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**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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**Draft CDDH report on issues relating to judges of the European Court of Human  
Rights**

*Note: this version of the draft report includes the executive summary prepared following the 110<sup>th</sup> meeting of the Bureau (8-9 November 2023) and some proposals submitted to the CDDH during the comment period which ended on 17 November 2023 (CDDH(2023)22).*

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## **Executive summary**

### *The national selection procedure*

The CDDH notes that the primary responsibility to select only candidates who fully meet the criteria of Article 21 § 1 of the European Convention on Human Rights lies with the State Parties. In order to ensure the fairness and transparency of national selection procedures, the CDDH reiterates the importance of the full implementation of the Committee of Ministers' Guidelines on the selection of candidates for the post of judge at the European Court of Human Rights.

The Guidelines have proved their usefulness and remain relevant but there is a need for technical updating. With a view to ensuring their consistency with Protocol No. 15 of the Convention, the CDDH proposes that the Committee of Ministers amends Section II, point 5 of the Guidelines to state that “[c]andidates shall be less than 65 years of age at the date by which the list of three candidates has been requested by the Parliamentary Assembly, further to Article 22”.

The CDDH welcomes the evolving practice of the Advisory Panel to examine the national selection procedures as part of its examination of lists of candidates. The CDDH suggests that the Committee of Ministers also welcomes this practice and invites the Advisory Panel to publish its views on national selection procedures in an anonymised and non-country-specific manner, while making sure that this does not interfere with the principle of confidential communication of the Panel's views to the government concerned.

### *The election procedure*

The CDDH welcomes the Parliamentary Assembly's scrutiny of national selection procedures. It considers that when the Assembly rejects lists on procedural grounds, publication in succinct form of its conclusions and reasoning would potentially encourage reflection not only in the State Party concerned but also other States Parties regarding the improvement of their national selection procedures.

In order to ensure the ready availability of detailed information on the election stage, the CDDH suggests that the Council of Europe could consider organising an information campaign on the election procedure.

### *Issues related to judges' active time in office*

The CDDH invites the Council of Europe to raise the issue of judges' difficulties in finding appropriate schooling for their children in Strasbourg with the relevant authorities of the host State with a view to finding appropriate solutions. It also encourages the relevant services of the Council of Europe and the Court to consider restoring the provision to judges of language training in the official languages of the Court. The CDDH encourages member States to consider possible solutions to other practical issues encountered by some judges, for instance concerning private health insurance and relations with financial institutions.

The CDDH considers that there are valid arguments for and against the designation of a judge as rapporteur in cases against the State Party in respect of which he/she was elected. Balancing these arguments and deciding who to designate remains within the exclusive competence of the Court.

Noting that the process of amendment by the Court of Rule 28 of the Rules of Court is advancing, the CDDH sees no reason to depart from the established position of the Committee of Ministers regarding the issue of recusal of judges.<sup>1</sup>

Having analysed the arguments in favour and against the proposal to change the judges' length of term of office from a non-renewable period of nine years to one of twelve, as well as a possible alternative that could address some of the Court's concerns, the CDDH concludes that there is no sufficiently convincing reason to change the current term of office.

#### Post-mandate recognition of service

Considering that any threats and reprisals against judges during or after their mandates remain a cause for serious concern, the CDDH proposes that the Committee of Ministers addresses this issue by means of a decision or declaration.

Considering that the level of recognition of judges' service on the Court, notably as regards regaining posts held in the member States before their service as well as their pension entitlements remains at rather low levels in a number of member States, the CDDH proposes that the Committee of Ministers promotes more robust and complete recognition by means of a decision or declaration calling on States to take action in this respect.

#### Ad-hoc judges

The CDDH welcomes the changes to the Rules of Court regarding the extension of the renewable period for which *ad hoc* judges are appointed from two to four years, as well as the automatic appointment of elected judges to serve as *ad hoc* judges when State Parties have not submitted lists of eligible *ad hoc* judges in advance.

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<sup>1</sup> [CM/AS\(2021\)Quest759-760-final](#).

## I. Introduction

1. At its 96th meeting (14-17 June 2022), the CDDH instructed DH-SYSC-JC to prepare, under the authority of DH-SYSC, a “[r]eport evaluating the effectiveness of the system for the selection and election of the [European Court of Human Rights] (“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”.

2. During its mandate DH-SYSC-JC held five meetings. At its 2nd meeting, it held an exchange of views with Mr Titus CORLĂȚEAN, Chair of the Parliamentary Assembly’s Committee on the Election of Judges to the European Court of Human Rights, Sir Paul MAHONEY, Chair of the Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights, Prof. Dr. Helen KELLER, Chair for Public Law and European and Public International Law, Institute for International Law and Comparative Constitutional Law, University of Zurich, and Prof. Kanstantsin DZEHTSIAROU, Professor in Human Rights Law and Associate Dean for Research of the School of Law and Social Justice, University of Liverpool. At its 3<sup>rd</sup> meeting, it held an exchange of views with judges Lado CHANTURIA and Tim EICKE, representing the Court.

3. With a view to substantiating its analysis with fact-based information, DH-SYSC-JC solicited views from former judges of the Court on issues concerning the exercise of their mandate.<sup>2</sup> It also solicited information from actual and potential applicants in the national selection procedures on issues encountered in the context of such procedures.<sup>3</sup> The DH-SYSC-JC received responses from 20 former judges, 91 responses from potential applicants and 58 responses from applicants at the national level.<sup>4</sup>

4. The CDDH recalls that at the end of 2017, it had transmitted to the Committee of Ministers a comprehensive “[r]eport on the process of selection and election of judges of the European Court of Human Rights (“the 2017 CDDH Report”).<sup>5</sup> On this basis, the Committee of Ministers examined the system of selection and election of judges in consultation with relevant stakeholders between June and October 2018<sup>6</sup> and adopted its decisions in January 2019.<sup>7</sup> At the end of 2018

<sup>2</sup> See the questionnaire addressed to former judges of the European Court of Human Rights, [DH-SYSC-JC\(2022\)05REV](#). This questionnaire was distributed via the Registry of the Court.

<sup>3</sup> See questionnaire addressed to persons who have considered applying or have applied at the national level for the post of judge at the European Court of Human Rights, [DH-SYSC-JC\(2022\)06REV](#). This questionnaire was distributed via the CCJE, CCPE, CCBE, CEPEJ and other relevant groups of academics including the ECHR Law Review, the ECHR blog, and the Strasbourg Observers blog.

<sup>4</sup> DH-SYSC-JC(2023)02CONFIDENTIAL.

<sup>5</sup> [CDDH\(2017\)R88addl](#).

<sup>6</sup> [GR-H\(2018\)CB7](#), 27 June 2018; [GR-H\(2018\)CB7](#), 10 September 2018; [GR-H\(2018\)CB8](#), 24 October 2018.

<sup>7</sup> [CM/Del/Dec\(2019\)1333/4.1](#), 19 January 2019. The Committee of Ministers, *inter alia*, took note of the measures taken by the Assembly to further improve its election procedure; called on States to fully implement the Guidelines of the Committee of Ministers on the selection of candidates for the post of judge at the Court; welcomed the dialogue developed between the Assembly and the Advisory Panel; encouraged the Assembly to consider further changes in the election procedure; and agreed to keep the operation of the whole system for the election of judges under review, and to decide by the end of 2020, in light of the elections and other events in the meantime, whether further action is required.

and beginning of 2019 the Parliamentary Assembly (“the Assembly”) undertook a series of procedural changes regarding the election of judges of the Court.<sup>8</sup>

5. The present report covers five main areas: the national selection procedure; the election procedure; issues related to judges’ active time in office; post-mandate recognition of service on the Court; and *ad hoc* judges. For each theme it takes stock of the key decisions and measures of the last review process, analyses developments and new challenges since then, and finally, makes some proposals to further strengthen the system of selection and election of judges of the Court.

6. The national selection procedure and the election procedure are dealt with separately in view of the different roles and responsibilities of the relevant actors. States Parties to the Convention are, pursuant to its Article 22, solely responsible for the selection of three candidates to be placed on the list transmitted to the Assembly. They are expected to implement the standards set out in the Guidelines on the selection of candidates for the post of judge at the European Court of Human Rights (the “Guidelines”).<sup>9</sup> As part of the national selection procedure, the State Parties benefit from the expert views of the Advisory Panel that was set up by the Committee of Ministers to advise the State Parties on the suitability of the candidates they intend to put forward for office as judge.<sup>10</sup> Following a confidential procedure, the Panel decides whether it considers that all the candidates meet the criteria stipulated in Article 21§1 of the Convention. As part of this process, it examines the national selection procedure. The States Parties concerned are expected to have due regard to the Panel’s views, although these are not binding.<sup>11</sup> As to the election procedure, this takes place under the sole responsibility of the Assembly, in accordance with its Rules of Procedure.<sup>12</sup> Following the assessment by its Committee on the election of judges to the European Court of Human Rights (the “Committee”) of the list of candidates presented by the States Parties and the national procedure used to select them, the plenary Assembly proceeds to elect one of the three candidates.

## II. The national selection procedure

### A. Relevant decisions and measures of the last review process

7. Central to the Committee of Ministers’ decisions on the system of selection and election of judges was the principle that the States Parties have the primary role in submitting lists of candidates who fulfil the criteria set out in Article 21 of the Convention.<sup>13</sup> All Convention actors were called upon to continue guaranteeing the highest standard of qualifications, independence and impartiality of the Court’s judges.<sup>14</sup> In particular, member States were called upon to ensure

<sup>8</sup> [Resolution 2248 \(2018\)](#) “Procedure for the election of judges to the European Court of Human Rights”; [Resolution 2278\(2019\) Modification of various provisions of the Assembly’s Rules of Procedure](#).

<sup>9</sup> [CM\(2012\)40-final](#).

<sup>10</sup> [Resolution CM/Res\(2010\)26](#) on the establishment of an Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights.

<sup>11</sup> See [CM/Del/Dec\(2019\)1333/4.1](#), 19 January 2019, §1. For full description of the role of the Panel see also [CDDH\(2017\)R88addl. §80](#).

<sup>12</sup> [Resolution 1202 \(1999\)](#) adopted on 4 November 1999 with subsequent modifications of the Rules of Procedure.

<sup>13</sup> [CM/Del/Dec\(2019\)1333/4.1](#), 19 January 2019.

