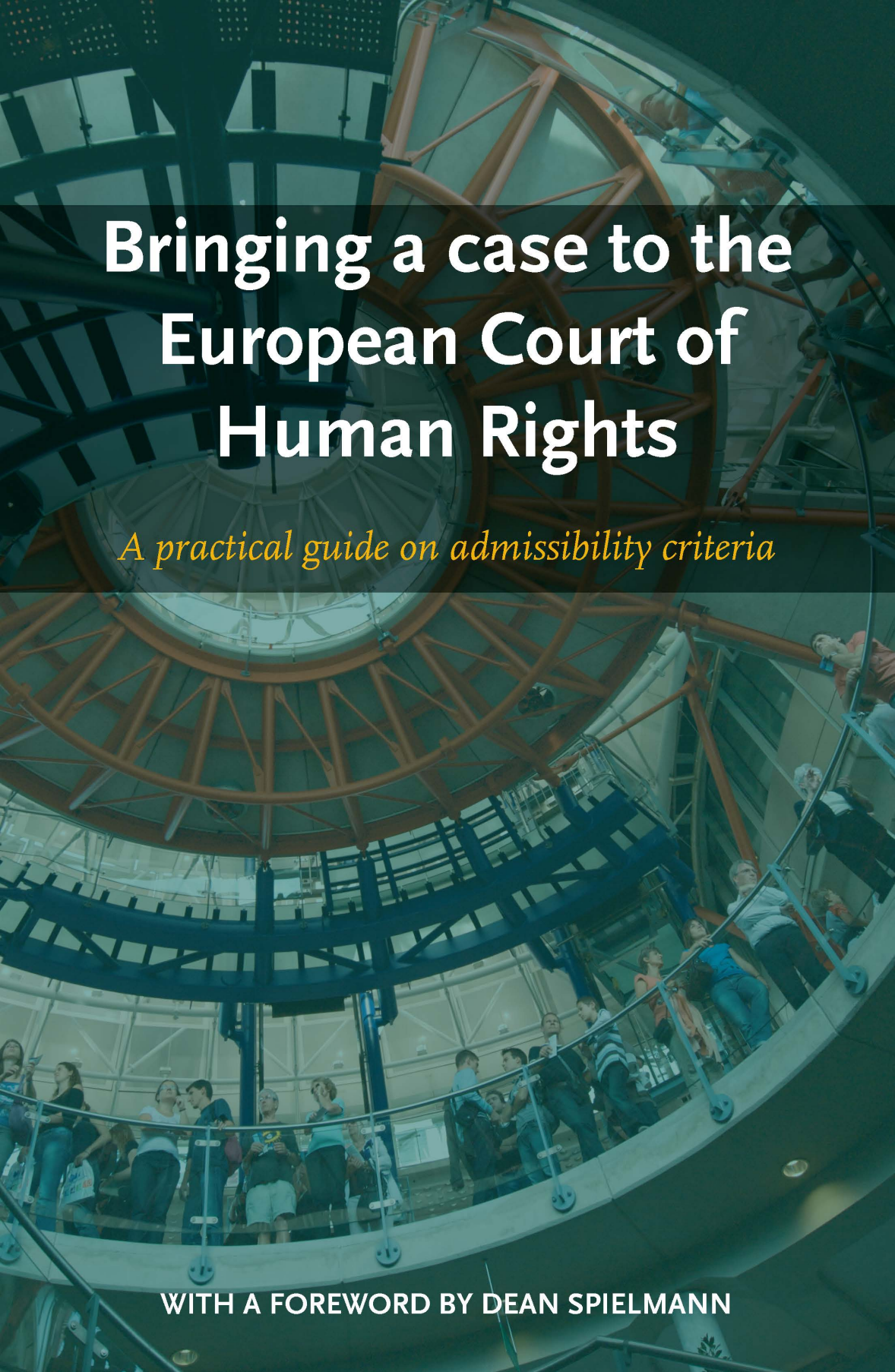

Bringing a case to the European Court of Human Rights

A practical guide on admissibility criteria

WITH A FOREWORD BY DEAN SPIELMANN

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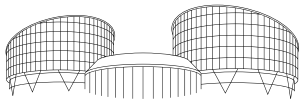

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

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With a foreword by Dean Spielmann

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This Guide has been prepared within the Department of the Jurisconsult and does not bind the Court. The first edition of the Guide was published in 2009 and the second in 2011. The manuscript for this third edition has been updated to 1 January 2014.

This Guide is available for downloading at www.echr.coe.int
(Case-law – Case-law analysis – Admissibility guide).

FOREWORD

The right of individual petition is rightly considered as the hallmark and greatest achievement of the European Convention on Human Rights. Individuals who consider that their human rights have been violated have the possibility of lodging a complaint before the European Court of Human Rights. There are however important admissibility requirements set out in the Convention that must be satisfied before a case can be examined. For example, applicants must have exhausted their domestic remedies and must have brought their complaints within a period of six months from the date of the final domestic decision.

As of 1 November 2014, about 78,000 applications were pending before a judicial formation of the Court. Although the Court's docket has been reduced by nearly 50% over the last three years, this still represents a very significant number of cases to be brought before an international tribunal and continues to threaten the effectiveness of the right of petition enshrined in the Convention. We know from experience that the vast majority of cases (92% of those decided in 2013) will be rejected by the Court on one of the grounds of inadmissibility. Such cases must be looked at by lawyers and judges before they are rejected. They thus clog up the Court's docket and obstruct the examination of more deserving cases where the admissibility requirements have been satisfied and which may concern serious allegations of human-rights violations.

It is clear from both experience and the statistics mentioned above that most individual applicants lack sufficient knowledge of the admissibility requirements. It would seem that this is also the case with many legal advisers or practitioners. At the Interlaken Conference on the reform of the Court the member States of the Council of Europe rightly identified this problem and called upon the "States Parties and the Court to ensure that comprehensive and objective information is provided to potential applicants on the Convention and the Court's case-law, in particular on the application procedures and admissibility criteria" (point 6 of the Interlaken Declaration of 19 February 2010).

The Court's response to the call was to prepare a Practical Guide on Admissibility Criteria which clearly sets out the rules and case-law concerning admissibility. It seeks to enable lawyers to properly advise their clients on their chances of bringing an admissible case to the Court and to reduce the number of obviously inadmissible cases being lodged. The previous editions of this Guide were translated into more than twenty languages and made

available online both at national level and on the Court's website. I would like to thank all governments and other partners who made this possible and also encourage them to translate and disseminate this third edition.

