



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

1/09/2016

**The Interlaken process and the Court  
(2016 Report)**

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## Introduction

Since 2012 the Court has prepared an annual report to the Committee of Ministers regarding the reforms that it has implemented or is giving consideration to as part of the Interlaken process. In this fifth report, the Court provides information regarding its docket, and about certain other aspects of its current situation and functioning. In particular, and in keeping with the request of the Committee of Ministers<sup>1</sup>, the report explains the Court's follow-up of the points addressed to it in the Brussels Declaration of 27 March 2015, "Implementation of the European Convention on Human Rights, our shared responsibility".

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<sup>1</sup> Decision 6 of Item 3, "Securing the long-term effectiveness of the supervisory mechanism of the European Convention on Human Rights", 125th Session of the Committee of Ministers, 19 May 2015.

## 1. Current Statistics

1. Detailed statistical data appear in Appendix I to this report, showing the Court's situation as of 30 June 2016, its activities in the first semester of this year, and the number of pending applications by State.

2. The number of new applications has risen considerably since 2015, which recorded an unusually low number of cases entering the system (see Appendix I.A). Compared to twelve months ago, there has been an increase of almost 5,000 applications (+24%), causing the Court to raise its estimate for new applications by the end of 2016 to 48,000 (+18%). Also to be noted is a change in the type of applications reaching the Court. In the past few years, roughly three-quarters of new cases were allocated to the single judge formation, and so could be dealt with quickly. So far this year, the proportion of new cases referred to the single judge has been lower (55% of the total), meaning a corresponding rise in new cases allocated to Chambers and Committees (+51% and +110% respectively). A major factor here is the influx of numerous applications from Hungary and Romania concerning prison conditions. Another factor is the cases relating to the situation in Crimea and the Donbass region of Ukraine.

3. Looking at overall output, i.e. the total number of cases decided at all levels of judicial formation, the first semester has seen a reduction of 28% (judgments and decisions together). This is mostly due to the decrease in the volume of decisions at single judge level, on account of the decline in the number of such cases reaching the Court in 2015 and 2016 as explained above. The number of Committee judgments given this year is lower (-69%). On the other hand, the number of Chamber judgments has risen by 22% since last year, rising to 605. This reflects the Court's increased efforts to adjudicate cases at this level, given their intrinsic legal significance, and also the accumulation of the number of such cases pending before the Court.

4. The number of cases communicated over the period in question decreased by 33% from the historic high of 2015, but at 5,629 it remains considerably higher than in previous years (more than twice the number communicated in the first semester of 2014).

5. By 30 June 2016, the total number of applications pending stood at 71,050, representing an increase of 10% since the beginning of this year. Of these, 28,550 (40%) are Chamber cases. At Committee level, the figure is 38,200 (54%), with the remaining 4,300 (6%) allocated to the single judge formation. In view of the tendencies observed during the six months, the Court has estimated that it will have 69,000 pending applications by the end of 2016, which would mean an increase of 6% compared to the number of cases pending at the end of 2015.

6. Finally, the increase in workload since the beginning of the year has had an impact on the duration of proceedings before the Court (see Appendix I.C). The "Brighton backlog", i.e. the number of cases that have not been processed within the timeframes set down in the Brighton Declaration, has increased in some respects. This is particularly so regarding cases in the top three priority categories; 4,165 of these applications are in the Brighton backlog, which represents an increase of 19% over six months. Taking account of the entire case load, however, there has been virtually no change to the Brighton backlog (an increase of less than 100 applications - only 0.3%)

## 2. The Court's judicial work

7. The Court met its target of disposing of the backlog of inadmissible applications in 2015. A year later, the situation regarding filtering remains stable, making it possible for the Court to develop its practice by issuing single judge decisions to applicants (see part 3 below).

8. The WECL procedure, which applies to cases decided by Committees, has been considerably streamlined since its introduction by Protocol No. 14 (Article 28 § 1(b)). A fast-track version developed in 2015 is applied by the Court's Filtering Section and covers more than 80% of pending repetitive cases. The remainder are dealt with by other simplified methods. The efficiency of the WECL procedure has been enhanced by the continuous development of IT tools that have allowed significant savings of time. Further adjustments are under consideration within the Court, the objective still being to dispose of the current lot of repetitive applications by the end of 2017. However, the massive influx of prison conditions cases in particular, and the continuing failure of some States to take remedial action with respect to structural violations, may prompt a review of this objective which is in any case subject to any further judicial policy decisions.

