

## **BASIC GUIDE FOR APPLICANTS TAKING THEIR CASE TO THE EUROPEAN COURT OF HUMAN RIGHTS**

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This document is a basic guide to the rights protected by the European Convention on Human Rights and the operation of the European Court of Human Rights. It aims to explain the complaints in relation to which it is possible to bring an application before the European Court of Human Rights, and how such a complaint may be made.



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## ***INTRODUCTION***

### ***1) What is the Council of Europe?***

The [Council of Europe](#) is the oldest international regional organisation working within Europe. Its stated objective is to create a common democratic and legal area throughout the whole of the continent of Europe ensuring respect for fundamental values, human rights, democracy and the rule of law. It was founded in 1949. It places particular emphasis on legal standards, human rights, democratic development, and cultural co-operation. It has 47 member states with some 800 million citizens. It is legally distinct from the [European Union](#) (EU).

### ***2) What is the European Convention on Human Rights and what rights are protected?***

The European Convention on Human Rights (ECHR) was adopted on the 4 November 1950 by the member States of the Council of Europe. It is an international treaty which all member States of the [Council of Europe](#) have ratified. The ECHR contains a list of fundamental rights which member States have agreed to secure to all those within their jurisdiction. Since its entry into force in 1953, 5 substantive protocols have been adopted which bolster the rights and liberties in the initial text of the ECHR and also amend some procedural rules. Not all of the member States have ratified all the Protocols.

The United Kingdom ratified the ECHR in March 1951 and it was given effect in the UK by the Human Rights Act 1998. In Scotland, the Scotland Act 1998 provides that an Act of the Scottish Parliament is not law if it is incompatible with the ECHR (s29(2)(d)) and a member of the Scottish Government has no power to make subordinate legislation or act in any way that is incompatible with ECHR (s57(2)).

The rights protected by the ECHR include:

- Right to life (Article 2)
- Prohibition of torture and ill-treatment (Article 3)
- Prohibition of slavery, servitude or forced or compulsory labour (Article 4)
- Right to liberty and security (Article 5)
- Right to a fair trial (Article 6)
- No punishment without law (Article 7)
- Right to respect for private and family life and the home (Article 8)
- Freedom of thought, conscience and religion (Article 9)
- Freedom of expression (Article 10)
- Freedom of assembly and association (Article 11)
- Right to marry (Article 12)
- Right to an effective remedy (Article 13)
- Prohibition of discrimination in the enjoyment of ECHR rights (Article 14)
- Protection of private property (Protocol 1, Article 1)
- Right to education (Protocol 1, Article 2)
- Right to free elections (Protocol 1, Article 3)

See the full text of the [ECHR](#)

### 3) What is the European Court of Human Rights?

The [European Court of Human Rights](#) (the “ECtHR” or “the Court”) is an international court based in Strasbourg in France. It has 47 judges – one from each Member State of the Council of Europe which has ratified the ECHR. The Court adjudicates on complaints against States under the ECHR. Significantly, individuals can make a complaint (or application) to the Court if they feel their rights have been breached. States can also make complaints against other States. The Court decides whether ECHR rights have been violated in individual cases. It issues written judgments setting out its decisions. Judgments of the Court are binding on Member States. This means that States are under a duty to comply with judgments of the Court.

*a) Are National Human Rights Institutions (NHRIs) connected to the Court?*

No: [NHRIs](#) are national independent administrative bodies that have the competence to promote and protect human rights. Recognition as a NHRI is dependent on compliance with the [UN Paris Principles](#).

NHRIs are separate from the European Court of Human Rights. However NHRI’s do interact with the Court through occasionally making *amicus curiae* interventions, and more generally, by follow-up of the Court’s case law and monitoring and advising on the execution of judgments by national authorities.

*b) Are there any rules for bringing an application before the ECtHR?*

The Court receives an enormous number of applications each year. In 2011, it received some 64,500 applications. At the end of 2011, there were 151,600 applications pending before the Court. Processing all these application places enormous strain on the resources of the Court. There are a number of “[admissibility criteria](#)” which apply to individual applications. These admissibility criteria are set out in [Articles 34 and 35](#) of the ECHR. Article 35 was recently amended by [Protocol 14](#) to the ECHR.

