



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

16/10/2012

**THE INTERLAKEN PROCESS AND THE COURT**

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## Introduction

The purpose of this note is to present the situation in the Court with particular regard to the reform work set in motion after the Interlaken Declaration and Action Plan, and the follow-up Conferences in Izmir and Brighton.

The Interlaken process calls for action on the part of different actors in the Convention system, notably Council of Europe member States, the Committee of Ministers and the Court. This note sets out the most recent information concerning the Court's contribution.

Since the Interlaken Conference the Court has pursued an intense programme of reform. In order to ensure that this work is done harmoniously and with the support of the members of the Court, the President has appointed a special committee – the Reform Committee – to advise him. Work is also going on in the Court's two Standing Committees; the Committee on Working Methods and the Rules Committee.

### 1. Latest statistics (at 1 October 2012)

The number of incoming applications to the Court is relatively stable and at the same level as last year. This is a new development. Previously, and ever since its start in 1998, the Court has been used to a steady increase of 10 to 15% every year.

Since the beginning of this year the Court has allocated 50,150 new applications to a judicial formation. During that same period it has disposed of 61,350 applications, which represents an increase of 76% compared to the previous year.

The number of applications in which judgments were delivered has also increased in 2012, standing at 1,134 (+6% compared to 1 October 2011).

The number of applications communicated to Governments has decreased by 6% this year.

The total number of pending applications now stands at 139,500. This represents a 10% decrease over one year, and a reduction of over 20,000 since the highest ever number pending applications recorded (160,200 on 1 September 2011).

## 2. Audit of the Court

At the Interlaken Conference, the Liechtenstein Foreign Minister called for an audit of the Court. Such calls were repeated later on. In the course of the spring of 2012, the Court's activity was the subject of a thorough audit carried out by the External Auditors of the Council of Europe. The result of the audit will be presented to the Committee of Ministers on 24 October 2012. The audit report and its recommendations<sup>1</sup> widely subscribe to the strategic choices made by the Court and advise the Court to continue pursuing the objectives it has fixed. The report recognises that the Court cannot be expected to achieve much more without further resources. In short the report makes it clear that the Court is working efficiently. It can be concluded that States are getting good value for the money allocated to the Court.

## 3. Administrative autonomy of the Court

The need for the Court to have a substantial degree of administrative autonomy was recognised by the recent delegation to the Registrar of some of the powers of the Secretary General in relation to staff matters. This measure sought to address issues both of principle and of sound management.

There are however other areas of administrative action and authority, notably in relation to the budget, where the needs of the Council of Europe Secretariat and the Court are different and where the current situation could be improved. It would actually enhance efficiency if these different needs were taken into account in respect of the Court's budget and its implementation. The current system, in particular reporting duties imposed on the Registry simply because they are imposed on other parts of the Secretariat, generates unnecessary work, for example internal quarterly reporting.

Another issue is the application to the Court of the technical abatement in the allocation of budgetary resources with the result that the budget does not cover fully expenditure on salaries for the posts assigned to the Registry. The Court shares the External Auditors' view on this question and proposes to abolish this system at least in so far as it concerns the Court. Similarly, the justification for the salary ceiling does not apply with the same force to the Court as to the rest of the Council of Europe. In reality it may result in allocated resources not being used in the most effective way.

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1. See CM document (2012) 100 pp. 100-115.

Moreover, as the External Auditors have recognised, there is some difficulty in assessing the true cost of the Court since various heads of expenditure are not covered by the Court's budget. This raises questions of transparency. Finally, the issue of a more equitable system of contribution to the Court's budget ought to be addressed. The Registrar will discuss these matters with the Secretary General with a view to finding solutions.

#### 4. Resources strategy

The Court is of the opinion that in the current financial climate it is particularly important to avoid asking for more permanent resources even if genuine structural needs exist. The Court has therefore, in line with the Interlaken Declaration, sought to obtain extra resources through the secondment of lawyers and, more recently, by the creation of a special account for States who wish to contribute specifically to the Court's efforts to deal with its backlog of cases. It is too early yet to make any assessment as to whether the contributions to the special account will be sufficient. At this stage a total of 30,000 euros has been paid into the account. If contributions to the account turn out to be limited, the Court may wish to investigate other sources of external funding, even from the private sector. It would be useful to have member States reflect on how the special account can be properly provisioned, for example an agreement among member States to transfer the unspent balance (*reliquat*) of the Council of Europe, or at least that of the Court, to the special account.