The new Rule 47 of the Rules of Court, which introduced stricter conditions for applying to the Court, came into force on 1 January 2014. This amendment to the Rules, accompanied by a new Practice Direction, introduced two major changes which will determine whether an application is rejected or allocated to a judicial formation. These concern, firstly, the new simplified application form which must be completed in full and accompanied by copies of all relevant supporting documents on pain of not being examined. Secondly, if the application form or the case file is completed only after the six-month period has expired, the case will normally be rejected as having been lodged out of time.*

In order to make potential applicants and/or their representatives aware of the new conditions for lodging an application, the Court has expanded its range of information materials in all official languages of the States Parties to the Convention. The materials include an interactive checklist and videos explaining the admissibility criteria and how to fill in the application form correctly. In addition, web pages providing helpful information for anyone wishing to apply to the Court are now fully available in the languages of all States Parties. I should also mention the Questions & Answers guide recently published by the Council of Bars and Law Societies in Europe (CCBE).

Last but not least, as a result of the translations programme which the Court launched in 2012 over 12,000 case-law translations in nearly thirty languages (other than English and French) have now been made available in the HUDOC database. Some of the cases which are now available in translated form contain important Court reasoning on points of admissibility. The cases can be searched in HUDOC using the keywords related to one or more admissibility criteria.

Lawyers and advisers, among others, have a responsibility to ensure that the pathways to the Court are open to all individuals whose cases satisfy the admissibility criteria set out in the Convention as well as the aforementioned procedural conditions. In spite of the important reduction in the number of pending cases over the last years, the Court still receives far too many applications that should never have been brought as they fail to meet these various requirements. Practitioners should study this Practical Guide carefully before deciding to bring a case. By so doing they will make an important contribution to the effectiveness of the European Convention on Human Rights.

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* The six-month period for lodging an application will be reduced to four months once Protocol No. 15 to the Convention enters into force.

I would like to record my thanks to Wolf Legal Publishers for producing a third print edition of this Guide in both English and French and in such an attractive format. I have no doubt that there will be many future editions of this Guide as the law continues to develop and its usefulness is recognised.

Strasbourg, November 2014

Dean Spielmann, President of the European Court of Human Rights

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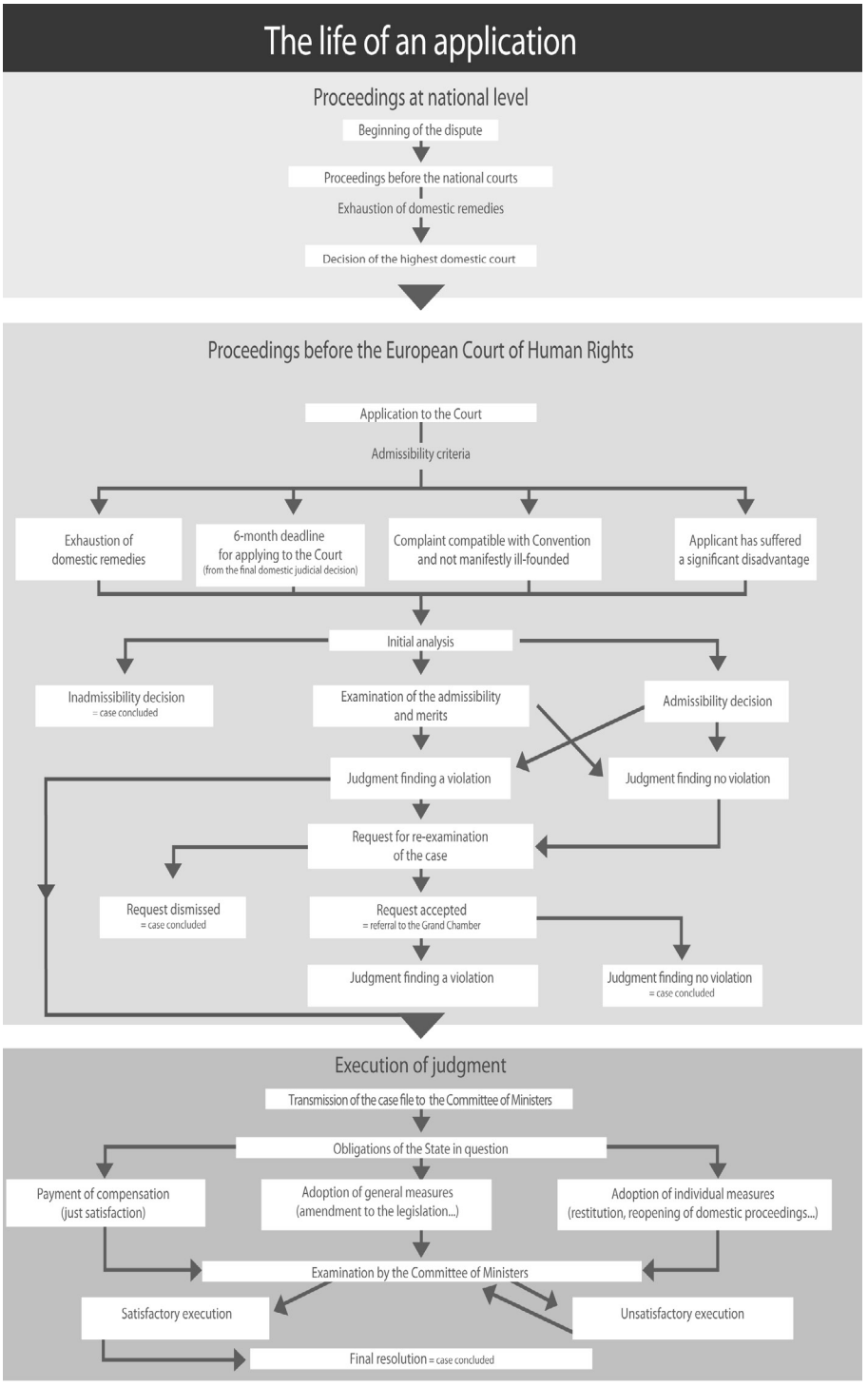
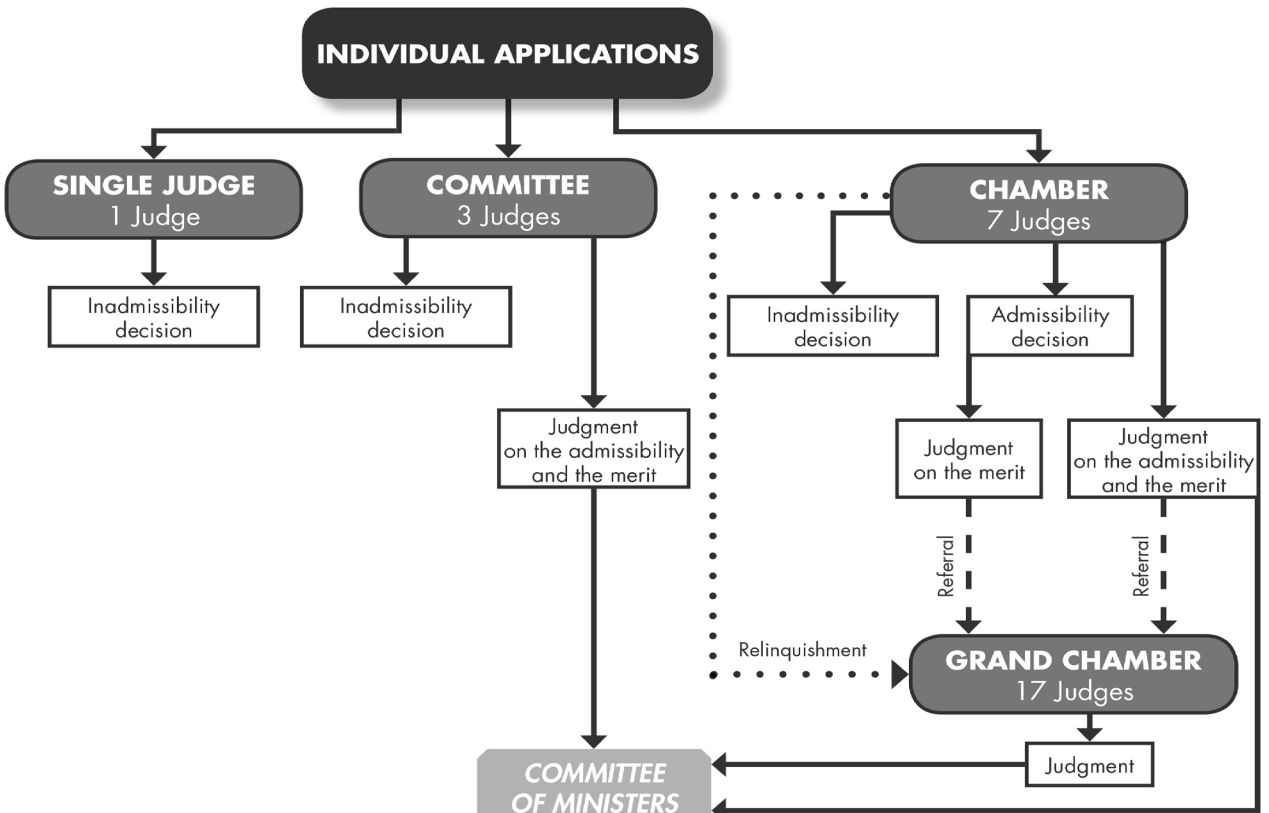
The life of an application



