
**JUDICIAL INDEPENDENCE:
LAW AND PRACTICE OF APPOINTMENTS TO THE
EUROPEAN COURT OF HUMAN RIGHTS**

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Preface

In early 2003, the question of the law and practice of judicial appointments to the European Court of Human Rights was considered by a group of eminent European jurists (the Group).

The Group comprised of:

- Professor Dr. Jutta Limbach, former President of the Federal Constitutional Court of Germany (Chair);
- Professor Dr. Pedro Cruz Villalón, former President of the Constitutional Court of Spain;
- Mr Roger Errera, former member of the Conseil d'Etat and of the Conseil supérieure de la magistrature in France;
- The Rt. Hon. Lord Lester of Herne Hill QC, President of INTERIGHTS;
- Professor Dr. Tamara Morschtschakowa, former Vice President (now Consultant) of the Constitutional High Court of the Russian Federation;
- The Rt. Hon. Lord Justice Sedley, judge in the English Court of Appeal; and
- Professor Dr. Andrzej Zoll, former President of the Constitutional High Court of Poland.

Members of the Group met on 14 February 2003 in London to examine appointment procedures in Strasbourg. Their discussions were informed by Council of Europe documentation concerning judicial appointments, and by research, analysis and private interviews with interested individuals conducted by the International Centre for the Legal Protection of Human Rights (INTERIGHTS), which acted as rapporteur for the Group. This report is the result of the Group's deliberations.

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Executive summary

In February 2003, a group of eminent European jurists met in London to consider the issue of judicial independence with respect to the current procedure for judicial appointments to the European Court of Human Rights. This report details their deliberations and contains their recommendations.

In the last forty years, the European Court of Human Rights has been at the forefront of the development of regional and international human rights jurisprudence. While paying tribute to the Court, this report notes that its credibility and authority risk being undermined by the *ad hoc* and often politicised processes currently adopted in the appointment of its judges.

As a leading human rights court internationally, it would be anomalous and unacceptable if appointments to the Court failed to meet the international human rights standards that it is charged with implementing, including those requirements relating to independence and impartiality of judges. In addition, flawed appointment procedures leave open the prospect that judges selected will lack the requisite skills and abilities to discharge their duties. This risks having an adverse effect on the Court's standing and on the development of authoritative human rights jurisprudence in Europe.

The current system of appointments to the Court involves the nomination of three candidates at a national level, followed by an election by the Council of Europe's Parliamentary Assembly. At both stages, the processes lack transparency and accountability.

At a national level, States are given absolute discretion with respect to the nomination system they adopt. The Council of Europe does not provide guidelines on appropriate procedures; nor does it require States to report on or account for their national procedures. Even in the most established democracies, nomination often rewards political loyalty more than merit.

At the international level, the Convention provides that the power to appoint judges lies solely with the Parliamentary Assembly. The Committee of Ministers has adopted a limited review role, which on paper allows it to question States' lists of nominees and nomination procedures. However, in practice the Committee of

Ministers gives the impression of being more interested in safeguarding State sovereignty, than in ensuring the quality of candidates nominated.

The only safeguard in the current system lies with the Sub-Committee on the election of judges, appointed by the Parliamentary Assembly's Committee on Legal Affairs and Human Rights. The Sub-Committee consists of parliamentarians, most of whom lack experience in human rights or international law. It makes recommendations to the Parliamentary Assembly on the most suitable candidate based on a superficial assessment of the *curricula vitae* of nominees and a 15-minute interview. The deliberations of the Sub-Committee are held *in camera* and it does not give reasons for its ranking of candidates.

This report describes the operation of the current system of judicial appointments to the Court, in light of the principles of judicial independence. It contains a number of recommendations. In particular, it proposes that:

- The Council of Europe should devise and distribute minimum standards for national nomination procedures. These would include requiring States to establish an independent body to arrive at the list of nominees and to submit an account of their nomination procedures to the Council of Europe. The report also recommends that the Council of Europe should provide a template to States for interviewing candidates.
- The list of nominees submitted by States and the description of nomination procedures adopted should be scrutinised by the Council of Europe. Those lists that have been devised pursuant to procedures that do not meet the prescribed minimum standards should be returned to States.
- The body making recommendations to the Parliamentary Assembly on the eligibility or suitability of candidates should itself be independent, possess the requisite expertise to fulfil its role, and follow a fair and open procedure. This could be done either by engaging a group of independent experts to provide advice on candidates to the Parliamentary Assembly, or by making an expert group of judicial assessors available to the existing Sub-Committee. In both cases, candidates would be interviewed by an independent group expert in international human rights law and would provide reasons for its ranking of candidates.

Introduction

Over the past fifty years, the European Court of Human Rights (the Court) has been critical in strengthening and promoting human rights protection in Europe, and has had a pioneering role in developing international human rights jurisprudence. The Court is a remarkable institution: it was the first international human rights court, and indeed one of the oldest international courts generally,¹ and it is currently the only human rights court before which cases may be initiated by individuals directly claiming a violation of human rights by a State.

In 1998, Protocol 11 to the European Convention on Human Rights (the Convention) established a permanent human rights court in Europe. While it altered the judicial structure in Strasbourg, Protocol 11 did not amend the existing procedures for the election of judges to the Court. With the continued expansion of the Council of Europe, attention has been paid to improving the working methods of the Court,² but little focus has been directed to the way in which its judges are appointed. An evaluation of the practice and procedure for judicial appointments to the Court is long overdue.

The issue of how judges are appointed is important in two respects. First, appointment procedures impact directly upon the independence and impartiality of the judiciary. Since the legitimacy and credibility of any judicial institution depends upon public confidence in its independence, it is imperative that appointment procedures for judicial office conform to—and are seen to conform to—international standards on judicial independence. It would be anomalous and unacceptable if the Court failed to meet the international human rights standards that it is charged with implementing, including the requirement that cases are heard by an independent and impartial court of law.

Second, without the effective implementation of ‘objective and transparent criteria based on proper professional qualification,’³ there is the very real possibility that the judges selected will not have the requisite skills and abilities to discharge their mandate. Declining standards will ultimately impact negatively on the standing of the

¹ After the International Court of Justice and the Permanent Court of Arbitration.

² *Report of the Evaluation Group to the Committee of Ministers on the European Court of Human Rights*, EG Court(2001)1, 27 September 2001; *Guaranteeing the long-term effectiveness of the European Court of Human Rights: Final report containing proposals of the CDDH*, Steering Committee for Human Rights, CDDH(2003)006 Final, 4 April 2003

³ Article 9, United Nations’ Charter of the Judge

Court, as well as on the application and development of human rights law on the international and (ultimately) national level.

Several factors combine to make consideration of judicial appointments to the Court increasingly necessary, and particularly timely. First, the number of member States of the Council of Europe has greatly increased the reach of the Court's jurisdiction and necessitated new appointments to the Court. Second, the Court's law and practice has increasing influence on the law and practice of the member States, assuming a quasi-constitutional nature that underlines the importance of the standards maintained by the Court itself.⁴ Third, since 1998, the Court has been composed of full-time judges with a shorter term of office (six years instead of nine), who can be re-elected. Finally, the Council of Europe's current evaluation of the operations of the Court is providing the opportunity for wider reflection upon the institution, and the potential for reform of it.

Consideration of appointment procedures to international courts generally is also important outside the European context. At present there are over two hundred judges sitting on twenty international judicial bodies.⁵ Several additional international courts, notably the African Court of Human Rights and the International Criminal Court, are about to come into being. The process for appointment of judges to these judicial bodies—ensuring judicial independence and diverse representation by candidates of the highest merit—will be instrumental in determining the future success and legitimacy of these important institutions.

While this report focuses on the practice and procedures of the European Court of Human Rights, it has been informed by consideration of the experience of appointments of other international judicial bodies.⁶ In places, appointments to these bodies—and perhaps to some domestic courts—may highlight elements of better practice from which the European Court can learn. It is hoped that the principles that emerge from this report might be of relevance to the practice and procedure of other international judicial bodies.

⁴ L. Wildhaber, "Un avenir constitutionnel pour la Cour européenne des droits de l'homme ?", *Revue universelle des droits de l'homme*, vol.14, N°1-4, October 31,2002, page 1. Mr. Luzius Wildhaber is President of the European Court of Human Rights

⁵ See Annex One

⁶ *Ibid.*

This report does not propose the amendment of the Convention. It is acknowledged, however, that if the Convention is to be revised, for example as a result of the Evaluation Group's proposals for reform of the Court, then certain of the issues raised in this report could be addressed in that context.⁷

This report seeks to highlight problematic aspects of the current law and practice with respect to appointments, and to propose ways of ensuring better practice. In order to safeguard the independence of judges against the control or influence of governments or political majorities, it emphasises the importance of minimum standards with respect to judicial appointments. It is hoped that this report will trigger analysis by policy makers within the Council of Europe and beyond, as to the mechanisms through which necessary change might most effectively be achieved.

Background to the appointment procedures

The delicate politics that surrounded the adoption of the Convention and establishment of the Court arguably contributed to shortcomings in the appointment processes. The *travaux préparatoires* indicate that the issue of how the nominations' procedure would be conducted was not even discussed. It was originally envisaged that judges would be elected by a simple majority of the votes cast in both the Parliamentary Assembly and the Committee of Ministers, with each body voting independently.⁸ While subsequent drafts of the Convention suggested an absolute majority of votes, they too envisaged that both organs of the Council of Europe would elect judges.⁹ With no explanation, the draft that was ultimately adopted omitted reference to the Committee of Ministers and consolidated the role in the Parliamentary Assembly.

