



DH-SYSC-JC(2022)R1

30/09/2022

STEERING COMMITTEE FOR HUMAN RIGHTS  
(CDDH)

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COMMITTEE OF EXPERTS ON THE SYSTEM OF THE EUROPEAN CONVENTION  
ON HUMAN RIGHTS  
(DH-SYSC)

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**DRAFTING GROUP ON ISSUES RELATING TO JUDGES OF  
THE EUROPEAN COURT OF HUMAN RIGHTS  
(DH-SYSC-JC)**

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**MEETING REPORT**

**1<sup>st</sup> meeting (Hybrid format)**  
28 - 30 September 2022

## **ITEM 1: OPENING OF THE MEETING AND ADOPTION OF THE AGENDA**

1. DH-SYSC-JC held its 1<sup>st</sup> meeting in Strasbourg from 28 to 30 September 2022 in a hybrid format with 11 delegations present in the meeting room and 7 delegations participating via the KUDO online platform. The meeting was chaired from Strasbourg by Mr Hans-Jörg BEHRENS (Germany). The list of participants appears in [Appendix I](#). The agenda as adopted appears in [Appendix II](#).

## **ITEM 2: ELECTION OF THE VICE-CHAIR**

2. The Group elected Ms Maria AVERSANO (Italy) as its Vice-Chairperson.

## **ITEM 3: DISCUSSION OF THE SCOPE AND STRUCTURE OF THE DRAFT REPORT**

3. The Group had an extensive discussion on the mandate given to it by the CDDH to prepare a “report evaluating the effectiveness of the system for the selection and election of the Court’s judges and the means to ensure due recognition for judges’ status and service on the Court and providing additional safeguards to preserve their independence and impartiality” (hereinafter the draft report).

4. It first recalled that the CDDH at its 96<sup>th</sup> meeting had concluded, *inter alia*, that: “[t]he breadth of the mandate would imply a need for the DH-SYSC-JC to prioritise, in the light of recent experience and developments, including the entry into force of the new criterion for the age of candidates under Protocol No.15, and bearing in mind the guidance suggested by the CDDH. The CDDH considered in particular that the proposal by the President of the Court to extend the term of office of judges of the Court from nine to twelve years [see [DH-SYSC-JC\(2022\)02](#)] will be examined as relevant to their independence and impartiality and was related to the issue of recognition for judges’ status and service on the Court.”

5. Several delegations commented on the general goals of the draft report as being to promote the efficiency of the system of selection and election of judges to the European Court of Human Rights (the Court), the independence and impartiality of the judges, the autonomy of the Court and the highest quality of judges sitting on the bench. The Group recognised the need to avoid duplication of the 2017 CDDH Report on the process of selection and election of judges of the European Court of Human Rights ([CDDH\(2017\)R88addI](#)). The Group underlined that particular attention should be paid to the experience of the relevant bodies at the national and Council of Europe levels involved in the selection and election procedure since the 2017 CDDH report.

6. The Group considered a number of questions regarding the selection procedure, the election procedure in the Parliamentary Assembly, issues related to the judges’ active time in office including the length of their mandate, the post-mandate recognition of service as well as ad hoc judges (see Appendix III).

7. The Group agreed that its conclusions and possible recommendations will have to be based on facts. It noted that at present it lacks complete information about the concrete challenges that the current nine-year term of office raises in practice. Similarly, it lacks information on the scope and scale of the problems reported in relation to the protection of judges from reprisals and recognition of their service after the end of their mandate. The Group took note that the report of the Court’s Committee on the Status of Judges on the situation of former judges after the end of

their mandate is still under consideration within the Court, and that the report of the Research Division of the Registry on recognition of service in international courts in national legislation ([CDDH\(2019\)07](#)) was currently being updated with a view to its finalisation by mid-October.

8. The Group considered that it could be useful to obtain the views of former judges of the Court on their experience, in particular any problems they may have encountered both during and after the end of their mandate, and their opinions on the need to extend the length of term of office from nine to 12 years. The Group tasked the Co-rapporteurs with preparing, with the support of the Secretariat, a draft questionnaire addressed to former judges for examination by the Group at its 2<sup>nd</sup> meeting (25-27 January 2023). The draft questionnaire should take into account the elements for the structure of the draft report (see paragraph 12 below) and include the possibility that responses are provided in an anonymous manner.

