HOUSE OF COMMONS LIBRARY

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Applying to the European Court of Human Rights: a practical guide for MPs

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Summary

Introduction

Members of Parliament are often asked how constituents can take a case to the European Court of Human Rights in Strasbourg.

There is lots of information for applicants and lawyers on the Court's website. This note summarises the main features of the process such as the need to exhaust all domestic remedies first, and emphasises recent changes such as the new requirement that the applicant has suffered 'significant disadvantage'.

Submitting an application

Firstly, all applications must be validly submitted.

There are detailed rules on how to fill in the **official application form,** and a **six-month deadline** for sending it.

These rules have recently been tightened further, largely because of the large number of complaints made to the Court. For instance, the application and any supporting documents – including any additional information requested by the Court – must all be posted within six months of the final decision by the highest competent national authority.

If these rules are not met, the Court can refuse even to register the case.

Admissibility

The next stage is for the Court to decide if a case is 'admissible' (in other words, whether judges will go on look to at the merits of the case). Most cases are ruled inadmissible.

The main conditions that must be met are:

- The applicant (or a close relative) must have been the **victim of an alleged violation** of the European Convention on Human Rights and – a new condition – must have suffered '**significant disadvantage**' as a result. A complaint against the general principles or provisions of Government policy or legislation would not be admissible, unless the personal rights of the applicant were affected.
- The alleged violation of the Convention must be attributable to the action or inaction of **a State Party to the Convention or its public authorities** (for instance a Government department, local authority or court). The Court does not deal with complaints against individuals or private or commercial bodies.
- The complaint must refer to an alleged **violation of a specific right mentioned in the Convention** or its Protocols. A vague reference to 'human rights' will not do.
- Before applying to the Court, the applicant must have **exhausted all domestic remedies**. This means that the applicant has done everything possible to resolve the case in their own country, which usually means taking a case to the appropriate national court, tribunal or authority, followed by an appeal where applicable, up to the highest level with the power to remedy the complaint (for example the UK Supreme Court).
- The complaint **must not be 'substantially the same'** as a matter that has already been examined by the Court.
- It **must not be 'manifestly ill-founded'**. This rather vague condition is the basis of many inadmissibility decisions.

Court proceedings

There are several stages to the Court's processes:

1 The Court first decides whether an application has been validly submitted.

2 It next examines all validly-submitted applications to see if they are 'admissible' – in other words, whether they comply with the basic conditions set out in Article 35 of the Convention.

3 A panel of three, seven or 17 judges examines the merits of admissible applications.

4 The Court will first encourage the parties to reach a settlement.

5 If no settlement is reached, the Court will consider the case in writing or (in a minority of cases) with a hearing.

6 It will then issue a judgment.

7 If the Court finds a breach of Convention rights, it can (but does not have to) order the State concerned to pay compensation and costs to the applicant. It cannot overrule national laws or national court rulings. If no violation is found, the applicant does not have to pay the state's costs.

8 The State concerned is bound under international law to comply with final judgments of the Court, although it has some discretion about how to do so. The Council of Europe's Committee of Ministers can take steps to enforce Court judgments.

Nearly all the proceedings are conducted in writing. Anything the applicant would like to communicate with the Court must be in writing, and the applicant is informed in writing of any decision taken by the Court.

Lawyers and legal aid

Although applicants do not need a lawyer for the initial stages, it could help them meet the complex admissibility requirements.

If the case proceeds, they will need a lawyer.

In some circumstances the Court can grant legal aid.

Not to be confused with…

Finally, it is important to note that the Strasbourg Court – which is part of the 47-country Council of Europe – is **nothing to do with the EU**.

The EU has its own court in Luxembourg, the Court of Justice of the EU, which rules on interpretation of EU law and treaties, and can hear some types of cases from individuals alleging a breach of those rules.

1. Introduction

Individuals can take a complaint to the European Court of Human Rights in Strasbourg, without paying any court fee. Tens of thousands of people do so every year, but **most applications are rejected** at an early stage, either for being invalidly submitted or for being 'inadmissible'.

This note summarises the main features of the process, and emphasises some recent changes, in order to help Members of Parliament respond to enquiries from constituents.