In addition, the Committee of Experts originally proposed that the Court be comprised of only nine judges, "in order to make it clear that the Court was a Court of Justice and not a political council of Member States".¹⁰ A number of smaller States

⁷ The current Evaluation Group is considering altering the terms of judges - addressed also in this report - which would require amendment of the Convention.

⁸ Report presented by Mr P.H. Teitgen to the Consultative Assembly of the Council of Europe; Doc. A 290 of 5 September 1949), *Collected Edition of the "Travaux Préparatoires" of the European Convention of Human Rights*, Volume I, Martinus Nijhoff, The Hague, 1977, page 210

⁹ Report to the Committee of Ministers submitted by the Committee of Experts instructed to draw up a draft convention of collective guarantee of human rights and fundamental freedoms; Doc. CM/WP I (50) 15; A 924 of 16 March 1950), *Collected Edition of the "Travaux Préparatoires" of the European Convention of Human Rights*, Volume IV, Martinus Nijhoff, The Hague, 1977, page 72

¹⁰ *Ibid.*, page 42

expressed concern that their interests might not be reflected in such a court. As a compromise, the Committee of Experts advising on the draft convention recommended that the Court be composed of that number of judges equal to the number of signatory States to the Convention.¹¹

Overview of the current procedures

The current procedure for judicial appointments to the Court is complex, and is detailed in Section Two of this report. In summary, the process is as follows:

In the case of a vacancy, the Directorate General of Human Rights of the Council of Europe asks each Contracting State for a list of three candidates to be submitted within a prescribed time frame. Each State is provided with information on the criteria set out in the Convention and the recommendations of the Parliamentary Assembly concerning criteria and the format of lists. The Council of Europe provides no guidance on the procedures to be adopted by the State to arrive at its list of nominees.

While State nomination procedures vary between countries, with very few exceptions they are politicised and lack transparency. Following a decision—usually of the government, taken without consultation—the State submits a list of three candidates, along with each candidate's model curriculum vitae. In most cases, States rank candidates in order of preference, although the Parliamentary Assembly of the Council of Europe has recommended that they submit them in alphabetical order.

Upon receipt of the list, the Directorate General of Human Rights undertakes a superficial review of the curricula vitae, apparently to check for candidates' compliance with formal requirements such as language ability, and in practice forwards the lists, as submitted, to the Committee of Ministers. A small group from the Committee of Ministers considers the applications, in theory with the power to review and reject unacceptable lists, either on the basis of the procedures adopted at the national level or because the candidates do not meet the Convention criteria for appointment. In practice they are reluctant to look behind the 'sovereign veil' and the Committee of Minister as a whole sends the lists unchanged to the Parliamentary Assembly.

¹¹ *Ibid.*

Within the Parliamentary Assembly, the Committee on Legal Affairs and Human Rights' Sub-Committee on the election of judges to the European Court of Human Rights (the Sub-Committee) then considers the nominations' lists. On the basis of the model curricula vitae and fifteen-minute interviews of candidates, the Sub-Committee ranks candidates in its order of preference. The Sub-Committee's deliberations are *in camera* and it does not give reasons for recommending one candidate over the others. It may reverse the expressed preferences of governments without giving any reasons, and even without noting that it is re-ranking candidates.

Finally, the Parliamentary Assembly votes on the three names submitted by each State. Lobbying by governments, on occasion together with the judicial candidates and other institutions and individuals, accompanies this process. While the Sub-Committee's report is available to voters, it provides members of the Parliamentary Assembly with negligible information on the candidates beyond the model curricula vitae. Members appear to be instructed on how to vote by their political groupings.

Overview of the problems

The key problems can be distilled as follows:

1. States have absolute discretion with respect to the nomination system they adopt. Governments are not given guidelines on procedures, nor are they required to report on or account for their national nomination processes. In practice, even in the most established democracies, nomination often involves a "tap on the shoulder" from the Minister of Justice or Foreign Affairs, and frequently rewards political loyalty more than merit. Nominees often lack the necessary experience and even fail to meet the very general criteria set out in the Convention.
2. The Committee of Ministers, while on paper the body that should be empowered to engage with governments on their nomination procedures and reject unacceptable lists, is concerned more with safeguarding State sovereignty than with ensuring the quality of nominated candidates. Accordingly it fails to engage in meaningful dialogue with States on their internal nomination procedures and to evaluate the quality of candidates submitted.

3. The only safeguard in the procedure lies at the Sub-Committee level. Regrettably, this mechanism is at best limited, and at worst is fundamentally flawed. The Sub-Committee consists of parliamentarians, most of whom lack human rights or international law expertise. The Sub-Committee ranks candidates after a cursory 15-minute interview. Its deliberations are secret and it does not give reasons for its ranking of candidates. There have been cases where its ranking of candidates has appeared to be based on or influenced by party politics rather than the merits of the prospective judges.
4. At the final stage, the Parliamentary Assembly is provided with limited information on candidates and the five political groups appear to dictate voting patterns. Lobbying by States, and occasionally by judicial candidates, jeopardises the future independence (actual and apparent) of judges.
5. The current possibility of re-appointing sitting judges renders them particularly susceptible to unacceptable interference from their governments and risks obedience to their governments.
6. The result is a Court less qualified and less able to discharge its crucial mandate than it might otherwise be. The Court also suffers from gender imbalance, at least in part due to the opaque and politicised nature of the nomination and election procedure.

Recent reforms

Some of the weaknesses in the system have been recognised by the Parliamentary Assembly, resulting in efforts at reform. While most of these steps have led to improvements in the system, they have not addressed the problems to which we have referred.

In Resolution 1082 (1996) and Recommendation 1295 (1996), the Parliamentary Assembly proposed two innovations in respect of the international procedures. First, it introduced a model curriculum vitae to be filled in by all candidates to "systematically... facilitate comparison between them." The model curriculum vitae was slightly revised by Resolution 1200 (1999). Second, it decided that candidates would be interviewed by a sub-committee of the Committee on Legal Affairs and Human Rights.

In Recommendation 1429 (1999), the Parliamentary Assembly recognised a number of weaknesses in the existing system. Specifically, it observed that: the method of selecting candidates varies considerably from one country to another; that in most cases there are no rules governing selection of candidates; that many governments do not include women on their lists; and that the candidates do not always meet the criteria established by the Convention. To this end, the recommendation asked the Committee of Ministers to invite nominating governments to: call for candidates through the specialised press; ensure that they have experience in human rights “either as practitioners or as activists in non-governmental organisations working in this area”; always select candidates of both sexes; ensure that they are fluent in either French or English; and put the names of candidates in alphabetical order.¹²

The Committee of Ministers sought an opinion of the Court on Recommendation 1429. The Court expressed an view that:

*The Parliamentary Assembly is thus right in stressing the importance of the composition of the lists of the candidates by governments. This exercise is the starting point of the process of election and, if it is not properly done, the scope for the Parliamentary Assembly to carry out effectively its elective duty is correspondingly reduced.*¹³

In its reply to the Parliamentary Assembly, the Committee of Ministers emphasised that the “details of the procedures chosen by states in order to nominate candidates for election to the Court are a matter for sovereign national decisions.”¹⁴ It noted that while issuing a call for candidates in the specialised press “would be one way of satisfying the criteria of transparency and fairness... there are also other ways through which this could be achieved.” In respect of the recommendation that States should not rank candidates, the Committee of Ministers stated that “this is a matter for individual states.”¹⁵

¹² Recommendation 1429 was adopted by Order 558 (1999). This recommendation instructed the Sub-Committee on the election of judges to ensure that, in future elections, States apply these criteria to their list of candidates.

¹³ Opinion of the European Court of Human Rights on Parliamentary Assembly Recommendation 1429 (1999), adopted 6 March 2000

¹⁴ National procedures for nominating candidates for election to the European Court of Human Rights, Document 8835 revised, 10 October 2000

¹⁵ *Ibid.*

While some of these recommendations may highlight certain shortcomings in the system (as will be detailed later), they have had limited impact on State practice.

Structure of this report

Section One considers international standards on judicial independence in respect of the question of judicial appointments. Section Two examines in more detail the current practice of appointments to the Court. Specifically, it studies the criteria for appointments, the nomination procedure at a national level, the procedures of review and election in Strasbourg, and the issue of non-renewable terms for judges. Section Three contains conclusions and recommendations.

A summary of relevant law and practice from other international courts and tribunals is set out in Annex One. Annex Two outlines the structure and procedures of the parts of the Council of Europe involved in judicial appointments. Annex Three includes some Council of Europe recommendations and documents concerning appointments.

Section 1: International standards

This section sets out some of the many international treaties and declarations relating to judicial independence and the appointment of judges, dealing first with the standards elaborated in the Council of Europe context, then international standards more broadly. It is against these standards that the procedure of appointments and its implications for judicial independence should be assessed.

1.1 The European Convention on Human Rights

The Convention expressly recognises the importance of judicial independence and impartiality, providing at Article 6 (1) that:

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

The Court's credibility in determining human rights cases brought by individuals of Member States—often on the basis of their Article 6 rights—depends on its ability to meet the same standards of independence and impartiality imposed on national courts.

The importance of independence and impartiality in the Court is reflected in the Convention criteria for the appointment of judges. Article 21(3) requires that:

During 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.

The standards contained in Article 6 of the Convention and their implications for judicial independence and impartiality, and appointment processes have been considered by the Court itself.

