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The European Court of Human Rights

Questions & Answers for Lawyers

2026



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

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) or through its tools such as HUDOC and the knowledge-sharing platform where information can be found about the case-law of the Strasbourg bodies, and general literature on the law of the European Convention on Human Rights.

ABBREVIATIONS:

CM	Committee of Ministers of the Council of Europe
CM Rules	Rules of the Committee of Ministers of the Council of Europe for the supervision of the execution of judgments
Convention	Convention for the Protection of Human Rights and Fundamental Freedoms / European Convention on Human Rights (including the additional Protocols)
Court	European Court of Human Rights
ECHR-KS	European Court of Human Rights Knowledge Sharing Platform https://ks.echr.coe.int/
Guide	Practical Guide on Admissibility Criteria, last updated 28 February 2026 https://www.echr.coe.int/documents/d/echr/admissibility_guide_eng
HUDOC	Human Rights Documentation Database https://hudoc.echr.coe.int/
Rules of Court	Rules of the European Court of Human Rights

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Foreword by Mattias Guyomar

President of the European Court of Human Rights

A year ago, the European Convention on Human Rights celebrated its 75th anniversary and since its founding the Court has dealt with over a million applications, being called by applicants to adjudicate the challenges of a changing world. It is therefore essential to ensure that the Court's practice and case law are well known and accessible. This 6th edition of *The European Court of Human Rights: Questions & Answers for Lawyers* is a very welcome guide, and I commend the CCBE for updating this useful resource.

The success of the guide lies in its practical approach. Lawyers rarely approach the Convention system as an academic exercise. By addressing their questions directly and accessibly, this volume has established itself as an indispensable resource for practitioners, judges, government agents, academics and students alike. In today's context, the need for reliable practical guidance has become even more pronounced. Practitioners must therefore be equipped not only with a firm understanding of established Convention principles but also a trustworthy guide to accompany them in making the best arguments for those they represent and to empower the Court in its decision making.

This sixth edition also arrives at an important moment in the development of the Court's procedures. Since the last edition in 2023, the Court has continued its efforts to improve transparency and efficiency. Amendments adopted in March 2023 clarified the rules governing third-party interventions and were accompanied by new guidance intended to enhance understanding of the role, timing and conduct of interventions by States, institutions and other interested parties. These reforms recognise the valuable contribution that interveners can make in cases raising significant questions of principle while providing greater predictability for litigants and representatives. The guidance also concerns Protocol No. 16 which enables member States' highest national courts and tribunals to ask the Court to give advisory opinions, and the guidance expands on the participation of any other High Contracting Party or person in the advisory-opinion proceedings. Its adoption was particularly apposite as the use of Protocol 16, now open to the superior courts of 26 states, has continued to develop in recent years where those courts refer cases to the Court with increasing frequency.
Other reforms also followed in 2024. After consultation with Contracting Parties, legal practitioners and civil society organisations, the Court amended Rule 39 of the Rules of Court and revised the accompanying Practice Direction on interim measures. The amendments codified aspects of the Court's established practice, clarified the threshold of an "imminent risk of irreparable harm to a Convention right", and provided more detailed procedural guidance regarding requests for interim measures. For practitioners, these developments are particularly significant given the exceptional nature of Rule 39 proceedings.

The Court has also continued to advance the modernisation of its working methods through the increased use of electronic filing and digital case-management processes. These developments reflect a broader commitment to ensuring that the Convention system remains accessible and effective while managing a substantial and complex caseload. They also underline an important reality: effective advocacy before the Court increasingly requires familiarity not only with substantive Convention law but also with evolving procedural and technological tools.

Against this background, the value of a clear and practical guide cannot be overstated. The value of this publication lies in its ability to translate procedural rules, institutional developments and complex jurisprudence into answers to the questions most frequently encountered in legal practice. It serves both as a reliable point of entry for those approaching Strasbourg litigation for the first time and as a trusted reference for experienced practitioners confronting new procedural challenges.

As such, this guide reminds us that the effective protection of human rights depends not only upon sound legal principles, but also upon the practical ability of lawyers to invoke, apply and defend those principles. Moreover, whilst the guide itself is a practitioners' resource, it also responds to an important principle which is that of enabling access to court. This key aspect of the right to a fair trial has been articulated repeatedly over the decades in the Court's caselaw and it remains ever relevant : the right of access to a court must be "practical and effective"[1]. Further, the right reflects to some extent a concept that applies at the level of the European Court and it is one which I have often underlined due to its importance, that the European Court of Human Rights is 'A Court for All'. The Court is designed to accept applications from people and states within its jurisdiction, should they turn to it to rule. Supporting lawyers in ensuring accessibility of the Court to those 700 million persons across 46 member States is essential. In the European context, indeed in all contexts, the resolution of disputes through law is of fundamental importance; law can accompany those in dispute, with justice, taking them from conflict to peace.

It is therefore a pleasure to commend this new edition to all who work with the Convention system and who seek to ensure that the promise of human rights remains effective, relevant and accessible for future generations.

[1] See for example Zubac v. Croatia [GC], 2018, §§ 76-79, with further references.

Summary

This Guide is divided into six parts which reflect the practical steps described.

The first part deals very briefly with the place of the Convention in national legal systems and the subsidiary role of the Court. The effective protection of human rights depends upon national systems of justice, so this part of the Guide explains how arguments based on the Convention must be first made in domestic proceedings before an application can be submitted to the Court.

The following three parts deal with the preparation of an application to the Court (second part), with the submission of the application, including the emergency procedure for interim measures in very serious and urgent cases (third part), and with the procedures by which the Court examines cases (fourth part).

The fifth part deals with the procedure once the Court gives judgment, including the procedure for their execution supervised by the Committee of Ministers of the Council of Europe.

Finally, the sixth part addresses some of the practical problems which lawyers for applicants face because of the Court's extremely heavy backlog of pending cases and its effect on execution.

By maintaining this practical focus, the Guide is intended to flesh out some of the practice of the Court which is sometimes only briefly covered in the Rules of Court or in the Court's Practice Directions and to supplement the Court's other guides and materials, which particularly deal with the interpretation of the Convention and the rights which it protects. The Guide is therefore a further aide to practitioners before the Court and seeks to address their perspective.

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01.

The place of the Convention in national legal systems and the essential role of national proceedings prior to the submission of a case to the Court

1.1

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

The Convention is part of the legal system of every Member State of the Council of Europe. Each Member State has undertaken in Article 1 of the Convention that it "shall secure to everyone within their jurisdiction" the rights which the Convention defines. Moreover, Protocol No. 15 has inserted into the Convention a recital to the effect that it is the Member States who have the primary responsibility for protecting Convention rights. It follows, as Article 35 of the Convention requires, that the Court can only examine applications where the complaints submitted to it have first been raised before domestic courts.

Consequently, violations of the Convention must be pleaded throughout the proceedings before the national courts, so that those courts have the opportunity to address the Convention complaints and potentially resolve them. The Convention complaints should therefore be made at first instance and at higher instances in accordance with the procedural rules of the national courts. The principle of subsidiarity requires that national courts must thus be given an opportunity to prevent, detect and redress the alleged violation(s) themselves. The arguments made before the national courts should refer to relevant Articles of the Convention and to the case-law of the Court interpreting them. They should be reiterated at each appeal instance, if appropriate in combination with relevant national constitutional arguments. If these submissions fail to provide redress, the unsuccessful party may lodge an application to the Court.

1.2

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

Article 35 § 1 of the Convention requires that domestic remedies should be exhausted before an application can be examined by the Court. Generally, therefore, national decisions should be appealed to the last available instance, often to the State's highest court (supreme court, or constitutional court, if established), before an application is made to the Court, to avoid the risk that the Court may otherwise declare the application inadmissible for failure to exhaust domestic remedies.

Exceptionally an appeal to the highest court may not be required, for example if that court has already ruled on the point of law in issue in a way that the applicant considers fails to respect the Convention and where a change in that ruling is very unlikely. The Convention only requires the exhaustion of domestic remedies which are relevant to the alleged violations, and which are capable of providing adequate and effective redress.

