki's efforts that we are now able to enjoy the benefits of constructive discussions with the Committee on the Election of Judges and the Parliamentary Assembly itself. As Chairperson



of the Panel, I was privileged to attend the meeting of the Assembly's Committee on the Election of Judges in Riga last October. It became apparent at this gathering that the Committee and the Panel have a strong mutual interest in exchange and dialogue.

We have also agreed to improve our communication with the Parliamentary Assembly in the future, not least by providing, through the existing secretariats, clarification on the Panel's opinions. In this regard, it is quite feasible within the current framework to establish a more direct and horizontal relationship and it is entirely up to us to put it in place.

To this end, next month a member of the Panel will participate for the first time in a meeting of the Committee on the Election of Judges which will precede the interviews with the candidates.

First of all, let me present the Third activity report of the Advisory Panel of Experts on Candidates for Election as Judge to the Court. This report, which has already been circulated to you for information in September 2017, covers the period from 1 January 2016 to 30 June 2017, the date corresponding to the end of the mandate of three members of the Advisory Panel, including its previous chairperson Mr John Murray. In its conclusions, the third activity report contains a review of the six years of the Panel's operation, reflecting the collective view of the Panel members.

Regarding more specifically the interaction of the Panel with the Parliamentary Assembly, the Report states:

“Obviously, the primary responsibility lies with the High Contracting Parties to fulfil their obligations by selecting only candidates, who in a substantive way, fully meet the criteria provided for in Article 21(1) ECHR. ... For the Panel to be effective and fulfil its *raison d'être*, it is important that all governments give due and full weight to the opinions which the Panel is obliged to express. For the same reason, it is equally important that the Parliamentary Assembly has due and sufficient regard for the views of the Panel. The Panel after all serves the interests of the Assembly by endeavoring to ensure that the three candidates submitted to it for each vacancy are fully qualified within the meaning of Article 21(1) ECHR. [...]

A broad review of the selection process at national and European level is now under way. While radical changes may require amendments to the Convention or the Committee of Ministers' Resolution CM/Res(2010)26, certain pragmatic short-term measures may be taken immediately. In particular synergies with the Parliamentary Assembly could easily be improved even further. In his farewell speech, the former Registrar of the Court, Mr Erik Fribergh launched the 'idea to integrate the members of the Advisory Panel of judges into the procedure before the Parliamentary Assembly.' Without putting into question its prerogatives, the Assembly could for example unilaterally commit already now to give greater weight to the Panel's opinions or to associate, under conditions that remain to be defined, the Panel's chairperson (or a member) to the meetings of its Election Committee.”

Moreover, I would like to welcome the comprehensive analysis and report of the Steering Committee for Human Rights (CDDH) on the process of the selection and election of judges of the ECHR. The report was published in December last year. The Panel has actively contributed to its preparation, through the former Chairperson of the Panel, John Murray, as well as its Secretary who held several exchanges of views with the CDDH experts and replied to their written questions. It is a very clear report, giving guidance and understanding to member States when preparing the list of candidates to be elected as judges at the Court, and I sincerely hope that the recommendation included therein will be followed up by all the stakeholders in the process and in particular by the Parliamentary Assembly.

Allow me in this context to share with you an idea which is not contained in the CDDH report which, however, is shared by all Panel members. Since its creation, the Panel communicates its opinions on candidates to the Parliamentary Assembly only in cases where the Panel has concluded that the

candidate in question does not meet the criteria established by Article 21 of the Convention. It would appear that, in order to enhance our common understanding of these criteria, it would be helpful if the Panel were able also to share with the Assembly its opinion on those candidates who have been found suitable. This view was also expressed by the members of the PACE Committee at the meeting in Riga. To do so would, however, require an amendment to Resolution CM/Res(2010)26 establishing the Panel.

Let me conclude by commenting briefly on the draft Copenhagen declaration as regards the part concerning the Panel, more precisely on paragraphs 62-69 of the Draft Declaration [initial version dated 5 February 2018].

At the outset, I would like to thank the Danish Chairmanship of the Committee of Ministers for having invited me to the beautiful castle of Kokkedal, where I had the honour to chair one of the breakout sessions, dedicated to the selection of ECHR judges.

I am happy to see now that the draft declaration includes the key points of our discussions, albeit in less strong terms than we would have liked and hoped for. The recommendations formulated largely coincide with those of the CDDH. This emerging consensus among member States is encouraging and certainly augurs well for the future.

