**Wyciąg z Regulaminu Zgromadzenia Parlamentarnego Rady Europy dotyczący wyborów sędziów Europejskiego Trybunału Praw Człowieka – stan prawny na lipiec 2019 r.**

# Rules of Procedure of the Assembly (July 2019)

##### (*Resolution 1202 (1999) adopted on 4 November 1999) with subsequent modifications of the Rules of Procedure\**)

##### Complementary texts

**IX. Elections by the Parliamentary Assembly**

**i. - Procedure**

*adopted by the Bureau of the Assembly on 5 September 2016 and ratified by the Assembly on 10 October 2016 (see the Progress Report of the Bureau and the Standing Committee, Doc. 14150)*

1. All elections will be held in the Chamber.

2. The agenda of a part-session sets down the schedules for the elections. One election takes place over two successive sittings on the same day.

3. Assembly members (representatives and authorised substitutes) will not be called individually to vote.

4. A voting register and a ballot box will be placed in the area behind the Chair. A member of the Table Office will be in attendance.

5. Assembly members (representatives and authorised substitutes) shall present their identity badge to the member of the Table Office before signing the voting register and receiving a ballot paper and an envelope.

6. By signing the register in place of a representative, a substitute shall prevent that representative from voting and from substituting for any other representative. A same Assembly member (representative or authorised substitute) can only vote once during a ballot.

7. A member entitled to vote shall place the ballot paper in the envelope and put it in the ballot box.

8. Any question of eligibility to vote shall be referred, if necessary, to the President, whose decision shall be final; no points of order may be raised.

9. Each political group may appoint an observer whose identity shall be notified to the President of the Assembly in advance.

10. Access to the voting operations zone (around the voting booths and the table on which the ballot box and voting register are placed) shall be restricted to voting Assembly members, members of the Table Office and duly notified political groups’ observers.

11. At the end of the scheduled time the President will ask whether any other member still has to vote and, when any such vote has been cast, the President shall announce that the voting is closed.

12. Four tellers chosen by lot shall be responsible for checking the voting register, collating and counting the votes, assisted by the secretariat. These operations shall take place outside the Chamber immediately after the ballot is declared closed.

13. The result will be announced by the President at the beginning of the following sitting, at the latest.

14. The list of members who took part in the vote shall be published as an appendix to the report of debates of the particular sitting.

15. The voting register shall be made available to any Assembly member on request. A copy of the voting register shall be addressed to any candidate for election on request.

#### ii. - Election of the members of the European Court of Human Rights and of the European Committee for the Prevention of Torture

##### *A. Extract from the Convention for the protection of human rights and fundamental freedoms*

##### *(signed at Rome on 4 November 1950, as amended by Protocols Nos. 11 and 14)*

##### Articles relating to the election of the judges of the European Court of Human Rights on which action is taken by the Assembly

##### *Article 20*

##### Number of judges

The Court shall consist of a number of judges equal to that of the High Contracting Parties.

##### *Article 21*

##### Criteria for office

1. 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.

2[[1]](#footnote-1). The judges shall sit on the Court in their individual capacity.

3. 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.

##### *Article 22*

##### Election of judges

The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party. 

##### *Article 23*

##### Terms of office and dismissal

1. The judges shall be elected for a period of nine years. They may not be re-elected.

2[[2]](#footnote-2). The terms of office of judges shall expire when they reach the age of 70. 

3. The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.

4. No judge may be dismissed from office unless the other judges decide by a majority of two-thirds that that judge has ceased to fulfil the required conditions.

##### *B. Extract from the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*

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**iv. - Modalities for the election procedure of judges to the European Court of Human Rights and the Council of Europe Commissioner for Human Rights**

*Appendix to Resolution 1432 (2005)*

1. In principle, the list of candidates for the election of judges, once submitted to the Parliamentary Assembly, should not be modified. The Assembly shall only exceptionally accept partial or complete modification of the list on the initiative of the government concerned.

2. The Assembly shall interrupt the procedure if one of the three candidates on a list for the post of judge or Commissioner for Human Rights withdraws before the first ballot. It shall ask the government concerned (in respect of judges) or the Committee of Ministers (in respect of the Commissioner) to complete the list of candidates.

3. The Assembly confirms its practice of listing candidates for the post of judge in alphabetical order on the ballot paper. This shall also remain the practice in those cases where the government, disregarding the Assembly’s position as set out in Recommendations 1429 (1999) and 1649 (2004), has expressed a preference for one of the candidates. Any such expressions of governmental preference shall play no role in the deliberations of the Committee on the election of judges to the European Court of Human Rights where only the criteria provided for in the European Convention on Human Rights and those established by the Assembly itself shall be relevant.

4. Furthermore, the Assembly confirms that the candidates for the post of Council of Europe Commissioner for Human Rights shall be listed in alphabetical order on the ballot paper.