9. The new initiative to be presented in this report is the procedure of immediate simplified communication of Chamber cases, which commenced in March 2016. The longstanding practice of the Court, when communicating such cases, is to prepare a detailed report that is sent to the parties. Given the number of pending Chamber cases, this represents a considerable burden for the Registry and inevitably lengthens the procedure. The stricter policy regarding the filing of applications, applied since 2014 (Rule 47 of the Rules of Court), has improved the presentation of new applications. This makes it possible to forward the application form to the respondent State, along with any other necessary documents provided by the applicant. In place of a communication report, the parties receive an indication of the subject-matter of the case along with the questions that the Court wishes them to address in their submissions.

10. This initiative should be viewed as a concrete aspect of the notion of shared responsibility, one that involves the parties to a greater extent than previously in the preparation of cases for judicial examination. It is a necessary step, in view of the Court's ever-increasing case load at Chamber level. The procedure is fully in keeping with the adversarial nature of judicial proceedings, and rests on the expectation of the parties' full cooperation with the Court. As well as alleviating the burden on the Court, and making it possible to reduce the duration of proceedings, the procedure may have the effect of encouraging the parties towards a friendly settlement instead of awaiting judgment at a later date. It may also lead to shorter judgments in future.

11. At this initial stage, the procedure has been introduced on a trial basis for the following twelve States: Albania, Bulgaria, Germany, Greece, Hungary, Iceland, Italy, Romania, Russia, Spain "the Former Yugoslav Republic of Macedonia" and Turkey. Over the first four months, 185 cases were communicated via this procedure (available in the HUDOC database). The Court has prepared guidance for the parties on how they should proceed: submissions on the facts; references to relevant domestic law; arguments concerning the admissibility and merits of the complaints. The trial period will run until the end of 2016. Following evaluation, its extension to more States can be envisaged.

12. Another initiative currently under development will see greater specialisation by Registry lawyers, with a view to greater operational efficiency and developing staff expertise. This approach has already been tested within the biggest national legal teams at the Registry with positive results. Building on this, it is envisaged to create specialisation hubs bringing together experienced Registry lawyers from different countries. These will have an advisory role in each area of specialisation, aiming for more standardised and consistent drafting by the Registry as it prepares cases for judicial examination. The first hub, created in mid-2016, specialises in asylum and migration issues.

13. It is of course clear that the situation regarding Chamber cases remains extremely challenging, as the number of applications pending at this level continues to rise. The Court will continue to reflect on how it may further increase its capacity to deal with such cases.

### **3. Follow-up to the Brussels Conference**

14. The Court will explain here its response to points addressed to it in part A of the Action Plan adopted at Brussels.

#### **A. Providing reasons for decisions of the Single Judge**

15. The relevant services of the Court's Registry have developed the necessary IT tools and working methods to implement this change in the Court's practice. Beginning in the final quarter of 2016, instead of a letter from the Registry applicants will receive a formal judicial decision on their case stating the reason for the decision of the single judge.

#### **B. Providing reasons for negative decisions of the Grand Chamber Panel**

16. The idea that when the Panel decides to reject a request under Article 43 of the Convention for referral to the Grand Chamber it should provide reasons to the parties was debated by the Plenary Court earlier this year, but not retained. The conclusions of the debate are set out in detail in Appendix II.

17. In summary, the Court considers that the proposal lacks any basis in the text of the Convention. The drafters of Protocol No. 11 did not envisage that reasons should be given for decisions of this sort, as is clear from Articles 43 and 45 of the Convention, and also paragraph 105 of the explanatory report of the Protocol.

18. Furthermore, the nature of the procedure before the Panel is not one that lends itself to the giving of reasons to the party that made the request. While there might not be difficulty with giving purely formal reasons, i.e. a mere indication that the request did not satisfy the conditions specified in Article 43, this would be of negligible added-value for the parties. To go further and provide more specific, detailed reasons would sit ill with the character of the exercise. The Panel acts as an intermediary filtering body exercising a wide discretion based on broadly-defined criteria. This function is very different from that of ruling on the admissibility and merits of cases, to which the duty to give reasons (Article 45) naturally applies.

