

The functioning of the European Court of Human Rights in Strasbourg

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The following brief introduction to the functioning of the European Court of Human Rights (ECtHR) aims to give an overview of the proceedings before the Court. Its objective is modest: to analyse the case law of the Court and its decisions it is helpful – and in some cases inevitable – to understand the procedural framework and limitations that produce these decisions.

Part 1: Substantive law

The European Convention on Human Rights (ECHR)¹ is an international treaty, in which 47 Council of Europe Member States have reached agreement on respecting a list of fundamental rights.

The European Court of Human Rights (ECtHR) watches over the adherence to these substantive guarantees, which are listed in Section I, Articles 2 – 18 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (title: „Rights and Freedoms“). Amongst others, they include the right to life (Article 2), the prohibition of torture (Article 3), the prohibition of slavery and forced labour (Article 4) and, in particular, the right to liberty and security (Article 5) as well as the right to a fair trial (Article 6). The ECHR also guarantees the right to respect for private and family life (Article 8), the freedom of thought, conscience and religion (Article 9), the freedom of expression (Article 10), the freedom of assembly and association (Article 11), the right to marry (Article 12), the right to an effective remedy (Article 13), and the prohibition of discrimination (Article 14).

Other substantive guarantees are laid down in the Protocols to the Convention. The (First) Protocol, signed on 20 March 1952, guarantees the protection of

¹ Convention for the Protection of Human Rights and Fundamental Freedoms, CETS No. 5 (as amended by Protocols Nos. 11 and 14 with Protocols Nos. 1, 4, 6, 7, 12 and 13).

property (Article 1), the right to education (Article 2) and the right to free elections (Article 3). Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms secures certain rights and freedoms other than those included in the Convention and in the first Protocol. It was signed on 16 September 1963 and establishes the prohibition of imprisonment for debt (Article 1), the freedom of movement (Article 2), and the prohibition of expulsion of nationals or aliens (Articles 3 and 4). The abolition of the death penalty is regulated in Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty, signed on 28 April 1983. Protocol No. 7, signed on 22 September 1984, guarantees procedural safeguards relating to the expulsion of aliens (Article 1) and the right of appeal in criminal matters (Article 2). Furthermore, Protocol No. 7 safeguards the compensation for wrongful conviction (Article 3), the right not to be tried or punished twice (Article 4) and the equality between spouses (Article 5). A general prohibition of discrimination can be found in Protocol No. 12 to the Convention, signed on 4 November 2000. And finally, Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in all circumstances secures that the death penalty is abolished without any exceptions.

Unlike the Convention itself, the Protocols have not been ratified by all Member States of the Council of Europe. Additionally, some Member States have filed declarations and reservations concerning their obligations resulting from the Convention and its Protocols. A complete list of these declarations and reservations can be retrieved from the website of the Council of Europe² or requested from the Registry.

² Cf. <http://conventions.coe.int/Treaty/Commun/ListeTableauCourt.asp?MA=3&CM=16&CL=ENG>

Figure (1)

Additional Protocol	All rights and freedoms not defined in Section I of the Convention (6 articles)	<i>Yearbook</i> , 1955-1957, p. 37-41
Protocol No. 2	Conferring upon the Court competence to give advisory opinions (5 articles)	<i>Yearbook</i> , 1963, p. 3-7
Protocol No. 3	Modification of articles 29, 30 and 34 of the Convention (4 articles)	<i>Yearbook</i> , 1963, p. 9-13
Protocol No. 4	Securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto (7 articles)	<i>Yearbook</i> , 1963, p. 15-22
Protocol No. 5	Modification of articles 22 and 40 (5 articles)	<i>Yearbook</i> , 1965, p. 5 -7
Protocol No. 6	Abolition of death penalty (9 articles)	<i>Yearbook</i> , 1983, p. PROT. 6 1
Protocol No. 7	Amendments of the Convention (10 articles)	<i>Yearbook</i> , 1984, p. PROT 7. 2
Protocol No. 8	Amendments of the Convention (14 articles)	<i>Yearbook</i> , 1985, p. 3-7
Protocol No. 9	Amendments of the Convention (8 articles)	<i>Yearbook</i> , 1990, p. 3-5
Protocol No. 10	Modification of article 32 (4 articles)	<i>Yearbook</i> , 1992, p. 3-4
Protocol No. 11	Amendments of articles 19 to 56 and of Protocol No. 2 (7 articles)	<i>Yearbook</i> , 1994, p. 2-11 <i>Yearbook</i> , 1997, p. 3-18 (Convention + Protocol No. 11)
Protocol No. 12	Prohibition of discrimination (6 articles)	http://conventions.coe.int/
Protocol No. 13	Abolition of death penalty in all circumstances (8 articles)	http://conventions.coe.int/
Protocol No. 14	Amending the control system of the Convention (22 articles)	http://conventions.coe.int/