This table provides a schematic view of the procedure only and does not purport to cover all situations (e.g. relinquishment of jurisdiction by a Chamber to the Grand Chamber; rule that Chamber judgment becomes automatically final after three months unless a request is made for referral to the Grand Chamber).

Simplified case-processing flow chart by judicial formation



INTRODUCTION

1. The system of protection of fundamental rights and freedoms established by the European Convention on Human Rights ("the Convention") is based on the principle of subsidiarity. The task of ensuring its application falls primarily to the States Parties to the Convention; the European Court of Human Rights ("the Court") should intervene only where States have failed in their obligations.

Supervision by Strasbourg is triggered mainly by individual applications, which may be lodged with the Court by any individual or legal entity located within the jurisdiction of a State Party to the Convention. The pool of potential applicants is therefore vast: in addition to the eight hundred million inhabitants of greater Europe and the nationals of third countries living there or in transit, there are millions of associations, foundations, political parties, companies and so forth (not to mention those persons who, as a result of extraterritorial acts committed by the States Parties to the Convention outside their respective territories, fall within their jurisdiction).

For a number of years now, and owing to a variety of factors, the Court has been submerged by individual applications (over 99,900 were pending as of 31 December 2013). The overwhelming majority of these applications (more than 95%) are, however, rejected without being examined on the merits for failure to satisfy one of the admissibility criteria laid down by the Convention. This situation is frustrating on two counts. Firstly, as the Court is required to respond to each application, it is prevented from dealing within reasonable time-limits with those cases which warrant examination on the merits, without the public deriving any real benefit. Secondly, tens of thousands of applicants inevitably have their claims rejected, often after years of waiting.

2. The States Parties to the Convention, and also the Court and its Registry, have constantly sought ways to tackle this problem and ensure effective administration of justice. One of the most visible measures has been the adoption of Protocol No. 14 to the Convention. This provides, among other things, for applications which are clearly inadmissible to be dealt with by a single judge assisted by non-judicial rapporteurs, rather than by a three-judge committee. Protocol No. 14, which came into force on 1 June 2010, also introduced a new admissibility criterion relating to the degree of disadvantage suffered by the applicant, aimed at discouraging applications from persons who have not suffered significant disadvantage.

On 19 February 2010, representatives of the forty-seven member States of the Council of Europe, all of which are bound by the Convention, met in

Interlaken in Switzerland to discuss the future of the Court and, in particular, the backlog of cases resulting from the large number of inadmissible applications. In a solemn declaration, they reaffirmed the Court's central role in the European system for the protection of fundamental rights and freedoms, and undertook to increase its effectiveness while preserving the principle of individual application.

The need to ensure the viability of the Convention mechanism in the short, medium and long term was further stressed in the declarations adopted at follow-up conferences in İzmir and Brighton held in 2011 and 2012, respectively.

3. The idea of providing potential applicants with comprehensive and objective information on the application procedure and admissibility criteria is expressly articulated in point C-6(a) and (b) of the Interlaken Declaration. This practical guide to the conditions of admissibility of individual applications is to be seen in the same context. It is designed to present a clearer and more detailed picture of the conditions of admissibility with a view, firstly, to reducing as far as possible the number of applications which have no prospect of resulting in a ruling on the merits and, secondly, to ensuring that those applications which warrant examination on the merits pass the admissibility test. At present, in most cases which pass that test, the admissibility and merits are examined at the same time, which simplifies and speeds up the procedure.

This document is aimed principally at legal practitioners and in particular at lawyers who may be called upon to represent applicants before the Court.