If a given domestic remedy is not pursued, the applicant's lawyer must justify this choice in the application to the Court and provide evidence of the alleged ineffectiveness of that remedy, by reference to established domestic judicial practice.

1.3

Researching the Court's case-law may well resolve whether a particular domestic remedy is effective

The Court has extensive case-law stretching back decades and it usually considers itself bound by its previous interpretations of the Convention, including whether specific national remedies are considered effective or not. Researching the Court's case-law may therefore resolve whether a national remedy has been considered effective in circumstances similar to the case at hand. The applicant's lawyer should refer in the application to the Court's case-law which supports the course adopted by the applicant.

However, applying the principle of subsidiarity, the Court is likely to resolve a doubt as to the effectiveness of a given remedy by expecting the applicant to try it, to ensure that the national courts have a real opportunity to address and redress violations of the Convention without an application to the Court being required.

1.4

How should a violation of the Convention be pleaded?

Any violation of the Convention must be substantively pleaded. Breaches of specific human rights and fundamental freedoms guaranteed by the Convention rather than a general or abstract violation of legal principles or unspecified human rights. Applicants should rely on the Court's case-law to show how specific provisions of the Convention have been interpreted and applied in his or her case. Similarly, precision is needed as to the alleged consequences the national 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 of the Convention) is pleaded in the context of a national criminal trial, the remedy sought should be clearly stated: termination of the proceedings, or the recognition of extenuating circumstances (which are the alternative consequences for a violation of the right to a fair trial under the Court's case-law).

1.5

How should the Court case-law be invoked in the national proceedings?

The Convention is part of the national legal system in all Member States. The Court's extensive case-law provides the authoritative interpretation of the substance of the Convention rights and illustrates how the Convention should be interpreted and applied in a wide variety of circumstances. This case-law should be relied on at every stage of proceedings before the national courts. Citations of the Court's judgments should include the specific paragraphs concerning the interpretation of the Convention in similar cases, whether

concerning the same respondent State concerned with the national proceedings, or other States where the same issue under the Convention has been decided. Applicants should rely on the Court's Knowledge Sharing platform which provides access to the same research material as the Court itself uses.

1.6

Should violations of fundamental rights always be raised in writing in domestic proceedings?

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, and/or written conclusions. The appropriateness of pleading human rights violations is no longer disputable. It falls first to national judges to determine these issues. Moreover, where violations have been pleaded in writing, the lawyer will be able to produce those documents ultimately before the Court to show that the relevant arguments have been made at every stage of the national proceedings.

1.7

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 legal issues that arise under the Convention. The lawyer's objective should be to ensure that the same arguments based on the Convention are explained to the client and made to the national courts as those which may later be relied on before the Court if an application is ultimately necessary. This approach may help the client to appreciate that the Court is almost never "the first stop" and that a case which fails on its facts before the national courts is unlikely to succeed before the Court which is not a court of appeal.

1.8

Particular advice to clients about applications to the Court and the Court's procedure

Clients often are unfamiliar with the Court and may assume that it has almost "magic" powers. Naturally, cases before the Court vary widely, but clients should be warned that the Court is overloaded and it has taken various steps including with the support of Member States to streamline its procedures, including the rapid rejection of weak cases by a single judge, and the strict prioritisation of the most serious cases. As a result, many less serious cases are frequently delayed for many years and even the most serious cases are seldom resolved in less than three years. Furthermore, contrary to a widely held opinion, the just satisfaction amounts awarded by the Court to successful applicants under Article 41 of the Convention are not very substantial. The applicants should also be made aware early on that the Court's judgment does not set aside domestic judicial decisions found to be in breach of the applicant's rights. Furthermore, the effect of Court judgments depends upon a further execution phase, supervised by the Committee of Ministers.

1.9

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 by documents relevant to the prospective applicant's arguments based on the Convention. The case file should include all the complaints which the potential applicant intends to raise before the Court; those should be submitted to the national court in accordance with the formal requirements and time-limits laid down in national law, using all procedural means capable of preventing a breach of the Convention. The case file should include the evidence, all relevant court documents (pleadings, written submissions, court orders, etc), extracts from human rights commentaries as well as relevant national judgments and the Court's case-law.

Furthermore, in order to ensure that the national courts deal with the Convention arguments fully and clearly, lawyers may invite the court of final instance to state in a defined part, and not spread out in different parts of the judgment, a succinct statement of its reasons for dismissing the Convention complaint as well as an assessment of the claim's significance. The lawyer will be able to rely particularly on that part of the final national judgment to show in the subsequent proceedings before the Court both that remedies were exhausted and what the national court's analysis of the Convention issues was.

1.10

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 Court, taking account of the four-month time-limit for lodging an application, and reviewing the latest relevant judgments in the Court's HUDOC and ECHR-KS databases. The lawyer should advise on the prospects of the case being admissible and on any foreseeable difficulties that may arise in connection with the proceedings before the Court (very high percentage of cases declared inadmissible, the length of proceedings; lawyers' fees and expenses, and the rules on just satisfaction). It is important to tell clients clearly and repeatedly that the Court is not a further appeal or 'fourth instance' court, does not decide questions of national law and very seldom determines facts itself, usually relying on the findings of national courts.

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 Court's Practical guide on admissibility criteria). Only lodging a complete application with the relevant documents interrupts the running of the four-month period. Sending documents by fax or email is not sufficient and will not constitute a filing within the time- limit (see part II.).

1.11

What steps should be followed where a lawyer is first contacted by a client only after domestic proceedings have already been completed?

If a lawyer is first consulted by a client only after domestic proceedings have come to end, i.e., if he/she takes a case over only at this stage, the case should be reviewed in order for the lawyer to advise the client on the application's prospects of success before the Court in the light of the lawyer's expertise in the Convention.

1.12

What other issues may arise in such cases?

Lawyers must be ready to address specific procedural issues that may arise in the proceedings before the Court and advise their client accordingly. Such issues include interim measures, proceedings before the Grand Chamber, pilot judgment, the execution of a judgment after a finding of a violation, legal aid, 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, and the means of communication with the Court.

Lawyers are advised to check the Court's website on a regular basis for information on communicated cases, to frequently consult the ECHR-KS database, and to use strictly the latest version of the application form template provided on the Court's website. Finally, lawyers should check for any changes to the Court's procedure, in particular following amendments to the Rules of Court. If the client changes lawyer, a new letter of authority must be provided to the Court.

1.13

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

An application cannot be made directly to the Court regarding violations arising from 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 Court, following a judgment from the CJEU on the same point (see the factsheet Case-law concerning the European Union available on the Court's website).

Accession of the European Union to the Convention is a long-standing priority for the Council of Europe and a legal obligation for the EU. Following the entry into force of Protocol No. 14 to the Convention and the

Treaty of Lisbon, EU accession negotiations began in July 2010 and are still underway.

The first attempt by the EU to join the ECHR ended in the negative opinion of the CJEU 2/13. The progress of subsequent negotiations can be followed on the dedicated website.

1.14

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, such as the ones organised by the national bar associations, and to follow developments in the Court case-law. Reading specialised texts and journals is also highly recommended.

There is a European Programme on 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 Court. It is available for any interested user at http://www.coe.int/help. Finally, command of the official languages of the Court (English and French) is very desirable to properly represent and assist a client.

1.15

What resources are available for parties and their lawyers?

Many resources are available to inform both parties and lawyers about the procedure before the Court and about human rights law. More specifically, the Court's website (http://www.echr.coe.int) provides a simplified summary of the Convention procedure as well as the text of the Convention and its Protocols together with access to the HUDOC database and the ECHR-KS, information notes on case-law, practical guides on admissibility (including online admissibility checklist) and other issues, and many other resources referred to in the Appendix to this Guide.

Many of these materials have been translated from the official languages and can be accessed also in other official languages of the Member States.

Many national websites also provide information on human rights.

02.

Preparing an application to the Court

2.1

Can an application be lodged without using the official application form available on the website?

