THE EUROPEAN COURT OF HUMAN RIGHTS

QUESTIONS & ANSWERS FOR LAWYERS

2014

This guide is directed at lawyers intending to bring a case before the European Court of Human Rights.

It contains information and practical advice to guide them in :

1. **proceedings both before national courts prior to application to the European Court of Human Rights** and
2. **before the Court itself**, and
3. **during the enforcement of the Court's judgments**.

Nonetheless, this practical guide offers only key information. It cannot replace reference to the relevant primary documents, in particular those available on the website of the Court (www.echr.coe.int), the case law of the Strasbourg bodies, and general literature on the law of the European Convention on Human Rights ("the Convention").

The European Court of Human Rights is hereinafter referred to as 'the ECHR' or 'the Court'.

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Foreword by Dean Spielmann, President of the European Court of Human Rights

It is a particular pleasure for me to welcome, on the occasion of its inauguration, the practice guide for lawyers representing applicants before the European Court of Human Rights ("the Court"), crafted under the auspices of the Council of Bars and Law Societies of Europe (CCBE), because, having been a practising lawyer and an active member of the CCBE for many years, and now being a judge and President of the Court, I fully appreciate the true value of this useful and unique tool.

In my view, although the Guide is primarily intended for lawyers, it is not to be forgotten that it concerns the procedure before a human rights court and that, by helping lawyers to navigate the sometimes technical waters of proceedings before the Court, the Guide ultimately benefits the interests of their clients: the citizens of Europe.

However, as the Guide rightly addresses the subject of proceedings at national level before the Court's international jurisdiction is brought into play, I can discern a wider reach for it, in particular among national judges, prosecutors and other participants in the administration of justice.

In more concrete terms, the Guide justly encourages lawyers to test their clients' arguments under the European Convention on Human Rights ("the Convention") before the national authorities and, by doing so, to involve them in the interpretation and application of the Convention.

It is symbolic that the release of the Guide coincides with the entry into force of the significantly amended Rule 47 of the Rules of Court, which introduces stricter conditions for applying to the Court. Thus, the Guide may well be one of the first instruments dealing with the ins and outs of how to apply to the Court in accordance with the new rules.

I trust that, with the assistance of the Guide, many Convention problems will be resolved at national level, the number of hopeless cases submitted to the Court will be reduced, and the overall quality of meritorious applications to the Court will be improved.

This, in my assessment, will in turn allow the Court to focus its resources on deserving cases, thus contributing to the consolidation and progressive development of the law of the Convention.

Congratulations and good luck!

1 National proceedings prior to the submission of a case to the ECHR

1 At what stage during proceedings before national courts should human rights violations be pleaded?

Violations of the Convention must be pleaded in the first instance before the national court, so that a potential application to the ECHR can be prepared from the outset. Moreover, where a case involves violations of fundamental rights, lawyers should seek to have those violations established by the national court: if the court finds there is a violation, no subsequent application to the ECHR may be required. Violations of articles of the Convention must be pleaded substantively at first instance, with specific reference to the applicable Convention Articles. It is appropriate to plead the same Convention arguments on appeal and to the highest court, or any other constitutional court or court of cassation which acts as a court of last resort. The principle of subsidiarity requires that national courts must have the opportunity to consider and redress the alleged violation(s). If they have not provided redress an application may be made to the Court.

2 Is it mandatory to appeal to the highest court before making an application to the ECHR?

A case should always be appealed to a State's highest court before an application is made to the ECHR To avoid the risk that the ECHR will declare the application inadmissible because of a failure to exhaust domestic remedies, as required by Article 35(1) of the Convention. In some States there may be instances in which an appeal to the highest court is not required, for example if that court has already ruled on the point of law in issue. In such circumstances the lawyer concerned should analyse carefully the relevant domestic law, the position of the national court of last resort, and the ECHR case law. The Convention only requires the exhaustion of domestic remedies which are relevant to the alleged violations, and which are adequate and effective.

3 Is it important to exhaust all available domestic appeal procedures?

The exhaustion of all available domestic appeal procedures is essential. Failure to appeal a case to all national courts up to and including the State's court of last resort may result in an application being declared inadmissible by the ECHR, in accordance with Article 35 of the Convention. The Convention system is premised on the principle of subsidiarity. Where an applicant has failed to exhaust domestic remedies, the ECHR will conclude that the national legal system has been deprived of the opportunity to review the Convention complaints.

4 How should a violation of the European Convention on Human Rights be pleaded?

Any violation of the Convention must be substantively pleaded. It is highly advisable to plead breaches of specific Articles of the Convention, rather than a general or abstract violation of legal principles. Similarly, precision is needed as to the alleged consequences the court is asked to draw from the violations. For example, if a violation of the right to trial within a reasonable time (Article 6(1) ECHR) is pleaded in the context of a national criminal trial, the sanction sought should be clearly stated: termination of the proceedings, or the recognition of extenuating circumstances (which are the alternative sanctions for a violation of the right to a fair trial under the Court's case law.