<sup>14</sup> [CM/Del/Dec\(2020\)130/4](#), §6.

the fairness and transparency of the selection procedure, notably by means of implementing the Guidelines.<sup>15</sup> In line with the CDDH's conclusions in its 2017 report to conduct further work to complement the Guidelines,<sup>16</sup> the Committee of Ministers decided to instruct the CDDH to review the Guidelines, in particular on the essential characteristics for the national selection procedure, and to promote their implementation, taking account of good practices in national selection procedures.<sup>17</sup>

8. The role of the Advisory Panel in the system was reinforced after the rules of procedure of the Committee and those of the Assembly were amended respectively in 2018 and 2019.<sup>18</sup> Hence, the Assembly has instructed the Committee to propose rejecting a list of candidates when the Advisory Panel has not been duly consulted,<sup>19</sup> and has decided that the Assembly itself does not consider such lists (see also §§ 27 and 28 below).<sup>20</sup> The Committee of Ministers, also in 2019, reiterated its call on State Parties not to forward lists of candidates to the Assembly if the Advisory Panel has expressed a negative opinion in relation to one or more of the candidates and to give this appropriate weight.<sup>21</sup>

## *B. Progress and challenges*

### *1. Ensuring satisfaction of the procedural requirements at national level*

9. According to the Guidelines, the national selection should be stable and established in advance through codification or in a settled administrative practice; the call for candidatures should be public and disseminated widely; a reasonable period should be allowed for the submission of applications; the body responsible for recommending candidates should have a balanced composition, its members should have sufficient technical knowledge and command respect and confidence, and it should be free from undue influence; all serious applicants should be interviewed, based upon a standardised format; the applicants' linguistic abilities should be assessed; any departure by the final decision-maker from the selection body's recommendation should be justified by reference to the criteria for the establishment of lists of candidates, and finally the list should be submitted to the Assembly only after the Advisory Panel's opinion on the candidates' suitability has been obtained.<sup>22</sup>

10. Where the Assembly has not rejected a list of candidates on procedural grounds, one can assume that the requirements for the national selection procedure have been met. In the few cases where lists were rejected on procedural grounds, the CDDH does not have information on

<sup>15</sup> [CM/Del/Dec\(2019\)1333/4.1](#), 19 January 2019, §1.

<sup>16</sup> [CM\(2012\)40-final](#). Good practices accompanying the Guidelines ([CM\(2012\)40-add](#)) could be updated, for example, in relation to the creation and composition of national selection bodies. If necessary, the Guidelines could be updated or a recommendation concerning essential characteristics of national selection procedure could be elaborated (such as an open call, the composition and status of the national selection body, and a stable procedure established in advance).

<sup>17</sup> [CM/Del/Dec\(2019\)1333/4.1](#), 19 January 2019, § 6.

<sup>18</sup> This was in line with the CDDH's conclusions in its 2017 report.

<sup>19</sup> [Resolution 2248 \(2018\)](#) "Procedure for the election of judges to the European Court of Human Rights".

<sup>20</sup> [Resolution 2278\(2019\)](#), Section 2.4.2.

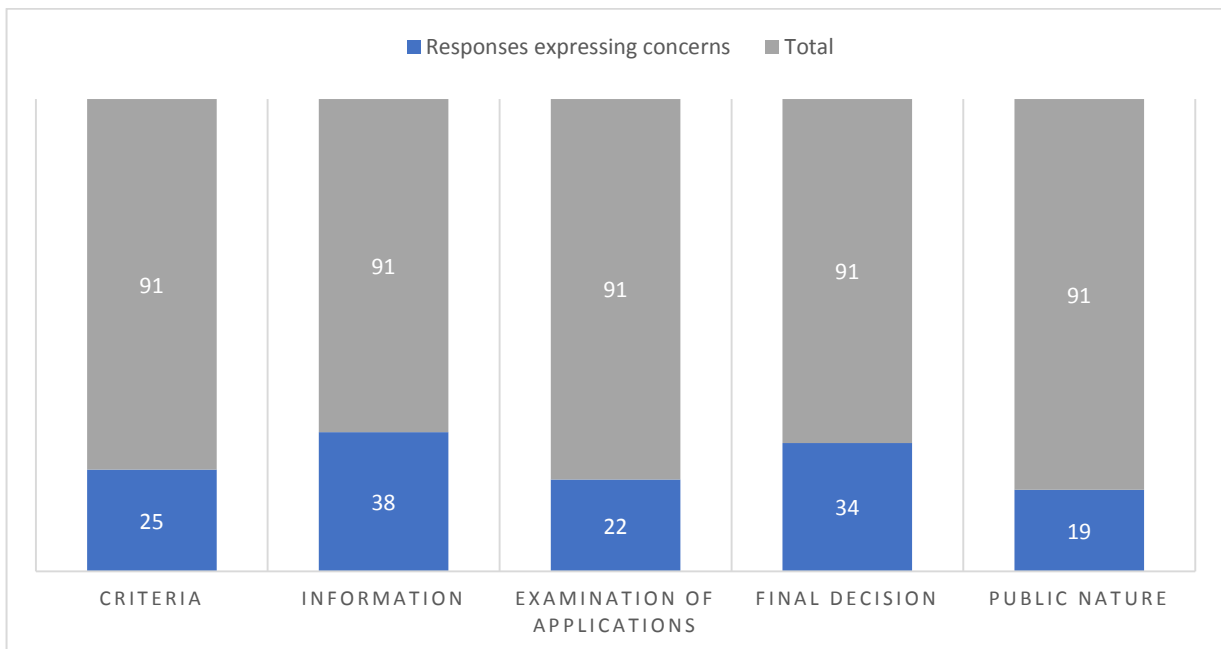
<sup>21</sup> [CM/Del/Dec\(2019\)1333/4.1](#), 19 January 2019.

<sup>22</sup> [CM\(2012\)40-final](#).

why the national selection procedure was considered not to have met the requirements mentioned above (see §§ 32 and 37 below).

11. Some problematic aspects of the national selection procedures were highlighted by those responding to the DH-SYSC-JC's questionnaire.<sup>23</sup> 91 respondents who had considered applying at the national level but decided not to do so (potential applicants) expressed concerns in relation to the criteria used to draw up the final list of three candidates, the lack or the quality of information about the process of eliciting applications, the way in which the applications would be examined, the way in which the final list of three candidates would be drawn up, and the public nature of the national selection procedure (see also tables 1 and 2 below).<sup>24</sup> Individual respondents considered that the nomination at the national level was politicised, within the exclusive remit of the government; that the procedures were not transparent or merit-based; that the format and fairness of interviews was questionable; or that the age requirement was restrictive.<sup>25</sup>

Table 1 –potential applicant respondents expressing concerns



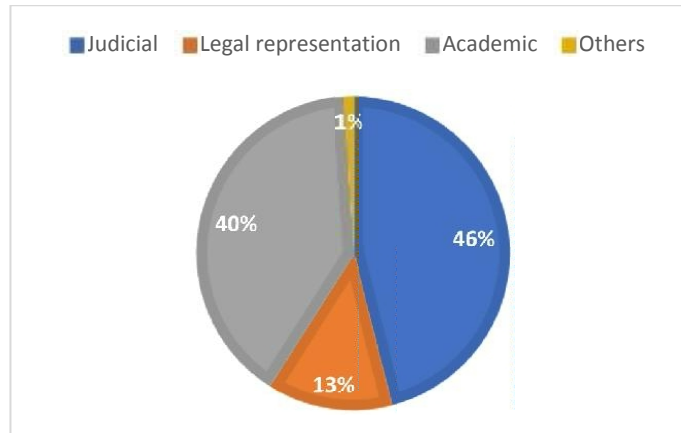
<sup>23</sup> [DH-SYSC-JC\(2022\)06REV](#).

<sup>24</sup> It should be noted that the 19 responses which expressed concerns about the public nature of the procedure did so with reference to the national selection procedure. Several respondents considered the transparency of the process as an indispensable aspect of any procedure.

<sup>25</sup> DH-SYSC-JC(2023)02CONFIDENTIAL.

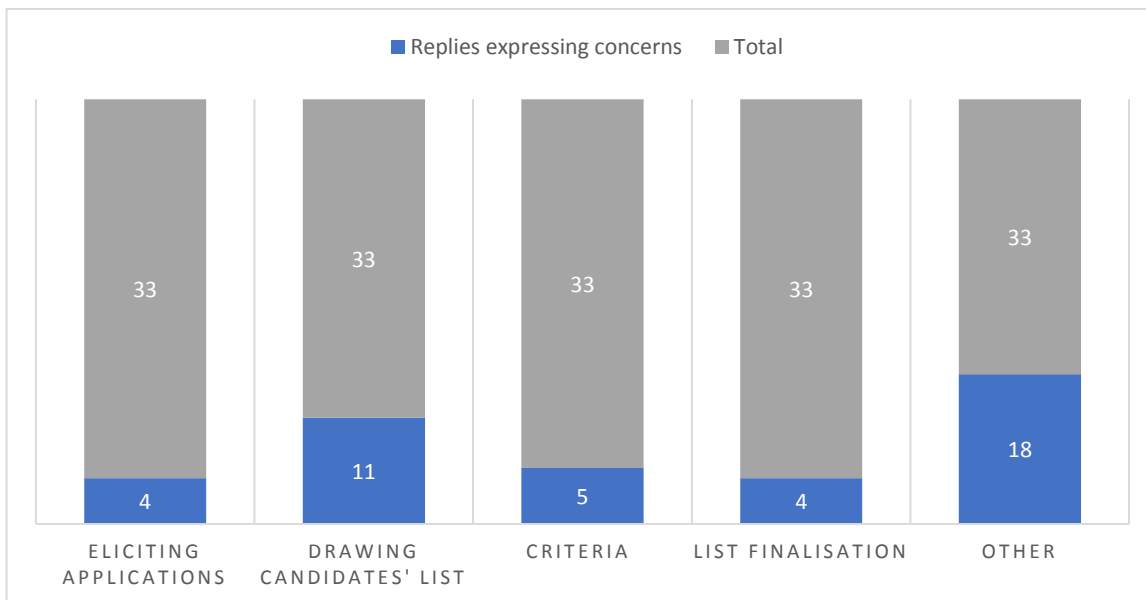


Table 2 – professional background of potential applicant respondents



12. 33 of a total of 56 respondents who had applied at the national level (applicants) highlighted one or several of the following perceived shortcomings of the national procedures. These included a failure to publicise the call for applicants or to circulate it in relevant professional communities; the absence of any information regarding the selection criteria; the composition of the selection bodies; the format of the interviews and lack of feedback information to applicants; the final decision-making process on the list;<sup>26</sup> the overall lack of transparency; and the political nature of the process or its lengthy duration (see also tables 3 and 4).<sup>27</sup>

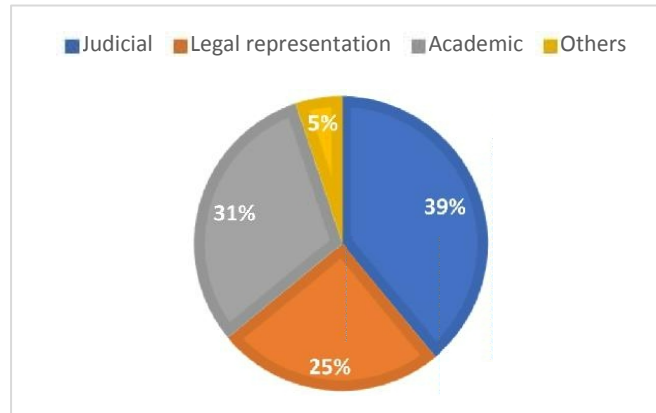
Table 3 – applicant respondents expressing concerns



<sup>26</sup> One respondent noted that some of the successful candidates were selected on the basis of their gender not their skills. However, it is recalled that in compliance with the Guidelines (Section II/8) “[l]ists of candidates should as a general rule contain at least one candidate of each sex, unless the sex of the candidates on the list is under-represented on the Court (under 40% of judges) or if exceptional circumstances exist to derogate from this rule”.

