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

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

Mr Serhii KALCHENKO, Second Vice-Chairperson of the Committee on the Election of Judges to the European Court of Human Rights, Member of the Parliament, Chairperson of the Committee on Rules of Procedure, Deputy Ethics, and Arrangement of Activity of the Verkhovna Rada of Ukraine

At the outset, I would like to thank the organizers of the seminar for inviting us and hosting the event.

The issue of enhancing/improving the selection process of the Strasbourg Court' judges is very topical indeed, since "*the quality of the Court's judges depends in the first place on the quality of the candidates that are nominated by the High Contracting Parties*" (Guidelines of the Committee of Ministers on the selection of candidates for the post of judge at the European Court of Human Rights).

As we know these Guidelines address the procedure at the national level, before a High Contracting Party' list of candidates is transmitted to the Advisory Panel and thereafter to the Parliamentary Assembly of the Council of Europe. In fact, the Guidelines incorporated many of the recommendations concerning national procedures for the selection of candidates for judge that had been developed by the PACE based on its direct practical experience.

The Committee on the Election of Judges to the European Court of Human Rights regards two bodies of criteria listed in the Committee of Ministers' Guidelines, namely: (i.) **procedural** criteria, pertaining to the national selection procedure, and (ii.) **substantive** criteria, relating to the quality and characteristics of individual candidates. For its part, non-compliance with these criteria might lead to rejection of the list based, accordingly, on procedural grounds or substantive grounds.

Thus, in my opinion, it is worth demonstrating how our Committee takes into account and applies the relevant **procedural** criteria in its practice. In particular, I would like to focus on the specific examples of circumstances which either **led to rejection** of the list of candidates by the Committee or **triggered discussion** of corresponding issues in the Committee' meetings.

- **Legal act/practice that governs the selection procedure on the national level**

It is stipulated in the Guidelines of the CM that the national selection procedure "*should be … established in advance through codification or settled by administrative practice*". It is worth mentioning that during the recent years there were no cases where the national procedure was administered according to "a practice". In all states concerned there were legal acts, either the laws (adopted by the Parliament) or the under-law regulations (adopted by other state authority, for instance by the Head of State, the Cabinet of Ministers, the Ministry etc.). The Committee thus has not taken a position on corresponding status of the legal act devoted to the national selection procedure.

It can be assumed that technically it is less time consuming to establish or to amend the existing rules on the selection procedure by an under-law regulation than by a law, since adoption of a law requires completion of corresponding law-making stages in a parliament. Once the Committee discussed the issue where the selection procedure in the given country was governed by the Law on nomination of candidates for judges at the international courts, hence not only at the ECtHR. The Committee took into account information provided by the national authorities about the ongoing revision of the legislation. I am going to return to this case in my presentation later on while addressing the issue of the final decision-making.

During the recent years, in some cases the Committee has established non-compliance of the national procedures with the requirements. However, the Committee did not call into doubt that a selection took place in fact. At the same time, in the past, the Committee once rejected the list on the procedural ground, because no meaningful national selection procedure was carried out at all.

- **Deadline for submission of applications to participate in the selection procedure**

The CM Guidelines and the PACE' practice require "*a reasonable period of time*" to ensure that potentially interested persons have enough time to prepare and submit their applications. Relevant practices of the member-states vary in this aspect. For instance, although an average deadline seems to be around one month, our Committee accepted a deadline of 20 days without discussing this particular aspect while scrutinizing the list of the given state.

- **Extension of deadline for submission of applications**

Once the Committee discussed this issue since during a period for submission of applications the original deadline was extended from only 15 days to 28 days. The Committee assumed that it was carried out in order to bring a deadline in conformity with the requirement of "a reasonable period". Even though the list of candidates of the given state was finally rejected by the Committee, the rejection was not caused by the extension of deadline.

- **Nomination of potential candidates by the third parties**

According to the CM Guidelines if "*national procedure allows or requires applicants to be proposed by the third parties*", suitable candidates may "*not be deterred or prevented from putting themselves forward*". Thus, the national procedure should envisage an option for initial "self-nomination". It was a case when the Committee rejected the list partly due to lack of transparency, since only a limited number of official entities might nominate

candidates, and it was not clear how those entities had made their initial selection/nomination.

