

ACCESSION OF THE EUROPEAN UNION TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS: A KEY ROLE (TO BE) PLAYED BY THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE⁽¹⁾

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ABSTRACT

The European Union (EU) is duty-bound to accede to the European Convention on Human Rights (ECHR): Article 6 § 2 of the Treaty on European Union (TEU) stipulates that the EU “shall” accede to the ECHR. If and when this happens, the Parliamentary Assembly of the Council of Europe has a key role to play in this procedure, not only by providing an Opinion on the arrangements agreed beforehand but, more importantly, it will need to set-up an internal procedure for the election of a judge onto the European Court of Human Rights in respect of the EU. This article provides an overview of the presently suspended negotiations with the EU, with particular emphasis placed upon negotiations undertaken so far, and those which must still be envisaged upon EU accession, to ensure a ‘representativity’ of the European Parliament (EP) within the Assembly when the latter elects judges onto the Court in Strasbourg.

Keywords

Accession Agreement; accession of EU, ECHR, European Parliament (EP); Joint Informal Body of PACE/EP; Parliamentary Assembly; the Strasbourg Court.

A. INTRODUCTORY REMARKS

If and when the EU accedes to the European Convention on Human Rights (ECHR), the European Parliament (EP) will be able to participate in the Parliamentary Assembly's procedure in electing judges to the European Court of Human Rights (Strasbourg Court).

I will therefore work on the assumption that when the Luxembourg Court is seized,

sometime in the future, to provide an Opinion on a re-vamped Accession Agreement, it will not – yet again, in an inappropriate manner – put into question arrangements made to accommodate the specificity of the EU.²

Also, although it is important to emphasise the Assembly's role in electing judges on to the Strasbourg Court,³ it must not be forgotten that the Assembly will also need to provide the Committee of Ministers of the Council of Europe (the Organisation's executive organ) with an Opinion on the new revised or re-negotiated version of the Accession Agreement, a subject to which I will revert in my third & last point.

B. THE PARLIAMENTARY ASSEMBLY'S KEY ROLE

At the outset, it is important to refer to the main provisions in the Convention relating to the election of judges onto the Court. The Strasbourg Court is made up of professional judges resident in Strasbourg, operating on a full-time basis and who must be, as specified in Article 21 of the Convention “... of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognized competence.” The number of judges is equal to that of High Contracting Parties. Since the entry into force of Protocol No.14 to the Convention, in 2010, judges are elected for a single term of office of nine years, and must retire when they reach the age of 70.⁴ When amending Protocol No.15 enters into force, judges will, in effect, be able to stay in office until the age of 74.⁵

Article 22 of the European Convention on Human Rights specifies that judges to the Strasbourg Court “shall be elected by the

Parliamentary Assembly [of the Council of Europe] 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.” Thus, if and when the EU accedes to the Convention, the judge elected in respect of the EU will possess the same status and duties as all other judges on the Strasbourg Court and the European Parliament (EP) will be provided the right to participate in Assembly’s election process.

A few words about the ‘institutional framework.’ The Council of Europe, based in Strasbourg, France, was founded in 1949 with the aim of creating a democratic and legal area throughout the continent, based on the fundamental values of human rights protection, pluralistic democracy and the rule of law. Founded by 10 countries, the Council presently has 47 member States, with a combined population of some 820 million persons. All of the Organisation’s member states are Parties to the Convention and are subject to the compulsory jurisdiction of the Strasbourg Court.

The Assembly is assigned the function of ‘deliberative organ’ by the Statute of the Organisation. There exists no equivalent body within the Organisation of American States. In addition, it possessed the important role – within the Council – of electing judges of the Court, the European Commissioner for Human Rights, and the Secretary General of the Organisation. The Assembly is presently comprised of 648 nationally-elected parliamentarians (324 representatives and 324 substitutes) from the parliaments of the member states of the Council,⁶ with the balance of political parties within each national delegation reflecting the proportions of the various parties in their respective national parliaments. The vast majority of members belong to one of the Assembly’s six organised political groups: the Group of the European People’s Party (EPP/CD), the Socialist, Democrats and Greens Group (SOC), the Alliance of Liberals and Democrats for Europe (ALDE), the European Conservatives Group (EC), and the Group of the Unified European Left (UEL) and the Free Democrats Group (FDG).

