

Implications of ECtHR and CJEU Judge Appointment Procedures for Judicial Status and Independence

Jarosław Kowalski

PhD, attorney at law; Maria Curie-Skłodowska University, Institute of Law Sciences;
<https://orcid.org/0000-0002-4731-1928>; e-mail: jaroslaw.kowalski@mail.umcs.pl

Introduction

The lessons drawn from the Second World War prompted Europe's political elite to seek supranational mechanisms of cooperation, giving rise to two parallel integration tracks. The first track began in 1949, when European states established the Council of Europe (CoE) to protect human rights, while the second pursued economic integration, beginning with the 1952 European Coal and Steel Community, which later evolved into the European Union. Many structures and organisations on the European continent now work to deepen these integration processes. The most important of these include the Organization for Security and Cooperation in Europe (1995), the European Atomic Energy Community (EURATOM) (1957), as well as regional initiatives such as the Nordic Council (1952), the Weimar Triangle (1991), and the Council of the Baltic Sea States (1992). All these institutions serve to strengthen European cooperation, both by solving common problems, including the provision of security, or supporting economic development, and by building the continent's political and social cohesion.

One may point to numerous important events in the postwar history of Europe, but two landmark moments deserve special attention. The first was the Hague Congress, which took place in May 1948. At the conclusion of the congress, participants adopted the Political Resolution of the Hague Congress, which demanded

the establishment of a court authorised to rule on human rights violations. This idea took the form of the CoE, and then, subsequently, the European Court of Human Rights (ECtHR) in Strasbourg, which led to the creation of the world's first regional system of human rights protection. The second landmark event was the signing of the Treaties of Rome in 1957. These agreements established the legal basis for the functioning of the European Economic Community (EEC) and EURATOM. Together with the previous Treaty of Paris in 1951, these agreements laid the foundations for the European integration process, an integral part of which was the establishment of the Court of Justice in Luxembourg (CJEU).

The establishment of two mutually independent courts resulted in the adoption of different solutions both in terms of their functioning and the status of adjudicating judges. With the Member States of the EU and the CoE increasingly challenging the status of judges, the independence of judges is highly important, particularly in the current context. Criticism directed at courts and judges is becoming ever more frequent.

The main objective is to analyse the issues relating to the procedure for appointing judges to the ECtHR and the CJEU. The paper examines the impact of this procedure on the status of these courts' judges. The article uses a comparative legal method to demonstrate similarities in the form of common legal solutions and discrepancies in the status of judges of the ECtHR and the CJEU. The legal-dogmatic method serves to indicate the postulated changes in the relevant research area. The legal-historical method presents changes in the status of judges of the ECtHR and the CJEU.

1. European Court of Human Rights and the Court of Justice of the European Union

The European continent is a pioneer in establishing regional international courts. Apart from the entities analysed herein, Europe also has the EFTA Court, which will remain on the margins of the discussion.

The CoE originally comprised two judicial bodies: the European Commission of Human Rights (ECmHR) and the ECtHR. This solution reflected the concept of a two-tier review mechanism adopted in the European Convention on Human Rights (ECHR). The abandonment of the idea of a permanent court modelled on the International Court of Justice limited the Court's activities to periodic sessions. The legal basis for the ECtHR was Article 19 of the ECHR, which provided for the establishment of both bodies to ensure compliance with the Convention.

The Court officially began its work in 1959.¹ The first inaugural session of the Court took place from 23 to 28 February 1959.² On 18 September 1959, the ECtHR adopted its Rules of Procedure. The Court issued its first judgment on 14 November 1960, in *Lawless v. Ireland*. The ECtHR was the first regional international court exercising jurisdiction strictly in the area of human rights.

The original content of the Convention and the original Rules of Procedure of the ECtHR assumed the creation of a body of a judicial character. The number of ECtHR judges corresponded to the number of CoE member states. Each country, regardless of whether it had ratified the Convention, had one judge. This solution differed from the one adopted for the ECmHR, where the number of members depended on the number of states that had ratified the ECHR. As a result, the Court also included judges from countries that were not parties to the Convention. An example was France, which, despite joining the CoE in 1949 and signing the Convention in 1950, ratified it as late as 1974. Despite this, a French judge³ had adjudicated in the Strasbourg court since 1959.⁴

According to the original wording of the Convention, the Parliamentary Assembly elected ECtHR judges for a nine-year term from among three candidates proposed by a given state. The judges had to be independent, have an unblemished reputation, and resign from functions contrary to the dignity of a judge. Article 40 of the Convention provided for the possibility of re-election, with one-third of the composition renewed every three years. The Court elected from among its members the President and the Vice-President for a three-year term, with the option of re-election.