In *Bryan v United Kingdom* the Court set out several principles to be taken into account in establishing the independence of the judiciary, including the manner of appointment of its members and their term of office, the existence of guarantees

against outside pressures, and whether the body presents the appearance of independence.¹⁶

The Court has also acknowledged the importance of independence and impartiality, which require that judges do not have prejudicial connections to, or views about, any party to a dispute, either because of involvement in a previous stage of the dispute, or because of a personal pecuniary connection to a party or issue involved in the dispute.¹⁷ Judges must similarly be seen to be independent and impartial.¹⁸

In addition to being binding on individual State Parties to the Convention, the Court's jurisprudence provides guidance to other States about acceptable mechanisms and standards to ensure the quality of judges and the capacity for independence, competence and impartiality.

1.2 Council of Europe guidelines

Over the years, the Council of Europe has issued numerous guidelines on the appointment of domestic judges in Member States. Specifically, the Committee of Ministers has noted that:

*All decisions concerning the professional career of judges should be based on objective criteria, and the selection and career of judges should be based on merit, having regard to qualifications, integrity, ability and efficiency.*¹⁹ *The authority taking the decision on the selection and career of judges should be independent of the government and the administration. In order to safeguard its independence, rules should ensure that, for instance, its members are selected by the judiciary and that the authority decides itself on its procedural rules.*

The Committee of Ministers notes that where “constitutional or legal provisions or tradition allow judges to be appointed by the government, there should be guarantees to ensure that the procedures to appoint judges are transparent and

¹⁶ *Bryan v United Kingdom* (1995) 21 EHRR 272, paragraph 37. The Court distilled these elements from previous judgments in the *Le Compte, Van Leuven and De Meyere v Belgium* (1982) 4 EHRR 1, paragraphs 55 and 57; *Piersack v Belgium* (1983) 5 EHRR 169, paragraph 27; *Delcourt v. Belgium* (1970) 1 EHRR 355, paragraph 31. Although in *Campbell and Fell v. United Kingdom* the Court held that appointment by the executive is permissible, even normal; (1984) 7 EHRR 165.

¹⁷ See *Daktaras v Lithuania* (42095/98 of 10 October 2000) in which the President of the Criminal Division of the Supreme Court of Lithuania both lodged a cassation petition and convened the Chamber hearing the case. The Court held that a tribunal must be impartial from an objective view point – that is, it must offer sufficient guarantees to exclude any legitimate doubt as to its impartiality;

¹⁸ *Delcourt v. Belgium* (1970) 1 EHRR 355, paragraph 31

independent in practice.” Guarantees suggested by the Committee of Ministers include a “special independent and competent body to give the government advice which it follows in practice.”²⁰

1.3 International treaties (beyond Europe)

International treaty law recognises the right to have one's rights and obligations heard before and determined by an independent and impartial tribunal.

Article 14(1) of the *International Covenant on Civil and Political Rights* (ICCPR) similarly underscores the right to a hearing before an independent judiciary:

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law...

The ICCPR makes explicit the requirement of ‘competence’, as well as those of independence and impartiality. Article 14 implies an obligation on States to create the conditions for judges to adjudicate independently.²¹

1.4 International declarations and resolutions

Internationally recognised standards, in the form of guidelines or recommendations emanating from institutions that enjoy a high level of international support, offer a point of reference in assessing State practice relating to judicial independence. While not binding, these standards have given substance to the basic principles of judicial independence enshrined in treaty (and customary international) law. They make clear the obligations of States, judges and others in safeguarding judicial independence, and highlight the essential link between an independent judiciary and the role of objective criteria and appropriate independent procedures for its appointment.

¹⁹ Recommendation No. R(94)12, adopted by the Committee of Ministers on 13 October 1994, paragraph 2(c)

²⁰ *Ibid.*, paragraph 2(c)(i)

²¹ While the ICCPR does not further elaborate on the content of judicial independence, the General Comment of the Human Rights Committee on Article 14 suggests a more detailed range of requirements: See Office of the High Commissioner for Human Rights, “Equality before the courts and the right to a fair and public hearing by an independent court established by law (Art. 14)”: 13/04/84, CCPR General Comment 13, (21st session 1984)

Article 10 of the *Universal Declaration in Human Rights* (UDHR) refers to the importance of judicial independence:

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

The *United Nations Basic Principles on the Independence of the Judiciary* were endorsed by the United Nations General Assembly in 1985. Principle 1 provides:

The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.

Furthermore, Principle 10 of the resolution holds:

Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.

While not binding, the Basic Principles represent a statement of the community of States' minimum aspirations for an independent judiciary. Principle 10 acknowledges that the methods and standards for judicial selection and promotion are essential both to protecting the independence of the judiciary and for ensuring the quality of judges.

In addition to United Nations provisions, a number of organisations representing judges have adopted standards with respect to judicial independence.²²

Conclusion to Section One

²² The Universal Charter of the Judge was adopted by the Central Council of the International Association of Judges in 1999; the Judges Charter of Europe was adopted by the European Association of Judges in 1993; and the European Charter on the Statute for Judges was adopted by the European Association of Judges in 1998.

The independence of the judiciary is one of the cornerstones of the rule of law. Rather than being elected by the people, judges derive their authority and legitimacy from their independence from political or other interference. It is clear from the existing international standards that the selection and appointment of judges plays a key role in the safeguarding of judicial independence and ensuring the most competent individuals are selected. While national court compliance with these standards is monitored and enforced by international courts, paradoxically these international courts may themselves fail to meet international human rights standards.

Section 2: Appointments to the Court

This section considers the current procedures for appointments to the Court. Specifically, it considers five matters: the criteria for judicial appointments, domestic nomination procedures, review and election procedures on the international level, the question of re-election of judges and gender balance on the Court.

2.1 Criteria for nominations and appointments

Article 21(1) of the Convention establishes the formal criteria for appointments to the Court:

The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.

These terms are commonly used in respect of international courts and tribunals.²³ Accordingly, it is often suggested that States 'know what they mean'. That said, they are undefined and aspects of their scope remain unclear, possibly laying the foundation for the nomination or election of unqualified or otherwise unsuitable candidates.

First, the level of qualification required for appointment to judicial office varies greatly within the Member States of the Council of Europe. For example, in the Ukraine, judges must be no younger than 25 years of age, must have a higher legal education and work experience in the legal sphere for no less than three years. In Norway a judge must be over 30, have a law degree, be eligible to vote and be reliable. Across Europe, the standards for eligibility for judicial office vary. What is meant by "high judicial office" is undefined.

Similarly, the meaning of "jurisconsults of recognised competence" leaves ample room for interpretation. It would appear in some cases that candidates' competence is recognised only by the government of the Member State. There have been instances where States have proposed candidates who have been only recently out of law school.

The criterion of "high moral character" is vague and general. In a recent case, a State justified the omission of its sitting judge from its list of candidates on the basis

²³ See Annex One

that he was not of “high moral character”. The allegations made against the judge were widely considered to be baseless, but the State maintained that it was upholding its obligations under the Convention by excluding him from its list.

Within the criteria for appointment, there is no mention of relevant experience, such as judicial or human rights experience. The Parliamentary Assembly has, however, urged States to nominate candidates who have a range of practical human rights experience either as practitioners or as NGO activists.²⁴ In its opinion on this recommendation, the Court stressed the importance of appointing judges who are—and are seen to be—non-partisan.²⁵

To command public confidence, the Court should be diverse in its composition. This includes ensuring a visible equality of opportunity for women to be nominated and elected to the bench in Strasbourg. Certain other treaties mention gender not as a criterion, but as a factor to be taken into account in the selection of judges (see Annex One). Perhaps as a function of its time, the Convention does not do so. The Parliamentary Assembly has urged States to nominate candidates of both sexes. While this is important, it has twice been exploited by States which, for allegedly political reasons, attempted to excluded sitting male judges by submitting lists comprising solely of female candidates in the name of gender balance.

Attention to the appropriate criteria could help better identify judges with the requisite skills and experience to perform their function on the Court. A dominant view in Strasbourg is that while a balance of professional backgrounds is desirable, there should be an emphasis on individuals with judicial experience on the bench. The long-term constitutional impact of the Court’s jurisprudence may also suggest the need for judges with constitutional law and human rights expertise.

There was however also some wariness among those we interviewed that with prescription comes a degree of inflexibility that could serve to further narrow the field of potentially capable candidates. Perhaps most importantly, suggestions for more rigorous criteria are belied by the fact that a large number of States currently fail to nominate candidates who satisfy the existing standards.

²⁴ Parliamentary Assembly Recommendation 1429 (1999)

²⁵ *Supra.*, n. 13

States are free to nominate persons who are not nationals of that State. While they are unsurprisingly reluctant to do so, if there were a situation where a State lacked able candidates from within, the State can nominate from elsewhere.

The predominant view appears to be that the problem lies not only with the vagueness of criteria, but with the nomination procedure and the absence of oversight thereof and with the international procedures that review and ultimately elect candidates.

2.2 Nomination procedures

The Convention is silent on the procedural steps that Member States should take when drafting their nomination lists. There are no comprehensive guidelines on national nomination procedures.

In a number of States, the absence of transparent and consistent nomination procedures is largely a function of domestic custom and practice: judges have always been appointed through informal “old-boys’ networks”. Although it may be true that non-transparent nomination procedures in some States lead to good candidates, the principle of judicial independence—and the perception of judicial independence—are jeopardised by the fact that procedures are, with very limited exceptions, neither open nor accountable.

