



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

15 April 2014

Opinion on the CDDH report on the Advisory Panel

Introduction

1. The Committee of Ministers¹ has transmitted to the Court for an opinion the report of the Steering Committee for Human Rights (CDDH) on the review of the functioning of the Advisory Panel of experts on candidates for election as judge to the European Court of Human Rights².
2. The Court has taken note of the report. The Court has also received a copy of the final activity report of the Panel³, submitted to the Committee of Ministers at the end of its first three-year mandate, and will refer to it as well in this opinion.
3. Both documents recall the initiative taken by the then-President of the Court, Jean-Paul Costa, which led to the setting up of the Advisory Panel in December 2010.

General comments

4. The Court considers that the issue of the election of judges to the Court is of vital importance for the operation of the whole Convention system. The election of judges must be organised so as to ensure that the Court is composed of judges of the highest quality. Especially in view of the nine-year term of office, it is essential to ensure that candidates who are unfit for the post of judge are not put forward for election. Over the years, there has been discussion about the conditions for becoming a judge and the procedure, both national and international, for the election of judges. The Court considers that the time may have come to review all the aspects of this question in order to reflect on the best possible system.
5. This being said, the Court is convinced of the great value of the contribution made by the Panel, which is composed of very eminent persons. A similar view is reflected in the CDDH report (§ 28). The Panel has undoubtedly enhanced the procedure for the election of judges, to the benefit of States and the Parliamentary Assembly as they exercise their respective powers under Article 22 of the Convention.

Some structural and practical comments

6. As the two reports note, there has been a small number of cases in which the procedure was not followed. The Court agrees with the view expressed in the CDDH report that this is incompatible with the *raison d'être* of the Panel. The Court also agrees with the proposal of the Panel to spell out in express terms in the Committee of Ministers Guidelines on the selection of candidates for the

1. Item 4.3b, 1190th meeting – 5 February 2014

2. CDDH (2013) R79 Addendum II

3. Advisory Panel (2013)12EN, 11 December 2013

post of ECHR judge the rule that States should await the Panel's opinion before submitting the list to the Parliamentary Assembly (§ 47 of the Panel's report). This would leave no room for doubt over what is expected of States in this context.

7. The importance of allowing sufficient time for the Panel to perform its function is recognised in both reports, although they differ in their conclusions. The CDDH considered (§ 60 of its report) that a three-month period could be indicated without amending Resolution (2010)26, whereas the Panel considered it advisable to add a provision to this effect (§ 51 of its report). The Court tends to the latter view, which would make it clear to States what is expected of them.

8. Regarding the Parliamentary Assembly, to whom the election of judges is entrusted, the Court notes that both reports include the idea that the election should not take place until the Assembly has received the Panel's advice. There is a clear logic to this idea. The best way to ensure that the Assembly has the benefit of the Panel's opinion on each list is that States act in accordance with the procedure.

9. The Court considers that the confidentiality of the proceedings before the Panel is of the utmost importance given the need to avoid harming any candidate's reputation. With that in mind, the Court is concerned about the fact that confidential information stemming from the Panel's proceedings has in fact been disclosed to the media recently. This is not only detrimental to the candidates and the Panel but also to the Court itself.

10. Lastly, the Court refers to the following passage of the Panel's report:

"The Panel was established with the overall mandate to contribute to the improvement of the standing of the European Court of Human Rights. The members of this independent body of experts have no personal stake in the election procedure and were elected in light of their professional experience as judges of the highest national or international courts. The Panel has been entrusted with a crucial task and requires sufficient means and support on the part of the major stakeholders in the election procedure to carry out that task effectively."

11. The Court considers that the time has come to ensure that the Panel has sufficient means to perform its important tasks. Thus the Court considers that the Panel's request to be free to organize meetings whenever it is necessary to carry out its work is a reasonable one, particularly in view of how the Panel has kept costs to the minimum (paragraph 22 of the Panel's report). These working methods are not adequately reflected in Resolution (2010)26, although the CDDH was of the opinion that the text allowed sufficient operational flexibility. The Court would nonetheless agree with the Panel's suggestion that the Resolution be revised in this respect. Being free to organize meetings presupposes specific budgetary provision for the functioning of the Panel. Given the time which members must invest in this work, the question of an appropriate level of remuneration should also be addressed. It may be recalled that to date the members have received no payment for their work.

Conclusion

12. The Panel has clearly enhanced the procedure for the election of the judges. Some adjustments need to be made to ensure that the confidentiality of the procedure is guaranteed in light of the effects it may have on the candidates and the procedure. Moreover, the Panel should be allowed to hold meetings when necessary which would require a specific budgetary allocation and this could include appropriate remuneration for the members.