Guide on strategic litigation for lawyers and civil society organizations: Strategies to end immigration detention of children through international remedies

February 2026

International Commission of Jurists

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Acronyms

Legal instruments

AP ESC	Additional Protocol to the ESC Providing for a System of Collective Complaints
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CED	International Convention on the Protection of All Persons from Enforced Disappearance
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ESC	European Social Charter and Revised Social Charter
EU Charter	Charter of Fundamental Rights of the European Union
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
OP1 CRC	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
OP2 CRC	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
OP3 CRC	Optional Protocol to the Convention on the Rights of the Child on a communication procedure
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
OP CEDAW	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women
OP CRPD	Optional Protocol to the Convention on the Rights of Persons with Disabilities
OP1 ICCPR	First Optional Protocol to the International Covenant on Civil and Political Rights
OP2 ICCPR	Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty
OP ICESCR	Optional Protocol to the International Covenant on Economic, Social and Cultural Rights
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights

International bodies

CAT Committee	Committee against Torture
CED Committee	Committee on Enforced Disappearances
CEDAW Committee	Committee on the Elimination of Discrimination against Women
CERD Committee	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CJEU	Court of Justice of the European Union

CMW Committee	Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families
CoE	Council of Europe
CRC Committee	Committee on the Rights of the Child
CRPD Committee	Committee on the Rights of Persons with Disabilities
ECSR	European Committee on Social Rights
ECtHR	European Court of Human Rights
HRC	Human Rights Committee
OHCHR	Office of the UN High Commissioner for Human Rights
SPT	Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
UNHCR	United Nations High Commissioner for Refugees – The UN Refugee Agency

1. Introduction to strategic litigation on immigration detention of children

This Guide to Strategic Litigation is intended for lawyers, civil society organizations (CSOs) and other actors engaging or considering engagement in strategic human rights litigation focusing on immigration detention of children,[1] and alternatives to immigration detention of children.[2] The Guide provides an overview of, and practical guidance on ,engaging with European Union (EU) and international human rights mechanisms, conducting strategic litigation in immigration-related cases, and providing legal assistance to children and their families. It also examines strategies, including with respect to advocacy and communication, which can be used to enhance the chances of success and impact of strategic litigation.

This Guide builds on the existing experience and expertise of the International Commission of Jurists (ICJ), including with respect to international and EU standards, and strategic litigation,[3] as well as on the outcomes of the RELEASE project,[4] in particular, national trainings and transnational workshops organized for lawyers and other practitioners with experience in litigating cases concerning immigration detention and alternatives to immigration detention of children.

The Guide is composed of three main sections. Section 1 introduces the concept of strategic litigation involving children, affected by migration-related situations,[5] including considerations of why and when to bring a case, how to assist child applicants in a safe and human rights-compliant manner, and outlines what international and regional fora, including within the EU, may be available to challenge immigration detention and rights violations in alternatives to immigration detention. Section 2 describes the relevant international and EU-level procedures and mechanisms, including judicial, quasi-judicial, and other relevant avenues. It outlines admissibility requirements and procedural steps needed for effective legal engagement. Section 3 focuses on the importance of follow-up, advocacy, and communication to reinforce litigation and support the implementation of decisions. It discusses alliance-building, public engagement, and interaction with monitoring mechanisms responsible for overseeing the implementation of the decisions described in Section 2.

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[1] For the purposes of this guide, "immigration detention of children" is understood broadly to encompass all situations in which a child is deprived of liberty for immigration-related purposes, and not as a criminal sanction. "Immigration detention of children" refers to any deprivation of liberty ordered or maintained by a State either (i) pursuant to powers of purported immigration control, including in the context of entry, stay, asylum, return, or removal procedures related to the child, or (ii) as a consequence of the detention of a parent or primary caregiver of the child for immigration control purposes. See International Detention Coalition, *Captured Childhood: Introducing a new model to ensure the rights and liberty of refugee, asylum seeker and irregular migrant children affected by immigration detention*, 2012, pp. 32-36.

[2] "Alternatives to immigration detention" – also referred as "less coercive measures", "special measures", or "less intrusive measures" – refer to a range of formal and informal non-custodial measures which are applied instead of detention, and not used as an alternative form of detention. See Council of Europe's Steering Committee on Human Right (CDDH), Practical Guide – Alternatives to Immigration Detention: Fostering Effective Results, Adopted at the 91th CDDH meeting (18-21 June 2019).

[3] See CADRE project, Training materials on Alternatives to Detention for Migrant Children, April 2022; FAIR project, Training materials on access to justice for migrant children, April 2018; ICJ, *Migration and International Human Rights Law: A Practitioners' Guide*, No. 6, 3rd ed., 2014.

[4] The RELEASE (Protecting Migrant Children against Detention through the EU Charter) project seeks to develop support and capacity building for lawyers working in immigration cases to strengthen their ability, and that of civil society more generally, to engage in strategic litigation to end the immigration detention of children. The project started in March 2024 and is intended to last until February 2026; it is carried out by the ICJ in cooperation with: aditus Foundation (aditus), Malta; Défense des Enfants International - Belgique (DEI Belgique), Belgium; Forum for Human Rights (FORUM), the Czech Republic; Helsinki Foundation for Human Rights (HFHR), Poland; Greek Council for Refugees (GCR), Greece; Foundation for Access to Rights (FAR), Bulgaria.

[5] For the purposes of this guide, the terms "migration-related situations" is used in a broad sense, and it does not imply that all children covered by the guide have themselves migrated. It encompasses a range of situations affecting children, including (but not limited to): children who have migrated across borders; children born to non-national or migrant parents in a country of residence; refugee and asylum-seeking children; stateless children; undocumented children; children of undocumented parents; and unaccompanied or separated children.

Strategic litigation depends not only on the legal claim but also on the procedural requirements and forum selection. Admissibility criteria, jurisdictional boundaries, and the specificities of each potential forum must be considered. Early decisions about where and how to litigate may determine the outcome of a case. Equally important are interim measures and third-party interventions, which can strengthen the case. Strategic litigation therefore requires a proactive approach.

1.1. What is strategic litigation?

Although there is no universally accepted definition of strategic litigation,[6] the term is generally understood to refer to the practice of bringing legal claims with the goal of effecting change beyond the individual case. Strategic litigation does not focus solely on the outcome for the parties to the immediate case, but rather seeks to select and pursue cases that will have broader and longer-term implications for law, policy and practice. Increasingly, victims and survivors of human rights violations or abuses, human rights activists, lawyers, CSOs and national human rights institutions (NHRIs) around the world engage in strategic litigation to strengthen respect, protection and fulfilment of human rights.[7] However, strategic litigation is not always about advancing human rights; in some cases, it is pursued to resist potential regressions or mitigate the impact of adverse rulings by a court, aiming to uphold existing human rights protections and limit harm beyond the individual case. In the last three decades, there have been a rapid growth in strategic litigation in the human rights arena, in terms of volume, types of cases, as well as the number and reach of available fora. At the same time, strategic human rights litigation faces considerable challenges impeding both the ability to carry out such litigation and its potentially beneficial impact on human rights.[8]

Strategic litigation concerning children's human rights has also seen a global rise, particularly since the adoption of the United Nations Convention on the Rights of the Child (CRC). In recent years, children have increasingly emerged as agents of change, for instance, in strategic litigation cases related to sexual and reproductive rights and environmental protection.[9] A variety of actors have been involved in strategic child rights litigation, including lawyers, specialized pro bono law firms engaged in human rights litigation, child rights organizations, university-based legal clinics and centres, NHRIs and Child Commissioners or Ombudspersons, as well as legal aid authorities and lawyers' associations.[10]

Strategic litigation can take different forms. Both cases that directly challenge specific laws, policies or practices and strategic intervention in existing individual cases through, for instance, *amicus curiae* briefs or third-party interventions, have proven effective. Civil actions for damages are less common,[11] but have also been successfully pursued on behalf of children in the public interest. Strategic litigation cases are framed as challenging children's rights violations, and may include additional interventions or support by third parties. As discussed further below, collective complaints, non-judicial mechanisms and other advocacy tools can also be effective in exposing violations of children's human rights, exerting pressure on authorities, and enhancing the protection of children's rights.

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[6] Sometimes also referred to as 'public interest litigation' or 'impact litigation'.
[7] Helen Duffy, *Strategic Human Rights Litigation: Understanding and Maximising Impact*, Hart Publishing, 2018, pp. 24-25.
[8] Helen Duffy, *Strategic Human Rights Litigation: Understanding and Maximising Impact*, Hart Publishing, 2018, pp. 32-33.
[9] Aoife Nolan and Ann Skelton, "'Turning the Rights Lens Inwards': The Case for Child Rights-Consistent Strategic Litigation Practice", in *Human Rights Law Review*, 2022, 22, 1-20, pp. 6-7.
[10] Aoife Nolan and Ann Skelton, "'Turning the Rights Lens Inwards': The Case for Child Rights-Consistent Strategic Litigation Practice", in *Human Rights Law Review*, 2022, 22, 1-20, pp. 7-8.
[11] Aoife Nolan and Ann Skelton, "'Turning the Rights Lens Inwards': The Case for Child Rights-Consistent Strategic Litigation Practice", in *Human Rights Law Review*, 2022, 22, 1-20, p. 8.

1.2. Why consider human rights strategic litigation?

The reasons for engaging in strategic litigation may vary depending on the context, the specific case at hand and the venue in which the claim is brought. For human rights defenders and activists, CSOs, NHRIs, and other actors actively engaged in human rights advocacy, strategic litigation is one of many tools available to advance outcomes seeking to safeguard human rights protection. Such outcomes may include the development or clarification of international human rights law and standards, legislative and policy reforms, cessation of certain practices detrimental to human rights, or the establishment of new human rights compliant policies and practices.[12] For a variety of actors engaged in human rights advocacy, strategic litigation may offer a means of bringing human rights concerns to light, exerting pressure on decision-makers and turning international human rights law and standards into reality on the ground.[13]

Aside from these wider goals, litigation may be meaningful and empowering for affected individuals by acknowledging the systemic nature of the violations of their human rights and seeking accountability and change that extends beyond their own case. It may also increase compliance with existing laws, ensuring that the law is respected, and establishing accountability for human rights violations. Other less direct aims of strategic litigation may include, for instance, establishing facts, gaining access to essential information, and contributing to changing entrenched societal attitudes.[14]

When deciding whether to engage in strategic litigation, it is crucial to be aware of and consider several factors. First, lawyers representing clients always have an ethical duty towards those individuals. Although strategic and long-term goals that transcend individual cases are inherent to strategic litigation, these cannot come at the expense of the interests of the individual whose case the litigation concerns. Careful balancing between broader legal objectives and a client's specific interests must therefore be carried out throughout the litigation.[15] Ensuring transparency and continuous communication with the client, and ensuring they have a realistic understanding of their case and its potential outcomes must always be paramount. When working with children, these considerations are particularly important. A child rights-based approach must be adopted to ensure that litigation does not result in harm, and that the child's rights and best interests are respected at every stage. Child rights specific considerations in strategic litigation are discussed further in Section 1.3. of this Guide.