A number of factors contribute to the problem with respect to national nominations. First, while most Member States have accepted in theory the need for an independent judiciary, in a number of Member States notions of judicial independence remain novel and weakly observed in practice. As all of the respondents before the Court are States, there is a particular danger that governments will favour a political ally on the bench. Second, judges at the Court earn around €170,000 per annum, which in some States amounts to an individual’s life savings. Appointments to the Court therefore become a favoured method of rewarding political loyalty. On the other hand, it must be recognised that levels of judicial remuneration need to be sufficient to attract candidates of outstanding calibre willing to leave good careers in their own countries.

Openness and transparency on a national level

In the vast majority of cases, the national processes adopted are unclear, apparently politicised and unaccountable. In Recommendation 1429, the Parliamentary Assembly gave States only very limited guidance with respect to nomination procedures, namely that they should advertise in the specialised press for candidates. During the 2001 round of nominations, a small number of States advertised for candidates. However, where this happened, the transparency ended there and governments still arrived at the list themselves, occasionally upon consultation with parliament. Only a small number of States followed any pre-established national procedures in selecting their candidate.²⁶

States rarely confer with civil society, such as human rights organisations, bar associations and, perhaps most critically, judicial bodies. In cases where civil society is consulted, the opaque nature of procedures means that the impact of such consultations is unclear.

Independent nominations' bodies

Historically, all Member States have employed unsatisfactory nomination procedures. The United Kingdom has been cited as the first to adopt a largely independent, transparent process, in 1998. The procedure was conducted as follows. A public advertisement was placed for nominations, to which thirty-three individuals responded. Five candidates were then interviewed for over an hour by a government-appointed panel charged with devising the United Kingdom's list. The panel consisted of two senior judges, two government officials with legal backgrounds and one lay member (who in this case was a former chair of the Equal Opportunities Commission). The panel then ranked its top three candidates and the United Kingdom sent the decision in that ranked order to Strasbourg as its list of three.

In another case, a government appointed an independent body for the purpose of devising its list of candidates, and then failed to follow the independent body's recommendations.

²⁶ For example, Slovenia and Lithuania. J. Flauss, "Analysis of the election of the new European Court of Human Rights", *AS/Jur* (1999) 3, 20 January 1999, page 2. This study has been published in the *Revue trimestrielle des droits de l'homme*, No. 35, 1 July 1998

As seen in Section One, international standards indicate that an independent body, consisting of judges, or human rights and international law experts, should draft the State lists.²⁷ Such a body should advertise widely and in a timely fashion for candidates, and engage in a rigorous review of applicants, including through meaningful interviews and consultation. States should then be bound by the body's decisions. If, for reasons given, a State fails to establish an independent body for nominations, they should, at a minimum, advertise widely, consult with authoritative civil society actors on the suitability of potential candidates and be transparent as to decisions taken.

Candidates nominated as a result of these procedures

Perhaps as a result of the lack of transparency and accountability in the current nomination procedures, questions have been raised as to the quality of the candidates proposed by some States, and their suitability to hold the office in question.

It is not unusual for States to propose individuals who are former government ministers, senior diplomats or the relatives of key political figures. A number of the judges on the present Court were formerly permanent representatives of their governments to the Council of Europe. In 1998, the Slovakian permanent representative to the Council of Europe not only stood as a candidate, but sent the State's list to the Secretariat on behalf of the government.

It is common practice for States to propose one candidate who has some of the qualifications required for the post, along with two candidates who are manifestly unsuitable. In devising such lists and offering only one 'real' candidate, States try to guide the hand of the Parliamentary Assembly at the time of the election.

The level of expertise of candidates proposed for election is often manifestly inadequate. In 1998, for example, around one third of candidates failed to mention any worthwhile human rights activities on their curricula vitae.²⁸ The 2001 elections,

²⁷ Article 9, Universal Charter of the Judge; Point 4, Judges Charter in Europe, General Principle 1.3, European Charter on the Statute for Judges.

²⁸ *Supra.*, n. 26, page 9

similarly revealed a large number of candidates devoid of meaningful expertise in human rights or international law.²⁹

In other cases, States have favoured the election of candidates where the information provided on the curricula vitae accompanying the list was allegedly inaccurate in significant respects, and included references to judicial or legal experience that the candidate did not possess. In relation to the 1998 election, Flauss notes that “numerous candidates were able to lay claim to several qualifications and professional activities simultaneously.”³⁰

2.3 International selection procedures

Article 22 of the Convention provides that the Parliamentary Assembly of the Council of Europe elects one of three candidates nominated by each Member State. The Convention does not provide for the Committee of Ministers to have a role in this process. However, on paper a number of bodies at the Council of Europe would appear to scrutinise these nominations prior to the election, although in practice there is little meaningful review. The international selection procedure involves a number of stages, set out below.

Directorate General for Human Rights

First, the Directorate General for Human Rights (DGHR) reviews the model curriculum vitae of each candidate to ensure that their applications confirm that they fulfil the formal requirements, such as language ability. This assessment is made purely on the basis of material provided in the curriculum vitae: the DGHR does not check any of the information. There are no known cases in which the DGHR has questioned the calibre of candidates submitted by States.

Committee of Ministers

Second, the list together with the government’s ranking (if any) and the model curricula vitae are then forwarded to the Committee of Ministers, which is authorised to review lists. In practice, this function is exercised by the Committee of Ministers’ Deputies.³¹ An *ad hoc* group of the Committee of Deputies meets to consider the applications, at which time it will engage in an “informal exchange of views on such

²⁹ See Appendix Five to *Election of judges to the European Court of Human Rights following the expiry of the terms office of one half of the judges*, Kevin McNamara MP (Rapporteur), AS/Jur/cdh (2001) 23, 18 April 2001

³⁰ *Supra.*, n. 26, page 8

candidates before the lists are formally submitted to the Committee of Ministers for transmission to the Parliamentary Assembly.”³²

When this system of review was established in 1997, the Committee of Deputies noted that:

*It is understood that the results of this exchange of views would neither bind governments, who would retain the right to present candidates of their choosing, nor interfere with the Parliamentary Assembly’s function of electing judges from the lists provided.*³³

Accordingly, while in theory the Committee of Ministers may scrutinise the lists and call on States to explain their domestic nomination procedures, in practice it seldom calls States to account. The Committee of Ministers rarely expresses any reservations with respect to the candidates proposed. As a body representing governments, the Committee appears in this respect mainly inclined to safeguard State interests and is rarely prepared to lift the "sovereign veil" to investigate the domestic processes that created the candidate lists or to criticise the outcome of such processes. At best, it considers only whether the candidates appear to comply with the formal requirements provided in the Convention.

Sub-Committee of the Parliamentary Assembly

Currently, the only mechanism for review that has any real impact on the appointment processes is the Parliamentary Assembly’s *ad hoc* Sub-Committee on the election of judges. As noted, the Sub-Committee was introduced in 1998 to facilitate a more informed election of candidates by the Parliamentary Assembly.

Prior to the establishment of the Sub-Committee, members of the Parliamentary Assembly had virtually no information about candidates. As one former member of the Parliamentary Assembly described the election:

We would be presented with the names of three people. We would be told to vote for one of them but, usually, no one told us anything about the three people. One could sometimes obtain a little information from the delegation of the country whose judges we were about to select. However, sometimes we would have been better off sticking a pin in the piece of paper to

³¹ For an explanation of these organs of the Council of Europe, see Annex Two

³² CM/Del/Dec/Act(96)547/1.3

³³ *Ibid.*

*determine our choice of vote. Indeed, on a number of occasions I flatly refused to exercise the vote because I knew nothing about the candidates.*³⁴

The Sub-Committee appears to represent an improvement on the previous system, as it guards against the Parliamentary Assembly simply rubber-stamping the rankings emanating from generally unsatisfactory nomination procedures within the national systems. However, the operations of the Sub-Committee may mean that not only is it an ineffective filter of candidates, but that it risks adding an additional level of arbitrariness to the appointments' procedure.

Role of the Sub-Committee

The terms of reference of the Sub-Committee are unclear.

When it was established, it was thought that Sub-Committee "in most cases, would limit itself to giving its opinion on [candidates'] *eligibility*, leaving it to the Assembly to elect such of the candidates as it desires"³⁵ (emphasis added). As such it would provide a basic filter to eliminate clearly unqualified candidates. However, in practice, the Sub-Committee makes recommendations on the *suitability* of candidates for the Court by expressing a preference for a particular candidate. In so doing it may, and in practice on occasion does, reverse the ranking that resulted from the national nomination procedure. While in many cases that national procedure was itself cursory and unsatisfactory, this is not always the case. The Sub-Committee comes to its decisions on the basis of their curricula vitae and a cursory interview.

The inadequacies of the Sub-Committee interview process are largely a function of its composition and working methods.

Composition of the Sub-Committee

The Sub-Committee is comprised of approximately 27 members of the Parliamentary Assembly's Committee on Legal Affairs and Human Rights. Members are appointed by the five political groups of the Parliamentary Assembly, with consideration as to their region, but not their States of origin. In the past there have been up to three nationals from one State on the Sub-Committee at the same time. Alternate members are also appointed along these lines.

³⁴ Lord Hardy of Wath, House of Lords, 13 July 1998, Hansard, Volume 592, Number 185, page 81

³⁵ *Memorandum, Election of judges to the European Court of Human Rights*, submitted by Lord Kirkhill, Rapporteur, AS/JUR (1997) 29, 7 July 1997, paragraph 17

There is no requirement of legal expertise, although some members of the Sub-Committee are lawyers. Others are qualified in other disciplines. Very few have any knowledge or experience of international human rights law.³⁶

The Sub-Committee's composition significantly inhibits its ability to provide a competent, independent assessment of candidates' legal professional capability, even though the questions asked by the Sub-Committee include such points, as noted below.

