

RULE 39 TOOLKIT



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



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

This toolkit is aimed at informing legal practitioners how to submit a Rule 39 request for interim measures to the European Court of Human Rights. It is not UNHCR's role, nor that of its staff, to request such measures.

This toolkit was prepared with the assistance of the Registry of the European Court of Human Rights but is not in any way binding on the Court.

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CONTENTS

INTRODUCTION	4
OVERVIEW OF RULE 39 INTERIM MEASURES	6
What kind of measures can the Court indicate?	
SCOPE OF RULE 39	7
What are the rights protected by Rule 39 interim measures?	
RULE 39 APPLICANTS	8
Who can submit a Rule 39 request?	
SUBSTANTIATING A REQUEST FOR RULE 39 INTERIM MEASURES	10-11
Who should prove what and how much must be proven?	
RULE 39 REQUEST TIMING	12
When should a Rule 39 request be submitted?	
PROCEDURE AND DECISION	13
How is the request examined and how is the decision transmitted to the parties?	
DURATION OF RULE 39 INTERIM MEASURES	14
How long do Rule 39 interim measures last?	
LEGAL CONSEQUENCES OF RULE 39 INTERIM MEASURES	16
Are Rule 39 interim measures binding?	
APPLICATION INFORMATION	18
Practical advice for completing a Rule 39 request	
THE COURT'S REFUSAL TO APPLY RULE 39	19
What happens if a Rule 39 request is rejected?	
CHECK-LIST FOR MAKING A REQUEST	20

INTRODUCTION

Rule 39 of the Rules¹ of the European Court of Human Rights (hereafter “the Court”) empowers the Court to indicate binding interim measures (see page 16) to the parties in the proceedings before it. An interim measure will **preserve and protect the rights and interests** of the parties involved in a case before the Court.

A request for a Rule 39 interim measure must therefore accompany, or be followed by, a full application submitted to the Court in accordance with Article 34 of the European Convention on Human Rights (hereafter “ECHR”). If a full application is not submitted, the measure will be lifted (see page 14).

RULE 39

1. 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. Where it is considered appropriate, immediate notice of the measure adopted in a particular case may be given to the Committee of Ministers.

3. The Chamber may request information from the parties on any matter connected with the implementation of any interim measure it has indicated.

For persons in need of international protection, Rule 39 offers, *inter alia*, the possibility to request suspension of removal orders. In this context, an interim measure is aimed at preventing irreparable harm pending the assessment of a person’s international protection needs (see page 7).

The Court has stated that Rule 39 plays “*a vital role in avoiding 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*”.²

The effective use of interim measures is endangered by the alarming rise in the number of requests for interim measures made to the Court.³ Between 2006 and 2010, Rule 39 requests increased by 4,000%. The Court’s capacity being limited, it is of paramount importance to ensure that such requests are well-substantiated to facilitate their proper and timely examination by the Court.

The purpose of this “Rule 39 Toolkit” is to strengthen the protection from *refoulement* by providing legal practitioners with practical information about Rule 39 interim measures and assisting them to prepare their requests under this Rule.

¹ The Rules of Court are available at:

http://www.echr.coe.int/NR/rdonlyres/6AC1A02E-9A3C-4E06-94EF-E0BD377731DA/0/REGLEMENT_EN_2012.pdf

² ECtHR, *Mamatkulov and Askarov v. Turkey*, Applications Nos. 46827/99 and 46951/99, Grand Chamber Judgment of 4 February 2005, para. 125.

³ See Statement issued in February 2011 by the President of the Court concerning requests for interim measures. Available at:

http://www.echr.coe.int/NR/rdonlyres/B76DC4F5-5A09-472B-802C-07B4150BF36D/0/20110211_ART_39_Statement_EN.pdf



UNHCR / B. Diab / December 2009

OVERVIEW OF RULE 39 INTERIM MEASURES

What kind of measures can the Court indicate?

In cases concerning persons for whom there appears to be a *prima facie* risk of serious and irreversible harm, the Court can indicate to the respondent Government(s) that an individual should not be removed to a particular country.

