Representing an Applicant Before the European Court of Human Rights

A User's Guide

Academy of European Law
5 March 2013
Presentation Developed by:
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Background and Perspective

Promote awareness of European law rights and assist marginalised individuals and those in vulnerable circumstances to assert those rights.

The AIRE Centre represents applicants before the European Court of Human Rights and intervenes in cases there, and provides free legal advice to individuals and advisers on European law.

An international public interest law organisation working to combat anti-Romani racism and human rights abuse of Roma through strategic litigation, research and policy development, advocacy and human rights education.

The ERRC acts on behalf of Roma victims of human rights violations in cases before the domestic courts, the European Court of Human Rights and other bodies.

Topics We Will Cover

1. The Different Steps of the Procedure (9.20 -9.45)
2. Lodging a Case (including Rule 39) (9.45 – 10.30)

BREAK – 10.30 – 11

3. Admissibility Criteria (11-11.40)
4. Repetitive Cases & Hearings (11.40 – 11.50)
5. Friendly Settlements (11.50 – 12.10)
6. Costs, Just Satisfaction and Legal Aid (12.10 – 12.30)

Methodology of the Session

Texts

- The Convention
- The Rules of Court
- The Court's Practice Directions and other material from the website

ECHR Case Law

- Judgments on the Merits
- Admissibility and Inadmissibility Decisions
- Friendly Settlement Decisions

AIRE & ERRC Experience

- Cases We Are Current Litigating
- Cases We Have Recently Litigated

Texts

- The Convention
- The Rules of Court
- The Court's Practice Directions

You can find all of these at:

http://www.echr.coe.int/ECHR/EN/Header/Basic+Texts/The+Convention+and+additional+protocols/The+European+Convention+on+Human+Rights/

There are currently six practice directions:

1. Institution of proceedings
2. Interim measures
3. Just satisfaction claims
4. Requests for anonymity
5. Secured electronic filing (not relevant to applicants)
6. Written pleadings

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Case Law

- Judgments on the Merits
- Admissibility and Inadmissibility Decisions
- Friendly Settlement Decisions

You can search the case law on HUDOC

HUDOC
European Court of Human Rights

SEARCH
Français | Advanced Search

NARROW YOUR SEARCH
DOCUMENT COLLECTIONS *
Case-Law (31052)
Judgments (31052)
Grand Chamber (838)
Chamber (30214)
Committee (0)
Decisions (0)
Admissibility (0)
Screening Panel* (0)
Communicated Cases (0)
Legal Summaries (0)
Advisory Opinions (0)
Reports* (0)
Resolutions (0)
Execution (0)
Merits* (0)
Press Collection

FILTERS
LANGUAGE: French (14859), English (14731), Russian (436), Polish (209), More...
IMPORTANCE: 3 (20710), 2 (6232), 1 (4110), Case Reports (1553), More...
STATE: Turkey (5575), Italy (4473), Russia (2614), Poland (2041), More...
ARTICLE: 6 (17352), 6-1 (16549), 41 (16157), 29 (5300), More...
NON-VIOLATION: 6 (1605)
VIOLATION: 6 (13507)

ADVANCED SEARCH
Text
Case Title
Application Number
Strasbourg Case-Law
Rules of Court
Applicability
Conclusion
Resolution Number
Date dd/mm/yyyy to dd/mm/yyyy
Separate Opinion(s) Yes No
Domestic Law
International Law and Other Relevant Material
Keywords
Search in Document Sections
SEARCH

31052 Results Found | Print | Export | RSS | Sort by: Relevance

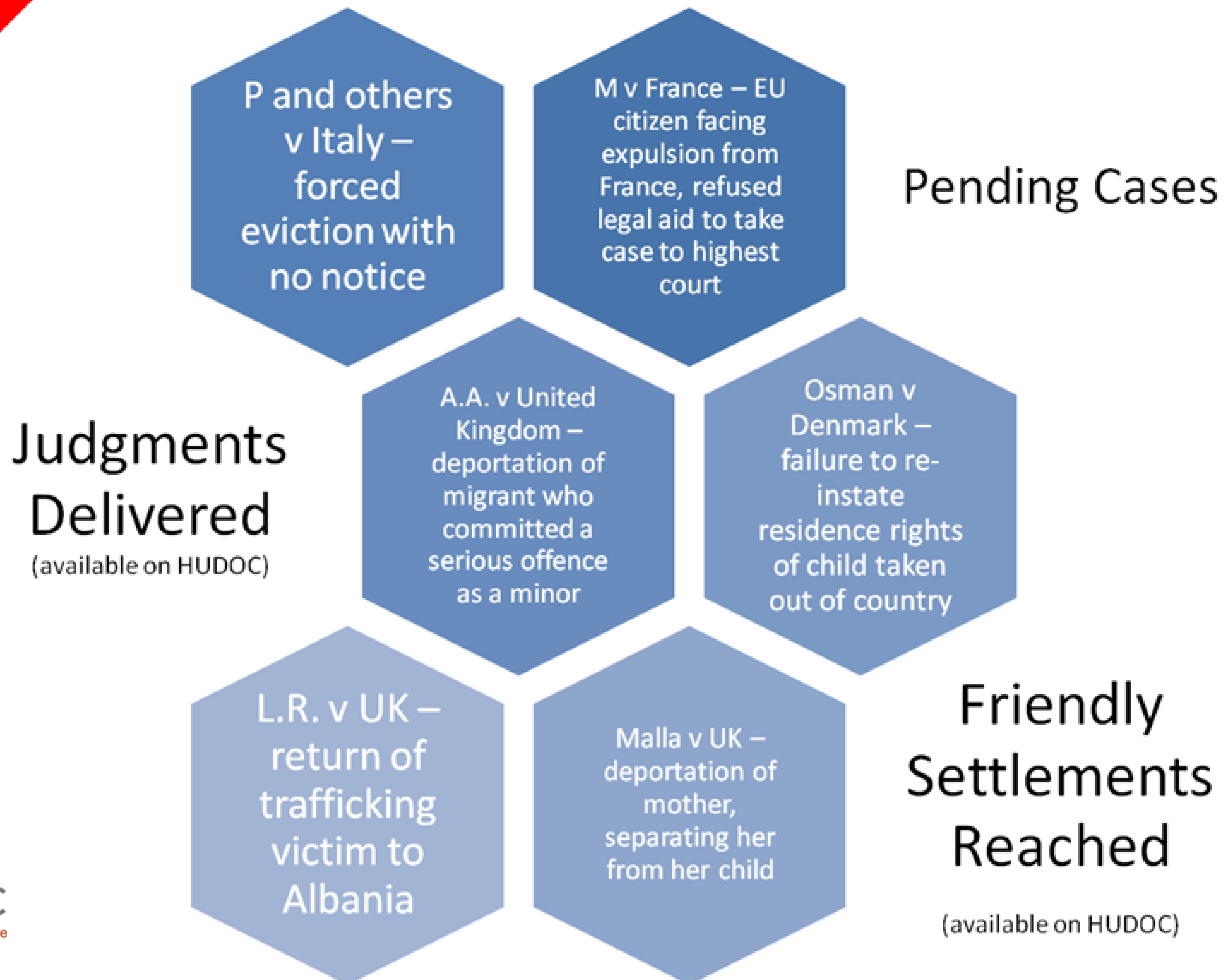
CRITERIA | CLEAR ALL | Document Collection Id: Committee,Decisions,... ×

new CASE OF SCHWEIZERISCHE RADIO- UND FERNSEHGESELLSCHAFT SRG v. SWITZERLAND
34124/06 | Available only in French | Judgment (Merits and Just Satisfaction) | Court (Fifth Section) | 21/06/2012
Violation of Article 10 - Freedom of expression -{General} (Article 10-1 - Freedom of expression)
Case Details Related

new CASE OF KULISH v. UKRAINE
35093/07 | Judgment (Merits and Just Satisfaction) | Court (Fifth Section) | 21/06/2012
Preliminary objections dismissed (Article 35-1 - Exhaustion of domestic remedies) No violation of Article 3 - Prohibition of ... more...
Case Details Translation Related

AIRE Centre Experience

- Cases We Are Litigating
- Cases We Have Recently Litigated



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Questions?

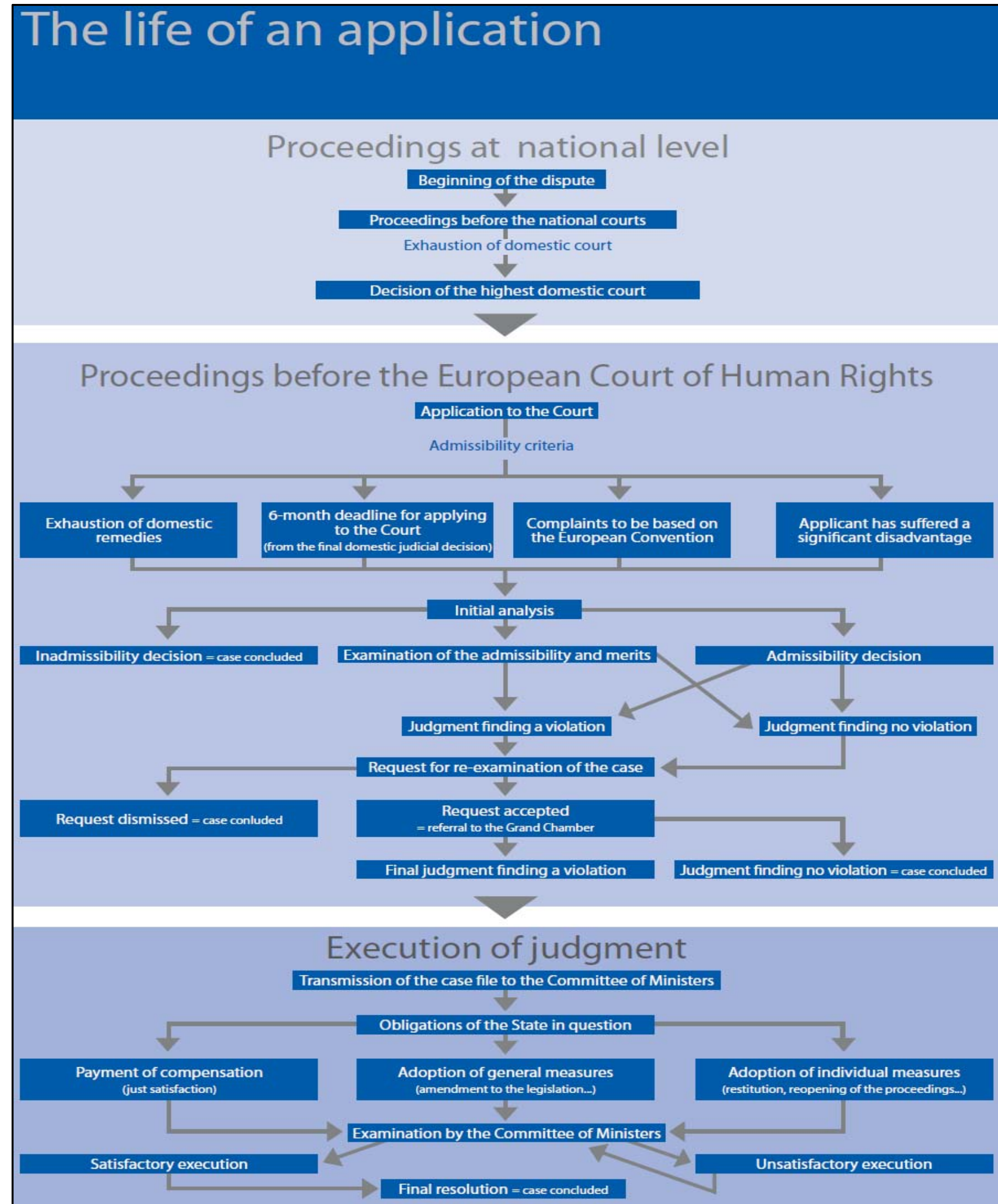
1. The Different Steps of the Procedure

The Court's Perspective on the Process

Applications to the European Court must be <u>admissible</u> and, if they are, they are then judged <u>on the merits</u>.