(cf. http://www.echr.coe.int/Documents/Archives_evolution_Convention_ENG.pdf)

Part 2: Procedural Law

The European Court of Human Rights was set up on 21 January 1959 in Strasbourg. Its main function rests within the interpretation and application of the Convention and its Protocols. The European Court of Human Rights does not act as a court of appeal vis-à-vis national courts and is not empowered to annul or

alter their decisions. It exclusively monitors the adherence of the Member States to the guarantees enshrined in the Convention and stipulates, if applicable, violations of the latter. If the conditions of Art. 41 of the Convention are met (i.e. a violation was found and the internal law only allows partial reparation to the individual concerned), the Court may also afford just satisfaction to the injured party.

(1) Statutory basis

The organisation and the proceedings of the Court are laid down in Section II of the Convention (Articles 19 to 51), the European Agreement relating to persons participating in proceedings of the European Court of Human Rights³, signed on 5 March 1996, and the Rules of Court, the latest version of which entered into force on 1 May 2013. Furthermore, the President of the Court has issued a number of Practice Directions which have, for example, clarified the procedures for the institution of proceedings or the requirements for written pleadings.

An essential alteration to the procedure of individual applications has been brought about by Protocol No. 14 to the Convention⁴ amending the control system of the Convention, which has come into force on 1 June 2010.

(2) Organisation

The Court consists of a number of judges equal to the number of Member States of the Council of Europe (Art. 20 ECHR) working in five sections. In each section, cases are considered by single judges, in committees of three judges or in Chambers of seven judges (Art. 26 (1) ECHR). There are no specialised chambers for certain areas of law, and applications are not assigned to individual panels of judges on a regional basis.

The single judges are appointed by the President for a limited period of time and are assisted by rapporteurs (Art. 24 (2) ECHR). A single judge will not examine

³ CETS No. 161.

⁴ CETS No. 194.

any application against the Contracting State in respect of which he/she has been elected (Art. 26 (3) ECHR). On the other hand, Art. 26 (4) ECHR regulates that, in the event that a Chamber deals with an individual application, the judge elected in respect of a Contracting State concerned must be member of this Chamber. If there is none or if that judge is unable to sit, the relevant Contracting State is allowed to appoint another judge of the Court or another person who will participate in the hearings of the Chamber in the capacity of an *ad hoc*-judge.

The Grand Chamber consists of 17 judges. It acts as the first instance for individual applications, if a Chamber relinquishes jurisdiction to it, e.g. because the case raises a serious question affecting the interpretation of the Convention or its Protocols, or because the answer to a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court (Art. 30 ECHR). If any party to a case requests that the case be referred to the Grand Chamber and a panel of five judges of the Grand Chamber accepts the request, the Grand Chamber acts as an appeals panel (Art. 43 ECHR).

The Plenary Court has administrative functions only and *inter alia* adopts the Rules of the Court (Art. 25 lit. d ECHR).