Second, the risks associated with strategic litigation, both for the individual client and, more broadly, for other individuals who may otherwise be affected, must be carefully considered. Depending on the circumstances, strategic litigation on human rights issues may entail a risk of backlash from the authorities or from specific interest groups, or attract media attention and subsequent risks to the client's right to privacy and other human rights more generally. The consequences of an unsuccessful case, or of a successful but unimplemented judicial decision, should be considered. Being at the centre of strategic litigation can be stressful and emotionally draining for the client, particularly in the case

[12] See e.g. Chiara Altafin, "Child Rights Strategic Litigation: Exploring Recent Cases to Advance the Rights of Children Deprived of Their Liberty for Migration- Related Reasons", *European Yearbook on Human Rights 2024*, 18 March 2025, pp. 378-379.
[13] See e.g. European Network of Equality Bodies (Equinet), *An Equinet Handbook: Strategic Litigation*, Brussels, 2017; Helen Duffy, *Strategic Human Rights Litigation: Understanding and Maximising Impact*, Hart Publishing, 2018, pp. 521-522.
[14] See e.g. European Network of Equality Bodies (Equinet), *An Equinet Handbook: Strategic Litigation*, Brussels, 2017; Helen Duffy, *Strategic Human Rights Litigation: Understanding and Maximising Impact*, Hart Publishing, 2018, pp. 521-522.
[15] Nuala Mole (AIRE Center), "Strategic litigation and particularities when children rights impacted" Presentation, RELEASE National Training in Brussels, 7 November 2024: There is always a risk of losing the case, so the child's interest should always be listened. It is essential to never lose sight of the individual case.

of children, who are in a situation of inherent vulnerability as a result of their age.[16] These and other risks should therefore be considered, discussed with the client, and weighed against the potential benefits of litigation at each step of the process and in light of new information.

Where used strategically, litigation has the potential to achieve significant and groundbreaking results, even when the immediate case is unsuccessful or does not lead to the intended outcome. However, such litigation can be complex, both strategically and technically, particularly when engaging with international and EU mechanisms. Lawyers and other actors involved in such litigation should therefore seek relevant information, advice and expertise necessary for such litigation, preferably early in the process. This Guide seeks to support lawyers in this work by providing an overview of strategic litigation at the international and EU levels with a particular focus on immigration detention and alternatives to immigration detention of children.

This Guide provides an overview of international and regional human rights bodies and mechanisms to which children affected by migration-related situations and their representatives may turn when seeking redress for violations of their human rights, where they have not been successful in obtaining effective remedies for such violations at the national level, including in cases of child immigration detention. It includes practical information about strategic litigation as a tool to seek to guarantee human rights protection, including information about the mandates, requirements and procedures of international and regional human rights bodies and mechanisms. It also includes information on non-judicial mechanisms available at the international level, which may, depending on the circumstances, provide complementary or alternative avenues to seek to protect the human rights of children in the context of migration.

1.2.1. Case selection

Most lawyers, CSOs and other actors that regularly engage in strategic litigation develop strategic plans, case selection criteria and internal processes to facilitate their decision-making on individual cases and litigation work.[17] Developing these plans, criteria and processes can help identify goals, assess potential impacts and litigation strategies, as well as ensure the availability of sufficient resources, transparency and sustainability of strategic litigation efforts.[18] In the case of public bodies, such as NHRIs and equality bodies, a public case selection policy plays an important role in informing the public about their litigation priorities and in pre-empting concerns regarding subjectivity and lack of transparency. Such policies should clarify the selection criteria and describe current strategic objectives, thus informing stakeholders, victims and the broader public that cases will be pursued only where they are expected to further these objectives, and where there is a clear public interest.[19]

Although important, policies can only provide a general framework for case selection. In practice, strategic litigation is often opportunistic, where cases emerge through a combination of circumstances, sometimes in response to developments that require a

[16] UNHCR, Policy on Refugee Children, 6 August 1993, paras 10-14: "Three interrelated factors contribute to the special needs of refugee children: their dependence, their vulnerability and their developmental needs […] Children, particularly in their early years, are dependent upon their parents or other adults to provide the basic necessities for their survival [and] appropriate guidance and direction. Children's vulnerability results in part from this dependence. They are physically and psychologically less able than adults to provide for their own needs or to protect themselves from harm […] Vulnerable in normal circumstances, in numerous situations currently confronting UNHCR, children's lives, health and safety are at extreme risk."

[17] David Loveday (International Refugee Assistance Project), "Leading the Strategic Litigation" Presentation, RELEASE National Training in Warsaw, 9 October 2024.

[18] Helen Duffy, *Strategic Human Rights Litigation: Understanding and Maximising Impact*, Hart Publishing, 2018, p. 522; European Network of Equality Bodies (Equinet), *An Equinet Handbook: Strategic Litigation*, Brussels, 2017, p. 17.

[19] European Network of Equality Bodies (Equinet), *An Equinet Handbook: Strategic Litigation*, Brussels, 2017, p. 17.

'spontaneous' response or open a window of opportunity for a specific kind of argumentation or approach. Significant flexibility may therefore be required to adapt to new and changing circumstances.[20] Many lawyers, CSOs and other actors that focus on strategic litigation in the field of children's rights identify cases both through *ad hoc* responses to matters brought to them by children and their representatives, and through ongoing engagement with the broader children's rights sector.[21]

When making decisions about case selection, different aspects of the case should be assessed, for instance, the strength of the case, its potential to achieve broader and long-term change, as well as various technical aspects, such as the availability of litigation venues. In addition, child rights and practical considerations – such as sufficient capacity and resources to sustain the case, the risk of losing contact with clients, the availability of evidence, whether the case would be better litigated by another actor who is better placed to litigate it, and any risks associated with the litigation – should be taken into account.

The litigation's strategic objectives will also influence case selection. For instance, where the objective is to clarify a point of domestic law, selecting a case where the facts are not in dispute can help ensure that the court focuses on clarifying the legal interpretation of that domestic law point in question, rather than on factual disagreements. Where the objective is to raise awareness about a particular human rights concern, the case must clearly illustrate what the concern at hand is.[22] If the aim is to challenge the legal, political, or societal *status quo*, the case should also have a "strong moral dimension".[23]

The following list of guiding questions should be taken into consideration when selecting cases:

- Are the facts of the case clear, well-established and undisputed?
- Is there sufficient evidence to support a finding of a violation?
- Are there sound and strong legal arguments supporting the desired outcome?
- What will the impact be if the litigation is successful?
- What will the impact be on the individual client and the broader affected group of individuals if the litigation is unsuccessful?
- Will progress towards the strategic objective sought be set back or harmed if the case is lost or the intervention is unsuccessful? If the judgment or decision is not implemented?
- What are the child rights implications of the litigation?
- Is the social, political or economic environment supportive or are there particular sensitivities and risks?
- Are there sufficient resources to carry out the litigation in a sustainable manner,[24] and are the potential costs justified by the possible gains?

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[20] Helen Duffy, *Strategic Human Rights Litigation: Understanding and Maximising Impact*, Hart Publishing, 2018, p. 522.

[21] Aoife Nolan and Ann Skelton, "'Turning the Rights Lens Inwards': The Case for Child Rights-Consistent Strategic Litigation Practice", in *Human Rights Law Review*, 2022, 22, 1-20, p. 8.

[22] For instance, in *A.D. v. Malta*, ECtHR, Application No. 12427/22, Judgment of 17 October 2023, the applicant's lawyers aimed to advance children's rights more broadly by drawing judicial and political attention to Malta's practices in relation to the detention of children for immigration-related purposes; see Chiara Altafin, "Child Rights Strategic Litigation: Exploring Recent Cases to Advance the Rights of Children Deprived of Their Liberty for Migration-Related Reasons", *European Yearbook on Human Rights 2024*, 18 March 2025, pp. 368-372. Following the *A.D. v. Malta* judgment, the Principal Immigration Officer (PIO) introduced a new policy of mandatory detention for a minimum of around two months for all persons, excepting those flagged as vulnerable by the Agency for the Welfare of Asylum Seekers (AWAS) at the point of disembarkation. This two-month detention applies to all persons. At the end of the two-month period, the PIO undertakes another assessment to determine whether to release or continue detaining applicants on the basis of the same detention order.

[23] European Network of Equality Bodies (Equinet), *An Equinet Handbook: Strategic Litigation*, Brussels, 2017, p. 18.

[24] "Sustainable manner" refers to conducting litigation in a way that ensures the case can be pursued effectively over time, considering financial, human, and operational capacities. Examples include having sufficient funding, available staff to manage the case, realistic timelines that do not compromise other cases, or the ability to address potential reputational risks associated with the litigation.

- How can the case be publicized in order to influence public opinion to further the strategic objective sought?
- What is the impact on the individual and the broader implications if the case is publicized, and at what stage and in which manner should it be publicized considering how the public and the court, body or authority may perceive the case?
- Is there a better way to tackle the concern at hand than through litigation?
- Is another actor better equipped to pursue the litigation, or could they provide support or collaboration?

1.3. How to work on cases involving children deprived of their liberty for migration-related reasons?

1.3.1. Child rights considerations

Despite the recent growth in strategic human rights litigation, including in the field of children's rights, human rights have not generally been used as criteria against which to assess, and, where necessary, critique the practice of strategic litigation itself – i.e., to consider the extent to which strategic litigation practices themselves are consistent with children's human rights.

With respect to this, the way in which strategic litigation is carried out, in and of itself, raises a range of potential issues with regard to children's human rights, including the rights to protection, participation, privacy, freedom of expression, access to information, freedom from exploitation and the principle of the best interests of the child, which provides that "in all actions concerning children, whether undertaken by public or private social welfare institutions, a court of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."[25] Strategic litigation efforts that seek to advance children's rights through legal or social change but are implemented in a manner inconsistent with their human rights give rise to concern regarding their legitimacy, internal coherence and overall contribution to improving the protection of children's rights.[26] In the worst-case scenario such efforts may even harm children's human rights. Thus, where strategic litigation aims to uphold the rights of children, it must itself be conducted in a way that is consistent with their human rights.[27]

To support actors involved in strategic litigation on children's rights in carrying out their work in a child rights-centred way, the Advancing Child Rights Strategic Litigation project[28] has developed a number of tools and publications on the topic.[29] These include the Key Principles for Child-Rights Consistent Child Rights Strategic Litigation Practice.[30] These Principles relate to the different phases of the strategic litigation process, from scoping, planning and designing child rights strategic litigation to extra-legal advocacy surrounding the case. They address aspects such as child participation and agency, access to information in a manner the child fully understands, the right to privacy and the child's best interests, among others.

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[25] Aoife Nolan, "Submission to the United Nations Committee with regard to Its Forthcoming General Comment No. 27 on Children's Rights to Access to Justice and Effective Remedies (Submission by the University of Nottingham Human Rights Law Centre on behalf of the Advancing Child Rights Strategic Litigation Project)", 26 August 2024. Available at SSRN: https://ssrn.com/abstract=

[26] Aoife Nolan, "Submission to the United Nations Committee with regard to Its Forthcoming General Comment No. 27 on Children's Rights to Access to Justice and Effective Remedies (Submission by the University of Nottingham Human Rights Law Centre on behalf of the Advancing Child Rights Strategic Litigation Project)", 26 August 2024, p. 3.

[27] See also e.g. Aoife Nolan and Ann Skelton, "'Turning the Rights Lens Inwards': The Case for Child Rights-Consistent Strategic Litigation Practice", in *Human Rights Law Review*, 2022, 22, p. 1-20.

[28] Advancing Child Rights Strategic Litigation project, https://www.acrisl.org/.

[29] These include videos and toolkits aimed at children. See Advancing Child Rights Strategic Litigation project, Resources, website (accessed 27 August 2024).

[30] Advancing Child Rights Strategic Litigation project, Key Principles for Child-Rights Consistent Child Strategic Litigation Practice, 2022.

The potential risks of strategic litigation to children's rights, particularly for children directly involved in litigation, should be kept in mind throughout the entirety of the litigation process, including in any complementary communications and advocacy work. A careful balance must be struck between the best interests of the child and the child's right to be heard, particularly when managing children's involvement in litigation and media engagement.