5 How should ECHR case law be invoked in the national proceedings?

It is appropriate to rely on ECHR case law before the national courts, and in doing so to refer to precedent decisions of the Court regarding violations of the Convention Article(s) at issue. ECHR judgments regarding such violations must be fully referenced, including reference to the specific paragraphs concerning the violation which have been relied on in the ECHR's judgments in similar cases.

Lawyers should not limit themselves to considering only ECHR judgments concerning the same defendant State. It is advisable to consider all similar ECHR decisions concerning countries with a similar legal system.

6 Should violations of fundamental rights always be raised in writing?

It is highly advisable for allegations of violations of the Convention to be made in writing, such as in written submissions, written notes to the court, or other written conclusions. In the first place, the appropriateness of pleading human rights violations is no longer disputable, and judges must determine these issues. Moreover, where violations have been pleaded in writing the lawyer will be able to produce those documents at every stage of the national proceedings, and ultimately before the ECHR.

7 What advice should be given to a client?

It is important for lawyers to advise their clients as fully and accurately as possible and so to pinpoint the relevant legal issues. A vague analysis of the issues is unhelpful to the client, and may lead prematurely to failure before the ECHR. To that end, the relevant facts should be established as precisely as possible. Precise identification of the factual matrix is necessary to avoid ambiguity or inaccuracy regarding the relevant Convention Articles and any imprecision in the decisions of national courts, which may result from an oversimplified analysis of the rights allegedly breached.

8 How should a violation of the ECHR be presented?

Lawyers should avoid pleading abstract violations of one or more Convention rights. Alleged violations should be pleaded precisely, identifying the infringement of one or more specific fundamental rights protected by Article(s) of the Convention or one of its Protocols. Very specific extracts of previous ECHR judgments should be cited, and their relevance explained (including judgment citation and paragraph references).

9 How should a case be prepared during national proceedings?

Lawyers should not forget to build up a well-documented case file as soon as the national proceedings begin, updating it at every level of proceedings in order to have a comprehensive file when the proceedings conclude in the highest court. The case file should include the evidence, all court documents (pleadings, written submissions, court orders et cetera), extracts from human rights commentaries as well as relevant national and ECHR judgments.

10 What approach should be adopted at the end of the national proceedings?

When all appeals before the national courts have been exhausted, it is advisable for the lawyer to prepare comprehensive advice on the chances of success before the ECHR. The advice should identify clearly the time limit for applying to the Court, which is currently six months from the date of the final national decision (a period which will be reduced to four months when all Member States have ratified Protocol 15). The advice should include a review of the latest relevant judgments in the ECHR HUDOC database. The lawyer should carefully and honestly explain the prospects of a finding of admissibility and any foreseeable difficulties. In doing so, the lawyer should consider and explain key topics such as the single judge procedure, inadmissibility statistics, the length of proceedings in Strasbourg, the estimated costs of proceedings and the rules on just satisfaction. It is important to tell clients clearly and repeatedly that the ECHR is not a further appeal or 'fourth instance'.

Care is needed as to the exact expiry of the time limit to lodge an application, such as if it falls on a weekend, because national rules may differ to those of the Court. Similarly, attention should be given to specific issues such as the calculation of the time limit for making an application to the Court in the case of multiple non-consecutive periods of pre-trial detention (See the *Idalov v Russia*, Application No. 5826/03).

Only lodging a complete application with the relevant documents interrupts the 6-month period. Sending documents by fax or email is not sufficient, and will not constitute a filing within the time period (see below, questions 16 and 17).

11 What steps should be followed where a lawyer is first instructed following completion of the national proceedings?

If a lawyer is first consulted after the end of national proceedings, i.e. if he/she takes a case over at this stage, the whole case should be reviewed in order for the lawyer to advise substantively on the prospects of success before the ECHR. The relevant documents will have to be prepared and drafted in a timely manner (letter of authority, application form, etc.) and lawyers must, of course, ensure their effective expertise in the field of the European Convention on Human Rights.

12 What other issues may arise in these cases?

Lawyers must be ready to address specific issues and advise their client if they arise. Such issues include interim measures, proceedings before the Grand Chamber, pilot judgments, the follow-up to a judgment after the finding of a violation, legal aid, electronic submissions, friendly settlements, requests for anonymity, unilateral declarations, and which languages may be used, as well as procedural problems which may arise, such as coordination when several lawyers are instructed, communication with the Court, and the relevance of other international proceedings.

Lawyers are advised to check the ECHR website on a regular basis for information on communicated cases, to frequently consult the database of the Court and its library, and to use the demonstration application provided on the Court's website.