Working methods of the Sub-Committee

In 1998, all judicial positions at the Court needed to be filled, meaning that the Sub-Committee had to interview over 100 individuals. Time restraints resulted in 15 minutes being allocated to each candidate. However, in 2001—when there were half as many candidates to interview—the Sub-Committee continued the practice of 15 minute interviews. This is thought by at least some members to be an adequate, if not an ideal, amount of time to assess candidates, and in Resolution 1200 (1999) the Parliamentary Assembly expressed its opinion that the “interviews were most helpful in order to obtain a better insight into the qualities of the candidates and thus facilitate a better-informed choice.” However, the interview format and brevity are widely criticised by others.

Like the role of the Sub-Committee, the precise purpose of the interviews is not entirely clear. An important focus would appear to be on assessing the personality and sociability of candidates. For example, in a July 1997 paper, the Committee on Legal Affairs and Human Rights stated that “the interviews should... take place in an informal way starting with some questions referring to the curricula vitae submitted by the candidates, which will give the candidates an opportunity to express themselves and enable the members of the Sub-Committee to obtain an idea of their personality.”³⁷

The Sub-Committee also poses questions regarding international human rights law. In this respect, the difficulty with the interview has been described as being both with the legal intelligibility of the questions asked and, in particular, with the lack of professional competence of the Sub-Committee to assess the answers given.

³⁶ Biographical information on members of the Parliamentary Assembly is available at the Council of Europe's website: <http://assembly.coe.int>

³⁷ *Supra.*, n. 35, paragraph 13

The Sub-Committee is also clearly concerned with testing the language ability of candidates, although the extent to which it does this is somewhat *ad hoc*. It also verifies straightforward issues such as the candidate's willingness to live in Strasbourg.

The dearth of legal knowledge aside, the composition of the Sub-Committee means that political considerations may affect the decisions taken by the panel. In the past, it has been claimed on several occasions that members of the Sub-Committee have held very firm views about the suitability of candidates from their own States based on the prospective judge's perceived political persuasion, rather than on his or her professional competence. There has been criticism that, as a result, a number of exceptional candidates have been passed over in favour of less qualified individuals.

Concerns have also been expressed about the scheduling of candidate interviews. There have been cases where the Sub-Committee was unable to interview all three candidates at once, in one instance with a month separating the consideration of one candidate from the others. The fluctuating availability of Sub-Committee members to attend all interviews, and fading impressions of candidates' performances, undermine the effectiveness and consistency of interviews scheduled in this manner and the appropriateness of the Sub-Committee's expression of preference as between candidates.

Finally, it should be noted that the Sub-Committee is not informed of, and does not enquire into the domestic processes that lead to the creation of candidate lists. Nor does it look beyond the curricula vitae and interview to gain a better understanding of the candidates themselves. On occasion, the panel has considered additional information provided by NGOs on State nomination procedure and the suitability of candidates, however, the Sub-Committee will not itself seek out additional information.

Recommendations of the Sub-Committee

Following the three interviews, the Sub-Committee decides—by consensus or a vote, if necessary—on its preferred candidate. In stating its preferences, the panel considers the merits of individuals and the “harmonious composition of the Court”, presumably in terms of a balance of professional backgrounds.

In light of poor nomination procedures and States giving preference to “favoured sons,” the Parliamentary Assembly has recommended that States no longer rank the three candidates on their lists.³⁸ However, in practice, some States continue to express a preference. Recently, the Sub-Committee has arranged for its Secretariat to place the names in alphabetical order, even if they are submitted with a ranking. In practice however, the State lobbying surrounding the election means that the preferred 'government' candidate is generally known to the Sub-Committee.

Where States rank candidates and (as until recently) this information is made available to the Sub-Committee, there are cases where the Sub-Committee agrees with the State's preference. In others, it inverts the ranking. The Sub-Committee does not seem to have any concern for the quality of the State nomination process when taking these decisions.

In a few cases, the Sub-Committee has recommended that the Parliamentary Assembly reject the list entirely and call on the capital for a new set of candidates.³⁹ There are no public guidelines for the circumstances in which lists should be rejected.⁴⁰ In some cases, lists comprising of only one barely qualified candidate or overtly politicised nominees have been transmitted to the Parliamentary Assembly for election.⁴¹

Just as there are no guidelines for rejecting lists, there is no procedure for stopping States withdrawing their lists. It is reported that in the past, governments have withdrawn their list of candidates in response to an unwelcome ranking by the Sub-Committee. This reflects the fact, as already noted, that not infrequently States submit one real candidate and two manifestly unqualified individuals to ensure that the favoured candidate prevails. Where this does not work, the list has been withdrawn.

The Sub-Committee's deliberations are not recorded, although a brief report is transmitted to the Committee on Legal Affairs and Human Rights. The report notes

³⁸ Parliamentary Assembly Recommendation 1429 (1999)

³⁹ In 1998, the first lists of Bulgaria, San Marino and Croatia were rejected. In the first two cases this was because the candidates were not of equivalent quality. In the case of Croatia, the rejection was in light of political considerations.

⁴⁰ In 2001, the Sub-Committee did however indicate that in future it would not consider lists that did not include candidates of both sexes; *supra.*, n. 29, page 3

⁴¹ For a list of candidates' qualifications as evaluated by the Sub-Committee see Appendix Five to *Election of judges to the European Court of Human Rights following the expiry of the terms office of one half of the judges*; *Ibid.*

whether the candidates were qualified—sometimes noting that only one was qualified; generally stating that all were qualified. It then recommends the election of one individual without giving reasons for its preference. The report has been described as anodyne and uninformative.

Election by the Parliamentary Assembly

The final stage of the international selection process is the election at the Parliamentary Assembly. The election of judges is one of the few powers that the Parliamentary Assembly enjoys and this role is therefore jealously guarded. At the same time, there seems to be a lack of interest from members in the process and not infrequently relatively few attend to vote.⁴²

Although there are exceptions, voting in the Parliamentary Assembly tends to follow the recommendations of the Sub-Committee, which reflects the political composition of its parent body.

Parliamentary Assembly Resolution 1200 (1999) notes that the report of the Sub-Committee is “made available” to the members of the Parliamentary Assembly prior to elections. Members of the Parliamentary Assembly may seek information on the candidates, which is kept in the library, but neither the curricula vitae of candidates, nor the report of the Sub-Committee is distributed to voters.

However, as all of the political groups are represented on the Committee on Legal Affairs and Human Rights, the Sub-Committee’s report is generally provided to the political groups. Twice a week during the Parliamentary Assembly’s session the political groups meet to discuss the agenda and items such as the election of judges. Potential judges are on occasion affiliated formally or informally with a political party, or are perceived so to be, and the political groups often advise their members to vote on this basis.

Finally, the election at the Parliamentary Assembly is commonly characterised by lobbying on the part of governments, who frequently “parade” preferred candidates around Strasbourg to enhance their chances of election. On occasion, candidates themselves electioneer to secure votes. While such lobbying is far from unique to

⁴² The low voter-turn out at the election of the Polish judge in June 2002 is a case in point. While in the morning session 238 parliamentarians voted for the Deputy General Secretary of the Council of Europe, that afternoon only 127 votes were cast in respect of the appointment of the Polish judge.

the European context, and reflects the realities of an otherwise inadequate appointment procedures, it has a detrimental effect on the independence, and the perception of independence, of the judge ultimately elected.

2.4 Re-election of judges

While States and politicians alike generally embrace the principle that their judges on the Court must be independent, there is concern that the current system of six-year, renewable terms gives certain States political leverage over their judges while in office.

Given the problems with the transparency, consistency and accountability of State nomination procedures, judges are vulnerable to the possibility that they will not be renominated in the event that they demonstrate independence from their governments. In a number of cases, there are claims that sitting judges have not been renominated for such reasons. Accordingly, there is a danger that some judges will spend the final years of their term trying not to upset their nominating government, rather than fulfilling their obligations to the Court.

For many judges, these problems are made more acute because they will ultimately have to return home to their State pension or to their pre-Court employment. The Council of Europe is currently examining establishing a pension for the Court's judges that would provide some safeguard for their financial future, as well as their judicial independence.

Judicial independence may require that, so far as judges have renewable terms of office, sitting judges should be automatically renominated by their States. There have been instances where, allegedly as *de facto* punishment for unacceptable levels of independence, States have failed to include sitting judges on their list.⁴³

However, even when they are renominated, the Parliamentary Assembly's procedures provide that the judges must again be interviewed and recommended by the Sub-Committee. In its 2001 report, the Sub-Committee noted that there were sitting judges on 15 of the 18 lists presented to the Assembly and that in all cases, the Sub-Committee recommended the reappointment of sitting judges. In so doing, the Sub-Committee was cognisant of the need for continuity on the Court, but its

decision was based primarily on the qualifications of the candidates as evident in candidate's curriculum vitae and from the interview.⁴⁴ The report notes that the special circumstances of the partial renewal meant that the selection of sitting judges should not be considered to constitute a precedent by judges or nominating countries.⁴⁵

The interview and intervention by the Parliamentary Assembly and its Sub-Committee allow for the possibility that sitting judges who have been involved in judgments perceived to be unfavourable to a particular political point of view may be treated prejudicially. The complications that arise from a judge having to face renomination and re-election destabilise the judges personally, and the Court as a whole.