19. Moreover, if the Panel adopted a practice of giving reasons this could affect the integrity and finality of Chamber judgments. It could also require a change of practice, in that an adversarial procedure might be required in the interests of fairness and the good administration of justice.

#### **C. Providing reasons for the granting of interim measures.**

20. The Court recalls that this point was addressed in discussions within the CDDH following the Brighton Conference<sup>2</sup>. At that time, the Court's Registry indicated that providing reasons for the application of Rule 39 would represent a considerable burden for the Court, likely to slow down a process that by its nature must operate rapidly. Instead, by the rapid communication of such applications, the Government concerned is informed of the factual basis for the interim measure. The Court's practice has further developed since 2013. It is not uncommon now for the Court to defer its decision on an interim measure, circumstances permitting, so as to request additional

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<sup>2</sup> See CDDH(2013) R77 Addendum III, of 22 March 2013, at paragraphs 33 and 51.

information from the Government. In 2016 this has been done, for example, in relation to applications about the medical treatment of detained persons, about the expulsion of non-nationals, about the abduction of an individual, and about the imposition of a curfew. Upon receipt of the information requested, the Court decided in some cases that the conditions for applying Rule 39 were not met<sup>3</sup>.

21. In order to explain further the Court's practice regarding interim measures, statistical information on the reasons for rejecting Rule 39 requests in 2015 is appended, indicating the principal grounds for such decisions (Appendix III).

#### **D. Information about state of proceedings**

22. The Court's IT Department has developed an IT tool enabling applicants to ascertain the procedural status of their case. This will be tested and evaluated in the coming months.

#### **E. Judicial dialogue**

##### **(i) Superior Court Network**

23. Launched in October 2015, the Network began its operations with a test phase. This allowed the Court and its partner institutions to identify suitable modalities for their mutual co-operation. The necessary IT tools and facilities were also developed for the network to function. The network is currently expanding to include all of the superior courts that have indicated their interest in becoming part of this initiative. Some twenty courts from fifteen States are in the process of formally registering as network members. Further expansion can be expected in the latter part of this year and in 2017.

24. From the Court's side, various case-law resources prepared by the Jurisconsult are made available to the member courts – weekly updates on new case-law, summary tables of noteworthy cases each week, research reports on different aspects of the Court's jurisprudence. The Court will also provide specific case-law references on request. In return, it is expected that the member courts will provide valuable assistance in gathering comparative law materials for the Court's use.

##### **(ii) Judicial dialogue**

25. The Court's dialogue with the highest national courts continues, with working visits to Strasbourg by senior judicial figures, recent examples being the Constitutional Court of Bosnia and Herzegovina and the Italian Court of Cassation. Later this year the Court will host a meeting of German-speaking courts. ECHR judges maintain continuing contact with their home States, regularly delivering training sessions to national judges and other legal professionals.

26. The Court also received, for the first time, a visit from the Network of Presidents of the Supreme Judicial Courts of the European Union. Eight Supreme Courts were represented at the meeting, and the subjects discussed included judicial dialogue, subsidiarity and Protocol No. 16 to the Convention. Given the pivotal role of the member courts in ensuring observance of the Convention throughout the domestic legal order, contacts with their Network are of great significance.

27. Along with its dialogue with national courts, the Court returned to practice of annual meetings with the Court of Justice of the European Union. This renewed dialogue comes at a time of important jurisprudential developments on both sides – the *Avotiņš v. Latvia* case<sup>4</sup> for the ECHR, and the *Aranyosi and Căldăraru* judgment for the CJEU<sup>5</sup>. The two Court presidents took part in a lengthy joint interview at the annual conference of the International Society of Public Law (17-19

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<sup>3</sup> See as examples press releases ECHR 195 (2014) and ECHR 016 (2016).

<sup>4</sup> Application no. 17502/07, judgment of the Grand Chamber of 23 May 2016.

<sup>5</sup> Judgment of 5 April 2016. C-404/15 and C-659/15 PPU, EU:C:2016:198

June, Berlin)<sup>6</sup>. Links have also been strengthened between the Registries of the two Courts, in the areas of research and judicial administration.