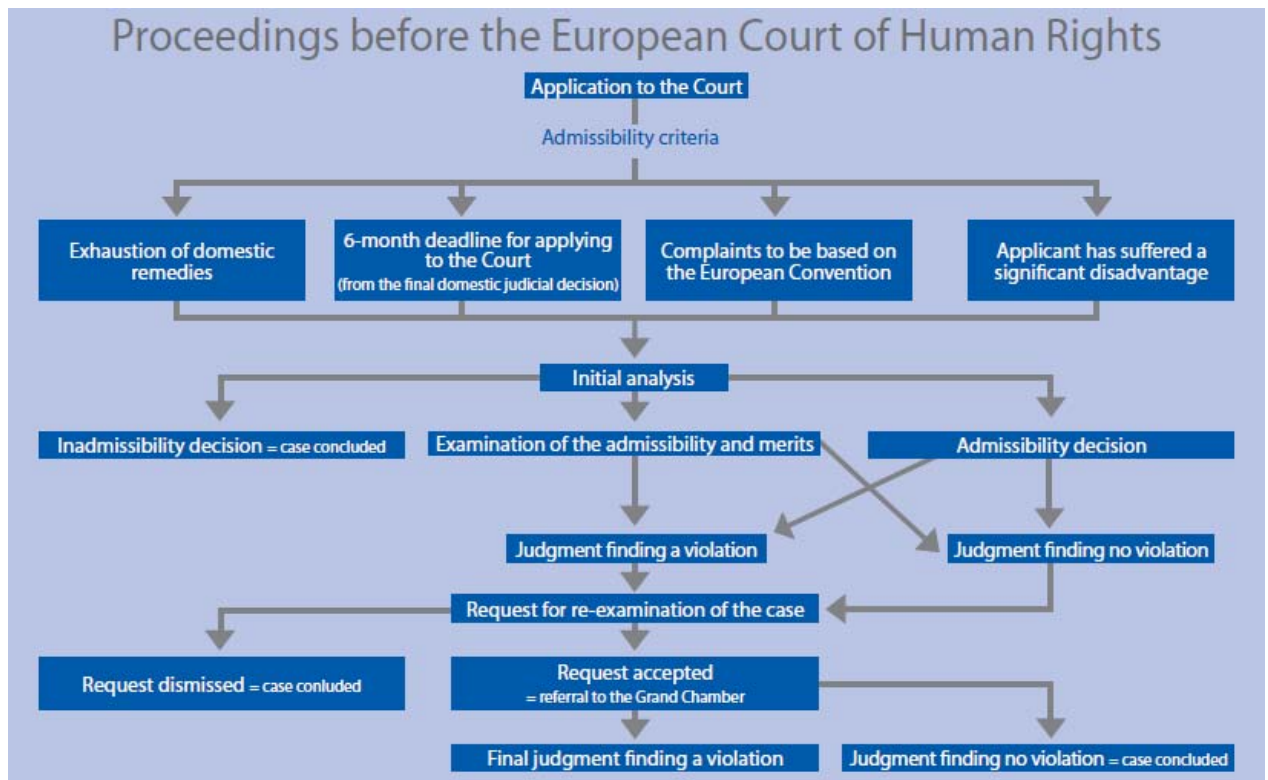
(3) The procedures for individual applications to the European Court of Human Rights

The Court decides on complaints filed by a Contracting State, in the case that one Contracting Party refers to the Court an alleged breach of the provisions of the Convention or one of its Protocols by another Contracting State (Art. 33 ECHR).

Furthermore, the Court can, at the request of the Committee of Ministers of the Council of Europe, give advisory opinions on legal questions concerning the interpretation of the Convention and its Protocols (Art. 47 ECHR).

Most important for the administration of justice is the fact that the Court can receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation of the rights set forth in the Convention or its Protocols by one of the Contracting States (Art. 34 ECHR).

Figure (2)



(cf. http://www.echr.coe.int/Documents/Case_processing_ENG.pdf)

(3.1) Admissibility of an individual application

An individual application is admissible if it meets the following prerequisites:

(a) Competence of the Court: Jurisdiction

The European Court of Human Rights' competence is limited to complaints that fall within the scope of protection of at least one provision of the Convention. This is why, as a general rule, only matters which are the responsibility of a public authority represent an acceptable issue of complaint leading to proceedings at the European Court of Human Rights. Complaints against the conduct of natural persons or private organisations are not admissible.

The Court is only allowed to deal with an application if the alleged breach of the convention occurred at a point of time when the European Convention on Human

Rights or the relevant Protocol(s) were already in force in the Contracting State concerned.

To determine whether the applicant is able to invoke a violation, it is important to know about the Conventions' territorial applicability. As stated in Art. 1 ECHR, everyone staying on the territory of a Contracting State, including foreigners and stateless persons, can rely on this state's adherence to the European Convention on Human Rights.

**(b) Capacity of the applicant to be a party to legal proceedings
("Parteifähigkeit")**

The Court may receive individual applications by any natural or legal person, non-governmental organisation or group of individuals under the jurisdiction of the state against which a complaint is filed (Art. 34 ECHR). The personal scope of protection offered by the European Convention on Human Rights is, however, limited by the individual rights granted by the Convention – if they protect a certain group of people only.

