

A PROCEDURAL GUIDE TO REQUESTS FOR INTERIM MEASURES BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS



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PART 1. What are requests for interim measures under Rule 39?

This guide presents an overview of the provisions of the European Convention on Human Rights ('ECHR'), the case-law of the European Court of Human Rights ('ECtHR'), and [the Rules of Court of the European Court of Human Rights](#) ('the Rules of Court'), in relation to requests for interim measures pursuant to Rule 39 of the Rules of Court. This guide summarises and builds on the material discussed in the EHRAC webinar on "[Rule 39 of the Rules of Court: Interim Measures](#)".

Interim measures are urgent measures, which the ECtHR may require of the Respondent Government and/or the applicant(s), where there is an imminent risk of irreparable harm.¹ Interim measures are considered pursuant to [Rule 39 of the Rules of Court](#):

Rule 39, Rules of Court:

- 1. The Chamber or, where appropriate, the President of the Section or a duty judge appointed pursuant to paragraph 4 of this Rule may, at the request of a party or of any other person concerned, or of their own motion, indicate to the parties any interim measure which they consider should be adopted in the interests of the parties or of the proper conduct of the proceedings.*
- 2. Where it is considered appropriate, immediate notice of the measure adopted in a particular case may be given to the Committee of Ministers.*
- 3. The Chamber or, where appropriate, the President of the Section or a duty judge appointed pursuant to paragraph 4 of this Rule may request information from the parties on any matter connected with the implementation of any interim measure indicated.*
- 4. The President of the Court may appoint Vice-Presidents of Sections as duty judges to decide on requests for interim measures.*

Interim measures are usually requested by the applicant in a case, and indicated to Respondent Governments to require them to either act or refrain from acting in a certain way, pending determination of the case. However, it has been known for interim measures to be indicated to an individual,² and also for the ECtHR in exceptional circumstances to invoke Rule 39 of its own motion if it feels such measures are warranted by the facts of the case.³

Interim measures applications are "*granted only in clearly defined conditions, namely where there is a risk that serious violations of the Convention might occur. A high proportion of requests for interim measures are inappropriate and therefore refused*".⁴ The threshold for granting interim measure requests is therefore high, and such requests are considered by the ECtHR on a case-by-case and a priority basis.⁵

¹ See [ECtHR Factsheet on Interim Measures](#)

² See [Ilaşcu and Others v. Moldova and Russia](#) (No. 48787/99, 08.07.04), where the ECtHR imposed interim measures requesting that one of the applicants stop their hunger strike. See also the recent case of detained Ukrainian film maker, [Oleg Sentsov](#): in response to his hunger strike, the ECtHR called on Russia to provide him with appropriate treatment in an institutionalised medical setting and invited Mr Sentsov to end his hunger strike and to accept any life-saving treatment offered.

³ See [Öcalan v. Turkey](#) (No. 46221/99, 04.03.99). In this case, the Court itself decided to invoke Rule 39 and requested the Turkish Government to ensure that, while the case was before the ECtHR, the death penalty was not carried out on the applicant.

⁴ [ECtHR Interim Measures Practical Information](#)

⁵ See [the ECtHR's Practice Direction on Interim Measures](#)

There is no right of appeal against a decision refusing a request for interim measures.⁶

Where granted, interim measures may last either for the entire duration of the case before the ECtHR, or a shorter period determined by the ECtHR. In any event, any interim measures that have been granted will expire when the ECtHR's judgment in the case becomes final.⁷

Where interim measures have been granted, they are binding on the State concerned. This was established in the case of [Mamatkulov and Askarov v. Turkey](#) (Nos. 46827/99 and 46951/99, 04.02.05) where the ECtHR found for the first time a State in violation of Article 34 of the ECHR by failing to comply with an interim measure that had been indicated under Rule 39.⁸

It must be noted that if a request for interim measures is successful, this has no bearing on the outcome of any later decision by the ECtHR on admissibility or the merits.

Legal test for interim measures applications

Interim measures have a very narrow scope and will only be granted if the ECtHR establishes that:

- there is a threat of irreparable harm of a very serious nature; and
- the harm threatened must be imminent and irremediable; and
- there must be an arguable (prima facie) case.⁹

This is a very high threshold: essentially applicants must demonstrate (with strong, credible evidence) that they are at risk of serious irreversible harm ([Mamatkulov § 104](#)).

