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The European Court of Human Rights

Questions & Answers for Lawyers

2023

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) or through its tools such as HUDOC and the knowledge-sharing platform ("ECHR-KS") where information can be found about, the case law of the Strasbourg bodies, and general literature on the law of the European Convention on Human Rights ("the Convention"; which term is used in this Guide to include the Protocols to the Convention containing additional rights).

Foreword by Síofra O'Leary

President of the European Court of Human Rights

This 5th edition of the practical guide for lawyers representing applicants before the European Court of Human Rights (the Court) is a most welcome addition to Convention law libraries as the Court passes the milestone of over 1 million applications processed since its establishment and as the Council of Europe prepares for its 75th anniversary next year.

The guide also comes in the wake of the historic 4th Summit of Heads of State and Government where, in the Reykjavik Declaration, the latter reaffirmed their "deep and abiding commitment to the European Convention on Human Rights and the European Court of Human Rights as the ultimate guarantors of human rights across our continent, alongside our domestic democratic and judicial systems".

As the Court has stressed in its recent case-law, in the light of the principles of subsidiarity and shared responsibility, the Contracting Parties' obligation to ensure judicial independence is crucially important for the Convention system itself. The latter cannot function properly without independent judges. However, if it is national judges who must act as the ordinary judges for the assessment of respect for Convention guarantees, for them to be able to correctly engage with alleged violations, lawyers must be able to put forward, clearly and cogently, their Convention based pleas.

The Court has often referred to the fact that the specific status of lawyers gives them a central position in the administration of justice as intermediaries between the public and the courts. The guide thus continues to provide up to date assistance to lawyers as regards the procedure before the Court and the more technical aspect of its proceedings. By raising Convention-based arguments in the correct manner at domestic level and later assisting in the process of execution of the Court's judgments, practicing lawyers contribute to subsidiarity in practice (see the first and third parts of the guide). By properly pleading their cases before the Court itself, they ensure that resources are well spent and the ability of the Court, despite the size of its docket, to deliver high quality judgments is preserved (the third part of the guide).

Throughout 2023, the Court has engaged in ongoing reform of its procedures with a view to promoting efficiency and providing increased clarity to all relevant stakeholders. In March it published a new Practice Direction on Third-party intervention under Article 36 § 2 of the Convention or under Article 3, second sentence, of Protocol No. 16. In October, to mark five years since the entry into force of Protocol No. 16, the Court published updated guidelines on the implementation of the advisory opinion procedure. This was followed by two consultation procedures, pursuant to Rule 116 of the Rules of Court, on proposed amendments to Rules 28 (recusal) and 39 (interim measures).

Successive editions of the guide have responded to such procedural and relevant case-law developments by raising awareness of any novelties and providing an ever more practical orientation to Convention practitioners who, as indicated previously, play a pivotal role at national and European level in the effective functioning of the Convention system for the protection of human rights.

On behalf of the Court, I would like to thank all those at the Council of Bars and Law Societies of Europe who have contributed to this latest edition of the guide.

Summary

This Guide is divided into **four parts** which reflect the practical steps which it describes. **First** it deals very briefly with the place of the Convention in national legal systems and the subsidiary role of the Court. The effective protection of human rights depends upon national systems of justice, so this part of the Guide explains how arguments based on the Convention must be made in domestic proceedings before an application can be made to the Court. The **second part** deals with the requirements for lodging an application with the Court, the procedure which the Court applies to examining cases and the emergency procedure for interim measures in very serious and urgent cases. The **third part** deals with the procedure once the Court gives judgment, including the procedure for enforcing judgements supervised by the Committee of Ministers of the Council of Europe. Finally, the **fourth part** addresses some of the practical problems which lawyers for applicants face because of the Court's extremely heavy backlog of pending cases.

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

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01.

The place of the convention in national legal systems and the essential role of national proceedings prior to the submission of a case to the european court of human rights

1.1

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

The Convention is part of the legal system of every Member State of the Council of Europe. Each Member State has undertaken in Article 1 of the Convention that it "shall secure to everyone within their jurisdiction" the rights which the Convention defines.

As a result, since 2021 the Convention has included a recital that it is the Member States who have the primary responsibility for protecting Convention rights. It follows, as Article 35 of the Convention requires, that the Court can only examine applications where the complaints submitted to it have first been raised before domestic courts.

Consequently, violations of the Convention must be pleaded throughout the proceedings before the national courts, so that those courts have the opportunity to address the Convention complaints and potentially resolve them. The Convention complaints should therefore be made at first instance and on appeal in the manner required by the procedural rules of the national courts. The principle of subsidiarity requires that national courts must have the opportunity to prevent, detect and redress the alleged violation(s) themselves. Those pleadings before the national courts should make specific reference to relevant Articles of the Convention and to the case law of the Court interpreting them and should be repeated at each appeal instance, if appropriate in combination with relevant national constitutional arguments. If these submissions fail to provide redress, an application may be made to the Court.

