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4 Human Rights

4.4 Guidelines of the Committee of Ministers on the selection of candidates for the post of judge at the European Court of Human Rights

Guidelines of the Committee of Ministers on the selection of candidates for the post of judge at the European Court of Human Rights

*(Adopted by the Committee of Ministers on 29 March 2012
at the 1138th meeting of the Ministers' Deputies)*

The Committee of Ministers,

Underlining the fundamental importance of the High Contracting Parties' role in proposing candidates of the highest possible quality for election as judges of the European Court of Human Rights (hereinafter "the Court"), so as to preserve the impartiality and quality of the Court, thereby reinforcing its authority and credibility;

Recalling Articles 21 and 22 of the European Convention on Human Rights (hereinafter "the Convention", ETS No. 5), which, respectively, set out the criteria for office and entrust the Parliamentary Assembly with the task of electing judges from a list of three candidates nominated by each High Contracting Party;

Recalling the Declaration adopted at the High Level Conference on the Future of the European Court of Human Rights (Interlaken, Switzerland, 18 and 19 February 2010), which stressed the importance of maintaining the independence of the judges and of preserving the impartiality and quality of the Court;

Recalling also the Declaration adopted at the High Level Conference on the Future of the European Court of Human Rights (Izmir, Turkey, 26 and 27 April 2011), which cited the need to encourage applications by good potential candidates for the post of judge at the Court, and to ensure a sustainable recruitment of competent judges, with relevant experience, and the impartiality and quality of the Court;

Recalling Committee of Ministers 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 (hereinafter the "Advisory Panel"), which reiterated the responsibility of the High Contracting Parties to the Convention to ensure a fair and transparent national selection procedure;

Recalling Recommendation 1649 (2004) of the Parliamentary Assembly on candidates for the European Court of Human Rights and the Committee of Ministers' reply thereto;

Taking note of the various resolutions of the Parliamentary Assembly on the matter, including Resolution 1646 (2009) on the nomination of candidates and election of judges to the European Court of Human Rights,

Adopts the following guidelines and encourages High Contracting Parties to implement them and ensure that they are widely disseminated, along with their explanatory memorandum, in particular among all authorities involved in the selection of candidates for the post of judge at the Court, and, if necessary, translated into the official language(s) of the country.

I. Scope of the Guidelines

The present guidelines address selection procedures at national level for candidates for the post of judge at the Court, before a High Contracting Party's list of candidates is transmitted to the Advisory Panel and thereafter to the Parliamentary Assembly of the Council of Europe.

II. Criteria for the establishment of lists of candidates

1. Candidates shall be of high moral character.
2. Candidates shall possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.
3. Candidates must, as an absolute minimum, be proficient in one official language of the Council of Europe (English or French) and should also possess at least a passive knowledge of the other, so as to be able to play a full part in the work of the Court.
4. Candidates need to have knowledge of the national legal system(s) and of public international law. Practical legal experience is also desirable.
5. 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.
6. Candidates should undertake not to engage, if elected and for the duration of their term of office, in any activity incompatible with their independence or impartiality or with the demands of a full-time office.
7. If a candidate is elected, this should not foreseeably result in a frequent and/or long-lasting need to appoint an ad hoc judge.
8. Lists 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.

III. Procedure for eliciting applications

1. The procedure for eliciting applications should be stable and established in advance through codification or by settled administrative practice. This may be a standing procedure or a procedure established in the event of each selection process. Details of the procedure should be made public.
2. The call for applications should be made widely available to the public, in such a manner that it could reasonably be expected to come to the attention of all or most of the potentially suitable candidates.
3. States should, if necessary, consider taking additional appropriate measures in order to ensure that a sufficient number of good applicants present themselves to allow the selection body to propose a satisfactory list of candidates.
4. If the national procedure allows or requires applicants to be proposed by third parties, safeguards should be put into place to ensure that all applicants are considered fairly and impartially, and that suitable applicants are not deterred or prevented from putting themselves forward.
5. A reasonable period of time should be given for the submission of applications.

IV. Procedure for drawing up the recommended list of candidates

1. The body responsible for recommending candidates should be of balanced composition. Its members should collectively have sufficient technical knowledge and command respect and confidence. They should come from a variety of backgrounds, be of similar professional standing and be free from undue influence, although they may seek relevant information from outside sources.
2. All serious applicants should be interviewed unless this is impracticable on account of their number, in which case the body should draw up, based on the applications, a shortlist of the best candidates. Interviews should generally be based upon a standardised format.
3. There should be an assessment of applicants' linguistic abilities, preferably during the interview.
4. All members should be able to participate equally in the body's decision, subject to the requirement that its procedures ensure that it is always able to reach a decision.

V. Finalisation of the list of candidates

1. 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.
2. Applicants should be able to obtain information concerning the examination of their application, where this is consistent with general principles of confidentiality in the context of the national legal system.
3. The final list of candidates to be presented to the Parliamentary Assembly should be made public by the High Contracting Party at national level.