You will find [here](#), statistics produced by the Court which illustrate the significant number of applications declared inadmissible by the Court.

*c) Who can make an application to the Court?*

Private persons, groups of individuals and legal entities, such as non-governmental organisations, commercial organisations or associations can make an application to the Court. At the initial stage of the proceedings, applicants do not need to be represented by a lawyer; but you will need a lawyer to represent you once your application has been notified to the Government.

Here is further information on applications or “[Individual Petitions](#)” to the Court.

*d) What can an application be about?*

The Court can only deal with complaints relating to infringements of one or more of the rights set out in the Convention and its Protocols. It is not a court of appeal *vis-à-vis* national courts and cannot repeal or alter their decisions.

*e) Who can an application be about?*

Your application must be about a State which is bound by the ECHR. Applications against private entities or individuals are inadmissible. The Court cannot usually examine complaints concerning events occurring before ratification by the State against which the complaint is taken. As not all states have ratified all Protocols, you are advised to [check](#) whether the respective state has ratified the relevant Protocol.

*f) How may applications be dealt with?*

In exceptional circumstances, where there is a serious risk of physical harm to the applicant, the Court may grant interim measures that are binding on the State. The Court may, for example, indicate to the State to halt deportation in cases where the applicant faces the risk of torture.

In practice, the Court examines the admissibility and the merits of the case together. The Court then issues a judgment stating whether there has been any violation of the Convention or its Protocols or not. This process can take several years to reach conclusion.

If the Court concludes that there has been a violation of the Convention or Protocols, the Court usually affords “just satisfaction” to the victim of the violation in the form of a sum of money in compensation for the damage suffered (see [article 41](#)) and directs the State concerned to refund some of the expenses you have incurred in presenting your case. It is important to note that the amounts generally awarded by the Court as just satisfaction and in respect of legal expenses might be considered low by Scottish standards.

Sometimes, the parties may decide to reach a friendly settlement of the matter (see [article 39](#)). The case is then struck out of the Court’s list. In both situations (judgment or friendly settlement), the Committee of Ministers supervises the full execution by the State concerned. More unusually the case may result in the State concerned making a unilateral declaration recognising that a violation of the Convention has occurred and offering compensation to the applicant.

*e) Other avenues for individual complaints against human rights violations*

Besides the ECtHR as a European regional human rights body, it is also possible in certain circumstances to bring individual complaints to the United Nations human rights treaty bodies (here is more [information](#) on complaints in the United Nations system). However, in contrast to the European Court, UN treaty bodies cannot issue legally binding judgments. When selecting the best forum for a case, a number of

criteria should be taken into consideration, *e.g.* the scope of protection offered by the respective convention in the case at stake and the average length of proceedings.

### ***CHECKLIST OF REQUIREMENTS BEFORE BRINGING AN APPLICATION BEFORE THE ECtHR***

All the admissibility criteria for bringing an application to the European Court of Human Rights must be fulfilled before an application can be entertained. The checklist below will help you decide if your complaint comes within the requirements of the ECHR.

The Court has set up its own [admissibility checklist](#) designed to assist potential applicants establish whether they fulfil the admissibility criteria for lodging an application with the Court. However, even though it may be useful as a guide, it should be noted that this checklist is not legally binding on the Court.

#### ***Stage 1: Is your complaint about the actions or inaction of a State which has ratified the ECHR?***

You can only complain to the Court about violations of the ECHR which have been committed by or are attributable to a State that is bound by the ECHR. Otherwise a complaint will be deemed inadmissible by the Court. You do not need to be a national of the State you wish to complain about. It is sufficient that you are within the jurisdiction of that State when the alleged violation occurred. Jurisdiction not only relates to the physical territory of the State but may also apply where State actors exercise some form of jurisdiction abroad. Here is information on which [States have ratified](#) the ECHR.

Scotland is bound by the ECHR. This is because Scotland is currently part of the United Kingdom which ratified the ECHR in 1951. The United Kingdom has ratified all the [Protocols](#) to the ECHR, with the exception of Protocols 4 (which it has signed), 7, 9 and 12.

