EHRAC

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Interim Measures at the European Court of Human Rights

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INTRODUCTION

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' or 'Court'), 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 has been updated in 2022, to include developments in the Court's jurisprudence on interim measures and new case studies based on successful and unsuccessful interim measures applications submitted by EHRAC with its partners. Importantly, it provides information on the new electronic submission of Rule 39 requests, available from October 2022 and a suggested interim measures submission template for practitioners. It is current as of 04 October 2022.

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

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 (or states in interstate cases), and are 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] It is possible for "any other person concerned" to request interim measures, meaning that even if a power of attorney has not yet been signed, a representative may lodge a request for interim measures on behalf of a victim, which may prove necessary in situations of extreme urgency (note, this does not displace the strict need for a signed power of attorney with respect to any application to the Court and the justification for not including a power of attorney must accompany the request). Additionally, theoretically, a third party (either an individual, state, or international body) could lodge a request for interim measures to the Court.

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] Statistics demonstrate the rarity in which interim measures are granted: in 2021, of 1921 applications for interim measures, only 227 were granted, with 519 refused and 1,174 found out of scope.[6]

On a number of occasions the Court has elucidated that the purpose of the measure is primarily to preserve the subject of the application from a risk of irreparable harm, ensuring the effective right of individual petition.[7] That is, interim measures are not free-standing measures to protect against human rights violations per se. Because of this, without an application to the Court or a pending ECtHR matter, the Court will not provide interim relief.

1 See ECtHR Factsheet on Interim Measures

2 See Ilascu 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 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.

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5 See the ECtHR's General Presentation on Interim Measures

6 See Rule 39 requests granted and refused in 2019, 2020 and 2021 by respondent state

7 See various explanations in Mamatkulov and Askarov v Turkey (Nos 46827/99 and 46951/99), 04.02.05); Aoulmi v France (No. 50278/99), 17.01.06; Al-Saadoon and Mufdhi v UK (No. 61498/09), 02.03.10); Savriddin Dzhurayev v Russia (No. 71386/10), 25.04.13).

If the request for interim measure is the first contact with the Court, then the Court will assume then that the request will be followed by an application, if one has not been lodged previously (see below, Part 2) Additionally, for issues that are outside of the Court's scope (for instance, concerning a respondent state outside of the Council of Europe, or matters not concerning Convention rights/violations), the Court will promptly refuse a request for interim measures.

There is no right of appeal against a decision refusing a request for interim measures.[8] A further request for interim measures may be later submitted. However, without new information or circumstances it is unlikely to succeed.

When they are 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.[9] If an interim measure is granted, but the Court considers that the applicant no longer wishes to proceed (e.g. by not submitting an application form, not responding to the Court's communications, withdrawing their claim, or being uncontactable by their representatives), then the measure will be lifted by the Court. In these circumstances (other than in the case of voluntary withdrawal) the Court will first provide a warning to the applicant that unless it hears from the applicant, the measure will be lifted and the request struck out.

Where interim measures have been granted, they are binding on the State concerned (and where relevant, other parties). 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.[10]

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. Once the application is resolved by the Court, whether by an inadmissibility decision, friendly settlement or judgment, the interim measures will expire. Upon finding a violation the implementation of measures redressing the violation are binding on the State concerned and supervision passes to the Committee of Ministers.

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 real risk of serious, irreversible harm;[11] and
- the harm threatened must be imminent and irremediable; and
- there must be an arguable (prima facie) case of violations under the Convention.

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 is 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. However, there are significant examples of interim measures being applied to a number of other Convention rights and even for legal persons (NGOs and companies). Therefore, it is possible to submit a request concerning violations other than Articles 2 and 3, if the test for granting an interim measure can be met (see above). That said, if claims of Articles 2 or 3 can be argued, these should be emphasized to increase prospects of success.

Additionally, there are no rules of stare decisis with respect to interim measures – each request is assessed on

8 See the ECtHR's General Presentation on Interim Measures.

9 Ibid.

10 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.

11 See the ECtHR's Practice Direction on Interim Measures.

its own merits. Just because an issue has never resulted in an interim measure in the past does not mean that, due to the particular facts or change in the Court's position, a request will not be granted in the future.

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. Whilst these cases still constitute much of the interim measures granted, they no longer constitute a majority: in 2021 deportation/extradition cases constituted 48% of interim measures granted (108 out of 227 granted measures), 40% of interim measures refused (206 of 519 refused measures), and thus constituted 42% of the requests that were not out of scope (314 deportation measures both refused and granted out of 746 requests).[12]

Interim measures have been granted in deportation/extradition 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));
- A risk of being arrested and tortured because of active participation in demonstrations against the existing political regime (M.A. v Switzerland (No. 52589/13, 18.11.14));
- 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 ill-treatment and social exclusion when there was no male relative in the destination country to protect the applicant (Hossein Kheel v The Netherlands (No. 34583/08, 16.12.08);
- 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 in the destination country (D. v. the United Kingdom (No. 30240/96, 02.05.97); N. v. the United Kingdom (No. 26565/05, 27.05.08)), including to other CoE states (Paposhvili v Belgium (No. 41738/10, 13.12.16), and including the medical risks of the transfer itself (Khachaturov v Armenia (No. 59687/17, 24.06.21));
- 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)).

Since August 2021, the Court has dealt with a number of requests for interim measures by individuals seeking asylum at the Belarusian borders (primarily Poland, but also Lithuania and Latvia). The applicants claimed their requests fell under Articles 2 and/or 3, and requested not to be pushed back to Belarus. The Court applied interim measures in 65 of the 69 requests and provided time-limited indications that the applicants should not be removed to Belarus. Additionally, the Court indicated to the Polish government to provide the applicants with food, water, clothing, adequate medical care and, if possible, temporary shelter for a limited amount of time. (see multiple applications here and here).

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

There are also limited 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)). In 2022, the Court granted interim measures preventing the removal of individual asylum seekers by the UK to Rwanda for refugee processing whilst domestic judicial review was pending. There, the Court had regard to the fact of a lack of a fair procedure for

12 Rule 39 requests granted and refused in 2019, 2020 and 2021 by respondent state

refugee status in Rwanda, that there was an open question whether Rwanda was a safe third country, and that removal to Rwanda removed the applicants from the Convention legal space. (N.S.K. v. the United Kingdom (No. 28774/22), and other further requests)

Aside from these limited cases, generally extradition and expulsion cases relying on Articles 5, 6 and 8 of the ECHR would not usually meet the imminent risk of irreparable harm test.

Death penalty

Recent cases involving the 2022 Russian aggression in Ukraine have raised Article 2 issues long absent from the Council of Europe. In three cases, the Court has issued interim measures concerning one Moroccan and two British nationals sentenced to death in the so-called "Donetsk People's Republic" ("DPR"), which forms part of the territory of Ukraine but is under the effective control of the Russian Federation. These individuals surrendered and were captured by Russian forces and were sentenced to death by a "DPR" court. The Court ordered that the Russian Federation ensure the death penalty is not carried out, ensure appropriate conditions of detention, and provide necessary medical assistance and medication. (Saadoune v Russia and Ukraine (No. 28944/22), Pinner v Russia and Ukraine (No. 31217/22), Aslin v Russia and Ukraine (31233/22).

