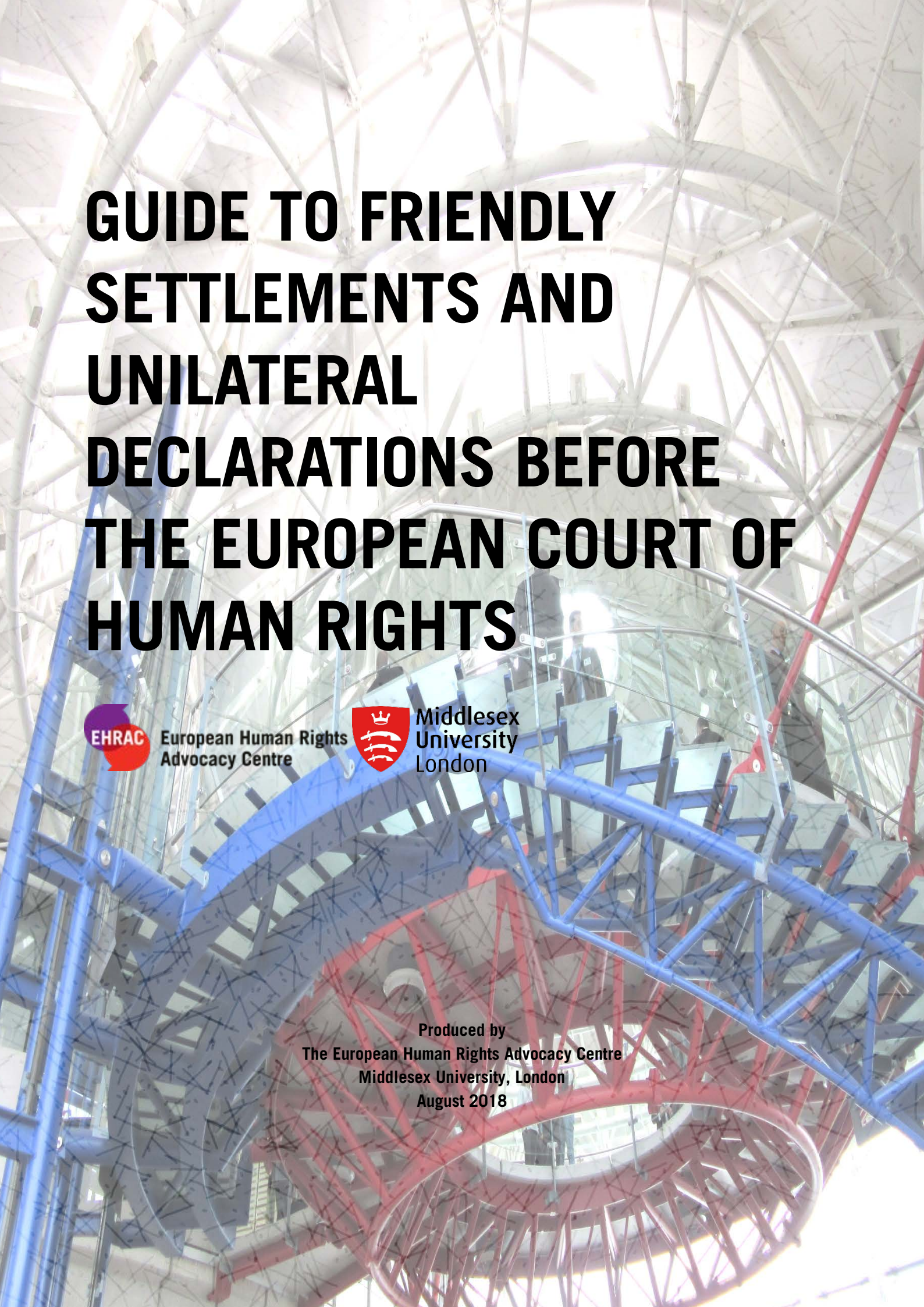
GUIDE TO FRIENDLY SETTLEMENTS AND UNILATERAL DECLARATIONS BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS



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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'), and the Rules of Court of the European Court of Human Rights ('the Rules of Court') in relation to friendly settlements and unilateral declarations (UDs), as well as the resulting procedures of striking out and restoration of cases. The guide summarises and builds on the material discussed in the EHRAC webinar on *"Friendly Settlements, Unilateral Declarations and Striking Out"*.[1]

The guide's aim is to provide lawyers and human rights defenders with insight into these ECtHR mechanisms, and act as a reference point should they be required to consider these mechanisms as part of the litigation process.