When the Court rules a case admissible or inadmissible, it issues a <u>decision</u> on admissibility.

When it rules on the merits (or admissibility and merits at the same time), it delivers a <u>judgment</u>.



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Judicial Formations – Who Will Deal With an Application

Single judge – Article 27

Can only declare an application inadmissible or strike out a case from the Court's list. Decisions by the single judge are final.

Committee (3 judges) – Article 28

Can, by unanimous vote, declare applications inadmissible, strike them out, or declare them admissible and deliver a judgment on the merits if the underlying question is the subject of well-established case law. Decisions and judgments are final.

Four possible judicial formations in Strasbourg

Chamber (7 judges) – Article 29

Can decide on admissibility and merits if no decision/judgment has been taken by the single judge or committee. Can relinquish cases to the Grand Chamber before ruling; cases can be referred from the Chamber to the Grand Chamber after ruling if the Chamber has delivered a judgment on the merits.

Grand Chamber (17 judges) – Articles 30 and 43

The Chamber can **relinquish** a case that it has not yet decided to the Grand Chamber or, after the Chamber has delivered a judgment on the merits, either party can request the case to be **referred** to the Grand Chamber, which a five-judge panel will consider. In both cases, the case must raise 'serious questions affecting the interpretation or application of the Convention'.

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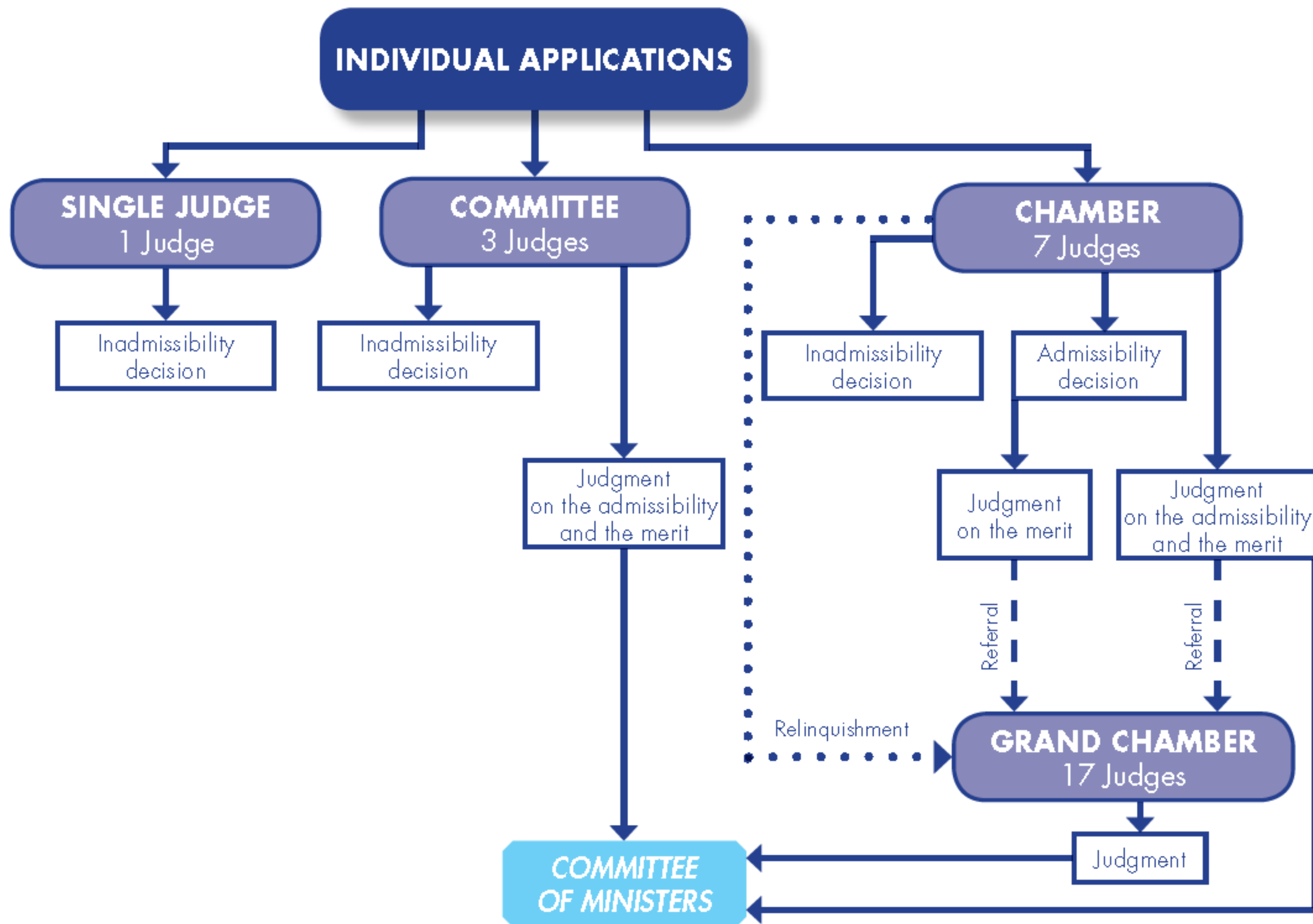
The Court's Simplified Case Flow Chart



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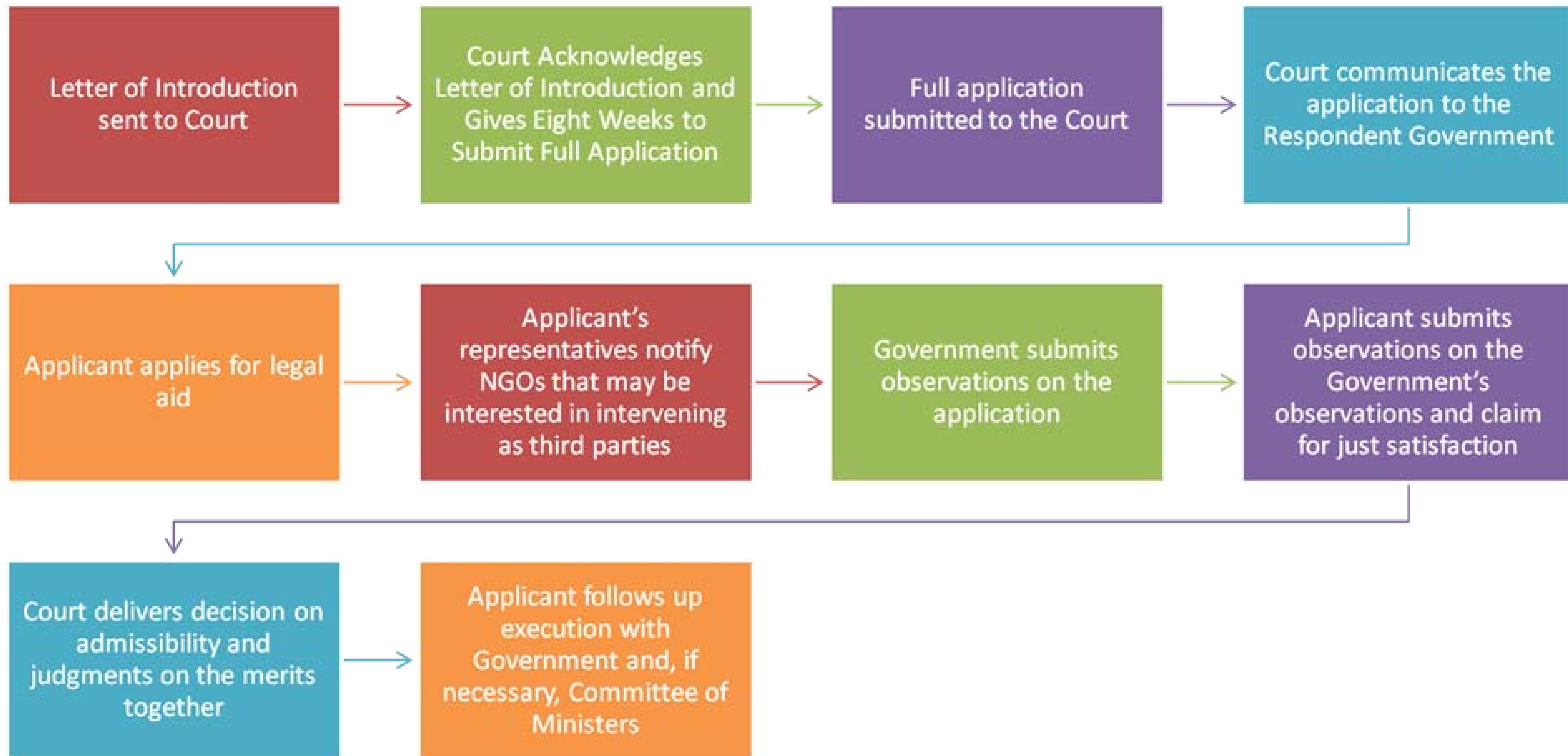
The NGO-Representative Perspective
(A Typical Case for AIRE/ERRC before new Rule 47)



