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Advisory Panel (2022)

Fifth activity report for the attention of the Committee of Ministers

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I. INTRODUCTION

1. The fifth activity report of the Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights (“the Panel” and “the Court”) covers the period from 7 May 2019 to 1 July 2022.
2. The purpose of this report, as of the previous activity reports, is not only to provide an account of the activities of the Panel but also to allow the Committee of Ministers and those involved or professionally interested in the selection of candidates for election as judge to the Court to become better acquainted with the role of the Panel and the criteria it uses for interpreting and applying in practice the generally worded conditions laid down paragraph 1 of Article 21 of the European Convention on Human Rights (“the Convention”). As a complement to the activity reports, “A Short Guide on the Panel’s Role and the Minimum Qualifications Required of a Candidate” (“the Short Guide”), prepared by the Secretariat of the Panel, was published in October 2020.
3. In addition to retaining a number of general explanations from its previous activity reports,¹ the present report contains an update of certain new developments, notably those concerning the assessment of the national selection procedure by the Panel, the sources of information relied on by the Panel, the interpretation and application of the notion of “high moral character” in Article 21(1) of the Convention and the gender balance of the lists of candidates (see, respectively, paragraphs 24-27 and 33; 28-32; 35-39; and 63-66 below).

II. MANDATE, FUNCTIONING AND COMPOSITION OF THE PANEL

4. The Panel was created by Committee of Ministers’ Resolution CM/Res(2010)26 of 10 November 2010. This decision was part of the process of implementation of the Interlaken Declaration of 19 February 2010, which 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*”.
5. 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 requirements laid down in Article 21(1) of the Convention, 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.”

Since the adoption on 24 March 2012 by the Committee of Ministers of its Guidelines on the selection of candidates for the position of judge at the European Court of Human Rights (“the Committee of

¹ Preceding activity reports covered the following periods: from 10 November 2010 (the date of the setting up of the Panel) to 31 December 2013 for the first report (document Advisory Panel (2013) 12 of 11 December 2013); from 1 January 2014 to 31 December 2015 for the second report (document Advisory Panel (2016) 1 of 25 February 2016); from 1 January 2016 to 30 June 2017, for the third report (document Advisory Panel (2017) 2 of 30 June 2017; and from 1 July 2017 to 7 May 2019 for the fourth report.

Ministers' Guidelines"),² the Panel has also taken it to be part of its task to advise on compliance with the additional "criteria for the establishment of lists of candidates" which are set out in section II of those Guidelines, notably as regards the linguistic proficiency of the candidates and the gender balance of the list.

6. In order to obtain the Panel's opinion, the governments have to provide the Panel with the names and *curricula vitae* of the three candidates selected at national level three months prior to the submission of the *curricula vitae* to the Parliamentary Assembly of the Council of Europe ("the PACE"). After transmitting its written opinion to the government concerned, the Panel informs the PACE of that opinion.

7. The Panel performs its function in accordance with the operating rules appended to Resolution CM/Res(2010)26.³ Under those rules, it may adopt such internal working methods as it deems necessary for the exercise of its function.⁴ In that context the Panel has adopted supplementary operating rules (reproduced in appendix III).

8. In accordance with paragraph 2 of Resolution CM/Res(2010)26, the Panel comprises seven members, chosen from among members of the highest national courts, former judges of international courts, including the European Court of Human Rights, and other lawyers of recognised competence, who shall serve in their personal capacity. The members of the Panel are appointed by the Committee of Ministers for a term of three years, renewable once.⁵ They do not receive any remuneration in respect of their role. They are reimbursed only for the travel and subsistence expenses incurred in the exercise of their functions.

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

- **Mr Christoph Grabenwarter** (Austria) (Chair and member of the Panel until 30 June 2020), President of the Austrian Constitutional Court;
- **Sir Paul Mahoney** (United Kingdom) (Vice-Chair of the Panel until 30 June 2020, Chair since 1 July 2020), former judge on the European Court of Human Rights;
- **Mr Maarten Feteris** (Netherlands) (Vice-Chair since 1 July 2020), President of the Supreme Court of the Netherlands and since 1 November 2020 judge on that court;
- **Ms Maria Gintowt-Jankowicz** (Poland, member of the Panel until 15 March 2021), former Judge at the Constitutional Tribunal of Poland;
- **Ms Lene Pagter Kristensen** (Denmark, member of the Panel until 8 October 2021), judge on the Supreme Court of Denmark;
- **Mr Bernard Stirn** (France), former President of the Litigation Division of the French Council of State;
- **Mr Guido Raimondi** (Italy), President of the Labour Chamber of the Italian Court of Cassation and former President of the European Court of Human Rights;

² Document CM(2012)40-final, as amended at the 1213th meeting (26 November 2014, decision [CM/Del/Dec\(2014\)1213/1.5](#)).

³ See paragraph 5 of Resolution CM/Res(2010)26.

⁴ See operating rule (xiii).

⁵ See paragraph 3 of Resolution CM/Res(2010)26.

- **Mr Luis Lopez Guerra** (Spain), Professor (Honorific), Universidad Carlos III de Madrid and former Section President of the European Court of Human Rights;
- **Ms Mirjana Lazarova Trajkovska** (North Macedonia), judge on the Supreme Court of North Macedonia and former Section President of the European Court of Human Rights;
- **Ms Saale Laos** (Estonia), Chair of the Criminal Chamber and judge on the Estonian Supreme Court.

10. The appointments and re-appointments made by the Ministers' Deputies during the period covered by this report were as follows:

- **Mr Guido Raimondi (Italy)** was appointed on 19 June 2019 for a full term expiring on 19 June 2022 and then re-appointed on 30 June 2022 for a second full term term ending on 30 June 2025;
- On 8 July 2020 the Ministers' Deputies appointed **Mr Luis Lopez Guerra (Spain)** for a full term ending on 8 July 2023 and re-appointed **Sir Paul Mahoney (United Kingdom)**, **Mr Maarten Feteris (Netherlands)** and **Mr Bernard Stirn (France)** for a second full term of three years ending on 8 July 2023;
- **Ms Mirjana Lazarova** was appointed on 7 July 2021 for a full term ending on 7 July 2024;
- **Ms Saale Laos** was appointed on 3 November 2021 for a full term of three years ending on 2 November 2024.
- **Sir Paul Mahoney** and **Mr Maarten Feteris** were respectively elected by the Panel as its new Chair and Vice-Chair on 17 June 2020 with effect on 1 July 2020.

11. The Panel welcomes the fact that the letter from the Committee of Ministers inviting governments to submit candidatures for filling a vacancy on the Panel explicitly mentions 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 requirement reduces operational costs and facilitates the functioning of the Panel in that it eliminates the need for translation and interpretation.

12. According to supplementary operating rule 7, adopted by the Panel in 2021 (see paragraph 7 above), a member of the Panel is obliged to withdraw from the discussion and vote when the list under examination concerns the election of the judge elected in respect of his or her country of origin. A "national" member may nevertheless be invited by the Panel to provide factual explanations, in particular on the nature of national qualifications or on the national selection procedure.

III. THE PANEL'S ROLE IN THE ELECTION PROCESS

1. The procedure before the Panel for assessing the candidates' qualifications

13. The process for electing a judge to the Court starts with a letter from the Secretary General of the PACE inviting the High Contracting Party concerned to submit a list of three candidates by a

certain deadline. The PACE dispatches the letter up to fourteen months in advance of the scheduled election of the judge. This letter also draws the High Contracting Party's attention to the existence of the Panel. A copy of the letter is sent to the Secretariat of the Panel.

14. Upon receipt of the PACE's letter, the Panel immediately sends the High Contracting Party a separate letter recalling the Panel's tasks and working methods and inviting the High Contracting Party to submit to it, in both the official languages of the Council of Europe (English and French), the names and *curricula vitae* of the candidates proposed, together with information on the national selection procedure.