In Scotland, the Scottish Parliament and the Scottish Government are bound to act within the ECHR. This is because under the Scotland Act 1998 provides s29(2)(d) an Act of the Scottish Parliament is not law if it is incompatible with the ECHR and under s57(2) a member of the Scottish Government has not power to make subordinate legislation or act in any way that is incompatible with ECHR.

#### ***Stage 2: Have you been directly affected by the violation you are alleging?***

The Court will only accept applications from “victims” of a violation of the ECHR. There are two types of victim; “direct victims” and “indirect victims”.

- a) Are you a *direct victim*?

This means that you have been directly and personally affected by the violation(s) of the ECHR which you allege. A complaint may in certain limited circumstances extend

to a risk or possibility that your rights have or will be violated, such as in the case of a person who fears inhuman or degrading treatment if deported.

b) *Are you an indirect victim?*

This means that you have a personal and specific link with a person who has been directly affected by a violation of the ECHR. The Court has generally accepted that spouses and parents come within this category. This is particularly the case where the person directly affected is deceased.

Here is further information on "[The Concept of the Victim](#)".

***Stage 3: As a victim of a violation of the ECHR, have you suffered a "Significant Disadvantage"?***

Although you may qualify as a victim under the ECHR, your complaint may not be deemed to warrant an examination on its merits if you have not suffered a "significant disadvantage".

The Court will decide whether you have suffered a significant disadvantage at the admissibility stage. This is a relatively new admissibility criterion and was introduced in June 2010 under [Protocol 14](#) to the ECHR. The concept of "significant disadvantage" was first applied by the Court in a case where the Applicant claimed that a breach of his right to a fair hearing (Article 6) resulted in the loss of a very small sum of money (i.e. €90). In the opinion of the Court, the Applicant has not suffered a significant disadvantage ([Adrian Mihai Ionescu v Romania](#)).

This admissibility criterion was developed to enable the Court to focus its attention on cases where there has been a significant breach of Convention rights and to allow a more rapid disposal of cases deemed unmeritorious.

***Stage 4: Have you exhausted all the domestic remedies available to you?***

Before you can make an application to the Court, you must first use all the available remedies in the country about which you are complaining. Usually this will mean bringing a court case and an appeal to the highest appropriate court. In Scotland this will depend on the type of case. In a civil case the final Court of appeal is the UK Supreme Court. In a criminal case it would normally involve bringing a case to the High Court of the Justiciary in Scotland however if a devolution matter is raised the final Court of appeal is the UK Supreme Court.. You must also have raised the substance of your human rights complaint in the national court proceedings. When applying to the national courts, you must normally comply with national rules of procedure, including time-limits. If you have not used such remedy, you will have to show that it was ineffective to secure your rights under the Convention.

The purpose of this rule is to give national authorities (primarily the courts) the opportunity to adjudicate on the alleged violations of the ECHR and to provide a remedy at the national level. This is the principle of subsidiarity, which means that the Court does not have jurisdiction until such time as the national authorities have made

a final decision in relation to the complaint and there is no other domestic remedy available.

Here is further information on "[Exhaustion of Domestic Remedies](#)"

### ***Stage 5: Was the final domestic court decision made within the past six months?***

The Convention lays down a "six month rule". This means that you have only six months from the date of the final decision by the competent national authorities to lodge an application with the Court. After that period your application **cannot** be accepted.

The purpose of the six month rule is to ensure that cases raising ECHR issues are introduced within a reasonable time. This also protects State authorities and other persons concerned from legal uncertainty for a prolonged period of time. It reflects the general practice of time limits in all court proceedings.

Only remedies which are adequate and effective are taken into account. An applicant cannot extend the six month time limit by make inappropriate or misconceived applications to bodies or institutions which have no power or competence to offer effective redress for the complaint.

In Scotland, time runs from the date of the decision of the last available domestic remedy, in a civil case this will be the UK Supreme Court, in a criminal case this is most likely to be the High Court of the Justiciary in Scotland but if a devolution matter is raised then it may be the UK Supreme Court.

As a matter of information, you should be aware that more than 90% of the applications examined by the Court are declared inadmissible for failure to comply with the formal conditions applying to an application.