The Court has granted Rule 39 interim measures mainly to respondent Governments, but such measures have also been indicated to individuals or private parties.⁴

More exceptionally, the Court has made more general statements inviting Governments to refrain from removing a certain group of persons to a particular country. Such statements do not constitute formal interim measures, but represent a response to a large number of requests pertaining to the same or very similar situations. Thus, in October 2007, the Court sent a letter to a number of States containing the following statement relating to Tamils from Sri Lanka:⁵

“(...) The Acting President [of the Section] has consulted the Judges of the Section about his concerns including as regards the strain which the processing of numerous Rule 39 applications places on judicial time and resources. The Court has concluded that, pending the adoption of a lead judgment in one or more of the applications already communicated, Rule 39 should continue to be applied in any case brought by a Tamil seeking to prevent his removal.

The Section has also expressed the hope that, rather than the Acting President being required to apply Rule 39 in each individual case, your Government will assist the Court by refraining for the time being from issuing removal directions in respect of Tamils who claim that their return to Sri Lanka might expose them to the risk of treatment in violation of the Convention (...)”

The Court has also indicated general measures to both parties in the inter-state case *Georgia v. Russia*:⁶

On 12 August 2008 the President of the Court, acting as President of Chamber, decided to apply Rule 39 of the Rules of Court (interim measures) considering that the current situation gives rise to a real and continuing risk of serious violations of the Convention. With a view to preventing such violations and pursuant to Rule 39, the President calls upon both the High Contracting Parties concerned to comply with their engagements under the Convention particularly in respect of Articles 2 and 3 of the Convention.

In accordance with Rule 39 § 3, the President further requests both Governments concerned to inform the Court of the measures taken to ensure that the Convention is fully complied with.

⁴ ECtHR, *Ilaşcu and Others v. Moldova and Russia*, Appl. No. 48787/99, Judgment of 8 July 2004, para. 11. The Court decided to urge one of the applicants to call off his hunger strike.

⁵ ECtHR, *NA. v. the United Kingdom*, Appl. No. 25904/07, Judgment of 17 July 2008, para. 21.

⁶ Press release of the ECtHR Registry, 12 August 2008, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=839100&portal=hbk&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

SCOPE OF RULE 39

What are the rights protected by Rule 39 interim measures?

While the grounds on which Rule 39 may be applied are not listed in the Rules of the Court, they can be inferred from the Court's case-law.⁷

Application of Rule 39 usually concerns the right to life (Article 2) and the right not to be subjected to torture or inhuman or degrading treatment or punishment (Article 3). Exceptionally, the prohibition of slavery and forced labour (Article 4) and the prohibition on the imposition of the death penalty (Article 1 of Protocol 6 and Protocol 13) are also the subject of Rule 39 measures. The Court has only very rarely granted interim measures in cases where the applicants complained of unjustified interference with their family/private lives under Article 8 ECHR.⁸

The vast majority of cases in which interim measures have been indicated concern deportation and extradition proceedings.

The proper administration of justice may require that other specific measures, in addition to those requested, be taken in order to prevent immediate and irreversible harm (e.g. the authorities concerned could be invited to provide medical treatment to a person deprived of liberty).

Rule 39 interim measures are also of relevance in other areas to prevent eviction from land or accommodation in the host country, provided a risk of irreparable harm is at stake.⁹

“The refugee is a product of our errors, his predicament an indictment of our conduct as peoples and nations. He exists for our education and as a warning.”

*Sadruddin Aga Khan,
United Nations High Commissioner for Refugees
from 1965 to 1977.*

⁷ ECtHR, *Mamatkulov and Askarov v. Turkey*, cited above, and *Paladi vs. Moldova*, Appl. No. 39806/05, Judgment of 10 March 2009.

⁸ ECtHR, *Eskinazi and Chelouche v. Turkey*, Appl. No. 14600/05, Decision of 6 December 2005. The case was eventually declared inadmissible.

⁹ ECtHR, *Yordanova and Others v. Bulgaria*, Appl. No. 25446/06. Decision of 14 September 2010.

RULE 39 APPLICANTS

Who can submit a Rule 39 request?

Any person who intends to submit an application before the Court under Article 34 ECHR and who faces an imminent risk of irreparable harm can submit a Rule 39 request. The person can submit an application and a request regardless of his/her nationality provided he/she is placed under the jurisdiction of one of the States Parties to the ECHR (within the meaning of Article 1 ECHR).