Some of the most important **basic requirements** for the Court to consider an application are that:

- The applicant has identified a specific right or rights under the European Convention on Human Rights[1] that has allegedly been breached.
- The applicant has done everything possible to resolve the case in their own country (exhausting domestic remedies).
- The application has been submitted to the Court within six months of exhausting domestic remedies.

Some **new rules** have recently been introduced, partly in an effort to deal with the large number of applications to the Court. These include:

- All documents, including any additional ones asked for by the Court, must be posted within the six-month deadline for applying.
- Applicants must have suffered a 'significant disadvantage' as a result of the alleged breach.
- A single judge can examine applications that are considered 'clearly inadmissible' and issue a brief written decision declaring them inadmissible.

There is lots of information for applicants and lawyers on the Court's website, including:

- General information such as the application form that must be used, a guidance sheet, questions and answers, and an online 'admissibility checklist'.
- A more detailed Practical Guide on Admissibility Criteria (last updated 1 January 2014) that is aimed at lawyers.
- The case law of the Court, its Rules and other documentation.

[1] Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, and its Protocols

2. Submitting an application

All applications must be validly submitted according to detailed rules, or risk not even being registered let alone considered.

2.1 The official application form must be used

Applicants must complete the official application form (a letter containing the relevant information is no longer acceptable).

The form can be completed in English, French or another official language of any Council of Europe Member State. It must include information such as:

- The applicant's name, date of birth, nationality and address (applications cannot be anonymous, although applicants can ask for their identity not to be made public.[2]
- The name of the State or States against which the application is made.
- A concise and legible statement of the facts.
- A concise and legible statement of the alleged violation(s) of the Convention and the relevant arguments.
- A concise and legible statement confirming the applicant's compliance with the Convention's admissibility criteria (see below).

Applicants can also include up to 20 pages of additional information with the application form.

There are detailed rules on how to fill in the application form, and on the form and content of any additional pages (for example, they must be divided into numbered paragraphs).[3]

The application must also include copies of all relevant documents, for instance those relating to the decisions or measures complained of, and showing that the applicant has exhausted all available domestic remedies and applied within six months of the final domestic decision.

The completed application form and related documents must be sent by post to the following address:

The Registrar
European Court of Human Rights
Council of Europe
F-67075 Strasbourg Cedex

Applicants cannot submit the form by fax or email.

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[2] 'Applicants who do not wish their identity to be disclosed to the public shall so indicate and shall submit a statement of the reasons justifying such a departure from the normal rule of public access to information in proceedings before the Court. The Court may authorise anonymity or grant it of its own motion.' Rule 47(4) of the Rules of Court (as updated)

[3] See also Rule 47 of the Rules of Court (as updated)

2.2 Six-month deadline for applying

The application must be posted within six months of the date on which the 'final decision' was taken by the highest competent national authority.[4]

The rules have recently been tightened so that not only the application itself but also any amendments or further documents requested by the Court must be sent within the six-month deadline.[5]

The 'final decision' here means the latest decision in the normal domestic process that was both available to the applicant in practice and capable of providing redress. Trying a remedy which the Court considers inappropriate will not stop the clock from running.

The date on the postmark is taken as the date when the application was posted.

2.3 The Court can refuse to register an application

If the form and its supporting documents are not correctly completed and submitted within the six-month deadline, the Court will not usually even register the application for initial examination.[6]

4 Convention Article 35(1)
5 Rule 47(6)(a) of the Rules of Court (as updated)
6 Rule 47(5)(1) of the Rules of Court (as updated)

3. Who can bring a complaint?

3.1 Individual victims or groups…

Private individuals, groups of individuals and non-governmental organisations can bring complaints to the Court, under Article 34 of the Convention.

They do not have to be nationals of a State Party to the Convention, or even living in a Convention state.

They must have been a direct victim of the alleged violation. It is not possible to make a general complaint about a measure which seems unfair, or to complain on behalf of someone else (unless the complainant is clearly identified as the official representative of an alleged victim who has died or disappeared , for example a close friend or relative).

Armed forces personnel are entitled to the same human rights protection under the Convention as civilians.