As to secondments, this has been relatively successful. Many States have responded positively to the call for secondments to the Registry. On 1 October this year, the Registry had some 45 seconded staff members. In their report the External Auditors question whether the stated policy of the Council of Europe of treating the Court as a priority area is in fact implemented in practice, this not being clearly borne out in terms of staffing levels and budgetary resources<sup>2</sup>. This is a matter which merits reflection at the political level.

#### 5. E-justice policy

The Court is convinced that it is essential to pursue a forward-looking e-justice policy. The mass of applications and the data which need to be processed make it essential to maintain a highly effective IT system. There are several

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2. CM (2012) 100 para. 302

areas in which this policy is relevant. Regarding general information about the Court and its activities, the website is the key. The recently launched new HUDOC data base with the Court's case-law is one example. The Court is also developing information about the case-law and its practice and advice to applicants on how to lodge applications (see below), all of which is available on the website. The second area can be said to be communication with the parties to proceedings. Here the Court will pursue its project to enable applicants to communicate with the Registry electronically. It is expected that in the foreseeable future, at least for communicated cases, most communication between applicants and the Registry will be electronic. Communication with Government Agents via secure internet sites started already in 2007 and has now been extended to 30 of the 47 Member States. The Court wishes to extend it to all Member States before the end of 2013. A third area relates to the support which information technology can provide in the internal processing of applications. Considerable progress has been made in recent years. Over the next few years it is likely that the Court will move to IT workflow solutions for the processing of all applications.

## 6. Information initiatives

The Court will continue to assist States in the implementation of the Convention through the information published on its website. It will update the existing material as necessary, and plans to develop it further, drawing on the work of the Jurisconsult and the Research Division. For all of these texts, the Court will co-operate with the relevant partners to have them translated into other languages.

Shortly after the Interlaken Conference the Court prepared an admissibility guide which has been widely appreciated. It has subsequently been updated. It has also been translated into a dozen national languages and can be found on the Court's website.

The Court is now preparing to publish information about the case-law under the different Articles of the Convention guaranteeing rights and freedoms. A first "Chapter" of such information, devoted to Article 5 of the Convention, has been prepared for publication.

The Court has also produced a series of thematic factsheets, available on its website, dealing with different issues in its case-law. These have been translated into German and Russian ([link](#)).

Moreover, the Court is preparing to publish an annotated version of its Rules of Court. The work on this publication has gone on for some time and a first version is now being used internally with a view to having a text ready for publication in 2013.

The Court's collection of judgments and decisions (the Reports) will be much reduced compared to previous years, containing only the most important cases decided each year. In advance of the paper version of the Reports, an electronic version is available straightaway on the Court's website ([link](#)).

These are the judgments that are particularly recommended for translation (paragraph A. 9 d) i) of the Brighton Declaration).

Finally, the Court has launched a project to make available on its website a collection of the most important judgments with translation into the national languages. This is a project which is financed by the Human Rights Trust Fund.

## 7. Training unit

Following a proposal from the Court, the Human Rights Trust Fund approved funding for the setting up of a Training Unit within the Court. This project concerns target States, and aims to provide professional groups (magistrates and lawyers) with high-quality training in Convention law and to contribute to the dissemination of the Court's case-law.

The training sessions, which are each limited to 20 persons, include attendance at a hearing, a meeting with the national judge and meetings with lawyers from the Registry.

Since the beginning of 2012 three training sessions have been organised. The first session for Armenian magistrates and lawyers took place in April. The second session for Serbian magistrates and lawyers took place in May. A third session for magistrates and lawyers from Azerbaijan was organised in September. A session for Albanian participants will take place before the end of 2012.

## 8. Dialogue with the State Parties

The Court's dialogue with States Parties takes many different forms. It has had regular exchanges with the Committee of Ministers through the so-called Liaison Committee. This format has been discontinued. Instead, as from this

year, the President of the Court will meet the Committee of Ministers, sitting at Deputies level, twice a year.

Meetings with the Government Agents have been intensified since Interlaken. The traditional biennial meetings (last one in December 2011) have been supplemented by further meetings. The Court also has biennial meetings with representatives of applicants and NGOs (next meeting in November 2012).

The Court will take steps to develop and consolidate its relations with the highest courts in the States Parties. It already has a practice of regular or periodic meetings with a significant number of these courts, and the utility of these meetings, which take place both in Strasbourg and in the different States, is beyond question. The Court will now concentrate its efforts on those States where judicial contacts have been less frequent in recent times, and hopes that the Governments concerned will help to achieve this objective.