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. The ECtHR has made the following Rule 39 orders:

- To transfer to a specialized medical centre (Kotsaftis v. Greece (No. 39780/06, 12.06.08));
- To continue treatment at a specialized centre (Paladi v. Republic of Moldova (No. 39806/05, 10.03.09));
- To secure in-patient treatment in a hospital specialized in the treatment of AIDS and establish a medical commission to diagnose needs and propose treatment (Aleksanyan v. Russia (No. 46468/06, 22.12.08));
- To transfer to a hospital (Salakhov and Islyamova v. Ukraine (No. 28005/08, 14.03.13));
- To provide adequate treatment in prison and if not available to transfer to a medical facility. In this case the Court also required monthly reporting to the Court Yunusova and Yunusov v Azerbaijan (No. 59620/14 02.06.14)).

In a 2020 request concerning Aleksey Navalnyy, the prominent Russian opposition figure allegedly poisoned by Russian agents, the Court ordered the Russian Government to allow his family and doctors to have access to him whilst he was in a coma in a Russian hospital and to assess his fitness for transfer to Germany for treatment. These measures were lifted after he was flown to a hospital in Berlin. Upon his return from Germany to Russia and arrest for breaching parole conditions he again made a request for interim measures on the basis that his treatment and conditions of custody amounted to a risk to his health and life. In February 2021, the Court granted the request and ordered the Russian Government to release the applicant owing to nature and extent of the risk to the applicant's life (Navalnyy v. Russia (No. 4743/21)).

Cases concerning the health of applicants have now been extended to dealing with the influx of migrants to Europe. In 2019, interim measures were made to ensure the provision of adequate medical care, food, water and basic supplies for 47 migrants held on a boat in Sicily (although no measures were ordered to allow them to disembark, despite ill health).[13] Similar measures were also made requiring food be provided to migrants held in Hungarian 'transit zones'.[14] The Court recently granted interim measures for 148 asylum seekers against Belgium to be provide accommodation and material assistance to meet their basic needs (Msallem and 147 Others v. Belgium (No. 48987/22 and 147 others)

13 ECtHR, ECHR grants interim measure in case concerning the Sea Watch 3 vessel, Press Release 29 January 2019

14 See Hungarian Helsinki Committee, Hungary Continues to Starve Detainees in the Transit Zones, https://helsinki.hu/en/hungary-continues-to-starve-detainees-in-the-transit-zones/ (last accessed 01/08/22)

Other cases have concerned decisions to discontinue life sustaining treatment (Lambert and Others v. France (No. 46043/14, 05.06.15)), Gard and Others v. the United Kingdom (No. 39793/17, 09.06.17; 13.06.17; 19.06.17)).

The Court received numerous applications concerning the Covid-19 crisis: many requests were to remove individuals from their place of detention or to protect them from the risk of infection. Most of these were rejected, save for very vulnerable persons (unaccompanied minors or persons with serious medical conditions). Other requests concerning vaccination schemes, compulsory vaccinations, and requests for general measures were rejected by the Court as out of scope.[15]

Conflict cases

The Court has, on multiple occasions, issued interim measures requested by states in international armed conflict.[16] What is unusual about these indications is that they are of general application, potentially applicable to an unidentified and indeterminate number of people, and do not consider the Court's usually strict tests for extra-territorial jurisdiction. These measures are addressed to both respondent and applicant states and in one case of Armenia v Turkey to "all states directly or indirectly involved in the conflict" (with the exception of interim measures concerning the Russian invasion of Ukraine which was only addressed to Russia) , requesting states refrain from taking any measures which might entail breaches of the Convention rights of the civilian population, in particular Articles 2 and 3.[17]

For instance, in its interim measure of March 2022 concerning Russian aggression in Ukraine, the Court decided "in the interests of the parties and the proper conduct of the proceedings before it, to indicate to the Government of Russia to refrain from military attacks against civilians and civilian objects, including residential premises, emergency vehicles and other specially protected civilian objects such as schools and hospitals, and to ensure immediately the safety of the medical establishments, personnel and emergency vehicles within the territory under attack or siege by Russian troops". The Court also applied this measure to any requests from individuals including those taking refuge in shelters, houses and other buildings, fearing for their lives due to ongoing shelling and shooting, without or with limited access to food, healthcare, water, sanitation, electricity and other interconnected services essential for survival, in need of humanitarian assistance and safe evacuation, so long as they can provide sufficient evidence showing that they face a serious and imminent risk of irreparable harm to their physical integrity and/or right to life. The Court also ordered that the Russian Federation should ensure unimpeded access of the civilian population to safe evacuation routes, healthcare, food and other essential supplies, rapid and unconstrained passage of humanitarian aid and movement of humanitarian workers. (see press releases here and here, and later expanded and clarified).

The Court has also granted interim measures involving a prisoner of war held by Russian forces, ordering the Russian Federation to ensure respect for his Convention rights and provide him with medical assistance should he need it. Exceptionally, the Court decided that this measure would cover any requests made on behalf of Ukrainian prisoners of war in Russian custody in which sufficient evidence has been provided to show that they face a serious and imminent risk of irreparable harm to their physical integrity and/or right to life. The Court also asked the Russian authorities to provide information on whether the individual had been captured and under what conditions he was being held, including medical examinations or treatment he has undergone (Oliynichenko v. Russia and Ukraine (No. 31258/22)). Note, for violations occurring after 16 September 2022, it will not be possible to lodge requests for interim measures against the Russian Federation due to its expulsion from the Council of Europe.

Requests based on other Convention Rights

These cases are much less common but there is evidence that the Court is becoming increasingly progressive in its interim measures jurisprudence.

15 ECtHR Factsheet, Interim measures

16 Including Georgia v Russia (II) (no. 38263/08), interim measure, 12 August 2008, Ukraine v Russia (no. 20958/14), interim measure, 13 March 2014, Armenia v Azerbaijan (no. 42521/20), interim measure, 29 September 2020, and Armenia v Turkey (no. 43517/20), interim measure, 6 October 2020)

17 See Dzehtsiarou, K. and Tzevelekos, V. 'Interim Measures: Are Some Opportunities Worth Missing?" (2021) European Convention on Human Rights Law Review, 2(1), 1-10

Notwithstanding recent developments in the ECtHR's case-law noted below, the ECtHR has historically found that interim measures were not warranted to prevent the imminent demolition of property; imminent insolvency; the enforcement of an obligation to do military service; to obtain the release of an applicant who is in prison pending the Court's decision as to the fairness of the proceedings; to ensure the holding of a referendum; to prevent the dissolution of a political party; or to freeze the adoption of constitutional amendments affecting the term of office of members of the judiciary.[18]

Right to legal representation[19] and fair trial (Article 6)

One area granted by the ECtHR in interim measures requests relates to the right of a defendant to a lawyer of their own choosing, in order to exercise their right of individual application to the Court. In some cases, the Court has extended the scope of orders involving denial of representation, including ordering not only that legal representation be granted but that authorities must also ensure compliance with Article 6 in domestic national security proceedings (Öcalan v. Turkey (No. 46211/99, 12 May 2005)). In Shtukaturov v Russia (No. 44009/05, 27.03.08), involving an applicant in a psychiatric hospital who was denied access to a lawyer, the Court went into specific detail as to what effective access to a lawyer requires. In D.B v Turkey (No. 33526/08, 13.07.10), the Court ordered that the authorities grant the lawyer access to the immigration detention centre, not only to obtain a power of attorney, but also receive instructions on the risks the applicant would face upon return to Iran. In Shamayev and Others v Georgia and Russia (No. 36378/02, 12.04.05), the Court's measures provided for "unhindered access" of the lawyers to their clients. In the Sea Watch 3 case, where a ship had migrants on board but was not allowed to dock in Italy, the Court indicated that 15 unaccompanied minors aboard be provided adequate legal assistance (e.g. legal guardianship).[20] In X v. Croatia (No. 11223/04, 17.07.08)) 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.