In the context of child immigration detention and alternatives to such detention, where children who are detained, liable to be detained or in non-custodial settings, are in a particularly vulnerable situation, actors engaged in litigation must be particularly careful to ensure that "no harm" is caused to the child. This includes avoiding (re)traumatization of the child through the litigation process or instrumentalization of the child in an exploitative manner.[31] Where there is a risk of retaliatory action by State authorities following litigation, the potential impacts of the case on the child must also be carefully assessed.[32]

Strategic litigation must also be carried out in line with the child's right to be heard, including with respect to the litigation process itself. This requires that the child be provided with relevant information in an age-appropriate manner, enabling them to make informed choices regarding their case. As clarified by the Committee on the Rights of the Child (CRC Committee):

> "*the realization of the right of the child to express her or his views requires that the child be informed about the matters, options and possible decisions to be taken and their consequences by those who are responsible for hearing the child, and by the child's parents or guardian... This right to information is essential, because it is the precondition of the child's clarified decisions*."[33]

Providing the child with the necessary information includes managing their expectations regarding the case. Doing so helps to allow the child to make informed decisions about the case, on the one hand, and, on the other, helps to minimize the harm caused to them should the litigation have an unfavourable outcome.[34]

Children's goals and perspectives must also be central to strategic litigation concerned with their human rights as centring them strengthens the legal argumentation and enhances the case's potential to bring about positive change for children's rights.

Lawyers, CSOs and other actors involved in strategic litigation should critically assess their own assumptions about a child's maturity, capacity and expertise, so as not to relegate children to a passive role in litigation concerning their rights.[35]

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[31] Aoife Nolan and Ann Skelton, "'Turning the Rights Lens Inwards': The Case for Child Rights-Consistent Strategic Litigation Practice", in *Human Rights Law Review*, 2022, 22, 1-20, p. 19.
[32] Such a backlash was noted for instance following the ECtHR judgment in *A.D. v. Malta*, ECtHR, Application No. 12427/22, Judgment of 17 October 2023, where, following a successful judgment, the applicant in question was subjected to renewed harsh detention, despite the judgment finding his earlier detention to have amounted to violations of his rights. His asylum application was rejected, and he was taken to a detention centre in view to being removed to his country of origin. Chiara Altafin, "Child Rights Strategic Litigation: Exploring Recent Cases to Advance the Rights of Children Deprived of Their Liberty for Migration- Related Reasons", *European Yearbook on Human Rights 2024*, 18 March 2025, p. 372.
[33] CRC Committee, General Comment No. 12, The right of the child to be heard, CRC/C/GC/12, 20 July 2009.
[34] Aoife Nolan and Ann Skelton, "'Turning the Rights Lens Inwards': The Case for Child Rights-Consistent Strategic Litigation Practice", in *Human Rights Law Review*, 2022, 22, 1-20, p. 19.
[35] Aoife Nolan and Ann Skelton, "'Turning the Rights Lens Inwards': The Case for Child Rights-Consistent Strategic Litigation Practice", in *Human Rights Law Review*, 2022, 22, 1-20, p. 15.

1.3.2. Child-centred work and communication

Engaging with children in migration-related situations requires a child-centred approach that places their rights and participation at the heart of legal processes.[36] Articles 12[37] and 17[38] of the UN CRC emphasize children's rights to be heard and to receive information tailored to their developmental needs. Strategic litigation aimed at advancing children's rights should adopt a holistic framework from the outset, ensuring that children's views shape case strategies in ways that respect the principle of the child's best interests.[39]

Communication with children must take into account their age, maturity, cultural background, and past experiences, using appropriate language and tools. Simple and accessible explanations of legal proceedings, the roles of key court actors, and the overall process are essential. Legal jargon should be avoided, and creative methods can help children better understand the situation.[40] Legal professionals should collaborate with experienced child psychologists and/or social workers to use these methods effectively, ensuring that children can express themselves without additional stress. Professionals should avoid aggressive or leading questions and allow children time to respond at their own pace.[41]

The setting in which communication takes place also plays a significant role. Child-friendly spaces for children at risk of detention, where available, foster trust and openness. Allowing a trusted adult, such as a guardian or family member, to be present can help children feel more secure. Additionally, familiarizing children with courtroom settings through visits or visual aids can help mitigate anxiety and support their active participation.[42]

Active engagement with children is fundamental. Their views must not only be heard but also carry meaningful weight in decisions affecting them, consistent with the principle of the child's best interests. This participatory approach strengthens trust, enhances the quality of representation, and aligns legal outcomes with children's best interests.

1.3.3. Tips for working with children at risk or deprived of their liberty for migration-related reasons

Assisting individuals in migration-related situations, particularly children and families, requires legal professionals to address unique challenges, such as language barriers and cultural differences. Providing accessible, clear, and concise information about legal rights, processes, and timelines is essential. Legal professionals who interview children in the

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[36] CADRE project, "How to communicate and work with children subject to alternatives to detention", "How to communicate and work with children subject to alternatives to detention", Training Materials on Alternatives to Detention for Migrant Children, April 2022, p. 6.
[37] Article 12 CRC: "1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."
[38] Article 17 CRC: "States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. (…)"
[39] Advancing Child Rights Strategic Litigation project, "Advancing Child Rights-Consistent Strategic Litigation Practice", p. 48.
[40] CADRE project, "How to communicate and work with children subject to alternatives to detention", Training Materials on Alternatives to Detention for Migrant Children, April 2022, pp. 12-13.
[41] CADRE project, "How to communicate and work with children subject to alternatives to detention", Training Materials on Alternatives to Detention for Migrant Children, April 2022, p. 13.
[42] UNICEF, Save the children, *Every child's right to be heard, A resource guide on the UN Committee on the Rights of the child General Comment No. 12*, 2011, p. 62.

context of a current or potential legal case should clearly define their roles, listen actively, and avoid rushing or pressuring children for specific details. Taking proactive steps to ensure that children and their families understand the support available to them, such as arranging transportation, and scheduling appointments at appropriate times, should also be considered.

Miscommunication due to language barriers can have significant legal and emotional consequences, particularly for children. An interpreter proficient in the child's primary language must always be available.[43] Clear translation is especially important during stressful interactions, such as recounting traumatic events or navigating complex legal procedures. Legal professionals must exhibit cultural sensitivity, empathy, and a child-friendly approach when assisting families and children who may be experiencing frequent relocations, financial instability, and communication disruptions. The Council of Europe Handbook – *How to Convey Child-friendly Information to Children in Migration* – recommends that frontline professionals "communicate in a culturally sensitive way, familiarise themselves with the child's culture of origin to build a relationship of trust and enhance the trust placed in the information by the child."[44]

Lawyers, as well as other professionals assisting in cases involving children in migration-related situations, should clearly explain to the child and their family that they owe them a duty of confidentiality.[45] This includes explaining the extent to which the information and experiences they disclose will be used during the procedure, who is bound by confidentiality (for example, the lawyer, guardian, social worker, or doctor), and the purpose of a closed hearing. Courts have the power to exclude all or part of the public for specific reasons, especially in view of the rights of the child to privacy and the principle of the best interests of the child.[46] The child's safety remains the primary concern in any communication and may require the disclosure of certain information of which the child must be made aware. Maintaining privacy during discussions and safeguarding sensitive information encourages openness and reduces fears of reprisal. Transparency in how decisions are communicated is equally important.

Training materials from the CADRE project provide further practical guidance to help lawyers and other professionals navigate these complexities effectively, ensuring sensitive legal representation of children.[47]

1.4. Types of international mechanisms

There are different types of international mechanisms that may provide an avenue for strategic litigation or strategic non-judicial advocacy, either for individual or collective complaints.

[43] Unlocking Children's Rights project, 'Strengthening the capacity of professionals in the EU to fulfil the rights of vulnerable children' training materials available, Coram Children's Legal Centre.
[44] CoE, *How to Convey Child-friendly Information to Children in Migration. A Handbook for Frontline Professionals*, 2018, p. 19.
[45] Access to justice for children, Report of the United Nations High Commissioner for Human Rights, UN DOC A/HRC/25/35, 16 December 2013.
[46] HRC, General Comment No. 32 (2007): Article 14, Right to equality before courts and tribunals and to fair trial, para. 29; *B. and P. v. the United Kingdom*, ECtHR, Applications Nos. 36337/97 and 35974/97, Judgment of 24 April 2001, paras. 37-49; *Moser v. Austria*, ECtHR, Application No. 12643/02, Judgment of 21 September 2006, paras. 97-104.
[47] CADRE project, "How to communicate and work with children subject to alternatives to detention", Training Materials on Alternatives to Detention for Migrant Children", April 2022.

1.4.1. Judicial mechanisms

a. International judicial mechanisms

International human rights courts have different powers to protect human rights in States bound by one or more of the treaties over which the court has jurisdiction,[48] subject to a range of admissibility criteria.[49] International human rights courts may examine petitions or applications alleging a violation of an individual's human rights by a State party. Where the admissibility criteria are satisfied, such courts have competence to determine whether the State has violated its treaty obligations and to prescribe remedies accordingly.[50] Their decisions are binding on the State or States concerned and must be implemented.[51] The judgments of these courts also clarify the interpretation of the treaty provisions concerned for all States parties.[52]

In determining cases, the European Court of Human Rights (ECtHR) considers compliance by the Member States of the Council of Europe (CoE) with the European Convention on Human Rights (ECHR) and its Protocols. The ECtHR issues binding judgments on alleged violations of the rights and freedoms guaranteed by the Convention. For more information about the ECtHR, see Section 2.1. below on international mechanisms.

b. EU judicial mechanisms

The Court of Justice of the European Union (CJEU), under the conditions set out in the EU Treaties, has jurisdiction to interpret EU law and ensure its uniform application,[53] including in matters concerning human rights as enshrined in the Charter of Fundamental Rights of the European Union (EU Charter).[54] The rulings of the CJEU are binding on EU Member States and institutions.[55]

Unlike procedures before the ECtHR and UN Treaty Bodies and special procedures, there is no right to individual petitions or applications alleging a violation of an individual's human rights before the Court of Justice of the European Union (CJEU) – the CJEU only hears direct actions challenging EU legally binding acts (see Section 2.2.1.c.). The main way of accessing the CJEU for individuals is by way of a preliminary reference from a national court. For more information about the CJEU, see Section 2.2.1. below on EU mechanisms.

1.4.2. Quasi-judicial human rights expert bodies

Several bodies within the international human rights system are quasi-judicial in nature, possessing competences similar to those of judicial mechanisms. While their decisions are not those of courts, quasi-judicial bodies interpret the treaties that States are obliged to implement.[56] Human rights Treaty Bodies are committees of independent human rights experts established under the United Nations human rights system to monitor the implementation of core international human rights treaties, including additional protocols to such instruments. Furthermore, States that have recognized the competence of a Treaty Body to consider individual complaints are under a good faith obligation to cooperate with such complaints mechanisms and procedures.

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[48] See i.e. Article 34 ECHR.
[49] See i.e. Article 35 ECHR.
[50] See i.e. Article 41 ECHR.
[51] See i.e. Article 46 ECHR.
[52] See i.e. Article 1 ECHR; ECtHR, *Tyrer v. the United Kingdom*, Application No. 5856/72, Judgment of 25 April 1978.
[53] Article 19 Treaty on European Union (TEU); Article 267 Treaty on the Functioning of the European Union (TFEU).
[54] Article 51 EU Charter.
[55] Article 267 TFEU, Article 260 TFUE.
[56] See e. g. Article 10 OP3-CRC; Article 5(4) OP ICCPR; Article 7(4) OP CEDAW; Article 14(7) ICERD; Article 22(7) CAT; Article 5 OP CRPD; Article 9 OP ICESCR; Article 31(4) CED.

