EHRAC GUIDE

Frequently Asked Questions

Litigating a case before the European Court of Human Rights

EHRAC

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Contents

The European Court of Human Rights ("ECtHR" or "the Court") has provided a number of helpful resources on aspects of submitting a case, however it is not always easy to find the answer to a specific question when litigating before it for the first time, or when encountering a new issue. This EHRAC FAQ Guide is intended to provide assistance to lawyers litigating these cases by providing answers to some of the questions that we are most often asked. This guide is not designed to cover all aspects of the procedure before the Court. For specific information about the Court's jurisprudence, please refer to the Court's admissibility guide and thematic factsheets.

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I. Evidence

What evidence do I need to gather to present my case?

In litigating cases before international tribunals, it is essential to gather the relevant evidence to support your case and not rely on the evidence submitted by the authorities. This should always include a witness statement from the applicant, setting out their version of events. This is advisable even in cases where the applicant has been interrogated by the authorities or had their account summarised in domestic court judgments, as these will not necessarily include everything the applicant reported nor all the factors relevant to the applicant's case before the ECtHR (such as evidence of discrimination). It is also likely that you will need to take statements from relatives, friends, neighbours, or other witnesses to the events and their impact.

In taking a witness statement, it is important that the witness recounts events chronologically, providing all the relevant details, including times, dates, and location, and does so in their own words. It is helpful to prompt the witnesses with open questions such as *'what happened next... then what happened...how did it happen...where...who was involved...how long did it last?'*. If you are taking statements from multiple witnesses about the same facts, ensure that the statements are drafted separately, in the witness's own words, to avoid them appearing too similar and undermining their credibility. Witness statements should set out the facts as perceived by the witness and not include legal argument. The ECtHR does not lay down particular rules as to the format of witness statements. For more specific guidance, please see EHRAC's Guide to Preparing Witness Statements.

Other relevant evidence could include medical evidence (doctor's reports or hospital records), photographs of injury or damage to property, video footage, police reports, domestic judicial or administrative decisions, news reports, international reports or reports from an appropriate expert witness instructed on an aspect of the case. In order to submit photographic or video evidence, where possible you should provide a witness statement from the creator of the imagery stating, along with the usual credentials (name, address, occupation), the date and time the evidence was recorded and the purpose for which it was made. Where this is not possible, and for evidence obtained from the internet, the lawyer in the case should provide a similar statement explaining the provenance and relevance of the footage.

II. Interim Measures

When should I apply for interim measures?

Pursuant to Rule 39 of its Rules, applicants or their legal representatives may request interim measures, which are granted in exceptional cases of irreparable harm, usually interpreted by the Court as physical harm to the person, mainly arising from threatened expulsion or extradition, but

also in relation to such issues as imminent eviction or failure to provide urgent medical treatment to prisoners. It is therefore important to remember that the threshold for granting interim measures is high and a large number of requests will be rejected. Applicants should pursue any domestic remedies that have a suspensive effect before addressing the Court. However, once a final decision has been taken, requests for interim measures should be submitted as soon as possible, enabling the Court to stipulate urgent measures, if a request is granted. Interim measures are normally decided in connection with proceedings before the Court, however it is also possible to submit an interim measures request without having already put in an application. In such a situation if the Court is considering granting the request, you will normally be asked to also submit an application within a short time. In some cases where the Court may not grant the request of interim measures, it may nonetheless transmit questions to the respondent state and prioritise an application, for instance in a domestic violence case where the victim is in immediate danger (stemming from, for example, the release of the perpetrator from prison).

How should I apply for interim measures?

The request for interim measures should be thoroughly but succinctly reasoned, including with respect to the nature of the risk faced and the Convention provisions that have allegedly been violated. It should usually be accompanied by a witness statement from the applicant and should incorporate all adequate documentary evidence, including relevant domestic court, tribunal or other decisions, together with any other material necessary for substantiating the allegations in question. The application should set out clearly the measures that are requested. Do not forget to include contact details or an authority form. Requests that do not include all necessary information enabling the Court to take a decision will not normally be submitted for a decision. Requests for interim measures under Rule 39 must be made by facsimile or by post using the details provided by the Court, and are decided within 24 to 48 hours. Applicants who apply for an interim measures should reply promptly to any correspondence from the Court, as well as inform the Court of any relevant change of circumstances.