1.2

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

Art. 35(1) of the Convention requires that domestic remedies should be exhausted before an application can be examined by the Court. Generally therefore cases should always be appealed to the last available instance, often to the 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. Exceptionally an appeal to the highest court may not be required, for example if that court has already ruled on the point of law in issue in a way that the applicant considers fails to respect the Convention and where a change in that ruling is very unlikely. The Convention only requires the exhaustion of domestic remedies which are relevant to the alleged violations, and which are adequate and effective to redress them. As a result, if a given domestic appeal is not pursued, the applicant's lawyer must justify this choice in the application to the Court.

1.3

Researching the Court's case law may well resolve whether a particular appeal is effective

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

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

1.4

Researching the Court's case law may well resolve whether a particular appeal is effective

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. Applicants should rely on the Court's case law to show how specific provisions of the Convention have been interpreted and applied. Similarly, precision is needed as to the alleged consequences the national court is asked to draw from the violations. For example, if a violation of the right to trial within a reasonable time (Article 6(1) of the Convention) is pleaded in the context of a national criminal trial, the remedy sought should be clearly stated: termination of the proceedings, or the recognition of extenuating circumstances (which are the alternative consequences for a violation of the right to a fair trial under the Court's case law).

1.5

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

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

or other States where the same issue under the Convention has been decided. The Court's "Knowledge Sharing" platform ECHR Knowledge Sharing - Gateway homepage - ECHR-KS - Knowledge Sharing (coe.int) provides access to the same research material as the Court itself uses.

1.6

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.

1.7

What advice should be given to a client?

It is important for lawyers to advise their clients as fully and accurately as possible and so to pinpoint the relevant legal issues. The lawyer's objective should be to ensure that the same arguments based on the Convention are explained to the client and made to the national courts as those which will be relied on before the Court if an application is ultimately necessary. This approach may help the client to appreciate that the Court is almost never "the first stop" and that a case which fails on its facts before the national courts is unlikely to succeed before the Court, which is not a court of appeal.

1.8

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

Clients often are unfamiliar with the Court and may assume that it has almost "magic" powers. Naturally cases before the Court vary widely, but clients should be warned that the Court is overloaded and has taken various steps to streamline its procedures, including the rapid rejection of weak cases by a single judge, and the strict prioritisation of the most serious cases. As a result many less serious cases are delayed for many years and even the most serious cases are seldom resolved in less than three years. Furthermore, the effect of Court judgments depends upon a further execution phase, supervised by the Committee of Ministers and that the Court seldom awards substantial damages.

1.9

How should a case be prepared during national proceedings?

Lawyers should not forget to build up a well-documented case file as soon as the national proceedings begin, updating it at every level of proceedings 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 Convention 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.

1.10

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

When all appeals before the national courts have been exhausted, it is advisable for the lawyer to prepare comprehensive advice on the chances of success before the Court, taking account of the four month time limit for lodging an application and review the latest relevant judgments in the Court's ECHR-KS database. The lawyer should advise on the prospects of a finding of admissibility and any foreseeable difficulties (inadmissibility statistics, the length of proceedings and the likely 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' and does not decide questions of national law.

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 as well as the Guide on Article 34/35 (Admissibility)).

Only lodging a complete application with the relevant documents interrupts the four-month period. Sending documents by fax or email is not sufficient and will not constitute a filing within the time period.

1.11

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 expertise on the Convention.

1.12

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 ECHR-KS 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 Court. If the client changes lawyer a new letter of authority must be provided to the Court .

1.13

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

An application cannot be made directly to the Court regarding violations arising from 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)).

1.14

How important is continuing education on Human Rights?

Continuing education on Human Rights is fundamental for lawyers. Lawyers are strongly advised to attend training and seminars on substantive Human Rights issues, such as the ones organised by the national Bar associations and to follow developments in the Court case law. Reading specialised texts and journals is also highly recommended. There is a European Programme 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.

1.15

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 and the ECHR-KS, information notes on case law, a practical guide on admissibility, and many other resources referred to in the Appendix. Many national websites also provide information on Human Rights.

02.

Preparing an application to the court

2.1

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

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

- be signed by both the applicant and the lawyer (a separate power of attorney is not accepted) ;
- be lodged in the original with original signatures: copies of signatures will be rejected;
- be presented in one piece, without any "additional sheets", setting out succinctly :
    1. a statement of all the facts,
    2. the various grounds for complaint, and
    3. a description of the domestic remedies that have been sought and exhausted.