The Draft Declaration calls on the Committee of Ministers and the Parliamentary Assembly to work together, in a full and open spirit of cooperation in the interests of the effectiveness and credibility of the Convention system, to consider the whole process by which judges are elected to the Court with a view to ensuring that the process is fair and efficient, and that the best candidates are elected. The Draft Declaration underlines the importance of States Parties consulting the Panel in good time before presenting to the Parliamentary Assembly lists of three candidates for election as judge to the Court, promptly responding to requests for information from the Panel, and fully considering and responding to the opinion of the Panel.

The declaration particularly calls on States Parties not to forward lists of candidates to the Parliamentary Assembly where the Panel has not yet expressed a view, or has expressed a negative opinion in relation to one or more of the candidates. In addition, the Declaration calls on the Parliamentary Assembly to refuse to consider lists of candidates unless the Panel has had the full opportunity to express its view, and to give appropriate weight to the opinions expressed by the Panel. Finally, the Draft encourages the Parliamentary Assembly to take into account the suggestions made in the 2017 report of the Steering Committee for Human Rights when amending the Assembly's Rules of Procedure.

I am convinced that enhanced interaction between all stakeholders in the (s)election process, member States, the Assembly and the Panel is key for the success of the process. We all want to support the Court and improve its functioning by ensuring that only fully qualified candidates of the highest calibre are elected as judges.

The Panel is a creation of the Committee of Ministers and we are very grateful for your support throughout its existence, which I am glad to see restated in the draft Copenhagen declaration. Finally, I would like to thank you again for the opportunity to hold this exchange with you today. Thank you for your attention.

## **Intervention by Ms Nina Vajić at the 1342cd meeting of Ministers' Deputies on 27 March 2019**

Madam Chair,

Ministers' Deputies,

1. First of all, I would like to thank the Committee of Ministers on behalf of the Panel for this opportunity (which you regularly afford me) to talk with you today. This is in fact the seventh exchange of views between the Committee of Ministers and the Chairpersons of the Council of Europe's Advisory Panel of Experts. Speaking for myself, this is the second time I have had the honour of addressing you, although I also had the pleasure of engaging in discussions with the Rapporteur Group on Human Rights (GR-H) last October.
2. I am privileged to have been a member of the Panel since May 2013. I was elected Chairperson in May 2017 and confirmed in January 2018 by the Panel, as newly constituted. With my term of office due to end on 7 May 2019, this is the last time I will address this Committee and I would like to take this opportunity to reiterate some issues that are particularly close to my heart.
3. The main purpose of my statement today is to outline recent developments and the Panel's experiences and activities since the last exchange of views with the Committee of Ministers in March 2018.
4. Allow me to begin with a few statistics regarding the Panel's activities. Over the past twelve months, the Panel has reviewed the curricula vitae of 27 (twenty-seven) candidates and has met twice, in Paris and Vienna. The Panel has successfully endeavoured to meet the response times set out in Resolution CM/Res (2010)26.
5. I am very pleased to report that the Panel's opinions were taken on board by the governments.
6. In the vast majority of cases, the Panel considered that the candidates satisfied the criteria set out in Article 21§1 of the European Convention on Human Rights. In two cases the candidates were replaced by the government after a negative assessment by the Panel. In another case, the Panel, having failed to reach the required majority, was unable to provide an opinion on a candidate; the candidate was maintained on the list by the government of the state in question. In several cases the Panel requested clarification or additional information which was provided by the governments very quickly. My colleagues and I welcome this excellent co-operation in general, which allows us to have a real dialogue with governments when considering a list.
7. I would also like to address the issue of the relationship between the Panel and the Parliamentary Assembly's Committee on the Election of Judges. I wish to take this opportunity to express, once again, my appreciation and thanks to the Secretary General of the Parliamentary Assembly, Mr Sawicki, who has put a great deal of effort into forging closer ties between the Panel and the Committee on the Election of Judges. Co-operation between these two entities is essential because, as you all know, the selection and election of judges to the Court is instrumental in ensuring the quality of judgments and the work of the Court in general, i.e. the protection of human rights in the member states. Given the complex issues dealt with by the Court and the impact of its judgments at national level, it is imperative that the judges who sit in it be of a very high calibre.

8. In this connection, I particularly welcome the adoption, on 23 November 2018, by the Parliamentary Assembly of the Council of Europe, of Resolution 2248 (2018) on the “Procedure for the election of judges to the European Court of Human Rights”.