Finally, lawyers should check for any changes to the Court's procedure.

Where there is a change of lawyer, in order to ensure continuity of representation the former lawyer should transfer the case file to the new lawyer, along with all information on the proceedings pending before the ECHR.

13 Is it possible to make an application to the ECHR in respect of an act of the European Union?

Application cannot be made directly to the ECHR regarding violations arising from of a decision or act of the European Union institutions. It is for national courts to refer a question of the interpretation of Union law or of the validity of acts adopted by the institutions, bodies, offices or agencies of the Union to the Court of Justice of the European Union (CJEU) for a preliminary ruling.

An alleged violation of the Convention may ultimately be raised in an application to the ECHR, even after a judgment from the CJEU on the same point (see, for example, the *Bosphorus* judgment of the Grand Chamber of 30 June 2005, Application No 45036/98). The situation may change when the European Union accedes to the Convention.

14 How important is continuing education on Human Rights?

Continuing education on Human Rights is fundamental for lawyers. Lawyers are strongly advised to attend training and seminars on substantive Human Rights issues, and to follow developments in ECHR case law. Reading specialised texts and journals is also highly recommended.

There is a European Programme in Human Rights Education for Legal Professionals (the HELP Programme), of which the CCBE is a partner. This programme supports the Council of Europe Member States in implementation of the Convention at national level and applies particularly to lawyers. The HELP website provides free online access to training materials and tools on the ECHR. It is available for any interested user at http://www.coe.int/help.

Finally, command of the official languages of the Court is very desirable to properly represent and assist a client.

15 What tools are available for parties and their lawyers?

Many tools are available to inform both parties and lawyers about the procedure before the Court and about human rights law. The ECHR website (http://www.echr.coe.int) provides a simplified version of the Convention and its Protocols as well as access to the HUDOC database, information notes on case law, a practical guide on admissibility, and many other resources. Many national websites also provide information on Human Rights (see question 28).

2 Proceedings before the ECHR

16 What is the time limit for lodging an application with the Court?

The Court may only deal with a matter which is lodged within six months of the date on which the final domestic decision was taken (Article 35(1)). It should be noted that Protocol 15, which will enter into force after ratification by all Member States of the Council of Europe, reduces that period from 6 months to 4 months.

This period runs from the date of the final decision of the highest national competent authority, in the course of the exhaustion of domestic remedies. The 6-month period starts on the day on which the applicant or their lawyer has sufficient notice of the decision.

The start of the period is therefore either the date of the court decision, or the date on which the decision was notified to the applicant and/or their lawyer. The period ends on the last day of the six-month period, even if that day falls on a Sunday or a bank holiday.

Ideally, lawyers should post an application to the ECHR to the ECHR Registry as soon as possible, and in any event before the time limit expires. Time will cease to run only on the despatch to the Court of a complete application meeting the requirements of Rule 47 of the Rules of the Court. http://www.echr.coe.int/Documents/Rule_47_of_the_Rules_of_Court_2014_1_ENG.pdf

The application will only be registered when the Court receives a complete application, including all necessary documents. Lawyers are therefore strongly advised to send the application form several weeks before the expiration of the six-month period to allow, if necessary, for additions to the application form or the provision of further documents within the 6 month period and to avoid risk of the application being rejected without consideration.

17 What should be included in the new application form?

Application forms are provided by the Registry and are available in PDF format on the "Applicants" section of the Court's website. Rule 47 of the Rules (the new text of which entered into force on 1 January 2014) lists the information that must be included in the application. A leaflet prepared by the Registry explains how to complete the application. Applications may be completed in any official language of a Member State of the Council of Europe. http://www.echr.coe.int/Documents/Notes_for_Filling_in_the_Application_Form_2014_1_ENG.pdf (this guidance is available in most official languages of Council of Europe Member States)

It is essential that all the information required in an application is provided as precisely and accurately as possible. Failure to provide precise and accurate information may result in an application not being considered by the Court. Supplementary information not exceeding a maximum of 20 pages may be attached to the application form if necessary.

The President of the Court has issued a practice direction on filing a case at the Court, which explains the steps for individual applications under Article 34 of the Convention: see

http://www.echr.coe.int/Documents/PD_institution_proceedings_ENG.pdf (this guidance is available in most official languages of Council of Europe Member States)

The authorisation given by an applicant to his/her lawyer is now part of the application form and will need to be completed, dated and signed (original signature) by the applicant.

Please note that an incomplete application will not be reviewed and registered by the Court. Where an incomplete application has been made, lawyers must therefore submit a new application form, duly completed and with any attachments, within the 6-month period provided for in Article 35(1).