All the admissibility criteria set forth in Articles 34 (individual applications) and 35 (admissibility criteria) of the Convention have been examined in the light of the Court's case-law. Naturally, some concepts, such as the six-month time-limit and, to a lesser extent, the exhaustion of domestic remedies, are more easily defined than others such as the concept of "manifestly ill-founded", which can be broken down almost *ad infinitum*, or the Court's jurisdiction *ratione materiae* or *ratione personae*. Furthermore, some Articles are relied on much more frequently than others by applicants, and some States have not ratified all the additional Protocols to the Convention, while others have issued reservations with regard to the scope of certain provisions. The rare instances of inter-State applications have not been taken into account as they call for a very different kind of approach. This guide does not therefore claim to be exhaustive and will concentrate on the most commonly occurring scenarios.

4. The guide was prepared by the Department of the Jurisconsult of the Court, and its interpretation of the admissibility criteria is in no way binding on the Court. It will be updated regularly. It was drafted in French and in English and will be translated into some other languages, with priority being given to the official languages of the high case-count countries.

5. After defining the notions of individual application and victim status, the guide will look at procedural grounds for inadmissibility (I), grounds relating to the Court's jurisdiction (II) and those relating to the merits of the case (III).

A. Individual application

Article 34 – Individual applications

"The Court may receive applications from any person, non-governmental organisation or group 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. …"

1. Purpose of the provision

6. Article 34, which guarantees the right of individual application, gives individuals a genuine right to take legal action at international level. It is also one of the fundamental guarantees of the effectiveness of the Convention system – one of the "key components of the machinery" for the protection of human rights (*Mamatkulov and Askarov v. Turkey* [GC][1], §§ 100 and 122; *Loizidou v. Turkey* (preliminary objections), § 70).

7. As a living instrument, the Convention must be interpreted in the light of present-day conditions. The well-established case-law to this effect also applies to the procedural provisions, such as Article 34 (ibid., § 71).

8. In order to rely on Article 34 of the Convention, an applicant must meet two conditions: he or she must fall into one of the categories of petitioners mentioned in Article 34 and must be able to make out a case that he or she is the victim of a violation of the Convention (*Vallianatos and Others v. Greece* [GC], § 47).

2. Categories of petitioners

(a) Physical persons

9. Any person may rely on the protection of the Convention against a State Party when the alleged violation took place within the jurisdiction of the State

1. The hyperlinks to the cases cited in the electronic version of the Guide refer to the original text in English or French (the two official languages of the Court) of the judgment or decision delivered by the Court and to the decisions or reports of the European Commission of Human Rights. Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber.

concerned, in accordance with Article 1 of the Convention (*Van der Tang v. Spain*, § 53), regardless of nationality, place of residence, civil status, situation or legal capacity. For a mother deprived of parental rights, see *Scozzari and Giunta v. Italy* [GC], § 138; for a minor, see *A. v. the United Kingdom*; for a person lacking legal capacity, without the consent of her guardian, see *Zehentner v. Austria*, §§ 39 et seq.

10. Applications can be brought only by living persons or on their behalf; a deceased person cannot lodge an application (*Aizpurua Ortiz and Others v. Spain*, § 30; *Dvořáček and Dvořáčková v. Slovakia*, § 41), even through a representative (*Kaya and Polat v. Turkey* (dec.); *Ciobanu v. Romania* (dec.)).

(b) Legal persons

11. A legal entity claiming to be the victim of a violation by a member State of the rights set forth in the Convention and the Protocols has standing before the Court only if it is a "non-governmental organisation" within the meaning of Article 34 of the Convention.

12. The term "governmental organisations", as opposed to "non-governmental organisations" within the meaning of Article 34, applies not only to the central organs of the State, but also to decentralised authorities that exercise "public functions", regardless of their autonomy *vis-à-vis* the central organs; likewise it applies to local and regional authorities (*Radio France and Others v. France* (dec.), § 26), a municipality (*Ayuntamiento de Mula v. Spain* (dec.)), or part of a municipality which participates in the exercise of public authority (*Municipal Section of Antilly v. France* (dec.)), none of which are entitled to make an application on the basis of Article 34 (see also *Döşemealtı Belediyesi v. Turkey* (dec.)).

13. The category of "governmental organisation" includes legal entities which participate in the exercise of governmental powers or run a public service under government control. In order to determine whether any given legal person other than a territorial authority falls within that category, account must be taken of its legal status and, where appropriate, the rights that status gives it, the nature of the activity it carries out and the context in which it is carried out, and the degree of its independence from the political authorities (*Radio France and Others v. France* (dec.), § 26; *Kotov v. Russia* [GC], § 93). For public-law entities which do not exercise any governmental powers, see *The Holy Monasteries v. Greece*, § 49; *Radio France and Others v. France* (dec.), §§ 24-26; *Österreichischer Rundfunk v. Austria* (dec.). For State-owned companies, which enjoy sufficient institutional and operational independence from the State, see *Islamic Republic of Iran Shipping Lines v. Turkey*, §§ 80-81; *Ukraine-Tyumen v. Ukraine*, §§ 25-28; *Unédic v. France*, §§ 48-59; and, by contrast, *Zastava It Turs v. Serbia* (dec.); *State Holding Company Luganskvugillya v. Ukraine* (dec.); see also *Transpetrol, a.s., v. Slovakia* (dec.).

(c) Any group of individuals

14. An application can be brought by a group of individuals. However, local authorities or any other government bodies cannot lodge applications through the individuals who make up them or represent them, relating to acts punishable by the State to which they are attached and on behalf of which they exercise public authority (*Demirbaş and Others v. Turkey* (dec.)).

3. Victim status

(a) Notion of "victim"

15. The word "victim", in the context of Article 34 of the Convention, denotes the person or persons directly or indirectly affected by the alleged violation. Hence, Article 34 concerns not just the direct victim or victims of the alleged violation, but also any indirect victims to whom the violation would cause harm or who would have a valid and personal interest in seeing it brought to an end (*Vallianatos and Others v. Greece* [GC], §§ 47). The notion of "victim" is interpreted autonomously and irrespective of domestic rules such as those concerning interest in or capacity to take action (*Gorraiz Lizarraga and Others v. Spain*, § 35), even though the Court should have regard to the fact that an applicant was a party to the domestic proceedings (*Aksu v. Turkey* [GC], § 52; *Micallef v. Malta* [GC], § 48). It does not imply the existence of prejudice (*Brumărescu v. Romania* [GC], § 50), and an act that has only temporary legal effects may suffice (*Monnat v. Switzerland*, § 33).