The substantive work of the Assembly, especially the preparation of reports for adoption as ‘resolutions’ and/or ‘recommendations’ addressed to the Committee of Ministers, is in

most instances carried out by the Assembly’s nine permanent committees. In so far as the election of judges onto the Strasbourg Court is concerned, suffice for present purposes is to note that there is a specially constituted 20-member Committee on the Election of Judges to the European Court of Human Rights – whose members are designated by political groups – mandated by the Assembly to make proposals prior to the vote in plenary, after it has studied the *curriculum vitae* and interviewed all candidates for the post of judge (the terms of reference of this Committee can be found in Appendix 1).⁷

The control mechanism of the ECHR, negotiated back in 1950 and in force since 1953, was substantially overhauled and streamlined in 1994 by Protocol No.11. Since 1998 individuals, after having exhausted all domestic remedies, can seize the Court directly with respect to alleged violations of the Convention and its protocols.⁸

As already indicated above, Article 21, paragraph 1, of the Convention stipulates that “*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,*” and according to Article 22 of the Convention “*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.*”

Paragraph 4 of Parliamentary Assembly Resolution 1646 (2009) specifies:

[...] *the Assembly recalls that in addition to the criteria specified in Article 21 § 1 of the Convention, as well as the gender requirement⁹, states should, when selecting and subsequently nominating candidates to the Court, comply with the following requirements:*

- 4.1. issue public and open calls for candidatures;
- 4.2. when submitting the names of candidates to the Assembly, describe the manner in which they had been selected;
- 4.3. transmit the names of candidates to the Assembly in alphabetical order;
- 4.4. candidates should possess an active knowledge of one and a passive knowledge of the other official language of the Council

of Europe (see model curriculum vitae appended hereto¹⁰), and

4.5. that, if possible, no candidate should be submitted whose election might result in the necessity to appoint an ad hoc judge¹¹.

This text consolidated and reinforced recommendations made to states in 2004 when governments were asked to ensure, *inter alia*, “that a call for candidatures has been issued through the specialised press” and that “every list contains candidates of both sexes” (paragraph 19 of Assembly Recommendation 1649 (2004)). The last two sentences in paragraph 2 of Resolution 1646 (2009) specify that “In the absence of a real choice among the candidates submitted by a state party to the Convention, the Assembly shall reject lists submitted to it. In addition, in the absence of a fair, transparent and consistent national selection procedure, the Assembly may reject such lists.”

This Resolution is based on a report of the Committee on Legal Affairs and Human Rights (document 11767, of 2008) which emphasised the need for more fairness and transparency in national selection procedures,¹² the need for candidates to possess a number of years of relevant (judicial) work experience and a knowledge of both working languages of the Council of Europe. It is also important to underline, in this context, that the Assembly will accept single-sex lists of candidates only if the sex is under-represented (under 40 % of judges) or if exceptional circumstances exist to derogate from this rule.¹³

As to the current procedure leading up to the election of judges, the Assembly – to the extent possible – tries to provide States ample time to organise an open call for candidatures prior to the transmission of a list of suitably qualified candidates, usually well over a year in advance.

Upon receipt of the lists by the Assembly, the *curriculum vitae* of the candidates are placed on the Assembly’s portal, and are accessible to all parliamentarians and, of course, to the public at large. The Assembly sets aside for itself a certain time for its own election procedure, depending on the scheduling of its plenary meetings.

In order to assist it in making its decision as to which candidate ought to be elected – from the list of three persons submitted to it – the Assembly invites its specifically constituted – by

political groups – Committee on the Election of Judges to make recommendations based on personal interviews with all the candidates and assessments of their *curriculum vitae*.

Each candidate is interviewed by the Committee for a period of 30 minutes, with the first five minutes of the interview being allotted for a short self- presentation, if the candidate so wishes. The candidate is informed of the possibility of making such a presentation by the Secretariat in the letter convening him or her for interview. Members of the Committee (then) pose questions, in English or in French, and the candidate responds in either or both these languages; simultaneous interpretation is provided. The interviews are carried out in the alphabetical order of the names of candidates. After all three candidates have been interviewed, the Chairperson provides Committee members with a brief summary of his or her first impressions of the candidates, after which a general discussion ensues. A vote is then taken – by secret ballot – after which the Chairperson announces the result of the vote. This procedure is confidential.

The document containing the Committee’s recommendations is then made public and is posted on the Assembly’s website. The Committee’s report is also formally transmitted, *via* the Bureau, to the plenary Assembly, which then proceeds to elect a judge.