18 What documents should be attached to an application?

The application form should be supported with copies (never the original documents, translations are not required) of the decisions of the national courts, documents to confirm compliance with the 6-month time limit (such as formal notice of the final decision), and pleadings and submissions in the proceedings at first instance and on appeal, showing that the Convention was raised before the national courts. The latter should be included as judgments do not always address points of law regarding the Convention which have been raised by lawyers in the proceedings because sometimes national decisions do not mention the arguments raised before them.

Other documents related to the decisions or to the measures which are challenged can be attached to an application (such as transcripts, medical or other reports or witness statements). Copies of all such documents and judgments must be numbered chronologically with exact reference to the document titles. In any supplementary submissions (which are limited to 20 pages), attached documents may be referred to by their reference number.

19 How and to whom must the application and documents be sent?

The application and attached documents must be sent, by post, to the Registrar of the Court. It is advisable to use recorded delivery/post in order to have written and official evidence of the date of lodging the application.

An application sent by fax is not deemed to be complete and will not interrupt the 6-month period, because the Court must receive the original signed application form.

When an applicant or lawyer files applications concerning different facts for several applicants, a duly completed application form must be used for each applicant, and documentation relating to each individual applicant must be attached to the appropriate application form.

If the application is lodged for more than 5 applicants, their lawyer must provide - in addition to the application forms - a table in Microsoft Excel format of the names and details of all the applicants. The table template can be downloaded from the Court's website.

Lawyers will be informed by post that an application has been registered (if it is complete), and will receive a case number and a set of bar code labels which should be affixed to all further communications with the Registry of the Court.

20 How should applicants and/or lawyers communicate with the Registry?

Correspondence with the Registry is exclusively in writing. It is not possible to communicate orally with the Registry regarding a case.

Every communication with the Registry must be by post, whether it is a question, a request for information, an additional document, or the change of address or marital status of an applicant.

The Registry will similarly communicate to the lawyer, in writing, any request for documents or information or for any explanations that may be needed in relation to an application.

Lawyers must ensure they respond promptly to questions from the Registry. If a lawyer does not respond or gives a late response, the Registry may assume the lawyer does not intend to pursue an application, and the application may be struck off the Court's list of cases.

21 How can interim measures be obtained?

Pursuant to Rule 39 of its Rules, the Court may issue interim measures which are mandatory for the State concerned. Interim measures are only granted in exceptional cases, mainly concerning expulsion and extradition.

The Court may decide that it should indicate to the relevant State that the applicant's removal should be deferred.

Detailed rules on requests for interim measures are set out in a practice direction issued by the President of the Court, last amended in July 2011 and annexed to the Rules of the Court: http://www.echr.coe.int/Documents/PD_interim_measures_ENG.pdf

Requests for interim measures under Rule 39 are dealt with in writing. Refusals of requests made under Rule 39 are not subject to appeal.

Requests must be justified, and must state, in detail, the grounds on which the applicant's fears are based, the nature of the risks alleged, and the provisions of the Convention which it is alleged are or will be violated.

In order for the request to be considered by the Court, decisions of the national courts and other domestic bodies must be attached to the request.

Requests for interim measures must be sent by fax or by post - not by e-mail - as soon as possible after the final domestic decision or exceptionally even before the final decision has been taken if the position is critical in order to give the Court enough time to address the matter.

The Court has set up a special fax number for requests for interim measures: +33 (0)3 88 41 39 00, from Monday to Friday, from 8.00 to 16.00. Requests sent after 16.00 will not be dealt with that day. Lawyers requesting interim measures must respond to any letters and information requests sent by the Registry of the Court.

If possible, lawyers should inform the Court of the date and time on which a deportation, removal or extradition decision will be implemented.

If a request for interim measures is rejected, it is necessary to inform the Court as to whether the substantive application will be continued.

22 What are the requirements for written observations (Rule 38 of the Court Rules)?

Written observations will only be required if an application is not clearly inadmissible or considered repetitive. Observations on admissibility and merits will first be requested from the Respondent Government. When those observations are received by the Chamber, the Registry will forward them to the applicant's lawyer.

Written observations may only be filed within the time limit set by the President of the Chamber or by the Judge-Rapporteur.

A practice direction amended in September 2008 sets out the procedure for such pleadings. http://www.echr.coe.int/Documents/PD_written_pleadings_ENG.pdf

Any documents and observations requested by the Court must be sent by post in triplicate.

The requirements for written pleadings set out in Articles 10-13 of the practice direction must be followed. Note that if pleadings exceed 30 pages a brief summary must be attached.

As far as the content of the observations is concerned the Court follows a set procedure. The Court's questions should be answered precisely.

First, the applicant's lawyer and or the Respondent Government may be asked to respond to specific factual questions from the Court.

Secondly, where the Court requests written observations they are first provided by the Respondent Government and then the applicant's representative is invited to reply.

The Court generally sets a time limit for the submission of observations. Parties may request an extension of the time limit, provided the request is received before the time limit expires.