9. The Group also agreed to collect information on the reasons why potential candidates refrain from applying for the post of the judge and the obstacles that they may encounter in the course of procedures. The target communities for collecting this information should be lawyers, national judges and scholars. Relevant organisations or networks of these communities could be invited to facilitate contacts. The Group tasked the Co-rapporteurs with preparing, with the support of the Secretariat, a draft questionnaire, bearing in mind the elements for the structure of the draft report (see paragraph 12 below). The draft questionnaire will be examined by the Group at its 2<sup>nd</sup> meeting.

10. Discussions about the selection procedure for candidates and post-mandate recognition of service as a judge highlighted the need for up-to-date information about national practice. The Group, therefore, decided to invite delegations to provide updates regarding the examples of good practices accompanying the Guidelines on the selection of candidates for the post of judge at the European Court ([CM\(2012\)40-add](#)). While noting that the Registry will provide its report on the recognition of service of judges by mid-October (see paragraph 7 above), the Group considered that it would be useful to invite delegations to submit up-to-date information on the tables on the recognition of service as a judge of the European Court of Human Rights ([DH-SYSC-I\(2017\)018](#)). The Group tasked the Secretariat with sending out these update requests to all member States, with a deadline for replies of 31 October 2022.

11. During the discussion of issues relating to the election procedure, in particular voting in the Parliamentary Assembly, it was noted that it would be desirable to have information on the participation of parliamentarians in the voting process. The Group decided to invite the Secretariat of the Parliamentary Assembly to provide data for the period of time since 2017 on percentages of participation of parliamentarians in voting and any differences in such participation between the first day and second day of voting.

12. At the end of its discussions of a number of issues relevant to the system of selection and election of judges, the Group agreed on a possible structure for the draft report, as it appears in [Appendix III](#). These elements should, if necessary, be adapted in the light of the results of information collected in accordance with paragraphs 8-11 above and of further discussions in the Group.

#### **ITEM 4: DISCUSSION ON THE ORGANISATION OF THE WORK OF DH-SYSC-JC**

13. The Group appointed Mr Thibault DUFÉTEL (United Kingdom) and Mr Adrian SCHEIDEGGER (Switzerland) as its co-rapporteurs, to be responsible for preparatory work on and presentation of the draft report in the future meetings of the Group.

14. The Group discussed the desirability of holding an exchange of views on issues of selection and election of candidates with stakeholders at its next meeting. It agreed to invite the Chairs of the Advisory Panel and the Parliamentary Assembly's Committee on the Election of Judges to an exchange of views at its 2<sup>nd</sup> meeting. It also agreed to invite two external experts from the scholarly community specialising on issues related to the Group's mandate. These scholars will be selected on the basis of suggestions made by members of the Group to the Secretariat before 17 October 2022.

15. The Group also agreed that it will invite the Court to discuss in future meetings issues relevant to the mandate of the Group.

#### **ITEM 5: DISCUSSION OF GENDER EQUALITY ASPECTS OF THE WORK OF DH-SYSC-JC**

16. The Group recalled that the CDDH, at its 96<sup>th</sup> meeting, decided that the chairpersons of its subordinate bodies should in future complete the CDDH 'thematic form on gender equality' ([CDDH\(2020\)13](#)) at the completion of work on each deliverable and transmit it to the Rapporteur on Gender Equality, who would compile these reports for presentation to the CDDH.

17. It noted that in its discussions on the situation of family members of judges, notably difficulties in finding suitable schooling for judges' children, might disproportionately affect women candidates and/ or judges. The Group agreed that it will continue to examine this and potentially other gender equality issues in the course of its mandate.

#### **ITEM 6: OTHER BUSINESS**

18. None.

## Appendix I

### List of participants

#### MEMBERS

<b>ARMENIA</b>	<b>Ms Diana KARAZYAN</b> Head of Department for Representation of Interests of Armenia before the ECtHR, Office of the Representative of The Republic of Armenia on International Legal Matters
<b>AZERBAIJAN</b>	<b>Mr Elnur ALIYEV</b> Lead consultant of the Human Rights Division, Department for Work with Law Enforcement Bodies, Administration of President of the Republic of Azerbaijan
<b>CROATIA</b>	<b>Ms Narcisa BEĆIREVIĆ</b> Minister Plenipotentiary Deputy to the Permanent Representative  <b>Mrs Štefica STAŽNIK</b> Representative of the Republic of Croatia before the European Court of Human Rights
<b>FINLAND</b>	<b>Ms Miila PÖNTINEN</b> Legal Officer Unit for Human Rights Court and Conventions Legal Service, Ministry for Foreign Affairs
<b>FRANCE</b>	<b>Ms Milène BLANCHARD</b> Consultante juridique au sein de la Direction des affaires juridiques, Ministère de l'Europe et des affaires étrangères
<b>GERMANY</b>	<b>Mr Hans-Jörg BEHRENS</b> Head of Unit IVC1, Human Rights Protection, Government Agent before the ECtHR, Federal Ministry of Justice
<b>ITALY</b>	<b>Ms Maria AVERSANO</b> Attachée juridique, Représentation permanente de l'Italie auprès du Conseil de l'Europe
<b>LATVIA</b>	<b>Ms Kristīne LĪCIS</b> Director General of the Legal Directorate, Representative of Latvia before the European Court of Human Rights, Ministry of Foreign Affairs of the Republic of Latvia  <b>Ms Elina Luize VITOLA</b> Head of the Government Agent Office