Applicants should refer to the Court's Practice Direction and Factsheet, as well as EHRAC's training package on interim measures for more information.

III. Preparing the application

What information should be included in the application form?

The application form can be found on the Court's website. You must use this form and complete it in accordance with Rule 47 of the Rules of Court, with reference to the guidance provided by the Court in its Practice direction on institution of proceedings. The Practice direction on written pleadings applies to all pleadings. The Court provides helpful advice on the specifics of lodging an application[1]. You should fill in all relevant fields, following closely the instructions set out in Rule 47 and in the other guidelines published by the Court. The application should preferably be typed, but handwriting is also possible. You may use one of the languages of any of the contracting parties, at least at the initial stage of proceedings. Failure to comply with the requirements set out in Rule 47 may result in the application not being registered or in rejection.

The purpose of information included in the application form is to provide a comprehensive, but

1. https://www.echr.coe.int/Documents/Application_Notes_ENG.pdf
https://www.echr.coe.int/Documents/Applicant_common_mistakes_ENG.pdf
https://www.echr.coe.int/Pages/home.aspx?p=court/questionsanswers&c=

clear and concise, statement of facts, a statement of the violations claimed and an explanation of the applicant's compliance with the admissibility criteria. There should be sufficient information as to enable the Court to determine the nature and scope of the application without having to refer to other materials. Symbols and abbreviations should be avoided.

You are advised to submit the strongest application possible, rather than reserve arguments for later stages of the proceedings, in response to the government's submission. You should focus on your strongest claims and you may decide to disregard weaker or secondary points that could distract the Court. You must focus on making out a prima facie case that one or several rights set out in the Convention has been violated. Make sure that you have fulfilled all the requirements in the application form, including by ticking the country box. Bear in mind that the Court rejects numerous cases at the very initial stage of proceedings as manifestly ill-founded or as incomplete.

How should I draft the facts section (section E of the application)?

You should present the key facts chronologically, providing dates, times and locations as appropriate. You need to ensure that you have included all the factual details relevant to asserting a violation. You cannot make unsupported assertions in the Statement of Facts – everything you describe must be supported by the evidence in the case, whether in a witness statement, a national or international report of an event, medical evidence etc. When you describe an event or incident you should provide a brief reference to the supporting evidence (e.g. Witness Statement of H.P, Annex X or Human Rights Watch Report, Annex X, p. 10).

The statement of facts should be drafted in an objective, neutral manner and should not include comment or legal argument. However, where relevant it should include brief information about the impact of an event on the applicant, in terms of their physical or mental health, living conditions, livelihood, prospects or other factors, as supported by the evidence (witness statement of the applicant, medical evidence, property damage, etc).

Where a case involves different sets of proceedings or separate factual events, it is helpful to address each of them individually. A scenario involving numerous incidents or a history of harassment or discrimination, such as domestic violence, can be presented in bullet points specifying the date, location, and brief description of each experience.

You should avoid lengthy quotations, background information or facts that are not directly related to your claims. It is possible to refer to annexes for non-essential detail or include such information in the supplementary pages. You should summarise the reasoning of domestic decisions and the applicants' submissions before domestic courts, as it may be relevant to prove compliance with admissibility criteria or to prove the violations alleged.

How should I draft the alleged violations section (section F)?

As with the facts section, it is important to write in clear, simple language. For each violation you need to identify the issue involved, determine the legal basis or principle, apply the principle to the facts of your matter and draw a conclusion. We advise that you:

- make your arguments as strong as possible but only to the extent supported by the evidence;
- avoid emotive language and sweeping statements;
- make sure that you check that your assertions are accurate, otherwise you risk undermining confidence in your argument;
- try to identify potential legal hurdles or weaknesses and provide arguments to overcome them;

- distinguish cases that are not helpful, without over-emphasising any weakness in your case;
- and, if you are asking the Court to develop or extend its jurisprudence, try to give it a route to get there, for instance by using analogy with similar cases.