The applicant's lawyer should inform the Court of any development of national law, whether legislative of arising from case law, relating to the subject matter of the application. Lawyers must answer promptly any letters sent by the Registry. Any delay or failure to respond to correspondence from Registry may lead the Court to strike out an application from its list of cases, or to declare it inadmissible.

Failure to inform the Court of important facts may be considered an abuse of the right of individual application.

23 How should a claim for just satisfaction be submitted?

Claims for just satisfaction should be made when submitting written observations.

Although it is not mandatory to do so, in the light of the eligibility criterion relating to damages it is advisable for applicants to specify the damage caused to them in their application form. An application may be declared inadmissible if the Court considers the applicant has suffered no significant damage (see Article 35 of the Convention).

Claims for just satisfaction must be made in accordance with the practice direction issued by the President of the Court in March 2007. (Note this practice direction is being redrafted.) http://www.echr.coe.int/Documents/PD_satisfaction_claims_ENG.pdf

Claims for just satisfaction will be granted only if the internal law of the Respondent State allows only partial reparation to be made and where it is necessary to do so.

Rule 60 of the Rules of the Court sets out the time limit and other formal conditions regarding the submission of claims for just satisfaction.

The Court requires claims for just satisfaction to be itemised and accompanied by any

supporting documents. If claims are not itemised and supported no award will be made.

Just satisfaction may be afforded in respect of three types of loss and damage: pecuniary damage, non-pecuniary damage (compensation for anxiety, inconvenience and uncertainty resulting from the violation), and costs and expenses.

Regarding pecuniary damage the Court may decide on an equitable basis not to award the full loss suffered.

The Court may also make an award for non-pecuniary loss to a legal person , such as damage to the reputation of the company, uncertainty in planning decisions, disturbance of company management, and anxiety and inconvenience to the members of the management bodies of a company (see, for example, *Comingersoll v Portugal*, Application No. 35382/97, judgment of 6 April 2000). Loss of this kind may have subjective and objective elements, and does not lend itself to exact quantification.

The principle applied in claims for just satisfaction is that of *restitution in integrum*: that the applicant should be placed in the situation in which he would have been had the violation not occurred. This principle is set out in the practice direction.

As to non-pecuniary damage, the Court will make an assessment on an equitable basis. Lawyers should evaluate objectively the compensation claimed under the heads of pecuniary and non-pecuniary damage, but should be aware that even where an evaluation is based on supporting documentation the Court may award a lower amount than the sum claimed.

Where no application for just satisfaction is made, the Court will not make any award.

Compensation for non-pecuniary loss is tax-free. However, compensation for pecuniary loss may be subject to tax. Awards for costs and expenses are tax free for the applicant, but amounts received by lawyers may be subject to tax.

24 Can costs and expenses be reimbursed?

Compensation for costs and expenses is also addressed in the practice direction issued by the President of the Court. If the Court decides to grant compensation in respect of costs and expenses it will be calculated and granted in Euros. It may include the cost of legal assistance, as well as legal costs such as court registration fees.

The Court may order the reimbursement of costs and expenses incurred by an applicant in trying to prevent a violation or to obtain redress both in national proceedings and in proceedings before the Court.

As set out in the practice direction, the Court is guided by three key principles in its calculation of reimbursement for costs and expenses. Claims will be upheld only where the costs and expenses were actually incurred, were necessary to prevent the violation or to obtain redress for it, and where they are reasonable as to quantum and fully supported with evidence. With regard to lawyers' fees, the applicant must show that the fees were paid or that they were legally required to be paid.

The Court has discretion in awarding lawyers' fees, which often leads to a lower award than claimed by the applicant, even where claims are evidenced and supported by invoices and fee statements. The Court is not bound by national rules as to the calculation of lawyers' fees.

It is necessary to provide the Court with detailed fee statements and/or invoices.

The Court will not order reimbursement of fees paid by an applicant in respect of domestic

proceedings where those fees were unrelated to the violation of the Convention found by the Court.

In light of the above, lawyers should not be surprised that the Court frequently reduces awards under this head even though the claim appears substantiated.

Payment of compensation and costs and expenses awarded by the Court may be made directly to the applicant's bank account or that of their lawyer, dependent on the instructions sent to the Registry of the Court.

25 When and how do hearings before the Court take place?

Hearings only take place in exceptional circumstances. In most cases there will not be a hearing, as proceedings before the Court are mainly conducted in writing.

However, hearings before the Chambers do take place in some cases. Hearings are mandatory in cases before the Grand Chamber.

Rules 63 to 70 of the Rules of the Court set out how hearings should be conducted.

Hearings are, in principle, public, subject to the exceptions set out in the Rules. Hearings ordinarily last for 2 hours.

There is no obligation for applicants to appear in person.

Simultaneous translation in English and French is provided, but with the permission of the Court lawyers may use an official language of one of the Member States of the Council of Europe.