Cases in which interim measures have been granted

As mentioned above, interim measures are only granted in situations where there is an imminent risk of irreparable harm. The ECtHR's case-law on interim measures indicates that this provision is most commonly applied where there is a serious risk to an applicant's life and/or health under Article 2 or Article 3 of the ECHR.

Removal and extradition

Interim measures are frequently applied for and granted in cases involving immigration or extradition, with the most common interim measure indicated being for the suspension of an applicant's removal or extradition pending the ECtHR's determination of the case.

Interim measures have been granted in deportation cases where there was deemed to be:

- A risk of the applicant being persecuted or killed for political, ethnic or religious reasons ([F.H. v. Sweden](#) (No. 32621/06, 20.01.09); [W.H. v. Sweden](#) (No. 49341/10, 08.04.15); [F.G. v. Sweden](#) (No. 43611/11, 23.03.16));

⁶ See the [ECtHR's Practice Directions on Interim Measures](#).

⁷ Ibid.

⁸ See also [Paladi v. the Republic of Moldova](#) (No. 39806/05, 10.03.09). Other cases where the ECtHR has found a violation of Article 34 ECHR due to the failure to comply with interim measures are noted in the ECtHR Factsheet on Interim Measures.

⁹ See the [ECtHR's Practice Direction on Interim Measures](#).

- A risk of the applicant being ill-treated due to sexual orientation ([M.E. v. Sweden](#) (No. 71398/12, 08.04.15));
- A risk of the applicant being stoned for adultery ([Jabari v. Turkey](#) (No. 40035/98, 11.07.00));
- A risk of the applicant being subjected to genital mutilation ([Abraham Lunguli v. Sweden](#) (No. 33692/00, 01/07.03));
- A risk of the applicant being sexually exploited ([M. v. the United Kingdom](#) (No. 16091/08, 01.12.09));
- A risk of the applicant's health being extremely adversely affected to the level of inhuman and degrading treatment or death ([D. v. the United Kingdom](#) (No. 30240/96, 02.05.97); [N. v. the United Kingdom](#) (No. 26565/05, 27.05.08));
- A risk of the applicant being sentenced to death or life imprisonment if extradited ([Öcalan v. Turkey](#) (No. 46221/99, 12.05.05); [Babar Ahmad and Others v. the United Kingdom](#) (Nos. 24027/07, 11949/08, 36742/08, 66911/09 and 67354/09, 10.04.12)).

In these situations, it was clear to see the severity of potential harm and how the imminent risk of irreparable harm standard applied in practice.

There are also a few cases in which interim measures requests have been granted where removal would result in a flagrant denial of justice in breach of Articles 5 and/or 6 of the ECHR ([Othman \(Abu Qatada\) v. the United Kingdom](#) (No. 8139/09, 17.01.12)), and/or Article 8 of the ECHR ([Amrollahi v. Denmark](#) (No. 56811/00, 11.07.02); [Eskinazi and Chelouche v. Turkey](#) (No. 14600/05, 06.12.05)). However, cases relying on Articles 5, 6 and 8 of the ECHR would not usually meet the imminent risk of irreparable harm test.

Health

Interim measures have been granted where there is an imminent risk of irreparable harm to a person's health. For example, the conditions of detention in a number of countries party to the ECHR may pose such a serious risk to an individual's health that they have been held to reach the threshold of potentially causing irreparable harm ([Kotsaftis v. Greece](#) (No. 39780/06, 12.06.08); [Paladi v. Republic of Moldova](#) (No. 39806/05, 10.03.09); [Aleksanyan v. Russia](#) (No. 46468/06, 22.12.08); [Salakhov and Islyamova v. Ukraine](#) (No. 28005/08, 14.03.13)).

Other cases

There is widely considered to be a third type of category where interim measures can be granted – the so-called 'Evans cases'. These cases are essentially miscellaneous and relatively rare. They are named after one such case, [Evans v. the United Kingdom](#) (No. 6339/05, 10.04.07) in which the ECtHR intervened and granted an interim measure to prevent the destruction of embryos that were central to the case in question until it had made a determination on the merits of the application.

Other examples include where:

- a Government appointed lawyer was ordered to represent the applicant who had no capacity under the relevant domestic law to decide on a legal representative ([X v. Croatia](#) (No. 11223/04, 17.07.08));
- the execution of a decision authorising a hospital to discontinue artificial nutrition and hydration to keep a patient alive was stayed ([Lambert and Others v. France](#) (No. 46043/14, 05.06.15));

- a hospital was ordered to continue treatment of a young baby and such treatment was forbidden from being withdrawn until a decision on the substantive merits of the case had been made ([Gard and Others v. the United Kingdom](#) (No. 39793/17, 09.06.17; 13.06.17; 19.06.17));
- an applicant was to be kept within a witness protection programme to protect them against physical retribution and retaliation from criminal gangs ([RR v. Hungary](#) (No. 19400/11, 04.12.12)).