28. The Court also resumed its dialogue with the Human Rights Committee of the United Nations. The Committee invited a delegation of ECHR judges (several of whom were previously members of UN expert bodies) for discussions in Geneva on issues that are relevant to both of these international human rights bodies<sup>7</sup>.

#### **4. Human resources**

29. As described above, the Court is continuously seeking to achieve greater operational efficiency in response to its expanding case load. However, it will ultimately need additional human resources in order to come to grips with the backlog of cases. At present, the Court receives additional support in the form of secondments and State contributions to the special account.

30. Regarding secondment, the number of seconded staff has remained stable since 2015, with 31 persons from 16 States working at the Registry<sup>8</sup>: Turkey (7), Germany (4), France (3), Italy (2), Moldova (2), Estonia (2), Georgia (2), Armenia, Austria, Azerbaijan, Czech Republic, Lithuania, Montenegro, Poland, Romania and Switzerland. In addition, via the European Judicial Training Network, 12 judges in training are commencing a one-year placement at the Registry on 1 September 2016.

31. As for the special account, the situation remains as described in the letter sent by the Registrar in April 2016 to all Ambassadors: the funds provided by donor Governments have enabled the recruitment of 14 A-grade lawyers, who make a valuable contribution to the Court's work. Their employment is funded into mid-2017. Thus far in 2016, substantial support has been provided by Norway (530,000 euros) and Germany (150,000 euros). Additional funding will be needed in order to be able to retain the services of the lawyers in question.

#### **5. Improving access to the case-law**

32. The Court's four-year translation project came to an end in March 2016. During that time, the amount of key case-law available in non-official languages greatly increased. The financial support of the Human Rights Trust Fund was particularly significant, allowing the Court to engage as many as 70 freelance translators to translate Convention case-law into twelve target languages. The total funding provided came to 1.6 million euros.

33. This project was also a catalyst for an ongoing inventory and sharing of case-law translations produced in member States. In addition to the 3,500 translations commissioned with project funds, another 14,000 translations were provided by partners such as Governments, Bar associations, judicial training centres, and civil society organisations. All of these translations have been published in HUDOC, which now contains texts in over 30 languages in addition to English and French. Increasingly, partner institutions are also translating the Court's case-law guides and other materials for their own needs while simultaneously making them available on the Court's website.

34. As indicated in previous reports, in order to keep the momentum generated by the HRTF-funded translations project, the Registrar contacted Governments in 2013 and 2014 requesting them to

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<sup>6</sup> Recording of interview available at <https://www.youtube.com/watch?v=Vrjbt9Yfg>

<sup>7</sup> See in this respect the CDDH report on the longer-term future of the system of the European Convention on Human Rights, paragraph 182.

<sup>8</sup> situation on 1 September 2016.

ensure the translation of the 30 leading cases which the Court's Bureau selects for each year. There has been some positive response to this invitation. The issue, which was included in the Brussels Declaration, was raised again in November 2015 at a meeting with Government Agents. The Court once again stresses the need to make the key case-law accessible to domestic courts and other relevant actors throughout Europe.

35. There will be further translations of case-law and case-law guides as part of the Council of Europe action plans for various member States in the coming years. The HUDOC search interface will become available in more languages, with a Spanish version currently under development, for launch later in 2016. Versions in Bulgarian and Georgian are also being prepared, at the request of those States.

36. A fifth volume has been added to the collection of handbooks on European Law published by the EU Fundamental Rights Agency in co-operation with the Court and the Council of Europe, on the theme of access to justice. Two new productions for the *COURTalks-disCOURs* series have been launched on the Court's website, presenting the relevant Convention standards in relation to terrorism and to asylum. As with the first video, on admissibility criteria, sub-titled versions of the two presentations will be produced in a range of other languages.