The United Nations human rights Treaty Bodies (UN Treaty Bodies) have been established and mandated by a human rights treaty to monitor its implementation by States Parties. An exception is the Committee on Economic, Social and Cultural Rights (CESCR), which was established not by treaty text but by a UN Economic and Social Council (ECOSOC) Resolution.[57] These quasi-judicial bodies undertake monitoring primarily through the examination of periodic reports submitted by States Parties on the implementation of their treaty obligations. Some Treaty Bodies are also competent to consider inter-State complaints[58] and individual complaints concerning alleged violations of human rights treaty obligations committed by States.

The following UN human rights Treaty Bodies monitor the implementation of their respective treaties and additional protocols, as relevant, including by adjudicating admissible complaints concerning alleged violations of treaty provisions by States Parties that have accepted their competence:

- The Committee on the Rights of the Child, in relation to the Convention on the Rights of the Child (CRC), the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (OP1 CRC), the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict (OP2 CRC), and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure (OP3 CRC);
- The Human Rights Committee (HRC), in relation to the International Covenant on Civil and Political Rights (ICCPR), the First Optional Protocol to the ICCPR (OP1 ICCPR), and the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty (OP2 ICCPR);
- The Committee on the Elimination of Discrimination against Women in relation to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (OP CEDAW);
- The Committee on the Elimination of Racial Discrimination in relation to the International Convention on the Elimination of All Forms of Racial Discrimination (CERD);
- The Committee against Torture, in relation to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
- The Committee on the Rights of Persons with Disabilities, with respect to the Convention on the Rights of Persons with Disabilities (CRPD) and the Optional Protocol to the Convention on the Rights of Persons with Disabilities (OP CRPD);
- The Committee on Economic, Social and Cultural Rights (CESCR), with respect to the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- The Committee on Enforced Disappearances, with respect to the International Convention for the Protection of All Persons from Enforced Disappearance (CED);
- The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), which will be empowered to consider individual complaints alleging violations of States obligations under the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, in relation to States Parties that have accepted this competence under Article 77 of the treaty, once ten States have done so.

Depending on the circumstances of the case, any of these Treaty Bodies may be relevant in cases involving child immigration detention and purported alternatives to such detention.

[57] The CESCR was established through the ECOSOC Resolution 1985/17 of 28 May 1985 to carry out the monitoring functions assigned to ECOSOC in Part IV of the Covenant. See further OHCHR, Introduction to the Committee on Economic, Social and Cultural Rights, website (accessed 17 December 2025).
[58] See further OHCHR, Inter-state complaints, website (accessed 17 December 2025).

The **European Committee of Social Rights** (ECSR) is a CoE body that monitors implementation by States of their obligations under the European Social Charter (ESC) and the Revised ESC. It has quasi-judicial powers[59] to consider collective complaints submitted by social partners[60] and non-governmental organizations[61] alleging violations of the rights enshrined in the Charter. The Committee is not competent to consider complaints submitted by individuals.[62] Its collective complaint procedure can be particularly useful in cases of systemic violations of the economic, social or cultural rights of children. For instance, the Committee decided on the right of access to health care for migrant children in *Defence for Children International v. Belgium*.[63]

1.4.3. Other non-judicial human rights mechanisms

A number of non-judicial human rights expert mechanisms have been established, primarily by intergovernmental organizations to monitor and provide guidance on human rights. Their mandates often focus on specific countries and/or thematic issues.[64] Their authority and influence generally derive from the intergovernmental organization that establishes them, as well as from their expertise and independence.[65] In addition to undertaking country visits, making recommendations to address structural issues that contribute to human rights violations, conducting thematic studies and facilitating the enforcement and development of international human rights law and standards, several of these bodies, although, not all, are also competent to consider individual cases, including by bringing them to the attention of the authorities.[66]

Examples of non-judicial human rights mechanisms that may take up individual cases and raise alleged violations of human rights, including those of children in migration-related situations, within the scope of their thematic mandates include certain UN Special Procedures reporting to the UN Human Rights Council. In contrast to the judicial and quasi-judicial complaints mechanisms discussed above, the mandate of the **UN Working Group on Arbitrary Detention** (WGAD) does not depend on a State's being a party to a treaty. Its mandate does not stem from a treaty, but rather from a resolution of the UN Human Rights Council.[67] These include the UN Special Rapporteur on the human rights of

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[59] Aoife Nolan, "European Social Charter: more relevant than ever", Social Europe, 20 June 2024.

[60] Social partners entitle to lodge collective complaints include: representative trade unions, employers' organisations, the European Trade Union Confederation, Business Europe and International Organisation of Employers. See Article 1(b) AP ESC.

[61] NGOs entitle to lodge collective complaints include: international NGOs holding participatory status with the Council of Europe and included at their request on the list drawn up by the Governmental Committee, and national NGOs granted by any State within its jurisdiction of the right to lodge complaints against it. See Articles 2 and 3 AP ESC.

[62] See further CoE, Collective complaints and The Collective Complaints Procedure, websites (accessed 27 August 2024).

[63] European Committee on Social Rights, *Defence for Children International v. Belgium*, Complaint No. 69/2011, Views of 23 October 2012.

[64] HRC, 5/1. Institution-building of the UNHRC, 18 June 2007, para. 45.

[65] HRC, 5/1. Institution-building of the UNHRC, 18 June 2007, para. 39.

[66] See further OHCHR, About special procedures, website (accessed 8 April 2025).

[67] The WGAD was established by Resolution 1991/42 of the predecessor of the HRC, the UN Commission on Human Rights. Its mandate was clarified and extended by Commission's resolution 1997/50, and has been repeatedly been extended by the HRC including most recently in 2016 in resolution 33/30. Its mandate includes: (a) To investigate cases of deprivation of liberty imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the Universal Declaration of Human Rights (UDHR) or in the relevant international legal instruments accepted by the States concerned; (b) To seek and receive information from Governments and intergovernmental and non-governmental organizations, and receive information from the individuals concerned, their families or their representatives; (c) To act on information submitted to its attention regarding alleged cases of arbitrary detention by sending urgent appeals and communications to concerned Governments to clarify and to bring to their attention these cases; (d) To conduct field missions upon the invitation of Government, in order to understand better the situations prevailing in countries, as well as the underlying reasons for instances of arbitrary deprivation of liberty; (e) To formulate deliberations on issues of a general nature in order to assist States to prevent and guard against the practice of arbitrary deprivation of liberty and to facilitate consideration of future cases; (f) To present an annual report to the Human Rights Council presenting its activities, findings, conclusions and recommendations. Additional information about the WGAD,

migrants, the UN Special Rapporteur on the right to health, and the UN Special Rapporteur on torture.[68] The WGAD is a special procedure mandated by the UN Human Rights Council, among other things, to consider individual complaints concerning allegations of arbitrary deprivation of liberty in violation of the Universal Declaration of Human Rights, the ICCPR and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.[69]

Furthermore, based on information received from individuals, the following mechanisms can address general issues and make recommendations within the scope of their respective mandates to relevant State authorities. However, none of the following bodies is mandated to consider individual complaints.

The **Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment** (SPT) is a Treaty Body within the UN human rights system.[70] It has a preventive mandate focused on an innovative, sustained and proactive approach to the prevention of torture and other ill-treatment. The SPT was established under the Optional Protocol to the Convention against Torture (OPCAT).[71] It has two primary operational functions: first, it may undertake visits to States Parties to the OPCAT and may visit any location where persons may be deprived of their liberty;[72] second, it has an advisory function providing assistance and guidance to States Parties on the establishment of **National Preventive Mechanisms** (NPM),[73] as required under the OPCAT, and providing advice and assistance to both the NPMs and the States parties regarding the functioning of the NPMs.[74]

At the European level, the **European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment** (CPT):[75] (i) carries out monitoring visits to places of detention, in order to assess how persons deprived of their liberty are treated; (ii) interviews detainees; and (iii) gathers information on potential ill-treatment of detainees in the Member States of the CoE.[76] The CPT's reports, which include recommendations to the State concerned are confidential,[77] however, most countries choose to publish them along with their comments.[78] If a State fails to cooperate or refuses to take measures in response to the Committee's recommendations, the Committee may issue a public statement on the matter.[79]

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including its mandate, its individual complaints and urgent appeals procedures, jurisprudence and reports can be found at: OHCHR, Working Group on Arbitrary Detention, website (accessed 28 April 2025).

[68] See the list of the 46 thematic mandates and the list of the 14 country mandates, UNHRC website (accessed 8 April 2025).

[69] See OHCHR, Fact Sheet No. 26 (Rev. 1): Working Group on Arbitrary Detention, 14 February 2024.

[70] See further OHCHR, Subcommittee on prevention of torture, website (accessed 10 April 2025).

[71] Articles 5-10 OPCAT.

[72] Article 4 OPCAT.

[73] National Preventive Mechanisms (NPMs) are independent bodies established under the OPCAT to regularly visit places of detention. Their purpose is to prevent torture and ill-treatment by monitoring conditions and making recommendations to improve the treatment of people deprived of liberty. See further OHCHR, National Preventive Mechanisms, website (accessed 10 April 2025).

[74] Articles 17-23 OPCAT.

[75] Also referred to as the Council of Europe Anti-Torture Committee.

[76] European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, ETS No. 126.

[77] Article 11 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

[78] As of 10 April 2025, the CPT had conducted a total of 542 visits (306 periodic and 236 ad hoc) and published 486 visit reports, indicating that a significant majority of countries choose to make these reports public. See CoE, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), website (accessed 10 April 2025).

[79] Article 10 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

The CoE Commissioner for Human Rights conducts country visits, reports on human rights concerns and makes recommendations in the 47 CoE Member States,[80] including on the treatment of individuals in migration-related situations, including children. The Commissioner's mandate aims to promote enhanced respect for and protection of human rights across Europe.[81] While the Commissioner is not mandated to consider individual cases, *per se*, they may intervene as a third party, for example, in cases before the ECtHR and engage with States on human rights issues.[82]

[80] Article 8 Resolution (99) 50 on the Council of Europe Commissioner for Human Rights, Committee of Ministers, 7 May 1999.
[81] Article 3 Resolution (99) 50 on the Council of Europe Commissioner for Human Rights.
[82] Article 36(3) ECHR; Rule 44(2) ECtHR Rules of Court, 15 September 2025; Article 7 Resolution (99) 50 on the Council of Europe Commissioner for Human Rights.

2. Procedures and fora for strategic litigation

2.1. Mechanisms under international law

2.1.1. Admissibility and preliminary requirements

Strategic litigation begins long before a case is filed. A successful strategy must anticipate and address procedural and jurisdictional hurdles that could render a case inadmissible. Beyond admissibility, the preliminary phase should also assess the broader strategic aims of the case, such as securing interim measures, drawing attention to systemic issues, or enabling third-party interventions.

a. Jurisdiction

Temporal jurisdiction (*ratione temporis*)

As a general rule, international human rights treaties become binding on a State upon their entry into force following ratification or accession.[83]

With respect to redress for alleged violations of treaty obligations, international courts and most quasi-judicial bodies generally have jurisdiction to adjudicate alleged violations of international treaty obligations arising from facts that occurred after the State became a party to the relevant treaty, unless the facts that gave rise to the communication continued or their effects or consequences endured after that date.[84]

The application of this criterion may vary depending on the nature of the alleged violation:

- **Instantaneous act or omission**: the simplest situation arises when the act or omission giving rise to the violation in question is an instantaneous one. In such cases, it suffices to determine whether the act occurred before or after the entry into force of the relevant treaty;
- **Continuous act or omission**: when a violation has a continuing character, the wrongful act or omission (and/or its effects) may persist until the violation is addressed. Examples include enforced disappearances, where the person remains disappeared and their fate and whereabouts continue to be unknown, or arbitrary detentions.[85]
- **Breach of the obligation to prevent**: this situation occurs when, notwithstanding a treaty obligation to prevent a certain violation, the State fails to comply with its preventive obligation. The breach continues for as long as the State remains in violation of the obligation to take all necessary measures to prevent the prohibited conduct.[86]

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[83] See e.g. Article 26 Vienna Convention on the Law of Treaties, 23 May 1969.

