



## THE EUROPEAN COURT OF HUMAN RIGHTS

*Questions & Answers for Lawyers*

2020



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

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](http://www.echr.coe.int)), the case law of the Strasbourg bodies, and general literature on the law of the European Convention on Human Rights (“the Convention”).

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## Foreword by Robert Spano, President of the European Court of Human Rights

In this year of celebration of the 70<sup>th</sup> anniversary of the Convention, it is more necessary than ever to recall that the European system of human rights protection is based on the proper application of the European Convention on Human Rights at national level.

I have often spoken about this fundamental aspect of the mechanism known as subsidiarity, which makes all domestic judges also “Strasbourg judges”. Indeed, they apply the Convention in the same way as the judges of the Court do.

In order for this principle to be implemented, the training of lawyers is absolutely essential. They are the ones who bring the Convention to life, first before the national courts and then before the Court. In this respect, I can only welcome the important work carried out since 2014, in cooperation with the Court, by the Council of Bars and Law Societies of Europe (CCBE) to raise awareness among lawyers about the procedure before the Court.

This has taken the form of a practical guide, the fourth edition of which I am pleased to welcome. Presented in a simple way, in the form of questions and answers, it has become an indispensable tool for all those who want to bring cases before the Court. Our procedure can sometimes seem complex, and the efforts of all those involved in making it more accessible and simpler are always to be welcomed.

I have noticed that each edition has brought new information and this is once again the case. For example, the new edition refers to the recently published guide on Article 46 of the Convention, on the binding force of decisions and their enforcement. Those who are familiar with the guide will therefore discover new parts of it. Those who are reading it for the first time will quickly realise that it answers all the questions one can have about the Court.

Congratulations to its authors and enjoy reading it.

**Robert Spano**  
President of the European Court of Human Rights



# I. National proceedings prior to the submission of a case to the European Court of Human Rights

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

Violations of the European Convention on Human Rights (“the Convention”) must be pleaded throughout the proceedings before the national court, so that a potential application to the European Court of Human Rights (“the Court”) can be prepared from the outset of the proceedings. Moreover, where a case involves violations of fundamental rights, lawyers should seek to have those violations established by the national court: if the national court finds that there is a violation, no subsequent application to the European Court of Human Rights will be required. The principle of subsidiarity requires that national courts must have the opportunity to prevent, detect and redress the alleged violation(s) themselves. If they fail to provide redress, an application may be made to the Court. Violations of Articles of the Convention must be pleaded substantively at first instance, with specific reference to the applicable Convention Articles. It is essential to plead those same Convention arguments on appeal, then to the highest national court, or any other constitutional court or court of cassation which acts as a court of last resort.

Lawyers should note that Protocol 16 introduced the Court’s competence to give advisory opinions if so requested by designated national courts or tribunals (usually highest national courts/courts of last resort). Such courts may request the Court for an advisory opinion on questions of principle relating to interpretation or application of Convention rights. The advisory opinion may only arise from a case pending before the designated national court. If the request is accepted for examination, the Grand Chamber gives the advisory opinion. The advisory opinion is not binding, but is published.

## 2. *Is it mandatory to appeal to the highest court before making an application to the European Court of Human Rights?*

A case should always be appealed to a State’s highest court before an application is made to the Court to avoid the risk that the Court may otherwise declare the application inadmissible because of a failure to exhaust domestic remedies, as required by Article 35(1) of the Convention. In some States occasionally 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. The lawyer concerned should therefore carefully analyse the relevant domestic law, the position of the national court of last resort, and the Court’s case law. The Convention only requires the exhaustion of domestic remedies which are relevant to the alleged violations, and which are adequate and effective to redress them.

## 3. *Is it important to exhaust all effective available domestic appeal procedures?*

The exhaustion of all effective available domestic appeal procedures is essential. Lawyers should find out the Court’s case law as to whether there is an effective remedy in the specific area of law applicable to their case. Failure to appeal to all national courts up to and including the State’s court of last resort may result in an application being declared inadmissible by the Court, in accordance with Article 35 of the Convention. The Convention system is premised on the principle of subsidiarity. Where an applicant has failed to exhaust domestic remedies, the Court will conclude that the national legal system has been deprived of the opportunity to review the complaints under the Convention and redress them if appropriate.

#### **4. How should a violation of the Convention be pleaded?**

Any violation of the Convention must be substantively pleaded. It is highly advisable to plead breaches of specific Articles of the Convention, rather than a general or abstract violation of legal principles. Similarly, precision is needed as to the alleged consequences the court is asked to draw from the violations. For example, if a violation of the right to trial within a reasonable time (Article 6(1) 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).

#### **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. Therefore it is necessary to rely on Court case law before the national courts at any stage of proceedings before the national courts, and in doing so to refer to precedent decisions of the Court regarding violations of the Convention Article(s) at issue. Citations of the Court judgments must be fully referenced, including to the specific paragraphs concerning the interpretation of the Convention relied on in the Court's judgments in similar cases. Lawyers should not limit themselves to considering only the Court judgments concerning the same respondent State. They should consider all Court judgments concerning the relevant Article of the Convention, including those concerning other States.

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

It is highly advisable for allegations of violations of the Convention to be made in writing, such as in written submissions, written notes to the court, and/or written conclusions. The appropriateness of pleading human rights violations is no longer disputable, and national judges must 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.

#### **7. What advice should be given to a client?**

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

#### **8. How should a violation of the Court be presented?**

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

#### **9. How should a case be prepared during national proceedings?**

Lawyers should not forget to build up a well-documented case file as soon as the national proceedings begin, updating it at every level of proceedings in order to have a comprehensive file when the proceedings conclude in the highest court. The case file should include all the objections 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 (*Cardot v. France*, Application No. 11069/84, *Fressoz and Roire v. France*, Application No. 29183/95). The case file should include the evidence, all 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 court deals with the Convention arguments fully and clearly, lawyers may invite the 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 ECHR claim 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 both that remedies were exhausted and what the national court's analysis of the Convention issues was.

