Deliberation and Drafting: European Court of Human Rights (ECtHR)
Helen Keller, Corina Heri

Subject(s):
Human rights — Deliberation and drafting — Case management — Judges — Concurring, dissenting, separate, joint or individual opinions — Registry

Published under the direction of Hélène Ruiz Fabri, with the support of the Department of International Law and Dispute Resolution, under the auspices of the Max Planck Institute Luxembourg for Procedural Law.
A. Introduction

1 The European Court of Human Rights (‘ECtHR’ or ‘Court’) (→ European Court of Human Rights), based in Strasbourg, France, and tasked with monitoring State compliance with the European Convention on Human Rights (1950) (‘ECHR’ or ‘Convention’), is the most prolific regional human rights body in the world. It hears applications from individuals against Member States of the Council of Europe, as well as the more rare inter-State applications. As of early 2018, the Court had decided more than 750,000 applications, and about 60,000 more are pending before it.

2 The Court’s 47 judges sit in a number of formations—from the individual judge, who issues the so-called single judge decisions, to the 17-judge Grand Chamber. Each formation has its own procedural particularities regarding deliberation and the drafting of judgments and decisions. The present entry outlines the Court’s organization (section B), the deliberation procedures used by its various formations (section C), and the structure of the Court’s judgments and decisions, including its practice concerning separate opinions (section D). This entry also describes a number of recent measures taken to improve the Court’s efficiency (section E) and touches on particularities of inter-State proceedings (section F).

B. Organization of the Court

1. An Overview of the Judicial Formations

3 The permanent Strasbourg Court was established in 1998, after the adoption of Protocol No 11, which restructured the Convention machinery, in 1994. Today, the Court is made up of 47 judges, one from each Member State of the Council of Europe (Art 20 ECHR), and has a president and one or two vice-presidents, who are elected by the judges themselves in a plenary session (Art 25 (a) ECHR). Judges serve for nine-year, non-renewable terms (Art 23 (1) ECHR). They do not represent their home States at the Court, and instead are expected to perform their role in an individual capacity and thus in an impartial way (Arts 21 (2) and 26 ECHR).

4 The process for deliberation and the drafting of judgments and decisions varies depending on the judicial formations into which the judges are arranged. The two main formations to be discussed here are the Sections, from which Chambers are formed, and the Grand Chamber, but the Court also sits as a single judge and as a three-judge Committee (Art 26 ECHR).

5 The judges are (as of 2018) divided into five Sections, each with its own president and vice-president. Section presidents are elected by the plenary Court (Art 25 (c) ECHR), and Section vice-presidents are elected by the Sections themselves, usually on the basis of their time in office (their so-called ancienneté).

6 The Sections are administrative entities made up of either nine or ten judges, and Chamber formations of seven judges are drawn from the individual Sections. Sections are formed by the president of the Court, and set up for a fixed period of time by the plenary Court (Art 25 (b) ECHR). The Chamber formation issues decisions on the admissibility of cases, as well as judgments on their admissibility and merits. The president ensures that the makeup of each Section is balanced according to the regional origin of the judges involved, their language abilities, and their gender. Each Section deals with at least one of the Member States from which the most cases come before the Court—as of early 2018, the six highest case-count States were Romania, Russia, Turkey, Ukraine, Italy, and Hungary, which were responsible, respectively, for 18 per cent, 14 per cent, 13 per cent, 13 per cent,
8 per cent, and 6 per cent of the Court’s caseload (ECtHR, Analysis of Statistics 2017, 8)—as way of ensuring a fair division of labour.

7 The Grand Chamber formation consists of 17 judges, including the Court’s president and vice-presidents, the presidents of the five Sections, the national judge (or an ad hoc replacement if necessary (Art 26 (5) ECHR; Rule 29 of the Rules of the European Court of Human Rights (‘Rules of Court’ or ‘RC’)), and other judges selected by the drawing of lots (Rule 24(2)(e) RC). These lots are drawn in accordance with a procedure laid down by the Plenary Court, which aims to ensure a geographically balanced composition of the Grand Chamber and adequate representation of the different legal systems that exist in the Member States (Rule 24 (4) RC). In practice, this means that the lots are drawn from a number of ‘baskets’ which are divided up so as to ensure a balanced formation.

8 The Grand Chamber examines applications that are referred to it after a Chamber judgment in the same case, as well as cases that are relinquished to it by the Chamber without a judgment (Arts 30 and 31 ECHR). Where a Chamber formation previously heard a case, the national judge and the Section president are the only judges who sit in the Grand Chamber formation in the same case (Rule 24(2)(d) RC). Where a case was relinquished, the entire original Chamber formation is included in the Grand Chamber formation (Rule 24(2)(c) RC).

9 In the single judge formation (Art 27 ECHR; Rule 27A RC), which was introduced by Protocol No 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention (‘Protocol No 14’) to address the Court’s backlog, single judges individually render inadmissibility or strike-out decisions for a country to which they are assigned by the president of the Court. To distribute the single judges’ workload fairly, there is often more than one single judge for the highest case-count countries. To balance this, an individual single judge may also be responsible for multiple lower case-count countries. The single judge is never responsible for the State in respect of whom he or she has been elected (Art 26 (3) ECHR; Rule 52A(2) RC).

10 Single judge decisions declaring an application inadmissible are taken by the responsible judge on his or her own where a strike-out is possible ‘without further examination’, and are final (Art 27 (1) and (2) ECHR; Rule 52A (1) RC). The single judge’s decision is not made public, but is notified to the applicant by letter (Rule 52A (1) RC); since mid-2017, this letter has included summary reasoning (cf para 83 below). Where a single judge finds that a case merits further examination, he or she forwards the case to the Committee or the Chamber (Art 28 ECHR). The introduction of the single judge procedure has allowed the Court to significantly reduce some of its backlog: in 2015, single judges declared 36,300 applications inadmissible; in 2016, they did the same in 30,100 applications (ECtHR, Annual Report 2016, 181).

11 The three-judge Committee (Art 28 ECHR; Rule 27 RC) renders inadmissibility decisions where these are possible ‘without further examination’, like the single judge, but can—since the introduction of this function via Protocol No 11—additionally issue judgments on the admissibility and the merits of a case based on the Court’s well-established case law (‘WECL’) (Art 28 ECHR, introduced by Protocol No 14). Like single judge decisions, these judgments and decisions are final (Art 28 (2) ECHR). The three judges in a given Committee are drawn from the same Section, and decide cases by unanimity (Rule 53 (1) RC). If the three Committee judges can reach a unanimous decision on every aspect of a case (thus, the admissibility, merits, and just satisfaction aspects) based on the Court’s WECL, they issue a short judgment on the matter (Council of Europe, Explanatory Report to Protocol No 14, para 69). If they cannot reach an anonymous decision, the Chamber procedure applies. The Committees’ judgments are made public, as
are roughly a third of their decisions, and by early 2018 almost 15,000 of these judgments and decisions had been published.