[84] This is the case for complaints brought before CEDAW (Article 4(a) OP CEDAW); ICESCR (Article 2(b) OP ICESCR); CRC (Article 7(7) OP3 CRC); CRPD (Article 2(f) OP CRPD); and also is the practice of HRC, CERD and CAT. Where individual complaints are provided for under a specific Optional Protocol (OP), the complaint must address facts that arose after the State became bound by the OP, see Article 4(e) OP CEDAW; Article 2(b) OP ICESCR; Article 7(7) OP3 CRC; Article 2(f) OP CRPD). Information about the status of ratification of human rights treaties may be found at: OHCHR, Status of ratification interactive dashboard, website (accessed 16 June 2025); CoE, Signature & ratifications, website (accessed 16 June 2025); CoE, Treaty Office, website (accessed 16 June 2025). Unilateral reservations and interpretative declarations may be made by the States upon ratification of the treaties.

[85] See e.g. *X v. Switzerland*, European Commission of Human Rights, Application No.7601/75, Admissibility Decision, 12 July 1976; *Varnava and others v. Turkey*, ECtHR, Applications Nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, Judgment of 18 September 2009; and *Palić v. Bosnia and Herzegovina*, ECtHR, Application No. 4704/07, Judgment of 15 February 2011.

[86] For example, the obligation to prevent transboundary damage by air pollution, dealt with in the Trail Smelter arbitration, was breached for as long as the pollution continued to be emitted. See: UNRIAA, *Trail Smelter case*, vol. III, No. 1949.V.2, p. 1905. See also: Article 14(3) Drafts on Responsibility of States for Internationally Wrongful Acts, International Law Commission, 2001.

Subject-matter jurisdiction (*ratione materiae*)

Most international human rights bodies with judicial or quasi-judicial powers may only address violations of provisions of the specific treaties over which they have competence.[87] As a general rule, this means that allegations of violations of human rights that are not guaranteed by the provisions of the relevant treaty cannot be raised before these bodies. This limitation applies, in particular, to the ECtHR, the UN Treaty Bodies, including the CRC Committee, HRC and the ECSR. However, it does not apply to the WGAD, whose mandate is not restricted to violations of particular treaties, but rather extends to assessing whether the detention of an individual is arbitrary.[88]

In determining whether there is subject-matter jurisdiction, legal practitioners and NGOs should bear in mind that, over time, the scope of certain human rights provisions has been expanded pursuant to their teleological aim. For instance, the ECtHR interprets the ECHR as a 'living instrument', allowing the rights guaranteed by the Convention to be interpreted dynamically, in the light of present-day conditions and responsive to the evolution of international human rights law and standards, which today cover a wide range of issues from the independence of the judiciary to environmental protection.[89]

Table 1. Subject-matter jurisdiction of judicial and quasi-judicial human rights bodies[90]

International body	Competent *ratione materiae* for breaches of
UN Committee on the Rights of the Child (CRC Committee)	- Convention on the Rights of the Child (CRC) - Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (OP1 CRC) - Optional Protocol to the CRC on the Involvement of Children in Armed Conflict (OP2 CRC)
UN Human Rights Committee (HRC)	- International Covenant on Civil and Political Rights (ICCPR) - Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty
UN Committee against Torture (CAT Committee)	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

[87] See e.g. Article 32(1) ECHR; Article 19(1) and Article 263 TFEU; Article 4 AP ESC; Article 5 OP3 CRC; Article 2 CEDAW; Article 14(1) ICERD; Article 22(1) CAT ; Article 1(1) OP CRPD; Article 2 OP ICESCR; Article 31(1) CED. As an exception, certain international human rights bodies have competence to address violations of provisions of other treaties, see e.g. the Economic Community of West African States (ECOWAS) Court of Justice "has jurisdiction to determine cases of violations of human rights that occur in any Member State" (Article 9 (4) ECOWAS Protocol A/P.I/7/91 on the Community Court of Justice); the African Court on Human and Peoples' Rights has jurisdiction "to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant human rights instrument ratified by the States concerned" (Article 3(1) Protocol to the African Charter on Human And Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights).

[88] HRC, Resolution A/HRC/RES/51/8, adopted 6 October 2022

[89] *Tyrer v. The United Kingdom*, ECtHR, Application No. 5856/72, Judgment of 25 April 1978, para. 31. For an overview of the different topics covered by ECtHR case law, see European Court of Human Rights, Knowledge Sharing platform, website.

[90] It should be noted that the UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW Committee) is not included here, as the individual complaint mechanism under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) has not yet entered into force (as of January 2026). Article 77 of the ICRMW provides that this individual complaint mechanism will become operative when 10 States Parties have made the necessary declaration. For status of ratifications, see OHCHR, Status of ratification interactive dashboard, website (accessed 23 January 2025). For the purposes of this guide, individual communications under the ICRMW will not be covered.

UN Committee on the Elimination of Racial Discrimination (CERD Committee)	International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
UN Committee on the Elimination of Discrimination against Women (CEDAW Committee)	Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
UN Committee on the Rights of Persons with Disabilities (CRPD Committee)	Convention on the Rights of Persons with Disabilities (CRPD)
UN Committee on Enforced Disappearances (CED Committee)	International Convention for the Protection of All Persons from Enforced Disappearance (CED)
UN Committee on Economic, Social and Cultural Rights (CESCR)	International Covenant on Economic, Social and Cultural Rights (ICESCR)
European Court of Human Rights (ECtHR) *Council of Europe*	European Convention on Human Rights and Fundamental Freedoms (ECHR) and its Protocols
European Committee of Social Rights (ECSR) *Council of Europe*	(Collective complaints) the European Social Charter and the Revised European Social Charter
Court of Justice of the European Union (CJEU)	Charter of Fundamental Rights of the European Union (EU Charter)
UN Working Group on Arbitrary Detention (WGAD)	Individual complaints alleging arbitrary detention worldwide. The State concerned need not be a party to a particular human rights treaty guaranteeing the right not to be subjected to arbitrary arrest or detention.

Territorial jurisdiction (*ratione loci*)

Whether the judicial or quasi-judicial human rights body is competent to consider the alleged violation or violations raised in a complaint depends on whether those violations took place within the State's jurisdiction.[91] The term *ratione loci* refers to the requirement that the alleged violation or violations must have taken place within the territorial jurisdiction of the State concerned or in a territory that the State effectively controls.[92] In the context of a diplomatic mission abroad, for example, a State may be responsible for the conduct of its diplomatic and consular staff whenever they exert authority and control over individuals outside the territory of the State.[93]

As clarified in a series of judgments by the ECtHR, the International Court of Justice and in a number of treaty monitoring bodies' decisions, a State's obligations under human rights treaties extend not only to persons within its territorial boundaries, but also to locations where the State or its agents exercise effective control.[94] The ECtHR recognizes several bases for the territorial and extraterritorial jurisdiction of a State party:

[91] See e.g. Article 1 ECHR; Article 1 AP ESC; Article 5 OP3 CRC; Article 2 OP CEDAW; Article 14(1) ICERD; Article 22(1) CAT ; Article 1(1) OP CRPD; Article 2 OP ICESCR; Article 31(1) CED.
[92] ICJ, "Redress Through International Human Rights Bodies and Mechanisms: Training Materials on Access to Justice for Migrant Children, Module 5", FAIR Project, April 2018.
[93] ECtHR, The admissibility of an application, 2015.
[94] See e.g. *Loizidou v. Turkey*, Application no. 15318/89, Judgment of 23 March 1995, paras. 62; *Al-Saadoon and Mufdhi v. the United Kingdom*, ECtHR, Application No. 61498/08, Judgment of 2 March 2010; *Medvedyev and Others v. France*, ECtHR, Application No. 3394/03, Judgment of 29 March 2010; International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004; HRC, Concluding Observations of the HRC: Israel, UN Doc. CCPR/CO/78/ISR, 21 August 2003; HRC, Observations of the HRC: US, UN Doc. CCPR/C/USA/CO/3, 15 September 2006; HRC, General Comment No. 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 10.

- Jurisdiction is presumed to be exercised normally throughout the State party's territory;[95]
- Jurisdiction is exercised at the border, which begins at the line forming the border;[96]
- Jurisdiction is exercised for positive obligations in territories which are legally within the jurisdiction of a State party but not under the effective authority or control of that State.[97]
- Jurisdiction is exercised where a State party exercises effective control over an area outside its territory or has at the very least a decisive influence over it. Control can occur through the armed forces of a State,[98] not directly but through a subordinate local administration that survives thanks to that State's support,[99] or through a purported "annexation" of the territory;[100]
- Jurisdiction is exercised in relation to violations of the rights of individuals outside a State party's territory who are under its authority and control through its agents operating either lawfully or unlawfully.[101] Examples include: military operations abroad,[102] multinational forces where no international organization has ultimate control,[103] UN buffer zones, and international armed conflicts;[104]
- Jurisdiction is exercised where a jurisdictional link exists between an individual and a State party in relation to rights violation that occurred outside its territory;[105]
- Jurisdiction is exercised where a State party is responsible for arrest and detention executed abroad as part of an extradition procedure;[106]
- Jurisdiction is exercised in relation to the activities of a State party's diplomatic or consular agents abroad;[107]
- Jurisdiction is exercised in relation to the activities on board aircraft and ships registered in, or flying the flag of, a State party.[108]

In its Grand Chamber decision in *N.D. and N.T. v. Spain,* the ECtHR affirmed:

> *" [...] (T)he special nature of the context as regards migration cannot justify an area outside the law where individuals are covered by no legal system capable of affording them enjoyment of the rights and guarantees protected by the Convention which the States have undertaken to secure to everyone within their jurisdiction (…). As a constitutional instrument of European public order (…), the*

[95] *N.D. and N.T. v. Spain*, ECtHR, Applications Nos. 8675/15 and 8697/15, Judgment of 13 February 2020, paras. 102-103.
[96] *M.A. and Others v. Lithuania*, ECtHR, Application No. 59793/17, Judgment of 11 December 2018, paras. 69-70.
[97] *Ilaşcu and Others v. Moldova and Russia*, Application no. 48787/99, Judgment of 8 April 2004, paras. 314-316;
[98] *Ilaşcu and Others v. Moldova and Russia*, Application no. 48787/99, Judgment of 8 April 2004, paras. 314-316; *Banković and Others v. Belgium and Others*, ECtHR, Application No. 52207/99, Decision of 12 December 2001, paras. 67 and 74-92.
[99] *Catan and Others v. the Republic of Moldova and Russia*, ECtHR, Applications Nos. 43370/04, 8252/05 and 18454/06, Judgment of 19 October 2012, paras. 116-122.
[100] *Ukraine v. Russia (*Re *Crimea)*, ECtHR, Applications Nos. 20958/14 and 38334/18, Decision of 16 December 2020, paras. 338-349.
[101] *Issa and Others v. Turkey*, ECtHR, Application No. 31821/96, Judgment of 16 November 2004, para. 71.
[102] *Al-Jedda v. the United Kingdom*, ECtHR, Application No. 27021/08, Judgment of 7 July 2011, paras. 84-86; *Hassan v. the United Kingdom*, Application no. 29750/09, Judgment of 16 September 2014, paras. 76-80.
[103] *Isaak and Others v. Turkey*, ECtHR, Application No. 44587/98, Decision of 28 September 2006.
[104] *Georgia v. Russia (II)*, ECtHR, Application No. 38263/08, Judgment of 21 January 2021, paras. 125-144.
[105] *Markovic and Others v. Italy*, ECtHR, Application no. 1398/03, Judgment of 14 December 2006, paras. 49-55; *Güzelyurtlu and Others v. Cyprus and Turkey*, ECtHR, Application No. 36925/07, Judgment of 29 January 2019, paras. 188-189 and 191; *Semenya v. Switzerland*, ECtHR, Application No. 10934/21, Judgment of 10 July 2025.
[106] *Stephens v. Malta (no. 1)*, ECtHR, Application No. 11956/07, Judgment of 21 April 2009, para. 52.
[107] *M. v. Denmark*, Commission. Application No. 17392/90, Decision of the 14 October 1994.
[108] *Hirsi Jamaa and Others v. Italy*, ECtHR, Application No. 27765/09, Judgment of 23 February 2012, paras. 70-75 and 79-81; *Medvedyev and Others v. France*, ECtHR, Application No. 3394/03, Judgment of 29 March 2010, para. 65.