2.2

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

Rule 47 of the Rules of Court lists the information to be included in the form, which is available on the Court's website in PDF format in the "Applicants" section. Other information, including a practical instruction on bringing proceedings, sets out the formalities for individual applications under Article 34 of the Convention and how to complete the form.

It is essential to complete all the information requested in the application form accurately and precisely. Failure to do so may result in the application not being considered by the Court. All facts and arguments must be included in the form. It is always possible to attach to the form a separate document of up to 20 pages containing additional explanations or arguments if this proves necessary, as long as these relate only to arguments already raised in the application form.

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

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

only communicate with his lawyer electronically: see J.R. and Others v. Greece (Application no. 22696/16) judgment of 25 January 2018.

The application form submitted on behalf of a legal entity must be accompanied by documentary evidence confirming that the representative of the legal entity is entitled under national law to act on its behalf, for example by producing the entry in the commercial register.

Please be aware that an incomplete application will not be examined or registered by the Court, and that a new, duly completed application will need to be submitted, together with the supporting documents, within the time limit laid down in Article 35 § 1 of the Convention.

2.3

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

Yes, the Court requires that the entire application under the Convention, all the facts in question and all the stages of the domestic proceedings be summarised in the application form so that the form states all the elements necessary for an initial assessment of the application. The Court can then immediately communicate it to the respondent government without asking the Registry to prepare a statement of facts (immediate communication).

2.4

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

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

2.5

What documents should be attached to the application?

The application should be accompanied by copies of the decisions by the domestic courts, documents showing that the four-month time limit has been observed (a document notifying the last decision, for example), and also pleadings and written submissions at first instance, appeal and before the highest court, showing that the Convention has been invoked before all the available national courts. Sometimes, in fact, judgments do not mention the Convention grounds raised by the lawyer, although it is good practice to expressly require such a determination (see the Guide to good practice in respect of domestic remedies).

Other documents relating to the decisions or measures complained of (minutes, medical or other reports, witness statements) may be attached. Copies of all these documents and decisions must be numbered and reproduced chronologically, with the exact title of the documents.
The application form specifies that copies should be submitted rather than originals. Translations are not required.

2.6

Additional information to the application form

Further submissions, strictly limited to a maximum of twenty pages, may be added detailing the facts, the grievances and the exhaustion of domestic remedies. This additional information should not address points other than those set out in the application form. The need for any additional information must be clearly and convincingly demonstrated.

2.7

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

The requirements are essentially the same for group applications, where a number of applicants are complaining about the same situation and have been parties to the same domestic proceedings. It is therefore necessary to obtain the personal details and original signatures of all the members of the group, and the first two pages of the claim form must be countersigned by the lawyer for each member of the group. It is therefore advisable to collect signatures well in advance. The Court requires groups of more than five applicants to specify the personal details of each member in a table which is available on request from the Registry and referred to on the Court's website. Groups of more than five persons may be asked to lodge their application electronically in addition to their original paper application form. Where applicants complain about the way in which the same common legal situation has been dealt with at national level, but the facts of their respective cases and the domestic procedures followed differ from one another, their applications do not constitute a "group of individuals", and each person will therefore have to lodge an individual application.

2.8

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

The director or any other person authorised under the articles of association of the company or other legal entity must complete and sign the application form and also provide evidence of their right and power to bind the company or other legal entity by their decision and signature.

For example, an extract from the national register of companies may establish the authority of a particular director. The Court's guidance on how this authority is sufficiently established is thin. Again, the original signature of each director will be required on the application form, as well as that of the lawyer.

2.9

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

The "Applicants" section of the Court's website provides a wealth of information and practical instructions on how to lodge an application and how to complete the mandatory application form correctly. If an application does not meet the requirements of Rule 47 of the Rules of Court, the Registry will respond formally, identifying the deficiencies and stating the application is not valid. However, unless there are valid reasons constituting an exception, the Registry will not answer individual questions concerning an intended application.

2.10

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

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

03.

Submitting an application

3.1

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

The application and documents must be sent to the Registrar of the Court by post only. It is strongly recommended that the application be sent in such a way as to provide official written proof of the date on which it was lodged, as the Registry does not acknowledge receipt of the application.

An application simply sent by fax is not considered complete and cannot interrupt the time limit, as the Court must receive the signed original of the application form containing the applicant's signature appointing the lawyer, as well as the lawyer's consent.

When an applicant or a lawyer submits applications concerning different facts for several applicants, a duly completed claim form must be used for each applicant, attaching the documents relating to each applicant.