On the basis of the candidatures transmitted to it, the Assembly elects the judges to the European Court of Human Rights during its part-sessions in Strasbourg.¹⁴ The candidate having obtained an absolute majority of votes cast is declared elected a member of the Court. If no candidate obtains an absolute majority, a second ballot is held on the next day, after which the candidate who has obtained a relative majority of votes cast is declared elected. Election results are publicly announced by the President of the Assembly during the part-session.¹⁵

C. THE ACCESSION AGREEMENT, ARTICLE 6, & THE JOINT INFORMAL BODY OF PACE/EP

I now come to the specific topic of arrangements made, as reflected in the Accession Agreement, Article 6, and the work of the ‘Joint Informal Body’ set-up by the Parliamentary Assembly and the European Parliament.

According to Article 6 of the Accession Agreement, the European Parliament “shall be entitled to participate, with the right to vote, in the sittings of the Parliamentary Assembly of the Council of Europe whenever the Assembly exercises its functions related to the election of judges [...]”.¹⁶ While the text specifies that the “number of representatives” of the EP is to be “the same ... [as] the highest number of representatives to which any State is entitled under Article 26 of the Statute of the Council of Europe [which is presently 18],” it leaves the modalities of European Parliament’s participation in the Parliamentary Assembly’s relevant bodies for the Assembly to determine, in cooperation with the European Parliament.¹⁷

Understandably, negotiations at the intergovernmental level concerning EU accession to the Convention took a considerable time. However, negotiations at Assembly-EP level were concluded with remarkable speed. This work was undertaken by a ‘Joint Informal Body’,¹⁸ consisting of representatives of both parliamentary institutions which managed, after just two one-day meetings, in Brussels on 14 March 2011, and another in Paris, in on 15 June 2011, to work out arrangements needed to ensure the European Parliament’s participation in the election procedure.¹⁹

The drafters of the Accession Agreement took into account these arrangements in the adopted texts, as is explained in the Explanatory Report attached to the Accession Agreement. (See, in particular, paragraph 76, third sentence, in the Agreement’s Explanatory Report).²⁰

At the inter-governmental level, it was decided that Article 22 of the Convention does not need amendment. Instead, express mention is made, in the Accession Agreement, of the fact that a delegation of the EP will participate, with a right to vote, in the sittings of the Assembly (and its relevant bodies) whenever the Assembly exercises its functions related to the election of judges onto the European Court of Human Rights.

The procedure envisaged is this: Article 6 of the Accession Agreement, entitled ‘Election of judges’, reads:

1. A delegation of the European Parliament shall be entitled to participate, with the right to vote, in the sittings of the Parliamentary Assembly of the Council of

Europe whenever the Assembly exercises its functions related to the election of judges in accordance with Article 22 of the Convention. The delegation of the European Parliament shall have the same number of representatives as the delegation of the State which is entitled to the highest number of representatives under Article 26 of the Statute of the Council of Europe.

*2. The modalities of the participation of representatives of the European Parliament in the sittings of the Parliamentary Assembly of the Council of Europe and its relevant bodies shall be defined by the Parliamentary Assembly of the Council of Europe, in cooperation with the European Parliament.*²¹

In the said negotiations, it was necessary to ensure an ‘equal footing’ for the EP delegation with that of other national parliamentary delegations, so that the EP be given ‘equivalent’ voting rights. It may be recalled, in this connection, that membership of the Parliamentary Assembly is dealt with in the 1949 Statute of the Council of Europe (Articles 22 to 35), Article 25, a, of which specifies that “*The Consultative [Parliamentary] Assembly shall consist of representatives of each member, elected by its parliament from among the members thereof, or appointed from among the members of that parliament [...].*” In addition, Article 26 indicates the number of representatives each member state of the Council of Europe is entitled to have in the Assembly. All expenses related to representation in the Assembly are borne by member states (presently 47 states; Article 38, a, of the Statute). Hence, as already explained, it was agreed that the European Parliament be provided with the same number of representatives in the Assembly as the States(s) entitled to the highest number of representatives, as specified in Article 26 of the 1949 Statute of the Council of Europe. This means that the EP delegation will consist of 18 members, as is the case at present in respect of five Council of Europe member states, namely France, Germany, Italy, the Russian Federation and the United Kingdom. The EU will also contribute, as indicated in draft Article 8 of the Accession Agreement, 34 per cent of what the other five ‘*grands payeurs*’ contribute to the annual ordinary budget of the Council of Europe; this sum represents the expenditure taken into account which is directly related to the functioning of the Convention.²²

The 'Joint Informal Body' also had to determine how best to ensure some form of EP 'representativity' within two other bodies of the Assembly, namely the Committee on the Election of Judges (at that time a sub-committee of the Committee on Legal Affairs and Human Rights) and the Bureau when these bodies act in the context of the Assembly's election process for judges.