Friendly settlements and UDs are different procedures, yet are often connected: if a friendly settlement cannot be agreed then governments increasingly seek to make a UD. They have advantages and disadvantages for applicants, who should be advised on both when considering these mechanisms. For example, while they can have the benefit of significantly reducing the timeframe of proceedings, it may also take longer to ensure compliance with them (where, for example, a timeframe for undertakings given by the Government is not specified). It is common for applicants and lawyers to be hesitant about the two mechanisms due to such potential drawbacks; however, the well-judged use of either mechanism may achieve a quicker effective remedy for the applicant.

As the ECtHR now adopts a more proactive approach to facilitating settlement, it is also increasingly important for lawyers to be able to advise applicants on these procedures and the resulting avenues of striking out and restoration of cases.

Part One of this guide provides an overview of friendly settlements. Part Two deals with UDs. Part Three considers striking out and restoration of cases, and Part Four sets out some practical considerations when dealing with these mechanisms and procedures.

[1] See Annex 1 to this guide

PART 1. Friendly settlements

Friendly settlements are permitted under Article 39 ECHR and Rule 62 of the Rules of Court. As part of the litigation process, the ECtHR will ask the parties whether a friendly settlement can be agreed when a case is communicated (Article 39(1) and Rule 62), but a friendly settlement can be agreed at any point during the proceedings. The ECtHR will usually set a time limit for any proposals; however, any time limit set may be extended. If the case involves the ECtHR's 'well-established case-law', the ECtHR may of its own motion send settlement proposals to parties.

Pursuant to Article 39(2) ECHR and Rule 62(2) of the Rules of Court, friendly settlement proceedings are confidential and no offer or concession made in the framework of an attempt to secure a friendly settlement may be referred to or relied upon in the contentious proceedings. Any breach of confidentiality from the applicant's side may lead to the case being declared inadmissible on grounds of abuse of the right of application (see, for example, *Hadrabová and Others v. Czech Republic* (Nos. 42165/02 and 466/03, 25.09.07) and *Miroļubovs and Others v. Latvia* (No. 798/05, 15.09.09)).

If a friendly settlement is agreed, the parties should write to the ECtHR to confirm the terms of the settlement agreement and request that the case be struck out of the ECtHR's list of cases, pursuant to Article 39(3) ECHR. The parties are expected to stipulate in their friendly settlement declarations that they will not request that the application is referred to the Grand Chamber, and that the settlement constitutes a final resolution of the case. The ECtHR will verify that the settlement has been reached on the basis of respect for human rights (Article 39(1) ECHR and Rule 62(3) of the Rules of Court; see further section 3.1 below). In some cases, the ECtHR will continue the examination of the application after the friendly settlement has been agreed. For example, in *Ukrainian Media Group v. Ukraine* (No. 72713/01, 29.03.05) the ECtHR continued the examination of the case after a friendly settlement had been agreed in order to determine whether the respect for human rights test had been satisfied. Similarly, in *Paladi v. Moldova* (No. 39806/05, 10.07.07), the ECtHR continued the examination of the case as it was not convinced that the applicant had agreed to a friendly settlement.

Where a friendly settlement is accepted by the ECtHR, this will be recorded in a decision setting out a brief statement of the facts and of the solution reached, and the case will be struck out of the ECtHR's list (Article 39(3) ECHR and Rule 43(3) of the Rules of Court). The Committee of Ministers will then be responsible for overseeing the implementation of the terms of the agreed friendly settlement (Article 39(4) ECHR and Rule 43(3) of the Rules of Court).