If there are more than five applicants, the lawyer must provide, in addition to the application forms, a summary table of the names and contact details of each applicant in Microsoft Excel format. The table can be downloaded from the Court's website (Addendum for multiple applicants).

If the application lodged in the interests of several applicants relates to facts that are identical for all of them, the contact details and power of attorney of each applicant (pages 1 to 3) must be signed and submitted with the rest of the form in the usual format. An Excel table summarising the addresses and civil status of each applicant should be added. Explanations may be added to box 71 "Comments" on page 13 of the form.

3.2

How to submit an application

All applications must be submitted by post or by physical delivery to the Court. If sent by post, the date of dispatch (as evidenced by the postmark) constitutes the date on which the application is lodged, whereas the date of receipt by the Court during working hours constitutes the date on which the application delivered to the Court is lodged. Applications may not be sent by fax (with the exception of requests for interim measures under Rule 39 of the Rules of Court). Applicants and their lawyers must send applications and other correspondence to the Court by registered post with recorded delivery in order to keep a record.

3.3

Can an application be submitted electronically? How can one request interim measures?

Applications cannot be lodged electronically, but in cases of urgency, where the applicant faces the risk of irreversible, very serious harm, an applicant (or a government) may seek interim measures from the Court under Rule 39 of the Rules and such a request can be made electronically on the Rule 39 portal. Rule 39 requests should only be made in the most serious cases, usually where the applicant is at imminent risk of treatment contrary to Articles 2 or 3, usually arising from the immediate risk of expulsion or extradition to a State where the applicant's right to life or physical integrity is at issue or where the applicant would be exposed to the real risk of other treatment contrary to Article 3. In very exceptional circumstances issues under Article 8 may generate a need for interim measures, such as where doctors are considering withdrawing life support from a minor. A request for interim measures will be determined by a Duty Judge, if necessary within hours. Interim measures may be imposed for a limited period to allow the Court to obtain urgent factual clarification from the parties, but they may be extended if the circumstances require it. The Court's indications under R 39 are binding on respondent States by virtue of Article 34 of the Convention, which requires States not to hinder in any way the effective exercise of the right of access to the Court. (see : https://www.youtube.com/watch?v=9e-_12HtuDc; Bing Videos).

3.4

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

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

3.5

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

Where an application lodged does not comply with the requirements of Rule 47, the Registry will explain the deficiencies in writing to the lawyer concerned. The letter from the Registry [which may only be sent after several weeks] will indicate, inter alia, that the grievances will not be examined by the Court until the application form satisfies the requirements of Rule 47. A completely new application must

then be lodged using an application form duly completed in one piece and including all the necessary accompanying documents such as national judgments and pleadings before the national courts stating that the arguments submitted to the Court have already been raised before the national courts. The corrected form will need to be re-signed by the applicant, countersigned by the lawyer and lodged before the deadline expires. Only a completed form can stop the time-limit running out.

3.6

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

In cases declared inadmissible by a single judge, the lawyer will be notified of the registration number only with the Court's decision. In other cases [after a delay which may be significant], the Registry will write to the lawyer with the registration number. The lawyer should quote the registration number in any correspondence with the Court.

04.

Examination of the application by the court

4.1

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

In principle, the Court's proceedings are public (with the exception of the negotiation of agreements, Article 39 § 2 of the Convention). However, Rule 47 § 4 of the Rules of Court offers the possibility of maintaining the anonymity of the applicant or the confidentiality of certain parts of the case vis-à-vis the public but not vis-à-vis the respondent government. Reasons must be given to the President in the application. Even where the President grants anonymity, the applicant's identity will be revealed to the respondent government if the case is communicated to them for their observations, since at that stage the entire application will be transmitted to the respondent government concerned.

4.2

Communicating with the Registry

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

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

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

As soon as the lawyer receives a letter from the Registry informing that the application has been registered, or when the application is communicated to the respondent government pursuant to Article 54 § 2 b), the lawyer will be informed of the practical arrangements for monitoring the proceedings and of their obligations for the remainder of the proceedings.

The Registry will communicate in the same way with the lawyer regarding any requests for documents, information or explanations relating to the application.
The lawyer must ensure that they respond promptly to requests made by the Registry. Delay or failure to reply may lead the Registry to consider that the lawyer no longer wishes the case to continue and to strike the application from the Court's list.

In accordance with an operational practice direction by the Court's President, following the communication of a case under Rule 54 § 2 (b), applicants who have chosen to file pleadings electronically are invited by the Registry to send all their written communications to the Court using the Court's Electronic Communication Service (eComms).

If they agree, they will also receive written communications (letters, observations of the government and other documents) from the Registry through eComms.