In its first years, the Court did not proceed on a permanent basis but met in week-long sessions, conducting on average ten sessions a year. The Court heard the cases in nine-judge chambers under the chair of the President or Vice-President of the Court. The judge from the state concerned had to be a member of the chamber. Plenary meetings were of an exceptional nature.

The contemporary functioning of the ECtHR, including the procedure for the selection of judges, has undergone significant changes. The decisive factors included the expansion of the CoE's membership, the growing number of

¹ M. R. Madsen, *From Cold War Instrument to Supreme European Court: The European Court of Human Rights at the Crossroads of International and National Law and Politics*, 'Law & Social Inquiry' 2007, vol. 32, issue 1, p. 144.

² Until 1998, the ECtHR proceeded in sessions, but since the entry into force of Additional Protocol No. 11, the Court has been sitting on a permanent basis.

³ René Samuel Cassin served with the Court as a judge in 1959–1976. Between 1965 and 1968, he was its President.

⁴ https://echr.coe.int/Documents/List_judges_since_1959_BIL.pdf

individuals protected under the Convention, and the steady increase in applications lodged with the Strasbourg Court.

The Court of Justice of the European Union (CJEU) dates back to the early stage of European integration. With the creation of the European Coal and Steel Community in 1952, Luxembourg saw the establishment of the first Court of Justice. An important stage in the development of the institution occurred after the signing of the Treaties of Rome in 1957, which gave rise to the EEC and EURATOM. At the same time, the newly-established Court of Justice of the European Communities (ECJ) took over the competences of the ECSC Court and assumed jurisdiction over all three communities.

The Single European Act, adopted in 1986, extended the jurisdiction of the Court of Justice. The Maastricht Treaty of 1992 transformed the European Communities into the European Union and introduced significant modifications to the functioning of this body. The Court in Luxembourg received new powers under the so-called 'Community pillar'. Moreover, the creation of the Court of First Instance (now the General Court) relieved the Court of Justice of part of its caseload.

The Treaty of Lisbon further institutionalised and increased the structural unity of the European Union. As a result, the Court in Luxembourg became the CJEU. According to Article 19 of the Treaty on European Union, the CJEU is composed of the Court of Justice, the General Court, and specialised courts. Currently, the structure of the CJEU consists of two bodies: the Court of Justice, primarily responsible for the interpretation of EU law, and the General Court, whose main task is to hear applications brought by natural and legal persons, as well as by Member States. Before 2016, the CJEU also comprised the Civil Service Tribunal.

The CJEU plays a key role in the process of interpreting EU law and in ensuring its uniform application throughout Member States. The primary tasks of the Court include settling disputes between the institutions of the European Union, the Member States, and private parties, as well as reviewing the compatibility of national laws with the EU legal order.

The legal basis for the functioning of the CJEU are: the Treaty on European Union (TEU), the Treaty on the Functioning of the European Union (TFEU), and Protocol No. 3 on the Statute of the Court of Justice of the European Union and the Council Decision of 25 February 2010 establishing the panel for giving an opinion on candidates (the so-called 255 Committee), together with its annex.

The functioning of any international court is based on its legitimacy and legitimisation. The judges adjudicating in international courts are themselves an

important element of that activity. H. J. Behrens writes that: ‘The authority of any international court depends to a large extent on the qualities and professional stature of its judges.’⁵ One cannot disagree with such an assessment.

2. The Status of Judges of the ECtHR and the CJEU

Judges, like other legal professionals, have a specific professional status. The status of the judge provides certain rights, obligations, and guarantees that define their professional and constitutional position in the legal system. This unique set of elements serves to ensure the independence of the judiciary and the impartiality of adjudication. The status of the judge includes: the election procedure, the term of office, the option of removal from office, immunity, remuneration, working conditions, ethical standards, and disciplinary liability.

The first important element of status is the mechanism for selecting and appointing candidates to judicial positions. At the domestic, national level, the relevant regulations form part of the national law of the country concerned. The situation is different for judges of international courts. In this case, the legal basis is most often listed in international agreements, followed by the statutes and rules of procedure of these courts. Candidates for international courts must usually have experience in adjudication and the qualifications necessary to serve as a judge in the highest courts and tribunals of their country of origin. Academic qualifications are also preferable.