It should be noted that Article 37(2) ECHR allows the ECtHR to restore a case to its list if the terms of a friendly settlement are not complied with (see also Part 3 below).

PART 2. Unilateral declarations (UDs)

2.1 How UDs work

Unilateral declarations have become an increasingly common mechanism used by governments within the ECHR system. In 2007, they were accepted by the ECtHR in relation to only 30 applications; by 2011 that figure had increased to 692 applications.[2] The latest statistics released by the ECtHR in January 2018 shows that in 2015, 2,970 UDs were accepted by the ECtHR; this figure fell in 2016 to 1,766, and significantly decreasing again in 2017 to 754 UDs.[3]

The use of UDs is governed by Rule 62A of the Rules of Court. There are also a number of judgments in which the ECtHR has identified principles relevant to its consideration of UDs. Further, Article 37(1)(c) ECHR provides the basis for the ECtHR to strike out a case from its list following acceptance of a UD (see further discussion of these provisions below).

Rule 62A(1)(a) of the Rules of Court states that:"[w]here an applicant has refused the terms of a friendly-settlement proposal made pursuant to Rule 62, the Contracting Party concerned may file with the ECtHR a request to strike the application out of the list in accordance with Article 37 §(1) of the Convention". Should a Contracting Party file such a request, they must at the same time specify the terms of the UD, which entails:

- Making a declaration clearly acknowledging that there has been a violation of the Convention in the applicant's case; and
- Giving an undertaking to provide adequate redress and, as appropriate, to take necessary remedial measures (Rule 62A (1)(b) of the Rules of Court).

Under Rule 62A(2) of the Rules of Court, where "exceptional circumstances so justify", a UD and a request to strike out a case may be filed before a friendly settlement is proposed (*Telegraaf Media Nederland Landelijke Media BV and van der Graaf v. Netherlands* (No. 33847/11, 30.8.16)).

A UD must be made within the (public) adversarial proceedings before the ECtHR, and with "due respect for" the confidentiality of any friendly settlement negotiations (Rule 62A(1)(c) of the Rules of Court).

The applicant is given an opportunity to submit comments on the UD.

2.2 ECtHR's consideration of UDs

In deciding whether to accept or reject a UD, the ECtHR may consider the following (non-exhaustive) list of factors as relevant:

- the nature of the complaints made;
- whether the issues raised are comparable to issues already decided by the ECtHR in previous cases;

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[2] ECtHR guidance on Unilateral declarations: policy and practice
[3] Analysis of ECtHR Statistics 2017

- the nature and scope of any measures taken by the respondent Government in the context of the execution of judgments delivered by the ECtHR in any such previous cases;
- the impact of those measures on the case in question;
- whether the facts are in dispute between the parties, and, if so, what *prima facie* evidentiary value is to be attributed to the parties' submissions on the facts, and to what extent;
- whether the ECtHR itself has already taken evidence in the case for the purposes of establishing disputed facts;
- whether in its UD the Government has made any admissions in relation to the alleged violations of the ECHR and, if so, the scope of such admissions and the manner in which it intends to provide redress to the applicant *(Tahsin Acar v. Turkey* (No. 26307/95, 06.05.03)).

In the case of *Tahsin Acar,* the ECtHR rejected the Government's UD because the facts were largely still in dispute between the parties, the Government did not provide any admission of responsibility or liability, the UD did not adequately address the applicant's alleged violations under the ECHR, and the Government did not undertake to carry out an ECHR compliant investigation into the 'disappearance' at issue.

The terms of the UD must also provide a sufficient basis for the ECtHR to find that respect for human rights does not require the continued examination of the application (see section 3.1).

Consequently, in *Gerasimov and others v. Russia* (No. 29920/05 et al., 01.07.14), a case which concerned the failure to implement domestic court judgments ordering the state provision of housing and other services, the Government acknowledged the violation and agreed to pay compensation. However, it did not undertake to address the wider issue in the case, which affected a large number of people, and for that reason the ECtHR rejected the UD. Likewise, in *Vyerentsov v. Ukraine* (No. 20372/11, 11.04.13) the ECtHR applied the respect for human rights test and rejected a UD because the issue at the core of the case, the adequacy of the legislative framework regulating the right to peaceful assembly, had not been previously considered by it in respect of Ukraine.