Representation

Either the applicant or his/her “representative” can send the Rule 39 request for interim measures. At this stage of the procedure, the representative can be a family member, friend, lawyer, or NGO (provided this person/organization is entitled to do so) or anyone in possession of a written authority signed by the applicant.¹⁰ If the applicant is represented, and if no written authority is submitted with the request for interim measures, the request may eventually be rejected (except in exceptional circumstances, see the paragraph below). Once the application has been communicated for observations to the Government concerned, legal representation is required but can only be provided by “*an advocate authorised to practise in any of the Contracting Parties and resident in the territory of one of them, or any other person approved by the President of the Chamber.*”¹¹

The written authority must be submitted together with the Rule 39 request unless the representative is unable to obtain a signed authority officially establishing he/she is the applicant’s representative. In such cases, the reasons for which a signature could not be obtained should be explicitly explained to the Court in the Rule 39 request. This may occur, for example, when representatives have not been granted access to a detained applicant.

Can children apply?

Children, including those who are unaccompanied or separated from their parents or guardians by law or custom, can apply to the Court. They do not require representation by a lawyer, their guardian or their parents, unless the case has been communicated for observations to the Government concerned.

Family applications

In those cases where a whole family faces an imminent risk of irreparable harm, family members can apply together or individually. The Court can then decide whether the applications should be joined or considered separately.

¹⁰ The Authority Form is available on the Court’s website through the following link:

<http://www.echr.coe.int/NR/rdonlyres/001F1ADA-0F5A-4975-8B10-25D0C239865B/0/English.pdf>

¹¹ See Rule 36 § 4 a) of the Rules of Court available at: http://www.echr.coe.int/NR/rdonlyres/6AC1A02E-9A3C-4E06-94EF-E0BD377731DA/0/REGLEMENT_EN_2012.pdf



UNHCR / N. Ng / June 2006

SUBSTANTIATING A REQUEST FOR RULE 39 INTERIM MEASURES

Who should prove what and how much must be proven?

While requests for Rule 39 interim measures are often lodged under difficult circumstances, including time constraints, there is a need to ensure that they are appropriately substantiated. There are no established or specific principles in terms of which standard and burden of proof shall be applied by the Court in the Rule 39 context, although several basic principles emerge from Court practice.

Who bears the burden of proof?

The initial responsibility to substantiate an individual application rests on the applicant to tell his/her story in detail and explain as concretely as possible any reasons underlying his/her personal fear of being forcibly returned.

What to prove?

Applicants must always establish that they face an imminent risk of irreparable harm contrary to the ECHR.

How must the imminent risk of irreparable harm be proven?

While the Court will rely primarily on the current and future situation of the applicant for determining the existence of a risk, information from the past, including the applicant's past experiences, may also be relevant. Individual applications under Article 34 ECHR as well as requests for Rule 39 interim measures should thus combine elements of the applicant's previous experiences together with updated personal, family and general information. General information that may be taken into account by the Court in determining the existence of a risk includes UNHCR documentation¹², provided it is relevant and recent. The Court also frequently quotes documents from recognized NGOs, the UN and national agencies in its decisions and judgments.

The applicant's life story should, where possible, be accompanied by documentary evidence. The expression of the applicant's fear is rarely considered sufficient evidence.¹³ As noted above, general information (including from external sources) can be submitted in support of claims, but the application and the request for Rule 39 interim measures should predominately focus on the applicant's personal situation.

How much to prove?

The Court's case law on Article 3 ECHR shows that the mere expression of a fear of persecution upon return does not in itself amount to a "real risk". When considering whether an alleged risk of irreparable harm is real, the Court takes into account a combination of facts and circumstances including the credibility of the facts presented by the applicant, the general situation in the country and, where relevant, UNHCR's position.

Rule 39 requests for interim measures are not expected to meet the standard of proof applied to an individual application under Article 34 ECHR. Due to the short timeframes involved, it would be difficult for Rule 39 requests to do so. However, when requesting Rule 39 interim measures, one should demonstrate, to the extent possible, that there are substantial grounds for believing that there is a real risk of irreparable harm for the applicant if he/she is forcibly returned.

