**PLP Webinar: Appeals to The European Court of Human Rights**

References and materials

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1. CASE HANDLING FROM COMMUNICATION TO FINAL JUDGMENT

1. Reference documents:
	1. ECHR and Protocols [European Convention on Human Rights - Official texts, Convention and Protocols (coe.int)](https://echr.coe.int/Pages/home.aspx?p=basictexts&c=);
	2. Rules of Court of 20 March 2023 [Rules of Court - 20 March 2023 (coe.int)](https://echr.coe.int/Documents/Rules_Court_ENG.pdf);
	3. Practice Directions (PDs) on, amongst other topics:
		1. Institution of proceedings [PD - Institution of proceedings (coe.int)](https://echr.coe.int/Documents/PD_institution_proceedings_ENG.pdf);
		2. Written pleadings [Written pleadings (coe.int)](https://echr.coe.int/Documents/PD_written_pleadings_ENG.pdf);
		3. Requests for interim measures [Requests for interim measures (coe.int)](https://echr.coe.int/Documents/PD_interim_measures_ENG.pdf);
		4. Just satisfaction claims [Practice Direction: Just satisfaction claims (Article 41 of the Convention) (coe.int)](https://echr.coe.int/Documents/PD_satisfaction_claims_ENG.pdf);
		5. Electronic filing of pleadings (but NOT applications) [Practice Directions - Electronic filing by applicants (coe.int)](https://echr.coe.int/Documents/PD_electronic_filing_applicants_ENG.pdf)
	4. Guidance on Court’s website:
		1. How to apply and how will your application be processed [Your application to the ECHR (coe.int)](https://echr.coe.int/Documents/Your_Application_ENG.pdf);
		2. Information for applicants [You have an application before the ECHR - Pending application - Procedure (coe.int)](https://echr.coe.int/Pages/home.aspx?p=applicants/application);
		3. CCBE ECtHR: Questions and Answers for Lawyers [ECHR - Questions & Answers for Lawyers (2020) (coe.int)](https://echr.coe.int/Documents/Q_A_Lawyers_Guide_ECHR_ENG.pdf);
		4. Interim measures [Practice direction: Requests of interim measures (Rule 39 of the Rules of Court) (coe.int)](https://echr.coe.int/Documents/PD_interim_measures_intro_ENG.pdf) and [Interim Measures - Practical Information (coe.int)](https://echr.coe.int/Documents/Interim_Measures_ENG.pdf).
	5. Application Form [Application\_Form\_ENG (7).pdf](file:///C%3A%5CUsers%5Cpgardner%5CDownloads%5CApplication_Form_ENG%20%287%29.pdf);
2. Gaps in the refence documents
	1. The Rules of Court and PDs obviously provide essential material.
	2. The Court has implemented a significant number of measures through the working practices of the Registry which are designed to address aspects of its huge backlog of pending cases, some of which are scarcely referred to in the Rules or PDs, or even not at all, but the schematic flow chart of formal steps is helpful: [Individual Application (coe.int)](https://echr.coe.int/Documents/Case_processing_Court_ENG.pdf).
3. The majority (about 80%) of applications are filtered out at an initial *triage* undertaken by the Court Registry. These cases are processed for decision by a single judge and are rejected as inadmissible within 6 weeks to 6 months of being lodged in a decision of a few lines (in 2022 some 31,000 cases were determined in this way) [Analysis of statistics 2022 (coe.int)](https://echr.coe.int/Documents/Stats_analysis_2022_ENG.pdf).
4. Cases which are not filtered out at the initial *triage* as obviously inadmissible are referred to the respondent Government (‘communication’), so that:
	1. The Court will register the application and inform the applicant/representative of that fact. This may take six weeks to some months, although UK cases are usually handled promptly because they are so rare: currently there are fewer applications per head of population against UK than against any other Council of Europe Member State (0.03 per 10,000) and between five and ten judgments a year [Analysis of statistics 2022 (coe.int)](https://echr.coe.int/Documents/Stats_analysis_2022_ENG.pdf). Once an application is registered, subsequent submissions etc. can be electronic (on Court's eComms web portal, see 1.c.v above).
	2. Urgent cases which are granted priority (R 41) or interim measures (R39) will be communicated rapidly, ie withing weeks or days respectively, with a list of questions. The usual time limit for the respondent Government to plead in writing is 8 weeks and 6 weeks for the Applicant to reply. This can be abridged if urgency dictates, eg to days in life and limb cases.
	3. Except in R 39 cases, the applicant’s reply should include submissions on just satisfaction (damages and costs) under A 41. Written, and therefore all, pleadings are then concluded except in a tiny minority of cases where further observations are requested and a yet smaller number of hearings, which are truly exceptional;
	4. Other (ie non-urgent) cases will be communicated eventually, but first wait between months and years and then, when communicated, undergo a compulsory ADR period. Note, that this may occur years after the application was lodged and that the Court has no notice of whether the applicant wants to seek a settlement, or of the costs or other losses which the applicant may have incurred in the domestic proceedings. The ADR period is driven by the Court’s desire to reduce its docket of pending cases, including especially, well-established case law cases (WECL), by encouraging even belated settlements.
5. Government Observations follow communication, exceptionally on admissibility alone or normally on admissibility and merits together under Rule 54A, (Rule 51(3)). In older cases the Court still usually communicates with a relatively detailed 'Statement of Facts & Issues' prepared by the Registry. The list of questions to the parties may give an indication of Court's initial view of the case. However, in cases which have been identified for communication more promptly (simplified communication), the Government is sent the application form and a short list of questions and is invited to correct or agree the facts as stated by the applicant. This saves the Court Registry’s time, but generally causes delay in the respondent Government (which may not even have been a party to the national proceedings) filing its observations.
6. Interveners may also write to the court seeking permission to intervene at this point (Art 36(2), Rule 44(3)) [Practice Directions - Third-party intervention under Article 36 § 2 of the Convention or under Article 3, second sentence, of Protocol No. 16 (coe.int)](https://echr.coe.int/Documents/PD_Third_Party_intervention_ENG.pdf).
7. The Applicant can then submit Observations in Reply (Rule 51(4)) see also [Guidelines on submitting pleadings following simplified communication (coe.int)](https://echr.coe.int/Documents/Guidelines_pleadings_communication_ENG.pdf). This is the first stage when applicants make submissions on just satisfaction (see 1.c.iv above).
8. The Court will then rule on the application. This may involve a decision that the application is inadmissible, or involve a judgment which incorporates a decision that the case is admissible together with the conclusion on the merits. In very rare cases there may exceptionally be a further round of observations (Rule 59).
9. Hearings are even more exceptional (Rule 59(3)), unless in the Grand Chamber. Hearings are usually of short duration (30-45 minutes each party), followed by the Court’s questions and 15 minute reply for each party.