Each complaint must mention the Article involved and include explanations as to how it was infringed, with reference to the relevant facts, domestic legislation and/or case law of the Court. You should avoid pleading abstract violations of one or more of the rights included in the Convention. If the Court uses a test to assess compliance with the Article in question, make sure you set out all elements of the test. For instance, in asserting a violation of Article 8 of the Convention you need to explain what action constituted an interference with the applicant's family or private life and why it was in breach of the Convention on one or more of the grounds identified in the provision: not in accordance with the law/no legitimate aim/disproportionate. This should be done briefly in the application and you can elaborate on your arguments in the supplementary pages. It is helpful to reference Court judgments you are relying on, indicating the precise paragraph that is relevant to your case and explaining its relevance.

What should be included in the admissibility section (section G)?

In this section, you should demonstrate, for each individual claim, that you have exhausted relevant domestic remedies (i.e. those which are available, effective and sufficient – see below) and that you have filed your application within the six-month time limit, by listing the relevant decisions received at the national level. You must submit documents showing that you raised all the allegations made before the Court in the national system, including national court judgments, but also pleadings or written records of hearings. The date of the final decision/s in the process of exhausting domestic remedies should be clearly identified and adequate documentary evidence provided.

The Court requires a brief description of each remedy used, including the name of the court and the date and nature of the decision. For example, a complaint of racially motivated ill treatment could develop along the following coordinates:

- Art. 3 complaint of ill treatment: Prosecutor's Office decision of non-indictment on 05/11/2018; appeal rejected by District Court on 3/03/2019 (File no. 22/2019).
- Article 14 complaint of discrimination: District Court rejected claim on 5/03/2019 (file no. 555/2019); County Court rejected appeal on 10/09/2019; Court of Appeal dismisses appeal on points of law on 10/02/2020.

If there was an available remedy that was not used, you should give reasons for doing so. For example, you may claim that you were not required to wait until a blatantly ineffective investigation was finished, due to inordinate delays, to the authorities' failure to engage with the victims or to other manifest deficiencies. Accordingly, this section should include evidence that domestic authorities received adequate notice of the incidents that required an investigation and other evidence of inaction on their part.

How do I argue that domestic remedies are ineffective or unavailable?

As already indicated, applicants have to demonstrate in their application that they have exhausted domestic remedies. It is then incumbent on the Government to argue non-exhaustion, by identifying the domestic remedy that should have been invoked, backed up by evidence showing effectiveness both in theory, as well as in practice. The burden of proof then shifts to the applicant to prove that the remedy had in fact been exhausted, that it was not adequate or effective, or that there were special reasons exempting them from invoking the remedy. Applicants are normally required to exhaust

remedies that are available, effective and sufficient. This is usually done by presenting relevant facts, by reference to domestic legislation or by providing examples of jurisprudence proving that a given remedy was for some reason ineffective. In situations where it is alleged that a domestic investigation is ineffective, applicants should explain the basis on which they argue this (length of time, lack of measures taken etc). Mere doubts as to its effectiveness do not absolve an applicant from exhausting a remedy. The reverse is that where an applicant has tried a remedy, which the Court considered inappropriate, there is a risk of the case being dismissed for breach of the 6-month-time limit.

An available remedy presupposes that the applicant must be able to initiate the proceedings directly, without being reliant upon a public body or official. Other circumstances that may impact on the practical availability of a remedy include the absence of legal aid or a failure to provide information in a suitable format affording the person in question an opportunity to afford themselves of the remedy in question. A remedy will be considered effective and sufficient if it may provide redress for the applicant in respect of the Convention violation alleged. For instance, an applicant lodging an application regarding prison conditions while still in detention would normally require a preventive remedy, i.e. one that is capable of putting an end to the violation alleged. If on the other hand the individual in question complains after the detention has already ended, a compensatory remedy should normally be exhausted, to the extent that it is available and sufficient. Where an applicant seeks to prevent his removal from a Contracting State for an alleged risk of persecution in the country of destination, a remedy will only be effective if it has suspensive effect.