12 The fact that three-judge Committees can also issue judgments on the basis of the Court’s WECL has meant that many cases which would once—before the introduction of Protocol No 14—have come before a Chamber are now decided by only three judges. This, like the single judge procedure, represents an efficiency gain for the Court.

13 The WECL procedure was originally understood by the Court as inapplicable in cases of severe human rights violations, thus cases concerning violations of Articles 2 and 3 ECHR, which enshrine the right to life and the prohibition of torture and inhuman and degrading treatment, respectively. In these cases, because of the gravity of the issues at stake, the Court considered it necessary to issue detailed judgments. However, this has recently changed. Thus, for example, in 2017 the Court found a violation of Article 2 ECHR by Russia vis-à-vis an individual who died of tuberculosis in prison (Ibragimov v Russia, 2017). Cases such as this one came before the Chamber formation until 2016, but because the Court’s case law in these matters is exceedingly clear and the judgments issued in such cases are very similar, this type of case is now also considered to fall under the WECL procedure. Applying the WECL procedure in such cases may prove beneficial to applicants. Thus, receiving a less expansive judgment establishing a Convention violation in a shorter amount of time can be helpful in many cases, for example where applicants allege the disappearance of a relative and seek the opening of a domestic investigation (cf Stabrovska v Ukraine, 2016).

2. The Registry

14 The Court’s judicial formations are supported by the Registry (Art 24 ECHR), which processes and prepares cases for adjudication. The organization of the Registry mirrors that of the Court to a significant extent. Thus, there are five Section Registries corresponding to the five Sections of the Court (Rule 18 RC), each with a Section Registrar and Deputy Section Registrar (Rule 18 (2) RC). The Registry also has a Registrar and a Deputy Registrar, who—like the president and vice-presidents of the Court—are elected by the plenary Court (Art 25 (e) ECHR).

15 The institution of the single judge is reflected in the makeup of the Registry in the form of the non-judicial rapporteurs responsible for individual States, who prepare the single judge decisions for judges to review (Rule 18A RC). These non-judicial rapporteurs are usually experienced law clerks who must speak the language of the country concerned, as they are required to read the original submissions by the applicant and any other relevant foreign-language documents. These individuals must be—and in practice are—highly competent, given that the single judge must wholly trust them to read the foreign-language documents in question and provide correct information about them.

16 The Jurisconsult (→ Jurisconsult: European Court of Human Rights (ECtHR)), who is also a member of the Registry, is responsible for ensuring that the Court’s case law is consistent, and provides information and opinions in this regard to the judges (Rule 18B RC). In other words, the Jurisconsult is tasked with making sure that the Court does not contradict itself or accidentally depart from its own case law. The Jurisconsult is in charge of the Grand Chamber Registry, the research and library division, the case law information and publications division, and the just satisfaction division of the Registry (ECtHR, Organisation Chart).
In total, the Registry has 33 case-processing units made up of lawyers and administrative staff, along with technical staff and translators. All told, the Registry currently includes 640 staff members (ECtHR, ECHR Registry). Cases are allocated to Registry units according to the members’ language abilities and their knowledge of the domestic legal system relevant to a case. The need to task Registry members familiar with the relevant language and legal system with a case stems from the fact that the national judge may not necessarily be the judge rapporteur (Judge-rapporteur) on the case in the Chamber proceedings, and is never the judge rapporteur in the Grand Chamber proceedings. In addition, applicants may initially—before an application is communicated to the respondent State—address the Court in any of the languages of the Council of Europe Member States (Rule 34 RC).

The Registry also has a Common Services Directory, which includes a budget and finance office, language divisions, and various other administrative divisions central to the functioning of the Court, as well as a Filtering Section, which screens new applications from the five highest case-count Member States—Russia, Turkey, Romania, Ukraine, and Poland—and sifts out cases to be passed to the single judge, Committee, or Chamber formations (ECtHR, Filtering Section).

In the past few years, an initiative has emerged to promote the specialization of Registry lawyers on issues that frequently come before the Court. These lawyers are grouped into special-focus hubs and take an advisory role in the drafting process, with the aim of ensuring greater standardization of the case law. In 2016, a first such hub was created to focus on issues concerning asylum and migration (ECtHR, The Interlaken Process and the Court: 2016 Report, para 12).

3. Communication of Cases

The communication of a case to the respondent State is particularly important in the Chamber proceedings. This is due to the fact that the communication defines the scope of the case (l’objet du litige) before the Court. The president of the relevant Section makes the decision regarding the issues to be communicated. Whatever issues are not communicated—because the president declares them to be out of time, manifestly ill-founded, or inadmissible for some other reason—are excluded from the scope of the case from that point onward. Inadmissibility decisions are often not communicated at all (Admissibility: European Court of Human Rights (ECtHR)).

All issues declared inadmissible by the Chamber will not be part of the objet du litige if a case goes to the Grand Chamber. In other words, the Grand Chamber cannot reverse the Chamber’s findings on the scope of a case; these are final. The decision concerning communication can therefore have a decisive influence on a case’s scope.

In communicating a case, the Court may choose to apply the immediate simplified communication procedure, which is often referred to internally simply as ‘IMSI’ (an acronym derived from the words immediate and simplified) (see below paras 81–82). This is a measure that accelerates the communication of cases and reduces the amount of preparatory research done by the Court by shifting the responsibility for this work to the respondent State.

C. Deliberations at the Court
Deliberations at the Court allow the judges in a given formation to express their opinions about a case, to vote on the issues at stake, and to discuss the text of the decision or judgment under preparation. The deliberations take place in one of the two working languages of the Court, thus either English or French (→ Working language). Judgments and decisions are also issued in one or both of these languages (→ Translation of judgments: European Court of Human Rights (ECtHR)).

The type of formation concerned informs the procedure of deliberation and drafting. Thus, the single judge procedure involves no deliberation, as the decision issued in such cases is drafted by the non-judicial rapporteur and approved by the single judge. In general, the non-judicial rapporteur makes a suggestion as to how a single-judge case should be decided, and the single judge approves this recommendation. Dinah Shelton has observed that some judges have reported the impression that they are simply expected to ‘rubber-stamp’ the Registry’s decisions (see Shelton, 2016). Nevertheless, it must be reiterated that a single judge decision is based on the collaboration between the single judge and the non-judicial rapporteur assigned to the case in question. If the single judge is not sure about a case, he or she can contact the non-judicial rapporteur in order to receive an explanation of the submissions made in the national language. As noted above, the element of trust in the non-judicial rapporteur is therefore particularly important (cf para 15 above). If the single judge is still not sure about how to decide a case—not due to a lack of trust in the non-judicial rapporteur, but because the outcome is not clear—he or she will send the case to the three-judge Committee or even directly to the Chamber formation.

