



Dr. Trócsányi László

Minister of Justice
Ministry of Justice

1357 Budapest, Pf.: 2.

Dear Minister,

András Sajó's tenure as the Hungarian judge at the European Court of Human Rights (ECtHR) ends in January 2017. In accordance with procedure, Hungary can present a list of three potential successors to Mr. Sajó to the Parliamentary Assembly of the Council of Europe (PACE) by 26 August 2016.

In the past few years the procedure of electing judges for the ECtHR in Strasbourg has played a significant part in ensuring and maintaining the authority and quality of the Court is widely recognised by the Council of Europe. One of the necessary elements of this very procedure involves Member States to the European Convention on Human Rights (ECHR) proposing a list of three candidates from which the Parliamentary Assembly then elects one judge per country.

As the then president of the Court, Jean-Paul Costa, wrote in his letter addressed to the Member States' Permanent Representatives (Ambassadors) in 2010:

"The states clearly have a fundamental role in ensuring that the three candidates whose names are submitted to the Parliamentary Assembly are all suitably qualified so as to offer the Assembly a real choice between candidates of an equivalent standing [...]. To achieve this means setting up a fair and transparent procedure at national level."¹

To fulfil this requirement the statutory bodies of the Council of Europe made several regulations. The Parliamentary Assembly's Resolution 1646 (2009) sets out that the process of nominating candidates to the Court in national selection procedures must reflect the principles of democratic procedure, transparency and non-discrimination.² Article 4.1 of the Resolution obliges Member States to issue public and open calls for candidatures. Furthermore, Article 4.2 records that the Member State must give account of the manner of selecting its candidates when submitting its list to the Assembly.

In Article 5 the Assembly urges the governments of Member States which have still not done so, to set up – without delay – appropriate national selection procedures to ensure that the authority

¹ <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=12764&lang=en>.

² Resolution 1646 (2009), Nomination of candidates and election of judges to the European Court of Human Rights – <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17704&lang=en>.

and credibility of the Court are not put at risk by ad hoc and politicised processes in the nomination of candidates.

The Committee of Ministers released guidelines³ on the selection of candidates to hold judicial office at the European Court of Human Rights which amongst others contains the following:

- The procedure for eliciting applications should be stable and established in advance through codification or by settled administrative practice. Details of the procedure should be made public.
- The call for applications should be made widely available to the public, in such a manner that it could reasonably be expected to come to the attention of all or most of the potentially suitable candidates.
- A reasonable period of time should be given for the submission of applications.
- The body responsible for recommending candidates should be of balanced composition. Its members should collectively have sufficient technical knowledge and command respect and confidence. They should come from a variety of backgrounds, be of similar professional standing.
- All serious applicants should be interviewed unless this is impracticable on account of their number, in which case the body should draw up, based on the applications, a shortlist of the best candidates.

According to Article 2 of the Resolution 1646 (2009), in the absence of a fair, transparent and consistent national selection procedure, the Assembly may reject such a list.

The [Hungarian Helsinki Committee](#) approached you in February this year enquiring about the manner of the process in which the Hungarian government wishes to elect the candidates and whether the call would be made according to the established norms of the Council of Europe. The Ministry gave a laconic answer to our letter saying that the government “will take care of the proposition of suitable candidates after appropriate and careful consideration.”

The Helsinki Committee followed this up with the government in June, with it being revealed that the government had not pursued a selection procedure which had been established in advance and in which regulations were visibly clear. There was no transparent selection process based on a public call: the list of candidates was submitted to the Council of Europe after ‘a consultation with experts’ whose names were not given in the letter. In short, this process excluded the public, lacked accountability and transparency.

This procedure of which every inch is contrary to the requirements mentioned above and to the spirit in which these were created, leads us to conclude that the government does not, or does not want to understand the importance of a transparent selection process in respect to maintaining the Court’s independence, legitimacy, credibility and its quality of decisions.

Due to a lack of publicly available information on this matter, we do not know who the candidates are. In light of this, we cannot pass judgment on their competence or suitability for the position. The transparency of the selection process is, however, a value in itself. If the government neglects the norms of the Council of Europe (adopted in 2009) during the course of the selection procedure it impairs the credibility of the candidates - irrespective of whether they meet the requirements of the post.

³ CM(2012)40-final, Guidelines[1] of the Committee of Ministers on the selection of candidates for the post of judge at the European Court of Human Rights, 2012. március 29.
https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cb1ac.

Dear Minister,

In light of the above mentioned and on behalf of the signatories, we ask you to withdraw the submitted list, create a public regulation for the candidacy process and issue a public call for candidacy. A list of proposed candidates should then be passed to the government leaving it up to them to decide their final selection ahead of the deadline in just over two months from now.

If you fail to do so, there will remain a real risk that Hungarian government's current list will be rejected by the PACE in accordance with Article 2 of the Resolution 1646 (2009). This will cause a significant loss of respect for our country and prevent the timely consideration of important human rights complaints at the European Court of Human Rights.

Budapest, 24 June 2016

Yours sincerely,

On behalf of the signatories: Dr. Kádár András Kristóf

Signatories:

- Amnesty International Hungary – Jeney Orsolya, Director,
- Eötvös Károly Institute – Majtényi László, President,
- European Roma Rights Centre (ERRC) – Dorde Jovanovic, President,
- Mental Disability Advocacy Centre (MDAC) – Oliver Lewis, Executive Director,
- Hungarian Helsinki Committee – Kádár András Kristóf, Co-President,
- Hungarian LGBT Alliance – Sándor Bea, Deputy,
- Hungarian Women's Lobby – Juhász Borbála, President,
- Legal Defence Bureau for National and Ethnic Minorities – Muhi Erika, Managing Curator,
- PATENT Association – Németh Katalin, President,
- Hungarian Civil Liberties Union – Szabó Máté Dániel, Director,
- Transparency International Hungary – Martin József Péter, Executive Director.