The Court has recognised that special circumstances may pertain that exempt applicants from the obligation to exhaust domestic remedies. This would be the case, for example, if the applicant was able to demonstrate the existence of an administrative practice consisting of a repetition of acts incompatible with the Convention and official tolerance by the State authorities, that would make proceedings futile or ineffective.

Applicants should refer to the Court's Practical Guide on Admissibility Criteria for more detail.

What is the difference between the Annexes and the Supplementary pages?

Annexes

You should annex copies of all the documents that substantiate your claims and demonstrate compliance with the admissibility criteria, including judgments, decisions and complaints, but also transcripts, witness statements, or medical reports. If you complain about an official act or decision, you should provide adequate documentary evidence to prove that act or decision.

There is no limit to the number of annexes, but you should only annex relevant documents. The documents should be arranged in order by date and procedure, numbered in consecutive order, and not be stapled, bound or taped. You may use extra pages to continue the list of documents, if the space available in the application form is not sufficient. Annexes should not be confused with the supplementary pages below.

Make sure that you provide a list of annexes and reference the annex you are relying on at each point in your argument so that it can be easily cross-referenced. Where you refer to a report in your argument, it is advisable to provide the page reference so that the Court can find the relevant passages.

If the applicant is unable to provide a copy of an essential document, they must provide an adequate explanation for that, backed up by adequate evidence. This could be, for example, because they are detained, or they were not able to hire a lawyer.

Supplementary pages

The supplementary pages attached to the application form have a different purpose to the annexes. These pages allow you to provide the Court with additional factual or legal information relevant to your arguments that cannot fit on the application form. This could include the background context to a violation (such as a context of persecution of a vulnerable minority, or a context of armed conflict, or repression of civil society) or the development of factual or legal arguments. However, you must ensure that the application form contains a stand-alone prima facie case. The supplementary pages must not exceed 20 pages.

IV. Other practical information about the initial stage of the proceedings

What do I do if there are multiple applicants in the case?

If multiple applicants are involved in cases based on different facts, you should provide separate individual applications. If, on the other hand, those cases are based on the same facts, you should provide one application but use a separate sheet of the pages with personal information in the application form for each individual applicant. If there are more than five applicants, provide a completed table of applicants, that is available to download from the Court's website.

The applicants should provide their own address that is separate from the representative's address. If the applicant is homeless or without a fixed residence, they may provide a friend's details accompanied by an adequate explanation. If the applicant is detained or lives in a social care home, they should provide the address of the place of detention/residence.

What are the rules for representatives?

The applicant does not have to instruct a lawyer at the application stage. However, it is normally required after communication of the case. The appointed lawyer should be authorised to practise and be resident in one of the contracting parties, but the President of the relevant Chamber may grant an exemption to that rule, by allowing, for example, a law graduate to act on an applicant's behalf even without a licence to practise as a lawyer, or an academic lawyer, or by granting leave to the applicant to present their own case.

The Court is running a legal aid scheme. Legal aid may be granted to indigent applicants if that is considered necessary for the proper conduct of the case, but only after a case is communicated to the Government concerned. Legal aid consists of a relatively small set fee payable in respect of each stage of proceedings before the Court.

An applicant who is incapable or in poor health may be represented by a person without legal training. For example, this could cover the situation of a parent representing a child, a guardian representing an adult placed under guardianship, an NGO representing a vulnerable person (in narrowly defined circumstances), or relatives representing an applicant who finds him/herself in one of the circumstances mentioned above.

What rules apply to the signatures included in the application (page 13 of the form)?

The applicant or their non-lawyer representative should sign the authority form. The authority form must contain original signatures. Photocopies are not accepted.

Lawyers have to sign the authority form that is included in the application, rather than sending a separate authority form concomitantly with the application. In the event that the lawyer has been instructed after the application has been filed, or they were replaced, a separate authority form should be submitted using the special form provided on the Court's website.

How do I apply for urgent treatment under Rule 40 of the Rules of Court or priority status under Rule 41?

