

## Reform of the ECHR

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A BRIEF GUIDE TO TERMS used in the current court reform debate.

### Subsidiarity

The principle of subsidiarity means that states bear the primary responsibility to secure the European Convention on Human Rights and that the European Court of Human Rights remains the last resort authority to supervise national implementation. Some governments are lobbying for a definition of subsidiary to be written into the European Convention on Human Rights that could limit the power of the Court to supervise national courts, which we believe is erroneous.

### Margin of appreciation

The margin of appreciation is a doctrine developed by the Court to allow for a degree of adaptability of the European Convention on Human Rights to the national context, in some cases, and in relation to some of articles of the Convention. The margin of appreciation granted by the court has been variable: narrow in some circumstances, such as in matters relating to threats to life, health and liberty, but wider in other areas which touch on its diverse member states' history and traditions, such as freedom of expression, some aspects of family life, or religious freedoms. The court's judges are currently left to determine its application.

### Admissible and non-admissible

The first judicial test of any application to the ECHR is whether the case meets the criteria to be heard. These are detailed in a 92-page guide by the ECHR and include: having gone through the relevant domestic judicial system, being filed within 6 months of the last domestic court decision, involving legitimate applicants who are victims of a violation of one of the rights included in the Convention and have suffered a significant disadvantage, and not having been taken to another international court. Around 90 per cent of applications are ruled inadmissible

### Repetitive applications

If the court has ruled on an issue, it is still possible for other individuals to file further applications complaining about the same violation, until it is rectified. These cases reveal structural or endemic violations. Repetitive plaintiffs are theoretically entitled to compensatory payments similar to those awarded to the original plaintiffs. Existing court reforms include steps to speed up processing of these applications.

## Summary procedure

Using summary procedure would allow, say, a single judge or a committee of three judges to rule on an application when it involves an issue that has already been clearly decided in the case law of the Court, even when the new case involves a different country. The court believes this could be used to handle the 19,000 non-priority, non-repetitive cases on its docket, and even some of the 6,000 priority cases.

## Priority and non-priority applications

Since 2010, the court has given priority to applications arising from alleged violations of the three “core” rights of the European Convention of Human Rights: article 2, the right to life; article 3, the prohibition of torture, Article 4, prohibition of slavery and forced labor, and article 5, para 1, the right to liberty and security.

## Filtering

In early 2011, the Registry established a unit to rapidly filter out inadmissible applications from Russia, Turkey, Romania, Ukraine and Poland, the states which account for over half of the cases pending before the Court. By the end of June 2011, the Registry reported that it had dealt with 42% more cases from these states in the first half of the year, compared with the same period in 2010.

## Pilot Judgements

Under the pilot judgement system, the court addresses multiple applications on a single issue by ruling on one application. The judgement sets out specific ways that the state involved can fix the problem, and compensate all follow-on applicants, whose cases are frozen in the meantime.

## De Minimis

Since 2011 the court has been empowered to dismiss cases where the applicant has suffered only minor damage. The Court has established that the criterion applies where, notwithstanding a potential violation of a right from a purely legal point of view, the level of severity attained does not warrant consideration by an international court. The court used this procedure last year to dismiss a claim over the lack of reclining seats on international bus travel.

## Registry and Presidency

The Registry consists of civil servants and lawyers who operate the court. The Registry is part of the debate on reform, submitting its own views and recommendations on court operations and ways to improve them to the Council of Ministers of the Council of Europe. The Presidency, currently held by Sir Nicholas Bratza, represents the views of the elected judges.

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