

# TAKING CASES TO THE EUROPEAN COURT OF HUMAN RIGHTS

A MANUAL  
SECOND EDITION



**Kerim Yildiz and Catriona Vine**







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KERIM YILDIZ AND CATRIONA VINE  
Second Edition  
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## FOREWORD

Since beginning its litigation programme in 1992, the Kurdish Human Rights Project (KHRP) has provided legal advice and representation to hundreds of victims of human rights abuse and engaged in effective strategic litigation action using human rights mechanisms at both the regional and international level. Its legal work takes place within the context of a wider advocacy strategy in connection with local partners based in the Kurdish regions, incorporating capacity building, networking and outreach, and fact-finding and trial observation missions.

In addition to shining a light on human rights abuses taking place within the Kurdish regions, KHRP's work is a clear example of the fact that developing a sustainable human rights framework in one region will have a wider impact on the enjoyment of human rights elsewhere. By sharing knowledge about European Court of Human Rights law, practice and procedure, KHRP assists human rights defenders across Europe adopt effective approaches in addressing both specific violations of human rights, as well as widespread patterns of abuse caused by systemic issues.

In this context, it is with pleasure that I introduce the second edition of the English language version of KHRP's manual 'Taking cases to the European Court of Human Rights', which provides a comprehensive guide to taking human rights complaints to Strasbourg, and includes commentaries on the practice and procedure of the Court and key texts such as the European Convention on Human Rights, the Court's application form and a table of legal aid rates. Further, and of particular importance to lawyers and advocates who want to keep up-to-date with the 'living instrument' aspect of the Convention, the manual sets out the development of the Court since its inception and the changes that have been made in order to enhance the Court's efficiency. In this regard, it covers the introduction of pilot-judgment procedures and the new admissibility criteria, as well as explaining further potential changes initiated by the Interlaken Conference in February 2010

*Arild Humlen*

*Head of the Justice and Rule of the Law Committee of the Norwegian Bar Association*

*July 2011*



## **ABBREVIATIONS**

|       |   |
|-------|---|
| CoE   | Council of Europe   |
| CoM   | Committee of Ministers                                    |
| ECHR  | European Convention on Human Rights                       |
| ECJ   | European Court of Justice                                 |
| ECtHR | European Court of Human Rights                            |
| EU    | European Union  |
| EUR   | Euro(s)   |
| FRY   | Federal Republic of Yugoslavia                            |
| ICTY  | International Criminal Tribunal for the former Yugoslavia |
| NATO  | North Atlantic Treaty Organization                        |



## INTRODUCTION

On 4 November 2010, the European Convention on Human Rights (ECHR or the Convention) had its sixtieth anniversary. It was the first convention adopted by the Council of Europe (CoE) in 1950 and is integrally linked with the founding principles of the organisation. These principles, which are implicitly stated in the Council of Europe Statute, are the promotion of pluralist democracy, respect for the rule of law and the protection of human rights and fundamental freedoms.

The CoE and the Convention emerged as part of the response to the death and suffering and the widespread destruction of the Second World War. 'Europe's leaders' were determined that such events should 'never happen again' and so ten European countries met in London on 5 May 1949 to bring into being the CoE. With events such as the fall of the Berlin Wall in 1989, the CoE expanded across Europe and now has 47 member states (Member States).

The Member States are all signatories to the Convention, as one of the conditions for entry into the CoE is to sign and ratify the ECHR and its protocols within a certain timeframe.

It is central to the effectiveness of the Convention that a person can raise a Convention issue before the local courts and have it adjudicated upon locally. This is in keeping with the philosophy of the Convention as a system for the protection of human rights subsidiary to national law. Accordingly, the majority of the Member States have incorporated the Convention into their domestic legal system, thus enabling the domestic courts to invoke the ECHR principles and its case law. For instance, in the UK, the ECHR was incorporated into domestic law through the Human Rights Act 1998, which came into force in October 2000.

Once domestic legal remedies in respect of a human rights complaint have been exhausted, an individual may submit an application to the European Court of Human Rights (ECtHR or the Court) claiming a breach of the Convention by a Member State. However, it should be stressed that the Strasbourg organs are not a 'fourth instance' or appeal court which review cases at a domestic level. Instead, the protection of human rights should be ensured at national level with the Court as the 'fall back' option.

It is important to note that the Convention is concerned primarily with civil and political rights and that there are a wide range of other human rights not covered.

For example, a number of social and economic rights are protected under the Social Charter<sup>1</sup> (another Council of Europe convention). Where the ECtHR receives applications concerning alleged injustices involving matters outside the scope of the ECHR, such applications will be deemed inadmissible even where the allegations raise serious human rights issues.

The ECHR differs from other international treaties in a fundamental way. For example, the concept of nationality is considered irrelevant since ‘everyone within the contracting party’s jurisdiction’ is covered by the Convention (Article 1). This means that the ECHR offers protection not only to citizens but also to anyone experiencing a violation of the Convention within the jurisdiction of a Contracting State, whether she or he is an immigrant, refugee or tourist. To date, complaints have been received from nationals of more than 80 countries.

Further, the ECtHR has in certain circumstances accepted that a Contracting Party has exercised extra-territorial jurisdiction. For example, in the case of *Loizidou v. Turkey*,<sup>2</sup> the Respondent State claimed not to have jurisdiction over the activities of the Turkish military forces occupying Northern Cyprus, which had prevented the applicant from gaining access to her property. The ECtHR confirmed that Article 1 of the Convention is grounded on the idea of State jurisdiction over the individual through State organs or authorities. It also held that the ‘responsibility of a contracting party may also arise when as a consequence of military action.... it exercises effective control of an area outside its national territory’.

The Court took a different view in the case of *Banković and Others v. Belgium and 16 Other Contracting States*.<sup>3</sup> The case concerned the death of the applicants’ relatives during the NATO bombings in the territory of the former Federal Republic of Yugoslavia (FRY). The Court rejected the applicants’ arguments that there was a jurisdictional link between the persons who were victims of the bombings and the Respondent States. It stated that the FRY did not fall within the legal space of the ECHR Member States and noted that ‘the Convention was not designed to be applied throughout the world, even in respect of the conduct of Contracting States’.<sup>4</sup> The Court decided to rely on the desirability of avoiding a gap in human rights protection in favour of establishing jurisdiction only when the territory in question was one that, but for the specific circumstances, would normally be covered by the Convention.

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1 The European Social Charter 1996, Strasbourg, 3.V.1996.

2 *Loizidou v. Turkey* ECtHR (Application No. 15318/89) Judgment of 18 December 1996.

3 *Banković and Others v. Belgium and 16 Other Contracting States* ECtHR (Application No. 52207/99) Judgment of 12 December 2001.

4 *Banković and Others v. Belgium and 16 Other Contracting States* ECtHR (Application No. 52207/99) Judgment of 12 December 2001, para. 80.



As a 'living instrument', the ECHR has evolved over time and will continue to do so. Adding to the original Convention, there are now a number of additional protocols in force, which either introduce new rights (Protocols Nos. 1, 4, 6, 7, 12 and 13) or improve the Convention machinery (Protocol Nos. 11 and 14bis and, since 1 June 2010, Protocol No. 14). The Convention and its protocols are also supplemented by the case law of the (former) European Commission of Human Rights (the Commission) and the Court, which have reinforced and developed these rights over the years.

An indication of the growing importance of the Convention system within Europe can be seen from considering the number of applications to the Court (and, previously, to the Commission). In the first 30 years of the ECHR, less than 10,000 complaints were filed with the Commission. Since then, the number of applicants has grown rapidly – in 1995 alone, 10,201 communications were received, whilst by 1999, there were more than 47,000 provisional files pending at the Court. By the end of 2010, there were approximately 120,000 outstanding cases.<sup>5</sup> In 2010, the Court received about 61,300 new applications, an increase of 7 per cent from the previous year, and it rendered judgment in more than 2,500 cases, an increase of more than 10 per cent compared to 2009.

These figures do not necessarily illustrate that human rights abuses are multiplying, but rather show that awareness of the Convention is increasing and, particularly with the assistance of non-governmental organisations (NGOs) and human rights groups, individuals are more readily able to pursue their cases to the ECtHR.

Nevertheless, the immense backlog of cases has raised concerns as to the Court's efficiency. To address this administrative hurdle, the Member States ratified Protocol No. 14, which aims to reduce the Court's caseload by 25 per cent, and also signed an Action Plan at the 'Interlaken Conference' (as outlined in more detail in part 1.8.1 below).

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<sup>5</sup> European Court of Human Rights, *Annual Report 2010*, Registry of the European Court of Human Rights Strasbourg, 2011, page 146.



# 1. THE EUROPEAN COURT OF HUMAN RIGHTS: AN OVERVIEW

## 1.1 Overview and Development of the European Convention System

- The ECHR is a creation of the Council of Europe, which was established immediately after the Second World War, with the aim of enhancing the cultural, social and political life of Europe.
- The creation, and early work, of the CoE (based in Strasbourg) was in part a reaction to the serious human rights violations encountered in Europe during World War II.
- There were originally ten Member States.
- The Council of Europe's primary decision-making bodies are the Committee of Ministers (the executive organ), and the Parliamentary Assembly.
- The ECHR was adopted in 1950 and came into force in 1953. It was intended to protect civil and political rights, rather than economic, social or cultural rights. The text can be found at **Annex A**.
- The Convention created a right of individual petition - the right of individuals and organisations to challenge their Government through the Strasbourg process. This was initially done by taking cases to the Commission, and then to the ECtHR, but today cases are taken directly to the ECtHR following the introduction of Protocol No. 11. The Court's judgments are binding on the State parties to the Convention.
- There has been great expansion of the Convention system, particularly in the 1990s when a number of central and eastern European states ratified the Convention. There are now 47 Member States, which are all signatories to the Convention.

### 1.1.1 Protocol No. 11

Previously, ECHR cases had been taking at least four or five years to proceed through the system (in addition to any domestic proceedings which may have been pursued).

Protocol No. 11 to the Convention, which came into force on 1 November 1988, abolished the two-tier system of Commission and Court, and created a single full-time permanent Court (Article 19).<sup>6</sup> The primary aim of the changes was to speed up the procedure.

Protocol No. 11 also introduced the mandatory right of individuals to complain directly to the Court.

### 1.1.2 Protocol No. 14

In spite of Protocol No. 11 coming into force, the backlog of Convention cases continued to increase. In 1999, 8,396 applications were registered, compared with 5,981 in 1998.<sup>7</sup> The number of new applications rose from 18,200 in 1998 to 57,000 new applications in 2009 and this dramatic growth raised concerns about the Court's capability to deal with this influx of applications. Thus, calls for further reform were made which materialised with the drafting and adoption of Protocol No. 14.<sup>8</sup>

On 12 May 2004, the Council of Europe Member States adopted Protocol No. 14 in order to deal with the very high number of individual applications and attempt to ensure the effectiveness of the ECHR system. It came into force on 1 June 2010, with the final ratification by Russia.<sup>9</sup>

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6 Protocol No. 11 to the *Convention for the Protection of Human Rights and Fundamental Freedoms, Restructuring the Control Machinery Thereby*, Council of Europe, Doc. H (94) 5; 17 EHRR 501 (1994), E.T.S No. 155.

7 Press release of the Registry of the European Court of Human Rights, 24 January 2000.

8 E.T.S 194. This protocol is available online at <http://conventions.coe.int/Treaty/EN/Treaties/Html/194.htm>.

9 Due to Russia's delay in ratifying Protocol No. 14, a number of Member States had signed up to Protocol No. 14bis, which provided for the immediate and interim application of two procedural measures taken from Protocol No. 14, pending the latter's entry into force, namely the provisions allowing (i) a single judge to reject plainly inadmissible applications, and (ii) the three-judge committees to declare applications admissible and decide on their merits in repetitive cases. Protocol No. 14bis ceased to be in force following the entry into force of Protocol No. 14. This has no practical effect on the work of the Court, because the provisions of the former are contained in the latter.

In the recent years, over 90 per cent of the applications lodged with the ECtHR were held to be inadmissible, while half of the remaining cases concerned ‘repetitive’ violations.<sup>10</sup> Accordingly, Protocol No. 14 introduced procedural reforms aimed at tackling the source of these problems in order to improve the Court’s efficiency by 25 per cent.

There are no changes to the substantive rights of the Convention (Articles 1-18); instead, the changes introduced by Protocol 14 relate more to the functioning than to the structure of the system. It also paved the way for EU accession to the ECHR.

The main changes, explained in further detail in Chapter 3, are:

- (a) The introduction of a **new admissibility criterion** in Article 35 ECHR: Article 35(3)(b) stipulates that the Court shall declare an individual application inadmissible if the applicant has not suffered a ‘significant disadvantage’.
- (b) The introduction of a **single-judge formation** (Article 26): this provides the competence to make final decisions on the admissibility of applications, where such decisions can be taken without further examination.
- (c) The **extension of the competence of the committee of three judges** to cover repetitive cases:

Protocol No. 14 introduced an accelerated procedure for repetitive but manifestly well founded cases which derive from the same structural defect at the national level. The amended Article 28 extends the competence of the committees of three judges from declaring individual applications inadmissible to rendering a joint decision on the admissibility and the merits of an individual application, if the underlying question of the case is already the subject of well-established case law of the Court. The decision and judgment reached are required to be unanimous. If a unanimous decision is reached, it will be final.

Protocol No. 14 maintained the competence of the three-judge committee to declare an individual application inadmissible or to strike it out of the list when the inadmissibility was manifest from the outset, but shares it with the single-judge formation.

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<sup>10</sup> ‘Protocol 14 – the reform of the ECHR’, Factsheet of the Council of Europe, page 1.

Chambers of seven judges will determine the remainder of the cases (Articles 27 and 29). The national judge will be an *ex officio* member of the Chamber. There is no right of appeal from an admissibility decision.

If the judges fail to reach unanimity, the Chamber procedure will be applied (Article 29). The Parties are entitled to contest the ‘well-established’ character of the case law.

The presence of the national judge in this type of procedure is not mandatory. However, Article 28(3) provides the Committee with the possibility to invite the judge elected in respect of the Respondent State to take the place of one of the members of the Committee, especially in cases where the Respondent State had contested the application of the accelerated procedure.

- (d) The **role of the Plenary Court** has been slightly amended: the Plenary Court is concerned with electing the President, Vice-Presidents, Presidents of Chambers, the Registrar and Deputy Registrar and adopting rules (Article 25). However, with the amendment of Article 25(f) and Article 26(2), the Plenary Court now has the power to request the size of the Court’s Chambers to be reduced for a fixed period from seven to five judges by a unanimous decision of the Committee of Ministers (CoM). The Plenary Court has no judicial role.
- (e) The establishment of a **new procedure**, which enables the **Committee of Ministers** to bring proceedings before the Court where a Member State refuses to comply with a judgment: if, for example, the CoM considers that a State Party refuses to abide by a final judgment against it, the CoM may now ask the Court to examine whether the State Party has failed to fulfil its obligation and bring infringement proceedings before the Court.
- (f) The **office term of judges** has been amended: one judge is elected by the Parliamentary Assembly for each Member State. Each judge holds office for nine years and may not be re-elected (Article 23).<sup>11</sup>

Each judge must retire at 70 (Article 23(2)). This change was made in order to promote the impartiality and independence of judges. Candidates older than 61 can be elected, although it is suggested that the Member States should propose candidates that will be able to serve at least half of

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<sup>11</sup> Prior to 1 June 2010, judges were elected for six years and could be re-elected.

their appointed term. There is a power of dismissal where a two-thirds majority of the judges consider that the judge has ceased to fulfil the required conditions (Article 23(4)).

Also, the Protocol introduces a new system of appointment of ad hoc judges. Thus, Member States are required to draw in advance a reserve list of ad hoc judges from which the President of the Court will choose when the need arises for such appointment (Article 26(4)).

In addition, the CoE's Commissioner for Human Rights will be entitled to intervene as a third party before the Court (Article 36(3)).

## 1.2 Substantive Rights Covered by the European Convention

Article 1 - obligation to respect human rights

Article 2 - right to life

Article 3 - prohibition of torture

Article 4 - prohibition of slavery and forced labour

Article 5 - right to liberty and security

Article 6 - right to a fair trial

Article 7 - prohibition of retrospective penalties

Article 8 - right to respect for private and family life

Article 9 - freedom of thought, conscience and religion

Article 10 - freedom of expression

Article 11 - freedom of assembly and association

Article 12 - right to marry

Article 13 - right to an effective remedy

Article 14 - prohibition of discrimination

Article 15 - derogation in time of emergency

Article 16 - restrictions on political activity of aliens

Article 17 - prohibition of abuse of rights

Article 18 - limitation on use of restrictions on rights

## 1.3 Additional Protocols to the Convention

The substantive rights have been supplemented by additional protocols, a table of which can be found as **Annex F**.

- **Protocol No. 1:**<sup>12</sup> Adopted in 1952 and came into force in 1954. The rights protected are as follows:

- (1) peaceful enjoyment of possessions
- (2) right to education
- (3) free elections at reasonable intervals

This protocol has been ratified by most Contracting States<sup>13</sup>.

- **Protocol No. 4:**<sup>14</sup> Adopted in 1963 and came into force in 1968. The rights protected are as follows:

- (1) no deprivation of liberty merely on the grounds of inability to fulfil a contractual obligation
- (2) freedom of movement and residence
- (3) no expulsions of nationals
- (4) prohibition of collective expulsion of aliens

This has been ratified by most Contracting States.<sup>15</sup>

- **Protocol No. 6:**<sup>16</sup> Adopted in 1983 and came into force in 1985. The sixth protocol provides for the abolition of the death penalty (except in time of war or imminent threat of war). This has been ratified by most Contracting States.<sup>17</sup>

- **Protocol No. 7:**<sup>18</sup> Adopted in 1984 and came into force in 1988. The rights protected are as follows:

- (1) conditions on expulsion of lawfully resident aliens
- (2) right of review of a criminal conviction or sentence
- (3) compensation for miscarriages of justice
- (4) no second criminal trial or punishment
- (5) equality of rights of spouses.

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12 E.T.S.No. 009

13 As of December 2010, Switzerland and Monaco have not ratified Protocol No. 1

14 E.T.S. No. 046

15 As of December 2010, Switzerland and Greece have not signed and Turkey and the UK, have not ratified Protocol No. 4.

16 E.T.S. No. 114.

17 As of December 2010, Russia is the only Member State not to have ratified Protocol No. 6.

18 E.T.S. No. 117.



This has been ratified by most Contracting States.<sup>19</sup>

- **Protocol No. 12:**<sup>20</sup> Adopted on 26 June 2000 and came into force on 1 April 2005. It provides a free-standing prohibition against discrimination. This is a significant introduction that adds to the non-discrimination provision in Article 14 of the ECHR. As of December 2010, 37 states have signed it whilst 18 have ratified.
- **Protocol No. 13:**<sup>21</sup> Adopted on 21 February 2002 and came into force on 1 July 2003. It abolishes the death penalty in all circumstances, including crimes committed during war and imminent threat of war. As of December 2010, this has been ratified by 42 Contracting States.<sup>22</sup>

## 1.4 Types of Cases

Cases can be brought by way of individual application or as an inter-state case. Further, third parties may be permitted to intervene in cases.

**Individual application:** this process is outlined in detail in Chapters 2 and 3 below.

**Inter-state cases:** any Member State may refer to the Court any alleged breach of the Convention by another Member State (Article 33). It is not necessary for the applicant Member State or any of its nationals to have been affected by the alleged violation. Chambers will decide the admissibility and merits of inter-state cases (Article 29(2)). Cases may be relinquished or referred for re-hearing.

**Third party intervention:** the President may permit any Convention signatory or 'any person concerned' to submit written comments or participate in hearings (Article 36(2)).

Applications for permission to intervene can be made by letter to the President of the Court. If permission is granted by the President, it is likely to be conditional. For example, interveners will usually be required not to comment on the facts or law of the particular case and they may be

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19 As of December 2010, the UK, Belgium, Germany, the Netherlands and Turkey have not ratified Protocol No. 7.

20 E.T.S. No. 177.

21 E.T.S. No. 187.

22 Russia and Azerbaijan have not signed Protocol No. 13, and are two of the five Member States which have not ratified Protocol No. 13.

required to keep their submissions to within a specified length. There is, otherwise, no required format for an intervention.

It is advisable (but not necessary) to consult with the applicant(s) in relation to an intervention, for example, to avoid duplication of submissions. Interventions may be useful for the Court in providing, among other things, the wider context relating to the particular case in question or relevant comparative jurisprudence.

According to the amended Article 36, the Commissioner for Human Rights may submit written comments and take part in hearings in all cases before the Chamber and the Grand Chamber, and no longer has to seek leave to do so.

## 1.5 Rules of the Court

New rules of the Court were adopted on 4 November 1998 and were last amended on 1 June 2010. The rules specify the procedure and internal workings of the Court. A copy of the rules can be found as **Annex L**.<sup>23</sup>

## 1.6 Underlying Convention Principles

**Subsidiarity:** The Convention system is subsidiary to the national systems of the Contracting Parties. Thus, applicants are required to exhaust effective domestic remedies before filing an application to the Court.

**Democratic Society:** The principle of democratic society is also prominent in the Convention. In the Preamble, the Contracting Parties reaffirm their profound belief that the fundamental freedoms, which are the foundation of justice, are best maintained by, among other approaches, effective political democracy. An interference with many of the rights guaranteed in the Convention is justified only if it is necessary in a democratic society (see Articles 8-11).

**Proportionality:** The Court uses the principle of proportionality when it assesses whether an interference with many of the Convention provisions (for example, Articles 8-11, Article 14) constitutes a violation. This principle requires the existence of a pressing social need for the measure

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<sup>23</sup> The rules can also be downloaded at: <http://www.echr.coe.int/ECHR/EN/Header/Basic+Texts/Other+texts/Rules+of+Court/>

in question and that this measure is proportionate to the legitimate aim pursued.

**Margin of Appreciation:** The Court refers to the national authorities' margin of appreciation doctrine when it assesses whether a limitation upon one of the rights and freedoms guaranteed in the Convention is necessary in a democratic society. For example, in cases concerning limitations of the freedom of the press, the Court has found in favour of a narrowed margin of appreciation, unless the prohibited publication is initiating violence. Conversely, in cases concerning environmental planning or regulation of names, the Court has found that national authorities enjoy a wider margin of appreciation.

**The Convention as a 'Living Instrument':** The Convention is a multilateral treaty and the Court has held, as early as 1975, that it will be guided in its interpretation of the Convention provisions by the principles codified in the Vienna Convention on the Law of the Treaties 1969.<sup>24</sup>

In *Tyrer v. UK*, the Court held that the 'the Convention is a living instrument which must be interpreted in the light of present day-conditions'.<sup>25</sup> This doctrine has been invoked by the Court in several cases. For example, in *Loizidou v. Turkey*, it was held that the 'living instrument' doctrine should not only be confined to the substantive provisions of the Convention but it should also apply to provisions, such as Articles 25 and 46, which govern the operation of the Convention's enforcement machinery.<sup>26</sup> According to the Court, 'these provisions cannot be interpreted solely in accordance with the intentions of their authors as expressed more than forty years ago'.<sup>27</sup> Sometimes, the Court interprets the Convention by referring to its 'dynamic and evolutive' interpretation which is another facet of the 'living instrument' doctrine.<sup>28</sup>

**Positive Obligations:** The concept of positive obligations on the part of Member States has been developed over the last thirty years as a tool for

24 *Golder v. the UK*, ECtHR (Application No. 4451/70) Judgment of 21 February 1975, Series A, No. 18 (1979-80) 1 EHRR 524

25 *Tyrer v. the UK*, ECtHR (Application No. 5856/72) Judgment of 25 April 1978, Series A, No. 26, para. 31.

26 *Loizidou v. Turkey (Preliminary Objections)*, ECtHR (Application No. 15318/89) Judgment of 18 December 1996, Series A, No. 310, (1995).

27 *Ibid*, para. 70.

28 Aistair Mowbray, *The Creativity of the European Court of Human Rights*, *Human Rights Law Review* (2005), Volume 5, Issue 1, pp 57-79, p. 64.

interpreting the guaranteed rights and freedoms in a more practical and effective way.<sup>29</sup>

The Court applies this doctrine in its case law to require Contracting States to fulfil not only negative obligations of non-interference, but also positive obligations to take reasonable and appropriate measures as necessary in the circumstances.

For example, the Court has articulated several key positive obligations under Article 2, including the duty to undertake effective investigations into killings<sup>30</sup> and the obligation to provide protection to persons whose lives are known to be at immediate risk from the criminal acts of others.<sup>31</sup> Analogous investigation obligations have been developed under Articles 3<sup>32</sup> and 5.<sup>33</sup>

The first case where the Court imposed a positive obligation upon States to provide civil legal aid for complex cases was *Airey v. Ireland*.<sup>34</sup> In *X. and Y. v. Netherlands*<sup>35</sup>, the Court held that the Convention creates obligations for States which may involve the adoption of measures even in the sphere of the relations of individuals between themselves.<sup>36</sup> This was continued in the case *Osman v. United Kingdom*,<sup>37</sup> which requests state authorities to take measures to protect individuals known to be at 'immediate risk to life' from the actions of other living individuals.

In the 2009 judgment in *Opuz v. Turkey*,<sup>38</sup> the Court held that the Turkish authorities failed to protect the applicant against ill-treatment perpetrated by her former husband under Article 2 and 3. The Court considered whether, and concluded that, a state can be held responsible for acts of domestic violence under Articles 2, 3 and 14.

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29 *Airey v. Ireland*, ECtHR (Application No. 6289/73) Judgment of 9 October 1979, Series A., No. 32, (1979), para. 24.

30 First stated in *McCann v. UK* (Application No. 19009/04) Judgment of 13 August 2008 at para 37.

31 See *Osman v. UK* (Application No. 23452/94) Judgment of 28 October 1998.

32 See *Assenov v. Bulgaria* (Application No. 24760/94) Judgment of 28 October 1998.

33 See *Kurt v. Turkey* (Application No. 24276/94) Judgment of 28 May 1998.

34 *Airey v. Ireland* (Application No. 6289/73) Judgment of 9 October 1979.

35 *X. and Y. v. Netherlands* (Application No. 8978/80) Judgment of 26 March 1985.

36 *X. and Y. v. Netherlands* (Application No. 8978/80) Judgment of 26 March 1985, para 6.

37 *Osman v. UK* (Application No. 23452/94) Judgment of 28 October 1998, para 116.

38 *Opuz v. Turkey* (Application No. 33401/02) Judgment of 9 June 2009.

**Principle de minimis non curat praetor :** The principle *de minimis non curat praetor* (literally, ‘the praetor does not concern himself with trifles’) is reflected in Article 35 which states that ‘The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that (it is) ... an abuse of the right of application.’

The Court is not restricted in its use of any information and argumentation it deems relevant in order to decide whether the principle can be applied.

An example of the Court’s approach can be seen in *Bock v. Germany*. In this case the applicant, a civil servant, made a request for aid to his employer and asked to be reimbursed for 7.99 EUR, which he had paid for magnesium tablets prescribed by his physician.<sup>39</sup> The case reached the Court based on an Article 6 argument concerning the lengths of the proceedings the applicant initiated to receive the reimbursement.

In its application of Article 35, the Court paid particular attention to the disproportion between the triviality of the facts against the background of the Court’s work-load and the large number of pending applications, which raised serious issues on human rights.

The Court further observed that such proceedings contributed to the congestion of the courts at the domestic level and therefore to the excessive length of court proceedings. It also took the applicant’s comfortable financial situation as a government official into consideration and the fact that there was no significant question of principle involved.

Noting that the issue of excessive length of court proceedings had been dealt with by the Court in numerous cases – in particular, including against the Respondent Government – in which the principles of the reasonable time requirement of Article 6(1) had been laid down, the Court found it appropriate to reject the application as a whole as an abuse of the right of application.

## 1.7 The Pilot –Judgment Procedure

The efficiency of the ECHR system is threatened not only by the high number of repetitive and clone cases in the Court’s backlog,<sup>40</sup> but by the

<sup>39</sup> *Bock v. Germany*, (Application No. 11118/84) Decision of 29 March 1989.

<sup>40</sup> European Court of Human Rights, Annual Report 2009, Registry of the European Court of Human Rights, Strasbourg, 2010, page 5.

prevalence of late (and non) executions of the Court's judgments. In this regard, the number of cases pending before the CoM for supervision of judgment rose from 2,298 in 2000, to 9,992 in 2010, with 87 per cent of the latter concerning repetitive cases.

To address this issue, the Court has developed the pilot-judgment procedure as a means of dealing with large groups of identical cases that derive from the same underlying problem. It is intended to help national authorities to eliminate systematic or structural problems highlighted by the Court as giving rise to repetitive cases. In doing this, it also assists the CoM in its role of ensuring that each judgment of the Court is properly executed by the Respondent State.

In a pilot judgment, the Court aims:

- to determine whether there has been a violation of the Convention in the particular case;
- to identify the systematic issue under national law, policy or practice that is at the root of the violation;
- to give clear indications to the Government as to how it can eliminate the systematic issue;
- to give guidance on general measures that can be used to bring about the creation of a domestic remedy capable of dealing with similar cases (including those already pending before the Court awaiting the pilot-judgment), or at least to bring about the settlement of all such cases pending before the Court.

However, not every category of repetitive cases is suitable for a pilot-judgment procedure and not every pilot-judgment leads to an adjournment of cases, especially where the systemic problem touches the most fundamental rights of the person under the Convention.

The Court has used the procedure flexibly since it delivered the first pilot-judgment in 2004 concerning the 'Bug River' cases against Poland,<sup>41</sup> which resulted in the introduction of new legislation to resolve the un-

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41 *Broniowski v. Poland* [GC], (Application No. 31443/96) ECHR 2004-V. See also *Broniowski v. Poland* (friendly settlement) [GC], (Application No. 31443/96) ECHR 2005-IX.

derlying systemic issue and the settlement of similar pending cases at the Court.<sup>42</sup>

Another case examined using this approach is the KHRP-assisted case of *Chiragov and Others v. Armenia*,<sup>43</sup> which was heard before the Grand Chamber on 15 September 2010.<sup>44</sup> This case concerned the flight of six applicants and their families, all Azeri Kurds, from their villages in the Azerbaijan region of Lachin following an attack by Armenian military forces in 1992. Since that time the applicants have been unable to return to their homes and property, as the area remains the subject of an international dispute between Armenia and Azerbaijan.

The outcome of this case will impact upon the approximately 30,000 Azeri persons displaced as a result of the capture of Lachin. The judgment is pending.

## 1.8 The Future of the Court

Although both the changes introduced by Protocol No. 14 and the pilot-judgment procedure have the potential to make significant improvements to the Court's excessive workload, they are unlikely to offer a complete solution.

Since 1959, the Court has delivered more than 14,000 judgments. In more than 80 per cent, the Court found a violation of the Convention. More than half of these judgments were made against four Member States: Russia, Turkey, Italy and France.

In 2010, the Court received about 61,300 new applications, an increase of 7 per cent from the previous year, and rendered judgment in more than 2,500 cases, an increase of more than 1 per cent compared to 2009.

Cases against a small number of states dominate the Court's current backlog: Russia represents more than 23 per cent; Romania almost 10 per cent;

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42 See *E.G v. Poland*, (Application No. 50425/99) and 175 other Bug River Applications, decisions of 23 September 2008.

43 *Chiragov and Others v. Armenia*, ECtHR (Application No. 12316/05).

44 The webcast of the hearing can be found at: [http://www.echr.coe.int/ECHR/EN/Header/Press/Multimedia/Webcasts+of+public+hearings/webcastEN\\_media?&p\\_url=20100915-1/en/](http://www.echr.coe.int/ECHR/EN/Header/Press/Multimedia/Webcasts+of+public+hearings/webcastEN_media?&p_url=20100915-1/en/)

Turkey 9.5 per cent; and Poland 9.4 per cent.<sup>45</sup> In 2010, almost 70 per cent of the Court's judgments concerned just six states.

In light of this situation, several decisions and resolutions have been made by the Member States, NGOs and the Court itself in order to improve the efficiency of the Court and uphold the protection of the Convention.

### 1.8.1 The Interlaken Declaration

Following an initiative of the Court, a high level conference on the future of the Court was organised in Interlaken, Switzerland, in February 2010, its purpose being to reaffirm the commitment of the Member States to the protection of human rights in Europe and to agree on a plan for the future development of the Court.

The Member States issued a joint declaration which included an Action Plan containing short- and middle-term measures as well as an agenda for their implementation. Member States have agreed to inform the CoM before the end of 2011 about the measures taken with respect to certain proposals. The Action Plan proposes that between 2012 and 2015, the CoM should evaluate the extent to which the implementation of Protocol No. 14 and the Action Plan has improved the operation of the Court, and before the end of 2019 the Committee should decide whether more significant changes are necessary.

The main points of the Action Plan concern the following areas:

- Right to Individual Petition
- Implementation of the Convention at National Level
- Filtering
- Repetitive Applications
- The Court
- Supervision of Executions of Judgments
- Simplified Procedure for Amending the Convention

Further details of the Interlaken Declaration and Action Plan can be found in **Annex K**.

Of significant concern is the possibility of the curtailment of the right of individual application. Although the specific reference to imposing fees

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<sup>45</sup> European Court of Human Rights, *Annual Report 2010*, Registry of the European Court of Human Rights, Strasbourg, 2011, page 148.



on applicants, requiring applications to be submitted in either English or French, and requiring applicants to be represented by a lawyer were removed from earlier drafts of the Interlaken Declaration and Action Plan, these proposals are still supported by some Member States.<sup>46</sup>

On 7 May 2010, the Committee of Experts on the Reform of the Court published a document in which it explored the possibility of imposing a system of fees for Applications.<sup>47</sup> The document outlined the possibility of having a number of exceptions to the fee system (including a waiver of fees for prisoners and detainees), means of assessment and reimbursement of fees for those cases which are ultimately successful.

Any developments, including proposed safeguards, will need to be carefully considered in order to ensure changes are not introduced that effectively limit the right to individual petition. It is clear that the charging of fees would have the effect of curtailing access to the Court for people in Europe who are unable to make such payments, potentially infringing their right of equality before the law. Further, the introduction of such a system has the potential to create administrative difficulties, may not discriminate against those applicants who have manifestly ill-founded cases and potentially lengthen rather than shorten proceedings before the Court.

### **1.8.2 EU Accession to the ECHR**

Protocol No. 14 provides, among other things, the legal basis for the possibility of EU accession to the Convention, to which the EU is committed pursuant to Article 6 of the Lisbon treaty (2007). The European Commission proposed negotiation directives for the EU's accession to the Convention in March 2010.

The negotiations for EU accession are ongoing and will address questions such as the relationship between the EU courts system and the Court, the procedures for bringing EU law-related cases to the Court, and whether or not the EU will nominate a judge to the Court (as all other Member States do). This process is expected to take months or probably even years.

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46 One of them being Turkey, see Council of Europe "Proceedings/ Actes", High Level Conference on the future of the European Court of Human Rights, Interlaken, 18-19 February 2010, Turkey, Mr Cevdet Yilmaz, page 103.

47 Implementation of the Interlaken Declaration: Draft Report on the Access to the Court - Fees for Applicants.



## 2. OUTLINE OF THE PROCEDURE FOR TAKING CASES TO THE EUROPEAN COURT OF HUMAN RIGHTS

A flowchart summarising the process below is attached at **Annex I**.

### 2.1 Lodging an Application with the Court

#### Contact details:

The Registrar  
 European Court of Human Rights  
 Council of Europe  
 67075 Strasbourg Cedex  
 France  
 Telephone: +33 (0)3 88 41 20 18  
 Fax: +33 (0)3 88 41 27 30  
 Website: <http://www.echr.coe.int>

The Court can easily be contacted in writing should there be any queries regarding the progress of a case. The relevant section staff are usually able to assist. The case name, Respondent State and application number should be stated in all correspondence. The Court now usually sends applicants a set of bar codes once the application has been submitted, which should be stuck on subsequent correspondence.

The initial letter should identify the applicant(s), summarise the relevant facts and any domestic proceedings, which have been brought and set out the Articles of the Convention, which the applicant claims have been breached (Rule 47).

An application need *not* be submitted by a lawyer (Rule 36(1)).<sup>48</sup>

There is no Court fee.<sup>49</sup>

<sup>48</sup> This may change, however, depending on the outcome of the steps taken by the Member States in order to implement the Interlaken Declaration.

<sup>49</sup> This may change, however, depending on the outcome of the steps taken by the Member States in order to implement the Interlaken Declaration, see above under part 1.8.1.

The date of introduction of the complaint is the date of the initial or ‘stop-the-clock’ letter (for the purposes of the six months time limit – under Article 35(1)). The introductory letter may be sent by fax (Rule 47 (5)).

The Court has two official languages, English and French (Rule 34). However, prior to an admissibility decision in a case, the introductory letter and indeed any communication or pleading submitted to the Court, may be in any one of the official languages of the ECHR State Parties.<sup>50</sup> After admissibility, parties will be required to communicate with the Court in English or French, unless they obtain the permission of the President of the Chamber to continue to use the official language of a State Party.

A pro forma introductory letter is attached at **Annex H**.

## 2.2 Registration of the Case

Once an introductory letter is received, the Court will open a provisional file and assign a case number. A Court Registry lawyer will respond in writing to confirm the case number and the date of introduction of the complaint, together with an application form and a form of authority (which should be signed by the client authorising the lawyer to act on the client’s behalf). See **Annexes B and C** for copies of both.

The case will then be assigned to one of the Court’s five sections (see **Annex G** for details of their composition).

The application form and form of authority, together with copies of all relevant supporting documents, should be completed and returned to the Court by the deadline advised by the Court (generally, within eight weeks). If necessary, it may be possible to obtain extensions of time by request in writing.

Further points to note:

- Legal aid is *not* available at this stage.
- The application is registered on receipt of the completed application form. The Court will reply in writing to confirm receipt. The Court may also refer in the letter to any apparent problems as to the admissibility of the application (which the applicant should try to answer).

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<sup>50</sup> This may change, however, depending on the outcome of the steps taken by the Member States in order to implement the Interlaken Declaration, see above under part 1.8.1.

- Following registration, all documents lodged with the Court are accessible to the public (unless the Court decides otherwise).
- Once registered, an application is assigned to a Judge Rapporteur (whose identity is not disclosed to the applicant) to consider admissibility.

## 2.3 Examination of the Case

To consider cases brought before it, the Court shall sit in a single-judge formation, in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. This examination takes place in two stages: admissibility and merits (see below).

## 2.4 Legal Aid

When a case is communicated to the Respondent Government, the applicant is then able to apply for legal aid. She or he will have to complete a ‘declaration of means’ form (see **Annex D**). The assessment of financial means is carried out by the appropriate *domestic* authority. The Court will send an application for legal aid to the Government to comment on. The grant of legal aid is retrospective and there is a set scale of fees for each stage of the proceedings, and grants are very low. Details are set out at **Annex E**. Monies are paid by bank transfer.

## 2.5 Interim Measures

Interim measures (Rule 39): a Chamber or its President may indicate to the parties any interim measures, which it considers should be adopted in the interests of the parties or the proper conduct of the proceedings.