### **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. The advice should identify clearly the time limit for applying to the Court, which is currently six months from the date of the final national decision (a period which will be reduced to four months when all Member States have ratified Protocol 15). The advice should include a review of the latest relevant judgments in the Court's HUDOC database. The lawyer should carefully and honestly explain the prospects of a finding of admissibility and any foreseeable difficulties. In doing so, the lawyer should consider and explain key topics such as the single judge procedure, inadmissibility statistics, the length of proceedings in Strasbourg, the estimated costs of proceedings (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'.

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 *Idalov v. Russia*, Application No. 5826/03).

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

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

If a lawyer is first consulted after the end of national proceedings, i.e. if he/she takes a case over at this stage, the whole case should be reviewed in order for the lawyer to advise substantively on the prospects of success before the Court. The application form will have to be filled in and lawyers must, of course, ensure their effective expertise in the field of the Convention.

### **12. What other issues may arise in these cases?**

Lawyers must be ready to address specific issues and advise their client if they arise. Such issues include interim measures, proceedings before the Grand Chamber, pilot judgments, the 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 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 database of the Court, and to use the application 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 the Court. If the client changes lawyer, in order to ensure continuity of representation, the former lawyer should transfer the case file to the new lawyer, along with all information on the proceedings pending before the Court and the Court should be informed.

### **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 of a decision or act of the European Union institutions (see the factsheet, Case-Law concerning the European Union available on the Court's website). 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, for example, the *Bosphorus v. Ireland* judgment of the Grand Chamber of 30 June 2005 (Application No 45036/98) and the more recent Grand Chamber case of *Avotiņš v. Latvia* of 23 May 2016 (Application No. 17502/07)).

**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 in Human Rights Education for Legal Professionals (the HELP Programme), of which the CCBE is a partner. This Programme supports the Council of Europe Member States in implementation of the Convention at national level and applies particularly to lawyers. The HELP website provides free online access to training materials and tools on the 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.

**15. What tools are available for parties and their lawyers?**

Many tools are available to inform both parties and lawyers about the procedure before the Court and about human rights law. More specifically, the Court 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, information notes on case law, a practical guide on admissibility, and many other resources (see question 30). Many national websites also provide information on Human Rights.



## II. Proceedings before the European Court of Human Rights

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

The Court may only deal with a matter which is lodged within six months of the date on which the final domestic decision was taken (Article 35(1)). It should be noted that Protocol 15, which will enter into force in the coming months after ratification by all 47 Member States of the Council of Europe, reduces that period from six months to four months (45 of the 47 Member States have ratified it so far).

This period runs from the date of the final decision of the highest national competent authority, in the course of the exhaustion of domestic remedies. The six-month period starts on the day after the announcement of the decision (see *Papachelas v. Greece* 31423/96 § 30, ECHR 1999-II, *Sabri Güneş v. Turkey* 29 June 2012).

The six-month time-limit for the lodging of applications was exceptionally suspended for a three-month period running from Monday 16 March 2020 to Monday 15 June 2020, due to the global health crisis.

For example:

- ▷ When no notice is provided under national law, the date to be taken into account should be the day on which the parties have effective notice of the content of the relevant decision;
- ▷ When it is clear from the outset that the applicant has no effective remedy, the six-month period starts on the date of the reported acts or measures complained about or on the date on which the applicant becomes aware of the acts or measures or suffers their effects or injury from them;
- ▷ If the alleged violation constitutes a continuing situation against which there is no remedy in domestic law, it is only upon termination of the situation that a six-month period actually begins. As long as the situation continues, the six-month period remains inapplicable.

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

Ideally, lawyers should post an application to the Court to the Court Registry as soon as possible, and in any event before the time limit expires. The six-month period may only be interrupted by the despatch to the Court of a complete application meeting the requirements of Rule 47 of the Rules of Court. See background note on Rule 47 on the Court's website.

The application will only be registered when the Court receives a complete application, including all necessary documents. Should any essential document be missing, the Registry will not open the case. Lawyers are therefore strongly advised to send the application form several weeks before the expiration of the six-month period to allow, if necessary, for additions to the application form or the provision of further documents within the six-month period and to avoid risk of the application being rejected without consideration when it is too late to resubmit it correctly.

### 17. What should be included in the new official application form available on the Court's website?

Application forms are available in PDF format on the "Applicants" section of the Court's website. Rule 47 of the Rules (which was significantly revised with effect from 1 January 2016) lists the information that must be included in the application. Further guidance, including a practice direction on filing a case at the Court, explains the steps for individual applications under Article 34 of the Convention and how to complete the application form. Applications may be completed in any official language of a Member State of the Council of Europe.



It is essential that all the information required in an application is provided precisely and accurately in the application form. Failure to do so may result in an application not being considered by the Court. All facts and arguments must be included in the application form. Supplementary information or argument not exceeding 20 pages may be attached in a different document to the application form if necessary, provided that it merely expands on arguments already raised in the application form.

The applicant's authority to his/her lawyer to act is now part of the application form (page 3 for individual applicants or page 4 for organisations) and will need to be completed, dated and signed (by an original signature) by the applicant. The representative will also need to sign the 'Authority' section in the application form (page 3/4 as well). Scans or photocopied signatures are not accepted.

A separate authority will only be accepted if a proper explanation is given, when the application is filed, for the lack of information and signature in the application form. This should explain why it was objectively impossible for the applicant to sign the authority on page 3/4 of the application form, such as where the applicant is imprisoned in a distant country and can only communicate with their lawyer electronically: see *JR and others v Greece* No 22696/16, judgment 25012018.