Given this, a proposal was recently put forward to introduce a nine-year, non-renewable term of office. The proposal appears as part of the on-going evaluation of the effectiveness of the Court. The *Report of the Evaluation Group to the Committee of Ministers on the European Court of Human Rights* notes that,

*... the Convention should be amended so as to lay down that judges of the Court are elected for a single, fixed term, without possibility of re-election. This term should not be less than nine years. The effect of these changes would be to ensure continuity within the Court and, moreover, to offer a further guarantee of the Court's independence.*⁴⁶

While the Evaluation Group's report does not speak to procedures for appointment to the Court more generally, it underlines the high standards of independence expected from it.⁴⁷

It is common practice in a number of European States for Constitutional Court judges to be appointed for one long, non-renewable term. This insulates judges from charges of interference or political manipulation. In the case of judges in Strasbourg, the argument in favour of non-renewable terms is more pronounced, as judges depend entirely on States and parliamentarians for their renomination and reelection.

⁴³ The Sub-Committee merely noted that a number of sitting judges were not renominated "for reasons which remain unknown to the Sub-Committee". *Supra*, n. 29, page 23

⁴⁴ *Ibid.*, page 23

⁴⁵ The partial renewal in 2001 was unique in that the judges were being renewed after only three years on the bench.

⁴⁶ *Supra.*, n. 2, paragraph 89

2.5 Gender imbalance on the Court

Due to its focus on procedures for appointment to the Court, this report does not address issues relating specifically to gender imbalance on the Court. The under-representation of women is however a significant problem in Strasbourg, and the lack of women on the Court may be—at least in part—a function of flawed appointment processes. There are currently 10 female judges and 31 male judges on the Court. Women therefore make up approximately a quarter of the Court's composition, which is better than in the case of other international courts.⁴⁸

The Parliamentary Assembly has taken up the issues of the under-representation of women on the bench in Strasbourg and the impact on the appointments' process. In Recommendation 1429 (1999), States were urged to include candidates of both sexes on their lists. Given the failure of a large number of countries to include both women and men on its lists, in 2001 the Sub-Committee indicated that in future it would not consider candidates from States that had not included candidates of both sexes. The degree to which the Sub-Committee itself considers the gender of candidates when drafting its recommendations is unclear.

If States and the Council of Europe were to adopt more independent and transparent appointments' processes, one likely effect would be the redressing—at least in part—of the gender imbalance on the Court.

⁴⁷ The Report notes that the principles contained in the Committee of Ministers Recommendation No. R(94)12 on judicial independence hold true for judges of the Strasbourg Court; *Ibid*.

⁴⁸ Women are traditionally unrepresented or underrepresented on international judicial bodies. Gender imbalance as been identified as a threat to the legitimacy and authority of international bodies and United Nations' bodies have urged greater representation of women in international courts and tribunals; Report of the Fourth World Conference on Women, Beijing 4-15 September 1995, UN. Doc. A/CONF.177/20, 17 October 1995, paragraph 142(b). Resolution adopted by the General Assembly, Improvement of the status of women in the United Nations system, UN Doc. A/RES/56/127, 30 January 2002; Security Council Resolution 1325(2000), 31 October 2000. Also see H. Charlesworth and C. Chinkin, *The Boundaries of International Law* (London, 2000).

Section 3: Conclusions and recommendations

Significant weaknesses in the current system lie at both the State nominations and the international review and election stages.

3.1 Nominations

The current system of appointments provides wide discretion to States with respect to their nominations systems. In practice, internal processes vary greatly, but are often inadequate, politicised and so opaque that they are barely understood, even by some of the judges appointed by them. There is no meaningful review of these procedures at the international level, and no effective safeguards against arbitrariness.

Recommendations

- While accepting the diversity of legal systems in Europe, minimum standards should be issued to States on the essential procedural steps and safeguards that should be undertaken in the judicial nomination processes. To this end, the Council of Europe should devise and distribute a template for national nomination procedures. The minimum standards would require States to:
 1. *Advertise* in the specialised press—where it exists—or in the national press for candidates (pursuant to Parliamentary Assembly Recommendation 1429).
 2. Establish an *independent body* to devise the State's list.
 - The independent body would consist of independent persons including judges and individuals with academic and other experience of international law and human rights.
 - The independent body would *consult* with interested civil society such as judicial and other State bodies and where possible human rights organisations and national bar associations. It would then shortlist and interview candidates, and forward the names of three nominees to the national government, for transmission to the Council of Europe.
 - Where, as a result of a thorough procedure, three suitable candidates emerge but there is a hierarchy between them, the independent body should be free to rank the candidates.
 3. As a general rule, the government should *follow the recommendation* of the independent body.
 4. The State should submit an *account of its nominations procedure* with its list of three candidates, to facilitate transparency and oversight. Where the

government departs from the recommendation of the independent body, this too should be noted and explained.

- To ensure fair and effective interviewing of candidates, the Council of Europe should provide States with an interview *template*. The template would require interview panels to:
 - a. Abide by the criteria for judicial appointments in the Convention and Council of Europe recommendations concerning candidates
 - b. Agree in advance what areas should be covered in the questions
 - c. Ensure that these are relevant to the criteria and do not carry built-in advantages for some candidates (especially in relation to gender, e.g. family commitments)
 - d. Cover the same areas with each candidate, and
 - e. Mark the candidates' performances on an agreed scale under agreed (and relevant) heads
- The interview panel should be the same for all candidates, and as far as possible, all candidates should be interviewed on the same day.

3.2 International procedures

The following recommendations reflect first the need for effective procedures for international oversight of a State's nomination process, and second recognition of the critical role of a review body in providing meaningful screening of nominees at the international level.

Recommendations

- The accuracy of information provided in candidates' curricula vitae should be verified before lists are forwarded to the Committee of Ministers.
- The lists of nominees submitted by States as well as the description of the nomination procedure adopted should be scrutinised. Where appropriate, States should be asked to provide details of these domestic nomination procedures. Where procedures do not meet the minimum standards outlined by the Council of Europe, as recommended above, or otherwise do not reflect the principles of judicial independence, the lists should be returned to States.
- The body making recommendations on the eligibility or suitability of candidates to the Parliamentary Assembly should itself be independent, follow a fair and open procedure and possess the requisite expertise to fulfil its role.

This could be done by engaging a *body of independent persons* with relevant expertise, including persons with judicial experience, to provide advice to the

Assembly on the candidates submitted to it. It would review the submitted curricula vitae and interview candidates thoroughly, with a view to identifying the most suitable professional judge. The independent body would provide reasons for its views.

In the alternative, the existing Sub-Committee should be strengthened by having available to it a group of independent *judicial assessors*. The judicial assessors would be involved in the interviewing of candidates and would provide reasoned advice to the Sub-Committee with a view to identifying the most qualified candidate.

- In either case, the interview panel should, reflecting the standards that should apply on the national level, ensure that it adheres to minimum standards with respect to:
 - certainty of criteria
 - certainty, consistency and fairness of questions asked, and
 - the objective assessment of candidates' performances

To this end, the interview template set out in relation to nominations above could be followed at the international, as well as the national level.

- In the interests of consistency, the interview panel should be the same for all candidates, and as far as possible, all three candidates should be interviewed on the same day.
- In addition to its current practice of exploring the suitability of candidates submitted, the Sub-Committee, or the other independent body established, should give more detailed reports, including *reasons for its views*, including the ranking of candidates. Where States propose rankings and these are changed, this should be noted, together with the reasons for the change.
- Guidance should be provided and procedures should be established for the circumstances in which the Parliamentary Assembly can or should reject lists in their entirety. These should include where States fail to provide three sufficiently qualified candidates.
- Once a State has submitted a list, it should not, in principle, be empowered to withdraw it, absent compelling reasons (such as the non-availability of candidates).
- All members of the Parliamentary Assembly should be provided with a copy of the Sub-Committee's report, along with the curricula vitae.

Annex 1: Comparative appointment procedures

This annex focuses on the procedures adopted by some other international judicial and quasi-judicial bodies in the appointment and selection of judges. It considers the way in which the criteria for judicial office and the procedures for the nomination and election of judges operate in other contexts, with a view to reviewing elements of best practice. It suggests that the European Court of Human Rights (the Court) could look to the better practice of newer bodies such as the International Criminal Court (ICC) with respect to criteria for judicial appointment and, to some degree, appointment procedures.

The procedures for judicial appointments to international bodies appear to be moving towards more prescriptive criteria and greater transparency. With the ICC, for example, there have been concerted efforts to give a more modern look to the composition of this international institution, largely in an attempt to solidify its legitimacy. While the criteria for judicial office seem to be becoming more specific, and more considerate of gender and geographical imbalance, the problems of domestic nomination procedures and international election procedures remain.

Reform of appointment procedures to the Court could pave the way for better practice in other international judicial bodies. This may be of particular relevance to emerging bodies such as the African Court on Human and People's Rights, which is expected to come into being in the next five years, and to the procedure for future elections to the ICC.

A. Criteria for judicial office

The criteria for judicial office to international bodies are for the most part uniform. The requirements of “high moral character” and “recognised competence” appear across the board. Other international judicial bodies, such as the European Court of Justice (ECJ), the International Court of Justice (ICJ) and the International Criminal Tribunal for the former Yugoslavia (ICTY) share the European Convention on Human Rights’ “qualification for high judicial office” requirement. A number of bodies also explicitly require qualities such as “integrity” and “impartiality” in judges.⁴⁹

The Court excepted, regional human rights commissions and courts all require judges’ competence to lie in “the field of human rights”.⁵⁰ Internationally, the European Convention is anomalous in that it establishes a court exclusively for

⁴⁹ Article 31 African Convention; Article 13 Statute of the ICTY

⁵⁰ See for example Article 52(1) American Convention on Human Rights; Article 31(1) African Charter on Human and People’s Rights; Article 11 Protocol to the African Charter on Human and People’s Rights. Membership of the Human Rights Committee similarly requires recognised competence in the field of human rights: Article 28(2) ICCPR.

human rights, and yet does not explicitly require human rights experience in its judges.