> *Convention cannot be selectively restricted to only parts of the territory of a State by means of an artificial reduction in the scope of its territorial jurisdiction."*[109]

Similarly, the Committee against Torture has confirmed that a State Party's obligations, as well as the Committee's competence to consider complaints related to alleged violations, extend not only to the State's territory, but also to places and individuals over whom the State exercises effective control.[110] The CRC Committee and the Committee on Migrant Workers have explicitly held that States' obligations in relation to children within their jurisdiction:

> "*cannot be arbitrarily and unilaterally curtailed either by excluding zones or areas from the territory of a State or by defining particular zones or areas as not or only partly under the jurisdiction of the State, including in international waters or other transit zones where States put in place migration control mechanisms. The obligations apply within the borders of the State, including with respect to those children who come under its jurisdiction while attempting to enter its territory*."[111]

Personal jurisdiction (*ratione personae*)

Admissibility criteria in international human rights law determine whether a complaint can be considered by a judicial or quasi-judicial body. One key criterion is *ratione personae*. It concerns whether the complainant has legal standing to bring the case. Fulfilling this criterion is essential for a complaint to proceed before international human rights mechanisms.

Individual complaints

Victims: Individual complaints may be lodged before competent international redress mechanisms by the alleged victims of a human rights violation. Most mechanisms also allow others to lodge a complaint on behalf of a victim or victims with their authorization. In certain circumstances, complaints submitted without direct authorization of the alleged victims may be permitted, provided that the applicant explain why such authorization was not possible or would be difficult to obtain.

A victim, for the purposes of lodging a complaint, is a person affected by an action or omission of a State or State agent. International human rights standards clarify that:

> "*[V]ictims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term "victim" also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization*."[112]

This may include among others:

1. A person directly affected by a violation committed by the State or its agents.[113]

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[109] *N.D. and N.T. v. Spain*, ECtHR, Applications nos. 8675/15 and 8697/15, GC, Judgment of 13 February 2020, para. 110.
[110] *J.H.A. v. Spain*, UN Committee Against Torture, UN Doc. CAT/C/41/D/323/2007, (21 November 2008) para. 8.2.
[111] CMW Committee, CRC Committee, Joint General Comment No. 3 (2017) and No. 22 (2017) on the general principles regarding the human rights of children in the context of international migration, CMW/C/GC/3-CRC/C/GC/22, 16 November 2017, para. 12 [henceforth Joint General Comment No. 3/22].
[112] UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Resolution 60/147, 15 December 2005, para. 8.
[113] See e.g. *Tănase v. Moldova*, ECtHR, Application No. 7/08, Judgment 27 April 2010, para. 104; *Toonen v. Australia,* HRC, Communication No. 488/1992, View of 31 March 1994. Also legal persons, such as companies or associations may be victims in their own right, but will not be dealt with in the present Guide.

2. An individual whose rights have been or are imminently likely to be affected by a law that potentially impedes the enjoyment of their rights, even if the law has not yet been applied, provided that the risk of the law being applied is more than a theoretical possibility.[114]
3. A person who is likely to be affected or who belongs to a group at risk of being targeted by a law, even if the individual is not aware of the risk, where the law itself prevents such awareness, for example, in surveillance-related cases.[115]
4. In certain cases, relatives of victims of torture or enforced disappearance may also be considered victims of violations of their own right not to be subjected to ill-treatment.[116]
5. In cases of threatened removal, an individual may be considered a victim even if the violation remains potential rather than actual.[117]

Individual complaints to international human rights treaty bodies: Complaints may be submitted by individuals who claim to be victims of violations of rights enshrined in the relevant treaty.[118] If the violation concerns a group, the complaint may be submitted collectively.[119] Complaints may be submitted either by the individual or individuals concerned or by a third party acting on their behalf with their authorization.[120] Treaty bodies also generally accept complaints submitted on behalf of a victim, without their authorization provided that the complainant supplies sufficient justification for the absence of such authorization.[121]

Applications may not be anonymous. However, the UN Treaty Bodies may grant anonymity to the applicant in public communications regarding the case and in case documents available to the public, where the applicant has provided sufficient justification for such a request.[122]

Complaints to the European Court of Human Rights: Complaints alleging violations of the provisions of the ECHR may be filed with the Court by individuals or groups of individuals who claim to be victims of violations of their rights under the Convention. Applications may initially be submitted directly by the victim or through a representative.[123]

The ECtHR requires that applicants be represented once the application has been notified to the respondent State.[124] An applicant may request permission to represent themselves, which may be granted by the President of the Chamber in exceptional circumstances.[125] The representative must be a lawyer authorized to practice in any of the States that are parties to the Convention and resident of one of those States, or any other person

[114] See e.g. *Dudgeon v. United Kingdom*, ECtHR, Application No. 7525/76, Judgment 22 October 1981.
[115] See e.g. *Klass and Others v. Germany*, ECtHR, Application No. 5029/71, Judgment 6 September 1978; *Szabó and Vissy v. Hungary*, ECtHR, Application No. 37138/14, Judgment 12 January 2016.
[116] See e.g. *Quinteros Almeida v. Uruguay*, HRC, Communication No.107/1981, Views of 21 July 1983, para. 14; *Staselovich and Lyashkevich v. Belarus*, HRC, Communication No.887/1999, Views of 3 April 2003, para. 9.2; *Kurt v. Turkey*, ECtHR, Application No. 24276/94, Judgment of 25 May 1998, para. 124.
[117] See e.g. *Kindler v. Canada*, HRC, Communication No. 470/1991, Views of 30 July 1993.
[118] Article 1 OP ICCPR; Article 14 ICERD; Article 2 CEDAW; Article 22 CAT; Article 1 OP CRPD; Article 5 OP3 CRC.
[119] Article 14 ICERD; Article 2 CEDAW; Article 22 CAT; Article 5 OP3 CRC.
[120] Rule 4(1) OP ICESCR Rules of Procedure; Rule 91 HRC Rules of Procedure; Rule 68(1) CEDAW Rules of Procedure; Rule 13(2) OP3 CRC Rules of Procedure; Rule 91(b) CERD Rules of Procedure; Rule 113(a) CAT Rules of Procedure; Rule 67 CRPD Rules of Procedure.
[121] Rule 4(2) OP ICESCR Rules of Procedure; Rule 91 HRC Rules of Procedure; Rule 68(2) CEDAW Rules of Procedure; Rule 13(3) OP3 CRC Rules of Procedure; Rule 91(b) CERD Rules of Procedure; Rule 113(a) CAT Rules of Procedure; Rule 67 CRPD Rules of Procedure. See e.g. *F (on behalf of C) v. Australia,* HRC, Communication No. 832/1998, Decision adopted on 25 July 2001.
[122] See Rules 88(3), 99(a) and 111(2) HRC Rules of Procedure; Article 5(2) OP3 CRC; Rules 16(3) and 29 OP3 CRC Rules of Procedure; Rule 74 CEDAW Rule of Procedure; Rule 77 CRPD Rule of Procedure; Rule 25 OP ICESCR Rules of Procedure.
[123] Rule 36 ECtHR Rules of Court.
[124] Rule 36(2) ECtHR Rules of Court.
[125] Rule 36(3) ECtHR Rules of Court.

approved by the President of the Chamber of the Court.[126] Legal aid is available from the Court for those who qualify.[127] The representative must remain in contact with the applicant throughout the time the case is pending before the Court.[128] A failure to do so may result in the case being struck out of the list.[129]

Applications are not admissible if they are anonymous, however, the applicant may request that their identity be withheld from the public.[130]

Collective complaints

As noted above, the European Committee of Social Rights has competence to consider collective complaints against States Parties to the ESC that have accepted its jurisdiction.[131] Complaints may concern laws or practices by the State Party concerned that are alleged to violate one or more provisions of the ESC or the Revised ESC.[132] This procedure can be particularly useful in cases of systemic violations of the economic, social or cultural rights of children.[133] However, the European Committee of Social Rights does not have competence to consider complaints by individuals or to address claims that an individual's rights under the ESC have been violated.[134]

Only certain entities have standing to file collective complaints to the ECSR; complaints submitted by individuals or by groups that do not meet the criteria under the Social Charter are not accepted. The following entities have standing to submit a collective complaint to the ECSR:

- International organizations of employers and trade unions;[135]
- Representative national organizations of employers and trade unions within the jurisdiction of the State Party against which the complaint is lodged;[136]
- International non-governmental organizations (INGOs) holding participatory status with the Council of Europe and included on a list established for this purpose by the Governmental Committee.[137]

The last two categories of organizations may submit complaints only in respect of matters for which their competence has been recognized.[138] In addition, a State may choose to recognize the right of other national non-governmental organizations with expertise in matters covered by the Charter to lodge complaints against it.[139]

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[126] Rule 36(4)(a) ECtHR Rules of Court.
[127] Chapter XII ECtHR Rules of Court.
[128] *Sevgi Erdoğan v. Turkey*, ECtHR, Application No. 28492/95, Judgment of 29 April 2003; *Ali v. Switzerland*, ECtHR, Application No. 69/1997/853/1060, Judgment of 5 August 1998.
[129] A constant failure, through a long period of time, of the applicant to contact their representative might lead the Court to rule that they have lost interest in the proceedings, leading to the case's. See *Ramzy v. the Netherlands*, ECtHR, Application No. 25424/05, Decision of 20 July 2010.
[130] Rule 47(4) ECtHR Rules of Court.
[131] See further: CoE, Collective complaints, website (accessed 19 June 2025).
[132] Article 2(1) AP ESC.
[133] For instance, there has been a case before the ESCR on the health rights of migrant children: *Defence for Children International v. Belgium*, ECSR, Application No. 69/2011, 23 October 2012.
[134] Preamble of the AP ESC. The Council of Europe has acknowledged the absence of an individual complaints mechanism under the ESC. In Recommendation 1795 (2007), the Parliamentary Assembly recommended that the Committee of Ministers consider the possibility of an additional protocol to the Charter providing for a system of individual complaints.
[135] Article 1(a) AP ESC.
[136] Article 1(c) AP ESC.
[137] Article 1(b) AP ESC.
[138] Article 3 AP ESC.
[139] Article 2 AP ESC. As of September 2024, only Finland has agreed to grant national organizations with the competence under Article 2 AP ESC to file collective complaints before the ECSR.

b. Procedural requirements

Before the merits of a complaint or case are examined by a human rights mechanism, the admissibility requirements must be fulfilled. Most complaint procedures require that the complaint:[140]

- be in writing;
- be submitted in one of the official languages;
- be submitted by or on behalf of a person with standing;
- not be anonymous;
- set out allegations of facts, including the date(s) of the acts or omissions that are alleged to constitute violations of the relevant treaty or subject matter within the jurisdiction of the adjudicating body;
- indicate the remedies sought and results obtained at the domestic level, demonstrating exhaustion of domestic remedies, unless indicating that effective domestic remedies are unavailable or that such remedies are unnecessarily prolonged and/or incapable of providing effective relief;
- be submitted within the time limit set from the date of the final domestic decision if any;
- be signed and dated and, if submitted by a representative, include a signed authorization from the victim, or, if such authorization has not been obtained, provide an explanation.
- not be substantially the same matter that has already been examined in another complaint before the same human rights mechanism;
- not be manifestly ill-founded or an abuse of the right of application;
- not be under examination by another international procedure.