16. The interpretation of the term "victim" is liable to evolve in the light of conditions in contemporary society and it must be applied without excessive formalism (ibid., §§ 30-33; *Gorraiz Lizarraga and Others v. Spain*, § 38; *Stukus and Others v. Poland*, § 35; *Zietal v. Poland*, §§ 54-59). The Court has held that the issue of victim status may be linked to the merits of the case (*Siliadin v. France*, § 63; *Hirsi Jamaa and Others v. Italy* [GC], § 111).

(b) Direct victim

17. In order to be able to lodge an application in accordance with Article 34, an applicant must be able to show that he or she was "directly affected" by the measure complained of (*Tănase v. Moldova* [GC], § 104; *Burden v. the United Kingdom* [GC], § 33). This is indispensable for putting the protection mechanism of the Convention into motion (*Hristozov and Others v. Bulgaria*, § 73), although this criterion is not to be applied in a rigid, mechanical and inflexible way throughout the proceedings (*Micallef v. Malta* [GC], § 45; *Karner v. Austria*, § 25; *Aksu v. Turkey* [GC], § 51).

(c) Indirect victim

18. If the alleged victim of a violation has died before the introduction of the application, it may be possible for the person with requisite legal interest as next-of-kin to introduce an application raising complaints related to the death or disappearance (*Varnava and Others v. Turkey* [GC], § 112). This is because of the particular situation governed by the nature of the violation alleged and considerations of the effective implementation of one of the most fundamental provisions in the Convention system (*Fairfield v. the United Kingdom* (dec.)).

19. In such cases, the Court has accepted that close family members, such as parents, of a person whose death or disappearance is alleged to engage the responsibility of the State can themselves claim to be indirect victims of the alleged violation of Article 2, the question of whether they were legal heirs of the deceased not being relevant (*Van Colle v. the United Kingdom*, § 86).

20. The next-of-kin can also bring other complaints, such as under Articles 3 and 5 of the Convention on behalf of deceased or disappeared relatives, provided that the alleged violation is closely linked to the death or disappearance giving rise to issues under Article 2.

21. For married partners, see *McCann and Others v. the United Kingdom* [GC], *Salman v. Turkey* [GC]; for unmarried partners, see *Velikova v. Bulgaria* (dec.); for parents, see *Ramsahai and Others v. the Netherlands* [GC], *Giuliani and Gaggio v. Italy* [GC]; for siblings, see *Andronicou and Constantinou v. Cyprus*; for children, see *McKerr v. the United Kingdom*; for nephews, see *Yaşa v. Turkey*.

22. In cases where the alleged violation of the Convention was not closely linked to the death or disappearance of the direct victim, the Court has generally declined to grant standing to any other person unless that person could, exceptionally, demonstrate an interest of their own (*Nassau Verzekering Maatschappij N.V. v. the Netherlands* (dec.), § 20). See, for example, *Sanles Sanles v. Spain* (dec.), which concerned the prohibition of assisted suicide in alleged breach of Articles 2, 3, 5, 8, 9 and 14 and where the Court held that the rights claimed by the applicant, who was the deceased's sister-in-law and legal heir, belonged to the category of non-transferable rights and that therefore she could not claim to be the victim of a violation on behalf of her late brother-in-law; see also *Bic and Others v. Turkey* (dec.) and *Fairfield v. the United Kingdom* (dec.).

23. In those cases where victim status was granted to close relatives, allowing them to submit an application in respect of complaints under, for example, Articles 5, 6 or 8, the Court took into account whether they have shown a moral interest in having the late victim exonerated of any finding of guilt (*Nölkenbockhoff v. Germany*, § 33; *Grădinar v. Moldova*, §§ 95 and 97-98) or in protecting their own reputation and that of their family (*Brudnicka and Others*

v. Poland, §§ 27-31; *Armonienė v. Lithuania*, § 29; *Polanco Torres and Movilla Polanco v. Spain*, §§ 31-33), or whether they have shown a material interest on the basis of the direct effect on their pecuniary rights (*Nölkenbockhoff v. Germany*, § 33; *Grădinar v. Moldova*, § 97; *Micallef v. Malta* [GC], § 48). The existence of a general interest which necessitated proceeding with the consideration of the complaints has also been taken into consideration (ibid., §§ 46 and 50; see also *Bic and Others v. Turkey* (dec.), §§ 22-23).

24. The applicant's participation in the domestic proceedings has been found to be only one of several relevant criteria (*Nölkenbockhoff v. Germany*, § 33; *Micallef v. Malta* [GC], §§ 48-49; *Polanco Torres and Movilla Polanco v. Spain*, § 31; *Grădinar v. Moldova*, §§ 98-99; see also *Kaburov v. Bulgaria* (dec.), §§ 57-58, where the Court found that, in a case concerning the transferability of Article 3 of the Convention, the applicant, in the absence of a moral interest in the outcome of proceedings or other compelling reason, could not be considered a victim merely because the domestic law allowed him to intervene in the tort proceedings as the late Mr Kaburov's heir; see also *Nassau Verzekering Maatschappij N.V. v. the Netherlands* (dec.) where the applicant company's claim to have victim status on account of having acquired a Convention claim by a deed of assignment was rejected by the Court).

25. As regards complaints pertaining to companies, the Court has considered that a person cannot complain of a violation of his or her rights in proceedings to which he or she was not a party, even if he or she was a shareholder and/or director of a company which was party to the proceedings. While in certain circumstances the sole owner of a company can claim to be a "victim" within the meaning of Article 34 of the Convention where the impugned measures were taken in respect of his or her company, when that is not the case the disregarding of a company's legal personality can be justified only in exceptional circumstances, in particular where it is clearly established that it is impossible for the company to apply to the Convention institutions through the organs set up under its articles of incorporation or – in the event of liquidation – through its liquidators (*Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], § 92).

(d) Potential victims and *actio popularis*

26. In certain specific situations, the Court has accepted that an applicant may be a potential victim. For example, where he was not able to establish that the legislation he complained of had actually been applied to him on account of the secret nature of the measures it authorised (*Klass and Others v. Germany*) or where an alien's removal had been ordered, but not enforced, and where enforcement would have exposed him in the receiving country to treatment contrary to Article 3 of the Convention or to an infringement of his rights under Article 8 of the Convention (*Soering v. the United Kingdom*).

27. However, in order to be able to claim to be a victim in such a situation, an applicant must produce reasonable and convincing evidence of the likelihood that a violation affecting him or her personally will occur; mere suspicion or conjecture is insufficient (*Senator Lines GmbH v. fifteen member States of the European Union* (dec.) [GC]). For the absence of a formal expulsion order, see *Vijayanathan and Pusparajah v. France*, § 46; for alleged consequences of a parliamentary report, see *Fédération chrétienne des témoins de Jéhovah de France v. France* (dec.); for alleged consequences of a judicial ruling concerning a third party in a coma, see *Rossi and Others v. Italy* (dec.).