## Appendix I.A

### CASE MANAGEMENT SURVEY - COURT

1/1-30/6/2016

(compared to the same period 2015)

<b>1. Allocated applications [round figures (50)]</b>	<b>2016</b>	<b>2015</b>	<b>+/-</b>
Applications allocated to a judicial formation	24750	19900	24%
- earmarked for Chamber or Grand Chamber procedure	3850	2550	51%
- earmarked for Committee procedure	7250	3450	110%
- earmarked for Single-Judge procedure	13650	13900	-2%
Annual number of applications allocated (estimation for the current year)	48000	40650	18%
<b>2. Processing applications</b>	<b>2016</b>	<b>2015</b>	<b>+/-</b>
Total applications decided	18631	25883	-28%
- by judgment delivered:	997	1776	-44%
<i>by a Chamber or Grand Chamber</i>	605	494	22%
<i>by a Committee</i>	392	1282	-69%
- declared inadmissible or struck out:	17634	24107	-27%
<i>by a Chamber or Grand Chamber</i>	190	247	-23%
<i>by a Committee Case Weight 4</i>	2536	2511	1%
<i>by a Committee Case Weight 2 or 3</i>	94	86	9%
<i>by Single Judge</i>	14814	21263	-30%
Applications communicated	5629	8406	-33%
Interim measures (Rule 39):	693	751	-8%
- granted	65	84	-31%
- refused	290	323	-10%
- refused - falling outside the scope	338	334	1%
<b>3. Pending applications [round figures (50)]</b>	<b>30/6/2016</b>	<b>1/1/2016</b>	<b>+/-</b>
Applications pending before a judicial formation	71050	64850	10%
- Chamber or Grand Chamber	28550	27200	5%
- Committee	38200	34500	11%
- Single-Judge formation	4300	3150	37%
- total by the end of the year (estimation)	69000	64850	6%
Ten high case count countries <b>84,9%</b>			
- applications pending before a judicial formation			
Ukraine <b>24,4%</b>	17350	13850	25,3%
Russia <b>12,8%</b>	9100	9200	-1,1%
Turkey <b>11,6%</b>	8250	8450	-2,4%
Hungary <b>10,1%</b>	7200	4800	50,0%
Italy <b>9,6%</b>	6850	7550	-9,3%
Romania <b>6,5%</b>	4600	3550	29,6%
Georgia <b>3,0%</b>	2100	2150	-2,3%
Poland <b>2,3%</b>	1650	1700	-2,9%
Slovenia <b>2,3%</b>	1650	1650	0,0%
Azerbaijan <b>2,3%</b>	1600	1500	6,7%
<b>4. New applications [round figures (50)]</b>	<b>30/6/2016</b>	<b>1/1/2016</b>	<b>+/-</b>
Number of applications at a pre-judicial stage	11500	10000	15%

## Appendix I.B

### Cases by Country (30.06.2016)

State	Pending before a decision body 01.01.2016	Allocated 1.01 - 30.06.2016	Apps pending before a decision body 30.06.2016					Comparison with 01.01.2016
			Total 30.06.2016	Cat. I, II, III	Cat. IV	Cat. V	Cat. VI, VII	
ALB	407	94	466	13	137	311	5	59
AND	4	2	4		3		1	0
ARM	975	338	1229	143	1035	30	21	254
AUT	135	96	113	5	57	29	22	-22
AZE	1516	182	1589	244	1245	82	18	73
BEL	346	94	344	95	219	17	13	-2
BGR	782	506	748	82	535	64	67	-34
BIH	836	386	869	5	127	691	46	33
CRO	502	376	522	103	273	74	72	20
CYP	57	19	56	14	26		16	-1
CZE	151	173	165	9	89	11	56	14
DNK	30	24	26	4	19	1	2	-4
ESP	86	285	121	9	44	1	67	35
EST	71	103	38	11	13		14	-33
FIN	14	86	24	3	4	1	16	10
FRA	382	526	397	66	216	15	100	15
GEO	2154	26	2117	124	1933	49	11	-37
GER	208	376	178	16	79	11	72	-30
GRC	881	160	783	147	324	277	35	-98
HUN	4611	3247	7213	5632	388	974	219	2602
IRL	5	12	9		3	1	5	4
ISL	19	8	22		21		1	3
ITA	7562	799	6822	104	1202	5399	117	-740
LIE	5	6	1				1	-4
LIT	350	209	357	125	136	3	93	7
LUX	7	16	13	1	12			6
LVA	158	131	169	12	78	25	54	11
MCO	3	3	4		2	1	1	1
MDA	1220	419	1257	231	800	152	74	37
MKD	261	170	262	11	207	8	36	1
MLT	50	9	47	13	31	2	1	-3
MON	168	101	135	2	23	83	27	-33
NLD	273	255	240	71	82	8	79	-33
NOR	61	41	57	12	37		8	-4
POL	1671	1216	1666	91	573	757	245	-5
PRT	321	79	145	11	90	17	27	-176
ROM	3513	3386	4532	2624	643	841	424	1019
RUS	9163	3048	9044	2703	3209	2380	752	-119
SER	1140	788	1149	30	161	813	145	9
SMR	6	9	13	1	10		2	7
SUI	126	119	119	15	61		43	-7
SVK	187	159	180	10	99	22	49	-7
SVN	1650	108	1656	15	187	1412	42	6
SWE	40	76	36	9	11		16	-4
TUR	8416	942	8204	714	2214	4263	1013	-212
UK.	252	189	217	30	67	89	31	-35
UKR	13814	5335	17355	1262	4272	11568	253	3541
<b>Total</b>	<b>64589</b>	<b>24732</b>	<b>70713</b>	<b>14822</b>	<b>20997</b>	<b>30482</b>	<b>4412</b>	<b>6124</b>
01/01/2016			64589	11324	19526	30507	3232	
increase/decrease			9%	31%	8%	0%	37%	