15. 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 in case that should prove necessary, the Panel invites the Governments to submit the *curricula vitae* at least three months before the expiry of the time-limit for the submission of the list of candidates to the PACE. The Panel's Secretariat collaborates with the PACE Secretariat with a view to coordinating, insofar as possible, the submission of the Panel's views with the timetable of meetings of the PACE's Committee on the Election of Judges.

16. While operating rule (iii) stipulates that the Panel's procedure shall be a written one (the main consequence of which is that the Panel has no power to convene candidates for interview), rule (iv) provides for the possibility of organising meetings "*where [the Panel] deems it necessary to the performance of its function*". In practice the Panel conducts most of its business in writing and only holds meetings if this is justified in terms of the workload or the importance or complexity of the issues to be discussed.

17. 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 five working days. If needed, video conferences or telephone-conference calls are organised.

18. Operating rule (viii) enables the Panel to seek additional information or clarification from the High Contracting Party in relation to any candidate under consideration. This will happen, for example, where the Panel members have doubts as to a candidate's qualifications or the modalities of the national selection procedure. Should the members require additional information from the High Contracting Party, a request (invariably in writing) is made, usually within ten working days following the receipt of the list by the Panel (as spelt out in supplementary operating rule 4).

19. By virtue of operating rule (x), the proceedings of the Panel are confidential. The Panel seeks to adopt its final views on the candidates as far as possible by consensus. If this proves impossible, final views are adopted by a qualified majority of five votes (operating rule (ii)). With the exception of cases where it is necessary to notify the government concerned and the PACE that the threshold of five votes has not been attained, the voting in relation to the adoption of the final views remains confidential in all respects (supplementary operating rule 8). The confidentiality of the Panel's proceedings does not, however, prevent a government from informing national selection bodies of the content of the Panel's final views, notably in instances where those views have been negative in respect of candidates' qualifications or the national selection procedure followed.

20. If the Panel considers all candidates qualified, it notifies the High Contracting Party in writing of that conclusion without further comment, as stipulated in Article 5(2) of Resolution CM/Res (2010)26. Observations on the selection procedure followed at national level may nonetheless be included in the Panel's letter to the High Contracting Party concerned (as to which, see the immediately following section III.2).

21. In cases where the Panel has considered one or more candidates not to be suitable, reasons for this conclusion will be given in the Panel's written response to the High Contracting Party. During the last few years, when stating the grounds for considering a candidate to be unqualified, the Panel has referred more frequently to the principles and criteria formulated in its activity reports (and now summarised in the Short Guide) for interpreting and applying the generally worded requirements laid down in Article 21(1) of the Convention (as to which, see section V below).

22. When the Panel has expressed a negative conclusion as to candidates' suitability for election as a judge on the Court, the High Contracting Party concerned is expected, though not obliged, to submit one or more new candidates.

23. In this 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 selection procedure followed at national level 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. It may be recalled that the Steering Committee for Human Rights has *"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"*.⁶ In some circumstances, in particular if two or three candidates have been judged by the Panel not to be qualified, it is difficult to imagine that other candidates from the same selection procedure will be more qualified than the ones chosen and found lacking by the Panel (unless more meritorious candidates have been discarded at national level for extraneous motives, which in itself would be an indicator of serious flaws in the initial selection procedure).

2. Role and competence of the Panel in relation to the national selection procedure

24. Under the terms of paragraph VI.2 of the Committee of Ministers' Guidelines, when sending its list of candidates to the Panel, a government should also submit information on the national selection procedure followed. The Panel has deduced from this requirement that, while it has no express power of review in this domain under Resolution CM/Resolution(2010)26, in its final views on the candidates it may, where appropriate, draw attention to aspects of the national selection procedure, notably with regard to fulfilment of the requirements of fairness and transparency.⁷

25. A practice to that effect has developed since the spring of 2019. In instances where the Panel has no specific remarks to make about the national selection procedure, that fact will be recorded in the letter communicating its final views to the Government concerned. When this is considered justified, the Panel will address queries to the government or seek further information from it in connection with national selection procedure followed. The Panel's written observations on the point are also included in the Panel's letter that is addressed to the Secretary General of the PACE.

26. It may also be that flaws in the national selection procedure have some relevance for the assessment of candidates under Article 21(1) of the Convention - for example, in the extremely rare cases where there exist objective doubts as to candidates' independence and impartiality vis à vis

⁶ The Steering Committee's 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.

⁷ These being requirements stated in paragraph 8.2.2 of Resolution 2248(2018) adopted by the PACE's Standing Committee.

the government nominating them (as to which, see section V.1, paragraphs 35-39 below, in relation to the Convention's requirement that judges on the Court "*be of high moral character*").

27. The criteria used by the Panel for assessment of the selection procedure followed at national level are indicated below in section IV.

3. Sources of information

28. In addition to the *curricula vitae* and any further information provided by the governments upon the Panel's request, the Panel on occasions receives unsolicited material from various sources (for example, non-governmental organisations and individuals, including disappointed candidates). The Panel does not actively seek information from such sources; and, more importantly, it will not reject a candidate as not qualified on the basis of information and representations received from them. However, the Panel does not exclude putting questions to a government in the light of unsolicited information or representations insofar as that appears appropriate in order to fully confirm that a candidate has the requisite competences and qualifications or in order to clarify issues concerning the national selection procedure. The Panel's final assessment of a candidate's suitability or of the fairness and transparency of the national selection procedure will be based only on material supplied by the government concerned (including the latter's responses to the Panel's questions) and, as spelt out in supplementary operating rule 5, on relevant notorious facts in the public domain (as, for example, documented in Resolutions of the PACE or judgements by the Court or other international or supranational courts such as the Court of Justice of the European Union).

4. The relations between the Panel and the PACE

29. In accordance with Article 5(4) of Resolution CM/Res(2010)26, the Secretary of the Panel informs the Secretary General of the PACE in writing of the Panel's final views on the candidates. If the list presented to the PACE includes candidates whom the Panel has considered unqualified, the reasons given to the High Contracting Party by the Panel for this conclusion are reproduced in the Panel's letter addressed to the Secretary General of the PACE. In the case of candidates whom the Panel has considered qualified, only this conclusion is communicated, without any further comment being provided, as stipulated in Article 5(2) of Resolution CM/Res (2010)26.

30. In line with paragraph 8.2.3 of Resolution 2248 (2018) of 23 November 2018 adopted by the PACE Standing Committee, the PACE has decided not to consider lists of candidates if the Panel has not been duly consulted beforehand by the government concerned.

31. By virtue of paragraph 8.1 of the same Resolution 2248 (2018):

"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."

32. In the view of the Panel, this initiative on the part of the PACE has progressively led to the installation of a fruitful dialogue between itself and the Committee on the Election of Judges, without in any way entailing an encroachment into the prerogatives of the PACE as regards the election of judges. The latest instalment of this dialogue was the joint meeting held on 7 June 2022 between the PACE Committee and a delegation of the Panel.