<sup>27</sup> DH-SYSC-JC(2023)02CONFIDENTIAL.

Table 4 – professional background of applicant respondents



13. The CDDH recalls that the Guidelines provide sufficient guidance to the State Parties as to how to organise national selection procedures that are conducive to the establishment of lists of candidates that meet the requirements of Article 21§1. In this context the CDDH reiterates the importance of the full implementation of the Guidelines.<sup>28</sup> Furthermore, the CDDH recalls its view expressed previously that the lack of confidentiality in certain instances may be harmful for the reputation of candidates and constitute a deterring factor to apply.<sup>29</sup>

14. Moreover, there have been delays in the presentation of lists of candidates by the State Parties to the Assembly, which should be done six weeks before the second-last Assembly session prior to the end of the sitting judge's mandate.<sup>30</sup> These may be caused by difficulties in setting up and carrying out an appropriate national selection procedure or the need to replace one or more candidates. Long delays, especially those over one year, will result in the *de facto* extension of the mandate of the sitting judges. While currently such delays were experienced in a relatively small number of cases, efficient national selection procedures are required in order to avoid them completely. For example, when the Advisory Panel has given a negative opinion on one or more of the selected candidates or the list has been rejected by the Assembly on substantive grounds, the State Party could include one or more of the previously examined applicants in its new list thus avoiding the necessity of a new selection procedure.<sup>31</sup>

<sup>28</sup> See also the CDDH conclusions in [CDDH\(2017\)R88addl. §§4, 58.](#)

<sup>29</sup> [CDDH\(2017\)R88addl §57.](#)

<sup>30</sup> Country-by-country "[table of progress](#)" on the election procedure, issued by the Secretariat of the Parliamentary Assembly on 8 September 2023. For the period of time January 2017 to December 2022 of the 29 State Parties which were invited by the Assembly to present their lists of candidates 10 State Parties presented their lists before the deadline; five State Parties presented their lists on the deadline; 10 State Parties presented their lists with a delay of less than one year (ranging from two weeks to seven months); one State Party presented its list after one year of the deadline; and three State Parties have still not submitted their lists after one year of the deadline indicated by the Assembly. Delays can also result following the Assembly's rejection of one or more lists presented by a State Party.

<sup>31</sup> [DH-SYSC-JC\(2023\)03](#) Summary of exchange of views held at the 2nd meeting of DH-SYSC-JC (25-27 January 2023).

15. Section II, point 5, of the Guidelines as it stands now is not in line with Article 21§1 of the Convention regarding the age of the candidates, as amended by Protocol No. 15.<sup>32</sup> This point could be changed to state that “[c]andidates shall be less than 65 years of age at the date by which the list of three candidates has been requested by the Assembly, further to Article 22”. From a technical perspective, this change could be considered by the Committee of Ministers and possibly adopted by means of a decision in a similar way that the amendment adding a section on the Advisory Panel to the Guidelines was considered in 2014.<sup>33</sup>

## *2. Ensuring satisfaction of the substantive criteria for candidates*

16. The Advisory Panel has reported that the lists it receives contain candidates from four main professional backgrounds: judges, university professors, practicing lawyers and others, for example, senior civil servants with a legal background. During its two last reporting periods – 1 July 2017 to 7 May 2019 and 7 May 2019 to 1 July 2022 – the Advisory Panel examined respectively 11<sup>34</sup> and 18 lists of candidates.<sup>35</sup> The proportions of different profiles remain similar for these two reporting periods, that is respectively 41 % and 42 % judges, 30% and 27% university professors, 19 % and 18% practising lawyers and 8% and 13 % others.

17. The Advisory Panel has progressively developed, in the light of its experience, its understanding of the criteria set out in Article 21§1 of the Convention. For example, the criterion of being of high moral character has to be presumed.<sup>36</sup> The other two criteria of possessing the qualifications required for appointment to high judicial office or being jurisconsults of recognised competence are examined in relation to the broader objective of ensuring that the Court enjoys authority and respect with national judiciaries at the highest level and in the State Parties generally.<sup>37</sup> The Advisory Panel takes account of the candidates’ entire careers in their professional fields, including the length and level of judicial service or experience in law and whether they have had to deal with cases involving human rights issues and complex interpretative issues of law.<sup>38</sup> While the Advisory Panel seeks to apply the same criteria to all State Parties it takes into account the difficulty that States with a small population may have in finding three suitably qualified high-level candidates.<sup>39</sup> In general, the Advisory Panel considers that its clarification of the Article 21§1 criteria has led to presentation of candidates of a higher quality.<sup>40</sup>

18. Based on its 12-year-long experience, the Advisory Panel has concluded that, in broad terms, the quality of candidates who have been presented has improved and that the requirement

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<sup>32</sup> Section II, point 5 reads: “If elected, candidates should in general be able to hold office for at least half of the nine-year term before reaching 70 years of age.” The Guidelines were adopted before the entry into force of Protocol No. 15.

<sup>33</sup> [CM/Del/Dec\(2014\)1213/1.5](#), § 4; [Appendix 5](#).

<sup>34</sup> [4th Activity Report of the Advisory Panel July 2017-May 2019](#), § 55; 56.

<sup>35</sup> [5th Activity Report of the Advisory Panel 7 May 2019 to 1 July 2022](#), § 75;81.

<sup>36</sup> *Ibid.*, § 39. Only very exceptionally, when there is some manifest evidence capable of rebutting this presumption, an issue concerning this criterion will arise.

<sup>37</sup> *Ibid.*, § 41.

<sup>38</sup> *Ibid.*, § 49.

<sup>39</sup> *Ibid.*, § 44.

<sup>40</sup> *Ibid.*, § 85.

to submit the lists to it has prompted governments to focus on the quality of candidates.<sup>41</sup> Nevertheless, it has noted with disappointment the relatively low number of candidates with long judicial experience at a high, and in particular the highest, national courts.<sup>42</sup> In other cases the length and breadth of experience of candidates has been considered as insufficient to qualify them as jurisconsults of recognised competence, falling below that required of an international judge adjudicating on measures adopted by national parliaments, governments and superior courts.<sup>43</sup> During the period 2020-2021, the Advisory Panel came to a “negative conclusion on a significant number of the candidates [12 of the 45 candidates] with there also being a number of candidates accepted as fulfilling the minimum qualifying conditions but whom the Panel had regarded as being borderline”.<sup>44</sup> Also, for the first time it has expressed a negative opinion as to candidates’ suitability on account of an objectively perceived lack of independence and impartiality on their part vis-à-vis the Government nominating them.<sup>45</sup> Lastly, it is noted that the Panel’s Operating Rules provide for the obligation of a member to withdraw from the Panel’s consideration of a list in circumstances where there is a conflict of interest.<sup>46</sup> These Rules also provide for the obligation of a member possessing the nationality of the country whose list is under consideration to refrain from taking part in either the Panel’s discussion or in any vote on the adoption of the final views on this list.<sup>47</sup>

19. At the level of the Assembly, the Committee has occasionally rejected lists of candidates because not all of them fulfilled the criteria of Article 21§1 of the Convention (see also § 31 below).<sup>48</sup>

### *3. The role of the Advisory Panel*

20. Since spring 2019, the Advisory Panel, by reference to the Guidelines, looks at the national selection procedures in a very comprehensive way, notably as regards the fulfilment of the requirements of fairness and transparency. Where justified, the Panel addresses queries to the government concerned or seeks further information from it in connection with the procedure followed. The Panel’s final views on the candidates may, where appropriate, draw attention to aspects of the national selection procedure. Its written observations on the national selection procedure are also included in its letter addressed to the Secretary General of the Assembly.<sup>49</sup>

21. The CDDH notes that a wide range of aspects of the national selection procedures are assessed by the Advisory Panel. These include the legal basis of the selection procedure; the publicity given to the call for applications; the number of candidates who responded to the call for applications and the number of those interviewed; the efforts, or lack of effort, on the part of the Government to ensure a sufficient number of good candidates of both sexes; the composition of

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<sup>41</sup> Ibid., § 85.

<sup>42</sup> Ibid., § 50.

<sup>43</sup> Ibid., § 51-62.

<sup>44</sup> Ibid., § 86.

<sup>45</sup> Ibid., §§ 35; 37; 86.

<sup>46</sup> See Supplementary Operating Rules of the Advisory Panel, § 7.

<sup>47</sup> Ibid. §6.

<sup>48</sup> [DH-SYSC-JC\(2023\)03](#) Summary of exchange of views held at the 2nd meeting of DH-SYSC-JC (25-27 January 2023).

<sup>49</sup> [5th Activity Report of the Advisory Panel 7 May 2019 to 1 July 2022.](#), § 24-27;33.

the national selection body, in particular the diversity of its members' backgrounds; the procedure followed by the national selection body; the selection criteria applied; the role played by government ministers or the Head of State in the finalisation of the list of candidates; whether complaints were made about the national selection procedure; and how such complaints were dealt with.<sup>50</sup>

22. The CDDH welcomes the evolving practice of the Advisory Panel to assess the national selection procedures as part of its examination of lists of candidates.<sup>51</sup> To promote further improvements in the fairness and transparency of these procedures, the CDDH considers that it may be desirable that the Advisory Panel makes public its observations concerning these aspects of the procedures, or a summary thereof, in an anonymised and non-country-specific manner and making sure that this does not interfere with the principle of confidential communication of the views of the Panel on the proposed list of candidates to the government concerned. Such an approach would potentially encourage reflection not only in the State Party concerned but also other State Parties on how to strengthen national selection procedures. The Advisory Panel says that, overall, its dialogue with governments has improved. Its requests for clarifications or additional information in relation to one or more candidates or on the national selection procedure are usually followed up swiftly by governments providing comprehensive information.<sup>52</sup> There are, however, cases in which the governments have submitted to the Assembly lists which had previously been totally or partially rejected by the Panel.<sup>53</sup> In some cases, significant delays have occurred in the submission of the lists of candidates to the Panel.<sup>54</sup> To prevent such situations from arising the CDDH encourages national authorities to take advantage of the possibility to meet with the Panel in the course of national selection procedures to clarify the standards that the candidates should meet and the demands of the national selection procedure.