#### EXPLANATORY NOTE

Applications with Case Warning cat. I, II, III are applications falling under the Court's policy of prioritisation:

Cat. I: urgent applications

Cat. II: pilot and leading applications

Cat. III: applications which raise as main complaints issues under Art. 2, 3 or 4 or Art. 5 § 1 of the Convention

Cat. IV: normal, difficult or very difficult Chamber applications

Cat. V: repetitive Committee or Chamber applications

Cat. VI and VII: Single Judge or Committee applications

This report does not account for applications awaiting referral request after a delivery of a Chamber judgment

## Appendix I.C

### Brighton backlog by country (30.06.2016)

State	Apps in backlog pending before a decision body 01.01.2016	Apps in backlog pending before a decision body					Comparison with 01.01.2016
		Total 30.06.2016	Cat. I, II, III	Cat. IV	Cat. V	Cat. VI, VII	
ALB	192	190	1	85	103	1	-2
AND	0	1	0	1	0	0	1
ARM	823	826	52	746	27	1	3
AUT	46	43	1	28	14	0	-3
AZE	1142	1185	130	1023	23	9	43
BEL	234	269	67	187	14	1	35
BGR	473	479	7	416	49	7	6
BIH	56	215	1	91	122	1	159
CRO	148	127	27	72	22	6	-21
CYP	26	23	5	15	0	3	-3
CZE	48	46	3	36	1	6	-2
DNK	13	14	3	11	0	0	1
ESP	24	14	2	10	1	1	-10
EST	20	12	0	10	0	2	-8
FIN	1	2	0	2	0	0	1
FRA	75	93	25	61	3	4	18
GEO	2088	2027	91	1892	38	6	-61
GER	74	48	5	26	7	10	-26
GRC	600	505	52	247	192	14	-95
HUN	701	1365	652	176	527	10	664
IRL	0	0	0	0	0	0	0
ISL	9	5	0	5	0	0	-4
ITA	5334	5297	47	843	4372	35	-37
LIE	2	0	0	0	0	0	-2
LIT	191	180	83	86	2	9	-11
LUX	0	0	0	0	0	0	0
LVA	84	75	2	49	23	1	-9
MCO	0	0	0	0	0	0	0
MDA	754	833	122	595	97	19	79
MKD	114	92	1	86	0	5	-22
MLT	10	4	0	4	0	0	-6
MON	49	33	2	7	22	2	-16
NLD	151	115	55	51	2	7	-36
NOR	24	25	5	20	0	0	1
POL	501	460	15	357	78	10	-41
PRT	80	51	1	44	2	4	-29
ROM	921	993	123	419	378	73	72
RUS	5339	4758	1379	2295	830	254	-581
SER	330	292	12	101	177	2	-38
SMR	3	2	0	2	0	0	-1
SUI	57	43	4	33	0	6	-14
SVK	87	76	2	63	3	8	-11
SVN	152	160	7	129	18	6	8
SWE	11	6	1	5	0	0	-5
TUR	7253	6065	519	1978	2843	725	-1188
UKR	61	126	12	31	83	0	65
UKR	2960	4179	649	1788	1736	6	1219
<b>Total</b>	<b>31261</b>	<b>31354</b>	<b>4165</b>	<b>14126</b>	<b>11809</b>	<b>1254</b>	<b>93</b>
01/01/2016		31261	3492	13916	13490	363	
increase/decrease		0%	19%	2%	-12%	245%	