Applicants can ask for expedited treatment of their cases from the outset of proceedings before the Court. In doing so, applicants should provide full reasons based on the categories identified in the Court's priority policy under Rule 41 and expedited notification in urgent cases under Rule 40. The Court's priority policy comprises seven categories of cases, indicating that cases in a higher category (for example those dealing with child welfare issues) will be examined before a case in a lower category, as set out in the Practice Direction. A request under either or both of these Rules can be made in a cover letter accompanying the application, or at a later date if the urgency materialises subsequently.

How do I request confidentiality?

Every application to the Court must identify the applicant (Article 35(2)(a)). Failure to do so can render the application inadmissible. The Court normally provides public access to the documents relating to the proceedings before it. However, the President of the relevant Chamber may grant applicants anonymity, based on a duly reasoned request explaining the impact that publication may have (the applicant's details still need to be filled in on the form). The request may be introduced with the application or at a later stage in the proceedings. Applicants should refer to Rule 47(4) and the Practice Direction on Requests for Anonymity for more detail. If the request is granted an applicant will be referred to in case reports by their initials or a letter (e.g. "X" or "Y").

How should I send the application?

Applications can only be sent by post, preferably by registered mail.

What happens after the application is submitted?

You should keep a copy of the form as you have filed it, together with the original documents annexed. It is important to send the application as soon as possible after national proceedings are exhausted and well before the six-month time limit has expired. You may be asked to complete and resubmit the application, unless the six-month time limit has already expired.

If the application submitted is complete, you will receive a confirmation letter from the court stating the number of the file, and a set of barcodes that should be affixed on all correspondence related to the case. You should bear in mind that there is no strict timeline in that respect, so it could take many months to receive a confirmation. There is nothing you can do during this time except wait for the Court to contact you.

How can I contact the Court in case I have a question about one of my cases?

You can send the Court questions or requests related to your case but bear in mind that you might not get a reply. The Court operates a high volume of cases and has restricted communication with applicants at a minimum.

The Court will write to you if it needs additional information, to communicate information, or to provide guidance at each step of the proceedings. It is important to respond to any request received from the Court within the prescribed deadline. Failure to do so may be taken as a sign that the applicant is no longer interested in pursuing the application and the file may be rejected or destroyed.

Can I request an extension of the deadline set by the Court?

The initial time limit for bringing an application is 6 months. Any application submitted outside this period will be inadmissible (Article 35(1) of the Convention). However, at later stages in a case, once it has been communicated, there is scope to request the Court to extend the deadline it has stipulated for the parties. Any request for an extension must be reasoned. Such reasons can include difficulty communicating with an applicant or multiple applicants; extensive documentation in a case (as disclosed by the Government); particular complexity of a case; the need to obtain specific evidence that is not readily available; or the need to translate documents. Any request should specify the time frame sought, which should be reasonable. It can be helpful if the Government has also asked for an extension. The Court will assess the request and decide whether to grant the extension.

What is the scope of the contracting party's obligation not to hinder the right to individual application?

Article 34 compels Contracting States not to hinder the right to individual petition or interfere with the right to present and pursue effectively a complaint before the Court. This provision covers direct coercion and intimidation of applicants or their legal representatives, but also other improper indirect acts or contacts that would prevent the Court from considering the case. For instance, there was a violation of Article 34 when the authorities seized the entire case file from the office of the lawyer representing the applicant.

Article 38(1)(a) of the Convention, which requires that states furnish all necessary facilities for the effective conduct of the investigation, is also relevant. The Court has relied on this provision to ask for documentation that is considered important to the case, particularly where the government alone held such information. Failure to cooperate may give rise to a violation of Article 38(1)(a), but also to the drawing of inferences as to the well-founded basis of the applicant's allegations.

When and about what do I need to update the Court?

After submission of an application you need to keep the Court informed of any major changes in the applicant's situation that may have a bearing on the case (such as withdrawal from the case or change of address). In circumstances where an applicant dies while the case is still pending before the Court, a relative can usually continue the case provided they have a legitimate interest (e.g. are sufficiently proximate to the deceased) or the Court determines the case is of general importance. The Court also needs to be updated about significant developments relating to the case itself such as the payment of compensation to the applicant or domestic court or other decisions relating to remedies

that could impact the consideration of the case. Failure to provide the Court with this information may be taken as signalling bad faith and have negative repercussions for your case.