An application can only be lodged using the application form, making sure it is the latest version available on the Court's website. The form must also:

- be signed by both the applicant and the lawyer (a separate power of attorney is not accepted);
- be lodged in the original with original signatures (copies of signatures will be rejected);
- be presented in one piece, setting out succinctly in particular:
    1. a statement of all the facts,
    2. the various grounds for complaint, and
    3. a description of the domestic remedies that have been sought and exhausted.

2.2

What must the official application form available on the Court's website contain?

Rule 47 of the Rules of Court, available in the "Applicants" widget on the Court's website in PDF format, lists information to be included in the form. Other information, including Practice Direction – Institution of proceedings and very detailed Notes for filling in the application form, sets out the formalities that individual applications under Article 34 of the Convention must comply with, and provide guidance to the applicants and the lawyers how to complete the form. The application form and practical information are available in all official languages of the Contracting Parties to the Convention.

It is essential to complete all the information requested in the application form accurately and precisely. Failure to do so may result in the application not being considered by the Court. All facts and arguments about the alleged breach of the applicant's rights must be included in the form. It is also possible to attach to the form a separate document of up to 20 pages containing more detailed explanations or arguments, if necessary, as long as these relate only to arguments already raised in the application form.

The authority to act given by the applicant to the lawyer forms an integral part of the application form (page 3 for individual applicants and page 4 for legal entities) and must be completed, dated and signed in the original by the applicant. The representative must also sign the "Power of Attorney" section of the application form on the same pages 3 or 4. Scanned or photocopied signatures are not acceptable.

A separate power of attorney will only be accepted if it is clearly explained why, when the application was submitted, the information and signature were not included in the application form. It must be explained why it was objectively impossible for the applicant to sign the power of attorney provided for on page 3 or 4 of the application form, for example where the applicant is imprisoned in a distant country and can only

communicate with his lawyer electronically. The special form for such separate power of attorney, available at the Court's website, should be used, if possible.

The application form submitted on behalf of a legal entity must be accompanied by documentary evidence confirming that the representative of the legal entity, who signs the application form, is entitled under national law to act on its behalf, for example by producing the entry in the commercial register even when such a register is available online and freely accessible. In legal entities with more than one director, it is advisable to attach to the application a board resolution to initiate the case before the Court and authorise the director to sign. Please be aware that an incomplete application will not be registered and examined by the Court. A new, duly completed application will need to be submitted, again together with copies of the supporting documents, within the four-month time-limit laid down in Article 35 § 1 of the Convention.

2.3

Does the application form need to submit the whole application in one document?

Yes, the Court requires that the entire application under the Convention, all the facts and stages of the domestic proceedings relevant for the Convention complaint are submitted at one go. The application form should be sufficiently clear to allow for an initial assessment of the application. However, a separate document of no more than 20 pages which develops arguments already contained in the application form may be attached to the application form (see II.6). If the case raises an issue under the Convention, the Court can then immediately communicate the application form to the respondent government without asking the Registry to prepare a statement of facts (immediate communication).

2.4

Can the application be submitted in a language other than French or English?

The Court has two official languages, English and French. The application and its supporting documents may be lodged in a language other than French or English, provided that it is one of the official languages of the Member States of the Council of Europe. It is not necessary to translate (into English or French) the copies of judgments given in the domestic proceedings or other accompanying documents attached to the application form.

2.5

What documents should be attached to the application?

The application should be accompanied by copies of the decisions by the domestic courts, documents showing that the four-month time-limit has been observed (a document proving the date when the

decision of the highest national court was notified to the applicant, for example), and also pleadings and written submissions at first instance, on appeal and before the highest courts, showing that the Convention complaint has been invoked before all the available national courts. Sometimes, in fact, domestic judgments do not mention the Convention grounds raised by the lawyer, although it is good practice to expressly require such a determination (see the Guide to good practice in respect of domestic remedies).

Other documents relating to the decisions or measures complained of (minutes, medical or other reports, witness statements) may be attached. It is advisable to attach all documentary evidence supporting the claims in the application form.

All documents attached to the application form should be arranged chronologically and by set of proceedings. The pages, numbered consecutively from the first page of the first document to the last page of the last document, should not be stapled, bound, taped or attached in any other manner.
Copies rather than the originals should be submitted as no documents are returned by the Court after the termination of the proceedings. Translations of the documents into the official languages of the Court are not required.
If necessary documents are omitted, Rule 47 will not be complied with and the application will not be accepted.

2.6

Additional information to the application form

Further submissions, strictly limited to a maximum of 20 pages, may be attached to the application form. In this document, the applicant is allowed to develop in more detail the subject matter of his or her application, in addition to the concise statement of facts, complaints and compliance with the admissibility criteria which must be set out in the parts E, F and G of the application form. This does not mean that the submissions can be started on the application form and continued on the additional sheets. No new complaints can be added in such a separate document; it should be used only to develop the complaints already raised on the application form itself.

2.7

Do the requirements differ when an application is filed on behalf of a group of individuals?

The requirements are essentially the same for group applications, where a number of applicants are complaining about the same situation and have been parties to the same domestic proceedings. It is therefore necessary to obtain the personal details and original signatures of all the members of the group. The first page (personal details) and pages 3 or 4 (details of the representatives of the individual applicant or applicant

organisation) must be filled in and signed by each applicant and/or their representatives and their lawyers separately for each member of the group. It is therefore advisable to collect signatures well in advance.

The Court requires groups of more than ten applicants to specify the personal details of each member in a table which is available on the Court's website. Where the representative is a lawyer, the table should also be provided in electronic form (on a CD-ROM or memory stick).

Where applicants complain about the way in which the same common legal situation has been dealt with at national level, but the facts of their respective cases and the domestic procedures followed differ from one another, their applications do not constitute a "group of individuals", and each person will therefore have to complete and lodge a separate application form.

In the event of an influx of a large number of similar applications, the Court may decide to suspend provisionally the registration of some or all of these applications, pending a decision in one or more leading cases on how the relevant applications are to be processed (for more details, see Practice Direction – Processing of applications in the event of a mass influx).

2.8

Do the requirements differ when an application is filed on behalf of a company, a legal entity or an NGO?

The director or any other person authorised under the articles of association of the company or other legal entity to represent this entity must complete and sign the application form and also provide evidence of their right and power to bind the company or other legal entity by their decision and signature. For example, an extract from the national register of companies may establish the authority of a particular director. The Court's guidance on how this authority is sufficiently established is thin. Again, the original signature of each director will be required on the application form, as well as that of the lawyer. Additionally, a board resolution indicating the director authorised to sign before the Court on behalf of the legal entity is advisable.

2.9

Does the Registry answer questions on how to lodge an application?

The "Applicants" section of the Court's website provides a wealth of information and practical instructions on how to lodge an application and how to complete the mandatory application form correctly. If an application does not meet the requirements of Rule 47 of the Rules of Court, the Registry will respond formally, identifying the deficiencies and stating the application has not been accepted. However, unless

there are valid reasons constituting an exception, the Registry will not answer individual questions concerning an intended application. If the Registry rejects an application form for non-compliance with Rule 47 of the Rules of Court, the four-month time-limit will not be interrupted.

2.10

Is it possible to obtain legal assistance in preparing an application from the Court?

The Court does not grant legal assistance to prepare an application and complete the form.

03.

Submitting an application to the Court

3.1

How and to whom should the application and documents be sent?

All applications must be submitted by post or by physical delivery to the Registrar of the Court. If sent by post, the date of dispatch (as evidenced by the postmark) constitutes the date on which the application is lodged, whereas the date of receipt by the Court during working hours constitutes the date on which the application delivered to the Court is lodged. It is strongly recommended that the application be sent in such a way (registered post) as to provide official written proof of the date on which it was dispatched as the Registry does not acknowledge receipt of the application.

Applications may not be sent by fax (with the exception of requests for interim measures under Rule 39 of the Rules of Court). An application simply sent by fax is not considered complete and cannot interrupt the running of the time-limit, as the Court must receive the signed original of the application form containing the applicant's signature appointing the lawyer, as well as the lawyer's consent.

3.2

Can an application be submitted electronically?