The Court applies a threefold test:

- (1) There must be a threat of irreparable harm of a very serious nature;
- (2) The threat of harm must be imminent and irremediable; and
- (3) There must be an arguable (*prima facie*) case.

For example, interim measures may be applied where an applicant is threatened with expulsion to a country where there is a danger of torture

or death. In *Shamayev and 12 Others v. Georgia and Russia*,<sup>51</sup> the Court requested the Georgian authorities to stay the extradition of several suspected terrorists of Chechen origin to Russia, pending receipt of more detailed information concerning the circumstances surrounding the extradition.<sup>52</sup>

Interim measures have also been applied in other types of cases. In *Öcalan v. Turkey*, the Court requested the Government to take interim measures in order to ensure that the applicant, who was facing the death penalty, had a fair trial and was able to exercise his right of individual petition to the Court through lawyers of his own choosing.<sup>53</sup>

Requests for interim measures in urgent cases should be sent to the Court by fax, e-mail or by courier, preferably during working hours. If a request is sent by e-mail, a hard copy should also be sent at the same time. The request should be marked as URGENT – RULE 39 and written, where possible, in one of the official languages of the Contracting States. In extradition and deportation cases, a request and relevant supporting material should be submitted prior to the final domestic decision being issued. The requests must be accompanied with all necessary supporting documents such as relevant domestic decision and any other material that will substantiate the applicant's allegations.

Failure of a State to comply with interim measures may amount to a violation of Article 34 ECHR. More specifically, in *Mamatkulov and Askarov v. Turkey*,<sup>54</sup> the Court held that '...a failure to comply with interim measures had to be regarded as preventing the Court from effectively examining the applicant's complaint and as hindering the effective exercise of his or her right and, accordingly, as a violation of Article 34'.

## 2.6 Decision on Admissibility

Whether a case is admissible will be determined by a single judge, a committee of three judges, or a Chamber of seven judges, depending on the circumstances of the case as follows:

51 *Shamayev and 12 Others v. Georgia and Russia* ECtHR (Application No. 36378/02) Interim Measures adopted on 4 October 2002.

52 See also *Babar Ahmad and Others v. UK*, (Application Nos. 24027/07 et al), Decision of 6 July 2010.

53 *Öcalan v. Turkey* ECtHR (Application No. 46221/99) Judgment of 2 May 2005.

54 *Askarov v. Turkey* ECtHR (Application No. 46827/99 and 46951/99) Judgment of 4 February 2005.

- An application may be declared inadmissible by a single Judge, where such a decision can be taken without further examination (Articles 27(1) and 28(1)), namely where such decision is based on clear, existing ECtHR case law. The Explanatory Report for Protocol No. 14 clarifies that ‘...the judge will take such decisions only in clear-cut cases, where the inadmissibility of the application is manifest from the outset’. However, a single judge cannot decide on the admissibility of an individual application filed against her or his own state (Article 26(3)). Such decisions are final.
- If a single judge does not declare an application inadmissible or strike it out, that judge shall forward it to a committee or to a Chamber for further examination.
- If a committee does not declare an application inadmissible or strike it out, that committee may at the same time render a judgment on the merits, if the underlying question in the case, concerning the interpretation or the application of the Convention or the Protocols, is already the subject of well-established case law of the Court.
- The remainder of the cases are dealt with by a Chamber of seven judges.
- The Court may hold an oral hearing to decide admissibility, although this is now rare and usually only if the case raises difficult or new issues. An application may be declared admissible/inadmissible in part.

## **2.7 Communication of the Case**

If a case is communicated to the Respondent Government, the Government will be asked to reply to specific questions (copies of which are sent to the applicant) within a stipulated time (extensions of time may be obtained by the Government).

## **2.8 Government’s Observations and Applicant’s Observations in Reply**

Following the communication of a case to a Respondent State, that State is able to submit written observations to the Court concerning the application. A copy of the Government’s written observations will be sent to the applicant. The applicant may submit further written observations in reply (within a stipulated time). The Government will then be provided with an opportunity to respond to these (again, within a stipulated time).

## **2.9 Admissibility and Merits Addressed Together**

The Court may decide an application's admissibility and merits at the same time (Articles 28(1) and 29(1)). This is happening on an increasing basis, mainly to speed up cases, particularly where they are repetitive.

If so, the Court will take this decision at the time of communicating a case to the Respondent State. The parties will be invited at that time to lodge submissions dealing with just satisfaction and friendly settlement.

Alternatively, where it considers it appropriate, a Chamber may decide to proceed to adopt a judgment on the merits, which incorporates the decision on admissibility without giving notice to the parties at the time of communication.

## **2.10 Establishing the Facts**

The Court *may* examine witnesses and carry out fact-finding hearings and/or on-the-spot investigations, although this is rare.

## **2.11 Friendly Settlement**

The friendly settlement procedure provides the Respondent Government and the applicant with an opportunity to resolve a dispute.

Following the decision on admissibility, the Court will write to the parties asking for any proposals as to settlement (Article 39). The case is struck off the Court's list of cases if settlement is agreed.

Applicants who receive friendly settlement proposals from a Respondent State would be advised to negotiate firmly for both redress, including compensation and costs, and also for Government commitments to revise policy or practice or to introduce new legislation.

A friendly settlement may be concluded 'at any stage of the proceedings'.

## **2.12 Final Submissions Post-Admissibility and Examination of the Merits**

Where admissibility and merits are not considered together, the parties are invited to lodge final written submissions (commonly referred to as



the ‘Memorial’). This should encapsulate the totality of the applicant’s case.

Details of any costs or compensation, which are being claimed should either be included with the Memorial or should be submitted to the Court within two months of the admissibility decision (or other stipulated time).

The Court will carry out a detailed examination of the merits.

### **2.13 Oral Hearing**

The practice whereby the Court holds an oral hearing on the merits of the case is now the exception rather than the rule. The Court is generally more likely to do so if the case is of high legal or political importance or if further clarification is needed on the facts.

Where hearings occur, these take place in public, unless there are reasons for the hearing to be held in private. The hearings usually take no more than two hours in total. Applicants are usually given 30 minutes to make their initial oral arguments. If the Court asks questions of the parties there may be a 15-20 minute adjournment, then each party may have 15-20 minutes to answer questions and reply to the other side.

### **2.14 Judgment<sup>55</sup>**

The Court’s reasoned judgment is published several months after the submission of final written observations or after any oral hearing. Parties will be given notice of the date and time of delivery of the judgment, which will also be posted on the Court’s website.

Judges may append their dissenting judgment to the majority judgment. Once final, judgments have binding force (Article 46(1)).

The Court’s primary remedy is a declaration that there has been a violation of one or more Convention rights.

The judgment may include an award for ‘just satisfaction’ under Article 41. This may include compensation for both pecuniary and non-pecuni-

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55 Further information about judgments can be found in Chapter 4 below.

ary loss and legal costs. Awards for just satisfaction may be reserved in order for the Court to receive further submissions.

The Court will *not* quash decisions of the domestic authorities or courts or strike down domestic legislation, but it may in some circumstances recommend that a Respondent State take particular measures. In instances where there has been a breach of the right to a fair trial, for example, the Court may recommend that the most appropriate form of relief would be to permit the applicant a retrial by an independent and impartial tribunal.<sup>56</sup>

There is *no provision* in the Convention for costs to be awarded against an applicant.

Parties have three months following the delivery of a Chamber judgment to request referral of the case to the Grand Chamber for fresh consideration. Requests for referral to the Grand Chamber are examined by a panel of judges which decides whether or not referral is appropriate. Judgments by the Grand Chamber are final and cannot be appealed.

## **2.15 Enforcement of Court Judgments**

Judgments are transmitted to the CoM, which supervises enforcement (Article 46(2)). This is explained in more detail in part 4.3 below.

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<sup>56</sup> See *Gencel v. Turkey*, ECtHR (Application No 53431/99) Judgment of 23 October 2003.

### 3. **ADMISSIBILITY CRITERIA AT THE EUROPEAN COURT OF HUMAN RIGHTS**

The admissibility rules are a critical aspect of the European Convention system, not least because over 90 per cent of the applications lodged with the ECtHR are currently deemed to be inadmissible.

Article 34 of the Convention sets out the requirements relating to standing (i.e. who can bring a case). Article 35 sets out the admissibility criteria, the most important of which in practice are the requirement to exhaust effective domestic remedies and to submit an application to the Court within six months of the final decision in the domestic proceedings.

**Article 34:** The Court may receive applications from any person, NGO or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

**Article 35:**

1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.
2. The Court shall not deal with any application submitted under Article 34 that
  - a. is anonymous; or
  - b. is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.
3. The Court shall declare inadmissible any individual application submitted under Article 34 which it considers that:

- a. The application is incompatible with the provisions of the Convention of the Protocols thereto, manifestly ill-founded or an abuse of the right of individual application; or
  - b. The applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground, which has not been duly considered by a domestic tribunal.
4. The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.

The notion of ‘significant disadvantage’ was introduced by Protocol No. 14. The Court first applied the new criterion on the first day of its entering into force in the case of *Ionescu v. Romania*<sup>57</sup> and then again a month later in the case of *Korolev v. Russia*.<sup>58</sup>

In the latter case, the applicant complained about the failure of the Russian authorities to pay him 22.50 roubles (which amounted to 0.56 euros) which had been awarded by the domestic courts. He relied on Article 6 and on Article 1 of Protocol No. 1. Although accepting that even a modest financial award might be significant for some people because of their personal circumstances or the economic situation of the country or region in which they lived, the Court considered less than one euro as of clearly negligible value and of minimal significance for the applicant.

The Court took into consideration that a violation of the Convention might concern an important question of principle and thus cause a significant disadvantage without affecting pecuniary interest and noted that the applicant had only complained of the failure to pay him less than one euro in dues.

In considering the safeguards that form part of Article 35(3)(b), the Court concluded that an examination of Mr Korolev’s application on the merits was not required, recalling that on many previous occasions it had decided on claims concerning the non-execution of domestic judicial decisions in Russia and the need for adoption of general measures to prevent future violations stemming from non-execution. An examination on the merits

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<sup>57</sup> *Adrian Mihai Ionescu v. Romania*, ECHR (Application No. 36659/04) Decision 1 June 2010.

<sup>58</sup> *Vladimir Petrovich Korolev v. Russia*, ECHR (Application No. 25551/05) Decision 1 July 2010.

of Mr Korolev's claim would not add anything new, and was consequently not necessary.

Concerning the due consideration by a domestic tribunal, the Court noted that Mr Korolev's case had been considered at two levels of domestic jurisdiction and his claims had been granted and that there had been due judicial consideration of his case at the national level.

### 3.1 Standing and Capacity - Who May Petition the Court?

The ECtHR rules relating to capacity and standing are not restrictive, although they are inextricably linked to the requirement that an applicant must claim to be the *victim* of a violation of one or more Convention rights (which is dealt with below).

Article 34 states that the Court may receive applications from 'any person, non-governmental organisation or group of individuals...' Accordingly, individuals, groups of individuals, NGOs, companies (even if dissolved),<sup>59</sup> shareholders, trusts, professional associations, trade unions, political parties and religious organisations may all submit applications to the Court. Depending on the nature of the Convention violation alleged, a company itself may bring an application under the Convention, as may the chair and managing director of the company<sup>60</sup> and individual shareholders in exceptional circumstances.<sup>61</sup>

However, certain rights by definition can only be claimed by individuals and cannot extend to organisations, such as freedom of thought, conscience and religion,<sup>62</sup> the right to education<sup>63</sup> and the right not to be subjected to degrading treatment or punishment.<sup>64</sup>

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59 *Pine Valley v. Ireland* ECtHR (Application No. 12742/87) Judgment of 29 November 1992, (1992) 14 EHRR 319, para. 42.

60 *Kaplan v. UK*, ECtHR (Application No. 7598/76) Judgment of 17 July 1980, (1982) 4 EHRR 64.

61 *Agrotexim v. Greece*, ECtHR (Application No. 14807/89) Judgment of 24 October 1995, (1996) 21 EHRR 250.

62 *X and Church of Scientology v. Sweden*, ECtHR (Application No. 7805/77) Decision of 5 May 1979, (1979) 16 DR 68.

63 *Ingrid Jordebo Foundation of Christian Schools v. Sweden*, ECtHR (Application No. 11533/85) DR 5.

64 *Kontakt-Information-Therapie and Hengen v. Austria*, ECtHR (Application No. 11921/86) (1988) 57 DR 81.

### 3.1.1 Nationality and Residence

Nationality and place of residence are irrelevant to the right of individual petition, reflecting the obligation in Article 1 for the parties to secure Convention rights to everyone within their jurisdiction. The test applied is whether or not the applicant can claim to be a victim of a violation of their Convention rights, where such violation occurred within the jurisdiction of the Respondent State.

### 3.1.2 Legal Capacity

Lack of legal capacity may not affect the right of petition,<sup>65</sup> but applicants may be represented by a relative or other suitable person. Where, however, applicants are represented before the Court by a relative or other person, the Court will require evidence of their authority to represent the applicant.

In *Zehentner v. Austria*<sup>66</sup> an applicant who was lacking legal capacity under domestic law was permitted to present his own case before the Court, despite his guardian's disapproval.

### 3.1.3 Children

Children may be applicants in cases before the Court, both in conjunction with adult 'victims' arising from the same complaint and in their own right. For example, in *Marckx v. Belgium*,<sup>67</sup> an unmarried mother and her young daughter complained of the illegitimacy laws in Belgium, including in relation to the bequeathing and inheritance of property. The case of *A v. UK*<sup>68</sup> concerned the severe ill-treatment of the applicant child by his step-father and the failure of the State to provide the child with protection from ill-treatment.

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65 See, for example, *Winterwerp v. The Netherlands*, ECtHR (Application No. 6301/79) Judgment of 24 October 1979, (1979) 2 EHRR 387; *Van der Leer v. the Netherlands* ECtHR (Application No. 11509/85) Judgment of 21 February 1990, (1990) 12 EHRR 567.

66 *Zehentner v. Austria* (Application No. 20082/02) Decision of 16 July 2009,

67 *Marckx v. Belgium*, Series A, No. 31, ECtHR (Application No. 6833/74) Judgment of 13 June 1979, (1980) 2 E.H.R.R. 330.

68 *A v. UK*, ECtHR (Application No. 25599/94) Judgment of 23 September 1998.

Children may also be represented by a parent,<sup>69</sup> unless there is a conflict of interest or for any reason the parent does not have legal standing in domestic law to do so. In *Hokkanen v. Finland*<sup>70</sup> an application was brought by a father in respect of a child custody dispute with the child's maternal grandparents. The applicant father also lodged an application on behalf of his daughter, but that aspect of the case was declared inadmissible as it was found that he was no longer the child's custodian at the relevant time. Where it is alleged that parents have a conflict of interest with any child on whose behalf they purport to act, the Court has emphasised that the key consideration is that any serious issues concerning respect for a child's rights should be examined.<sup>71</sup>

Children may be represented at the Court by others, such as solicitors, provided that the representative produces proof of their authority to act. For example, in *SD, DP and T v. UK*,<sup>72</sup> which concerned delay in care proceedings, the application was brought by a solicitor on behalf of the three children, supported by a letter of authority from the guardian *ad litem* appointed by the court to safeguard the interests of the children in the domestic proceedings. This was challenged by the Government who argued that neither the solicitor nor the guardian *ad litem* had authority to act on the children's behalf in the proceedings under the Convention. However, the Commission rejected the Government's objections, emphasising that it would not take a restrictive or technical approach to such questions, as children generally relied on others to represent their interests, and required specific protection of their interests which had to be both practical and effective. No conflict of interests was found to arise and on the facts there was no alternative means of representation.

### 3.1.4 Death of an Applicant

The Court will not accept applications in the name of a deceased person. However, it is well established that an application can be brought on behalf of the deceased by a close relative or heir. For example, the case of

69 *Campbell and Cosans v. UK*, ECtHR (Application Nos. 7511/76 and 7743/76) Judgment of 16 May 1980, (1981) 3 EHRR 531.

70 *Hokkanen v Finland*, ECtHR (Application No. 19823/92) Judgment of 23 September 1994, (1995) 19 EHRR 139.

71 *P, C and S v. UK*, ECtHR (Application No. 56547/00) Judgment of 11. December 2001.

72 *SD, DP and T v. UK*, ECtHR (Application No. 23715/94) Judgment of 20 May 1996, (1996) 22 EHRR CD 148.

*McCann v. UK*,<sup>73</sup> concerning the fatal shooting of three members of the IRA in Gibraltar by British soldiers, was brought by members of the victims' families who were representatives of the estates of the deceased. In *Keenan v. UK*,<sup>74</sup> following her son's suicide in prison, the applicant complained of the prison authorities' failure to take adequate steps to safeguard her son's life.

It is *not* necessary for an applicant in such cases to have to establish financial dependency or pecuniary loss. In *Keenan*, the applicant's son had been over 18 when he died and he had no dependants, which effectively ruled out proceedings under the Fatal Accidents Act 1976 or for bereavement damages. The absence of any pecuniary loss did not prevent Mrs Keenan from making an application to the Commission and indeed the very fact that she could not bring domestic proceedings in respect of her son's death led to a finding by the Court of a violation of the right to an effective remedy under Article 13.<sup>75</sup>

Where the standing of an applicant to bring Convention proceedings in respect of a deceased relative has been challenged, the Strasbourg institutions have underlined the objective and purpose of the Convention as being to provide practical and effective safeguards.<sup>76</sup>

If an applicant dies whilst a case is pending before the Court, the case can usually be continued by the applicant's close relatives or heirs, if that person has a legitimate interest, or if the Court is satisfied that the complaint is of general importance. For example, the parents of a haemophiliac who had contracted HIV could continue an application brought in respect of the length of domestic proceedings for compensation following the applicant's death.<sup>77</sup> In *Laskey, Jaggard and Brown v. UK*,<sup>78</sup> a case concerning criminal proceedings for assault brought in relation to sadomasochistic activities, there was no objection to the father of the first applicant continuing with the proceedings following the first applicant's death. In

73 *McCann v. UK*, ECtHR (Application No. 18984/91) Judgment of 27 September 1995, (1996) 21 EHRR 97.

74 *Keenan v. UK*, ECtHR (Application No. 27229/95) Comm. Rep. 6 September 1999.

75 *Keenan v UK*, ECtHR (Application No. 27229/95) Judgment of 18 April 2001.

76 See, for example, *Yasa v. Turkey*, ECtHR (Application No. 22495/93) Judgment of 2 September 1988, (1999) 28 EHRR 408; *Kurt v. Turkey*, ECtHR (Application No. 24276/94) Judgment of 25 May 1998, (1999) 29 EHRR 373.

77 *X v. France*, ECtHR (Application No. 9993/82) Judgment of 31 March 1992, (1992) 14 EHRR 483.

78 *Brown v. UK*, ECtHR (Application No. 21627/93) Judgment of 19 February 1997, (1997) 24 EHRR 39.



*Micallef v. Malta*<sup>79</sup> the Court allowed an application introduced on behalf of the applicant's sister, who had died while her constitutional claim concerning an alleged breach of her right to a fair trial was pending.

### 3.1.5 Public Corporations

Public bodies, such as councils, cannot make applications to the ECtHR, as Article 34 only permits a 'person, non-governmental organisation or group of individuals' to petition the Court. This rule excludes any 'decentralised authorit[y] that exercise[s] public functions'.<sup>80</sup>

## 3.2 Who Can Claim to be a Victim?

In accordance with Article 34, an applicant must claim to be the *victim* of a violation of one or more Convention rights. The Court will only consider the particular circumstances of each case and will not permit abstract challenges (*actio popularis*),<sup>81</sup> nor will the Court admit hypothetical breaches. This may lead to all or part of Convention applications being rejected. For example, in *Buckley v. UK*<sup>82</sup> the applicant, who was a self-identified gypsy, complained that she was prevented from living in caravans on her own land with her family and from following a life as a traveller. The applicant also complained to the Court of the provisions of the Caravan Sites Act 1968 and the Criminal Justice and Public Order Act 1994, which criminalised the use of traveller caravans in certain circumstances. However, the Court found that as measures had been taken

79 *Micallef v. Malta*, ECtHR (Application No. 17056/06), Decision of 15 October 2009

80 *Danderyds Kommun v. Sweden*, ECtHR (Application No. 52559/99) Judgment of 7 June 2001. See also *16 Austrian Communes and some of their councillors v Austria*, ECtHR (Application No. 5765/77) Judgment of 31 May 1974; *Rothenthurm Commune v. Switzerland*, ECtHR (Application No. 13252/87) Judgment of 14 December 1988; 59 DR 251 (1988) *Ayuntamiento de M v. Spain*, ECtHR (Application No. 15090/89) Decision of 7 January 1991, 68 DR 209; *The Province of Bari, Sorrention and Messeni Nemagna v. Italy*, ECtHR (Application No. 41877/98) Judgment of 15 September 1998; *The Municipal Section of Antilly v. France*, ECtHR (Application No. 45129/98) Decision of 23 November 1999, EHRR 1999-VIII & *Ayuntamiento de Mula v. Spain*, ECtHR (Application No. 55346/00) Decision of 1 February 2001. For the position of the BBC, see *BBC v. UK*, ECtHR (Application No. 25978/94) Judgment of 19 January 1996, 84-A DR 129, (1996) EHRLR 322.

81 See, for example, *Lindsay and Others v. UK*, ECtHR (Application No. 31699/96) Decision of 17 January 1997 – application claiming to represent more than 1 million people in Northern Ireland declared inadmissible *ratione personae* with the provisions of the Convention.

82 *Buckley v. UK*, ECtHR (Application No. 20348/92) Judgment of 25 September 1996, (1997) 23 EHRR 101.

against the applicant under neither statute, those particular complaints could not be considered.

The test applied by the Court is that the applicant must show that she or he has been personally or directly affected by the alleged Convention violation.

The victim test may rule out some applicants in a case, but not others.<sup>83</sup> In *Ahmed and Others v. UK*,<sup>84</sup> a complaint made by the union UNISON concerning the restrictions on the political activities of local government officers was declared inadmissible. The Commission found that the regulations in question<sup>85</sup> did not affect the rights of the union as such (under Articles 10 or 11) and therefore UNISON could not claim to be a victim of a violation of the Convention. However, applications brought by individual local government officers who were affected by the regulations were declared admissible. Therefore if there are doubts about an applicant organisation's victim status, it is advisable to include at least one individual victim as an applicant.

The Strasbourg institutions have allowed a degree of flexibility in certain circumstances in defining what is meant by a 'victim'. Where there is any doubt about an individual's 'victim' status, practitioners should consider carefully whether their clients fall into any of the categories set out below.

### 3.2.1 Potential Victims

Article 34 may permit an applicant to complain that the law itself violates their Convention rights, even if there has been no specific measure implemented against them. However, potential victims of Convention violations must satisfy the Court that there is a real personal risk of being directly affected by the violation.<sup>86</sup>

83 See, for example, *Bowman and the Society for the Protection of Unborn Children v. UK*, ECtHR (Application No. 24839/94) Judgment of 4 December 1995.

84 *Ahmed and Others v. UK*, ECtHR (Application No. 22954/93) Judgment of 12 September 1995. See also, for example, *Purcell and Others v. Ireland*, ECtHR (Application No. 15404/89) Judgment of 16 April 1991.

85 The Local Government Officers (Political Restrictions) Regulations 1990.

86 See, for example, *Open Door Counselling and Dublin Well Woman v. Ireland*, ECtHR (Application Nos. 14234/88 and 14253/88 Series A, No. 246) Judgment of 29 October 1992, (1993) 15 EHRR 244, para. 44 and *Johnston and Others v. Ireland*, ECtHR (Application No. 9697/82, Series A, No. 112) Judgment of 18 December 1986, (1987) 9 EHRR 203, para. 42.

Those considered to be at risk have fallen into various categories, including those at risk of criminal prosecution. The cases of *Dudgeon v. UK*,<sup>87</sup> *Norris v. Ireland*,<sup>88</sup> *Modinos v. Cyprus*<sup>89</sup> all concerned domestic legislation criminalising homosexual acts.<sup>90</sup> In *Dudgeon*, the applicant complained that he was liable to prosecution because of his homosexual conduct and complained of the fear, suffering and psychological distress caused by the very existence of the laws in question. He had been questioned by the police about his homosexual activities and his house had been searched, but criminal proceedings had not been brought against him. The Court accepted that the very existence of the legislation continuously and directly affected his private life, as the threat hanging over him was real.

Another category of potential victims includes those who fall into a particular group within society who might be affected by a particular measure or omission. In *Balmer-Schafroth v. Switzerland*<sup>91</sup> the Government argued that the applicants who were residents living close to a nuclear power station could not claim to be victims of a decision to extend the power station's operating licence because the consequences of the violations of which they complained were too remote to affect them directly and personally. However, the Court rejected those arguments, as the applicants' objections had been found admissible by the Swiss Federal Council and because there could be a Convention violation even in the absence of prejudice.

Potential violations of the Convention will also arise in cases concerning specific measures which, if implemented, would breach the Convention. This often arises in the context of immigration or extradition cases. The case of *Soering v. UK*<sup>92</sup> concerned the decision of the Home Secretary to extradite the applicant to the US where he faced capital murder charges

87 *Dudgeon v. UK*, ECtHR (Application No. 7525/76) Judgment of 22 October 1981, (1982) 4 EHRR 149.

88 *Norris v. Ireland*, ECtHR (Application No. 10581/83, Series A, No. 142) Judgment of 26 October 1988, (1991) 13 EHRR 186.

89 *Modinos v. Cyprus*, ECtHR (Application No. 15070/89, Series A, No. 259) Judgment of 22 April 1993, (1993) 16 EHRR 485.

90 See also *Sutherland v. UK*, ECtHR (Application No. 25186/94) Comm. Rep. 1 July 1997, (1997) 24 EHRR CD 22; *A.D.T. v. UK*, ECtHR (Application No. 35765/97) Judgment of 31 July 2000, (2001) 31 EHRR 33.

91 *Balmer-Schafroth v. Switzerland*, ECtHR (Application No. 22110/93) Judgment of 26 August 1997, (1998) 25 EHRR 598, paras. 24–26. See also, for example, *Amuur v. France*, ECtHR (Application No. 19776/92) Judgment of 25 June 1996, (1996) 22 EHRR 533, para. 36.

92 *Soering v. UK*, ECtHR (Application No. 14038/88, Series A, No. 161) Judgment of 7 July 1989, (1989) 11 EHRR. 439.

in Virginia and a possible death sentence. Therefore, if he were sentenced to death, he would be exposed to the ‘death row phenomenon’ which he claimed would violate Article 3. In those circumstances, the Court found that the responsibility of the State would be engaged where there were substantial grounds for believing that, if extradited, the applicant faced a real risk of being subjected to torture or inhuman or degrading treatment or punishment. That had to be the case, in order to ensure the effectiveness of the Article 3 safeguards, given the serious and irreparable nature of the suffering which the applicant faced.

There have been many examples of applicants complaining of prospective violations in deportation cases.<sup>93</sup> In *Chahal v. UK*<sup>94</sup> the applicant complained that his deportation to India would violate his rights under Article 3 because as a Sikh political activist he risked being subjected to torture. The State’s responsibility will be engaged where there are substantial grounds for believing that the applicant, if expelled, would face a real risk of treatment contrary to Article 3. In *D v. UK*<sup>95</sup> the applicant, who was suffering from the advanced stages of the AIDS virus, complained that his removal to St Kitts, where he had been born, would violate Article 3 because the lack of adequate medical treatment would expose him to inhuman and degrading treatment.

Nevertheless, applicants will be required to wait for the final decision in any domestic proceedings and to exhaust available and effective avenues of appeal before their complaints will be admitted by the Court.<sup>96</sup>

The extent of the secrecy of legislation or measures taken by public authorities may have a bearing on the question of victim status. In *Klass and Others v. Germany*,<sup>97</sup> the applicant lawyers complained about the domestic law in Germany relating to secret surveillance, even though they had no evidence that they had been under surveillance themselves. The Court found that the applicants should not be prevented from claiming

93 See, for example, *Hilal v. United Kingdom*, ECtHR (Application No. 45276/99) Judgment of 6 March 2001.

94 *Chahal v. UK*, ECtHR (Application No. 22414/93) Judgment of 15 November 1996, (1997) 23 EHRR 413.

95 *D v. UK*, ECtHR (Application No. 30240/96) Judgment of 2 May 1997, (1997) 24 EHRR 423. Also see *Bensaid v. United Kingdom*, ECtHR (Application No. 44599/98) Judgment of 6 February 2001.

96 See, for example, *Vijayanathan and Pusparajah v. France*, ECtHR (Application Nos. 17550/90 and 17825/91, Series A, No. 241-B) Judgment of 27 August 1992, (1993) 15 EHRR 62.

97 *Klass and Others v. Germany*, ECtHR (Application No. 5029/71) Judgment of 6 September 1978, (1978) 2 EHRR. 214.

to be victims of the alleged violation where, because of the secrecy of the measures in question, it was not possible to prove any specific implementation against the applicant. Accordingly, applicants may in certain circumstances legitimately complain to the Court of being a victim of a violation because of the mere existence of secret measures.<sup>98</sup>

### 3.2.2 Indirect Victims

An individual who is not directly affected by a particular measure or omission may nevertheless have been ‘indirectly’ affected by the violation of the Convention rights of another person. This may often be the case in respect of close family connections, but it could also include other third parties. For example, family members of a person who is subject to a deportation decision might claim to be a victim of a Convention violation. The case of *Chahal v. UK*<sup>99</sup> concerned the proposed deportation of Mr Chahal, a Sikh separatist leader, on grounds that he posed a threat to national security. Not only did Mr Chahal himself bring proceedings under the Convention, but so too did his wife and children, arguing that his deportation would violate their right to respect for family life under Article 8. The case of *Abdulaziz, Cabales and Balkandali v. UK*<sup>100</sup> concerned the 1971 Immigration Act and Rules which prevented the applicants’ husbands from remaining with them or joining them in the UK. The case was brought by the wives who were lawfully and permanently settled in the UK and the Court found a violation of Article 8 taken together with Article 14 (as victims of sex discrimination) and of Article 13.

### 3.2.3 ‘Prejudice’ Experienced by the Applicant

Generally, there is no need for a ‘victim’ to have suffered ‘prejudice’ or ‘detriment’, which is relevant only in relation to awards of ‘just satisfaction’ under Article 41 of the Convention.<sup>101</sup>

98 See also, for example, *Virginia Matthews v. UK*, ECtHR (Application No. 28576/95) Judgment of 16 October 1996 – allegation that applicant peace campaigner’s telephone calls had been intercepted.

99 *Chahal v. UK*, ECtHR (Application No. 22414/93) Judgment of 15 November 1996, (1997) 23 EHRR 413.

100 *Abdulaziz, Cabales and Balkandali v. UK*, ECtHR (Application Nos. 9214/80, 9473/81 and 9474/81) Judgment of 28 May 1985, (1985) 7 EHRR 471.

101 See, for example, *Balmer-Schafroth v. Switzerland*, ECtHR (Application No. 22110/93) Judgment of 26 August 1997, (1998) 25 EHRR 598, para. 26 & *Amuur v. France*, ECtHR (Application No. 19776/92) (1996) 22 EHRR 533, para. 36.

For example, in *CC v. UK*,<sup>102</sup> the applicant complained of automatic pre-trial detention. The Commission found that the deduction of the period of pre-trial detention from his sentence did not remove his victim status as it did not constitute an acknowledgement that the Convention had been violated.

The position may be different, however, where the national authorities have acknowledged, either expressly or in substance, that there has been a violation of the Convention and where redress has then been provided to the victim.<sup>103</sup> This is discussed further below.

Further, as noted at the start of Chapter 3, the Court now has the power to declare cases inadmissible where the applicant ‘has not suffered a significant disadvantage’ (Article 35(3)(b)). However, a case will not be rejected on this ground where the Court considers that respect for human rights, as defined in the Convention and the Protocols, requires an examination of the application on the merits or where the case has not been duly considered by a domestic tribunal.

### 3.2.4 Losing Victim Status

Applicants may lose their status as ‘victims’ for the purposes of Article 34. For example, an applicant’s status may be affected by settlement of domestic proceedings, or acquittal in criminal proceedings,<sup>104</sup> a successful appeal or discontinuation of the domestic proceedings. For example, in *Caraher v. UK*<sup>105</sup> the applicant alleged violations of Articles 2 and 13 arising from the fatal shooting of her husband by British soldiers in Northern Ireland. Two soldiers were prosecuted for the shooting, but were acquitted. The application was introduced in Strasbourg in 1994. In 1998 the applicant settled a High Court action against the Ministry of Defence for aggravated damages in respect of the death of her husband on receipt of £50,000 in full and final settlement of all claims. The application was subsequently declared inadmissible as the Court found that the applicant could no longer claim to be a victim of a violation of the Convention, having settled the civil proceedings. However, an award of damages from the

102 *CC v. UK*, ECtHR (Application No. 32819/96) Judgment of 1 December 1997.

103 *Eckle v. Federal Republic of Germany*, ECtHR (Application No. 8130/78) Judgment of 15 July 1982, (1983) 5 EHRR 1, para. 66.

104 However, an acquittal may still mean that an applicant can claim to be a victim of procedural violations. See, for example, *Heaney and McGuinness v. Ireland*, ECtHR (Application No. 34720/97) Judgment of 21 December 2000.

105 *Caraher v. UK*, ECtHR (Application No. 24520/94) Judgment of 11 January 2000.

Criminal Injuries Compensation Scheme will not remove an applicant's victim status.<sup>106</sup>

In *Eckle v. Federal Republic of Germany*,<sup>107</sup> the Court laid down a threefold test as to when an applicant would be considered to have lost their victim status:

- (i) where the national authorities had acknowledged that there had been a breach of the Convention, either expressly, or in substance; and
- (ii) where the applicant had been provided with redress; and
- (iii) where the applicant had been treated in such a way that there were sufficient indications to allow an assessment of the extent to which the violation was taken into account.

Applying this test in the case of *Ludi v. Switzerland*,<sup>108</sup> the Court rejected the Government's arguments that the applicant was no longer a victim of a Convention violation because his sentence had been reduced by the Court of Appeal. The Court found that rather than acknowledging that the use of an undercover agent in the criminal proceedings against the applicant had violated the Convention, the authorities had expressly decided that it had been compatible with the Convention's obligations.

Where interferences with rights are caused by 'incidental errors' rather than being deliberate and systematic, a formal apology may remove the applicant's victim status. For example, an apology for interference with prisoners' correspondence, and an assurance that steps would be taken to prevent it happening again, have been found to do so.<sup>109</sup>

106 *Z.W. v. UK*, ECtHR (Application No. 34962/97) Judgment of 27 November 2001.

107 *Eckle v. Federal Republic of Germany*, ECtHR (Application No. 8130/78, Series A, No.51) Judgment of 15 July 1982, (1983) 5 EHRR 1, para. 66. See also *Dalban v. Romania*, ECtHR (Application No. 28114/95) Judgment of 28 September 1999 and *Amuur v. France*, ECtHR (Application No. 19776/92) Judgment of 25 June 1996, (1996) 22 EHRR 533.

108 *Ludi v. Switzerland* ECtHR (Application No. 12433/86) Judgment of 15 June 1992, (1993) 15 EHRR 173.

109 See, for example, *Faulkner v. UK*, ECtHR (Application No. 37471/97) Decision of 18 September 2001 and *Armstrong v. UK*, ECtHR (Application No. 48521/99) Judgment of 25 September 2001.

### 3.3 When Inadmissibility Arguments can be Raised and Decided

The Court may declare an application inadmissible at any stage of the proceedings (Article 35(4)). It may uphold a Respondent Government's arguments that the applicants had failed to exhaust appropriate domestic remedies at the merits stage of the case, even though the case was previously declared admissible.<sup>110</sup>

However, the Respondent Government will be stopped from raising new admissibility arguments at the merits stage, if those arguments were not previously raised at the admissibility stage,<sup>111</sup> unless there are developments after the admissibility decision which are relevant to the question of admissibility amounting to special circumstances warranting its re-examination,<sup>112</sup> such as a reversal of domestic case law or the introduction by the applicant of a new complaint. In *McGonnell v. UK*,<sup>113</sup> the Government argued before the Court that the applicant had failed to exhaust domestic remedies in relation to his complaint that the domestic proceedings had not been independent or impartial, as he had failed to appeal to the Court of Appeal. The Court found that the Government were stopped from relying on such arguments which had not been raised before the Commission.

### 3.4 Exhaustion of Domestic Remedies

By far the most important of admissibility rules, in practice, are the requirements to exhaust domestic remedies and to lodge an application with the European Court within six months from the date when the final decision was taken. The rules are closely linked, as the time limit for lodging an application will depend upon the extent of the domestic remedies available. Respondent Governments will frequently raise, wherever possible, any objection that domestic remedies have not been exhausted, therefore this is an area where practitioners need to be very clear about their client's position.

110 See, for example, *Aytekin v. Turkey*, ECHR (Application No. 22880/93) Judgment of 23 September 1998, (2001) 32 EHRR 22.

111 *Artico v. Italy*, ECtHR (Application No. 6694/74, Series A, No. 37) Judgment of 13 May 1980, (1981) 3 EHRR 1, paras. 27-28; *Pine Valley Developments v. Ireland*, ECtHR (Application No. 12742/87) Judgment of 9 February 1993, (1992) 14 EHRR 319, para. 45.

112 *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, ECtHR (Application Nos. 29221/95 and 29225/95) Judgment of 2 October 2001, para. 54.

113 *McGonnell v. UK*, (Application No 28488/95), Judgment of 8 February 2000



The rationale for the domestic remedies rule is the principle that the domestic authorities should always be given the opportunity to put right a Convention violation before the matter is to be considered by the European Court. The rule is based on the assumption, reflected in Article 13, that there is in the domestic system an effective remedy available in respect of the alleged breach, whether or not the Convention is incorporated into national law.<sup>114</sup>

### 3.4.1 Burden of Proof

Applicants are required to set out in their application the steps taken to exhaust domestic remedies. The burden of proof is then on the Respondent Government to raise non-exhaustion,<sup>115</sup> by pointing to a domestic remedy which in the circumstances of the particular case should have been, but which had not been, invoked. The Government must satisfy the Court that the remedy was an effective one available both in theory and in practice at the relevant time. This will mean a remedy that was accessible, that was capable of providing redress in respect of the applicant's complaint and offered reasonable prospects of success. If the Government refers to an available remedy which in its view should have been utilised, the applicant must either show why the remedy was in fact exhausted, or why the purported remedy is not adequate or effective or that there were special reasons absolving the applicant from invoking the remedy (see below).

A Respondent Government whose submissions in relation to domestic remedies are inconsistent with their arguments in the domestic proceedings will be given short shrift by the Court.<sup>116</sup>

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114 See, for example, *Akdivar v Turkey*, ECtHR (Application No. 21893/93) Judgment of 16 September 1996, (1997) 23 EHRR 143, para. 65.

115 *De Wilde, Ooms and Versyp v. Belgium*, ECtHR (Application Nos. 2832/66, 2835/66 and 2899/66) Judgment of 18 June 1971, (1979) 1 EHRR 373, para. 60 and *Deweert v. Belgium*, ECtHR (Application No. 6903/75) Judgment of 27 February 1980, (1980) 2 EHRR 439, para. 26.