How do I make a just satisfaction claim?

Claims for just satisfaction should normally be submitted within the time limits allowed for the submission of the applicant's observations on the merits. Just satisfaction may be afforded in respect of pecuniary damage, non-pecuniary damage, and costs and expenses. An award of pecuniary or non-pecuniary compensation is made on the basis of a clear causal link between the violation of the Convention involved and the losses claimed. Claims must be itemised and accompanied by any supporting documents, although even in such circumstances the Court may award a lower award than the sum claimed. Where applicants are unable to provide evidence due to circumstances beyond their control, the Court may take this into account when deciding any claim for non-pecuniary damages. Awards for pecuniary damages may include items such as loss of earnings (past and future); loss of means of earning a living; fines and taxes imposed; the value of confiscation orders imposed; damages paid; medical expenses; or domestic court fees. Awards of non-pecuniary damage may reflect pain and suffering; disruption to life; embarrassment; frustration; inconvenience or loss of opportunity as a result of the violation claimed. Applicants may submit a statement setting out the detriment suffered, but no direct proof of the non-pecuniary damage sustained as such is required. Awards made in comparable cases may constitute a valuable indicator when evaluating the value of the claim in a given case.

Compensation for costs and expenses incurred may include the costs of legal assistance, as well as legal costs such as court fees incurred at the national level. The criteria for awarding costs and expenses are as follows: the costs are actually incurred; they were necessary to prevent the violation or to obtain redress for it; and are reasonable as to quantum. While any claim has to be supported by adequate documentary evidence, the Court may award a lesser sum than that claimed, seeing as it is not bound by national fee scales. Lawyers are advised to submit to the Court a detailed bill of costs setting out the tasks carried out, the hours worked, the hourly rates and details of all expenses, with relevant invoices and other evidence. The applicant must show that lawyer's fees were paid or they were legally required to be paid. Where the lawyer has acted free of charge, costs have not been incurred and so they cannot be claimed.

Applicants should refer to the Court's Practice Direction on just satisfaction claims for more detail.

V. How is an application processed?

How are cases allocated among different Court formations?

Once the case is registered, it will be allocated to one of the Court's judicial formations: a single judge, a three-judge Committee, or a seven-judge Chamber.

Single judges may adopt final decisions rejecting clearly inadmissible cases or striking them out of the list of cases. Such decisions, taken without having been communicated to the respondent government, are final. Inadmissibility decisions should provide brief reasons for rejecting the case in question.