The ECtHR also rejected a UD proposed by the Cypriot Government in *Rantsev v. Cyprus and Russia* (No. 25965/04, 07.01.10), which concerned the death of the applicant's daughter in Cyprus. The proposed UD acknowledged violations of Articles 2, 3 and 4 ECHR and offered compensation. However, in light of the serious nature of the allegations of human trafficking and the paucity of case-law under Article 4 ECHR, the ECtHR rejected the UD.

As set out above, a UD may also be rejected on the grounds that the proposal does not provide just satisfaction. Therefore, in *Topčić-Rosenberg v. Croatia* (No. 19391/11, 14.11.13) the ECtHR found that although the Government had admitted violations of ECHR rights in their UD, the remedial action offered to the applicant was inadequate. As a result, the ECtHR rejected the UD.

If the ECtHR accepts the Government's UD, the case may be struck out of its list, even if the applicant wishes for the application to continue (Rule 62A(3)).[4]

PART 3. Striking out and restoration of cases

Pursuant to Article 37(1) ECHR, and Rules 43 and 62A(3) of the Rules of Court, the ECtHR may strike a case out of its list, in whole or in part,[5] in any of the following three situations.

Non-pursuit of an application (Art. 37(1)(a) and Rule 43)

If an applicant does not intend to pursue his/her application, the ECtHR may strike it out. In practice the ECtHR will provide the applicant with opportunities to reply to ECtHR letters in relation to the pursuit of their case, but it is becoming stricter on this issue. For example, according to figures released by the ECtHR in January 2011, 1,549 cases against Georgia concerning the Georgia-Russia conflict of August 2008 were struck out for failure to respond to the ECtHR's correspondence.[6] In *Peltonen v. Finland* (No. 27323/95, 28.9.00), the ECtHR considered that a period of six months during which time the applicant failed to respond to the ECtHR as sufficient to strike out the application.[7] It should be noted that in order to avoid the risk of an application being struck out for non-pursuit, it is important that legal representatives maintain contact with the applicant throughout proceedings. Indeed, in the case of *V.M. and others v. Belgium* (No. 60125/11, 17.11.2016), the ECtHR's Grand Chamber decided to strike out the applicants' case due to the failure to keep in contact with their legal representatives.

Resolution of the matter (Art. 37(1)(b) and Rule 43)

The ECtHR asks two questions to determine if the matter has been resolved. Firstly, it considers whether the circumstances of the violation(s) still apply to the applicant, and secondly whether the effects of a possible violation(s) ECHR as a result of those circumstances have been redressed. For example in *Sisojeva and others v. Latvia* (No. 60654/00, 08.01.07) the applicants had taken up residence in Latvia as Soviet nationals, but had become stateless after the break-up of the Soviet Union. They brought domestic proceedings to challenge the revocation of their residency status and lodged an application before the ECtHR alleging a violation of Article 8 ECHR. The case was struck out as the applicants were not at imminent risk of deportation and they had failed to respond for some years to the immigration services, which had explained the procedure the applicants needed to follow to regularise their residency. The ECtHR therefore decided that the matter had been resolved. In *Association of Real Property Owners in Łódź v. Poland* (No. 3485/02, 08.03.11), the ECtHR examined the legislative changes introduced following the pilot judgment in *Hutten-Czapska v. Poland* (No. 35014/97, 16.6.06), relating to legislative restrictions on the rights of landlords to charge rent for their properties and to recover maintenance costs. In such cases concerning systemic violations, the ECtHR will consider the position of the individual applicant, as well as the adequacy of the