In a series of 2022 cases involving the lifting of Polish judges' immunities with a view to prosecution, the Court ordered that the proceedings to remove immunity comply with the requirements of a "fair trial" under Article 6(1), particularly an "independent and impartial tribunal established by law" and that no decision on immunity be taken by the Disciplinary Tribunal until final determination of the complaint by the Court (see Raczkowski v Poland (No. 33082/22); Wróbel v Poland (No. 6904/22); Stępka v. Poland (application no. 18001/22)) .

Right to freely apply to the Court

The Court has granted interim measures to protect the physical security of an applicant whose case is pending before the Court. Interim measures have been granted ordering the applicant be kept within a witness protection program to protect them against physical retribution and retaliation from criminal gangs (RR v. Hungary (No. 19400/11, 04.12.12)). In Bitiyeva and X v Russia (No. 57953/00, 37392/03), 21.06.07), the applicant experienced intimidation and harassment by military and law enforcement bodies after applying to the Court about the extra-judicial killing of her family. The Court ordered the Russian Government to take all measures to ensure that there was no hindrance in any way of the effective exercise of the second applicant's right of individual petition.

Protection of family and private life (Article 8) cases

The Court has granted interim measures in a limited number of cases involving underlying claims of violations of Article 8, regarding the protection of private and family life. In Evans v. the United Kingdom (No. 6339/05, 10.04.07) the ECtHR 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. The Court has granted interim measures requiring parental contact with children after they were ordered to be taken into care with a view to adoption (Soares de Melo v Portugal (No. 72850/14, 16.02.16)). The Court has also applied interim measures preventing the return of a child to a third country under the Hague Convention based on a complaint that such return would amount to violation of Article 8 (Eskinazi and Chelouche v Turkey, No. 14600/05, 06.12.05).

18 See p. 2-3 of ECtHR Factsheet on Interim Measures.

19 See, P Leach, "Urgency at the European Court of Human Rights: New Directions and Future Prospects for the Interim Measures Mechanism?" in E Rieter (ed) Urgency and Human Rights (T.M.C Asser Press)

20 Ibid.

The Court has also indicated interim measures relating to the right to a 'home' under Article 8. Interim measures have been ordered preventing:

- Evictions from Roma settlements until authorities provided assurance of measures to secure housing for the children, elderly, disabled or otherwise vulnerable people (Yordanova and Others v Bulgaria, No. 25466/06, 24.04.12); P.H. and Others v Italy (No. 25838/19); and
- eviction and demolition of homes that were unauthorized constructions until the Government had provided the Court with precise and accurate information as to the arrangements made by the domestic authorities for securing adequate housing and social services to the applicants (Raji and Others v Spain (No. 3537/13), 16.12.14; see also AMB and Others v Spain (No. 77842/12), 28.01.14)).

It should be emphasized that these measures focused not on the eviction per se but protection of vulnerable persons who would face harm as result of the evictions.

Freedom of Expression (Article 10)

The Court has also indicated measures involving alleged violations of Article 10 of the Convention. A novel use of interim measures was granted in Sedletska v Ukraine (No. 42634/18) 01.04.21), concerning a journalist's request to refuse access to his mobile data which would have revealed journalistic sources. The Court ordered that the respondent government ensure that the public authorities abstain from accessing the data pending the Court's judgment (see for more examples cases involving companies/NGOs below).

Interim measures on behalf of organisations

Whilst the vast majority of interim measures concern individual persons, the Court has, exceptionally, extended their scope to legal personalities (companies and NGOs). These cases are also progressive insofar as these also relate to underlying violations of Article 10 (and other qualified rights).

In 2017, in Rustavi 2 Broadcasting Company Ltd. v. Georgia (No. 16812/17), under Rule 39 the ECtHR required Georgia to temporarily suspend the 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, which would have had the effect of shutting it down. This case concerned a complained violation of Article 10 (freedom of expression), as well as Article 1 of Protocol 1 (property rights) and Article 6(1) (fair trial).

This novel use of interim measures to protect independent media was further entrenched in the Court's practice in March 2022, when the Court granted interim measures on behalf of a Russian independent media company, Novaya Gazeta. The authorities had ordered Novaya Gazeta to delete specific articles concerning the war in Ukraine, and under threat from the Russian legislation criminalizing 'fake news' about the actions of the Russian Armed Forces, Novaya Gazeta stopped reporting on military action in Ukraine, to avoid it being at risk of closure. The Court, having regard to the exceptional context in which the request has been lodged, ordered the Government of Russia to abstain until further notice from actions and decisions aimed at full blocking and termination of the activities of Novaya Gazeta, and from other actions that in the current circumstances could deprive Novaya Gazeta of the enjoyment of its rights guaranteed by Article 10 of the Convention. (ANO RID Novaya Gazeta and Others v. Russia (No. 11884/22)).

The Court's Rule 39 jurisprudence was extended to civil society in late 2019/early 2022, when Russian organisations International Memorial and Memorial Human Rights Centre applied, and received, interim measures concerning their imminent liquidation under the Foreign Agents Act. The Court ordered the suspension of the enforcement of the liquidation proceedings pending the Court's consideration of Ecodefence and Others v Russia ((9988/13 and others) 14.06.22)), which concerned the compatibility of the Foreign Agents Laws with Article 10 and 18 of the Convention (where the two organisations were both applicants).

PART 2
Making applications for interim measures under Rule 39

FORMAT AND CONTENT OF APPLICATIONS FOR INTERIM MEASURES

The application

- There is no prescribed form for requests for interim measures. They can be requested by letter, as long as all of the essential information is included. A suggested template request is annexed to this Guide.
- It is **essential** that a request provide the full contact details (address, telephone and email, date of birth, nationality) of the applicant and contact details of the applicant's representative.[21]
- Applicants must indicate the state against which the request is lodged and the interim measure is directed against. This state must be a member of the Council of Europe. For deportation/removal cases this will likely be the sending/removing state. Note, due to the expulsion of the Russian Federation from the Council of Europe, it will not be possible to lodge interim measures for violations that occurred after 16 September 2022 (see, e.g. refusal of interim measures concerning Ukrainian children in Crimea being imminently adopted in Russia here). For violations occurring prior to this date, and for pending applications against Russia, the Court has the ongoing power to order interim measures (although given Russia's ongoing non-cooperation, there is currently little prospect of compliance).
- When specifying the requested measures to be taken, it is helpful to frame them as if the Court was making the order to the respondent state. For instance, if the issue is the health of a detainee, request that "the applicant is given unhindered access to and attended by an independent medical practitioner and provided all necessary treatment." One suggestion is to start with a broader request (e.g. "the authorities provide access to an independent legal representative") and then list what this entails (e.g. "including providing confidential meeting spaces, granting all necessary time and facilities to consult with the representative, allowing the representative to meet the client at regular intervals etc"). The type of request can be as varied as the range of violations, but could include requests to :
  - Refrain from conducting a proposed action (expulsion, eviction etc)
  - Provide a necessary service (e.g. medical, welfare, security)
  - Allow access (e.g. by a legal or health professional)
  - Provide information (e.g. on the location of an applicant or their medical treatment)
  - Ensure the safety and security of an applicant (e.g. if they are being harassed by authorities)
- Requests must lay out reasons why the interim measures specified should be granted. Specifically, a request must state in detail and supported by evidence:
  - The grounds for the request for interim measures including:
    - Detailed description of the current situation
    - Nature of the alleged imminent risk of irreparable damage
  - Information regarding domestic proceedings:
    - Information regarding domestic proceedings, including date and content of the judicial decisions and appeals
    - All other relevant information concerning proceedings before domestic authorities
    - A copy of all related documents (copies of national authorities' decisions, judicial decisions, petitions submitted to the national authorities and courts etc.)
  - The resulting rights under the ECHR which will be violated if interim measures are not granted. Note, whilst the request should make the case as comprehensively as possible, the test for granting an interim measure is lower than finding a violation – parties must establish an arguable or prima facie case. This should be kept in mind, particularly when dealing with urgent applications when there is little time to put