It is the Rome Statute establishing the ICC that has made the greatest innovations in respect to the requirements for judicial office by providing clearer, more specific criteria for nomination and appointment. Beyond the standard criteria, the Rome Statute requires candidates to have either:

- (i) Established competence in criminal law and procedure, and the necessary relevant experience, whether as a judge, prosecutor, advocate or in other similar capacity, in criminal proceedings.
- (ii) Established competence in relevant areas of international law such as international humanitarian law and the law of human rights, and extensive experience in a professional legal capacity which is of relevance to the judicial work of the court.⁵¹

The candidates are placed on one of the two lists, depending on their experience.⁵² These lists are used as the basis of the voting procedure.⁵³

Women have been traditionally unrepresented or underrepresented on international judicial bodies and the use of gender-based selection criteria has been suggested as one way of ensuring greater representation of women in international courts and tribunals. While there are no quotas, in the appointment of ad litem judges to the ICTY and judges to the (yet to be established) African Court on Human and People's Rights and the International Criminal Court (ICC), provision is made for the need to ensure fair gender representation.⁵⁴

In addition to the requirements for judicial office, the Rome Statute directs States Parties on factors they should 'take into account' when composing the ICC—such as breadth of legal experience, particular types of experience relevant to the work of the Court, and gender representation.⁵⁵

Significantly, the Rome Statute requires that the nomination of judges be accompanied by a statement specifying how the candidate fulfils the requirements for judicial appointment.⁵⁶

⁵¹ Article 36(3)(b) Rome Statute of the International Criminal Court

⁵² The dual list approach ensures a range of experience in key fields on the bench, without the need for very broad criteria.

⁵³ Described below under "International election procedures".

⁵⁴ Article 13(1)(a) Statute of the ICTY; Article 12(2) Protocol to the African Charter on Human and People's Rights; Article 36(8)(a)(i) Rome Statute

⁵⁵ Article 36(8); these requirements will be discussed below, under Nominations and Elections

⁵⁶ Article 36(4) Rome Statute

While this report suggests that the problem at the European level lies not so much with criteria, but with the processes that lead to appointment of judges, the Rome Statute's experiment in clearer, more stringent requirements for judges could provide an interesting lead in the future.

B. Nominations and oversight of nomination procedures

Little guidance is provided by international institutions, or their constituent instruments, in respect of the type of nomination procedures that States should adopt. In the case of the African and Inter-American Commissions and Courts, the Human Rights Committee, the ECJ and the ICTY/R, the choice of nomination procedure is left entirely to the state.

Some guidance is however provided by the ICJ, and more recently by the Rome Statute.

There are two safeguards built in to the ICJ system. First, the nomination of judges to the ICJ is indirect: governments do not propose individuals directly, rather candidates are nominated by the "National Groups" of the Permanent Court of Arbitration (PCA).⁵⁷ In the case of States Parties which are not members of the PCA, they form National Groups in a similar fashion. On paper, the system provides some transparency and protection against political manipulation—in that National Groups not States nominate judges. In practice, however, they are weak⁵⁸ and, as the system allows for members of National Groups to nominate members of their group, State interests still predominate.⁵⁹ This may, in any event, be unlikely to provide a useful model in the context of a regional, as opposed to a global, institution.

The second aspect of the ICJ nomination system of note, is that the ICJ procedure recommends that each National Group consult its highest court of justice, legal faculties and schools of law, and local international legal academics before taking a decision.⁶⁰ This recognition of the important of consultation with civil society is unique in the international system and may be worthy of replication elsewhere.

⁵⁷ The system was originally established with respect to the PCA. In 1920, it was adapted for the Permanent Court of International Justice. It was maintained for the ICJ.

⁵⁸ Eyffinger notes to date there are 81 parties to the Hague Conventions and the PCA, while there are 186 parties to the Statute of the Court. These hundred and three States must 'artificially' constitute National Groups for the sole purpose of nominating ICJ judges. As cited by John R W D Jones, "Composition of the Court", *The Rome Statute of the International Criminal Court: A Commentary*, A Cassese, P Gaeta, J RWD Jones (eds), Oxford University Press, 2002, page 250

⁵⁹ *Ibid.*

⁶⁰ Article 6, Statute of the International Court of Justice

The Rome Statute was built to some degree on the ICJ system. In nominating judges to the ICC, States must use either the procedure in place for the selection of their highest domestic judges, or the ICJ procedure.⁶¹

Further, the Rome Statute provides that, “[t]he Assembly of States Parties may decide to establish, if appropriate, an Advisory Committee on nominations.”⁶² While at the first round of nominations to the ICC, the nascent Assembly has not taken up this opportunity, it may do so in the future. The mere inclusion of the provision is itself a significant development in recognising the need for international oversight of nomination procedures.

Also in the ICC context, the fact that candidates’ details are openly posted on the Internet, together with the government’s supporting statements, places pressure on States to be open and transparent in their selection procedure. The ICC procedure has also been characterised by an unprecedented degree of NGO engagement in pressing for a transparent and objective State nomination procedures for the ICC. The active involvement of civil society in the ICC nominations in this way may be a welcome development that again can be replicated elsewhere.

While the ICC has therefore signalled some progress with respect to nomination procedures, it should be remembered that other nomination systems allow for absolute State discretion. Further, the Rome Statute still fails to provide the type of detailed guidance that might structure decision-making at the national level. For example, there are no provisions compelling states to advertise posts, interview candidates or involve an independent body in the selection process. There are no obligations in relation to the transparency of the process and the accountability of decision-making procedures.

C. International election procedures

In most but not all international courts and bodies, judges are elected.⁶³ In respect of election procedures, none of the international institutions considered give rise to clear best practice. Political bargaining and electioneering by and/or on behalf of judges is widespread, and vote trading remains common.

Of interest in the international system is the Rome Statute's prescription of the kinds of considerations States Parties should entertain when voting for judges. Article

⁶¹ Article 36(4)(a) Rome Statute

⁶² *Ibid.*

⁶³ The exception is the European Court of Justice, where the European Parliament is not involved in the appointments of judges. Judges are appointed by the “common accord” of the EU Member States.

36(8)(a) provides a number of factors to be taken into account by States Parties when considering the overall composition of the ICC, namely:

- (i) the representation of the principal legal systems of the world;
- (ii) an equitable geographical representation; and
- (iii) a fair representation of female and male judges.

The manner in which States should give effect to this provision has been outlined by the Resolution on the Procedure for the Election of Judges to the ICC, which was adopted by the Assembly of States Parties on 9 September 2002. The Resolution—which is binding on States—provides that States must vote for at least three candidates from each of the African, Asian, Eastern European, Latin American and Western European Groups. They are also obliged to vote for at least six candidates of each gender.

It may be that the European Court of Human Rights could benefit from guidance as to the considerations that should be at play when electing judges.

In terms of the information provided to the electing body, while the operation of voting processes varies according to the institution, in most cases considered biographical information on the candidates is provided, and the candidates are proposed in alphabetical order.

Finally, it should be noted that international judicial bodies tend to allow for the re-election of judges. The exception is the Rome Statute: judges to the ICC will be elected for a single, nine-year term.⁶⁴

When it comes to international oversight of State nomination lists, as noted above, the ICC anticipates a possible 'advisory committee on nominations.' However, the Council of Europe leads the way over other bodies in at least recognising the need for review of candidates, even if its current mechanism is weak and politicised.

⁶⁴ Article 36(9)(a) Rome Statute. This does not apply to the first elections, which may be for 3, 6 or 9 years.

Annex 2: Basic structure and procedures within the Council of Europe

The Council of Europe has two main bodies: the Committee of Ministers, and the Parliamentary Assembly, which are serviced by a Secretariat.⁶⁵

The Committee of Ministers is the Council of Europe's decision-making body, comprising the Foreign Ministers of the 45 Member States⁶⁶ or their permanent diplomatic representatives. The Parliamentary Assembly is the Council's deliberative body, grouping 306 members (and 306 substitutes) from the 44 national parliaments and delegations from observer States. Members are appointed by their national parliaments.

The Council of Europe's 1300-strong Secretariat is divided into specialised directorates for various matters including political affairs, legal affairs and human rights.

In order to develop a European outlook, the formation of political groups in the Parliamentary Assembly has been promoted. From 1964 onwards these groups were granted certain rights within the Rules of Procedure. At present the Parliamentary Assembly counts five political groups: the Socialist Group (SOC); the Group of the European People's Party (EPP/CD); the European Democratic Group (EDG); the Liberal, Democratic and Reformers Group (LDR) and the Group of the Unified European Left (UEL). Members of the Parliamentary Assembly are entirely free to choose the Group they wish to join. The President of the Assembly and the Leaders of the Groups form the Presidential Committee of the Parliamentary Assembly.

1. The Committee of Ministers

Comprising of the Foreign Minister of the 45 Member States, the Committee of Ministers is the Council of Europe's decision making body. It is mandated to "consider the action required to further the aim of the Council of Europe, including the

⁶⁵ Article 10, Statute of the Council of Europe, adopted 5 May 1949. While the Statute refers to the deliberative body as the 'Consultative Assembly', it is commonly termed the 'Parliamentary Assembly'.