- **Composition of the national selection body**

There is the requirement that "*the body responsible for recommending candidates should be of balanced composition*" and "*it should be free from undue influence*". In practice, during the recent years the Committee several times rejected the lists of candidates on the ground of non-compliance with this requirement.

On one occasion, the Committee decided that the national selection procedure was heavily dominated by governmental representatives since the selection body was composed almost exclusively of persons who were not independent of governmental influence. In another case, the Committee could not assume that the members of the national selection body were free from undue influence.

- **The final "decision-maker"**

It is required that "*any departure by the final decision-maker from the selection body' recommendation should be justified by reference to the criteria for the establishment of lists of candidates*" (the CM Guidelines). It thus establishes the relevant requirement for a situation when the national selection body and the "final decision-maker" are different authorities. Our Committee discussed this aspect in its practice, and the lists were not rejected.

For instance, on one occasion, the President of the given country made the final decision on the list of candidates proposed by the national selection panel. Notably, three candidates presented by the President were the first three candidates recommended by the national panel. Hence, there was no deviation at all.

In other case, the list was not rejected too. However, there was discussion within the Committee about the procedure. In particular, we discussed the decisive role played by the selection body composed exclusively of officials from the Presidential office, which conducted the interviews and modified the list proposed by the judicial body, which did not conduct interviews. The Committee took into account that there was a special Law (not an under-law regulation!) on nomination of candidates for judges at international court, and information from the national authorities about their intention to amend that Law. Eventually, the Committee accepted the list on the understanding that the procedure would change in the ongoing revision of the legislation applicable (possibly, through a merger of these two phases to make the selection body conducting interviews more balanced).

- **Consultation of the Advisory Panel of Experts**

"*The High Contracting Parties should submit their list of candidates to the Parliamentary Assembly after having obtained the Advisory Panel' opinion on the candidates' suitability to fulfil the requirements under the Convention*" (the CM Guidelines). In fact, during the recent years all member-states properly consulted the Advisory Panel, though the Panel might further express its reservations and/or make a negative conclusion.

However, in the past there was a case when the list of candidates was transmitted simultaneously to the Panel and to the Assembly. This meant that the government was not able to take the views of the Panel into account prior to transmission of the list to the Assembly. As a result, the list was rejected on purely procedural grounds.

- **Gender balance in the list of candidates**

As we know, there is the requirement pertaining to gender balance, whose status has been clarified by the European Court of Human Rights in its Advisory opinion. Though this criterion may not be regarded as a "purely procedural" one, I would consider it as "quasi-procedural", since as such it does not pertain to the quality of candidates, like knowledge and experience. During the recent years, the Committee scrutinized all-female lists several times. The Committee accepted those lists since this option was envisaged by the rules. The rules establish that a single-sex list is acceptable when the candidates belong to the sex which is under-represented in the Court, namely the sex to which under 40 % of the total number of judges belong. Since women were under 40 % of the total number of judges at the time of the Secretary General's letter (and still are), the lists were accepted.

At the same time, once the Committee rejected an all-male list following a meeting with the Minister of Justice of the given state. The reasoning presented by the Minister was not accepted. On its part, the Committee concluded that it did not find "exceptional circumstances" justifying an exception from the rule.

To sum up the considerations mentioned above, I would like to emphasize that our Committee has done its best to ensure a consistent application of the procedural criteria. The Committee has also paid more attention to the CM' Guidelines, particularly with regard to national selection procedures and the composition of national selection bodies. Since the adoption of the CM Guidelines in 2012, there has been a steady improvement of national selection procedures. Public calls for candidatures and interviews are now standard. This improvement has gone hand in hand with the Committee's stricter assessment of the fairness and transparency of these procedures.

It is worth noting that the cooperation between the Panel and the Committee has improved over the recent years. We are pleased that the Panel has also taken up the task of examining the national selection procedure and clarifying any issues in its dialogue with the governments (although the Panel's mandate given by the CM does not include the assessment of national selection procedures). In recent years, the Panel has referred to procedural issues more frequently in its opinions transmitted to the Committee, identifying possible shortcomings. The Panel' views on the selection procedures are extremely useful for us, since they help the Committee greatly in its own assessment of these procedures.

In the ongoing report that our Chair, Ms. Petra Bayr, is preparing on the election procedure, we are also examining how to improve the assessment of national selection procedures and the cooperation with the Panel. However, I will leave this matter to her.