An application form submitted for a legal person must be accompanied with supporting documents confirming that the representative of the legal person is, under domestic law, entitled to act on their behalf, e.g. by producing an extract from the commercial register.

Note that an application form which the Court finds incomplete will not be registered. An incomplete application will have to be resubmitted afresh on a new application form, duly completed and with any attachments, still within the time limit under Article 35(1).

#### **18. What documents should be attached to an application?**

The application form should be supported with copies of the decisions of the national courts, documents to confirm compliance with the six-month time limit (such as formal notice of the final decision), and pleadings and submissions in the proceedings at first instance, on appeal and before the highest instance, showing that the Convention was relied upon before all available national courts. The latter should be included as judgments do not always address points of law regarding the Convention which have been raised by lawyers in the proceedings, although it is good practice to expressly request such a determination. (See Guide to good practice in respect of domestic remedies).

Other documents related to the decisions or to the measures which are challenged can be attached to an application (such as transcripts, medical or other reports or witness statements). Copies of all such documents and judgments must be numbered chronologically with exact reference to the document titles.

The application form specifies that copies should be submitted rather than original documents. Translations are not required.

The application form (with the relevant documents from the national proceedings) is the only document taken into account by the Court when assessing compliance with Rule 47.

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

The application and attached documents must be sent, by post, to the Registrar of the Court. It is strongly recommended to use recorded delivery/registered post in order to have written and official evidence of the date of lodging the application, which is the date of posting. The Registry does not acknowledge receipt of correspondence.

An application sent by fax is not deemed to be complete and will not interrupt the six-month period, because the Court must receive the original signed application form with the signature of the applicant appointing the lawyer and the lawyer's acceptance.

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

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

If an application is lodged on behalf of several applicants and involves identical facts for all, each applicant's personal details and authority (pp 1 - 3) should be signed and submitted with the remainder of the form in

common form. An Excel table listing the addresses and civil status of each applicant should be added. Explanations can be added to box 71 'Comments' on p. 13 of the form.

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

## **20. How to communicate with the Registry?**

The procedure provides for the Court to inform the applicant of the registration of their application.

The Court informs the applicant of registration in different ways depending upon the procedure to be applied to the case. There are three main alternatives. First, obviously inadmissible cases: the applicant's lawyer will receive the decision by a single judge (Rule 52 A, § 1) as the first communication from the Court. Secondly, cases not declared inadmissible immediately, which are registered for further examination: the lawyer will be informed of the registration number and told to await developments. Thirdly, cases which are promptly communicated to the respondent Government (Rule 54 § 2b): the lawyer will be notified of the Court's questions to the parties and have an opportunity to respond to observations filed by the respondent Government as described more fully below.

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

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

When the Registry writes to an applicant's lawyer about the registration of the application or that the application has been communicated to the respondent Government under Rule 54 § 2b, that letter will set out the registration number of the application and the practical steps for following it, as well as the lawyer's responsibilities for the rest of the proceedings.

The Registry will similarly write to the lawyer with any request for documents or information or for any explanation that may be needed in relation to the application.

Lawyers must ensure they respond promptly to questions from the Registry. Failure to do so may lead the Registry to conclude that the applicant does not intend to pursue an application, and the application may be struck off the Court's list of cases.

Following a practice direction operational from September 2018, after the communication of a case under Rule 54 § 2b, applicants who have opted to file pleadings electronically are invited by the Registry to send all written communications with the Court by using the Court's Electronic Communications Service (eComms).

If they accept, they will also receive written communications (letters, observations of the Government and other documentation) from the Registry through eComms.

This electronic filing and receiving of all communication with the Court does not apply to interim measures or cases before the Grand Chamber.

## **21. How can interim measures be obtained?**

Pursuant to Rule 39 of its Rules, the Court may issue interim measures which are binding for the parties to the case concerned. Interim measures are only granted in exceptional cases of irreparable harm, mainly arising from threatened expulsion or extradition and normally only at the applicant's request.

Thus for example, the Court may decide that it should indicate to the relevant State that the applicant's removal should not be implemented until the application is determined or until further notice.

Detailed rules on requests for interim measures are set out in a practice direction issued by the President of the Court, last amended in 2011 and annexed to the Rules of Court.

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

The Court pays particular attention to the obligations to be met by lawyers within the framework of interim measures.

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

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

Requests for interim measures must be sent by fax or by post - not by email - as soon as possible after the final domestic decision, or, exceptionally, even before the final decision has been taken if the position is critical, in order to give the Court enough time to respond before it is too late.

The Court has a dedicated fax number for requests for interim measures: +33 (0)3 88 41 39 00, manned from Monday to Friday, from 8.00 to 16.00. Requests sent after 16.00 will not usually be dealt with until the following working day. Lawyers requesting interim measures must respond to any letters and information requests sent by the Registry of the Court as a matter of urgency. Requests for interim measures are usually decided within 24 to 48 hours.

If possible, lawyers should inform the Court of the date and time at which the deportation, removal or extradition decision which they seek to prevent will be implemented.

Once the request for interim measures is introduced, the applicant or their lawyer is asked to follow them up.

In particular, it is essential to immediately inform the Court of any change in the administrative status or any other status of the applicant (e.g. obtaining a residence permit or return to their country of origin).

It is up to the applicant's representative to take the initiative to promptly inform the Court of any possible loss of contact with his/her client.

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

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

Written observations will only be required if an application is not clearly inadmissible or considered repetitive and the lawyer will be informed by the Registry that it is to be communicated to the respondent Government.

Since January 2019 the Court has introduced on a trial basis a new practice involving a dedicated, non-contentious phase for applications that have been communicated to the respondent Government in order to encourage early friendly settlements.

When a case is communicated to the Government, there are now two distinct phases in the procedure. First there is a 12-week non-contentious phase. The Registry will often propose the basis on which a friendly settlement could be adopted immediately, especially where the application concerns issues about which there is already well-established Court case law. The parties will then be invited to inform the Court if they wish to accept the Registry's proposal of a friendly settlement.