2. DELAYS AND ACCELERATION/ PRIORITY / INTERIM MEASURES

1. Several aspects of the outline above illustrate the Court’s efforts to address its crushing backlog of pending cases. The total docket exceeds 74,000. The Court gives barely one thousand judgments a year, albeit many in joined cases. Even though many applications are baseless and are rapidly rejected by a single judge decision, cumulative delays mean that some 24,000 non-trivial but non-priority cases await their first judicial examination. Many have been pending for five years, some for eight or more, after potentially lengthy domestic proceedings.
2. Since 2009 the Court has operated a published Priority Policy which was revised in 2017 as follows:



**The Court’s Priority Policy**

 In June 2009 the Court adopted a priority policy with a view to speeding up the processing and adjudication of the most important, serious and urgent cases. It established seven categories ranging from urgent cases concerning vulnerable applicants (Category I) to clearly inadmissible cases dealt with by a Single Judge (Category VII). It has now conducted a review of that policy and with effect from 22 May 2017 has made some amendments to the priority categories.

**Interstate cases**

Firstly it decided to place inter-State cases (Article 33 of the Convention), which were hitherto in Category II, outside the priority policy in view of their special character which in any event attracted special procedural treatment.

**Persons deprived of liberty**

The Court also extended the definition of cases falling under Category I to cover situations where “the applicant is deprived of liberty as a direct consequence of the alleged violation of his or her Convention rights”.

The amended table defining the various categories of priority is appended below.

|  |  |
| --- | --- |
| I.  | **Urgent** applications (in particular risk to life or health of the applicant, the applicant deprived of liberty as a direct consequence of the alleged violation of his or her Convention rights, other circumstances linked to the personal or family situation of the applicant, particularly where the well-being of a child is at issue, application of Rule 39 of the Rules of Court)  |
| II.  | Applications raising questions capable of having an **impact on the effectiveness of the Convention system** (in particular a structural or endemic situation that the Court has not yet examined, pilot-judgment procedure) or applications raising an **important question of general interest** (in particular a serious question capable of having major implications for domestic legal systems or for the European system)  |
| III.  | Applications which on their face raise as main complaints issues under **Articles 2, 3, 4 or 5 § 1** of the Convention (“core rights”), irrespective of whether they are repetitive, and which have given rise to direct threats to the physical integrity and dignity of human beings  |
| IV.  | Potentially well-founded applications based on other Articles  |
| V.  | Applications raising issues already dealt with in a pilot/leading judgment (“well-established case-law cases”)  |
| VI.  | Applications identified as giving rise to a problem of admissibility  |
| VII.  | Applications which are manifestly inadmissible  |

1. The Court deals rapidly with life and death cases in Category I, involving imminent exposure to A 2 or 3 treatment: it can grant interim measures under R 39 which are binding and very widely respected. An example *F v UK*: power to terminate life sustaining treatment of 2 year old child.
2. Other allegations of A 3 treatment through detention, failure to prevent or investigate death under A 2 and unlawful detention under A 5 all rank as priority cases and are usually dealt with promptly. If interim relief is refused the applicant has the option to maintain a ‘normal’ application, but it is usually pointless: if the relevant urgent event, such as extradition, has occurred, the applicant will usually have no interest in pursuing matters.
3. If interim measures are granted, and maintained, the application is likely to be settled to the applicant’s satisfaction, such as by the refusal of removal. In consequence, many high priority cases are rapidly resolved one way or the other and do not stay long on the Court’s docket. However, there are exceptions, such as the extraordinary judgment in *Mamasakhlisi v Georgia and Russia* 7 March 2023 [MAMASAKHLISI AND OTHERS v. GEORGIA AND RUSSIA (coe.int)](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-223361%22]}), where interim measures imposed in 2006 were lifted in 2012, although the applicant who complained of his conditions of detention had been released to safety in 2007.
4. Together these ‘priority’ cases accounted for about 10k applications in 2022.
5. Of the 24k+ pending cases alleging violations of A 6, 8, 9, 10, 11, 12, A1P1, A2P1, A3P1 etc (so called Category IV cases) about 500 were singled out in 2021 as ‘impact’ cases and so in practice elevated to Category II, although they are referred to in the Registry as Category IV+.
6. The impact criteria remain elusive, particularly because the Court does not record in its decisions or judgments that a particular application has been so categorised: only the Parties are told. Inevitably, with so many pending cases in Category IV, the impact case innovation will have limited effect.