## 9. Strategy to deal with applications

Since Interlaken and the subsequent entry into force of Protocol No. 14 the Court has adopted a new strategy for how to deal with applications and tackle the backlog.

### (a) **Prioritisation**

Under the Court's priority policy ([link](#)), all applications are classified in one of seven different categories. These categories indicate the order in which the applications should be dealt with.

Categories 1-3 are the top priority applications. Category 4 is composed of Chamber cases which do not fall within the top three categories and which cannot be classified as repetitive applications; category 5 covers repetitive applications and categories 6 and 7 are inadmissible applications. Category 7 applications are dealt with by Single Judges.

### (b) **Filtering and the Single Judge**

When a new application is lodged the aim is to identify the nature of the application immediately and to place it on the right procedural track. Applications that are clearly inadmissible are prepared at once for decision by a Single Judge, so that the applicants will only receive one letter which informs them both about the registration and about the rejection of the application.

This approach is based on the idea that, at the filtering stage at least, each intervention by the Registry lawyers should produce a concrete result, in other words should move an application on to the next step, whether it is inadmissibility decision or referral for processing on the merits. From this perspective the Court is considering whether, in future, the filtering process could also include communication of repetitive applications. Tests are currently being conducted. However, as regards repetitive applications the policy line pursued by the Court is that, since repetitive applications derive essentially from a failure of the execution process, finding a solution should be a matter for the Committee of Ministers and the respondent State as part of their obligations in respect of the execution of judgments (see below under repetitive applications).

With reference to paragraph C. 15 (b) of the Brighton Declaration, the question of applying the six-month time-limit more stringently is being examined by the Court's Standing Committees, in the context of a wider review of the modalities for instituting proceedings before the Court. The Plenary Court will examine proposals at the end of the year.

#### 10. Interim measures - Rule 39 requests

At the end of 2010 the situation in the Court with regard to the handling of Rule 39 requests was problematic. Large numbers of applications had been received in the autumn of 2010 and one of the decisions taken, the automatic application of Rule 39 in cases of expulsion to Iraq, created a further surge of applications. Rule 39 requests took up a disproportionate amount of the Court's resources and the number of cases seemed to be rocketing. In respect of some States there were so many cases coming in that the Court was simply unable to deal with them within a reasonable time.

In response, the Court's President issued an important public statement clarifying the responsibilities of the different parties, i.e. national authorities, applicants and NGOs. Along with that the President issued a new practice direction ([link](#)).

The Court centralised the processing and determination of these requests with a view to guaranteeing greater efficiency and consistency. One Deputy Section Registrar was charged with co-ordinating all requests for application of Rule 39 at the Registry level. Later the decision-making function was entrusted to a smaller group of Judges (three Vice-Presidents of Sections).

An improved system for internal monitoring of these cases was set up in order to ensure that Rule 39 cases received the priority treatment which they require. From 1 July 2012 the responsibility for dealing with Rule 39 requests at the Registry level has been transferred to the Filtering Section.

The practice has gradually changed so that the decision to apply Rule 39 is increasingly combined with a decision to communicate the application to the Government (this indirectly responds to some extent to the request for information about the reasons for the application of Rule 39 and it speeds up the proceedings). Where a Rule 39 request is refused, that decision is now combined with a decision to declare the application inadmissible, when possible.

Finally, the Court has started to publish on its internet site facts and figures about the application of Rule 39.

The efforts made by the Court are reflected in the following statistics.

At the end of 2010 the Court had some 1,800 applications pending before it in which Rule 39 had been applied. On 1 July 2012 this number had gone down to 390.

In 2010 the Court dealt with a total of 3,774 Rule 39 requests; 1,443 were granted; 1,903 refused and 428 were considered to fall outside the scope of Rule 39. Thus 38 % of the requests were granted. In 2011 this percentage went down to 12 % and in the first 6 months of 2012 the Court granted a total of 65 Rule 39 requests, refused 733, while 339 were considered out of scope (6% granted).

In 2012 62 % of the applications in which Rule 39 were granted were also communicated at the same time. 12% of the applications where Rule 39 was refused were declared inadmissible at the same time.

The results of these measures have been considerable and made it possible to bring down the number of pending applications in which Rule 39 has been applied to manageable proportions. The Court will now ensure that the effective handling of these cases is maintained and that the monitoring of the pending cases is further reinforced.

## 11. Priority applications

The Court is focusing its efforts and case-management on the priority applications. There were more than 6,100 such applications pending on 1 October this year. More than 600 of them concern expulsion or extradition. 2,600 of these cases are backlog cases according to the definition deriving from the criteria set out in the Brighton declaration (see below under 15.). The Court is now making a strong effort to tackle these cases. It will notably use the extra resources paid into the special account to recruit more lawyers to deal with these cases.