Committee cases are usually not submitted to a vote. Instead, they are decided by circular: the judges receive the draft judgment or decision prepared by the relevant case lawyer within the Registry—an experienced lawyer who knows the legal system and speaks the language of the country concerned—and are notified of a deadline by which they can voice their agreement or disagreement with this text. Thus, the Committee usually holds no meetings or deliberations unless one of the three judges requests this, for example because he or she does not agree with the outcome proposed in the draft or wishes to change the reasoning employed, or because he or she wants to make an amendment to the findings under Article 41 ECHR. If the Committee judges reach an agreement, they will issue their judgment or decision. If they are unable to do so, the case will proceed to the Chamber formation.

The Court’s two larger formations—the Chamber and the Grand Chamber—which involve more judges and address more complex legal issues than the single judge or the Committee, require more complex deliberation and drafting procedures. The following will focus on the working methods of these two formations.

These two formations must be considered separately, because there are some extensive differences regarding the deliberation and drafting practices between them. Thus, before deliberations in the Chamber formation commence, the judges receive a thick file from the Registry that already contains a draft judgment or decision. When the Chamber meets—always on a Tuesday—the judges therefore commence their deliberations with a concrete proposal for resolving the case before them, which is then deliberated upon. In the Grand Chamber, by contrast, a draft judgment or decision is never available when the judges begin deliberating. Instead, the judges commence their work on the basis of the note by the judge rapporteur and the various reports prepared by the Registry (cf para 36 below).
The proceedings in the Chamber also follow a less rigid process than in the Grand Chamber. Thus, in the Grand Chamber, there is an unwritten rule that a ‘regular’ judge—i.e. not the president, the national judge, or the judge rapporteur—can take the floor only once. In the Chamber, by contrast, the proceedings are less ordered, and judges can choose to take the floor two or three times. The following must be read with these differences, and those additional ones outlined below, in mind.

1. Background on the Rules of the Court

The Rules of the Court, which are adopted by the plenary Court (Art 25 (d) ECHR; International Courts and Tribunals, Rules and Practice Directions (ECJ, CFI, ECtHR, IACtHR, ICSID, ITLOS, WTO Panels and Appellate Body)), provide the framework for the Court’s deliberations both in its Chamber and Grand Chamber formations. The Rules stipulate that the deliberations of the Court will be private and secret (Rules 3 and 22 (1) RC). Deliberations take place with only the judges in a given formation present, along with the Registrar and other Registry officials or interpreters whose assistance is considered necessary, along with other individuals—for example researchers—who may occasionally be admitted by special decision of the Court (Rule 22 (2) RC).

Before a vote is taken on any matter, judges may state their opinions on it; the president has the power to request them to do so (Rule 22 (3) RC). Voting takes place by show of hands and votes are decided by a majority of judges present; ties are broken by the president of the Court or of the Section in question (Rule 23 (1) RC). Judges may not abstain from a vote concerning the admissibility or merits of a case (Rule 23 (2) RC). It is also possible for the president to opt for a roll-call vote, with judges voting one by one in reverse order of precedence (Rule 23 (3) RC).

There are some notable differences in the voting practices of the Chamber and the Grand Chamber, as explored below. These stem from the fact that the judges of the Chamber, at the first deliberation, already have a draft judgment or decision in hand, and those of the Grand Chamber do not. Thus, Grand Chamber judges must, at their first deliberation, signal how they propose to resolve the case before them. By contrast, in the Chamber, if judges do not voice disagreement with the draft judgment or decision provided to them, they are presumed to be in agreement with this draft, if not entirely then at least in a general sense. Indeed, there is an informal rule requiring Chamber judges who are fundamentally in disagreement with a draft judgment or decision to notify their colleagues of this a few days before the deliberations take place. Such notification, which takes place by e-mail, allows the other judges—and especially the judge rapporteur—to adequately prepare themselves for the deliberations.

Interim measures under Rule 39 RC may be indicated at the request of a party to a case, any other person concerned, or of the Court’s own motion. In practice, the Court has only indicated interim protection ex officio in a handful of cases (cf. Öcalan v Turkey, 2005, para 5), and there has been no practice concerning requests by third parties (Keller and Marti, 2013, 331). Because the indication of interim protection can sometimes be exceedingly urgent, the Court has a dedicated fax number for receiving such requests, and requests sent before 4:00pm local time on weekdays are attended to on the same day (Provisional measures: European Court of Human Rights (ECtHR)). This means that such requests cannot be deliberated upon by whole Chambers. Therefore, while the decision to indicate such measures can be taken by a Chamber as a whole, it is usually taken by a Section vice-president (Rule 39 (1) and (4) RC). At the Court, a duty judge—usually a Chamber vice-president—is constantly available to receive Rule 39 requests. Upon receiving a request for interim measures, the duty judge consults with the national judge, and then decides whether to grant the Rule 39 protection. Generally speaking, the duty
judge must be available around the clock, and must be prepared to quickly make often rather difficult decisions.

2. Scope of the Case

33 The judges deliberate on the issues communicated to the State—which form the scope of the case (paras 20 and 21)—on the basis of the submissions of the parties. The parties’ submissions can be very important at this stage, and so they are always distributed to the judges before the deliberation, both in the Chamber and Grand Chamber formations. The only exception applies in Chamber proceedings where an applicant has made submissions in his or her native language, where this language is not an official language of the Court.

34 In preparation for the Grand Chamber deliberations, judges are also provided with a note from the judge rapporteur—the so-called rapporteur’s note—which is prepared with the assistance of the Registry. This usually serves as a source of background information and provides an overview of the existing case law as well as an indication of where modifications of the jurisprudence may be necessary.

35 The national judge may prepare a similar note, but this is done without the Registry’s support. The content of such a note should generally be limited to the relevant aspects of the national law and practice. However, in the Chamber, a national judge’s note may also provide other arguments, for example urging the Chamber to refer a case to the Grand Chamber. In the Grand Chamber, the national judge’s note should be limited to the domestic law and practice. As the national judge can never serve as the judge rapporteur in the Grand Chamber formation, his or her note can serve as an opportunity to determine whether the judge rapporteur has correctly understood the domestic law and practice.

36 The file provided to the judges may also include a comparative law research report prepared by the Registry’s research division and compiled with input from all of the judges whose home legal systems are under discussion. Such a report is usually provided in the Grand Chamber formation and is possible—although not necessary—in the Chamber formation as well. These reports are compiled after a concrete question—for example about the domestic approach to a given question, or the national implementation of a given rule—is asked to the Research Division. The request for such a report is made by the judge rapporteur. The research division then collects the relevant information, often with the assistance of the Swiss Institute of Comparative Law, an independent body based in Lausanne. Once the report is finished, it is circulated among those judges whose home legal systems have been examined, who verify the information compiled. If questions of international law are involved, the Registry usually also prepares an international law report, and there may be reports on the Court’s own case law where this is considered necessary. These latter reports provide summaries and analyses of the Court’s past jurisprudence on the matter at hand.