As I explained in the first part of my presentation, in order to make an informed choice when voting for a candidate, the Assembly invites its 20-member Committee on the Election of Judges to the European Court of Human Rights (AS/Cdh)²³ to make recommendations based on personal interviews with all candidates and assessments of their *curriculum vitae*. This Committee has been specifically constituted for this purpose and its members must possess appropriate knowledge or practical experience in the legal field.²⁴ Its members are designated by the Assembly's six political groups.²⁵

The Joint Informal Body thus had to find a formula to ensure EP 'representativity' within the Committee on the Election of Judges. This was quite problematic. Why? Because the composition of the Committee is determined, on a yearly basis, by the six political groups within the Assembly, with apportionment being determined mainly but not exclusively by recourse to the so-called 'D'Hondt principle'.²⁶ But how could the European Parliament, which itself possesses seven political groups, fit into this schema? Any possible negotiations, on a yearly basis, relating to EP involvement in the Assembly's internal political group arrangements – six political groups in the Assembly and seven in the EP! – would result in a horribly time consuming and complicated procedure, be it between or within each of these parliamentary bodies.

Fortunately, the Joint Informal Body came up with a pragmatic solution: it was agreed that the EP would designate one member (and one alternate) to 'represent' the European Parliament – with the right to vote – within the (at the time Sub-) Committee when the latter interviews candidates. Although this solution appears to provide a 'privileged status' to the EU, as a (new) Contracting Party within the Committee whose composition is determined to reflect (a duly weighted) 'political group representativity,' this was the price to pay in order to find a

simple, easy solution, in what might otherwise have necessitated the putting into place of an extremely complex designation procedure.

As already indicated, the Committee's recommendation(s), prepared by its Chairperson, are transmitted to the Bureau of the Assembly and are also posted on the Assembly's portal in the form of an Addendum to a Bureau Progress Report, in good time before voting in plenary commences. However, if the Committee proposes the rejection of a list (which has occurred in the past, e.g., when the gender requirement had not been complied with, or where national selection procedures had not been fair and transparent, or where there existed no real choice among candidates submitted), this must be discussed in the Bureau and brought to the attention of the plenary Assembly in that such a proposal – to reject a list – must be ratified, i.e., endorsed, by the Assembly.²⁷

The Joint Informal Body therefore also agreed to the proposal for the need of an *ex officio* participation of a member of the EP in the Assembly's Bureau, when the subject of the election of judges is discussed by the Bureau. The EP will therefore designate one representative to the Assembly's Bureau – with the right to vote – when the Bureau deals with the Committee's reports.

This is a quite a complex internal procedure, which can be summarized as follows:

Firstly: When the plenary Assembly elects judges to the Strasbourg Court, 18 members of the EP will be entitled to take part in such elections

Secondly: Whenever the Bureau of the Assembly has the subject of the election of judges on its agenda, one representative of the EP, with a right to vote, will be entitled to take part in the Bureau's meetings

And thirdly: One member of the EP (with an alternate) will (also) be entitled to sit, with the right to vote, as an *ex officio* member of the Assembly's Committee on the Election of Judges to the Strasbourg Court. He or she will therefore be able to take part in the confidential hearings with candidates ... and by so doing will be directly implicated in providing recommendations to the plenary Assembly to enable the Parliamentary Assembly to make an informed choice when it elects judges.

D. ASSUMPTION: SUCCESSFUL CONCLUSIONS OF NEGOTIATIONS

We must, for the purpose of this presentation, work on the assumption – the hypothesis – that upon the successful completion of a new set of negotiations, the Luxembourg Court will provide a positive Opinion.