23. The dialogue between the Advisory Panel and the Assembly has also been strengthened. The Panel recognises that when candidates are on the borderline in terms of their qualifications, it is possible that it and the Committee may arrive at different conclusions, given that the Committee has the possibility to interview the candidates.<sup>55</sup>

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<sup>50</sup> Ibid., § 33.

<sup>51</sup> State Parties are requested to submit information about the national selection procedures to the Panel when transmitting the names and curricula vitae of the candidates (Guidelines, VI.2). The Panel had deduced from this requirement that while it has no express power of review in this domain under Resolution CM/Resolution (2010)26, in its final views on the candidates it may, where appropriate, draw attention to aspects of the national selection procedure, notably with regard to the fulfilment of the requirements of fairness and transparency. See [5th Activity Report of the Advisory Panel 7 May 2019 to 1 July 2022](#). §24.

<sup>52</sup> Ibid., § 84.

<sup>53</sup> Ibid., § 78. During the period 7 May 2019 to 1 July 2022, two governments submitted to the Assembly lists without replacing the candidates who had been assessed by the Panel as not being qualified and in one instance after replacing two of the initial candidates but not one of the replacement candidates whom the Panel had also found not to be qualified.

<sup>54</sup> Ibid., § 79. There was a delay of more than one year in one case and six months and five months respectively in two other cases. In one case the initial delay combined with complications in the procedure led to a delay of more than three years in the election of the new judge. As regards two other countries, at the date of adoption of this report no list or any other information had been submitted at all, entailing a delay so far of more than one year for one list and five months for the other list.

<sup>55</sup> Ibid., §§ 91, 92.

### C. Conclusions

24. The CDDH notes that the **primary** responsibility to select only candidates who fully meet the criteria of being of high moral character, possessing the qualifications required for appointment to high judicial office or being jurisconsults of recognised competence under Article 21 § 1 of the Convention lies **primarily** with the State Parties. In the light of persisting concerns about the fairness and transparency of national selection procedures in certain cases, the CDDH reiterates the importance of the full implementation of the Guidelines.

25. The CDDH has considered a possible revision of the Guidelines as a means of strengthening national selection procedures. The Guidelines, together with the complementary information included in their explanatory memorandum, have proved their usefulness and remain relevant. With a view to ensuring consistency of the Guidelines with Protocol No. 15 the CDDH proposes that the Committee of Ministers reviews Section II, point 5 of the Guidelines to state that “[c]andidates shall be less than 65 years of age at the date by which the list of three candidates has been requested by the Parliamentary Assembly, further to Article 22”.

26. The CDDH welcomes the fact that the Advisory Panel provides comprehensive and qualitative information as to its assessment of candidates with regard to the requirements for the office of judge and national selection procedures. This is set out in its activity reports and the guide published in 2019.<sup>56</sup> This serves as the basis for guiding member States in complying with the Guidelines when organising their national selection procedures. To strengthen these procedures, the CDDH suggests that the Committee of Ministers welcomes the evolving practice of the Advisory Panel to assess national selection procedures and invite it to publish its views on them in an anonymised and non-country-specific manner and making sure that this does not interfere with the principle of confidential communication of the view of the Panel to the government concerned.

## III. The election procedure

### A. Relevant decisions and measures of the last review process

27. Several changes to the Assembly’s rules on the election of judges introduced in November 2018 and April 2019 reinforced its ability to have a real choice, under Article 22 of the Convention, between three qualified candidates. Accordingly, the Assembly does not consider lists of candidates when areas of competence of the candidates appear to be unduly restricted, not all of them fulfil each of the conditions of Article 21§1 of the Convention, or one of the candidates does not appear to have an active knowledge of one of the official languages of the Council of Europe and a passive knowledge of the other.<sup>57</sup> Also, the Assembly does not consider lists of candidates where the national selection procedure did not satisfy the minimum requirements of fairness and transparency, for example there had been no public call for candidates or interviews held with them, and when the Advisory Panel was not duly consulted.<sup>58</sup>

<sup>56</sup> [A short guide on the Panel’s role and the minimum qualifications required of a candidate.](#)

<sup>57</sup> [Resolution 2278\(2019\)](#), Section 2.4.2. The Assembly refers to these grounds as substantive grounds.

<sup>58</sup> [Resolution 2278\(2019\)](#), section 2.4.2. [SG-AS \(2023\) 01rev02](#), §19. The Assembly refers to these as procedural grounds.

In all these cases, the Committee adopts proposals to reject a list by simple majority and the Assembly endorses the Committee's proposals as contained in the Progress Report of the Assembly's Bureau, generally without a plenary vote.<sup>59</sup>

28. Other changes to the Assembly's rules reinforced its dialogue with the Advisory Panel. The Chairperson of the Committee invites the Chairperson or a representative of the Advisory Panel to explain the reasons for the Panel's views on candidates, during the briefing sessions scheduled before each set of interviews.<sup>60</sup>

29. Another set of changes confined the Assembly's consideration of single-sex lists of candidates to cases when the candidates belong to the under-represented sex in the Court (i.e. the sex to which under 40% of the total number of judges belong),<sup>61</sup> or in exceptional circumstances where a State Party has taken all the necessary and appropriate steps to ensure that the list contains candidates of both sexes. A majority of two thirds is required in the Committee to accept that such circumstances exist, failing which the Committee proposes to the Assembly to reject the list concerned.<sup>62</sup>

30. Before introducing the above changes, the Assembly had examined a number of reform proposals, including those put forward by CDDH in its 2017 report, which aimed at addressing issues of lobbying in the Assembly and increasing the transparency of its election process. The following proposals were not retained by the Assembly: changing the rules on nominations to and the composition of the Committee and introducing sanctions for non-attendance of its meetings;<sup>63</sup> integrating a representative of the Advisory Panel in interviews with candidates;<sup>64</sup> giving more detailed reasons for the Committee's recommendations and making them public before the election;<sup>65</sup> the Committee sending to the Plenary Assembly lists of two or one candidates when not all candidates were considered as qualified;<sup>66</sup> a single preferential voting round;<sup>67</sup> extending the duration of interviews by the Committee.<sup>68</sup>

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<sup>59</sup> In these cases, the Committee systematically proposes to the Assembly to reject lists of candidates deciding by secret ballot and a simple majority of votes; the members of the Committee from the country whose list is under consideration and those who have not attended the interview are excluded from voting. The Assembly endorses the proposal of the Committee in the Progress Report of the Bureau of the Assembly and the Standing Committee which constitutes definitive rejection of the list and the State concerned is invited to submit a new one. See [Resolution 2248 \(2018\)](#), sections 8.3; 8.4. See Report "Procedure for the election of judges to the European Court of Human Right", [Doc. 14662](#), 02 November 2018, section 4.4.2. [Resolution 2278\(2019\)](#), sections 2.4.1 and 2.4.2.

<sup>60</sup> [Resolution 2278\(2019\)](#), section 2.4.2. [Resolution 2248 \(2018\)](#), section 8.1.

<sup>61</sup> At the time of writing of this report, 17 out of 46 judges at the Court are women. The President of the Court is a woman and one Section President out of 5 is a woman. See also speech by Síofra O'Leary, President of the Court "Judicial Forum on Gender Equality and the Western Balkans" Belgrade, 2 June 2023.

<sup>62</sup> [Resolution 2278\(2019\)](#), section 2.4.2. The Committee's proposal is endorsed by the Assembly in the Progress Report of the Bureau and the Standing Committee.

<sup>63</sup> See Report "Procedure for the election of judges to the European Court of Human Rights", [Doc. 14662](#), 02 November 2018, section 4.1; appendix, section 1.

<sup>64</sup> *Ibid.* sections 4.2; 4.4.1.

<sup>65</sup> *Ibid.*, section 4.3.

<sup>66</sup> *Ibid.*, appendix, section 2.

<sup>67</sup> *Ibid.*

<sup>68</sup> *Ibid.* 4.4.1.

## B. Progress and challenges

### 1. Examination of candidates' lists by the Committee

31. The Committee's practice shows a strict application of the rules described above. It first examines the lists on the sole basis of the candidates' *curricula vitae* and in light of its exchange of views with the chairperson or representative of the Advisory Panel. Should it become clear that one or more candidate(s) does not reach the minimum threshold of competence and experience required for election under Article 21§1 of the Convention, the Committee may recommend that the list is rejected by the Assembly on substantive grounds.<sup>69</sup> Between January 2017 and January 2023, the Committee considered 38 lists of candidates. It proposed to the Assembly to reject 13 lists, of which 8 without interviewing the candidates, including three on substantive grounds.<sup>70</sup>

32. The Committee's scrutiny of the national selection procedure has gradually taken into account the implementation of the Guidelines. It is observed that since their introduction in 2012, national procedures have generally improved. The Committee has occasionally recommended to reject proposed lists, for example when the Panel was not properly consulted, there had been no clear national selection procedure at all, when candidates had not been interviewed, or when the national selection procedure, whilst rather elaborate and transparent, had been heavily dominated by representatives of the government of the day.<sup>71</sup> The Committee has decided to no longer consider lists of candidates drawn up without recourse to interviews at national level.<sup>72</sup> Between January 2017 and January 2023, the Committee proposed to the Assembly to reject five lists on procedural grounds without interviewing the candidates. The Committee's recommendations to reject lists of candidates on procedural grounds do not provide information as to which aspect of the national selection procedure is considered as being not in line with the Assembly's standards on fairness and transparency.

33. The Committee strictly applies the "exceptional circumstances" threshold to justify exceptions from the rule that the list submitted to the Assembly should contain candidates of both sexes (see §29 above). Recently it rejected an all-male list despite explanations given by the Minister of the State Party concerned.<sup>73</sup>

34. Interviews are held when the Committee has decided not to propose rejection of a list on procedural or substantive grounds on the sole basis of the candidates' *curricula vitae* or on gender equality grounds. They are conducted according to a standard structure, each lasting 30 minutes, the first five of which candidates may use to introduce themselves.<sup>74</sup> After this the chairperson addresses to each candidate the same one or two questions. Committee members can ask any questions, including clarifications of the candidates' *curriculum vitae*.<sup>75</sup> Questions can vary and

<sup>69</sup> [SG-AS \(2023\) 01rev02](#), §§18; 20.

<sup>70</sup> Data provided by the Secretariat of the Assembly.