The ECtHR and the CJEU differ fundamentally in terms of their scope of jurisdiction, organisational structure, internal structure, and the status of the judges adjudicating in these institutions. A key difference concerning judges is the different mechanism for their appointment.

In the case of the ECtHR, the procedure for appointing a judge begins with the Secretary General of the CoE, who asks the member state to submit a list of three candidates. The Convention for the Protection of Human Rights and Fundamental Freedoms specifies the requirements for candidates in a very general manner. Article 21(1) of the Convention states that they should display the highest moral character and be qualified to hold a high judicial office or serve as lawyers of recognised qualifications. Moreover, the candidates must not be over 65 years of age on the submission date of the list to the Parliamentary Assembly of the Council of Europe (PACE). Apart from the requirements set out in the Convention, candidates must

⁵ H. J. Behrens, *How to Improve Independence and Impartiality of Judges of the European Court of Human Rights*, ‘European Convention on Human Rights Law Review’ 2023, vol. 4, no. 3, pp. 259–266.

have an active knowledge of one of the official languages of the CoE and, in addition, at least a passive knowledge of another official language of the Convention.

The list submitted by the state concerned must include at least one candidate representing the underrepresented sex.⁶ In practice, it is always a woman. Before the submission of the official list of candidates for the position of judge, the state sends the resumes of potential candidates to the Advisory Panel, using a confidential procedure. The Advisory Panel assesses whether the persons the state proposes as candidates for the office of judge meet the criteria laid down in Article 21 of the Convention. In the next step, the Strasbourg Court receives from the member state a list containing the names of three candidates. The Court then sends the list to the Committee on the Election of Judges to the ECtHR, which is responsible for assessing the fairness and transparency of the national selection procedure used to select candidates. In the next stage, the Committee on the Election of Judges interviews candidates and analyses their resumes in terms of career path. A positive assessment of the candidates at this stage of the proceedings results in the adoption of a recommendation for the PACE, pointing out the best candidate. In the event of an unfavourable assessment of the candidates, the Committee on the Election of Judges recommends that the state concerned submit a new list of candidates. This was the case in April 2021 with regard to the list submitted by Poland. The PACE rejected the Polish list because the national procedure for their selection 'did not comply with the standards required by the Assembly and the Committee of Ministers'.⁷ The negative assessment of the Committee on the Election of Judges is not unique. S. Schmahl writes that out of the twelve lists of candidates submitted by member states and examined by the Advisory Panel from January 2016 to mid-2017, only two of them received a positive verification and the 'green light' to continue the judge election procedure.⁸

In the final stage of the procedure for electing a judge, the PACE holds a vote that takes place during the plenary session in Strasbourg. Voting occurs in accordance with the recommendations of the Committee on the Election of Judges of the ECtHR. The first round of voting requires an absolute majority of votes. In

⁶ Guidelines of the Committee of Ministers on the selection of candidates for the post of judge at the ECtHR, CM(2012)40, adopted by the Committee of Ministers on 28 March 2012. Downloaded from: <https://rm.coe.int/16805cb1ac>.

⁷ K. Drzewicki, *Obraza polskich kandydatów na sędziów ETPCz*, 'Rzeczpospolita', 18 May 2021, <https://www.rp.pl/opinie-prawne/art8586221-krzysztof-drzewicki-obraza-polskich-kandydatow-na-sedziow-etpcz> [accessed: 15.08.2025].

⁸ S. Schmahl, *The European Court of Human Rights – Can There be Too Much Success? A Comment*, 'Journal of Human Rights Practice' 2022, vol. 14, issue 1, p. 197. <https://doi.org/10.1093/jhuman/huac024>

a situation where no candidates achieve the required majority, the second round elects the candidate with the highest number of votes. Importantly, the internal procedure for the election of judges functioned practically unchanged from 1958 through 2009. The modification and improvement of the procedure was the result of the adoption by the Parliamentary Assembly of Resolution 1646 (2009) on the nomination of candidates and election of judges to the ECtHR,⁹ which sets out the standards for the selection of judges. According to the Resolution, these are: announcing a public and open call for candidatures as well as submitting the names of candidates in alphabetical order with information on the method of nomination and attached resumes of candidates according to the model *curriculum vitae* attached to the Resolution. Despite the fact that the procedure for electing judges is not complex, it requires the cooperation of many entities.

The procedure for appointing CJEU judges differs significantly from that used in the ECtHR. Each EU Member State may nominate one candidate for the position of judge or advocate general, whereas in the ECtHR, each state submits a list of three candidates. Candidates for the CJEU must have qualifications equivalent to those required for judges of the highest national courts and tribunals and have recognised legal expertise, with particular regard to international law and EU law, in addition to displaying unquestionable independence.