In cases where the Registry has not made such a proposal the parties are requested to indicate whether they have their own proposals for a friendly settlement of the case and to submit them on a confidential basis. If a settlement is reached the Committee of Ministers will supervise its implementation.

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, frequently on terms similar to those originally proposed by the Registry. Further details about Unilateral Declarations are set out below.

Secondly, if the parties do not settle the case within the initial 12-week period, which can be extended if a settlement looks likely and no Unilateral Declaration is proposed either, the Contentious Phase begins, which involves the exchange of observations between the parties.

During the Contentious Phase the respondent Government is requested to submit within 12 weeks their observations on admissibility and merits by reference to the Court's questions, prepared by the Registry.

If the case has been communicated promptly after it was lodged, the respondent Government will additionally be asked to prepare its own statement of facts, on which the applicant's lawyer will also be invited to comment. The Court will accept as accurate any fact which is not disputed.

Where cases are communicated to the respondent Government after having been pending before the Court for a longer period the Registry will usually have prepared a summary of the facts, which either party may seek to correct. This is usual where the application was lodged before the amendment of Rule 47 in 2014, which tightened the requirement for applicants to concentrate their complaints in the application form.

The Registry will forward the respondent Government's observations to the applicant's lawyer for reply, usually within a period of six weeks.

Written observations may only be filed within the time limit set by the President of the Chamber or by the Judge-Reporter. Extensions of time may be requested but only before the expiry of the original time limit.

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

A practice direction amended in September 2014 sets out the procedure for such pleadings. Where electronic communication has not been accepted, all documents and observations requested by the Court must be sent by post in triplicate.

The requirements for written pleadings set out in §§ 10-13 of the practice direction (entitled "Form") must be followed. Note that if pleadings exceed 30 pages, a brief summary must be provided.

As far as the content of the observations is concerned the Court follows a set procedure.

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

Failure to inform the Court of important facts, such as the death of the applicant, may be considered an abuse of the right of individual application.

### **23. How should a claim for just satisfaction be submitted ?**

Claims for just satisfaction should be made at the same time as the applicant's lawyer submits their written observations in reply to those of the Government. They should be filed in accordance with Rule 60 of the Rules of Court and the practice direction issued by the President of the Court in March 2007.

Although it is not mandatory to do so, in the light of the eligibility criterion relating to damages it is advisable for applicants to specify the damage caused to them in their application form. An application may be declared inadmissible if the Court considers the applicant has suffered 'no significant disadvantage' (see Article 35(3)(b) of the Convention).

As the application form includes no paragraph relating to financial loss, the point will need to be developed - if the issue deserves attention - in the 20-page paper that can be attached to the application.

Claims for just satisfaction which must be fully documented can only be granted if the internal law of the respondent State allows only partial reparation to be made for violations of the Convention and where the Court deems it necessary.

The Court requires claims for just satisfaction to be itemised and accompanied by any supporting documents. If claims are not itemised and supported, no award will be made.

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

Regarding pecuniary damage the Court may decide on an equitable basis not to award the full loss suffered, or even to make no award.

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

The principle applied in claims for just satisfaction is *restitutio in integrum*: that the applicant should be placed in the situation in which (s)he would have been had the violation not occurred. This principle is set out in the practice direction and developed in the Court's case law.

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

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

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

## **24. Can costs and expenses be reimbursed ?**

Compensation for costs and expenses is different from the other awards of just satisfaction. It is also addressed in the practice direction and extensive case law of the Court. If the Court decides to grant compensation in respect of costs and expenses it will be calculated and granted in euros. It may include the cost of legal assistance, as well as legal costs such as court registration fees.

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

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

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

It is necessary to provide the Court with detailed fee statements and/or invoices, including confirmation that they have been received, such as a statement from the lawyer concerned certifying payment.

The Court will not order reimbursement of fees paid by an applicant in respect of domestic proceedings where those fees were unrelated to the violation of the Convention found by the Court.

The lawyer will therefore have to explain the exact nature of the services performed, especially those devoted exclusively to pleading the violations described in various written submissions before domestic courts and obviously before the Court as well.

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

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

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

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

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

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

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

There is no obligation for applicants to appear in person.

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

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

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

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

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

Applicants' travel expenses will be reimbursed if the court finds against the Respondent Government. All hearings are recorded, and can be streamed live or watched after the event.

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

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

Between 1 November 1998 - when Protocol N°11 entered into force - and October 2011, the panel analysed 2,129 referral requests. Only 110 were accepted and led to the referral of the case to the Grand Chamber. (See “The general practice followed by the panel of the Grand Chamber when deciding on requests for referral in accordance with Article 43 of the Convention”, published by the Court in October 2011.)

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

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

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

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

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

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

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

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

## **28. Can cases brought before the Court be settled?**

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

The Court always encourages parties to reach a friendly settlement.

Settlement negotiations are confidential, and may result in a financial payment to resolve the case completely, provided that the Court considers that respect for human rights does not require it to continue to examine the application. The Court has only very rarely found it necessary to continue to examine the case despite a settlement.

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

## **29. What is a unilateral declaration?**

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

A unilateral declaration is usually submitted after failed friendly settlement negotiations and may be proposed during the non-contentious phase of proceedings (see above) or at the stage of the proceedings addressing just satisfaction.

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

### 30. Useful publications by the Court

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

#### **a) Case-Law Information Note**

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

#### **b) Admissibility guide**

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

#### **c) Case-law research reports**

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

#### **d) Factsheets, guides and reports on case-law**

The Court's Press Service compiles factsheets by theme on the Court's case law and pending cases (a factsheet on legal professional privilege was published in January 2018). There are also numerous guides and research reports on the Court's case law.