Here, it is important to see what exactly the Assembly would need to do prior to the opening of the Accession Agreement for signature and ratification, where necessary, by the 47 member States of the Council of Europe and the EU.²⁸

Once the revamped Accession Agreement has been formally adopted, and assuming that the Luxembourg Court does not find any of its provisions incompatible with EU law, I can envisage the following scenario for the Assembly:

- Firstly, there would probably have to be another meeting of the Joint Informal Body to confirm arrangements made back in 2011 and 2012, especially as, in the meantime, changes have been made in the election procedure put into place by the Parliamentary Assembly.
- Also, and more importantly, arrangements reached between the Assembly and the European Parliament would actually need to be implemented (with any possible changes). I quote from the synopsis of the meeting of political leaders of both parliamentary bodies on 15 June 2011: [arrangements agreed] “*must [now] be approved by the Parliamentary Assembly and the European Parliament in accordance with their respective procedures.*”²⁹
- In so far as the Parliamentary Assembly is concerned, this can probably be implemented by means of a Resolution, in which the Assembly would have to specify which of its Rules of Procedure need amendment, so as to put into place the procedure agreed with the European Parliament.³⁰
- And last but not least, and independently of the above (inter-)parliamentary procedures, it cannot be forgotten that the Accession Agreement would still need to be adopted by the Committee of Ministers, *after* it had received the (formal) Opinions on the agreed text(s) from both the Strasbourg Court and the Parliamentary Assembly.³¹

E. PERSPECTIVES

I’d like to conclude my presentation with an anecdote. During my presentation I mentioned the fact that negotiations between the political leaders of the Assembly and European Parliament had been completed in record time: in effect, in two one-day meetings.

The 2nd meeting of the Joint Informal Body, held in Paris on 15 June 2011, was co-chaired by Mr. Carlo Cassini, the Italian Chairperson of the EP’s Committee on Constitutional Affairs, and Mr. Christos Pourgourides, the Cypriot Chairperson of the Assembly’s Committee on Legal Affairs and Human Rights.

On 15 June 2011, at the end of the meeting of the Joint Informal Body in Paris, Mr. Pourgourides, a Cypriot parliamentarian who, co-chaired the meeting in his capacity as Chair of the Assembly’s Legal Affairs and Human Rights Committee, made appropriately positive optimistic concluding remarks, underlining the remarkable efficiency with which agreement had been reached (indeed, the co-chairmen even issued a joint press statement to this effect). Then, just as the meeting had come to a close – I was sitting next to Mr. Pourgourides – he scribbled-down, on a piece of paper, a message which he passed onto me.

I’d like to finish my presentation by citing, *verbatim*, the content of this message, which Mr. Pourgourides gave me. It reads: “*Accession [of the EU to the ECHR] will not take place during my lifetime, although I intend to live over 105 years.*”

If my calculations are correct, this means that accession will not take place, according to this astute lawyer and Cypriot Statesman, before 2051!

APPENDIX 1: TERMS OF REFERENCE OF THE PARLIAMENTARY ASSEMBLY’S COMMITTEE ON THE ELECTION OF JUDGES TO THE EUROPEAN COURT OF HUMAN RIGHTS (AS/CDH)³²

Terms of reference:

1. In the framework of the procedure for the election of judges to the European Court of Human Rights, in accordance with Article 22 of the European Convention on Human Rights,

the committee shall examine the candidatures and make recommendations to the Assembly.

2. The committee shall:

i. study the curricula vitae and interview all candidates for posts of judge of the European Court of Human Rights, before their election by the Assembly;

ii. under the authority of its chairperson, prepare a report to the Assembly on the election of each judge to the European Court of Human Rights, which shall include its recommendations. Whenever possible, the reasons for its recommendations and ranking of candidates shall be indicated in the report;

iii. review, when necessary, the standard curriculum vitae sent to candidates for the post of judge of the European Court of Human Rights;

iv. seek to ensure that the national procedure for the nomination of candidates complies with the criteria which the Assembly has drawn up for the establishment of lists, and in particular the presence of candidates of both sexes.

3. The committee may report to the Assembly on any question related to the procedure for the selection of candidates and the procedure for the election of judges to the European Court of Human Rights.

4. In addition to the general regulations or as an exception thereto, the committee shall apply the following rules:

i. the committee shall vote by a majority of the votes cast; however, a decision to reject a list of candidates or a decision to consider a single-sex list of candidates requires a two-thirds majority of the votes cast. The committee shall proceed to vote on candidates by secret ballot. Only members who have attended in full the interview procedure for a post of judge may vote. For any other decision, voting shall take place by a show of hands. However, voting by secret ballot may be requested by at least one third of the members present. The chairperson is entitled to vote;

ii. when rejection of a list of candidates is recommended to the Assembly, the reason(s) must be specified.