Meeting the formal requirements by the candidate initiates a stage during which the panel gives an opinion on the candidate. The panel consists of seven members made up of former judges of the CJEU, members of national supreme courts, and one member proposed by the European Parliament. Although the opinion issued by the panel is non-binding, it is of considerable political and practical importance. A positive opinion enables the appointment of the candidate to the position of CJEU judge by common accord of the governments of the member states, in accordance with Article 253 of the Treaty on the Functioning of the European Union.

The panel for giving opinions on candidates performs only a consultative function. Despite their seemingly important role in the nomination process, member states usually propose only one candidate, which shifts the process of actual selection to the national level. The panel has no decision-making powers and no possibility of real influence on the staffing of the Court.

The panel responsible for issuing opinions on candidates for appointment as judges of the CJEU has a significantly narrower scope of competence and a weaker institutional position than the analogous Committee on the Election of Judges to

⁹ Resolution 1646 (2009) Parliamentary Assembly, Nomination of candidates and election of judges to the ECtHR, adopted by the Assembly on 27 January 2009. Downloaded from: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?file-id=17704&lang=en>.

the ECtHR. Nevertheless, the establishment of the so-called 255 Committee was an important step towards increasing transparency and institutional control of the European Union over the nomination process. To some extent, it also contributed to restricting political influence in the procedure for appointing CJEU judges.¹⁰

The judge selection procedure is important for several reasons. First of all, a properly selected composition of judges allows for the attainment of the court's founding objectives. The selection of well-qualified judges has an impact on the perception of the court by the member states and their citizens; therefore, impacting its legitimisation. Finally, the appropriate selection of judges makes it possible to create the legal reality in the particular international organisation and its member states. An example is the CJEU, which has played a crucial role in the process of European integration since its inception. The performance of this function required that it be composed of judges characterised by a pro-European attitude. The election of Eurosceptics would undoubtedly change the line of jurisprudence and thus slow down the integration process or even hinder it.¹¹ The situation is similar with the ECtHR. The legitimisation of this court means that the protection of human rights in Europe is genuine rather than illusory.

Another important element of the status of judges is the term of office. Currently, the term of office of judges in Strasbourg is nine years, with no possibility of re-election, while the term of office of the judges in Luxembourg is six years and subject to renewal. The length of the term of office has a major impact on the independence of judges in the exercise of their mandate. For EPTC judges, proposals envisaged extending the term of office to 12 years while eliminating the possibility of re-election, as is currently the case.¹² When comparing the regulations concerning the term of office of judges, it seems that the solutions adopted in the ECtHR provide greater independence from the authorities of the states they represent. Ø. Stiansen writes that a judge who has only one but longer term is less dependent on national authorities. Such a situation makes it possible to perform the judicial function more independently and impartially.¹³ The simultaneous extension of the term

¹⁰ P. Dermine, *What the European Court of Justice is for: Making Sense of the ECJ's Procedural and Organisational Law*, 'European Constitutional Law Review' 2023, vol. 19, issue 4, p. 773. DOI: /10.1017/S1574019623000305.

¹¹ R. D. Kelemen, *The Political Foundations of Judicial Independence in the European Union*, (in:) *The Power of the European Court of Justice*, Routledge, 2014, pp. 43–58.

¹² H. Keller, *How to Improve Independence and Impartiality of Judges of the European Court of Human Rights*, 'European Convention on Human Rights Law Review' 2023, vol. 4, no. 3, p. 265.

¹³ Ø. Stiansen, *(Non)Renewable Terms and Judicial Independence in the European Court of Human Rights*, 'The Journal of Politics' 2022, vol. 84, issue 2, pp. 992–1006. DOI: 10.1086/715253.

of office from six to nine years leads to a situation where the judge has a longer career perspective, with the office often being the crowning achievement of their professional career. In the case of the CJEU, the prospect of a second term may make judges more susceptible to external influences, which may affect their function and ultimately the rulings they issue.

A judge leaves office when their appointed term expires. The regulations that govern the functioning of the CJEU and the ECtHR provide for the possibility of shortening the term of office in the event of a judge's death, resignation, or dismissal.