(There is a separate mechanism for States Parties to refer another State Party to the Court for alleged breaches of the Convention or its Protocols, under Article 33 of the Convention.)

3.2 …who have suffered 'significant disadvantage'

There is a new rule that applications are inadmissible if the applicant has not suffered a 'significant disadvantage'.[7]

This new rule is intended to reflect the idea that a violation of a right should reach a minimum level of severity to be considered by an international court.

When considering this rule, the court should take into account both the applicant's subjective perception and what is objectively at stake in the case. 'Disadvantage' can be financial or non-financial.

Applications cannot be rejected on this ground if respect for human rights requires the application to be considered on the merits – for instance where there is a need to clarify states' obligations under the Convention.

Nor can they be rejected on this ground unless a domestic court or tribunal has already considered the case. This is in order to make sure that every case has some kind of judicial examination, whether in a national or European court.

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[7] Convention Article 35(3)(b), inserted by Protocol 14 as of 1 June 2010

4. Who can they complain about?

An alleged violation must relate to an action (or failure to act) by a State within the Court's jurisdiction, or a public authority of such a State.

The actions of private individuals or companies, etc, cannot form the basis of a complaint to the Court, unless they are attributable to a State or public authority

4.1 States

The 47 States that are members of the Council of Europe have all agreed to be bound by the Convention and have accepted the right of individual petition to the Court. These include all 28 EU Member States, as well as Russia and Turkey, for example.

However, not all these states have ratified all the Protocols to the Convention. A complaint that alleges a breach of a Protocol that the state has not ratified will be inadmissible.

The UK has declared that the Convention (including the right to individual petition to the Court) extends to its Crown Dependencies and Overseas Territories.

4.2 Public authorities

A public authority can include the following, for example:

- central government
- local government
- local authorities
- police
- prison services
- immigration services
- NHS trusts
- courts and tribunals
- executive agencies

4.3 Attributable

The actions or inaction of private individuals or groups cannot generally be challenged in the Court. However, in some circumstances they might be attributable to a state or public authority.

For instance, the Court has held that the state can be responsible for failing to protect someone from being killed by another individual, if the authorities knew or ought to have known of a real an immediate risk to life and failed to take action.[8]

[8] Osman v United Kingdom, case no 23452/94, 28 October 1998

5. Must allege violation of a 'Convention right'

5.1 Introduction

The Court can only consider cases alleging violations of rights that are protected under the Convention, and that occurred at a time when and place where the Convention applies.

So for instance applications have been rejected where they concern the right to be issued with a driving licence, or the right of foreign nationals to enter and reside in a state, because these are not rights protected by the Convention.

Vague references to 'human rights' will not do. Nor will references to other human rights treaties.

5.2 What are the Convention rights?

The complaint must be linked to an Article in the European Convention and/or its Protocols. It may concern, for example:

Convention

Article 1 - Obligation to respect human rights (states must ensure that everyone has the rights set out in the Convention)

Article 2 - Right to life

Article 3 - Prohibition of torture

Article 4 - Prohibition of slavery and forced labour

Article 5 - Right to liberty and security

Article 6 - Right to a fair trial

Article 7 - No punishment without law

Article 8 - Right to respect for private and family life

Article 9 - Freedom of thought, conscience and religion

Article 10 - Freedom of expression

Article 11 - Freedom of assembly and association

Article 12 - Right to marry and have a family

Article 13 - Right to an effective remedy

Article 14 - Prohibition of discrimination with regard to Convention rights, regardless of skin colour, sex, language, political or religious beliefs or origins

Additional Protocol

Right to peaceful enjoyment of property

Right to education

Right to free elections by secret ballot

Protocol 4

No deprivation of liberty for non-fulfilment of contractual obligations

Right to liberty of movement and freedom to choose one's residence

Prohibition of a State's expulsion of a national

Prohibition of collective expulsion of aliens

Protocol 6

Abolition of the death penalty

Protocol 7

Right of aliens to procedural guarantees in the event of expulsion from the territory of a State

Right of a person convicted of a criminal offence to have the conviction of sentence reviewed by a higher tribunal

Right to compensation in the event of a miscarriage of justice

Right not to be tried or punished in criminal proceedings for an offence for which one has already been acquitted or convicted

Equality of rights and responsibilities as between spouses

Protocol 12

General prohibition of discrimination.