Applications cannot be lodged electronically.

However, the possibility of electronical submission of the application is currently under consideration by the Court.

3.3

How can one request interim measures?

In cases of urgency, where the applicant faces the risk of irreversible, very serious harm, an applicant may seek interim measures from the Court under Rule 39 of the Rules of Court. Such a request can be made by post, by fax or electronically on the Rule 39 portal.

Rule 39 of the Rules of Court requests should only be made in the most serious cases, in particular where the applicant is at imminent risk of treatment contrary to Articles 2 or 3 of the Convention, usually arising from the immediate risk of expulsion or extradition to a State where the applicant's right to life or physical integrity is at issue or where the applicant would be exposed to the real risk of other treatment contrary to Article 3. In very exceptional circumstances issues under Article 8 of the Convention may generate a need for interim measures, such as where doctors are considering withdrawing life support from a minor.

A request for interim measures will be determined by a duty judge. Requests for interim measures should normally be sent 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. The Court may not be able to deal with requests in expulsion or extradition cases received less than a working day before the scheduled time of removal. Therefore, where imminent removal is anticipated, interim measures can be requested even before the final domestic decision, if the Court would otherwise be prevented from considering the request in time.

Interim measures may be imposed for a limited period to allow the Court to obtain urgent factual clarification from the parties, but they may be extended if the circumstances require it.

The Court's indications under Rule 39 are binding on respondent States by virtue of Article 34 of the Convention, which requires States not to hinder in any way the effective exercise of the right of access to the Court.

For more details on interim measures see Practice Direction – Requests for interim measures, summary information and useful video manual.

3.4

Can an application be lodged in stages or by adding to briefs already submitted?

Unless a valid explanation is given (such as the difficulty of corresponding with a requesting client who is in prison), an application form can only be lodged once and in its entirety. If it is incomplete or does not comply with the Registry's strict interpretation of Rule 47 of the Rules of Court, it will be rejected and must be re-lodged in its entirety. Any previous form completed incorrectly will be disregarded. Only a duly completed application form can interrupt the running of the time-limit laid down in Article 35 § 1 of the Convention and result in the registration of an application and decision of the Court.

3.5

Can an incomplete application form be re-lodged if it is revised and duly completed?

Where an application lodged does not comply with the requirements for the institution of the proceedings, the Registry will explain the deficiencies in writing to the lawyer concerned. The letter from the Registry will indicate, inter alia, that the grievances will not be examined by the Court until the application form satisfies all formal requirements. A completely new application must then be lodged using a new application form, this time duly completed and including all the necessary accompanying documents, even if all documents have already been sent to the Court together with the previous application form. Therefore, the new

application form will also need to be re-signed by the applicant, countersigned by the lawyer and lodged before the deadline expires.

Given that it may take several weeks before the Registry informs the lawyer of the original application form failure to meet requirements of Rule 47, it is highly advisable to lodge the application as soon as possible after the termination of all internal proceedings and not to wait until the end of the four-month time-limit for lodging the application.

3.6

Does the Registry inform the applicant's lawyer of the number assigned to the application once it has been registered?

In cases declared inadmissible by a single judge, the lawyer will be notified of the registration number only with the Court's decision itself. In other cases (after a delay which may be of several months), the Registry will inform the lawyer of the registration of the application and of the registration number and provide him/her with a set of self-adhesive barcode labels to be attached to every future communication with the Court.

04.

Examination of the application by the Court

4.1

Can the applicant remain anonymous, including to the respondent government?

In principle, the Court's proceedings are public (with the exception of the friendly settlement negotiations, which are confidential under Article 39 § 2 of the Convention). 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.

However, Rule 47 § 4 of the Rules of Court offers the possibility of maintaining the anonymity of the applicant or the confidentiality of certain parts of the case vis-à-vis the public but not vis-à-vis the respondent government. Reasons must be given in the application form or as soon as possible thereafter. Even where the Court grants anonymity, the applicant's identity will be revealed to the respondent government if the case is communicated to them for their observations, since at that stage the entire application will be transmitted to the respondent government concerned (see also Practice Direction – Requests for anonymity).

4.2

Communicating with the Court Registry

The Court Registry may respond in one of three ways, depending on the case. Firstly, in plainly inadmissible cases, the applicant's lawyer will receive the inadmissibility decision given by a single judge (Rule 52 A § 1 of the Rules of Court) as an initial communication from the Court. Secondly, for cases registered and not declared inadmissible by the single judge, the lawyer will be informed of the case number and will be asked to await further action. Thirdly, when these cases are communicated to the respondent government [Rule 54 § 2 b) of the Rules of Court], the lawyer will be informed of the Court's questions to the parties and will be given the opportunity to reply to the observations filed by the respondent government as described in more detail below.

Correspondence with the Registry is in writing only. There is no opportunity for oral communication with the Registry about the case.

Any questions, requests for information, additional documents, changes in the applicant's civil status or changes of address must be notified to the Registry by post.

As soon as the lawyer receives a letter from the Registry informing that the application has been registered, or when the application is communicated to the respondent government pursuant to Article 54 § 2 b) of the Rules of Court, the lawyer will be informed of the practical arrangements for monitoring the proceedings and of their obligations for the remainder of the proceedings.
The Registry will communicate in the same way with the lawyer regarding any requests for documents,

information or explanations relating to the application.

The lawyer must ensure that they respond promptly to requests made by the Registry. Delay or failure to reply may lead the Registry to consider that the applicant no longer wishes the case to continue and to strike the application from the Court's list.

Following the communication of a case under Rule 54 § 2 b), applicants who have chosen – in the application form – to file pleadings electronically are invited by the Registry to send all their written communications to the Court using the Court's Electronic Communication Service (https://ecomms.echr.coe.int/). If they agree, they will also receive written communications (letters, observations of the government and other documents) from the Registry through eComms (for more details see Practice Direction – Electronic filing by applicants and a useful video).

This electronic filing and receipt of all communications with the Court does not apply to interim measures (see 3.3.).

4.3

What is the non-contentious phase of the procedure before the Court?

In order to encourage early friendly settlements, the Court operates a specific non-contentious phase for applications which have been communicated to the respondent government. The Court notifies the respondent government ("communicates") cases where its initial examination suggests that some complaints raise an issue under the Convention. Communication involves the Court in putting specific questions to the government arising from the application.

When a case is communicated to the respondent government, there are two distinct phases in the procedure. First, there is a 12-week non-contentious phase (see a useful video).

The Registry will often propose the basis on which a friendly settlement could be adopted immediately, particularly where the application concerns issues on which there is already well-established case-law of the Court. The parties will then be invited to inform the Court whether they wish to accept the Registry's proposal for a friendly settlement.

In cases where the Registry has not made such a proposal, the parties are invited to indicate whether they have their own proposals for friendly settlement of the case and to submit them confidentially.
If a settlement is reached, usually this is an agreement as to the amount of money being paid to the applicant by the respondent government, the Court will strike out the application. The Committee of Ministers will supervise the implementation of the settlement.

Even if the applicant does not accept the friendly settlement proposal made by the Registry, the respondent government may still seek to conclude the proceedings on the basis of a unilateral declaration, often on terms similar to those initially proposed by the Registry (see 4.5.).

4.4

Can there be a friendly settlement of the case brought before the Court?

Rule 62 of the Rules of Court sets out the conditions under which an agreement can be reached between the applicant and the State concerned to resolve the dispute between them. The Court always encourages the parties to reach a friendly settlement, even after the non-contentious phase is over.

These negotiations are confidential and may result in the payment of a sum of money to resolve the case if the Court considers that respect for human rights does not justify maintaining the application. The Court has very rarely found it necessary to continue examining a case despite a settlement.

The role of the lawyer is essential here – they must be able to advise their client whether or not to accept a settlement, particularly as regards the quantum of the offer made by the respondent government.

4.5

What is a unilateral declaration?

This is a declaration that the respondent government may submit to the Court, usually after an attempt at friendly settlement has failed. In this declaration, under Rule 62A of the Rules of Court, the government acknowledges the violation of the Convention and undertakes to provide the applicant with an appropriate remedy – usually money.