#### **e) Joint publications by the Court and EU Agency for Fundamental Rights (FRA)**

- [Handbook on European non-discrimination law](#)

This handbook - published jointly by the Court and the European Union Agency for Fundamental Rights (FRA) in 2010 - is the first comprehensive guide to European non-discrimination law. It covers relevant European case-law, the context and background to types of discrimination and potential defences, and the scope of the law, including who is protected and the protected grounds such as sex, disability, age, race and nationality. The case law update to the handbook covers the period from July 2010 to December 2011. An updated edition was published in 2018.

- [Handbook on European law relating to asylum, borders and immigration](#)

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

- [Handbook on European personal data protection law](#)

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

- [Handbook on European law relating to the rights of the child](#)

This handbook, published in 2015, is a compilation of Council of Europe and European Union law relating to the protection and promotion of children's rights.

- [Handbook on European law on access to justice](#)

This handbook, published in 2016, summarises the main key issues concerning access to justice by outlining the law including case law in this area.

#### **f) The library of the Court**


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

#### **g) The HUDOC database available on the Court's website**

The [HUDOC database](#) provides access to the case law of the Court, the European Commission of Human Rights and the Committee of Ministers.

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

#### **h) The HELP Programme (see question 14)**



### III. Content and execution of judgements of the Court in cases of individual applications – Appeals against such judgments

#### 31. *Can judgments of the Court be appealed?*

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

#### 32. *What is the main content of a judgment of the Court?*

In a judgment, the Court will state whether there has been a violation by the respondent State and, if so, which Articles of the Convention or the Protocols have been violated. Depending on the nature of the violation, the Court can order the State to adopt general or particular measures. Where an applicant has made a claim for just satisfaction, the Court will also state whether the applicant shall receive such an award (typically by way of a monetary compensation) from the respondent State. The Court may also award legal costs and default interest.

#### 33. *What else may a judgment of the Court contain?*

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

#### 34. *What is a pilot judgment?*

The pilot judgment procedure is followed when the Court receives a significant number of applications deriving from the same root cause, or when the facts of an application reveal the existence of a structural or systemic problem or other similar dysfunction in the State concerned which may give rise to similar applications. The Court may then select one or more applications for priority treatment, adjourning the remainder. In dealing with the priority cases, the Court will seek to achieve a solution that extends beyond the particular case so as to cover all similar cases raising the same issue. When delivering its pilot judgment, the Court will mandate the State to comply with its obligations under Article 46 by bringing its legislation 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 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.



**35. 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.

**36. 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 on the part of a State violate the Convention. It cannot invalidate or annul such acts. The respondent State is, however, bound by the findings of the Court, and a major aim of the Committee of Ministers of the Council of Europe (CM) supervision of the execution of the Court's judgments is to ensure that continuing violations of the Convention are brought to an end, and that no such violations occur in the future.

**37. Who enforces the Court's judgments?**

It is the respondent State in question that is responsible for the enforcement of judgments of the Court. That enforcement is supervised by the CM. When implementing the Court's judgments, States after paying the just satisfaction awarded normally within 3 months of the judgement becoming final, have a margin of appreciation, except in respect of specific measures or actions ordered by the Court. In every case, States must ensure that existing violations of the Convention are brought to an end and that future violations are prevented.

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

The State must ensure that the consequences of the violation(s) for the applicant(s) are erased, or otherwise that restitutio in integrum is, to the extent possible, achieved – i.e. take so called individual measures (see notably CM recommendation (2000)2 to the member States and Rule 6 of the CM's Rules for the supervision of execution). Redress may take many forms depending on the violations established, the situation of the applicant and the nature and scope of any just satisfaction awarded by the Court (which may, for example, have provided full compensation for loss of opportunity or 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 possible – see below);
- expulsion orders violating the Convention are annulled, possibly combined with other measures such as the granting of a residence permit;
- criminal investigations are engaged/reopened/resumed in cases involving violations of Articles 2 and 3 of the Convention;
- personal information gathered by the State in violation of the Convention is destroyed;
- non-executed domestic judgments are executed;
- persons kept in inhuman detention are transferred to proper detention facilities.
- reinstate a judge to the Supreme Court.

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 such cases, and to prevent new ones in future for example by changing domestic case law, administrative practice, or relevant legislation (see also questions 39 and 40 and CM recommendations (2004)5 and (2004)6 and Rule 6 of the CM's Rules for the supervision of execution).

**39. 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 interpreting the relevant domestic law in accordance with the Convention. If this is not possible, the State should amend the legislation in light of the Court's judgment. The choice of remedial action will be at the basis of the action plan for the execution which is to be submitted to the CM within six months at the latest after the judgment becomes final and that action plan will provide the basis for the CM's supervision of execution of the judgment (see also question 42 below).

**40. 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 and national constitutional law must also comply with the Convention requirements as interpreted by the Court in judgments rendered against the State. The question whether the State considers the Convention to be on the same level as, or below, its constitution is mainly relevant for allocating the responsibility for this re-interpretation to the national constitutional court or the national legislature. The State should thus amend the relevant provision of its constitution, unless it can be interpreted in a way that is consistent with the Convention (numerous changes of constitutions have also taken place in order to give full effect to judgments of the Court - for example in Armenia, Greece, Hungary, Slovakia, and Turkey).

**41. Who monitors a State's compliance with judgments of the Court?**

The CM is responsible for supervising the enforcement of the Court's judgments. The Committee is assisted by the Department for the execution of judgments of the Court. For some general information the 13th Annual Report may provide useful background and statistics <https://rm.coe.int/annual-report-2019-1/16809e1c59>. The applicant does not have a right to attend the CM meetings but under Rule 9 of the CM Rules for the Supervision of execution <https://rm.coe.int/16806eebf0> may write to the CM if the just satisfaction has not been paid or if individual measures have not been taken.

