Strasbourg, 2 February 2013

GT-GDR-C(2013)R2 Addendum I

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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**DRAFTING GROUP 'C' ON THE REFORM OF THE COURT
(GT-GDR-C)**

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Draft CDDH report on interim measures under Rule 39 of the Rules of Court

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I. INTRODUCTION

1. Rule 39 of the Rules of the European Court of Human Rights reads as follows:
"The Chamber or, where appropriate, its President may, at the request of a party or of any other person concerned, or of its own motion, indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or of the proper conduct of the proceedings before it."

2. Rule 39 is linked to Article 34 of the Convention, by which the State Parties "undertake not to hinder in any way the effective exercise of the right" of individual application. The Court's practice is only to issue an interim measure against a State Party where, having reviewed all the relevant information, it considers that the applicant faces a real risk of serious, irreversible harm if the measure is not applied.[1] The Court has held that its indications of interim measures under Rule 39 are legally binding and that a failure by a State Party to comply with them is to be regarded as preventing the Court from effectively examining the applicant's complaint and as hindering the effective exercise of his or her right of individual petition in violation of Article 34 of the Convention.[2]

3. Although the Court has made publicly clear that interim measures "are only applied in exceptional cases",[3] the number of requests for such measures showed until recently an enormous increase, notably between 2006 and 2010. Between October 2010 and January 2011 alone, the Court received around 2,500 requests concerning only returns to Iraq.[4] At more or less the same time, there were a large number of requests concerning returns under the Dublin Regulation. This explosion in requests, described by the President of the Court as "alarming" and with "implications for an already over-burdened Court", led to concern at the highest political levels of the member States.[5]

4. The Declaration adopted at the Izmir High-level Conference on the future of the European Court of Human Rights, organised by the Turkish Chairmanship of the Committee of Ministers (Izmir, Turkey, 26-27 April 2011), expressed this concern, whilst also welcoming the improvements in the practice already put in place by the Court.[6] The Izmir Declaration then recalled certain important points concerning the requirement for States Parties to comply with indications of interim measures, application of the principle of subsidiarity, the role of the Court, the requirement for States Parties to provide domestic remedies with suspensive effect, the Practice Direction to applicants (with an invitation to the Court to draw appropriate conclusions from an applicant's failure to comply with it), the procedural rights of the States Parties, and treatment of the request and of the underlying individual application (paragraph A3). On this basis, the Declaration expressed "its

[1] See the Court's Practice Direction on requests for interim measures, contained in doc. GT-GDR-C(2012)002.
[2] See *Mamatkulov & Askarov v. Turkey*, App. no. 46827/99, Grand Chamber judgment of 4 February 2005.
[3] See doc. GT-GDR-C(2012)002.
[4] For a short period in late 2010, the Court, under unusual pressure, adopted a 'quasi-systematic' approach involving a presumption in favour of application of Rule 39 in these cases.
[5] See the "Statement on requests for interim measures" issued by the President of the Court on 11 February 2011, doc. GT-GDR-C(2012)005.
[6] Including the revised Practice Direction (see doc. GT-GDR-C(2012)002) and the President's Statement (see doc. GT-GDR-C(2012)005).

expectation [of] a significant reduction in the number of interim measures granted by the Court, and … the speedy resolution of those applications in which they are, exceptionally, applied, with progress achieved within one year" ("Implementation", paragraph 4).

5. The Declaration adopted at the subsequent Brighton Conference, organised by the United Kingdom Chairmanship of the Committee of Ministers (Brighton, United Kingdom, 19-20 April 2012), "[invited] the Committee of Ministers to assess both whether there has been a significant reduction in their numbers and whether applications in which interim measures are applied are now dealt with speedily, and to propose any necessary action" (paragraph 12.e). The Committee of Ministers, at its 122nd Session (23 May 2012), "instructed the CDDH to submit, by 15 April 2013, its conclusions and possible proposals for action in response to paragraph 12e … of the Brighton Declaration".

6. The present report constitutes the CDDH's response to this instruction. It is divided into two parts. The first part provides factual information on the questions posed in the Brighton Declaration (i.e. whether there has been a significant reduction in the number of interim measures and whether applications in which interim measures are applied are now dealt with speedily). The second part addresses related issues concerning interim measures considered by the group.[7] The report includes proposed actions some of which relate to action to be taken by the member States, whilst others concern invitations to the Court.

7. The present report does not address the issue of the legal status of Rule 39. The CDDH recalls that its work on this issue, which took place in the context of work on a simplified procedure for amendment of certain provisions of the Convention, including the possibility of creating a Statute for the Court, will be resumed once work is completed on priority issues set out in the Committee of Ministers' decisions for the biennium 2012-13.[8]

8. The factual information contained in the present report originates from the Registry of the Court, which provided extensive information and explanations directly to the CDDH during the course of its work. The CDDH appreciates this excellent co-operation with the Court and its Registry.