IV. CRITERIA FOR ASSESSMENT OF THE NATIONAL SELECTION PROCEDURE

33. As indicated earlier, the two primary criteria employed by the Panel for assessing the national selection procedure are those set out in paragraph 8.2.2 of Resolution 2248 (2018) adopted by the PACE's Standing Committee, namely the criteria of fairness and transparency. The aspects of the national selection procedure that the Panel, basing itself on the Committee of Ministers' Guidelines, has so far looked at have included:

- the kind of qualifications, experience and qualities required of the persons applying for selection, including personal qualities such as independence and impartiality;
- the legal basis of the selection procedure followed, when the national selection procedure was established, where the rules establishing the national selection procedure were laid down and if these rules were made public;
- the publicity given to the call for applications, in particular its wideness (especially when the number of applications was limited);
- how many candidates responded to the call for applications and how many of these candidates were interviewed;
- the time-limit for responding to the call for applications;
- more generally, the efforts, or lack of effort, on the part of the Government to ensure that a sufficient number of good candidates of both sexes present themselves;
- the composition of the national selection body; in particular (a) whether the composition of the national selection body was balanced, with members coming from a variety of backgrounds (including some members nominated by independent entities such as bar councils, magistrates' associations, non-governmental organisations and bodies representing the academic world and civil society) or (b) whether, on the contrary, the national selection body is packed with representatives of the government, the political majority in parliament and officials serving the government;
- the procedure followed by the national selection body;
- the selection criteria applied at the national level and the transparency of those criteria;
- the role played by government ministers or the Head of State in the finalisation of the list of candidates;
- whether any complaints were made (including by candidates) about or in connection with the national selection procedure, and if so, how these complaints were dealt with by national authorities;
- the size and population of the country (where the number or quality of applicants in response to the call for candidatures was low);
- in the event of a single-sex list of candidates that does not include the under-represented sex in the composition of the Court (at present, the female sex), the relevant background circumstances insofar as they have a bearing on the issue of justifying a derogation from the general rule of gender balance of lists of candidates (as to which, see section VI.1 below).

V. CRITERIA FOR EVALUATION OF THE QUALIFICATIONS OF THE CANDIDATES

34. Under the terms of Article 21(1) of the Convention, 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 has continuously reviewed the application of this provision in the light of its experience in dealing with concrete cases. In doing so, it pays due regard to the Committee of Ministers’ Guidelines. It follows from the text of Article 21(1) of the Convention that the necessary level of professional competence or experience to serve as a judge on the Court may be achieved through two broad, alternative career avenues, namely (i) experience in the judicial sphere and (ii) recognition as a jurisconsult. Before addressing these two avenues of professional qualification for the position of judge on the Court, it is first necessary to say a few words about the personal requirement of “*high moral character*”.

1. The condition of “be[ing] of high moral character”

35. In previous activity reports, qualities such as integrity, a high sense of responsibility, courage, dignity, diligence, honesty, discretion, respect for others and the absence of conviction for crimes have been mentioned as key components of this requirement, as well as (obviously) independence and impartiality.⁸

36. Generally speaking, however, the Panel has to assume that these personal qualities are possessed by the candidates. A candidate’s character is hardly ever open to being assessed on the basis of what appears in the *curriculum vitae*. In particular, it will only be when something is manifestly apparent from the *curriculum vitae* (for example, if there is mention of the commission of a criminal or disciplinary offence) that a negative judgement as to character can be made. Representations received from third parties asserting the existence of facts capable of supporting an unfavourable assessment of the moral character of a candidate are dealt with in the manner described above at paragraph 28 (in section III.3 on sources of information). Furthermore, the Panel will only take into account publicly available information in this connection once the government proposing the candidate has been given the opportunity to comment on the information’s pertinence and merits. In practice, issues concerning a candidate’s “*high moral character*” have therefore rarely arisen and, until recently, no manifest problems under this head had ever been signalled by the Panel in its views.

37. There has now been one instance in which the Panel was satisfied that serious objective doubts existed in regard to the independence and impartiality of candidates vis à vis the government nominating them. This represents a new development in the practice of the Panel. Furthermore, the negative conclusion was arrived at not only on the basis of what appeared in the *curricula vitae* concerned and the information furnished by the government, notably as to the national selection procedure, but also in the light of notorious facts and documents that were in the public domain. In the latter connection the Panel considers that it cannot be expected to ignore publicly known facts which, as documented in reliable sources such as Resolutions of the PACE and judgements by the Court, are liable to compromise a candidate’s independence and impartiality, even though those facts have not been mentioned by the candidate or the government in question (on this point, see paragraph 28 above).

38. One specific proviso regarding the foregoing explanation needs to be added. As far as the Panel is concerned, being, or having been, active in national politics does not in itself and automatically

⁸ In its first activity report of December 2013 at paragraph 28 the Panel made reference to the Resolution on judicial ethics adopted by the Plenary of the Court in 2008. An updated Resolution on judicial ethics was adopted by the Court in 2021.

constitute a disqualifying incompatibility on the ground of being indicative of a lack of judicial independence and impartiality. Relevant considerations will include the recent or distant character and the intensity or looseness of the links with national politics. What is certain is that active involvement in politics - whether as a member of a government, a parliamentarian or a high official - is not enough on its own for disqualification; there must be other sufficient objective indicators of a lack of independence and impartiality. The Panel is naturally not prevented from expressing an overall negative assessment under the other two conditions laid down in Article 21(1) in regard to the professional qualifications and experience of a candidate whose career has essentially been in the political field.

39. To sum up, the “*high moral character*” of candidates normally cannot be examined by the Panel and has to be presumed, especially given that the Panel is not empowered to convene candidates for interview; and it will only be very exceptionally, when there is some manifest evidence capable of rebutting this presumption, that an issue concerning “*high moral character*” will arise.

2. General considerations concerning the other two conditions

which is appropriate for a constitutional or international court (of which knowledge of human rights law is only one, albeit important, component).

42. The Court, 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.

43. 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.

44. The Panel seeks to apply the same criteria to all countries and all candidates in order to ensure consistency in the application of Article 21(1) of the Convention and equality of treatment across the board and also in order to avoid the risk of disparity in the quality of the judges composing the Court. Nonetheless, in some instances where it has been hesitant about a borderline candidate, the Panel has taken into account as a counter-balancing factor in its assessment the characteristics of the country – that is to say, its small size and population and the consequential difficulty in finding three suitably qualified high-level candidates.

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 on the international plane**.

3. The condition of “possess[ing] the qualifications for appointment to high judicial office”

46. The expression “*high judicial office*” would seem to cover posts as a judge on a national supreme or constitutional court, whereas it would seem to exclude posts as a judge on lower national first-instance courts (although judges on lower national courts may otherwise qualify as jurisconsults – as to which, see paragraph 61 below).

47. The qualifying condition of “*possess[ing] the qualifications for appointment to high judicial office*” must be given a substantive interpretation consistent with its purpose in the light of the criterion of professional experience of long duration at a high level (see paragraph 41 above) and not a purely formal one. Given the wide diversity of national rules on eligibility for appointment to constitutional and supreme courts, the Panel’s view is that all persons eligible for appointment to one of the highest national courts in a country, and even persons holding office on such a court, would not, for that reason alone, be automatically considered qualified to be candidates for election to the Court. In contrast, actual service for a significant number of years on a supreme or constitutional court should mean that a national judge is qualified.

48. 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 of at least ten to fifteen years as a judge or practising lawyer before being eligible for appointment to the highest courts.

49. In sum, consistent with the global appreciation of a candidate's qualifications, account is taken of the person's entire career in the judicial sphere, including the length and level of judicial service or practice of the law and whether he or she has had to deal with cases involving human rights issues and complex interpretative issues of law. The publication of significant books or articles may also represent an important factor compensating for weakness otherwise existing in the judicial side of the candidature.

50. As a final point under this head, the Panel would reiterate its concern about the fact that there is still a considerable number of candidates without long-lasting judicial experience. While many excellent candidates with a non-judicial background have figured on the lists presented by the governments, the Panel 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 convinced that, in the interests of strengthening the overall judicial quality of the Court, 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. The entry into force of Protocol No. 15 (with effect from 1 August 2021), raising the compulsory retirement age of judges on the Court to 74 years, should facilitate this.

4. The condition of being a “jurisconsult of recognised competence”

51. 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.”*

52. In terms of the necessary length of experience, the Panel would on average expect a minimum of 15 to 20 years working in a relevant professional environment. As to the breadth of experience required, certain candidates who possessed a good, even excellent, *curriculum vitae* for their age have been considered by the Panel to lack sufficiently deep experience at a senior level. Even though they could be taken to be well-qualified mid-career legal professionals with an evidently promising future before them, the level of their professional experience to date fell below that required of an international judge tasked with adjudicating on measures adopted by national parliaments, governments and superior courts. In connection with the latter requirement, experience of working in teams at international level would be an important asset, as serving as a judge on the Court entails being able to be a productive member of a collective judicial body which operates in an international environment representing different legal traditions.