37 In addition, the Court may—both in the Chamber and the Grand Chamber proceedings—receive third party interventions (Art 36 ECHR; Rule 44 RC). A third party intervention (→ Intervention: European Court of Human Rights (ECHR)) may be submitted by any State whose national is an applicant before the Court (Art 36 (1) ECHR) or by the Council of Europe Commissioner for Human Rights (Art 36 (3) ECHR). The president of the Court may also grant leave to intervene to any other State or person—or, in practice, institution—who wishes to submit a third party intervention (Art 36 (2) ECHR). The briefs submitted by the third party interveners are distributed to the parties and to the judges in the relevant
formation. If an oral hearing takes place, the third party interveners may be granted leave
to present their arguments orally (Rule 44 (1) (a), (2), and (3) RC).

3. **The Practice of Drafting and Deliberations in the Chamber**

38 Cases allocated to a Section of the Court are assigned to one particular judge, who
takes the role of judge rapporteur, and to an administrative unit of the Registry. Judge
rapporteurs are designated by the president of the relevant Section (Rule 49 (2) RC), and
their identity is strictly confidential. Together, the judge rapporteur and the registry
prepare a draft judgment in the case, which is then circulated to the remaining judges in
that particular Chamber formation.

39 This drafting process is informed by the observations of the Jurisconsult, who draws up
a document concerning the Court’s case law to support the preparation of the draft. Such a
document is compiled only regarding cases before a Chamber formation. The Jurisconsult’s
observations, which are prepared and distributed a few days before the deliberations take
place, serve to ensure the consistency of the Court’s case law.

40 After having received the draft, the judges meet to deliberate. Deliberations in the
Chamber are led by the Section president, who first gives the word to the judge rapporteur
and then to the national judge. The Section president has some discretion concerning the
length and depth of the presentation of the draft (cf Arold, 2007, 63, n 205). After this, all of
the remaining judges in attendance are allowed to express their opinions on the draft. The
order in which these judges speak is not fixed, and judges may take the floor more than
once. Their comments are followed by a vote, on the basis of which the Registry amends the
draft. Substitute judges—thus, the remaining judges of a Section who are not selected to
make up a given Chamber formation (Rule 26 RC)—generally cannot vote in the Chamber
proceedings. This is due to the fact that they may be part of a later Grand Chamber
formation tasked with examining the same case, wherefore they should not influence the
decision-making at the Chamber stage.

41 At this point, it is possible for the Chamber to opt to hold a hearing. Although the
general rule is that there is no hearing in Chamber proceedings, it is possible to hold one
where the facts of the case are unclear and there is a need to obtain more information.
Chamber hearings are public unless exceptional circumstances justify a closed hearing
(Rule 63 RC). Thus, for example, in two Polish rendition cases decided in 2014, the
Chamber formation held both a public and, at the request of the Government, an *in camera*
hearing (*Husayn (Abu Zubaydah) v Poland*, 2014, paras 8–13; *Al Nashiri v Poland*, 2014,
paras 10–15).

42 The Chamber may also, at this point, decide to refer a case to the Grand Chamber
without issuing a judgment (Art 30 ECHR). This applies where a case raises a ‘serious
question’ of interpretation, or a question that may, in its resolution, bring about a result
inconsistent with the Court’s case law.

43 The Chamber, like the Grand Chamber, reaches a decision or judgment by a simple
majority vote. There is usually no second deliberation in the Chamber proceedings, as there
is often no need for one: generally, the Chamber judges approve the draft judgments or
decisions before them.

44 In the event that the judges in the majority are unable to reach an agreement on the
text of a draft judgment or decision in the first deliberation, there are two main ways for the
Court to proceed. If the disagreement concerns the formulation of certain crucial
paragraphs of the draft, the Court may apply the so-called pigeonhole procedure. This
procedure, which is outlined below (see below paras 60–62), is designed to involve the
Registry and facilitate the search for formulations that are mutually agreeable to the majority. In the unusual event that the majority of the judges in a Chamber formation does not agree with the finding made in a draft judgment, cases may also be adjourned to allow for the preparation of a new draft. Under these circumstances, it is mandatory to hold a second round of Chamber deliberations.

4. The Practice of Drafting and Deliberations in the Grand Chamber

Wednesday at the Court are reserved for Grand Chamber work. Cases come before the Grand Chamber either because one of the parties requested a referral after a Chamber judgment (Art 43 ECHR) or because a Chamber formation relinquished the case (Art 30 ECHR). In case of a request for referral under Article 43 ECHR, a five-judge Grand Chamber Panel examines the request and determines whether it raises a serious question of the Convention’s interpretation or application, or ‘a serious issue of general importance’; if so, the request is accepted and the case is referred to the Grand Chamber (Art 43 (2) and (3) ECHR). A relinquishment, by contrast, is decided by the Chamber tasked with deciding a case and takes place where the Chamber determines that the case in question raises a serious question of the Convention’s interpretation or application, or where there is a potential that the Chamber’s findings will conflict with the Court’s existing case law (Art 30 ECHR). Either of the parties to a case can, according to Article 30 ECHR, veto the referral, although this will no longer be possible once Protocol No 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms (‘Protocol No 15’) enters into force (Art 3 Protocol No 15).

The process of deliberation and drafting in the Grand Chamber is similar to that before the Chamber, but with some important differences. For one, the Grand Chamber formation is made up of 17 judges, plus at least three substitutes in case a judge should be unable to carry on in the formation (Rule 24 (1) RC), instead of the seven judges who form a Chamber, and the president of the Court is in charge of this formation. Grand Chamber cases also regularly—though not necessarily—involve a public hearing, which allows the applicant as well as the respondent State and eventual third-party interveners to present oral arguments in addition to their written submissions and to engage with the arguments of the other parties directly. Judges can interact with any of the persons appearing before them in these proceedings by asking questions (Rules 62 (2) and 71 (1) RC); the parties then receive some time to prepare their answers before responding. Furthermore, again, while the Chamber deliberations commence on the basis of a draft judgment or decision, the Grand Chamber does not begin to prepare its draft until after its first deliberation.

Like in the Chamber proceedings, each case before the Grand Chamber is assigned to a judge rapporteur. However, before the Grand Chamber, the national judge is never the rapporteur. The same is not necessarily true for the Chamber, as noted above, although the Court may sometimes choose not to make the national judge the rapporteur in politically sensitive cases. The members of the Grand Chamber are usually selected by the drawing of lots mere days after the Grand Chamber is seized in a case, and work on the case begins almost right away, with a first orientation meeting between the case lawyer, the Registrar, and the judge rapporteur.

The judge rapporteur is appointed after the president has determined the composition of the Grand Chamber formation (see above para 7). The president selects one judge from the formation to act as the judge rapporteur. The president does so by considering the backgrounds of the judges and their language skills—thus, if a case file is predominantly in French, the judge in question should have an excellent command of that language. In addition, the president may consider the expertise of the judges: if a case involves questions
From: Oxford Public International Law (http://opil.ouplaw.com). (c) Oxford University Press, 2015. All Rights Reserved.date: 19 October 2019

related to specific legal disciplines, the president may select a rapporteur who has a particular background in the field concerned.