<sup>71</sup> [DH-SYSC-JC\(2023\)03](#) Summary of exchange of views held at the 2nd meeting of DH-SYSC-JC (25-27 January 2023).

<sup>72</sup> [SG-AS \(2023\) 01rev02](#), § 19.

<sup>73</sup> [Doc. 15626 Add. 2](#), 12 October 2022.

<sup>74</sup> [DH-SYSC-JC\(2023\)03](#) Summary of exchange of views held at the 2nd meeting of DH-SYSC-JC (25-27 January 2023).

<sup>75</sup> [SG-AS \(2023\) 01rev02](#), § 25.



usually concern topical legal and human rights issues or “hypotheticals” where knowledge of the case law of the Court can be useful but is not indispensable for candidates to come up with a convincing legal argument. The Committee members assess the candidates both on the basis of their *curriculum vitae* and answers given during their interviews in a detailed discussion after each set of interviews.<sup>76</sup> Of the 13 lists on which the Committee proposed rejection between January 2017 and January 2023, five concerned candidates who had been interviewed by the Committee.<sup>77</sup>

35. When the Committee recommends the rejection of a list on substantive grounds (see §31 above), succinct reasons must be given to the Assembly.<sup>78</sup> The State Party and the person/s concerned are informed before the Committee’s recommendation is made public.<sup>79</sup> Should one or more candidates withdraw, the election procedure is suspended until the Government has completed the list, after consulting the Advisory Panel.<sup>80</sup> If the Committee’s recommendation to reject a list is rejected by a majority vote in the Assembly, the list is referred back to the Committee.<sup>81</sup>

36. When the Committee does not propose rejection of a list, it votes on its preference among the candidates, by secret ballot. Its recommendation to the Assembly does not include reasons for the Committee’s choice and does not indicate the exact majority with a view to protecting the reputation of candidates, although it does indicate relative size of the majority. Only the name of the candidate recommended as the most qualified is mentioned in the short note that is attached to the Bureau’s Progress Report and thus becomes public.<sup>82</sup>

37. The CDDH welcomes the Assembly’s scrutiny of national selection procedures. It notes that the Committee’s recommendations to reject lists of candidates on procedural grounds do not provide information as to which aspect of the national selection procedure is considered as being not in line with the Assembly’s standards of procedural fairness and transparency. The CDDH considers that an explanation to this effect as well as a succinct presentation of the reasoning for the Assembly’s conclusions would potentially encourage reflection not only in the State Party

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<sup>76</sup> [DH-SYSC-JC\(2023\)03](#) Summary of exchange of views held at the 2nd meeting of DH-SYSC-JC (25-27 January 2023).

<sup>77</sup> Data provided by the Secretariat of the Assembly.

<sup>78</sup> [SG-AS \(2023\) 01rev02](#), §30.

<sup>79</sup> [SG-AS \(2023\) 01rev02](#), §30. See also [DH-SYSC-JC\(2023\)03](#) summary of exchange of views held at the 2nd meeting of DH-SYSC-JC (25-27 January 2023); the Committee meetings where a rejection recommendation is decided usually take place on the Thursday and Friday before the week of the Assembly session. The Secretary General of the Assembly and the Chairperson of the Committee provide information, in confidence, to the Permanent Representative of the State Party concerned in Strasbourg and to the chairperson of the national delegation to the Assembly, respectively. The person/s concerned are informed on the Wednesday before the plenary session during the election should take place.

<sup>80</sup> [DH-SYSC-JC\(2023\)03](#) summary of exchange of views held at the 2nd meeting of DH-SYSC-JC (25-27 January 2023).

<sup>81</sup> [SG-AS \(2023\) 01rev02](#), §30.

<sup>82</sup> *Ibid.* §30. For example, it is indicated that a recommendation in favour of one candidate was adopted “unanimously”, “with an overwhelming/very large majority”, “with a large majority”, “with a narrow majority” or simply “by a majority”, sometimes “over” another candidate; it is understood that a second name is mentioned whenever the vote was fairly close between the first and second candidate, whilst the third candidate was far behind; and that a “large” majority implies a majority of at least two thirds. See also [DH-SYSC-JC\(2023\)03](#) summary of exchange of views held at the 2nd meeting of DH-SYSC-JC (25-27 January 2023).

concerned but also other State Parties regarding the improvement of national selection procedures. This is unlikely to harm the reputation of the candidates given that the Assembly clearly distinguishes between rejection on procedural grounds and substantive grounds and that the assessment of national selection procedures is separate from that of candidates' qualifications under Article 21 § 1 of the Convention.

38. The Committee has developed a fruitful dialogue with the Advisory Panel, especially following the changes made to its rules of procedure in 2018 (see §28 above). On 7 June 2022 the Committee had a joint meeting with a delegation of the Panel, which permitted the two bodies to agree on and further clarify a number of issues regarding the interpretation of the eligibility criteria under Article 21 of the Convention.<sup>83</sup>

## *2. Election by the Parliamentary Assembly*

39. In almost all cases, the Assembly has followed the recommendations of the Committee. In the entire history of its election procedure the Assembly has rejected the Committee's recommendation only once and has once voted for the second candidate on the Committee's order of preference.

40. Participation in the voting has also increased. As of January 2017, of the 306 representatives authorised to vote there are usually between 180 and 300 voting. In only two cases the votes cast were substantially lower, amounting to 143 and 167. In only one case a second round of voting became necessary in the plenary.<sup>84</sup>

41. In responses to the DH-SYSC-JC's questionnaire, the large majority of those who considered but did not apply for the post of judge at the national level said they did not have any concerns about the election stage before the Assembly (72 out of 89 responses) or with its public nature (69).<sup>85</sup> Some of those who did express concerns noted the lack of detailed information about the election stage, its transparency, and the reference to personal characteristics relating to gender. The majority of the applicants at the national level who were included in the lists presented to the Assembly responded that they had not encountered obstacles or difficulties in the election stage (20 out of 24).<sup>86</sup> The Council of Europe could consider organising an information campaign on the election procedure.

## *C. Conclusions*

42. Following the changes to the Assembly's rules, the practice of the Committee involves assessment of the candidates' lists on substantive, procedural and gender equality grounds, before the interviews take place. A standard structure for the interviews and certain safeguards

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<sup>83</sup> [4th Activity Report of the Advisory Panel July 2017-May 2019](#), § 32. [DH-SYSC-JC\(2023\)03](#) Summary of exchange of views held at the 2nd meeting of DH-SYSC-JC (25-27 January 2023).

<sup>84</sup> Data provided by the Secretariat of the Assembly.

<sup>85</sup> DH-SYSC-JC(2023)02CONFIDENTIAL. It should be noted that the 19 responses which expressed concerns about the public nature of the procedure did so with reference to the national selection procedure. Several respondents considered the transparency of the process as an indispensable aspect of any procedure.

<sup>86</sup> DH-SYSC-JC(2023)02CONFIDENTIAL.

have been put in place to preserve the reputation of candidates when the Committee's recommendation to reject a list or its indication of preference is submitted to the Assembly.

43. The CDDH welcomes the Assembly's scrutiny of national selection procedures. It considers that when it rejects lists on procedural grounds a publication of its conclusions and its reasoning in a succinct manner would potentially encourage reflection not only in the State Party concerned but also other State Parties regarding the improvement of national selection procedures. The CDDH suggests that the Council of Europe could consider organising an information campaign on the election procedure.

#### **IV. Issues related to active time in office**

##### *A. Relevant decisions and measures of the last review process*

44. Following the 2017 CDDH report, the Committee of Ministers did not consider issues relating to judges' employment or working conditions or their term of office.<sup>87</sup>

45. The CDDH in its 2017 report had considered that the immunity of the judges during their term of office was sufficiently regulated by the existing arrangements. As regards the situation of judges' family members, the CDDH welcomed the French authorities' undertaking to grant spouses of international civil servants' access to the French labour market. Regarding difficulties in finding suitable schooling for children, the CDDH noted that this issue is not unique to the judges of the Court and considered that it should be raised by the Council of Europe with the relevant authorities of the host State in order to find a solution to the problem. The CDDH encouraged all measures to enhance the swift integration of the judges and their continuing training. Any responses regarding the judges' working conditions at the Court, their integration and continuing training would mainly be implemented by the Court itself.

46. The CDDH had also analysed the possible extension of the judges' term of office to 12 years.<sup>88</sup> It highlighted concerns about potential situations of "a less qualified judge" sitting in the bench as well as a potential dissuasive effect associated with interruption of domestic careers. Without pre-empting a future analysis of the discouraging effect of the nine-year term of office on potential candidates, the CDDH concluded at that time that the current duration, introduced by Protocol No. 14, should be preserved.

##### *B. Progress and challenges*

###### *1. Practical issues*

47. 28 out of 88 respondents to the relevant questionnaire, who had considered but did not apply at the national level for the post of judge, responded in the affirmative to the question whether they had concerns about moving to Strasbourg or returning to their home countries after

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<sup>87</sup> The GR-H decided to focus its examination on the national selection procedure, the role of the Advisory Panel and the election process, see GR-H(2018)CB7, 27 June 2018.

<sup>88</sup> This issue was examined in relation to the criteria for office stipulated by Article 21 of the Convention, notably the independence and competence of judges, as well as in relation to the objective of ensuring the institutional stability of the Court.

the end of their mandate, or about the situation of their partners/ families. Some of those respondents noted that it would have been desirable to have the possibility of working remotely. One respondent noted the level of pay and other benefits at the Court, which they considered not to be commensurate with the level of responsibility of a judge at the Court. One respondent who applied at the national level and was elected by the Assembly as a judge noted problems with the range of secondary school options accessible in Strasbourg. In their responses to the relevant questionnaire, 16 of the 20 judges did not mention any difficulties regarding either their personal situation, or that of their partners or family members.<sup>89</sup>

48. Recalling its 2017 Report, the CDDH notes that some judges continue to have difficulty in finding suitable schooling for their children in Strasbourg during their term of office. This may deter candidates with young children from applying and may also in reality have a disproportionate impact on women judges and women candidates.<sup>90</sup> It underlines that this issue should be raised by the Council of Europe with the relevant authorities of the host State so as to find a solution to the problem, including by means of facilitating the enrolment of judges' children in suitable international schooling programmes.<sup>91</sup>

49. Some other practical issues were raised by judges of the Court when exchanging views with the DH-SYSC-JC.<sup>92</sup> These include possibly reduced coverage when judges revive their private health insurance following their return to their home countries after their mandates. Others concern the unwillingness of banks, pension funds and other financial institutions in the home countries to continue dealing with a customer who is no longer physically present in that jurisdiction and is likely to have to be treated as a politically exposed person and therefore subject to stricter anti-money laundering due diligence procedures.