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together comprehensive submissions.

- An application reference number from the Court if the request relates to a pending application
- Any other information and documents considered necessary

- 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).[22]

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;
- copies of all the relevant domestic decisions; and
- any other necessary relevant documents (e.g. forensic reports, notice of arrest/detention, complaints to authorities, recent medical reports, photographs, documents demonstrating the applicant's vulnerability, press articles or reports concerning the applicant's situation etc).

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

- Specify detailed reasons for leaving the country of origin/destination country, reasons for fearing to return to the country of origin/destination country, information regarding the date and circumstances of arrival in the Contracting State, expected date and time of removal/deportation/extradition, the address or place of detention of the applicant;
- Include information about asylum proceedings or removal proceedings, if relevant and all related documents;
- Include as much country information as you can, e.g. NGO reports and government human rights reports on the relevant country.[23]
- If the removal involves risk to health, outline health complaints and any evidence that removal will present an irreparable risk.

In health cases, requests for interim measures must:

- Include the applicant's medical record (although 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 accompany the request, if it has not already been filed. However, exceptionally, a request for interim measures can be submitted without an accompanying application form, but the request must indicate and justify why an application form cannot accompany the request. In these circumstances, if the Court grants the measure it will request the

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

23 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.

submission of an application form (usually within four weeks, but this can be extended if requested and justified). If this is not submitted in time, the Court will warn the applicant, and if this warning is not actioned, the Court will strike out the application and lift the interim measure.

If the request is submitted by a legal representative a duly completed **authority form** must be sent. Applicants should use the Court's separate authority form for this. It is not a strict requirement to include an authority form at the time of request, but if an authority form is not provided, the request should justify why this is the case and should include reference that the request was submitted with the applicant's consent (and, of course, such consent must be sought), or explain why obtaining consent was impossible at the time. In such circumstances an authority form **must** be submitted shortly thereafter. If an application form is being submitted with, or after, the interim measures request, the authority form for the application will also apply to the interim measures request (so there is no need to sign two authority forms).

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. The Court will not grant interim measures where there are unexhausted domestic measures that have suspensive effect (e.g. domestic injunctions).[24]

Generally, the Court needs a minimum of 24 hours to process a request, so do not send requests just before the complained action or after an irreversible action (e.g. after removal); by this point there will nothing that the Court can do. Unless the matter is urgent, the Court will need a number of days, so it is advised to give more than the 24 hours minimum notice – best practice would be to give an absolute minimum of three days' notice, but more notice is preferable. Given this, it is acknowledged by the Court that this time frame may be very difficult for applicants, especially in the context of extradition or removal where removal frequently happens immediately after a decision has been made. Therefore, 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.[25]

In circumstances where irreparable damage may occur immediately after a final decision, it is helpful to take client instructions on this matter as early as possible to ensure a Rule 39 request can be submitted urgently. Additionally, representatives should notify domestic authorities that a request for interim measures has been submitted to the ECtHR so they are put on notice.

The Court does not ordinarily process requests outside of work hours (after 4pm Strasbourg time Monday to Friday, and on weekends and public holidays). If a matter requires urgent attention outside of these hours, it is advised to send, by fax or the online site, a very short note within Strasbourg work hours briefly outlining the situation and stating that a request will be forthcoming. The Court will, if possible, make contact and may arrange means to receive the request.

On the other hand, it is not advisable to give too much notice or in situations where the risk is only hypothetical, as the Court may find that the risk is not sufficiently immediate and will reject the application.

24 ECtHR Practice Directions.

25 Ibid.

HOW TO FILE APPLICATIONS FOR INTERIM MEASURES

- A request for interim measures must be submitted to the ECtHR in writing – either via the Rule 39 ecomms online site (below), by post or by fax – and where possible, in a language of a Member State. **The ECtHR will not accept a request made by email.**
  - The web address of the Rule 39 site is https://r39.echr.coe.int – further details on the online site are set out below.
  - There are two dedicated fax numbers for sending requests for interim measures: +**33 (0)3 88 41 39 00 and** +**33 (0)3 90 21 43 50.** If requests are not sent to these fax numbers, they may not be received or dealt with.
  - Whilst Rule 39s can be sent by post, given the time it takes to send post and the risk of delivery issues, this form of sending by post is not advised. Nevertheless, the postal address is:

    European Court of Human Rights
    Council of Europe
    67075 STRASBOURG CEDEX
    FRANCE
  - Requests for 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 working day. Requests sent on public holidays will be dealt with the next working day.[26]
  - Any faxes that are more than ten pages should be sent in several parts. [27]
- 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 including email address);
  - If a deportation or extradition case, date and time of expected removal and destination.
- If representatives are having trouble sending a fax to the Court, they should contact the Court (currently on +33 (0)3 88 41 20 18) and inform them of the difficulty in submitting the Rule 39. The Court will assess whether there are technical issues at their end – if so they will advise on alternative means of contact (typically email). If there are no technical issues on their end, they will advise you to keep trying to send the fax. For this reason, it is advisable to send a Rule 39 request earlier in the day to allow for multiple attempts to fax before the 4pm cutoff.
- If the Court only receives a partial copy of the request, it may attempt to contact the applicant or representative if possible. Once initial contact has been made, the Court may, at its discretion and at its invitation, accept the request via other means including email.

RULE 39 ONLINE SITE

In October 2022 the Court opened a Rule 39 online site, available at: https://r39.echr.coe.int. It can be accessed in English and French and can be used to upload Rule 39 requests to the Court. Once uploaded via this site, the Court will communicate with the parties through the site. If a request is submitted via the site, and the Court requests further information, it must be done via the site.

To use the site, one must have an ECHR Services account. If a representative has already used eComms with the Court for this or any other case the same account can be used to access the Rule 39 site.

An Authenticator App (downloadable via Apple or Google App Stores) is also required to authenticate the account. If one cannot use an Authenticator App, then the portal cannot be used and submissions must be made via fax or post.

26 List of public holidays available here: https://www.echr.coe.int/Pages/home.aspx?p=contact&c=

27 Ibid; ECtHR Interim Measures Practical Information.

Once on the site, click "New Request" to submit a new request.