The 2017 decision by the ECtHR to indicate a Rule 39 request in the case of [Rustavi 2 Broadcasting Company Ltd. v. Georgia](#) (No. 16812/17) demonstrates that new areas of law can and are being considered by the ECtHR as warranting interim measures. In that case, the ECtHR required Georgia to temporarily suspend a final domestic judgment transferring ownership of the country's largest media outlet from a company openly critical of the current Government to a pro-government media outlet.

Notwithstanding recent developments in the ECtHR's case-law noted above, the ECtHR has historically found that interim measures were not warranted in cases of: eviction from and/or demolition of property; insolvency; conscription; holding a referendum; preventing dissolution of a political party.¹⁰

PART 2. Making applications for interim measures under Rule 39

Format and content of applications for interim measures

The application

- It is **essential** that a request provide the full contact details (address, telephone and email) of the applicant or the applicant's representative, and specify the interim measures to be taken.¹²
- Requests must lay out reasons why the interim measures specified should be granted. Specifically, a request must state in detail:
 - the nature of the alleged risks and potential irreversible harm to the applicant, and the grounds for the applicant's fears; and
 - the resulting rights under the ECHR which may be violated if interim measures are not granted.¹³
- When setting out the legal arguments as to why and how the test for interim measures is satisfied, cite any relevant case-law, from the ECtHR and any other relevant bodies (for example, the UN treaty bodies, other regional human rights mechanisms, and national court decisions).¹⁴

Requests for interim measures must be accompanied by supporting documentation, including:

- a witness statement from the applicant (if feasible to obtain) and/or their legal representatives or other relevant witnesses, explaining in their own words the alleged risks and potential harm faced and other facts relevant to the request; and

¹⁰ See p. 2 of [ECtHR Factsheet on Interim Measures](#).

¹¹ Ibid.

¹² [ECtHR Practice Directions on Interim Measures](#).

¹³ Ibid.

¹⁴ See further: Eva Rieter, '[Preventing Irreparable Harm: Provisional Measures in International Human Rights Adjudication](#)' (Intersentia), a seminal text on interim measures.

- copies of all the relevant domestic decisions.

In *removal and extradition cases*, requests for interim measures must:

- Specify the expected date and time of removal/deportation, the address or place of detention of the applicant, and any domestic case reference number; and
- Include as much country information as you can, e.g. NGO reports and government human rights reports on the relevant country.¹⁵

In *health cases*, requests for interim measures must:

- Include the applicant's medical record, of which it can take a long time to obtain copies.
- If at all possible, annex an independent expert medical report, setting out the expert's assessment of the risks to the applicant (*Aleksanyan v. Russia* (No. 46468/06, 22.12.08), § 65); *Amirov v. Russia* (No. 51857/13, 27.11.14));
- Include any other relevant material, for example, evidence on conditions or treatment in hospitals/places of detention in the relevant country.

It is a good idea to **keep the evidence and documentation submitted manageable**. With the increase of requests for interim measures, it is advisable to do so in order to facilitate the ECtHR's swift consideration of the request.

Alongside a request for interim measures, a fully and properly completed **application form** should usually be submitted, if it has not already been filed. It is vital that if the request is submitted by a legal representative that a duly completed **authority form** is filled out and attached to the request.

Timings of applications for interim measures

In general, a request for interim measures must be received **as soon as possible after the final domestic decision** has been handed down.

However, it is acknowledged that such a position is very difficult for applicants, especially in the context of extradition or removal where removal frequently happens immediately after a decision has been made. Therefore, the guidance from the ECtHR states that where there is a risk of immediate enforcement (especially in removal cases):

- The ECtHR will consider a request for interim measures before a final domestic decision has been reached, but only in circumstances where there is an extremely limited amount of time between the decision and removal of the applicant to a third state.
- In such a case, applicants/representatives should submit the request for interim measures while waiting for the domestic decision, clearly specify the date on which the final domestic decision will be made and make it clear in the application that the request for interim measures is subject to the final domestic decision being unfavourable.¹⁶

¹⁵ When submitting reports, best practice is to submit short reports or excerpts from reports that relate directly to the issue at hand in your case, rather than submitting an entire general report on the country at issue.

