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

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1. Progress and problems in ensuring the quality of ECtHR judges

75 years ago, the European Convention on Human Rights was signed in Rome. Just over 25 years have passed since the first judges of the European Court of Human Rights, reformed by Protocol No. 11 to the Convention, were elected, at that time for a term of six years with the possibility of re-election. With Protocol No. 14, which entered into force on 1 June 2010, the term of office was extended to nine years and the possibility of re-election was removed.

In recent decades, countless discussions in working groups, commissions, and academic publications have focused on further strengthening the quality of the Strasbourg judiciary, and several concrete advances have been achieved.

Particularly noteworthy in this regard are the reforms to the Convention itself introduced by Protocols No. 14 and No. 15, which addressed the term of office and the age limit for judges. In addition, the creation of the Advisory Panel of Experts in 2010 and the establishment of the Parliamentary Assembly's Committee on the Election of Judges to the European Court of Human Rights in 2015 represent key organisational and procedural milestones.

2. Improvements and shortcomings in the election procedure and deterrent effects

Despite the progress made, more than 25 years after Protocol No. 11 entered into force, shortcomings in the selection procedure persist. The influence on the quality of the applications for judicial positions in Strasbourg impacts the quality of the judges ultimately elected. In any case, for some individuals who would be well suited to serve as judges, these factors have a "chilling effect," to use the ECtHR's terminology, and thus act as a deterrent.

At the end of 2017, the Steering Committee for Human Rights (CDDH) submitted a comprehensive report to the Committee of Ministers on the selections and appointment of judges, which was published in March 2018. The report documents the state of discussions and reform considerations, addressing not only the selection process at the member state level and the election process within the Council of Europe, but also the working conditions at the Court. In 2023, a subsequent report by the Steering Committee likewise addresses the conditions of judicial office, the selection and election procedures, as well as developments that have taken place since 2017.

Regardless of all the discussions within the Council of Europe, the quality of the candidates naturally depends foremost on the nominees put forward by each member state. Stricter requirements for domestic procedures have, in many member states, had predominantly positive effects. In most cases, they have led to greater transparency and openness in the selection process.

The Council of Europe, on the other hand, has for years been faced with the persistent accusation that the election process in the Parliamentary Assembly is politically influenced. In addition, a divergence of appreciation that cannot be overlooked has arisen between the Advisory Panel and the Committee on the Election of Judges; this has identified in recent times, with negative consequences for the candidates. In practice, however, this tension has often been used constructively: the Committee on the Election of Judges has generally relied on the Advisory Panel's assessments and has, for the most part, refrained from considering candidates deemed unsuitable by the Panel. The participation of an Advisory Panel representative in the meetings of the Committee in a briefing session prior to the hearings is likewise a positive development.

However, these positive developments are counterbalanced by negative ones. Although the Advisory Panel does not rank candidates - since it has no mandate to do so - its assessments at times reveal significant differences in quality among the three candidates nominated by member states. There have been repeated instances in which a clearly better-qualified candidate, based on the written application, was passed over in favour of another candidate with a markedly weaker profile. The often-invoked argument that the ultimately selected candidate delivered an exceptional performance during the hearing before the Committee on the Election of Judges carries only limited weight: it cannot be independently verified, as the hearings are not public, and such hearings represent mere snapshots in time. Without any doubt, language skills cannot be reliably evaluated on the basis of written documents alone but can only be assessed during the hearing.

Another problem is that the hearings in the Committee on the Election of Judges are conducted by politicians. Some of them have a keen interest in human rights and the Court of Justice and are certainly capable of assessing whether a candidate is highly qualified in their field. Another problem is that the hearings are conducted by the Committee on the Election of Judges which is a political, not an expert body. This shortcoming could be addressed more effectively by directly involving members of the Advisory Panel - something that has not yet happened. In many cases, the Panel's members do not rely solely on written application materials; through their extensive experience in the field of human rights and the judiciary, they are personally familiar with many of the candidates.

The multi-stage selection process can result in discrepancies between the assessments of the Committee on the Election of Judges and those of the Advisory Panel in individual cases. The Advisory Panel has explicitly acknowledged that, especially in borderline cases, the candidates' hearings may lead to different conclusions.