116 *Kolompar v. Belgium*, ECtHR (Application No. 11613/85, Series A, No. 235-C) Judgment of 24 September 1992, (1993) 16 EHRR 197.

An applicant should raise in domestic proceedings the substance of the complaint to be made to the Court,<sup>117</sup> in relation to each Article claimed to be violated, on the basis that the domestic courts should have the opportunity to decide on a claim before it is considered by the European Court. For example, in *Ahmet Sadik v. Greece*,<sup>118</sup> the applicant was found by the Court not to have exhausted domestic remedies as he had at no stage relied on Article 10, or on equivalent arguments, in the domestic courts, even though Article 10 was directly applicable in Greek law.

### 3.4.2 Compliance with Domestic Procedural Rules

In raising the issue expressly or in substance in domestic proceedings, an applicant will be required to have complied with the formal and procedural rules, including time limits, in the domestic law and to have invoked any procedural means which might have prevented a breach of the Convention.<sup>119</sup> Domestic remedies will accordingly not be considered exhausted if an applicant has not pursued a remedy because the time limits or other procedural rules have not been complied with.

### 3.4.3 Flexibility of the Rule

The Court has said that the rules in Article 35 should be applied with ‘some degree of flexibility and without excessive formalism’.<sup>120</sup> This flexibility reflects the fact that the rule is being applied in the context of a system intended to protect human rights.<sup>121</sup> Therefore the exhaustion of domestic remedies rule is not absolute, nor is it applied automatically. The circumstances of each case are always considered, including the general context in which the formal remedies operate and the personal circum-

117 See, for example, *Glaserapp v. Germany*, ECtHR (Application No.9228/80, Series A, No. 104) Judgment of 28 August 1986, (1987) 9 EHRR. 25, paras. 42-46. However, it may not be strictly necessary for the applicant to have been a party to the proceedings, provided that her/his claims were in substance brought to the attention of the courts (see, for example, *P., C. & S v. UK*, ECtHR (Application No. 56547/00) Judgment of 11 December 2001).

118 *Ahmet Sadik v. Greece*, ECtHR (Application No. 18877/91) Judgment of 15 November 1996, (1997) 24 EHRR 323.

119 *Cardot v. France*, ECtHR (Application No. 11069/84) Judgment of 19 March 1991, (1991) 13 EHRR 853, para. 34.

120 See, for example, *Guzzardi v. Italy*, ECtHR (Application No. 7367/76) Judgment of 6 November 1980, (1981) 3 EHRR 333, para. 72 and *Cardot v. France*, ECtHR (Application No. 11069/84) Judgment of 19 March 1991, (1991) 13 EHRR 853, para. 34.

121 *Akdivar v. Turkey*, ECtHR (Application No. 21893/93) Judgment of 16 September 1996, (1997) 23 EHRR 143, para 69.

stances of the applicant. The Court will then examine, in all the circumstances of the case, whether applicants have done everything that could reasonably be expected of them to exhaust domestic remedies.<sup>122</sup>

### 3.4.4 Availability, Effectiveness and Sufficiency of Remedies

Whilst Article 35(1) states that the Court may only deal with a matter after all domestic remedies have been exhausted, an applicant is only required to pursue remedies, which are available, effective and sufficient.

For a domestic remedy to be available, the applicant must be able to initiate the proceedings directly (without being reliant upon a public official). The unavailability of legal aid may affect the accessibility of a remedy, depending upon the applicant's financial resources, the complexity of the remedy and whether or not legal representation is compulsory in domestic proceedings.<sup>123</sup>

The Court will not be satisfied with Respondent Governments raising the existence of remedies which are only theoretically available. In this respect, the Court may require the Government to produce examples of the claimed remedy having been successfully utilised.<sup>124</sup>

A remedy will be considered effective if it may provide redress for the applicant in respect of the alleged Convention violation. This includes not only judicial remedies, but also any administrative domestic remedy, which may provide (binding) redress in the circumstances of the particular case.

The opportunity to request an authority to reconsider a decision it has already taken does not generally constitute a sufficient remedy.<sup>125</sup> Appli-

122 See, for example, *Yasa v. Turkey*, ECtHR (Application. 22495/93) Judgment of 2 September 1998, para. 77.

123 See *Airey v. Ireland*, ECtHR (Application No. 6289/73) Judgment of 9 October 1979, 2 EHRR 305; *Faulkner v. UK*, ECtHR (Application No. 30308/96) Comm. Rep. 1 December 1998.

124 See, for example, *De Jong, Baljet and van den Brink v. The Netherlands*, ECtHR (Application Nos. 8805/79, 8806/79 and 9242/81, Series A, No. 77) Judgment of 22 May 1984, (1986) 8 EHRR 20.

125 *B v. UK*, ECtHR (Application No. 18711/91) Decision of 9 December 1992, (1993) 15 EHRR CD100.

cants will also not be required to have pursued remedies which are purely discretionary.<sup>126</sup>

In cases of doubt about the effectiveness of a domestic remedy, including an appeal process (see below), for the purposes of the ECtHR's exhaustion of domestic remedies test, the remedy should be pursued. This has particularly been found to be the case in common law systems, where the courts extend and develop principles through case law: 'it is generally incumbent on an aggrieved individual to allow the domestic courts the opportunity to develop existing rights by way of interpretation'.<sup>127</sup>

In general, applicants will be required to pursue processes of appeal available in the course of domestic remedies, if such an appeal process would or might provide a remedy for the alleged Convention violation.<sup>128</sup> However, it is not necessary for applicants to pursue a potential form of redress or an appeal process which would not in fact provide a remedy,<sup>129</sup> for example, where it is clear on settled legal opinion that it has no prospects of success.<sup>130</sup> In that situation, the applicant will have to satisfy the Court that there were no such prospects of success and practitioners should consider filing with the Court counsel's opinion to that effect.<sup>131</sup>

The length of domestic proceedings will also be a factor in the consideration of their effectiveness.<sup>132</sup> For example, the case of *Tanli v. Turkey*<sup>133</sup> concerned the killing of the applicant's son in police custody. Criminal proceedings had been instituted but were still pending one year and eight months after the death of the applicant's son. In view of the serious nature

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126 See, for example, *Buckley v. UK*, ECtHR (Application No. 20348/92) Judgment of 3 March 1994; *Temple v. UK*, ECtHR (Application No. 10530/83) Judgment of 16 May 1985, (1986) 8 EHRR 252.

127 *Earl and Countess Spencer v. UK*, ECtHR (Application No. 28851-2/95) Judgment of 16 January 1998.

128 See, for example, *Civet v. France*, ECtHR (Application No. 29340/95) Judgment of 28 September 1999.

129 See, for example, *Hilton v. UK*, ECtHR (Application No. 5613/72) Judgment of 5 March 1976; (1976) 4 DR 177; *A.D.T. v. UK*, ECtHR (Application No. 35765/97, Judgment of 31 July 2000.

130 See, for example, *De Wilde, Ooms and Versyp v. Belgium*, ECtHR (Application Nos. 2832/66, 2835/66 and 2899/66, Judgment of 18 November 1980, (1979) 1 EHRR 373, para. 62.

131 See, for example, *H v. UK*, ECtHR (Application No. 10000/82) Judgment of 4 July 1983, 33 DR 247.

132 See, for example, *Tanli v. Turkey*, ECtHR (Application No. 26129/94) Judgment of 5 March 1996.

133 *Tanli v. Turkey*, ECtHR (Application No. 26129/94) Judgment of 5 March 1996.

of the crime involved, the Commission found that the criminal proceedings were an ineffective remedy.

If there are a number of possible domestic remedies, an applicant will not be required to have exhausted them all, or even to have utilised more than one if they would not achieve anything more. The Court has held that an applicant cannot be criticised for not having had recourse to legal remedies, which would have been directed essentially to the same end and would in any case not have offered better chances of success.<sup>134</sup>

Exhaustion of domestic remedies may take place after an application has been introduced with the Court, but such remedies must have been exhausted before the admissibility decision is made.<sup>135</sup>

### 3.4.5 Special Circumstances

There may, exceptionally, be special circumstances absolving the applicant from exhausting domestic remedies.<sup>136</sup> However, ‘special circumstances’ will *not* include lack of legal knowledge of the Convention, negligent advice by lawyers, or the applicant’s depressive state.

Delay in the availability of a remedy may mean that it need not be utilised by the applicant. In *Reed v. UK*,<sup>137</sup> the applicant complained of being assaulted in prison, invoking Article 3. The Government argued that he had failed to exhaust domestic remedies because he had not brought a civil action for damages. However, the applicant had been first required to allow the prison authorities to investigate his complaints and he was denied access to a solicitor for more than two years. In those circumstances, the applicant was not barred for non-exhaustion of domestic remedies, even where the remedy subsequently became available after the two-year period, as in principle, a remedy should have been immediately available to every aggrieved person, particularly in cases of alleged maltreatment.

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134 *A v. France*, ECtHR (Application No. 14838/89) Series A, No. 277-B, Judgment of 23 November 1993, (1994) 17 EHRR 462, para. 32.

135 *Luberti v. Italy*, ECtHR (Application No. 9019/80) Decision of 7 July 1981, DR 27, p 281.

136 *Akdivar v. Turkey*, ECtHR (Application No. 21893/93) Judgment of 16 September 1996, (1997) 23 EHRR 143.

137 *Reed v. UK*, ECtHR (Application No. 7630/76) Judgment of 6 December 1979, (1981) 3 EHRR 136.

## 3.5 Six-Month Time Limit

### 3.5.1 General Principles

According to Article 35(1), the Court may only deal with a matter which has been submitted within six months of the final decision taken in the domestic proceedings.

The time limit is intended to promote legal certainty, to provide the authorities with a degree of protection from uncertainty, and to ensure that past decisions are not continually open to challenge. It is also intended to ensure that cases are dealt with within a reasonable time, and it increases the likelihood of evidence being available which might otherwise disappear. However, as Convention cases take an average four to five years to progress through the various stages (in addition to the time taken for the matter to be dealt with in the domestic courts), it is common for applicants and witnesses to be asked to produce evidence (usually documentary, and occasionally oral) many years after the original events which are the subject matter of the case.

The Court considers that the six-month rule allows a prospective applicant time to consider whether to lodge an application and, if so, to decide on the specific complaints and arguments to be raised.

Time runs from the day after the date of the final decision in the domestic proceedings, which the applicant is required to invoke under the exhaustion of domestic remedies rule. This will usually mean the date when judgment is given. If judgment is not given publicly, time will run from the date when the applicant or their representative is informed of the decision.<sup>138</sup> This will mean that time will start to run when the applicant's solicitor receives notification of a decision, even if the applicant is not informed until later.

If reasons for a decision follow after the date when the decision itself was made public or notified to the applicant, the time will only start to run from the later date if the reasons given for the decision are relevant to the

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<sup>138</sup> See, for example, *K.C.M. v. the Netherlands*, ECtHR (Application. No. 21034/92) Judgment of 9 January 1995, DR 80, p.87.

Convention application.<sup>139</sup> In *Worm v. Austria*,<sup>140</sup> the applicant journalist had been prosecuted for publishing an article, which was considered capable of influencing the outcome of criminal proceedings relating to a former minister. The Government challenged the admissibility of the application as it had not been lodged within six months of the date when the operative provisions and the relevant reasons were read out by the Court of Appeal. The applicant was not provided with a written copy of the judgment until more than five months later. The Court held that time only started to run after receipt of the written judgment, which contained more than nine pages of detailed legal reasoning.

In relation to a reference to the European Court of Justice (ECJ),<sup>141</sup> the six-month time limit runs from the domestic court's application of the ruling of the ECJ, rather than from the date of the decision of ECJ itself.<sup>142</sup>

If there are no domestic remedies, practitioners should lodge an application at the Court within six months of the incident or decision complained of, or within six months of the applicant's date of knowledge of the incident or decision.<sup>143</sup> This will be the Court's approach where it is clear that from the outset no effective remedy was available to the applicant.

Where there has been a series of events, which the applicant proposes to raise with the European Court, the safest course is to lodge an application within six months of the first incident. However, if the events are linked, it may be possible to lodge within six months of the final event in the series.

The six-month time limit can be satisfied by the lodging of a letter with the Court which sets out the circumstances of the applicant's complaint<sup>144</sup>

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139 *Worm v. Austria*, ECtHR (Application No. 22714/93) Judgment of 29 August 1997, (1998) 25 EHRR 454.

140 *Worm v. Austria*, ECtHR (Application No. 22714/93) Judgment of 29 August 1997, (1998) 25 EHRR 454.

141 Under Article 234 - formerly Article 177 - of the EC Treaty.

142 *Bosphorus Hava Yollari Turizm Ve Ticaret AS v. Ireland*, ECtHR (Application No. 45036/98) Judgment of 13 September 2001.

143 See, for example, *X v. the UK*, ECtHR (Application No. 7379/76) Judgment of 10 December 1977, DR 8, p.211; *Scotts' of Greenock (Estd. 1711) Ltd. Lithgows Ltd (Formerly Lithgows Holdings Ltd v. the UK*, ECtHR (Application No. 9599/81) Judgment of 11 March 1985, DR 42, p33.

144 See, for example, *Allan v. UK*, ECtHR (Application No. 48539/99) Judgment of 28 August 2001.

(see **Annex H** for pro forma letter). However, an application may not, other than in very exceptional circumstances, be introduced by telephone.<sup>145</sup>

However, if there is a significant delay between the initial letter and the submission of the completed application form, an applicant may fall foul of the six months rule.<sup>146</sup>

The six months rule has a value in itself of promoting legal certainty and therefore cannot be waived by Respondent Governments.<sup>147</sup>

### 3.5.2 Doubtful Remedies

If an applicant pursues a remedy which proves to be ineffective, the six months may run from the final decision in the effective remedy pursued (or from the date of the incident itself, if there were no effective remedies). For some prospective applicants to the Court, it may not be at all clear whether a particular form of redress would amount to a 'domestic remedy' for the purposes of Article 35. However, if there is any doubt about the effectiveness of a particular 'remedy', practitioners should consider lodging an introductory letter with the Court in order to protect their client's position. This can simply be done by a letter to the Court. The procedure is set out in Chapter 2. The Court will not usually require a full application to be lodged in those circumstances, although applicants will be required to keep the Court informed of any developments in the domestic proceedings. A full application should then be lodged once the domestic remedy has been exhausted. If such a letter is not lodged, there is a danger that the Government might argue that the applicant had pursued a remedy that was not 'effective' for the purposes of Article 35 and therefore that the application should be declared inadmissible as having been submitted after the expiry of the six months period. For example, the UK Government successfully argued such a point in the case of *Raphaie v. UK*<sup>148</sup> on the basis that the applicant had pursued an internal prison complaint which was not 'effective'.

145 *West v. UK*, ECtHR (Application No. 34728/97) Judgment of 20 October 1997.

146 See, for example, *Nee v. Ireland*, ECtHR (Application No. 52787/99) Decision of 30 January 2003.

147 See, for example, *Walker v. UK*, ECtHR (Application No. 24979/97) Judgment of 25 January 2000.

148 *Raphaie v. UK*, ECtHR (Application No. 20035/92) Judgment of 2 December 1993.



Where there is real doubt as to the availability or effectiveness of domestic remedies, the Court *may* be more flexible in applying the six months rule. The Court will, in general, not require an applicant to lodge a complaint before the position in relation to the matter in question has been settled at the domestic level<sup>149</sup>. If an applicant pursues an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, the six months may only start to run from the date when the applicant first became aware, or ought to have become aware of the circumstances which made the remedy ineffective.<sup>150</sup>

The case of *Keenan v. UK*<sup>151</sup> concerned the applicant's son's suicide in prison and the failure of the prison authorities to safeguard his life, given his history of threatening to kill himself in custody. The Government argued that the applicant had failed to comply with the six months rule as there had been no effective domestic remedies and the complaint should therefore have been lodged within six months of the applicant's son's death. The applicant had had a potential remedy under the Law Reform (Miscellaneous Provisions) Act 1934. She applied for and was granted legal aid. She obtained the opinion of a consultant psychiatrist and then obtained counsel's opinion. Counsel advised that there were no effective domestic remedies available to her. An application to the Commission was lodged within six months of that advice. The Commission found that it was not until she had received counsel's advice that she could reasonably have known that there were no domestic remedies and accordingly the six months only ran from the date of that advice. The position might be different, however, if there were any evidence of abuse or delay by an applicant or an applicant's lawyers. It may be that in reaching this decision the Commission was influenced by the gravity of the case.

*Edwards v. UK*<sup>152</sup> concerned the death of the applicants' son who was kicked and stamped to death by his cell-mate whilst being held on remand in Chelmsford Prison in 1994. His parents were advised in 1996 that any civil proceedings would have been uneconomic and they only lodged their Strasbourg application in 1998 after a non-statutory inquiry

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149 See, for example, *Scotts' of Greenock (Estd. 1711) Ltd. Lithgows Ltd (Formerly Lithgows Holdings Ltd) v. the UK*, ECtHR (Application No. 9599/81) Judgment of 11 March 1985, DR 42, p. 33.

150 See, for example, *Lacin v. Turkey*, ECtHR (Application No. 23654/94) Judgment of 15 May 1995, DR 81, p. 76.

151 *Keenan v. the UK*, ECtHR (Application No. 27229/95) Judgment of 22 May 1998, [1998] EHRLR 648.

152 *Paul and Audrey Edwards v. the UK*, ECtHR (Application No. 46477/99) Judgment of 7 June 2001.

had published its findings. Nevertheless, the Court rejected the Government's arguments that the case had been lodged out of time, taking into account the difficulties for the applicants in obtaining information about their son's death in prison and finding it reasonable for them to have awaited the outcome of the inquiry.

Care should be taken to ensure that if an applicant pursues domestic remedies or appeals, that those remedies would be capable of providing redress for every complaint to be made to the Court.<sup>153</sup> This frequently arises in criminal cases where the applicant wishes to complain about aspects of their detention, as well as the fairness of the proceedings. However, if the applicant's appeal against conviction would have no bearing on the question of the lawfulness of the pre-trial detention, then the question of the detention must be considered carefully and a Convention application lodged within six months of the end of the period of the detention at the latest (or within six months of the final decision in any domestic remedy relating to the detention). For example, in *Surriye Ali v. UK*,<sup>154</sup> the applicant complained under Article 6 about the fairness of the criminal proceedings against him and also under Article 5 about the lawfulness of her initial detention. The application concerning both aspects of the case was not lodged until after judgment was handed down by the Court of Appeal, but the applicant's Article 5 complaint was found to be out of time as the appeal proceedings were not capable of affecting the position in relation to the detention.

### 3.5.3 Continuing Breaches of the Convention

Where the matter, which the applicant complains about, is continuing, the time limit will not start to run until the breach ceases to have a continuing effect. Great care should of course be taken to ascertain that the violation is a continuing one, rather than a one-off decision. There will be a continuing breach, for example, where the applicant complains of the continued existence of particular laws, as in *Dudgeon v. UK*,<sup>155</sup> which concerned the existence in Northern Ireland of laws which made homosexual acts between consenting adult males criminal offences.

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153 See, for example, *Lines v. UK*, ECtHR (Application No. 24519/94) Decision of 17 January 1997, (1997) 23 EHRR CD 58.

154 *Ali v. the UK*, ECtHR (Application No. 25605/94) Judgment of 28 February 1996, (1996) EHRLR 428.

155 *Dudgeon v. UK*, ECtHR (Application No. 7525/76) Judgment of 23 September 1981, (1982) 4 EHRR 149.

There was a violation of the applicant's rights under Article 8 because of the non-enforcement of his right of access to his daughter in the case of *Hokkanen v. Finland*.<sup>156</sup> The case was introduced in 1992 and the Court found that the violation arising from the non-enforcement of access had continued until September 1993 when the Court of Appeal decided that the applicant's access to his daughter could not be enforced against her wishes.

The case of *Varnava and Others v. Turkey*<sup>157</sup> concerned the disappearance of nine Cypriot nationals during military operations conducted by the Turkish army in northern Cyprus in 1974. The Grand Chamber held that, in this exceptional situation of international conflict where no normal investigative procedures were available, it had been reasonable for the applicants to await the outcome of the initiatives taken by their government and the United Nations. Accordingly, although they had applied to the Court more than six months after the acceptance by the Respondent State of the right of individual petition, the applicants (relatives of the disappeared persons) had acted with reasonable expedition.

### 3.6 Anonymous Applications

Every application to the Court must identify the applicant (Article 35(2)(a)). Any application, which does not do so, may be declared inadmissible on this ground alone. For example, in *Blondje v. the Netherlands*<sup>158</sup>, the applicant's identity could not be established from any of the material in the case file. The Court found that the application was to be regarded as anonymous and declared it inadmissible on that account.

In some cases applicants may have very good reasons for not wishing to have their identities disclosed. In such cases, the applicant's details (including name, address, date of birth, nationality and occupation) will have to be set out in the application form, but the applicant can request confidentiality. If the applicant's request for confidentiality is accepted by the Court, the applicant will be identified in the case reports by their initials or simply by a letter.

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156 *Hokkanen v. Finland*, ECtHR (Application No.19823/92, Series A, No. 299-A) Judgment of 23 September 1994, (1995) 19 EHRR 139.

157 *Varnava and Others v. Turkey*, Application Nos. 16064/90 et al.) Decision of 18 September 2008.

158 *Blondje v. the Netherlands*, ECtHR (Application No. 7254/09) Decision of 15 September 2009.

### 3.7 Applications Substantially the Same as a Matter which has Already Been Examined by the Court

An application which is substantially the same as a matter that has already been examined by the Court and which contains no relevant new information will be declared inadmissible by the Court (Article 35(2)(b)). For example, repeated applications from the same applicant concerning the same matter will be declared inadmissible on this ground, unless new relevant information has come to light.

However, the exception concerning ‘relevant new information’ is important. For example, an applicant whose petition has previously been declared inadmissible for non-exhaustion of domestic remedies may re-submit the case to the Court after having exhausted effective domestic remedies. There may also be new factual information or new developments in domestic proceedings, which may justify a further application, such as the increased length of domestic proceedings.<sup>159</sup> However, additional legal arguments will not amount to ‘relevant new information’.<sup>160</sup>

### 3.8 Applications Already Submitted to Another Procedure of International Investigation or Settlement

The Court may not consider any application which has already been submitted to another procedure of international investigation or settlement, and which contains no relevant new information (Article 35(2)(b)). This has very rarely raised any difficulties in practice.<sup>161</sup>

In the case of *Peraldi v. France*,<sup>162</sup> the Court acknowledged for the first time that the United Nations Working Group on Arbitrary Detention was, like the United Nations Human Rights Committee, an ‘international investigation and settlement body’, basing that finding on considerations such as the group’s composition, the nature of its examinations and the procedure it followed. It therefore held that the application before it was ‘substantially the same’ as the complaint brought by the applicant’s broth-

159 See, for example, *X v. the UK*, ECtHR (Application No. 8233/78) Judgment of 3 October 1979, DR 17, p 122; *Vallon v. Italy*, ECtHR (Application No. 9621/81) Decision of 3 June 1985, DR 33, p 217.

160 *X v. the UK*, ECtHR (Application No. 8206/78) Judgment of 10 July 1981, DR 25, p 147.

161 But see, for example, *Cacerrada Fornieles and Cabeza Mato v. Spain*, ECtHR Application No. 17512/90) Decision of 6 July 1992, DR 214.

162 *Peraldi v. France*, ECtHR (Application No. 2096/05) Decision of 7 April 2009.

er before that institution. The Court further observed that the rule in Article 35(2)(b), aimed at avoiding a plurality of international proceedings relating to the same cases, applied notwithstanding the date on which the proceedings were brought, the criterion to be taken into consideration being the prior existence of a decision on the merits at the time when the Court examined the application.

### 3.9 Incompatibility with the Provisions of the Convention

Article 35(3)(a) requires the Court to declare inadmissible any application which it considers ‘incompatible with the provisions of the Convention or the protocols...’ This has four aspects to it:

- (1) Incompatibility of an application because of the limits of the State’s jurisdiction (known as ‘*ratione loci*’);
- (2) Incompatibility of an application because of the limits as to what the Convention rights cover (known as ‘*ratione materiae*’);
- (3) Incompatibility of an application because of the limits in time as to the State’s obligations under the Convention (known as ‘*ratione temporis*’);
- (4) Incompatibility of an application because of the limits as to who may bring Convention applications and as to who may be respondents (known as ‘*ratione personae*’).

#### 3.9.1 Jurisdiction: *Ratione loci*

The alleged violation of the Convention must have occurred within the Respondent State’s *jurisdiction*. This includes a ‘dependent territory’ if the State has made a declaration under Article 56 that the Convention applies to the territory.

For example, in the *Cyprus v. Turkey* cases, Turkey has been found to be responsible for its armed forces in Cyprus. The Turkish armed forces in Cyprus were considered to have brought any persons or property there within the jurisdiction of Turkey, ‘to the extent that they exercise control over such persons or property’.<sup>163</sup>

<sup>163</sup> See, for example, *Cyprus v. Turkey*, ECtHR (Application Nos. 6780/74 and 6950/75) Judgment of 10 July 1976, (1976) 4 EHRR 482, para. 83.

It is generally not possible to complain about the decision of an international organisation. However, the transfer of State power to an international organisation does not necessarily exclude the State's responsibility, as otherwise the Convention guarantees could easily be excluded or limited.<sup>164</sup>

In *Issa and Others v. Turkey*,<sup>165</sup> the Court held unanimously that the applicant's relatives, Iraqi shepherds who had been killed by Turkish soldiers carrying out a military operation in northern Iraq at the time, had not been within the jurisdiction of Turkey within the meaning of Article 1 (obligation to respect human rights) of the Convention.

*Bankovic and Others v. Belgium*<sup>166</sup> concerned an application brought by six citizens of the Federal Republic of Yugoslavia (FRY) whose relatives had died, or who themselves had been injured, as a result of bombing by NATO during the Kosovo crisis in April 1999. The Court unanimously declared the application inadmissible on the basis that the impugned act fell outside the jurisdiction of the Respondent States. The Court concluded that there was no jurisdictional link between the persons who were victims of the extra-territorial act complained of and the Respondent States.

### 3.9.2 Ratione materiae

Complaints about rights which are not protected by the Convention will be declared inadmissible on this ground, including rights clearly not covered by the Convention at all, and rights which are found not to fall within the scope of Convention Articles, for example, if an activity is not considered to be part of your 'private life' under Article 8.<sup>167</sup>

### 3.9.3 Ratione temporis

Complaints against a State which had not ratified the Convention or accepted the right of individual petition at the relevant date will be declared inadmissible on this ground.

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164 See, for example, *Beer and Regan v. Germany*, ECtHR (Application No. 28934/95) and *Waite and Kennedy v. Germany*, ECtHR (Application No. 26083/94) Judgments of 18 February 1999.

165 *Issa and Others v. Turkey* (Application No. 31821/96), Judgment of 16 November 2004.

166 *Bankovic and Others v. Belgium*, (Application no. 52207/99) Decision of 12 December 2001.

167 See, for example, *Botta v. Italy*, ECtHR (Application No. 21439/93) Judgment of 24 February 1998, (1998) 26 EHRR 241.

Where the events complained of began prior to the entry into force of the Convention and continued afterwards, only the latter part may be the subject of a complaint, although the Court may take facts into account which have occurred before the entry into force of the Convention.<sup>168</sup> The case of *Zana v. Turkey*<sup>169</sup> concerned the length of criminal proceedings which had started before Turkey had accepted the right of individual petition. In assessing the reasonableness of the length of the proceedings, the Court took into account that at that date the proceedings had already lasted two years and five months.

In *Šilih v. Slovenia*<sup>170</sup> the Grand Chamber clarified the Court's case law concerning its temporal jurisdiction to examine complaints under the procedural aspect of Article 2 in cases where the death occurred before the entry into force of the Convention in the Respondent State. It held that the obligation to carry out an effective investigation has evolved into a separate and autonomous duty which, although triggered by acts concerning the substantive aspects of Article 2, can give rise to a finding of a separate and independent 'interference'. It may therefore be considered to be a detachable obligation capable of binding the State even when the death took place before the critical date. However, having regard to the principle of legal certainty, the Court stated that, where the death occurred before the critical date, only procedural acts and/or omissions occurring after that date could fall within its temporal jurisdiction. Furthermore, in order for the procedural obligations to take effect, there must be a genuine connection between the death and the entry into force of the Convention in respect of the Respondent State.

The case of *Varnava and Others v. Turkey*<sup>171</sup> supplements this by emphasising the distinction between the obligation to investigate a suspicious death and the obligation to investigate a suspicious disappearance. The Grand Chamber found that where disappearances in life-threatening circumstances were concerned, the procedural obligation to investigate could hardly come to an end on discovery of the body or the presumption of death, since there generally remained an obligation to account for the disappearance and death as well as to identify and prosecute any perpe-

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168 See, for example, *Kerojarvi v. Finland*, ECtHR (Application No. 17506/90, Series A, No. 328) Judgment of 19 July 1995.

169 *Zana v. Turkey*, ECtHR (Application No. 18954/91) Judgment of 25 November 1997, para. 82.

170 *Silih v. Slovenia*, ECtHR (Application No. 71463/01), Grand Chamber, 9 April 2009.

171 *Varnava and Others v. Turkey*, ECtHR (Application Nos 16064/90 et al), Decision of 18 September 2009.

trator of unlawful acts in that regard. Accordingly, even though a lapse of over 34 years without any news of the missing persons could constitute strong evidence that they had died in the meantime, the procedural obligation to investigate had not relinquished. Regarding suspicious disappearances, the procedural obligation under Article 2 could potentially persist as long as the person's fate was unaccounted for, even where the victim could be presumed dead. The approach adopted in *Šilih*,<sup>172</sup> concerning the requirement of proximity of the death and investigative steps to the date of the Convention's entry into force, therefore applied only in the context of killings or suspicious deaths.

### 3.9.4 Ratione personae

This condition will in general exclude complaints which are not directed against the State (or any emanation of the State, such as a public authority, court or tribunal), but against a private individual or organisation.

However, the Court has emphasised that the State cannot absolve itself from responsibility by delegating its obligations to private bodies or individuals. In *Costello-Roberts v. UK*,<sup>173</sup> the Court applied this principle in a case relating to corporal punishment in a private school. The Court found that the State has an obligation to provide children with their right to education, including responsibility for a school's disciplinary system; the right to education applies equally to pupils in independent schools as well as those in state schools.

There may also be exceptions to this condition where the State is found to be responsible for the alleged breach, by, for example, failing to take appropriate measures to protect an individual against the actions of others. For example, the case of *Young, James and Webster v. UK*<sup>174</sup> concerned former British Rail employees who had been dismissed for failing to comply with the closed shop agreement. The Court found the State to be responsible for the domestic law which made the treatment of the applicants lawful.

The responsibility of the State in cases concerning ill-treatment by private individuals will also be incurred under the Convention by virtue of the

172 *Šilih v. Slovenia*, ECtHR (Application No. 71463/01), Grand Chamber, 9 April 2009

173 *Costello-Roberts v. the UK*, ECtHR (Application No. 13134/87, Series A, No. 247-C) Judgment of 25 March 1993, (1995) 19 EHRR 112.

174 *Young, James & Webster v. UK*, ECtHR (Application Nos. 7601/76 and 7807/77, Series A, No. 55) Judgment of 18 October 1982, (1982) 4 EHRR 38.



combined obligations under Articles 1 and 3. Article 1 requires the State to secure to everyone within their jurisdiction the rights and freedoms set out in the Convention. The State must therefore take the necessary steps to prevent individuals being subjected to inhuman and degrading treatment or punishment, even by private individuals. This will require that there is effective deterrence to prevent ill-treatment, in particular, of children and other vulnerable people, such as those with mental health problems.

*A v. UK*<sup>175</sup> concerned the applicant's nine-year-old child's ill-treatment by his stepfather. The stepfather was prosecuted for assault occasioning actual bodily harm for beating the child with a garden cane, but was acquitted. The applicant complained, *inter alia*, of a violation of Article 3. The Court found that as it was a defence to a charge of assault that the treatment in question amounted to 'reasonable chastisement', the law did not provide adequate protection against the ill-treatment of the applicant, in violation of Article 3. This was accepted before the Court by the UK Government.

Complaints against a State which has not signed the Convention or the Protocol will also be excluded by this condition. For example, complaints against the UK in respect of Protocols 4 or 7 would be declared inadmissible on this ground, as the UK has not, as yet, ratified either protocol.

The Court has extended its case law developed in *Behrani v. France*<sup>176</sup> and *Berić and Others v. Bosnia and Herzegovina*<sup>177</sup> - concerning the application of this limitation to armed forces and administrative authorities - to international tribunals. In the cases of *Galić v. the Netherlands*<sup>178</sup> and *Blagojević v. the Netherlands*<sup>179</sup> the Court declared that it lacked jurisdiction *ratione personae* to deal with acts of the International Criminal Tribunal for the former Yugoslavia (ICTY), notably on the grounds that it could not hinder the Security Council's effective fulfillment of its mission to ensure peace and security and that the provisions governing the ICTY's organisation and procedure were designed precisely to provide those indicted before it with all appropriate guarantees.

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175 *A v. UK*, ECtHR (Application No. 25599/94) Judgment of 23 September 1998, (1999) 27 EHRR 611.

176 *Behrani v. France*, ECtHR, (Application No 71412/01) Decision of 2 May 2007.

177 *Beric and Others v. Bosnia and Herzegovina*, ECtHR (Application No. 36357/04) Decision of 16 October 2007.

178 *Galić v. the Netherlands*, ECtHR, (Application No. 22617/07) Decision of 9 June 2009.

179 *Blagojević v. the Netherlands*, ECtHR, (Application No. 49032/07) Decision of 9 June 2009.

### 3.10 Manifestly Ill-Founded

An application may be declared inadmissible as being ‘manifestly ill-founded’ (Article 35(3)), if, on a preliminary investigation, the application does not disclose *prima facie* grounds that there has been a breach of the Convention;<sup>180</sup> for example, where the applicant fails to adduce any evidence in support of the application, or if the facts complained of clearly fall within the limitations or restrictions on the Convention rights. In this case, for example, an applicant would need to produce sufficient evidence of telephone tapping or of torture, failing which, the application would be declared inadmissible as being manifestly ill-founded.

In practice, this requirement amounts to a preliminary merits test and a large number of cases are declared inadmissible on this ground. It is in effect a filtering mechanism, intended to root out the weakest cases. This is perhaps an inevitable part of the Strasbourg system given the very large number of cases, which the Court has to deal with. However, it is something of a misnomer, as applications can still be declared ‘manifestly ill-founded’ even after the Court has decided that the case was worthy of being communicated to the Respondent Government, and only in the light of the Government’s submissions. Furthermore, such decisions do not require unanimity, but can be made by a majority of the chamber of the Court.

### 3.11 Abuse of the Right of Application

Under Article 35(3), the Court will declare inadmissible any application which it considers an abuse of the right of application. Vexatious petitions<sup>181</sup> or petitions written in offensive language will be declared inadmissible on this ground. Deliberately concealing relevant information from the Court might lead to a declaration of inadmissibility on this ground.<sup>182</sup>

The application in *Foxley v. UK*<sup>183</sup> was declared partly inadmissible for failure to comply with the six months rule, but the Commission found

180 See, for example, *Brady v. UK*, ECtHR (Application No. 55151/00) Judgment of 3 April 2001.

181 See, for example, *M v. the UK*, ECtHR (Application No. 13284/87) Judgment of 15 October 1987, DR 54, p 214 – a series of ‘ill-founded and querulous complaints’.

182 See, for example, *F v. Spain*, ECtHR (Application No. 13524/88) Decision of 12 April 1991, DR 69, p 185, where the applicant was found not to have deliberately concealed certain domestic proceedings in progress.

183 *Foxley v. the UK*, ECtHR (Application No. 33274/96) Judgment of 12 October 1999.

that as there was evidence of the applicant's original representative having forged a letter purportedly from the Commission, it could equally have been rejected as an abuse of the right of application. In *Drozd v. Poland*<sup>184</sup> the application was struck off the Commission's list of cases following publication in a newspaper (of which the applicant was on the editorial board) of correspondence from the Commission, in breach of the Commission's confidentiality rules.

But this condition will *not* exclude 'political' applications or those made for purposes of gaining publicity. In *McFeeley v. UK*<sup>185</sup> the applicants complained about the conditions in the Maze prison in Northern Ireland. The Government argued that the application was an abuse of the right of petition as it was inspired by motives of publicity and propaganda and was intended to pressurise the Government into re-introducing the special category status. The Commission rejected these arguments, finding that a complaint of abuse might be upheld if an application were clearly unsupported by the evidence or outside the scope of the Convention.

In *Miroļubovs and Others v. Latvia*<sup>186</sup> the Court, for the first time, gave a general definition of the concept of 'abuse of the right of application' and defined the fundamental principles applicable in that regard. While stating that an intentional breach of the confidentiality rule amounted to an abuse of procedure, the Court nevertheless observed that the burden of proving that applicants were at fault for disclosing confidential information lay in principle with the Government, as a mere suspicion was not sufficient for an application to be declared an abuse of the right of petition.

### 3.12 Applications Without Significant Disadvantage / New Admissibility Criterion

As discussed above, the Court has recently issued inadmissibility decisions in the case of *Korolev v. Russia* and in *Ionescu v. Romania* invoking the new admissibility criterion.

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184 *Drozd v. Poland*, ECtHR (Application No. 25403/94) Decision of 5 March 1996, (1996) EHRLR 430 - the case was struck off under the then Article 30(1)(c).

185 *McFeeley et al v. the UK*, ECtHR (Application No. 8317/78) Judgment of 15 May 1980, (1981) 3 EHRR 161.

186 *Mirolubovs and Others v. Latvia*, ECtHR (Application No. 798/05), Judgment of 15 September 2009

In light of the two cases, which so far have been examined under the new admissibility criteria under Article 35(3) and the application of the *de minimis no curat praetor* principle as previously applied in the *Bock case*, the argument can be made that there is not much difference in the Court's assessment before and after the entry into force of the new criterion.

This raises questions over the value of the new criterion. Since for the moment it has only been used in cases concerning obviously insignificant sums of money, the Court could have dealt with them, as demonstrated in *Bock v. Germany*, without the new criterion.

However, it is likely that the new criterion will achieve its goal – to enable more rapid disposal of unmeritorious cases – in the long run. 'More rapid disposal' will probably be achieved through further interpretation by the Court.

## **4. JUDGMENT AND ENFORCEMENT**

### **4.1 Judgment**

The Court's judgment is usually published several months after the submission of final written observations. Judgments are drafted in one of the two official languages of the Court (English or French) unless the Court decides that it must be given in both official languages (Rule 76). They are written in standard format and will contain, among other things, the dates on which it was adopted and delivered, the facts of the case, a summary of the submissions of the parties, the reasons in points of law, the operative provisions and the decision, if any, in respect of costs. A judgment also must contain the number of the judges constituting the majority. Concurring or dissenting judges are entitled to have their separate opinions annexed to the judgment (Rule 74(2)).

A judgment may be read out at a public hearing and certified copies are sent by the Registry to the parties. It will also be posted on the website the day the judgment is given, but not until later in the day, usually around 1.30pm GMT.