Protocol 13

Abolition of the death penalty in all circumstances (including in time of war or of imminent threat of war).

5.3 Time and place

The violation must have occurred at a time when the Convention was in force in respect of the state concerned.

Importantly, it must also have happened at a place within the state's jurisdiction, or in territory effectively controlled by it. In recent years the Court has interpreted the Convention as applying 'extra-territorially' in some conflict situations, for instance allowing some Iraqi citizens to bring claims under the Convention against the UK for the way they were treated by the British armed forces in Iraq.

5.4 Interpretation

Over the years, the Court has interpreted the Convention rights in hundreds of cases, sometimes taking them well beyond the original intention.

It holds that the Convention is a '**living instrument**' that must be interpreted in the light of present-day conditions and situations, rather

than assessing what was intended by the original drafters of the Convention in the late 1940s.[9]

It has also used the term '**margin of appreciation**' in hundreds of rulings and decisions to give national authorities room for manoeuvre in fulfilling some of their main obligations under the Convention. This term is not used in the Convention itself, but is part of the notion that the Court is subsidiary to national authorities in safeguarding human rights, and that there are many issues which national authorities are in the best position to assess. The Court's attitude towards the margin of appreciation varies according to the context: relevant factors include the nature of the Convention right in issue, its importance for the individual and the nature of the activities concerned.

Protocol 15 to the Convention would add references to subsidiarity and the margin of appreciation to the Preamble of the Convention, but this Protocol is not yet in force.

5.5 Derogations

Under Article 15 of the Convention, States Parties may derogate from certain Convention rights in the case of war or 'other public emergency threatening the life of the nation', as long as the Council of Europe is kept fully informed of the measures taken.

However, this does not prevent applicants from taking a case alleging a breach of those rights. In such cases, the Court will first assess whether a Convention right has in fact been breached, and if so, it will then look at whether there is a valid derogation in relation to that right. When assessing whether a derogation is valid, the Court will for instance look at whether or not the circumstances genuinely warrant the status of a public emergency threatening the life of the nation, and whether the actions taken are proportionate to the threat faced.

[9] See for example *Selmouni v France* (2000) 29 EHRR 403

6. All domestic remedies must be exhausted

6.1 Introduction

The requirement that an applicant must have 'exhausted all domestic remedies' before applying to the European Court of Human Rights reflects the fact that the Court is intended to be subsidiary to national systems safeguarding human rights.

6.2 What does it mean?

The rule on exhausting domestic remedies means that before applying to the European Court of Human Rights, the applicant must first have done everything possible to resolve the case in their own country.

This usually means taking a case to the appropriate national court, tribunal or authority, followed by an appeal where applicable, up to the highest level with the power to remedy the complaint (for example the UK Supreme Court).

Applicants are only obliged to exhaust domestic remedies that are available, accessible, and capable of providing redress for their complaints with a reasonable prospect of success.

6.3 A flexible rule

The Court interprets this requirement flexibly – it is neither absolute nor applied automatically.

For example, it has not required applicants to use a remedy which even the highest court of the country had not obliged them to use.

Nor will the Court require applicants to use a remedy that would be unreasonable in practice, futile or ineffective.

However, applicants who have been unable to appeal in the national courts only because they made a procedural mistake may not be taken to have exhausted domestic remedies.

6.4 Domestic remedies in the UK

Since the UK's *Human Rights Act 1998* came into force, applicants have generally had to do more to 'exhaust domestic remedies' before they can apply to the European Court of Human Rights.

That is because the Human Rights Act for the first time allowed individuals to rely on Convention rights directly in UK courts. It did so by 'incorporating' certain articles of the Convention and its Protocols into UK domestic law.

Before the Human Rights Act came into force in 2000, the Convention bound the UK Government in international law only. Allegations of breaching Convention rights often had to go straight to the European

Court of Human Rights in Strasbourg as no domestic remedies were available.

The Government intends to replace the Human Rights Act with a 'British Bill of Rights', but no details of this have yet been published.

