

To: The Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights

From: Human rights and gender equality organizations, activists, legal professionals and academics from Romania

Subject: The failure of the Romanian Government to comply with the requirement of gender balance regarding the list of candidates for the position of judge at the ECtHR

Date: 10 March 2022

Distinguished Members of the Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights,

On 2 March 2022, the Government of Romania approved for submission to the Council of Europe a list with three male candidates to be considered for the election of Romania's next judge at the European Court of Human Rights ("ECtHR" or "the Court").¹ This contravenes the requirement imposed by both the Committee of Ministers and the Parliamentary Assembly of the Council of Europe ("PACE" or "the Parliamentary Assembly") that the lists of candidates must include at least one candidate of each sex.² We, a group of Romanian human rights and gender equality organizations, activists, legal professionals and academics, write to respectfully request the Panel to invite the Romanian Government to revise this list and submit to the Parliamentary Assembly a list of candidates that respects the principle of gender balance. We also urge the Panel to raise this issue with the PACE Committee on election of judges to the ECtHR.

¹ Informație de presă privind actele normative aprobate în ședința Guvernului României din 2 martie 2022 (Press Release Regarding the Normative Acts Approved in the Meeting of the Romanian Government on 2 March 2022), <https://gov.ro/ro/guvernul/sedinte-guvern/informatie-de-presa-privind-actele-normative-aprobate-in-edinta-guvernului-romaniei-din-2-martie-2022?fbclid=IwAR1-ZacpbIMO1katdLWXdMeMj4zt9NN7S1aFqFFKV9s7BTkmLatrHpT7UIA>, Chapter IV – Memoranda, para. 1.

² PACE Resolution 1366 (2004) as modified by Resolutions 1426 (2005), 1627 (2008), 1841 (2011), 2002 (2014) and 2278 (2019), http://assembly.coe.int/nw/xml/RoP/RoP-XML2HTML-EN.asp?id=EN_CEGCAIFG#Format-It; Guidelines of the Committee of Ministers on the Selection of Candidates for the Post of Judge at the European Court of Human Rights Adopted by the Committee of Ministers on 28 March 2012, CM(2012)40-final, <https://rm.coe.int/16805cb1ac>, as amended on 26 November 2014 by CM/Del/Dec(2014)1213/1.5-app5.

As the European Court of Human Rights has stated on numerous occasions, “the advancement of the equality of the sexes is today a major goal in the member States of the Council of Europe”³ and the equal representation of men and women in the judiciary – including on the bench of the ECtHR – is considered an important facet of gender equality.⁴ Both the Committee of Ministers and PACE explicitly request States to submit gender diverse lists of candidates to be considered for the post of judge at the ECtHR.⁵ The Advisory Panel of Experts on Candidates for Election as Judge to the ECtHR itself also takes into account the need for gender balance in its assessment.⁶ According to the last three reports of the Panel, covering the period of 2014-2019, all High Contracting Parties that submitted lists of candidates in this period have put forward at least one female candidate.⁷ We note with regret Romania’s departure from this trend. Allowing Romania’s list to be further submitted in this format to PACE would set a risky precedent and contravene the Council of Europe’s efforts to promote gender equality.

While PACE may decide to consider a single-sex list when candidates do not belong to the underrepresented sex, this can be done only in exceptional circumstances.⁸ Romania does not fall under the situations that may exceptionally justify the submission of a list not observing the principle of gender balance. According to PACE Resolution 1366 (2004), a single-sex list of candidates can only be accepted when “the candidates belong to the sex which is under-represented in the Court (i.e. the sex to which under 40% of the total number of judges belong⁹), or in exceptional circumstances where a contracting party has taken all the necessary and appropriate steps to ensure that the list contains candidates of both sexes meeting the requirements of paragraph 1 of Article 21 of the European Convention on Human Rights”.¹⁰

³ *Abdulaziz, Cabales and Balkandali v UK* (1985), para. 78.

⁴ See e.g. Committee of Ministers, Recommendation CM/Rec(2010)12 on Judges: Independence, Efficiency and Responsibilities, 17 November 2010, <https://rm.coe.int/cmrec-2010-12-on-independence-efficiency-responsibilites-of-judges/16809f007d>, point 4.

⁵ See *supra* 2.

⁶ A Short Guide on the Advisory Panel’s Role and the Minimum Qualifications Required of a Candidate: <https://rm.coe.int/short-guide-panel-pdf-a5-2757-1197-8497-v-1/1680a0ae31>, p. 11.