A party may request the interpretation of a judgment within a year following the delivery of that judgment (Rule 79). If a party discovers a new fact that might have a decisive influence upon the outcome of the case but was unknown to the Court when the judgment was delivered, it may request the revision of the judgment within a period of six months after it acquired knowledge of that fact (Rule 80).

In exceptional cases, any party to the case may request for its referral to the Grand Chamber. Such a request must take place within a period of three months from the date that the Chamber rendered its judgment on the case (Article 43, Rule 73).

A judgment rendered by a Chamber shall become final in one of the following instances:

- (1) when the parties declare that they will not request that the case be referred to the Grand Chamber; or

- (2) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or
- (3) when the panel of the Grand Chamber rejects the request to refer under Article 43.<sup>187</sup>

A refusal to refer a case to the Grand Chamber and a judgment rendered by the Grand Chamber are both final (Article 44 (1) ECHR).

## 4.2 Remedies

The Court's primary remedy is a declaration that there has been a violation of the Convention. Where the Court finds that there has been a violation of the Convention, the judgment may include an award for 'just satisfaction' under Article 41, if the question of compensation is ready for decision.

Just satisfaction under Article 41 may include compensation for both pecuniary and non-pecuniary loss and legal costs and expenses. Awards for just satisfaction are an equitable remedy, at the discretion of the Court.

The obligation to abide to a final judgment (Article 46(1)) includes a legal obligation on the part of the Respondent State not only to pay monetary compensation in cases where an award for just satisfaction has been made, but also to choose the general and/or, if appropriate, individual measures, subject to supervision of the CoM, to be adopted in its domestic legal order to end the violation found by the Court and make reparations.<sup>188</sup>

### 4.2.1 Pecuniary and Non-Pecuniary Compensation

In general, awards of damages are relatively low compared to damages awarded by the domestic courts of many of the older CoE States. This is probably due to a prevailing view that the primary remedy in Strasbourg is the finding of a violation of the Convention itself. Indeed, in many cases, the Court will decline to award any damages on the basis that the declaration is 'sufficient' just satisfaction. In considering awards for just

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187 Article 44(2) ECHR.

188 *Paygar ev Haghthanak Ltd v. Armenia* (Application No. 21638/03) Judgment of 20 December 2007.

satisfaction, the Court is unlikely to take account of principles or scales of assessment used by domestic courts.<sup>189</sup>

Rather than lay down specific means of calculating damages awards (such as an hourly rate for unlawful detention), the Court applies general principles in assessing just satisfaction. The legal effect of a judgment is to place a duty on the Respondent State to make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (*restitutio in integrum*). The Court will frequently comment that it is unable to speculate on the outcome of the applicant's domestic proceedings, had there not been a violation of the Convention. This is often the position, for example, in cases where there has been a violation of the right to a fair trial in criminal proceedings.<sup>190</sup> In *Findlay v. UK*,<sup>191</sup> for example, the applicant's claim for loss of income of 440,200 UK pounds following his conviction and sentence by a court-martial which violated Article 6(1) was rejected for this reason by the Court. On many occasions, the Court states that its award is made 'on an equitable basis'.

The Respondent State is usually expressly required to pay compensation and costs within three months of the date of the judgment becoming final. The Court usually directs that interest at a prescribed rate shall be payable on any sums not paid within that time.

It is vital that detailed claims for just satisfaction are made by the applicant. Where an applicant fails to make such a claim, the Court will not consider an award of its own motion<sup>192</sup>. Details of how to set out the claims are included at **Annex J**.

Claims for punitive or aggravated damages have been rejected by the Court, without ruling out the possibility of making such awards.<sup>193</sup>

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189 *Osman v. UK*, ECtHR (Application No. 23452/94) Judgment of 28 October 1998, (2000) 29 EHRR 245, para. 164.

190 See, for example, *Hood v. UK*, ECtHR (Application No. 27267/95) Judgment of 18 February 1999, (2000) 29 EHRR 365, para 86.

191 *Findlay v. UK*, ECtHR (Application No. 22107/93) Judgment of 25 February 1997, (1997) 24 EHRR 221.

192 See, for example, *Moore and Gordon v. UK*, ECtHR (Application Nos. 36529/97 and 37393/97) Judgment of 29 September 1999, (2000) 29 EHRR 728, para. 28.

193 See, for example, *Selcuk and Asker v. Turkey*, ECtHR (Application Nos. 23184/94 and 23185/94) Judgment of 24 April 1998, (1998) 26 EHRR 477, para. 119 and *Hood v. UK*, ECtHR (Application No. 27267/95) Judgment of 18 February 1999, (2000) 29 EHRR 365, para. 89.

One of the highest awards for damages, in recent years was the award of 190,000 euros in respect of pecuniary and non-pecuniary damage in the case of *Perdigão v. Portugal*.<sup>194</sup> The Court held in this case that two former owners of expropriated land in Portugal, who complained that their court fees were more than the compensation they received, had been violated in their right of protection of property as guaranteed by Article 1 of Protocol No. 1.

In the case of *Loizidou v. Turkey*<sup>195</sup> the damages awarded for the violation of the same right amounted to 457,084 Cypriot pounds (for pecuniary damage, non-pecuniary damage and costs and expenses); by the time Turkey paid the damages in 2003, the sum amounted to more than one million US dollars.<sup>196</sup>

The conduct of the applicant may also be a factor in assessing awards. No award was made in *McCann and Others v. UK*<sup>197</sup> 'having regard to the fact that the three terrorist suspects who were killed had been intending to plant a bomb in Gibraltar'.

In order to succeed in claiming pecuniary losses, the applicant must establish a causal link between the violation and the losses claimed. Awards may include loss of earnings (past and future), loss of pension scheme benefits, fines and taxes imposed, costs incurred, loss of inheritance and loss of the value of land. Awards for non-pecuniary damage may include elements in respect of pain and suffering, anguish and distress, trauma, anxiety, frustration, feelings of isolation, helplessness and injustice and for loss of opportunity, reputation or relationship.

If one or more heads of damage cannot be calculated precisely or if the distinction between pecuniary and non-pecuniary damage proves difficult, the Court may decide to make a global assessment.<sup>198</sup>

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194 *Perdigão v. Portugal*, ECtHR, (Application No. 24768/06) Decision of 16 November 2010.

195 *Loizidou v. Turkey*, ECtHR, (Application No. 15318/89) Judgment on just satisfaction of 28 July 1998.

196 'Turkey compensates Cyprus refugee' (2 December 2003) *BBC News*, available at <http://news.bbc.co.uk/1/hi/world/europe/3257880.stm> (last accessed on 21 December 2010).

197 *McCann and Others v. UK*, ECtHR (Application No. 18984/91, Series A, No. 324) Judgment of 27 September 1995, (1996) 21 EHRR 97, para. 219.

198 *Comingersoll v. Portugal [GC]*, ECtHR (Application No. 35382/97) Judgment of 6 April 2000 (2000) IV ECHR, para. 29.



## 4.2.2 Restitution in Property Cases

In cases of unlawful expropriation of immovable property where the Court finds a violation of the Convention, it may order the return of the property to the applicants and also hold that should the Respondent State fail to do so it should pay the applicants, in respect of pecuniary damage, an amount corresponding to the current value of the property. For example, in *Strain and Others v. Romania* concerning the failure of the Respondent State to return to the applicants part of their property that was nationalised in the 1950s, the Court found a violation of Article 1 Protocol 1 ECHR and ordered Romania to return the property to the applicants or, if it failed to do so, to pay the applicants the amount, in pecuniary damage, corresponding to the current value of their flat.<sup>199</sup> In such cases, it is suggested that the applicant(s) submit a detailed valuation of the property expropriated.

## 4.2.3 Release of a Person Unlawfully Detained

In cases where the Court has found a violation of Article 5 in relation to the applicant's continuing arbitrary detention, it may request the authorities of the State party to take all the necessary measures to put an end to the arbitrary detention of the applicant(s) still imprisoned and secure their immediate release.<sup>200</sup>

## 4.2.4 Re-hearings in Criminal Proceedings

The Court is placing increasing pressure on Member States to hold a re-hearing in the domestic proceedings following a finding of an ECHR violation in the course of those proceedings. Re-examination of a case by the domestic authorities or the re-opening of proceedings will often be the most effective way of achieving '*restitutio in integrum*'. For example, in a series of judgments against Turkey, which found that the applicants had been convicted by a court which was not independent and impartial within the meaning of Article 6(1), the Court recommended that the most appropriate form of redress would be for them to be re-tried by an

199 *Strain and Others v. Romania*, ECtHR (Application No. 57001/00) Judgment of 21 July 2003, paras. 74-75.

200 *Ilascu and Others v. Russia and Moldova*, ECtHR (Application No. 48787/99) Judgment of 8 July 2004, para. 221.

independent and impartial court at an early date.<sup>201</sup> However, such recommendations do not seem to have been adopted in practice.

In the Case of *Öcalan v. Turkey*<sup>202</sup> the Grand Chamber endorsed this general approach, but found that the specific remedial measure, if any, required of a Respondent State in order to discharge its obligations under Article 46 had to depend on the particular circumstances of the individual case and be determined in the light of the terms of the Court's judgment in that case and with due regard to the case law of the Court.

#### 4.2.5 Costs and Expenses

The Court may award an applicant their costs provided that each of the following conditions is satisfied:

- (1) that the costs are actually incurred;
- (2) that they are necessarily incurred; and
- (3) that they are reasonable as to quantum.

In addition to the costs of the Court proceedings, a successful applicant may seek to recover from the Court costs incurred in domestic proceedings, which were aimed at obtaining redress in respect of the Convention violation.<sup>203</sup> Domestic fee scales may be relevant, but they are not binding on the Court.

It is essential to submit to the Court detailed bills of costs setting out the tasks carried out, the hours worked, the hourly rates and details of all expenses. Costs will not be deemed to have been incurred where a legal representative has acted free of charge and therefore they cannot in those circumstances be claimed under Article 41.<sup>204</sup> A suggested format can be found at **Annex J**.

If the applicant has not succeeded in establishing a violation of the Convention in respect of part of their case, this may be a factor in the Court reducing the costs sought.

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201 *Gençel v. Turkey*, ECtHR (Application No. 53431/99) Decision of 23 October 2003; *Somogyi v. Italy*, (Application No. 67972/01), § 86, ECHR 2004-IV.

202 *Öcalan v. Turkey*, ECtHR, (Application No. 46221/99) Grand Chamber Judgment of 12 May 2005.

203 See, for example, *Lustig-Prean and Beckett v. UK*, (Application Nos. 31417/96 and 32377/96) Judgment of 27 September 1999, paras. 30-33.

204 See, for example, *McCann v. UK*, (Application No. 18984/91) 21 EHRR 97, para. 221.

Costs awards may be expressed to be inclusive or exclusive of VAT and any sums previously paid by the Court, as legal aid will be deductible.

There is no provision in the Convention for costs to be awarded against an unsuccessful applicant.

### 4.3. Enforcement

The Member States undertake to abide by the final judgment of the Court in any case to which they are parties (Article 46(1)). However, the standard of protection provided by the ECtHR cannot be maintained if Member States refuse or delay the execution of the Court's final judgments in cases to which they are parties, as the final judgments issued by the Court are legally binding but essentially declaratory.<sup>205</sup> Thus, in cases where the Court finds that a violation of the ECHR stems directly from contested legislation it cannot annul or repeal that legislation.<sup>206</sup> It is up to the Respondent State to choose the means to fulfil the obligations arising from Article 46 of the ECHR.<sup>207</sup>

*Manole and Others v. Moldova*<sup>208</sup> concerned the censorship and political pressure to which journalists working for the State broadcasting company were subjected. For the first time, the Court called upon a State to take general measures as soon as possible, including legislative reform, to remedy the situation that had given rise to a violation of Article 10. It added that the legal framework to be instituted must be in conformity with the recommendations of the CoM and those of an expert appointed following an agreement between the Moldovan authorities and the Secretary General of the CoE.

The Court has also had to deal with cases disclosing systemic problems in relation to medical care in prison. For example, in *Poghosyan v. Georgia*,<sup>209</sup> the Court noted the systemic nature of the lack of medical care in Georgian prisons, particularly regarding the treatment of persons with Hepatitis C, and urged Georgia to 'rapidly' take legislative and admin-

205 Article 46 para. 1 ECHR; see, for example, *Marckx v. Belgium*, ECtHR (Application No. 6833/74, Series A, No. 31) Judgment of 13 June 1979.

206 *Ibid.*

207 Report on the execution of judgments of the European Court of Human Rights, on behalf of the Committee on Legal Affairs and Human Rights, Rapporteur: Mr Jurgens, Doc. 8808, adopted on 28 September 2000, reproduced in (2000) 21 4-7 HRLJ 275.

208 *Manole and Others v. Moldova*, (Application No. 13963/02) Decision of 17 September 2009.

209 *Poghosyan v. Georgia*, ECtHR, (Application No. 9870/07) Decision 24 February 2009.

istrative measures in order to prevent the transmission of the disease in prisons, to introduce a testing programme and to guarantee the provision of care for those suffering from the disease. The case of *Stawomir Musiał v. Poland*<sup>210</sup> concerned the inadequate medical care provided to an accused person suffering from epilepsy and various mental disorders who was detained in a succession of ordinary prisons. The Court considered that, in view of the seriousness and the systemic nature of the problem of overcrowding and the poor living and sanitary conditions in Polish detention facilities, the necessary legislative and administrative measures should be taken rapidly to ensure appropriate conditions of detention, particularly for prisoners who needed special care owing to their state of health.

The CoM is the body entrusted with the supervision of the execution of the judgments and friendly settlement agreements.<sup>211</sup> The CoM is assisted in its task by the Directorate General of Human Rights. A final judgment is transmitted to the CoM and the latter invites the Respondent State to inform it of the steps taken to pay any just satisfaction awarded as well as of any individual or general measures which may be necessary in order to comply with the State's legal obligation to abide by the Court's findings. When the judgment becomes final, the Applicant(s) should submit their bank details to the Directorate General for payment of the just satisfaction, as well as the bank details of their representatives for payment of the costs and expenses, as applicable. These should be sent to:

Department for the Execution of Judgments  
 Directorate General II – Human Rights  
 Council of Europe  
 F-67075 STRASBOURG CEDEX  
 FRANCE

Tel.: +33 (0)3 90 21 55 54  
 Fax: +33 (0)3 88 41 27 93  
 E-mail: DGII.Execution@coe.int

For information of the supervision on the execution of the Court's final judgments can also be sought from their website: [http://www.coe.int/t/dghl/monitoring/execution/default\\_en.asp](http://www.coe.int/t/dghl/monitoring/execution/default_en.asp).

210 *Stawomir Musiał v. Poland*, ECtHR, (Application No. 28300/06) Decision of 20 January 2009.

211 Article 46 para. 2, ECHR.

Since Protocol No. 14 entered into force, the CoM has two extra tools that are likely to help it influence Governments of Respondent States with regards to the execution of the Court's judgments.<sup>212</sup>

Article 46(3) provides that in cases where the CoM considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation.<sup>213</sup>

Article 46(4) provides that in cases where the CoM considers that a Respondent State refuses to execute a judgment in a case to which it is a party, it may refer to the Court the question of whether the Respondent State has failed to fulfil its obligations under Article 46(1) and bring infringement proceedings before the Court.<sup>214</sup> This procedure is likely to be invoked only in the most exceptional cases.

Applicants, their representatives and NGOs all have a discretion to make submission to the CoM about the execution – or non-execution – of a judgment or friendly settlement (Rules 9 and 15 of the Rules of the CoM for the supervision of the execution of judgments and of the terms of friendly settlements). Such submissions should be sent to the address above.

The work of the supervision of the final judgments is carried out by the CoM in six regular meetings during the year. The CoM completes the supervision of a case by issuing a final resolution.

Although Respondent States are usually willing to pay the just satisfaction and try to abide with their obligation under Article 46(1), there are also many occasions where a Respondent State refuses to execute a final judgment, or delays in doing so. There may be political, budgetary or other reasons why execution does not take place, such as in connection with the scale of the reforms required. The CoM may take various steps in order to assist execution, such as diplomatic initiatives or the issuing of interim resolutions. If problems persist, the CoM may issue more strongly-word-

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212 See also the proposals in Resolution 1226 (2000), Execution of Judgments of the European Court on Human Rights, Texts adopted by the Assembly, 28 September 2000, reproduced in (2000 21 4-7 HRLJ 273). The Parliamentary Assembly has also undertaken efforts to encourage the timely execution of the Court's judgments by holding debates in which non-implementing governments are publicly called to account (see Resolution 1411 (2004) (provisional edition), text adopted by the Standing Committee acting on behalf of the Assembly on 23 November 2004).

213 See Protocol No. 14 and Explanatory Report.

214 See Protocol No. 14 and Explanatory Report.

ed resolutions urging the Respondent State to comply with the judgment, ultimately recalling the unconditional nature of the obligation to comply with the Court's judgments and stressing that compliance is a condition of membership of the Council of Europe.

The ECHR does not provide for sanctions when a State delays or does not execute a final judgment in a case to which it is a party. However, as a last resort, Article 8 in conjunction with Article 3 of the Council of Europe Statute can be applied and the CoM may decide to suspend a Council of Europe member from its rights of representation or expel it in view of its persistent refusal to implement the Court's judgments. To date, this avenue has never been used. It is unlikely it will be used except in extraordinary circumstances, given that the generally accepted view in the Council of Europe is that 'human rights can best be protected by working with a State within the organisation.'<sup>215</sup>

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215 Ovey, Clare and Robin C.A. White, *The European Convention on Human Rights*, 3rd ed. (Oxford University Press, 2002), page 434.

**Annex A: European Convention on Human Rights  
Convention for the Protection  
of Human Rights  
and Fundamental Freedoms  
as amended by Protocols Nos. 11 and 14  
with Protocols Nos. 1, 4, 6, 7, 12 and 13**

The text of the Convention is presented as amended by the provisions of Protocol No. 14 (CETS no. 194) as from its entry into force on 1 June 2010.

The text of the Convention had previously been amended according to the provisions of Protocol No. 3 (ETS no. 45), which entered into force on 21 September 1970, of Protocol No. 5 (ETS no. 55), which entered into force on 20 December 1971, and of Protocol No. 8 (ETS no. 118), which entered into force on 1 January 1990, and comprised also the text of Protocol No. 2 (ETS no. 44) which, in accordance with Article 5 § 3 thereof, had been an integral part of the Convention since its entry into force on 21 September 1970. All provisions which had been amended or added by these Protocols were replaced by Protocol No. 11 (ETS no. 155), as from the date of its entry into force on 1 November 1998. As from that date, Protocol No. 9 (ETS no. 140), which entered into force on 1 October 1994, was repealed and Protocol No. 10 (ETS no. 146) lost its purpose.

The current state of signatures and ratifications of the Convention and its Protocols as well as the complete list of declarations and reservations are available at <http://conventions.coe.int>.

Registry of the European Court of Human Rights  
June 2010

The governments signatory hereto, being members of the Council of Europe,

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10 December 1948;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realization of human rights and fundamental freedoms;

Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend;

Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration,

Have agreed as follows:

## **Article 1 – Obligation to respect human rights**

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

## **Section I – Rights and freedoms**

### **Article 2 – Right to life**

- 1 Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
- 2 Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
  - a in defense of any person from unlawful violence;
  - b in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
  - c in action lawfully taken for the purpose of quelling a riot or insurrection.

### **Article 3 – Prohibition of torture**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.



**Article 4 – Prohibition of slavery and forced labour**

- 1 No one shall be held in slavery or servitude.
- 2 No one shall be required to perform forced or compulsory labour.
- 3 For the purpose of this Article the term “forced or compulsory labour” shall not include:
  - a any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
  - b any service of a military character or, in case of conscientious objectors in countries where they are recognized, service exacted instead of compulsory military service;
  - c any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
  - d any work or service which forms part of normal civic obligations.

**Article 5 – Right to liberty and security**

- 1 Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
  - a the lawful detention of a person after conviction by a competent court;
  - b the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law;
  - c the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
  - d the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

- e the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of un-sound mind, alcoholics or drug addicts or vagrants;
  - f the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
- 2 Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
  - 3 Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
  - 4 Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
  - 5 Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

### **Article 6 – Right to a fair trial**

- 1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
- 2 Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
- 3 Everyone charged with a criminal offence has the following minimum rights:
  - a to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

- b to have adequate time and facilities for the preparation of his defense;
- c to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- d to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- e to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

#### **Article 7 – No punishment without law**

- 1 No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
- 2 This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations.

#### **Article 8 – Right to respect for private and family life**

- 1 Everyone has the right to respect for his private and family life, his home and his correspondence.
- 2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

#### **Article 9 – Freedom of thought, conscience and religion**

- 1 Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

- 2 Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

### **Article 10 – Freedom of expression**

- 1 Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
- 2 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

### **Article 11 – Freedom of assembly and association**

- 1 Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
- 2 No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

### **Article 12 – Right to marry**

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

**Article 13 – Right to effective remedy**

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

**Article 14 – Prohibition of discrimination**

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

**Article 15 – Derogation in time of emergency**

- 1 In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
- 2 No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 § 1 and 7 shall be made under this provision.
- 3 Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefore. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

**Article 16 – Restriction on political activity of aliens**

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

**Article 17 – Prohibition of abuse of rights**

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

## **Article 18 – Limitation on use of restrictions on rights**

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

## **Section II – European Court of Human Rights**

### **Article 19 – Establishment of the Court**

To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as “the Court”. It shall function on a permanent basis.

### **Article 20 – Number of judges**

The Court shall consist of a number of judges equal to that of the High Contracting Parties.

### **Article 21 – Criteria for office**

- 1 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 recognized competence.
- 2 The judges shall sit on the Court in their individual capacity.
- 3 During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.

### **Article 22 – Election of judges**

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.

### **Article 23 – Terms of office and dismissal**

- 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.
- 4 No judge may be dismissed from office unless the other judges decide by a majority of two-thirds that that judge has ceased to fulfill the required conditions.

#### **Article 24 – Registry and rapporteurs**

- 1 The Court shall have a Registry, the functions and organization of which shall be laid down in the rules of the Court.
- 2 When sitting in a single-judge formation, the Court shall be assisted by rapporteurs who shall function under the authority of the President of the Court. They shall form part of the Court’s Registry.

#### **Article 25 – Plenary Court**

The plenary Court shall:

- a select its President and one or two Vice-Presidents for a period of three years; they may be re-elected;
- b set up Chambers, constituted for a fixed period of time;
- c elect the Presidents of the Chambers of the Court; they may be re-elected;
- d adopt the rules of the Court;
- e elect the Registrar and one or more Deputy Registrars;
- f make any request under Article 26 § 2.

#### **Article 26 – Single-judge formation, Committees, Chambers and Grand Chamber**

- 1 To consider cases brought before it, the Court shall sit in a single-judge formation, in Committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. The Court’s Chambers shall set up Committees for a fixed period of time.

- 2 At the request of the plenary Court, the Committee of Ministers may, by a unanimous decision and for a fixed period, reduce to five the number of judges of the Chambers.
- 3 When sitting as a single judge, a judge shall not examine any application against the High Contracting Party in respect of which that judge has been elected.
- 4 There shall sit as an *ex officio* member of the Chamber and the Grand Chamber the judge elected in respect of the High Contracting Party concerned. If there is none or if that judge is unable to sit, a person chosen by the President of the Court from a list submitted in advance by that Party shall sit in the capacity of judge.
- 5 The Grand Chamber shall also include the President of the Court, the Vice-Presidents, the Presidents of the Chambers and other judges chosen in accordance with the rules of the Court. When a case is referred to the Grand Chamber under Article 43, no judge from the Chamber which rendered the judgment shall sit in the Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the High Contracting Party concerned.

#### **Article 27 – Competence of single judges**

- 1 A single judge may declare inadmissible or strike out of the Court's list of cases an application submitted under Article 34, where such a decision can be taken without further examination.
- 2 The decision shall be final.
- 3 If the single judge does not declare an application inadmissible or strike it out, that judge shall forward it to a Committee or to a Chamber for further examination.

#### **Article 28 – Competence of Committees**

- 1 In respect of an application submitted under Article 34, a Committee may, by a unanimous vote,
  - a declare it inadmissible or strike it out of its list of cases, where such decision can be taken without further examination; or
  - b declare it admissible and render at the same time a judgment on the merits, if the underlying question in the case, concerning the interpretation or



the application of the Convention or the Protocols thereto, is already the subject of well-established case-law of the Court.

- 2 Decisions and judgments under paragraph 1 shall be final.
- 3 If the judge elected in respect of the High Contracting Party concerned is not a member of the Committee, the Committee may at any stage of the proceedings invite that judge to take the place of one of the members of the Committee, having regard to all relevant factors, including whether that Party has contested the application of the procedure under paragraph 1 (b).

### **Article 29 – Decisions by Chambers on admissibility and merits**

- 1 If no decision is taken under Article 27 or 28, or no judgment rendered under Article 28, a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 34. The decision on admissibility may be taken separately.
- 2 A Chamber shall decide on the admissibility and merits of inter-State applications submitted under Article 33. The decision on admissibility shall be taken separately unless the Court, in exceptional cases, decides otherwise.

### **Article 30 – Relinquishment of jurisdiction to the Grand Chamber**

Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects.

### **Article 31 – Powers of the Grand Chamber**

The Grand Chamber shall

- a determine applications submitted either under Article 33 or Article 34 when a Chamber has relinquished jurisdiction under Article 30 or when the case has been referred to it under Article 43;
- b decide on issues referred to the Court by the Committee of Ministers in accordance with Article 46 § 4; and
- c consider requests for advisory opinions submitted under Article 47.

### **Article 32 – Jurisdiction of the Court**

- 1 The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the Protocols thereto which are referred to it as provided in Articles 33, 34, 46 and 47.
- 2 In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.

### **Article 33 – Inter-State cases**

Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the Protocols thereto by another High Contracting Party.

### **Article 34 – Individual cases**

The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

### **Article 35 – Admissibility criteria**

- 1 The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognized rules of inter-national law, and within a period of six months from the date on which the final decision was taken.
- 2 The Court shall not deal with any application submitted under Article 34 that
  - a is anonymous; or
  - b is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.
- 3 The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:
  - a the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; or

- b the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal.
- 4 The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.

### **Article 36 – Third party intervention**

- 1 In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings.
- 2 The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.
- 3 In all cases before a Chamber or the Grand Chamber, the Council of Europe Commissioner for Human Rights may submit written comments and take part in hearings.

### **Article 37 – Striking out applications**

- 1 The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
  - a the applicant does not intend to pursue his application; or
  - b the matter has been resolved; or
  - c for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.

- 2 The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.

### **Article 38 – Examination of the case**

The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities.

### **Article 39 – Friendly settlements**

- 1 At any stage of the proceedings, the Court may place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the Protocols thereto.
- 2 Proceedings conducted under paragraph 1 shall be confidential.
- 3 If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.
- 4 This decision shall be transmitted to the Committee of Ministers, which shall supervise the execution of the terms of the friendly settlement as set out in the decision.

### **Article 40 – Public hearings and access to documents**

- 1 Hearings shall be in public unless the Court in exceptional circumstances decides otherwise.
- 2 Documents deposited with the Registrar shall be accessible to the public unless the President of the Court decides otherwise.

### **Article 41 – Just satisfaction**

If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.

### **Article 42 – Judgments of the Chambers**

Judgments of Chambers shall become final in accordance with the provisions of Article 44 § 2.

**Article 43 – Referral to the Grand Chamber**

- 1 Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.
- 2 A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the Protocols thereto, or a serious issue of general importance.
- 3 If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

**Article 44 – Final judgments**

- 1 The judgment of the Grand Chamber shall be final.
- 2 The judgment of a Chamber shall become final:
  - a when the parties declare that they will not request that the case be referred to the Grand Chamber; or
  - b three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or
  - c when the panel of the Grand Chamber rejects the request to refer under Article 43.
- 3 The final judgment shall be published.

**Article 45 – Reasons for judgments and decisions**

- 1 Reasons shall be given for judgments as well as for decisions declaring applications admissible or inadmissible.
- 2 If a judgment does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

**Article 46 – Binding force and execution of judgments**

- 1 The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

- 2 The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.
- 3 If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the Committee.
- 4 If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1.
- 5 If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case.

#### **Article 47 – Advisory opinions**

- 1 The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the protocols thereto.
- 2 Such opinions shall not deal with any question relating to the content or scope of the rights or freedoms defined in Section I of the Convention and the protocols thereto, or with any other question which the Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention.
- 3 Decisions of the Committee of Ministers to request an advisory opinion of the Court shall require a majority vote of the representatives entitled to sit on the Committee.

#### **Article 48 – Advisory jurisdiction of the Court**

The Court shall decide whether a request for an advisory opinion submitted by the Committee of Ministers is within its competence as defined in Article 47.

**Article 49 – Reasons for advisory opinions**

- 1 Reasons shall be given for advisory opinions of the Court.
- 2 If the advisory opinion does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.
- 3 Advisory opinions of the Court shall be communicated to the Committee of Ministers.

**Article 50 – Expenditure on the Court**

The expenditure on the Court shall be borne by the Council of Europe.

**Article 51 – Privileges and immunities of judges**

The judges shall be entitled, during the exercise of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder.

**Section III – Miscellaneous provisions****Article 52 – Inquiries by the Secretary General**

On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention.

**Article 53 – Safeguard for existing human rights**

Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a Party.

**Article 54 – Powers of the Committee of Ministers**

Nothing in this Convention shall prejudice the powers conferred on the Committee of Ministers by the Statute of the Council of Europe.

**Article 55 – Exclusion of other means of dispute settlement**

The High Contracting Parties agree that, except by special agreement, they will not avail themselves of treaties, conventions or declarations in force between them for

the purpose of submitting, by way of petition, a dispute arising out of the interpretation or application of this Convention to a means of settlement other than those provided for in this Convention.

### **Article 56 – Territorial application**

- 1 Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall, subject to paragraph 4 of this Article, extend to all or any of the territories for whose international relations it is responsible.
- 2 The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary General of the Council of Europe.
- 3 The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.
- 4 Any State which has made a declaration in accordance with paragraph 1 of this article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention.

### **Article 57 – Reservations**

- 1 Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this article.
- 2 Any reservation made under this article shall contain a brief statement of the law concerned.

### **Article 58 – Denunciation**

- 1 A High Contracting Party may denounce the present Convention only after the expiry of five years from the date on which it became a party to it and after six months' notice contained in a notification addressed to the Secretary General of the Council of Europe, who shall inform the other High Contracting Parties.



- 2 Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.
- 3 Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to this Convention under the same conditions.
- 4 The Convention may be denounced in accordance with the provisions of the preceding paragraphs in respect of any territory to which it has been declared to extend under the terms of Article 56.

### **Article 59 – Signature and ratification**

- 1 This Convention shall be open to the signature of the members of the Council of Europe. It shall be ratified. Ratifications shall be deposited with the Secretary General of the Council of Europe.
- 2 The European Union may accede to this Convention.
- 3 The present Convention shall come into force after the deposit of ten instruments of ratification.
- 4 As regards any signatory ratifying subsequently, the Convention shall come into force at the date of the deposit of its instrument of ratification.
- 5 The Secretary General of the Council of Europe shall notify all the members of the Council of Europe of the entry into force of the Convention, the names of the High Contracting Parties who have ratified it, and the deposit of all instruments of ratification which may be effected subsequently.

Done at Rome this 4th day of November 1950, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatories.

## **Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms**

The governments signatory hereto, being members of the Council of Europe,

Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section I of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as “the Convention”),

Have agreed as follows:

### **Article 1 – Protection of property**

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

### **Article 2 – Right to education**

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

### **Article 3 – Right to free elections**

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

### **Article 4 – Territorial application**

Any High Contracting Party may at the time of signature or ratification or at any time thereafter communicate to the Secretary General of the Council of Europe a declaration stating the extent to which it undertakes that the provisions of the present Protocol shall apply to such of the territories for the international relations of which it is responsible as are named therein.

Any High Contracting Party which has communicated a declaration in virtue of the preceding paragraph may from time to time communicate a further declaration modifying the terms of any former declaration or terminating the application of the provisions of this Protocol in respect of any territory.

A declaration made in accordance with this article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

### **Article 5 – Relationship to the Convention**

As between the High Contracting Parties the provisions of Articles 1, 2, 3 and 4 of this Protocol shall be regarded as additional articles to the Convention and all the provisions of the Convention shall apply accordingly.

### **Article 6 – Signature and ratification**

This Protocol shall be open for signature by the members of the Council of Europe, who are the signatories of the Convention; it shall be ratified at the same time as or after the ratification of the Convention. It shall enter into force after the deposit of ten instruments of ratification. As regards any signatory ratifying subsequently, the Protocol shall enter into force at the date of the deposit of its instrument of ratification.

The instruments of ratification shall be deposited with the Secretary General of the Council of Europe, who will notify all members of the names of those who have ratified.

Done at Paris on the 20th day of March 1952, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatory governments.

### **Protocol No.4 to the Convention for the Protection of Human Rights and Fundamental Freedoms securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto**

The governments signatory hereto, being members of the Council of Europe,

Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4th November 1950 (hereinafter referred to as the “Convention”) and in Articles 1 to 3 of the First Protocol to the Convention, signed at Paris on 20th March 1952,

Have agreed as follows:

### **Article 1 – Prohibition of imprisonment for debt**

No one shall be deprived of his liberty merely on the ground of inability to fulfil a contractual obligation.

### **Article 2 – Freedom of movement**

- 1 Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
- 2 Everyone shall be free to leave any country, including his own.
- 3 No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
- 4 The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

### **Article 3 – Prohibition of expulsion of nationals**

- 1 No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.
- 2 No one shall be deprived of the right to enter the territory of the state of which he is a national.

### **Article 4 – Prohibition of collective expulsion of aliens**

Collective expulsion of aliens is prohibited.

### **Article 5 – Territorial application**

- 1 Any High Contracting Party may, at the time of signature or ratification of this Protocol, or at any time thereafter, communicate to the Secretary General of the Council of Europe a declaration stating the extent to which it undertakes that the provisions of this Protocol shall apply to such of the territories for the international relations of which it is responsible as are named therein.

- 2 Any High Contracting Party which has communicated a declaration in virtue of the preceding paragraph may, from time to time, communicate a further declaration modifying the terms of any former declaration or terminating the application of the provisions of this Protocol in respect of any territory.
- 3 A declaration made in accordance with this article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.
- 4 The territory of any State to which this Protocol applies by virtue of ratification or acceptance by that State, and each territory to which this Protocol is applied by virtue of a declaration by that State under this article, shall be treated as separate territories for the purpose of the references in Articles 2 and 3 to the territory of a State.
- 5 Any State which has made a declaration in accordance with paragraph 1 or 2 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided in Article 34 of the Convention in respect of all or any of Articles 1 to 4 of this Protocol.

#### **Article 6 – Relationship to the Convention**

As between the High Contracting Parties the provisions of Articles 1 to 5 of this Protocol shall be regarded as additional articles to the Convention, and all the provisions of the Convention shall apply accordingly.

#### **Article 7 – Signature and ratification**

- 1 This Protocol shall be open for signature by the members of the Council of Europe who are the signatories of the Convention; it shall be ratified at the same time as or after the ratification of the Convention. It shall enter into force after the deposit of five instruments of ratification. As regards any signatory ratifying subsequently, the Protocol shall enter into force at the date of the deposit of its instrument of ratification.
- 2 The instruments of ratification shall be deposited with the Secretary General of the Council of Europe, who will notify all Members of the names of those who have ratified.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 16th day of September 1963, in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatory states.

**Protocol No.6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of death penalty**

The member States of the Council of Europe, signatory to this Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as “the Convention”),

Considering that the evolution that has occurred in several member States of the Council of Europe expresses a general tendency in favour of abolition of the death penalty,

Have agreed as follows:

**Article 1 – Abolition of the death penalty**

The death penalty shall be abolished. No-one shall be condemned to such penalty or executed.

**Article 2 – Death penalty in time of war**

A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.

**Article 3 – Prohibition of derogations**

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

**Article 4 – Prohibition of reservations**

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

**Article 5 – Territorial application**

- 1 Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.
- 2 Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the date of receipt of such declaration by the Secretary General.
- 3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the date of receipt of such notification by the Secretary General.

**Article 6 – Relationship to the Convention**

As between the States Parties the provisions of Articles 1 to 5 of this Protocol shall be regarded as additional articles to the Convention and all the provisions of the Convention shall apply accordingly.

**Article 7 – Signature and ratification**

The Protocol shall be open for signature by the member States of the Council of Europe, signatories to the Convention. It shall be subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol unless it has, simultaneously or previously, ratified the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

**Article 8 – Entry into force**

- 1 This Protocol shall enter into force on the first day of the month following the date on which five member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 7.
- 2 In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month

following the date of the deposit of the instrument of ratification, acceptance or approval.

### **Article 9 – Depositary functions**

The Secretary General of the Council of Europe shall notify the member States of the Council of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance or approval;
- c any date of entry into force of this Protocol in accordance with Articles 5 and 8;
- d any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 28th day of April 1983, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

### **Protocol No.7 to the Convention for the protection of Human Rights and Fundamental Freedoms**

The member States of the Council of Europe signatory hereto,

Being resolved to take further steps to ensure the collective enforcement of certain rights and freedoms by means of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as “the Convention”),

Have agreed as follows:

### **Article 1 – Procedural safeguards relating to expulsion of aliens**

- 1 An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:
  - a to submit reasons against his expulsion,



- b to have his case reviewed, and
  - c to be represented for these purposes before the competent authority or a person or persons designated by that authority.
- 2 An alien may be expelled before the exercise of his rights under paragraph 1.a, b and c of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security.

### **Article 2 – Right of appeal in criminal matters**

- 1 Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.
- 2 This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.

### **Article 3 – Compensation for wrongful conviction**

When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of the State concerned, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

### **Article 4 – Right not to be tried or punished twice**

- 1 No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.
- 2 The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.

- 3 No derogation from this Article shall be made under Article 15 of the Convention.

### **Article 5 – Equality between spouses**

Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of the children.

### **Article 6 – Territorial application**

- 1 Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which the Protocol shall apply and state the extent to which it undertakes that the provisions of this Protocol shall apply to such territory or territories.
- 2 Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date of receipt by the Secretary General of such declaration.
- 3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of two months after the date of receipt of such notification by the Secretary General.
- 4 A declaration made in accordance with this article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.
- 5 The territory of any State to which this Protocol applies by virtue of ratification, acceptance or approval by that State, and each territory to which this Protocol is applied by virtue of a declaration by that State under this Article, may be treated as separate territories for the purpose of the reference in Article 1 to the territory of a State.
- 6 Any State which has made a declaration in accordance with paragraph 1 or 2 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of

the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided in Article 34 of the Convention in respect of Articles 1 to 5 of this Protocol.

### **Article 7 – Relationship to the Convention**

As between the States Parties, the provisions of Articles 1 to 6 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

### **Article 8 – Signature and ratification**

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

### **Article 9 – Entry into force**

- 1 This Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date on which seven member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 8.
- 2 In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date of the deposit of the instrument of ratification, acceptance or approval.