The dismissal of a judge of the ECtHR and a judge of the CJEU before the end of their terms of office is possible only in exceptional circumstances. The European Convention on Human Rights stipulates that a dismissal is possible if a judge no longer meets the relevant requirements. The dismissal of an ECtHR judge requires a two-thirds majority of the remaining judges. The requirements for the judges, which are set out in Article 21 ECHR, include the highest moral character, qualifications to hold the highest judicial office, and not engaging in activities that are incompatible with impartiality and judicial independence. In practice, events such as the loss of ability to perform the relevant functions (for instance, through illness), detention by national authorities, permanent absence, or change of citizenship may justify the dismissal of an ECtHR judge.

The removal of a CJEU judge before the end of their mandate may occur in several circumstances, namely if national authorities detain the judge or if a court convicts the judge of a serious crime. Another cause for dismissal is the loss of the judge's ability (physical or mental) to perform their professional duties (including through illness) or a serious breach of ethics or misconduct (such as corruption, nepotism, or cronyism). A CJEU judge may also lose office if they lose their citizenship or acquire the nationality of a non-EU country.¹⁴

The procedure for dismissing a CJEU judge is set out in detail in the EU Treaties and the Statute of the Court of Justice. The Council of the European Union may initiate the procedure at the request of the Commission or other relevant EU bodies.

Neither international agreements relating to the ECtHR nor the CJEU provide for the possibility of dismissing a judge by the country of their origin. Thus, the member states of the CoE and the EU are unable to dismiss a judge, even one acting to their detriment. The adopted solution allows the judge to maintain an appropriate level of independence and impartiality in the performance of their function.

¹⁴ D. V. Kochenov, G. Butler, *Independence of the Court of Justice of the European Union: Unchecked Member States Power After the Sharpston Affair*, 'European Law Journal 2021', vol. 27, issue 1–3, pp. 262–296.

A common element for judges of the ECtHR and the CJEU is immunity. The judges of both courts possess jurisdictional immunity. After leaving office, the judges continue to enjoy the benefits of this immunity. In the case of ECtHR judges, protection relates to oral and written statements and any actions they might take in the course of their duties.¹⁵ The immunity of CJEU judges covers actions they might take in the course of their official duties, including words, both spoken and written.¹⁶ The scope of immunity for judges in both courts is identical.

An essential element of the status of both ECtHR and CJEU judges is their judicial competence. ECtHR judges deal with cases of human rights violations. As part of their judicial competence, they examine individual and inter-state complaints concerning alleged violations of the rights and freedoms laid down in the ECHR and additional protocols. The judges in Strasbourg issue preliminary rulings on questions referred to them by the supreme courts and tribunals of member states of the CoE. CJEU judges deal with cases concerning the review of the compatibility of national law with EU law and the resolution of disputes between Member States and EU institutions. The judges in Luxembourg also issue preliminary rulings relating to questions referred to them by member states.

Despite significant differences in the scope of jurisdiction of the two courts, the rulings issued both in Strasbourg and Luxembourg have a significant impact on the legal order of the member states of the EU and CoE. The rulings issued by these two European courts of justice have fiscal and economic consequences for member states and very often result in changes to national legislation.

3. Questioning the Status of Judges and Independence of the ECtHR and CJEU

Questioning the independence of judges is a key threat to the functioning of the ECtHR and the CJEU. An international court cannot be effective without legitimisation. Throughout their history, both courts have repeatedly experienced criticism about alleged lack of independence and legitimacy. These accusations originated from countries where the rule of law, democracy, or human rights protection faced significant challenges. An example of criticism of the ECtHR was the reaction of the Russian and Turkish authorities to judgements the Court issued against these countries concerning violations of human rights. Also,

¹⁵ Sixth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe, European Treaty Series no. 162.

¹⁶ Protocol No. 3 on the statute of the Court of Justice of the European Union, Official Journal L115, 9 May 2008, pp. 210–229.

EU member states, such as Hungary and previously the United Kingdom, regularly criticised the CJEU's activities.

K. Dzehtsiarou and D. K. Coffey state that the independence of the judiciary refers both to the independence of the individual and of the institution empowered to take decisions (adjudicate). The independence of the judiciary is both a mindset and a set of institutional solutions. The first aspect concerns the effective independence of the judge. The second is about defining the relationship between the judiciary and other authorities so as to ensure both actual and apparent independence. These two elements of judicial independence are closely linked: even if a judge acts with personal independence, the judge cannot be considered independent if the court in which they adjudicate lacks independence from other authorities.¹⁷