The unilateral declaration is usually made after a friendly settlement procedure has failed and may be submitted at any stage of the proceedings before the Court. The filing of a unilateral declaration is public, unlike friendly settlement negotiations, which are confidential (see also Unilateral declarations: policy and practice).

4.6

What is the contentious phase of the procedure before the Court?

If the parties do not settle the case within the initial 12-week period of the non-contentious phase (see 4.3.), which may be extended if a settlement seems likely and no unilateral declaration is proposed either, the contentious phase begins, which involves the exchange of written observations between the parties.

During the contentious phase, the respondent government is invited to submit within 12 weeks its observations on the admissibility and merits of the case with reference to the questions of the Court prepared by the Registry and the application form which the Applicant has submitted.

The respondent government will also be invited to comment on the statement of facts in the application form and to prepare their own statement of facts, on which the applicant's lawyer will also be invited to comment. The Court will accept as correct any facts which are not in dispute.

Where cases are communicated to the respondent government after having been pending before the Court for a longer period, the Registry may prepare a statement of facts, which either party may seek to correct. The Registry forwards the respondent government's observations to the applicant's lawyer for response, to be submitted usually within six weeks, together with any claims for just satisfaction (see IV.9). The lawyer is free to correct or develop the statement of facts made by the government if the presentation is inaccurate or incomplete.

Then, the respondent government has usually four weeks to submit any comments on the claims for just satisfaction or any further legal observations they may wish to make. These comments and further observations of the government are sent to the applicant's lawyer only for information. Any further submissions from the applicant will normally not be included in the case file of the Court except where they contain important new factual information.

Written observations may only be sent by the lawyer within the time-limit set by the Court. Extensions of time may be requested, but only before the expiry of the initial time-limit.

Governments frequently request extensions of time and they are granted to them. Applicants may also request extensions.

A practical instruction from the President of the Court sets out the procedures for these observations (see Practice Direction – Written pleadings). Where electronic communications are not accepted, all documents and observations requested by the Court must be sent by post in triplicate.

4.7

What are the duties of the lawyer during the proceedings before the Court?

The applicant's lawyer must inform the Court of any developments in the applicant's case and in national case-law or legislation relating to the subject-matter of the application, and must reply promptly to letters sent by the Registry, as delay or failure to reply may lead the Court to strike the application out of its list or declare it inadmissible.

Failure to inform the Court of important facts, such as the death of the applicant, may also constitute an abuse of the right of individual application in the sense of Article 35 § 3 a) of the Convention.

Generally, parties have a duty to cooperate fully with the Court in the conduct of the proceedings. Where a party fails to comply with an order of the Court or 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 (Rules 44A to 44 C of the Rules of Court).

In exceptional circumstances, the President of the Court may, where he/she considers that the conduct of the lawyer so warrants, direct that the said lawyer may no longer represent or assist a party before the Court. Such exclusion order may be for a definite or indefinite period. The decision must be reasoned and taken after the lawyer, the government and bar association concerned have been given the possibility of submitting comments. The rights of representation may be restored upon a reasoned request of the lawyer concerned (Rule 44D of the Rules of Court).

4.8

Can Third Parties intervene in cases before the Court?

Yes. Under Rule 44 of the Rules of Court and Article 36 of the Convention, within 12 weeks of the Court communicating a case to the respondent government for observations, and so by the beginning of the contentious phase of the proceedings, third parties may apply to the Court for permission to intervene. Intervenors are frequently other States or NGOs with familiarity with the legal issues raised in the case, especially those with knowledge of relevant wider European law and practice. Intervenors are required to be neutral as between the parties and may not comment on the specific facts of the case, or proposed outcome, but provide the Court with a wider perspective on the issues raised. Where permission to intervene is granted it is usually limited to written submissions on which the parties are given an opportunity to comment. The procedure is further explained in the Court's Practice Direction – Third-party Intervention.

4.9

How to submit a claim for just satisfaction

When submitting written observations in response to those of the respondent State, the lawyer may submit a request for just satisfaction, in accordance with Rule 60 of the Rules of Court and the Practice Direction – Just satisfaction claims.

The Court requires that the claim for just satisfaction be detailed and supported by documentary evidence,

failing which no compensation will be awarded. The application is submitted to the respondent government for their observations in reply.

Just satisfaction may have three components:

a) pecuniary damage,

b) non-pecuniary damage (to compensate for the anxiety, inconvenience, loss of opportunity, stress, suffering and uncertainty resulting from the violation), and

c) costs and expenses including those arising from the domestic proceedings as well as in the proceedings before the Court.

As regards pecuniary damage, the Court may, in equity, not compensate the applicant for all the damage suffered, or even award nothing.

The Court may award a legal person non-pecuniary damage comprising elements that are more or less "objective" or "subjective": the company's reputation, uncertainty in the planning of decisions to be taken, disturbances caused to the management of the company itself, the consequences of which do not lend themselves to exact calculation and, finally, the anguish and inconvenience experienced by the members of the company's management bodies.

With regard to non-pecuniary damage, the Court again proceeds on the basis of equity. The lawyer will therefore have to make an objective assessment of the compensation claimed, while being aware that even an application based on relevant documents may lead the Court to award his client a sum lower than that claimed.

If the lawyer makes no claim for just satisfaction, the Court will normally not award anything to the applicant. Subject to its own discretion in some exceptional cases, the Court will normally reject claims set out on the application form but not resubmitted at the appropriate stage of the proceedings.

In cases raising repetitive issues which are dealt with in a simplified manner in line with the relevant well-established case-law of the Court, the applicants may be exempt from the requirement to submit a separate just satisfaction claim. In such case, the parties would be clearly informed in the communication letter that the just satisfaction award would be based on the appropriate awards in the leading case, on a friendly settlement proposal, or that the Court may decide that the finding of a violation constitutes just satisfaction in itself.

Compensation for non-pecuniary damage is tax-free. However, compensation for pecuniary damage may not be. The amount for costs and expenses is tax-free for the applicant, but tax may be payable by the lawyer on the fees.

4.10

Can costs and expenses be reimbursed?

This component is separate from the other components of just satisfaction. It is calculated and awarded in euros if the Court decides to grant the applicant reimbursement of costs and expenses. It is also explained in the Practice Direction – Just satisfaction claims and in the Court's extensive case-law. It includes the costs of legal assistance and court fees.

The Court may order that the applicant be reimbursed the costs and expenses incurred by them at domestic level, and subsequently before the Court, to prevent the breach or have its consequences remedied.

The Court is guided by a number of principles in determining costs and expenses: they must have been actually incurred, they must have been necessary to prevent or remedy the violation, and they must be reasonable in amount. As regards lawyers' fees, the applicants must show that they have paid them or are required to pay them.

The criterion "reasonable in amount", which is left to the Court's discretion, very often leads it to reduce the fees requested, even though they were actually incurred by the claimant, and even though fee notes and invoices attest to this. The Court is not bound by national regulations on the calculation of fees. The lawyer should therefore not be surprised by the Court's decision to frequently reduce, even significantly, the sums claimed in this respect, even though their claim appears to be justified.

Fee notes or detailed invoices must be submitted to the Court and must state that they have been paid.
The Court will not order the reimbursement of fees paid by the applicant at national level which are unrelated to the violation of the Convention found by the Court. The lawyer will therefore have to explain precisely the nature of the steps taken, in particular those devoted exclusively to alleging the violations set out in the various submissions made to the domestic courts and, of course, to the Court.

Where appropriate, payment of compensation and of the costs and expenses awarded by the Court may be made directly to the applicant's bank account or to that of their lawyer, in accordance with the instructions sent to the Registry.

4.11

When and how does a hearing before the Court take place?

The Court holds hearings very exceptionally, usually only several times a year. In the vast majority of cases, no hearing is organised, as the procedure before the Court is essentially written and limited to a single exchange of pleadings between the respondent government and the applicant.

Hearings are usually held only in cases before the Grand Chamber; in cases before the Chambers the hearings are rare.