53. Once again, inherent in these observations is **the importance of electing to the Court persons of mature professional experience at a high level.**

54. In line with the definition given by the former President of the Court, the Panel considers that, **for persons pursuing an academic career**, the level of “*recognised competence*” is normally attained when they have been a tenured full professor – not an associate, assistant or visiting professor - at a

university of standing for many years and have published important academic works, for example relating to the protection of human rights and the relationship between those rights and the constitutional functions of States.

55. Lack of sufficiently high-level experience as a full, tenured professor over many years on the part of a candidate who has followed an academic career may, although not always, be compensated by the parallel existence of other relevant professional experience, for instance as an advisor or advocate in cases involving human rights or constitutional issues or as a member of national, international or European supervisory bodies in fields connected with human rights. It is a question of degree and of the overall quality of the *curriculum vitae* in question.

56. The selection of **persons other than academics, such as advocates, prosecutors, ombudspersons, diplomats, legal advisors of governmental entities or non-governmental organisations and, generally, legal professionals in the public (including political) or private domains**, on the ground of their being “jurisconsults of recognised competence” is also possible. This will be particularly so where they have, through their career, acquired professional intimacy with the functioning of courts – subject always to the criterion that they have the mature professional experience expected of a judge serving on an international court.

57. In regard to candidates who at first sight do not appear to meet that criterion, the Panel will, as in regard to candidates with a career in academia, look to see if the *curriculum vitae* indicates the existence of compensating factors. For instance, in one case the Panel was willing to recognise as a “jurisconsult of recognised competence” a practising lawyer who, although lacking the usual high-level experience required in that capacity, had served as a member of a committee in an inter-governmental organisation as well as a legal advisor to a Minister. Other concrete examples that might be cited of **persons other than career academics** who, so the Panel accepted, could be regarded as being “jurisconsults of recognised competence” are candidates who had had combined professional experience:

- as a civil servant and a lecturer in relevant domains and as a legal consultant to the constitutional court and to the OSCE;

- as a practising lawyer, as the agent of the government before the Court and as an associate professor of law; and

- as a senior national or international civil servant - for instance, as the chief legal advisor of the Ministry of Foreign Affairs or the Ministry of Justice or as head of department in the Council of Europe with over 20 years of experience in the field of human rights in the Organisation.

58. In contrast to the latter example, on a number of occasions the Panel has expressed a negative opinion in regard to **internal Council of Europe candidates** on the ground that, although they had successfully attained a mid-point of their career with the Organisation, their experience was too far from being sufficiently extensive or sufficiently high-level to qualify them as jurisconsults of recognised competence. In their case, their mid-level professional experience within the Council of Europe was not compensated by sufficient other judicial experience, whether academic or judicial.

59. While **the experience in the field of Convention law** or fields of law relevant to the implementation of Convention rights is a highly material factor to be taken into account, it must be kept in mind that the essential qualifications to adjudicate on 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 professors 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 they have not specialised in human rights; and the same would be true for professors of constitutional law. Academics and other legal professionals in these and other fields should, however, be able to show some real engagement during their career with questions of human rights related to their field of law – for example, professors of criminal law, criminal procedure, family law or immigration law are likely to be able to show some such engagement.

60. In sum, **being a “*jurisconsult of recognised competence*” means more than just having expertise as a lawyer at a certain level.** One may, for example, have acquired good knowledge of human rights and the Convention by obtaining impressive academic qualifications, attending colloquies, publishing some learned articles and so on. 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 such specialist knowledge. Similarly, even full professors in a relevant field of law, while being competent jurists, could not be said to automatically meet the condition of being “*jurisconsults of recognised competence*” within the meaning of Article 21(1) of the Convention if their appointment was of recent origin and their professional experience was limited.

61. In such circumstances the Panel seeks to identify whether such jurists have any compensating experience in advising, appearing or even adjudicating in cases involving the protection of fundamental rights before national or international courts or bodies. There are thus a few examples of the Panel accepting, on the ground of being a “*jurisconsult of recognised competence*”, candidates who have combined academic experience that was not of the most senior level with a certain judicial experience. As a corollary, a national judge who does not satisfy the Article 21(1) condition of “*possess[ing] the qualifications for appointment to high judicial office*” may, by virtue of a parallel academic career with important publications in relevant fields of law, meet the requirements for being considered as a “*jurisconsult of recognised competence*” (cf. paragraph 47 above). It may be that, on an overall assessment of the *curriculum vitae* by the Panel, a combination of elements falling under the two professional heads mentioned in Article 21(1) of the Convention is considered as being sufficient.

62. As a concluding remark, the Panel would once more emphasise (see paragraph 52 above) that many, if not most, of the candidates whom it has found to fall short of the standard of “*jurisconsults of recognised competence*” were excellent experts in the law who were no doubt in good standing with their professional peers but who nonetheless, being at a middling or even early stage of their careers, had not yet acquired **the necessary length and breadth of professional experience.** As mentioned above, Article 21(1) of the Convention is concerned, not simply with the appointment of competent experts to, say, an inter-governmental committee, but with the election of international judges called on to adjudicate in human rights cases that are liable to be complex, sensitive or of significant influence for the development of democratic society in all the Convention countries.

VI. OTHER RELEVANT REQUIREMENTS

1. Gender balance

63. The Panel also has regard to the gender balance of the lists of candidates. If a single-sex list that does not include the under-represented sex (defined in the Committee of Ministers’ Guidelines as under 40% of the judges sitting on the Court) is submitted, the Panel considers itself to be

empowered to ask the government to explain the exceptional circumstances justifying this departure from the “general rule” now specified in the Guidelines.¹⁰

64. When assessing whether all the necessary and appropriate steps have been taken to ensure that the list includes candidates of both sexes meeting the requirements of paragraph 1 of Article 21(1) of the Convention, the Panel will take into consideration factors such as:

- whether, in the absence of qualified candidates of the under-represented sex (at present, the female sex), the call for candidatures was re-published and, if so, in what manner;
- whether any members of the under-represented sex figured on a reserve list;
- whether any concrete and specific efforts were made to encourage members of the under-represented sex to apply, such as inserting in the call for candidatures a prominent mention that applications from them would be particularly welcome and directly contacting potential candidates of that sex.

65. Any derogation from the rule of gender balance that is not perceived to be justified by the existence of exceptional circumstances will be signalled by appropriate observations in the Panel’s final views on the list.

66. In the lists submitted to the PACE, during the period covered by this activity report (7 May 2019 to 1 July 2022) the High Contracting Parties have respected the rule on gender-balance by including at least one female candidate (that is, a candidate of the under-represented sex). On one occasion in the past (in the period covered by the fourth activity report) the Panel accepted a single-sex list of candidates since all the candidates were female.

2. Language proficiency

67. In accordance with the Committee of Ministers’ Guidelines, candidates must, as an absolute minimum, be proficient in one official language of the Council of Europe (English and French) and should also possess at least a passive knowledge of the other, so as to be able to play a full part in the work of the Court.¹¹

68. In practice however, the Panel is not in a position to reliably verify compliance with this requirement, since it does not have the opportunity to interview the candidates and can only judge on the basis of what is included in the *curriculum vitae* prepared by the candidate (primarily the candidate’s own declaration as to language proficiency) and in the accompanying information from the government.

¹⁰ Paragraph II.8 of the Committee of Ministers’ Guidelines reads: “*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 on the Court (under 40% of judges) or if exceptional circumstances exist to derogate from this rule.*”

¹¹ Paragraph II.3 of the Committee of Ministers’ Guidelines.