¹⁶ [ECtHR Practice Direction](#).

If this is a situation that may occur, it is helpful to take client instructions on this matter as early as possible.

How to file applications for interim measures

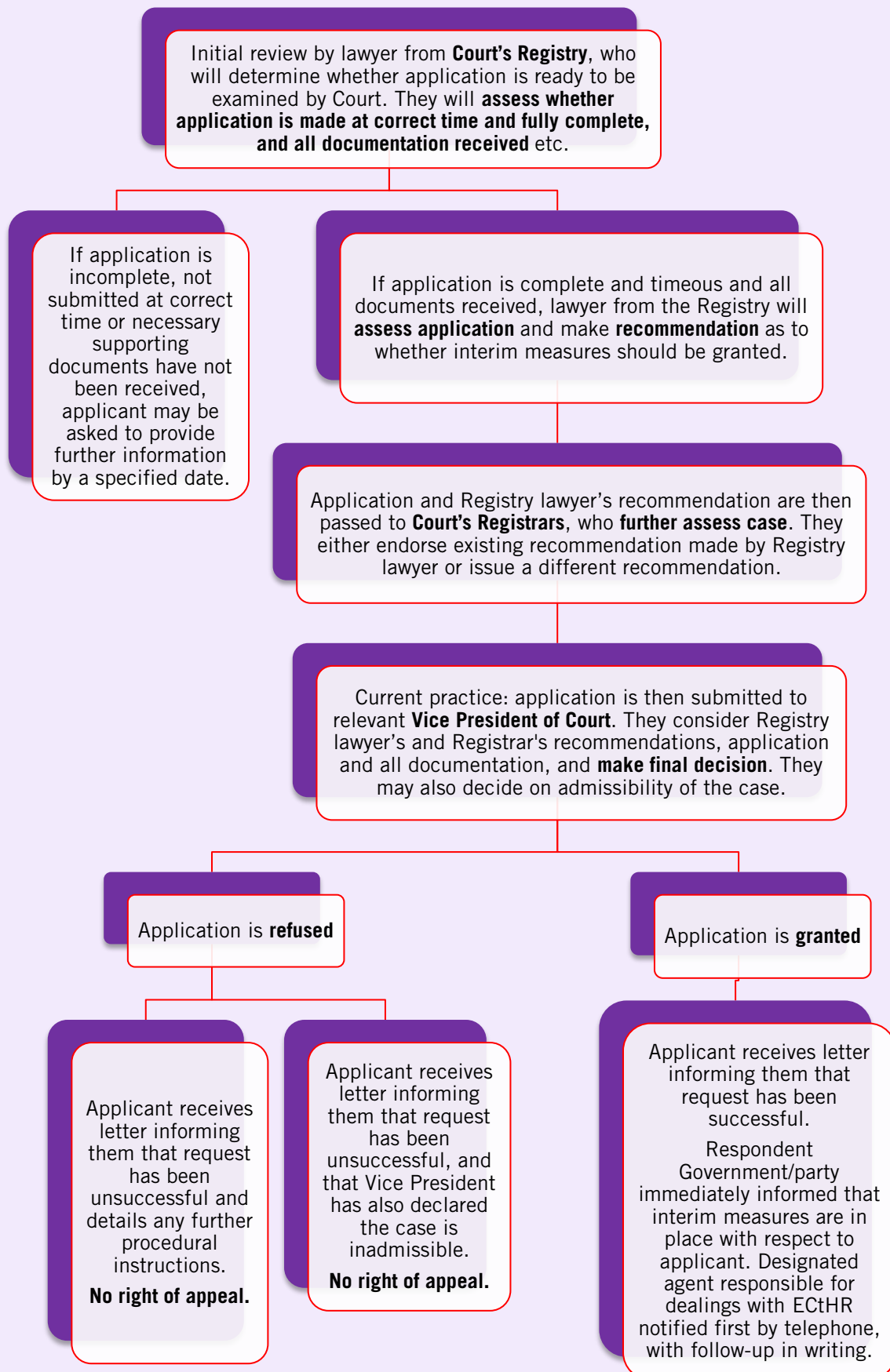
- A request for interim measures must be submitted to the ECtHR in writing – either by post or by fax – in a language of a Member State. **The ECtHR will not accept a request made by email.**
 - There is a dedicated fax number for sending requests for interim measures: **+33 (0)3 88 41 39 00**. If requests are not sent to this number, they may not be received or dealt with.
 - Faxes and letters requesting interim measures are received from **Monday - Friday from 8am to 4pm Strasbourg time (GMT+1)**. If a request is sent after 4pm, it will not normally be dealt with until the following day.
 - Any faxes that are more than ten pages should be sent in several parts.¹⁷
- All requests for interim measures should have written in bold on the first page of the request:
 - Rule 39 – Urgent;
 - Person to contact (name and contact details);
 - If a deportation or extradition case, date and time of expected removal and destination.