(c) Capacity of the applicant to conduct proceedings ("Prozessfähigkeit")

Neither the Convention itself nor the Rules of Procedure set up special requirements relating to the capacity of the applicant to conduct proceedings in his/her own name.

(d) Representation by a lawyer ("Postulationsfähigkeit")

There is no statutory requirement to be represented by a lawyer during all stages of the proceedings at the European Court of Human Rights. Every person or group of individuals capable of being a party to legal proceedings can file a complaint personally or through a representative. There are no statutory provisions or restrictions regarding suitable representatives (Rule 36 (1)).

(e) Right to complaint (“Beschwerdebefugnis”)

Only natural persons, non-governmental organisations or groups of individuals that claim that one of their rights guaranteed by the Convention or one of its Protocols has been infringed by an action or omission of a Contracting State, and that they have been personally, currently and directly affected thereby, have the right to file an application (Art. 34 Sentence 1 ECHR).

An applicant is not personally affected if he or she asserts a third party’s right in his or her own name.

An applicant is currently affected if he or she is infringed in a personal right guaranteed by the Convention or one of its supplementary Protocols at the time the application is filed. Only on an exceptional basis does a prospective future victim hold the right to appeal. This might be the case if it is unacceptable to wait for the actual violation of rights following the execution of a measure ordered by a state – for example in cases of extradition or expulsion.

The requirement of the applicant being directly affected is to ensure that all means of legal protection available at the national level are exhausted before filing an application to the Court. In rare exceptional cases, a complaint against an existing legal provision may be accepted if the provision contains a direct prohibition or order that does not leave the authorities with any scope of consideration when executing it. In such cases the applicant is *de facto* infringed in his or her rights by the legal situation.

(f) Exhaustion of all domestic remedies

In order to offer a Contracting Party the chance of rectifying a violation of the Convention at the national scale, the European Court of Human Rights is only allowed to deal with a case after the applicant has exhausted all legal remedies actually and effectually available at the national level (Art. 35 (1) ECHR). Thus the applicant is obliged to make use of all legal remedies available to him or her that are adequate to redress the alleged violation of the Convention. Any

application must state all domestic remedies used and include copies of all relevant documents and decisions (Rule 47 Paragraph 2). Should a domestic appeal be rejected as inadmissible due to the non-observance of the form, time-limit or any other rule of procedure, the European Court of Human Rights will regard this as non-exhaustion of all domestic remedies. This does not apply in the case that the rejection of a domestic remedy appears to be arbitrary or in itself contradictory to the Convention or in the case that a national authority has – despite its inadmissibility – examined the case.

(g) Time-limit

An application to the European Court of Human Rights has to be submitted within a period of 6 months (Art. 35 (1) ECHR).

This 6-month period usually commences the day the final and complete decision on the subject of complaint is pronounced at the national level. If no effective legal remedy is admissible against a burdening action of the state, the period commences the day the governmental measure is implemented or the day the person concerned actually takes notice of it.

In order to comply with the 6-month time-limit, neither the date of the application nor the receipt of the application at the Registry are of any importance, but the date of sending or rather posting the application, which has to be proven by a legible postmark, an official document or a fax report. The relevant date is the date of the first communication from the applicant setting out, even summarily, the subject matter of the application (Rule 47 Paragraph 5). It is not necessary to use the application form offered by the Court, but general inquiries or requests for information will not be considered sufficient.

(h) Not “manifestly ill-founded” or abuse of the right of application

The Court declares applications as inadmissible that it considers manifestly ill-founded or an abuse of the right of individual application (Article 35 (3) lit. a ECHR). For this reason it is recommendable to accurately describe the facts of a

case and give a detailed explanation as to why the complaint is justified when lodging the application.

(i) “Significant Disadvantage”

The Court shall declare inadmissible any individual application if it considers that the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal (Art. 35 (3) lit. b ECHR).

(j) Anonymous or redundant application

The Court shall not deal with any application submitted under Article 34 that is anonymous or is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.

(k) Form

Formal requirements ensue from the Rules of Court and the Practice Direction “Institution of proceedings”. Failure to comply with the stated formal requirements does not in itself make the application inadmissible, but as a result the application might neither get registered nor examined.

Any application must be made directly to the Court, submitted to the Registry in writing and signed by the applicant or by the applicant’s representative (Rule 45 Paragraph 1).