However, it becomes problematic when the Parliamentary Assembly invites candidates to a hearing but then prevents them from attending because the member states' list is deemed insufficient at short notice, even though the candidates had previously been deemed suitable by the Advisory Panel. This occurred three times in 2024 and 2025, affecting the candidate lists of Austria, Hungary, and Monaco. This may not only an irritating signal to the experts on the Advisory Panels, but also to the candidates themselves. It may be that such individual cases have deeper causes in the tense relationship between the organs of the Council of Europe; sometimes domestic politics also interferes with foreign and European policy. However, such developments and

tensions should not come at the expense of candidates, which is where the point of deterrent effects is reached.
In addition to that attention has to paid to other aspects of the selection process that deter highly qualified individuals from applying:

Being included in a shortlist of three candidates without ultimately making the race is not necessarily a deterrent for early-career applicants. Universities frequently use shortlists for professorships, and many member states apply similar practice for their high courts, especially for nominations to the presidency of supreme courts. Shortlists of three candidates can help balance the separation of powers in the selection process, which, if well designed, can increase democratic legitimacy, a goal regularly achieved in elections to constitutional courts. In the context of electing judges to the Strasbourg Court, however, this objective of increased legitimacy is not fully realised due to the structure of the process. Moreover, practical drawbacks further call the effectiveness of the three-candidate shortlist into question despite the fact that the Parliamentary Assembly has taken measures to mitigate these effects.

In the Committee on the Election of Judges, a cumulative negative effect can be observed in cases where a meeting date is particularly unfavourable, for example following elections in member states, which in the past has reduced attendance to hearings to half of the Committee members. This observation coincides with the more general criticism of the lack of representativeness of the Committee on the Election of Judges, combined with the perception of a lower democratic legitimacy of the procedure. Although the PACE Committee on the Elections of Judges only emits recommendations, deficits in attendance in the Committee, combined with the lack of continuity in parliamentary work, can lead to random majorities that cannot claim to be representative of parliamentary bodies and decision-making processes and thus cannot claim democratic legitimacy in narrower sense.

The shortcomings described are primarily not due to individuals acting within the bodies, but to the constitution of the bodies, which was appropriate for post-war Europe in the 1950s and 1960s, but no longer seems adequate today. In the past, significant progress in advancing the Council of Europe’s objectives and fulfilling its tasks was achieved largely thanks to the skill of the governing bodies and, above all, the dedication of the senior officials of the Council of Europe who work and continue to work in support of these bodies, all while maintaining a sound overall institutional balance.

One example of this is the working meetings in which the qualification criteria for judges, as laid down in Article 21 of the Convention and further developed in international and European practice over recent decades, were evaluated, in particular that of the "jurisconsult of recognised competence". In discussions it has been raised that modern human rights protection needs to include not only individuals who are well versed in theory, but also practitioners, such as human rights lawyers, who are more familiar with the practice of human rights protection. According to the traditional understanding and to the practice of the Advisory Panel in general, the election of such persons would need some qualifications either through part-time employment as university professors or through special experience in the field of human rights combined with publications of a certain significance in the field of human rights. Broadening the pool of potential candidates to include practising lawyers without an academic or judicial background would require an amendment to the ECHR, which explicitly refers to “jurisconsults of recognised competence” and the “qualifications required for appointment to high judicial office”. Particularly in times when the ECtHR is addressing highly political issues, it is crucial to uphold objective quality criteria and ensure their strict application, as

illustrated by decisions in areas such as climate protection.

3. A proposal for discussion

The election of judges and the constitutional rules created for this purpose are among the most sensitive issues for the preservation of a democracy based on the rule of law. This applies at the level of individual states as well as at the international and European levels. Rules that have been in place for a long time and have generally proven effective should only be changed where experience shows a need for adjustment.

Such a need can be observed in the current system for electing judges to the Strasbourg Court. The reforms introduced by the Committee of Ministers fifteen years ago seem to have been insufficient and should be complemented. Against this background, it may be preferable to abandon the system of a list of three candidates ("triple nomination"), which in recent years has at times led to tensions, frustration and, in some cases, suboptimal results, and to replace it with a system of single nominations, similar to the procedure for electing judges to the Court of Justice of the European Union. The confirmation of the candidate by the Parliamentary Assembly could be retained and could serve as a final safeguard in the case of states that consistently refuse to propose a suitable candidate.

For such a step to represent progress, it is essential that the national selection process be transparent beyond any doubt and that the Advisory Panel be strengthened along the lines of the committee established under Article 255 TFEU. The Advisory Panel would also need to be able to conduct hearings. At the same time, the positive and negative experiences with the committee established under Article 255 TFEU should be taken into account. A good selection of committee members is just as important here as appropriate monitoring of the quality criteria for judges of a European court. In any case, one should refrain from examining candidates in the style of a state examination and from disproportionate influence by the President of the Court of Justice in the selection of members of the committee under Article 255 TFEU, as this could lead to a narrowing of the diversity and profile of future judges. The judges' biographies should form the basis for the decision, not least because this will help to consolidate confidence in the case law of the Strasbourg Court through the inclusion of recognised figures from the domestic sphere.