The independence of judges is all the more important because it affects the independence of courts, strengthening their legitimacy for shaping the legal reality of the Member States of the EU and the CoE. A problem common to both courts includes issues related to the nomination of candidates for ECtHR and CJEU judges and the procedure for their selection. Member States and national courts have often criticized the lack of transparency during candidate selection. An example is the case of Judge Valančius,¹⁸ where an Estonian court has referred a question for a preliminary ruling during the first stage of the procedure for the selection of CJEU judges. Although the Estonian Judge Valančius was first on the list of candidates in the national proceedings, the Estonian Government chose another candidate located lower on the list.¹⁹ The case of a Portuguese Constitutional Court judge also reverberated widely across Europe. The 255 Committee issued a negative opinion on the candidacy of Judge de Almeida Ribeiro. This provoked widespread protest from the communities of judges and academia. At the same time, there was a call to ignore the opinions of the 255 Committee.²⁰

The procedure for selecting judges at the ECtHR has also garnered extensive criticism. Scholars point to a high risk of politicising the entire process. The governments of CoE member states nominate the candidates, while the final choice

¹⁷ K. Dzehtsiarou, D. K. Coffey, *Legitimacy and Independence of International Tribunals: An Analysis of the European Court of Human Rights*, 'Hastings International and Comparative Law Review' 2014, vol. 37, pp. 27–322.

¹⁸ Case C-119/23 Valančius ECLI:EU:C:2024:653.

¹⁹ M. E. Bartoloni, *The 255 Committee and the Procedure for Appointing EU Judges. The (Perhaps Unintended) Implications of the Valancius Judgment*, 'European Papers' 2024, vol. 9, issue 3, pp. 846–850.

²⁰ M. Bobek, *The Past and the Future of the 255 Panel*, 'EU Law Live Weekend Edition' 2025, issue 236, pp. 2–3. <https://doi.org/10.2139/ssrn.5364525>.

belongs to PACE. Critics argue that such a mechanism favours selection based not exclusively on legal expertise but also on political considerations, including the national interests of individual countries. An additional alleged flaw is the lack of uniform and precise evaluation criteria, which leads to significant differences in the level of substantive professional preparation of judges from different legal systems.²¹ The limited transparency of the electoral process raises questions about the legitimacy and authority of the Court. For this reason, part of the academic community and prominent moral authorities call for a reform of the procedure that would guarantee greater transparency and the real primacy of legal expertise over political factors.²²

4. Recent CoE and EU Standards Concerning the Status and Independence of ECtHR and CJEU Judges

In recent years, the CoE and the EU have taken several measures aimed at strengthening the status of both ECtHR and CJEU judges. Institutional changes point to a growing emphasis on judicial appointment procedures as a key element of judicial independence. European standards reflect the premise that breaches of judicial independence often go as far back as the candidate selection and appointment stages.

The CoE, in cooperation with the ECtHR, introduced measures to improve the quality, transparency, and legitimacy of national nomination procedures. The Committee of Ministers' guidelines on the selection of candidates for the position of ECtHR judge, adopted in 2012, represent an important step in this process.²³ These guidelines set out rules concerning public calls for applications, objective assessment criteria, the transparency of national procedures, and the requirement for candidates to possess the qualifications necessary to hold high judicial office. The guidelines aimed to allay concerns that national nomination procedures in some CoE member states were insufficiently transparent and subject to political influence.

The reform process did not end with the adoption of the guidelines in 2012. The work carried out within the Steering Committee on Human Rights (CDDH) and the Committee of Experts on the European Convention on Human Rights System

²¹ T. Widlak, *Rule of Law and the Criteria for Appointment of Judges: A Case for Judicial Virtues*, 'Hague Journal on the Rule of Law' 2025, vol. 17, issue 1, pp. 199–220.

²² Keller H., Sweet A. S., *A Europe of Rights: The Impact of the ECHR on National Legal Systems*, Oxford University Press, Oxford 2008, pp. 707–709.

²³ CM(2012)40 - final – Guidelines of the Committee of Ministers on the selection of candidates for the post of judge at the ECtHR (Adopted by the Committee of Ministers on 28 March 2012 at the 1138th meeting of the Ministers' Deputies).