VII. OVERVIEW OF THE PANEL' S WORK IN THE PERIOD MAY 2019 TO JULY 2022

1. General overview of the Panel's work

69. The Panel's work is cyclical, dictated by the duration of the terms of office of the judges at the Court. Thus, during its 12 years of existence the Panel has examined 75 lists of candidates in respect of all the Contracting States (17 lists during the first three years of its existence, 17 lists in 2014-2016, 12 lists in 2016-June 2017, 11 lists in 2017-April 2019 and, as far as the period covered by this activity report is concerned, 18 lists in 2019-2022).

2. Organisation of meetings, budget and secretariat

a. Meetings

70. From 7 May 2019 to 1 July 2022, the Panel held **nine meetings**, six of them by video-conference (see appendix I for a list of all meetings).

71. On 15 January 2020 and 12 January 2022 the Chair in office at the time was invited by the Committee of Ministers' Deputies to have the now customary periodic exchange of views with them on the activities of the Panel (see appendix II for the text of the two introductory interventions by the Chairs).

72. On 9 October 2019 the Panel had a meeting with the Bureau of the Court, at the latter's invitation, in order to discuss the implications of the Panel's activities for the Court.

73. At the invitation of the PACE's Committee on the Election of Judges, a joint meeting to discuss certain matters of common interest was held on 7 June 2022 between the latter and a delegation of the Panel. With a view to maintaining the optimum level of assistance that the Panel can provide to the PACE Committee, it is intended that such joint working meetings become a regular feature in the future

b. Budget and Secretariat

74. The budgetary appropriation for the Panel in the Council of Europe's ordinary budget for 2019-2022 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.

3. Candidates assessed from 2019-2022

75. During the 38 months from 7 May 2019 to 1 July 2022, **the Panel had referred to it 18 lists¹² and the *curricula vitae* of 45 candidates** (which figure includes replacement candidates). Notwithstanding the challenging nature of this workload, the members of the Panel (whose work is unremunerated) succeeded in maintaining its evaluation of the candidates at the quality level it had set itself, while respecting often very tight deadlines.

77. In the following table the indicated number of lists is higher than the number of vacancies occurring on the Court because it includes the occasions when the government was moved to present more than one list following a negative opinion expressed by the Panel or the rejection of a list by the PACE.

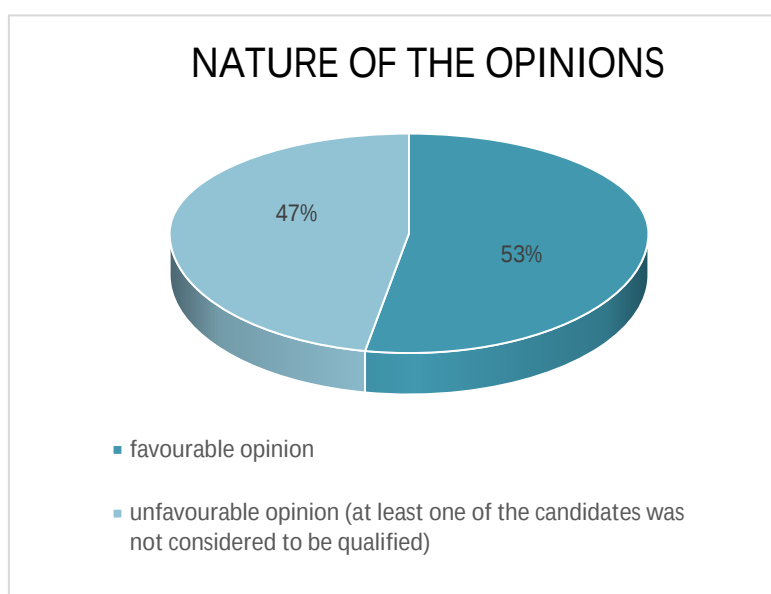
Year	2019 (as from 7 May)	2020	2021	2022 (until 1 July)
Number of meetings (physical, remote, or hybrid)	1	2	4	2
Number of lists	2	5	7	4
Number of opinions	2	5	7	3
Number of candidates assessed	6	14	14	11

a. Panel's opinions

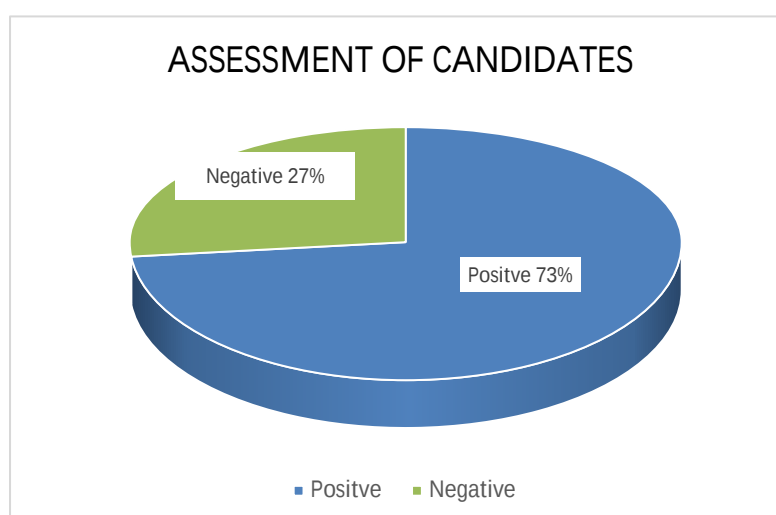
76. In respect of four country lists the Panel considered all candidates to be qualified for the purposes of Article 21(1) of the Convention without requesting further information.

77. In the case of all other lists the Panel requested additional information on one or more of the nominated candidates and/or on the national selection procedure. Requests for additional information have thus become the rule rather than the exception. In respect of nine lists, the Panel subsequently came to the final conclusion that the candidates met the requirements of Article 21(1) of the Convention. In eight cases the Panel expressed a negative opinion on 12 candidates. Four of these candidates were replaced by the Government. In one case the candidate withdrew but the replacement candidate was likewise considered by the Panel to be non-qualified.

¹² For the purposes of this report, a list may be composed of only one or two candidates in case of replacement of candidates who the Panel considered as not qualified under Article 21(1) of the Convention.



Opinions on candidate lists	Favourable opinion	Unfavourable opinion
17	9	8



Number of of candidates	Positive assessment	Negative Assessment
45	33	12

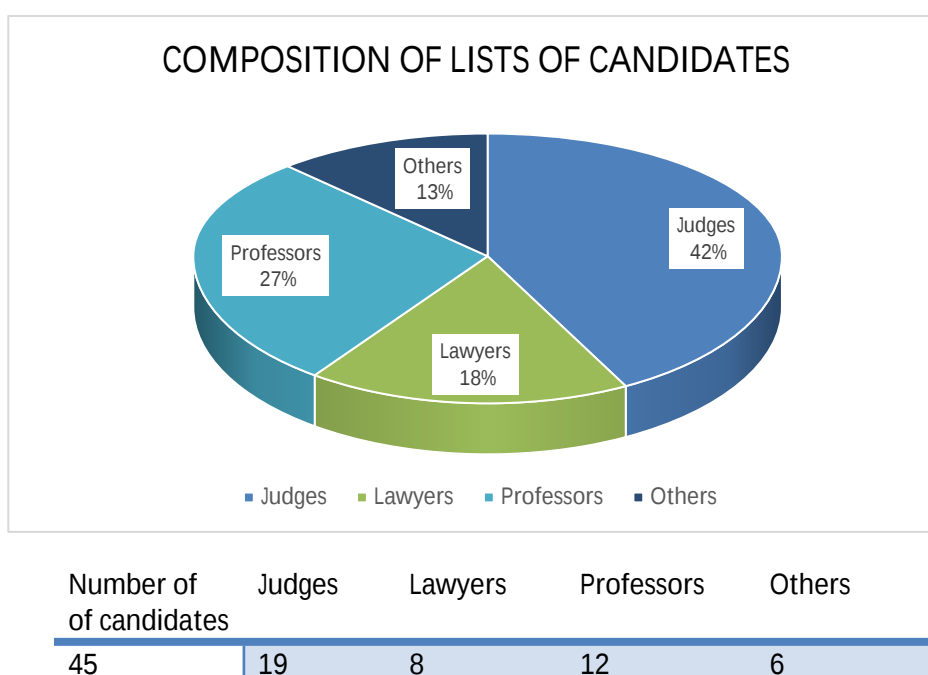
78. During this period three High Contracting Parties submitted to the PACE a list which had previously been totally or partially rejected by the Panel, in two instances without replacing the candidates who had been assessed by the Panel as not being qualified and in one instance after replacing two of the initial candidates but not one of the replacement candidates whom the Panel had also found not to be qualified. In two of these cases the PACE rejected the lists and in one case the list was accepted. In contrast, one High Contracting Party twice replaced the candidates who had not been considered by the Panel to be qualified.