Written submissions and/or notes which will be relied on must be received by the Registry no later than 24 hours before the hearing, to allow for their communication to the interpreters. Such written submissions do not need to be followed to the letter at the hearing.

Written comments may not be filed at hearings, unless requested by the Court.

The duration of the hearing is determined by the President in agreement with the parties prior to the hearing. Up to 30 minutes are usually granted to each party, and each party is usually given an additional 10 minutes to reply.

There will usually be a break in the hearing following the parties' submissions and any questions put by members of the Chamber, to allow lawyers to prepare to answer questions. Lawyers are not required to wear robes, but may do so if they wish.

Applicants' travel expenses will be reimbursed if the court finds against the Respondent Government.

All hearings are recorded, and can be streamed live or watched after the event.

26 Is it possible to ask for a case to be referred to the Grand Chamber, and if so, how?

Pursuant to Article 43 of the Convention, requests for a reference to the Grand Chamber are analysed by a panel of five Grand Chamber judges. The request must be made within 3 months of the judgment of the Chamber. Requests will only be granted where a case is exceptional in at least some respects. The panel will take this requirement into account when considering referral requests. Chamber decisions that a complaint is inadmissible, findings of fact by the Chamber, and decisions that apply well-established case law cannot be referred to the Grand Chamber.

Between 1 November 1998 - when Protocol N°11 entered into force - and October 2011,

the panel analysed 2,129 referral requests. Only 110 were accepted and led to the referral of the case to the Grand Chamber. (See "The general practice followed by the panel of the Grand Chamber when deciding on requests for referral in accordance with Article 43 of the Convention", published by the Court in October 2011.) http://www.echr.coe.int/Documents/Note_GC_ENG.pdf

27 Can applicants obtain legal aid in respect of proceedings before the Court?

The Court does not grant legal aid at the outset of proceedings. In the later stages of proceedings, after the Court has decided to communicate an application to the relevant government in order to obtain its written observations, applicants can receive legal aid if they cannot afford to instruct a lawyer and if the Court considers it is necessary to grant such assistance for the proper conduct of the case.

Rules 100 to 105 of the Court's Rules set out the details of such legal aid.

The President of the Chamber may only grant legal aid after the Respondent Government has submitted their written observations on the application.

The applicant must complete and the national authorities must certify a statement indicating the applicant's income, financial resources and financial commitments towards their dependants.

The President of the Chamber may ask the Respondent Government to comment on the request for legal aid.

The Registrar will inform the parties if legal aid is granted or refused. The Registrar will determine the applicable fee rate and any appropriate payments in respect of travel, accommodation and other expenses.

It should be noted that the amount allocated by way of legal aid is low, and represents only a contribution to the legal costs. Any amount received in legal aid will be deducted from compensation that may be awarded by way of just satisfaction for costs and expenses.

28 Can cases brought before the Court be settled?

Rule 62 of the Rules of the Court sets out the conditions under which an agreement may be reached between the applicant and the relevant state so as to end their dispute.

The Court always encourages parties to reach a friendly settlement.

Settlement negotiations are confidential, and may result in a financial payment, provided that the Court considers that respect for human rights does not require it to continue to examine the application.

Lawyers play a key role in settlement negotiations. They should be able to advise their clients as to whether to accept a settlement, especially as regards to the amount of any offer made by the Respondent Government.

29 What is a unilateral declaration?

Where there has been failure to reach a friendly settlement, the Respondent Government may submit a unilateral declaration to the Court under Rule 62A of the Rules. By such a declaration, the Respondent Government acknowledges there has been a violation of the Convention and commits to provide the applicant with an appropriate remedy.

A unilateral declaration is usually submitted after failed friendly settlement negotiations and

may be proposed at the stage of the proceedings addressing just satisfaction.

Submission of a unilateral declaration is public (unlike confidential settlement negotiations conducted with a view to a friendly settlement).

30 Useful publications by the Court

The ECHR website offers many publications that will be of interest to lawyers during the making of an application and in proceedings before national courts.

a) Case-Law Information Note

This monthly publication contains summaries of cases (judgments, admissibility decisions, communicated cases and cases pending before the Grand Chamber) considered to be of particular interest. Each summary has a headnote and is classified by the Convention Article(s) to which the case relates, and by keywords. The Case-Law Information Note also provides news about the Court and Court publications.

b) Admissibility guide

This practical guide on criteria of admissibility is aimed mainly at lawyers intending to refer a case to the Court. It sets out the conditions for admissibility of an application.

c) Case-law research reports

Research reports are reports prepared by the Court's Research Division. They are not binding on the Court. They cover case law relevant to pending cases as well as covering decided cases.

d) Factsheets, guides and reports on case-law

The Court's Press service compiles factsheets by theme on the Court's case-law and pending cases. There are also guides and research reports on the Court's case-law.

e) Joint publications by the ECHR and FRA

- ***Handbook on European non-discrimination law***

  This handbook - published jointly by the Court and the European Union Agency for Fundamental Rights (FRA) in 2010 - is the first comprehensive guide to European non-discrimination law. It covers relevant European case-law, the context and background to types of discrimination and potential defences, and the scope of the law, including who is protected and the protected grounds such as sex, disability, age, race and nationality. The case-law update to the handbook covers the period from July 2010 to December 2011.