50. Lastly, the CDDH notes that the training provided to judges in the official languages of the Court was interrupted in 2018.<sup>93</sup> In view of the fact that such training is considered essential for the functioning of a bilingual institution, the CDDH encourages the relevant services of the Council of Europe and of the Court to consider resuming its provision. Mindful of the member States' commitment to ensure allocation of sufficient and sustainable resources to the Court,<sup>94</sup> the CDDH considers this essential and notes that the judges have regarded such training as a useful resource.<sup>95</sup>

## *2. Judge-rapporteur*

51. One of the issues raised and discussed in the DH-SYSC-JC is that of judges being designated as rapporteurs in cases against the State Party in respect of which they were elected.

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<sup>89</sup> DH-SYSC-JC(2023)02CONFIDENTIAL.

<sup>90</sup> [DH-SYSC-JC\(2023\)03](#) Summary of exchange of views held at the 2nd meeting of DH-SYSC-JC (25-27 January 2023).

<sup>91</sup> [CDDH\(2017\)R88addl, §§30, 153.](#)

<sup>92</sup> [DH-SYSC-JC\(2023\)05](#) Summary of the exchange of views with judges of the European Court of Human Rights.

<sup>93</sup> [DH-SYSC-JC\(2023\)05](#) Summary of the exchange of views with judges of the European Court of Human Rights.

<sup>94</sup> [Declaration](#) of Heads of State and Government, Reykjavik Summit of the Council of Europe "United around our values", 16 and 17 May 2023.

<sup>95</sup> [DH-SYSC-JC\(2023\)05](#) Summary of the exchange of views with judges of the European Court of Human Rights.

It is argued that potentially this raises concerns about those judges' independence and impartiality.

52. The designation of a judge as rapporteur is regulated by the Rules of Court. In the case of an inter-State application the Chamber constituted to consider the case designates one or more of its judges as Judge Rapporteur(s) to submit a report on admissibility when the written observations of the Contracting Parties concerned have been received.<sup>96</sup> In the case of an individual application, when its examination by a Chamber or a Committee under Rule 53 § 2 seems justified, the President of the Section to which the case has been assigned designates a judge Rapporteur to examine the application.<sup>97</sup> Where a case has been submitted to the Grand Chamber, the President of the Grand Chamber designates as Judge Rapporteur(s) one or, in the case of an inter-State application, more of its members.<sup>98</sup>

53. From the outset, the CDDH notes that the Court does not indicate which judge is designated as rapporteur in any given case. The CDDH's considerations in this regard are primarily based on the relevant principles of the Convention and the Rules of Court.

54. Under Article 26§3 of the Convention, a judge shall not sit as a single judge in cases concerning the State Party in respect of which they have been elected. While this rule is justified by the fact that the judge would be sitting alone, its fundamental rationale of preserving the judge's independence and impartiality is also relevant to their exercise of judicial functions in collegial judicial formations. This approach is also embedded in Rule 13 of the Rules of Court, which provides that judges may not preside in cases in which the State Party of which they are nationals or in respect of which they were elected is a party. The Rules of Court also exclude the participation of the judge elected in respect of a State Party in the panel examining a referral request to the Grand Chamber.<sup>99</sup> These considerations may also be relevant for the appointment of a judge rapporteur.

55. From the opposite perspective, it can be argued that the expertise of a judge in the law and practice of the State Party in respect of which they were elected may be important to the decision-making. Hence, those judges participate *ex-officio* in Chamber and Grand Chamber cases under Article 26§4, and may be invited to participate in committee cases under Article 28§3. This expertise may also facilitate the task of the judge rapporteur in presenting the case to the judicial formation.

56. In conclusion, the CDDH considers that the Court enjoys discretion in case-allocation and organisation of its work. There are valid arguments for and against the designation of a judge as rapporteur in cases against the State Party in respect of which he/she was elected. Balancing

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<sup>96</sup> Rule 48 § 1.

<sup>97</sup> Rule 49 § 2; see also § 3 "In their examination of applications, Judge Rapporteurs: (a) may request the parties to submit, within a specified time, any factual information, documents or other material which they consider to be relevant; (b) shall, subject to the President of the Section directing that the case be considered by a Chamber or a Committee, decide whether the application is to be considered by a single-judge formation, by a Committee or by a Chamber; (c) shall submit such reports, drafts and other documents as may assist the Chamber or the Committee or the respective President in carrying out their functions."

<sup>98</sup> Rule 50.

<sup>99</sup> Rule 24§5,c.

these arguments and deciding who to designate remains within the exclusive competence of the Court.

### 3. *Incompatible activities*

57. The criteria for judicial office are set out in Article 21§1 of the Convention, which states that “[t]he judges shall be of high moral character and must either possess the qualifications required for the appointment to high judicial office or be jurisconsults of recognised competence.” Article 21§3 of the Convention states that “[d]uring their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.”

58. The Rules of Court give effect to these principles. A judge is under an obligation to declare any additional activity to the President of the Court.<sup>100</sup> A judge may not take part in the deliberations of a case on certain grounds relating to his/her independence or impartiality which are listed in the Rules of Court.<sup>101</sup> If a judge withdraws on one of these grounds, he/she notifies the President of the Chamber who exempts the judge from sitting in the case.<sup>102</sup> In the event of any doubt the issue is decided by the Chamber.<sup>103</sup>

59. In the interest of clear and transparent application of the principles set out in Article 21 of the Convention, the Court adopted in June 2021 a [Resolution on Judicial Ethics](#).<sup>104</sup> This document sets down a series of principles on judges’ integrity, independence, impartiality, exercise of their freedom of expression, additional activities, acceptance of favours, advantages, decorations and honours. The President shall report annually to the Plenary Court on the application of these principles.

60. The CDDH has discussed the issue raised by some of its members regarding the impossibility of parties to a case to request the recusal of a judge. The CDDH has noted that this question has been addressed by the Committee of Ministers in its replies to questions from members of the Parliamentary Assembly.<sup>105</sup> It is noted that “parties to a case are aware of which Section their case has been assigned to, at the latest as of the communication of a case for observations. The composition of the various Sections (as well as the list of the judges appointed by the President as Single Judges) being publicly available on the Court’s [webpage](#), the parties may at any time verify that composition and request the Court that a particular judge not be involved in deciding their case for duly explained reasons. In such a case, the procedure provided for in Rule 28 shall be followed.”<sup>106</sup> Asked “what it intends to do about the scope and functionality of the Court’s rules of recusal”, the Committee of Ministers replied by recalling that under Article

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<sup>100</sup> Rule 4§1.

<sup>101</sup> Rule 28§2.

<sup>102</sup> Rule 28§3.

<sup>103</sup> Rule 28§4.

<sup>104</sup> The Resolution states that the Court has reviewed the principles on judicial ethics adopted by the Plenary Court on 23 June 2008.

<sup>105</sup> See [CM/AS\(2021\)Quest747-748-749-final](#), 31 March 2021, paragraph 6; [CM/AS\(2021\)Quest759-760-final](#), 7 July 2021.

<sup>106</sup> [CM/AS\(2021\)Quest759-760-final](#), 7 July 2021, paragraph 5.

25 of the Convention, the Court adopts its Rules and, therefore, it is not for the Committee of Ministers to take any action about the scope and functionality of the Court's rules of recusal.<sup>107</sup> It was, however, noted that the Court's Committee on Working Methods was reviewing the existing Rules of Court, including Rule 28.

61. Noting that the process of amendments by the Court of Rule 28 of the Rules of Court is advancing, the CDDH sees no reason for departing from the position of the Committee of Ministers regarding the issue of recusal of judges.

#### *4. The term of office*

62. The Court has suggested extending the length of the term of office from nine to 12 years. Former President of the Court, Robert Spano, argued that "a single nine-year term does not provide sufficient stability to the Court's functioning, including its governance structure, and importantly the continued coherence and consistency of its jurisprudence which often requires a long-term vision on the interaction between the Convention and day-to-day realities."<sup>108</sup> **Supporting this suggestion, the current President of the Court, Siofra O'Leary, has also raised the issue of a high turnover of judges each year. Without taking a position on the issue of an extension, the current President of the Court, Siofra O'Leary, has explained the consequences for the Court's work of a high turnover of judges each year and, in particular, of a failure to appoint replacements on time.**

63. The CDDH recalls that the current non-renewable term of office of nine years was introduced by Protocol No.14 which replaced the renewable term of office of six years. These changes were intended to reinforce the judges' independence and impartiality.<sup>109</sup> The CDDH has analysed the suggestion raised by the Court. To address some of the concerns mentioned above, the CDDH has also analysed the alternative of extending only the mandate of the judge elected as President to the necessary time to complete a term of office as President.

#### *Possible extension of the term of office to 12 years*

64. The CDDH agrees that in principle such extension could contribute to the stability of the Court's governance and potentially reinforce the guarantees of the judges' independence and impartiality. It has been brought to its attention that a considerable number of judges do not retire after their service in the Court which in certain cases may raise questions of independence towards the end of their mandate.<sup>110</sup> On the other hand, concerns already underlined during the previous review process<sup>111</sup> about a potential dissuasive effect of a longer commitment to an international judicial position which entails the interruption of domestic careers and consequential difficulties of reintegration in the domestic systems still remain valid today.

<sup>107</sup> Ibid., paragraph 7.

<sup>108</sup> [DH-SYSC-JC\(2022\)02](#).

<sup>109</sup> See explanatory report to Protocol No.14, §50.

<sup>110</sup> [DH-SYSC-JC\(2023\)05](#) Summary of the exchange of views with judges of the European Court of Human Rights.

<sup>111</sup> [CDDH\(2017\)R88addI](#), §§ 64-69.

65. The CDDH notes that in 2024 it is expected that 15 new judges will be elected whose integration would be a significant challenge for the functioning of the Court. The suggested extension of the length of the term of office would reduce the frequency of such rotations but would not prevent their periodic recurrence. The situation in 2024 appears to be an exceptional peak in the turnover of judges on the bench. The fact that so many new judges will be elected in 2024 also means that lower than average numbers will be elected across ensuing years. During the period 2017-2022, on average, the term of office of five judges has expired each year.<sup>112</sup> In 2023, the term of office of four sitting judges had already expired with no other term of office expiring in this year. Aside from the issue of how many judges' terms of office expire each year, the CDDH is concerned by certain delays in filling the vacant posts of judges (see §14 above).<sup>113</sup> However, these delays are not related to the length of judges' term of office.