79. Some significant delays have occurred in the submission of the list of candidates: more than one year in one case and six months and five months respectively in two other cases. In one extreme case the initial delay combined with complications in the procedure led to a delay of more than three years in the election of the new judge. As regards two other countries, at the date of adoption of this report no list or any other information had been submitted at all, entailing a delay so far of more than one year for one list and five months for the other list.

80. Despite a remarkable workload in the period 2019-July 2022, the Panel was able to provide its first response to the lists within the time-limit foreseen by Resolution CM/Res(2010)26 (four weeks). However, given that in 80% of the cases additional information was requested from the government, the average time for communicating the final opinion was 47.5 days.

b. Profiles of candidates

81. The lists of candidates were composed of approximately 42% judges, 27% university professors, 18% practising lawyers and 13% others (for example, senior civil servants with a legal background).



VIII. CONCLUSIONS AND OUTLOOK FOR THE FUTURE

82. “*The system will fail if judges do not have the necessary experience and authority*”, wrote the then President of the Court in his letter of 9 July 2010 to the Committee of Ministers (referred to at paragraph 52 above). 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*” (as recounted in paragraphs 4 and 5 above).

83. The only armour of a court is the cloak of public trust. The Committee of Ministers itself has emphasised that the overall success of the Convention system depends on confidence in the judicial authority of the Court.¹³ The common minimum guarantees for the protection of human rights in Europe as defined in the Convention and interpreted by the Court must be fully observed by all High Contracting Parties, in particular by their governmental and judicial arms. This in turn means that it is crucial that the Court be composed of judges with the necessary breadth and depth of professional experience, so that their judgements can attract the respect and confidence of their peers in national supreme and constitutional courts.

84. Overall, the governments' willingness to factor the Panel's views into the composition of the lists of candidates submitted to the PACE has improved over the years. While the Panel continues to receive a good number of excellent lists which do not require intense scrutiny, it has by now become an almost regular practice for the Panel to request clarifications or additional information in relation to one or more candidates or the national selection procedure. The Panel welcomes the fact that such requests have usually been swiftly followed up by the governments, by providing comprehensive information in response. The Panel members are motivated by such cooperation which 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 replacement of candidates who have not been considered suitable by the Panel is tangible evidence of the trust that governments should have in the Panel and its competence as an expert body to evaluate candidates.

85. On the basis of the Panel's experience over the last 12 years since its creation, its conclusion is that, in broad terms, the quality of candidates who have been presented has improved, at least in part because of the existence of the Panel. The required passage of a list before Panel has prompted governments to focus on the issue of the quality of candidates in a way that perhaps some of them did not do so before. And the clarification of the criteria used by the Panel, in the Activity Reports and the Short Guide, has been taken into account by Governments in a way which in general has led to a higher quality of the candidates.

86. Nevertheless, the Panel noted with concern that in 2021 and 2022 it had come to a negative conclusion on a significant proportion of candidates (see paragraph 77 above for statistics), with there also being a number of candidates accepted as fulfilling the minimum qualifying conditions but whom the Panel had regarded as being borderline. It is also disquieting that for the first time in its short history the Panel has, exceptionally, felt itself obliged to express a negative opinion as to candidates' suitability on account of an objectively perceived lack of independence and impartiality on their part vis à vis the government nominating them.

87. The greater frequency with which queries are put to governments in connection with their compliance with the standards, both non-binding and binding, set out in the Committee of Ministers' Guidelines on the selection of candidates, is likely to continue, as a sign of the increased attention paid to these procedural standards on the part of the Panel (as to why, see paragraphs 24-25 and 63 above).

88. The primary responsibility evidently lies with the High Contracting Parties to select only candidates who fully meet the qualifying conditions laid down in Article 21(1) of the Convention, the Panel's role being a purely advisory one. As pointed out above, a vacancy on the Court is a vacancy for one of the highest judicial positions in Europe, involving adjudication on applications challenging decisions by a country's legislative, executive or judicial authorities in relation to respect of human rights. It is thus a vacancy that calls for the election of a person who can exercise sound judgement

¹³ See, e.g., Guidelines of the Committee of Ministers on the selection of candidates for the post of judge at the European Court of Human Rights, adopted by the Committee of Ministers on 28 March 2012 at the 1138th meeting of the Ministers' Deputies.

based on mature professional experience and a developed sense of justice. It follows that there is a clear need for the High Contracting Parties, at the outset of the election process, to do all within their power to ensure that three well, and equally, qualified candidates are presented on a list. It is therefore regrettable that the Panel is occasionally confronted with a list containing one or more candidates who clearly do not satisfy the conditions laid down in the Convention for being elected as a judge on the Court.

89. In sum, if the authority of the Court is to be maintained at an optimum level, it is important that all governments give due and full weight to any negative opinions or observations which the Panel feels obliged to express about candidates or the national selection procedure.

90. Likewise, the optimal effectiveness of the election process as a whole is more likely to be achieved if the PACE, before electing judges to the Court, has appropriate regard to the Panel's preliminary examination both of the national selection procedure followed and of the qualifications of the candidates. The presence of a representative of the Panel at the briefing sessions of the PACE Committee on the Election of Judges and the PACE's rejection of a list if the Panel has not been duly consulted (cf. paragraphs 31-32 above) demonstrate the recognition by the PACE of the useful expert assistance that the Panel is capable of offering it for the effective discharge of its crucial function under Article 21 of the Convention.

91. The Panel thus welcomes the fact that its views are increasingly taken into account, if not always followed to the letter, by the PACE's Committee on the Election of Judges. In the latter connection, when candidates are on the borderline in terms of their qualifications, there necessarily exists a certain scope for different conclusions to be arrived at by the Panel and the PACE Committee on the Election of Judges, especially given that the PACE Committee has the opportunity to interview the candidates and, thus, to obtain a more accurate picture of the candidates' suitability, whereas the Panel is restricted to making its assessment on the sole basis of the written material before it.

92. The Panel stands ready, if so, requested by the Committee of Ministers or the PACE, to continue its dialogue with them with a view to improving its participation in the process of electing judges to the Court. There are doubtless various avenues remaining to be explored. A consistently high quality of candidates for election as judge can only be ensured via a robust procedure of selection and then election, with the input of the expertise of an Advisory Panel performing an effective auxiliary role in mutual collaboration with the other – main – institutional actors in the procedure.

93. The Panel members are grateful for all the support they have received from the Committee of Ministers as well as the PACE. They look forward to continued good cooperation with the Committee of Ministers and the PACE. The Panel would finally reiterate the hope (announced in the introduction at paragraph 2 above) that the present activity report, which incorporates and updates the information given in its first four activity reports, will in particular enable a better understanding of the criteria employed by the Panel when assessing candidates for the office of judge at the Court and a better understanding of how the Panel is likely to apply these criteria in concrete cases.