<b>REPUBLIC OF MOLDOVA</b>	<b>Ms Mihaela MARTINOV-GUCEAC</b> Deputy to the Permanent Representative
<b>NETHERLANDS</b>	<b>Ms dr Nelleke KOFFEMAN</b> Senior legal advisor Human rights unit, Directorate for Legislation and Legal Affairs, Ministry of Justice and Security of the Netherlands
<b>POLAND</b>	<b>Mr Jan SOBCZAK</b> Agent of the Government before the European Court of Human Rights Deputy Director, Legal and Treaty Department Ministry of Foreign Affairs
<b>ROMANIA</b>	<b>Ms Adriana BARBIERU</b> Deputy to the Permanent Representative, Co-Agent of the Government before the ECHR, Permanent Representation of Romania to the Council of Europe
<b>SPAIN</b>	<b>Alfonso BREZMES MARTÍNEZ DE VILLARREAL</b> Agent for the Kingdom of Spain before the European Court of Human Rights and the European Committee of Social Rights, Head of the Human Rights Area of the Constitutional & Human Rights Department Ministry of Justice
<b>SWEDEN</b>	<b>Ms Anna M SUNDSTRÖM</b> Legal Advisor Department for International Law, Human Rights and Treaty Law Ministry for Foreign Affairs
<b>SWITZERLAND</b>	<b>Mr Adrian SCHEIDEGGER</b> Agent suppléant du Gouvernement suisse devant la Cour européenne des droits de l'Homme le CAT, le CEDR, le CEDAW et le CDE Co-Rapporteur of the DH-SYSC-JC  <b>Dr Christoph SPENLÉ</b> Département fédéral des affaires étrangères DFAE, Direction du droit international public DDIP, Chef suppléant de la Section droits de l'homme
<b>TÜRKİYE</b>	<b>Mr Faruk ONCEL</b> Juge rapporteur, Ministère de la Justice  <b>Ms Ayşen EMÜLER</b> Experte juridique, Représentation permanente de Türkiye auprès du Conseil de l'Europe

<b>UKRAINE</b>	<b>Ms Olga OLINYK</b> Head of Division for Representation of the Government in cases regarding the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol of the Office of the agent before the European Court of Human Rights, Ministry of Justice of Ukraine
<b>UNITED KINGDOM</b>	<b>Mr Thibault DUFÉTEL</b> Senior Policy Advisor, International Human Rights, Ministry of Justice Co-rapporteur of the DH-SYSC-JC  <b>Mr Michael JOHNSTONE</b> Policy Advisor, International Human Rights, Ministry of Justice UK national co-ordinator for the execution of judgments of the European Court of Human Rights

#### **PARTICIPANTS**

<b>Registry of the European Court of Human Rights</b>	<b>Mr Razvan PROCA</b> Senior lawyer
<b>PACE</b>	<b>Mr Guillem CANO-PALOMARES</b> Adjoint au Chef du Secrétariat Commission des questions juridiques et des droits de l'homme
<b>DLAPIL</b>	<b>Ms Ana GOMEZ</b> Secretary of the Advisory Panel  <b>Mr Antoine KARLE</b> Secretariat of the Advisory Panel

#### **OBSERVERS**

<b>HOLY SEE</b>	<b>M. Grégor PUPPINCK</b>
<b>CCBE</b>	<b>Mr Piers GARDNER</b> Chair of the Permanent Delegation, Strasbourg

#### **SECRETARIAT**

<b>DGI – Human Rights and Rule of Law Council of Europe</b>	<b>Mr David MILNER</b> Secretary of the CDDH
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<b>F-67075 Strasbourg Cedex</b>	Head of the Human Rights Intergovernmental Co-operation Division  <b>Ms Elvana THACI</b> Administrator Secretary of the DH-SYSC-JC Human Rights Intergovernmental Cooperation Division  <b>Ms Sarah BELHADJ MILED</b> Assistant lawyer Human Rights Intergovernmental Cooperation  <b>Mr Nicolas DOMAGALSKI</b> Assistant Human Rights Intergovernmental Cooperation Division
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#### INTERPRETERS