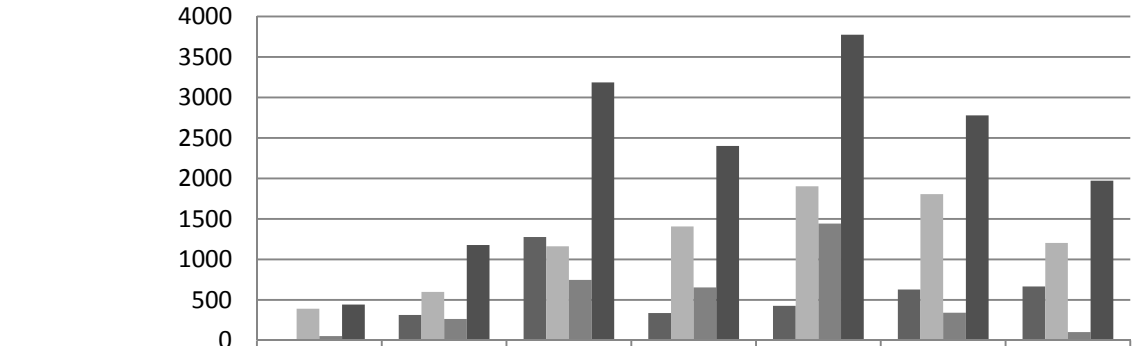
II. FACTUAL INFORMATION ON THE SPECIFIC QUESTIONS POSED

9. The CDDH is called upon "to assess both whether there has been a significant reduction in their numbers and whether applications in which interim measures are applied are now dealt with speedily, and to propose any necessary action".[9] The report will address these issues in turn.

a. Figures

10. The development of the situation over recent years can be seen from the figures in the following table. It should be noted that the Court's figures relate only to decisions taken on requests for interim measures and not to the requests themselves; figures on the latter are not available.

[7] In addition to the issues raised in the Brighton Declaration, the DH-GDR raised a number of questions about interim measures for GT-GDR-C to consider. These questions formed the basis of the 'other issues concerning interim measures' considered by the Group.
[8] See doc. CM/Del/Dec(2012)1154/1.6.
[9] See para. 5 above.



	2006	2007	2008	2009	2010	2011	2012
"Outside the scope"		314	1276	339	428	629	666
Refused	391	600	1162	1408	1904	1807	1203
Granted	53	265	747	655	1443	342	103
Total decisions	444	1179	3185	2402	3775	2778	1972

11. In the face of this alarming increase, the then President of the Court, Jean-Paul Costa, issued a public statement recalling to Governments and applicants the role of the Court in immigration and asylum law matters and emphasising their respective responsibilities.[10] On 7 July 2011, a revised Practice Direction of the Court on requests for interim measures was introduced. The Court and its Registry also established a centralised procedure on 5 September 2011. As a result, all requests are now considered by a centralised Rule 39 unit[11] against a standard checklist.[12] This system is designed to improve efficiency and consistency and ensure rapid identification of groups of similar cases, including those concerning several member States. In part, this more streamlined and efficient approach helps to avoid the need to apply Rule 39 in a quasi-systematic way (which the Court is resolved to avoid in the future[13]) as the Registry is better able to deal with high volumes of applications. In addition, judgments of principle,[14] which set out whether the Court considers that the real risk threshold is met in relation to groups of persons deported to particular country at a specific time (i.e. Tamils to Sri Lanka in 2007), have assisted in the reduction of interim measures.

[10] See doc. GT-GDR-C(2012)005.

[11] Applications are first considered by the lawyer in the national division who will indicate whether the application should be granted, refused or whether further information is required. Another senior lawyer in the national division will then review the decision. The checklist is then sent to the Rule 39 Unit which is composed of experienced lawyers (A4/5). After the quality control undertaken by the Rule 39 unit, the check list is sent to the judge elected with respect to the respondent State, then to the Section Vice-presidents. Three Section Vice-presidents nominated for this purpose by the President of the Court constitute a decision centre for all requests for Rule 39 submitted to the Court.

[12] The checklist requires the lawyer to summarise the facts and the domestic decisions, and recommend to either (1) apply interim measure (2) refuse interim measure (3) declare inadmissible (4) urgent notification (5) grant priority (6) grant anonymity (7) ask for factual information (8) communicate for observations. The checklist can be found in appendix to the present report.

[13] See GT-GDR-C(2012)009, para. 41. The Court has confirmed that each application will be considered on the basis of, *inter alia*, the existence of a personal risk for the applicant established by a substantiated account, see para 28 of GT-GDR-C(2012)009 and footnote 4 above.

[14] See for example, *N.A. v United Kingdom* (no. 25904/07), *Salah Sheek v The Netherlands* (no. 1948/04), *M.S.S. v. Belgium and Greece* (no. 30696/09), *Hirsi Jamaa & otrs v. Italy* (no.27765/09), *Sufi and Elmi v United Kingdom* (nos. 8319/07 and 11449/07).

12. It is clear that the procedural reforms introduced by the Court have contributed to the fall in the number of interim measures being imposed, as has the absence of a sudden influx of cases relating to a specific situation. The extent to which these reforms will be capable of dealing with such an influx should such a situation reoccur remains to be seen.

b. Whether applications in which interim measures are applied are now dealt with speedily

13. The Izmir Declaration[15] emphasises that requests should be based on an assessment of the facts and circumstances in each individual case, followed by a speedy examination of, and ruling on, the merits of the case or of a lead case.

14. The Court's practice has gradually changed so that the decision to apply Rule 39 is increasingly combined with a decision to communicate the application to the Government.[16] Similarly, where a Rule 39 request is refused, that decision is now increasingly combined with a decision to declare the application inadmissible.[17] If immediate communication is not possible, the Court will try to communicate it in the following days or week. An internal control system is being studied within the Registry to regularly verify the follow-up given to cases. It should also be noted that the application of Rule 39 is systematically accompanied by giving the case priority[18] and also results in shortened deadlines for the parties' submission of observations. These measures should have the effect of reducing the length of time that it takes the Court to deal with applications in which interim measures are applied.