APPENDIX I – MEETINGS OF THE ADVISORY PANEL

10-11 October 2019, meeting held at the seat of the Council of Europe in Strasbourg

17 June 2020, meeting by video-conference;

19 December 2020, meeting by video-conference;

4 February 2021, meeting by video-conference;

18 March 2021, meeting by video-conference;

22 April 2021, meeting by video-conference;

30 November 2021, meeting at the Council of Europe's office in Paris (hybrid);

25 February 2022, meeting by video-conference;

30 June 2022, meeting at the Council of Europe's office in Paris (hybrid).

Year	2019 (as from 7 May)	2020	2021	2022 (until 1 July)
Number of meetings	1	2	4	2
Number of opinions	2	5	7	3

APPENDIX II

1. Intervention by Christoph Grabenwarter at the 1364th meeting of the Ministers' Deputies on 15 January 2020

Mr Chair,

Ministers' Deputies,

1. First of all, I would like to thank the Committee of Ministers on behalf of the Panel for giving me this opportunity to talk to you today. This is in fact the eighth exchange of views between the Committee of Ministers and a chair of the Council of Europe's Advisory Panel of Experts (the Panel). Speaking for myself, this is the first time I have had the honour of addressing you. I was elected Chairperson in April 2019. In May 2019, Guido Raimondi, the former President of the European Court of Human Rights, was elected as a new member of the Panel.

2. The Panel set up in November 2010 by a Resolution of the Committee of Ministers has a mandate to advise the High Contracting Parties whether candidates for election as judges of the Court meet the minimum conditions laid down in Article 21§1 of the European Convention on Human Rights are able to serve as a judge of the Court. The Panel as an expert body does its best to apply, as a minimum threshold, the objective criteria of Article 21 of the Convention.

3. Over the years the Panel has developed criteria for assessing whether one or the other of the minimum conditions of Art. 21§1 of the Convention is satisfied. Those criteria are found in its activity reports (four since its establishment). The most recent is the fourth activity report, which was already communicated to you on 15 May 2019.

4. The purpose of my statement today is to outline certain aspects of the fourth activity report of the Panel as well as recent developments since the last exchange of views with the Committee of Ministers in March 2019.

5. The fourth report covers the period from 1 July 2017 to 7 May 2019, the date corresponding to the end of the term of office of the previous chairperson, Ms Nina Vajić.

6. Allow me to begin by citing a few statistics. During the period covered by the fourth report, the Panel held four meetings and examined 11 lists of candidates and was always duly consulted. After this period and until today the Panel held an additional meeting last October in Strasbourg.

7. Lists of candidates were composed of approximately 41% judges, 30% university professors, 19% practising lawyers and 8% others (for example, senior civil servants with a legal background).

8. In respect of five country lists, the Panel considered all candidates to be qualified within the meaning of Article 21(1) of the Convention without requesting further information.

9. In the case of six 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.

10. In one case, the Panel could not reach the required majority to either accept or reject one candidate. This candidature was eventually submitted to the PACE for election.

11. I am very pleased to confirm that compliance with Panel's opinions has improved over the years. In some cases, there have however been significant delays in submitting lists.

12. Relations with the PACE have substantially improved further in 2018/19. As stated in the fourth activity report, by virtue of PACE Resolution 2248 (2018) the Chairperson or a representative of the Advisory Panel is 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 will be rejected when the Advisory Panel has not been duly consulted.

13. The Panel has also very much welcomed the Decision of the Committee of Ministers adopted at the 1333rd 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.

14. As for the criteria for assessing whether one or the other of the minimum conditions of Article 21§1 of the Convention is satisfied, the Panel members focus their examination on whether the candidate **possesses the qualifications for appointment to high judicial office or is a jurisconsult of recognised competence**. As previously said, the criteria are found in the fourth activity report.

15. In the broadest terms, both these minimum conditions have been understood by the Panel as requiring "professional experience of long duration at a high level" on the part of candidates (§42 of the report). Ideally, the Panel is seeking "to ensure that candidates proposed are of mature professional experience and unquestionable qualifications for the exercise of a high judicial function" (§45). It is to be noted that "knowledge of human rights law is only one, albeit important, component" of the overall examination of the person's career that the Panel carries out (§42).

16. Against this background, I would like to draw your attention to a highly significant development concerning the role of the Panel. Let me highlight three points:

a) Under the relevant Committee of Ministers' Guidelines, the Governments, when sending their lists of candidates to the Panel, are expected to include information on the national selection procedure followed. Although the Panel is not expressly called on to review the details of the national selection procedure, the Panel decided in April 2019 that, whenever appropriate, in its advice it would draw attention to aspects of the information provided by the Government on national selection procedure, notably with regard to fulfilment of the requirements of fairness and transparency as indicated in the 2018 Resolution of the Parliamentary Assembly (§21 of the fourth activity report).

b) Secondly, the Advisory Panel is a body which has been created in order to support Governments. It fulfils its task in a most diligent manner, which is also recognised by the PACE which has to deal with the proposed candidates. It has become the practice of the Committee of the PACE which holds the hearings with the candidates to hear the chairperson of the Panel before it meets the candidates. While keeping its original function, the Panel also supports the PACE in the discharge of its task of electing the most appropriate candidate.

c) Thirdly, the Panel, in examining the applications of candidates and presenting its activity reports, accumulates experience and a know-how which it is ready to share also in the future with the Governments of Member States as well as with the Council of Europe organs involved in the election procedure – of course, within the limits of confidentiality required by the rules of procedure.

d) The working methods of the Panel have changed over the years since its creation nearly ten years ago. During the first years, a written procedure was the usual way of dealing with lists of candidates. This was to a large extent due to the high number of lists the Panel had to deal with at the same time and to budgetary restrictions. The budgetary restrictions have remained. However, the Panel is now in the position to hold meetings at least twice a year in order to properly discuss the candidates. With the help of your Governments (presenting their list in most cases well in time) the Panel tries to maximise the number of lists which are discussed during a meeting. In order to support Governments in this respect, the Panel is ready to give information on the schedule well in advance.

17. 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.

18. Finally, I would like to thank you again for the opportunity to hold this exchange with you today. I also want to thank Mr Wojciech Sawicki, Secretary General of the PACE for the excellent co-operation. The next meeting will be held in London in March 2020, at which all lists which have reached the Panel by the beginning of March will be dealt with.

Thank you for your attention.

2. Intervention by Sir Paul Mahoney at 1421st meeting of the Ministers' Deputies on 12 January 2022

Monsieur le Président,

Mesdames et Messieurs les Délégués des Ministres,

1. Comme il est d'usage en ces occasions, je voudrais commencer par remercier le Comité des Ministres, au nom du Panel consultatif, de me donner l'occasion de lui rendre compte directement des activités récentes du Panel. La réunion d'aujourd'hui marque le neuvième échange de vues entre le Comité des Ministres et le Président du Panel. Ces échanges complètent les rapports d'activité écrits publiés périodiquement par le Panel, dont le dernier date du 31 juillet 2019. Pour ma part, ayant été élu à la présidence du Panel en juin 2020 en remplacement du juge Christoph Grabenwarter, désormais Président de la Cour constitutionnelle autrichienne, c'est la première fois que j'ai l'honneur de m'adresser à vous.

2. Depuis le dernier échange de vues avec le Comité des Ministres en janvier 2020, **trois nouveaux membres du Panel ont été nommés** : M. Luis Lopez Guerra (professeur d'université en Espagne et ancien juge à la Cour constitutionnelle espagnole et à la Cour de Strasbourg (la Cour)), Mme Mirjana Lazarova Trajkovska (ancienne juge à la Cour et actuellement juge à la Cour suprême de Macédoine du Nord) et Mme Saale Laos (juge à la Cour suprême d'Estonie).