## 12. Repetitive applications

On 1 October 2012 the Court had a total of 39,100 pending cases which had been identified as category V cases, that is repetitive cases. The main States concerned are ranked as follows: Italy (9,400), Turkey (7,700), Serbia (6,000), Romania (5,100), Ukraine (3,500), the United Kingdom (2,300) and the Russian Federation (1,600).

The policy of the Court when it receives repetitive applications is the following. If it concerns a fresh issue which has not previously been dealt with by the Court, it will aim to select some applications and process them in accordance with the pilot-judgment procedure, leading to a judgment indicating to the respondent State the measures which need to be taken to correct the systemic problem. The pilot-judgment is accordingly being applied with greater frequency nowadays; five pilot judgments have been delivered so far in 2012.

The great majority of these applications are however follow-up applications which would not have come to the Court had the execution process operated satisfactorily. The Court takes the view that this problem of repetitive applications must be solved at source by member States, with efficient supervision of execution by the Committee of Ministers carrying out its duties under Article 46 of the Convention.

The Registrar sent a letter to the Committee of Ministers in this regard at the end of June this year.

The Court's Committee on Working Methods has been tasked with looking at a possible default judgment procedure, with a view to bringing proposals before the Plenary Court for consideration at a later stage. The need for this kind of procedure will depend on how the Member States and the Committee of Ministers respond to the demands of the Brighton Declaration. If States and

the Committee of Ministers respond adequately, the need for a default judgment procedure would disappear.

Reference is made to paragraph D. 20 (d) of the Brighton Declaration, which requests the Committee of Ministers to give thought to a new form of procedure involving the determination of a small number of representative applications. This suggestion emerged at a time when the Court had received many thousands of individual applications against Hungary concerning with pension entitlements. The Court can report on the following developments in the situation since then. As announced in the Registrar's press release at the time ([link](#)), the Court divided most of the applications (approximately 11,500) into 37 case groups, allowing it to commence its examination of them in an orderly way.

### 13. Non-priority and non-repetitive applications (category IV)

The Court's intention is to apply a broader definition of the concept of well-established case-law (WECL) in the context of Committee proceedings (Article 28 § 1 (b) of the Convention). As a consequence increasing numbers of these cases should be dealt with under the summary Committee procedure.

### 14. Grand Chamber procedure

The Grand Chamber procedure has been examined under the guidance of a specific Working Party set up to discuss the relevant issues. In that context the Court has also examined some of the proposals made in the Interlaken process. The Plenary has discussed these matters on several occasions.

One step that has been taken, for the sake of avoiding delay, is for the Grand Chamber Panel to meet on a monthly basis to consider requests for referral. As soon as possible after an application has been referred to the Grand Chamber either by a decision of the Panel or through relinquishment of jurisdiction by a Chamber, the President will compose the Grand Chamber, appoint the Judge-Rapporteur and fix the procedure in the case, including the date of the hearing.

It was suggested at the Izmir conference that the Grand Chamber Panel should give reasons when it declines a request for referral. This is not a requirement at present (Article 45 of the Convention<sup>3</sup>). The Court's practice of not giving reasons for Panel decisions, including when it accepts a request, is essentially a

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3. See also § 105 of the Explanatory Report on Protocol No. 11

matter of practicality. Given that it has considered well over 2,000 requests under this procedure, a reasoned decision in each one would have represented a real and unnecessary burden. It does however recognise the interest of States and applicants in knowing more about the procedure. To this end it prepared a memorandum on the subject which is available on its website ([link](#)). This document contains a thorough explanation of the practice developed by the Panel since its creation, indicating the types of case that may be accepted for referral, and the types that, as a rule, are not.

The Court has also changed its practice in one respect – parties are now informed of the composition of the Panel that has taken the decision on the referral request.

The Brighton Declaration proposed that the Vice-Presidents of Sections should become *ex officio* members of the Grand Chamber (E. 25 (e)), an idea that the Court has decided not to take up. To have eleven *ex officio* members of each Grand Chamber would mean that only six other judges would be involved in each case. The Court has always attached importance to achieving balance in the composition of every Grand Chamber, especially a geographical balance. Furthermore, regular involvement in Grand Chamber cases is an important and valued aspect of the work of all of the judges of the Court.