Communications to UN Treaty Bodies must be submitted in one of the official UN languages (Arabic, Chinese, English, French, Russian or Spanish).[141] Collective complaints to the ECSR must be submitted in one of the official languages of the Council of Europe (English or French).[142] The ECtHR accepts applications in its official languages, English and French, as well as in the official languages of the Contracting Parties.[143] At a later stage in the proceedings, submissions must as a rule be in English or French, unless an exception is granted.[144]

Special Procedures – Special Rapporteurs, Independent Experts, Working Groups: Any individual, group, CSO, inter-governmental entity or national human rights body may submit information to the Special Procedures.[145] The Office of the High Commissioner for Human Rights recommends that applications be "as comprehensive, detailed and precise as possible".[146] Since submissions are periodically published in reports to the Human Rights Council or the General Assembly, it is essential that applicants clearly state whether they consent to their names being disclosed.[147]

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[140] See e.g. Article 4 AP ESC; Rules 23-24 ESC Rules of Procedure; Article 22 CAT; Rule 113 CAT Rules of Procedure; Article 31 CED; Articles 2-4 OP CEDAW; Rule 67 CEDAW Rules of Procedure; Article 14 CERD; Articles 35 ECHR; Rule 91 CERD Rules of Procedure; Article 7 OP3-CRC; Rule 13 OP3 CRC Rules of Procedure; Article 2 OP CRPD; Rule 70 CRPD Rules of Procedure; Articles 3 and 5 OP ICCPR; Rules 97-99 HCR Rules of Procedure; Article 3 OP ICESCR; Rules 12-14 OP ICESCR Rules of Procedure; Rule 47 ECtHR Rules of Court; ECtHR, Practice Direction: Institution of Proceedings (Individual applications under Article 34 of the Convention), last amended 1 February 2022.

[141] See e.g. Rule 27-28 CAT Rules of Procedure; Rule 24-25 CEDAW Rules of Procedure; Rule 55 CRPD Rules of Procedure; Rules 29 and 88 HCR Rules of Procedure; Rule 1 OP ICESCR Rules of Procedure.

[142] Rule 24 ESC Rules of Procedure.

[143] Rule 34 ECtHR Rules of Court.

[144] Rule 34 ECtHR Rules of Court.

[145] HRC, 5/1. Institution-building of the UNHRC, 18 June 2007, para. 87(d).

[146] OHCHR, Submission of information to the Special Procedures, website (accessed 16 September 2024).

[147] For example, the HRC Secretariat's standardized application forms include questions regarding the candidate's consent to disclose their name publicly.

Table 2. Treaties establishing a complaint procedure and Rules of Procedure for complaints

Treaty Body	Treaty establishing the procedure Rules of Procedure of the body
Human Rights Committee (HRC/CCPR)	First Optional Protocol to the ICCPR Rules of Procedure of the Human Rights Committee (last revised 4 January 2021)
Committee on Economic, Social and Cultural Rights (CESCR)	Optional Protocol to ICESCR Rules of Procedure under the Optional Protocol to the ICESCR (last revised 3 May 2022)
Committee on the Rights of the Child (CRC Committee)	Optional Protocol 3 to the CRC on a Communications Procedure Rules of Procedure under Optional Protocol 3 to the CRC (last revised 4 November 2021)
Committee on the Elimination of Discrimination against Women (CEDAW Committee)	Optional Protocol to CEDAW Working Methods of the CEDAW Committee and its Working Group on individual communications received under the Optional Protocol to the CEDAW Convention
Committee against Torture (CAT Committee)	Article 22 of the CAT CAT Rules of Procedure (last revised 5 July 2023) CAT Working Methods

Exhaustion of domestic remedies

As mentioned earlier, most international human rights judicial and quasi-judicial redress procedures that examine individual complaints require applicants to exhaust domestic remedies available in the State concerned before bringing a complaint before the international mechanism.

The rationale behind this requirement is that State authorities, including domestic courts, bear primary responsibility for ensuring implementation of and compliance with their legal obligations to respect, protect and fulfil human rights guaranteed in international human rights treaties by which they are bound.[148] Fulfilment of the legal obligation to ensure an effective domestic remedy for human rights violations may require an effective investigation into the alleged human rights violations and the provision of other forms of redress in respect of those violations.[149] A State should ensure the existence of an effective remedy, namely, "one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success."[150]

Only those remedies that are accessible, adequate and effective must be exhausted.

- A domestic remedy is considered "adequate" only when it is capable of addressing human rights violations according to international human rights law standards.[151] A complaint under a substantive provision containing a right under international human rights law must be arguable before the domestic remedial mechanism.[152] It is not necessary that the specific article of the human rights treaty be used as a

[148] See e.g. *Gherghina v. Romania*, ECtHR, Application No. 42219/07, Judgment of 9 July 2015, paras. 84-89. See further ECtHR, Practical guide on admissibility criteria (updated on 31 August 2024).
[149] See e.g. *Hanan v. Germany*, ECtHR, Application No. 4871/16, Judgment of 16 February 2021, paras. 149-151.
[150] See e.g. *Akdivar and Others*, ECtHR, Application No. 21893/93, Judgment of 16 September 1996, para. 68.
[151] *Danyal Shafiq v. Australia*, HRC, Communication No. 1324/2004, Views of 31 October 2006, para. 6(4); *Salah Sheekh v. the Netherlands*, ECtHR, Application No. 1948/04, Judgment of 11 January 2007, para. 121; *Soldatenko v. Ukraine*, ECtHR, Application No. 2440/07, Judgment of 2 October 2008, para. 49; *Shamayev and Others v. Georgia and Russia*, ECtHR, Application No. 36378/02, Judgment of 12 April 2005, para. 446. See also ICJ's Practitioners Guide No. 6, *Migration and International Human Rights Law*, 3rd ed., 2021.
[152] *Muminov v. Russia*, ECtHR, Application No. 42502/06, Judgment of 11 December 2008, para. 99.

ground of judicial review; it is sufficient that the substance of the human rights claim be arguable.[153]

- The domestic remedy must also be "effective", meaning that it must be able to determine whether a violation has occurred and provide redress. It must have the power to issue binding orders that reverse the situation of violation of the individual's rights or, if that is not possible, to provide adequate reparation. Reparation includes, as appropriate, restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.[154] Remedies whose decisions do not have binding force or whose decisions or implementation are at the discretion of a political body are not deemed to be effective.[155] Furthermore, the remedy must have the power to suspend the situation of potential violation when the lack of suspension would lead to irreparable harm/irreversible effects for the applicant while the case is being considered.[156]
- The remedy must meet due process requirements. It must be independent, which means that it must not be adjudicated by or subject to interference from the authorities against whom the complaint is brought.[157] It must ensure fair procedures, be accessible and must not constitute a denial of justice.[158] Ensuring accessibility may require the provision of free legal advice, where necessary. The remedy must allow the applicant sufficient time to prepare the case, so as to allow a realistic possibility of access to it.[159]

In certain circumstances a domestic remedy need not be pursued to meet the admissibility requirements. In general, this arises where the remedy lacks effectiveness, adequacy, or due process of law characteristics. Below are the most typical cases of exception to the rule of the exhaustion of domestic remedies, although other situations may also arise where exhaustion of domestic remedies is not required:

- If it can be proven that the remedy was "bound to fail".[160] This might occur when, under the domestic legal system, or consistent with domestic practice or jurisprudence, it is virtually impossible to obtain redress domestically in the circumstances of the individual case.[161]

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[153] *Fressoz and Roire v. France*, ECtHR, Application No. 29183/95, Judgment of 21 January 1999, paras. 33-37; *Castells v. Spain*, ECtHR, Application No. 11798/85, Judgment of 23 April 1992, paras. 24-32.

[154] UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, paras. 19-23. See also, ICJ's, Practitioner's Guide No. 2, *The Right to a Remedy and to Reparation for Gross Human Rights Violations* (2006), chapters VI and VII.

[155] See *Madafferi and Madafferi v. Australia*, HRC, Communication No. 1011/2001, Views of 26 July 2004, para. 8(4); *C. v. Australia*, HRC, Communication No. 900/1999, Views of 13 November 2002, para. 7(3); *L. Z. B. v. Canada*, CAT Committee, Communication No. 304/2006, Views of 15 November 2007, para. 6.4; *L. M. V. R. G. and M. A. B. C. v. Sweden*, CAT Committee, Communication No. 64/1997, Views of 19 November 1997, para. 4(2); *Shamayev and Others v. Georgia and Russia*, ECtHR, Application No. 36378/02, Judgment of 12 April 2005, para. 446. However, there must be evidence in practice that the discretion of the political power does not lead to a predictable decision according to legal standards. It must be evident that the discretion is absolute. Otherwise, the applicant has a duty to try to exhaust also that remedy. See, *Danyal Shafiq v. Australia*, HRC, Communication No. 1324/2004, Views of 31 October 2006, para. 6(5). See also Article 22(5)(b) CAT; Article 4(1) OP CEDAW.

[156] See *Dar v. Norway*, CAT Committee, Communication No. 249/2004, Views of 16 May 2007, paras. 6(4)-(5); *Tebourski v. France*, CAT Committee, paras. 7(3)-(4); *Na v. United Kingdom*, ECtHR, Application No. 25904/07, Judgment of 17 July 2008, para. 90; *Jabari v. Turkey*, ECtHR, Application No. 40035/98, Admissibility decision of 28 October 1999; *Bahaddar v. the Netherlands*, ECtHR, Application No. 25894/94, Judgment of 19 February 1998, paras. 47-48; *Soldatenko v. Ukraine*, ECtHR, Application No. 2440/07, Judgment of 23 October 2008, para. 49; *Muminov v. Russia*, ECtHR, Application No. 42502/06, Judgment of 11 December 2008, para. 101; *Gebremedhin v. France*, ECtHR, Application No. 25389/05, Decision of 26 April 2007, paras. 66-67.

[157] HRC, General Comment No. 31, Nature of the General Legal Obligations Imposed on State Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, 29 March 2004, para. 15; *Keenan v. United Kingdom*, ECtHR, Application No. 27229/95, Judgment of 3 April 2001, para. 122.

[158] *Airey v. Ireland*, ECtHR, Application No. 6289/73, Judgment of 9 October 1979.

[159] *Muminov v. Russia*, ECtHR, Application No. 42502/06, Judgment of 11 December 2008, para. 90; *Bahaddar v. the Netherlands*, ECtHR, Application No. 25894/94, Judgment of 19 February 1998, para. 45; *Alzery v. Sweden*, HRC, Communication No. 1416/2005, Views of 25 October 2006, para. 8.2.

[160] *NA v. United Kingdom*, ECtHR, Application No. 25904/07, Judgment of 17 July 2008, para. 89.

[161] *Salah Sheekh v. the Netherlands*, ECtHR, Application No. 1948/04, Judgment of 11 January 2007, paras. 121-124.