### **Article 10 – Depositary functions**

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance or approval;
- c any date of entry into force of this Protocol in accordance with Articles 6 and 9;
- d any other act, notification or declaration relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 22nd day of November 1984, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

### **Protocol No.12 to the Convention on the Protection of Human Rights and Fundamental Freedoms**

The member States of the Council of Europe signatory hereto,

Having regard to the fundamental principle according to which all persons are equal before the law and are entitled to the equal protection of the law;

Being resolved to take further steps to promote the equality of all persons through the collective enforcement of a general prohibition of discrimination by means of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as “the Convention”);

Reaffirming that the principle of non-discrimination does not prevent States Parties from taking measures in order to promote full and effective equality, provided that there is an objective and reasonable justification for those measures,

Have agreed as follows:

#### **Article 1 – General prohibition of discrimination**

- 1 The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
- 2 No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

#### **Article 2 – Territorial application**

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.

- 2 Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt by the Secretary General of such declaration.
- 3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General of the Council of Europe. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.
- 4 A declaration made in accordance with this article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.
- 5 Any State which has made a declaration in accordance with paragraph 1 or 2 of this article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention in respect of Article 1 of this Protocol.

### **Article 3 – Relationship to the Convention**

As between the States Parties, the provisions of Articles 1 and 2 of this Protocol shall be regarded as additional articles to the Convention, and all the provisions of the Convention shall apply accordingly.

### **Article 4 – Signature and ratification**

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

### **Article 5 – Entry into force**

- 1 This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which ten member

States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 4.

- 2 In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

### **Article 6 – Depositary functions**

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance or approval;
- c any date of entry into force of this Protocol in accordance with Articles 2 and 5;
- d any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Rome, this 4th day of November 2000, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

### **Protocol No.13 to the Convention on the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances**

The member States of the Council of Europe signatory hereto,

Convinced that everyone's right to life is a basic value in a democratic society and that the abolition of the death penalty is essential for the protection of this right and for the full recognition of the inherent dignity of all human beings;

Wishing to strengthen the protection of the right to life guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention");

Noting that Protocol No. 6 to the Convention, concerning the Abolition of the Death Penalty, signed at Strasbourg on 28 April 1983, does not exclude the death penalty in respect of acts committed in time of war or of imminent threat of war;

Being resolved to take the final step in order to abolish the death penalty in all circumstances,

Have agreed as follows:

### **Article 1 – Abolition of the death penalty**

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

### **Article 2 – Prohibition of derogations**

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

### **Article 3 – Prohibition of reservations**

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

### **Article 4 – Territorial application**

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.
- 2 Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
- 3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

## **Article 5 – Relationship to the Convention**

As between the States Parties the provisions of Articles 1 to 4 of this Protocol shall be regarded as additional articles to the Convention, and all the provisions of the Convention shall apply accordingly.

## **Article 6 – Signature and ratification**

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

## **Article 7 – Entry into force**

- 1 This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which ten member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 6.
- 2 In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

## **Article 8 – Depositary functions**

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance or approval;
- c any date of entry into force of this Protocol in accordance with Articles 4 and 7;
- d any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.



Done at Vilnius, this 3rd day of May 2002, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.



## **Annex B: Application Form**

Voir note explicative  
*See Explanatory Note*

### **COUR EUROPÉENNE DES DROITS DE L'HOMME** *EUROPEAN COURT OF HUMAN RIGHTS*

Conseil de l'Europe - *Council of Europe*  
Strasbourg, France

## **REQUÊTE** ***APPLICATION***

présentée en application de l'article 34 de la Convention européenne des Droits de l'Homme, ainsi que des articles 45 et 47 du Règlement de la Cour

*under Article 34 of the European Convention on Human Rights  
and Rules 45 and 47 of the Rules of Court*

**IMPORTANT:** La présente requête est un document juridique et peut affecter vos droits et obligations.  
This application is a formal legal document and may affect your rights and obligations.

**I - LES PARTIES**  
**THE PARTIES**

**A. LE REQUÉRANT/LA REQUERANTE**  
**THE APPLICANT**

(Renseignements a fournir concernant le requérant(e) et son/sa représentant(e) éventuel(le)  
(Fill in the following details of the applicant and the representative, if any)

1. Nom de famille ..... 2. Prénom(s).....  
*Surname.....First name(s)*

Sexe: masculin/féminine Sex: male/female

3. Nationalité..... 4. Profession .....  
*Nationality Occupation*

5. Date et lieu de naissance .....  
*Date and place of birth*

6. Domicile.....  
*Permanent address*

7. Tel No.....

8. Adresse actuelle (si différente de 6.) .....  
*Present address (if different from 6)*

9. Nom et prénom du/de la représentant(e)\* .....  
*Name of representative\**

10. Profession du/de la représentant(e) .....  
*Occupation of representative*

11. Adresse du/de la représentant(e) .....  
*Address of representative*

12. Tel. No..... Fax No.....

**B. LA HAUTE PARTIE CONTRACTANTE**  
**THE HIGH CONTRACTING PARTY**

(Indiquer ci-après le nom de l'Etat/des Etats contre le(s)quel(s) la requête est dirigée)  
(Fill in the name of the State(s) against which the application is directed)

13. ....

\* Si le/la requérant(e) est représenté(e), joindre une procuration signée par le/la requérant(e) en faveur du/de la représentant(e)  
*A form of authority signed by the applicant should be submitted if a representative is appointed*

II - EXPOSÉ DES FAITS  
**STATEMENT OF THE FACTS**

(Voir chapitre II de la note explicative)  
(see Part II of the Explanatory Note)

14.

Si nécessaire, continuer sur une feuille séparée  
*Continue on a separate sheet if necessary*

**III - EXPOSÉ DE LA OU DES VIOLATION(S) DE LA CONVENTION  
ET/OU DES PROTOCOLES ALLÉGUÉE(S), AINSI QUE DES  
ARGUMENTS À L'APPUI**  
***STATEMENT OF ALLEGED VIOLATION(S) OF THE CONVEN-  
TION AND/OR PROTOCOLS AND OF RELEVANT ARGUMENTS***

(Voir chapitre III de la note explicative)  
(*See Part III of the Explanatory Note*)

15.

**IV - EXPOSÉ RELATIF AUX PRESCRIPTIONS DE L'ARTICLE 35(1)  
DE LA CONVENTION**  
***STATEMENT RELATIVE TO ARTICLE 35(1) OF THE CONVEN-  
TION***

(Voir chapitre IV de la note explicative. Donner pour chaque grief, et au besoin sur une feuille séparée, les renseignements demandés sous les points 16 à 18 ci-après)

*(See Part IV of the Explanatory Note. If, necessary, give the details mentioned below under points 16 to 18 on a separate sheet for each separate complaint)*

16. Décision interne définitive (date et nature de la décision, organe - judiciaire ou autre - l'ayant rendue)

*Final decision (date, court or authority and nature of decision).*

17. Autres décisions (énumérées dans l'ordre chronologique en indiquant, pour chaque décision, sa date, sa nature et l'organe - judiciaire ou autre - l'ayant rendue)

*Other decisions (list in order, giving date, court or authority and nature of decision for each of them)*

18. Dispos(1)ez-vous d'un recours que vous n'avez pas exercé? Si oui, lequel et pour quel motif n'a-t-il pas été exercé?

*Is there or was there any other appeal or other remedy available which you have not used? If so, explain why you have not used it.*

Si nécessaire, continuer sur une feuille séparée

*Continue on a separate sheet if necessary*

**V - EXPOSÉ DE L'OBJET DE LA REQUÊTE ET PRETENTIONS PRO-  
VISOIRES POUR UNE SATISFACTION EQUITABLE  
STATEMENT OF THE OBJECT OF THE APPLICATION AND PRO-  
VISIONAL CLAIMS FOR JUST SATISFACTION**

(Voir chapitre V de la note explicative)  
(See Part V of the Explanatory Note)

19.

**VI - AUTRES INSTANCES INTERNATIONALES TRAITANT OU AY-  
ANT TRAITÉ L'AFFAIRE  
STATEMENT CONCERNING OTHER INTERNATIONAL PRO-  
CEEDINGS**

(Voir chapitre VI de la note explicative)  
(See Part VI of the Explanatory Note)

20. Avez-vous soumis à une autre instance internationale d'enquête ou de règlement les griefs énoncés dans la présente requête? Si oui, fournir des indications détaillées à ce sujet.

*Have you submitted the above complaints to any other procedure of international investigation or settlement? If so, give full details*



**VII - PIECES ANNEXEES  
LIST OF DOCUMENTS**

**(PAS D'ORIGINAUX,  
UNIQUEMENT DES COPIES)  
(NO ORIGINAL DOCUMENTS,  
ONLY PHOTOCOPIES)**

(Voir chapitre VII de la note explicative. Joindre copie de toutes les décisions mentionnées sous ch. IV et VI ci-dessus. Se procurer, au besoin, les copies nécessaire et, en cas impossibilité, expliquer pourquoi celles-ci ne peuvent pas être obtenues. Ces documents ne vous seront pas retournes)

*(See Part VII of the Explanatory Note. Include copies of all decisions referred to in Parts IV and VI above. If you do not have copies, you should obtain them. If you cannot obtain them, explain why not. No documents will be returned to you)*

- 21. a) .....
- b) .....
- c) .....

**VIII - DECLARATION ET SIGNATURE**  
***DECLARATION AND SIGNATURE***

(Voir chapitre IX de la note explicative)

*(See Part IX of the Explanatory Note)*

22. Je déclare en toute conscience et loyauté que les renseignements qui figurent sur la présente formule de requête sont exacts.

*I hereby declare that, to the best of my knowledge and belief, the information I have given in the present application form is correct.*

Lieu/Place .....

Date/Date.....

(Signature du/de la requérant(e) ou du/de la représentant(e))

*(Signature of the applicant or of the representative)*

## Annex C: Form of Authority

### EUROPEAN COURT OF HUMAN RIGHTS AUTHORITY

(Rule 36 of the Rules of Court)

1 This form must be completed and signed by any applicant wishing to be represented before the Court and by the lawyer or other person appointed.

I, .....

.....

(name and address of applicant)

hereby authorise .....

.....

.....

(name, address and occupation of representative)

to represent me in the proceedings before the European Court of Human Rights, and in any subsequent proceedings under the European Convention on Human Rights, concerning my application introduced under Article 34 of the Convention against

.....

(respondent State)

on .....

(date of letter of introduction)

.....

(place and date)

.....

(signature of applicant)

I hereby accept the above appointment

.....

(signature of representative)



5. List and value of capital assets owned by you:

- (a) Immovable property (e.g. land, house, business premises)
- (b) Movable property and nature thereof (e.g. bank balance, savings account, motor-car, valuables)

6. List your financial commitments:

- (a) Rent, mortgage and other charges
- (b) Loans your interest payable thereon
- (c) Maintenance of dependants
- (d) Any other financial obligations

7. What contribution can you make towards your legal representation before the Court Of Human Rights?

8. The name of the person whom you propose to assist you:  
(see Rule 94 of the Rules of Court )

I certify that the above information is correct.

Signed:

Dated:

## Annex E: European Court Legal Aid Rates



COUR EUROPÉENNE DES DROITS DE L'HOMME  
EUROPEAN COURT OF HUMAN RIGHTS

**Legal aid rates  
applicable since 1 January 2009**

| <u>A. FEES AND EXPENSES</u>   | <u>Lump sum per case</u> |
|---|--------------------------|
| Preparation of the case   |                          |
| <ul style="list-style-type: none"> <li>• Filing written pleadings at the request of the Court on the admissibility or merits of the case</li> <li>• Supplementary observations at the request of the Court (on the admissibility or merits of the case at whatever stage of the proceedings)</li> <li>• submissions on just satisfaction or friendly settlement<sup>1</sup></li> <li>• Normal secretarial expenses (for example telephone, postage, photocopies)</li> </ul> | } € 850                  |
| <br>  |                          |
| <b><u>B. OTHER</u></b>  |                          |
| 1. Appearance at an oral hearing before the Court or attending the hearing of witnesses (including preparation) .....   | € 300                    |
| 2. Assisting in friendly settlement negotiations <sup>2</sup> .....   | € 200                    |
| 3. Travelling costs incurred in connection with appearance at an oral hearing or hearing of witnesses or with friendly-settlement negotiations .....  | according to receipts    |
| 4. Subsistence allowance in connection with appearance at an oral hearing or hearing of witnesses or with friendly-settlement negotiations.....   | € 175 per diem           |

<sup>1</sup> The lump sum covers all written exchanges on the subject.

<sup>2</sup> This involves taking part in a meeting organized by the Registry and attended by the parties and Registry staff (one or more judges may also attend) with a view to reaching a friendly settlement.





## Appendix F: Table of Ratifications

Dates of ratification of the European Convention on Human Rights and Additional Protocols as at July 2011

| States                 | Convention | Protocol No. 1 | Protocol No. 4 | Protocol No. 6 | Protocol No. 7 | Protocol No. 12 | Protocol No. 13 |
|------------------------|------------|----------------|----------------|----------------|----------------|-----------------|-----------------|
| Albania                | 2/10/96    | 2/10/96        | 2/10/96        | 1/10/00        | 1/1/97         | 1/4/05          | 1/6/07          |
| Andorra                | 22/1/96    | 6/5/08         | 6/5/08         | 1/2/96         | 1/8/08         | 1/9/08          | 1/7/03          |
| Armenia                | 26/4/02    | 26/4/02        | 26/4/02        | 1/10/03        | 1/7/02         | 1/4/05          |                 |
| Austria                | 3/9/58     | 3/9/58         | 18/9/69        | 1/3/85         | 1/11/88        |                 | 1/5/04          |
| Azerbaijan             | 15/4/02    | 15/4/02        | 15/4/02        | 1/5/02         | 1/7/02         |                 |                 |
| Belgium                | 14/6/55    | 14/6/55        | 21/9/70        | 1/1/99         |                |                 | 1/10/03         |
| Bosnia and Herzegovina | 12/7/02    | 12/7/02        | 12/7/02        | 1/8/02         | 1/10/02        | 1/4/05          | 1/11/03         |
| Bulgaria               | 7/9/92     | 7/9/92         | 4/11/00        | 1/10/99        | 1/2/01         |                 | 1/7/03          |
| Croatia                | 5/11/97    | 5/11/97        | 5/11/97        | 1/12/97        | 1/2/98         | 1/4/05          | 1/7/03          |
| Cyprus                 | 6/10/62    | 6/10/62        | 3/10/89        | 1/2/00         | 1/12/00        | 1/4/05          | 1/7/03          |
| Czech Republic         | 1/1/93     | 1/1/93         | 1/1/93         | 1/1/93         | 1/1/93         |                 | 1/11/04         |
| Denmark                | 3/9/53     | 18/5/54        | 2/5/68         | 1/3/85         | 1/11/88        |                 | 1/7/03          |
| Estonia                | 16/4/96    | 16/4/96        | 16/4/96        | 1/5/98         | 1/7/96         |                 | 1/6/04          |
| Finland                | 10/5/90    | 10/5/90        | 10/5/90        | 1/6/90         | 1/8/90         | 1/4/05          | 1/3/05          |
| France                 | 3/5/74     | 3/5/74         | 3/5/74         | 1/3/86         | 1/11/88        |                 | 1/2/08          |
| Georgia                | 20/5/99    | 7/6/02         | 13/4/00        | 1/5/00         | 1/7/00         | 1/4/05          | 1/9/03          |
| Germany                | 3/9/53     | 13/2/57        | 1/6/68         | 1/8/89         |                |                 | 1/2/05          |
| Greece                 | 28/11/74   | 28/11/74       |                | 1/10/98        | 1/11/88        |                 | 1/6/05          |
| Hungary                | 5/11/92    | 5/11/92        | 5/11/92        | 1/12/92        | 1/2/93         |                 | 1/11/03         |
| Iceland                | 3/9/53     | 18/5/54        | 2/5/68         | 1/6/87         | 1/11/88        |                 | 1/3/05          |
| Ireland                | 3/9/53     | 18/5/54        | 29/10/68       | 1/7/94         | 1/11/01        |                 | 1/7/03          |
| Italy                  | 26/10/55   | 26/10/55       | 27/5/82        | 1/1/89         | 1/2/92         |                 | 1/7/09          |
| Latvia                 | 27/6/97    | 27/6/97        | 27/6/97        | 1/6/99         | 1/9/97         |                 |                 |
| Lichtenstein           | 8/9/82     | 14/11/95       | 8/2/05         | 1/12/90        | 1/5/05         |                 | 1/7/03          |
| Lithuania              | 20/6/95    | 24/5/96        | 20/6/95        | 1/8/99         | 1/9/95         |                 | 1/5/04          |
| Luxembourg             | 3/9/53     | 18/5/54        | 2/5/68         | 1/3/85         | 1/7/89         | 1/7/06          | 1/7/06          |
| Malta                  | 23/1/67    | 23/1/67        | 5/6/02         | 1/4/91         | 1/4/03         |                 | 1/7/03          |
| Moldova                | 12/9/97    | 12/9/97        | 12/9/97        | 1/10/97        | 1/12/97        |                 | 1/2/07          |
| Monaco                 | 30/11/05   |                | 30/11/05       | 1/12/05        | 1/2/06         |                 | 1/3/06          |
| Montenegro             | 6/6/06     | 6/6/06         | 6/6/06         | 6/6/06         | 6/6/06         | 6/6/06          | 6/6/06          |

| <b>States</b>                             | <b>Convention</b> | <b>Protocol No. 1</b> | <b>Protocol No.4</b> | <b>Protocol No.6</b> | <b>Protocol No.7</b> | <b>Protocol No.12</b> | <b>Protocol No.13</b> |
|---|-------------------|-----------------------|----------------------|----------------------|----------------------|-----------------------|-----------------------|
| Netherlands                               | 31/8/54           | 31/8/54               | 23/6/82              | 1/5/86               |                      | 1/4/05                | 1/6/06                |
| Norway                                    | 3/9/53            | 18/5/54               | 2/5/68               | 1/11/88              | 1/1/89               |                       | 1/12/05               |
| Poland                                    | 19/1/93           | 10/10/94              | 10/10/94             | 1/11/00              | 1/3/03               |                       |                       |
| Portugal                                  | 9/11/78           | 9/11/78               | 9/11/78              | 1/11/86              | 1/3/05               |                       | 1/2/04                |
| Romania                                   | 20/6/94           | 20/6/94               | 20/6/94              | 1/7/94               | 1/9/94               | 1/11/06               | 1/8/03                |
| Russia                                    | 5/5/98            | 5/5/98                | 5/5/98               |                      | 1/8/98               |                       |                       |
| San Marino                                | 22/3/89           | 22/3/89               | 22/3/89              | 1/4/89               | 1/6/89               | 1/4/05                | 1/8/03                |
| Serbia                                    | 3/3/04            | 3/3/04                | 3/3/04               | 1/4/04               | 1/6/04               | 1/4/05                | 1/7/04                |
| Slovakia                                  | 1/1/93            | 1/1/93                | 1/1/93               | 1/1/93               | 1/1/93               |                       | 1/12/05               |
| Slovenia                                  | 28/6/94           | 28/6/94               | 28/6/94              | 1/7/94               | 1/9/94               | 1/11/10               | 1/4/04                |
| Spain                                     | 4/10/79           | 27/11/90              | 16/9/09              | 1/3/85               | 1/12/09              | 1/6/08                | 1/4/10                |
| Sweden                                    | 3/9/53            | 18/5/54               | 2/5/68               | 1/3/85               | 1/11/88              |                       | 1/8/03                |
| Switzerland                               | 28/11/74          |                       |                      | 1/11/87              | 1/11/88              |                       | 1/7/03                |
| The former Yugoslav Republic of Macedonia | 10/4/97           | 10/4/97               | 10/4/97              | 1/5/97               | 1/7/97               | 1/4/05                | 1/11/04               |
| Turkey                                    | 18/5/54           | 18/5/54               |                      | 1/12/03              |                      |                       | 1/6/06                |
| Ukraine                                   | 11/9/97           | 11/9/97               | 11/9/97              | 1/5/00               | 1/12/97              | 1/7/06                | 1/7/03                |
| United Kingdom                            | 3/9/53            | 18/5/54               |                      | 1/6/99               |                      |                       | 1/2/04                |

## Annex G: List of European Court Judges

(By Section and By Country)

List of European Court of Human Rights Judges

(By Section and By Country)

Composition of the Sections (as at May 2011)

| <b>Section I</b>   | <b>Section II</b>  | <b>Section III</b>   | <b>Section IV</b>  | <b>Section V</b>  |
|--|--|--|--|---|
| President<br>N. Vajić  | President<br>F. Tulkens  | President<br>J. Casadevall   | President<br>N. Bratza   | President<br>D. Spielmann   |
| Vice-President<br>A. Kovler  | Vice-President<br>D. Jočienė   | Vice-President<br>C. Birsan  | Vice-President<br>L. Garlicki  | Vice-President<br>E. Fura   |
| P. Lorenzen<br>E. Steiner<br>K. Hajiyev<br>G. Nicolaou<br>M. Lazarova<br>Trajkovska<br>J. Laffranque<br>L.-A. Sicilianos | D. Björgvinsson<br>D. Popović<br>G. Malinverni<br>A. Sajó<br>I. Karakaş<br>G. Raimondi<br>P. Pinto de<br>Albuquerque | A. Gyulumyan<br>E. Myjer<br>J. Šikuta<br>I. Ziemele<br>L. López Guerra<br>N. Tsotsoria<br>M. Poalelungi<br>K. Pardalos | L. Mijović<br>S. E. Jebens<br>P. Hirvelä<br>L. Bianku<br>Z. Kalaydjieva<br>N. Vučinić<br>V. De Gaetano | J.-P. Costa<br>K. Jungwiert<br>B. Zupančič<br>M. Villiger<br>I. Berro-Lefèvre<br>A. Power<br>G. Yudkivska<br>A. Nußberger |
| Section Registrar<br>S. Nielsen  | Section Registrar<br>S. Naismith   | Section Registrar<br>S. Quesada  | Section Registrar<br>L. Early  | Section Registrar<br>C. Westerdiek  |
| Deputy Section Registrar<br>A. Wampach   | Deputy Section Registrar<br>F. Elens-Passos  | Deputy Section Registrar<br>M. Tsirli  | Deputy Section Registrar<br>F. Aracı   | Deputy Section Registrar<br>S. Phillips   |

## Composition of the Court by Country (as at May 2011)

| Judge (in order of precedence)              | Country                                     |
|---|---|
| <u>Jean-Paul Costa</u> , President          | France                                      |
| <u>Nicolas Bratza</u> , Vice-President      | United Kingdom                              |
| <u>Françoise Tulkens</u> , Vice-President   | Belgium                                     |
| <u>Josep Casadevall</u> , Section President | Andorra                                     |
| <u>Nina Vajić</u> , Section President       | Croatia                                     |
| <u>Dean Spielmann</u> , Section President   | Luxembourg                                  |
| <u>Corneliu Bîrsan</u>                      | Romania                                     |
| <u>Peer Lorenzen</u>                        | Denmark                                     |
| <u>Karel Jungwiert</u>                      | Czech Republic                              |
| <u>Boštjan Zupančič</u>                     | Slovenia                                    |
| <u>Anatoly Kovler</u>                       | Russian Federation                          |
| <u>Elisabeth Steiner</u>                    | Austria                                     |
| <u>Lech Garlicki</u>                        | Poland                                      |
| <u>Elisabet Fura</u>                        | Sweden                                      |
| <u>Alvina Gyulumyan</u>                     | Armenia                                     |
| <u>Khanlar Hajiyev</u>                      | Azerbaijan                                  |
| <u>Ljiljana Mijović</u>                     | Bosnia and Herzegovina                      |
| <u>Egbert Myjer</u>                         | Netherlands                                 |
| <u>Sverre Erik Jebens</u>                   | Norway                                      |
| <u>David Thór Björgvinsson</u>              | Iceland                                     |
| <u>Danutė Jočienė</u>                       | Lithuania                                   |
| <u>Ján Šikuta</u>                           | Slovak Republic                             |
| <u>Dragoljub Popović</u>                    | Serbia                                      |
| <u>Ineta Ziemele</u>                        | Latvia                                      |
| <u>Mark Villiger</u>                        | Liechtenstein                               |
| <u>Isabelle Berro-Lefèvre</u>               | Monaco                                      |
| <u>Päivi Hirvelä</u>                        | Finland                                     |
| <u>Giorgio Malinverni</u>                   | Switzerland                                 |
| <u>Goerge Nicolaou</u>                      | Cyprus                                      |
| <u>Luis López Guerra</u>                    | Spain                                       |
| <u>András Sajó</u>                          | Hungary                                     |
| <u>Mirjana Lazarova Trajkovska</u>          | “The former Yugoslav Republic of Macedonia” |
| <u>Ledi Bianku</u>                          | Albania                                     |
| <u>Nona Tsotsoria</u>                       | Georgia                                     |
| <u>Ann Power</u>                            | Ireland                                     |
| <u>Zdravka Kalaydjieva</u>                  | Bulgaria                                    |
| <u>Işıl Karakaş</u>                         | Turkey                                      |
| <u>Mihai Poalelungi</u>                     | Moldova                                     |
| <u>Nebojša Vučinić</u>                      | Montenegro                                  |

| Judge (in order of precedence)    | Country    |
|-----------------------------------|------------|
| <u>Kristina Pardalos</u>          | San Marino |
| <u>Guido Raimondi</u>             | Italy      |
| <u>Ganna Yudkivska</u>            | Ukraine    |
| <u>Vincent A. De Gaetano</u>      | Malta      |
| <u>Angelika Nußberger</u>         | Germany    |
| <u>Julia Laffranque</u>           | Estonia    |
| <u>Paulo Pinto de Albuquerque</u> | Portugal   |
| <u>Linos-Alexandre Sicilianos</u> | Greece     |



## **Annex H: Pro Forma Introductory Letter to the European Court of Human Rights**

BY POST & BY FAX

The Registrar  
European Court of Human Rights  
Council of Europe  
67075 Strasbourg - Cedex  
France

[Date]

Dear Sir or Madam

**[Name of Applicant(s)] v [Respondent State]**

I act for [Applicant(s)] of [Address]. I am writing to introduce to the Court an application by [Applicant(s)] (the ‘Applicant(s)’) against [Respondent State] pursuant to Article 34 of the European Convention on Human Rights (the ‘Convention’).

### ***Factual History***

[Set out brief detail of the events, including dates of violations, damage suffered by Applicant(s), details of domestic court proceedings]

### ***Applicant’s submissions***

[Set out alleged violations of the specific Convention articles with brief reasons].

### ***Procedural Requirements***

This letter has been lodged within six months of the decision handed down by [Court] on [date], in accordance with Article 35 (1) of the Convention.

OR

The Applicant(s) claims that the available domestic remedy is neither adequate nor effective because [brief reason why]. Therefore, the Applicant(s) submits that [she or he] is absolved from complying with the requirements of Article 35 of the Convention.

The Applicant seeks a declaration that [her or his] rights have been violated pursuant to Articles [insert all relevant Articles] of the Convention.

I enclose a copy of the Form of Authority duly signed by the Applicant. A full application will be lodged with the Court shortly.

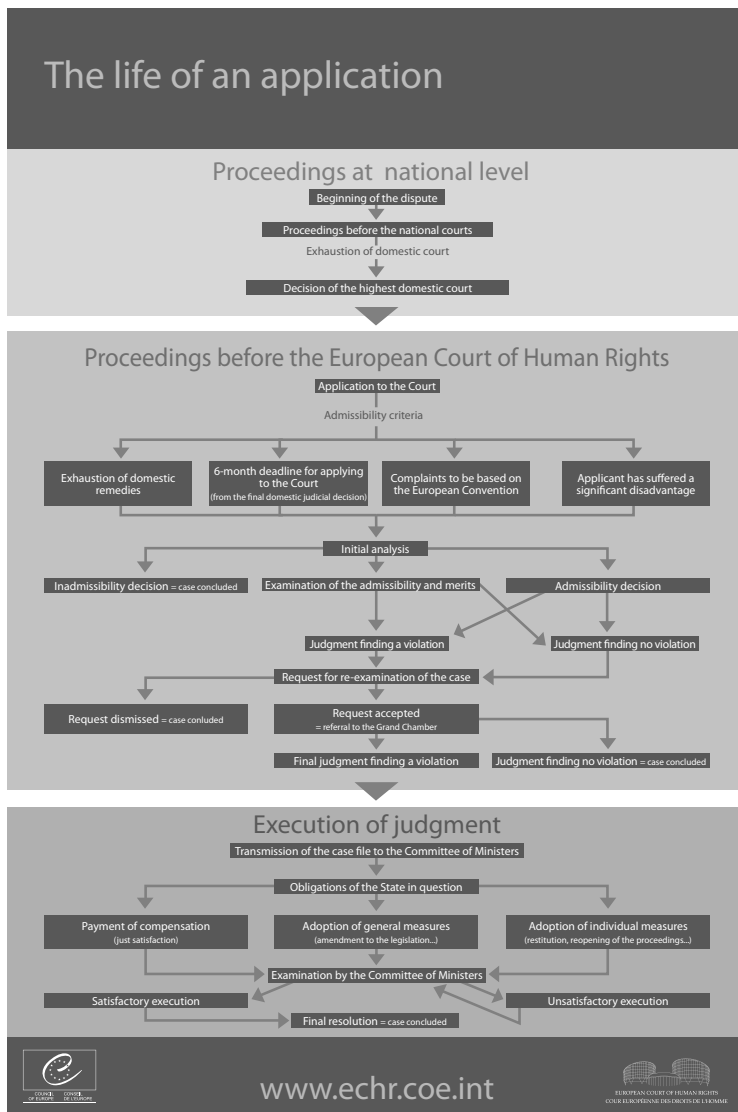
I would be grateful for acknowledgment of receipt of this letter and enclosures as soon as possible.

Yours faithfully,

[name of Applicant's Representative]



# Annex I: Flowchart of European Court of Human Rights Procedure





## **Annex J: Precedent Timesheet and Costs and Expenses Schedule**

### **SAMPLE SCHEDULE OF COSTS AND EXPENSES**

*[Name and Address of Applicant]*

*[Date]*

Schedule of Costs

*[Applicant(s)] v [Respondent State] (Case no [insert])*

**Total Costs**

**£ 3, 320.00**

[*Name and Address of Applicant*]

[*Date*]

Schedule of Costs

[*Applicant(s)*] v [*Respondent State*] (Case no [*insert*])

**Total Costs** £.....

***A. Fees incurred from [date of first writing on case] to [current date] (see attached time recording schedules)***

| <i>Fee earner</i> | <i>Number of hours</i> | <i>Hourly rate</i> | <i>Total</i> |
|-------------------|------------------------|--------------------|--------------|
| Fee earner A      | 12 hours               | £150               | £1,800.00    |
| Fee earner B      | 9 Hours 20 mins        | £150               | £1,400.00    |
| Sub-Total         |                        |                    | £3,200.00    |

Additional fees and expenses incurred in preparing for and attending any hearing will be submitted to the Court in the event that a hearing is held in this case.

**B. Administrative costs and expenses**

Administrative costs and disbursements within office

- Telephone /fax (including international calls and mobile)  
£ 40.00
- Postage (including international courier)  
£ 25.00
- Photocopy/stationery  
£ 35.00
- Translation costs  
£ 20.00

Sub-Total £120.00

**Summary**

**A. Legal fees**(from [*date of first writing on case*] to [*current date*])      **£ 3,200.00**

**B. Administrative costs and expenses**      **£120.00**

TOTAL      3,320.00

Payment should be made in sterling (GBP) direct to the account of:

**[*insert bank details*]**

## FEE EARNER'S TIME RECORDING SCHEDULES

| <b>Name</b>  | <b>Date</b> | <b>Work carried out</b>                      | <b>Time taken</b> |
|--------------|-------------|--|-------------------|
| Fee earner A | 02/11/10    | Drafting application                         | 3 hours           |
| Fee earner A | 04/11/10    | Drafting application and submitting to court | 1.5 hours         |
| Fee earner B | 26/12/10    | Considering court correspondence             | 10 minutes        |
| Etc.         |             |  |                   |
|              |             |  |                   |



## **Annex K: Interlaken Declaration**

### **High Level Conference on the Future of the European Court of Human Rights Interlaken Declaration**

The High Level Conference meeting at Interlaken on 18 and 19 February 2010 at the initiative of the Swiss Chairmanship of the Committee of Ministers of the Council of Europe (“the Conference”):

PP 1 Expressing the strong commitment of the States Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) and the European Court of Human Rights (“the Court”);

PP 2 Recognising the extraordinary contribution of the Court to the protection of human rights in Europe;

PP 3 Recalling the interdependence between the supervisory mechanism of the Convention and the other activities of the Council of Europe in the field of human rights, the rule of law and democracy;

PP 4 Welcoming the entry into force of Protocol No. 14 to the Convention on 1 June 2010;

PP 5 Noting with satisfaction the entry into force of the Treaty of Lisbon, which provides for the accession of the European Union to the Convention;

PP 6 Stressing the subsidiary nature of the supervisory mechanism established by the Convention and notably the fundamental role which national authorities, i.e. governments, courts and parliaments, must play in guaranteeing and protecting human rights at the national level;

PP 7 Noting with deep concern that the number of applications brought before the Court and the deficit between applications introduced and applications disposed of continues to grow;

PP 8 Considering that this situation causes damage to the effectiveness and credibility of the Convention and its supervisory mechanism and represents a threat to the quality and the consistency of the case-law and the authority of the Court;

PP 9 Convinced that over and above the improvements already carried out or envisaged additional measures are indispensable and urgently required in order to:

- i achieve a balance between the number of judgments and decisions delivered by the Court and the number of incoming applications;
- ii enable the Court to reduce the backlog of cases and to adjudicate new cases within a reasonable time, particularly those concerning serious violations of human right;
- iii ensure the full and rapid execution of judgments of the Court and the effectiveness of its supervision by the Committee of Ministers;

PP 10 Considering that the present Declaration seeks to establish a roadmap for the reform process towards long-term effectiveness of the Convention system;

#### The Conference

- 1 Reaffirms the commitment of the States Parties to the Convention to the right of individual petition;
- 2 Reiterates the obligation of the States Parties to ensure that the rights and freedoms set forth in the Convention are fully secured at the national level and calls for a strengthening of the principle of subsidiarity;
- 3 Stresses that this principle implies a shared responsibility between the States Parties and the Court;
- 4 Stresses the importance of ensuring the clarity and consistency of the Court's case-law and calls, in particular, for a uniform and rigorous application of the criteria concerning admissibility and the Court's jurisdiction;
- 5 Invites the Court to make maximum use of the procedural tools and the resources at its disposal;
- 6 Stresses the need for effective measures to reduce the number of clearly inadmissible applications, the need for effective filtering of these applications and the need to find solutions for dealing with repetitive applications;



- 7 Stresses that full, effective and rapid execution of the final judgments of the Court is indispensable;
- 8 Reaffirms the need for maintaining the independence of the judges and preserving the impartiality and quality of the Court;
- 9 Calls for enhancing the efficiency of the system to supervise the execution of the Court's judgments;
- 10 Stresses the need to simplify the procedure for amending Convention provisions of an organisational nature;
- 11 Adopts the following Action Plan as an instrument to provide political guidance for the process towards long-term effectiveness of the Convention system.

## **Action Plan**

### **A. Right of individual petition**

- 1 The Conference reaffirms the fundamental importance of the right of individual petition as a cornerstone of the Convention system which guarantees that alleged violations that have not been effectively dealt with by national authorities can be brought before the Court.
- 2 With regard to the high number of inadmissible applications, the Conference invites the Committee of Ministers to consider measures that would enable the Court to concentrate on its essential role of guarantor of human rights and to adjudicate well-founded cases with the necessary speed, in particular those alleging serious violations of human rights.
- 3 With regard to access to the Court, the Conference calls upon the Committee of Ministers to consider any additional measure which might contribute to a sound administration of justice and to examine in particular under what conditions new procedural rules or practices could be envisaged, without deterring well-founded applications.

### **B. Implementation of the Convention at the national level**

- 4 The Conference recalls that it is first and foremost the responsibility of the States Parties to guarantee the application and implementation of the Convention and consequently calls upon the States Parties to commit themselves to:
  - a continuing to increase, where appropriate in co-operation with national human rights institutions or other relevant bodies, the aware-

ness of national authorities of the Convention standards and to ensure their application;

- b fully executing the Court's judgments, ensuring that the necessary measures are taken to prevent further similar violations;
- c taking into account the Court's developing case-law, also with a view to considering the conclusions to be drawn from a judgment finding a violation of the Convention by another State, where the same problem of principle exists within their own legal system;
- d ensuring, if necessary by introducing new legal remedies, whether they be of a specific nature or a general domestic remedy, that any person with an arguable claim that their rights and freedoms as set forth in the Convention have been violated has available to them an effective remedy before a national authority providing adequate redress where appropriate;
- e considering the possibility of seconding national judges and, where appropriate, other high-level independent lawyers, to the Registry of the Court;
- f ensuring review of the implementation of the recommendations adopted by the Committee of Ministers to help States Parties to fulfil their obligations.

- 5 The Conference stresses the need to enhance and improve the targeting and coordination of other existing mechanisms, activities and programmes of the Council of Europe, including recourse by the Secretary General to Article 52 of the Convention.

### **C. Filtering**

- 6 The Conference:
- a calls upon States Parties and the Court to ensure that comprehensive and objective information is provided to potential applicants on the Convention and the Court's case-law, in particular on the application procedures and admissibility criteria. To this end, the role of the Council of Europe information offices could be examined by the Committee of Ministers;

- b stresses the interest for a thorough analysis of the Court's practice relating to applications declared inadmissible;
- c recommends, with regard to filtering mechanisms,
  - i to the Court to put in place, in the short term, a mechanism within the existing bench likely to ensure effective filtering;
  - ii to the Committee of Ministers to examine the setting up of a filtering mechanism within the Court going beyond the single judge procedure and the procedure provided for in i).

#### **D. Repetitive applications**

##### 7 The Conference:

- a calls upon States Parties to:
  - i facilitate, where appropriate, within the guarantees provided for by the Court and, as necessary, with the support of the Court, the adoption of friendly settlements and unilateral declarations;
  - ii cooperate with the Committee of Ministers, after a final pilot judgment, in order to adopt and implement general measures capable of remedying effectively the structural problems at the origin of repetitive cases.
- b stresses the need for the Court to develop clear and predictable standards for the "pilot judgment" procedure as regards selection of applications, the procedure to be followed and the treatment of adjourned cases, and to evaluate the effects of applying such and similar procedures;
- c calls upon the Committee of Ministers to:
  - i consider whether repetitive cases could be handled by judges responsible for filtering (see above Section C);
  - ii bring about a cooperative approach including all relevant parts of the Council of Europe in order to present possible options to a State Party required to remedy a structural problem revealed by a judgment.

## E. The Court

- 8 Stressing the importance of maintaining the independence of the judges and of preserving the impartiality and quality of the Court, the Conference calls upon States Parties and the Council of Europe to:
  - a ensure, if necessary by improving the transparency and quality of the selection procedure at both national and European levels, full satisfaction of the Convention's criteria for office as a judge of the Court, including knowledge of public international law and of the national legal systems as well as proficiency in at least one official language. In addition, the Court's composition should comprise the necessary practical legal experience;
  - b grant to the Court, in the interest of its efficient functioning, the necessary level of administrative autonomy within the Council of Europe.
  