## 15. Backlog

The term “backlog” has been defined differently over the years. The objectives set out in the Brighton Declaration (see D. 20 (h)) provide a basis for a new definition. An application which has not been dealt with for the first time within one year would form part of the backlog. Equally, an application which has been communicated to the Government and which thereafter has not been finally disposed of within two years from the date of communication would also be part of the backlog. Using these indications, the Court’s backlog at 1 October this year stood at a total of almost 98,000 applications. The conclusion of this is that since the Court had a total of pending cases on that date which amounted to almost 140,000, the aim would be to bring down the balance of cases to something in the area of 40,000. This would be a “normal” stock of pending applications.

The backlog is constituted of some 2,600 priority applications; 15,000 non-priority and non-repetitive applications; 22,000 repetitive applications; and less than 60,000 Single Judge applications. The Court concentrates its current efforts on, on the one hand, the backlog of priority applications and, on the

other hand , the backlog of Single Judge applications using the new more efficient working methods which it has been possible to put in place since the entry into force of Protocol No 14.

#### 16. Case-law consistency

The issue of consistency in the case-law was raised at Interlaken and the Court has since then been involved in an exchange of views on this subject with in particular the Government Agents. The work of the Court in this area was recognised in the Brighton Declaration (see E. 25 (c)) and the Court's proposal to amend Article 30 of the Convention met with support of States (see E. 25 (d)). In its preliminary opinion for the Brighton conference the Court referred to a possible change in its rules on the relinquishment of cases in favour of the Grand Chamber (Rule 72). This latter point will be examined by the Plenary Court towards the end of the year. Other possible measures to guard against inconsistencies in the case-law, going beyond the arrangements already in place<sup>4</sup>, will also be examined.

#### 17. Unilateral declarations

Recourse to unilateral declarations has become more and more common. They now play a significant role in the Court's work. The policy and practice in this connection were considered in depth by the Court in the course of the spring of 2012 after consultations with the Government Agents and representatives of NGOs.

The Court has adopted a new Rule 62A of the Rules of Court, which entered into force on 1 September 2012 and which governs the use of unilateral declarations.

The Court has sent an information note about its practice to the Government Agents and the representatives of NGOs and has also posted a simplified note on its website ([link](#)) for information to the general public.

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4. Described in the Jurisconsult's note, *Clarity and consistency of the Court's case-law*, 8 July 2010, doc. No. 3197955

## 18. Meetings with Permanent Representatives

The Registry continues to organise regular half-day meetings with the Permanent Representatives of Member States. The latest meeting took place on 1 June and the next one will take place in December.

## 19. Some other issues

The Court has examined the following three points that appear in the Brighton Declaration and has decided not to act on them for the reasons explained below.

First, there is the suggestion in paragraph C. 15 (g) that the Court develop its case-law regarding the exhaustion of domestic remedies. The Court would simply note that the wording used in this part of the Declaration (“alleged violation of the Convention rights or an equivalent provision of domestic law”) seems very close to the existing case-law, which requires the applicants to have raised their complaint at least in substance<sup>5</sup>.

The second point is contained in paragraph C. 15 (f). This invites the Court to amend the Rules of Court so that, where requested by the respondent Government, a separate decision on admissibility is taken for the purpose of ruling on the effectiveness of a domestic remedy. The Court considers this request unjustified firstly because a provision of this sort in the Rules of Court would go against the spirit of Article 29 § 1 of the Convention, by virtue of which joint examination of the admissibility and merits of individual applications is the norm. This was plainly the intention of the High Contracting Parties when drafting Protocol No. 14 – they chose to endorse the practice that had already been developed by the Court for the sake of greater efficiency. In the Court’s view, it would be incorrect to take contrary action now as a result of a political declaration. The second reason is that such a change is in any event unnecessary, since where there is a particular question of admissibility – including the issue of exhaustion of domestic remedies – the Court is at liberty to deal with that point separately in a decision. It is therefore open to a Government in any such case to invite the Court to proceed in this way. In the end it is, however, for the Court to decide.

The third point is raised in paragraph D. 20 (g) iii) - that the Court give advance copies of its decisions and judgments to the parties concerned. The Court considers this to be a problematic suggestion that would undermine the

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5. See paragraph 51 of the Practical Guide on Admissibility Criteria

important principle of secret deliberations. It does not see any strong reason for modifying the rule that a judgment or decision remains secret until the moment it is delivered publicly. To send out advance copies would be to run the clear and real risk of premature disclosure of the result of a case, in particular since the Court does not have any effective means to ensure the parties' strict observance of secrecy until the moment the judgment is publicly delivered.