Rules 63 to 70 of the Rules of Court govern the procedures for the hearing.

In principle, a hearing is public, except in cases provided for in the Rules of Court, and generally lasts two hours.

The applicant is under no obligation to appear in person.

Simultaneous interpretation is provided in English and French. With the Court's permission, lawyers may use one of the official languages of the Member States of the Council of Europe.

The text of the oral pleadings or the notes to be read should reach the Registry 24 hours in advance for transmission to the interpreters. However, it is not essential to follow the written text to the letter.

Written comments may not be submitted during the hearing, except at the request of the Court.

The time allowed for oral pleadings is agreed with the President before the hearing. A time of 20–40 minutes is generally allotted to each party, followed by 10 minutes for each party to reply.

A recess is usually called after the initial round of oral pleadings and after the judges ask the parties questions, to allow the lawyers to prepare answers to these questions and to comment on the pleadings of the other Party.

The parties' lawyers are not required to wear robes but may do so if they wish. Travel expenses may be reimbursed if the Court finds against the respondent State.

All public hearings of the Court are filmed and broadcast on the Court's website. Hearings held in the morning can normally be viewed as of 2.30 p.m., while afternoon hearings are available at the end of the day, barring technical difficulties. In exceptional cases, oral delivery of judgments of the Grand Chamber are also broadcasted live online.

4.12

In what language is the procedure conducted?

Once the application has been communicated to the respondent government, the pleadings must be drafted in English or French, unless the President of the Chamber grants leave for the continued use of the official language of a Contracting Party.

4.13

Is it possible to request that a case be referred to the Grand Chamber, and under what conditions?

Under Article 30 of the Convention, where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention, 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.

Under Article 43 of the Convention, any party may request a referral to the Grand Chamber of the case decided by a judgment of a Chamber of seven judges. The request must be made within three months of the delivery of the Chamber's judgment. A panel of five judges will examine the request and will accept the request if it concludes that the case raises a serious question affecting the interpretation or application of the Convention, or a serious issue of general importance (see Practice of the Grand Chamber panel).

A request for referral is not an appeal. It involves a redetermination of the case. A Chamber decision declaring an application inadmissible and any Committee decisions or judgments cannot be the subject of a referral to the Grand Chamber under Article 43.

4.14

Can an application be processed as a priority?

Yes, the Court has published its criteria for granting priority under Rule 41 of the Rules of Court.

The Court distinguishes between seven categories of cases:

I. urgent cases;
II. cases likely to have an impact on the effectiveness of the Convention system or raising an important issue of general interest;
III. cases, whether repetitive or not, relating to key rights (Articles 2 to 5 § 1 of the Convention);
IV. potentially well-founded cases under other articles;
V. cases raising issues already dealt with in a pilot judgment or in a judgment of principle;
VI. cases raising a problem of admissibility;
VII. manifestly inadmissible cases.

In addition, since 2021 the Court has been identifying – within category IV. cases – "impact" cases, i.e. cases which are particularly important for the development of the Convention system and which raise new questions concerning the interpretation and application of the Convention.

4.15

Can a lawyer request that the examination of an application be accelerated?

Yes, a request for priority can be submitted at any stage of the procedure, in particular to reflect new facts.

4.16

How long does the procedure before the Court last?

The length of proceedings varies greatly but is often long or even very long. It depends on a number of factors: compliance with the prioritisation policy, the nature of the right alleged to have been infringed, the number of applications against a given State, the complexity of the case, the availability of Registry lawyers, and so on. It often takes several months for single-judge cases, and several years for Committee and Chamber cases.

The Court's State of Proceedings search engine enables parties to find out the current procedural state of an application solely for cases that are allocated to a judicial formation, using the case registration number.

4.17

How much does the procedure before the Court cost?

The procedure is free of charge, as the Court does not charge any legal fees. However, if the applicant is represented by a lawyer, they will normally have to pay fees to the lawyer.

4.18

Is legal aid available for proceedings before the Court?

It is only after the Court has received the written observations of the government concerned on the admissibility of the application that the applicant may, where appropriate, be granted legal aid if they do not have the means to pay for a lawyer and if the Court considers it necessary to grant such aid for the proper conduct of the case.

Rules 105 to 110 of the Rules of Court define the terms and conditions of legal aid.

A declaration indicating the resources, capital assets and financial commitments the applicant has towards

their dependents must be completed and certified by the national authorities. The President of the Chamber may invite the State concerned to submit its observations.

The Registrar informs the parties of the granting or refusal of legal aid and sets the rate of fees to be paid in accordance with the tariff in force and the amount to be paid in respect of travel and subsistence expenses and other disbursements.

It should be noted that the amount awarded for legal aid is very moderate (usually a lump sum of 850 euros) and constitutes only a contribution to costs. In addition, the amount received will be deducted from any compensation awarded for costs and expenses in the case.

4.19

Should the lawyer remain in contact with the client during the proceedings?

Yes. The Court requires lawyers to maintain contact with their clients and to inform the Court of any relevant developments, including the applicant's death, and to be available to give instructions, for example in response to submissions by the respondent government. If contact is not maintained, the Court will readily conclude that the applicant has lost interest in the application, which will then be struck out of the list.

05.

Content and execution of judgments of the Court in cases of individual applications

5.1

Can judgments of the Court be appealed?

Inadmissibility decisions delivered by the Court and judgments delivered by Committees of three judges or by Grand Chambers cannot be appealed. Only in case of judgments delivered by Chambers of seven judges the parties can request the referral of the case to the Grand Chamber for fresh consideration. Such reconsideration is exceptional (see 4.13.).

5.2

What is the main content of a judgment of the Court?

udgments of the Court are declaratory. In a judgment, the Court will state whether there has been a violation of the applicant's rights guaranteed by the Convention 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 Court will also make an appropriate award (typically by way of a monetary compensation of the pecuniary and non-pecuniary damage and of the costs and expenses incurred) from the respondent State.

5.3

What else may a judgment of the Court contain?

Exceptionally, in cases of systemic shortcomings, typically of a legislative kind, the Court can identify legislation which a State should pass, modify, or repeal. In rare cases, the Court may mandate specific measures to be taken by the respondent State and set a deadline for that action. When legislating, States are bound to comply with the Convention as interpreted by the Court, subject to a margin of appreciation (see also 5.9. and 5.10.). In really exceptional cases, the Court can declare that a State should take specific individual action, such as reopening of unfair proceedings, or the release of an applicant from detention (see also 5.8.). The Court is not competent to quash any national law or judgment (see 5.6.).

5.4

What is a pilot judgment?

The pilot judgment procedure may be followed when an application reveals 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 Court will mandate the State to comply with its obligations under Article 46 of the Convention by bringing domestic

law into line with the requirements of the Convention so that all other actual or potential applicants are granted relief and pending applications are also resolved.

If the State concerned fails to take appropriate action, the Court may be expected to find violations 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.

The execution of pilot judgments is a priority for the Committee of Ministers of the Council of Europe (see 5.7.).

5.5

How can the pilot judgment procedure be initiated?

The Court will decide *ex officio* whether to initiate the pilot judgment procedure. A lawyer can, however, request that the Court 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.

5.6

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

No. The Court can only state that certain actions, omissions, laws, or national court decisions violated the Convention. It cannot directly invalidate or annul such acts. The respondent State is, however, bound by the findings of the Court, and a major aim of the supervision of the execution of the Court's judgments (see 5.7.) is to ensure that continuing violations of the Convention are brought to an end, for example by way of amending domestic legislation, and that comparable violations do not occur in the future.

5.7

Who enforces the Court's judgments?

The respondent State in question is responsible for the enforcement of judgments of the Court. Article 46 imposes a legal duty on the respondent State to comply with the final judgments. That enforcement is supervised by the Committee of Ministers of the Council of Europe.

When implementing the Court's judgments, States after paying the just satisfaction awarded normally within 3 months of the judgment becoming final, have a choice as to the precise means of execution, except where the Court in its judgment has exceptionally directed specific measures or actions to be taken. In every case, States should ensure that existing violations of the Convention are brought to an end and that future similar violations are prevented.