7. Not 'substantially the same' as a previous case

The Court will reject an application where it 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.[10]

This includes cases that have been struck out because a friendly settlement has been reached (see below), but not those which have never been the subject of a formal decision (for example applications which were not registered because they were not validly submitted).

Applications will generally be rejected under this provision if they have the same factual basis as a previous application, even if there are new legal arguments.

An applicant who repeatedly lodges similar vexatious and manifestly ill-founded applications with the Court could also have their application declared inadmissible as being an 'abuse of the right of individual application'.[11]

10 Convention Article 35(2)(b)
11 Convention Article 35(3)(a)

8. Not 'manifestly ill-founded'

8.1 Introduction

Even where an application is compatible with the Convention and all the formal admissibility conditions have been met, the Court can declare it (or part of it) 'manifestly ill-founded' and therefore inadmissible.

There are three main categories of manifestly ill-founded complaints, as follows.

8.2 The Court is effectively being asked to quash or retry a case

The Court will not usually question the findings and conclusions of domestic courts on matters such as the following, unless they are flagrantly and manifestly arbitrary:

- establishing the facts of the case;
- interpreting and applying domestic law;
- ruling on admissibility and assessment of evidence at trial; or
- whether the accused in a criminal trial is guilty or innocent.

8.3 No appearance of violating Convention rights

If the Court looks at the merits of a complaint and concludes that there is no appearance of a violation of Convention rights, it can declare the complaint inadmissible. Examples of this include:

- The case was examined by the competent national authorities and there is no appearance of arbitrariness or unfairness.
- The Convention right relied on is subject to limitations allowing the right to be restricted, and the interference with that right appears to be lawful and proportionate to a legitimate aim.
- There is settled and abundant case-law of the Court in identical or similar cases, on the basis of which the Court can conclude that there has been no violation of the Convention in this case.

8.4 Lack of evidence

It is up to the applicant to provide the necessary factual evidence and legal arguments showing that the Convention has been breached. The Court does not carry out any investigation itself.

So if the applicant has for instance simply cited articles of the Convention without explaining how they have been breached, or failed to produce documentary evidence in support of his or her allegations, the Court may declare the application inadmissible as being manifestly ill-founded.

The same applies where the complaint is far-fetched, or so confused that it is impossible to make sense of the facts and grievances.

9. Court proceedings

9.1 Introduction

Most of the Court's proceedings are conducted in writing. Only about 30 cases a year have hearings where the parties and their lawyers appear in person.

Different 'judicial formations' – from one judge to 17 – look at different kinds of cases. Where a single judge is looking at a case, it will never be the one who is a national of the State concerned. Where three judges are looking at a case, the judge who is a national of the State concerned may be assigned to it. Where a case is assigned to seven or 17 judges, the judge from the State concerned will always be part of the panel.

There is one judge in respect of each of the 47 Member States of the Council of Europe.

9.2 Interim measures

Exceptionally, the Court may order urgent 'interim measures' to prevent serious and irreparable harm to the applicant while their application is being dealt with.[12]

Applications for interim measures must be made in writing, and there is no appeal against refusal.

Interim measures do not prejudge subsequent decisions on the admissibility or merits of the case in question.

Most interim measures are to suspend an expulsion or extradition.

9.3 Admissibility decisions

If an application has been validly submitted (see section 2 of this briefing paper), the Court will examine the facts and decide on whether it is 'admissible'.

It can look at every aspect of admissibility:

- **Procedural admissibility**: have all available domestic remedies been exhausted? Was the application made within six months of doing so? Is the application 'substantially the same' as a matter that has already been examined by the Court?
- **Jurisdiction**: is the complaint against a state or public authority under the court's jurisdiction? Does it relate to a time and a place covered by the Convention? Does it allege a violation of a Convention right?
- **Admissibility on the merits**: is the application 'manifestly ill-founded'? Has the applicant suffered 'significant disadvantage'?

More information on these admissibility criteria is given in sections 3 to 8 of this briefing paper.

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12 Rule 39, Rules of Court

Most applications are declared inadmissible.

Single judge decisions on 'clearly inadmissible' cases

A single judge can now examine applications that are considered 'clearly inadmissible'. If the judge decides that they are inadmissible, he or she will issue a letter saying that the application did not meet the admissibility criteria under Article 35 of the Convention. The letter will not usually specify the particular grounds for this decision.