- ***Handbook on European law relating to asylum, borders and immigration***

  This handbook - the second joint publication by the Court and the FRA - is the first comprehensive guide to European law relating to asylum, borders and immigration. It focuses on the law relevant to third-country nationals in Europe and covers a broad range of topics, including access to asylum procedures, forced deportations, detention and restrictions on freedom of movement.

- ***Handbook on European personal data protection law***

  By serving as a main reference source, the aim of this handbook is to raise awareness and improve knowledge of data protection rules in European Union and Council of Europe Member States. It is designed for non-specialist legal professionals, judges, national data protection authorities and others working in the field of data protection.

f) The library of the Court

Created in 1966, the library has built a substantial collection of general human rights literature. It is possible to access this resource by appointment.

g) The HUDOC database available on the Court website

http://www.echr.coe.int/Pages/home.aspx?p=caselaw/HUDOC&c=eng

The HUDOC database provides access to the case-law of the Court, the European Commission of Human Rights and the Committee of Ministers.

The legal issues addressed in each case are summarised in a list of keywords. Keywords are taken from a lexicon of terms found in the text of the Convention and the Protocols thereto.

h) The HELP Programme (see question 14)

3 Content and Execution of Judgments by the ECHR in cases of Individual Applications – Appeals against such Judgments

31 Can judgments of the ECHR be appealed?

Inadmissibility decisions and judgments delivered by Committees or the Grand Chamber cannot be appealed. If a Chamber has delivered a judgment the parties can, however, request the referral of the case to the Grand Chamber for fresh consideration. Such re-consideration is exceptional (see question 26).

32 What is the main content of a judgment of the ECHR?

In a judgment, the ECHR will state whether there has been a violation by the Respondent State, and if so which Articles of the Convention or the Protocols have been violated. Where an applicant has made a claim for just satisfaction the ECHR will also state whether the applicant shall receive such an award (typically by way of a monetary compensation) from the Respondent State.

33 What else may a judgment of the ECHR contain?

In cases of systemic shortcomings, typically of a legislative kind, the ECHR can mandate that a State pass, modify or repeal legislation. In exceptional cases, the Court may set a deadline for that action. When legislating, States are bound by the Convention as interpreted by the ECHR, subject to a margin of appreciation. In exceptional cases, the ECHR can mandate that a State take specific action, such as the release of an applicant from detention or the enforcement of an applicant's right to access to a child over which they have custody. The Court is not competent to quash any national law or judgment (see question 36).

34 What is a pilot judgment?

The pilot judgment procedure is followed when the Court receives a significant number of applications deriving from the same root cause, or when the facts of an application reveal the existence of a structural or systemic problem or other similar dysfunction in the State concerned which may give rise to similar applications. The Court may then select one or more applications for priority treatment, adjourning the remainder. In dealing with the priority cases, the Court will seek to achieve a solution that extends beyond the particular case so as to cover all similar cases raising the same issue. When delivering its pilot judgment, the ECHR will mandate the State to bring its legislation into line with the requirements of the Convention so that all other actual or potential applicants are granted relief. If the State fails to take appropriate action, the ECHR will rule against it in all of the adjourned applications. The Court may at any time during the pilot judgment procedure examine an adjourned application where the interests of the proper administration of justice so require. If the parties to the pilot case reach a friendly settlement, such settlement must comprise a declaration by the State as to the implementation of the general measures identified in

the pilot judgment, and must set out the redress to be afforded to other actual or potential applicants.

35 How can the pilot judgment procedure be initiated?

The ECHR will decide *ex officio* whether to initiate the pilot judgment procedure. A lawyer can, however, request that the ECHR adopt the pilot judgment procedure, on the basis that the applicant's case is representative of a multitude of other cases with the same root cause in domestic law.

36 Can the ECHR invalidate laws or decisions of national courts that violate the Convention?

No. The ECHR can only state that certain actions, omissions, laws or court decisions on the part of a State violate the Convention. It cannot invalidate or annul such acts. States are, however, bound by the findings of the ECHR, in that they are required to ensure that ongoing violations of the Convention are brought to an end, and that no such violations occur in the future.

