European Court of Human Rights

THE ECHR IN **50** QUESTIONS

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

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

ENG

The ECHR
in 50 questions

This document has been prepared by the Public Relations Unit of the Court and does not bind the Court. It is intended to provide basic general information about the way the Court works.

For more detailed information, please refer to documents issued by the Registry available on the Court's website **www.echr.coe.int.**

The European Convention on Human Rights

1 *When was the Convention adopted?*

The Convention for the Protection of Human Rights and Fundamental Freedoms, better known as the "European Convention on Human Rights", was opened for signature in Rome on 4 November 1950; it entered into force on 3 September 1953.
The Convention gave effect to certain of the rights stated in the Universal Declaration of Human Rights and established an international judicial organ with jurisdiction to find against States that do not fulfil their undertakings.

2 *What is a protocol to the Convention?*

A protocol to the Convention is a text which adds one or more rights to the original Convention or amends certain of its provisions.
Protocols which add rights to the Convention are binding only on those States that have signed and ratified them; a State that has merely signed a protocol without ratifying it will not be bound by its provisions.
To date, 14 additional protocols have been adopted.

3 *Which rights are protected by the Convention?*

States that have ratified the Convention, also known as "States Parties", have undertaken to secure and guarantee to everyone within their jurisdiction, not only their nationals, the fundamental civil and political rights defined in the Convention.
The rights and freedoms secured by the Convention include the right to life, the right to a fair hearing, the right to respect for private and family life, freedom of expression, freedom of thought, conscience and religion and the protection of property. The Convention prohibits, in particular, torture and inhuman or degrading treatment or punishment, forced labour, arbitrary and unlawful detention, and discrimination in the enjoyment of the rights and freedoms secured by the Convention.

4 *Does the Convention evolve?*

Yes. The Convention evolves especially by means of the interpretation of its provisions by the European Court of Human Rights. Through its case-law the Court has made the Convention a living instrument; it has thus extended the rights afforded and has applied them to situations that were not foreseeable when the Convention was first adopted.
The Convention has also evolved as and when protocols have added new rights: for example in July 2003, with Protocol No. 13 concerning the abolition of the death penalty in all circumstances, or in April 2005, with Protocol No. 12 on non-discrimination.

5 *Are domestic courts obliged to apply the Convention?*

The Convention is applicable at national level. It has been incorporated into the legislation of the States Parties, which have undertaken to protect the rights defined in the Convention. Domestic courts therefore have to apply the Convention. Otherwise, the European Court of Human Rights would find against the State in the event of complaints by individuals about failure to protect their rights.

The European Court of Human Rights (ECHR)

6 What is the Court's composition?

The number of judges on the Court is the same as that of the States Parties to the Convention (47 at present).

7 How are the Court's judges elected?

The judges are elected by the Parliamentary Assembly of the Council of Europe from lists of three candidates proposed by each State. They are elected for a non-renewable term of nine years.

8 Are the judges really independent?

Although judges are elected in respect of a State, they hear cases as individuals and do not represent that State. They are totally independent and cannot engage in any activity that would be incompatible with their duty of independence and impartiality.

9 Do judges sit in cases concerning their own country?

"National judges" cannot sit in a single-judge formation. In exceptional cases, they may be invited to sit in a Committee. However, the composition of the Court always includes the "national judge" when it hears cases as a seven-judge Chamber or a seventeen-judge Grand Chamber.

10 What is the Registry and how is it run?

The Registry is the body of staff that provides the Court with legal and administrative support in its judicial work. It is made up of lawyers, administrative and technical staff and translators.

11 What is the Court's budget?

The Court's expenditure is borne by the Council of Europe, whose budget is financed by contributions from member States in accordance with scales based on population and GDP.
For 2012 the Court's budget amounts to just over 67 million euros. It covers the salaries of judges and staff and the various overheads (IT, official travel, translation, interpreting, publications, representational expenses, legal aid, fact-finding missions, etc.).

12 Can the Court's composition vary from one case to another?

Yes, cases are heard by one of four main formations.
Manifestly inadmissible applications are examined by a single judge. A three-judge Committee may rule by a unanimous vote on the admissibility and merits of cases that are already covered by well-established case-law of the Court. An application may also be assigned to a seven-judge Chamber which rules by a majority vote, mostly on the admissibility and merits of a case.
Exceptionally, the Grand Chamber of 17 judges hears cases referred to it either after relinquishment of jurisdiction by a Chamber or when a request for referral has been accepted.

13 What is the difference between a Chamber and a Section?

A Section is an administrative entity and a Chamber is a judicial formation of the Court within a given Section.
The Court has five Sections in which Chambers are formed. Each Section has a President, a Vice-President and a number of other judges.