9. Among those aspects of the Resolution which the Panel considers very positive are the following:

*the Chairperson or a representative of the Advisory Panel shall be invited by the Chairperson of the Committee on the Election of Judges to explain the reasons for the panel’s views on candidates, during the briefing sessions scheduled before each set of interviews;*

*a list of candidates shall be rejected when:*

*not all of the candidates fulfil all the conditions laid down by Article 21.1;*

*the national selection procedure did not fulfil minimum requirements of fairness and transparency;*

*the Advisory Panel was not duly consulted;*

*The Committee on the Election of Judges shall decide on a proposal to reject a list of candidates by a majority of the votes cast;*

*Members of the Committee on the Election of Judges from the country whose list is under consideration shall not have the right to vote in the committee, either on a possible rejection of their country’s list or on the expression of preferences among candidates.*

10. On a more negative note, in the explanatory memorandum accompanying the Resolution, the Committee is still not refusing to interview candidates found by the Panel to be insufficiently qualified, although, admittedly, the Panel’s opinion is increasingly taken into account in such cases. The Panel wishes to emphasise that heeding a negative opinion which it has given, based on a detailed review of the candidates’ curricula vitae, under Article 21 of the Convention, and clarified more specifically in its 3<sup>rd</sup> report, would not in any way limit the Committee’s powers. Rather, it would be a demonstration of mutual trust between the two bodies involved in the process of electing judges to the Court.

11. In any case, this Resolution significantly enhances the synergies between the Panel and the Parliamentary Assembly.

12. In this context of participation in Committee briefings, as Chairperson of the Panel, I had the honour of attending four meetings of the Committee on the Election of Judges and I am due to attend a fifth meeting at the end of this week. In my opinion, our recent experience of working with the Committee has been a positive one.

13. I would also like to welcome the Decisions of the Committee of Ministers adopted at the 1333<sup>rd</sup> meeting of the Ministers’ Deputies on 9 January 2019 on *Securing the long-term effectiveness of the system of the European Convention on Human Rights*. In this context, as mentioned earlier, I took part on 18 October 2018 in an exchange of views with the Rapporteur Group on Human Rights (GR-H).

14. I am pleased to note that the Committee of Ministers welcomes “as a positive development the decision taken by the Parliamentary Assembly to reject a list of candidates when the Panel was not duly consulted”. The Decisions recall the importance of the expert opinion given by the Panel and encourage the States Parties to enhance consultation and dialogue with the Panel before transmitting the list of candidates to the Parliamentary Assembly.

15. The Decisions call on States Parties not to forward the list of candidates to the PACE if the Panel has expressed a negative opinion in relation to one or more candidates and noted with satisfaction that, in such cases, the Panel’s views are increasingly taken into account by the PACE.

16. And finally, they welcome the participation of the Chairperson or a representative of the Panel in the briefing sessions of the Assembly's Committee on the election of Judges. They also encourage the PACE and the Panel to further develop their interaction.

17. I am happy to see now that both the Decisions of the Committee of Ministers of January 2019 and the Resolution of the Parliamentary Assembly of November 2018 include the key points of the Panel opinions as mentioned also in the Third activity report of the Panel.

18. In this respect I would like to note that since its setting up, the Advisory Panel has elaborated three activity reports, the latest one dates of June 2017. The **Fourth activity report** will be discussed at the next coming meeting of the Panel, at the end of April and will cover the period from 1 July 2017 to 7 May 2019.

19. Allow me just to make some brief remarks about the kind of candidates we have had to consider. The Panel as an expert body does its best to apply, as a minimum threshold, the objective criteria of Article 21 of the ECHR. Once candidates are over the threshold, the decision is communicated to the government concerned and to the Parliamentary Assembly. However, the Parliamentary Assembly in its Report to Resolution 2248 (2018) expressed the wish to have more information from us, other than the simple fact that we consider a candidate qualified. For the time being, pending possible amendment of the CoM's Resolution this is done during the briefing sessions with the PACE Cttee.

20. If we consider a candidate not qualified we explain the general reasons for that conclusion. Of those we do not consider qualified, many of them are very good experts, very good quality people at that stage of their career, but nonetheless persons who do not have the length or the breadth of experience at a sufficiently high level to exercise a judicial function in a very superior court such as the European Court of Human Rights. For some of these candidates, one could say that in 10 years' time or so, such a person could be a perfect candidate for the Court.

21. Maybe the member States/Governments need to be sensitised to the level and breadth of experience which they should look for in candidates and that is why I am mentioning this issue here before you.

22. Let me conclude by drawing your attention briefly to a new area raised both by PACE and the Committee of Ministers during my previous discussions with you, namely the influence of the Panel to improve national selection procedures.

23. This is particularly important in view of the recent decision taken on 11 January 2019 by the PACE Committee on the Election of Judges to the European Court of Human Rights according to which *"the Committee would henceforth not consider any lists of candidates in the absence of interviews during the national selection procedure, as requested by the Committee of Ministers' Guidelines"*.