If possible, the application should be lodged using the application form (Rule 47 Paragraph 1), which can be found in the “Documentation for persons wishing to

apply to the European Court of Human Rights”⁵. Should the application form not be available to the applicant, he or she is free to lodge the complaint by sending a letter within the period allowed. The Registry will then send the applicant the relevant form and ask him or her to return it within a fixed term – usually 8 weeks. Filing a complaint without the application form will in any case delay the examination of the application.

The application must contain copies of all relevant documents and in particular the decisions, whether judicial or not, relating to the object of the application. Furthermore, the applicant has to provide copies of all documents and decisions that prove the eligibility of the complaint according to Article 35 Paragraph 1 of the Convention. He or she must also inform the Court about any documents to be considered as evidence.

If the application is signed by the applicant’s representative, a form of authority signed by the applicant and the representative must be submitted (Rule 45 Paragraph 3). The relevant form is included in the “Documentation for persons wishing to apply to the European Court of Human Rights”.

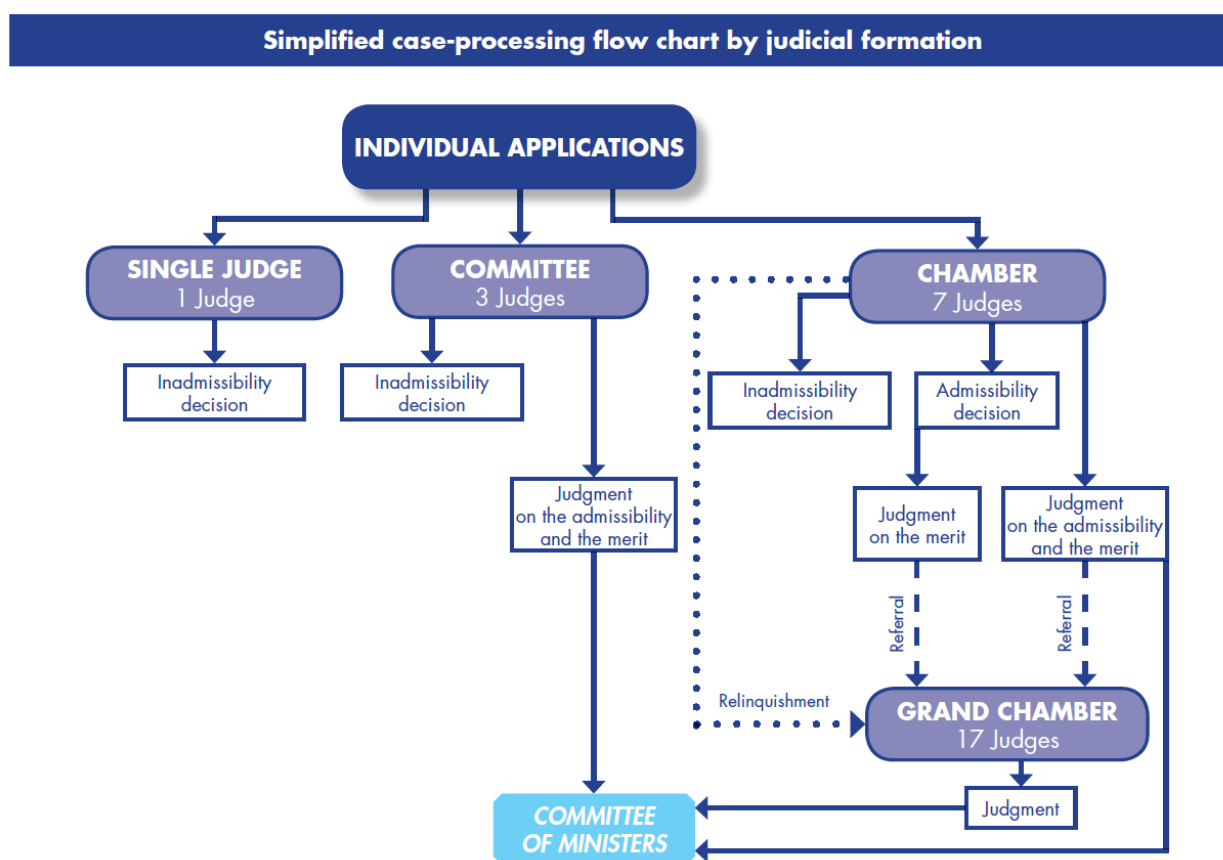
As long as the application has not been conveyed to the Contracting State involved, the Court and the applicant and his/her representative may communicate in one of the two official languages of the Court (English and French) or in the official language of the Contracting State (Rule 34).