66. Lastly, the CDDH notes that 16 out of the 20 former judges who responded to the questionnaire considered the current term of office to be appropriate and not in need of change.<sup>114</sup> Similarly, the majority of responses from potential applicants at the national level – 80 out of 88 respondents – stated that they did not have any concerns regarding the length of the term of office. The large majority of the respondents (82) did not express any concerns about the evolution of their career at the end of the term of office.<sup>115</sup>

*Possible extension of the term of office of the judge elected as the President of the Court*

67. The CDDH recalls that the President of the Court is elected, pursuant to Article 25 (a) of the Convention and the Rules of Court, for a period of three years and may be re-elected once.<sup>116</sup> It fully appreciates the advantages to the proper functioning of the Court of the President of the Court being able to complete the term of office.

68. It notes that regular rotation of presidents contributes to a more equal standing of all judges. Although any particular length of service on the Court is not an eligibility condition for a judge to present themselves as a candidate for the post of President, in practice seniority on the bench is a customary consideration. This may result in situations of judges being elected as President towards the end of their mandate, with the risk of not being able to complete a full term of three years in these roles. Since the entry into force of Protocol No.14 in 2010, this has been

<sup>112</sup> Country-by-country “[table of progress](#)” on the election procedure, issued by the Secretariat of the Parliamentary Assembly on 8 September 2023. The term of office of 7 judges expired in 2017; 1 judge in 2018; 4 judges in 2019; 6 judges in 2020; 4 judges in 2021 and 6 judges in 2022. The term of office of 1 judge expired due to early resignation in 2017; 1 in 2020 and 2 in 2021.

<sup>113</sup> Country-by-country “[table of progress](#)” on the election procedure, issued by the Secretariat of the Parliamentary Assembly on 8 September 2023. In 2017 the election of judges took place before the expiry of the sitting judges' term of office in 2 cases and was delayed in 5 other cases (delay periods ranging from 7 months to one year); in 2018 the election of the judge took place before the expiry of the sitting judge's term of office; in 2019 the election of judges took place before the expiry of the sitting judges' terms of office in 3 cases and was delayed in 1 other case (delay of 2 years); in 2020 the election of judges took place before the expiry of the sitting judges' terms of office in 4 cases and was delayed in 2 other cases (delay periods of 6 months); in 2021 the election of judges took place before the expiry of the sitting judges' term of office in 3 cases and was delayed in 1 other case (delay period of more than 2 years with the election yet to take place); in 2022 the election of judges took place before the expiry of the sitting judges' term of office in 1 case and was delayed in 5 other cases (with the election yet to take place).

<sup>114</sup> Respondents included judges serving under the pre-Protocol No.14 system of election.

<sup>115</sup> DH-SYSC-JC(2023)02CONFIDENTIAL.

<sup>116</sup> Rule 8 §§1,3.



the case for four of the seven presidents.<sup>117</sup> The CDDH considers that a combination of factors may lead to these situations, including but not exclusively the judges' nine-year term of office. The fact that the average age of new judges has declined somewhat and the Court's internal customs on eligibility also seem to contribute significantly to the current situation.

69. Different lengths of terms of office for the President of the Court and judges may cast a shadow on the role of the President of the Court as *primus inter pares*.<sup>118</sup>

70. In conclusion, having analysed the arguments in favour and against the proposed change and a possible alternative to address the concerns of the Court, the CDDH considers that there is no sufficiently convincing reason to change the current term of office.

### C. Conclusions

71. The CDDH invites the Council of Europe to raise the issue of judges' difficulties in finding appropriate schooling for their children in Strasbourg with the relevant authorities of the host State to find appropriate solutions, including by means of facilitating the enrolment of judges' children in suitable international schooling programmes. It also encourages the relevant services of the Council of Europe and of the Court to consider once again making available to judges language training in the official languages of the Court. The CDDH encourages member States to consider possible solutions to other practical problems mentioned in this report (paragraph 49).

72. The CDDH considers that there are valid arguments for and against the designation of a judge as rapporteur in cases against the State Party in respect of which he/she was elected. Balancing these arguments and deciding who to designate remains within the exclusive competence of the Court.

73. The CDDH considers that there is no sufficiently convincing reason to change the current term of office.

74. Noting that the process of amendments by the Court of Rule 28 of the Rules of Court is advancing, **in particular that the Court has recently launched a consultation on the proposed changes with interested parties**, the CDDH sees no reason for departing from the position of the Committee of Ministers regarding the issue of recusal of judges.

## V. Post-mandate recognition of service

### A. Relevant decisions and measures of the last review process

75. In 2020, the Committee of Ministers agreed, in the framework of its evaluation of the Interlaken Process, to consider further means to ensure due recognition for judges' status and service on the Court and providing additional safeguards to preserve their independence,

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<sup>117</sup> Jean-Paul Costa's term of office as President was four years and 11 months (including the term office before entry they into force Protocol No. 14); Sir Nicolas Bratza's term of office as President was 11 months; Dean Spielman's term of office as President was three years; Guido Raimondi's term of office as President was three years and six months; Linos-Alexandre Sicilianos' term of office was one year; Robert Spano's term of office as President was two years and five months. Siofra O'Leary term of office as President will be two years and six months. See <https://www.echr.coe.int/former-presidents>.

<sup>118</sup> DH-SYSC-JC(2023)05 Summary of the exchange of views with judges of the European Court of Human Rights.

including after the end of their terms.<sup>119</sup> This conclusion followed the CDDH's contribution to the evaluation provided for by the Interlaken Declaration which had suggested that the Committee of Ministers adopt a Declaration underlining the importance of preventing disguised reprisals against judges and recognising their service at the Court at the end of their mandate.<sup>120</sup> It also built on the 2017 CDDH report which had concluded that further work could be carried out possibly leading to a Committee of Ministers' recommendation, taking into account the diversity of legal, constitutional and political systems.

## *B. Progress and challenges*

### *1. Protection from threats and reprisals*

76. Threats and reprisals against judges during or after their mandates remain a cause for serious concern.

77. Of the 20 responses by former judges of the Court to the questionnaire three respondents noted that they had experienced negative consequences or situations because of their appointment, service or activity as a judge of the Court, during or after their mandate. Their comments underlined issues such as anonymous direct threats to the judge and their family, special investigations, interceptions and potential legal proceedings in the national context against the judge concerned or criminal proceedings against family members.<sup>121</sup> Two of these respondents considered that these acts were intended to undermine their impartiality.

**78. Instances of undue influence in the work of judges during their mandate have also been reported.**<sup>122</sup>

79. In the DH-SYSC-JC's exchange of views with judges of the Court, it was noted that threats and reprisals against judges still occur, especially after judges leave the Court. The Court itself does not have a specific mechanism in place to deal with such situations. In addition, the responsibility for addressing these situations lies with the State Parties.<sup>123</sup>

80. The CDDH notes that these problems have not been encountered by a high number of judges. Nonetheless, they raise serious challenges for the judges concerned as well as the Court as an institution. Any judge must be able to fulfil their duties without fear of negative consequences. Therefore, the CDDH proposes that the Committee of Ministers addresses this issue by means of a decision or declaration.

### *2. Recognition of service on the Court*

81. The CDDH's analysis focused on the consequences of interrupting national careers to work at an international court<sup>124</sup> for three categories of professionals who could potentially be

<sup>119</sup> [CM/Del/Dec\(2020\)130/4](#), §6.

<sup>120</sup> [CM\(2019\)182-add](#) §§ 134; 236.

<sup>121</sup> DH-SYSC-JC(2023)02CONFIDENTIAL.

<sup>122</sup> [DH-SYSC-JC\(2023\)03](#) summary of exchange of views held at the 2nd meeting of DH-SYSC-JC (25-27 January 2023).

<sup>123</sup> [DH-SYSC-JC\(2023\)05](#) Summary of the exchange of views with judges of the European Court of Human Rights.

<sup>124</sup> Generally speaking, member States' relevant legislation or policy refer to international courts or organisations. Some member States refer specifically to the European Court of Human Rights; see Recognition of service in international

candidates for the post of the judge of the Court, namely judges, public servants and university professors. The CDDH has further examined information as to the right of people in these categories to regain their former posts after having served in an international court and to have such service count for the purposes of career advancement and pension rights.<sup>125</sup> Practicing lawyers are a further relevant category of professionals in this context. The States' responsibilities to ensure recognition of their service in respect to career progression in the private sector are, however, limited.

82. Judges at the national level may leave their functions to serve in an international court on special or unpaid leave (21 member States), through suspension of their national mandate (13 member States) or on secondment by domestic authorities (12 member States), or after resigning from their post (five member States). 31 member States provide for the right to regain judicial office at the national level after service in an international court. In 13 member States there are no specific regulations concerning recognition of service in an international court.<sup>126</sup> The positions of judges of superior courts and of those in lower courts sometimes differ; in three member States, the provisions on interruption of the national judicial career are not applicable to judges of their constitutional courts; in one member State, judges of the Supreme Court and the Administrative Supreme Court cannot take leave to work on an international court; and in one member State, judges of the highest court have to resign in case of their election to an international court.<sup>127</sup>

83. The time served in an international court is generally taken into account for career development purposes at the national level. In 25 member States this is addressed in specific legal provisions, whereas in several other countries recognition is achieved despite not being expressly set out in law.<sup>128</sup> In 27 member States service in an international court is taken into account for purposes of pension rights at the national level, of which 16 require the payment of contributions during the international mandate.<sup>129</sup>

84. Conditions similar to those applicable to national judges for leaving the post at the national level either on special or unpaid leave, on secondment, or following suspension or resignation apply to public civil servants. These modalities are broadly speaking as available to civil servants as they are to national judges. The right to regain the former post after service in an international court is recognised in 31 member States, whereas in 11 member States such right is not recognised. **However simply regaining one's former post implies that the nine years spent at the Court has not been taken into account.** The time that public servants

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courts in national legislation - Report of the Research Unit, Directorate of the Jurisconsult, Registry of the European Court of Human Rights, 21 October 2022, para. 154. For purposes of this report reference is made to international courts.

<sup>125</sup> DH-SYSC-JC(2022)03REV2.

<sup>126</sup> DH-SYSC-JC(2022)03REV2.

<sup>127</sup> Recognition of service in international courts in national legislation - Report of the Research Unit, Directorate of the Jurisconsult, Registry of the European Court of Human Rights, 21 October 2022, para. 145.

<sup>128</sup> DH-SYSC-JC(2022)03REV2; see also Recognition of service in international courts in national legislation - Report of the Research Unit, Directorate of the Jurisconsult, Registry of the European Court of Human Rights, 21 October 2022, para. 145.

