

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

**SEMINAR MARKING THE 15 YEARS OF THE ADVISORY PANEL'S WORK**

27 November 2025, Strasbourg

**LOOKING AHEAD: ENHANCING THE ELECTION PROCEDURE AND THE ADVISORY  
PANEL'S EVOLVING ROLE**

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Thank you for the invitation to this important Seminar. As President of the Article 255 TFEU Panel charged with assessing the suitability of candidates to become members of the European Court of Justice and the General Court, I will limit my remarks to the role of this Panel. I will focus mainly on features of the 255 Panel that differ from the status and role of the Advisory Panel of Experts we are discussing at this seminar.

The initial system for electing judges and advocates-general to the Court of Justice and the then Court of First Instance (today the General Court) consisted of a proposal put forward by the government of each Member State and containing the name of one candidate only, followed by a decision "by common accord" of the governments of the EU Member States. The candidate that was put forward by the national government was practically always endorsed by the other Member States and thus elected judge or advocate-general. When I was myself, in the autumn of 2001, nominated and then elected judge at the Court of Justice, I remember being somewhat surprised that there was no open procedure at national level nor any vetting procedure at Union level.

As concerns were expressed as to whether the original EU system provided for sufficient guarantees concerning the professional qualifications and independence and impartiality of members of the CJEU, the idea came up of reforming the procedure to appoint members. The so-called Due report of January 2000 commissioned by the European Commission stated that it would be "useful" to establish an advisory committee at Union level composed of highly qualified and independent experts. This idea was discussed further and developed by a discussion circle set up in February 2003 by the European Convention charged with preparing a Treaty establishing a Constitution for Europe.

After the abortive Treaty establishing a Constitution for Europe was turned into the Treaty of Lisbon, the Treaty on the Functioning of the European Union (TFEU) came to include Article 255 establishing a panel "in order to give an opinion on candidates' suitability to perform the duties of Judge and Advocate-General of the Court of Justice and the General Court". The system thus established, which follows closely the proposals of the discussion circle, differs in many respects from the Council of Europe and ECtHR corresponding system, with its Advisory Panel, which was established shortly after the entry into force of the Lisbon Treaty.

The main differences are as follows:

- In the EU system, the members of the two Courts continue to be appointed by the governments of the Member States “by common accord”, not for instance by the European Parliament
- Members are appointed for a term of six years, which is renewable without any formal limitations such as age or number of consecutive terms
- The process starts with a national selection process for which there are no special EU requirements or recommendations comparable to the Strasbourg Guidelines concerning national selection procedures (however most EU Member States now have some national rules);
- The EU Member State’s government makes a choice leading to the submission of only one candidate, who is then forwarded to the 255 Panel
- Based on a written and oral procedure, with extensive information forwarded by the government and the candidate, and an intense hearing *in camera* of each candidate, the Panel’s opinion, whether positive or negative, is forwarded to all the 27 governments; if the opinion is negative, the government concerned has always withdrawn its proposal and later submitted a new proposal, which again has been vetted by the 255 Panel; if the opinion is positive, the candidate proposed by a government and vetted by the 255 Panel, will be appointed by common accord

The role of the 255 Panel is thus not to make a choice between two or more candidates but simply to give its opinion on the suitability of the candidate put forward by a national government. That said, by taking cognizance of several Panel opinions, both positive and negative, as well as the detailed Activity Reports of the Panel (which are public), Member States should get an idea of what criteria and considerations the Panel is using when reaching its conclusions. The practice of the Panel thus may have an indirect influence on the selection process at national level.

The existence and practice of the Panel have also contributed to the development of national selection procedures which in many cases involve an advisory group of experts, sometimes appointed for a given period, sometimes *ad hoc*. The Panel, and in the Case of *Valančius* (C-119/2023), the Court of Justice, have welcomed the setting up of such national procedures involving, if possible, independent advisory bodies. The lack of such national procedures is not an impediment to the 255 Panel delivering a positive opinion on a candidate but the existence or not of such national procedures may be a factor taken into account in borderline cases.

It should come as no surprise that the work of the 255 Panel has from time to time inspired debate, more recently in an on-line symposium arranged by EU LawLive in September-October 2014. Governments confronted with a negative opinion on “their” candidate have not always welcomed the opinion with open arms... Some of the academics in the EULawLive symposium expressed criticism of the panel’s role and practice. While time does not allow me to dwell on this debate in any greater detail, three issues merit to be mentioned.

First, some critics argued that the Panel has embarked on a too detailed and rigid scrutiny of the suitability of candidates and that in the case of a candidate who is a member of a national supreme or constitutional court, the Panel should, given the wording of Article 253 TFEU, simply confirm that the candidate is such a national judge and thus suitable. The Panel, from its very beginning in 2010, has not understood its role in such a limited way

but has exercised a real assessment of the suitability of each candidate. This also seems to have been the intention behind the establishment of the Panel, as can be seen from the *travaux préparatoires* of Article 255. Throughout its 15 years of existence, the average rate of negative opinions on candidates for a first term of office has been around 20 to 25 %.

Second, other commentators, while welcoming the fact that the Panel embarks upon a robust review, argue that its opinions, including their reasoning, should be made public and not only distributed to the governments of the Member States. The Panel has interpreted its Operating Rules in such a way that the opinions remain confidential. I note that this seems to be in line with the procedures applying to the ECHR Advisory Panel of Experts. The 255 Panel's position has been condoned by the European Ombudsman, who has referred to the advantage of confidentiality in ensuring frank and robust opinions on the suitability of candidates and to privacy concerns. Given the wording of the Panel's Operating Rules, the established practice of the Panel since its birth and the opinion of the European Ombudsman, making the Panel opinions public would in my view require amendments to the Operating Rules established by the EU Council. Personally, I would not advocate such a change.

Third, some observers have claimed that the 255 Panel aims at creating something they refer to as an "EU law bureaucracy" supposedly consisting of a narrow group of Union law *aficionados*. Nothing could be further from the truth. A look at the present composition of the Court of Justice and the General Court will show that the judges and advocates-general come from very different backgrounds. As to the claim that the work of the 255 Panel is dominated by former CJEU judges, while according to Article 255 TFEU the Panel shall comprise seven members chosen from among, *inter alia*, former members of the Court of Justice and the General Court, the majority of the members has always been national judges or former judges.

At this point in time, I am not aware of any concrete proposals to change the role of the 255 Panel in the assessment of the suitability of candidates. The Panel has favoured continuity and avoided any significant changes to its methods of work and the criteria it has used in the assessment of the suitability of candidates as they were established in 2010. New challenges may of course lie ahead, such as a possible role to be given the Panel in the election of candidates to become an EU judge for the ECtHR, should accession now finally move forward. Moreover, a strengthening of national selection procedures would be welcome.

I am grateful for the opportunity to take part in today's seminar and to learn more about the election process concerning ECtHR judges. While the EU and the Council of Europe systems differ in many respects, I am sure that there are also issues of common interest. I would be happy to try to answer any question concerning the 255 Panel that you may have. Thank you.