5. In order to be able to evaluate the qualifications and skills of candidates, committee members shall have appropriate knowledge or practical experience in the legal field.

APPENDIX 2. EXTRACT FROM THE EXPLANATORY REPORT TO THE ACCESSION AGREEMENT (PARAGRAPHS 75 TO 77)

Article 6 – Election of judges

75. It is agreed that a delegation of the European Parliament should be entitled to participate, with the right to vote, in the sittings of the Parliamentary Assembly of the Council of Europe (and its relevant bodies) whenever it exercises its functions related to the election of judges under Article 22 of the Convention. It was considered appropriate that the European Parliament should be entitled to the same number of representatives in the Parliamentary Assembly as the States entitled to the highest number of representatives under Article 26 of the Statute of the Council of Europe.

76. Modalities for the participation of the European Parliament in the work of the Parliamentary Assembly and its relevant bodies will be defined by the Parliamentary Assembly in co-operation with the European Parliament. These modalities will be reflected in the Parliamentary Assembly's internal rules. Discussions between the Parliamentary Assembly and the European Parliament to that effect already took place during the drafting of the Accession Agreement. It is also understood that internal EU rules will define the modalities for the selection of the list of candidates in respect of the EU to be submitted to the Parliamentary Assembly.

77. It is not necessary to amend the Convention in order to allow for the election of a judge in respect of the EU since Article 22 provides that a judge shall be elected with respect to each High Contracting Party. As laid down in Article 21, paragraphs 2 and 3, of the Convention, the judges of the Court are independent and act in their individual capacity. The judge elected in respect of the EU shall participate equally with the other judges in the work of the Court and have the same status and duties."

NOTAS

1. This text is a slightly revised and updated version of a presentation made at a conference entitled "The Inter-relationship between the European Convention on Human Rights and European Union Law", held on 17-18 March 2017 at the School of Law, University of Nicosia, Cyprus. Parts of this text are based on the author's contribution in a book published by the Oxford University Press in 2014 (*The EU Accession to the ECHR*, edited by V.Kosta, N.Skoutaris & V.P. Tzevelekos).
2. See J.Polakiewicz "Accession to the European Convention on Human Rights (ECHR) – an Insider's Views Addressing One by One the CJEU's Objections in Opinion 2/13" in Vol. 36 *Human Rights Law Journal* (2016), pp.10-22.
3. For a historical overview, see A.Drzemczewski "Election of Judges (European Court of Human Rights)" in on-line *Max Planck Encyclopedia of International Procedural Law* (Oxford University Press, as of mid-2018).
4. Article 23, paragraphs 1 to 3, of the Convention stipulates:
 1. *The judges shall be elected for a period of nine years. They may not be re-elected.*
 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."
5. Ratified by 41, signed but not yet ratified by 5 and neither signed nor ratified by one of the 47 States Parties to the Convention: see http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/213/signatures?p_auth=7YJMHHRHz.
6. At present, there is no Russian delegation at the Assembly. For an explanation see, e.g., N.P. Engel "Russland testet das Rückgrad des Europarates" ["Russia is testing the backbone of the Council of Europe"] in vol. 44 *Europäische Grundrechte Zeitschrift* (2017) pp.720-722 and L.R.Glas "The Assembly's row with Russia and its repercussions for the [ECHR] Convention system," in 'Strasbourg Observers' blog of 31 October 2017, available at <https://strasbourgobservers.com/2017/10/30/the-assemblys-row-with-russia-and-its-repercussions-for-the-convention-system/>. The number of members allocated to each national delegation is proposed by the Assembly when giving its opinion on the accession of the state to the Council, with the main criteria being population size: see Article 26 of the Statute of the Organisation (which has undergone successive modifications as additional states have become members of the Council), found at http://assembly.coe.int/RulesofProcedure/Statute/Statut_CE_2008.pdf.
7. See footnote 2 above. An overview of work undertaken by this Committee (AS/Cdh) can be found on the Assembly's portal: http://website-pace.net/en_GB/web/as-cdh/main.
8. See A. Drzemczewski "A major overhaul of the ECHR control mechanism: Protocol No.11" in *Collected Courses of the Academy of European Law 1995* Vol. IV Book 2, Martinus Nijhoff, 1997, pp. 121-244.
9. For more details consult "Procedure for electing judges to the European Court of Human Rights", document AS/Cdh/Inf (2018) 01 rev 2, of 18 February 2018 at <http://website-pace.net/documents/1653355/1653736/ProcedureElectionJudges-EN.pdf/e4472144-64bc-4926-928c-47ae9c1ea45e> (this document is regularly updated). See also "Le mandat et le travail de la Commission de l'Assemblée Parlementaire sur l'élection des juges à la Cour européenne des droits de l'homme du Conseil de l'Europe: un aperçu" in vol 15 of this *Revista* (2015), pp. 37-50.
As the rules governing the Assembly's procedure for the election of judges are scattered over a number of Assembly resolutions and recommendations, the AS/Cdh has recently proposed that they be consolidated into one single Assembly resolution: see A.Drzemczewski "Human Rights in Europe: an insider's views" in vol. 16 of this *Revista* (2016), pp. 343-356, at p. 350.
10. The text of the model curriculum can be accessed at: Resolution 1646 (2009). It is also available on the Assembly's website: <http://assembly.coe.int/CommitteeDocs/2009/ModelCVEN.doc>.
11. The issue of *ad hoc* judges is not broached in this presentation, although it is (also) relevant in the context of the EU's need to provide a list of such judges to the Court: see Article 26, paragraph 4, of the Convention, and Assembly document 12827 issued in 2011, entitled "*Ad hoc* judges