5.8

What must a State do when the Court has found a violation of the Convention?

When supervising the execution of a judgment by the State concerned, the CM examines (Rule 6 of the CM's Rules for the supervision of the execution of judgments, "the CM Rules"):

- if awarded by the Court, whether the just satisfaction has been paid, including default interest if there has been a delay in payment of just satisfaction due; and
- if required, whether:
  - individual measures have been taken to ensure that the violation has ceased and that the injured party is put, as far as possible, in the same situation as that party enjoyed prior to the violation of the Convention (restitutio in integrum);
  - general measures have been adopted, preventing new violations similar to that or those found or putting an end to continuing violations (either by way of amending an offending legislation or, where violation arose from the way national legislation was applied in an individual case, by way of changing relevant domestic practice).

The State must ensure that the consequences of the violation(s) for the applicant(s) are erased, or otherwise that is achieved as far as possible – i.e., take so called individual measures (see notably CM recommendation (2000)2 to Member States on the re-examination or reopening of certain cases at domestic level following judgments of the Court). Redress may take many forms depending on the violations established, the applicant's circumstances and the nature and scope of any just satisfaction awarded by the Court (which may, for example, have provided full compensation for pecuniary and non-pecuniary damage suffered).

States may, for example, be required to ensure that:

- impugned decisions/judgments can be re-opened (e.g., in cases concerning unfair or otherwise unjust proceedings, in particular in criminal matters);
- the matter can otherwise be re-examined (frequently in family cases where res judicata is weak);
- compensation can be awarded (e.g. for loss of opportunity if the re-opening of civil or administrative proceedings is not practicable – see below);
- expulsion orders violating the Convention are annulled, possibly combined with other measures such as the granting of a residence permit;
- criminal investigations into perpetrators are engaged/reopened/resumed in cases involving violations of Articles 2 and 3 of the Convention;

- personal data gathered by the State in violation of the Convention are destroyed;
- non-executed domestic judgments are executed;
- persons kept in inhuman detention are transferred to proper detention facilities;
- where removal of public officials breached the Convention, they should be reinstated;
- restitution and/or compensation for the expropriation or loss of use of a property is awarded.

Where a violation of Article 6 § 1 has been found, the right to have unfair or otherwise unjust criminal proceedings reopened is generally recognised. Many States also have rules for the re-opening of administrative procedures or judicial proceedings in civil and administrative matters following an adverse judgment by the Court (taking due account of the requirements of legal certainty and the rights of good faith third parties).

If the violation affects other cases or situations, the State is also required to take general measures to stop those violations, for example by extending the right of reopening of proceedings also to those cases, and to prevent new ones in future for example by changing domestic case-law, administrative practice, or relevant legislation (see also CM recommendations to Member States (2004)5 on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the Convention and (2004)6 on the improvement of domestic remedies and Rule 6 of the CM Rules).

5.9

What is a State required to do if the Court judgment reveals 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 re-interpreting the relevant domestic law in accordance with the Convention. If this is not possible, the State will have to amend the legislation to reflect the Court's judgment. The State sets out its choice of remedial action in an action plan for execution which should be submitted to the CM within six months after the judgment becomes final. That action plan will provide the basis for the CM's supervision of execution of the judgment.

5.10

What is a State required to do if the Court judgment reveals that a State's constitution violates the Convention?

The obligation for respondent States to abide by the Court's judgments is unconditional, so that national constitutional law must also comply with the Convention requirements as interpreted by the Court. The question whether the State's legal order considers the Convention to be on the same level as, or below,

its Constitution determines whether it is the responsibility of the national constitutional court or of the national legislature to achieve this compliance. The State should thus amend the relevant provision of its Constitution, unless the Constitution can be interpreted in a way that is consistent with the Convention (changes of constitutions have taken place in order to give full effect to judgments of the Court – for example in Armenia, Greece, Hungary, Slovakia, and Turkey).

5.11

How does the Committee of Ministers monitor a State's compliance with judgments of the Court?

The CM is responsible for supervising the enforcement of the Court's judgments. It is assisted by the Department for the Execution of Judgments of the Court (Execution Department). The Annual Reports provide useful further information about execution of judgments of the Court.

Once judgments become final, States usually within 6 months submit to the CM an action plan containing the measures envisaged for the execution. Thereafter, action reports are submitted by the respondent States providing updates.

The CM meets four times a year on the level of Deputies in a dedicated formation known as the Human Rights CM (DH) meetings. During these meetings, representatives of Member States review the progress and may adopt interim resolutions expressing concern or urging further action or final resolutions closing the case once satisfied with the compliance.

The applicant does not have a right to attend the CM meetings, but under Rule 9 of the CM Rules, the applicant may make written submissions to the CM if the payment of just satisfaction is delayed or if sufficient individual measures have not been taken.

These submissions are circulated to the whole CM and applicants frequently find significant support from an informal group of Member States with a keen interest in the efficient execution of particular categories of judgments.

NGOs, bar associations and international bodies such as the CCBE may also make submissions relating to general measures. Applicant's lawyers should be cautious to refer only to the just satisfaction or individual measures, as the Secretariat will not circulate applicants' submissions which include points on general measures. As bars and international bodies are entitled to make submissions on general measures, applicant's lawyers can cooperate with them in this regard.

5.12

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

Supervision is based on a twin-track procedure. New cases are rapidly classified under either standard or enhanced supervision. The enhanced supervision is reserved for cases requiring urgent individual measures, pilot judgments, inter-State cases, or cases revealing major structural or complex issues, as identified either directly by the Court in its judgment or subsequently in the procedure before the CM. The CM concentrates attention on cases under enhanced supervision, but the execution of all cases is monitored by the Execution Department.

Supervision is based on action plans submitted by States and, once execution is terminated, on action reports. In the course of the supervision procedure, applicants and their representatives, NGOs and national institutions for the protection of human rights (ombudspersons, research institutes and other similar institutions, as defined in national legislation) may submit communications to the CM under Rule 9 of the CM Rules.

Enhanced supervision cases are subjected to more detailed examination by the CM, which provides encouragement, recommendations or other incentives to promote and facilitate execution. In cases under standard supervision, the CM is in principle limited to taking note of the action plans submitted by the respondent State, the implementation of which is checked by the Execution Department.

The status of execution in all pending cases is presented on the Execution Department's website. The Execution Department confers regularly with respondent States over their action plans. Applicants' lawyers can also approach the Directorate of the Execution Department to highlight problems over the effective execution of individual cases.

5.13

Where can information on pending cases, the status of execution, and other relevant information be found?

CM decisions and communications submitted to it are in principle public (see Rule 8 of the CM's Rules) and are published both on the Execution Department's website. A new search engine HUDOC-EXEC allows for searching for all documents related to all cases subject to execution.

5.14

What can be done if a State fails to comply with its duty to pay an applicant monetary compensation or has not adequately remedied a violation of the Convention?

The vast majority of awards of just satisfaction are paid promptly by the State concerned. However, where payment is delayed the applicant's lawyer should pursue the relevant national authorities and also refer the matter to the CM using the Rule 9 § 1 of the CM Rules.

Similarly, if individual measures have not been taken, or other problems arise, the lawyer should point this out to the CM by commenting on action plans or action reports, or by separate submissions under Rule 9 § 1 of the CM Rules. In severe cases, e.g. violations of Articles 2 and 3, the CM will follow up the question of individual measures (e.g. to ensure that effective criminal investigations are carried out to identify and, where appropriate, punish the State agents responsible) *ex officio*.

Where the violation is a continuing one, or where the obstacles encountered may be seen as new facts raising new questions under the Convention rights, it may also be possible to lodge a new application with the Court.

If general measures are not taken promptly or are otherwise inadequate to redress the violations found, the CM will use the different tools at its disposal in order to induce compliance. Under Protocol No. 14, the CM is empowered to seek a declaration from the Court (under Article 46 § 4 of the Convention) that a State is not respecting its obligations. The CM can also assist execution through decisions and interim resolutions.