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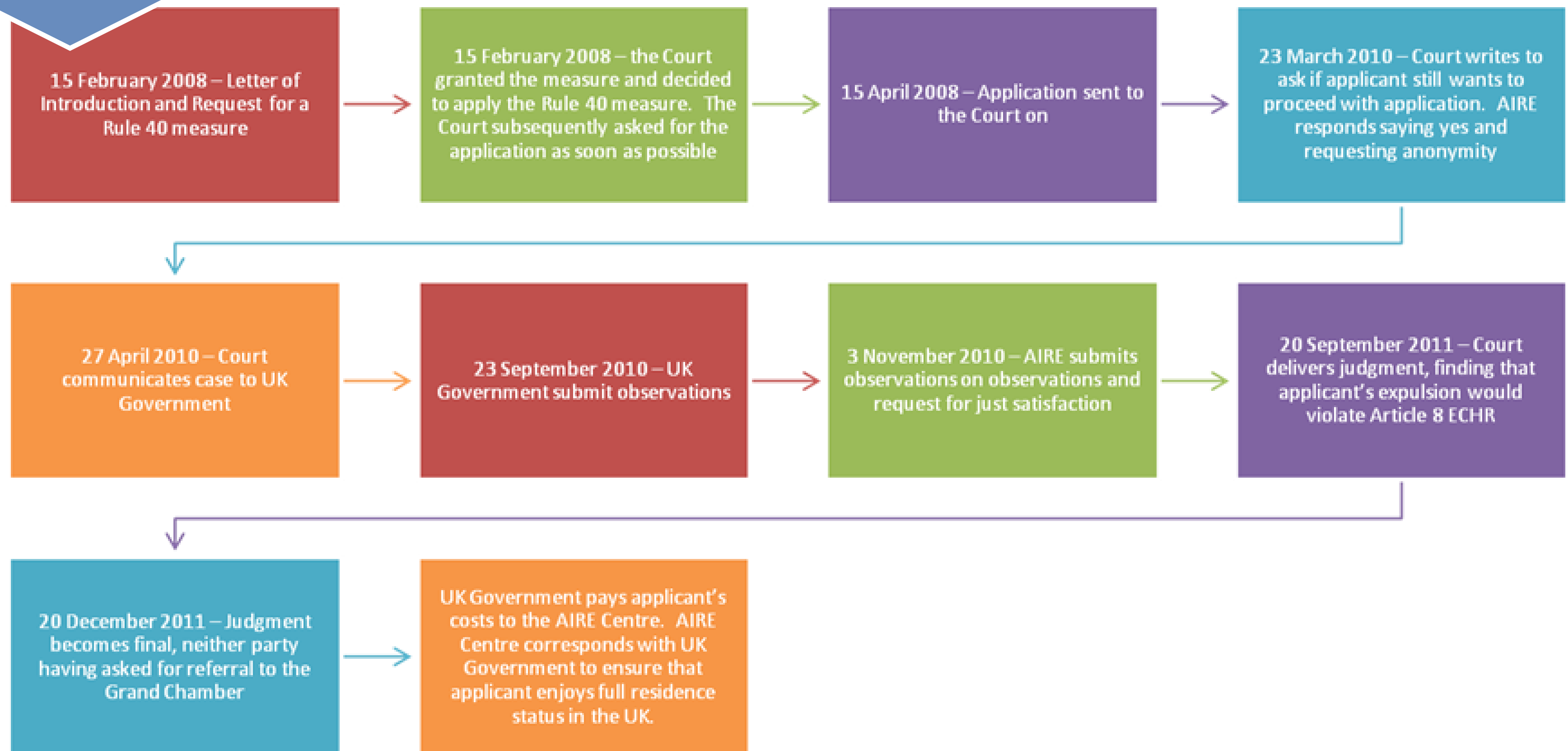
The Process in *A.A.*

A.A. v United Kingdom – deportation of migrant who committed a serious offence as a minor



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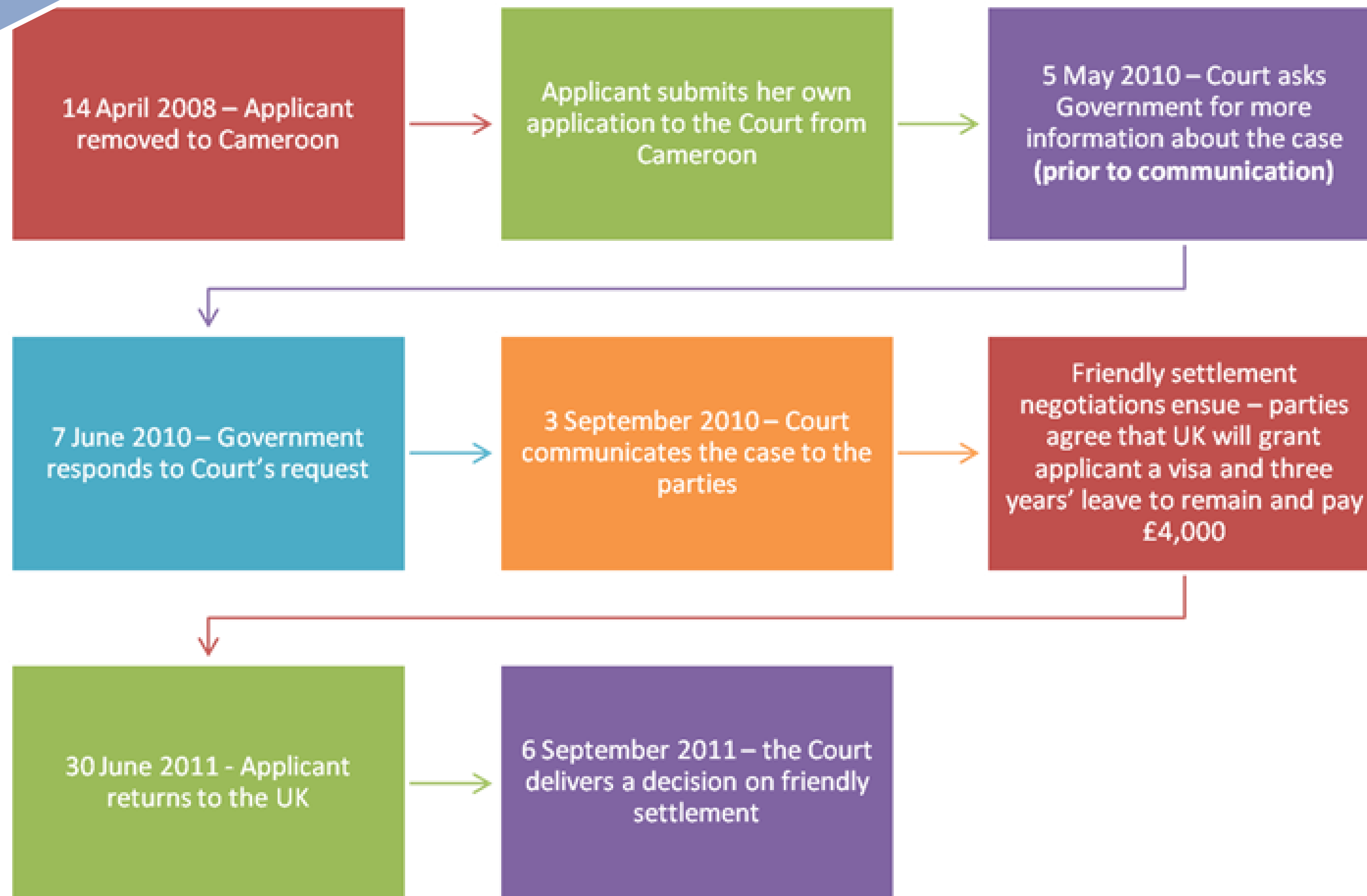
Malla v UK – deportation of mother, separating her from her child

Process in *Malla*



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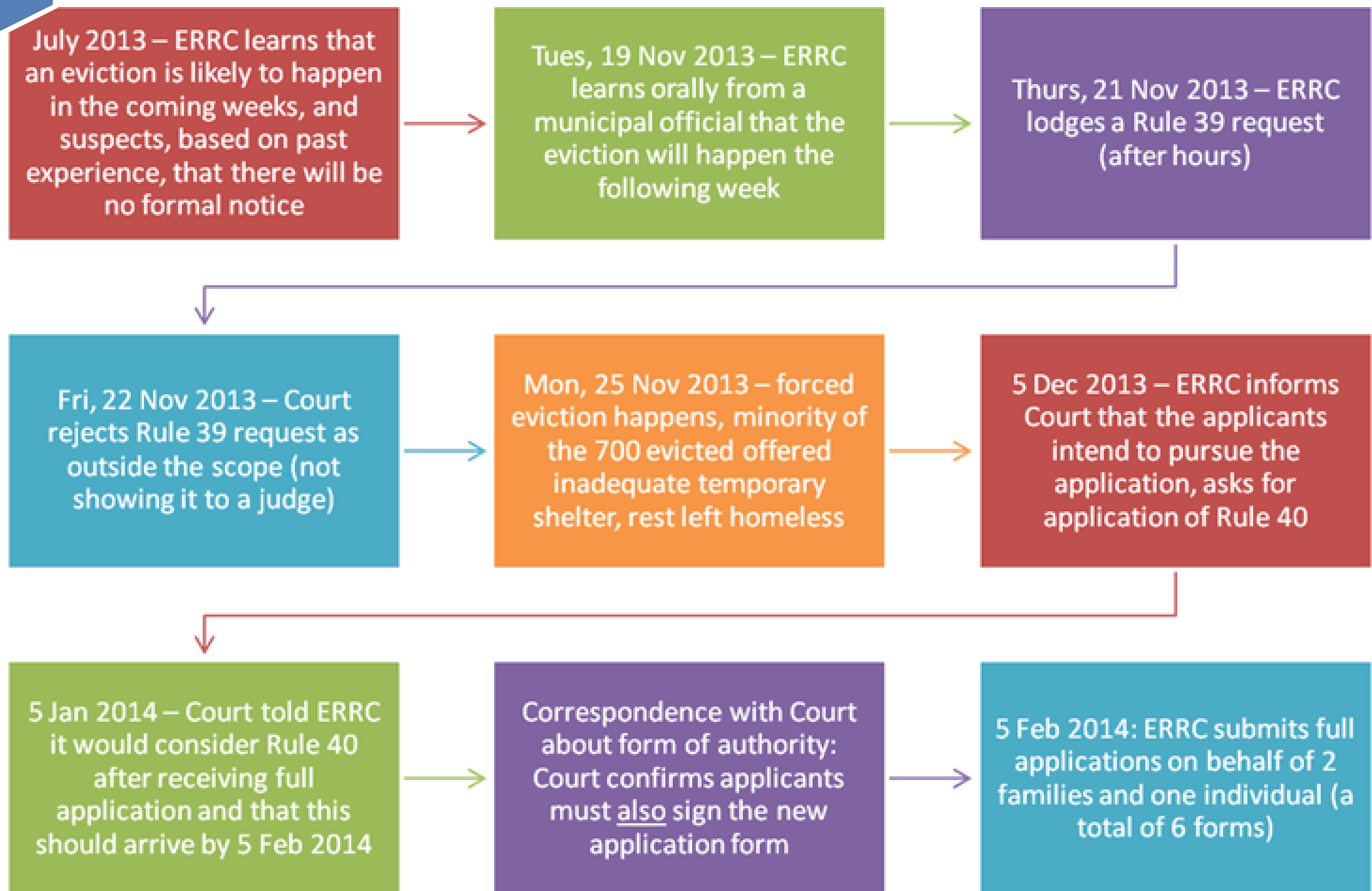
P and others v Italy – forced eviction with no notice

Process in *P and others*



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Third-Party Interventions

Under Rule 44 of the Rules of Court, organisations and individuals have twelve weeks to write to the Court to ask for permission to intervene. Third-party interventions are no more than 10 pages long and do not address the facts of the case.

AIRE Centre third-party interventions

- <u>*Rantsev v Cyprus and Russia* (2010)</u>

§ 320: *The Court has already expressed concern that the police chose to hand Ms Rantseva into M.A.'s custody rather than simply allowing her to leave (see paragraph 298 above). Ms Rantseva was not a minor. According to the evidence of the police officers on duty, she displayed no signs of drunkenness (see paragraph 20 above). It is insufficient for the Cypriot authorities to argue that there is no evidence that Ms Rantseva did not consent to leaving with M.A.: <u>as the AIRE Centre pointed out (see paragraph 269 above), victims of trafficking often suffer severe physical and psychological consequences which render them too traumatised to present themselves as victims</u>. Similarly, in her 2003 report the Ombudsman noted that fear of repercussions and inadequate protection measures resulted in a limited number of complaints being made by victims to the Cypriot police (see paragraphs 87 to 88 above).*

- <u>*B.S. v Spain* (2012)</u>

§ 66: *De son côté, The AIRE Centre invite la Cour à reconnaître le phénomène de la discrimination multifactorielle, qui doit être examinée de façon conjointe, sans dissociation des facteurs. Il passe en revue les avancées dans ce sens au sein de l'Union européenne, ainsi que dans différents États dont le Royaume-Uni, les États-Unis ou le Canada.*

§ 71: A la lumière des éléments de preuve fournis en l'espèce, la Cour estime que les décisions rendues en l'espèce par les juridictions internes n'ont pas pris en considération la vulnérabilité spécifique de la requérante, inhérente à sa qualité de femme africaine exerçant la prostitution. Les autorités ont ainsi manqué à l'obligation qui leur incombait en vertu de l'article 14 de la Convention combiné avec l'article 3 de prendre toutes les mesures possibles pour rechercher si une attitude discriminatoire avait pu ou non jouer un rôle dans les événements.

Questions?

2. Lodging a Case

New Rule 47 (from 1 January 2014)

Rule 47[1] – Contents of an individual application

1. An application under Article 34 of the Convention shall be made on the application form provided by the Registry, unless the Court decides otherwise. It shall contain all of the information requested in the relevant parts of the application form and set out

(a) the name, date of birth, nationality and address of the applicant and, where the applicant is a legal person, the full name, date of incorporation or registration, the official registration number (if any) and the official address;

(b) the name, occupation, address, telephone and fax numbers and e-mail address of the representative, if any;

(c) the name of the Contracting Party or Parties against which the application is made;

(d) a concise and legible statement of the facts;

(e) a concise and legible statement of the alleged violation(s) of the Convention and the relevant arguments; and

(f) a concise and legible statement confirming the applicant's compliance with the admissibility criteria laid down in Article 35 § 1 of the Convention.

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New Rule 47 (from 1 January 2014)

2. (a) All of the information referred to in paragraph 1 (d) to (f) above that is set out in the relevant part of the application form should be sufficient to enable the Court to determine the nature and scope of the application without recourse to any other document.

(b) The applicant may however supplement the information by appending to the application form further details on the facts, alleged violations of the Convention and the relevant arguments. Such information shall not exceed 20 pages.

3.1. The application form shall be signed by the applicant or the applicant's representative and shall be accompanied by

(a) copies of documents relating to the decisions or measures complained of, judicial or otherwise;

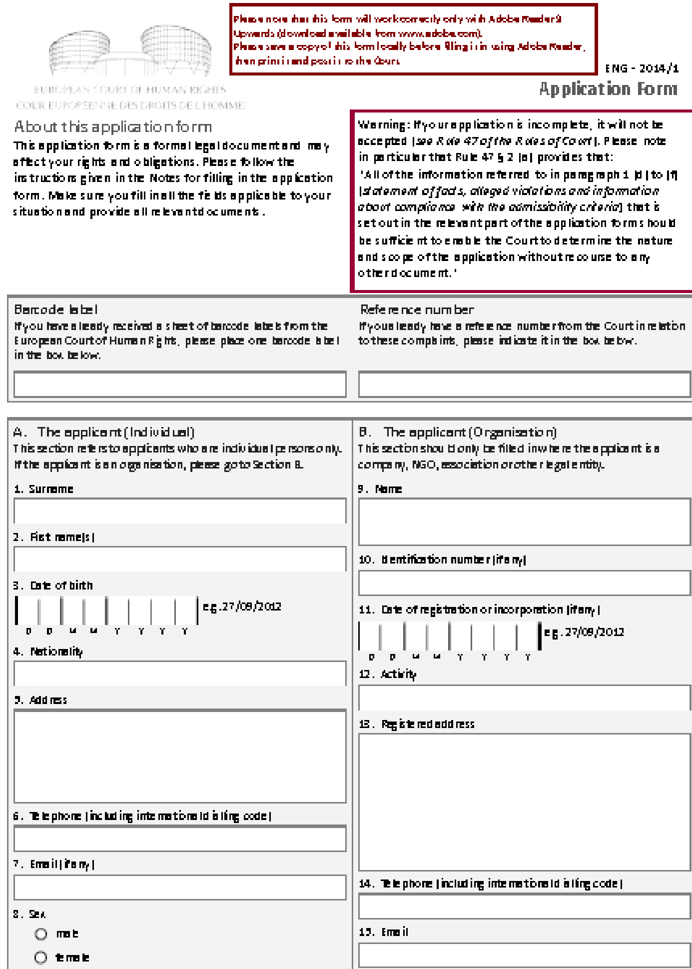
(b) copies of documents and decisions showing that the applicant has complied with the exhaustion of domestic remedies requirement and the time-limit contained in Article 35 § 1 of the Convention;

(c) where appropriate, copies of documents relating to any other procedure of international investigation or settlement;

(d) where represented, the original of the power of attorney or form of authority signed by the applicant.

3.2. Documents submitted in support of the application shall be listed in order by date, numbered consecutively and be identified clearly.

The (New) Application Form



Please note that this form will work correctly only with Adobe Reader 9 upwards (download available from www.adobe.com). Please save a copy of this form locally before filling it in using Adobe Reader, then print it and post it to the Court.

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

ENG - 2014/1

Application Form

About this application form

This application form is a formal legal document and may affect your rights and obligations. Please follow the instructions given in the Notes for filling in the application form. Make sure you fill in all the fields applicable to your situation and provide all relevant documents.

Warning: If your application is incomplete, it will not be accepted (see Rule 47 of the Rules of Court). Please note in particular that Rule 47 § 2 (a) provides that: 'All of the information referred to in paragraph 1 (d) to (f) (statement of facts, alleged violations and information about compliance with the admissibility criteria) that is set out in the relevant part of the application form should be sufficient to enable the Court to determine the nature and scope of the application without recourse to any other document.'

Barcode label

If you have already received a sheet of barcode labels from the European Court of Human Rights, please place one barcode label in the box below.

Reference number

If you already have a reference number from the Court in relation to these complaints, please indicate it in the box below.

A. The applicant (Individual)

This section refers to applicants who are individual persons only. If the applicant is an organisation, please go to Section B.

1. Surname
2. First name(s)
3. Date of birth e.g. 27/09/2012 D D M M Y Y Y Y
4. Nationality
5. Address
6. Telephone (including international dialling code)
7. Email (if any)
8. Sex
- male
- female

B. The applicant (Organisation)

This section should only be filled in where the applicant is a company, NGO, association or other legal entity.

9. Name
10. Identification number (if any)
11. Date of registration or incorporation (if any) e.g. 27/09/2012 D D M M Y Y Y Y
12. Activity
13. Registered address
14. Telephone (including international dialling code)
15. Email

European Court of Human Rights - Application form 2/11

C. Representative(s) of the applicant

If the applicant is not represented, go to Section D.

Non-lawyer/Organisation official

Please fill in this part of the form if you are representing an applicant but are not a lawyer.

In the box below, explain in what capacity you are representing the applicant or state your relationship or official function where you are representing an organisation.

16. Capacity / relationship / function
17. Surname
18. First name(s)
19. Nationality
20. Address
21. Telephone (including international dialling code)
22. Fax
23. Email

Lawyer

Please fill in this part of the form if you are representing the applicant as a lawyer.

24. Surname
25. First name(s)
26. Nationality
27. Address
28. Telephone (including international dialling code)
29. Fax
30. Email

Authority

The applicant must authorise any representative to act on his or her behalf by signing the authorisation below (see the Notes for filling in the application form).

I hereby authorise the person indicated to represent me in the proceedings before the European Court of Human Rights, concerning my application lodged under Article 34 of the Convention.

31. Signature of applicant
32. Date e.g. 27/09/2012 D D M M Y Y Y Y

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The (New) Application Form

Subject matter of the application

All the information concerning the facts, complaints and compliance with the requirements of exhaustion of domestic remedies and the six-month time-limit laid down in Article 35 § 1 of the Convention must be set out in this part of the application form (sections E., F. and G.) (Rule 47 § 2 (a)). The applicant may supplement this information by appending further details to the application form. Such additional explanations must not exceed 20 pages (Rule 47 § 2 (b)); this page limit does not include copies of accompanying documents and decisions.

E. Statement of the facts

34.

Please ensure that the information you enter into this section does not exceed the size limit and review your text accordingly. If you wish to submit supplementary information see the "Notes for filling in the application form".

F. Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments

37. Article invoked	Explanation

G. For each complaint, please confirm that you have used the available effective remedies in the country concerned, including appeals, and also indicate the date when the final decision at domestic level was delivered and received, to show that you have complied with the six-month time-limit.

38. Complaint	Information about remedies used and the date of the final decision

P and others v Italy – forced eviction with no notice

Two issues:

- Form of authority
- Insufficient space on the forms (we attached)

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Requests for Anonymity

Rule 47 § 5 of the Rules of Court

Applicants who do not wish their identity to be disclosed to the public shall so indicate and shall submit a statement of the reasons justifying such a departure from the normal rule of public access to information in proceedings before the Court. The Court may authorise anonymity or grant it of its own motion.

Contents of the Practice Direction

General principles

1. The parties are reminded that, unless a derogation has been obtained pursuant to Rules 33 or 47 of the Rules of Court, documents in proceedings before the Court are public. Thus, all information that is submitted in connection with an application in both written and oral proceedings, including information about the applicant or third parties, will be accessible to the public.

2. The parties should also be aware that the statement of facts, decisions and judgments of the Court are usually published on the Court internet site HUDOC (Rule 78 of the Rules of Court).

Requests in pending cases

3. Any request for anonymity should be made when completing the application form or as soon as possible thereafter. In both cases the applicant should provide reasons for the request and specify the impact that publication may have for him or her.

Retroactive requests

4. If an applicant wishes to request anonymity in respect of a case or cases published on HUDOC before 1 January 2010, he or she should send a letter to the Registry setting out the reasons for the request and specifying the impact that this publication has had or may have for him or her. The applicant should also provide an explanation as to why anonymity was not requested while the case was pending before the Court.

5. In deciding on the request the President shall take into account the explanations provided by the applicant, the level of publicity that the decision or judgment had already received and whether or not it is appropriate or practical to grant the request.

6. When the President grants the request he or she shall also decide on the most appropriate steps to be taken to protect the applicant from being identified. For example, the decision or judgment could inter alia be removed from the Court's internet site or the personal data deleted from the published document.

Other measures

7. The President may also take any other measure he or she considers necessary or desirable in respect of any material published by the Court in order to ensure respect for private life.

Requests for Anonymity

A.A. v United Kingdom – deportation of migrant who committed a serious offence as a minor

The AIRE Centre requested anonymity late in this case. Two years had passed since the application had been lodged and the applicant had started working and was afraid that his employers would find out about the case. The Court agreed to anonymise the case but the press in the UK figured out the applicant's identity anyway and published his name.

O.G.O. v UK – return of trafficking victim to Nigeria

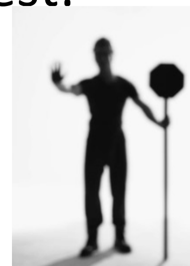
This case involved a victim of trafficking for forced domestic labour. The applicant did not instruct us to seek anonymity nor did we think it was necessary, as she is not in danger from her traffickers, but the Court decided to anonymise the case anyway, restricting access to the documents filed with the Court.

Requests for Rule 39 measures

- Need to show that there is an imminent risk of irreparable harm (arts. 2-3 or occasionally art.8).
- Usually used in immigration matters (imminent expulsion), but also used in other contexts:
  - To stop the UK authorities from destroying embryos. *Evans v United Kingdom* (2007).
  - To require the Russian authorities to provide HIV treatment to a prisoner. *Aleksanyan v Russia* (2008).
  - Court's webpage on Rule 39: http://www.echr.coe.int/Pages/home.aspx?p=applicants&c=#n1365511916164_pointer
  - Three ways of disposing of a Rule 39 request:

1. Decision falls outside of scope: rejected without showing to a judge.

2. Decision falls within scope but rejected: a judge decides not to grant the request



3. Request granted: a judge sees the request and makes an indication.

Rule 39 Requests

P and others v Italy – forced eviction with no notice

There are very few cases in which the Court has granted a Rule 39 to stop an eviction (see *Yordanova v Bulgaria* (2012)). ERRC asked for a Rule 39, citing *Yordanova* but also the recent judgment in *Winterstein v France*, where the Court stated that Roma should not be evicted without being offered re-housing, and *M.S.S. v Belgium and Greece* (2011), where the Court found leaving an asylum seeker homeless breached art.3. The registry did not see fit to show our request to a judge.

O.G.O. v UK – return of trafficking victim to Nigeria

This case involved a victim of trafficking for forced domestic labour. AIRE became aware of son expulsion a day before it was meant to happen and sent a Rule 39 request the evening before (7 March 2012). The Court granted the request. An injunction had been requested – but not received – from a High Court judge on the same day.

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A.M.B. v Spain (decision, Jan 2014)

- Roma family in Spain, on the waiting list for social housing, were refused and started squatting an empty social-housing flat. A court ordered them to leave. They appealed, but the appeal did not have automatic suspensive effect, and they applied to the ECtHR for a Rule 39. Do you think it was granted?

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Prioritisation of Cases

Look at the Court's priorisation policy: http://www.echr.coe.int/NR/rdonlyres/AA56DA0F-DEE5-4FB6-BDD3-A5B34123FFAE/0/2010__Priority_policy__Public_communication.pdf.

The Court's prioritisation chart:

I.	**Urgent** applications (in particular risk to life or health of the applicant, 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), inter-State cases
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 ("repetitive cases")
VI.	Applications identified as giving rise to a problem of admissibility
VII.	Applications which are manifestly inadmissible

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Statement of Facts – Keep it Simple – Cross-Reference to Annexes

Osman v Denmark – failure to re-instate residence rights of child taken out of country

1. Sahro Osman Ibrahim Musse ('the Applicant') was born on 1 November 1987 in Mogadishu. She is a Somali national and a member of the Darod clan and Harti sub-clan.

2. In 1994, the Applicant's father and disabled sister were granted residence status in Denmark. In February 1995, the Applicant, her mother and her three other siblings came to Denmark to join the Applicant's father, having been granted entry visas for this purpose. A stamp the Danish authorities placed on the Applicant's visa indicated that the permit was 'granted with a view to permanent residence' (Annex A).

3. The Aliens (Consolidation) Act 2004 § 17(1) provides that a residence permit such as the Applicant's shall expire if the holder spends more than six consecutive months outside Denmark, unless the holder has resided lawfully in Denmark for two years, in which case the permit shall lapse if the holder stays outside Denmark for more than twelve consecutive months. It is possible for the authorities to make exceptions to this rule under § 17(2) of the Act. The Applicant had resided in Denmark for 8 years at the relevant time.

4. Soon after the family reunited in Denmark, the Applicant's parents divorced. The Applicant's father subsequently remarried. The Applicant attended Haderslev School until January 1999. The Applicant then moved to Esbjerg with her mother and siblings and attended several schools there. She had disciplinary problems at these schools and stopped attending in August 2002 at the age of 14. Education is compulsory in Denmark until the age of 16, but the Applicant remains unaware of any meaningful steps taken by the Danish authorities to enforce this law in her case. The Applicant also had difficulties with her parents, who disapproved of the certain aspects of her behaviour that they considered unbecoming of a Somali girl.

5. In March 2003, the Applicant's father decided to take the Applicant – aged 15 – to her paternal grandmother in Kenya. The Applicant's mother did not want her to go, but reluctantly agreed on the understanding it would be a short trip. The Applicant and her father travelled to Hagadera, Kenya, where the Applicant's paternal grandmother was living in a refugee camp administered by the UN High Commissioner for Refugees in the Dadaab area. The Applicant's father abandoned the Applicant with instructions that she was to stay in the camp to provide her grandmother with full-time care.

6. The Applicant's grandmother was unable to eat, drink, bathe or use the toilet on her own. The Applicant was obliged to help her grandmother perform these tasks, 24 hours a day, for two years. The Applicant's grandmother had difficulty keeping down food and water and suffered from restricted continence. The Applicant lacked the necessary common language skills to communicate with her grandmother, which made these tasks even more difficult.

7. The Applicant received no education during the two years she spent in the camp. She received no financial compensation for looking after her grandmother.

8. In August 2005, other relatives of the Applicant's grandmother arrived at the camp from Somalia and, taking advantage of their presence, the Applicant went to Nairobi. She contacted the Danish embassy with a view to returning to live with her mother and siblings in Denmark. The Danish authorities in Nairobi refused to grant the Applicant an entry visa. They concluded that she had been away from Denmark for more than 12 consecutive months, rendering her residence permit invalid.

Osman v Denmark – failure to re-instate residence rights of child taken out of country

Statement of Violations – Cite Case Law

Osman, Article 8 in relation to failure to re-instate residence permit:

26. The Applicant alleges that even if, as is the case at present for practical reasons, no immediate steps are being taken to remove her, the precarious nature of her residence status in Denmark violates the Applicant's right to respect for private life.

i. There is a protected right

27. While the Applicant recognises that there is no right under Article 8 to a specific kind of residence document, the Court will be aware that the issue of residence documentation is a matter falling within the ambit of private life Article 8. *See, e.g., Smirnova v Russia*, Application Numbers 46133/99 and 48183/99, judgment of 24 July 2003, paragraphs 96-97.

ii. There is an interference with the Applicant's rights

28. As was the case for the Applicant in *Aristimuño Mendizabal v France*, Application Number 51431/99, judgment of 17 January 2006, for the Applicant 'la précarité de son statut et l'incertitude sur son sort ont eu d'importantes conséquences pour elle sur le plan matériel et moral' (paragraph 70). The Applicant is unable to work, unable to continue her education and unable to establish herself independently. The deprivation of residence status makes the Applicant that much more dependent on her mother and siblings with whom she lives. The Applicant is particularly anxious as a result of the uncertainty surrounding her future, and particularly the threat of expulsion to Somalia.

iii. The interference is in accordance with the law

29. The Applicant reiterates paragraph 18 above, *mutatis mutandis*.

iv. The interference pursues a legitimate aim

30. The Applicant reiterates paragraph 19 above, *mutatis mutandis*.

v. The interference is not necessary in a democratic society

31. The Applicant reiterates paragraphs 20-23 above, *mutatis mutandis*. The Applicant also emphasises that the refusal to re-instate her residence status has left the Applicant living as an undocumented migrant in Denmark. This makes it impossible for her to carry out a normal life (*cf. Smirnova v Russia*, paragraphs 96-97) – in particular to work or to continue her education. As a result, the Applicant essentially spends her time at home, dependent on her siblings and mother for the basic means of survival and in constant fear that she will be detained and forcibly removed to Somalia.

The Court’s Factsheets

The Court’s factsheets can be helpful for compiling applications in specific areas by point you to decided and pending cases: http://www.echr.coe.int/ECHR/EN/Header/Press/Information+sheets/Factsheets/.

You can also look at press releases to get summaries of cases.

Questions?

Break!

3. Admissibility Criteria

Article 35 – Admissibility Criteria

1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.

2. The Court shall not deal with any application submitted under Article 34 that

(a) is anonymous; or

(b) is substantially the same as a matter that has already been

examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.

3. The Court shall declare inadmissible any individual application

submitted under Article 34 if it considers that:

(a) the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill founded, or an abuse of the right of individual application;

or

(b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal.

4. The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.

The Court's Practical Guide

The Court has assembled a 92-page practical guide to admissibility. This is a key resource that includes references to hundreds of cases and is the first place to look when dealing with any question about the admissibility of an application. The guide was published in 2011 so it may be necessary to look at more up-to-date case law. It is available in 25 languages.

http://www.echr.coe.int/NR/rdonlyres/B5358231-79EF-4767-975F-524E0DCF2FBA/0/ENG_Guide_pratique.pdf

Exhaustion

Basic principles:

- Purpose of the rule is to afford the national authorities the opportunity to put right the alleged violations.
- '*The exhaustion rule may be described as one that is golden rather than cast in stone*' (admissibility guide) – there is some flexibility and each case is different.
- No need to exhaust remedies that are not practical and effective.
- You must comply with domestic rules and time limits.
- If there are several remedies available, you only need to exhaust one set of remedies.
- You must raise the complaint in substance before the domestic courts.

Burden of Proof on Exhaustion

Selmouni v France (paragraph 76):

Article 35 provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement….

Where Domestic Remedies Are Likely To Fail

De Wilde, Ooms and Versyp v Belgium [1971], paragraph 62

"The Court finds… that according to the settled legal opinion which existed in Belgium up to 7th June 1967 recourse to the Conseil D'Etat against the orders of a magistrate was thought to be inadmissible…. The Court is therefore of the opinion that, as regards the complaints concerning the detention orders, the Government's submission of inadmissibility on the ground of failure to observe the rule on the exhaustion of domestic remedies is not well-founded."

Common Law Systems

Less likely that this doctrine will work for applicants – courts can always develop the law and must be given the opportunity to do so. *D v Ireland* (abortion rights). Also, legislation like the UK Human Rights Act makes this doctrine very unlikely to help applicants there.

Civil Law Systems

More likely that the doctrine will apply, but see *Augusto v France* [2007], which suggests that appeals must be made, even if there is case law on the point.

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Example – *Karoussiotis v Portugal* (2011)

The applicant's child was abducted by the other parent from Germany to Portugal. The Portuguese courts had taken a very long time to deal with the cases about parental responsibility and return of the child to Germany. The application was lodged before those cases were finished before the Portuguese courts.

58. *La Cour observe que la procédure visant le retour de l'enfant a été conclue par un arrêt de la cour d'appel de Guimarães du 9 janvier 2009. Toutefois, s'agissant de la procédure portant sur la réglementation de l'autorité parentale, la Cour constate que celle-ci est effectivement toujours pendante. Toutefois, dans la mesure où la requérante se plaint d'une violation de son droit au respect de sa vie familiale en raison, notamment, de la durée des procédures en cause, la Cour estime que l'exception préliminaire tirée du non épuisement des voies de recours internes est étroitement liée au bien-fondé de l'affaire. Elle reprendra donc ci-après son examen sur ce point dans le cadre de l'examen du fond des griefs.*

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Example – Expulsion Cases

If an application is claiming that her expulsion from a country will result in ill treatment in violation of Article 3, in order for a remedy to be effective it must have automatic suspensive effect. *Gebremedhin v France* (2007), § 63.

P and others v Italy – forced eviction with no notice

Exhaustion in *P and others*

- The applicant notes that the Court's case law requires that the question of exhaustion of domestic remedies be considered in the light of her particularly vulnerable status as a Romani woman and in the light of the refusal of the municipal authorities to respect basic principles of Italian administrative law, despite the fact that the State of Emergency legislation under which they appear to have been acting had been declared unlawful. See, mutatis mutandis, *M.S.S. v Belgium and Greece* (Grand Chamber, 2011), § 321 ('*there has been a violation of Article 13 of the Convention taken in conjunction with Article 3 because of the deficiencies in the Greek authorities' examination of the applicant's asylum request and the risk he faces of being returned directly or indirectly to his country of origin without any serious examination of the merits of his asylum application and without having access to an effective remedy*').
- In any event, Italian domestic law does not provide remedies with automatic suspensive effect against this kind of eviction. The applicant relies on her arguments set out above in stating that any remedy, in order for it to be effective, had to have automatic suspensive effect:
  - a) as she claims to be the victim of a violation of Article 3, she was entitled to a remedy with automatic suspensive effect (*Gebremedhin v France* (2007), § 66);
  - b) even if the matter does not fall within Article 3, the threatened harm (particularly to the applicant's children) was potentially irreversible and she was therefore entitled to a remedy with automatic suspensive effect;
  - c) the Court itself in *Winterstein v France* (2013), § 148 and *Rousk v Sweden* (2013) found that there was a right to have a court consider the proportionality of the eviction before it took place.

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M v France – EU citizen facing expulsion from France, refused legal aid to take case to highest court

Exhaustion in *M v France*

- Applicant appealed to first-instance court, lost, and appealed to Court of Appeal. She was refused legal aid to continue to the Conseil d'Etat.
- Research: *Winterstein v France* (2013), same situation.

O.G.O. v UK – return of trafficking victim to Nigeria

O.G.O. and Judicial Review

There are still proceedings going on in the English courts about judicially reviewing the failure of the authorities to treat the applicant's new claim for asylum as a new claim. These do not have automatic suspensive effect. In relation to exhaustion, we wrote the following to the Court:

96. The Applicant currently has an application for judicial review of the decision not to treat her fresh claim for asylum as a fresh claim. The Applicant submits that these proceedings do not provide her with an effective remedy against her complaints under Articles 3, 4 and 8 of the Convention. The Court has found that in order for a remedy against a claim that an individual's expulsion will expose her to treatment contrary to Article 3, such a remedy must have automatic suspensive effect. *Gebrehmedhin v France* (2007), § 66. Judicial review proceedings of this kind do not have automatic suspensive effect and the High Court has not made any order that the Applicant should not be expelled. The UK authorities have now, in the context of those proceedings, undertaken not to expel the Applicant while the UKBA 'competent authority' re-assesses the Applicant's case, this is not sufficient to make the current proceedings effective. See, mutatis mutandis, *Čonka v Belgium* (2002), § 83 ('*the requirements of Article 13, and of the other provisions of the Convention, take the form of a guarantee and not of a mere statement of intent or a practical arrangement*'). The Applicant is aware that there are cases which the Court has struck out of the list when it found that a procedure taking place at domestic level 'may lead to a possible Convention violation being prevented'. *Atmaca v Germany* (decision, 2012). However, the conditions present in the *Atmaca* case are not met here. In particular, unlike in the *Atmaca* case, there is nothing at present as a matter of law, other than this Court's indication made under Rule 39, preventing the UK authorities from expelling the Applicant.

Exhaustion – Constitutional Courts

In Germany, Spain and the Czech Republic, for example, it is necessary to bring a claim to the Constitutional Court before going to Strasbourg. Not so for Georgia, Hungary and Italy, for example, because of the way their systems work.

A.M.B. v Spain (decision, Jan 2014)

- The Rule 39 in this case was granted, and the Spanish government then argued that the Rule 39 should be lifted and the case ruled inadmissible on grounds of failure to exhaust because:
  - The applicants had €560/month in social assistance and could use that.
  - There were other sources of social assistance to help them get re-housed that they had not yet used.

How do you think the Court ruled?

Six Months

Applications must be introduced within six months of the date of the final decision.

If you are not sure whether you have exhausted or not, submit your application. The Court will then tell you if you have not exhausted and this will not prevent you from coming back to the Court. For example, in *Parias Merry v Spain* (1999) the applicant made an appeal to the Constitutional Court that was dismissed as inappropriate by the Constitutional Court.

New Rule 47 (from 1 January 2014)

6. (a) The date of introduction of the application for the purposes of Article 35 § 1 of the Convention shall be the date on which an application form satisfying the requirements of this Rule is sent to the Court. The date of dispatch shall be the date of the postmark.

(b) Where it finds it justified, the Court may nevertheless decide that a different date shall be considered to be the date of introduction.

7. Applicants shall keep the Court informed of any change of address and of all circumstances relevant to the application.

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Continuing Violations

Some violations are ‘continuing’ (i.e. ongoing) in nature.

For example:

- Failure to investigate a disappearance.
- Preventing a person from returning to land that she owns.

In these cases, the six-month rule does not apply. However, there is a duty of reasonable expedition. Key cases:

- *Varnava v Turkey* (2009)
- *Sargsyan v Azerbaijan* (2011)
- *Chriagov & Others v Armenia* (2012)

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Cases Being Considered by Another International Body

What other international bodies are we talking about?

Judicial and Quasi-Judicial Proceedings

Bodies That Count	**Bodies That Do Not Count**
UN Human Rights Committee Other UN Bodies that accept individual petitions International Labour Organisation (examination of complaints)	UN bodies that do not receive individual petitions (e.g. U.N. Committee for Missing Persons in Cyprus) Non-governmental (as opposed to international) bodies **The European Commission**

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Significant Disadvantage

- Added by Protocol 14
- *De minimis* notion
- Money: the Court has found losses of less than €200 not to amount to significant disadvantage
- Czech cases: failure to give an opportunity to reply to submissions by lower courts or other parties before the Constitutional Court did not affect the outcome.

Article 34 – Individual Applications

The Court may receive applications from any <u>person</u>, <u>non-governmental organisation</u> or <u>group</u> of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective

exercise of this right.

‘Victim Status’

Two questions that arise here:

1. Who is a ‘victim’ of a Convention violation
2. When can an applicant lose her victim status?

Who is a 'victim'?

Applicants must show that they are

- actual victims, or
- potential victims, or
- indirect victims

of a violation of the Convention.

Actual victims do not need to have suffered prejudice or detriment (if they do, this is relevant to claims for just satisfaction).

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Potential Victims

Cases Where Applicants Were Not Victims

- **Gay men and lesbians in cases where laws exist criminalising homosexual behaviour (e.g. *Modinos v Cyprus, SL v Austria*)**
- ***Burden and Burden v UK*: sisters living together one of whom would be subject to a taxation regime they claimed violated the Convention upon the other's death**
- **Immigration cases: individuals facing imminent removal to a place where they face death, torture, inhuman and degrading treatment, &c.**

Cases Where Applicants Were Not Victims ('Actio Popularis')

- ***Buckley v UK*: complaint about law prohibiting gypsy caravans was not admissible because no measures had been taken against the applicant**
- ***Russian Conservative Party of Entrepreneurs v Russia*: supporters of a political party were not victims as a result of being forced to change their vote when the party was banned**

Indirect Victims

An individual can establish that she is an ‘indirect victim’ of a Convention violation if she is affected by the violation of another person’s rights. This usually involves family members.

Kurt v Turkey: violation of Article 3 resulting from mother’s anguish and distress when here son was taken by state security forces.

Losing Victim Status

It is possible for an individual who was a victim to lose his victim status after lodging his application. That will make the application inadmissible.

L.R. v UK – return of trafficking victim to Albania

As part of friendly settlement negotiations in this case, the UK agreed to recognise the applicant as a refugee. Had they done so, but had we not reached a friendly settlement agreement, the Court might very well have found that she had been deprived of victim status.

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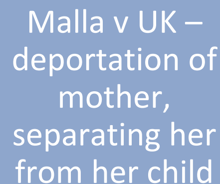
What Kind of Change in Circumstances Will Suffice

It is now generally accepted that unilateral action by the state to redress an alleged breach of the Convention in the course of proceedings of the Court will have to involve **both a recognition of a violation and adequate redress**.

Unilateral Declarations

States may seek to resolve cases by making a ‘unilateral declaration’ (e.g. if friendly-settlement negotiations claim), in order to deprive someone of victim status or otherwise resolve the case (see Article 37(1)(b) ECHR – allowing the Court to strike out cases where ‘the matter has been resolved’). Two examples:

- *Stojanovic v Serbia* (2009)
- *Rantsev v Cyprus and Russia* (2010)



We resolved this case by means of a friendly settlement: the UK granted the applicant an entry visa and three years’ leave to remain and made an ex gratia payment of £4,000. Had this not been resolved by means of a friendly settlement by the UK nonetheless had offered to do the same in a unilateral declaration, the applicant probably would still have had victim status but the Court might have found that the ‘matter ha[d] been resolved’.

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Rule 62 of the Rules of Court

Rule 62A[2] – Unilateral declaration

1. (a) Where an applicant has refused the terms of a friendly-settlement proposal made pursuant to Rule 62, the Contracting Party concerned may file with the Court a request to strike the application out of the list in accordance with Article 37 § 1 of the Convention.

(b) Such request shall be accompanied by a declaration clearly acknowledging that there has been a violation of the Convention in the applicant's case together with an undertaking to provide adequate redress and, as appropriate, to take necessary remedial measures.

(c) The filing of a declaration under paragraph 1 (b) of this Rule must be made in public and adversarial proceedings conducted separately from and with due respect for the confidentiality of any friendly-settlement proceedings referred to in Article 39 § 2 of the Convention and Rule 62 § 2.

2. Where exceptional circumstances so justify, a request and accompanying declaration may be filed with the Court even in the absence of a prior attempt to reach a friendly settlement.

3. If it is satisfied that the declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue its examination of the application, the Court may strike it out of the list, either in whole or in part, even if the applicant wishes the examination of the application to be continued.

4. This Rule applies, *mutatis mutandis*, to the procedure under Rule 54A.

Other Issues Under Article 34

- Competence *Ratione Materiae*

- Competence *Ratione Temporis*
  - See *Silih v Slovenia* (2009)

- Competence *Ratione Loci*

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Questions?

4. Repetitive Cases and Hearings

The Court's Tools for Dealing with Repetitive Cases

Article 28 – Competence of Committees

- *In respect of an application submitted under Article 34, a committee may, by unanimous vote… declare it admissible and render at the same time a judgment on the merits, if the underlying question in the case, concerning the application of the Convention or the Protocols thereto, is already the subject of well-established case law of the Court.*
- **These judgments are final.**

Rule 61 of the Rules of Court - The Pilot Judgment Procedure

- § 1: *The Court may initiate a pilot-judgment procedure and adopt a pilot judgment where the facts of an application reveal in the Contracting Party concerned the existence of a structural or systemic problem or other similar dysfunction which has given rise or may give rise to similar applications.*
- Any party can ask for a case to be considered as a pilot judgment.

Tips for Repetitive Cases

- If there is previous case law on point:
  - Make the application particularly short
  - Signal to the Court that the case is suitable for examination by a committee under Article 28 if there is previous case law
- If there is no case law yet, but a large number of cases, discuss with the other lawyers and NGOs involved and decide which is the best to be put forward as a pilot judgment (although of course the Court has the ultimate say).

Cases Where the Court Has Applied the Pilot Judgment Procedure

- Failure to respect a previous ruling that now affects a lot of people:
  - Prisoners' voting rights in the UK (*M.T. and Greens v UK* (2010))
- Large numbers of applications
  - Polish 'Bug River Legislation' litigation – *Brionowski v Poland* (2004)
  - Social housing legislation in Moldova – *Olaru v Moldova*

Strategy: several thousand Roma are subject to eviction in Milan and elsewhere in Italy each year with no formal notice. If we can gather a critical mass of cases, ERRC would consider asking for a pilot judgment.

P and others v Italy – forced eviction with no notice

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Hearings: Basis in the Rules of Court

Rule 54 § 3 – before a decision on admissibility

Before taking its decision on the admissibility, the Chamber may decide, either at the request of a party or of its own motion, to hold a hearing if it considers that the discharge of its functions under the Convention so requires. In that event, unless the Chamber shall exceptionally decide otherwise, the parties shall also be invited to address the issues arising in relation to the merits of the application.

Rule 59 § 3 – after a decision on admissibility

The Chamber may decide, either at the request of a party or of its own motion, to hold a hearing on the merits if it considers that the discharge of its functions under the Convention so requires.

Rule 71 – Grand Chamber

1. *Any provisions governing proceedings before the Chambers shall apply, mutatis mutandis, to proceedings before the Grand Chamber.*
2. *The powers conferred on a Chamber by Rules 54 § 3 and 59 § 3 in relation to the holding of a hearing may, in proceedings before the Grand Chamber, also be exercised by the President of the Grand Chamber.*

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Osman v Denmark – failure to re-instate residence rights of child taken out of country

Osman – Request for Hearing

Content of our request:

We write further to your letter of 28 July 2010 to request, in accordance with your letter, that any further submissions in this case be heard by way of an oral hearing.

The reasons for requesting an oral hearing are as follows:

- The Applicant raised complaints under Article 4 of the Convention which have not been considered by the Government. The Applicant's arguments under Article 4 of the Convention are somewhat unusual, as this case concerns intra-familial trafficking, and require further elucidation. The Court has determined that trafficking falls under Article 4 of the Convention (*Rantsev v Cyprus & Russia (Application No. 25965/04)* however the application of this extension of Article 4 is as yet unclear and undetermined by the Court. These issues would be best considered in the context of an oral hearing.

- There is a paucity of cases before the Court concerning the Danish immigration system and as this case raises serious allegations relating to the operation of Danish immigration rules, an oral hearing would be appropriate to determine these issues.

We look forward to hearing from you.

The Court rejected our request.

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Conduct of Hearings

- Rule 64 of the Rules of Court allows the President of the Chamber to organise and direct hearings and prescribe the order in which those appearing shall speak.
- Normal procedure and tips:
  - Each Party is given 30 minutes to speak, in English or French.
  - Speeches should be easy to interpret into the other language.
  - The judges will ask questions and give the parties time to prepare their answers. It is important to have a good team with you to help you formulate answers.

Questions?

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6. Friendly Settlements

Article 39 ECHR

1. At any stage of the proceedings, the Court may place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the Protocols thereto.

2. Proceedings conducted under paragraph 1 shall be confidential.

3. If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.

4. This decision shall be transmitted to the Committee of Ministers, which shall supervise the execution of the terms of the friendly settlement as set out in the decision.

AIRE Friendly Settlements

L.R. v UK – return of trafficking victim to Albania

In this case, the UK Government agreed to grant the applicant, who had not yet been expelled to Albania, refugee status. This went far beyond what we could have achieved from the Court, which has no jurisdiction to require the Government to give the applicant any particular kind of status.

Malla v UK – deportation of mother, separating her from her child

In this case, where the applicant had already been expelled to Cameroon, the UK Government agreed to grant her an entry visa, three years' leave to remain and to make an ex gratia payment of £4,000. The amount of money was about what we could expect, although it would have taken much longer following a judgment to secure an entry visa and leave to remain.

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Important Points for Friendly Settlement Negotiations

Opportunities	Risks
-Resolve the case quickly -Secure remedies beyond the Court's jurisdiction to grant -There is a decision which records what the Government agreed -Committee of Ministers will oversee execution of the terms of the friendly settlement	-If you do not agree to reasonable terms, the Government are likely to make a unilateral declaration setting out their terms and the Court may strike out the case -There may be systemic problems that cannot be resolved through a friendly settlement (e.g. *Rantsev v Cyprus and Russia* (2010))

L.R. v UK – return of trafficking victim to Albania

Doing Your Homework for Friendly Settlement

The reasonableness of a friendly settlement offer must be judged relative to similar friendly settlements and judgments in similar cases.

Search through (friendly settlement) decisions in HUDOC to find similar cases. In *L.R.*, the most similar case (also an AIRE case) was *M v United Kingdom*, involving a trafficking victim from Uganda who got three years' leave to remain. Other research revealed that in general, in expulsion cases where the person had not yet been expelled, the Court was willing to accept five years' residence rights or more as resolving the matter and had rejected cases where one year had been offered or granted.

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Questions?

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7. Costs and Just Satisfaction

Texts on Just Satisfaction

Article 41 ECHR – Just Satisfaction

If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.

Rule 60 of the Rules of Court

1. An applicant who wishes to obtain an award of just satisfaction under Article 41 of the Convention in the event of the Court finding a violation of his or her Convention rights must make a specific claim to that effect.
2. The applicant must submit itemised particulars of all claims, together with any relevant supporting documents, within the time-limit fixed for the submission of the applicant's observations on the merits unless the President of the Chamber directs otherwise.
3. If the applicant fails to comply with the requirements set out in the preceding paragraphs the Chamber may reject the claims in whole or in part.
4. The applicant's claims shall be transmitted to the respondent Contracting Party for comment.