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Cat. IV: normal, difficult or very difficult Chamber applications

Cat. V: repetitive Committee or Chamber applications

Cat. VI and VII: Single Judge or Committee applications

## Appendix II

### Conclusions of the Plenary Court on the giving of reasons when the Grand Chamber panel rejects a referral request.

In its examination of the point, the Court was mindful of the case-law under Article 6 concerning the reasoning of judicial decisions<sup>9</sup>. This lays down the general proposition that court judgments should adequately state the reasons on which they are based. One may link this duty to the principles of transparency, legitimacy and foreseeability that are inherent in the rule of law. Yet it is also established in the Convention case-law that the extent of the duty to give reasons may vary according to the nature of the decision in question. While the Article 43 procedure is not truly comparable to an appeal, it is not without relevance to note that the case-law permits an appellate court to simply endorse, without further reasoning, the decision given by a lower decision. Where the question for decision is leave to appeal, the Court has held that the Convention does not require that refusal of leave be subject to a requirement to give detailed reasons<sup>10</sup>.

The Court has concluded that, in light of the text of the Convention and of the intrinsic nature of the referral procedure, it would be neither appropriate nor advisable to introduce a practice of giving reasons for negative decisions of the Grand Chamber Panel. The explanation for this conclusion is set out in the following paragraphs.

#### **(i) The text of the Convention**

The procedure for referring cases to the Grand Chamber was introduced into the Convention by Protocol No. 11. The parties may request referral “within a period of three months from the date of the Chamber judgment” “in exceptional cases” (Article 43 § 1 of the Convention). The Panel “shall accept the request if the case raises serious questions affecting the interpretation or application of the Convention or the Protocols thereto, or a serious issue of general importance” (Article 43 § 2). If the Panel rejects the request, the judgment of the Chamber becomes final (Article 44 § 2 (c)). If the Panel accepts the request, the Grand Chamber shall decide the case by means of a judgment (Article 43 § 3).

It is not envisaged either in the text of the Convention, or in the Explanatory Report, that the Panel should give reasons for its decisions. Article 45 § 1 only provides that “Reasons shall be given for judgments as well as for decisions declaring applications admissible or inadmissible.” Paragraph 105 of the Explanatory Report, which in somewhat broader terms affirms that Article 45 “lays down a general rule that all judgments and most decisions of the Court must be reasoned”, states expressly “[t]his Article does not concern decisions taken by the Panel of five judges of the Grand Chamber in accordance with Article 43.” Accordingly, there is no support in the Convention or in the Explanatory Report for any proposition that the Panel should give reasons. On the contrary, and in contrast to the filtering procedure that operated under Protocol No. 9<sup>11</sup>, it is clear that the Panel was deliberately exempted from any such requirement. Neither Protocol No. 14 or 15 brought any change here.

#### **(ii) The nature of the procedure**

For the Panel to give reasons might seem difficult to reconcile with the special features of the Panel procedure, seen in the context of the proceedings as a whole, and its particular role as an

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<sup>9</sup> As summarised in *Hansen v. Norway*, no. 15319/09, §§ 71-74, 2 October 2014.

<sup>10</sup> See *Hansen*, cited above, §§ 80-81.

<sup>11</sup> Protocol No. 9 (signed in 1990, in force for several States 1994-1998) which introduced a procedure to filter requests by individual applicants to refer their case to the Court. The Rules of Court governing that procedure provided that where the Panel declined the request, a briefly reasoned decision was given to the applicant.

intermediary filtering body, between the Chamber and the Grand Chamber, exercising a wide discretion based on broadly defined criteria.