15. From September to December 2011, approximately 44% of cases in which Rule 39 was applied were subject to immediate communication. In 2012, the proportion rose to approximately 60 – 65% (figure to be confirmed by the Registry in March 2013).[19] Similarly, 12% of the applications where Rule 39 was refused were declared inadmissible at the same time.[20] There are three reasons why not all applications in which interim measures are imposed are communicated immediately: (1) factual information is requested (2) the Court does not have the time or resources to immediately communicate the case[21] and (3) applications are grouped and serially communicated. In terms of cases pending in which interim measures have been imposed, in August 2011, 1553 cases were pending while on 1 January 2013, this figure had fallen to 328. There is no information available on the average length of time taken by the Court to resolve an application in which an interim measure was imposed.[22]

III. ISSUES CONCERNING PROPER FUNCTIONING OF THE INTERIM MEASURES SYSTEM

[15] See Action Plan A.3.
[16] See doc. DH-GDR(2012)018, p.8.
[17] Ibid.
[18] The prioritisation of cases is governed by Rule 41 of the Rules of Court and the Court's published Priority Policy, which orders priority according to a list of seven categories of case; cases involving application of Rule 39 are in the first category. The Registry confirmed that the Court has a policy of automatically prioritising applications when interim measures are applied.
[19] GT-GDR-C(2012)009, para. 17.
[20] See doc. DH-GDR(2012)018, p.8.
[21] Requests for Rule 39 at the end of the week, during holiday periods, in cases of multiple applications concerning the same country, etc.
[22] On 1 January 2013, the average length of time for which cases with interim measures imposed have been pending since that imposition was approximately 22 months.

16. Having examined the question of interim measures in the round, the CDDH wishes to draw particular attention to the following issues.

a. Issues leading up to the moment the Court has to deal with a request for an interim measure

i. Effective domestic remedies

17. The Izmir Declaration stressed "the importance of States Parties providing domestic remedies, where necessary with suspensive effect, which operate effectively and fairly and provide a proper and timely examination of the issue of risk in accordance with the Convention and in light of the Court's case law."

18. The requirements of the case-law on the suspensive effect and the effectiveness of remedies under Article 13 of the Convention, in conjunction with Articles 2 and 3, have been recently recalled by the Grand Chamber of the Court in the judgment *De Souza Ribeiro v. France*[23] which recalls that the person concerned shall have access to a remedy with automatic suspensive effect where a complaint concerns allegations that the person's expulsion would expose him/ her to a real risk of treatment contrary to Article 3 of the Convention or to a real risk of a violation of his/ her right to life safeguarded by Article 2 of the Convention, as well as for complaints under Article 4 of Protocol No. 4.

19. In conformity with the principle of subsidiarity,[24] the Court attaches great importance to the reasons set out by the national courts or tribunals for rejecting an asylum application or an objection to removal. Accordingly, generally speaking, the more that national decisions are detailed and explicitly reasoned, the better informed is the Court as to the applicant's situation and the better able to assess the request for an interim measure.[25]

ii. Timely notification of removal and enforcement actions by the authorities

20. The Court's practice direction states that it "may not be able to deal with requests in removal cases received less than a working day before the planned time of removal. Where the final domestic decision is imminent and there is a risk of immediate enforcement, especially in extradition or deportation cases, applicants and their representatives should submit the request for interim measures without waiting for that decision, indicating clearly the date on which it will be taken and that the request is subject to the final domestic decision being negative".[26]

21. The underlying aim is that the Court receive applications for interim measures as soon as possible. The practice of applying the one working-day deadline, however, implies that the applicant is aware of the planned time of removal. As national practices among State Parties vary considerably when it comes to timely notification of removal and enforcement actions,[27] the Court is prevented from applying the one day deadline in all cases. However, the Court

[23] App. no. 22689/07, judgment of 13 December 2012, para. 82.
[24] The Court considers national authorities better placed to evaluate the evidence presented before it.
[25] See also doc. GT-GDR-C(2012)009, para. 29.
[26] See doc. GT-GDR-C(2012)002.
[27] Most countries in the Council of Europe do not systematically communicate the date and time of removal to individuals by, for example, a removal direction.

generally seeks to clarify the reasons for a late request in order to see which information was transmitted by the national authorities to the applicants or to their representatives.

b. Ensuring awareness of the Court's procedure

i. The requirements surrounding requests for interim measures

22. Concerns have been raised that applicants were not always fully aware of the requirements for submitting a request for an interim measure for example the one working day requirement or the requirement to provide supporting documents.[28] The Registry has provided training to representatives of bar associations and NGOs *inter alia* on these requirements, as has the UNHCR, which published a toolkit in 2012.[29] Relevant information is also available on the Court's website under "Applicants"–"Interim Measures"–"Practical Information", including the Practice Direction adopted by the President of the Court (updated on 7 July 2011).

ii. The legal representative's standing to make a request for interim measures

23. Concerns have been raised that legal representatives sometimes apply to the Court or pursue proceedings without the explicit consent of the applicant.[30] In the context of interim measures, although an application and consent form is required from the applicant, this can only be done after the request has been received given the timeframe within which interim measures are examined. Even for applications not accompanied by requests for interim measures, the application and consent forms are requested during examination of the file and not at the very outset of the procedure. Supplementary information could be provided on the Court's website about the need for the applicant to provide explicit consent by way of a consent form.

24. Concerns have been raised that in some instances applications were pursued when the legal representative was no longer in contact with the applicant. Any loss of contact between the applicant and his/ her legal representative may imply the striking out of the application in substance (Article 37(1)(a) of the Convention). This approach, which the Court has developed in its case law, is stricter than that in certain national courts, which will continue the examination of the case in the presence of the representative alone, even though the latter has no contact with the client. Legal representatives should of their own initiative inform the Court of any loss of contact with his/ her client. The State concerned is informed of the possible strike out decision.