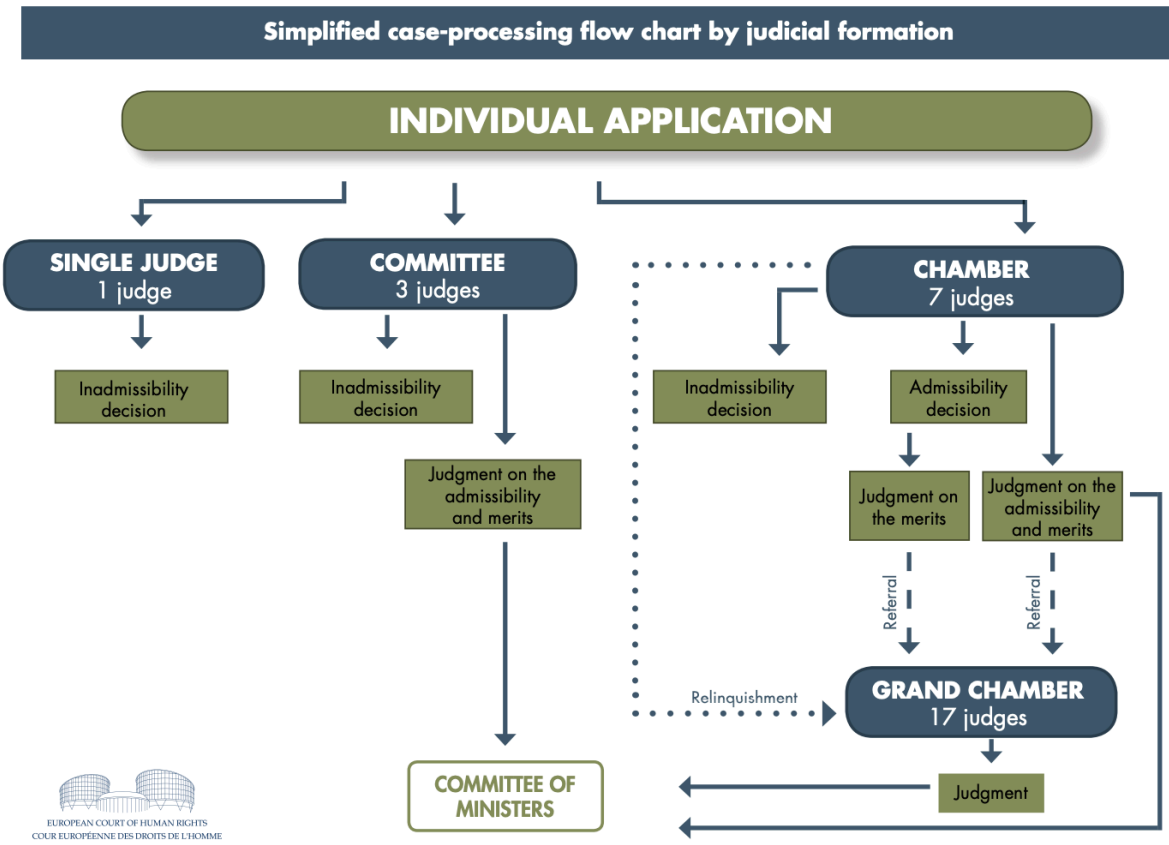
Committees may declare a case inadmissible or strike them out of the list without communication or following communication of the case to the respondent government. In case of decisions taken before communication, applicants will receive a succinctly reasoned letter to that effect. Committees may also simultaneously decide on admissibility and the merits of a case, if the underlying question,

concerning the interpretation or the application of the Convention, is already the subject of well-established case law ('WECL'), in a procedure designed to facilitate the processing of repetitive applications.

Chambers may adopt decisions declaring a case inadmissible or striking it out of the list of cases, or judgments on the merits of the case following communication to the parties.

Inadmissibility decisions are final in the vast majority of cases. However, in very exceptional cases, the Court may decide to reopen a case deemed inadmissible and restore it to its list of cases, justified by a factual or legal mistake of the Court's own making. One example in that respect could be an error regarding the date of the final decision for the purposes of the six-month rule.

The following chart, provided by the Court, illustrates in a simplified manner how cases are processed.



What happens once a case is communicated to the respondent government?

Communication is the notification of the application to the respondent government, which consists of a statement of facts drafted by the Registry of the Court and questions addressed to the parties, singling out specific legal issues raised by the case which require responses from the parties. The standard procedure following communication involves two consecutive phases. The first, non-contentious, phase provides the parties with an opportunity of exploring the possibility of a friendly settlement. During the second, contentious, phase, the parties are required to exchange observations on admissibility and the merits, as well as on just satisfaction and costs and expenses.

Some cases may follow a simplified procedural track. The Court may dispense altogether with

observations in Committee cases involving well-established case law, in attempt to reach an expedited settlement. It is also possible for the Court to communicate cases in a simplified format and require parties to provide succinct and narrowly tailored pleadings following a strict timeline.

Regardless of the procedural track applied, the Court will provide parties with detailed guidelines that should be followed closely. For example, the Court provides detailed guidance on the applicant's pleadings following regular communication, with respect to both the non-contentious, as well as to the contentious phase, on the applicant's pleadings following simplified communication and on just satisfaction claims.

How do I decide whether to reject or accept (or propose) a friendly settlement?