Although there are no specific requirements for single judges to give reasons for inadmissibility decisions,[13] Article 45 of the Convention imposes a general obligation on the Court to give reasons for its judgments and admissibility decisions:

> Reasons shall be given for judgments as well as for decisions declaring applications admissible or inadmissible.

Some consider that the single judges' current practice not to give any reasons 'clearly violates this provision' which 'lies at the heart of the Convention system as a whole'. After all, the Court requires national courts to give clear reasons for their decisions, not least in order to demonstrate that the applicants have been heard.[14]

Single judges cannot decide on the merits of an application.

Other admissibility decisions

Other judicial formations can also rule on admissibility, sometimes at the same time as looking at the merits of the case.

No appeal

Admissibility decisions are usually final and cannot be challenged. It is therefore very important that applicants make sure that they comply with all the admissibility criteria before applying to the Court.

9.4 Friendly settlement

If an application is considered admissible, the Court will investigate the facts and try to find an agreement – a 'friendly settlement' – between the applicant and the State.

If a friendly settlement is reached, the case is struck off the Court's list.

If an applicant refuses an offer of a friendly settlement without justification, the Court may nevertheless strike out the application if the State acknowledges that there has been a violation of the Convention and undertakes to provide adequate redress for the applicant.

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13 Articles 26 and 27 of the Convention, Rule 52A of the Rules of Court, or Protocol 14 to the Convention and its explanatory report

14 See Helena De Vylder, 'Stensholt v. Norway: Why single judge decisions undermine the Court's legitimacy', Strasbourg Observers blog, 28 May 2014

9.5 Consideration of the merits

If the application is admissible and no friendly settlement is reached, the Court will determine whether or not there has been a violation of a Convention right.

It can do so in various formations:

- a Committee of three judges (for cases deemed 'repetitive' because they raise an issue on which the Court has already ruled consistently in a number of cases concerning the State in question: the Committee can vote unanimously to declare an application admissible and at the same time issue a judgment on the merits);
- a Chamber of seven judges; or
- a Grand Chamber of 17 judges (for the most important or difficult cases).

9.6 Judgments

All judgments are published in writing and on the Court's website.

Violation

If the Court finds a violation of a Convention right, it may consider that the finding itself is all that is required.

States are required to bring any continuing violation to an immediate end (for example by revoking a deportation order that breaches the Convention).

Wherever possible, States are also obliged to put the applicant in the position they would have been in if there had been no violation.

In some cases the Court will grant 'just satisfaction' (monetary compensation) for pecuniary (material or financial) loss and/or non-pecuniary (moral) damages. Any compensation is entirely at the discretion of the court. Amounts awarded can vary widely.

The Court may also require the State concerned to refund the applicant's costs and expenses.

The Court cannot overrule, repeal or annul national laws. Also, because it is not a court of appeal against decision of national courts, it cannot quash, vary or revise national court rulings.

It does not intercede directly on behalf of the applicant with the national authority which is the subject of the complaint, although it occasionally grants interim measures where there is a serious risk of physical harm to the applicant.

No violation

If no violation is found, the applicant does not have to pay any additional costs or expenses (such as those incurred by the respondent State).

9.7 Appeal

Rulings of a single judge on admissibility are final and cannot be appealed. In exceptional circumstances the Court may re-open a case that it had previously declared inadmissible, although it would not do so where the applicant or lawyer made a mistake.[15]

Similarly rulings of a Committee (three judges) on 'repetitive' cases cannot be appealed.

The judgment of a Chamber of the Court (seven judges) becomes final three months after it is issued. However, within that three-month period, any party to the case may refer it to the Grand Chamber (17 judges) for fresh consideration. The Grand Chamber only accepts such referrals in exceptional cases.

All judgments of the Grand Chamber are final and binding.

9.8 Executing the final judgment

State bound under international law

All States Parties to the Convention have agreed 'to abide by the final judgment of the Court in any case to which they are parties' (Article 46(1) of the Convention).