¹² This may include documents relevant to the individual like a UNHCR refugee certificate or country of origin information.

¹³ ECtHR, *M.S.S. v. Belgium and Greece*, Appl. No. 30696/09, Grand Chamber Judgment of 21 January 2011, para. 104.

The Court has stated that “it follows from the very nature of interim measures that a decision on whether they should be indicated in a given case will often have to be made within a very short lapse of time (...). Consequently, the full facts of the case will often remain undetermined until the Court's judgment on the merits (...). It is precisely for the purpose of preserving the Court's ability to render such a judgment (...) that such measures are indicated. Until that time, it may be unavoidable for the Court to indicate interim measures on the basis of facts which, despite making a *prima facie* case in favour of such measures, are subsequently added to or challenged to the point of calling into question the measures' justification.”¹⁴

The interim measure eventually indicated by the Court will be a protective measure which does not prejudice the examination of the full application. At the stage when an interim measure is indicated, it is not for the Court to analyze the case in depth – and indeed it will often not have all of the information it needs to do so.¹⁵

Credibility

In conducting its credibility assessment, the Court will examine whether the allegations and information are consistent in both the individual application under Article 34 ECHR and the request for Rule 39 interim measures. As such, it is important that the allegations and information presented in both are consistent. In this regard, and in parallel with the pursuit of interim measures, it is extremely important to substantiate asylum claims at the domestic level from the beginning of the national procedure.¹⁶ The Court will rarely be convinced by later submissions that could have been submitted earlier in the process. The early submission of all relevant documentation, together with the initial claim, may help to persuade the Court of the applicant's good faith and the overall credibility of the claim.

WHAT DOCUMENTS SHOULD BE SUBMITTED?

Requests **MUST** be accompanied by all necessary supporting documents.

Other material which is considered to substantiate the applicant's allegations must also be included, for example:

- documents from NGOs/UN agencies;
- pertinent press releases;
- news or academic articles.

These documents must be:

- in full version;
- in their original language (provided this is one of the official languages of the State parties to the ECHR);
- photocopies (the Court will not return the documents to the applicants).

¹⁴ ECtHR, *Paladi v. Moldova*, cited above, para. 89.

¹⁵ ECtHR, *M.S.S. v. Belgium and Greece*, cited above, para. 355.

¹⁶ ECtHR, *Nasimi v. Sweden*, Appl. No. 38865/02, Decision of 16 March 2004.

RULE 39 REQUEST TIMING

When should a Rule 39 request be submitted?

In general, and in the specific context of *refoulement*, requests for interim measures under Rule 39 should be made as soon as an imminent risk of removal exists.

Imminent risk

The Court applies the principle of subsidiarity. This means that the Court considers a risk imminent where, and only where, there are no possibilities to make use of the domestic legal avenues capable of suspending removals, or where such avenues have been used unsuccessfully.¹⁷

Suspensive effect

If an effective remedy is available at the domestic level, the risk is not considered to be imminent. In those cases where an applicant claims that a domestic remedy is not effective, this should be clearly specified in the Rule 39 request.

A remedy is effective if, among other requirements, it has suspensive effect both in law as well as in practice.¹⁸ In cases where the effectiveness of the domestic remedy is unclear, a Rule 39 request should be submitted without delay – even while domestic proceedings are ongoing or could be initiated. Where, by contrast, a suspensive application for judicial review can be lodged domestically against a removal order, and where the scrutiny of the risk by domestic courts is capable of being assessed as sufficiently rigorous, the Court is unlikely to consider the risk imminent, and is likely to reject the Rule 39 request for interim measures.

Date and time of removal

Applicants should in all cases indicate the date and time of their expected removal since this element is directly relevant to the determination of the imminent nature of the risk. If an applicant is not in a position to provide this information, it should be expressly noted and explained in his/her Rule 39 request for interim measures. Applicants should keep the Court informed of any further developments and, where relevant, explain why they consider their expulsion to be imminent.

“The Court cannot always examine in a timely and proper manner requests which are sent at the last moment, particularly when they are supported by a large number of documents. For that reason, where the final domestic decision is imminent and there is a risk of immediate enforcement, 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.”