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14 How are Chambers and Grand Chambers formed?

A Chamber is composed of the President of the Section to which the case was assigned, the "national judge" (the judge elected in respect of the State against which the application was lodged) and five other judges designated by the Section President in rotation.
The Grand Chamber is made up of the Court's President and Vice-Presidents, the Section Presidents and the national judge, together with other judges selected by drawing of lots. When it hears a case on referral, it does not include any judges who previously sat in the Chamber which first examined the case.

15 When does the Grand Chamber hear a case?

The initiation of proceedings before the Grand Chamber takes two different forms: referral and relinquishment.
After a Chamber judgment has been delivered, the parties may request referral of the case to the Grand Chamber and such requests are accepted on an exceptional basis. A panel of judges of the Grand Chamber decides whether or not the case should be referred to the Grand Chamber for fresh consideration.
Cases are also sent to the Grand Chamber when relinquished by a Chamber, although this is also exceptional. The Chamber to which a case is assigned can relinquish it to the Grand Chamber if the case raises a serious question affecting the interpretation of the Convention or if there is a risk of inconsistency with a previous judgment of the Court.

16 Can a judge refuse to sit in a case?

Yes. Judges are in fact obliged to refrain from taking part in the consideration of a case when they have previously acted in that case in any capacity. This is called withdrawal. They are replaced in the proceedings by another judge and an ad hoc judge is appointed if it is the national judge who withdraws.

17 What is an ad hoc judge?

An ad hoc judge is appointed by the government concerned when the national judge does not sit in the case because of inability, withdrawal or exemption.

18 What is the scope of the Court's jurisdiction?

The Court cannot take up cases of its own motion. It has jurisdiction to hear allegations of violations of the European Convention on Human Rights and does so on receiving individual or inter-State applications.

Proceedings before the Court

19 Who can bring a case to the Court?

The Convention makes a distinction between two types of application: individual applications lodged by any person, group of individuals, company or NGO having a complaint about a violation of their rights, and inter-State applications brought by one State against another.
Since the Court was established, almost all applications have been lodged by individuals who have brought their cases directly to the Court alleging one or more violations of the Convention.

20 Who are cases brought against?

Cases can only be brought against one or more States that have ratified the

Convention. Any applications against third States or individuals, for example, will be declared inadmissible.

21 *How are cases brought before the Court?*

Cases can be brought directly by individuals and the assistance of a lawyer is not necessary at the start of the proceedings. It is sufficient to send the Court a duly completed application form with the requisite documents. However, the registration of an application by the Court is no guarantee that it will be admissible or successful on the merits.

The Convention system provides for "easy" access to the Court, enabling any individual to bring a case even if he or she lives in a remote region of a member State or is penniless. With this in mind, there are no fees for proceedings before the Court.

22 *What is the difference between an individual application and an inter-State application?*

Most applications before the Court are individual applications lodged by private persons. A State may also lodge an application against another State Party to the Convention; this is called an inter-State application.

23 *Is it necessary to be represented by a lawyer in proceedings before the Court?*

Legal representation is not indispensable at the start of proceedings; anyone can bring a case before the Court directly. The assistance of a lawyer becomes necessary, however, once the Court has given notice of the case to the respondent Government for their observations. Legal aid may be granted to applicants, if necessary, from that stage in the proceedings.

24 *Who is entitled to make legal submissions to the Court?*

There is no list of authorised lawyers for the written or oral submissions to the Court. An applicant may be represented by anyone who is a lawyer qualified to practise in one of the States Parties to the Convention, or who has been so authorised by the President of the Chamber.

25 *What are the different stages of the proceedings before the Court?*

There are two main stages in the consideration of cases brought before the Court: the admissibility stage and the merits stage (i.e. the examination of the complaints). The processing of an application also goes through different phases.

A single-judge formation will declare an application inadmissible where inadmissibility is clear from the outset; its decisions cannot be appealed against.

A Committee will give a final decision or judgment in a case which is covered by well-established case-law of the Court.

A Chamber will give notice of the case to the respondent Government for their observations. Written observations are submitted by both parties. The Court then decides if it is appropriate to hold a public hearing in the case, but this remains exceptional in relation to the number of applications examined. Ultimately, the Chamber delivers a judgment that will become final only after the expiry of a three-month period during which the applicant or Government may request the referral of the case to the Grand Chamber for fresh consideration.

If the request for referral is accepted by the panel of the Grand Chamber, the case will be reconsidered and a public hearing will be held if necessary. The Grand Chamber judgment will be final.