25. Concerns have been raised that interim measures are on occasion imposed by the Court in cases where it turns out that the applicant has in fact voluntarily returned to his country of destination, for example with the aid of the International Organisation for Migration (IOM). This clearly raises the question whether the legal representative is still in touch with his client.

[28] See doc GT-GDR-C(2012)002.

[29] "Toolkit on how to request interim measures under Rule 39 of the Rules of the European Court of Human Rights for persons in need of international protection."

[30] Although it is possible for an application to be pursued by a representative on behalf of an applicant (Rule 36 of the Rules of the Court), the application must be made with the explicit consent of the applicant who must be an alleged victim of a breach of the Convention (Article 34 of the Convention).

26. Where the Court strikes an application out of its list under Article 37(1)(a), this would imply also lifting any interim measure that may have been indicated.

iii. Whether there is still a domestic remedy (with suspensive effect) available

27. Concerns were raised that applicants were not always fully aware of the domestic remedies with suspensive effect that needed to be exhausted before requesting an interim measure (see para. 18 above). More could be done to clarify and increase awareness of what remedies are available and should be exhausted.

c. Issues relating to the way in which a request for an interim measure is processed by the Court

i. The number of incomplete requests

28. Incomplete applications (i.e. those that are not accompanied by the necessary documents etc.) are captured in the 'outside the scope' section of the Court's statistics. 'Outside the scope' also includes applications that are either too late or fall below the threshold of real risk of serious, irreversible harm.[31] There are accordingly no statistics for precisely how many applications are considered as incomplete, nor is there precise information on why they are considered incomplete other than the fact that they were not accompanied by the necessary documents.

ii. Introducing adversarial elements in the procedure, including a possible mechanism to challenge an interim measure once imposed

29. The possibility of introducing an adversarial stage before the application of an interim measure was discussed as it would allow States to submit observations, including relevant factual information, to the Court on the necessity or otherwise of applying an interim measure. In this connection, it was noted that:

- Where necessary, the adversarial stage would need to be preceded by a suspensive measure.
- The effect of this would be to prolong the length of detention of persons subject to removal at national level and add to the workload of the Court.
- Once imposed, it is already possible for a respondent Government to contest an interim measure at any time by sending observations or complementary elements.[32]

[31] Such cases usually involve Articles 2 or 3 but exceptionally may involve Articles 6 or 8 of the Convention.

[32] If a respondent State challenges an interim measure it will be transmitted to the applicant for information and possible comments. The Registry then prepares a full note with the original check list and new material which is sent to the quality checker then the Judge elected with respect to the respondent State. It will then be transmitted to the Vice-President who had taken the decision to apply the interim measure. The latter may decide to lift the interim measure, to maintain it until the substance of the case is examined or to transmit the application to lift the interim measure to the Chamber, if necessary. Numerical data on the number of successful applications for lifting are not available. Requests for lifting may be justified by factual developments (for example, development of the political situation in the applicant's destination country) or by the transmission of further information to the Court (for example, *Haliti v France*, no 72227/12: the applicants, a family composed of two parents and five children aged between less one and eight years, were placed in a detention centre on the morning of 14 November 2012 with a view to being sent that very afternoon to Serbia. Invoking the judgment in the case of *Popov v. France* (nos. 39472/07 and 39474/07), they alleged principally that the placement of their children in administrative detention was contrary to Articles 3, 5 and 8 of the Convention. Rule 39 was applied, then lifted on 28 November 2012, following observations provided by the French government concerning notably the detention conditions of the applicants and their children.

- The Court's new policy is to rapidly communicate an application once an interim measure is imposed[33] which provides the responded Government with the necessary factual information to challenge the interim measure.
- The Court can request any necessary factual information from the parties (Rule 49(3) (a) of the Rules of the Court), including before deciding on the request for an interim measure.
- It would delay the determination of unmeritorious requests for interim measures.

iii. The desirability of an 'intermediate check' for cases that are not communicated after the imposition of an interim measure

30. Consideration was given to whether there should be an intermediate check of cases that are not rapidly communicated after the imposition of an interim measure (which leaves the respondent State without all the factual information to challenge the measure concerned). Some applications were still waiting for the case to be communicated many months after the imposition of an interim measure. Such cases should be in the process of disappearing, given the implementation of systematic immediate communication. An internal control system is being studied within the Registry in order to regularly verify the follow-up given to cases. It can also be noted that respondent States may at any moment provide further information to the Court or challenge the interim measure, including prior to communication.

iv. The grounds on which a request may be granted

31. The Court will only issue an interim measure against a State Party where, having reviewed all the relevant information, it considers that the applicant faces a real risk of serious, irreversible harm if the measure is not applied.[34] Whilst the scope of application of Rule 39 is not restricted to any specific articles of the Convention, requests for its application usually concern the rights to life (Article 2), the right not to be subjected to torture or inhuman treatment (Article 3) and, exceptionally, the right to respect for private and family life (Article 8) or others guaranteed by the Convention.[35] It is a question of avoiding serious irreversible situations that would prevent the Court from properly examining the application and, where appropriate, securing to the applicant the practical and effective benefit of the Convention rights asserted.[36] It follows that requests for interim measures based on Articles other than 2 and 3 of the Convention only very rarely fall within the scope of the application of Rule 39. The majority of requests concerning Article 8 of the Convention are thus rejected, except certain exceptional cases showing irreparable damage.[37] It is likewise the case for requests concerning only Article 5 of the Convention (unless it is a matter of the applicant's state of health) or Article 6.[38]