49 The Grand Chamber proceedings before the whole 17-member formation begin, in most cases, with a public hearing. This is another difference between the Chamber and Grand Chamber: while hearings are exceptional before the Chamber, they are the rule before the Grand Chamber. However, there are exceptions to this rule, and the judge rapporteur can request that no hearing be held where this is not considered necessary. In practice, there have been instances in which the Grand Chamber has opted not to hold a hearing. It did this, for example, in the Sabri Güneş v Turkey case, where the only real issue before the Court, the calculation of the six-month rule, did not require an oral hearing (Sabri Güneş v Turkey, 2012, para 7).

50 The Grand Chamber judges retire immediately after a hearing to begin their first round of deliberations. As Grand Chamber cases are often legally challenging, it can be necessary to hold several deliberation sessions, although two rounds prove sufficient in most cases. Like in the Chamber, the deliberations begin with the judge rapporteur and the national judge taking the floor to express their arguments and opinions. Then, all the remaining judges voice their opinions. The process here differs from the Chamber proceedings, however, in that judges who do not have a special function in the Grand Chamber formation—thus, who do not hold the office of the president, have not been assigned to serve as the judge rapporteur and are not the national judge—can take the floor only once in this deliberation. This means that judges cannot rebut the arguments advanced by colleagues whose turn to speak comes after their own. Thus, judges may strategically choose when to take the floor. This rule does not apply to the national judge and the judge rapporteur, who may speak again at the end of the deliberation, and the president of the Court, who leads the deliberation.

51 In the first deliberation, judges are not allowed to abstain from taking the floor but may abstain from voting if they provide reasons for doing so. In the first Grand Chamber deliberation, judges can therefore reserve their vote for the second deliberation, at which point the draft text of the judgment will be available. They are however required to provide justifications for this. Generally, this means that they must state the points in which they are undecided, and then reserve their decision until they are provided with the concrete wording of the draft judgment. In the indicative vote at the beginning of the second deliberation, all judges are then obligated to vote.

52 If a first vote is close, for example if the judges are tied due to an abstention, then two draft judgments will be prepared. Usually, but not always, the decision to prepare two drafts is made where there are quite fundamental differences in the judges’ opinions on a case, and thus for example one draft will find a Convention violation and the other will find a non-violation. In controversial cases, the president will commence the second deliberation by noting that two drafts have been prepared, and determining which draft is preferred by the majority by taking an indicative vote. As noted above, judges cannot abstain from this vote (cf para 49 above). If, on an indicative basis, a clear majority of judges prefers one alternative, then the judges proceed to go through that draft and deliberate on its content paragraph by paragraph. Once an agreement has been reached on the text—or a near-agreement, as there may still be a need to apply the pigeonhole procedure (see below para 60) to some issues—a definitive vote takes place.
53 At the end of the first session of deliberation, after all of the judges have voiced their opinions, the national judge and the judge rapporteur are permitted to take the floor again. At this point, the rapporteur provides a summary of the deliberations and then poses the questions on which the judges will vote. The president, based on the rapporteur’s proposal, determines the issues on which the judges vote, and in which order they do so.

54 At the end of the session, the president selects a number of those judges who voted with the majority to form the drafting committee (→ Drafting committee). The drafting committee is usually made up of about five judges, and always includes the judge rapporteur. The drafting committee makes the drafting process more efficient than it would be if all 17 Grand Chamber judges were tasked with preparing the text. The national judge assists the drafting committee but cannot vote within that formation. If the majority was divided, then the president selects representatives of the various opinions to participate in drafting. A divided majority often also means that the president suggests the preparation of more than one draft.

55 After the first deliberations, a second orientation meeting takes place between the judge rapporteur, the Registrar, and the case lawyer. This provides guidance to the case lawyer on how to prepare the draft judgment or decision. The case lawyer then prepares the draft; this takes an average of about six weeks. During this process, the case lawyer, with certain input from the judge rapporteur, takes up the most important arguments made orally by the judges during the first deliberation and processes these into a draft text.

56 Once this drafting process is complete, the result is transmitted to the drafting committee; about six or seven weeks later, the drafting committee holds its first meeting, which may or may not be its only meeting depending on the ease with which it is able to agree on the text of the draft. The drafting committee thus prepares the draft—or drafts, where necessary—on the basis of the first version prepared by the case lawyer. The drafting committee is free to amend the first draft as it deems necessary.

57 While the composition of the drafting committee is the privilege of the president of the Court, the idea behind it is to allow those judges who put forth the best arguments during the deliberation, assisted by the national judge, to draft the text of the judgment or decision. This also removes some of the responsibility for the draft from the judge rapporteur.

58 The drafting committee may make use of the pigeonhole procedure where it is unable to agree on an issue (see below para 60). Once the draft judgment or decision is complete, it is translated by the Court’s language division and circulated among the judges involved in both French and English. This is a further difference to the Chamber proceedings, where the drafts are available in only one of the Court’s two official languages: in the Grand Chamber, a version in each language is prepared and deliberated upon by the judges.

59 A second deliberation is then held in order to present and discuss the draft. A second—and definitive—vote is held at this meeting. Judges are not obligated to vote in the same way in the first and second votes: they can—and indeed sometimes do—change their minds. However, the matters at issue and the way the judges vote usually does not change significantly from the first to the second deliberation. Nevertheless, if the Grand Chamber judges do not agree with the draft text that has been prepared, extensive discussions are possible at this point. If no agreement can be reached on the wording of individual controversial paragraphs, the pigeonhole procedure can be applied again.
5. The Pigeonhole Procedure

60 In both the Chamber and Grand Chamber formations, an inability of the judges to agree on the wording of certain paragraphs of the draft judgment or decision may lead to the application of the pigeonhole procedure. This is a procedure designed for situations in which the judges in the majority of a formation, while in general agreement about the outcome of a case, are unable to agree on the text of individual paragraph(s). In these cases, the Registry prepares a recommendation concerning the issue at stake, the so-called pigeonhole. This recommendation is then circulated among the judges via e-mail.

61 The pigeonhole procedure is, in essence, a method of deliberation that is applied when a draft judgment or decision has already been prepared. In practice, the use of this procedure is common, as it often facilitates the finding of a mutually agreeable solution and can unburden the deliberations by removing the need to perfect the wording of crucial paragraphs on the spot. By applying this procedure, judges are not under pressure to, in the context of just one or two deliberation sessions, prepare a publication-ready text in a language that is often not their native one.

62 The success of the pigeonhole procedure is largely due to the Registry’s skill at crafting formulations that are acceptable to all involved, and to the time that elapses between the judges’ deliberation(s) and the circulation of the pigeonhole proposal. Applying this procedure thus often allows for the harmonization of conflicting demands on a given formulation. This procedure also provides the case lawyer and the judge rapporteur with more time to re-examine the text. It may therefore also improve the draft text by allowing, for example, for the identification and removal of contradictions between different paragraphs.