Instances of real refusal to comply are very rare and may lead to different further responses, including calls on Member States to take whatever action they deem appropriate to ensure execution, and ultimately exclusion from the Council of Europe. The CM has clearly stated that the respect for judgments of the Court is a condition for States to remain members of the Council of Europe.

A very little explored area is the possibility of executing the unsatisfied part of a monetary judgment in the domestic legal order of the respondent State or even a third State. There is in principle no obstacle for such a legal action, since first, the Convention is part of the legal system of every Council of Europe Member State and secondly, the task of the CM is only that of supervising the execution of judgments.

5.15

What can be done if the execution of a judgment of the Court is hindered because it is difficult to interpret?

Execution may raise issues related to the interpretation of the judgment, or of relevant case-law of the Court. The parties may seek such an interpretation within one year of the delivery of the judgment (Rule 79 of the Rules of Court).

If such a request has not been submitted, notably where the problems arise only after the deadline has expired, the CM may itself, by virtue of a new competence accorded by Protocol No. 14, also seek the interpretation of a final judgment (Article 46 § 3 of the Convention).

06.

Points from a practitioner's perspective

6.1 One aim of the present Guide is to provide legal practitioners with information about the processes of the Court and the Committee of Ministers which are particularly relevant to the lawyers' needs. The Guide cannot replace the necessity to study both the Convention, the Rules of Court and the CM Rules, but it draws attention to certain aspects of the operation of these provisions which are notably different from national judicial practice from a perspective which may not be central to the valuable guidance and publications produced by the Court itself. The following points should be seen from that perspective.

6.2 The Court is a court of last resort. Given the established place of the Convention in the domestic legal systems of all Member States of the Council of Europe, complaints that the Convention has been violated should be made to, determined, and usually resolved, by national courts. This subsidiary role of the Court has several prominent consequences:

6.2.1 The Court will only examine applications where the complaints submitted to it have been made and dismissed (or not addressed at all) by every available instance in the domestic legal system. Where there is doubt as to the efficacy of a remedy under domestic law, the remedy should be attempted.

6.2.2 In Member States which have accepted Protocol No. 16, a senior national court may seek an advisory opinion from the Court on a point of Convention interpretation. That advisory opinion will not be binding on the case at issue, but lawyers may see an advantage to their clients in initiating that procedure, which the Court prioritises over other work.

6.2.3 The Court follows and applies its extensive case-law of prior decided cases. The acceptance of the Convention in domestic law implies that national courts are also expected to apply the Court's case-law themselves, even in jurisdictions where the concept of the binding status of prior judicial decisions is unfamiliar.

6.2.4 A part of the Court's over-burdened docket relates to thousands of repetitive cases, where the Court's case-law is well settled, but where national practice has not implemented the Court's interpretation of the Convention. Regrettably for applicants, but inevitably for the Court, which is swamped with pending cases, these repetitive cases are seldom a priority for the Court's attention. Similarly, the increase in the number of inter-State cases has also generated large numbers of individual applications which are effectively dependent upon the outcome of those inter-State cases. This provides another large group of pending cases which the Court cannot process until the inter-State case is resolved.

6.3 Because the Court is overburdened with pending cases it is compelled to select and prioritise incoming applications. The most urgent cases, and not merely those exceptionally urgent cases to which interim measures are applied under Rule 39 of the Rules of Court, are rapidly communicated to

therespondent government concerned. However, despite the absence of any formal hierarchy between the rights under the Convention, thousands of applications which are less urgent must wait before the resources of the Court permit their examination. The wait can be for years, even in ultimately well-founded cases. Depending upon the State complained against and the nature of the complaint, applications may wait more (and sometimes much more) than three years before they are communicated to the respondent government. Even after the respondent government and the applicant have made written pleadings to the Court, such cases often wait a further several years before a judgment is ultimately delivered.

6.4 To control the Court's docket, most unmeritorious cases are dealt with promptly, and declared inadmissible within six months by a single judge. Cases which have initially been communicated to the respondent government may also ultimately be rejected as inadmissible in whole or in part. Such decisions cannot be appealed but very exceptionally, if the Court is shown to have made a manifest mistake, a request may be made to reopen the case.

6.5 The Court's aim is to concentrate its resources on the most significant cases and to simplify its handling of repetitive or unmeritorious cases, including by short form decisions and judgments, where appropriate given by a Committee of three judges, rather than a Chamber of seven. In meritorious cases one round of pleadings is the norm, a second round is rare and hearings are almost exclusively reserved to Grand Chamber proceedings, which are themselves exceptional.

6.6 It follows that applicants and their lawyers should ensure that their applications are clear, brief and focused and identify the Convention issue complained about and how it has been examined by the domestic courts. The Registry's initial examination of the case will focus on the application form alone, so that the inclusion of the permitted additional up to 20 pages may be unnecessary, but a short submission about why the case is urgent or otherwise important is advisable.

6.7 A practical problem arises in relation to financial claims at two stages of the Court's procedure. First, in the non-contentious phase the Registry may propose the basis for a friendly settlement even though it will usually have no information at all about the legal costs and expenses incurred in the national proceedings, nor of any financial loss suffered by the applicant: such information is not requested in the application form, although lawyers may briefly provide it. Secondly, claims for just satisfaction in communicated cases must be made at the stage when the applicant replies to the written observations of the respondent government. Apart from the formal requirements in relation to evidencing the costs of the national proceedings and of the application to the Court, the applicant's lawyer cannot then know whether, exceptionally, the Court might subsequently require an additional round of written pleadings, or even a hearing, which would normally generate further costs. In either case, short precautionary submissions should be considered.

6.8 The Registry very rarely corresponds with an applicant's lawyer, save to request specific information, to notify them that the application has been declared inadmissible, or has been communicated to the

respondent government, or to give notice of the Court's judgment. Unsolicited communications to the Court are frequently rejected from the case file, unless they provide relevant new factual information.

6.9 Following a favourable judgment, the Committee of Ministers is responsible for supervising execution including the payment of any just satisfaction awarded. As the Court's docket has increased, so has the workload of the CM, which has also sought to systematise and improve the effectiveness of its supervision despite its growing backlog. The CM meets quarterly in a special human rights format, supported by a specialist secretariat, the Department for the Execution of Judgments of the Court. The majority of judgments are executed promptly with just satisfaction awards being paid within six months or less. However, in the minority of more complex cases where execution is complicated or indeed resisted by the respondent State, the applicant's lawyer will need to consider vigorous submissions to the CM commenting under Rule 9 of the CM Rules on any inadequacies in the respondent government's response. A small but stubbornly consistent core of politically sensitive cases await execution for protracted periods; their resolution depends upon high level political action by the diplomatic representatives of Member States of the Council of Europe, which is slow to emerge.

Appendix

Useful links

- Council of Europe
- Court
- Convention
- Rules of Court
- Practice Directions
- Requests for interim measures
- Institution of proceedings
- Written pleadings
- Just satisfaction claims
- Secured electronic filing by Governments
- Requests for anonymity
- Electronic filing by applicants
- Processing of applications in the event of a mass influx
- Requests under Article 43 of the Convention
- Third-party intervention
- Recusal of judges
- HUDOC
- ECHR Knowledge Sharing Platform (ECHR-KS)

- Department for the Execution of Judgments of the Court
- Applicants' "homepage" (English / non-official languages)
- Notes for filling in the application form
- Rule 39 Site (interim measures)
- Addendum for multiple applicants
- eComms
- Practical guide on admissibility criteria
- Online admissibility checklist
- Unilateral declarations: policy and practice
- Life of an application
- Court's State of Proceedings search engine
- Common mistakes
- Questions & Answers
- Court in 50 questions
- Your application to the ECHR – How to apply and how your application will be processed
- Procedure following communication of an application – non-contentious phase
- Procedure following communication of an application – contentious phase
- Procedure following communication of an application – single phase
- Guidelines on submitting pleadings following simplified communication

Useful videos

- Film on the Court
- Lodging an application
- Admissibility conditions
- Non-contentious proceedings
- eComms
- Webcasts of public hearings
- Court's YouTube Channel
- Press releases of the Court