[33] As noted above, applications of interim measure are now often accompanied by either immediate or rapid communication to the Respondent Government. See document GT-GDR-C(2012)009, para 17.
[34] See doc. GT-GDR-C(2012)005.
[35] *Mamatkulov and Askarov v Turkey*, op cit., para. 104.
[36] Ibid, para 125.
[37] *Evans v United Kingdom*, no. 6339/05, para.5, a case in which Article 2 was also invoked; *Neulinger and Shuruk v. Switzerland*, no. 41615/07, para.5, a case in which Article 3 was also invoked; for an example of rejection see *KissiwaKoffi v Switerland*, no. 38005/07, para. 24.
[38] Interim measures have only very rarely been imposed on the basis on Article 6, for example in the case of *Othman (Abu Qatada) v United Kingdom*, no. 8139/09, judgment of 17 January 2012 a case in which Article 3 was also invoked.

v. The Court giving reasons for the imposition of an interim measure

32. The Court does not currently as a matter of course give reasons for imposing interim measures.[39] It was discussed whether this practice should change to allow states to better understand what amounts to irreparable harm, to address necessary issues at the domestic level (i.e. the need for a more thorough examination of risk by domestic courts) and to enable states to more appropriately challenge the imposition of interim measures. The Registry responded to this by explaining that for cases subject to immediate communication this would amount to duplication. However, it could be envisaged in exceptional circumstances, on an ad hoc basis. Furthermore, the Registry indicated that any supplementary formulation of reasoning would amount to further work for the Court.

vi. Duration of an imposed interim measure

33. The Court's current general practice is to apply interim measures for the duration of the proceedings before the Court. In certain cases, interim measures may be applied for a specified duration. As has been noted above, a respondent State can challenge the application of an interim measure at any time after it has been imposed. To systematically apply interim measures for a specified duration would imply significant administrative management: it would oblige the Court to re-examine periodically the necessity or not of prolonging interim measures requested for each application. This would significantly increase the workload of the Court which would detract from the time devoted to substantive cases. The continuation of the current practice (duration of application determined by the Court), combined with the possibility for states to request the lifting of interim measures at any time and the priority treatment of cases appears to provide the most balanced situation.

vii. The grounds on which the Court may impose interim measures

34. When considering the request for interim measures, the Court normally does not have information or observations provided by the respondent State, only the applicant. The Court may nevertheless look at additional sources of information, for example UNHCR reports and at times, may depart from the applicant's conclusions. It may also depart from the terms of the request by ordering 'lesser measures 'sufficient to achieve the aim of avoiding the risk of serious irreversible harm.[40] Furthermore, it may exceptionally apply Rule 39 ex officio.

viii. Indicating the name of the judge who decided to apply interim measures

35. The name of the judge is generally mentioned when it is a decision that brings proceedings to an end (for example, applications declared inadmissible by a single judge or by committees of three judges, judgments etc.) By contrast, the request for interim measures comes at the beginning of the proceedings and like other comparable procedures the Judge who takes the decision is not named. In the context of interim measures, there may be practical reasons, given the urgency with which they are considered, to use standard formulas.

[39] See doc. GT-GDR-C(2012)009, Appendix 2.

[40] For example a person detained may request that they are released for the purpose of medical treatment. The Court may respond by requiring the respondent State to take certain steps to ensure access to medical treatment, without ordering release from detention.

ix. The number of applications that are not pursued

36. Once Rule 39 has been applied, the applicants may decide not to pursue the case for various reasons, including (1) the case being re-examined by national authorities and the applicant obtaining a status (recognition of refugee status, subsidiary protection etc.), (2) the loss of contact between the applicant and his/her representative and the Registry, and (3) adoption of a judgment in a lead case followed by serial striking out of significant numbers of cases. In all these situations, the substantive case will be subject to striking out, which implies lifting of the interim measure.[41] Detailed statistical data on the different reasons for strike out decisions adopted by the Court are not available.

d. The effect of an imposed interim measure

i. The effect towards the High Contracting Party concerned

37. Interim measures are legally binding and a failure by a State Party to comply with them is to be regarded as preventing the Court from effectively examining the applicant's complaint and normally implies a violation of Article 34 of the Convention by hindering the effective exercise of his or her right of individual petition.[42]

ii. Exhaustion of non-suspensive domestic remedies following imposition of interim measures

38. The case-law does not, in fact, reveal such a requirement. Accordingly, in recent 'lead' judgments concerning cases in which interim measures had been applied, non-suspensive domestic remedies had not been exhausted.[43]

iii. "Positive" interim measures requiring the respondent State to treat the applicant in a certain way

39. It is possible for the Court to order positive interim measures if it is necessary to avoid irreversible harm that would prevent it from properly examining the application and, where appropriate, securing to the applicant the practical and effective benefit of the Convention rights asserted. For example, in recent cases against Greece concerning detained persons, the Court has requested that the government do its utmost so that the persons benefit from the care necessary to their state of health; in one case, it also requested that the frequent transfers between the place of detention and a hospital take place in conditions appropriate to the applicant's state of health. Any 'positive' interim measures should not, however, seek to provide *restitutio in integrum* (fully restore the prior situation).

iv. Treatment of the applicant by the respondent State following imposition of an interim measure

40. The principal obligation is the respect of the indicated interim measure. As to the treatment of the applicant following the indication of the interim measures (for example,

[41] The respondent State is informed of this.
[42] *Mamatkulov and Askarov v. Turkey*, op. cit.
[43] See *M.S.S. v. Belgium & Greece*, *Na v. United Kingdom*, *I.M. v. France* and *Daoudi v. France*, para. 71.

reception facilities), obligations flow from the Convention[44] and other international Conventions and norms.

e. Communication between the Court and relevant domestic actors concerning interim measures

41. Communication between the Court and relevant domestic actors concerning interim measures has improved considerably. The Court publishes yearly statistics on interim measures and has recently started to publish half yearly statistics.