3. En ce qui concerne les statistiques, au cours des deux dernières années, le Panel a tenu **six réunions** (cinq par video-conférence, une en format hybride). Il a examiné **12 listes de candidats** (29 candidats), ce chiffre tenant compte de la situation dans laquelle un pays, en réponse à l'avis final du Panel, a soumis une nouvelle liste. Le Panel a toujours été dûment consulté par les gouvernements et, de son côté, s'est efforcé avec succès de respecter les délais de réponse fixés dans votre Résolution CM/Res (2010)26.

4. Les listes de candidats étaient composées d'approximativement 41% de juges, 38% de professeurs d'université, 10% d'avocats en exercice et 10% d'autres personnes (par exemple, des hauts fonctionnaires ayant une formation juridique).

5. En ce qui concerne **quatre listes**, le Panel a considéré que **tous les candidats** étaient **qualifiés** au sens de l'article 21§1 de la Convention européenne des droits de l'homme **sans avoir besoin de demander des informations supplémentaires** au gouvernement concerné.

6. S'agissant de **huit listes**, le Panel a demandé des **informations supplémentaires** concernant un ou plusieurs des candidats nommés et/ou la procédure de sélection nationale. En effet, les demandes d'informations supplémentaires sont devenues la règle plutôt que l'exception. Les avis finaux du Panel concernant **deux des huit listes** en question étaient que chacun **des candidats proposés répondait aux exigences** de la Convention ; alors que, même à la lumière d'informations supplémentaires, le Panel n'a **pas pu arriver à une conclusion similaire en ce qui concerne un ou plusieurs candidats des six autres listes**. Dans deux de ces cas, les candidats ont été remplacés et, dans un cas, le candidat de remplacement a été considéré comme qualifié. **A quatre reprises**, les **listes** ont été **transmises** à l'Assemblée parlementaire **malgré l'évaluation négative** du Panel. Il y a également eu des retards importants dans l'envoi de certaines listes.

7. Turning to substantive matters, over the years the Panel has progressively developed concrete criteria for assessing compliance with the generally worded minimum conditions figuring in the Convention. Those concrete criteria, which are continually being refined, are explained in the Panel's four activity reports and now in a Short Guide, published in October 2020, on the role of the Panel and the minimum qualifications required of a candidate. This Short Guide is in the first place aimed at providing national authorities involved in the selection of candidates, notably national selection committees, with a clear indication of how the Panel has so far assessed given career-profiles in terms of meeting the Convention's requirements.

8. As you are aware, there are two alternative minimum conditions of what one might call a "professional" character stated in the Convention, namely "**possessing the qualifications for appointment to high judicial office**" and "**being a jurisconsult of recognised competence**". In the broadest terms both these minimum conditions have been understood by the Panel as requiring "professional experience of long duration at a high level" on the part of candidates. Ideally, the Panel is seeking "to ensure that candidates proposed are of mature professional experience and unquestionable qualifications for the exercise of a high judicial function". It is to be noted that "knowledge of human rights law is only one, albeit important, component" of the overall examination of the person's career that the Panel carries out.

9. Despite the explanations given in the Panel's periodic activity reports and now in the Short Guide, Governments are on occasions proposing candidates who are under-qualified. This is liable to be problematic for the credibility of the Court, especially vis à vis the national superior courts. Since the Court may be called on to implicitly overrule the highest national courts, its composition should not create the impression that the professional level of some of its judges is inferior to that of their peers from on those national courts or on other international, including European, courts. Furthermore, when expressing a negative assessment in relation to a candidate on the ground that their professional qualifications and experience are too low-level, the Panel is doing no more than endeavouring to ensure a consistent and equal application of the Convention's qualifying professional conditions from one country to another and from one candidate to another.

10. One of the "key components", to quote the words of the Panel's first activity report, inherent in the third qualifying condition stated in Article 21§1 of the Convention, namely the condition of "**being of**

high moral character”, is independence; quite apart from independence being, along with impartiality, a fundamental requirement for any appointment to judicial office. A significant recent development under the head of the substantive assessment of candidates’ qualifications is that, exceptionally, in relation to one list the Panel found that the accompanying circumstances required it to examine whether two of the candidates could objectively and reasonably be regarded as being independent vis à vis their Government. The Panel took care to specify that the fact of being active in national politics, for example as a Government Minister or as a member of parliament, was not an impediment to being a candidate; and that to reasonably ground the conclusion of an objective fear of a lack of independence or impartiality, there needed to be other circumstances.

11. Although its final views are primarily addressed to the Governments of the Contracting States to the Convention in order to aid them in presenting lists of high-quality candidates, the Panel is also in a position to assist the Parliamentary Assembly in relation to the preliminary question of whether the Assembly has before it three candidates who fully satisfy the Convention’s minimum conditions for serving on the Court as a judge. The cooperative relations between the Assembly and the Panel have been greatly strengthened following the new practice adopted under the Assembly’s Resolution 2248 (2018). By virtue of this Resolution, the Chair of the Panel is invited to explain to the Assembly’s Committee on the election of judges the reasons for Panel’s final conclusions during a briefing session held immediately before each set of interviews with the candidates. Over the last two years the Chair or a Panel member has taken part in briefing sessions on the occasion of five meetings of the Assembly Committee. A joint working meeting of the Assembly Committee and the Panel, intended to facilitate the lines of communication between the two bodies, is planned for the near future as soon as sanitary conditions permit.

12. The Panel’s members are very grateful for the support of the Committee of Ministers throughout its existence. Thanks to this support, we feel that the Panel, through its role as an independent body of experts offering advice, has contributed to the quality of the composition of the Court and to the acceptance of the Court’s rulings by national superior courts. In this, the creation of the Panel by the Committee of Ministers could be said to have brought added value to the Council of Europe and, in particular, to the Convention system.

13. On that note, I would like to reiterate the Panel’s appreciation at having had the opportunity to hold this exchange with you today. Thank you for your attention. And I of course remain available to answer any questions as well as I can.

APPENDIX III - SUPPLEMENTARY OPERATING RULES OF THE ADVISORY PANEL

- 1) The quorum shall be reached when five of the seven members of the Panel are present in the case of a meeting, whether the meeting be physical, remote or hybrid. If a written procedure is being followed, the quorum shall be reached when five members reply.
- 2) The time-limit of four weeks as set out in rule (vi) of the operating rules appended to Resolution CM/Res(2010)26 on the establishment of the Panel (“the operating rules”) shall only begin to run if the list of candidates has been submitted in due form, that is to say, using the model CV form required by the Parliamentary Assembly.
- 3) The members shall give, in so far as possible, their opinion on a list of candidates within five working days following the receipt of the list from the Secretariat.
- 4) Additional information from the Government concerned may be requested, if considered necessary, preferably within ten working days following the receipt of the list from the Secretariat.
- 5) To assess the qualifications of candidates, the Panel may also have recourse to other sources of publicly available information in addition to the information provided by the Government.
- 6) Any member of the Panel possessing the nationality of the country whose list is under consideration shall refrain from taking part either in the Panel’s discussion or in any vote on the adoption of the final views on this list irrespective of whether they have a close personal or professional relationship with any of the candidates. The Panel member in question may, however, provide factual information to the Panel, in particular on the national selection procedure. In this case, the Government concerned is informed that the Panel member possessing the nationality of the country in question had withdrawn from the examination of the list.
- 7) A member of the Panel shall similarly withdraw from the Panel’s consideration of a list in circumstances where there is a conflict of interest, notably by reason of their having a close relationship, whether professional or personal, with one or more candidates on the list, it being understood that no conflict of interest can be taken to exist in the case of mere professional or personal acquaintance.
- 8) With the exception of cases where it is necessary to notify the Government concerned and the Parliamentary Assembly that the threshold of a majority of five votes laid down in operating rule (ii) has not been attained, the voting in relation to the adoption of the Panel’s final views on a list shall remain confidential in all respects.