

SELECTING EUROPE'S JUDGES:

A CRITICAL APPRAISAL OF APPOINTMENT
PROCESSES TO THE EUROPEAN COURTS



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College of Europe, Brugge
Verversdijk, Auditorium 1
4th November 2013

ANNOTATION: For many years, the process of selecting judges to both European courts, the Court of Justice of the European Union as well as the European Court of Human Rights, has been somewhat opaque. With selection criteria on the national level unclear and procedure non-transparent, it was typically not a job for which one could openly apply for. Within the EU, national governments tended to promote and to mutually rubberstamp their own candidates, whose knowledge, competence, and suitability for the job were sometimes rather questionable. Moreover, although selection processes and appointments to European courts have always been the preferred subject for academic and judicial gossip Europe-wide, there would in fact be very little reliable information on the selection process itself.

In the last few years, selection processes to both European courts have been undergoing considerable changes at both: national as well as European levels. At the national level, more and more states have started openly advertising judicial positions in European courts, making national nominations subject to competition, at least to some extent. The changes at the European level, however, have been even more significant: within the EU, the Lisbon Treaty brought into life a special panel pursuant to Art. 255 TFEU. The task of the panel is to provide the Council with opinions on candidates' suitability to perform the duties of Judge and Advocate-General of the Court of Justice and the General Court. Within the Council of Europe, an advisory panel of experts has been set up by the Committee of Ministers to advise the High Contracting Parties whether candidates to the ECHR meet the criteria required by the European Convention.

In both European systems therefore, the selection procedures have been undergoing a major overhaul. With first few years of their new operation already passed, the time is perhaps ripe to critically examine the on-going mutation of the selection procedures to European courts. What system generates "better" results and why? What are the persisting problems? What should be the guiding principles? Expertise only? Social representativeness? National political preferences? Other considerations? Looking critically at some of the selection "results" in the past few years, does democratic election of judges as practiced by the Parliamentary Assembly produce optimal results? Or is it in fact the rather technocratic style of the Art. 255 TFEU Panel, which may be neither democratic nor transparent, but in fact precisely because of that is arguably able to

guarantee better professional quality of current Union courts' appointees? What type of legitimacy does each of the systems generate and/or lack? Should expertise-driven considerations completely take over when selecting judges for European courts? Or should political considerations (still) matter? How do the two levels of selection, national and European, influence each other? What are the impacts and/or spill-overs from one level to the other?

The aim of the one-day conference is to provide a high-level reflective forum for such critical questions relating to the current selection processes to European courts. There are three "C" that characterise the approach of the conference: critical, comparative, and composite.

First, as is already apparent from the questions asked in the previous paragraphs, the aim of the conference is to *critically* evaluate the operation of the new systems. Second, the analysis should be *comparative*, integrating discussion of selection processes to both European courts (but also the two different processes with the EU itself, including the appointment procedure to the Civil Service Tribunal) together with selection processes at national levels. Third, the outlook of the conference is *composite*: it brings together academics with practitioners, people theorising about certain phenomenon and people actually engaged in the process itself.

Such composite view will be structurally introduced into the first two panels, where three different looks at the same phenomenon will be represented in turn: a concise and as far as possible value-free description of the operation of the system, assembling knowledge about the mechanism and relevant data; a critical appraisal of the system, pointing out weak spots and problems in terms of function and/or legitimacy; and, finally, both of these levels will be contrasted with and complemented by views and remarks from within the respective selection mechanism. The three vantage points will eventually join in an open discussion with the audience. The third panel offers comparative discussion of common issues pertaining to both systems: judicial independence, social responsiveness and representativeness and secrecy of selection procedures. The aim of the fourth panel is to look beyond the current selection procedures to both European courts, to reach out for further inspiration and look at the broader picture.

PROGRAMME

- 9:00 Welcome and introduction
 Jörg Monar, College of Europe
- 9:15 – 10:45 **Panel 1 - The European Court of Human Rights**
 Chair: *Monica Claes, Maastricht University*

1) The Mechanism

Koen Lemmens, University of Leuven

2) The Critique

David Kosař, Masaryk University

3) The Practice

John L. Murray, Supreme Court of Ireland; member of Council of Ministers' Advisory Panel of Experts on Candidates for Election as Judge to the ECHR

4) Discussion

[... *coffee break*...]

11:15 – 12:45 **Panel 2 - The Court of Justice**

Chair: *Bruno de Witte*, European University Institute and Maastricht University

1) The Mechanism

Henri de Waele, Radboud University Nijmegen & University of Antwerp

2) The Critique

Damian Chalmers, London School of Economics

3) The Practice

Jean-Marc Sauvé, Conseil d'Etat; president of the Art. 255 TFEU Committee

4) Discussion

[... *lunch* ...]

14:15 – 15:45 **Panel 3 - Cross-cutting Issues: A Comparative Appraisal**

Chair: *Inge Govaere*, College of Europe

Independence of European Judges: Lessons for the Selection Processes

Armin von Bogdandy, Max Planck Institute for Comparative Public Law and International Law

Should the Composition of European Courts be Socially Representative?

Iyiola Solanke, University of Leeds

Access to Information versus Privacy in the Process of Selection: Is there a reasonable middle ground?

Alberto Alemanno, Hautes études commerciales de Paris

[... *coffee break*...]

16:15 – 17:45 **Panel 4 - The Broader Outlook**

Chair: *Deirdre Curtin*, University of Amsterdam

The Real Test - How to Contribute to a Better Justice: the Experience of the European Civil Service Tribunal

Georges Vandensanden, College of Europe; former member of the CST Selection Committee

Selection, Appointment and Legitimacy: A Political Perspective

Daniel Kelemen, Rutgers University

Judicial Legitimacy: Beyond Society and Politics

Mikael Rask Madsen, University of Copenhagen

17:45

Conclusions: Finding the European Hercules

Michal Bobek, College of Europe

The languages of the conference are English and French. Contributions and discussion interventions are welcome in both languages.