COURT'S WEBSITE

¹⁷ This requirement should not be confused with the formal obligation to exhaust domestic remedies before sending a full application to the Court, referred to in Article 35 § 1 ECHR, although both inevitably overlap in practice.

¹⁸ ECtHR, *Gebremedhin* [Gaberamadhien] v. *France*, Appl. No. 25389/05, Judgment of 26 April 2007, para. 53.

PROCEDURE AND DECISION

How is the request examined and how is the decision transmitted to the parties?

The procedure is conducted in writing, and every request is examined individually (see page 18 for application information).

Decision-making process

Once the request has been submitted, it will be considered by the Court as speedily as possible, depending on how imminent removal is determined to be.

In certain circumstances, it is difficult for the applicant to communicate with his/her representative or vice versa, e.g. when the applicant is detained. In these cases, the Rule 39 request should refer to this obstacle and ask the Court to invite the defending State to facilitate communication between the applicant and the representative,¹⁹ e.g. in some cases by applying Rule 39 for a limited period of time (see page 14).

In practice, when the Court decides to indicate a Rule 39 interim measure, it may also apply the priority procedure, as foreseen by Rule 41 of the Rules of the Court.

Application of Rule 41 can be expressly requested by the applicant or his/her representative regardless of the granting or rejection of a Rule 39 interim measure. However, Rule 41 does not guarantee the examination of the case in a very short delay, as the full procedure still has to be respected and that, therefore, the Court still needs a minimum of 18 months to issue a judgment in which Rule 41 is applied.

Every request for interim measures will be dealt with as soon as possible by the Court, unless the request is manifestly intended as a delaying tactic. If the request is not complete or sufficiently substantiated, the Court may decline to deal with it. The Court may exceptionally ask for additional information to be submitted,²⁰ but such omissions will delay the Court's decision. Some requests are not put to the Court for decision, e.g. requests which are submitted too late, requests that are outside of the scope of the Rules or requests that are

repetitive.

In certain cases, the President or Vice-President taking the Rule 39 decision may also take further procedural decisions, including deciding to communicate the case to the respondent Government if Rule 39 is applied, or deciding to declare an application inadmissible if Rule 39 is not applied.

Once the decision is taken

Applicants or their representatives are informed of the decision of the Court to grant or refuse Rule 39 interim measures by letter (sent by fax and post). Reasons for the Court's decision are not given. Where the Court decides to indicate a Rule 39 interim measure, the defending State is informed (by fax and post). If interim measures are urgently required, the Court may first inform the parties by phone before sending a confirmation of its decision by fax and post.

No appeal can be filed against decisions on a Rule 39 request, but applicants may submit a new request if new elements arise. Furthermore, if new elements arise, parties can ask the Court to lift Rule 39 measures (see page 14). In any case, the Court will always assess the full application regardless of the refusal or lifting of a Rule 39 request if the applicant indicates that he/she wants to maintain his/her application.

¹⁹ ECtHR, *Shtukaturov v. Russia*, Appl. No. 44009/05, Judgment of 27 March 2008, para. 33.

²⁰ *Ibid*, para. 32.

DURATION OF RULE 39 INTERIM MEASURES

How long do Rule 39 interim measures last?

The Court specifies the period of time during which the Rule 39 interim measures apply. The Court can:

- apply Rule 39 “**until further notice**” – i.e. until the end of the procedure before the Court, unless new circumstances arise that require the lifting of the interim measures (see below); or
- apply Rule 39 “**with a time-limit**” – i.e. until a given date specified by the Court, after which the Court will determine whether the interim measure should be prolonged until another given date or “until further notice”. This can be done at the Court’s initiative or upon the applicant’s request (or that of his/her representative).

In practice, the Court often applies Rule 39 with a time-limit when the case-file requires further evidence be provided. One should note however that the Court is increasingly rejecting Rule 39 requests that are incomplete.

Lifting of Rule 39 interim measures by the Court

Rule 39 interim measures may be lifted by the individual judge of the Court who took the decision to indicate the measures, or by the Chamber.