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

4.3

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

Since January 2019, the Court has introduced a practice involving a specific non-contentious phase for applications which have been communicated to the respondent government, in order to encourage early friendly settlements.

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

In cases where the Registry has not made such a proposal, the parties are invited to indicate whether they have their own proposals for friendly settlement of the case and to submit them confidentially. If a settlement is reached, 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, often on terms similar to those initially proposed by the Registry.

4.4

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

Rule 62 sets out the conditions under which an agreement can be reached between the applicant and the State concerned to resolve the dispute between them.
The Court always encourages the parties to reach a friendly settlement.

These negotiations are confidential and may result in the payment of a sum of money to resolve the case if the Court considers that respect for human rights does not justify maintaining the application. Only very rarely has the Court found it necessary to continue examining a case despite a settlement.
The role of the lawyer is essential here – they must be able to advise their client whether or not to accept a settlement, particularly as regards the quantum of the offer made by the respondent government.

4.5

What is a unilateral declaration?

This is a declaration that the respondent government may submit to the Court after an attempt at friendly settlement has failed. In this declaration, under Rule 62A of the Rules of Court, the government acknowledges the violation of the Convention and undertakes to provide the applicant with an appropriate remedy.
The unilateral declaration is usually made after a friendly settlement procedure has failed and may be submitted in the non-contentious proceedings phase or in the just satisfaction proceedings phase.
The filing of a unilateral declaration is public (unlike friendly settlement negotiations, which are confidential).

4.6

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

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

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

If the case has been communicated after it has been lodged, the respondent government will also be invited to prepare their own statement of facts, on which the applicant's lawyer will also be invited to comment. The Court will accept as correct any facts which are not in dispute.

Where cases are communicated to the respondent government after having been pending before the Court for a longer period, the Registry will usually have prepared a statement of facts, which either party may seek to correct.

The Registry forwards the respondent government's observations to the applicant's lawyer for response, usually within six weeks.

Written observations may only be sent by the lawyer within the time limit set by the President of the Chamber or the Judge-Rapporteur. Extensions of time may be requested, but only before the expiry of the initial time limit.

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

A practical instruction from the President of the Court sets out the procedures for these observations. Where electronic communications are not accepted, all documents and observations requested by the Court must be sent by post in triplicate.
A certain formality must be observed (Paragraphs 10 to 13 of the Practice Direction on the Institution of proceedings, referred to as "Form"). It should be noted that if the observations exceed 30 pages, a brief summary must be provided.
As for the content of the observations, the Court imposes once again a model to be followed.
The applicant's lawyer must inform the Court of any developments in national case-law or legislation relating to the subject-matter of the application, and must reply promptly to letters sent by the Registry, as any delay or failure to reply may lead the Court to strike the application out of its list or declare it inadmissible.
Failure to inform the Court of important facts, such as the death of the applicant, may constitute an abuse of the right of individual application (See Chepelenko and others v Ukraine No 15117/17 decision of 28 January 2020).

4.6A

Can Third Parties intervene in cases before the Court ?

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

4.7

How to submit a claim for just satisfaction

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

The Court requires that the claim for just satisfaction be detailed and supported by documentary evidence, failing which no compensation will be awarded. The application is submitted to the respondent government for their observations in reply.

Just satisfaction may have three components: material damage, non-material damage (to compensate for the anxiety, inconvenience and uncertainty resulting from the violation) and costs and expenses.
As regards material damage, the Court may, in equity, not compensate the applicant for all the damage suffered, or even award nothing.

The Court may also award a legal person non-material damage comprising elements that are more or less "objective" or "subjective": the company's reputation, uncertainty in the planning of decisions to be taken, disturbances caused to the management of the company itself, the consequences of which do not lend themselves to exact calculation and, finally, the anguish and inconvenience experienced by the members of the company's management bodies (See Comingersoll S.A. v. Portugal [Application no. 35382/97], Judgment of 6 April 2000).

The principle is that the applicant must be placed in the situation in which they would have been had the violation not occurred (restitutio in integrum).

This principle is set out in a Practice Direction issued by the President of the Court and developed in the Court's case law.

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

If the lawyer makes no claim for just satisfaction, the Court will not award anything to the applicant.
Compensation for non-material damage is tax-free. However, compensation for material damage may not be. The amount for costs and expenses is tax-free for the applicant, but tax may be payable by the lawyer on the fees.

4.8

Can costs and expenses be reimbursed?

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

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

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

This last criterion, which is left to the Court's discretion, very often leads it to reduce the fees requested, even though they were actually incurred by the claimant, and even though fee notes and invoices attest to this. The Court is not bound by national regulations on the calculation of fees.