(DH-SYSC) increasingly focuses on the institutional status of ECtHR judges and on the threats that may affect their independence. Particular attention has been paid to issues concerning the conditions of service, disciplinary liability, and protection against political pressure exerted by the authorities of Member States. These discussions reflect the view that judicial independence should serve as a comprehensive institutional framework extending beyond the formal guarantees contained in the ECHR itself.²⁴

Recent analyses by the CoE demonstrate that the legitimacy of the Strasbourg Court largely depends on public confidence in the integrity of its judges and the transparency of the appointment process. Consequently, contemporary standards increasingly encourage Member States to introduce open and transparent selection procedures, whilst ensuring the involvement of independent experts. These changes reflect a gradual shift away from the previous, state-centred model of judicial appointments. The current model seeks to strike a balance between national discretion and supranational oversight and common European standards.²⁵

Similar changes have affected the EU legal system. Although the founding treaties contain limited provisions regarding the procedure for appointing judges to the CJEU, the establishment of the committee, provided for in Article 255 of the Treaty on the Functioning of the European Union, has significantly altered the appointment process. Since it began its work in 2010, the Commission has played a key role in assessing the qualifications of candidates proposed by Member States for the posts of judges and Advocates-General. Although the Commission's opinions are formally advisory in nature, they exert a significant influence on the practice of appointing judges and Advocates-General. The Commission's opinions have contributed to the development of common standards regarding professional competence, judicial experience, and independence.

Academic commentators widely regard the panel established under Article 255 as one of the most significant institutional innovations affecting the appointment of judges in the EU. According to Dumbrovski, Petkova, and van der Sluis, this panel has effectively strengthened the selection process based on skills and professional experience, whilst reducing the likelihood of purely political appointments by

²⁴ Report of the Steering Committee for Human Rights (CDDH) as adopted at its 99th meeting (28 November–1 December 2023), Issues relating to judges of the ECtHR, 1 December 2023, [25.06.2026].

²⁵ A. Drzemczewski, *The Election of Judges onto the European Court of Human Rights* (in:) S. Vasiliev, and Niels Blokker (eds.), *Governance of International Courts and Tribunals: Institutions, Practices, and Norms, International Courts and Tribunals*, Oxford University Press, Oxford 2026, pp. 285–301.

subjecting national nominations to independent scrutiny.²⁶ The existence of supranational scrutiny has encouraged Member States to amend their national nomination procedures to ensure that candidates meet the standards applied by the panel. Consequently, the mechanism provided for in Article 255 has had regulatory effects extending beyond the EU level and has indirectly contributed to raising standards of transparency and professionalism in national systems.

Recent debates on the rule of law in the European Union have further highlighted the importance of judicial independence as a constitutional value underpinning the EU's legal order. The Court of Justice has repeatedly emphasised that judicial independence is an essential element of effective judicial protection under Article 19 TEU and Article 47 of the Charter of Fundamental Rights of the European Union. Although these judgments primarily concern national courts, they have also contributed to a broader understanding of the institutional conditions necessary to guarantee the independence and legitimacy of supranational case law.²⁷

A comparison of current standards developed within the CoE and the EU reveals both similarities and differences. Both systems pay increasing attention to ensuring transparent, merit-based, and rigorous appointment procedures. Both organisations have recognised that the independence of the judiciary requires greater safeguards than solely the guarantees applied after appointment. The independence of judges is a must from the very earliest stages of candidate selection. At the same time, the mechanisms in place differ significantly. The Strasbourg system continues to be based on a multi-stage process involving national authorities, the Consultative Council of Experts, and the PACE, whilst the Luxembourg system displays a more centralised oversight exercised by the Article 255 Committee.

Recent developments point to the emergence of a broader European trend towards proceduralising judicial independence. Contemporary standards increasingly focus on the quality of appointment procedures, transparency requirements, and external oversight mechanisms as instruments for safeguarding the legitimacy of international and supranational courts. Consequently, scholars and institutional actors no longer view the status and independence of judges at the ECtHR and the CJEU solely through the prism of traditional judicial guarantees. Instead, they increasingly assess them in the light of the effectiveness and credibility of the procedures governing judicial selection and appointment.

²⁶ T. Dumbrovský, B. Petkova, M. van der Sluis, *Judicial Appointments: The Article 255 TFEU Advisory Panel and Selection Procedures in the Member States*, 'Common Market Law Review' 2014, vol. 51, issue 2, pp. 455–482.

²⁷ See: Case C-64/16, *Associação Sindical dos Juizes Portugueses v. Tribunal de Contas* (EU:C:2018:117); Case C-619/18, *Commission v. Poland (Independence of the Supreme Court)* (EU:C:2019:531).

Conclusions

The status of judges is an important element in assessing the independence of international courts. The ECtHR and the CJEU operate in different institutional contexts, which affects the nature of guarantees of independence and their political and legal authority.