42. The possibility of the Court publishing information on the reasons for rejection of interim measure requests (rejections constituting more than 50% of total decisions) was discussed. Such information would provide applicants' representatives, unrepresented applicants and national authorities with a better understanding of what situations do not amount to irreparable harm and what suspensive remedies should have been exhausted. This would, *inter alia*, assist in reducing the number of repeated failed requests by applicants and their representatives. The Registry indicated its willingness to consider the communication of such information. However, it was noted that, given the potential for creating risk to the applicant, the Court should not publish information concerning individual cases, but only general data on common typologies.

f. Interim measures preventing removal to another member State where the applicant would be at risk of irreparable harm

43. It was mentioned that a high number of interim measures relate to the return of persons to another Council of Europe member State. Questions were raised about whether it would be possible and/or appropriate for the Court to impose an interim measure on the destination State (i.e. an interim measure on the destination State from committing the irreparable harm). This raised further questions about whether the Court could impose interim measures against a state not party to the instant application. In relation to returns to a member State, the Court applies the same criteria as are applied for non-member States.[45]

IV. CONCLUSIONS AND RECOMMENDATIONS

44. The number of indications of interim measures has fallen considerably over the past two years. The Court is to be commended on the efforts it has made – notably the President's Statement, the new Practice Direction, transfer of responsibility to the Filtering Section of the Registry and centralisation of treatment of requests also at the decision-making level – that have contributed to this development. It is too soon, however, to say determinatively whether the procedural reforms introduced by the Registry will be sufficient to keep interim measures at a sustainable number. The Court could be invited to consider whether any further measures need to be introduced to ensure that it can cope with influx of requests as happened in 2010/2011 in the context of returns to Iraq.

45. There is no information available on the average length of time taken by the Court to resolve an application in which an interim measure was imposed. The Court is nevertheless to be commended for its on-going efforts to deal speedily with applications in which interim

[44] Certain standards were evoked in the judgment in *M.S.S. Belgium & Greece*.
[45] For criteria see document GT-GDR-C(2012)009, para. 28.

measures have been imposed, notably by their immediate communication, according them high priority treatment, and establishing an internal control system to regularly verify the follow-up given to them. It can be presumed from this that such applications are now dealt with more speedily than in the period immediately prior to the Izmir Conference. The Court could be invited to provide further information on progress of this system, as well as statistical information on the average length of time between the granting of an interim measure and the final determination of a case. The CDDH also encourages the Court to deal speedily with these applications and to consider whether more may be done to shorten the time between imposition of an interim measure and final determination of the application.

46. The Court's recent initiative to publish half yearly statistics on interim measures is to be welcomed. The Court could consider also communicating additional, generic information on interim measure requests, including on the reasons for refusals, in such a way as not to put the safety of the applicant at risk. The means of communication could include amendment of the Practice Direction as and when necessary, the Court's website and its regular meetings with Government Agents and applicants' representatives. The CDDH recalls the Court's detailed memorandum on the practice of the panel of the Grand Chamber and invites the Court to consider preparing a similar text on its practice with respect to interim measures.

47. Member States should be reminded of the importance of providing national remedies, where necessary with suspensive effect, which operate effectively and fairly and provide, in accordance with the Convention and in light of the Court's case law, a proper and timely examination of the issue of risk (see paragraphs 17-19 above). The CDDH would propose that it be recommended to member States that national decisions should be such as to provide the Court with sufficient information to ascertain the quality and sufficiency of the domestic procedure.

48. The CDDH underlines the importance of the Court ensuring that a legal representative acts with the consent of the applicant in cases in which interim measures have been applied. It invites the Court to clarify this requirement on its website and to implement a timely check of whether or not such consent exists.

49. Although this is currently mentioned in the Court's letter to applicants and/ or their representatives, the Court could also provide supplementary information on the Court's website and its practice direction informing applicants' representatives that they should promptly inform the Court of their own motion if they are no longer in contact with the applicant. Related to this, the Court could provide supplementary information on the need for it to be informed when the applicant has voluntarily returned to his/ her country of destination, and the Court when considering the request could systematically pay attention to this issue in its checklist.

50. Member States could better publicise the domestic remedies with suspensive effect that are available to individuals subject to removal and which should therefore be exhausted before applying for an interim measure.

51. Given the relevant material and time constraints, it would seem that the possibility of a "prior dialogue" between the Registry and the state concerned during the examination of the request for interim measures could and should in no way be systematic. It can and should only be a solution for use on an ad hoc basis, on the basis of the Court's decision and if the latter considers it useful in order to obtain specific, factual information. Whilst the CDDH

would not propose an adversarial procedure, it nevertheless encourages the practice of dialogue between the Court and the respondent State concerned.

52. The Court could be invited to consider its case law with respect to requiring exhaustion of effective, non-suspensive remedies as a condition for examination of applications concerning which an interim measure has been applied. This would allow completion of domestic procedures, in accordance with the principle of subsidiarity.

53. Acknowledging that it is likely to be burdensome for the Court routinely to provide reasons for the imposition of interim measures, the Committee of Ministers could suggest that the Court consider giving reasons on an ad hoc basis in exceptional circumstances.