- at the European Court of Human Rights.” <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=13035&Language=EN>. It is understood that procedures for the designation of a list of three to five *ad hoc* judges, as indicated in the Strasbourg Court’s Rules (Rule 29), has been foreseen in the internal EU Council rules prepared by the FREMP (Working Party on Fundamental Rights, Citizens Rights and Free Movement of Persons).
12. Reinforced by Guidelines of the Committee of Ministers on the selection of candidates for the post of judge at the European Court of Human Rights, adopted on 28 March 2012, as amended on 26 November 2014.
- In 2010, the Committee of Ministers also set up an advisory panel of experts on candidates for election as judges to the Court. Their function is to advise States Parties to the Convention – before the latter transmit lists of candidates to the Assembly – whether candidates for election meet the criteria stipulated in Article 21, paragraph 1, of the Convention (see Resolution CM/Res (2010)26, as amended, on the establishment of an Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights). The panel is composed of seven personalities: see Committee of Ministers decision of 8 December 2010). The role of this advisory panel must not be confused, as it sometimes is, with the panel set up by virtue of Article 255 of the Treaty on the Functioning of the European Union, as explained in § 11 of the AS/Jur’s report on this subject (Assembly document 12391, of 7 October 2010, <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=12764&Language=EN> which led to the adoption of Resolution Assembly Resolution 1764 (2010)). See also the advisory panel’s website: <http://www.coe.int/en/web/dlapil/advisory-panel>.
13. See Assembly Resolution 1366 (2004), as modified by Resolutions 1426 (2005), 1627 (2008), 1841 (2011) and 2002 (2014), paragraphs 3 and 4. In paragraph 4 it is specified that such “*exceptional circumstances*” exist “*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 Article 21 § 1 of the European Convention on Human Rights.*” Such exceptional circumstances must be duly so determined by a two-thirds majority of the Committee on the Election of Judges, whose position subsequently needs to be endorsed by the Assembly in the framework of a Progress Report of the Assembly’s Bureau.
14. Modalities for the election procedure can be found in the Appendix to Assembly Resolution 1432 (2005), reproduced in Rules of Procedure of the Assembly, Strasbourg, January 2018, at p. 172.
15. See paragraph 8 of Assembly Resolution 1726 (2010), adopted on 29 April 2010, which specifies when judges’ terms of office commence. This paragraph reads: “[*the Assembly...*] *confirms its position that the nine-year term of office of a judge elected by the Assembly to the Court shall commence from the date of taking up of his/her duties, and in any event no later than three months after his/her election. However, if the election takes place more than three months before the seat of the outgoing judge becomes vacant, the term of office shall commence the day the seat becomes vacant. If the election takes place less than three months before the seat of the outgoing judge becomes vacant, the elected judge shall take up his/her duties as soon as possible after the seat becomes vacant and the term of office shall commence as from then and in any event no later than three months after his/her election.*”
16. Full title: Draft Revised Agreement on the Accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), appended to the ‘Final report to the CDDH’ (Steering Committee for Human Rights: Fifth negotiation meeting between the CDDH ad hoc Negotiation Group and the European Commission on the Accession of the European Union to the European Convention on Human Rights, Council of Europe document 47+1 (2013)008rev2, of 10 June 2013, Appendix I, Art. 6, paragraph 1, available at: http://www.coe.int/en/web/cahdi/46th-meeting?p_p_id=101&p_p_lifecycle=0&p_p_state=maximized&p_p_col_id=column-1&p_p_col_count=1&_101_struts_action=%2Fasset_publisher%2Fview_content&_101_assetEntryId=2213476&_101_type=content.
17. See Article 6, paragraphs 1 & 2 (and paragraphs 75 to 77 of the Explanatory Report appended thereto: see Appendix 2). Emphasis added.
18. This Joint Informal Body was established upon the initiative of the EP “*in order to coordinate information sharing*” (see § 34 of EP Resolution, of 19 May 2010, on the institutional aspects