28. An applicant cannot claim to be a victim in a case where he or she is partly responsible for the alleged violation (*Paşa and Erkan Erol v. Turkey*).

29. The Court has also underlined that the Convention does not envisage the bringing of an *actio popularis* for the interpretation of the rights it contains or permit individuals to complain about a provision of a domestic law simply because they consider, without having been directly affected by it, that it may contravene the Convention (*Aksu v. Turkey* [GC], § 50; *Burden v. the United Kingdom* [GC], § 33).

30. However, it is open to a person to contend that a law violates his or her rights, in the absence of an individual measure of implementation, if he or she is required either to modify his or her conduct or risks being prosecuted or if he or she is a member of a class of people who risk being directly affected by the legislation (ibid., § 34; *Tănase v. Moldova* [GC], § 104; *Michaud v. France*, §§ 51-52; *Sejdić and Finci v. Bosnia and Herzegovina* [GC], § 28.).

(e) Loss of victim status

31. It falls first to the national authorities to redress any alleged violation of the Convention. Hence, the question whether an applicant can claim to be a victim of the violation alleged is relevant at all stages of the proceedings before the Court (*Scordino v. Italy (no. 1)* [GC], § 179). In this regard, the applicant must be able to justify his or her status as a victim throughout the proceedings (*Burdov v. Russia*, § 30; *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], § 80).

32. The issue as to whether a person may still claim to be the victim of an alleged violation of the Convention essentially entails on the part of the Court an *ex post facto* examination of his or her situation (ibid., § 82).

33. A decision or measure favourable to the applicant is not, in principle, sufficient to deprive him or her of his or her status as a "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention (*Scordino v. Italy (no. 1)* [GC], § 180; *Gäfgen v. Germany* [GC], § 115; *Nada v. Switzerland* [GC], § 128). Only when

these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (*Jensen and Rasmussen v. Denmark* (dec.); *Albayrak v. Turkey*, § 32).

34. The applicant would remain a victim if the authorities have failed to acknowledge either expressly or in substance that there has been a violation of the applicant's rights (ibid., § 33; *Jensen v. Denmark* (dec.)) even if the latter received some compensation (*Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], § 88).

35. Moreover, the redress afforded must be appropriate and sufficient. This will depend on all the circumstances of the case, with particular regard to the nature of the Convention violation in issue (*Gäfgen v. Germany* [GC], § 116).

36. For example, a person may not claim to be a victim of a violation of his right to a fair trial under Article 6 of the Convention which, according to him, took place in the course of proceedings in which he was acquitted or which were discontinued (*Oleksy v. Poland* (dec.); *Koç and Tambaş v. Turkey* (dec.); *Bouglame v. Belgium* (dec.)), except for the complaint pertaining to the length of the proceedings in question (*Osmanov and Husseinov v. Bulgaria* (dec.)).

37. In some other cases whether an individual remains a victim may also depend on the amount of compensation awarded by the domestic courts and the effectiveness (including the promptness) of the remedy affording the award (*Normann v. Denmark* (dec.); *Scordino v. Italy (no. 1)* [GC], § 202; see also *Jensen and Rasmussen v. Denmark* (dec.)).

38. For other specific situations, see *Arat v. Turkey*, § 47 (Article 6); *Constantinescu v. Romania*, §§ 40-44 (Articles 6 and 10); *Guisset v. France*, §§ 66-70 (Article 6); *Chevrol v. France*, §§ 30 et seq. (Article 6); *Moskovets v. Russia*, § 50 (Article 5); *Moon v. France*, §§ 29 et seq. (Article 1 of Protocol No. 1); *D.J. and A.-K.R. v. Romania* (dec.), §§ 77 et seq. (Article 2 of Protocol No. 4); and *Sergey Zolotukhin v. Russia* [GC], § 115 (Article 4 of Protocol No. 7); *Dalban v. Romania* [GC], § 44 (Article 10); *Güneş v. Turkey* (dec.) (Article 10).

39. A case may be struck out of the list because the applicant ceases to have victim status/*locus standi*. Regarding resolution of the case at domestic level after the admissibility decision, see *Ohlen v. Denmark* (striking out); for an agreement transferring rights which were the subject of an application being examined by the Court, see *Dimitrescu v. Romania*, §§ 33-34.

40. The Court also examines whether the case should be struck out of its list on one or more of the grounds set forth in Article 37 of the Convention, in the light of events occurring subsequent to the lodging of the application, notwithstanding the fact that the applicant can still claim to be a "victim" (*Pisano v. Italy* (striking out) [GC], § 39), or even irrespective of whether or not he or she can continue to claim victim status. For developments occurring

after a decision to relinquish jurisdiction in favour of the Grand Chamber, see *El Majjaoui and Stichting Touba Moskee v. the Netherlands* (striking out) [GC], §§ 28-35; after the application had been declared admissible, see *Shevanova v. Latvia* (striking out) [GC], §§ 44 et seq.; and after the Chamber judgment, see *Sisojeva and Others v. Latvia* (striking out) [GC], § 96.

(f) Death of the victim

41. In principle, an application lodged by the original applicant before his or her death may be continued by heirs or close family members expressing the wish to pursue the proceedings, provided that he or she has sufficient interest in the case (*Hristozov and Others v. Bulgaria*, § 71; *Malhous v. the Czech Republic* (dec.) [GC]).

42. However, where the applicant has died in the course of the proceedings and either no one has come forward with a wish to pursue the application or the persons who have expressed such a wish are not heirs or sufficiently close relatives of the applicant, and cannot demonstrate that they have any other legitimate interest in pursuing the application, the Court will strike the application out of its list (*Léger v. France* (striking out) [GC], § 50; *Hirsi Jamaa and Others v. Italy* [GC], § 57) save for in very exceptional cases where the Court finds that respect for human rights as defined in the Convention and the Protocols thereto requires a continuation of the examination of the case (*Karner v. Austria*, §§ 25 et seq.).

43. See, for example, *Raimondo v. Italy*, § 2, and *Stojkovic v. the former Yugoslav Republic of Macedonia*, § 25 (widow and children); *X v. France*, § 26 (parents); *Malhous v. the Czech Republic* (dec.) [GC] (nephew and potential heir); *Velikova v. Bulgaria* (dec.) (unmarried or *de facto* partner); contrast with *Thévenon v. France* (dec.) (universal legatee not related to the deceased); *Léger v. France* (striking out) [GC], §§ 50-51 (niece).