The Court may lift Rule 39 interim measures where:

- the Court considers it necessary to do so (e.g. if the applicant is no longer considered to be at risk of imminent and irreparable harm or where the risk of harm would no longer be imminent, such as in cases where the failed asylum-seeker is invited to submit a new claim for asylum to the domestic authorities);²¹
- the applicant requests it (e.g. to facilitate voluntary return back to his/her country of origin); or
- the defending Government requests it (e.g. if a State considers it is in possession of material capable of convincing the Court to annul the interim measure and informs the Court accordingly).²²

What happens to the Rule 39 interim measures if the case is adjourned?

In some instances the Court may grant an adjournment, e.g. in order for the applicant to submit a new claim for asylum to the domestic authorities. If the case is adjourned, the Court will either decide that the Rule 39 interim measures remain in force, or the Court may request an undertaking from the respondent Government that the individual will not be removed pending the outcome of the final decision on the newly submitted claim.²³ A further alternative is to lift the Rule 39 interim measures on the basis that the applicant will be able to revert to the Court later, if need be.

²¹ This was the case with over three hundred Tamils following the judgment of the Court in *NA. v. the United Kingdom*, cited above.

²² ECtHR, *Paladi v. Moldova*, cited above, para. 90.

²³ This was the procedure followed in over three hundred Tamil cases after the judgment in *NA. v. the United Kingdom*, cited above.



UNHCR / A. Branthwaite / March 2011

LEGAL CONSEQUENCES OF RULE 39 INTERIM MEASURES

Are Rule 39 interim measures binding?

Rule 39 individual interim measures are binding for the period during which they remain in force.

Failure to comply with Rule 39 interim measures was initially a matter of “*serious concern*”.²⁴ The binding nature of Rule 39 has been established by the Court since February 2005 (according to the Court’s most relevant case-law).²⁵

The Court has repeatedly considered that a State which does not respect Rule 39 interim measures violates the right of individual petition guaranteed by Article 34 ECHR. This article requires Parties not to hinder the effective exercise of an applicant’s right to access the Court. According to the Court’s current jurisprudence, interim measures are binding on a State, and failure to respect them will necessarily lead to a violation of Article 34 of the ECHR.

Rule 39 bears a close relationship with the **right to individual petition** under Article 34 ECHR. The Court has stated that a State which does not respect a Rule 39 interim measure violates Article 34

Conversely, nothing in the Court’s jurisprudence indicates that **general statements** (see page 6) are binding on States to which they are addressed. Rather, these general statements are a call for State cooperation. As Rule 39 is closely connected to Article 34 ECHR and the right to individual petition, only the individual(s) who has/have submitted their case(s) to the Court are concerned by the measure indicated. However, general indications underline an existing need for international protection or at least the importance of closely verifying the existence of such a need, and thus represent a call for States to support the Court in its task.

Verification of compliance

It is for the Court, and not for the domestic authorities concerned, to verify compliance with interim measures.²⁶ To determine whether a State has complied with those measures, the Court applies the following legal approach:

- the fact that the damage which Rule 39 was designed to prevent does not occur is irrelevant to the assessment of the State’s compliance with the given interim measures;²⁷
- the point of departure to assess whether the respondent State has complied with the interim measures is the formulation of the interim measure themselves;²⁸
- the Court examines whether the State concerned complied with the letter and the spirit of the interim measures indicated.²⁹

Once Rule 39 has been applied, the responsibility lies with the State to demonstrate to the Court that the interim measures were complied with or, in an exceptional case, that there was an **objective impediment** which prevented compliance. In the latter case, the State must also show that the authorities took all reasonable steps to remove the impediment and to keep the Court informed of the situation.

²⁴ ECtHR, *Cruz Varas v. Sweden*, No. 15576/89, Judgment of 20 March 1991.

²⁵ ECtHR, *Mamatkulov and Askarov v. Turkey*, cited above, para. 100; ECtHR, *Olaechea Cahuas v. Spain*, No. 24668/03, Judgment of 10 August 2006.

²⁶ ECtHR, *Paladi v. Moldova*, cited above, para. 90.

²⁷ *Ibid.*, para. 89 *in fine*.

²⁸ *Ibid.*, para. 91.