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[4] See, for example, *Union of Jehovah's Witnesses of Georgia and others v. Georgia*, (No. 72874/01, 21.04.15); *Kalanyos and others v. Romania* (No. 57884/00, 26.4.07); and *Gergely v. Romania* (No. 57885/00, 26.4.07).
[5] See, for example, *Cēsnieks v. Latvia* (No. 9278/06, 06.03.12) where the Government admitted that it had violated Articles 3 and 13 and a friendly settlement was agreed between the parties on these matters. However, the Government denied that it had violated Article 6(1) and this aspect of the application was continued as the Parties could not agree on that point.
[6] *1,549 cases against Georgia concerning the Russia-Georgia conflict of August 2008 struck out by the European Court of Human Rights*, ECtHR Press release, 10.01.11.
[7] See also *Yakan v. Turkey* (No. 43362/98, 19.9.00).

remedial action taken in order to implement the general measures set out in the relevant pilot judgment. In *Association of Real Property Owners in Łódź v. Poland,* the ECtHR held that the statutory damages scheme implemented as a result of the decision in *Hutten-Czapska* meant that the matter was considered to be resolved.

Notably, as occurred in the case of *L and V v. Austria* (Nos. 39392/98 and 39829/98, 09.01.03), the ECtHR is unlikely to consider that a case has been resolved within the meaning of Article 37(1)(b) where a provision of criminal law, under which the applicant was prosecuted and convicted, has been subsequently repealed without affecting the applicant's conviction.[8]

Continued examination of an application is no longer justified (Art. 37(1)(c) and Rules 43 and 62A(3)

Article 37(1)(c) is broad and more difficult to define with precision. It provides the ECtHR with discretion to strike out cases which do not justify continued examination "for any other reason". In *Goryachev v. Russia* (No. 34886/06, 09.04.13), the ECtHR found that the applicant could have done more on the domestic level to pursue his case with diligence, and the case was struck out on the basis that the application was no longer justified. The ECtHR's reasoning in some cases struck out pursuant to Article 37(1)(c) suggest that there is a degree of overlap with Article 37(1)(b). For example, in *Victor Emmanuel of Savoy v. Italy* (No. 53360/99, 24.04.03), the applicant was the son of the last king of Italy, who complained of being banned by law from entering or living in Italy. The case was struck out following the amendment of Italian law and the applicant was permitted to return.

Article 37(1)(c) has also been invoked by the ECtHR as the basis for striking out cases pursuant to its acceptance of a UD *(Tahsin Acar v. Turkey*). This is confirmed by Rule 62A(3), which provides that the ECtHR may strike a case out of its list if it is satisfied that the UD offers a *"sufficient basis for finding that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue its examination of the application"*.

Where a case is struck out under Article 37, the ECtHR has discretion to award an applicant's costs under Rule 43(4) of the Rules of Court (*Pisano v. Italy* (No. 36732/97, 24.10.02)).

3.1 Respect for human rights test

It should be noted that in any of the three situations listed above the ECtHR may not strike a case out of its list if the 'respect for human rights' test is not satisfied. Article 37(1) states that the ECtHR *"shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."* This means that if the ECtHR finds that the circumstances of the case need to be examined in order to respect human rights, the ECtHR can continue to examine an application, even if the two parties have agreed on the terms of a friendly settlement. The justification for applying this test, as set out in case of *Konstantin Martin v. Russia* (No. 30078/06, 22.03.12), is that the ECHR system's mission, in addition to providing individual relief, is to *"determine issues on public policy grounds in the common interest, thereby raising the general standards of protection of human rights and*

[8] See also *Konstantin Markin v. Russia* (No. 30078/06, 22.3.12)

extending human rights jurisprudence throughout the community of Convention States" (para. 89).

In practice, however, the respect for human rights test has only been exceptionally used by the ECtHR to continue the examination of a case. In *Tyrer v. UK* (No. 5856/72, 25.04.78), involving the corporal punishment of a child, the ECtHR refused to strike out the case when the applicant wanted to withdraw. This was due to the fact that the case was considered to raise questions of a general character affecting the observance of the ECHR and required further examination. In *Tehrani and others v. Turkey* (No. 32940/08 et al., 13.04.10), one of the applicants informed the ECtHR that he wished to withdraw his case where he sought protection from deportation to Iran, where he had stated that his life would be in danger. The ECtHR refused to strike out the case and rejected the request due to doubts about the applicant's mental state.