In order to submit requests, the applicants must fill out the following mandatory fields:

- Field "Title of the request (Applicants should briefly explain the object of their requests in this field)"
- Fields related to the Applicants, the Representative and the State concerned
- Submit at least one attachment. All attachments must be in PDF format. This attachment should include, in the minimum, the primary document outlining submissions on the grounds for the request, domestic proceedings, and resulting Convention rights violations. All supplementary documentation and evidence should be attached.

Then click 'submit' to submit the request.

To view current and previous requests, click the 'my requests' section of the site.

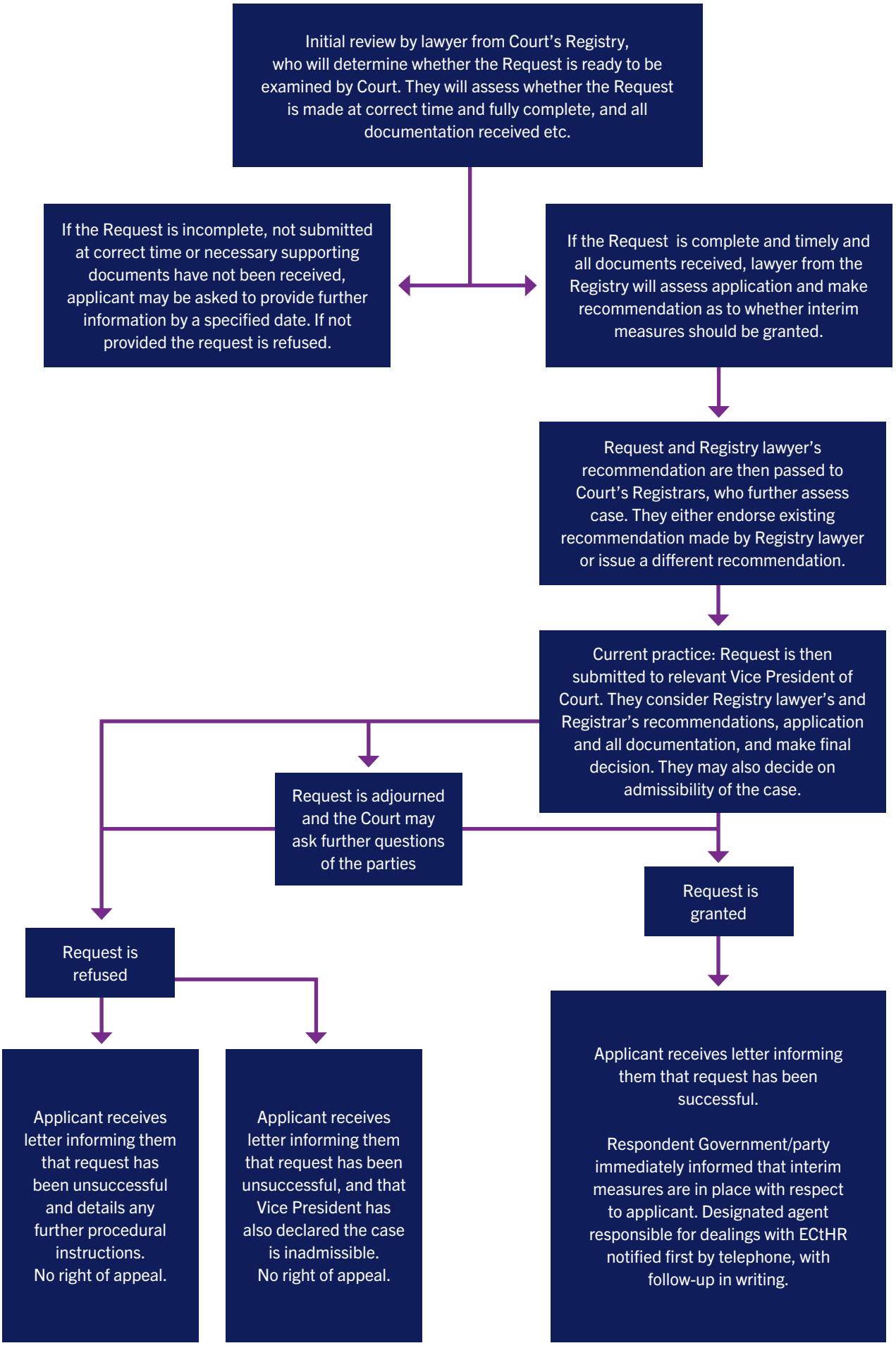
The Court will not use the portal to contact applicants who have submitted via other means i.e. fax or post.

Where a request has been lodged via the ECHR Rule 39 Site and the request has been closed on the site after a decision has been notified to the applicant, further correspondence with the Court should be sent by fax or by post.

COMMON ERRORS TO AVOID

- Submitting an application too early: when the risk is not imminent or there are unexhausted domestic suspensive remedies;
- Submitting an application too late: within 24 hours of irreparable harm, or after the complained action (e.g. after deportation);
- Excessively lengthy applications – a request should be succinct with relevant supporting documentation submitted;
- Not submitting an application form if interim measures are granted. If this is not done, the ECtHR will consider that the case is not being adequately pursued and will strike out the case and lift any measures;
- Failing to submit an authority form either with the request or shortly after. Cases will be – and have been – rejected if the ECtHR does not believe the representative has the authority to represented the applicant (Isakov v. Russia (No. 52286/14, 05.07.16)).
- Failing to communicate with the Court. If the Court asks the applicant for information, a response must be provided. If the Court asks the applicant to respond to Government comments, or the Court asks for an update, the applicant must respond. Failure to do so may lead the measures to be lifted and the case struck out.

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


Initial review by lawyer from Court's Registry, who will determine whether the Request is ready to be examined by Court. They will assess whether the Request is made at correct time and fully complete, and all documentation received etc.
If the Request is incomplete, not submitted at correct time or necessary supporting documents have not been received, applicant may be asked to provide further information by a specified date. If not provided the request is refused.
If the Request is complete and timely and all documents received, lawyer from the Registry will assess application and make recommendation as to whether interim measures should be granted.
Request and Registry lawyer's recommendation are then passed to Court's Registrars, who further assess case. They either endorse existing recommendation made by Registry lawyer or issue a different recommendation.
Current practice: Request is then submitted to relevant Vice President of Court. They consider Registry lawyer's and Registrar's recommendations, application and all documentation, and make final decision. They may also decide on admissibility of the case.
Request is adjourned and the Court may ask further questions of the parties
Request is granted
Request is refused
Applicant receives letter informing them that request has been unsuccessful and details any further procedural instructions. No right of appeal.
Applicant receives letter informing them that request has been unsuccessful, and that Vice President has also declared the case is inadmissible. No right of appeal.
Applicant receives letter informing them that request has been successful.
Respondent Government/party immediately informed that interim measures are in place with respect to applicant. Designated agent responsible for dealings with ECtHR notified first by telephone, with follow-up in writing.

WHAT TO DO NEXT IF YOUR RULE 39 REQUEST IS GRANTED

The respondent government will be immediately contacted by their agent to the Council of Europe. The government agent to the Council of Europe must communicate the interim measure to the proper domestic authority. In practice, this may not occur with sufficient expedition. There are a number of cases where alleged failures of communication between government agents and domestic authorities has led to failures to timely execute the measures, for instance, deportations occurring despite measures being in place. If a Rule 39 request is granted, a representative should therefore immediately proactively present this to the relevant domestic authorities.