Fee notes or detailed invoices must be submitted to the Court and must state that they have been paid. The Court will not order the reimbursement of fees paid by the applicant at national level which are unrelated to the violation of the Convention found by the Court.

The lawyer will therefore have to explain precisely the nature of the steps taken, in particular those devoted exclusively to alleging the violations set out in the various submissions made to the domestic courts and, of course, to the Court.

The lawyer should therefore not be surprised by the Court's decision to frequently reduce the sums claimed in this respect, even though their claim appears to be justified.

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

4.9

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

A hearing is exceptional. In most cases, no hearing is organised, as the procedure before the Court is essentially written and limited to a single exchange of pleadings between the respondent government and the applicant.
However, hearings are held in certain cases before the Chambers and necessarily before the Grand Chamber.

Rules 63 to 70 of the Rules of Procedure govern the procedures for the hearing.
In principle, a hearing is public, except in cases provided for in the Rules of Procedure, and generally lasts two hours.
The applicant is under no obligation to appear in person.

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

The text of the oral pleadings or the notes to be read must reach the Registry 24 hours in advance for transmission to the interpreters. However, it is not essential to follow the written text to the letter.
Written comments may not be submitted during the hearing, except at the request of the Court.

The time allowed for oral pleadings is agreed with the President before the hearing. A maximum of 30 minutes is generally allotted to each party, followed by 10 minutes for each party to reply.

A recess is usually called after the oral pleadings and before the Chamber judges ask the parties questions, to allow the lawyers to prepare answers to these questions.
The parties' lawyers are not required to wear robes but may do so if they wish. Travel expenses will be reimbursed if the Court finds against the respondent State. All hearings are recorded and can be viewed live or replayed.

4.10

In what language is the procedure conducted?

Once the application has been communicated to the respondent government, the pleadings must be drafted in English or French, unless authorised by the President of the Chamber.

4.11

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

Under Article 43 of the Convention, requests for referral to the Grand Chamber are examined by a panel of five judges of the Grand Chamber. The request must be introduced within three months of the delivery of the Chamber's decision. The request will only be granted if the case presents at least one aspect of an exceptional nature. Under no circumstances is it an appeal. It is this criterion that the members of the panel will take into consideration. A Chamber decision declaring a grievance inadmissible cannot be the subject of a referral to the Grand Chamber, nor can the Chamber's assessment of the facts or the application of well-established case law.

4.12

Can an application be processed as a priority?

Yes, the Court has published its criteria for granting priority under Rule 41.
It distinguishes between seven categories of cases: I. urgent cases;
II. cases likely to have an impact on the effectiveness of the Convention system or raising an important issue of general interest; III. cases, whether repetitive or not, relating to key rights (Articles 2 to 5 § 1 of the Convention); IV. potentially well-founded cases under other articles; V. cases raising issues already dealt with in a pilot judgment or in a judgment of principle; VI. cases raising a problem of admissibility; VII. manifestly inadmissible cases. In addition, since 2021 the Court has been identifying "impact" cases, i.e. cases which are particularly important for the development of the Convention system and which raise new questions concerning the interpretation and application of the Convention. Applicants' lawyers should consider invoking these criteria in the application form to justify requests for priority consideration of an application. The Court applies these priority criteria to all new applications to determine which should be examined more quickly than others.

4.13

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

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

4.14

How long does the procedure before the Court last?

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

4.15

How much does the procedure before the Court cost?

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

4.16

Is legal aid available for proceedings before the Court?

It is only after the Court has received the written observations of the government concerned on the admissibility of the application that the applicant may, where appropriate, be granted legal aid if they do not have the means to pay for a lawyer and if the Court considers it necessary to grant such aid for the proper conduct of the case.
Rules 105 to 110 of the Rules of Court define the terms and conditions of legal aid.

A declaration indicating the resources, capital assets and financial commitments the applicant has towards their dependents must be completed and certified by the internal authorities.
The President of the Chamber may invite the State concerned to submit its observations.
The Registrar informs the parties of the granting or refusal of legal aid and sets the rate of fees to be paid in accordance with the tariff in force and the amount to be paid in respect of travel and subsistence expenses and other disbursements.
It should be noted that the amount awarded for legal aid is small and constitutes only a contribution to costs. In addition, the amount received will be deducted from any compensation awarded for costs and expenses.

4.17

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

Yes. The Court requires lawyers to maintain contact with their clients and to inform the Court of relevant developments, including any applicant's death, and to be available to give instructions, for example in response to submissions by the respondent government, see VM and Others v. Belgium (Application no. 60125/11), Grand Chamber judgment of 17 November 2016. If contact is not maintained, the Court will readily conclude that the applicant has lost interest in the application, which will then be struck out of the list.