⁶⁶ Albania (1995), Andorra (1994), Armenia (2001), Austria (1956), Azerbaijan (2001), Belgium (1949), Bosnia and Herzegovina (2002), Bulgaria (1992), Croatia (1996), Cyprus (1961), Czech Republic (1993), Denmark (1949), Estonia (1993), Finland (1989), France (1949), Georgia (1999), Germany (1950), Greece (1949), Hungary (1990), Iceland (1950), Ireland (1949), Italy (1949), Latvia (1995), Liechtenstein (1978), Lithuania (1993), Luxembourg (1949), Malta (1965), Moldova (1995), Netherlands (1949), Norway (1949), Poland (1991), Portugal (1976), Romania (1993), Russian Federation (1996), San Marino (1988), Serbia and Montenegro (2003), Slovak Republic (1993), Slovenia (1993), Spain (1977), Sweden (1949), Switzerland (1963), "the former Yugoslav Republic of Macedonia" (1995), Turkey (1949), Ukraine (1995), United Kingdom (1949). The Observers to the Committee of Ministers are: Canada (1996), Holy See (1970), Japan (1996), Mexico (1999) and United States of America (1996). The Observers to the Parliamentary Assembly: Canada (1997), Israel (1957) and Mexico (1999). Monaco has applied for membership to the Council of Europe.

conclusion of conventions or agreements and the adoption by governments of a common policy with regard to particular matters.”⁶⁷

The Committee of Ministers is both a governmental body, where national approaches to problems facing European society can be discussed, and a collective forum, where Europe-wide responses to such challenges are formulated. In collaboration with the Parliamentary Assembly, it is the guardian of the Council's fundamental values, and monitors Member States' compliance with their undertakings.

The Committee of Ministers operates on several levels. At their twice-yearly sessions the Ministers review European co-operation and matters of political concern. The Ministers' Deputies, acting on behalf of the Ministers, conduct most of the day-to-day business of the Committee of Ministers. They hold separate meetings for human rights (execution of judgements) and the monitoring of commitments.

Article 15.b of the Statute of the Council of Europe provides for the Committee of Ministers to make recommendations to Member States on matters for which the Committee has agreed “a common policy”. The adoption of a recommendation requires a unanimous vote of all representatives present, and a majority of those entitled to vote.⁶⁸ However, at their meeting in November 1994 the Ministers' Deputies decided to make their voting procedure more flexible and subject to a “Gentleman's agreement” not to apply the unanimity rule to recommendations. Recommendations are not binding on Member States. The Statute also permits the Committee of Ministers to ask member governments “to inform it of the action taken by them” in regard to recommendations.⁶⁹

Although the records of the Committee of Ministers' sessions are confidential, a final communiqué is issued at the end of each meeting. The Ministers may also issue one or more declarations.

2. The Parliamentary Assembly

The Parliamentary Assembly is the deliberative organ of the Council of Europe. It is mandated to debate any matters within the scope of the Council of Europe and to present its conclusions, in the form of recommendations, to the Committee of Ministers.⁷⁰

The members and substitute members of the Parliamentary Assembly are appointed from their national or federal parliaments, where they also sit as parliamentarians.

⁶⁷ Article 15, Statute of the Council of Europe, adopted 5 May 1949

⁶⁸ Article 20, Statute of the Council of Europe, adopted 5 May 1949

⁶⁹ Article 15b, Statute of the Council of Europe, adopted 5 May 1949

⁷⁰ Article 22, Statute of the Council of Europe, adopted 5 May 1949

Whilst in the Committee of Ministers each Member State has one vote, in the Parliamentary Assembly the number of representatives and consequently of votes is determined by the size of the country. The biggest number is eighteen, the smallest two. At present there are over around 640 representatives and substitutes in the Parliamentary Assembly, including 18 Observers.

The President, nineteen Vice-Presidents and the Chairpersons of the political groups or their representatives make up the Bureau of the Parliamentary Assembly. The duties of the Bureau include: the preparation of the Parliamentary Assembly's agenda, the reference of documents to committees, the arrangement of day-to-day business, and relations with other international bodies

The Parliamentary Assembly can adopt four different types of texts: recommendations, resolutions, opinions, and orders. Recommendations contain proposals addressed to the Committee of Ministers, the implementation of which is beyond the competence of the Parliamentary Assembly, but within the competence of national governments.⁷¹ Resolutions embody decisions by the Parliamentary Assembly on questions of substance, which it is empowered to put into effect or expressions of view for which it alone is responsible.⁷² Opinions are expressed by the Parliamentary Assembly on questions put to it by the Committee of Ministers, such as the admission of new Member States to the Council of Europe, but also on draft conventions, the budget, and the implementation of the Social Charter. Orders are generally instructions from the Parliamentary Assembly to one or more of its committees. An Order is concerned with form, transmission, execution or procedure and cannot deal with the substance of the matter.⁷³

A motion for a recommendation or resolution in the Parliamentary Assembly may request that a committee generate a report. A motion for a recommendation or resolution has to be tabled by ten or more members of the Parliamentary Assembly belonging to at least five national delegations.⁷⁴ It is then referred to the relevant committee for report and possibly to other committees for opinion. Ultimately, when a report has been adopted in the committee it is tabled for discussion by the Parliamentary Assembly either at a part-session or at a meeting of the standing committee. Following the debate on the Committee's report, the Parliamentary Assembly then votes on the draft text or texts that it may contain.

According to its Rules of Procedure, the Parliamentary Assembly has ten committees in addition to the Bureau and the Standing Committee. These include the Committee on Legal Affairs and Human Rights, which has 80 seats.

⁷¹ Rule 23.1.a, Rules of Procedure of the Parliamentary Assembly

⁷² Rule 23.1.b, Rules of Procedure of the Parliamentary Assembly

⁷³ Rule 23.1.c, Rules of Procedure of the Parliamentary Assembly

⁷⁴ Rule 23.2, Rules of Procedure of the Parliamentary Assembly

The terms of reference of the Committee on Legal Affairs and Human Rights include examination of “all candidatures for judges of the European Court of Human Rights, before the election of judges by the Assembly.” The Committee on Legal Affairs and Human Rights currently has two subcommittees: the Sub-Committee on Human Rights and the Sub-Committee on Penal Law and Criminology. The Sub-Committee on the election of judges is an *ad hoc* sub-committee.

3. Summary of potential Council of Europe processes for adopting a review of judicial appointment procedures

A possible review of current practice on judicial appointments could be initiated by one of a number of bodies within the Council of Europe hierarchy:

1. The Committee on Legal Affairs and Human Rights of the Parliamentary Assembly could initiate a report into the matter;⁷⁵
2. The Bureau could refer the matter to the Committee on Legal Affairs and Human Rights following the tabling of a motion by a representative or a substitute.⁷⁶
3. The Parliamentary Assembly, at the initiative of a group of its members, could adopt a recommendation or resolution, or request the above Committee initiate a report⁷⁷;
4. The Committee of Ministers could request of the Parliamentary Assembly a report, opinion or further consideration;⁷⁸
5. The Committee of Ministers could consider the matter, either on the basis of a request or recommendation from the Parliamentary Assembly or on its own initiative, and take appropriate action.⁷⁹ The Statute permits the Committee of Ministers to ask member governments “to inform it of the action taken by them” in regard to its recommendations.⁸⁰

⁷⁵ The report would be voted on and adopted by that Committee, and proceed through the Parliamentary Assembly, which may vote to make recommendations to the Committee of Ministers.

⁷⁶ Pursuant to Rule 22.2 Rules of Procedure of the Parliamentary Assembly

⁷⁷ The resolution or recommendation would have to be tabled by ten or more members of the Assembly belonging to at least five national delegations; Rule 23.2 Rules of Procedure of the Parliamentary Assembly.

⁷⁸ By way of the procedure in Rule 22.2 Rules of Procedure of the Parliamentary Assembly, the Bureau could then request that the Committee on Legal Affairs and Human Rights, or the Sub-Committee, consider the matter

⁷⁹ Article 15.a Statute of the Council of Europe

⁸⁰ Article 15.b Statute of the Council of Europe

Annex 3 Relevant Council of Europe documents

THE FOLLOWING WILL BE POSTED SOON

- A. Resolutions and recommendations of the Council of Europe
 - i. Parliamentary Assembly Resolution 1200 (1999)
 - ii. Parliamentary Assembly Recommendation 1429 (1999)
 - iii. Reply from the Committee of Ministers to Parliamentary Assembly Recommendation 1429 (1999), Doc. 8835, 10 October 2000
 - iv. Opinion of the European Court of Human Rights on Parliamentary Assembly Recommendation 1429 (1999), 6 March 2000

- B. Memorandum on the election of judges to the European Court of Human Rights, submitted by Lord Kirkhill on behalf of the Committee on Legal Affairs and Human Rights, AS/Jur (1997) 29, 7 July 1997. The memorandum outlines the aim and working methods of the Sub-Committee's review of candidates.

- C. Report on the election of judges to the European Court of Human Rights, submitted by Lord Kirkhill on behalf of the Committee on Legal Affairs and Human Rights, Doc. 8460, 9 July 1999. The report reviews the Sub-Committee's consideration of candidates to the Court in 1998.

- D. Jean-François Flauss, "Analysis of the election of the new European Court of Human Rights", AS/Jur (1999) 3, 20 January 1999.

- E. Report by the Sub-Committee on the election of judges to the European Court of Human Rights, AS/Jur/cdh (2001) 23, 18 April 2001. The report reviews the Sub-Committee's consideration of candidates to the Court in 2001.