The Panel decision in effect determines whether the Chamber judgment should become final, or if it should be for the Grand Chamber to give final judgment. Either way, whether final judgment is given by a Chamber or the Grand Chamber, Article 45 § 1 ought to be interpreted to mean that the reasons stated for the purposes of this provision are to be given in the judgment itself. It is important that those reasons not only be adequate for disposing of the particular case but also for fulfilling the Court's wider role of providing guidance on the interpretation and application of the Convention (Article 32 of the Convention), a role that is not reserved for the Grand Chamber but also assumed by Chambers.

If the Panel were to provide purely formal reasons, i.e. simply state that the case in question did not fulfil the criteria of Article 43, it would be of very limited value. If instead the Panel were to state specific reasons for its decision to reject a referral request, one might expect reasoning involving an assessment of the nature of the subject matter of the case, whether it is fact-specific or one of principle, and of the seriousness of the issues raised – whether there is a “serious question affecting the interpretation or application of the Convention” or a “serious issue of general importance” (Article 43). That assessment is different from the one involving a determination of admissibility and merits, for which reasons should be given pursuant to Article 45. The test and the criteria are different in that those which apply in the Article 43 context involve an element of discretion in assessing the Convention case-law which does not lend itself to being set out with the same conclusiveness as reasoning provided for the purposes of Article 45. In short, the exercise is different in nature from the one referred to under Article 45.

However, it is inevitable that the Panel scrutinises the reasoning given by the Chamber and reaches its decision in the light of its agreement or disagreement with the majority or the minority, as the case may be, on the substance of the case and of its evaluation of the potential added-value of examination by the Grand Chamber and so on.

In so far as the reasons for the Panel's rejection of a referral request could be seen to overlap with the reasoning of a Chamber judgment, it seems likely to bring a series of consequences.

To start with, the reasons could be perceived as adding something to those already given by the Chamber for its judgment which becomes final by virtue of the Panel's decision. Although it may be difficult to foresee what such an addition would actually entail in practice, it is probable that it would in some way affect the integrity of the Chamber judgment. This could be the case where the Panel identifies which of the referral grounds were not fulfilled, or even if it expressly endorses the Chamber judgment. In order to appreciate the jurisprudential value of a Chamber judgment, the legal user could not limit his or her enquiry to studying the reasoning stated in the judgment but would have to look into a source outside the judgment, namely the reasoning provided by the Panel for rejecting the referral request. There is thus a real danger of the Panel's reasoning diminishing and even undermining the reasoning of the Chamber's final and legally binding conclusion. It would give the Panel a power which goes beyond the role of merely acting as a filter.

Moreover, the party which was unsuccessful before the Chamber might then see the referral request as an opportunity for obtaining more reasons from the Panel that could weaken the Chamber judgment. Such prospects may lead to more referral requests being brought. The successful party might be justified in considering it not “fair” that such an opportunity is given without adversarial argument. The Panel procedure, in its current form, consists of a summary examination of the referral request in the light of the Chamber judgment and the case-file as it

stands, without any adversarial argument. If reasons were to be given for the rejection of a referral request, it might be necessary in the interest of the proper administration of justice to consider allowing adversarial pleadings. This would clearly be at the expense of efficient filtering.

The fact Protocol No. 16 provides that the panel shall give reasons if it declines to accept a request for an advisory opinion coming from a domestic does not alter the analysis. That context is entirely different from Article 43, and the concerns set out above do not arise.

In conclusion, for the panel to adopt a practice of giving reasons would risk creating confusion about the meaning of the Chamber judgment. It further raises a number of other procedural issues likely to make the procedure much more burdensome, which would outweigh the modest advantage that a reasoned panel decision would represent for the requesting party.

## Appendix III

### Reasons for refusal of interim measures in 2015

The Court indicated interim measures in 161 cases in 2015. It refused 630 requests.

The four most common grounds for refusal, corresponding to the great majority of situations, are listed here:

- The domestic decisions concerning the applicant are duly reasoned, complete and allow the Court to dispel any doubt about the well-founded character of the national authorities' refusal of the applicant's appeal (DOM);
- The request is incomplete (essential documents or information missing) (INCOMPL) ;
- Lack of credibility (NCRED) ;
- Lack of risk to applicant (NRISK)