Here is further information on the "[Six Month Rule](#)"

## **THE TYPES OF INADMISSABLE APPLICATIONS**

### ***1) An anonymous application***

The Court will not accept individual applications if they are anonymous. You can find [here](#) examples of applications which are considered anonymous by the Court.

### ***2) An application that is substantially the same as an application that has already been examined and one that introduces no new facts***

The Court has pointed out on several occasions that, under Article 35(2)(b) of the ECHR, it cannot admit an individual application that is substantially the same as a matter that has already been examined by the Court and contains no relevant new information. See for example the judgment in [Verein gegen Tierfabriken Schweiz \(VgT\) v. Switzerland \(No.2\)](#).

You will also find below examples of applications that were considered essentially the same as a preceding application examined by the Court and which introduced no new facts ([practical guide on admissibility](#), at pages 29-32).

**3) *An application that is substantially the same as a matter that another international body has already examined***

In the view of the Court, it is incompatible with the spirit and the letter of the ECHR if the same matter is submitted simultaneously to two international institutions. This rule [Article 35(2)(b)] of the ECHR seeks to avoid the same matter being considered in more than one international forum. Applications are considered as being “substantially the same” when they concern the same persons, facts and complaints. For example see [Pauger v. Austria](#).

The United Nations Human Rights Committee and the International Labour Organization’s Committee on Freedom of Association have been recognised as another procedure of international investigation or settlement.

Here is further information on “[Matters Already Examined](#)”.

**4) *An application that is incompatible with the ECHR or its Protocols***

In order for an application to be compatible with the ECHR the alleged violation has to have:

- i) taken place within the jurisdiction of a State bound by the ECHR or in territory effectively controlled by that State. This is known as compatibility [ratione loci](#).
- ii) been committed by a State bound by the ECHR or in some way attributed to it. States are generally responsible for the acts of their authorities whether performed within or outside national boundaries. This is known as compatibility [ratione personae](#).
- iii) taken place during the period in which the ECHR and its Protocols was binding on the State concerned. This is known as compatibility [ratione temporis](#).

**5) *An application that is manifestly ill-founded***

The Court may deem an application inadmissible if it is manifestly ill-founded. It will generally only do so when an application does not disclose any possible ground for establishing a violation of the ECHR. This may be the case where an Applicant makes wholly unsubstantiated allegations or makes allegations which even if proved would not amount to a breach of the Convention.

**6) *An abuse of the right of individual application***

This may arise where an applicant makes improper use of the procedural rights under [Article 34](#) for making a complaint to the Court. For instance, the Court has received

multiple applications from persons who are considered to be “vexatious litigants” in the Member State in which they reside. Such applications have been deemed to be inadmissible for abuse of process.

## ***PROCEDURAL FORMALITIES FOR MAKING AN APPLICATION***

### ***1) Do I need to fill out an application form?***

Yes. An application form must be filled out. If you wish to make an application to the Court it is important to read through the Court’s ‘[Application Pack](#)’. The Application Pack contains a copy of the ECHR, an Application Form and Notes for Guidance.

If possible it is recommended that you receive legal assistance in making an application to the Court, although this is not necessary.

### ***2) What must an application form to the Court contain?***

You should fill out an application form carefully and return it promptly. Rule 47 of the [Rules of Court](#) sets out the requirements for a valid application, and should be referred to before submitting the application. In summary it must contain:

- Your personal details and those of your representative (if any);
- The name of the State(s) against which the complaint is being made;
- A brief summary of the facts and your complaints;
- An indication of the ECHR rights you think have been violated;
- Details of the remedies you have already used;
- Copies of the decisions given in your case by the public bodies/ courts concerned;
- Your signature.

### ***3) Where do I send my application to?***

Applications to the Court can only be made by post (not by telephone). If you send your application form by e-mail or fax, you must also send the original by post. No purpose will be served by you travelling to Strasbourg to state your case orally. The Court’s Registry will not be able to help you in person.

The address of the Court is:

**The Registrar  
European Court of Human Rights  
Council of Europe  
F-67075 Strasbourg Cedex  
France  
Tel : +33 (0)3 88 41 20 18  
Fax : +33 (0)3 88 41 27 30**