54. The Committee of Ministers could take note of the high number of interim measures that are related to expulsions to another Council of Europe member State and remind member States of their obligations under the Convention.

55. The CDDH underlines the importance of prompt and effective domestic implementation of judgments concerning Articles 2 and 3, which helps to diminish the number of Rule 39 requests in similar cases.

56. Member States should be reminded that Article 34 of the Convention entails an obligation for States Parties to comply with an indication of interim measures made under Rule 39 of the Rules of Court and that non-compliance normally implies a violation of Article 34 of the Convention.

Appendix

Registry Checklist and letters to Applicants

GENERAL CHECKLIST

Application no. XXXXX/XX
XXXXXXXX v. XXXXX

Section: X
Rapporteur: XXX
Division FS.8: XXX/XXX/XXX
ref: #XXXXXXX

☐ **Application form received**
☐ **Section assistant informed**

I. APPLICANT

1.	Name:	XXXXXXXX yyyyyy
2.	Address:	Mr yyyyyy XXXXXXXX Xxxxx xxxxxxxx xxxxxxxxxxxxxxxxxxxxxxx 97xxx XXXXXXXXXXXXX
3.	Date of birth:	...
4.	Nationality:	xxxxxxxxxx
5.	Representative:	 *Phone*: None *Fax*: [Click and Type (add in CMIS)] *E-mail*: None

II. REQUEST

6.	Date request received (MESURE/DEM):	[Click and Type (add in CMIS)]
7.	Interim measure requested:	[Click and Type]
8.	Convention issue or Article referred to:	[Click and Type]
9.	Grounds for the request:	[Brief Summary of Story + Request]

III. FACTUAL BACKGROUND AND DOMESTIC PROCEEDINGS[46]:

[Click and Type]

IV. DECISION

[Click and Type]

[46]. Concerning the domestic proceedings indicate decision body, date of decision and a succinct summary of reasons.

Proposal(s) and reasons:
[Click and Type]

Quality-checker:	**Judge Rapporteur:**
Date:	Date:
Signature:	Signature:

Ruling by the CASEPRESIDENT TO CORRECT

- ☐ Apply interim measure[47] (Rule 39) (MESURE/Y)
- ☐ Refuse application of interim measure (Rule 39) (MESURE/N)
- ☐ Declare application inadmissible under Article 27 § 1 (IRRECEV)
- ☐ Urgent notification (Rule 40) (INF/REQ/40)
- ☐ Grant priority (Rule 41) (PRIORITE/Y)
- ☐ Grant anonymity (Rule 47 § 3) (ANON/Y)
- ☐ Grant confidentiality[48] (Rule 33) (FILE/CONF/Y)
- ☐ Ask for factual information (Rule 54 § 2 (a))
- ☐ Communicate for observations (Rule 54 § 2 (b))

Date:	Hour:
Signature:	Name:

[47]. If interim measures are applied, *priority* must also be granted.
[48]. If anonymity is granted, *confidentiality* must also be granted.

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

[Request too late / not considered]

Xxxxxxx Xxxxxx XXXXXXXX
Xxxxx xxxxxxxx
XXXXXXXXXXXXXXXX
97XXX XXXXXXXXXXXXX

XXXXXX SECTION

ECHR-LE1.1R R39 XX Xxxxxxx XXXX
XXX/XXX/xxx

Application no. XXXXX/XX
Xxxxxxxx v. Xxxxxx

Dear Xxx,

I acknowledge receipt of your fax of XX Xxxxxxx XXXX and accompanying documents requesting the European Court of Human Rights under Rule 39 of the Rules of Court to prevent your client's removal to [Click and type State (please update CMIS)]. **This request has been given the above application number, to which you must refer in any further correspondence relating to this case**.

Your fax was received at the Court at 16:30 French time on Xxxxxx, XX Xxxxxxx XXXX to prevent removal at 08:00 on [J + 1], XX Xxxxxxx XXXX. Due to its late submission, the Court was not in a position to consider your request.

Applicants are advised to send documents at the earliest opportunity.

Removal directions sent to the Court after 15:00 French time (2 pm UK time) on the day before removal may not be dealt with. When removal takes place at the weekend, the day before removal is Friday.

I would be grateful if you would inform me as soon as possible, and in any event before **[DATE 4 WEEKS]**, if your client wishes to continue with her complaint under the Convention. If you do not confirm by this deadline that you wish to continue with your complaint, your file will be destroyed without further notice.

Yours faithfully,

X. Xxxxxxx
Xxxxxxxxxx Xxxxxx Xxxxxxxx

ADRESSE I ADDRESS
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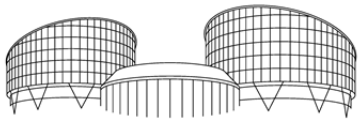

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

[Outside the Scope]

Xxxxxxx Xxxxxx XXXXXXXX
Xxxxx xxxxxxxx
XXXXXXXXXXXXXXXXX
97XXX XXXXXXXXXXXXX

ECHR-LE2.0R FS
XXX/XXX/xxx

X Xxxxxxxx XXXX

Application no. XXXXX/XX
Xxxxxxxx v. Xxxxxx

Dear Xxx,

I acknowledge receipt of your fax of 5 December 2012 requesting the European Court of Human Rights to make an interim measure under Rule 39 of the Rules of Court to [prevent] [[click and type Measure requested/Country]].

This application falls clearly outside the scope of Rule 39 and therefore has not been submitted to the [Acting] President of a Chamber for decision. The Court will not, therefore, [prevent] [[click and type Measure requested/Country]].