05.

Content and execution of judgements of the court in cases of individual applications – appeals against such judgments

5.1

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 4.13).

5.2

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

Judgments of the Court are declaratory. 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 exceptionally 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.

5.3

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 really exceptional cases, the Court can declare that a State should take specific individual action, such as reopening of unfair proceedings, or the release of an applicant from detention. The Court is not competent to quash any national law or judgment (see 5.6).

5.4

What is a pilot judgment?

The pilot judgment procedure may be followed when the Court receives a significant number of applications deriving from the same root cause, or when an application reveals a structural or systemic problem or other similar dysfunction in the State concerned which may give rise to similar applications. The Court may then select one or more applications for priority treatment, adjourning the remainder. In dealing with the priority cases, the Court will seek to achieve a solution that extends beyond the

particular case so as to cover all similar cases raising the same issue. When delivering its pilot judgment, the Court will mandate the State to comply with its obligations under Article 46 by bringing domestic law into line with the requirements of the Convention so that all other actual or potential applicants are granted relief and pending applications are also resolved. If the State 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.

5.5

How can the pilot judgment procedure be initiated?

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

5.6

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

No. The Court can only state that certain actions, omissions, laws, or national court decisions 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 comparable violations do not occur in the future.

5.7

Who enforces the Court's judgments?

The respondent State in question is responsible for the enforcement of judgments of the Court. 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 as to the precise means of execution, except where the Court has exceptionally directed specific measures or actions to be taken.

In every case, States should ensure that existing violations of the Convention are brought to an end and that future similar violations are prevented.

5.8

What must a State do when the Court has found 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 achieved as far as possible – 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 the execution of judgments, "The CM Rules"). Redress may take many forms depending on the violations established, the applicant's circumstances and the nature and scope of any just satisfaction awarded by the Court (which may, for example, have provided full compensation for 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 practicable – see below).
- expulsion orders violating the Convention are annulled, possibly combined with other measures such as the granting of a residence permit.
- criminal investigations into perpetrators are engaged/reopened/resumed in cases involving violations of Articles 2 and 3 of the Convention.
- personal data gathered by the State in violation of the Convention are destroyed.
- non-executed domestic judgments are executed.
- persons kept in inhuman detention are transferred to proper detention facilities.
- reinstate a judge to the Supreme Court.

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

If the violation affects other cases or situations, the State is also required to take **general measures** to stop those violations, for example by extending the right of reopening of proceedings also to those cases, and to prevent new ones in future for example by changing domestic case law, administrative practice, or relevant legislation (see CM recommendations (2004)5 and (2004)6 and Rule 6 of the CM's Rules).

5.9

What is a State required to do if the Court judgment reveals that domestic legislation violates the Convention?

The State will first have to consider whether a violation of the Convention can be avoided (in the case at hand and in all future cases) by re-interpreting the relevant domestic law in accordance with the Convention. If this is not possible, the State will have to amend the legislation to reflect the Court's judgment. The State sets out its choice of remedial action in an action plan for execution which should be submitted to the CM within six months after the judgment becomes final. That action plan will provide the basis for the CM's supervision of execution of the judgment.

5.10

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

The obligation for respondent States to abide by the Court's judgments is unconditional, so that national constitutional law must also comply with the Convention requirements as interpreted by the Court. The question whether the State's legal order considers the Convention to be on the same level as, or below, its constitution determines whether it is the responsibility of the national constitutional court or of the national legislature to achieve this compliance. The State should thus amend the relevant provision of its constitution, unless the Constitution can be interpreted in a way that is consistent with the Convention (changes of constitutions have taken place in order to give full effect to judgments of the Court – for example in Armenia, Greece, Hungary, Slovakia, and Turkey).

5.11

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 (Execution Department). The Annual Reports provide useful further material Annual Reports - Department for the Execution of Judgments of the European Court of Human Rights (coe.int). 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, the applicant may make written submissions to the CM if the payment of just satisfaction is delayed or if sufficient individual measures have not been taken. These submissions are circulated to the whole CM and applicants frequently find significant support from an informal group of Member States with a keen interest in the efficient execution of particular categories of judgments. Bar associations and international bodies such as the CCBE may also make submissions relating to general measures.

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

5.12

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

Supervision is based on a twin-track procedure. New cases are rapidly classified under either standard or enhanced supervision. The enhanced supervision is reserved for cases requiring urgent individual measures, pilot judgments, inter-State cases, or cases revealing major structural or complex issues, as identified either directly by the Court in its judgment or subsequently in the procedure before the CM. The CM 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, on 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 under Rule 9 of the CM Rules.