(3.2) The proceedings of individual applications

The following overview depicts the proceedings of individual applications:

⁵ Cf. http://www.echr.coe.int/Documents/PO_pack_ENG.pdf

Figure (3)



(cf. http://www.echr.coe.int/Documents/Case_processing_Court_ENG.pdf)

(a) Recording by the Registry

On receipt of the first communication adequately setting out the subject matter of the application, the Registry will open a file in the name of the applicant and assign a number under which the application will be registered. This file number must be mentioned in all subsequent correspondence.

The applicant has the right to correspond freely with the Court. He or she shall not be hindered from effectively asserting a violation of the Convention by a Contracting Party neither when filing the application nor during the subsequent proceedings before the European Court of Human Rights (cf. Article 3 of the European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights signed on 5 March 1996).

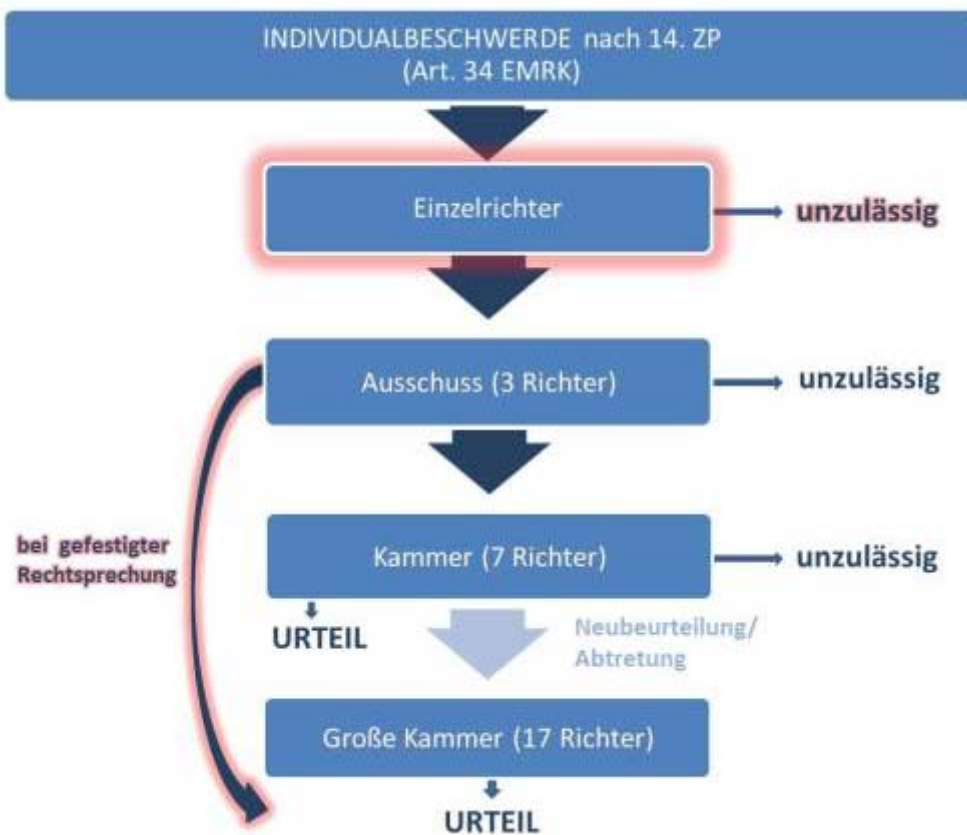
Should there be any doubts about the admissibility of a complaint or should necessary documents be missing, the Registry will usually ask the applicant to send in further information or documents. If the applicant does not react to such requests within a set time limit, the Court may decide to strike the application out of its list of cases (Art. 37 ECHR).

Each registered individual application will be assigned to one of the five Sections of the Court by the President (Rule 52 (1)).

(b) Examination of Admissibility

The upcoming examination of the admissibility of the complaint will be carried out by a single judge. He or she has the power to declare the application inadmissible where such a decision can be taken without further examination (Art. 27 (1) ECHR). This decision of the single judge may not be appealed (Art. 27 (2) ECHR). If the single judge does not declare an application inadmissible, he or she will forward it to a Committee of three judges or to a Chamber (Art. 27 (3) ECHR).