Common errors to avoid

- Submitting an application too early;
- Submitting an application too late;
- Excessively lengthy applications – a request should be succinct with relevant supporting documentation submitted;
- Not submitting the general case application form if interim measures are granted. If this is not done, the ECtHR may consider that the case is not being adequately pursued;
- Failing to submit an authority form. Cases will be – and have been – rejected if the ECtHR does not believe the representative has the authority to represent the applicant (*Isakov v. Russia* (No. 52286/14, 05.07.16)). This is currently applied very strictly.

¹⁷ Ibid; [ECtHR Interim Measures Practical Information](#).

PART 3. What happens once a request for interim measures has been filed?



What to do next if your Rule 39 request is granted

Cases will normally proceed to judgment, but it is important to remember that interim measures being granted does not interrupt or change any other admissibility requirements, nor constitute communication of the application. It is still necessary to ensure that the application form is submitted before the relevant deadline, if it has not already been filed.

It is also worthwhile noting that cases in which interim measures have been granted are often dealt with more urgently due to their nature. This means that, on occasion, the usual timescales and deadlines of the ECtHR are shortened.

Additionally, if interim measures have been granted:

- It is important that any correspondence that is received by the applicant or their representative from the ECtHR's Registry is responded to.
- Applicants or their representatives must also ensure that they are keeping the ECtHR informed on a regular basis about any continuing domestic proceedings, and that they immediately inform the ECtHR if there is any change to the applicant's status or circumstances.
- It is also important that if a representative loses contact with a client for whom interim measures are in force that this is communicated as soon as possible to the ECtHR.¹⁸

PART 4. Enforcement of interim measures

As mentioned above, the [Mamatkulov](#) case established that measures ordered by the ECtHR are legally binding on respondent Governments. In [Mamatkulov](#), the ECtHR found the Turkish Government to be in breach of its obligations under Article 34 of the ECHR, which provides for the individual right of petition to the ECtHR. The ECtHR found that by failing to prevent the applicants' extradition, the Government had hindered the exercise of his right of individual petition under Article 34 because:

*"the Court was prevented by the applicants' extradition to Uzbekistan from conducting a proper examination of their complaints in accordance with its settled practice in similar cases and ultimately from protecting them, if need be, against potential violations of the Convention as alleged. As a result, the applicants were hindered in the effective exercise of their right of individual application guaranteed by Article 34 of the Convention, which the applicants' extradition rendered nugatory."*¹⁹

The ECtHR has also found governments in violation of Article 34 in a number of other cases.²⁰

¹⁸ [ECtHR Interim Measures Practical Information](#).

¹⁹ Ibid.

²⁰ See [ECtHR's Factsheet on Interim Measures](#).

Annex 1: Relevant Articles of the ECHR and Rules of Court

Rule 39 of the Rules of Court of the European Court of Human Rights: Interim Measures

1. The Chamber or, where appropriate, the President of the Section or a duty judge appointed pursuant to paragraph 4 of this Rule may, at the request of a party or of any other person concerned, or of their own motion, indicate to the parties any interim measure which they consider should be adopted in the interests of the parties or of the proper conduct of the proceedings.
2. Where it is considered appropriate, immediate notice of the measure adopted in a particular case may be given to the Committee of Ministers.
3. The Chamber or, where appropriate, the President of the Section or a duty judge appointed pursuant to paragraph 4 of this Rule may request information from the parties on any matter connected with the implementation of any interim measure indicated.
4. The President of the Court may appoint Vice-Presidents of Sections as duty judges to decide on requests for interim measures.

ECtHR Practice Direction on requests for interim measures (Rule 39)²¹

By virtue of Rule 39 of the Rules of Court, the Court may issue interim measures which are binding on the State concerned. Interim measures are only applied in exceptional cases.

The Court will only issue an interim measure against a Member State where, having reviewed all the relevant information, it considers that the applicant faces a real risk of serious, irreversible harm if the measure is not applied.

Applicants or their legal representatives²² who make a request for an interim measure pursuant to Rule 39 of the Rules of Court should comply with the requirements set out below.