This cannot be done in relation to general measures.

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

Supervision is in principle public and 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, as identified either directly by the Court in its judgment or subsequently in the procedure before the CM, major structural or complex issues. The CM specialist human rights committee (CMDH) concentrates attention on cases under enhanced supervision, but the execution of all cases is monitored by the Department for the execution of judgments of the Court.

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

The execution of cases under enhanced supervision is subjected to more detailed examination at CM meetings, normally the quarterly CMDH meetings. The CM 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 Department for the Execution of Judgments provides assistance and advice to the CM and follows the execution of the Court's judgments in all cases in order to help solve execution problems. The status of execution in all pending cases is presented on the Department's website. The Department confers regularly with respondent States, notably as regards the elaboration of action plans, and also offers various forms of support and assistance whenever requested, including multilateral meetings to allow all member States concerned by a given problem to share experience with the participation of expert bodies.

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

A list of all pending cases, together with a summary of the status of their execution, can be found on the website of the Department for the execution of judgments. CM decisions and communications submitted to it are in principle public (see Rule 8 of the CM's Rules for its supervision of execution) and are published both on the Department's website (mainly on a case by case basis) and on that of the CM (mainly on a meeting basis). A new search engine, similar to HUDOC for judgements of the Court, allows for searching for cases subject to execution. The Department also publishes other materials of relevance for execution, including information on CM recommendations to member States and the results of multi-lateral roundtables or other similar events. Link to the CM website: [www.coe.int/cm](http://www.coe.int/cm); Link to the Department's website: <https://www.coe.int/en/web/execution>.

**44. 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 not achieved within the period specified in the judgment, which is usually three months from the date the judgment becomes final, default interest is due as specified in the Court's judgment. Where payment is nevertheless urgent, the lawyer concerned should indicate this to the relevant state authorities, and if necessary also refer the matter to the CM using the Rule 9(1) procedure.

Similarly, if individual measures have not been taken, or other problems arise, the lawyer should point this out to the CM as soon as possible, whether by commenting on Action Plans or Action Reports, or by separate submissions under Rule 9(1). If the right or freedom violated is one which can be waived by the applicant, such complaints are important to ensure adequate CM responses (not all applicants wish e.g. to have unfair criminal proceedings reopened and the CM will thus not look into possible obstacles to reopening of its own motion). If the right at issue is not of such a nature, e.g. in many cases of violations of Articles 2 and 3, the CM will, on the other hand ex officio 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).

Where the violation is a continuing one, or where the obstacles encountered may be seen as new facts raising new questions under the rights and freedoms protected by Articles 2-18 of the Convention, it may also be possible to lodge a new application with the Court (see: *Bochan v. Ukraine* (no 2) [GC] no 22151/08). Numerous issues of *restitutio in integrum* may, however, be considered to fall outside of the scope of the rights protected by these Articles (for example the right to obtain the restitution of a residence permit unjustly annulled or the right to obtain the reopening of unfair criminal proceedings), and the chances of success of new applications to the Court are thus very limited. If such applications are lodged with the Court, the CM is likely to await their outcome before pursuing supervision further.

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 – see e.g. the summary contained in the CM's Annual Report 2014 – in order to induce compliance. If the ordinary tools to support the execution process are not successful in resolving matters, the CM can take a number of actions, usually in the form of an interim resolution, possibly including a declaration that the State is not respecting its obligations under the Convention and/or as a member State of the Council of Europe. Since 2010, when Protocol No. 14 entered into force, the CM has been empowered to seek a declaration from the Court (under Article 46(4) of the Convention) that a State is not respecting its obligations. In the *Mammadov v. Azerbaijan* <http://hudoc.echr.coe.int/eng/?i=001-193543> the CM finally deemed it necessary to initiate the infringement procedure under Article 46(4) of the Convention. The Court's judgment was given in May 2019 strongly confirming the clear and consistent position of the CM. Despite forceful calls on the Azerbaijani authorities the applicant continued to be affected by the consequences of the violation of his Convention rights. This failure had brought the execution process to a situation of unprecedented gravity raising the question of measures to be taken under Article 46(5) of the Convention.

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 membership of the organisation – see notably interim resolution ResDH (2006)26).

A very little explored area is the possibility of executing the unsatisfied monetary part of a judgement, 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 the task of the Committee of Ministers is only that of supervising the execution of judgements.

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**45. *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. A number of avenues exist to overcome such problems, notably relying on the competence of the Department for the execution of judgments and the competence of the CM itself. In a number of situations, the problems are so closely linked with the exact wording of the judgment that the best avenue may be to seek an interpretation from the Court. The parties may seek such an interpretation within the time-limits provided by the Rules of Court (Rule 79 – one year from the date of delivery, i.e. usually some five to nine months from the date the judgment becomes final). 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, seek the interpretation of the final judgment where it considers that the supervision of the execution is hindered by a problem of interpretation of the judgment. No time limit is foreseen here.

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

Rule 81 of the Rules of Court allows the Court to rectify clerical errors, errors in calculation or obvious mistakes in a decision or judgment of its own motion or at the request of a party, where a request is made within one month of the decision or judgment.

**47. *Can a party ask for a judgment to be reviewed?***

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

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

Under Article 46, a State is bound to abide by a judgment to which it is a party and so their supreme and constitutional courts are bound by the Court's interpretation of the Convention and findings as to a violation of the Convention. There are many States in which the human rights protection provided by the Convention goes beyond the protection provided by national constitutions. If the court or the supreme or constitutional courts of a State are of the opinion that the origin of a violation is a result of the State's constitution, the national courts should first seek to interpret the national constitution in accordance with the Convention. If and to the extent this is not possible, the State should amend its constitution to bring it in line with the Convention (as interpreted by the Court). This is the case even where a State's national constitution has a higher rank in the State's hierarchy of laws than the Convention (see also question 40).

