

4.4 COMPLAINT PROCEDURE OF THE EUROPEAN COURT OF HUMAN RIGHTS

BASIC FACTS ON THE EUROPEAN COURT OF HUMAN RIGHTS¹

ORIGIN

When and how was the European Court of Human Rights created?

- ▶ The ECtHR was created in 1959 pursuant to the European Convention on Human Rights (ECHR).

When did it become operational?

- ▶ The ECtHR opened in 1959 as part of a two-tier structure comprising the ECtHR and the Commission on Human Rights, with the latter acting as a filtering mechanism to the ECtHR. This two-tier structure was replaced in 1998 by a single court, pursuant to revisions introduced by Protocol 11 to the ECHR.

PURPOSE

What is the European Court of Human Rights' general objective?

- ▶ To examine complaints of violation of the ECHR

What are the European Court of Human Rights' functions?

- ▶ Interstate complaints (Article 33, ECHR)
- ▶ Individual complaints (Article 34, ECHR)
- ▶ Fact-finding (in the context of individual complaints only and an optional step in the procedure)

COMPOSITION

How many persons compose the European Court of Human Rights?

- ▶ As many judges as there are States parties to the European Convention on Human Rights

Are these persons independent experts or state representatives?

- ▶ Independent experts

WHAT ARE THE ADMISSIBILITY REQUIREMENTS?

A communication will be declared inadmissible if:

- ▶ The communication is anonymous;

¹Based on *Reported Killing as Human Rights Violations* by Kate Thompson and Camille Giffard (published by the Human Rights Centre, University of Essex).

- ▶ The communication has not been submitted within six months of the date of the domestic authorities' final decision in the case;
- ▶ The communication is “manifestly ill-founded or an abuse of the right of petition” (a preliminary examination of the petition does not point to any appearance of a violation of rights protected under the ECHR—where the petition can be immediately declared inadmissible without having to proceed to the formal examination on the merits);
- ▶ The communication is incompatible with the provisions of the Convention
- ▶ The application is substantially the same as one that has already been considered by the court or as another procedure of international investigation and contains no new and relevant information;
- ▶ Domestic remedies have not been exhausted, except where the remedies are unavailable, ineffective or unreasonably prolonged (and an explanation as to such issues has been provided to the Court).

As of June 1, 2010, in accordance with Protocol 14 to the ECHR, a new admissibility requirement allows the Court to declare inadmissible applications where the applicant has not suffered a significant disadvantage, unless “respect for human rights” requires an examination on the merits, and no domestic judicial remedy is available.² These are known as “minor complaints.”

WHAT SHOULD YOUR APPLICATION CONTAIN?

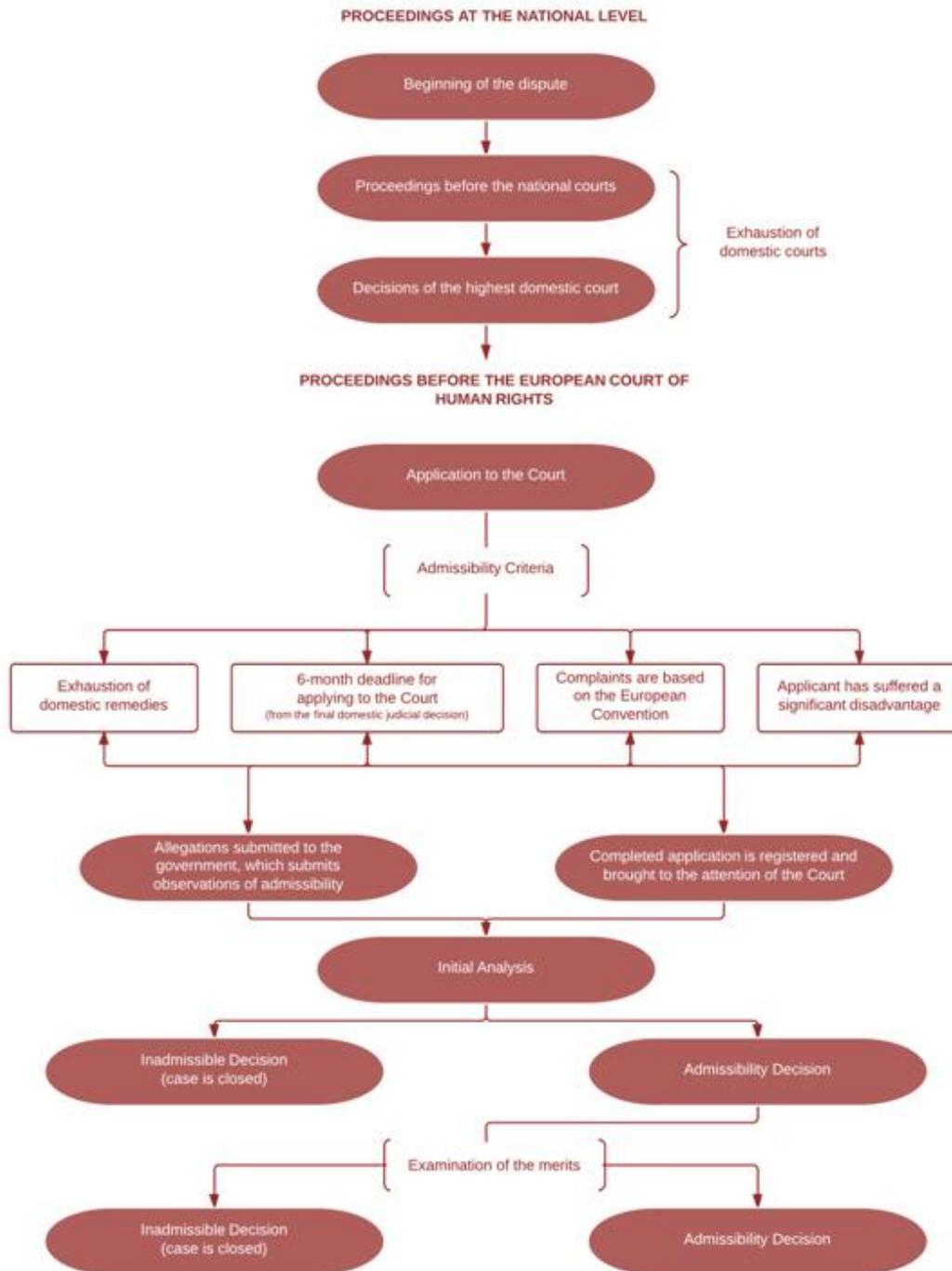
Your initial letter should contain:

- ▶ A brief summary of your complaints;
- ▶ An indication of which rights in the ECHR you think have been violated;
- ▶ An indication of the domestic remedies you have used or attempted to use; and
- ▶ A list of the official decisions in your case, including the date of each decision, by whom it was made, and an indication of what it said (attach a copy of each of these decisions).

An application form and more information on lodging applications before the ECtHR may be obtained from the ECtHR website (<http://www.echr.coe.int/Pages/home.aspx?p=applicants&c=>).

²Article 12 of Protocol 14 of the ECHR, amending article 35 of the ECHR.

TABLE: BASIC CHRONOLOGY OF THE INDIVIDUAL COMPLAINT PROCEDURE OF THE EUROPEAN COURT OF HUMAN RIGHTS³



³Based on *Reported Killing as Human Rights Violations* by Kate Thompson and Camille Giffard (published by the Human Rights Centre, University of Essex) and "Life of an Application" by the European Court of Human Rights, (http://www.echr.coe.int/Documents/Case_processing_ENG.pdf).

PRACTICALITIES OF THE USE OF THE INDIVIDUAL COMPLAINT PROCEDURE IN THE EUROPEAN COURT OF HUMAN RIGHTS

Who can bring a case under this procedure?

Individuals, NGOs, and groups of individuals claiming to be victim of a human rights violation; a case can be brought by a close relative of the victim where the victim cannot do so in person, for example, if he or she has disappeared or died.

Is there a time limit for bringing an application?

Six months from the date of the final decision taken in the case by the state authorities

Can you bring a case under this procedure if you have already brought one under another procedure concerning the same set of facts?

No

Do you need legal representation?

Legal representation is not necessary at the time of the application, but is required for proceedings after the case has been declared admissible, unless the president of the court gives exceptional permission for the applicant to present his or her own case.

Is financial assistance available?

Yes, but only if the application is communicated to the State; the applicant will need to fill out a statement of means, signed by a domestic legal aid board, as legal aid is only granted where there is a financial need.

Are amicus curia briefs accepted?

Yes, with permission (Rule 61 of the Rules of Court)

Who will know about the communication?

In principle, the proceedings are public unless the President of the Chamber decides otherwise. In exceptional cases, where an applicant does not wish his or her identity to be made public and submits a statement explaining the reasons for this, anonymity may be authorized by the president.

How long does the procedure take?

Several years

What measures, if any, can the mechanisms take to assist the court in reaching a decision?

Fact-finding hearings, expert evidence, written pleadings, oral hearings

Are provisional or urgent measures available?

Yes, but they are practices that have been developed by the Court and have no basis in the convention and are applied only in very specific cases, mainly immigration/deportation cases, where there is a “real risk” to a person (Rule 39 of the Rules of Court).

A NOTE ON RESEARCHING EUROPEAN CONVENTION OF HUMAN RIGHTS CASE LAW

The original structure of the Court and mechanism for handling cases provided for a two-tier system of rights protection – the European Commission of Human Rights (now obsolete) as well as the European Court of Human Rights. In 1998, Protocol 11 of the European Convention on Human Rights came into force, eliminating the Commission of Human Rights and allowing for the emergence of a new European Court of Human Rights. If researching a particular topic under the Convention case law, research both Commission and Court decisions.