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

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

5.13

Where can information on pending cases, the status of execution, and other

CM decisions and communications submitted to it are in principle public (see Rule 8 of the CM's Rules) and are published both on the 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.
Link to the CM website: www.coe.int/cm:
Link to the Execution Department's website: https://www.coe.int/en/web/execution.

5.14

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

The vast majority of awards of just satisfaction are paid promptly by the State concerned. However, where payment is delayed the applicant's lawyer should pursue the relevant national authorities, and 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 by commenting on Action Plans or Action Reports, or by separate submissions under Rule 9(1). In severe cases, e.g. violations of Articles 2 and 3, the CM will, follow up the question of individual measures (e.g. to ensure that effective criminal investigations are carried out to identify and, where appropriate, punish the State agents responsible) ex officio.
Where the violation is a continuing one, or where the obstacles encountered may be seen as new facts raising new questions under the Convention rights, it may also be possible to lodge a new application with the Court (see: Bochan v. Ukraine (no 2) [GC] no 22151/08), but it ought to be quicker and more effective to issue domestic proceedings to implement the Court's judgment.
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 2022 – in order to induce compliance. Under Protocol No. 14 the CM is empowered to seek a declaration from the Court (under Article 46(4) of the Convention) that a State is not respecting its obligations. First applied in Mammadov v. Azerbaijan a small number of references have followed, as a last resort.

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 Interim Resolution ResDH(2006)26 concerning the judgment of the European Court of Human Rights of 8 July 2004 (Grand Chamber) in the case of ILAŞCU AND OTHERS against Moldova and the Russian Federation).
A very little explored area is the possibility of executing the unsatisfied part of a monetary 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 first, the Convention is part of the legal system of every Council of Europe Member State and secondly, the task of the Committee of Ministers is only that of supervising the execution of Judgements.

5.15

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

Execution may raise issues related to the interpretation of the judgment, or of relevant case law of the Court. The parties may seek such an interpretation within one year of the delivery of the judgment (Rule 79). 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 Under Protocol No. 14 the CM may also seek the interpretation of a final judgment if the supervision of its execution is hindered by a problem of interpretation.

06.

Points from a Practitioner's Perspective

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

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

6.2.1 The Court will only examine applications where the complaints submitted to it have been made and rejected by every available instance in the domestic legal system. Where there is doubt as to the efficacy of an appeal under domestic law, the appeal should be attempted;

6.2.2 In Member States which have accepted Protocol 16, a senior national court may seek an advisory opinion from the Court on a point of Convention interpretation. That advisory opinion will not be binding on the case at issue, but lawyers may see an advantage to their clients in initiating that procedure, which the Court prioritises over other work.

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

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

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

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

6.4 To control the Court's docket, most unmeritorious cases are dealt with promptly, and declared inadmissible within six months by a single judge. Cases which have been referred to the respondent government may also be rejected as inadmissible in whole or part. Such decisions cannot be appealed but very exceptionally, if the Court is shown to have made a manifest mistake, a request may be made to reopen the case (see: N*oé, Vajnai and Bakó v Hungary No 24515/09*, decision of 13 March 2012 and judgment of 23 September 2014).

6.5 The Court's aim is to concentrate its resources on the most significant cases, and to simplify its handling of repetitive or unmeritorious cases, including by short form decisions and judgments, where appropriate given by a Committee of three judges, rather than a Chamber of seven (see: *DR and Others v Norway No 63307/17*, judgment of 12 September 2023). In meritorious cases one round of pleadings is the norm, a second round is rare and hearings are almost exclusively reserved to Grand Chamber proceedings, which are themselves exceptional.

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

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

6.8 The Registry very rarely corresponds with an applicant's lawyer, save to request specific information, to notify them that the application has been declared inadmissible, or has been referred to the respondent government, or to give notice of the Court's judgment, and unsolicited communications to the Court are frequently rejected from the case file, unless they provide relevant new factual information.

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

Appendix

Links to documents available on the Court's website relating to the making of applications and their handling, including applications for interim measures (R 39)

- HUDOC
- Rules of Court and Practice Directions
- ECHR Knowledge Sharing Platform (ECHR-KS)
- Notes for filling in the application form
- Common mistakes
- Institution of Proceedings
- Practical guide on admissibility criteria
- Questions & Answers
- Your application to the ECHR – How to apply and how your application will be processed
- Requests for interim measures (Practice directions)
- Rule 39 interim measures: Practical Information
- Procedure following communication of an application – non-contentious phase
- Procedure following communication of an application – contentious phase
- Procedure following communication of an application – single phase
- Guidelines on submitting pleadings following simplified communication