4. Representation

44. Where applicants choose to be represented under Rule 36 § 1 of the Rules of Court, rather than lodging the application themselves, Rule 45 § 3 requires them to produce a written authority to act, duly signed. It is essential for representatives to demonstrate that they have received specific and explicit instructions from the alleged victim within the meaning of Article 34 on whose behalf they purport to act before the Court (*Post v. the Netherlands* (dec.)). On the validity of an authority to act, see *Aliev v. Georgia*, §§ 44-49; on the authenticity of an application, see *Velikova v. Bulgaria*, §§ 48-52.

45. However, special considerations may arise in the case of victims of alleged breaches of Articles 2, 3 and 8 of the Convention at the hands of the national

authorities, having regard to the victims' vulnerability on account of their age, sex or disability, which rendered them unable to lodge a complaint on the matter with the Court, due regard also being paid to the connections between the person lodging the application and the victim. In such cases, applications lodged by individuals on behalf of the victim(s), even though no valid form of authority was presented, have thus been declared admissible. See, for example, *İlhan v. Turkey* [GC], § 55, where the complaints were brought by the applicant on behalf of his brother, who had been ill-treated; *Y.F. v. Turkey*, § 29, where a husband complained that his wife had been compelled to undergo a gynaecological examination; *S.P., D.P. and A.T. v. the United Kingdom*, Commission décision, where a complaint was brought by a solicitor on behalf of children he had represented in domestic proceedings, in which he had been appointed by the guardian *ad litem*; and, by contrast, *Nencheva and Others v. Bulgaria*, § 93, where the Court did not accept the victim status of the applicant association acting on behalf of the direct victims, noting that it had not pursued the case before the domestic courts and also that the facts complained of did not have any impact on its activities, since the association was able to continue working in pursuance of its goals.

B. Freedom to exercise the right of individual application

Article 34 – Individual applications

"… The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

46. The right to apply to the Court is absolute and admits of no hindrance. This principle implies freedom to communicate with the Convention institutions (for correspondence in detention, see *Peers v. Greece*, § 84; *Kornakovs v. Latvia*, §§ 157 et seq.). See also, in this connection, the 1996 European Agreement relating to persons participating in proceedings of the European Court of Human Rights (CETS No. 161).

47. The domestic authorities must refrain from putting any form of pressure on applicants to withdraw or modify their complaints. According to the Court, pressure may take the form of direct coercion and flagrant acts of intimidation in respect of applicants or potential applicants, their families or their legal representatives, but also improper indirect acts or contacts (*Mamatkulov and Askarov v. Turkey* [GC], § 102).

The Court examines the dissuasive effect on the exercise of the right of individual application (*Colibaba v. Moldova*, § 68). In some circumstances, it can, of its own motion, raise the issue whether the applicant had been subjected to

intimidation which had amounted to a hindrance to the effective exercise of his right of individual petition (*Lopata v. Russia*, § 147).

Consideration must be given to the vulnerability of the applicant and the risk that the authorities may influence him or her (*Iambor v. Romania (no. 1)*, § 212). Applicants may be particularly vulnerable when they are in pre-trial detention and restrictions have been placed on contact with their family or the outside world (*Cotleț v. Romania*, § 71).

48. Some noteworthy examples:

– as regards interrogation by the authorities concerning the application: *Akdivar and Others v. Turkey*, § 105; *Tanrıkulu v. Turkey* [GC], § 131;

– threats of criminal proceedings against the applicant's lawyer: *Kurt v. Turkey*, §§ 159-65; complaint by the authorities against the lawyer in the domestic proceedings: *McShane v. the United Kingdom*, § 151; disciplinary and other measures against the applicant's lawyers: *Khodorkovskiy and Lebedev v. Russia*, §§ 929-33;

– police questioning of the applicant's lawyer and translator concerning the claim for just satisfaction: *Fedotova v. Russia*, §§ 49-51; regarding an inquiry ordered by the government's representative: *Ryabov v. Russia*, §§ 53-65;

– inability of the applicant's lawyer and doctor to meet: *Boicenco v. Moldova*, §§ 158-59;

– failure to respect the confidentiality of lawyer-applicant discussions in a meeting room: *Oferta Plus SRL v. Moldova*, § 156;

– threats by the prison authorities: *Petra v. Romania*, § 44;

– refusal by the prison authorities to forward an application to the Court on the ground of non-exhaustion of domestic remedies: *Nurmagomedov v. Russia*, § 61;

– pressure put on a witness in a case before the Court concerning conditions of detention: *Novinskiy v. Russia*, §§ 119 et seq.;

– dissuasive remarks by the prison authorities combined with unjustified omissions and delays in providing the prisoner with writing materials for his correspondence and with the documents necessary for his application to the Court: *Gagiu v. Romania*, §§ 94 et seq.;

– the authorities' refusal to provide an imprisoned applicant with copies of documents required for his application to the Court: *Naydyon v. Ukraine*, § 68; *Vasiliy Ivashchenko v. Ukraine*, §§ 107-10;

– loss by prison authorities of irreplaceable papers relating to prisoner's application to the Court: *Buldakov v. Russia*, §§ 48-50;

– intimidation and pressuring of an applicant by the authorities in connection with the case before the Court: *Lopata v. Russia*, §§ 154-60.

49. The circumstances of the case may make the alleged interference with the right of individual application less serious (*Sisojeva and Others v. Latvia* (striking out) [GC], §§ 118 et seq.). See also *Holland v. Sweden* (dec.), where the Court found that the destruction of tape recordings from a court hearing in accordance with Swedish law before the expiry of the six-month time-limit for lodging an application with the Court did not hinder the applicant from effectively exercising his right of petition; *Farcaş v. Romania* (dec.), where the Court considered that the alleged inability of the physically disabled applicant to exhaust domestic remedies, owing to lack of special facilities providing access to public services, did not hinder him from effectively exercising his right of petition; *Yepishin v. Russia*, §§ 73-77, where the Court considered that the prison administration's refusal to pay postage for dispatch of prisoner's letters to the Court did not hinder the applicant from effectively exercising his right of petition.

1. Obligations of the respondent State

(a) Rule 39 of the Rules of Court

50. Under Rule 39 of the Rules of Court, the Court may indicate interim measures (*Mamatkulov and Askarov v. Turkey* [GC], §§ 99-129). Article 34 will be breached if the authorities of a Contracting State fail to take all steps which could reasonably have been taken in order to comply with the measure indicated by the Court (*Paladi v. Moldova* [GC], §§ 87-92).