Practice Direction

http://www.echr.coe.int/NR/rdonlyres/8227A775-CD37-4F51-A4AA-1797004BE394/0/ENG_INSTRUCTION_PRATIQUE_ART41.pdf

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Osman v Denmark – failure to re-instate residence rights of child taken out of country

Osman Just Satisfaction Claim

Our claim:

5. The Applicant maintains that the Danish authorities' refusal to provide her with an entry visa to re-enter Denmark constituted a violation of the Applicant's right to respect for family life by depriving her of the possibility of being re-united with her mother and siblings. From August 2005, when the Applicant applied at the Danish embassy in Nairobi for her residence rights to be re-instated, until June 2007, when the Applicant re-entered Denmark clandestinely, the Applicant was separated from her mother and siblings as a result of State action (the refusal to provide her with documentation necessary to enter Denmark) in violation of the Convention.
6. In *Kutzner v Germany* (2002), the applicants "*alleged that they had sustained substantial non-pecuniary damage, their physical and psychological health having suffered as a result of their separation from their children* [and] *their children's separation from each other*" (paragraph 85). The Court awarded compensation in the amount of €15,000.
7. Likewise, in *Nolan and K. v Russia* (2009), the Court awarded the applicant €7,000 by way of non-pecuniary damage, in part because the refusal to allow him to re-enter Russia on his visa resulted in "*his lengthy separation from his son*" (paragraph 120).
8. In *Tuquabo-Tekle v the Netherlands* (2005), the Court found that the applicants, who were separated as a result of the Dutch authorities' refusal to allow a fifteen year-old child (who by the time the case was heard was an adult) to return to live with her mother, stepfather and siblings in the Netherlands, '*must have suffered non-pecuniary damage as a result of being separated from each other, which is not sufficiently compensated for by the finding of a violation of the Convention*'. The Court awarded the applicants €8,000.
9. In the light of this case law, the Applicant claims €10,000 by way of non-pecuniary damage suffered because of her separation from her mother and siblings between August 2005 and June 2007. This separation was caused by the Danish authorities' refusal to re-instate the Applicant's residence status and provide her with documentation to re-enter Denmark.

Osman v Denmark – failure to re-instate residence rights of child taken out of country

Osman Just Satisfaction Claim

10. The Applicant has suffered considerable anxiety as a result of her uncertain status in Denmark. The Applicant is unable to complete her education in Denmark as a result of her undocumented status and is unable to take up work or access any of the social assistance or social security benefits to which she might otherwise be entitled. The Applicant is in constant fear about the uncertainty of her status. The Danish authorities have exacerbated that fear by sending the Applicant a letter on 27 January 2010 informing her that she liable to be expelled from Denmark (Annex A). (The Applicant emphasises that the letter was sent directly to her, and not to her representatives.) It appears that the letter was sent as a direct response to the Applicant's exercise of her right, under Article 34 of the Convention, to apply to the Court. The Applicant is now extremely anxious and depressed and reports having occasional suicidal thoughts. She continues to receive psycho-social support from Anders Toft Andersen, a social worker working with the organisation Gadehjørnet. However, the Applicant's mental health continues to deteriorate because of the state of uncertainty in which she lives.
11. In *Smirnova v Russia* (2003), the Court awarded the applicant Y.S. €3,500 in part because she "*suffered frustration over not being able to engage fully in her everyday life due to the confiscation of her passport*" (paragraph 105).
12. In *Aristimuño Mendizabal v France* (2006), the applicant, who lived in France as an undocumented migrant for 14 years due to the French authorities' unlawful refusal of residence documentation, claimed non-pecuniary damages because "*l'incertitude permanente dans laquelle elle a été maintenue pendant de très longues années a généré un sentiment permanent d'humiliation et de peur, l'empêchant de faire des projets au plan personnel comme au plan social*" (paragraph 93). The Applicant claims that she is currently in the same situation and also lives with a permanent feeling of humiliation and fear. The Court awarded the applicant in *Aristimuño Mendizabal* €50,000 in both pecuniary and non-pecuniary damage.
13. The Applicant claims €5,000 in respect of non-pecuniary damage arising out of her current situation as an undocumented migrant in Denmark.

Costs – the Practice Direction

16. The Court can order the reimbursement to the applicant of costs and expenses which he or she has incurred – first at the domestic level, and subsequently in the proceedings before the Court itself – in trying to prevent the violation from occurring, or in trying to obtain redress therefor. Such costs and expenses will typically include the cost of legal assistance, court registration fees and suchlike. They may also include travel and subsistence expenses, in particular if these have been incurred by attendance at a hearing of the Court.

17. The Court will uphold claims for costs and expenses only in so far as they are referable to the violations it has found. It will reject them in so far as they relate to complaints that have not led to the finding of a violation, or to complaints declared inadmissible. This being so, applicants may wish to link separate claim items to

particular complaints.

18. Costs and expenses must have been actually incurred. That is, the applicant must have paid them, or be bound to pay them, pursuant to a legal or contractual obligation. Any sums paid or payable by domestic authorities or by the Council of Europe by way of legal aid will be deducted.

19. Costs and expenses must have been necessarily incurred. That is, they must have become unavoidable in order to prevent the violation or obtain redress therefor.

20. They must be reasonable as to quantum. If the Court finds them to be excessive, it will award a sum which, on its own estimate, is reasonable.

21. The Court requires evidence, such as itemised bills and invoices. These must be sufficiently detailed to enable the Court to determine to what extent the above requirements have been met.

Arranging Your Costs

The AIRE Centre normally engages in contingency-fee arrangements with clients for costs in Strasbourg. Because the Court does not award costs against applicants, this is a safe way for applicants to undertake litigation in Strasbourg.

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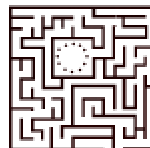
Osman v Denmark – failure to re-instate residence rights of child taken out of country

Our Bill in Osman – page 1



THE AIRE CENTRE

Advice on Individual Rights in Europe

LEGAL COSTS

Osman v Denmark (Application Number 38058/09)

Unit Costs

Senior Lawyers, AIRE Centre (Adam Weiss, Saadiya Chaudary)

Time charged @ £110 per hour

Junior Lawyers, AIRE Centre (Hildur Hallgrimsdottir, and Sarah St Vincent)

Time charged @ £95 per hour

Paralegal (photocopying, proof-reading, translating etc)

Time charged @ £20 per hour

Researching and drafting the letter of introduction (July 2009)

Senior Lawyers: 2 hours @ £110	£220
Junior Lawyers: 4 hours @ £95	£380

Researching and Drafting the full application (August – September 2009)

- Drafting the statement of facts

Senior Lawyers: 14 hours @ £110	£1,540
Junior Lawyers: 13 hours @ £95	£1,235

- Researching the law including ECHR case law domestic laws on immigration, education and paternity

Senior Lawyers: 2 hours @ £110	£220
Junior Lawyers: 4 hours @ £95	£380

- Correspondence and interaction with the Client as well as Specialists such as Anders Toft Andersen from Gadeljornet

Senior Lawyers: 2 hours @ £110	£220
Junior Lawyers: 6 hours @ £95	£570

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Osman v Denmark – failure to re-instate residence rights of child taken out of country

Our Bill in Osman – page 2

- Research regarding aspects of the Application, human trafficking, rights of the child, related Articles of the Convention as applicable to this case

Senior Lawyers: 9 hours @ £110	£990
Junior Lawyers: 3 hours @ £95	£285

- Drafting the Statement of Violations

Senior Lawyer: 6 hours @ £110	£660
Junior Lawyer: 1 hour @ £95	£95
Paralegal: 4 hours @ £20	£80

Reading the Government Observations and drafting the response (May – June 2009)

Senior Lawyer: 8 hours @ £110.00	£880
Junior Lawyers: 6 hours @ £95.00	£570

Researching and drafting the claim for just satisfaction

Senior Lawyer: 1 hour @ £110	£110
Junior Lawyer: 2 hours @ £95.00	£190

Total legal costs:	**£8,625**

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Excerpt from the Judgment in Osman

Osman v Denmark – failure to re-instate residence rights of child taken out of country

86. The applicant also claimed 8,625 GBP pounds (equivalent to EUR 10,435) for the costs and expenses incurred before the Court.

87. The Government found the amount excessive and noted that the applicant had failed to apply for legal aid under the Danish Legal Aid Act (*Lov 1999-12-20 nr. 940 om retshjælp til indgivelse og førelse af klagesager for internationale klageorganer i henhold til menneskerettigheds-konventioner)* according to which applicants may be granted free legal aid for their lodging of complaints and the procedure before international institutions under human rights conventions.

88. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the documents in its possession, the above criteria, and awards made in comparable cases against Denmark (see, among others, *Hasslund v. Denmark*, no. 36244/06, § 63, 11 December 2008 and *Christensen v. Denmark*, no. 247/07, § 114, 22 January 2009), the Court considers it reasonable to award the sum of EUR 6,000 covering costs for the proceedings before the Court.

Excerpt from the Judgment in AA

A.A. v United Kingdom – deportation of migrant who committed a serious offence as a minor

70. The applicant also claimed GBP 5,729.49 for the costs and expenses incurred before the Court.
71. The Government argued that the case was straightforward and that no new issue of principle arose. In these circumstances, they considered that the number of lawyers involved in the preparation of the case, the rates charged and the time spent were excessive. They proposed the sum of GBP 2,460, which corresponded to the costs incurred by the Government in the proceedings before the Court.
72. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, the Court considers it reasonable to award the sum of EUR 4,000 for the proceedings before the Court.

Legal Aid – Rules of Court

If you request it, the Court will send you a guide for making a claim for legal aid.
The relevant rules are Rules 101-105.

Rule 101:

Legal aid shall be granted only where the President of the Chamber is satisfied
(a) that it is necessary for the proper conduct of the case before the Chamber;
(b) that the applicant has insufficient means to meet all or part of the costs entailed.

Rule 102:

1. *In order to determine whether or not applicants have sufficient means to meet all or part of the costs entailed, they shall be required to complete a form of declaration stating their income, capital assets and any financial commitments in respect of dependants, or any other financial obligations. The declaration shall be certified by the appropriate domestic authority or authorities.*
2. *The President of the Chamber may invite the Contracting Party concerned to submit its comments in writing.*
3. *After receiving the information mentioned in paragraph 1 of this Rule, the President of the Chamber shall decide whether or not to grant legal aid. The Registrar shall inform the parties accordingly.*

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More on Legal Aid

- In cases against the UK, the AIRE Centre has been able to secure legal aid by showing the Court that the applicant would be eligible for legal aid in the domestic legal system (obtaining a 'certificate of indigence' from the Legal Services Commission in England and Wales).
- The amount given by the Court is usually €850. This will be deducted from costs awarded at the end of the proceedings.
- Your domestic legal system may provide legal aid for Strasbourg proceedings.

Questions?