- 9 The Conference, acknowledging the responsibility shared between the States Parties and the Court, invites the Court to:
  - a avoid reconsidering questions of fact or national law that have been considered and decided by national authorities, in line with its case-law according to which it is not a fourth instance court;
  - b apply uniformly and rigorously the criteria concerning admissibility and jurisdiction and take fully into account its subsidiary role in the interpretation and application of the Convention;
  - c give full effect to the new admissibility criterion provided for in Protocol No. 14 and to consider other possibilities of applying the principle *de minimis non curat praetor*.
  
- 10 With a view to increasing its efficiency, the Conference invites the Court to continue improving its internal structure and working methods and making maximum use of the procedural tools and the resources at its disposal. In this context, it encourages the Court in particular to:
  - a make use of the possibility to request the Committee of Ministers to reduce to five members the number of judges of the Chambers, as provided by Protocol No. 14;

- b pursue its policy of identifying priorities for dealing with cases and continue to identify in its judgments any structural problem capable of generating a significant number of repetitive applications.

## **F. Supervision of execution of judgments**

- 11 The Conference stresses the urgent need for the Committee of Ministers to:
- a develop the means which will render its supervision of the execution of the Court's judgments more effective and transparent. In this regard, it invites the Committee of Ministers to strengthen this supervision by giving increased priority and visibility not only to cases requiring urgent individual measures, but also to cases disclosing major structural problems, attaching particular importance to the need to establish effective domestic remedies;
  - b review its working methods and its rules to ensure that they are better adapted to present-day realities and more effective for dealing with the variety of questions that arise.

## **G. Simplified Procedure for Amending the Convention**

- 12 The Conference calls upon the Committee of Ministers to examine the possibility of introducing by means of an amending Protocol a simplified procedure for any future amendment of certain provisions of the Convention relating to organisational issues. This simplified procedure may be introduced through, for example:
- a a Statute for the Court;
  - b a new provision in the Convention similar to that found in Article 41(d) of the Statute of the Council of Europe.

## **Implementation**

In order to implement the Action Plan, the Conference:

- 1 calls upon the States Parties, the Committee of Ministers, the Court and the Secretary General to give full effect to the Action Plan;
- 2 calls in particular upon the Committee of Ministers and the States Parties to consult with civil society on effective means to implement the Action Plan;

- 3 calls upon the States Parties to inform the Committee of Ministers, before the end of 2011, of the measures taken to implement the relevant parts of this Declaration;
- 4 invites the Committee of Ministers to follow-up and implement by June 2011, where appropriate in co-operation with the Court and giving the necessary terms of reference to the competent bodies, the measures set out in this Declaration that do not require amendment of the Convention;
- 5 invites the Committee of Ministers to issue terms of reference to the competent bodies with a view to preparing, by June 2012, specific proposals for measures requiring amendment of the Convention; these terms of reference should include proposals for a filtering mechanism within the Court and the study of measures making it possible to simplify the amendment of the Convention;
- 6 invites the Committee of Ministers to evaluate, during the years 2012 to 2015, to what extent the implementation of Protocol No. 14 and of the Interlaken Action Plan has improved the situation of the Court. On the basis of this evaluation, the Committee of Ministers should decide, before the end of 2015, on whether there is a need for further action. Before the end of 2019, the Committee of Ministers should decide on whether the measures adopted have proven to be sufficient to assure sustainable functioning of the control mechanism of the Convention or whether more profound changes are necessary;
- 7 asks the Swiss Chairmanship to transmit the present Declaration and the Proceedings of the Interlaken Conference to the Committee of Ministers;
- 8 invites the future Chairmanships of the Committee of Ministers to follow-up on the implementation of the present Declaration.

## **Annex L: Rules of Court**

Conseil de l'Europe  
Council of Europe



**Cour Européenne des Droits de l'Homme**  
**European Court of Human Rights**

Note by the Registry

This new edition of the Rules of Court includes the new provisions adopted by the plenary Court on pilot-judgment procedure (Rule 61).

The new edition entered into force on 1 April 2011.

Any additional texts and updates will be made public on the Court's website ([www.echr.coe.int](http://www.echr.coe.int)).

Registry of the European Court of Human Rights  
April 2011

The European Court of Human Rights,

Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto,

Makes the present Rules:

**Rule 1**<sup>216</sup>

(Definitions)

For the purposes of these Rules unless the context otherwise requires:

- a the term “Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto;
- b the expression “plenary Court” means the European Court of Human Rights sitting in plenary session;
- c the expression “Grand Chamber” means the Grand Chamber of seventeen judges constituted in pursuance of Article 26 § 1 of the Convention;
- d the term “Section” means a Chamber set up by the plenary Court for a fixed period in pursuance of Article 25 (b) of the Convention and the expression “President of the Section” means the judge elected by the plenary Court in pursuance of Article 25 (c) of the Convention as President of such a Section;
- e the term “Chamber” means any Chamber of seven judges constituted in pursuance of Article 26 § 1 of the Convention and the expression “President of the Chamber” means the judge presiding over such a “Chamber”;
- f the term “Committee” means a Committee of three judges set up in pursuance of Article 26 § 1 of the Convention and the expression “President of the Committee” means the judge presiding over such a “Committee”;
- g the expression “single-judge formation” means a single judge sitting in accordance with Article 26 § 1 of the Convention;

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216 As amended by the Court on 7 July 2003 and 13 November 2006.



- h the term “Court” means either the plenary Court, the Grand Chamber, a Section, a Chamber, a Committee, a single judge or the panel of five judges referred to in Article 43 § 2 of the Convention;
- i the expression “*ad hoc* judge” means any person chosen in pursuance of Article 26 § 4 of the Convention and in accordance with Rule 29 to sit as a member of the Grand Chamber or as a member of a Chamber;
- j the terms “judge” and “judges” mean the judges elected by the Parliamentary Assembly of the Council of Europe or *ad hoc* judges;
- k the expression “Judge Rapporteur” means a judge appointed to carry out the tasks provided for in Rules 48 and 49;
- l the term “non-judicial rapporteur” means a member of the Registry charged with assisting the single-judge formations provided for in Article 24 § 2 of the Convention;
- m the term “delegate” means a judge who has been appointed to a delegation by the Chamber and the expression “head of the delegation” means the delegate appointed by the Chamber to lead its delegation;
- n the term “delegation” means a body composed of delegates, Registry members and any other person appointed by the Chamber to assist the delegation;
- o the term “Registrar” denotes the Registrar of the Court or the Registrar of a Section according to the context;
- p the terms “party” and “parties” mean
  - the applicant or respondent Contracting Parties;
  - the applicant (the person, non-governmental organisation or group of individuals) that lodged a complaint under Article 34 of the Convention;
- q the expression “third party” means any Contracting Party or any person concerned or the Council of Europe Commissioner for Human Rights who, as provided for in Article 36 §§ 1, 2 and 3 of the Convention, has exercised the right to submit written comments and take part in a hearing, or has been invited to do so;

- r the terms “hearing” and “hearings” mean oral proceedings held on the admissibility and/or merits of an application or in connection with a request for revision or an advisory opinion, a request for interpretation by a party or by the Committee of Ministers, or a question whether there has been a failure to fulfil an obligation which may be referred to the Court by virtue of Article 46 § 4 of the Convention;
- s the expression “Committee of Ministers” means the Committee of Ministers of the Council of Europe;
- t the terms “former Court” and “Commission” mean respectively the European Court and European Commission of Human Rights set up under former Article 19 of the Convention.

## **Title 1**

### Organisation and working of the Court

## **Chapter 1**

### Judges

#### **Rule 2<sup>217</sup>**

(Calculation of terms of office)

- 1 Where the seat is vacant on the date of the judge’s election, the term of office shall begin as from the date of taking up office which, unless the President, in an exceptional case, decides otherwise, shall be no later than three months after the date of election.
- 2 When a judge is elected to replace a judge whose term of office has expired or is about to expire or who has declared his or her intention to resign, the term of office shall begin as from the date of taking up office which, unless the President decides otherwise, shall be no later than three months after the seat becomes vacant.
- 3 In accordance with Article 23 § 3 of the Convention, an elected judge shall hold office until a successor has taken the oath or made the declaration provided for in Rule 3.

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<sup>217</sup> As amended by the Court on 13 November 2006.

**Rule 3**

(Oath or solemn declaration)

- 1 Before taking up office, each elected judge shall, at the first sitting of the plenary Court at which the judge is present or, in case of need, before the President of the Court, take the following oath or make the following solemn declaration:

“I swear” – or “I solemnly declare” – “that I will exercise my functions as a judge honourably, independently and impartially and that I will keep secret all deliberations.”

- 2 This act shall be recorded in minutes.

**Rule 4<sup>218</sup>**

(Incompatible activities)

- 1 In accordance with Article 21 § 3 of the Convention, the judges shall not during their term of office engage in any political or administrative activity or any professional activity which is incompatible with their independence or impartiality or with the demands of a full-time office. Each judge shall declare to the President of the Court any additional activity. In the event of a disagreement between the President and the judge concerned, any question arising shall be decided by the plenary Court.
- 2 A former judge shall not represent a party or third party in any capacity in proceedings before the Court relating to an application lodged before the date on which he or she ceased to hold office. As regards applications lodged subsequently, a former judge may not represent a party or third party in any capacity in proceedings before the Court until a period of two years from the date on which he or she ceased to hold office has elapsed.

**Rule 5<sup>219</sup>**

(Precedence)

- 1 Elected judges shall take precedence after the President and Vice-Presidents of the Court and the Presidents of the Sections, according to the date of their taking up office in accordance with Rule 2 §§ 1 and 2.
- 2 Vice-Presidents of the Court elected to office on the same date shall take precedence according to the length of time they have served as judges. If the length of

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218 As amended by the Court on 29 March 2010.

219 As amended by the Court on 14 May 2007.

time they have served as judges is the same, they shall take precedence according to age. The same rule shall apply to Presidents of Sections.

- 3 Judges who have served the same length of time as judges shall take precedence according to age.
- 4 *Ad hoc* judges shall take precedence after the elected judges according to age.

### **Rule 6**

(Resignation)

Resignation of a judge shall be notified to the President of the Court, who shall transmit it to the Secretary General of the Council of Europe. Subject to the provisions of Rules 24 § 4 *in fine* and 26 § 3, resignation shall constitute vacation of office.

### **Rule 7**

(Dismissal from office)

No judge may be dismissed from his or her office unless the other judges, meeting in plenary session, decide by a majority of two-thirds of the elected judges in office that he or she has ceased to fulfil the required conditions. He or she must first be heard by the plenary Court. Any judge may set in motion the procedure for dismissal from office.

## **Chapter 2<sup>220</sup>**

Presidency of the Court and the role of the Bureau

### **Rule 8<sup>221</sup>**

(Election of the President and Vice-Presidents of the Court and the Presidents and Vice-Presidents of the Sections)

- 1 The plenary Court shall elect its President, two Vice-Presidents and the Presidents of the Sections for a period of three years, provided that such period shall not exceed the duration of their terms of office as judges.
- 2 Each Section shall likewise elect for a period of three years a Vice-President, who shall replace the President of the Section if the latter is unable to carry out his or her duties.

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220 As amended by the Court on 7 July 2003.

221 As amended by the Court on 7 November 2005.

- 3 A judge elected in accordance with paragraphs 1 or 2 above may be re-elected but only once to the same level of office. This limitation on the number of terms of office shall not prevent a judge holding an office as described above on the date of the entry into force<sup>222</sup> of the present amendment to Rule 8 from being re-elected once to the same level of office.
- 4 The Presidents and Vice-Presidents shall continue to hold office until the election of their successors.
- 5 The elections referred to in this Rule shall be by secret ballot. Only the elected judges who are present shall take part. If no candidate receives an absolute majority of the elected judges present, an additional round or rounds shall take place until one candidate has achieved an absolute majority. At each round the candidate who has received the least number of votes shall be eliminated. If more than one candidate has received the least number of votes, only the candidate who is lowest in the order of precedence in accordance with Rule 5 shall be eliminated. In the event of a tie between two candidates in the final round, preference shall be given to the judge having precedence in accordance with Rule 5.

### **Rule 9**

(Functions of the President of the Court)

- 1 The President of the Court shall direct the work and administration of the Court. The President shall represent the Court and, in particular, be responsible for its relations with the authorities of the Council of Europe.
- 2 The President shall preside at plenary meetings of the Court, meetings of the Grand Chamber and meetings of the panel of five judges.
- 3 The President shall not take part in the consideration of cases being heard by Chambers except where he or she is the judge elected in respect of a Contracting Party concerned.

### **Rule 9A<sup>223</sup>**

(Role of the Bureau)

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222 1 December 2005.

223 Inserted by the Court on 7 July 2003.

- a The Court shall have a Bureau, composed of the President of the Court, the Vice-Presidents of the Court and the Section Presidents. Where a Vice-President or a Section President is unable to attend a Bureau meeting, he or she shall be replaced by the Section Vice-President or, failing that, by the next most senior member of the Section according to the order of precedence established in Rule 5.
  - b The Bureau may request the attendance of any other member of the Court or any other person whose presence it considers necessary.
- 2 The Bureau shall be assisted by the Registrar and the Deputy Registrars.
  - 3 The Bureau's task shall be to assist the President in carrying out his or her function in directing the work and administration of the Court. To this end the President may submit to the Bureau any administrative or extra-judicial matter which falls within his or her competence.
  - 4 The Bureau shall also facilitate coordination between the Court's Sections.
  - 5 The President may consult the Bureau before issuing practice directions under Rule 32 and before approving general instructions drawn up by the Registrar under Rule 17 § 4.
  - 6 The Bureau may report on any matter to the Plenary. It may also make proposals to the Plenary.
  - 7 A record shall be kept of the Bureau's meetings and distributed to the Judges in both the Court's official languages. The secretary to the Bureau shall be designated by the Registrar in agreement with the President.

### **Rule 10**

(Functions of the Vice-Presidents of the Court)

The Vice-Presidents of the Court shall assist the President of the Court. They shall take the place of the President if the latter is unable to carry out his or her duties or the office of President is vacant, or at the request of the President. They shall also act as Presidents of Sections.

### **Rule 11**

(Replacement of the President and the Vice-Presidents of the Court)

If the President and the Vice-Presidents of the Court are at the same time unable to carry out their duties or if their offices are at the same time vacant, the office

of President of the Court shall be assumed by a President of a Section or, if none is available, by another elected judge, in accordance with the order of precedence provided for in Rule 5.

**Rule 12**<sup>224</sup>

(Presidency of Sections and Chambers)

The Presidents of the Sections shall preside at the sittings of the Section and Chambers of which they are members and shall direct the Sections' work. The Vice-Presidents of the Sections shall take their place if they are unable to carry out their duties or if the office of President of the Section concerned is vacant, or at the request of the President of the Section. Failing that, the judges of the Section and the Chambers shall take their place, in the order of precedence provided for in Rule 5.

**Rule 13**<sup>225</sup>

(Inability to preside)

Judges of the Court may not preside in cases in which the Contracting Party of which they are nationals or in respect of which they were elected is a party, or in cases where they sit as a judge appointed by virtue of Rule 29 § 1 (a) or Rule 30 § 1.

**Rule 14**

(Balanced representation of the sexes)

In relation to the making of appointments governed by this and the following chapter of the present Rules, the Court shall pursue a policy aimed at securing a balanced representation of the sexes.

**Chapter 3**

The Registry

**Rule 15**

(Election of the Registrar)

- 1 The plenary Court shall elect its Registrar. The candidates shall be of high moral character and must possess the legal, managerial and linguistic knowledge and experience necessary to carry out the functions attaching to the post.
- 2 The Registrar shall be elected for a term of five years and may be re-elected. The Registrar may not be dismissed from office, unless the judges, meeting in

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224 As amended by the Court on 17 June and 8 July 2002.

225 As amended by the Court on 4 July 2005.

plenary session, decide by a majority of two-thirds of the elected judges in office that the person concerned has ceased to fulfil the required conditions. He or she must first be heard by the plenary Court. Any judge may set in motion the procedure for dismissal from office.

- 3 The elections referred to in this Rule shall be by secret ballot; only the elected judges who are present shall take part. If no candidate receives an absolute majority of the elected judges present, a ballot shall take place between the two candidates who have received most votes. In the event of a tie, preference shall be given, firstly, to the female candidate, if any, and, secondly, to the older candidate.
- 4 Before taking up office, the Registrar shall take the following oath or make the following solemn declaration before the plenary Court or, if need be, before the President of the Court:

“I swear” – or “I solemnly declare” – “that I will exercise loyally, discreetly and conscientiously the functions conferred upon me as Registrar of the European Court of Human Rights.”

This act shall be recorded in minutes.

### **Rule 16**

(Election of the Deputy Registrars)

- 1 The plenary Court shall also elect two Deputy Registrars on the conditions and in the manner and for the term prescribed in the preceding Rule. The procedure for dismissal from office provided for in respect of the Registrar shall likewise apply. The Court shall first consult the Registrar in both these matters.
- 2 Before taking up office, a Deputy Registrar shall take an oath or make a solemn declaration before the plenary Court or, if need be, before the President of the Court, in terms similar to those prescribed in respect of the Registrar. This act shall be recorded in minutes.

### **Rule 17**

(Functions of the Registrar)

- 1 The Registrar shall assist the Court in the performance of its functions and shall be responsible for the organisation and activities of the Registry under the authority of the President of the Court.



- 2 The Registrar shall have the custody of the archives of the Court and shall be the channel for all communications and notifications made by, or addressed to, the Court in connection with the cases brought or to be brought before it.
- 3 The Registrar shall, subject to the duty of discretion attaching to this office, reply to requests for information concerning the work of the Court, in particular to enquiries from the press.
- 4 General instructions drawn up by the Registrar, and approved by the President of the Court, shall regulate the working of the Registry.

**Rule 18**<sup>226</sup>

(Organisation of the Registry)

- 1 The Registry shall consist of Section Registries equal to the number of Sections set up by the Court and of the departments necessary to provide the legal and administrative services required by the Court.
- 2 The Section Registrar shall assist the Section in the performance of its functions and may be assisted by a Deputy Section Registrar.
- 3 The officials of the Registry, but not the Registrar and the Deputy Registrars, shall be appointed by the Secretary General of the Council of Europe with the agreement of the President of the Court or of the Registrar acting on the President's instructions.

**Rule 18A**<sup>227</sup>

(Non-judicial rapporteurs)

- 1 When sitting in a single-judge formation, the Court shall be assisted by non-judicial rapporteurs who shall function under the authority of the President of the Court. They shall form part of the Court's Registry.
- 2 The non-judicial rapporteurs shall be appointed by the President of the Court on a proposal by the Registrar.

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226 1. As amended by the Court on 13 November 2006.

227 Inserted by the Court on 13 November 2006.

## **Chapter 4**

### The Working of the Court

#### **Rule 19**

(Seat of the Court)

- 1 The seat of the Court shall be at the seat of the Council of Europe at Strasbourg. The Court may, however, if it considers it expedient, perform its functions elsewhere in the territories of the member States of the Council of Europe.
- 2 The Court may decide, at any stage of the examination of an application, that it is necessary that an investigation or any other function be carried out elsewhere by it or one or more of its members.

#### **Rule 20**

(Sessions of the plenary Court)

- 1 The plenary sessions of the Court shall be convened by the President of the Court whenever the performance of its functions under the Convention and under these Rules so requires. The President of the Court shall convene a plenary session if at least one-third of the members of the Court so request, and in any event once a year to consider administrative matters.
- 2 The quorum of the plenary Court shall be two-thirds of the elected judges in office.
- 3 If there is no quorum, the President shall adjourn the sitting.

#### **Rule 21**

(Other sessions of the Court)

- 1 The Grand Chamber, the Chambers and the Committees shall sit full time. On a proposal by the President, however, the Court shall fix session periods each year.
- 2 Outside those periods the Grand Chamber and the Chambers shall be convened by their Presidents in cases of urgency.

#### **Rule 22**

(Deliberations)

- 1 The Court shall deliberate in private. Its deliberations shall remain secret.

- 2 Only the judges shall take part in the deliberations. The Registrar or the designated substitute, as well as such other officials of the Registry and interpreters whose assistance is deemed necessary, shall be present. No other person may be admitted except by special decision of the Court.
- 3 Before a vote is taken on any matter in the Court, the President may request the judges to state their opinions on it.

**Rule 23**

(Votes)

- 1 The decisions of the Court shall be taken by a majority of the judges present. In the event of a tie, a fresh vote shall be taken and, if there is still a tie, the President shall have a casting vote. This paragraph shall apply unless otherwise provided for in these Rules.
- 2 The decisions and judgments of the Grand Chamber and the Chambers shall be adopted by a majority of the sitting judges. Abstentions shall not be allowed in final votes on the admissibility and merits of cases.
- 3 As a general rule, votes shall be taken by a show of hands. The President may take a roll-call vote, in reverse order of precedence.
- 4 Any matter that is to be voted upon shall be formulated in precise terms.

**Rule 23A<sup>228</sup>**

(Decision by tacit agreement)

Where it is necessary for the Court to decide a point of procedure or any other question other than at a scheduled meeting of the Court, the President may direct that a draft decision be circulated among the judges and that a deadline be set for their comments on the draft. In the absence of any objection from a judge, the proposal shall be deemed to have been adopted at the expiry of the deadline.

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228 Inserted by the Court on 13 December 2004.

**Chapter 5****(The Composition of the Court)****Rule 24<sup>229</sup>****(Composition of the Grand Chamber)**

- 1 The Grand Chamber shall be composed of seventeen judges and at least three substitute judges.
- 2
  - a The Grand Chamber shall include the President and the Vice-Presidents of the Court and the Presidents of the Sections. Any Vice-President of the Court or President of a Section who is unable to sit as a member of the Grand Chamber shall be replaced by the Vice-President of the relevant Section.
  - b The judge elected in respect of the Contracting Party concerned or, where appropriate, the judge designated by virtue of Rule 29 or Rule 30 shall sit as an ex officio member of the Grand Chamber in accordance with Article 26 §§ 4 and 5 of the Convention.
  - c In cases referred to the Grand Chamber under Article 30 of the Convention, the Grand Chamber shall also include the members of the Chamber which relinquished jurisdiction.
  - d In cases referred to it under Article 43 of the Convention, the Grand Chamber shall not include any judge who sat in the Chamber which rendered the judgment in the case so referred, with the exception of the President of that Chamber and the judge who sat in respect of the State Party concerned, or any judge who sat in the Chamber or Chambers which ruled on the admissibility of the application.
  - e The judges and substitute judges who are to complete the Grand Chamber in each case referred to it shall be designated from among the remaining judges by a drawing of lots by the President of the Court in the presence of the Registrar. The modalities for the drawing of lots shall be laid down by the Plenary Court, having due regard to the need for a geographically balanced composition reflecting the different legal systems among the Contracting Parties.

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<sup>229</sup> As amended by the Court on 8 December 2000, 13 December 2004, 4 July and 7 November 2005 and 29 May and 13 November 2006.

- f In examining a request for an advisory opinion under Article 47 of the Convention, the Grand Chamber shall be constituted in accordance with the provisions of paragraph 2 (a) and (e) of this Rule.
- g In examining a request under Article 46 § 4 of the Convention, the Grand Chamber shall include, in addition to the judges referred to in paragraph 2 (a) and (b) of this Rule, the members of the Chamber or Committee which rendered the judgment in the case concerned. If the judgment was rendered by a Grand Chamber, the Grand Chamber shall be constituted as the original Grand Chamber. In all cases, including those where it is not possible to reconstitute the original Grand Chamber, the judges and substitute judges who are to complete the Grand Chamber shall be designated in accordance with paragraph 2 (e) of this Rule.
- 3 If any judges are prevented from sitting, they shall be replaced by the substitute judges in the order in which the latter were selected under paragraph 2 (e) of this Rule.
- 4 The judges and substitute judges designated in accordance with the above provisions shall continue to sit in the Grand Chamber for the consideration of the case until the proceedings have been completed. Even after the end of their terms of office, they shall continue to deal with the case if they have participated in the consideration of the merits. These provisions shall also apply to proceedings relating to advisory opinions.
- 5 a The panel of five judges of the Grand Chamber called upon to consider a request submitted under Article 43 of the Convention shall be composed of
- the President of the Court. If the President of the Court is prevented from sitting, he or she shall be replaced by the Vice-President of the Court taking precedence;
  - two Presidents of Sections designated by rotation. If the Presidents of the Sections so designated are prevented from sitting, they shall be replaced by the Vice-Presidents of their Sections;
  - two judges designated by rotation from among the judges elected by the remaining Sections to sit on the panel for a period of six months;
  - at least two substitute judges designated in rotation from among the judges elected by the Sections to serve on the panel for a period of six months.

- b When considering a referral request, the panel shall not include any judge who took part in the consideration of the admissibility or merits of the case in question.
- c No judge elected in respect of, or who is a national of, a Contracting Party concerned by a referral request may be a member of the panel when it examines that request. An elected judge appointed by the Contracting Party concerned pursuant to Rules 29 or 30 shall likewise be excluded from consideration of any such request.
- d Any member of the panel unable to sit, for the reasons set out in (b) or (c) shall be replaced by a substitute judge designated in rotation from among the judges elected by the Sections to serve on the panel for a period of six months.

## **Rule 25**

(Setting-up of Sections)

- 1 The Chambers provided for in Article 25 (b) of the Convention (referred to in these Rules as “Sections”) shall be set up by the plenary Court, on a proposal by its President, for a period of three years with effect from the election of the presidential office-holders of the Court under Rule 8. There shall be at least four Sections.
- 2 Each judge shall be a member of a Section. The composition of the Sections shall be geographically and gender balanced and shall reflect the different legal systems among the Contracting Parties.
- 3 Where a judge ceases to be a member of the Court before the expiry of the period for which the Section has been constituted, the judge’s place in the Section shall be taken by his or her successor as a member of the Court.
- 4 The President of the Court may exceptionally make modifications to the composition of the Sections if circumstances so require.
- 5 On a proposal by the President, the plenary Court may constitute an additional Section.

**Rule 26**<sup>230</sup>

## (Constitution of Chambers)

- 1 The Chambers of seven judges provided for in Article 26 § 1 of the Convention for the consideration of cases brought before the Court shall be constituted from the Sections as follows.
  - a Subject to paragraph 2 of this Rule and to Rule 28 § 4, last sentence, the Chamber shall in each case include the President of the Section and the judge elected in respect of any Contracting Party concerned. If the latter judge is not a member of the Section to which the application has been assigned under Rules 51 or 52, he or she shall sit as an ex officio member of the Chamber in accordance with Article 26 § 4 of the Convention. Rule 29 shall apply if that judge is unable to sit or withdraws.
  - b The other members of the Chamber shall be designated by the President of the Section in rotation from among the members of the relevant Section.
  - c The members of the Section who are not so designated shall sit in the case as substitute judges.
- 2 The judge elected in respect of any Contracting Party concerned or, where appropriate, another elected judge or ad hoc judge appointed in accordance with Rules 29 and 30 may be dispensed by the President of the Chamber from attending meetings devoted to preparatory or procedural matters. For the purposes of such meetings the Contracting Party concerned shall be deemed to have appointed in place of that judge the first substitute judge, in accordance with Rule 29 § 1.
- 3 Even after the end of their terms of office, judges shall continue to deal with cases in which they have participated in the consideration of the merits.

**Rule 27**<sup>231</sup>

## (Committees)

- 1 Committees composed of three judges belonging to the same Section shall be set up under Article 26 § 1 of the Convention. After consulting the Presidents of the Sections, the President of the Court shall decide on the number of Committees to be set up.

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230 1. As amended by the Court on 17 June and 8 July 2002.

231 As amended by the Court on 13 November 2006.

- 2 The Committees shall be constituted for a period of twelve months by rotation among the members of each Section, excepting the President of the Section.
- 3 The judges of the Section, including the President of the Section, who are not members of a Committee may, as appropriate, be called upon to sit. They may also be called upon to take the place of members who are unable to sit.
- 4 The President of the Committee shall be the member having precedence in the Section.

**Rule 27A<sup>232</sup>**

(Single-judge formation)

- 1 A single-judge formation shall be introduced in pursuance of Article 26 § 1 of the Convention. After consulting the Bureau, the President of the Court shall decide on the number of single judges to be appointed and shall appoint them. The President shall draw up in advance the list of Contracting Parties in respect of which each judge shall examine applications throughout the period for which that judge is appointed to sit as a single judge.
- 2 Single judges shall be appointed for a period of twelve months in rotation. The President of the Court and the Presidents of the Sections shall be exempted from sitting as single judges. Single judges shall continue to carry out their other duties within the Sections of which they are members in accordance with Rule 25 § 2.
- 3 Pursuant to Article 24 § 2 of the Convention, when deciding, each single judge shall be assisted by a non-judicial rapporteur.

**Rule 28<sup>233</sup>**

(Inability to sit, withdrawal or exemption)

- 1 Any judge who is prevented from taking part in sittings which he or she has been called upon to attend shall, as soon as possible, give notice to the President of the Chamber.
2. A judge may not take part in the consideration of any case if

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<sup>232</sup> Inserted by the Court on 13 November 2006.

<sup>233</sup> As amended by the Court on 17 June and 8 July 2002, 13 December 2004 and 13 November 2006.



- a he or she has a personal interest in the case, including a spousal, parental or other close family, personal or professional relationship, or a subordinate relationship, with any of the parties;
  - b he or she has previously acted in the case, whether as the Agent, advocate or adviser of a party or of a person having an interest in the case, or as a member of another national or international tribunal or commission of inquiry, or in any other capacity;
  - c he or she, being an ad hoc judge or a former elected judge continuing to sit by virtue of Rule 26 § 3, engages in any political or administrative activity or any professional activity which is incompatible with his or her independence or impartiality;
  - d he or she has expressed opinions publicly, through the communications media, in writing, through his or her public actions or otherwise, that are objectively capable of adversely affecting his or her impartiality;
  - e for any other reason, his or her independence or impartiality may legitimately be called into doubt.
- 3 If a judge withdraws for one of the said reasons, he or she shall notify the President of the Chamber, who shall exempt the judge from sitting.
  - 4 In the event of any doubt on the part of the judge concerned or the President as to the existence of one of the grounds referred to in paragraph 2 of this Rule, that issue shall be decided by the Chamber. After hearing the views of the judge concerned, the Chamber shall deliberate and vote, without that judge being present. For the purposes of the Chamber's deliberations and vote on this issue, he or she shall be replaced by the first substitute judge in the Chamber. The same shall apply if the judge sits in respect of any Contracting Party concerned. In that event, the Contracting Party concerned shall be deemed to have appointed the first substitute judge to sit in his or her stead, in accordance with Rule 29 § 1.
  - 5 The provisions above shall apply also to a judge's acting as a single judge or participation in a Committee, save that the notice required under paragraphs 1 or 3 of this Rule shall be given to the President of the Section.

**Rule 29<sup>234</sup>**

(Ad hoc judges)

- 1
  - a If the judge elected in respect of a Contracting Party concerned is unable to sit in the Chamber, withdraws, or is exempted, or if there is none, and unless that Contracting Party has opted to appoint an ad hoc judge in accordance with the provisions of paragraph 1 (b) of this Rule, the President of the Chamber shall invite it to indicate within thirty days the name of the person it wishes to appoint from among the other elected judges.
  - b Where a Contracting Party has opted to appoint an ad hoc judge, the President of the Chamber shall choose the judge from a list submitted in advance by the Contracting Party containing the names of three to five persons whom the Contracting Party has designated as eligible to serve as ad hoc judges for a renewable period of two years and as satisfying the conditions set out in paragraph 1 (d) of this Rule. The list shall include both sexes and shall be accompanied by biographical details of the persons whose names appear on the list. The persons whose names appear on the list may not represent a party or a third party in any capacity in proceedings before the Court. For the purposes of the application of Article 26 § 4 of the Convention and the first sentence above, the names of the other elected judges shall, ipso jure, be considered to be included on the list.
  - c The procedure set out in paragraph 1 (a) and (b) of this Rule shall apply if the person so appointed is unable to sit or withdraws.
  - d An ad hoc judge shall possess the qualifications required by Article 21 § 1 of the Convention, must not be unable to sit in the case on any of the grounds referred to in Rule 28, and must be in a position to meet the demands of availability and attendance provided for in paragraph 5 of this Rule. For the duration of their appointment, an ad hoc judge shall not represent any party or third party in any capacity in proceedings before the Court.
- 2 The Contracting Party concerned shall be presumed to have waived its right of appointment
  - a if it does not reply within the thirty-day period set out in paragraph 1 (a) or by the end of any extension of that time granted by the President of the Chamber;

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<sup>234</sup> As amended by the Court on 17 June and 8 July 2002, 13 November 2006 and 29 March 2010.

- b if it opts to appoint an ad hoc judge but, at the time of notice given of the application to the respondent Government under Rule 54 § 2, the Party had not supplied the Registrar with a list as described in paragraph 1 (b) of this Rule or where the Chamber finds that less than three of the persons indicated in the list satisfy the conditions laid down in paragraph 1 (d) of this Rule.
- 3 The President of the Chamber may decide not to invite the Contracting Party concerned to make an appointment under paragraph 1 (a) of this Rule until notice of the application is given to it under Rule 54 § 2. In that event, pending any appointment by it, the Contracting Party concerned shall be deemed to have appointed the first substitute judge to sit in place of the elected judge.
  - 4 An ad hoc judge shall, at the beginning of the first sitting held to consider the case after the judge has been appointed, take the oath or make the solemn declaration provided for in Rule 3. This act shall be recorded in minutes.
  - 5 Ad hoc judges are required to make themselves available to the Court and, subject to Rule 26 § 2, to attend the meetings of the Chamber.

**Rule 30<sup>235</sup>**

(Common interest)

- 1 If two or more applicant or respondent Contracting Parties have a common interest, the President of the Chamber may invite them to agree to appoint a single judge elected in respect of one of the Contracting Parties concerned as common-interest judge who will be called upon to sit ex officio. If the Parties are unable to agree, the President shall choose the common-interest judge by lot from the judges proposed by the Parties.
- 2 The President of the Chamber may decide not to invite the Contracting Parties concerned to make an appointment under paragraph 1 of this Rule until notice of the application has been given under Rule 54 § 2.
- 3 In the event of a dispute as to the existence of a common interest or as to any related matter, the Chamber shall decide, if necessary after obtaining written submissions from the Contracting Parties concerned.

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235 As amended by the Court on 7 July 2003.

## **Title 2**

### Procedure

## **Chapter 1**

### General Rules

#### **Rule 31**

(Possibility of particular derogations)

The provisions of this Title shall not prevent the Court from derogating from them for the consideration of a particular case after having consulted the parties where appropriate.

#### **Rule 32**

(Practice directions)

The President of the Court may issue practice directions, notably in relation to such matters as appearance at hearings and the filing of pleadings and other documents.

#### **Rule 33<sup>236</sup>**

(Public character of documents)

- 1 All documents deposited with the Registry by the parties or by any third party in connection with an application, except those deposited within the framework of friendly-settlement negotiations as provided for in Rule 62, shall be accessible to the public in accordance with arrangements determined by the Registrar, unless the President of the Chamber, for the reasons set out in paragraph 2 of this Rule, decides otherwise, either of his or her own motion or at the request of a party or any other person concerned.
- 2 Public access to a document or to any part of it may be restricted in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties or of any person concerned so require, or to the extent strictly necessary in the opinion of the President of the Chamber in special circumstances where publicity would prejudice the interests of justice.

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<sup>236</sup> As amended by the Court on 17 June and 8 July 2002, 7 July 2003, 4 July 2005, 13 November 2006 and 14 May 2007.

- 3 Any request for confidentiality made under paragraph 1 of this Rule must include reasons and specify whether it is requested that all or part of the documents be inaccessible to the public.
- 4 Decisions and judgments given by a Chamber shall be accessible to the public. Decisions and judgments given by a Committee, including decisions covered by the proviso to Rule 53 § 5, shall be accessible to the public. The Court shall periodically make accessible to the public general information about decisions taken by single-judge formations pursuant to Rule 52A § 1 and by Committees in application of Rule 53 § 5.

**Rule 34<sup>237</sup>**

(Use of languages)

- 1 The official languages of the Court shall be English and French.
- 2 In connection with applications lodged under Article 34 of the Convention, and for as long as no Contracting Party has been given notice of such an application in accordance with these Rules, all communications with and oral and written submissions by applicants or their representatives, if not in one of the Court's official languages, shall be in one of the official languages of the Contracting Parties. If a Contracting Party is informed or given notice of an application in accordance with these Rules, the application and any accompanying documents shall be communicated to that State in the language in which they were lodged with the Registry by the applicant.
- 3
  - a All communications with and oral and written submissions by applicants or their representatives in respect of a hearing, or after notice of an application has been given to a Contracting Party, shall be in one of the Court's official languages, unless the President of the Chamber grants leave for the continued use of the official language of a Contracting Party.
  - b If such leave is granted, the Registrar shall make the necessary arrangements for the interpretation and translation into English or French of the applicant's oral and written submissions respectively, in full or in part, where the President of the Chamber considers it to be in the interests of the proper conduct of the proceedings.
  - c Exceptionally the President of the Chamber may make the grant of leave subject to the condition that the applicant bear all or part of the costs of making such arrangements.

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237 As amended by the Court on 13 December 2004.

- d Unless the President of the Chamber decides otherwise, any decision made under the foregoing provisions of this paragraph shall remain valid in all subsequent proceedings in the case, including those in respect of requests for referral of the case to the Grand Chamber and requests for interpretation or revision of a judgment under Rules 73, 79 and 80 respectively.
- 4
- a All communications with and oral and written submissions by a Contracting Party which is a party to the case shall be in one of the Court's official languages. The President of the Chamber may grant the Contracting Party concerned leave to use one of its official languages for its oral and written submissions.
  - b If such leave is granted, it shall be the responsibility of the requesting Party
    - i to file a translation of its written submissions into one of the official languages of the Court within a time-limit to be fixed by the President of the Chamber. Should that Party not file the translation within that time-limit, the Registrar may make the necessary arrangements for such translation, the expenses to be charged to the requesting Party;
    - ii to bear the expenses of interpreting its oral submissions into English or French. The Registrar shall be responsible for making the necessary arrangements for such interpretation.
  - c The President of the Chamber may direct that a Contracting Party which is a party to the case shall, within a specified time, provide a translation into, or a summary in, English or French of all or certain annexes to its written submissions or of any other relevant document, or of extracts therefrom.
  - d The preceding sub-paragraphs of this paragraph shall also apply, *mutatis mutandis*, to third-party intervention under Rule 44 and to the use of a non-official language by a third party.
- 5
- The President of the Chamber may invite the respondent Contracting Party to provide a translation of its written submissions in the or an official language of that Party in order to facilitate the applicant's understanding of those submissions.
- 6
- Any witness, expert or other person appearing before the Court may use his or her own language if he or she does not have sufficient knowledge of either of the two official languages. In that event the Registrar shall make the necessary arrangements for interpreting or translation.

**Rule 35**

(Representation of Contracting Parties)

The Contracting Parties shall be represented by Agents, who may have the assistance of advocates or advisers.