37 Who is responsible for the execution of the ECHR's judgments?

It is the State in question that is responsible for the execution of judgments of the ECHR. When implementing the ECHR's judgments States have a margin of appreciation, unless the ECHR has mandated specific measures or actions. In every case States must ensure that existing violations of the Convention are brought to an end and that future violations are prevented. (See 'Execution of Judgments of the European Court of Human Rights' on the Council of Europe website)

38 What must a State do when the ECHR has found that one or more decisions of national courts or administrative acts violate the Convention?

Where a State's administrative action or a decision of a domestic court continues to violate an applicant's Convention rights even after the ECHR's judgment and the award of compensation, the State must ensure the decision or action can be re-opened. Many States already have procedural rules for the re-opening of administrative procedures or judicial proceedings following an adverse judgment by the ECHR. When acts or decisions are re-opened all national courts and other authorities are required to abide by the Convention as interpreted by the ECHR. If the violation affects other cases, the State is required to take general measures to stop those violations, for example by changing domestic law (see question 33).

39 What is a State required to do if the ECHR finds that domestic legislation violates the Convention?

The State will first have to consider whether a violation of the Convention can be avoided (in the case at hand and in all future cases) by interpreting the relevant domestic law in accordance with the Convention. If the wording of the legislation does not allow such an interpretation, the State should amend the legislation in the light of the ECHR's judgment.

40 What is a State required to do if the ECHR finds that a State's constitution violates the Convention?

The State should amend the relevant provision of its constitution, unless it can be interpreted in a way that is consistent with the Convention. National constitutional law must comply with the Convention, regardless of where the State places the Convention in its hierarchy of laws (i.e. regardless of whether the State considers the Convention superior to, on the same level as, or below, its constitution).

41 Who monitors a State's compliance with judgments of the ECHR?

The Committee of Ministers of the Council of Europe is responsible for supervising the enforcement of the ECHR's judgments.

42 What is the Committee of Ministers' approach to its supervisory duty?

The Committee of Ministers confers with the relevant State and the competent department of the Council of Europe as to how a judgment should be executed and how future violations of the Convention should be avoided. To that end, individual measures may be specified. The Committee of Ministers will then verify whether such measures have been taken and, if they have not, will reprimand the State (in a case where difficulties of interpreting a Court judgment hinder its execution, see question 44).

43 What can be done if a State fails to comply with its duty to pay monetary compensation?

The lawyer may refer the matter to the Committee of Ministers, which will then officially request that the State fulfil its duty to pay. If such a demand is not successful, the Committee of Ministers can, on a two-thirds majority decision, request that the ECHR rule that the State has refused to execute the ECHR's judgment. This option was introduced with Protocol 14 in 2010 and has not yet been tested in practice.

44 What can be done if a State has not adequately remedied a violation of the Convention, or if the execution of a judgment of the ECHR is hindered by difficulties of its interpretation?

As States enjoy a margin of appreciation in executing ECHR judgments, the extent of the measures a State takes may be dependent on its interpretation of the judgment. Where there is disagreement between an applicant and a State as to the interpretation of a judgment and the ensuing consequences, the applicant or their lawyer may within a year of the judgment becoming final submit a request to the ECHR for interpretation of the judgment. On a two-thirds majority decision, the Committee of Ministers may also refer a matter to the ECHR for interpretation. The Committee of Ministers' right to have the ECHR determine whether a Member State has complied with a judgment extends to the question of whether the measures taken to execute the judgment are adequate and sufficient.

45 What can be done if there are mistakes in decisions or judgments of the Court?

The Court may rectify clerical errors, errors in calculation or obvious mistakes in a decision or judgment of its own motion or at the request of a party, where such request is made within one month of the decision or judgment.

Rule 81 of the Rules of the Court sets out the procedure to be followed as to corrections of errors in decisions and judgments.

46 Can a party ask for a judgment to be reviewed?

Rule 80 of the Rules of the Court sets out the circumstances in which a party may ask the Court to review a judgment in a settled case. A party may do so where a fact which by its nature could have exerted a decisive influence on the outcome of the case, has been discovered which was not known to the Court at the time of the judgment and could not reasonably have been known by a party.

47 Can a State refuse to execute a judgment of the ECHR on the basis that, according to the State's highest court or constitutional court, no violation of national constitutional law or the Convention exists?

A State is bound to abide by a judgment to which it is a party and so their supreme and constitutional courts are bound by the ECHR's interpretation of the Convention and findings as to a violation of the Convention. There are many States in which the human rights protection provided by the Convention goes beyond the protection provided by national constitutions. If the ECHR or the supreme or constitutional courts of a State are of the opinion that the State's constitution violates the Convention (as interpreted by the ECHR), the national courts should first interpret the national constitution in accordance with the Convention. If and to the extent this is not possible, the State should amend its constitution to bring it in line with the Convention (as interpreted by the ECHR). This is the case even where a State's national constitution has a higher rank in the State's hierarchy of laws than the Convention (see also question 40).