Figure (4)



Applications are usually forwarded to a Committee if the single judge regards the application as manifestly justified. A Committee may – by unanimous vote – declare a complaint admissible and well-founded if the underlying question is already the subject of well-established case-law of the Court (Art. 28 (1) lit. b ECHR). The decisions of a Committee to declare an application admissible or inadmissible are final (Art. 28 (2) ECHR).

Should the Committee not decide in the way laid out above or should the single judge forward the application directly to a Chamber, the Chamber will decide on the admissibility and merits of the application (Art. 29 (1) Sentence 2 ECHR). A separate decision on admissibility as stated in Article 29 (1) Sentence 2 ECHR is a rare exception.

An application lodged with the European Court of Human Rights does not suspend the execution of national judgements. To prevent the applicant from

suffering an irreversible loss of rights while the proceedings before the Court are still pending, the Chamber or - where appropriate - its President may, at the request of a party or on its own motion, indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or of the proper conduct of the proceedings before it (Rule 39).

(c) Proceedings after the application has been admitted

If the Court has admitted an application, it will examine the case together with the representatives of the parties and, if necessary, undertake an investigation (Art. 38 ECHR). This usually initiates proceedings in writing, in the course of which the parties may file written statements. Nonetheless, the principle of judicial investigation applies to the handling and examining of the complaint. After the application has been registered, the Court will institute legal proceedings of its own motion and is not bound to declarations, requests or proposals made by the parties.

As soon as a complaint is declared admissible, the Court will attempt to secure a friendly settlement on the basis of respect for human rights as defined in the Convention (Art. 39 ECHR). Should the applicant decline a friendly settlement proposed by the Court, this might result in the Court striking the application from its list of cases.

After the Court has given notice of the application to the Contracting Party involved (Rule 54 (2) lit. b), the applicant will usually be required to appoint a legal representative (Rule 36 (2)). However, in most cases it is sufficient for the applicant to be legally represented as of the beginning of the proceedings following the admission of the application – especially in hearings (Rule 36 (3)). From the point in the proceedings set by the Chamber President, the representative acting on behalf of the applicant must be a lawyer authorised to practise in any of the Contracting Parties and resident in the territory of one of them (Rule 36 (4) lit. a). Besides lawyers, the President of the Chamber may approve any other person to act as representative (Rule 36 (4) 4 lit. a).

After notice of an application has been given to the Contracting Party involved (Rule 54 (2) 2 lit. b) all further communication with the Court has to be in one of its two official languages. In exceptional cases the President of the Chamber may allow the continuous use of the language used in the application or any other language (Rule 34 (3) lit. a).

The Chamber may, at the request of a party or of its own motion, adopt any investigative measure which it considers capable of clarifying the facts of the case. The Chamber may, inter alia, invite the parties to produce documentary evidence and decide to hear as a witness or expert or in any other capacity any person whose evidence or statements seem likely to assist it in carrying out its tasks.

A hearing on the merits of the complaint will take place at the request of a party or of the Court's own motion (Rule 59 (3)). Due to the high work load of the Court, hearings in the presence of the parties have become exceptional cases.

If the Chamber finds that an application raises a serious question affecting the interpretation of the Convention or that the decision of a question might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may relinquish jurisdiction in favour of the Grand Chamber consisting of 17 judges (Art. 30 ECHR).

(d) The judgment of the Court

All judgements of the European Court of Human Rights are taken by the majority of votes of the judges present. Every judge involved in the proceedings is entitled to add to the judgment a statement on his or her consenting or dissenting opinion or a declaration of his or her mere dissent (Art. 45 (2) ECHR).

To determine whether one of the rights guaranteed by the Convention have been violated, the judges usually apply a three-step test:

- (1) scope of protection,
- (2) infringement/encroachment of the right,
- (3) justification of the infringement.

As the Court does not act as a court of appeal vis-à-vis national courts, its decisions are of mere declaratory nature, except for those related to just satisfaction (Art. 41 ECHR). The breach of the Convention will be ascertained irrespective of the applicant having suffered any material or non-material damage.

If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party (Art. 41 ECHR).

(e) Costs of the proceedings

The expenditure on the Court is borne by the Council of Europe (Art. 50 ECHR). This is why applications to the European Court of Human Rights are dealt with free of charges.

(f) Execution of judgments

The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution (Art. 46 (2) ECHR).

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