**Rule 36<sup>238</sup>**

(Representation of applicants)

- 1 Persons, non-governmental organisations or groups of individuals may initially present applications under Article 34 of the Convention themselves or through a representative.
- 2 Following notification of the application to the respondent Contracting Party under Rule 54 § 2 (b), the applicant should be represented in accordance with paragraph 4 of this Rule, unless the President of the Chamber decides otherwise.
- 3 The applicant must be so represented at any hearing decided on by the Chamber, unless the President of the Chamber exceptionally grants leave to the applicant to present his or her own case, subject, if necessary, to being assisted by an advocate or other approved representative.
- 4
  - a The representative acting on behalf of the applicant pursuant to paragraphs 2 and 3 of this Rule shall be an advocate authorised to practise in any of the Contracting Parties and resident in the territory of one of them, or any other person approved by the President of the Chamber.
  - b In exceptional circumstances and at any stage of the procedure, the President of the Chamber may, where he or she considers that the circumstances or the conduct of the advocate or other person appointed under the preceding sub-paragraph so warrant, direct that the latter may no longer represent or assist the applicant and that the applicant should seek alternative representation.
- 5
  - a The advocate or other approved representative, or the applicant in person who seeks leave to present his or her own case, must even if leave is granted under the following sub-paragraph have an adequate understanding of one of the Court's official languages.

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238 As amended by the Court on 7 July 2003.

- b If he or she does not have sufficient proficiency to express himself or herself in one of the Court's official languages, leave to use one of the official languages of the Contracting Parties may be given by the President of the Chamber under Rule 34 § 3.

**Rule 37<sup>239</sup>**

(Communications, notifications and summonses)

- 1 Communications or notifications addressed to the Agents or advocates of the parties shall be deemed to have been addressed to the parties.
- 2 If, for any communication, notification or summons addressed to persons other than the Agents or advocates of the parties, the Court considers it necessary to have the assistance of the Government of the State on whose territory such communication, notification or summons is to have effect, the President of the Court shall apply directly to that Government in order to obtain the necessary facilities.

**Rule 38**

(Written pleadings)

- 1 No written observations or other documents may be filed after the time-limit set by the President of the Chamber or the Judge Rapporteur, as the case may be, in accordance with these Rules. No written observations or other documents filed outside that time-limit or contrary to any practice direction issued under Rule 32 shall be included in the case file unless the President of the Chamber decides otherwise.
- 2 For the purposes of observing the time-limit referred to in paragraph 1 of this Rule, the material date is the certified date of dispatch of the document or, if there is none, the actual date of receipt at the Registry.

**Rule 38A<sup>240</sup>**

(Examination of matters of procedure)

Questions of procedure requiring a decision by the Chamber shall be considered simultaneously with the examination of the case, unless the President of the Chamber decides otherwise.

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239 As amended by the Court on 7 July 2003.

240 Inserted by the Court on 17 June and 8 July 2002.



**Rule 39**<sup>241</sup>

(Interim measures)

- 1 The Chamber or, where appropriate, its President may, at the request of a party or of any other person concerned, or of its own motion, indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or of the proper conduct of the proceedings before it.
- 2 Notice of these measures shall be given to the Committee of Ministers.
- 3 The Chamber may request information from the parties on any matter connected with the implementation of any interim measure it has indicated.

**Rule 40**

(Urgent notification of an application)

In any case of urgency the Registrar, with the authorisation of the President of the Chamber, may, without prejudice to the taking of any other procedural steps and by any available means, inform a Contracting Party concerned in an application of the introduction of the application and of a summary of its objects.

**Rule 41**<sup>242</sup>

(Order of dealing with cases)

In determining the order in which cases are to be dealt with, the Court shall have regard to the importance and urgency of the issues raised on the basis of criteria fixed by it. The Chamber, or its President, may, however, derogate from these criteria so as to give priority to a particular application.

**Rule 42 (former Rule 43)**

(Joinder and simultaneous examination of applications)

- 1 The Chamber may, either at the request of the parties or of its own motion, order the joinder of two or more applications.
- 2 The President of the Chamber may, after consulting the parties, order that the proceedings in applications assigned to the same Chamber be conducted simultaneously, without prejudice to the decision of the Chamber on the joinder of the applications.

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241 As amended by the Court on 4 July 2005.

242 As amended by the Court on 17 June and 8 July 2002 and 29 June 2009.

**Rule 43<sup>243</sup> (former Rule 44)**

(Striking out and restoration to the list)

- 1 The Court may at any stage of the proceedings decide to strike an application out of its list of cases in accordance with Article 37 of the Convention.
- 2 When an applicant Contracting Party notifies the Registrar of its intention not to proceed with the case, the Chamber may strike the application out of the Court's list under Article 37 of the Convention if the other Contracting Party or Parties concerned in the case agree to such discontinuance.
- 3 If a friendly settlement is effected, the application shall be struck out of the Court's list of cases by means of a decision. In accordance with Article 39 § 4 of the Convention, this decision shall be transmitted to the Committee of Ministers, which shall supervise the execution of the terms of the friendly settlement as set out in the decision. In other cases provided for in Article 37 of the Convention, the decision to strike out an application which has been declared admissible shall be given in the form of a judgment. The President of the Chamber shall forward that judgment, once it has become final, to the Committee of Ministers in order to allow the latter to supervise, in accordance with Article 46 § 2 of the Convention, the execution of any undertakings which may have been attached to the discontinuance or solution of the matter.
- 4 When an application has been struck out, the costs shall be at the discretion of the Court. If an award of costs is made in a decision striking out an application which has not been declared admissible, the President of the Chamber shall forward the decision to the Committee of Ministers.
- 5 The Court may restore an application to its list if it considers that exceptional circumstances justify such a course.

**Rule 44<sup>244</sup>**

(Third-party intervention)

- 1 a When notice of an application lodged under Article 34 of the Convention is given to the respondent Contracting Party under Rules 53 § 2 or 54 § 2 (b), a copy of the application shall at the same time be transmitted by the Registrar to any other Contracting Party one of whose nationals is an applicant in the case. The Registrar shall similarly notify any such Contracting Party of a decision to hold an oral hearing in the case.

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243 As amended by the Court on 17 June and 8 July 2002, 7 July 2003 and 13 November 2006.

244 As amended by the Court on 7 July 2003 and 13 November 2006.



- 5 Any invitation or grant of leave referred to in paragraph 3 (a) of this Rule shall be subject to any conditions, including time-limits, set by the President of the Chamber. Where such conditions are not complied with, the President may decide not to include the comments in the case file or to limit participation in the hearing to the extent that he or she considers appropriate.
- 6 Written comments submitted under this Rule shall be drafted in one of the official languages as provided in Rule 34 § 4. They shall be forwarded by the Registrar to the parties to the case, who shall be entitled, subject to any conditions, including time-limits, set by the President of the Chamber, to file written observations in reply or, where appropriate, to reply at the hearing.

**Rule 44A**<sup>245</sup>

(Duty to cooperate with the Court)

The parties have a duty to cooperate fully in the conduct of the proceedings and, in particular, to take such action within their power as the Court considers necessary for the proper administration of justice. This duty shall also apply to a Contracting Party not party to the proceedings where such cooperation is necessary.

**Rule 44B**<sup>246</sup>

(Failure to comply with an order of the Court)

Where a party fails to comply with an order of the Court concerning the conduct of the proceedings, the President of the Chamber may take any steps which he or she considers appropriate.

**Rule 44C**<sup>247</sup>

(Failure to participate effectively)

- 1 Where a party fails to adduce evidence or provide information requested by the Court or to divulge relevant information of its own motion or otherwise fails to participate effectively in the proceedings, the Court may draw such inferences as it deems appropriate.
- 2 Failure or refusal by a respondent Contracting Party to participate effectively in the proceedings shall not, in itself, be a reason for the Chamber to discontinue the examination of the application.

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245 Inserted by the Court on 13 December 2004.

246 *Idem*

247 *Idem*

**Rule 44D**<sup>248</sup>

(Inappropriate submissions by a party)

If the representative of a party makes abusive, frivolous, vexatious, misleading or prolix submissions, the President of the Chamber may exclude that representative from the proceedings, refuse to accept all or part of the submissions or make any other order which he or she considers it appropriate to make, without prejudice to Article 35 § 3 of the Convention.

**Rule 44E**<sup>249</sup>

(Failure to pursue an application)

In accordance with Article 37 § 1 (a) of the Convention, if an applicant Contracting Party or an individual applicant fails to pursue the application, the Chamber may strike the application out of the Court's list under Rule 43.

**Chapter 2**

Institution of Proceedings

**Rule 45**

(Signatures)

- 1 Any application made under Articles 33 or 34 of the Convention shall be submitted in writing and shall be signed by the applicant or by the applicant's representative.
- 2 Where an application is made by a non-governmental organisation or by a group of individuals, it shall be signed by those persons competent to represent that organisation or group. The Chamber or Committee concerned shall determine any question as to whether the persons who have signed an application are competent to do so.
- 3 Where applicants are represented in accordance with Rule 36, a power of attorney or written authority to act shall be supplied by their representative or representatives.

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248 *Idem*

249 Inserted by the Court on 13 December 2004.

**Rule 46**

(Contents of an inter-State application)

Any Contracting Party or Parties intending to bring a case before the Court under Article 33 of the Convention shall file with the Registry an application setting out

- a the name of the Contracting Party against which the application is made;
- b a statement of the facts;
- c a statement of the alleged violation(s) of the Convention and the relevant arguments;
- d a statement on compliance with the admissibility criteria (exhaustion of domestic remedies and the six-month rule) laid down in Article 35 § 1 of the Convention;
- e the object of the application and a general indication of any claims for just satisfaction made under Article 41 of the Convention on behalf of the alleged injured party or parties; and
- f the name and address of the person or persons appointed as Agent; and accompanied by
- g copies of any relevant documents and in particular the decisions, whether judicial or not, relating to the object of the application.

**Rule 47<sup>250</sup>**

(Contents of an individual application)

- 1 Any application under Article 34 of the Convention shall be made on the application form provided by the Registry, unless the President of the Section concerned decides otherwise. It shall set out
  - a the name, date of birth, nationality, sex, occupation and address of the applicant;
  - b the name, occupation and address of the representative, if any;
  - c the name of the Contracting Party or Parties against which the application is made;

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<sup>250</sup> As amended by the Court on 17 June and 8 July 2002, 11 December 2007 and 22 September 2008.

- d a succinct statement of the facts;
  - e a succinct statement of the alleged violation(s) of the Convention and the relevant arguments;
  - f a succinct statement on the applicant's compliance with the admissibility criteria (exhaustion of domestic remedies and the six- month rule) laid down in Article 35 § 1 of the Convention; and
  - g the object of the application; and be accompanied by
  - h copies of any relevant documents and in particular the decisions, whether judicial or not, relating to the object of the application.
- 2 Applicants shall furthermore
- a provide information, notably the documents and decisions referred to in paragraph 1 (h) of this Rule, enabling it to be shown that the admissibility criteria (exhaustion of domestic remedies and the six- month rule) laid down in Article 35 § 1 of the Convention have been satisfied; and
  - b indicate whether they have submitted their complaints to any other procedure of international investigation or settlement.
- 3 Applicants who do not wish their identity to be disclosed to the public shall so indicate and shall submit a statement of the reasons justifying such a departure from the normal rule of public access to information in proceedings before the Court. The President of the Chamber may authorise anonymity or grant it of his or her own motion.
- 4 Failure to comply with the requirements set out in paragraphs 1 and 2 of this Rule may result in the application not being examined by the Court.
- 5 The date of introduction of the application for the purposes of Article 35 § 1 of the Convention shall as a general rule be considered to be the date of the first communication from the applicant setting out, even summarily, the subject matter of the application, provided that a duly completed application form has been submitted within the time-limits laid down by the Court. The Court may for good cause nevertheless decide that a different date shall be considered to be the date of introduction.
- 6 Applicants shall keep the Court informed of any change of address and of all circumstances relevant to the application.

**Chapter 3**

## Judge Rapporteurs

**Rule 48**

(Inter-State applications)

- 1 Where an application is made under Article 33 of the Convention, the Chamber constituted to consider the case shall designate one or more of its judges as Judge Rapporteur(s), who shall submit a report on admissibility when the written observations of the Contracting Parties concerned have been received.
- 2 The Judge Rapporteur(s) shall submit such reports, drafts and other documents as may assist the Chamber and its President in carrying out their functions.

**Rule 49**

(Individual applications)

- 1 Where the material submitted by the applicant is on its own sufficient to disclose that the application is inadmissible or should be struck out of the list, the application shall be considered by a single-judge formation unless there is some special reason to the contrary.
- 2 Where an application is made under Article 34 of the Convention and its examination by a Chamber or a Committee exercising the functions attributed to it under Rule 53 § 2 seems justified, the President of the Section to which the case has been assigned shall designate a judge as Judge Rapporteur, who shall examine the application.
- 3 In their examination of applications, Judge Rapporteurs
  - a may request the parties to submit, within a specified time, any factual information, documents or other material which they consider to be relevant;
  - b shall, subject to the President of the Section directing that the case be considered by a Chamber or a Committee, decide whether the application is to be considered by a single-judge formation, by a Committee or by a Chamber;
  - c shall submit such reports, drafts and other documents as may assist the Chamber or the Committee or the respective President in carrying out their functions.



**Rule 50**

(Grand Chamber proceedings)

Where a case has been submitted to the Grand Chamber either under Article 30 or under Article 43 of the Convention, the President of the Grand Chamber shall designate as Judge Rapporteur(s) one or, in the case of an inter-State application, one or more of its members.

**Chapter 4**

Proceedings on Admissibility

Inter-State applications

**Rule 51**<sup>251</sup>

(Assignment of applications and subsequent procedure)

- 1 When an application is made under Article 33 of the Convention, the President of the Court shall immediately give notice of the application to the respondent Contracting Party and shall assign the application to one of the Sections.
- 2 In accordance with Rule 26 § 1 (a), the judges elected in respect of the applicant and respondent Contracting Parties shall sit as ex officio members of the Chamber constituted to consider the case. Rule 30 shall apply if the application has been brought by several Contracting Parties or if applications with the same object brought by several Contracting Parties are being examined jointly under Rule 42.
- 3 On assignment of the case to a Section, the President of the Section shall constitute the Chamber in accordance with Rule 26 § 1 and shall invite the respondent Contracting Party to submit its observations in writing on the admissibility of the application. The observations so obtained shall be communicated by the Registrar to the applicant Contracting Party, which may submit written observations in reply.
- 4 Before the ruling on the admissibility of the application is given, the Chamber or its President may decide to invite the Parties to submit further observations in writing.
- 5 A hearing on the admissibility shall be held if one or more of the Contracting Parties concerned so requests or if the Chamber so decides of its own motion.

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<sup>251</sup> As amended by the Court on 17 June and 8 July 2002.

- 6 Before fixing the written and, where appropriate, oral procedure, the President of the Chamber shall consult the Parties.

#### Individual applications

#### **Rule 52<sup>252</sup>**

(Assignment of applications to the Sections)

- 1 Any application made under Article 34 of the Convention shall be assigned to a Section by the President of the Court, who in so doing shall endeavour to ensure a fair distribution of cases between the Sections.
- 2 The Chamber of seven judges provided for in Article 26 § 1 of the Convention shall be constituted by the President of the Section concerned in accordance with Rule 26 § 1.
- 3 Pending the constitution of a Chamber in accordance with paragraph 2 of this Rule, the President of the Section shall exercise any powers conferred on the President of the Chamber by these Rules.

#### **Rule 52A<sup>253</sup>**

(Procedure before a single judge)

- 1 In accordance with Article 27 of the Convention, a single judge may declare inadmissible or strike out of the Court's list of cases an application submitted under Article 34, where such a decision can be taken without further examination. The decision shall be final. The applicant shall be informed of the decision by letter.
- 2 In accordance with Article 26 § 3 of the Convention, a single judge may not examine any application against the Contracting Party in respect of which that judge has been elected.
- 3 If the single judge does not take a decision of the kind provided for in the first paragraph of the present Rule, that judge shall forward the application to a Committee or to a Chamber for further examination.

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252 As amended by the Court on 17 June and 8 July 2002.

253 Inserted by the Court on 13 November 2006.

**Rule 53**<sup>254</sup>

(Procedure before a Committee)

- 1 In accordance with Article 28 § 1 (a) of the Convention, the Committee may, by a unanimous vote and at any stage of the proceedings, declare an application inadmissible or strike it out of the Court's list of cases where such a decision can be taken without further examination.
- 2 If the Committee is satisfied, in the light of the parties' observations received pursuant to Rule 54 § 2 (b), that the case falls to be examined in accordance with the procedure under Article 28 § 1 (b) of the Convention, it shall, by a unanimous vote, adopt a judgment including its decision on admissibility and, as appropriate, on just satisfaction.
- 3 If the judge elected in respect of the Contracting Party concerned is not a member of the Committee, the Committee may at any stage of the proceedings before it, by a unanimous vote, invite that judge to take the place of one of its members, having regard to all relevant factors, including whether that Party has contested the application of the procedure under Article 28 § 1 (b) of the Convention.
- 4 Decisions and judgments under Article 28 § 1 of the Convention shall be final.
- 5 The applicant, as well as the Contracting Parties concerned where these have previously been involved in the application in accordance with the present Rules, shall be informed of the decision of the Committee pursuant to Article 28 § 1 (a) of the Convention by letter, unless the Committee decides otherwise.
- 6 If no decision or judgment is adopted by the Committee, the application shall be forwarded to the Chamber constituted under Rule 52 § 2 to examine the case.
- 7 The provisions of Rules 79 to 81 shall apply, *mutatis mutandis*, to proceedings before a Committee.

**Rule 54**<sup>255</sup>

(Procedure before a Chamber)

- 1 The Chamber may at once declare the application inadmissible or strike it out of the Court's list of cases.
- 2 Alternatively, the Chamber or its President may decide to

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254 As amended by the Court on 17 June and 8 July 2002, 4 July 2005 and 14 May 2007.

255 As amended by the Court on 17 June and 8 July 2002.

- a request the parties to submit any factual information, documents or other material considered by the Chamber or its President to be relevant;
  - b give notice of the application to the respondent Contracting Party and invite that Party to submit written observations on the application and, upon receipt thereof, invite the applicant to submit observations in reply;
  - c invite the parties to submit further observations in writing.
- 3 Before taking its decision on the admissibility, the Chamber may decide, either at the request of a party or of its own motion, to hold a hearing if it considers that the discharge of its functions under the Convention so requires. In that event, unless the Chamber shall exceptionally decide otherwise, the parties shall also be invited to address the issues arising in relation to the merits of the application.

**Rule 54A**<sup>256</sup>

(Joint examination of admissibility and merits)

1. When giving notice of the application to the responding Contracting Party pursuant to Rule 54 § 2 (b), the Chamber may also decide to examine the admissibility and merits at the same time in accordance with Article 29 § 1 of the Convention. The parties shall be invited to include in their observations any submissions concerning just satisfaction and any proposals for a friendly settlement. The conditions laid down in Rules 60 and 62 shall apply, *mutatis mutandis*. The Court may, however, decide at any stage, if necessary, to take a separate decision on admissibility.
2. If no friendly settlement or other solution is reached and the Chamber is satisfied, in the light of the parties' arguments, that the case is admissible and ready for a determination on the merits, it shall immediately adopt a judgment including the Chamber's decision on admissibility, save in cases where it decides to take such a decision separately.

Inter-State and individual applications

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<sup>256</sup> Inserted by the Court on 17 June and 8 July 2002 and amended on 13 December 2004 and 13 November 2006.

**Rule 55**

(Pleas of inadmissibility)

Any plea of inadmissibility must, in so far as its character and the circumstances permit, be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application submitted as provided in Rule 51 or 54, as the case may be.

**Rule 56**<sup>257</sup>

(Decision of a Chamber)

- 1 The decision of the Chamber shall state whether it was taken unanimously or by a majority and shall be accompanied or followed by reasons.
- 2 The decision of the Chamber shall be communicated by the Registrar to the applicant. It shall also be communicated to the Contracting Party or Parties concerned and to any third party, including the Commissioner for Human Rights, where these have previously been informed of the application in accordance with the present Rules. If a friendly settlement is effected, the decision to strike an application out of the list of cases shall be forwarded to the Committee of Ministers in accordance with Rule 43 § 3.

**Rule 57**<sup>258</sup>

(Language of the decision)

- 1 Unless the Court decides that a decision shall be given in both official languages, all decisions of Chambers shall be given either in English or in French.
- 2 Publication of such decisions in the official reports of the Court, as provided for in Rule 78, shall be in both official languages of the Court.

**Chapter 5**

Proceedings after the Admission of an Application

**Rule 58**<sup>259</sup>

(Inter-State applications)

- 1 Once the Chamber has decided to admit an application made under Article 33 of the Convention, the President of the Chamber shall, after consulting the

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257 As amended by the Court on 17 June and 8 July 2002 and 13

258 As amended by the Court on 17 June and 8 July 2002.

259 As amended by the Court on 17 June and 8 July 2002.

Contracting Parties concerned, lay down the time-limits for the filing of written observations on the merits and for the production of any further evidence. The President may however, with the agreement of the Contracting Parties concerned, direct that a written procedure is to be dispensed with.

- 2 A hearing on the merits shall be held if one or more of the Contracting Parties concerned so requests or if the Chamber so decides of its own motion. The President of the Chamber shall fix the oral procedure.

**Rule 59<sup>260</sup>**

(Individual applications)

- 1 Once an application made under Article 34 of the Convention has been declared admissible, the Chamber or its President may invite the parties to submit further evidence and written observations.
- 2 Unless decided otherwise, the parties shall be allowed the same time for submission of their observations.
- 3 The Chamber may decide, either at the request of a party or of its own motion, to hold a hearing on the merits if it considers that the discharge of its functions under the Convention so requires.
- 4 The President of the Chamber shall, where appropriate, fix the written and oral procedure.

**Rule 60<sup>261</sup>**

(Claims for just satisfaction)

- 1 An applicant who wishes to obtain an award of just satisfaction under Article 41 of the Convention in the event of the Court finding a violation of his or her Convention rights must make a specific claim to that effect.
- 2 The applicant must submit itemised particulars of all claims, together with any relevant supporting documents, within the time-limit fixed for the submission of the applicant's observations on the merits unless the President of the Chamber directs otherwise.
- 3 If the applicant fails to comply with the requirements set out in the preceding paragraphs the Chamber may reject the claims in whole or in part.

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260 *Idem*

261 As amended by the Court on 13 December 2004.

- 4 The applicant's claims shall be transmitted to the respondent Government for comment.

**Rule 61**<sup>262</sup>

(Pilot-judgment procedure)

- 1 The Court may initiate a pilot-judgment procedure and adopt a pilot judgment where the facts of an application reveal in the Contracting State concerned the existence of a structural or systemic problem or other similar dysfunction which has given rise or may give rise to similar applications.
- 2
  - a Before initiating a pilot-judgment procedure, the Court shall first seek the views of the parties on whether the application under examination results from the existence of such a problem or dysfunction in the Contracting State concerned and on the suitability of processing the application in accordance with that procedure.
  - b A pilot-judgment procedure may be initiated by the Court of its own motion or at the request of one or both parties.
  - c Any application selected for pilot-judgment treatment shall be processed as a matter of priority in accordance with Rule 41 of the Rules of Court.
- 3 The Court shall in its pilot judgment identify both the nature of the structural or systemic problem or other dysfunction as established as well as the type of remedial measures which the Contracting State concerned is required to take at the domestic level by virtue of the operative provisions of the judgment.
- 4 The Court may direct in the operative provisions of the pilot judgment that the remedial measures referred to in paragraph 3 above be adopted within a specified time, bearing in mind the nature of the measures required and the speed with which the problem which it has identified can be remedied at the domestic level.
- 5 When adopting a pilot judgment, the Court may reserve the question of just satisfaction either in whole or in part pending the adoption by the respondent State of the individual and general measures specified in the pilot judgment.
- 6
  - a As appropriate, the Court may adjourn the examination of all similar applications pending the adoption of the remedial measures required by virtue of the operative provisions of the pilot judgment.

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262 Inserted by the Court on 21 February 2011.

- b The applicants concerned shall be informed in a suitable manner of the decision to adjourn. They shall be notified as appropriate of all relevant developments affecting their cases.
  - c The Court may at any time examine an adjourned application where the interests of the proper administration of justice so require.
- 7 Where the parties to the pilot case reach a friendly-settlement agreement, such agreement shall comprise a declaration by the respondent Government on the implementation of the general measures identified in the pilot judgment as well as the redress to be afforded to other actual or potential applicants.
  - 8 Subject to any decision to the contrary, in the event of the failure of the Contracting State concerned to comply with the operative provisions of a pilot judgment, the Court shall resume its examination of the applications which have been adjourned in accordance with paragraph 6 above.
  - 9 The Committee of Ministers, the Parliamentary Assembly of the Council of Europe, the Secretary General of the Council of Europe, and the Council of Europe's Human Rights Commissioner shall be informed of the adoption of a pilot judgment as well as of any other judgment in which the Court draws attention to the existence of a structural or systemic problem in a Contracting State.
  - 10 Information about the initiation of pilot-judgment procedures, the adoption of pilot judgments and their execution as well as the closure of such procedures shall be published on the Court's website.

**Rule 62**<sup>263</sup>

(Friendly settlement)

- 1 Once an application has been declared admissible, the Registrar, acting on the instructions of the Chamber or its President, shall enter into contact with the parties with a view to securing a friendly settlement of the matter in accordance with Article 39 § 1 of the Convention. The Chamber shall take any steps that appear appropriate to facilitate such a settlement.
- 2 In accordance with Article 39 § 2 of the Convention, the friendly-settlement negotiations shall be confidential and without prejudice to the parties' arguments in the contentious proceedings. No written or oral communication and no offer or concession made in the framework of the attempt to secure a friendly settlement may be referred to or relied on in the contentious proceedings.

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263 As amended by the Court on 17 June and 8 July 2002 and 13 November 2006.



- 3 If the Chamber is informed by the Registrar that the parties have agreed to a friendly settlement, it shall, after verifying that the settlement has been reached on the basis of respect for human rights as defined in the Convention and the Protocols thereto, strike the case out of the Court's list in accordance with Rule 43 § 3.
- 4 Paragraphs 2 and 3 apply, *mutatis mutandis*, to the procedure under Rule 54A.

## Chapter 6

### Hearings

#### Rule 63<sup>264</sup>

(Public character of hearings)

- 1 Hearings shall be public unless, in accordance with paragraph 2 of this Rule, the Chamber in exceptional circumstances decides otherwise, either of its own motion or at the request of a party or any other person concerned.
- 2 The press and the public may be excluded from all or part of a hearing in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the Chamber in special circumstances where publicity would prejudice the interests of justice.
- 3 Any request for a hearing to be held *in camera* made under paragraph 1 of this Rule must include reasons and specify whether it concerns all or only part of the hearing.

#### Rule 64<sup>265</sup>

(Conduct of hearings)

- 1 The President of the Chamber shall organise and direct hearings and shall prescribe the order in which those appearing before the Chamber shall be called upon to speak.
- 2 Any judge may put questions to any person appearing before the Chamber.

#### Rule 65<sup>266</sup>

(Failure to appear)

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264 As amended by the Court on 7 July 2003.

265 *Idem*

266 *Idem*

Where a party or any other person due to appear fails or declines to do so, the Chamber may, provided that it is satisfied that such a course is consistent with the proper administration of justice, nonetheless proceed with the hearing.

### **Rules 66 to 69 deleted**

#### **Rule 70<sup>267</sup>**

(Verbatim record of a hearing)

- 1 If the President of the Chamber so directs, the Registrar shall be responsible for the making of a verbatim record of the hearing. Any such record shall include:
  - a the composition of the Chamber;
  - b a list of those appearing before the Chamber;
  - c the text of the submissions made, questions put and replies given;
  - d the text of any ruling delivered during the hearing.
- 2 If all or part of the verbatim record is in a non-official language, the Registrar shall arrange for its translation into one of the official languages.
- 3 The representatives of the parties shall receive a copy of the verbatim record in order that they may, subject to the control of the Registrar or the President of the Chamber, make corrections, but in no case may such corrections affect the sense and bearing of what was said. The Registrar shall lay down, in accordance with the instructions of the President of the Chamber, the time-limits granted for this purpose.
- 4 The verbatim record, once so corrected, shall be signed by the President of the Chamber and the Registrar and shall then constitute certified matters of record.

### **Chapter 7**

Proceedings before the Grand Chamber

#### **Rule 71<sup>268</sup>**

(Applicability of procedural provisions)

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<sup>267</sup> As amended by the Court on 17 June and 8 July 2002.

<sup>268</sup> As amended by the Court on 17 June and 8 July 2002.

- 1 Any provisions governing proceedings before the Chambers shall apply, *mutatis mutandis*, to proceedings before the Grand Chamber.
- 2 The powers conferred on a Chamber by Rules 54 § 3 and 59 § 3 in relation to the holding of a hearing may, in proceedings before the Grand Chamber, also be exercised by the President of the Grand Chamber.

### **Rule 72**

(Relinquishment of jurisdiction by a Chamber in favour of the Grand Chamber)

- 1 In accordance with Article 30 of the Convention, where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto or where the resolution of a question before it might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case has objected in accordance with paragraph 2 of this Rule. Reasons need not be given for the decision to relinquish.
- 2 The Registrar shall notify the parties of the Chamber's intention to relinquish jurisdiction. The parties shall have one month from the date of that notification within which to file at the Registry a duly reasoned objection. An objection which does not fulfil these conditions shall be considered invalid by the Chamber.

### **Rule 73**

(Request by a party for referral of a case to the Grand Chamber)

- 1 In accordance with Article 43 of the Convention, any party to a case may exceptionally, within a period of three months from the date of delivery of the judgment of a Chamber, file in writing at the Registry a request that the case be referred to the Grand Chamber. The party shall specify in its request the serious question affecting the interpretation or application of the Convention or the Protocols thereto, or the serious issue of general importance, which in its view warrants consideration by the Grand Chamber.
- 2 A panel of five judges of the Grand Chamber constituted in accordance with Rule 24 § 5 shall examine the request solely on the basis of the existing case file. It shall accept the request only if it considers that the case does raise such a question or issue. Reasons need not be given for a refusal of the request.
- 3 If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

## Chapter 8

### Judgments

#### Rule 74<sup>269</sup>

(Contents of the judgment)

- 1 A judgment as referred to in Articles 28, 42 and 44 of the Convention shall contain
  - a the names of the President and the other judges constituting the Chamber or the Committee concerned, and the name of the Registrar or the Deputy Registrar;
  - b the dates on which it was adopted and delivered;
  - c a description of the parties;
  - d the names of the Agents, advocates or advisers of the parties;
  - e an account of the procedure followed;
  - f the facts of the case;
  - g a summary of the submissions of the parties;
  - h the reasons in point of law;
  - i the operative provisions;
  - j the decision, if any, in respect of costs;
  - k the number of judges constituting the majority;
  - l where appropriate, a statement as to which text is authentic.
- 2 Any judge who has taken part in the consideration of the case by a Chamber or by the Grand Chamber shall be entitled to annex to the judgment either a separate opinion, concurring with or dissenting from that judgment, or a bare statement of dissent.

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<sup>269</sup> As amended by the Court on 13 November 2006.

**Rule 75<sup>270</sup>**

(Ruling on just satisfaction)

- 1 Where the Chamber or the Committee finds that there has been a violation of the Convention or the Protocols thereto, it shall give in the same judgment a ruling on the application of Article 41 of the Convention if a specific claim has been submitted in accordance with Rule 60 and the question is ready for decision; if the question is not ready for decision, the Chamber or the Committee shall reserve it in whole or in part and shall fix the further procedure.
- 2 For the purposes of ruling on the application of Article 41 of the Convention, the Chamber or the Committee shall, as far as possible, be composed of those judges who sat to consider the merits of the case. Where it is not possible to constitute the original Chamber or Committee, the President of the Section shall complete or compose the Chamber or Committee by drawing lots.
- 3 The Chamber or the Committee may, when affording just satisfaction under Article 41 of the Convention, direct that if settlement is not made within a specified time, interest is to be payable on any sums awarded.
- 4 If the Court is informed that an agreement has been reached between the injured party and the Contracting Party liable, it shall verify the equitable nature of the agreement and, where it finds the agreement to be equitable, strike the case out of the list in accordance with Rule 43 § 3.

**Rule 76<sup>271</sup>**

(Language of the judgment)

- 1 Unless the Court decides that a judgment shall be given in both official languages, all judgments shall be given either in English or in French.
- 2 Publication of such judgments in the official reports of the Court, as provided for in Rule 78, shall be in both official languages of the Court.

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270 As amended by the Court on 13 December 2004 and 13 November 2006.

271 As amended by the Court on 17 June and 8 July 2002.

**Rule 77<sup>272</sup>**

(Signature, delivery and notification of the judgment)

- 1 Judgments shall be signed by the President of the Chamber or the Committee and the Registrar.
- 2 The judgment adopted by a Chamber may be read out at a public hearing by the President of the Chamber or by another judge delegated by him or her. The Agents and representatives of the parties shall be informed in due time of the date of the hearing. Otherwise, and in respect of judgments adopted by Committees, the notification provided for in paragraph 3 of this Rule shall constitute delivery of the judgment.
- 3 The judgment shall be transmitted to the Committee of Ministers. The Registrar shall send copies to the parties, to the Secretary General of the Council of Europe, to any third party, including the Commissioner for Human Rights, and to any other person directly concerned. The original copy, duly signed and sealed, shall be placed in the archives of the Court.

**Rule 78**

(Publication of judgments and other documents)

In accordance with Article 44 § 3 of the Convention, final judgments of the Court shall be published, under the responsibility of the Registrar, in an appropriate form. The Registrar shall in addition be responsible for the publication of official reports of selected judgments and decisions and of any document which the President of the Court considers it useful to publish.

**Rule 79**

(Request for interpretation of a judgment)

- 1 A party may request the interpretation of a judgment within a period of one year following the delivery of that judgment.
- 2 The request shall be filed with the Registry. It shall state precisely the point or points in the operative provisions of the judgment on which interpretation is required.
- 3 The original Chamber may decide of its own motion to refuse the request on the ground that there is no reason to warrant considering it. Where it is not possible

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272 As amended by the Court on 13 November 2006 and 1 December 2008.

to constitute the original Chamber, the President of the Court shall complete or compose the Chamber by drawing lots.

- 4 If the Chamber does not refuse the request, the Registrar shall communicate it to the other party or parties and shall invite them to submit any written comments within a time-limit laid down by the President of the Chamber. The President of the Chamber shall also fix the date of the hearing should the Chamber decide to hold one. The Chamber shall decide by means of a judgment.

### **Rule 80**

(Request for revision of a judgment)

- 1 A party may, in the event of the discovery of a fact which might by its nature have a decisive influence and which, when a judgment was delivered, was unknown to the Court and could not reasonably have been known to that party, request the Court, within a period of six months after that party acquired knowledge of the fact, to revise that judgment.
- 2 The request shall mention the judgment of which revision is requested and shall contain the information necessary to show that the conditions laid down in paragraph 1 of this Rule have been complied with. It shall be accompanied by a copy of all supporting documents. The request and supporting documents shall be filed with the Registry.
- 3 The original Chamber may decide of its own motion to refuse the request on the ground that there is no reason to warrant considering it. Where it is not possible to constitute the original Chamber, the President of the Court shall complete or compose the Chamber by drawing lots.
- 4 If the Chamber does not refuse the request, the Registrar shall communicate it to the other party or parties and shall invite them to submit any written comments within a time-limit laid down by the President of the Chamber. The President of the Chamber shall also fix the date of the hearing should the Chamber decide to hold one. The Chamber shall decide by means of a judgment.

### **Rule 81**

(Rectification of errors in decisions and judgments)

Without prejudice to the provisions on revision of judgments and on restoration to the list of applications, the Court may, of its own motion or at the request of a party made within one month of the delivery of a decision or a judgment, rectify clerical errors, errors in calculation or obvious mistakes.

## Chapter 9

### Advisory Opinions

#### Rule 82

In proceedings relating to advisory opinions the Court shall apply, in addition to the provisions of Articles 47, 48 and 49 of the Convention, the provisions which follow. It shall also apply the other provisions of these Rules to the extent to which it considers this to be appropriate.

#### Rule 83<sup>273</sup>

The request for an advisory opinion shall be filed with the Registrar. It shall state fully and precisely the question on which the opinion of the Court is sought, and also

- a the date on which the Committee of Ministers adopted the decision referred to in Article 47 § 3 of the Convention;
- b the name and address of the person or persons appointed by the Committee of Ministers to give the Court any explanations which it may require.

The request shall be accompanied by all documents likely to elucidate the question.

#### Rule 84<sup>274</sup>

- 1 On receipt of a request, the Registrar shall transmit a copy of it and of the accompanying documents to all members of the Court.
- 2 The Registrar shall inform the Contracting Parties that they may submit written comments on the request.

#### Rule 85<sup>275</sup>

- 1 The President of the Court shall lay down the time-limits for filing written comments or other documents.
- 2 Written comments or other documents shall be filed with the Registrar. The Registrar shall transmit copies of them to all the members of the Court, to the Committee of Ministers and to each of the Contracting Parties.

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<sup>273</sup> As amended by the Court on 4 July 2005.

<sup>274</sup> *Idem*

<sup>275</sup> *Idem*



**Rule 86**

After the close of the written procedure, the President of the Court shall decide whether the Contracting Parties which have submitted written comments are to be given an opportunity to develop them at an oral hearing held for the purpose.

**Rule 87**<sup>276</sup>

- 1 A Grand Chamber shall be constituted to consider the request for an advisory opinion.
- 2 If the Grand Chamber considers that the request is not within its competence as defined in Article 47 of the Convention, it shall so declare in a reasoned decision.

**Rule 88**<sup>277</sup>

- 1 Reasoned decisions and advisory opinions shall be given by a majority vote of the Grand Chamber. They shall mention the number of judges constituting the majority.
- 2 Any judge may, if he or she so desires, attach to the reasoned decision or advisory opinion of the Court either a separate opinion, concurring with or dissenting from the reasoned decision or advisory opinion, or a bare statement of dissent.

**Rule 89**<sup>278</sup>

The reasoned decision or advisory opinion may be read out in one of the two official languages by the President of the Grand Chamber, or by another judge delegated by the President, at a public hearing, prior notice having been given to the Committee of Ministers and to each of the Contracting Parties. Otherwise the notification provided for in Rule 90 shall constitute delivery of the opinion or reasoned decision.

**Rule 90**<sup>279</sup>

The advisory opinion or reasoned decision shall be signed by the President of the Grand Chamber and by the Registrar. The original copy, duly signed and sealed, shall be placed in the archives of the Court. The Registrar shall send certified cop-

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276 As amended by the Court on 4 July 2005.

277 *Idem*

278 *Idem*

279 *Idem*

ies to the Committee of Ministers, to the Contracting Parties and to the Secretary General of the Council of Europe.

## **Chapter 10<sup>280</sup>**

Proceedings under Article 46 §§ 3, 4 and 5 of the Convention

### **Sub-chapter 1**

Proceedings under Article 46 § 3 of the Convention

#### **Rule 91**

Any request for interpretation under Article 46 § 3 of the Convention shall be filed with the Registrar. The request shall state fully and precisely the nature and source of the question of interpretation that has hindered execution of the judgment mentioned in the request and shall be accompanied by

- a information about the execution proceedings, if any, before the Committee of Ministers in respect of the judgment;
- b a copy of the decision referred to in Article 46 § 3 of the Convention;
- c the name and address of the person or persons appointed by the Committee of Ministers to give the Court any explanations which it may require.