1. Accompanying information

Any request lodged with the Court must state reasons. The applicant must in particular specify in detail the grounds on which his or her particular fears are based, the nature of the alleged risks and the Convention provisions alleged to have been violated.

A mere reference to submissions in other documents or domestic proceedings is not sufficient. It is essential that requests be accompanied by all necessary supporting documents, in particular relevant domestic court, tribunal or other decisions, together with any other material which is considered to substantiate the applicant's allegations.

The Court will not necessarily contact applicants whose request for interim measures is incomplete, and requests which do not include the information necessary to make a decision will not normally be submitted for a decision.

Where the case is already pending before the Court, reference should be made to the application number allocated to it.

²¹ Practice direction issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 5 March 2003 and amended on 16 October 2009 and on 7 July 2011.

²² It is essential that full contact details be provided.

In cases concerning extradition or deportation, details should be provided of the expected date and time of the removal, the applicant's address or place of detention and his or her official case-reference number. The Court must be notified of any change to those details (date and time of removal, address etc.) as soon as possible.

The Court may decide to take a decision on the admissibility of the case at the same time as considering the request for interim measures.

II. Requests to be made by facsimile or letter²³

Requests for interim measures under Rule 39 should be sent by facsimile or by post. The Court will not deal with requests sent by e-mail. The request should, where possible, be in one of the official languages of the Contracting Parties. All requests should be marked as follows in bold on the face of the request:

“Rule 39 – Urgent

Person to contact (name and contact details): ...

[In deportation or extradition cases]

Date and time of removal and destination: ...”

III. Making requests in good time

Requests for interim measures should normally be received as soon as possible after the final domestic decision has been taken, in order to enable the Court and its Registry to have sufficient time to examine the matter. The Court may not be able to deal with requests in removal cases received less than a working day before the planned time of removal.²⁴

Where the final domestic decision is imminent and there is a risk of immediate enforcement, especially in extradition or deportation cases, applicants and their representatives should submit the request for interim measures without waiting for that decision, indicating clearly the date on which it will be taken and that the request is subject to the final domestic decision being negative.

IV. Domestic measures with suspensive effect

The Court is not an appeal tribunal from domestic tribunals, and applicants in extradition and expulsion cases should pursue domestic avenues which are capable of suspending removal before applying to the Court for interim measures. Where it remains open to an applicant to pursue domestic remedies which have suspensive effect, the Court will not apply Rule 39 to prevent removal.

V. Follow-up

Applicants who apply for an interim measure under Rule 39 should ensure that they reply to correspondence from the Court's Registry. In particular, where a measure has been refused, they should inform the Court whether they wish to pursue the application. Where a measure has been applied, they must keep the Court regularly and promptly informed about the state of any continuing domestic proceedings. Failure to do so may lead to the case being struck out of the Court's list of cases.

²³ According to the degree of urgency and bearing in mind that requests by letter must not be sent by standard post.

²⁴ The list of public and other holidays when the Court's Registry is closed can be consulted on the Court's website: www.echr.coe.int/contact

Annex 2: Additional Resources

Books

'Urgent cases: interim measures' (paragraphs 2.42-2.64) in Leach, P. (2017), *Taking a Case to the European Court of Human Rights*, 4th edition, Oxford: Oxford University Press.

Rieter, E. (2010) '[Preventing Irreparable Harm: Provisional Measures in International Human Rights Adjudication](#)', Intersentia.

ECtHR factsheets and statistics

Rules of Court of the European Court of Human Rights – Practice Directions: Requests for Interim Measures: https://www.echr.coe.int/Documents/Rules_Court_ENG.pdf#page=65

ECtHR Factsheet on Interim Measures:

https://www.echr.coe.int/Documents/FS_Interim_measures_ENG.pdf

ECHR Interim Measures Practical Information,

http://www.echr.coe.int/Documents/Interim_Measures_ENG.pdf

ECtHR's Practice Direction on Interim Measures:

https://www.echr.coe.int/Documents/PD_interim_measures_intro_ENG.pdf

ECtHR statistics on acceptance and refusal of requests for interim measures (2017):

https://www.echr.coe.int/Documents/Stats_art_39_02_ENG.pdf

Webinar

Gavron, J. and Harvey, P. (2016) "*Rule 39 of the Rules of Court: Interim Measures*", EHRAC, 17 November, see recording at: <http://ehrac.org.uk/resources/rule-39-requests> and summary at: <http://ehrac.org.uk/news/ehrac-webinars-mechanisms-under-the-rules-of-court/>



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