<b>Ms Pascale MICHLIN</b>  <b>Ms Julia TANNER</b>
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## Appendix II

### Agenda

<b>1. Opening of the meeting and adoption of the agenda</b>	<b>1. Ouverture de la réunion et adoption de l'ordre du jour</b>
DH-SYSC-JC(2022)OJ1 – Draft agenda	DH-SYSC-JC(2022)OJ1 – Projet d'ordre du jour
<b>2. Election of the Vice-Chair</b>	<b>2. Élection d'un·e vice-président·e</b>
<a href="#">CM/Res(2021)3</a>	<a href="#">CM/Res(2021)3</a>
<b>3. Discussion of the scope and structure of the “CDDH Report evaluating the effectiveness of the system for the selection and election of the Court’s judges and the means to ensure due recognition for judges’ status and service on the Court and providing additional safeguards to preserve their independence and impartiality.”</b>	<b>3. Discussion de la portée et de la structure du « Rapport du CDDH évaluant l’efficacité du système de sélection et d’élection des juges de la Cour et des moyens d’assurer la reconnaissance du statut et de l’ancienneté des juges de la Cour et offrant des garanties supplémentaires pour préserver leur indépendance et leur impartialité »</b>
<a href="#">DH-SYSC-JC(2022)01</a> – background document prepared by the Secretariat <a href="#">DH-SYSC-JC(2022)02</a> – Speech by Mr Robert Spano, President of the European Court of Human Rights	<a href="#">DH-SYSC-JC(2022)01</a> – document d’information préparé par le Secrétariat <a href="#">DH-SYSC-JC(2022)02</a> – Discours par M. Robert Spano, Président de la Cour européenne des droits de l’homme
<b>3. Discussion on the organisation of the work of DH-SYSC-JC</b>	<b>5. Discussion de l’organisation des travaux du DH-SYSC-JC</b>
<b>4. Discussion of gender equality aspects of the work of DH-SYSC-JC</b>	<b>6. Discussion des aspects relatifs à l’égalité de genre dans le cadre des travaux du DH-SYSC-JC</b>
<a href="#">CDDH(2020)13</a> - Thematic form on gender equality	<a href="#">CDDH(2020)13</a> - Fiche thématique sur l’égalité de genre
<b>7. Other business</b>	<b>6. Questions diverses</b>
<b>7. Approval of the meeting report</b>	<b>8. Adoption du rapport de réunion</b>
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## Appendix III

### Structure elements for the draft report

#### **I - Selection procedure**

*A. Relevant conclusions and decisions of the last review process (2017 CDDH Report, decisions of the Committee of Ministers and the Assembly)*

*B. Subsequent developments/follow-up*

- i. review / update of the Guidelines
- ii. obstacles for potential candidates
- iii. gender balance
- iv. confidentiality / transparency
- v. impact on independence of judges
- vi. the Advisory Panel

*C. Conclusions*

#### **II - Election procedure in Assembly**

*A. Relevant conclusions and decisions of the last review process (2017 CDDH Report, decisions of the Committee of Ministers and the Assembly)*

*B. Subsequent developments/follow-up*

- i. Committee stage  
    Procedure, interviews, reputation of candidates
- ii. Election plenary  
    Attendance, recommendations of the Committee

*C. Conclusions*

#### **III- Issues related to active time in office**

*A. Relevant conclusions and decisions of the last review process (2017 CDDH Report, decisions of the Committee of Ministers and the Assembly)*

*B. Subsequent developments/follow-up*

- i. Role of national judge as Rapporteur
- ii. Material conditions of judges at the office; conditions for spouses and children
- iii. Other practical problems
- iv. Loss of connection to national systems
- v. Focus on length of mandate
- vi. Impact on independence and impartiality of judges

*C. Conclusions*

#### **IV. Post-mandate recognition of service**

*A. Relevant conclusions and decisions of the last review process (2017 CDDH Report, decisions of the Committee of Ministers and the Assembly)*

*B. Subsequent developments/follow-up*

- i. Employment prospects
- ii. Restrictions to judges after mandate
- iii. reprisals / post-mandate immunity
- iv. Impact on independence and impartiality of judges

*C. Conclusions*

## **VI. Ad hoc judges**

*A. Relevant conclusions and decisions of the last review process (2017 CDDH Report, decisions of the Committee of Ministers and the Assembly)*

*B. Subsequent developments/follow-up*

Nomination process

Necessity to have ad hoc judges

*C. Conclusions*