**v. - Candidates for the European Court of Human Rights**

*Resolution 1366 (2004) as modified by Resolutions 1426 (2005), 1627 (2008), 1841 (2011), 2002 (2014) and 2278 (2019)*

1. The Parliamentary Assembly, referring to its Recommendation 1649 (2004), continues to support the procedure by which candidates are asked to complete a standard curriculum vitae; it believes that the model to be used should be reviewed by the Committee on the Election of Judges to the European Court of Human Rights and that proposals for modification should be reported to the committee for adoption by the Assembly.

2. The Assembly remains convinced that the twelve-month timetable it has adopted provides a practical model for all participants, but resolves nevertheless to keep its targets under review.

3. The Assembly decides not to consider lists of candidates where:

*i.* the areas of competence of the candidates appear to be unduly restricted;

*ii.* not all of the candidates fulfil each of the conditions laid down by Article 21, paragraph 1, of the European Convention on Human Rights;

*iii.* one of the candidates does not appear to have an active knowledge of one of the official languages of the Council of Europe and a passive knowledge of the other;

*iv.* the national selection procedure did not satisfy the minimum requirements of fairness and transparency;

*v.* the Advisory Panel was not duly consulted.

In such cases, the Committee on the Election of Judges to the European Court of Human Rights shall decide on a proposal to reject a list of candidates by a majority of the votes cast. This proposal shall be endorsed by the Assembly in the Progress Report of the Bureau of the Assembly and the Standing Committee. The Assembly’s endorsement of the proposal to reject a list entails its definitive rejection; the State concerned is invited to submit a new list. Rejection by the Assembly of the committee’s proposal to reject a list shall entail the referral of the list back to the committee.

4. Moreover, the Assembly decides to consider single-sex lists of candidates when the candidates belong to the sex which is under-represented in the Court (i.e. the sex to which under 40% of the total number of judges belong), or in exceptional circumstances where a contracting party has taken all the necessary and appropriate steps to ensure that the list contains candidates of both sexes meeting the requirements of paragraph 1 of Article 21 of the European Convention on Human Rights.

Such exceptional circumstances must be duly so considered by a two-thirds majority of the votes cast by members of the Committee on the Election of Judges to the European Court of Human Rights. If the required majority has not been achieved, the committee shall recommend that the Assembly reject the list concerned. This position shall be endorsed by the Assembly in the Progress Report of the Bureau of the Assembly and the Standing Committee.

5. The Assembly continues to believe that the process of interview provides additional insight into the qualities of the candidates and decides:

*i.* that nominated candidates should be informed as far as possible of the purpose of the interview and procedures for its conduct;

*ii.* that alternative locations for interviews should be considered if there is a valid reason for holding interviews outside Strasbourg and Paris;

*iii.* that further staggering or additional sessions of the committee might permit an extension of the time available for each interview;

*iv.* that the political groups, when nominating their representatives to the committee, should aim to include at least 40% women, which is the parity threshold deemed necessary by the Council of Europe to exclude possible gender bias in decision-making processes;

*v.* that candidates should be made aware of the criteria employed by the committee in reaching its decision;

*vi.* that one of the criteria used by the committee should be that, in the case of equal merit, preference should be given to a candidate of the sex under-represented at the Court;

*vii.* that a fair and efficient interview process requires a continuous process of training and re-assessment of the members and staff involved in selection panels;

*viii.* that the obligation to promote an open and transparent process might require the committee to give reasons for its recommendations and ranking of candidates and in particular to give positive reasons for its recommendation in favour of a particular candidate;

*ix.* that it would be desirable to provide timely feedback to both the individual candidate and the nominating state.

6. The Chairperson or a representative of the Advisory Panel shall be invited by the Chairperson of the Committee on the Election of Judges to explain the reasons for the panel’s views on candidates, during the briefing sessions scheduled before each set of interviews.

*\*Aktualizowany tekst Regulaminu ZPRE - patrz:* [*http://assembly.coe.int/nw/xml/RoP/RoP-XML2HTML-EN.asp?id=toc#Part-1*](http://assembly.coe.int/nw/xml/RoP/RoP-XML2HTML-EN.asp?id=toc#Part-1)

1. Na mocy Protokołu nr 15 zmieniającego Konwencję o ochronie praw człowieka i podstawowych wolności z dniem 1 sierpnia 2021 r. dodany został nowy art. 21 ust. 2 Konwencji, zgodnie z którym „Kandydaci na sędziów powinni mieć mniej niż 65 lat w dniu, w którym lista trzech kandydatów na sędziów ma zostać przedstawiona Zgromadzeniu Parlamentarnemu Rady Europy, zgodnie z artykułem 22 Konwencji”. W konsekwencji dotychczasowe ustępy 2 i 3 otrzymały numery odpowiednio 3 i 4 [przyp. MSZ]. [↑](#footnote-ref-1)
2. Przepis uchylony przez Protokół nr 15 zmieniający Konwencję o ochronie praw człowieka i podstawowych wolności z dniem 1 sierpnia 2021 r. W konsekwencji dotychczasowe ustępy 3 i 4 otrzymały numery odpowiednio 2 i 3 [przyp. MSZ]. [↑](#footnote-ref-2)