- of the accession to the EU to the ECHR, (2009/2241 (INI)).
19. See, in particular, the synopses of the second meeting, of 15 June 2011, available on the Assembly's website at <http://www.assembly.coe.int/committee/BUR/2011/BURJointInformalBodyE.pdf>. The Joint Informal Body held a third meeting in Paris on 19 June 2012 (see synopsis at <http://www.assembly.coe.int/committee/BUR/2012/BURJointInformalBodyE.pdf>) at which note was taken of the change in internal procedures within the Assembly whereby its Committee on Legal Affairs and Human Rights would no longer, in the future, take part in the election process (see § 6 in Assembly document AS/Cdh/Inf (2018)01 rev 2, cited above in footnote 8).
 20. An extract from the Explanatory Report can be found in Appendix 2, below.
 21. All documents pertaining to the negotiations are accessible on-line at http://www.coe.int/t/dghl/standardsetting/cddh/default_EN.asp (Directorate General of Human Rights and Rule of Law, Council of Europe).
 22. For a detailed explanation, consult Article 8 of the Accession Agreement and paragraphs 93-99 of the draft Explanatory Report to the Accession Agreement.
 23. The Chairpersons of the Committee on Legal Affairs & Human Rights (AS/Jur) and the Committee on Equality & Non-Discrimination (AS/Ega) are *ex officio* members of the Committee (or, in their absence, a vice-chairperson): see Rule 44.1 (point 9) of the Assembly's Rules of Procedure.
 24. See Terms of reference of the Committee, § 5 (in Appendix 1).
 25. I.e., the 20 members and alternates but not *ex officio* members: see Rule 44.3.a of the Assembly's Rules of Procedure.
 26. This is a mathematical formula, named after a Belgian mathematician, which ensures that representation is fairly distributed in proportion to the number of seats held in the Assembly as a whole. It requires the number of seats for each political group to be divided successively by a series of divisors (1,2,3,4), with seats on committees allocated successively to political groups to secure the highest resulting quotient or average.
 27. For recent examples of lists being rejected, see A. Drzemczewski "Human Rights in Europe: an insider's views," footnote 8, above, at p. 350.
 28. I will not, in the context of the Assembly's role in the 'accession negotiations', describe the procedures envisaged on the EU side, as provided by Article 218 (6) (a) (ii) and (8) of the TFEU, namely the need to obtain consent of the EP and unanimous agreement of the Council, before approval by EU member States "in accordance with their constitutional requirements,' not to mention the need, in addition, to find agreement on the internal rules necessary to implement the Accession Agreement at EU level (the Council, *via* FREMP – see footnote 10 above – is likely to be tasked with this).
 29. Taken from Synopsis of the 2nd meeting held in Paris (last paragraph): see footnote 18, above.
 30. And possibly also the adoption/provision of one or more 'complementary texts,' as would be indicated in the said Resolution (Rule 41.c of the Assembly's Rules of Procedure specifies that the majority required "*for the adoption of a draft resolution and for any other decision*" is "*a majority of the votes cast...*". This could, I suppose, also be done afterwards, but logic suggests that such a text ought to be adopted by the Assembly prior to the opening of the Accession Agreement for signature and ratification by the Committee of Ministers.
 31. Opinions to the Committee of Ministers necessitate a two-thirds majority of the votes cast: see Rule 41.a of the Assembly's Rules of Procedure.
 32. Appendix 1 is taken from an article published in vol. 35 of the *Human Rights Law Journal* (2015), entitled "The Parliamentary Assembly's Committee on the Election of Judges to the European Court of Human Rights, Council of Europe," pp. 269-274, at p.272, a French version of which was published in vol.15 of this *Revista*, in 2015, pp. 37-50 at p. 43.