51. The government must demonstrate to the Court that the interim measure was complied with or, in an exceptional case, that there was an objective impediment which prevented compliance and that the government took all reasonable steps to remove the impediment and to keep the Court informed about the situation (see, for example, *A.N.H. v. Finland* (dec.), § 27).

52. Some recent examples:

– failure to secure a timely meeting between an asylum-seeker in detention and a lawyer despite the interim measure indicated under Rule 39 in this respect: *D.B. v. Turkey*, § 67;

– transfer of detainees to Iraqi authorities in contravention of interim measure: *Al-Saadoon and Mufdhi v. the United Kingdom*, §§ 162-65;

– expulsion of the first applicant in contravention of interim measure: *Kamaliyevy v. Russia*, §§ 75-79;

– inadvertent but not irremediable failure to comply with interim measure indicated in respect of Article 8: *Hamidovic v. Italy* (dec.);

– failure to comply with interim measure requiring prisoner's placement in specialised medical institution: *Makharadze and Sikharulidze v. Georgia*, §§ 100-05;

– failure to comply with interim measure indicated by the Court on account of real risk of torture if extradited: *Mannai v. Italy*, §§ 54-57; *Labsi v. Slovakia*, §§ 149-51;

– secret transfer of person at risk of ill-treatment in Uzbekistan and in respect of whom an interim measure was in force: *Abdulkhakov v. Russia*, §§ 226-31;

– forcible transfer of person to Tajikistan with real risk of ill-treatment and circumvention of interim measures: *Savriddin Dzhurayev v. Russia*, §§ 218-19; see also failure by Russian authorities to protect Tajik national in their custody from forcible repatriation to Tajikistan in breach of interim measure: *Nizomkhon Dzhurayev v. Russia*, §§ 157-59.

53. It is for the Court to verify compliance with the interim measure, while a State which considers that it is in possession of materials capable of convincing the Court to annul the interim measure should inform the Court accordingly (*Paladi v. Moldova* [GC], §§ 90-92; *Olaechea Cahuas v. Spain*, § 70; *Grori v. Albania*, §§ 181 et seq.).

The mere fact that a request has been made for application of Rule 39 is not sufficient to oblige the State to stay execution of an extradition decision (*Al-Moayad v. Germany* (dec.), §§ 122 et seq.; see also the obligation of the respondent State to cooperate with the Court in good faith).

(b) Establishment of the facts

54. Whereas the Court is responsible for establishing the facts, it is up to the parties to provide active assistance by supplying it with all the relevant information. Their conduct may be taken into account when evidence is sought (*Ireland v. the United Kingdom*, § 161).

55. The Court has held that proceedings in certain types of applications do not in all cases lend themselves to a rigorous application of the principle whereby a person who alleges something must prove that allegation, and that it is of the utmost importance for the effective operation of the system of individual petition instituted under Article 34 of the Convention that States should furnish all necessary facilities to make possible a proper and effective examination of applications (*Bazorkina v. Russia*, § 170; *Tahsin Acar v. Turkey* [GC], § 253). This obligation requires the Contracting States to furnish all necessary facilities to the Court, whether it is conducting a fact-finding investigation or performing its general duties as regards the examination of applications. A failure on a government's part to submit such information which is in their hands without a satisfactory explanation may not only give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 of the Convention (ibid., § 254; *Imakayeva v. Russia*, § 200; *Janowiec and Others v. Russia* [GC], § 202).

56. The obligation to furnish the evidence requested by the Court is binding on the respondent government from the moment such a request has been formulated, whether it be on initial communication of an application to the government or at a subsequent stage in the proceedings (ibid., § 203; *Enukidze and Girgvliani v. Georgia*, § 295; *Bekirski v. Bulgaria*, §§ 111-13). It is a fundamental requirement that the requested material be submitted in its entirety, if the Court has so directed, and that any missing elements be properly accounted for (*Janowiec and Others v. Russia* [GC], § 203). In addition, any material requested must be produced promptly and, in any event, within the time-limit fixed by the Court, for a substantial and unexplained delay may lead the Court to find the respondent State's explanations unconvincing (ibid.).

57. The Court has previously found that the respondent government failed to comply with the requirements of Article 38 in cases where they did not provide any explanation for the refusal to submit documents that had been requested (see, for example, *Maslova and Nalbandov v. Russia*, §§ 128-29) or submitted an incomplete or distorted copy while refusing to produce the original document for the Court's inspection (see, for example, *Trubnikov v. Russia*, §§ 50-57).

58. If the government advances confidentiality or security considerations as the reason for their failure to produce the material requested, the Court has to satisfy itself that there exist reasonable and solid grounds for treating the documents in question as secret or confidential (*Janowiec and Others v. Russia* [GC], § 205). As regards failure to disclose a classified report to the Court: ibid., §§ 207 et seq.; *Nolan and K. v. Russia*, §§ 56 et seq.

Regarding the relationship between Articles 34 and 38, see *Bazorkina v. Russia*, §§ 170 et seq. and § 175. Article 34, being designed to ensure the effective operation of the right of individual application, is a sort of *lex generalis*, while Article 38 specifically requires States to cooperate with the Court.

(c) Investigations

59. The respondent State is also expected to assist with investigations (Article 38), for it is up to the State to furnish the "necessary facilities" for the effective examination of applications (*Çakıcı v. Turkey* [GC], § 76). Obstructing a fact-finding visit constitutes a breach of Article 38 (*Shamayev and Others v. Georgia and Russia*, § 504).

As of 1 November 2014, about 78,000 applications were pending before a judicial formation of the Court. Although the Court's docket has been reduced by nearly 50% over the last three years, this still represents a very significant number of cases to be brought before an international tribunal and continues to threaten the effectiveness of the right of petition enshrined in the Convention. The vast majority of cases (92% in 2013) will be rejected by the Court on one of the grounds of inadmissibility. Such cases clog up the Court's docket and obstruct the examination of more deserving cases where the admissibility requirements have been satisfied and which may concern serious allegations of human-rights violations.

The 2010 Interlaken Conference on the reform of the Court called upon the "States Parties and the Court to ensure that comprehensive and objective information is provided to potential applicants on the Convention and the Court's case-law, in particular on the application procedures and admissibility criteria". The Court's first response to the call was to prepare a Practical Guide on Admissibility Criteria which clearly sets out the rules and case-law concerning admissibility. This third edition covers case-law up to 1 January 2014 and the stricter procedural conditions for applying to the Court which came into force on that date.

Practitioners and prospective applicants should study this Practical Guide carefully before deciding to bring a case before the European Court of Human Rights.

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE