Enhancing the selection process of European Court
of Human Rights judges through multi-institutional dialogue

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NATIONAL PROCEDURES OF SELECTION OF CANDIDATES FOR THE POST OF JUDGE AT THE EUROPEAN COURT OF HUMAN RIGHTS: CHALLENGES AND GOOD PRACTICES

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The Assembly's refinement of requirements in the selection of candidates

Le raffinement, par l'Assemblée, des exigences relatives à la sélection des candidats

My intervention will specifically deal with the Assembly's refinement of requirements in the selection of three candidates, one of whom is to be elected as a judge onto the ECtHR. I will concentrate principally – but not exclusively – on a short (historical) overview, the importance for States to possess an appropriate national selection procedure; for States to take into account the Assembly's gender requirement **&** for all shortlisted candidates to possess a good knowledge of English or French, & at least a passive knowledge of the other language.

My intervention will consist of 7 points.

1. A little history: the situation that existed between 1958 & the entry into force of Protocol No. 11 in 1998. For this period of 40 years the manner in which judges were elected was, to put it politely, far from satisfactory. The process of selecting candidates at the national level was left entirely at the discretion of governments. This could, I suppose, be partly 'explained' by the fact that – at that time - the Court's role in enforcing Convention righs was optional & contingent, in addition, on a case being referred to it by the now defunct European Commission of Human Righs or a State concerned.

Suffice, for present purposes, for me to refer to an article written by one of the Advisory Panel's most ardent protagonist and close friend of many persons present here today, the late Norbert Engel, who – in the *Human Rights Law Journal* of 2012 – explained how the election procedure in most cases was a foregone conclusion at the very outset with governments stressing - in their covering letters to the Council of Europe- whom they actually wished to have elected by placing the said person at the top of the list !! [vol.32 HRLJ (2012), pp. 448- 455 at p. 451.For a 'history' of the election process see :

Oxford Public International Law: Election of Judges: European Court of Human Rights (ECtHR)]

2. The Assembly's insistance on the need for States to provide for an appropriate transparent national selection procedure - a procedure which was, to the best of my knowlege, non-existant for a long period of time in all States Parties to the Convention.

When in 1997 the Secretary General of the Council of Europe asked States to put forward candidates for the 'new' full-time Court, the Assembly urged States to improve their 'opaque' selection procedures - even if a few states openly invited interested persons to put forward their candidatures ['job vacancies' were advertised in Belgium, in the Moniteur belge, in the Netherlands ; in newspaper calls for candidates in Poland & the UK.]

Soon afterwards, in 1999, in a Recommendation addressed to the Committee of Ministers [Rec 1429 (1999), §§ 4-6], the Assembly went a step further and insisted that States set up transparent and rigorous national selection procedures. In 2009 – ten years later - having noticed progress in only a handful of states, the Assembly specified, in a Resolution, - & I quote: « *in the absence of a fair, transparent and consistent national selection procedure, the Assemby may reject such lists* » [Resolution 1646 (2009)]. And yet, another ten years had to elapse before - in 2019 - the Assembly decided that it would henceforth **automatically reject lists** of candidates when – again I quote – « the national selection procedure did not satisfy the minimum requirements of fairness and transparency. » [Res 2278 (2019)]. I understand that today, in 2025, this strict requirement is uncontested. Indeed, it is of interest to note in this connection the CM's intention to revise its 'Guidelines' in order to take into account this development, as well as the Advisory Panel's evolving practice in assessing national selection procedures [CM/Del/Dec (2024) 1488/4.2, of 8 February 2024 – in the context of following-up CDDH report on issues relating to judges of the ECtHR].

3. My 3rd and 4th points : issues relating to the gender requirement and language proficiency, both procedural requirements 'imposed' upon States which – although not specifically, expressly catered for in the text of the Convention, « *can* » – as the Court has confirmed in its first Advisory Opinion [12 February 2008, § 47] « *be considered to flow implicitly from Article 21(1)* » of the Convention. [See also § 43 : the Court acknowledged that the Assembly « *has a certain latitude* » in establishing its procedure in electing judges ».]

I'll limit my observations relating to my third point, namely that of the need to ensure a gender balance in the list of candidates, as I understand that Serhii Kalchenko will cover this issue. Suffice to note the Assembly's insistance to ensure gender parity within the Court, especially in the period leading up to & directly after the establishment of the full-time Court in Strasbourg… The percentage of women on the Court increased dramatically from 2.7% in 1997 to 20% in 1998 &, since 2007, it has consistently been above 30%. [This requirement is now uncontested. Here, it might be worth – later on

in discussions – to refer to how in all but two instances, all-male lists provided by Malta, Belgium, Croatia, Moldova & Denmark were rejected by the Assembly.]

4. In their procedures for selecting candidates governments must ensure, for self-evident reasons, that shortlisted candidates possess an active knowledge of one, and a passive knowledge of the other official language of the CoE (English/French). Since the establishment of the full-time Court, candidates' linguistic proficiency must not only have been verified within the domestic selection procedure, but also clearly indicated on the model – standardised - curriculum vitae submitted to the Assembly, templates of which are nowadays available, for all potential candidates on the Assembly's website.

…And while on the subject of candidates' CVs - copies of which are obviously provided to both Advisory Panel and the Assembly – allow me to make a critical comment. The manner in which CVs are completed by certain candidates leaves a lot to be desired: some are, in effect, 'an overkill' where candidates enumerate not only all their publications but also every conference, seminar and workshop they've ever taken part in! Here I'm obvously exaggerating …but I'm sure you've understood what the problem is!

5. The delicate issue of the 'quality' of certain candidates put forward by States when they clearly do not meet the criteria listed in Artice 21, § 1 of the Convention, or where they are borderline in terms of their qualifications - a subject discussed in the 6th, most recent, Report of the Advisory Panel, issued a few weeks ago [5 November 2025, encompassing the period of 1 July 2022 to 30 June 2025].

These concerns of the Panel remind me of parallel 'teething problems' within PACE, which led to the creation of a fully fledged general Commiteee on the Election of Judges in 2015, after the plenary Assembly had, on a few occassions, not followed the recommendations of its then Sub-Committee – by electing onto the Court candidates who had not been recommended!

This is a subject which, I assume, will be discussed in Thematic Session II.

6. Here I simply wish to draw attention to the Assembly's recent Resolution [2601 (2025) of 10 April 2025] on 'Legal Aspects of accession of the EU to the ECHR,' in § 5 of which it is specified that, if & when the EU accedes to the Convention, the Assembly « *expects that the EU will duly consult the Advisory Panel … before submitting its list of candidates to the Assembly, as do all Parties to the Convention*. » and the fact that some 'reflection' may be necessary, as concerns the designation, by states, of *Ad Hoc* judges, a procedure whose designation evades – is beyond the control – of the Assembly (& the Panel). It may be noted, in this connection, that after the election of the new Polish judge in October of last year, Poland placed the two unsuccessful candidates onto the country's list of *Ad Hoc* judges (as envisaged in Rule 29 of the Court's Rules).

7. My concluding point. Former President of the Court, Sir Nicolas Bratza, rightly pointed out a few years back – when interviewed in the context of a comparative survey carried-out on this subject by the Open Society Justice Initiative & the International Commission of Jurists – he confirmed that the procedure in the election of judges in Strasbourg has '***improved beyond recognition*.**' This is certainly true, especially as concerns national selection procedures. But this is not to say that in many instances, improvements are still necessary.

I thank you for your attention.