²⁹ *Ibid.*



UNHCR / J. Redfern / June 2006

APPLICATION INFORMATION

Practical advice for completing a Rule 39 request

Although there is no specific application form to submit a Rule 39 request, the applicants can fill in the Court's general Application Form which enables applicants to ensure compliance with the Court's requirements. The general Application Form is available in 35 languages on the Court's website.³⁰

Nevertheless, nothing prevents applicants from submitting their Rule 39 request on blank paper, provided they respect the Court's instructions. To facilitate the Court's work, it is in any case recommended to present the facts of the case before separately developing legal arguments.

UNHCR recommends that potential applicants strictly follow the instructions available on the Court's website.³¹

Contact details

While a Rule 39 request is pending before the Court, UNHCR recommends that applicants or their representatives remain as available as possible. For this purpose:

- a phone number, ideally a mobile, should be provided so the Court can reach the applicant/representative as quickly as possible if a request lacks information;
- this phone number should be easily readable and written on the cover page of the request.

Timing of the submission

Rule 39 requests should be faxed in sufficient time so as to provide the Court with at least one working day to deal with them. If the Court is facing a large number of Rule 39 requests, there is no guarantee that requests will be examined speedily, although the Court will do its best to deal with meritorious cases which arrive late where no fault attaches to the applicants for failing to apply in time.

During holiday periods, the Court's registry maintains a stand-by system to deal with any urgent Rule 39 request. This system is not operational on Saturdays and Sundays, nor on French public holidays.

³⁰ The general Application Form is available at:
<http://www.echr.coe.int/ECHR/EN/Header/Applicants/Apply+to+the+Court/Application+pack/>

³¹ The Court's instructions to submit a Rule 39 request are available at:
<http://www.echr.coe.int/ECHR/EN/Header/Applicants/Interim+measures/Practical+information/>

THE COURT'S REFUSAL TO APPLY RULE 39

What happens if a Rule 39 request is rejected?

In cases where Rule 39 interim measures are refused, the applicant can still continue with the main proceedings (under Article 34 ECHR) before the Court.

It is important to remember that Rule 39 is just one of the tools provided by the ECHR mechanism to protect the effectiveness of Article 34 ECHR. This explains the strong connection between Rule 39 of the Rules of the Court and Article 34 ECHR (see page 16). It also means that the rejection of a Rule 39 request may only be the first step of the procedure, and that nothing prevents the applicant, at least in law³², from maintaining his/her application on the merits.

Where Rule 39 has not been applied, States may still opt to suspend the applicant's removal.

In case of a Rule 39 refusal, the applicant or his/her representative can submit a fresh and more substantiated Rule 39 request. Repetitive requests without new elements have a higher likelihood of rejection.

Reasons for refusal

A Rule 39 request can be refused for various reasons, such as insufficient evidence, the fact that the risk of removal does not lead to an imminent risk of irreparable harm, or where the allegedly violated right is not guaranteed by the Convention (or does not fall within the scope of Rule 39). Reasons for refusal of a Rule 39 request are never given by the Court.

“(...) requests for interim measures should be individuated, fully reasoned, be sent with all relevant documentation including the decisions of the national authorities and courts, and be sent in good time before the expected date of removal. (...) It must be emphasized that failure to comply with the conditions set out in the Practice Direction may lead to such cases not being accepted for examination by the Court.”

**STATEMENT ISSUED BY THE PRESIDENT OF THE COURT
CONCERNING REQUESTS FOR INTERIM MEASURES, 11 FEBRUARY 2011**

³² Although this may be difficult in practice, in case of rejection, since the applicant may be removed.

CHECK-LIST FOR MAKING A REQUEST

Before sending a Rule 39 request to the European Court of Human Rights, ensure:

- The applicant is facing an imminent risk of irreparable harm, and the nature of the risk faced is precisely described, including the time of removal and the destination
- The request is written in one of the official languages of the Parties to the European Convention on Human Rights
- The request is sent as soon as possible after the final domestic level decision regarding removal
- All the relevant documents and evidence are attached – in particular **full copies of domestic authorities' decisions** – and
- “RULE 39 – URGENT” is written at the top of the request

Once the request has been completed:

- It should be sent **by fax with all the supporting documents**
(Requests sent by mail will be considered but applicants should take into account the time for delivery)
- Court's contact details:

Fax No: (+33) (0)3 88 41 39 00

Telephone No: (+33) (0)3 88 41 20 18

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