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. Current practice is that the Court will request an application form within four weeks of the request for interim measures, if it is not submitted concurrently with the request.

It is also worthwhile noting that cases in which interim measures have been granted are often dealt with more urgently due to their nature. The Court may grant priority treatment to the underlying application (under Rule 41 of the Rules of Court) or, exceptionally, urgently communicate the case (Rule 40). They may do so even if the interim measures are not granted. This means that, on occasion, the usual timescales and deadlines of the ECtHR are shortened. For this reason, it is advised to be prepared that a case may be communicated shortly after the request for interim measures, and that submissions may need to be drafted promptly.

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, otherwise the case may be struck from the list and Rule 39 measures lifted. This includes requests for information, comments on submissions from the respondent government, or requests for updates.
- 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, particularly with respect to matters that are the subject of the interim measures.
- 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.[28] In this instance, if contact is lost then the measure will be lifted.

28 ECtHR Interim Measures Practical Information.

PART 4
Enforcement of interim measures

If a measure is not being complied with, the first step is to immediately notify the Court of non-compliance. The Court will correspond with the relevant Government agent. However, it must be emphasized that the Court cannot, and does not have the machinery to, force a Government to comply with interim measures. The Court can only establish whether noncompliance constitutes a violation of Article 34 of the Convention. In exceptional circumstances the Court will inform the Committee of Ministers of non-compliance.

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 their right of individual petition under Article 34 because the Court was prevented from conducting a proper examination of the complaints and protecting them against violations of the Convention.[29]

The ECtHR has found governments in violation of Article 34 in many cases.[30]

For this reason, once a case is communicated, applicants or their representatives should make submissions in their observations on issues of non-compliance with interim measures (whether this is asked by the Court or not), and, if justified, submit that this constitutes a violation of Article 34 of the Convention.

The Court may find a violation of Article 34 alongside other substantive violations, but it can also find a violation of Article 34 alone, in the absence of any other substantive violations (see, e.g. Kamaliyevy v Russia (No. 52812.07), 03.06.10). If the Court finds a violation of Article 34, the Committee of Ministers will then supervise implementation of individual and general measures to address this violation. For this reason, applicants may wish to submit Rule 9(1) submissions concerning non-compliance with measures to rectify violation of Article 34 occurring due to noncompliance with interim measures. Equally, NGOs may wish to submit Rule 9(2) submissions concerning broader failures and systemic and ongoing issues that led to non-compliance with the interim measure.[31]

The Court also has the power to notify the Committee of Ministers of the interim measures (Rule 39(2) Rules of Court). This has, most recently, been used in the March 2022 Ukraine v Russia interstate cases.

The Court has, on occasion, addressed non-compliance with interim measures in its Article 46 indications (see, e.g., Savriddin Dzhurayev v Russia (No. 71386/10), 25.04.13); M.A. v France (No. 9373/15), 01.02.2018). Whilst the Committee of Ministers has ultimate discretion to determine the required individual and general measures, such indications from the Court are highly persuasive matters that the Committee will most likely include as part of their supervision. Indeed, in M.A. v France, the implementation of general measures to prevent further violations of Article 34, for reasons for non-compliance with interim measures to suspend deportations, was explicitly considered as a major issue which led the Committee to ask the Secretariat to draft an interim resolution should no tangible progress be made on this issue (see M.A. v France, CM decision of 09.03.22) For this reason, if the applicants or representatives choose to make submissions on what Article 46 indications the Court should provide, they may wish to include compliance with interim measures (either as an individual or general measure).

29 Mamatkulov At [127].

30 See ECtHR's Factsheet on Interim Measures.

31 For more information on implementation and how practitioners should engage in the implementation process, see the European Implementation Network's (EIN) helpful handbook, available here.

ANNEX 1: CASE STUDIES

Yunusov and Yunosova v Azerbaijan

Leyla Yunusov and Arif Yunusov are well-known human rights defenders in Azerbaijan, and hold leading positions at the Institute for Peace and Democracy, formerly in Baku, now based in the Netherlands. Leyla was arrested on 30 July 2014, on spurious charges of fraud, illegal entrepreneurship, tax evasion, high treason and falsification of official documents. Following questioning later that day, Arif was also charged with fraud and high treason. They were held in pre-trial detention until 13 August 2015, when they were convicted and sentenced by the Baku Serious Crimes Court to eight and a half and seven years in prison respectively.

During their pre-trial detention, EHRAC, and its domestic partner Khalid Baghirov, submitted a Rule 39 request, setting out the denial of access to necessary medicine and food, which due to their respective very poor medical conditions, would put them at imminent and irreversible risk to health and life. They requested release from pre-trial detention to be transferred to appropriate medical facilities, as well as special food and medicines for their conditions, and supervision by qualified medical professionals.

Initially the Court adjourned the Rule 39 request, and requested further medical information from the parties. After further information and updates were provided, the Court granted the Rule 39 request, but only in part. It indicated to the Azerbaijani authorities to provide both applicants with the adequate medical treatment in prison and, if such a treatment was not available in prison, to ensure the first applicant's immediate transfer to a specialised medical establishment for the duration of the proceedings before the Court. The Government was also requested to inform the Court, on a monthly basis, of the state of health of the applicants and their medical treatment.

Six months later, further submissions were made to the Court, including the lodging of a new Request, regarding the applicants' treatment in prison and the authorities' failure to meaningfully comply with the Court's order, in that the monthly medical reports were perfunctory and not evidence based. The Court rejected these submissions, noting that the applicants were requested to submit observations on the merits, and that the question of compliance with Rule 39 would be addressed by the examination of the case by the Court.

During this time, the international human rights community conducted a sustained advocacy campaign concerning the applicants' health and conditions of detention. This included lobbying European Parliament members who arranged for a German doctor to fly to Baku to visit the applicants in prison, who concluded that the applicants needed urgent hospitalisation.

In late 2015 the applicants were released from detention on health grounds and consequently the ECtHR lifted the interim measures.

As detailed in the judgment of 02 June 2016, the Azerbaijani government did indeed provide monthly medical reports on the applicants. However, the Court noted that these were one or two pages long, were in a standard format and merely said that "the applicants' state of health is stable and does not require [their] transfer to a specialist medical facility". The reports were not accompanied by any medical documents. The Court therefore found a violation of Article 34 of the Convention for failure to comply with the letter and spirit of the interim measure indicated by the Court under Rule 39. The failure to provide any medical documents meant that the Court could not establish whether the applicants were receiving adequate medical treatment in detention as required by the interim measure. Additionally, the Court found substantive violations of Article 3 of the Convention due to the failure to provide adequate medical care.

Lessons learned:

- For issues of medical treatment in prison the Court requires detailed evidence. In some circumstances, this may be difficult to obtain, but it is advisable to provide as much medical documentation in the original Rule 39 submission as possible.
- The Court was unwilling to further engage with the applicants on the compliance with Rule 39 until it assessed the issue in its judgment, eventually finding noncompliance with Rule 39. This outcome is perplexing, given

that the Court found that the authorities did not provide sufficient medical documentation, which could have more effectively and preventively been addressed over the course of detention. The lesson to draw here is that whilst the Court may provide Rule 39 indications, there is limited powers for the Court to enforce compliance. For this reason, other avenues of advocacy may be necessary, which in this case were resorted to and arguably contributed to the applicants release from detention.

