

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

OPENING SESSION

**Ms Petra Bayr, Chairperson of the Committee on the Election of
Judges to the European Court of Human Rights of the
Parliamentary Assembly of the Council of Europe**

Distinguished President of the Minister's Deputies, distinguished President of the Court, distinguished Chair of the Advisory Panel, distinguished judges, ambassadors, members of parliaments and guests,

I would like to start by congratulating the Advisory Panel on its 15th anniversary and thanking its Chair, Mr Lopez Guerra, for the excellent cooperation that we have maintained over the years. Let me also remind you that the Assembly's dedicated Committee on the Election of Judges, which I have the honour of chairing, is celebrating its 10th anniversary this year. The Committee was established in 2015 to replace the former Sub-Committee of the Committee on Legal Affairs and Human Rights.

Although the Panel has no decision-making power, it is part of a multi-stage procedure that results in the election of Court judges by the Assembly. The Parliamentary Assembly is the Council of Europe statutory body that was entrusted with the fundamental task of electing judges by the Convention in 1950 (Article 39 of the original text). This is one of the Assembly's most important prerogatives and a key element of the Convention system as we understand it today. This prerogative provides a measure of democratic legitimacy to the Court and has remained unchanged throughout the 75-year history of the Convention. This was not altered in 1998 when the Court became a single, permanent judicial body, nor with the successive reform protocols (14 and 15). This is also one of the features that distinguish the European human rights system from other regional human rights courts and the system prevailing in the Court of Justice of the EU.

However, this power must be exercised with care and responsibility. Firstly, we must apply the eligibility criteria set out in Article 21(1) of the Convention to ensure that the most highly qualified and independent judges are elected by the Assembly to sit on the Court's bench. Our committee has gradually become stricter in applying these criteria, as well as the Committee of Ministers' Guidelines on the selection of candidates. Rejections of lists on substantive grounds because not all candidates fulfil the minimum requirements under Article 21(1) are not uncommon. In fact, since 2019, our committee is obliged by our own rules of procedure to reject a list if "not all of the candidates fulfil each of the conditions" set out in Article 21(1). This reflects a

tightening of the rules compared to previous practice, when the Assembly occasionally accepted lists where one candidate did not fulfil the requirements. These rejections are necessary to ensure the Assembly can have a real choice from three qualified candidates. Since I became Chair of the Committee in January 2024, the Committee has rejected lists on substantive grounds on three occasions.

Secondly, our committee has also gradually placed greater emphasis on the fairness and transparency of national selection procedures. Although this is not regulated in the Convention, the Committee of Ministers' Guidelines and our own practice have guided us in assessing national selection procedures. This has also led to the rejection of certain lists on procedural grounds. For example, during my time as Chair, we rejected one list on procedural grounds and another on both substantive and procedural grounds. According to our rules since 2019, we have to reject a list if the national selection procedure did not fulfil the minimum requirements for fairness and transparency, or if the Advisory Panel was not duly consulted.

Some of these procedural improvements were made in 2019 (based on Mr Cilevics' 2018 report) and were positively assessed by the Steering Committee for Human Rights in its 2023 report. In its decision of February 2024, the Committee of Ministers invited the Assembly, 'when it rejects a list on procedural grounds, to consider publishing its conclusions and reasoning'. Regarding this proposal, we believe that transmitting the reasons for rejection to the respective ambassador and indicating them in a succinct manner in our public memorandum (in a non-country specific manner) is sufficient for the sake of transparency and to help governments improve their selection procedures.

Regarding gender equality, the Assembly clarified in 2011 that any list must include candidates of both sexes, unless the candidates are of the underrepresented sex among the Court's judges or there are exceptional circumstances justifying an exception, supported by a two-thirds majority of the committee. While the Committee had previously accepted all-male lists on this basis, in 2022 it rejected an all-male list despite explanations provided by the relevant minister. This demonstrates the Assembly's commitment to addressing the issue of gender balance and the ongoing underrepresentation of women at the Court.¹ Given these circumstances, I welcome the recent submission of all female lists by certain states, such as Andorra and Cyprus.

Finally, regarding our relationship with the Panel, I would like to remind you that in 2010, the Assembly welcomed the initiative to establish a panel of experts to advise governments before lists of candidates are submitted to the Assembly.² Since then, and even more so since the creation of the free-standing Assembly Committee on the Election of Judges in 2015³, the two bodies have endeavoured to cooperate as closely as possible while recognising the different roles we play in the process. The Panel advises governments and has no decision-making authority. The Assembly

¹ Currently, there are 16 women out of 45 judges, meaning 36%.

² See Resolution 1764 (2010), initiative by the then President of the Court.

³ Which replaced the former Sub-Committee on the Election of Judges of the Committee on Legal Affairs and Human Rights.

Committee makes recommendations on candidates and possible list rejections to the plenary Assembly, which makes the final decision on the election of a judge for each country or rejection of a list.⁴ From 2019, and as a reflection of our closer cooperation with the Panel, the Chairperson or a representative of the Panel has been invited to explain the reasons for the Panel's views on candidates during briefing sessions scheduled before the discussion on each list of candidates. We have also held more joint meetings to discuss issues of common interest (every two years). Our respective secretariats also cooperate more closely to avoid misunderstandings and prepare the briefing sessions better. A positive outcome of this cooperation is that it has become standard practice to reject a list on substantive grounds, without inviting the candidates for interviews, when the Panel has issued a negative opinion on one or more candidates on the list based on their CVs.

That said, it is inevitable that, in very specific cases, we will not agree. For example, the Panel may deem all candidates acceptable 'on paper', but the Committee may find after the interview that one or more candidates do not comply with the minimum requirements. This is because, unlike the panel, our assessment of the candidates is based not only on their CVs, but also on their performance during interviews with the committee. During these interviews, our members assess the candidates' suitability by asking questions about their experience and legal knowledge.

Let me conclude by stressing that the authority of the Court depends on the quality and independence of its judges. At a time when the Court is being criticised for certain aspects of its case law, and when the Convention system and international law are facing unprecedented challenges, it is crucial that all stakeholders, including the governments, the Panel and the Assembly, ensure that the judges elected to the Court are of the highest quality, through the best possible national selection procedures and a rigorous and responsible election process. This is central to the continuing success of the Convention system after 75 years.

I look forward to engaging in fruitful discussions with you during this seminar, and would like to thank the Advisory Panel again, on behalf of the Committee and the Assembly, for their thorough work, their cooperation with the Committee over the years, and for taking the excellent initiative to organise this event.

Thank you!

⁴ In my experience, the plenary Assembly almost always follows the committee's recommendation. In the last two years, the plenary Assembly elected a candidate who was not the committee's preferred candidate only on two occasions (although the committee had placed the elected candidate second by a narrow majority). These cases were Liechtenstein and Bulgaria. This general trend demonstrates the Assembly's trust in the Committee.