D. Elements of the Court’s Judgments and Decisions

1. The General Structure of Court’s Jurisprudence

63 The Court’s judgments and decisions—whether taken by the Committee, the Chamber, or the Grand Chamber formations—have a number of commonalities. Thus, very generally speaking, they all set out the names of the judges involved, summarize the procedure followed and the facts of the case, and then conclude with a section on the law—thus, the case’s admissibility and merits. Of course, there are variations in this regard. For one, decisions will generally not contain an analysis of the merits, and judgments may contain separate opinions (as outlined below).

64 In addition, depending on the case, there may be a section on the domestic law and practice, on comparative law, or on the relevant international and human rights law and materials. The content of these sections is drawn from the materials gathered and research carried out by the Registry, for example to establish the existence of a European consensus on a given matter (for example, as in Hämäläinen v Finland, 2014, paras 31–33 and 73).

65 If the applicants in a case have made a corresponding claim, judgments usually also contain a section on the award to be made in respect of just satisfaction under Article 41 ECHR. To standardize these awards, the Court has set out the amounts generally awarded for a violation of a specific Convention provision in table form, and the judges can apply these tables to a specific case. The contents of these tables are strictly confidential (see Ichim, 2015, 121, 160–61), and their existence does not mean that determining the amount of just satisfaction in a given case is necessarily uncontroversial among the judges.
While States are bound to abide by its judgments (Art 46 (1) ECHR), the Court does not have the power to abolish domestic legislation or quash domestic courts’ decisions. However, the Court can indicate individual and general measures to States and has made use of this power in the past (Keller and Marti, 2016). The ordering of measures by the Court itself is rather peculiar given that, institutionally speaking, the Court is not responsible for the execution of its judgments—this falls under the purview of the Committee of Ministers (→ Execution of judgment: European Court of Human Rights (ECtHR)). Though the source of its power to do so is rather ambiguous, the Court occasionally orders individual measures to address problems in a specific case (see, for example, Oleksandr Volkov v Ukraine, 2013). General measures are usually ordered in pilot judgments (Broniowski v Poland, 2005) or so-called quasi-pilot judgments, which do not formally fall under the pilot judgment procedure but which do address systemic problems (Oleksandr Volkov v Ukraine, 2013) (→ Judgment: European Court of Human Rights (ECtHR)).

Sometimes, interim measures ordered under Rule 39 RC also take the form of specific individual measures: thus, for example, in a case against Russia the president of the First Section made a detailed interim protection order regarding medical interventions to be performed regarding a detainee (G v Russia, 2016, paras 4 and 8).

2. Separate Opinions

Where Chamber or Grand Chamber judgments are concerned, judges in the majority and the minority may submit dissenting or concurring opinions (Art 45 (2) ECHR; Rule 88 (2) RC). There are no separate opinions with regard to judgments taken by the three-judge Committee, given that this formation must decide anonymously. Separate opinions are also not possible where a decision of the Court is concerned (as implied by the text of Art 45 (2) ECHR, which refers only to judgments; specifically concerning decisions on interpretation brought under Article 46 (3) ECHR, see Rule 93 RC).

Separate opinions can be written by individual judges, possibly joined by other judges who agree with their arguments, or they may be written by a number of judges in collaboration. Judges may also simply opt to attach a ‘bare statement of dissent’ to a judgment (Rule 74 (2) RC). In these cases, judges who decided not to vote with the majority in a case append a statement to the resulting judgment that effectively discloses how they voted. This one-line statement might note, for example, that the judge in question was ‘unable to follow the finding of the majority’ (compare, for example, Mardosai v Lithuania, 2017, statement of dissent by Judge Paczolay). It is a widely accepted—although unwritten and not always observed—practice at the Court that judges who do not vote with the majority in a judgment should append such a statement of dissent to disclose how they voted.

Given this practice, it is almost always possible, by means of the separate opinions and ‘bare statements of dissent’ attached to a judgment, to determine how a given judge voted. Such a determination is however not possible in the context of decisions, given that separate opinions and ‘bare statements of dissent’ are not permitted in these cases. In its decisions, the Court therefore simply states that it reached a given outcome either ‘unanimously’ or ‘by a majority’. Where a decision was not reached unanimously, it is therefore not possible to determine which of the judges—or even how many of them—made up the majority.
Separate opinions often provide further insight into the discussions that took place inside the Court when deciding a case and the arguments that were tabled in this regard, and therefore represent an important source of further information about the deliberations. Concurring opinions generally allow judges in the majority to explain the majority’s reasoning or to indicate the reasons for their disagreement with that reasoning. Dissenting opinions allow judges in the minority to explain why they voted against the majority and to provide their own alternative account of how they believe that a case should have been decided.

In certain legal traditions, individual apex court judges produce their own written opinions concerning each case heard (on the approach formerly applied by the United Kingdom House of Lords, see Mak, 2013, 129–30). At the ECtHR, this method is not applied: judges do not circulate their draft (separate) opinions preceding the deliberations. If a judge wishes to prepare a separate opinion, he or she announces this during the deliberations and outlines the reasons for his or her disagreement. The Court’s deliberations therefore generally take place without a draft text of any judge’s separate opinion having yet been formulated, much less circulated. This approach is due to the Court’s enormous workload and the impossible burden it would place on judges if they had to prepare written opinions for each case in advance. It also, however, makes it more difficult to respond to the arguments presented in separate opinions in the judgment prepared by the majority.

As noted in the previous paragraph, judges announce their intention to prepare a separate opinion to their colleagues in a formation. The judge or judges concerned, who prepare their arguments independently, without any institutional support in drafting or research from the Registry or elsewhere, then draft their separate opinions. In the Grand Chamber, the president usually fixes a time limit of three weeks from the moment of agreement on the final version of a judgment at the second deliberations until separate opinions are due; in the Chamber, this limit is usually two weeks.

The resulting opinion is submitted to language review and translation by the Registry, although not a revision on the content, and then appended to the judgment. There is no general limit to the length of separate opinions. However, overly lengthy opinions require a lot of the Court’s translation and language check resources, and thus create delays with regard to the publication of judgments.

Judges are never obligated to write a separate opinion, even if they did not vote with the majority. However, judges’ individual opinions about when it is appropriate and necessary to write such an opinion are influenced by their own understanding of this concept and by the legal traditions of their home States, and can diverge. Thus, some judges feel that they should explain their reasoning whenever they do not agree with the majority, and others do so only rarely, in cases where they consider it particularly important to do so.