<sup>129</sup> DH-SYSC-JC(2022)03REV2.

served in an international court is taken into account for purposes of pension rights in 23 member States, of which 13 require the payment of contributions during the international mandate.<sup>130</sup>

85. Most of the feedback received from former judges did not highlight any issues in terms of recognition of the time spent at the Court in employment or pension records at the end of their mandate by the State Party with respect to which they were elected. One of the 20 responses noted a failure to find appropriate employment; five noted that their time at the Court had not been appropriately recognised for pension purposes. Another response noted that the level of the judges' pension under the existing Council of Europe system is not sufficient, hence most judges do not take this option. The same response observed that the recognition of the time spent at the Court in the State Parties concerned for career purposes should be automatic. Most of the feedback received by DH-SYSC-JC from potential applicants for the post of judge (79 out of 89 respondents) stated that they had had no concerns about the level of recognition in their home countries of judges' status or service on the Court at the conclusion of their mandates.<sup>131</sup>

86. A large majority of member States, approximately 32, do not have any specific regulations allowing for university professors to interrupt national careers in order to join an international court, or recognition of their service in these institutions.<sup>132</sup> These are usually addressed in general regulations applicable to civil servants, labour law, university regulations, or collective agreements providing for suspension of duties in general terms or subject to specific arrangements with the employer.<sup>133</sup> Nine member States recognise specifically the right to regain the former post after an international mandate, 10 member States recognise pension rights, of which four require the payment of contributions.

87. Lastly, the CDDH notes that judges of the Court have underlined the need to put in place additional guarantees after the end of a judge's term of office. It has been suggested that member States consider a recommendation ensuring that judges after their mandate can return to posts comparable to those previously occupied, or to a judicial post at highest domestic courts and tribunals as well as proper pension entitlements.<sup>134</sup>

### *C. Conclusions*

88. The level of recognition of service on the Court remains at rather low levels. The right to regain the former post is recognised in approximately 67% of member States for national judges, and for public servants and in 19 % of member States for university professors. More worrisome is the level of recognition of pension rights, which for national judges are recognised in

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<sup>130</sup> DH-SYS-JC(2022)03REV2, of the 13 member States, one makes recognition of time served at the Court for pension rights conditional upon not receiving pension from the Council of Europe, and one member State makes it conditional upon the fact that the public servant interrupted his/her career on secondment.

<sup>131</sup> DH-SYSC-JC(2023)02CONFIDENTIAL.

<sup>132</sup> DH-SYS-JC(2022)03REV2.

<sup>133</sup> Recognition of service in international courts in national legislation - Report of the Research Unit, Directorate of the Jurisconsult, Registry of the European Court of Human Rights, 21 October 2022, para. 153.

<sup>134</sup> DH-SYSC-JC(2023)05 Summary of the exchange of views with judges of the European Court of Human Rights.

approximately 60% of member States, for public servants in 50% and for university professors in 21 % of member States.

89. The CDDH reiterates that recognition of service as judge is key for the attractiveness of the post of judge at the Court. It is also relevant to judicial independence, by ensuring that judges' professional and material situations following their return to their home countries are not dependent on the goodwill of national authorities.<sup>135</sup> For example, judges should have the possibility to accede to posts commensurate to the experience gained at the Court. The CDDH proposes that the Committee of Ministers promotes more robust and complete recognition of service as judge on the Court by means of a decision or declaration calling on States to take action in this respect.

## VI. Ad-hoc judges

### A. Relevant decisions and measures of the last review process

90. The Committee of Ministers and the Parliamentary Assembly did not specifically address issues relating to *ad hoc* judges in the last review process. In its 2017 report, the CDDH had examined concerns raised by the Parliamentary Assembly's Committee on Legal Affairs regarding the exclusion of the Parliamentary Assembly from the appointment procedure of *ad hoc* judges, differences in national selection procedures for elected judges and *ad hoc* judges, and delays in their appointment.<sup>136</sup> Noting that the system had worked well and having regard to various explanations provided by the Registry, the CDDH concluded that the distinct regime for *ad hoc* judges is justified by the rarity of their appointment. It expressed the hope that the Court could envisage changes to its Rules to prolong the period of validity of lists of *ad hoc* judges, or to make it more flexible.

### B. Progress and challenges

#### 1. Appointments of *ad hoc* judges

91. The potential need to appoint *ad hoc* judges in case a particular candidate were to be appointed as judge of the Court should be taken into account during the selection and election procedures, in view of the fact that the appointment of *ad hoc* judges is not subject to the same safeguards of independence and impartiality and their presence would affect the stability of the Court's composition.<sup>137</sup> The CDDH recalls that the Guidelines state that national selection procedures should avoid any foreseeable, frequent and/or long-lasting need to appoint an *ad hoc* judge.<sup>138</sup> A memorandum of the Parliamentary Assembly's Secretariat on the procedure for election of judges to the Court, issued following Resolution 2248(2018), also contains a clear indication that, as far as possible, no candidate should be submitted whose election might result in the necessity to appoint an *ad hoc* judge.<sup>139</sup>

<sup>135</sup> [CDDH\(2017\)R88addI](#), §156.

<sup>136</sup> *Ad hoc* judges at the European Court of Human Rights: an overview "[Doc. 12827](#) | 23 January 2012.

<sup>137</sup> [CM\(2012\)40-add](#) §33.

<sup>138</sup> [CM\(2012\)40-final](#) Section II, §7.

<sup>139</sup> [SG-AS \(2023\) 01rev02](#), Appendix 2, pg. 11.

92. In view of the fact that *ad hoc* judges, when sitting, are on an equal footing with ordinary judges, States must ensure that the *ad hoc* judges possess the qualifications laid down in Article 21(1) of the Convention.<sup>140</sup>

93. The CDDH notes that from 1 January 2017 to 20 September 2023 *ad hoc* judges have been appointed in 143 cases. During the same period, 11 elected judges were appointed as *ad hoc* judges in 35 cases. 49 judges from the lists provided by governments were appointed as *ad hoc* judges in 108 cases. Accordingly, 82% of *ad hoc* judges were appointed from the lists provided by governments.

## 2. Changes to the appointment procedure

94. Since the last review process there have been two changes in the Court's procedure for appointing *ad hoc* judges. The first concerns the extension of the period of appointment of *ad hoc* judges from two to four years – this period continues to be renewable.<sup>141</sup> This change is in line with the CDDH's conclusion in its 2017 report.<sup>142</sup> The second change deprived States Parties that had not provided a list of potential *ad hoc* judges in advance of the option of indicating to the President of the Chamber concerned a preference among elected judges for possible appointment as *ad hoc* judge.<sup>143</sup> It is now the President of the Chamber who shall appoint another elected judge to sit as an *ad hoc* judge, if, by the time the State Party concerned is notified of the application, it has not supplied the Registrar with a list meeting the criteria set out in the Court's Rules.<sup>144</sup> The CDDH welcomes these changes, which should help States Parties avoid procedural formalities when renewing their lists of eligible *ad hoc* judges, and the Court to have a more efficient appointment process of *ad hoc* judges from the existing bench wherever the States Parties concerned have failed to provide in advance lists of eligible *ad hoc* judges.

95. In cases against the Russian Federation, for which the Court remained competent<sup>145</sup> following the cessation of Russia's status as a High Contracting Party to the Convention on 16 September 2022,<sup>146</sup> the Court has developed the novel practice of appointing an elected judge to sit as *ad hoc* judge. As the office of judge with respect to the Russian Federation also ceased to exist on 16 September 2022<sup>147</sup> the Court has noted that there was no longer a valid list of *ad hoc* judges who would be eligible to take part in the consideration of cases where the Russian Federation was the respondent State.<sup>148</sup> The President of the Chamber has, therefore, decided

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<sup>140</sup> Rules of Court, Rule 29§ 1(c).

<sup>141</sup> Rules of Court, Rule 29§ 1(a).

<sup>142</sup> [CDDH\(2017\)R88addl](#), § 173.

<sup>143</sup> Rules of Court, ex-Rule 29§ 1(a) "If the judge elected in respect of a Contracting Party concerned is unable to sit in the Chamber, withdraws, or is exempted, or if there is none, and unless that Contracting Party has opted to appoint an *ad hoc* judge in accordance with the provisions of paragraph 1 (b) of this Rule, the President of the Chamber shall invite it to indicate within thirty days the name of the person it wishes to appoint from among the other elected judges."

<sup>144</sup> Rules of Court, Rule 29§ 2(a).

<sup>145</sup> *Kutayev v. Russia*, no. [17912/15](#), 24 January 2023, §8. *Svetova and others v. Russia*, no. [54714/17](#), 24 January 2023, §11.

<sup>146</sup> Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights.

<sup>147</sup> Resolution of the European Court of Human Rights of 5 September 2022.

<sup>148</sup> *Kutayev v. Russia*, §9. *Svetova and others v. Russia*, §12.

to appoint an *ad hoc* judge from among the members of the composition, applying by analogy Rule 29 § 2 (b) of the Rules of Court.<sup>149</sup>

### C. Conclusions

96. The CDDH welcomes the changes to the Rules of Court regarding the extension of the renewable period for which *ad hoc* judges are appointed from two to four years and the automatic appointment of elected judges to serve as *ad hoc* judges when State Parties have not submitted in advance lists of eligible *ad hoc* judges.

Table summarising conclusions

Issue	Proposals
The national selection procedure	<ol style="list-style-type: none"> <li>1. Revision of Section II, point 5 of the Guidelines concerning candidates' maximum age.</li> <li>2. Welcoming the Panel's assessment of national procedures and possible invitation to it to publish its views on them, to the extent that this does not interfere with the principle of confidentiality.</li> </ol>
Election procedure	Welcoming the Assembly's scrutiny of national selection procedures and possible invitation to provide its reasoning when rejecting lists on procedural grounds.
Active time in office	<ol style="list-style-type: none"> <li>1. Inviting the Council of Europe to raise the issue of difficulties encountered by judges in finding appropriate schooling for their children in Strasbourg with the relevant authorities of the host State to find appropriate solutions, including by means of facilitating the enrolment of judges' children in suitable international schooling programmes. Inviting the relevant services of the Council of Europe and the Court to consider once again making available to judges language training in the official languages of the Court. Encouraging member States to consider possible solutions to other practical problems mentioned in this report.</li> <li>2. The designation of a judge as rapporteur in cases against the State Party in respect of which he/she was elected remains within the exclusive competence of the Court.</li> <li>3. There is no sufficiently convincing reason to change the current term of office.</li> <li>4. Supporting the Committee of Ministers' conclusion that the issue of judges' recusal remains within the remit of the Court.</li> </ol>
Post-mandate recognition	Possible declaration/decision of the Committee of Ministers concerning issues of reprisal and recognition of status.
Ad-hoc judges	Welcoming the changes to the Rules of Court regarding the extension of the renewable period for which <i>ad-hoc</i> judges are appointed and the automatic appointment of elected judges to serve as <i>ad hoc</i> judges when State Parties have not submitted their lists in advance.

<sup>149</sup> Ibid., §10.