In the case of the ECtHR, the PACE elects judges from among candidates that member states nominate. The non-renewable term of office is nine years. This construct aims to reduce potential pressures from states on adjudication by the judge, as the judge does not need to seek re-election. However, the ECtHR simultaneously struggles with the perception problem – despite formal guarantees of independence, the candidate nomination process strongly binds judges and their respective national states, raising questions about their actual autonomy when confronted with the interests of the Convention states-parties.²⁸

In turn, in the CJEU, judges receive their appointments ‘by common accord of the governments of the member states’ for a renewable six-year term. On the one hand, this gives the member states a significant influence on the composition of the Court, yet on the other, the possibility of re-election provides room for political pressure. Nevertheless, the CJEU has developed a strong institutional position within the EU legal system, and the status of its judges supports this role through guarantees of independence, immunity, and high qualification requirements. In addition, the fact that the judges elect the President of the Court from among themselves and act within the framework of well-defined and complex judicial procedures (chambers, Grand Chamber, full court) reinforces the perception of collegiality and autonomy of the Court.²⁹

Comparing both these institutions, we can observe that the status of ECtHR judges more effectively safeguards their individual formal independence (no re-election), whereas the status of CJEU judges, despite the risk of politicisation associated with re-election, strengthens the institutional position of the court as a whole within the EU legal order. In both cases, the status of judges constitutes the foundation of the authority of their judicial decisions, but the mechanisms for its protection take different forms, rooted in the distinct natures of the CoE and EU systems.

The author argues that modifying the procedures for selecting judges to the ECtHR and the CJEU would strengthen both the independence of judges and the legitimacy of European courts. More specifically, the author proposes that the

²⁸ S. Greer, *The European Convention on Human Rights: Achievements, Problems and Prospects*, Cambridge University Press, Cambridge 2006, pp. 178–183.

²⁹ K. J. Alter, *The European Court's Political Power: Selected Essays*, Oxford University Press, Oxford 2010, pp. 45–67.

highest courts and tribunals of the member states should select candidates for appointment to these two courts. This selection should take place without the participation of the political factor. At the same time, the author proposes to extend and equalise the terms of office of ECtHR and CJEU judges to 10 to 12 years without the possibility of re-election. This solution would weaken the position of the political factor (national authorities) in the nomination process and their potential influence on the judges' rulings. Extending the term of office without the possibility of re-election would result in greater independence of judges from the national authorities of their country of origin. Moreover, a longer term of office would ensure a higher level of expertise and greater experience in adjudication.

Implications of ECtHR and CJEU Judge Appointment Procedures for Judicial Status and Independence

Abstract

This article examines the status of judges of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU), which the judicial appointment procedures largely determine. The article focuses on selected elements that make up the status of a judge, primarily the procedure for appointing and removing judges and their term of office. Judges' independence is of particular importance, as it underpins the independence of courts and thereby reinforces their legitimacy in shaping the legal order of the Member States of the Council of Europe and the European Union. Scholars and commentators have raised several concerns regarding the procedure for appointing ECtHR and CJEU judges, including the politicisation of the selection process, lack of transparency, and the absence of uniform and clearly defined evaluation criteria. The status of judges serves as the foundation of judicial decisions' authority, while the mechanisms designed to protect it take different forms, reflecting the distinct nature of the Council of Europe and European Union systems.

Keywords: international courts, judge, status of a judge, European Union, Council of Europe

Wpływ procedur powoływania sędziów ETPC i TSUE na ich status i niezależność

Streszczenie

Tematem niniejszego artykułu jest status sędziów Europejskiego Trybunału Praw Człowieka (ETPC) oraz Trybunału Sprawiedliwości Unii Europejskiej (TSUE), który wynika z procedury mianowania sędziów. Niniejszy artykuł skupia się na wybranych elementach składających się na status sędziego, przede wszystkim na procedurze mianowania i odwoływania

sędziów oraz na długości ich kadencji. Niezależność sędziów ma szczególne znaczenie, ponieważ stanowi podstawę niezależności sądów, a tym samym wzmacnia ich legitymację w kształtowaniu porządku prawnego państw członkowskich Rady Europy i Unii Europejskiej. Pojawiło się kilka zastrzeżeń dotyczących procedury mianowania sędziów ETPC i TSUE, w tym upolitycznienie procesu selekcji, brak przejrzystości oraz brak jednolitych i jasno określonych kryteriów oceny. Status sędziów stanowi fundament autorytetu ich orzeczeń, jednak mechanizmy jego ochrony przybierają odmienne formy, wynikające z odmiennych charakterów systemów Rady Europy i Unii Europejskiej.

Słowa kluczowe: sądy międzynarodowe, sędzia, status sędziego, Unia Europejska, Rada Europy