3.2 Restoration of case after strike out

Article 37(2) ECHR provides the ECtHR with authority to restore an application to its list of cases if it considers the circumstances justify this. The restoration of cases is rare but may be necessary where governments have not fully discharged their obligations in relation to the implementation of a friendly settlement or UD confirmed by the ECtHR. The ECtHR has restored cases where:

- Two disabled applicants agreed a friendly settlement of €6,000 with the Serbian Government. As a result, the ECtHR struck out the case. The applicants subsequently informed the ECtHR that there had been difficulties with the effective implementation of the settlement (the monies were managed by the applicants' legal guardian, and only €400 had been spent on the applicants' subsistence). The Serbian Government failed to respond to these allegations and, as a result, the ECtHR restored the case to its list *(Katić v. Serbia* ((No. 13920/04, 07.07.09)).
- An application involving the disappearance of the applicant's brother was struck out after the ECtHR accepted a UD in which the Turkish Government declared that it would offer the applicant compensation and undertook to effectively investigate disappearances. However, the Turkish Government failed to observe its undertaking to investigate. As a result, the ECtHR restored the case *(Tahsin Acar v. Turkey*).
- The Croatian Government failed to comply with its obligations to investigate a killing (e.g. *Zarkovic and others v. Croatia*, No. 75187/12, 09.06.15).
- The Latvian Government failed to conduct a proper investigation into a complaint of alleged ill-treatment under Article 3 ECHR *(Jeronovičs v. Latvia*, No. 44898/10, 05.07.16).
- The Russian Government failed to pay compensation for non-pecuniary damage *(Aleksentseva and others v. Russia* (Nos. 75025/01 et al., 17.04.08)).

PART 4. The role of the applicant

Should the applicant receive proposals for a friendly settlement or UD, the matter should be considered carefully and in detail between the applicant and her/his legal representative and acted upon within the ECtHR's proposed time limits. The applicant has an extremely important role in negotiating (or making submissions about) the terms of any friendly settlement or UD, ensuring its implementation by the Government once any friendly settlement or UD has been approved by the ECtHR, and taking action should the Government fail to implement. The applicant should be advised of their role and her/his legal team should note that important considerations include:

4.1. Friendly settlement discussions and drafting

The specific wording of a friendly settlement can be crucial to future implementation. It is important to push for specific definitions in relation to the timing of the implementation as well as concrete and sufficient undertakings as to, for example, the extent or scope of an investigation. Ensuring that such detailed information is included in the friendly settlement provides a backstop should the Government fail to comply with its obligations under the friendly settlement or UD, and the applicant needs to request that the case be restored to the ECtHR's list of cases.

4.2. Once a friendly settlement or UD has been agreed

It is important that the applicant and her/his legal team are proactive in monitoring the Government's compliance with the friendly settlement or UD. The applicant should alert the Committee of Ministers and/or the ECtHR if the Government fails to comply with its obligations.

Proving the Government's non-compliance can be difficult. Therefore, it is important to contact the relevant domestic authorities beforehand to collect evidence of non-compliance which should be submitted to the Committee of Ministers and/or the ECtHR. There is limited case-law setting out how applicants have proved the non-compliance of a friendly settlement or UD entered into by a Government, and it is likely to be assessed on a case-by-case basis.

4.3. Restoring cases

The ECHR and Rules of Court do not prescribe the format for applying to the ECtHR to request that a case be restored. A letter would be the common way to communicate with the ECtHR to make such a request. It is important that in this letter, the applicant clearly states to what extent the Government has neglected its obligations of implementation.

Please see Annex 2 for an example of a letter to the Committee of Ministers/the ECtHR raising a complaint of non-implementation.

Conclusion

Friendly settlements and UDs can both be frustrating and difficult procedures to navigate, but it is important to remember that by being vigilant and proactive, they may provide satisfactory remedies for applicants.