In other words, States cannot simply ignore a Court ruling that they are in breach of the Convention. Something must be done to remedy the situation, but the Court does not prescribe the remedy (beyond sums payable as 'just satisfaction' to the applicant) or how it should be applied.

Committee of Ministers has primary responsibility

The Court is not responsible for the execution of its judgments.

Instead, the Council of Europe's Committee of Ministers, made up of foreign ministers from its 47 Member States and ministers' deputies, has the primary responsibility for supervising the execution of Court judgments and ensuring that any compensation awarded is paid.[16]

The specialist Department for the Execution of Judgments of the European Court of Human Rights supports this process.

The Parliamentary Assembly of the Council of Europe also plays a role, largely by encouraging national parliaments to adopt a proactive approach.

New provisions

Two new provisions on executing Court judgments were added to Article 46 in June 2010, when Protocol 14 to the Convention entered into force:

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15 See Philip Leach, Taking a Case to the European Court of Human Rights, 3rd edition, 2011, paras 2.87-2.88; and Harris, O'Boyle & Warbrick, Law of the European Convention on Human Rights, 3rd edition, 2014, pp120-21.

16 See Supervision of the execution of judgments and decisions of the European Court of Human Rights

- An ‘advisory opinion procedure’, for cases where a judgment is not being executed because of a problem interpreting the judgment. The Committee of Ministers can ask the Court for a ruling on interpretation.
- An ‘infringement procedure’, allowing the Committee of Ministers to go back to the Court to ask for an official determination that a state has not complied with its judgment. It does not provide for additional sanctions, and has not yet been used.

Effect of Court judgments in the UK

Judgments of the European Court of Human Rights have special legal effect in the UK through section 2 of the Human Rights Act 1998. This states that the UK courts ‘must take into account’ any European Court judgment when relevant to their decision.

There is some disagreement about what this actually means. But it is clear that the UK courts are not required to follow the same approach as the European Court when interpreting Convention rights.

In practice, the UK courts rarely depart from the European Court’s approach when interpreting Convention rights.

10. Lawyers

10.1 Legal representation not necessary for applications

There is no formal need to be represented by a lawyer at the early stage of the proceedings.

However, having a lawyer present the arguments initially might give applicants a better chance of meeting the complex requirements for having their complaint declared admissible. The challenges of the process are illustrated by the Court's 114-page Practical Guide on Admissibility Criteria. This guide – which is explicitly aimed at lawyers – states that:

> It is clear from both experience and the statistics … that most individual applicants lack sufficient knowledge of the admissibility requirements. It would seem that this is also the case with many legal advisers or practitioners.

If the applicant wants to apply to the Court through a representative, that representative's authority to act on behalf of the applicant must be sent with the application.

At a later stage, if the Court finds an application admissible and decides to hold a hearing, the Court Rules require the applicant to be represented by a lawyer at that hearing unless the Court decides otherwise. Under Article 36 of the Rules of the Court the applicant should be represented by a qualified or authorised person.

10.2 The Court can grant legal aid

Initially applicants bears their own costs, which might include lawyers' fees as well as things like expenses for research and correspondence. There is no court fee for applying to the Court.

At a later stage of the proceedings, if the Court decides to 'communicate' the application to the government or state authority concerned for written observations, the applicant may apply to the Court for free legal aid. There is a two-part test:

- Does the applicant have the means to pay a lawyer's fees?
- Is legal aid necessary for the proper conduct of the case?

The Court decides whether or not to grant legal aid. It can cover both legal fees (at a rather low rate) and expenses.

The provisions on and conditions for legal aid are set out in Rules 100 to 105 of the Rules of Court of 19 September 2016 (Chapter XI – Legal Aid).

11. NB: not an EU court

Finally, it is important to note that the Strasbourg Court – which is part of the 47-member Council of Europe – is nothing to do with the EU.

The EU has its own court in Luxembourg, the Court of Justice of the EU, which rules on interpretation of EU law and treaties. It can decide on some complaints from individuals who have been negatively affected by an EU act or a failure to act, but not those concerning a government's failure to respect an EU obligation.

Another Library briefing paper explains about Taking a complaint to the Court of Justice of the European Union.[17]

[17] Standard Note SN5397, 11 March 2010

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