24. I am convinced that enhanced interaction between all stakeholders in the (s)election process, member States, the Assembly and the Panel is key for the success of the process. We all want to support the Court and improve its functioning by ensuring that only fully qualified candidates of the highest caliber are elected as judges. In this respect, the Panel has repeatedly observed that on numerous lists a third candidate often appears to be less qualified than the two others. Since each candidate on the list can be elected as judge by the PACE, there is a clear need to have three equally qualified candidates presented. I thus call upon you to, please, raise that issue with your governments whenever appropriate.

25. The Panel is a creation of the Committee of Ministers and we are very grateful for your support throughout its existence, which I am glad to see restated in the very recent decisions.

26. Finally, I would like to thank you again for the opportunity to hold this exchange with you today.

Thank you for your attention.

## Appendix III

### Parliamentary Assembly Resolution 2278 (2019)<sup>1</sup>

#### Modification of various provisions of the Assembly's Rules of Procedure Parliamentary Assembly

1. Considering that its actions and decisions must be founded on clear, consistent and effective parliamentary rules and procedures, the Parliamentary Assembly intends to continue with the process of updating its Rules of Procedure. It points out that it has regularly amended its rules in recent years in order to accommodate the changes in parliamentary practice, clarify the rules and procedures where their application or interpretation has raised difficulties or to address specific problems. It therefore intends to take due account of the proposals submitted by its members, national delegations, political groups and committees, particularly in the context of the work of the Bureau's Ad hoc Committee on the role and mission of the Parliamentary Assembly, and make the necessary adjustments in its Rules of Procedure.

2. Accordingly, the Assembly decides to amend its Rules of Procedure as follows:  
(...)

2.4 with regard to the *procedure for the election of judges to the European Court of Human Rights*:

2.4.1 amend paragraph 4.i of the terms of reference of the Committee on the Election of Judges to the European Court of Human Rights as follows:

*“4.i. The committee shall vote by a majority of the votes cast. A decision to consider a single-sex list of candidates in exceptional circumstances shall require a two-thirds majority of the votes cast. The committee shall vote on candidates by secret ballot. Only members who have attended in full the interview procedure for a post of judge may vote. Members of the committee from the country whose list is under consideration shall not have the right to vote, either on the possible rejection of their country's list or on the expression of preferences among candidates. For any other decision, voting shall take place by a show of hands. However, voting may be by secret ballot if requested by at least one third of the members present. The chairperson shall be entitled to vote.”;*

2.4.2 amend the additional provisions on Candidates for the European Court of Human Rights by amending Resolution 1366 (2004), modified, as follows:

– replace paragraph 3 by the following:

*“3. The Assembly decides not to consider lists of candidates where:*

*i. the areas of competence of the candidates appear to be unduly restricted;*

*ii. not all of the candidates fulfil each of the conditions laid down by Article 21, paragraph 1, of the European Convention on Human Rights;*

*iii. one of the candidates does not appear to have an active knowledge of one of the official languages of the Council of Europe and a passive knowledge of the other;*

*iv. the national selection procedure did not satisfy the minimum requirements of fairness and transparency;*

*v. the Advisory Panel was not duly consulted.*

*In such cases, the Committee on the Election of Judges shall decide on a proposal to reject a list of candidates by a majority of the votes cast. This proposal shall be endorsed by the Assembly in the Progress Report of the Bureau of the Assembly and the Standing Committee. The Assembly's endorsement of the proposal to reject a list entails its definitive rejection; the State concerned is invited to submit a new list. Rejection by the Assembly of the committee's proposal to reject a list shall entail the referral of the list back to the committee.”;*

– amend paragraph 4 as follows:

*“4. Moreover, the Assembly decides to consider single-sex lists of candidates when the candidates belong to the sex which is under-represented in the Court (i.e. the sex to which under 40% of the total number of judges belong), or in exceptional circumstances 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 paragraph 1 of Article 21 of the European Convention on Human Rights.*

*Such exceptional circumstances must be duly so considered by a two-thirds majority of the votes cast by members of the Committee on the Election of Judges to the European Court of Human Rights. If the required majority has not been achieved, the committee shall recommend that the Assembly reject the list concerned. This position shall be endorsed by the Assembly in the Progress Report of the Bureau of the Assembly and the Standing Committee.”;*

– add after paragraph 5 the following new paragraph:

*“The Chairperson or a representative of the Advisory Panel shall be invited by the Chairperson of the Committee on the Election of Judges to explain the reasons for the panel's views on candidates, during the briefing sessions scheduled before each set of interviews.”;*