#### **Rule 92**

- 1 The request shall be examined by the Grand Chamber, Chamber or Committee which rendered the judgment in question.
- 2 Where it is not possible to constitute the original Grand Chamber, Chamber or Committee, the President of the Court shall complete or compose it by drawing lots.

#### **Rule 93**

The decision of the Court on the question of interpretation referred to it by the Committee of Ministers is final. No separate opinion of the judges may be delivered thereto. Copies of the ruling shall be transmitted to the Committee of Ministers and to the parties concerned as well as to any third party, including the Human Rights Commissioner.

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<sup>280</sup> Inserted by the Court on 13 November 2006 and 14 May 2007.

**Sub-chapter II**

Proceedings under Article 46 §§ 4 and 5 of the Convention

**Rule 94**

In proceedings relating to a referral to the Court of a question whether a Contracting Party has failed to fulfil its obligation under Article 46 § 1 of the Convention the Court shall apply, in addition to the provisions of Article 31 § (b) and Article 46 §§ 4 and 5 of the Convention, the provisions which follow. It shall also apply the other provisions of these Rules to the extent to which it considers this to be appropriate.

**Rule 95**

Any request made pursuant to Article 46 § 4 of the Convention shall be reasoned and shall be filed with the Registrar. It shall be accompanied by

- a the judgment concerned;
- b information about the execution proceedings before the Committee of Ministers in respect of the judgment concerned, including, if any, the views expressed in writing by the parties concerned and communications submitted in those proceedings;
- c copies of the formal notice served on the respondent Contracting Party or Parties and the decision referred to in Article 46 § 4 of the Convention;
- d the name and address of the person or persons appointed by the Committee of Ministers to give the Court any explanations which it may require;
- e copies of all other documents likely to elucidate the question.

**Rule 96**

A Grand Chamber shall be constituted, in accordance with Rule 24 § 2 (g), to consider the question referred to the Court.

**Rule 97**

The President of the Grand Chamber shall inform the Committee of Ministers and the parties concerned that they may submit written comments on the question referred.

### **Rule 98**

- 1 The President of the Grand Chamber shall lay down the time-limits for filing written comments or other documents.
- 2 The Grand Chamber may decide to hold a hearing.

### **Rule 99**

The Grand Chamber shall decide by means of a judgment. Copies of the judgment shall be transmitted to the Committee of Ministers and to the parties concerned as well as to any third party, including the Human Rights Commissioner.

## **Chapter 11**

### **Legal Aid**

#### **Rule 100 (former Rule 91)**

- 1 The President of the Chamber may, either at the request of an applicant having lodged an application under Article 34 of the Convention or of his or her own motion, grant free legal aid to the applicant in connection with the presentation of the case from the moment when observations in writing on the admissibility of that application are received from the respondent Contracting Party in accordance with Rule 54 § 2 (b), or where the time-limit for their submission has expired.
- 2 Subject to Rule 105, where the applicant has been granted legal aid in connection with the presentation of his or her case before the Chamber, that grant shall continue in force for the purposes of his or her representation before the Grand Chamber.

#### **Rule 101 (former Rule 92)**

Legal aid shall be granted only where the President of the Chamber is satisfied

- a that it is necessary for the proper conduct of the case before the Chamber;
- b that the applicant has insufficient means to meet all or part of the costs entailed.

**Rule 102 (former Rule 93<sup>281</sup>)**

- 1 In order to determine whether or not applicants have sufficient means to meet all or part of the costs entailed, they shall be required to complete a form of declaration stating their income, capital assets and any financial commitments in respect of dependants, or any other financial obligations. The declaration shall be certified by the appropriate domestic authority or authorities.
- 2 The President of the Chamber may invite the Contracting Party concerned to submit its comments in writing.
- 3 After receiving the information mentioned in paragraph 1 of this Rule, the President of the Chamber shall decide whether or not to grant legal aid. The Registrar shall inform the parties accordingly.

**Rule 103 (former Rule 94)**

- 1 Fees shall be payable to the advocates or other persons appointed in accordance with Rule 36 § 4. Fees may, where appropriate, be paid to more than one such representative.
- 2 Legal aid may be granted to cover not only representatives' fees but also traveling and subsistence expenses and other necessary expenses incurred by the applicant or appointed representative.

**Rule 104 (former Rule 95)**

On a decision to grant legal aid, the Registrar shall fix

- a the rate of fees to be paid in accordance with the legal-aid scales in force;
- b the level of expenses to be paid.

**Rule 105 (former Rule 96)**

The President of the Chamber may, if satisfied that the conditions stated in Rule 101 are no longer fulfilled, revoke or vary a grant of legal aid at any time.

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281 As amended by the Court on 29 May 2006.

### **Title 3**

#### Transitional rules

#### **Former rules 97 and 98 deleted**

#### **Rule 106 (former Rule 99)**

(Relations between the Court and the Commission)

- 1 In cases brought before the Court under Article 5 §§ 4 and 5 of Protocol No. 11 to the Convention, the Court may invite the Commission to delegate one or more of its members to take part in the consideration of the case before the Court.
- 2 In cases referred to in paragraph 1 of this Rule, the Court shall take into consideration the report of the Commission adopted pursuant to former Article 31 of the Convention.
- 3 Unless the President of the Chamber decides otherwise, the said report shall be made available to the public through the Registrar as soon as possible after the case has been brought before the Court.
- 4 The remainder of the case file of the Commission, including all pleadings, in cases brought before the Court under Article 5 §§ 2 to 5 of Protocol No. 11 shall remain confidential unless the President of the Chamber decides otherwise.
- 5 In cases where the Commission has taken evidence but has been unable to adopt a report in accordance with former Article 31 of the Convention, the Court shall take into consideration the verbatim records, documentation and opinion of the Commission's delegations arising from such investigations.

#### **Rule 107 (former Rule 100)**

(Chamber and Grand Chamber proceedings)

- 1 In cases referred to the Court under Article 5 § 4 of Protocol No. 11 to the Convention, a panel of the Grand Chamber constituted in accordance with Rule 24 § 5 shall determine, solely on the basis of the existing case file, whether a Chamber or the Grand Chamber is to decide the case.
- 2 If the case is decided by a Chamber, the judgment of the Chamber shall, in accordance with Article 5 § 4 of Protocol No. 11, be final and Rule 73 shall be inapplicable.

- 3 Cases transmitted to the Court under Article 5 § 5 of Protocol No. 11 shall be forwarded by the President of the Court to the Grand Chamber.
- 4 For each case transmitted to the Grand Chamber under Article 5 § 5 of Protocol No. 11, the Grand Chamber shall be completed by judges designated by rotation within one of the groups mentioned in Rule 24 § 31, the cases being allocated to the groups on an alternate basis.

**Rule 108 (former Rule 101)**

(Grant of legal aid)

Subject to Rule 96, in cases brought before the Court under Article 5 §§ 2 to 5 of Protocol No. 11 to the Convention, a grant of legal aid made to an applicant in the proceedings before the Commission or the former Court shall continue in force for the purposes of his or her representation before the Court.

**Rule 109 (former Rule 102<sup>282</sup>)**

(Request for revision of a judgment)

- 1 Where a party requests revision of a judgment delivered by the former Court, the President of the Court shall assign the request to one of the Sections in accordance with the conditions laid down in Rule 51 or 52, as the case may be.
- 2 The President of the relevant Section shall, notwithstanding Rule 80 § 3, constitute a new Chamber to consider the request.
- 3 The Chamber to be constituted shall include as ex officio members
  - a the President of the Section; and, whether or not they are members of the relevant Section,
  - b the judge elected in respect of any Contracting Party concerned or, if he or she is unable to sit, any judge appointed under Rule 29;
  - c any judge of the Court who was a member of the original Chamber that delivered the judgment in the former Court.
- 4
  - a The other members of the Chamber shall be designated by the President of the Section by means of a drawing of lots from among the members of the relevant Section.

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282 As amended by the Court on 13 December 2004.

- b The members of the Section who are not so designated shall sit in the case as substitute judges.

#### **Title 4**

##### Final clauses

#### **Rule 110 (former Rule 103)**

(Amendment or suspension of a Rule)

- 1 Any Rule may be amended upon a motion made after notice where such a motion is carried at the next session of the plenary Court by a majority of all the members of the Court. Notice of such a motion shall be delivered in writing to the Registrar at least one month before the session at which it is to be discussed. On receipt of such a notice of motion, the Registrar shall inform all members of the Court at the earliest possible moment.
- 2 A Rule relating to the internal working of the Court may be suspended upon a motion made without notice, provided that this decision is taken unanimously by the Chamber concerned. The suspension of a Rule shall in this case be limited in its operation to the particular purpose for which it was sought.

#### **Rule 111 (former Rule 104<sup>283</sup>)**

(Entry into force of the Rules)

The present Rules shall enter into force on 1 November 1998.

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283 The amendments adopted on 8 December 2000 entered into force immediately. The amendments adopted on 17 June 2002 and 8 July 2002 entered into force on 1 October 2002. The amendments adopted on 7 July 2003 entered into force on 1 November 2003. The amendments adopted on 13 December 2004 entered into force on 1 March 2005. The amendments adopted on 4 July 2005 entered into force on 3 October 2005. The amendments adopted on 7 November 2005 entered into force on 1 December 2005. The amendments adopted on 29 May 2006 entered into force on 1 July 2006. The amendments adopted on 14 May 2007 entered into force on 1 July 2007. The amendments adopted on 11 December 2007, 22 September and 1 December 2008 entered into force on 1 January 2009. The amendments adopted on 29 June 2009 entered into force on 1 July 2009. The amendments relating to Protocol No. 14 to the Convention, adopted on 13 November 2006 and 14 May 2007, entered into force on 1 June 2010.



## **Annex to the rules<sup>284</sup>**

(concerning investigations)

### **Rule A1**

(Investigative measures)

- 1 The Chamber may, at the request of a party or of its own motion, adopt any investigative measure which it considers capable of clarifying the facts of the case. The Chamber may, inter alia, invite the parties to produce documentary evidence and decide to hear as a witness or expert or in any other capacity any person whose evidence or statements seem likely to assist it in carrying out its tasks.
- 2 The Chamber may also ask any person or institution of its choice to express an opinion or make a written report on any matter considered by it to be relevant to the case.
- 3 After a case has been declared admissible or, exceptionally, before the decision on admissibility, the Chamber may appoint one or more of its members or of the other judges of the Court, as its delegate or delegates, to conduct an inquiry, carry out an on-site investigation or take evidence in some other manner. The Chamber may also appoint any person or institution of its choice to assist the delegation in such manner as it sees fit.
- 4 The provisions of this Chapter concerning investigative measures by a delegation shall apply, *mutatis mutandis*, to any such proceedings conducted by the Chamber itself.
- 5 Proceedings forming part of any investigation by a Chamber or its delegation shall be held *in camera*, save in so far as the President of the Chamber or the head of the delegation decides otherwise.
- 6 The President of the Chamber may, as he or she considers appropriate, invite, or grant leave to, any third party to participate in an investigative measure. The

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284 Inserted by the Court on 7 July 2003.

President shall lay down the conditions of any such participation and may limit that participation if those conditions are not complied with.

### **Rule A2**

(Obligations of the parties as regards investigative measures)

- 1 The applicant and any Contracting Party concerned shall assist the Court as necessary in implementing any investigative measures.
- 2 The Contracting Party on whose territory on-site proceedings before a delegation take place shall extend to the delegation the facilities and cooperation necessary for the proper conduct of the proceedings. These shall include, to the full extent necessary, freedom of movement within the territory and all adequate security arrangements for the delegation, for the applicant and for all witnesses, experts and others who may be heard by the delegation. It shall be the responsibility of the Contracting Party concerned to take steps to ensure that no adverse consequences are suffered by any person or organisation on account of any evidence given, or of any assistance provided, to the delegation.

### **Rule A3**

(Failure to appear before a delegation)

Where a party or any other person due to appear fails or declines to do so, the delegation may, provided that it is satisfied that such a course is consistent with the proper administration of justice, nonetheless continue with the proceedings.

### **Rule A4**

(Conduct of proceedings before a delegation)

- 1 The delegates shall exercise any relevant power conferred on the Chamber by the Convention or these Rules and shall have control of the proceedings before them.
- 2 The head of the delegation may decide to hold a preparatory meeting with the parties or their representatives prior to any proceedings taking place before the delegation.

### **Rule A5**

(Convocation of witnesses, experts and of other persons to proceedings before a delegation)

- 1 Witnesses, experts and other persons to be heard by the delegation shall be summoned by the Registrar.
- 2 The summons shall indicate
  - a the case in connection with which it has been issued;
  - b the object of the inquiry, expert opinion or other investigative measure ordered by the Chamber or the President of the Chamber;
  - c any provisions for the payment of sums due to the person summoned.
- 3 The parties shall provide, in so far as possible, sufficient information to establish the identity and addresses of witnesses, experts or other persons to be summoned.
- 4 In accordance with Rule 37 § 2, the Contracting Party in whose territory the witness resides shall be responsible for servicing any summons sent to it by the Chamber for service. In the event of such service not being possible, the Contracting Party shall give reasons in writing. The Contracting Party shall further take all reasonable steps to ensure the attendance of persons summoned who are under its authority or control.
- 5 The head of the delegation may request the attendance of witnesses, experts and other persons during on-site proceedings before a delegation. The Contracting Party on whose territory such proceedings are held shall, if so requested, take all reasonable steps to facilitate that attendance.
- 6 Where a witness, expert or other person is summoned at the request or on behalf of a Contracting Party, the costs of their appearance shall be borne by that Party unless the Chamber decides otherwise. The costs of the appearance of any such person who is in detention in the Contracting Party on whose territory on-site proceedings before a delegation take place shall be borne by that Party unless the Chamber decides otherwise. In all other cases, the Chamber shall decide whether such costs are to be borne by the Council of Europe or awarded against the applicant or third party at whose request or on whose behalf the person appears. In all cases, such costs shall be taxed by the President of the Chamber.

**Rule A6**

(Oath or solemn declaration by witnesses and experts heard by a delegation)

- 1 After the establishment of the identity of a witness and before testifying, each witness shall take the oath or make the following solemn declaration:

“I swear” – or “I solemnly declare upon my honour and conscience” – “that I shall speak the truth, the whole truth and nothing but the truth.”

This act shall be recorded in minutes.

- 2 After the establishment of the identity of the expert and before carrying out his or her task for the delegation, every expert shall take the oath or make the following solemn declaration:

“I swear” – or “I solemnly declare” – “that I will discharge my duty as an expert honourably and conscientiously.”

This act shall be recorded in minutes.

### **Rule A7**

(Hearing of witnesses, experts and other persons by a delegation)

- 1 Any delegate may put questions to the Agents, advocates or advisers of the parties, to the applicant, witnesses and experts, and to any other persons appearing before the delegation.
- 2 Witnesses, experts and other persons appearing before the delegation may, subject to the control of the head of the delegation, be examined by the Agents and advocates or advisers of the parties. In the event of an objection to a question put, the head of the delegation shall decide.
- 3 Save in exceptional circumstances and with the consent of the head of the delegation, witnesses, experts and other persons to be heard by a delegation will not be admitted to the hearing room before they give evidence.
- 4 The head of the delegation may make special arrangements for witnesses, experts or other persons to be heard in the absence of the parties where that is required for the proper administration of justice.
- 5 The head of the delegation shall decide in the event of any dispute arising from an objection to a witness or expert. The delegation may hear for information purposes a person who is not qualified to be heard as a witness or expert.

### **Rule A8**

(Verbatim record of proceedings before a delegation)

- 1 A verbatim record shall be prepared by the Registrar of any proceedings concerning an investigative measure by a delegation. The verbatim record shall include:
  - a the composition of the delegation;
  - b a list of those appearing before the delegation, that is to say Agents, advocates and advisers of the parties taking part;
  - c the surname, forenames, description and address of each witness, expert or other person heard;
  - d the text of statements made, questions put and replies given;
  - e the text of any ruling delivered during the proceedings before the delegation or by the head of the delegation.
- 2 If all or part of the verbatim record is in a non-official language, the Registrar shall arrange for its translation into one of the official languages.
- 3 The representatives of the parties shall receive a copy of the verbatim record in order that they may, subject to the control of the Registrar or the head of the delegation, make corrections, but in no case may such corrections affect the sense and bearing of what was said. The Registrar shall lay down, in accordance with the instructions of the head of the delegation, the time-limits granted for this purpose.
- 4 The verbatim record, once so corrected, shall be signed by the head of the delegation and the Registrar and shall then constitute certified matters of record.

**Practice direction<sup>285</sup>**

**Requests for interim measures**

(Rule 39 of the Rules of Court)

Applicants or their legal representatives<sup>286</sup> who make a request for an interim measure pursuant to Rule 39 of the Rules of Court should comply with the requirements set out below.

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285 Issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 5 March 2003 and amended on 16 October 2009.

286 Full contact details should be provided.

Failure to do so may mean that the Court will not be in a position to examine such requests properly and in good time.

### **I. Accompanying information**

Any request lodged with the Court must state reasons. The applicant must in particular specify in detail the grounds on which his or her particular fears are based and the nature of the alleged risks.

It is essential that requests be accompanied by all necessary supporting documents, in particular relevant domestic court, tribunal or other decisions, together with any other material which is considered to substantiate the applicant's allegations.

Where the case is already pending before the Court, reference should be made to the application number allocated to it.

The applicant and/or his or her representative must indicate in their request a telephone number at which they can be contacted.

In cases concerning extradition or deportation, details should be provided of the expected date and time of the removal, the applicant's address or place of detention and his or her official case-reference number. The Court must be notified of any change to those details (date and time of removal, address, etc.) as soon as possible.

### **II. Requests to be made by fax or letter<sup>287</sup>**

Requests for interim measures under Rule 39 should be sent by fax or by post. The request should, where possible, be in one of the official languages of the Contracting Parties. All requests should be marked as follows in bold on the face of the request:

**“Rule 39 – Urgent Person to contact (name and contact details): ...**  
[In deportation or extradition cases]

**Date and time of removal and destination: ...”**

These requests should be sent during the Court Registry's working hours<sup>288</sup> unless this is absolutely impossible.

<sup>287</sup> According to the degree of urgency and bearing in mind that requests by letter must not be sent by standard post.

<sup>288</sup> Information is available on the Court's website ([www.echr.coe.int](http://www.echr.coe.int)).

### III. Making requests in good time

Requests for interim measures should normally be received as soon as possible after the final domestic decision has been taken, in order to enable the Court and its Registry to have sufficient time to examine the matter.

Applicants and their representatives should be aware, however, that the Court cannot always examine in a timely and proper manner requests which are sent at the last moment, particularly when they are supported by a large number of documents. For that reason, where the final domestic decision is imminent and there is a risk of immediate enforcement, especially in extradition or deportation cases, applicants and their representatives should submit the request for interim measures without waiting for that decision, indicating clearly the date on which it will be taken and that the request is subject to the final domestic decision being negative.

#### **Practice direction<sup>289</sup>**

#### **Institution of proceedings<sup>290</sup>**

#### **(Individual applications under Article 34 of the Convention)**

##### **I. General**

- 1 An application under Article 34 of the Convention must be submitted in writing. No application may be made by telephone.
- 2 An application must be sent to the following address:
 

The Registrar  
European Court of Human Rights  
Council of Europe  
F-67075 Strasbourg Cedex.
- 3 An application should normally be made on the form<sup>291</sup> referred to in Rule 47 § 1 of the Rules of Court and be accompanied by the documents and decisions mentioned in Rule 47 § 1 (h).

<sup>289</sup> Issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 1 November 2003 and amended on 22 September 2008 and on 24 June 2009.

<sup>290</sup> This practice direction supplements Rules 45 and 47.

<sup>291</sup> The relevant form can be downloaded from the Court's website.

Where an applicant introduces his or her application in a letter, such letter must set out, at least in summary form, the subject matter of the application in order to interrupt the running of the six-month rule contained in Article 35 § 1 of the Convention.

- 4 If an application has not been submitted on the official form or an introductory letter does not contain all the information referred to in Rule 47, the applicant may be required to submit a duly completed form. It must be despatched within eight weeks from the date of the Registry's letter requesting the applicant to complete and return the form.

Failure to comply with this time-limit will have implications for the date of introduction of the application and may therefore affect the applicant's compliance with the six-month rule contained in Article 35 § 1 of the Convention.

- 5 Applicants may file an application by sending it by fax<sup>292</sup>. However, they must despatch the signed original by post within eight weeks from the date of the Registry's letter referred to in paragraph 4 above.
- 6 Where, within six months of being asked to do so, an applicant has not returned a duly completed application form, the file will be destroyed.
- 7 On receipt of the first communication setting out the subject-matter of the case, the Registry will open a file, whose number must be mentioned in all subsequent correspondence. Applicants will be informed thereof by letter. They may also be asked for further information or documents.
- 8
  - a An applicant should be diligent in conducting correspondence with the Court's Registry.
  - b A delay in replying or failure to reply may be regarded as a sign that the applicant is no longer interested in pursuing his or her application.
- 9 Failure to provide further information or documents at the Registry's request (see paragraph 7) may result in the application not being examined by the Court or being declared inadmissible or struck out of the Court's list of cases.

## **II. Form and contents**

- 10 An application should be written legibly and, preferably, typed.

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<sup>292</sup> Fax no. +33 (0)3 88 41 27 30; other fax numbers can be found on the Court's website.



- 11 Where, exceptionally, an application exceeds ten pages (excluding annexes listing documents), an applicant must also file a short summary.
- 12 Where applicants produce documents in support of the application, they should not submit original copies. The documents should be listed in order by date, numbered consecutively and given a concise description (e.g., letter, order, judgment, appeal, etc.).
- 13 An applicant who already has an application pending before the Court must inform the Registry accordingly, stating the application number.
- 14 a Where an applicant does not wish to have his or her identity disclosed, he or she should state the reasons for his or her request in writing, pursuant to Rule 47 § 3.
  - b The applicant should also state whether, in the event of anonymity being authorised by the President of the Chamber, he or she wishes to be designated by his or her initials or by a single letter (e.g., “X”, “Y”, “Z”, etc.)

### **Practice direction<sup>293</sup>**

#### **Written pleadings**

##### **I. Filing of pleadings**

###### General

- 1 A pleading must be filed with the Registry within the time-limit fixed in accordance with Rule 38 and in the manner described in paragraph 2 of that Rule.
- 2 The date on which a pleading or other document is received at the Court’s Registry will be recorded on that document by a receipt stamp.
- 3 With the exception of pleadings and documents for which a system of secured electronic filing has been set up, all other pleadings, as well as all documents annexed thereto, should be submitted to the Court’s Registry in three copies sent by post or in one copy by fax<sup>294</sup>, followed by three copies sent by post.
- 4 Pleadings or other documents submitted by electronic mail shall not be accepted.

<sup>293</sup> Issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 1 November 2003 and amended on 22 September 2008.

<sup>294</sup> Fax no. +33 (0)3 88 41 27 30; other fax numbers can be found on the Court’s website ([www.echr.coe.int](http://www.echr.coe.int)).

- 5 Secret documents should be filed by registered post.
- 6 Unsolicited pleadings shall not be admitted to the case file unless the President of the Chamber decides otherwise (see Rule 38 § 1). Filing by fax
- 7 A party may file pleadings or other documents with the Court by sending them by fax.
- 8 The name of the person signing a pleading must also be printed on it so that he or she can be identified. Secured electronic filing
- 9 The Court may authorise the Government of a Contracting Party to file pleadings and other documents electronically through a secured server. In such cases, the practice directions on written pleadings shall apply in conjunction with the practice directions on secured electronic filing.

## **II. Form and contents**

### Form

- 10 A pleading should include:
  - a the application number and the name of the case;
  - b a title indicating the nature of the content (e.g., observations on admissibility [and the merits]; reply to the Government's/the applicant's observations on admissibility [and the merits]; observations on the merits; additional observations on admissibility [and the merits]; memorial etc.).
- 11 A pleading should normally in addition
  - a be in an A4 page format having a margin of not less than 3.5 cm wide;
  - b be typed and wholly legible, the text appearing in at least 12 pt in the body and 10 pt in the footnotes, with one-and-a-half line spacing;
  - c have all numbers expressed as figures;
  - d have pages numbered consecutively;
  - e be divided into numbered paragraphs;
  - f be divided into chapters and/or headings corresponding to the form and style of the Court's decisions and judgments ("Facts"/"Domestic law [and practice]"/"Complaints"/ "Law"; the latter chapter should be followed by

- headings entitled “Preliminary objection on ...”, “Alleged violation of Article ...”, as the case may be);
- g place any answer to a question by the Court or to the other party’s arguments under a separate heading;
  - h give a reference to every document or piece of evidence mentioned in the pleading and annexed thereto;
  - i if sent by post, the text of a pleading must appear on one side of the page only and pages and attachments must be placed together in such a way as to enable them to be easily separated (they must not be glued or stapled).
- 12 If a pleading exceptionally exceeds thirty pages, a short summary should also be filed with it.
- 13 Where a party produces documents and/or other exhibits together with a pleading, every piece of evidence should be listed in a separate annex.

#### Contents

- 14 The parties’ pleadings following communication of the application should include
- a any comments they wish to make on the facts of the case; however,
    - i if a party does not contest the facts as set out in the statement of facts prepared by the Registry, it should limit its observations to a brief statement to that effect;
    - ii if a party contests only part of the facts as set out by the Registry, or wishes to supplement them, it should limit its observations to those specific points;
    - iii if a party objects to the facts or part of the facts as presented by the other party, it should state clearly which facts are uncontested and limit its observations to the points in dispute;
  - b legal arguments relating first to admissibility and, secondly, to the merits of the case; however,
    - i if specific questions on a factual or legal point were put to a party, it should, without prejudice to Rule 55, limit its arguments to such questions;

- ii if a pleading replies to arguments of the other party, submissions should refer to the specific arguments in the order prescribed above.
- 15 a The parties' pleadings following the admission of the application should include:
- i a short statement confirming a party's position on the facts of the case as established in the decision on admissibility;
  - ii legal arguments relating to the merits of the case;
  - iii a reply to any specific questions on a factual or legal point put by the Court.
- b An applicant party submitting claims for just satisfaction at the same time should do so in the manner described in the practice direction on filing just satisfaction claims.
- 16 In view of the confidentiality of friendly-settlement proceedings (see Article 39 § 2 of the Convention and Rule 62 § 2), all submissions and documents filed within the framework of the attempt to secure a friendly settlement should be submitted separately from the written pleadings.
- 17 No reference to offers, concessions or other statements submitted in connection with the friendly settlement may be made in the pleadings filed in the contentious proceedings.

### **III. Time-limits**

#### General

- 18 It is the responsibility of each party to ensure that pleadings and any accompanying documents or evidence are delivered to the Court's Registry in time.

#### Extension of time-limits

- 19 A time-limit set under Rule 38 may be extended on request from a party.
- 20 A party seeking an extension of the time allowed for submission of a pleading must make a request as soon as it has become aware of the circumstances justifying such an extension and, in any event, before the expiry of the time-limit. It should state the reason for the delay.
- 21 If an extension is granted, it shall apply to all parties for which the relevant time-limit is running, including those which have not asked for it.

#### IV. Failure to comply with requirements for pleadings

- 22 Where a pleading has not been filed in accordance with the requirements set out in paragraphs 8-15 of this practice direction, the President of the Chamber may request the party concerned to resubmit the pleading in compliance with those requirements.
- 23 A failure to satisfy the conditions listed above may result in the pleading being considered not to have been properly lodged (see Rule 38 § 1).

#### Practice direction<sup>295</sup>

#### Just satisfaction claims

##### I. Introduction

- 1 The award of just satisfaction is not an automatic consequence of a finding by the European Court of Human Rights that there has been a violation of a right guaranteed by the European Convention on Human Rights or its Protocols. The wording of Article 41, which provides that the Court shall award just satisfaction only if domestic law does not allow complete reparation to be made, and even then only “if necessary” (*s’il y a lieu* in the French text), makes this clear.
- 2 Furthermore, the Court will only award such satisfaction as is considered to be “just” (*équitable* in the French text) in the circumstances. Consequently, regard will be had to the particular features of each case. The Court may decide that for some heads of alleged prejudice the finding of violation constitutes in itself sufficient just satisfaction, without there being any call to afford financial compensation. It may also find reasons of equity to award less than the value of the actual damage sustained or the costs and expenses actually incurred, or even not to make any award at all. This may be the case, for example, if the situation complained of, the amount of damage or the level of the costs is due to the applicant’s own fault. In setting the amount of an award, the Court may also consider the respective positions of the applicant as the party injured by a violation and the Contracting Party as responsible for the public interest. Finally, the Court will normally take into account the local economic circumstances.
- 3 When it makes an award under Article 41, the Court may decide to take guidance from domestic standards. It is, however, never bound by them.

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295 Issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 28 March 2007.

- 4 Claimants are warned that compliance with the formal and substantive requirements deriving from the Convention and the Rules of Court is a condition for the award of just satisfaction.

## **II. Submitting claims for just satisfaction: formal requirements**

- 5 Time-limits and other formal requirements for submitting claims for just satisfaction are laid down in Rule 60 of the Rules of Court, the relevant part of which provides as follows:
- 1 An applicant who wishes to obtain an award of just satisfaction under Article 41 of the Convention in the event of the Court finding a violation of his or her Convention rights must make a specific claim to that effect.
  - 2 The applicant must submit itemised particulars of all claims, together with any relevant supporting documents, within the time-limit fixed for the submission of the applicant's observations on the merits unless the President of the Chamber directs otherwise.
  - 3 If the applicant fails to comply with the requirements set out in the preceding paragraphs, the Chamber may reject the claims in whole or in part.

Thus, the Court requires specific claims supported by appropriate documentary evidence, failing which it may make no award. The Court will also reject claims set out on the application form but not resubmitted at the appropriate stage of the proceedings and claims lodged out of time.

## **III. Submitting claims for just satisfaction: substantive requirements**

- 6 Just satisfaction may be afforded under Article 41 of the Convention in respect of:
- a pecuniary damage;
  - b non-pecuniary damage; and
  - c costs and expenses.
1. Damage in general
- 7 A clear causal link must be established between the damage claimed and the violation alleged. The Court will not be satisfied by a merely tenuous connection between the alleged violation and the damage, nor by mere speculation as to what might have been.

- 8 Compensation for damage can be awarded in so far as the damage is the result of a violation found. No award can be made for damage caused by events or situations that have not been found to constitute a violation of the Convention, or for damage related to complaints declared inadmissible at an earlier stage of the proceedings.
- 9 The purpose of the Court's award in respect of damage is to compensate the applicant for the actual harmful consequences of a violation. It is not intended to punish the Contracting Party responsible. The Court has therefore, until now, considered it inappropriate to accept claims for damages with labels such as "punitive", "aggravated" or "exemplary".

## 2. Pecuniary damage

- 10 The principle with regard to pecuniary damage is that the applicant should be placed, as far as possible, in the position in which he or she would have been had the violation found not taken place, in other words, *restitutio in integrum*. This can involve compensation for both loss actually suffered (*damnum emergens*) and loss, or diminished gain, to be expected in the future (*lucrum cessans*).
- 11 It is for the applicant to show that pecuniary damage has resulted from the violation or violations alleged. The applicant should submit relevant documents to prove, as far as possible, not only the existence but also the amount or value of the damage.
- 12 Normally, the Court's award will reflect the full calculated amount of the damage. However, if the actual damage cannot be precisely calculated, the Court will make an estimate based on the facts at its disposal. As pointed out in paragraph 2 above, it is also possible that the Court may find reasons in equity to award less than the full amount of the loss.

## 3. Non-pecuniary damage

- 13 The Court's award in respect of non-pecuniary damage is intended to provide financial compensation for non-material harm, for example mental or physical suffering.
- 14 It is in the nature of non-pecuniary damage that it does not lend itself to precise calculation. If the existence of such damage is established, and if the Court considers that a monetary award is necessary, it will make an assessment on an equitable basis, having regard to the standards which emerge from its case-law.

- 15 Applicants who wish to be compensated for non-pecuniary damage are invited to specify a sum which in their view would be equitable. Applicants who consider themselves victims of more than one violation may claim either a single lump sum covering all alleged violations or a separate sum in respect of each alleged violation.

#### 4. Costs and expenses

- 16 The Court can order the reimbursement to the applicant of costs and expenses which he or she has incurred – first at the domestic level, and subsequently in the proceedings before the Court itself – in trying to prevent the violation from occurring, or in trying to obtain redress therefor. Such costs and expenses will typically include the cost of legal assistance, court registration fees and suchlike. They may also include travel and subsistence expenses, in particular if these have been incurred by attendance at a hearing of the Court.
- 17 The Court will uphold claims for costs and expenses only in so far as they are referable to the violations it has found. It will reject them in so far as they relate to complaints that have not led to the finding of a violation, or to complaints declared inadmissible. This being so, applicants may wish to link separate claim items to particular complaints.
- 18 Costs and expenses must have been actually incurred. That is, the applicant must have paid them, or be bound to pay them, pursuant to a legal or contractual obligation. Any sums paid or payable by domestic authorities or by the Council of Europe by way of legal aid will be deducted.
- 19 Costs and expenses must have been necessarily incurred. That is, they must have become unavoidable in order to prevent the violation or obtain redress therefor.
- 20 They must be reasonable as to quantum. If the Court finds them to be excessive, it will award a sum which, on its own estimate, is reasonable.
- 21 The Court requires evidence, such as itemised bills and invoices. These must be sufficiently detailed to enable the Court to determine to what extent the above requirements have been met.

#### 5. Payment information

- 22 Applicants are invited to identify a bank account into which they wish any sums awarded to be paid. If they wish particular amounts, for example the sums awarded in respect of costs and expenses, to be paid separately, for ex-



ample directly into the bank account of their representative, they should so specify.

#### IV. The form of the Court's awards

- 23 The Court's awards, if any, will normally be in the form of a sum of money to be paid by the respondent Government to the victim or victims of the violations found. Only in extremely rare cases can the Court consider a consequential order aimed at putting an end or remedying the violation in question. The Court may, however, decide at its discretion to offer guidance for the execution of its judgment (Article 46 of the Convention).
- 24 Any monetary award under Article 41 will normally be in euros (EUR, €) irrespective of the currency in which the applicant expresses his or her claims. If the applicant is to receive payment in a currency other than the euro, the Court will order the sums awarded to be converted into that other currency at the exchange rate applicable on the date of payment. When formulating their claims applicants should, where appropriate, consider the implications of this policy in the light of the effects of converting sums expressed in a different currency into euros or contrariwise.
- 25 The Court will of its own motion set a time-limit for any payments that may need to be made, which will normally be three months from the date on which its judgment becomes final and binding. The Court will also order default interest to be paid in the event that that time-limit is exceeded, normally at a simple rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

#### **Practice direction<sup>296</sup>**

#### **Secured electronic filing**

##### **I. Scope of application**

- 1 The Governments of the Contracting Parties which have opted for the Court's system of secured electronic filing shall send all their written communications with the Court by uploading them on the secured website set up for that purpose and shall accept written communications sent to them by the Registry of the Court by downloading them from that site, with the following exceptions:

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<sup>296</sup> Issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 22 September 2008.

- a all written communications in relation to a request for interim measures under Rule 39 of the Rules of Court shall be sent simultaneously by two means: through the secured website and by fax;
  - b attachments, such as plans, manuals, etc., which may not be comprehensively viewed in an electronic format may be filed by post;
  - c the Court's Registry may request that a paper document or attachment be submitted by post.
- 2 If the Government have filed a document by post or fax, they shall, as soon as possible, file electronically a notice of filing by post or fax, describing the document sent, stating the date of dispatch and setting forth the reasons why electronic filing was not possible.

## **II. Technical requirements**

- 3 The Government shall possess the necessary technical equipment and follow the user manual sent to them by the Court's Registry.

## **III. Format and naming convention**

- 4 A document filed electronically shall be in PDF format, preferably in searchable PDF.
- 5 Unsigned letters and written pleadings shall not be accepted. Signed documents to be filed electronically shall be generated by scanning the original paper copy. The Government shall keep the original paper copy in their files.
- 6 The name of a document filed electronically shall be prefixed by the application number, followed by the name of the applicant as spelled in the Latin alphabet by the Registry of the Court, and contain an indication of the contents of the document<sup>297</sup>.

## **IV. Relevant date with regard to time-limits**

- 7 The date on which the Government have successfully uploaded a document on the secured website shall be considered as the date of dispatch within the meaning of Rule 38 § 2 or the date of filing for the purposes of Rule 73 § 1.

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<sup>297</sup> For example, 65051/01 Karagyozov Observ Adm Merits.

- 8 To facilitate keeping track of the correspondence exchanged, every day shortly before midnight the secured server generates automatically an electronic mail message listing the documents that have been filed electronically within the past twenty-four hours.

#### **V. Different versions of one and the same document**

- 9 The secured website shall not permit the modification, replacement or deletion of an uploaded document. If the need arises for the Government to modify a document they have uploaded, they shall create a new document named differently (for example, by adding the word “modified” in the document name). This opportunity should only be used where genuinely necessary and should not be used to correct minor errors.
- 10 Where the Government have filed more than one version of the same document, only the document filed in time shall be taken into consideration. Where more than one version has been filed in time, the latest version shall be taken into consideration, unless the President of the Chamber decides otherwise.

#### **Practice direction<sup>298</sup>**

#### **Requests for anonymity**

#### **(Rule 33 and 47 of the Rules of Court)**

##### **General principles**

The parties are reminded that, unless a derogation has been obtained pursuant to Rules 33 or 47 of the Rules of Court, documents in proceedings before the Court are public. Thus, all information that is submitted in connection with an application in both written and oral proceedings, including information about the applicant or third parties, will be accessible to the public.

The parties should also be aware that the statement of facts, decisions and judgments of the Court are usually published in HUDOC<sup>299</sup> on the Court’s website (Rule 78).

##### **Requests in pending cases**

Any request for anonymity should be made when completing the application form or as soon as possible thereafter. In both cases the applicant should pro-

<sup>298</sup> Issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 14 January 2010.

<sup>299</sup> [www.echr.coe.int/echr/en/hudoc](http://www.echr.coe.int/echr/en/hudoc)

vide reasons for the request and specify the impact that publication may have for him or her.

### **Retroactive requests**

If an applicant wishes to request anonymity in respect of a case or cases published on HUDOC before 1 January 2010, he or she should send a letter to the Registry setting out the reasons for the request and specifying the impact that this publication has had or may have for him or her. The applicant should also provide an explanation as to why anonymity was not requested while the case was pending before the Court.

In deciding on the request the President shall take into account the explanations provided by the applicant, the level of publicity that the decision or judgment has already received and whether or not it is appropriate or practical to grant the request.

When the President grants the request, he or she shall also decide on the most appropriate steps to be taken to protect the applicant from being identified. For example, the decision or judgment could, *inter alia*, be removed from the Court's website or the personal data deleted from the published document.

### **Other measures**

The President may also take any other measure he or she considers necessary or desirable in respect of any material published by the Court in order to ensure respect for private life.







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