- Although the Court did not order the applicants immediate release from pre-trial detention, the Rule 39 result formed a valuable part of the broader advocacy efforts by the representatives.

Kazanbiyeva v Russia

To EHRAC's knowledge, no interim measures have been granted by the Court with respect to domestic violence, despite a number of known attempts by international partners. Nevertheless, domestic violence would seem to fit squarely within the requirements of Rule 39, in that victims are subject to potentially life-threatening violence and are often without legal measures or unsupported by the state.

In early 2021, EHRAC with international partners at Memorial Human Rights Centre, submitted a Rule 39 request on behalf of a woman in Dagestan who had been subject to extreme and life changing domestic violence by her former husband. At the time of the Request the husband was in detention and due to be released and had made explicit threats that he would kill her upon release. Initially, the Court suspended the request, asking for further information and an application form from the applicant, and asking that the Court be informed of any developments relevant to the risk of harm to the applicant's well-being. The Government was invited to inform the Court what measures they envisaged taking, promptly upon the perpetrator's release, to prevent him from harming or harassing the applicant and the conditions for the application of post-conviction State protection measures in her case. By email, the Court asked EHRAC to send the application as soon as possible. The application was sent within days.

Three days later, the Court decided not to grant interim measures, but did on the same day, communicate the application to the Russian Federation. In October 2022, the Court handed down its judgment under its well-established case law procedure, finding violations of both the substantive and procedural limbs of Article 3 of the Convention.

Lessons learned:

- The Court has, to date, resisted issuing Rule 39 measures for domestic violence. This should not necessarily deter such requests where there is strong evidence and justification to do so, but applicants should be aware of the current slim chance of success.
- A Rule 39 request can be deployed strategically to bring an issue to the Court's attention, which may then prioritise the matter. In this case, whilst the request was unsuccessful, the Court did initially engage with the state on the issues raised and communicated the case within days of the Rule 39 submission (bearing in mind communication usually takes months, if not years).

International Memorial and Memorial Human Rights Centre (MHRC)

On 8 November 2021, Russian authorities initiated proceedings to liquidate Russia's two most prominent human rights organisations under the "Foreign Agents Law". EHRAC together with its longstanding partners at Memorial Human Rights Centre submitted a Rule 39 request to the Court to halt the proceedings. These two organisations were both applicants in Ecodefence and Others v Russia, challenging the 2012 Foreign Agents Law, which had been communicated in 2017.

The Rule 39 request was submitted to the Court days before the domestic court hearings on liquidation. The request argued that the organisations could be liquidated upon the conclusion of the hearings and that there was no procedure for reversing such a decision, making the risk of irreparable and immediate damage to the applicants' Article 10 rights.

Despite this, the Court suspended the Rule 39 on the basis that the proceedings had not concluded, and requested information on any judicial decision concerning the claim for dissolution, as soon as they were adopted. On 28 December, the Court was informed that the Russian Supreme Court had, that day, ordered the liquidation of International Memorial, pending any further appeals.

The next day, on 29 December, the Court ordered the Russian Government under Rule 39 to suspend the enforcement of the decisions to dissolve the applicant organisations pending the Court's consideration of the Ecodefence case. On the same day, 29 December, MHRC was dissolved by the Moscow City Court.

In breach of the Court's order, on 28 February the Presidium of the Russian Supreme Court upheld the liquidation of International Memorial. On 22 March 2022, after International Memorial's application to stay the liquidation pending the ECtHR's interim measure, the Russian Supreme Court ruled against the enforcement of the ECtHR's interim measure, stating that it had no validity since interim measures of the ECHR "usually" apply to situations where there is a threat to life and health. On 12 May 2022, the Supreme Court denied a procedural appeal against this decision, making the liquidation final.

On 5 April 2022, the First Appeal Court in Moscow confirmed the dissolution of MHRC, and the liquidation came into force. On the same day, MHRC sought a stay of execution based on the ECtHR interim measure. This was denied on 2 June 2022.

On 14 June 2022, the Court handed down judgment in the long-awaited case of Ecodefence and Others v Russia. In addition to detailed and robust findings that the Foreign Agents Law was incompatible with the Convention, the Court found a violation of Article 34 of the Convention due to the Russian authorities' disregard of the Court's interim measure to suspend liquidation.

Lessons learned:

- This case demonstrates the limits of a successful Rule 39. Despite its binding character, ultimately without any enforcement mechanism, the Court relies on the good faith of the state parties to abide by its orders, and there is little it can do if a state chooses to ignore them. This outcome was unsurprising in this particular context, given Russia's antagonistic relationship with the Court and the Convention and ensuing expulsion from the Council of Europe on 16 March 2022 in response to its invasion of Ukraine. Nevertheless, it was important, if only symbolically, for both the parties and the Court to call out these flagrant injustices.
- A feature of this case is that the Court waited until the decisions to liquidate had been handed down. Even though the prospect of liquidation was, in reality, fait accompli, the Court would not issue the measure until the liquidation become certain (subject to appeal). This is disappointing, but consistent with the Court's practice that it will not generally grant interim measures prior to a pending domestic decision, unless (for instance, in expulsion cases) there is very little time between the order and the harm occurring.

Karpyuk v Russia

Mykola Karpyuk was a member of a Ukrainian political opposition party. On 17 March 2014, he entered Russia on the promise of negotiations with people close to Russian President Vladimir Putin. Through the mass media it became known that he was abducted by Russian FSB agents at the border into Russia from Ukraine. Four days later, his wife only received a short phone call that her husband was in custody in an undisclosed location and that a hearing would be held on his detention. In June 2014, his wife requested consular assistance from Ukraine, which could only confirm that he was being detained in the Russian Federation, but were unable to assist in locating his whereabouts.

EHRAC, with its partners Ukrainian Helsinki Human Rights Union, represented Mr Karpyuk at the European Court of Human Rights. On 8 December 2014, his wife submitted an application to the Court regarding her husband's situation, and on 12 December 2014 requested Rule 39 measures to locate and release her husband. As a result, on 16 December 2014 the Court required the Governments of Ukraine and Russia to ensure respect for the Convention rights of Mr Karpyuk, including respect for security of his person; inform the Court whether their authorities had or tried to establish contact with Mr Karpyuk and/or persons depriving him of liberty; what action had been taken in that context with a view to his release, and to provide documents indicating the current location of Mr Karpyuk.

In response, on 05 January 2015 the Ukrainian Government outlined the consular attempts to locate Mr Karpyuk. On 21 January 2015, the Russian authorities provided the first detailed information on the charges against Mr Karpyuk and the location of his detention.

In September 2015, domestic lawyers of Mr Karpyuk's choosing were able to meet him and take full instructions, in which he detailed being tortured and held in solitary confinement. Only thereafter was he able to challenge the

lawfulness of his detention. As a result, EHRAC's partners were finally able to substantively comment on the full violations to which he had been subjected and additional applications were sent to the Court in 2017.

The applicant was finally released as part of a prison swap in September 2019. This case is awaiting judgment.