E. Increasing the Court’s Efficiency

Over the years, as the Court’s caseload has grown, a number of reform measures have been taken in order to improve its ability to handle the number of applications pending before it. The introduction of the single judge procedure, the WECL standard (cf paras 11–12 above), and the ‘significant disadvantage’ (de minimis non curat praetor) admissibility criterion by Protocol No 14 in 2010 were such innovations (amending Arts 26 and 27, Art 28 (1) (b), and Art 12 (3) (b) ECHR, respectively). Another was the creation of the pilot judgment procedure (Rule 61 RC), which allows the Court to address large groups of repetitive cases coming from a widespread or systematic problem in a Member State. Here, the Court selects one case from such a group, halts the examination of the others, and
issues a judgment in the selected case that can serve to address the underlying issue. The idea here is to provide the respondent State with the basis for creating an effective domestic remedy for the problem in question (see Haider, 2012).

77  In recent years, the process to reform the Court’s working methods and make them more efficient has taken place largely through the so-called ‘Interlaken Process’, an effort to reform the ECtHR in order to guarantee its long-term effectiveness that began with a High-level Conference on the Future of the European Court of Human Rights held in Interlaken, Switzerland, in 2010. That conference was followed by four others, held in Izmir (Turkey), Brighton (United Kingdom), Oslo (Norway), and Brussels (Belgium), which took place in 2011, 2012, 2013, and 2015, respectively.

78  The Court’s reform efforts are assessed and guided by the work of its Reform Committee and its two Standing Committees, one on the Court’s Rules and one on its Working Methods (ECTHR, The Interlaken Process and the Court: 2012 Report). The Committee on Working Methods is made up of judges of the Court, assisted by members of the Registry, who seek to identify ways to streamline the Court’s working methods in order to make case-processing more efficient. In addition, there is also a Working Group on the Grand Chamber, which can be consulted by the Court regarding questions of Grand Chamber procedure and which formulates reform proposals in this regard.

79  One other proposed avenue to increase the Court’s efficiency is a restriction of individual access to the Court. An example is the aforementioned introduction of the *de minimis non curat praetor* principle (see above para 76), applied where an applicant has suffered ‘no significant disadvantage’. This reform has been controversial given fears that it will undermine individual access to justice or the individual right of petition (cf Shelton, 2016; Vogiatzis, 2016; Gerards and Glas, 2017, 19-21). In any event, this new criterion has brought rather limited relief to the Court’s workload given that it is generally rather reluctant to declare cases inadmissible on the basis of pecuniary considerations. Another measure is the reduction of the time limit within which applicants can bring an application to Strasbourg from six months to four (as envisaged by Protocol No 15 to the Convention).

80  Another avenue for increasing the efficiency of the Court is to expand the notion of what falls under the Court’s WECL (cf paras 11-12 above). The Court has increasingly pursued this avenue in recent years. As noted above, cases that fall under the Court’s WECL can be decided by the three-judge Committee instead of the seven-judge Chamber or the 17-judge Grand Chamber (Art 28 (1) (b) ECHR). The Explanatory Report to Protocol No 14 defines WECL as ‘[case law] which has been consistently applied by a Chamber’, although it may exceptionally be established by just one judgment ‘on a question of principle … particularly when the Grand Chamber has rendered it’ (Council of Europe, Explanatory Report to Protocol No 14, para 68). A number of the cases that currently come before the Chamber could arguably be described as repetitive, and could potentially be allocated to the Committee. This would create great efficiency gains, not only because it would reduce the number of judges seized with a particular application, but also because a Committee judgment or decision is usually shorter than those of the Chamber or Grand Chamber, and thus also entails less work in the context of drafting and translation.

81  Another avenue for making the Court more efficient is the so-called ‘IMSI’, or immediate simplified communication, procedure. This represents a new manner of communicating repetitive cases, and was introduced *vis-à-vis* twelve States on a test basis in March 2016 (ECTHR, Annual Report 2016, 14). Previously, before the communication of a case to the respondent State, a Registry case lawyer prepared a detailed analysis of the facts and procedural history of the case as well as the main issues at stake. This preparatory work was then supplied to the respondent State together with specific
questions and indications concerning particularly relevant ECtHR case law. The IMSI procedure means that this—once voluminous—preparatory work has now been reduced to just half a page noting the case in question and the issue at stake, based on the standardized application form filled in by the applicant(s). The State is then called to provide information concerning the procedural history of the case and to answer the Court’s questions. To some extent, this means that the duty to do preparatory research is being passed from the Court to the State. The deadlines for submitting the information in question are relatively short: States are usually required to submit their responses within six weeks’ time.

82 In practice, IMSI represents an example of the sharing of responsibility between States and the Court (ECtHR, Annual Report 2016, 14), and means that the communication procedure is faster and the case-lawyers have a lighter burden to carry. However, this procedure also means that the preparatory work is written from the point of view of one of the parties—the respondent State—and it therefore has a potential to be one-sided. This procedure is not yet applied vis-à-vis all States or in all cases, and the Court uses its discretion in this regard. However, the Court has made positive experiences with the IMSI procedure to date, and safeguards do exist: it is relatively easy to review and verify the State’s summary, and the proceedings remain adversarial (ECtHR, Annual Report 2016, 14).

83 Where measures to increase the Court’s efficiency reduce the number of judges tasked with examining a case—thus, where they shift cases from the Chamber to the Committee, and from the Committee to the single judge—they may, while streamlining the Court’s work, potentially affect the quality of the resulting jurisprudence, and thus applicants as well. In this light, the Court changed its approach to the reasoning provided in single judge decisions in 2017. This change was based on the recognition that, while the single judge procedure certainly helped the Court to deal with some of its backlog, the letters posted to applicants concerning the outcome of their application were standardized and exceedingly summary, and contained no reasons for the inadmissibility of a given application. The Court faced quite some criticism in light of this (compare, with further references, Gerards, 2014), given also the fact that single judge decisions are final. In this light, the 2015 Brussels Declaration invited the Court to change its practice regarding the single judge formation, and since June 2017 the single judges have begun to provide reasons for their decisions (ECtHR, Launch of New System for Single Judge Decisions with More Detailed Reasoning, 2017; see above para 9).

84 In other words, the Court is continually seeking to balance the quality of its case law with the efficiency of its proceedings. The single judge procedure is not the only area where such issues arise, of course. Thus, for example, a certain case against Spain that was declared manifestly ill-founded by a three-judge Committee in 2008 was subsequently found to constitute a violation of Article 7 → International Covenant on Civil and Political Rights (1966), the prohibition of torture and cruel, inhuman, or degrading treatment or punishment, by the Human Rights Committee (Achabal Puertas v Spain; María Cruz Achabal Puertas v Spain, No 1945/2010, paras 2.14, 4.1, 5.4, 6.3, 7.2, and 7.3). This led to some critique within and outside the Court, particularly because it took the Court three years to decide the case, and to the argument that increased efficiency and output may also entail the risk that certain meritorious cases will slip through the cracks (Concurring Opinion of Judge Pinto de Albuquerque in Centre for Legal Resources on behalf of Valentin Câmpeanu v Romania, 2014, fn 28; Gerards, 2014, 148-58, especially 150-52; Björgvinsson, 2016, 43-44).
Where the smallest formations of the Court examine an application, and thus especially in the single judge procedure, the possibility that a meritorious case will not receive the attention it deserves is greater than when a large group of judges is tasked with a given case. This is particularly due to the high volume of cases that come before these smaller formations (cf., for a critical view, O’Meara, 2015; Shelton, 2016; Lambert Abdelgawad, 2017; Gerards and Glas, 2017, 24–25). Thus, in 2017, the single judge formation decided a whopping 66,156 cases, which means that the number of decisions issued by this formation more than doubled compared to the previous year (ECtHR, Analysis of Statistics 2017, 4). In this regard, it is important to underscore the role of the individual judges in this formation. The single judge procedure creates a significant burden of responsibility for the Court’s judges, and one that can only be performed given the relationship of trust between the single judge and the relevant non-judicial rapporteur (see above paras 15 and 24).