The Court applies Rule 39 only where an applicant faces imminent risk of serious and irreparable damage. The vast majority of cases in which Rule 39 is applied concern deportation and extradition proceedings and involve complaints that the applicant will be at real risk of a violation of Article 2 (the right to life) or Article 3 (the right not to be subjected to torture or inhuman treatment) of the Convention, if returned to the receiving State.

I would be grateful if you would inform me as soon as possible, and in any event before **XX Xxxxxxxx XXXX**, whether you wish to continue with your complaints under the Convention. If so, you should provide the Court with a forwarding address. If no such information is received by that date, your file will be destroyed without further notice.

Yours faithfully,

X. Xxxxxxx
Xxxxxxxxxx Xxxxxx Xxxxxxxx

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EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

[Incomplete Rule 39 request]

Xxxxxxx Xxxxxx XXXXXXXX
Xxxxx xxxxxxxx
XXXXXXXXXXXXXXXXX
97XXX XXXXXXXXXXXXX

Fax: +

XXXXXX SECTION

ECHR-LE2.0R R39
XXX/XXX/xxx

XX Xxxxxxx XXXX

Application no. XXXXX/XX
Xxxxxxxx v. Xxxxxx

Dear Sir,

I acknowledge receipt of your recent correspondence / fax(es) of XX Xxxxxxx XXXX, in which you request a measure under Rule 39 of the Rules of Court to stop your / your client's [removal / deportation / extradition] to [Click and type State (please update CMIS)].

This request has been given the above application number, to which you must refer in any further correspondence relating to this case.

I would inform you that, according to the Court's practice, unsubstantiated requests for an interim measure within the meaning of Rule 39 are not submitted to the [Acting] President of the Section for decision. This includes requests, like yours in the present case, where the relevant documents have not been submitted, such as [a detailed account of the circumstances that led to the departure from your / your client's country of origin and a statement specifying the grounds on which your / his / her particular fears of return are based], [the nature of the alleged cited risks] [and the Convention provisions alleged to have been violated]. A mere reference to submissions in other documents or domestic proceedings is not sufficient; which implies that requests must be accompanied by copies of all relevant domestic court, tribunal or other decisions or material.

[In particular, you must submit the following document(s):

List of required documents, to be inserted by each division

Netherlands: copies of all interviews and decisions taken by the national administrative and judicial authorities

Sweden: the decisions / judgment from the ***Migrationsverket***, ***Migrationsdomstolen*** and ***Migrationsöverdomstolen***. Furthermore, you are requested to fill out and return the enclosed questionnaire.

UK: any letters from the Home Office, any appeal determinations from the relevant asylum and immigration tribunals and any judicial review decisions from the High Court (if applicable).]

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If there are any medical documents (reports or other) relevant to this claim, you should also send copies of these.

Accordingly, in its present form and for as long as the relevant documents have not been received, [prior to your / your client's removal / deportation / extradition, or by [Click and type Time] on XX Xxxxxxx XXXX,] your request to apply Rule 39 will not be submitted to the [Acting] President of the Section.

You are invited to consult the practice direction on interim measures available on the Court's internet site.

The file opened in respect of your communication **will be destroyed without being submitted for judicial decision, six months from the date of the present letter**, unless the duly completed Rule 39 request and/or an original formal application form has been received in the meantime.

[As you are [/ your client is] being removed / deported / extradited to another Member State of the Council of Europe, it will be open to you / your client to make an application against that country if it appears that it is responsible for any breach of your / his / her rights under the Convention.]

[Another version:]

[If you are [/ your client is] removed / deported / extradited to [Click and type State (please update CMIS)], which is another member state of the Council of Europe, it will be open to you / your client to make an application against [Click and type State (please update CMIS)] if it appears that it is responsible for any breach of your / his / her rights under the Convention.]

Yours faithfully,

X. Xxxxxxx
Xxxxxxxxxx Xxxxxx Xxxxxxxx

Enc: Application package
(NB: The enclosure will only be sent to your postal address)

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

[R39 refusal + declared inadmissible]

Xxxxxxx Xxxxxx XXXXXXXX
Xxxxx xxxxxxxx
XXXXXXXXXXXXXXXXX
97XXX XXXXXXXXXXXXX

ECHR-LE11.00R (CD1mod)
XXX/XXX/xxx

X Xxxxxxx XXXX

Application no. XXXXX/XX
Xxxxxxxx v. Xxxxxx

Dear Sir,

I acknowledge receipt on X Xxxxxxx XXXX of your fax of X Xxxxxxx XXXX requesting the European Court of Human Rights under Rule 39 of the Rules of Court to stay the deportation of your to Xxxxxxxx.

On X Xxxxxxx XXXX, after examining the request, the Acting President decided not to indicate to the Government of Xxxxxx, under Rule 39 of the Rules of Court, the interim measure you are seeking.

In addition, in the light of all the material in its possession, and in so far as the matters complained of were within its competence, the Court (Judge's name), sitting in a single-judge formation, found that they did not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols and declared your application inadmissible.

This decision is final and not subject to any appeal to either the Court, including its Grand Chamber, or any other body. You will therefore appreciate that the Registry will be unable to provide any further details about the single judge's deliberations or to conduct further correspondence relating to its decision in this case. You will receive no further documents from the Court concerning this case and, in accordance with the Court's instructions, the file will be destroyed one year after the date of the decision.

The present communication is made pursuant to Rule 52A of the Rules of Court.

Yours faithfully,
For the Court

X. Xxxxxxx
Xxxxxx Xxxxxx Xxxxxx

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