Parties may reach an agreement to end the case based on a friendly settlement, which may occur at any stage of the proceedings. The Court has introduced a new compulsory non-contentious phase of 12 weeks after communication of a case. The Court proactively seeks to facilitate negotiations and it may even consider striking out an application under Article 37 (1) of the Convention, if an applicant is considered 'unreasonably' to have refused friendly settlement proposals. Whilst a friendly settlement is a possible resolution of any case, the Court will now routinely identify cases in which it deems this appropriate and suggest potential terms to both parties. Despite the fact that the proposed settlement is initiated by the Court the applicant is not under pressure to accept it. Negotiations are confidential and without prejudice to the arguments made in the contentious proceedings and should not be referred to in subsequent submissions.

Lawyers should consider the interest of their clients at this stage. If monetary compensation for the violations alleged is considered sufficient, a friendly settlement may constitute an expeditious and effective way of ending a case, provided the Government is prepared to meet the applicant's requirements. However, friendly settlement negotiations may also offer an opportunity to go over and beyond monetary compensation, by providing a forum where any form of redress such as revising law or policy, making a commitment to provide restitution in kind based on a clear timeline, or undertaking to investigate ill-treatment, could be negotiated and secured. The Government may be interested to pay higher rates of compensation and make more specific commitments in order to avoid a judgment on the merits. Some applicants, however, may see the publicity surrounding a judgment on the merits as the only form of redress capable of addressing their grievances, in which case a friendly settlement may be out of the question. Lawyers and applicants should be aware that friendly settlements that provide a financial settlement without acknowledgement of a violation constitute an ex gratia payment with no recognition of causality between the payment offered and the harm suffered or actions that caused it. The Committee of Ministers' oversight of implementation of such an agreement will be confined to payment of the agreed sum.

For more information, please refer to EHRAC's Guide on Friendly Settlements and Unilateral Declarations.

Is it possible to ask the Court to rectify mistakes in a judgment?

Final Grand Chamber or Chamber judgments may be subject to reconsideration in three situations, based on a request for interpretation (Rule 79 of the Rules of the Court), a request for revision (Rule 80) or a request for rectification of errors (Rule 81). Rule 81 allows the Court, of its own motion or at the request of a party made within one month of a decision or judgment, to rectify clerical errors, errors in calculation, or obvious mistakes. Rule 79 allows either party to request interpretation of the operative provisions of a judgment within one year after it has been delivered. Such requests have been rare and referred to issues concerning the payment of compensation.

When can I request that a case is referred to the Grand Chamber?

Pursuant to Article 43 of the Convention, within three months of a Chamber judgment, applicants may lodge a request for a referral to the Grand Chamber that is analysed by a panel of five judges. This is not a right of appeal as such, but a right to request a re-hearing, that will only be granted in exceptional cases. The party seeking a referral must specify its reasons. The five-judge panel will evaluate if the case involves any of the following: (1) a serious question affecting the interpretation of the Convention; or a serious question affecting its application (for example, if it necessitates a substantial change to national law or practice); or a serious issue of general importance (for example, a substantial political issue or an important issue of policy). The decision of the panel is not reasoned. Inadmissibility decisions given or findings of fact by a Chamber, and decisions that apply well-established case law cannot be referred to the Grand Chamber.

How do I prepare for and make oral submissions?

The court may decide to organise a hearing on the admissibility and/or the merits of a case on an exceptional basis. When this happens, the Registry of the Court will send a letter to the parties setting out the questions that should be addressed at the hearing. The duration of the hearing is determined in advance by the President in agreement with the parties and judges may ask questions. Applicants and the Government typically receive 30 minutes each to make their oral submissions and an additional 10 minutes to reply to any questions from the Court, with a break after the questions have been asked. Hearings usually take no more than two hours in total. Lawyers may wear robes if they wish, but that is optional. The hearings are conducted in one of the Court's official languages, but the President may allow the use of another Council of Europe language. Advocates should speak clearly and not too quickly, and concentrate on the primary points of dispute in the case, as opposed to rehearsing the facts or arguing every point of the application. They should be aware that oral pleadings are designed to supplement written submissions already lodged and that judges are assumed to have a broad knowledge of the case.

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