F. Inter-State Proceedings

While most of the applications that come before the ECtHR are brought by individuals, it is also possible for Council of Europe Member States to initiate proceedings before the Court against other Member States, namely so-called inter-State proceedings (Art 33 ECHR). This possibility allows States to seize the Court with applications concerning alleged breaches of the Convention and its Protocols by other parties to the ECHR. These cases are relatively rare, and the overwhelming majority of applications before the Court come from individual applicants. There are some notable differences in the deliberation and drafting processes in inter-State cases as compared to individual applications.

According to the Convention’s text, the admissibility and merits of inter-State applications are decided by a Chamber formation, usually in the context of two separate decisions (Art 29 (2) ECHR). In practice, however, because of their often-political nature and because of difficulties with fact-finding (→ Fact-Finding: European Court of Human Rights (ECtHR)) and the gathering of evidence (→ Evidence: European Court of Human Rights (ECtHR)), these cases are often sent to the Grand Chamber (compare ECtHR, Georgia v Russia (I), 2014, para 11). In these cases, there have usually not been any domestic proceedings, which means that no court has established the facts of the case yet. Fact-finding in these cases is a challenge for the Court, and often requires it to invest a large amount of time and resources (compare the Annex to the Rules of Court concerning investigations).

In the context of an inter-State case, the Rules of Court state that the Chamber will designate one or more judge rapporteurs (Rule 48 RC). In practice, there are always two rapporteurs in such cases. There are of course also two national judges given the involvement of two Member States. This, in turn, impacts the deliberation process. Thus, in an inter-State case, the deliberations begin with contributions from both rapporteurs, followed by the arguments of the two national judges. The dynamic of such cases is also different, given that—as noted—these are often highly politicized proceedings that may place the national judges in a difficult position.

G. Conclusion

The European Court of Human Rights monitors States’ compliance with the ECHR, and hears individual—and occasionally inter-State—applications in this regard. In examining applications, the Court works in a number of formations, from cases decided by the single judge to those submitted to a public hearing and an intensive examination by the 17-judge
Grand Chamber. Each formation has its own procedures regarding deliberations and the
drafting of judgments and decisions.

90 The Court has, over the course of its existence, repeatedly amended its methods of
working, and thus also its approach to deliberations and drafting. Reform efforts aiming to
increase the efficiency and effectiveness of the Court have tended to push cases down on
the hierarchy of the Court’s formations—thus, from the Chamber to the Committee and the
single judge. The Court’s methods of deliberation and drafting are shaped by its need to
strike a balance between its own efficiency and the reduction of its backlog, on the one
hand, and the quality and coherence of its jurisprudence, on the other.

Corina Heri

Cited Bibliography


D Haider, *The Pilot-Judgment Procedure of the European Court of Human Rights* (Brill
Leiden 2013).

H Keller and C Marti, ‘Interim Relief Compared: Use of Interim Measures by the UN
Human Rights Committee and the European Court of Human Rights’ (2013) 73 ZaöRV
325–72.

E Mak, *Judicial Decision-Making in a Globalised World: A Comparative Analysis of the

J Gerards, ‘Inadmissibility Decisions of the European Court of Human Rights: A

O Ichim, *Just Satisfaction under the European Convention on Human Rights* (CUP
Cambridge 2015).

N O’Meara, ‘Reforming the European Court of Human Rights: The Impacts of
Protocols 15 and 16 to the ECHR’ in KS Ziegler, E Wicks, and L Hodson (eds), *The UK
and European Human Rights: A Strained Relationship?* (Hart Oxford and Portland
2015).

DT Björgvinsson, ‘The Role of the European Court of Human Rights in the Changing
European Human Rights Architecture’ in OM Anardóttir and A Buyse (eds), *Shifting
Centres of Gravity in Human Rights Protection: Rethinking Relations between the

H Keller and C Marti, ‘Reconceptualizing Implementation: The Judicialization of the
Execution of the European Court of Human Rights’ Judgments’ (2016) 26 EJIL 829–
50.

D Shelton, ‘Significantly Disadvantaged? Shrinking Access to the European Court of

N Vogiatzis, ‘The Admissibility Criterion under Article 35(3)(b) ECHR: A ‘Significant
Disadvantage’ to Human Rights Protection?’ (2016) 65 ICLQ 185–211.


Further Bibliography


Cited Documents


ECtHR, The Interlaken Process and the Court, 16 October 2012. (accessed 15 June 2018)

ECtHR, The Interlaken Process and the Court, 1 September 2016. (accessed 15 June 2018)


Cited Cases

European Court of Human Rights (ECtHR)

Achabal Puertas v Spain, Admissibility, 13 May 2008, not reported.

Al Nashiri v Poland, Merits and just satisfaction, 24 July 2014, App 28761/11. (accessed 7 January 2018)

Broniowski v Poland, Merits, 28 September 2005, ECtHR Reports 2005-IX.

Centre for Legal Resources on behalf of Valentin Câmpeanu v Romania, Merits and just satisfaction, 17 July 2014, ECtHR Reports 2014.

G v Russia, Merits and just satisfaction, 21 June 2016, App 42526/07. (accessed 5 January 2018)

Georgia v Russia (I), Merits, 3 July 2014, ECtHR Reports 2014 (excerpts).

Sabri Güneş v Turkey, Preliminary objection, 29 June 2012, App 27396/06. (accessed 8 January 2018)

Hämäläinen v Finland, Merits and just satisfaction, 16 July 2014, ECtHR Reports 2014.


Ibrahimov v Russia, Merits and just satisfaction, 28 November 2017, App 26586/08. (accessed 5 January 2018)

Mardosai v Lithuania, Merits and just satisfaction, 11 July 2017, App 42434/15. (accessed 8 January 2018)

Öcalan v Turkey, Merits and just satisfaction, 12 May 2005, ECtHR Reports 2005-IV.

Oleksandr Volkov v Ukraine, Merits, 9 January 2013, ECtHR Reports 2013.

United Nations Human Rights Commission