⁷ There has been only one expectation, when one State submitted a list containing only female candidates who, at that time, like today, were under-represented on the bench of the ECtHR. See: Fourth activity report of the Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights (2017-2019): <https://rm.coe.int/4th-activity-report-en/168097a742>, para. 54; Third activity report of the Advisory Panel of Experts (2016-2017): <https://rm.coe.int/3rd-activity-report-/1680765d5a>, para. 46; Second activity report of the Advisory Panel of Experts (2014-2015), <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168066db65>, para. 47.

⁸ PACE Procedure for the election of judges to the European Court of Human Rights, 2022: <https://assembly.coe.int/LifeRay/CDH/Pdf/ProcedureElectionJudges-EN.pdf>, para. 10, 19.

⁹ The relevant time is the date of the Secretary General’s letter inviting the Government to present a list and informing them of the gender balance among judges at this time. PACE Procedure for the Election of Judges to the European Court of Human Rights, 2022: <https://assembly.coe.int/LifeRay/CDH/Pdf/ProcedureElectionJudges-EN.pdf>, para. 10.

¹⁰ PACE Resolution 1366 (2004) (as subsequently modified), <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17194&lang=en>, point 4.

Since 2011, women have been constantly under-represented on the bench of the ECtHR and have never made up more than 40% of the total number of judges.¹¹ Currently, out of the 47 judges of the ECtHR, only 15 are women (representing 31.9% of the total). In this context, all High Contracting Parties – including Romania – must include at least one woman on their lists with candidates for the position of ECtHR judge, unless exceptional circumstances hinder them from doing so. In the case of Romania, no such exceptional circumstances can be invoked. Romania is one of the countries with the highest number of female judges in Europe, as women make up the majority of judges, including on the bench of the High Court of Cassation and Justice and as presidents of courts.¹² Furthermore, women are also very well represented in other legal professions and among law professors. In fact, the Romanian Government has already identified two qualified women for the position of judge at the ECtHR, as a result of the assessment made by the national commission that evaluated the applications for this position. Surprisingly, however, both women were placed on the reserve list.

Against this background, we urge you to recommend, in the strongest terms possible, that the Romanian Government ensures that the list of candidates for the post of ECtHR judge respects the principle of gender balance, and to signal Romania’s deviation from this principle to the Committee on election of judges to the ECtHR. This would be not only in line with the requirements set by the Committee of Ministers and PACE, as well as the consistent practice of other High Contracting Parties, but would also reaffirm the Council of Europe’s commitment to “the advancement of the equality of the sexes”.

Signatories:

Organisations

Asociația pentru Libertate și Egalitate de Gen - A.L.E.G

Asociația Active Watch

Asociația ANAIS

Asociația Declic

Asociația Front / Feminism-Romania

Asociația Novapolis - Centrul de Analize și Inițiative pentru Dezvoltare

Asociația MozaiQ LGBT

Asociația Transcena

¹¹ Helen Keller, Corina Heri, and Myriam Christ, “Fifty Years of Women at the European Court of Human Rights: Successes and Failures of the Council of Europe’s Gender Agenda,” in *Identity and Diversity on the International Bench – Who Is the Judge?*, ed. Freya Baetens (Oxford University Press, 2020), p. 184.

¹² For example, in Romania women make up more than 60% of judges at all court levels. See Council of Europe’s European Commission for the Efficiency of Justice (CEPEJ)’s database on gender equality in courts:

https://public.tableau.com/app/profile/cepej/viz/CEPEJ-Genderequalityv2020_1_0EN/GenderEquality; Yvonne Galligan et al., “Mapping the Representation of Women and Men in Legal Professions Across the EU” (Policy Department for Citizens’ Rights and Constitutional Affairs, EU, 2017),

[https://www.europarl.europa.eu/RegData/etudes/STUD/2017/596804/IPOL_STU\(2017\)596804_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/596804/IPOL_STU(2017)596804_EN.pdf), pp. 102–114.

Centrul FILIA

CeRe: Centrul de Resurse pentru Participare Publică

Centrul pentru Inovare Publică

Consiliul Tineretului din România

Euroregional Center for Public Initiatives

Fundația Centrul de Mediere și Securitate Comunitară

Fundația Centrul Parteneriat pentru Egalitate

RENASIS (Rețeaua Națională Antisărăcie-Includere Socială)

Romanian Women's Lobby

Sexul vs Barza

Societatea de Educație Contraceptivă și Sexuală

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Laura Albu, Executive president Community Safety and Mediation Center, president Romanian Women's Lobby

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Dr. Oana Băluță, Associate Professor, Faculty of Journalism and Communication Sciences, University of Bucharest

Dr. Maria Bucur, John V. Hill Professor of History and Gender Studies, Indiana University, Bloomington, USA

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