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26 *What are the conditions of admissibility?*

Applications must meet certain requirements if they are to be declared admissible by the Court; otherwise the complaints will not even be examined.

Cases can only be brought to the Court after domestic remedies have been exhausted; in other words, individuals complaining of violations of their rights must first have taken their case through the courts of the country concerned, up to the highest possible level of jurisdiction. In this way the State itself is first given an opportunity to provide redress for the alleged violation at national level.

An applicant's allegations must concern one or more of the rights defined in the Convention. The Court cannot examine complaints concerning violations of any other rights.

Applications must also be lodged with the Court within six months following the last judicial decision in the case, which will usually be a judgment by the highest court in the country concerned.

The applicant must be, personally and directly, a victim of a violation of the Convention, and must have suffered a significant disadvantage.

It should not be forgotten, of course, that applications can only be lodged against one or more of the States Parties to the Convention, and not against any other State or against an individual.

27 *Are NGOs or States allowed to take part in proceedings?*

Yes, both NGOs and States can lodge applications. They may also be authorised by the President of the Court to intervene in proceedings as third parties.

28 *What is a third-party intervener?*

The President of the Court may authorise any person other than the applicant, or another State Party to the Convention other than that against which the application has been lodged, to intervene in the proceedings. This is called third-party intervention. The person or State in question is entitled to file pleadings and take part in public hearings.

29 *Can the Court appoint experts or take evidence from witnesses?*

Yes. Exceptionally, the Court may decide to take investigative measures and to travel to certain countries in order to clarify the facts of a given case. The delegation from the Court may then take evidence from witnesses and carry out an on-site investigation.

The Court occasionally appoints experts, for example when it requests expert doctors to examine applicants in prison.

30 *Does the Court hold public hearings?*

The Court basically has a written procedure but occasionally decides to hold public hearings in specific cases.

Hearings take place in the Human Rights Building in Strasbourg. They are public unless otherwise decided by the President of the Chamber or Grand Chamber, as the case may be. The press and the public are thus usually authorised to attend; they just need to show their press or identity card at the reception.

All hearings are filmed and broadcast on the Court's website on the day itself, from 2.30 p.m. (local time).

31 *What are preliminary objections?*

Preliminary objections are arguments submitted by the respondent Government in support of their claim that the case should not be examined on the merits.

32 *What is a friendly settlement?*

A friendly settlement is an agreement between the parties to put an end to proceedings initiated by an application. When the parties concerned agree to settle their dispute in this way, the outcome is usually that the State pays the applicant a sum of money. After examining the terms of the friendly settlement, and unless it considers that respect for human rights requires continuation, the Court will strike out the application.

The Court always encourages parties to negotiate a friendly settlement. If no agreement is reached the Court will proceed to examine the merits of the application.

33 *Can the Court order interim measures?*

When the Court receives an application it may decide that a State should take certain measures provisionally while it continues its examination of the case. This usually consists of requesting a State to refrain from doing something, such as not returning individuals to countries where it is alleged that they would face death or torture.

34 *Are deliberations open to the public?*

No, the Court's deliberations are always secret.

35 *Have States ever refused to cooperate with the Court?*

There have been cases where States have omitted or even refused to provide the Court with the information and documents required for its examination of an application.

In such cases the Court may find against the State under Article 38 of the Convention (obliging States to furnish all the necessary facilities to the Court).

36 *How long do proceedings before the Court usually last?*

It is impossible to indicate the length of proceedings before the Court.

The Court endeavours to deal with cases within three years after they are brought, but the examination of some cases can take longer and some can be processed more rapidly.

The length of the proceedings before the Court obviously varies depending on the case, the formation to which it is assigned, the diligence of the parties in providing the Court with information and many other factors, such as the holding of a hearing or referral to the Grand Chamber.

Some applications may be classified as urgent and handled on a priority basis, especially in cases where the applicant is alleged to be facing an imminent threat of physical harm.

The Court's decisions and judgments

37 *What is the difference between a decision and a judgment?*

A decision is usually given by a single judge, a Committee or a Chamber of the Court. It concerns only admissibility and not the merits of the case. Normally, a Chamber examines the admissibility and merits of an application at the same time; it will then deliver a judgment.

38 *Are States bound by judgments against them?*

Judgments finding violations are binding on the States concerned and they are obliged to execute them. The Committee of Ministers of the Council of Europe monitors the execution of judgments, particularly to ensure payment of the amounts awarded by the Court to the applicants in compensation for the damage they have sustained.