**49. *Useful Guide published by the Court***

The Court recently published a "Guide on Article 46 of the European Convention on Human Rights - Binding force and execution of judgments" which analyses and sums up the case-law on Article 46. This Guide is regularly updated.



## IV. Practical Tips on procedure when lodging an application

The Court has amended Rule 47 of the Rules of Court which relates to lodging an Application as a natural or legal person, group of individuals or an NGO. The Court's practice in processing new applications is very strict. The practical tips contained in this section concentrate on the new practice. It is also intended to alert practitioners to sources of information about the new practice, which is intended to accelerate the Court's examination of valid applications.

The formal requirements for lodging an application are applied strictly. Any departure from the rules and practice may only be accepted if it is properly explained (for example in box 71 Comments in the application form) and is justified. Applications which are determined not to comply with these strict requirements are treated as not having been submitted and are wholly ineffective. You have been warned.

### **50. Does the Registry answer enquiries about how to lodge an application?**

There is extensive information and guidance on the 'Applicants' part of the Court's website and in practice directions explaining how to lodge an application and how to complete the obligatory application form correctly. If an attempted application does not meet the requirements of Rule 47 of the Rules of Court, the Registry will reply formally identifying the deficiency and emphasising that a valid application has not been made. Subject to this, however, unless there are valid reasons for an exception, the Registry does not correspond about individual questions concerning an intended application.

### **51. Can an application be lodged in stages or through supplementing a previous submission?**

No: unless a valid explanation is given (such as difficulty in corresponding with a client applicant who is in prison) an application form can only be lodged once and completely. If it is incomplete or fails to comply with the Registry's strict interpretation of Rule 47, it will be rejected and must be resubmitted correctly and completely. No account will be taken of the previously incorrectly submitted form. Only a correctly completed application form can interrupt the six-month time limit in Article 35 and result in a registered application which will be decided by the Court.

### **52. Can an application be lodged without using the official application form available on the website?**

No: an application can only be lodged using an up-to-date application form, available from the Court's website: which must furthermore:

- Be signed both by the applicant and the lawyer (a separate power of attorney is not acceptable);
- The original form containing both original signatures must be filed: copy signatures are rejected;
- Be self-standing, without any 'continuation sheet' and succinctly
  - set out the whole facts,
  - the complaints and
  - a description of the domestic remedies tried and exhausted.

**53. *Must the application form alone set out the whole complaint as a stand-alone document?***

Yes: The Court requires that the whole complaint under the Convention, all the relevant facts and all the steps in the domestic proceedings are summarised in the application form so that that form provides all that is required to make an initial assessment of the application. This allows the Court to refer competent applications immediately to the respondent Government without requiring the Registry to prepare a statement of facts (immediate communication).

**54. *Documents which must accompany the application form***

Copies of all relevant domestic court decisions must be included and paginated, including evidence establishing that domestic remedies have been exhausted, such as by filing copy pleadings from the final domestic appeal.

**55. *Additional material which may be filed with the application form***

In addition, further arguments, strictly limited to a maximum of twenty pages, may be filed developing the facts, complaints and how domestic remedies have been exhausted. This additional material should not add points which have been omitted from the application form. If more supporting material is submitted, its necessity must be clearly and convincingly shown and explained.

**56. *Are the requirements different where an application is made for a group of individuals?***

The requirements are essentially the same for group applications, where a number of applicants complain about the same situation and were parties to the same domestic proceedings, so that it is necessary to obtain the individual personal details and signatures, in the original, of every member of the group and for the first two pages of the usual application form to be counter-signed by the lawyer representative for each member of the group: Start gathering signatures early! The Court requires groups of more than five applicants to provide their personal information in a table which is made available on request to the Registry and referred to on the Court's website; larger groups may be directed to file their application electronically in addition to their original hard copy application forms. Note that where applicants complain about the operation of a common domestic legal position but the facts of their cases and the domestic proceedings which they have pursued differ from one another, their applications do not involve a 'group of individuals': each individual will need to lodge an independent application.

**57. *Are the requirements different where an application is made for a company, other legal person or an NGO?***

The director or other authorised person under the internal rules of the company or other legal person should complete and sign the application form. Each must in addition provide evidence of their entitlement and authority to bind the company or other legal person by their decision and signature. For example, an extract from the national companies' register may establish the authority of a given director. The Court's guidance on precisely what evidence of such authority is sufficient is sparse. Again, the original signature of each director will be required on the application, together with that of the lawyer representative.

**58. *TIP***

These are merely examples of the formality with which the Court now treats applications when first lodged and the intricate nature of the requirements for lodging an application successfully. These requirements on the Court's website must be painstakingly followed in every detail if an application is to be treated as successfully lodged. Lawyers should try to lodge applications well within the six-month time limit, so that, if a first attempt is non-compliant with Rule 47, there may still be time to re-lodge a perfected application.

**59. *Can an application form which was incomplete be resubmitted if it is revised and perfected?***

Where an application has been attempted which did not comply with Rule 47, the Registry will write to the lawyer concerned pointing out the deficiencies. The Registry's letter will then continue: "As a result your complaints cannot be examined by the Court. Please note that no documents or submissions you have provided have been kept. If you wish the Court to examine your complaints, you must submit a complete and valid application form with all supporting documents as required by Rule 47." It follows that a completely fresh application must be filed with a correctly completed, self-standing, application form and with all the necessary accompanying documents,

such as domestic decisions and the pleadings in the domestic appeals which show that the arguments now made to the Court were relied on before the domestic courts. The corrected form will have to be signed by the applicant(s) again and counter-signed by the lawyer and filed before the expiry of the six months time limit. Only a completed form can stop that time limit running.