The key point to take away from this guide is that the applicant has a key role to play in holding the Government accountable at every stage of these proceedings (for example, by being specific in the wordings of friendly settlements, as well as setting out specific time limits wherever possible).

In relation to UDs, it is crucial to bring up potential systemic issues raised in the case when commenting on a Government's proposed UD. It is important that the applicant maintains their position in relation to addressing potential systemic issues, even after a UD has been approved and the case has been struck out, as any information or communication with the Government can help build evidence of non-compliance at a later stage and assist in requests for the restoration of the case by the ECtHR.

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

Article 37 ECHR : Striking out applications

1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
   (a) the applicant does not intend to pursue his application; or
   (b) the matter has been resolved; or
   (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.

2. The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.

Article 39 ECHR : Friendly settlements

1. At any stage of the proceedings, the Court may place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the Protocols thereto.
2. Proceedings conducted under paragraph 1 shall be confidential.
3. If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.
4. This decision shall be transmitted to the Committee of Ministers, which shall supervise the execution of the terms of the friendly settlement as set out in the decision.

Rule 43 of the Rules of Court: Striking out and restoration to the list

1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases in accordance with Article 37 of the Convention.
2. When an applicant Contracting Party notifies the Registrar of its intention not to proceed with the case, the Chamber may strike the application out of the Court's list under Article 37 of the Convention if the other Contracting Party or Parties concerned in the case agree to such discontinuance.
3. If a friendly settlement is effected in accordance with Article 39 of the Convention, the application shall be struck out of the Court's list of cases by means of a decision. In accordance with Article 39 § 4 of the Convention, this decision shall be transmitted to the Committee of Ministers, which shall supervise the execution of the terms of the friendly settlement as set out in the decision. In other cases provided for in Article 37 of the Convention, the application shall be struck out by means of a judgment if it has been declared admissible or, if not declared admissible, by means of a decision. Where the application has been struck out by means of a judgment, the President of the Chamber shall forward that judgment, once it has become final, to the Committee of Ministers in order to allow the latter to supervise, in accordance with Article 46 § 2 of the Convention,

the execution of any undertakings which may have been attached to the discontinuance or solution of the matter.

4. When an application has been struck out in accordance with Article 37 of the Convention, the costs shall be at the discretion of the Court. If an award of costs is made in a decision striking out an application which has not been declared admissible, the President of the Chamber shall forward the decision to the Committee of Ministers.
5. Where an application has been struck out in accordance with Article 37 of the Convention, the Court may restore it to its list if it considers that exceptional circumstances so justify.

Rule 62 of the Rules of Court: Friendly settlement[9]

1. Once an application has been declared admissible, the Registrar, acting on the instructions of the Chamber or its President, shall enter into contact with the parties with a view to securing a friendly settlement of the matter in accordance with Article 39 § 1 of the Convention. The Chamber shall take any steps that appear appropriate to facilitate such a settlement.
2. In accordance with Article 39 § 2 of the Convention, the friendly-settlement negotiations shall be confidential and without prejudice to the parties' arguments in the contentious proceedings. No written or oral communication and no offer or concession made in the framework of the attempt to secure a friendly settlement may be referred to or relied on in the contentious proceedings.
3. If the Chamber is informed by the Registrar that the parties have agreed to a friendly settlement, it shall, after verifying that the settlement has been reached on the basis of respect for human rights as defined in the Convention and the Protocols thereto, strike the case out of the Court's list in accordance with Rule 43 § 3.
4. Paragraphs 2 and 3 apply, *mutatis mutandis*, to the procedure under Rule 54A.

Rule 62A of the Rules of Court: Unilateral declaration[10]

1. (a) Where an applicant has refused the terms of a friendly-settlement proposal made pursuant to Rule 62, the Contracting Party concerned may file with the Court a request to strike the application out of the list in accordance with Article 37 § 1 of the Convention.