39 *Can judgments be appealed against?*

Inadmissibility decisions, and also judgments delivered by Committees or the Grand Chamber, are final and cannot be appealed against. However, the parties have three months following the delivery of a Chamber judgment to request referral of the case to the Grand Chamber for fresh consideration. Requests for referral to the Grand Chamber are examined by a panel of judges which decides whether or not referral is appropriate.

40 *How are the Court's judgments enforced?*

When the Court delivers a judgment finding a violation, the Court transmits the file to the Committee of Ministers of the Council of Europe, which confers with the country concerned and the department responsible for the execution of judgments to decide how the judgment should be executed and how to prevent similar violations of the Convention in the future. This will result in general measures, especially amendments to legislation, and individual measures where necessary.

41 *What are the consequences of a judgment finding a violation?*

In the event of a violation being found, the State concerned must be careful to ensure that no such violations occur again in the future, otherwise the Court may deliver new judgments against them. In some cases the State will have to amend its legislation to bring it into line with the Convention.

42 *What is just satisfaction?*

When the Court finds against a State and observes that the applicant has sustained damage, it awarded the applicant just satisfaction, that is to say a sum of money by way of compensation for that damage. The Committee of Ministers ensures that any sum awarded by the Court is actually paid to the applicant.

43 *What is a pilot case?*

Over the past few years the Court has developed a new procedure to cater for the massive influx of applications concerning similar issues, also known as "systemic issues" – i.e. those that arise from non-conformity of domestic law with the Convention.

The Court has thus recently been implementing a procedure that consists of examining one or more applications of this kind, whilst its examination of a series of similar cases is adjourned (in other words, postponed). When it delivers its judgment in a pilot case, it calls on the Government concerned to bring the domestic legislation into line with the Convention and indicates the general measures to be taken. It will then proceed to dispose of the other similar cases.

44 *What is a separate opinion?*

Judges may wish to draft an opinion concerning a case in which they have sat and their opinions will be appended to the judgment. In general they explain why they voted with the majority (concurring opinion) or, on the contrary, why they did not agree with the majority of judges (dissenting opinion).

The Court's activity

45 How many cases are brought before the Court?

The Court has been a victim of its own success: over 50,000 new applications are lodged every year. The repercussions of certain judgments of the Court, on a regular basis, and the growing recognition of its work among nationals of the States Parties, have had a considerable impact on the number of cases brought every year.

46 What rights do most cases concern?

In about one half of the judgments finding a violation since its establishment, the Court has found a violation of Article 6 of the Convention, concerning both the fairness and the length of proceedings. In fact, 64% of the violations found by the Court concern either Article 6 (right to a fair hearing) or Article 1 of Protocol No. 1 (protection of property). Then in about 9% of cases, the Court has found a serious violation of the Convention under Articles 2 and 3 of the Convention (right to life and prohibition of torture and inhuman or degrading treatment).

47 Are interim measures really effective?

Whilst States almost always follow the Court's indications concerning interim measures, it is not unknown for some of them to fail to act on the Court's request. Those States are likely to be found by the Court to have failed to fulfil their obligations under Article 34 (right of individual application).

48 Does the Court deal with any issues of society?

The Court has, of course, been called upon to address issues that were not foreseeable when the Convention was signed in 1950. Over the past 50 years the Court has ruled on many issues of society such as: abortion-related questions, assisted suicide, strip-searching, domestic slavery, the right not to be prevented from tracing one's origins by the possibility for mothers to give birth anonymously, the wearing of the Islamic headscarf in schools and universities, the protection of journalists' sources, discrimination against Roma and environmental concerns.

The Court's future

49 What is Protocol No. 14?

Protocol No. 14, whose aim is to guarantee the long-term efficiency of the Court by optimising the filtering and processing of applications, provides in particular for new judicial formations to deal with the simplest cases, for a new admissibility criterion (that of "significant disadvantage") and for judges' terms of office to be extended to nine years without the possibility of re-election. This Protocol entered into force on 1 June 2010.

50 What are the plans for reform?

Independently of Protocol No. 14, further reform of the Convention system was considered necessary and a Group of Wise Persons, composed of eminent jurists, reported to the Committee of Ministers in January 2006. The Group recommended, among other things, establishing a new judicial filtering mechanism and elaborating a Statute concerning certain organisational elements of the Court's functioning, which could thus be amended more flexibly than the international treaty process required for the Convention. The Council of Europe Steering Committee for Human Rights is examining the different proposals.

FAQ

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Council of Europe
67075 Strasbourg-Cedex
France

www.echr.coe.int

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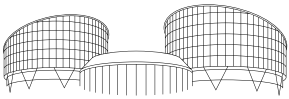

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