**60. How should an application be lodged?**

An application must be lodged by post or by physical delivery to the Court. If the post is used the date of posting (as evidenced by the post stamp) constitutes the date of introduction of the application, whereas the date of receipt by the Court in working hours is the relevant date of introduction of applications delivered to the Court. Applications cannot be lodged by fax (with the exception of Rule 39 requests for interim measures, see Question 21 above).

Applicants and their lawyers should send applications and other correspondence to the Court by registered post with conformation of receipt in order to have a record.

**61. Can an application be lodged electronically?**

Applications cannot be lodged electronically. The Registry permits electronic filing in later stages of certain proceedings.

**62. Can the entire proceedings be conducted in a language other than French or English?**

The Court has two official languages, English and French (Rule 34 § 1 of the Rules of Court). The application and its supporting documents can be submitted in any language (other than English or French) used as an official language of one of the Contracting Parties (Rule 34 § 2 of the Rules of Court). There is no need to translate documents or judgments from the domestic proceedings. After the date on which an application is communicated to the respondent Government, pleadings must be made in English or French.

**63. Can the applicant's identity be kept confidential, including from the respondent Government?**

In principle, the procedure of the Court is public (with the exception of settlement negotiations, Article 39§ 2 of the Convention). Rule 47 § 4 of the Rules of Court provides, however, for the possibility of keeping the applicant's identity and or certain parts of the case file confidential from the public, but not from the respondent Government. Reasons must be given when submitting such a request to the President. Even where the President grants such a request, the applicant's identity will be revealed to the respondent Government if the case is communicated to them for observations, because at that stage the whole application is sent to the respondent Government concerned.

**64. When and why will the Registry contact the applicant's lawyer?**

There are generally five reasons why the Registry may contact the applicant's lawyer at the initial stages of the application process when new applications are assessed for compliance with Rule 47. At this stage plainly inadmissible cases are promptly rejected by a single judge and the remaining applications are accorded an appropriate degree of priority and examined accordingly. Competent applications may be immediately communicated to the respondent Government. The Registry will write to the applicant's lawyer when:

- a. An application does not comply with Rule 47 and so no application has been made. The Registry will indicate what information is missing. The application process must restart from scratch;
- b. The application is declared inadmissible. The letter will state that there is no recourse against that decision and that the file will be destroyed within 12 months. This may be the first acknowledgement which the Registry has made of the application;
- c. The application is neither immediately declared inadmissible, nor immediately communicated to the respondent Government. Such cases face a long wait;
- d. The Registry needs information or documents for the Court's examination of the case,
- e. The application has been communicated to the respondent Government for observations on admissibility and merits. Where this is an immediate communication of a recently filed application, the Registry will simply send the application to the respondent Government. Where communication follows a longer

scrutiny of the application by the Court, the letter will enclose a statement of facts prepared by the Registry and questions which the respondent Government have been asked to respond to. Those pleadings will be preceded by the non-contentious phase of proceedings described above

In any case, applicants' lawyers should always send applications and any other correspondence to the Court by registered post with proof of delivery, because the Registry's assessments implicit in the steps summarised above may take time.

**65. Does the Registry tell the applicant's lawyer the registered number of an application when the application is registered?**

Provided that the form is considered fully completed the application will be registered and given a number. The applicant or their lawyer will be informed by post. The lawyer should cite that number in any correspondence with the Court. In cases which are identified as plainly inadmissible, the lawyer may only receive notification of the registered number in a letter recording the rejection of the application as inadmissible. In other cases the Registry will write to notify the lawyer of the registration number.

**66. Must the lawyer maintain contact with their client during the proceedings and can the Court exercise disciplinary powers to exclude lawyers from representing their clients?**

The Court requires lawyers to maintain contact with their clients and to inform the Court of relevant factual developments, including the applicant's death and to be available to give instructions for example in response to the respondent Government's submissions, see *VM and others v Belgium* No 60125/11, judgment of 17112016 GC. Where contact is not maintained the Court will readily conclude that the applicant has lost interest in the application, which will then be struck out.

Exceptionally a lawyer who misleads the Court may be excluded from pleading before the Court in a particular case or at all (Rules 36 and 44 Rule of Procedure). In one case where the Court found that a lawyer's conduct of various applications was 'fraudulent and abusive' the lawyer was permanently barred from representing applicants in those cases and in future cases. Various applications were subsequently struck out because the Court was unable to contact the applicants concerned: *Yuldashev and Others v Russia and Ukraine* No 32139/14, decision of 20 05 2020.

**67. Can an application be given priority treatment?**

Yes: The Court has published its criteria for granting priority under Rule 41 of the Rules of Court and applicants' lawyers should consider invoking these criteria in the application form to justify requests for priority examination of applications. The Court applies these priority criteria to all new applications to determine which need to be examined more promptly than otherwise.

**68. Can a lawyer request the acceleration of the examination of a pending application?**

Yes: a request for priority may be submitted at any stage of the proceedings, especially to reflect new factual developments.

**69. Can the applicant or his representative contact the Committee of Ministers to complain about execution if a violation is found or if a friendly settlement is not respected?**

Yes: the CM's Rules for the supervision of execution of judgments of the Court and the terms of friendly settlements allow applicants and their lawyers to submit written communications to the CM (to be addressed to the CM and the Department for the execution of the Court's judgments) as regards the question of individual redress to the applicant. NGOs and NHRIs (National Human Rights Institutions) also have the right to submit comments on the issue of general measures. Communications are in principle public and rapidly made accessible over the internet. These matters are regulated in Rules 8 and 9.

Communications should be submitted as rapidly as possible after relevant events to allow the communications to be taken into account by the CM and the Department. The calendar of the CM's special HR meetings can be found on the CM's web site and on that of the Department. Note that CM decisions in individual cases may provide for examination of cases also at other meetings. Communications, should to the extent possible, be formulated in English and French as this will speed up handling. There is no provision for representatives to be heard orally before the CM.