(b) Such request shall be accompanied by a declaration clearly acknowledging that there has been a violation of the Convention in the applicant's case together with an undertaking to provide adequate redress and, as appropriate, to take necessary remedial measures.

(c) The filing of a declaration under paragraph 1 (b) of this Rule must be made in public and adversarial proceedings conducted separately from and with due respect for the confidentiality of any friendly-settlement proceedings referred to in Article 39 § 2 of the Convention and Rule 62 § 2.

2. Where exceptional circumstances so justify, a request and accompanying declaration may be filed with the Court even in the absence of a prior attempt to reach a friendly settlement.

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[9] As amended by the Court on 17 June and 8 July 2002 and 13 November 2006.
[10] Inserted by the Court on 2 April 2012.

3. If it is satisfied that the declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue its examination of the application, the Court may strike it out of the list, either in whole or in part, even if the applicant wishes the examination of the application to be continued.
4. This Rule applies, *mutatis mutandis*, to the procedure under Rule 54A.

Annex 2: Additional Resources

Books

'Friendly Settlement' (paragraphs 2.155-2.164) in Leach, P. (2017) *Taking a Case to the European Court of Human Rights,* 4th edition, Oxford: Oxford University Press

'Striking Out (and Unilateral Declarations)' (paragraphs 2.165-2.177) in Leach, P. (2017) *Taking a Case to the European Court of Human Rights,* 4th edition, Oxford: Oxford University Press

'Friendly Settlement and Strike Out (Articles 37-38)' in Erdal, U. and Bakirci, H. (2006) *Article 3 of the European Convention on Human Rights: A Practitioner's Handbook*, Switzerland: World Organization against Torture (OMCT)

Keller, H., Forowicz, M. and Engi L. (2010) Friendly Settlements before the European Court of Human Rights: Theory and Practice, Oxford: Oxford University Press

Official ECtHR guidance and statistics

The ECtHR, (2017) *Analysis of statistics 2016,* Council of Europe: http://www.echr.coe.int/Documents/Stats_analysis_2016_ENG.pdf

The ECtHR, (2012) *Unilateral declarations: policy and practice,* Council of Europe: http://www.echr.coe.int/Documents/Unilateral_declarations_ENG.pdf

Webinar

Leach, P. (2016) 'Friendly Settlements, Unilateral Declarations and Striking Out' EHRAC, 15 November, see recording at: http://ehrac.org.uk/resources/friendly-settlements-uds and summary at: http://ehrac.org.uk/news/ehrac-webinars-mechanisms-under-the-rules-of-court/

Relevant EHRAC cases and resources

Okroshidzeebi v. Georgia (No. 60596/09, 11.12.12)
Gamtsemlidze & others v. Georgia (No. 2228/10, 01.04.14)
Studio Maestro & others v. Georgia (No. 22318/10, 23.07.15)
Mirtskhulava v. Georgia (No. 18372/04, 30.07.15)
Bekauri and others v. Georgia (No. 312/10, 08.10.15)
Menabde v. Georgia (No. 4731/10, 05.11.15)
Egiazaryan v. Georgia (40085/09, 17.12.15)
Tedliashvili and others v. Georgia (No. 64987, 17.12.15)
Asatiani and others v. Georgia (No. 42174, 04.05.17)
Zurashvili v. Georgia (52168/12, 12.09.17)
Volkov v. Ukraine (JS) (21722/11, 06.02.18)

Article: Friendly settlements and unilateral declarations at the European Court of Human Rights
Article: Police and prison abuses in Georgia: European Court asked to re-open cases due to failure to investigate

Example letter raising complaint of non-compliance with friendly settlement or unilateral declaration and requesting restoration of a case to the ECtHR's list

In January 2018, EHRAC and our partner NGO made an application to the ECtHR to restore four police and prison abuse cases to its list. All four cases had been struck out by the ECtHR in 2015 through either friendly settlements or unilateral declarations. A redacted version of this request can be downloaded from our website here: http://ehrac.org.uk/wp-content/uploads/2018/08/Annex-2-Restoration-of-applications-to-the-ECtHR.pdf

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