Lessons learned:

- The Rule 39 measures ordered by the Court arguably changed the situation of this applicant. Until Russian authorities complied with the Court's requests, he had been held incommunicado: the reason for his arrest, his location, state of health and treatment by the authorities remained unknown. Once the Russian authorities provided details of his detention, consular assistance was granted and he was eventually permitted visits from an independent lawyer. That said, it remained difficult for independent counsel to reach and meet Mr Karpyuk. It appears that the Rule 39 helped to identify his location and ensure access to him by lawyers of his choosing and Ukrainian consular officials. Nevertheless, Mr Karpyuk had already suffered numerous violations, including egregious violations of his right to a fair trial, incidents of torture and other ill-treatment, and prolonged detention in solitary confinement.

LK v Georgia

LK was a Georgian minor with a disability requiring around the clock home-based care. The Georgian authorities assessed LK's needs and determined that the family was generally eligible to receive services under the requisite government programme. However, they refused to provide any home-based care to LK under the government programme because LK required extended hours of care provided by two caregivers, who had to be able to physically manoeuvre and restrain him. Without adequate home-based care, LK's disability would cause him to be violent toward himself and his mother, his primary caregiver.

EHRAC and its partner, the Georgia-based Partnership for Human Rights (PHR), submitted an interim measures request on behalf of L.K. and his mother to the Court, requesting the Court to order the Georgian authorities to provide urgent care to LK that met his specific needs. In response to the interim measure request the Court, through a series of requests for clarifying information, engaged the Government of Georgia in a discourse about the implementation of the programme of support. The Court requested information about the authorities' assessment of LK's needs and the risk LK's disability-related violent behaviour posed to himself and his mother.

The Georgian authorities' own assessment supported the Applicants' position that LK was in need of home-based care and that there was a real and imminent risk to him and his mother. The findings from the needs assessment led the Government to undertake to the Court that it would accommodate LK's needs under the existing programme and pass a decree that would extend the parameters of the programme including the hours of care available and the number of caregivers assigned to each recipient to cover the home-based care needs of other young people like LK. The Court then granted the Applicants' interim measure request in full by requiring the Government to urgently abide by its own undertaking.

Lessons Learned:

- Interim measure requests can be useful tools for ensuring that authorities are effectively and expeditiously executing their mandates. In this case, the authorities were not effectively implementing the findings of their needs assessment, as required by the domestic legislation, and had failed to undertake a risk assessment in cases where there is a real and imminent risk to one's life and health, as required by the Court. The Court's oversight and engagement with the authorities mobilised high level actors within the government, expediting the provision of services, particularly them undertaking a lethality risk assessment and recruiting trained and capable staff to care for LK.
- Interim measure requests are most effective where civil society is also engaging in simultaneous domestic advocacy. In this case, PHR was actively advocating for a legislative extension of the parameters of the programme. The pressure applied at the domestic realm, coupled with the pressure from the Court through the interim measures process, led Georgia to pass a decree extending the parameters of the programme. This is a significant win for LK and other young people in Georgia that was facilitated by the engagement required by the Rule 39 request.

ANNEX 2: RELEVANT RULES OF COURT AND PRACTICE DIRECTIONS

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) [32]

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 representatives[33] 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.

I. 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.

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.

32 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, available at: https://www.echr.coe.int/Documents/PD_interim_measures_ENG.pdf

33 It is essential that full contact details be provided.

II. Requests to be made by facsimile or letter[34]

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.[35]

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.

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

35 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 3: TEMPLATE RULE 39 REQUEST

NB – items in square brackets [] are suggestions

[PAGE 1]

RULE 39 – URGENT

Person to contact: [INSERT NAME OF REPRESENTATIVE]

Address: [INSERT ADDRESS]

Tel.: [INSERT A PHONE NUMBER CONTACTABLE OUTSIDE OF OFFICE HOURS]

e-mail: [INSERT EMAIL CONTACTABLE OUTSIDE OF OFFICE HOURS]

[In deportation or extradition cases] Date and time of removal and destination: [INSERT IF RELEVANT]

DATE:

NUMBER OF PAGES: [INSERT – so the Court knows how many pages to expect]

SUMMARY

[Insert a summary of the entirety of the request including whether this relates to an existing pending application, very brief facts, how the action will lead to an irreparable and immediate risk to the applicants Convention rights [specify which rights] and how the facts disclose a prima facie violation of the Convention [specify which rights] and the interim measures you are requesting. Make this summary no more than 1-2 paragraphs and do not go past the first page, to ensure all necessary information is on the first page]

[PAGE 2 ONWARDS]

I. **The applicant:** [insert applicant(s) names, date of birth, address, nationality]

II. **[IF RELEVANT] Relevant case:** [Insert application number and state of proceedings]

III. **State against which request is taken:** [Insert the Convention State this concerns]

IV. Factual background:

[provide a comprehensive summary of the facts (similar to a statement of facts in an application to the Court)]. Where available, provide evidence.

V. **Domestic proceedings:** [Insert information about domestic proceedings, including date and content of the judicial decisions and appeals and any other relevant information]

VI. The facts disclose a prima facie violation of INSERT RIGHTS

[set out brief legal submissions how the facts violate specific articles of the Convention. Treat this in a similar way to the 'statement of violations' in the application form but with the proviso that only a prima facie case here needs to be met]

VII. Without interim measures from the ECtHR there is an immediate risk of irreparable damage to the enjoyment of INSERT RIGHTS.

[This section should go into specific detail as to what violations of the Convention are at risk, and why the risk is immediate and the damage is irreparable. If possible, address these matters separately to ensure the legal test is met. For the irreparable test, outline what the consequences would be if the action/omission proceeds and why this cannot be undone (e.g. death or significant physical harm to applicant, real risk of torture/disappearance, irreversible liquidation of NGO and its effects etc]. For the immediate risk, set out when these consequences could realistically occur by. Set out here whether there are any domestic suspensive mechanisms available]

VIII. Request for application of Rule 39

[set out here the specific measures you are requesting from the Court. As noted in the guide, these should be written as if they are being communicated to the government concerned]

IX. Other matters

[set out here any other matters of relevant, in particular:

1) Whether an application form is attached to the request
2) If an application form is not attached, justify why this is the case
3) If an authority form is attached
4) If an authority form is not attached, why that is the case
5) Any other issues that the Court should be informed about]

X. List of annexes

[SIGNED AND DATED]

ANNEX 4: ADDITIONAL RESOURCES

Books and Articles

Dzehtsiarou, K. and Tzevelekos, V. 'Interim Measures: Are Some Opportunities Worth Missing?" (2021) European Convention on Human Rights Law Review, 2(1), 1-10. doi: https://doi.org/10.1163/26663236-bja10017

'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.

Leach, P. "Urgency at the European Court of Human Rights: New Directions and Future Prospects for the Interim Measures Mechanism?" in Rieter, E. (ed) Urgency and Human Rights (T.M.C Asser Press) (forthcoming) pp209-211

McCormick, P., "Risk of Irreparable Damage: Interim Measures in Proceedings before the European Court of Human Rights, A" (2009-2010) 12 Cambridge YB Eur Legal Stud 313.

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%3D65 or https://www.echr.coe.int/Documents/PD_interim_measures_ENG.pdf

ECtHR Factsheet on Interim Measures: https://www.echr.coe.int/Documents/FS_Interim_measures_ENG.pdf

ECHR Interim Measures Practical Information, https://www.echr.coe.int/Documents/Interim_Measures_ENG.pdf

ECtHR General Presentation 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 (see sub section on interim measures): https://www.echr.coe.int/Pages/home.aspx?p=reports&c=

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

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