- If the legal system fails to provide conditions for the effectiveness of the remedy, such as lack of effective investigation, a consistent practice of failing to implement court orders in particular situations, or where there is a situation of conflict or impunity.[162] The ECtHR has held that remedies where the granting of relief is purely discretionary need not be exhausted.[163]
- If the process to obtain or access the remedy is unreasonably prolonged.[164]
- If the victim does not have access to the remedy due to a lack of legal representation, whether because of the unavailability of legal aid, threat of reprisals or restrictions on access to lawyers in detention.[165]

Time limitations

Complaints should generally be filed within a specific time period.[166] This period often starts from the date on which the victim has exhausted the available domestic remedies.[167] For example, if an effective remedy is available before the highest court of the State, the time limit is counted from the date the individual is notified of the decision of that court.[168] Failure to meet the prescribed time limits for filing a complaint in the required form will likely result in the complaint being dismissed as inadmissible without examination on the merits. When selecting an international human rights mechanism for redress, it is therefore essential to be aware of and comply with the relevant time limits.

ECtHR: Since 1 February 2022, following the entry into force of Protocol No 15 to the ECHR, an individual application must be submitted within four months of the exhaustion of domestic remedies.[169] Where no domestic remedies are available, the complaint must be submitted within four months of the alleged violation.

CERD Committee: A complaint must be submitted within six months of the exhaustion of domestic remedies, including proceedings before the national body competent to receive petitions under the CERD, except in cases of duly verified exceptional circumstances.[170]

CESCR and CRC Committee: Individual complaints must be filed within one year of the exhaustion of domestic remedies unless the applicant demonstrates that it was not possible to submit the communication within that time.[171]

HRC: As a general rule, individual complaints should be submitted within five years of the exhaustion of domestic remedies or three years following the conclusion of another international investigation or settlement procedure, unless the applicant can justify the delay.[172] While neither the Optional Protocol to the ICCPR nor the Rules of Procedure set a strict time limit, Rule 99 of the Rules of Procedure clarifies that complaints that are not

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[162] *Akdivar and Others v. Turkey*, ECtHR, Application No. 21893/93, Judgment of 16 September 1996, paras. 69-77.
[163] *Buckley v. United Kingdom*, ECtHR, Application No. 20348/92, Admissibility decision of 3 March 1994.
[164] *Zundel v. Canada*, HRC, Communication No. 1341/2005, Views of 4 April 2007, UN Doc. CCPR/C/89/D/1341/2005; *Z.U.B.S. v. Australia*, CERD, Communication No. 6/1995, Views of 25 January 2000, UN Doc. CERD/C/55/D/6/1995, para. 6.4.
[165] *Rahimi v. Greece*, ECtHR, Application No. 8687/08, Judgment of 5 April 2011, paras. 74-80; *Z. T. (No.2) v. Norway*, CAT Committee, Communication No. 238/2003, 14 November 2005, paras. 8.1-8.4.
[166] See e.g. Article 35(1) ECHR; Article 14(5) CERD; Article 3(2)(a) OP ICESCR; Article 7(h) OP3 CRC; Rule 99 HRC Rules of Procedure.
[167] Ibid.
[168] See e.g. *Jaćimović v. Croatia*, ECtHR, Application No. 22688/09, Judgment of 31 October 2013, paras. 31-34.
[169] Article 35(1) ECHR, as amended by Protocol 15. The European Court clarified the six-month requirement in the case of *Kemevuako v. the Netherlands*, ECtHR, Application No. 65938/09, Admissibility decision of 1 June 2010, para. 29. "The date of submission is the date on which an application form, satisfying the [formal] requirements of [Rule 47 of the Rules of Court], is sent to the Court. The date of dispatch shall be the date of the postmark. Where it finds it justified, the Court may nevertheless decide that a different date shall be considered to be the date of receipt". See also Rule 47(6) ECtHR Rules of Court.
[170] Article 14(5) CERD.
[171] Article 3(2)(a) OP ICESCR; Article 7(h) OP3 CRC.
[172] Rule 99 HRC Rules of Procedure.

filed within the time frame (five years after the exhaustion of domestic remedy or three years after the conclusion of another international procedure) may be considered an abuse of the right of petition.[173]

CAT Committee: The Committee does not impose a specific time limit, but has stated that it does not admit communications received after an "unreasonably prolonged" period.[174]

CEDAW and CED Committees: The treaties establishing these individual complaints procedures do not set specific timeframes for filing complaints. However, as a general rule, complaints should be filed within a reasonable time following the exhaustion of domestic remedies.

WGAD and ECSR: Neither body requires exhaustion of domestic remedies for a complaint to be declared admissible.[175] However, both mechanisms generally address ongoing violations, such as continued deprivation of liberty or non-implementation of the ECSR.[176]

Same matter examined under another procedure

Most judicial and quasi-judicial international complaints mechanisms deem a complaint inadmissible if the same matter has already been examined by the same or another international human rights redress mechanism with judicial or quasi-judicial powers or has been or is being examined under another procedure of international investigation or settlement.[177]

For example, the HRC excludes complaints that are pending before other international procedures. In interpreting Article 5(2) of the OP ICCPR, which precludes consideration of "any communication being examined under another procedure of international investigation or settlement", the Committee has nevertheless concluded that, once the procedure before another international body has ended, it may still consider the same matter.[178] The fact that Article 31(2)(c) of the CED contains similar language to Article 5(2) of the OP ICCPR, suggests that the CED Committee may adopt a similar approach.

In addition, UN Treaty Bodies are not precluded from considering a case that has been brought before the WGAD, another Special Procedure, or where related issues have been examined in the collective complaints procedure before the CoE ECSR.

Significant disadvantage

European Court of Human Rights: Since the entry into force of Protocol No. 14 to the ECHR, individual complaints filed before the ECtHR must demonstrate "significant disadvantage". Under Article 35, the Court must declare an individual application inadmissible if it considers that:

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[173] Rule 99(c) HRC Rules of Procedure; Article 3 OP ICCPR. See *Gobin v. Mauritius*, HRC, Communication No. 787/1997, Views of 20 August 2001, para. 6.3.
[174] Rule 113(f) CAT Committee's Rules of Procedure.
[175] See AP ESC; ESC Rules of Procedure; HRC, Methods of work of the WGAD, A/HRC/36/38, 13 July 2017.
[176] See e.g. WGAD, Opinion No. 40/2024 (Bahrain), 100th session, 26-30 August 2024; *Defence for Children International (DCI), European Federation of National Organisations working with the Homeless (FEANTSA), Magistrats Européens pour la Démocratie et les Libertés (MEDEL), Confederación Sindical de Comisiones Obreras (CCOO) and International Movement ATD Fourth World v. Spain*, ECSR, Complaint No. 206/2022, 11 September 2024.
[177] See Article 22(4) CAT; Article 4(2)(a) OP CEDAW; Article 2(c) OP CRPD; Article 3(2)(c) OP ICESCR; Article 7(d) OP CRC; Article 5(2)(a) OP ICCPR; Article 30(2)(e) CED. See further Alexandre Skander Galand, Defer or Revise? Horizontal Dialogue Between UN Treaty Bodies and Regional Human Rights Courts in Duplicative Legal Proceedings, *Human Rights Law Review*, Vol.23, Issue 2, June 2023.
[178] *Correia de Matos v. Portugal*, HRC, Communication No. 1123/2002, Views of 18 April 2006, para. 6.2.

> "*the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits*."[179]

In assessing whether the applicant has suffered a significant disadvantage, the Court must take into consideration "both the applicant's subjective perception and what is objectively at stake in a particular case."[180] The Court has recognized that, "a violation of the Convention may concern important questions of principle and thus cause a significant disadvantage without affecting pecuniary interest".[181] Furthermore, even where the Court finds that the applicant has not suffered a significant disadvantage, it must still determine whether an examination of the case is required in the interests of human rights protection as defined in the Convention and its Protocols.[182]

UN Committee on Economic, Social and Cultural Rights: The CESCR "may, if necessary, decline to consider a communication where it does not reveal that the author has suffered a clear disadvantage, unless the Committee considers that the communication raises a serious issue of general importance".[183] However, this provision does not constitute an admissibility criterion. The wording 'if necessary' means that the "clear disadvantage" test is discretionary and likely to be used by the CESCR Committee only in exceptional circumstances.

Other inadmissibility grounds

In addition, there are a number of other inadmissibility grounds. For instance, UN Treaty Bodies and the ECtHR reject communications that constitute an abuse of the right to application.[184]

In addition, submissions must be complete and include all required information.[185] The CAT, CEDAW, CESCR and the ECtHR explicitly exclude consideration of complaints that are manifestly unfounded or insufficiently substantiated,[186] and this is also the case for other Treaty Bodies. The OP ICESCR explicitly excludes complaints that are based exclusively on reports disseminated by mass media.[187]

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[179] Article 35(3)(b) ECHR, as amended by Protocols No. 14 and 15.
[180] *Eon v. France*, ECtHR, Application No. 26118/10, Judgment of 14 March 2013, para. 34.
[181] *Korolev v. Russia*, ECtHR, Application No. 25551/05, Admissibility decision of 1 July 2010.
[182] CoE, Explanatory Report to Protocol No. 14 to the ECHR, No. 194, 2004, para. 81.
[183] Article 4 OP ICESCR.
[184] Article 3 OP ICCPR; Rule 99(c) and (d) HRC Rules of Procedure; Article 3(2)(d) to (g) OP ICESCR; Article 22(2) CAT; Rule 113(b) and (c) CAT Rules of Procedure; Rule 91(c) and (d) CERD Rules of Procedure; Article 4(2) OP CEDAW; Article 7(c) OP3 CRC; Article 2(a) and (b) OP CRPD; Article 31(2)(a) and (b) CED; Articles 35(3)(a) ECHR. For an application declared inadmissible as an abuse of the right of application, see *Zhdanov and Others v. Russia*, ECtHR, Application Nos. 12200/08, 35949/11 and 58282/12, Judgment of 16 July 2019, paras. 79-81. "Firstly, an application may be rejected as an abuse of the right of petition within the meaning of Article 35(3)(a) if it was knowingly based on untrue facts […]. Secondly, it may also be rejected in cases where an applicant used particularly vexatious, contemptuous, threatening or provocative language in his communication with the Court […] However, the notion of abuse of the right of application […] is not limited to those two instances and other situations can also be considered as an abuse of that right."
[185] See e.g. Rule 47 ECtHR Rules of Court.
[186] Article 4(2)(c) OP CEDAW; Article 22(2) CAT; Rule 113(b) and (c) CAT Rules of Procedure; Article 3(2)(d) to (g) OP ICESCR; Article 7(f) OP3 CRC; Article 2(e) OP CRPD; Articles 35(2)(a) and 35.3(a) and (b) ECHR. For an example of manifestly ill-founded complaints where there has clearly or apparently been no violation, see *Mentzen v. Latvia*, ECtHR, Application No. 71074/01, Decision of 7 December 2004. For an example of manifestly unsubstantiated complaints, see *Trofimchuk v. Ukraine,* ECtHR, Application No. 4241/03, Decision of 31 May 2005.
[187] Article 3(2)(d) to (g) OP ICESCR.

c. *Interim measures*

More detailed and up to date information on lodging a request for an interim measure before the **ECtHR** can be found on the ECtHR website,[188] including:

- the Practice direction on requests for interim measures;[189]
- the factsheet on interim measures;[190]
- a document on how to contact the Court for interim measures.[191]

Where there is a real risk of imminent irreparable harm or damage to the alleged victim or applicant pending adjudication on the merits by an international human rights redress mechanism, the complainant may ask that the mechanism request the State to take specific action to avert such harm, pending its final determination of the case.[192] Such action is variously referred to as a request for interim, preventive or provisional measures. Within the framework of international litigation, the purpose of such measures is to preserve the rights of the parties, guarantee the integrity and effectiveness of judgments on the merits and prevent proceedings from being rendered ineffective.[193]

It should be noted that the issuance of interim measures is not a routine procedure, and it does not constitute or imply a determination on admissibility or the merits of a complaint.[194] However, it may suggest "a reasonable likelihood of success on the merits."[195]

The **European Court of Human Rights** has clarified that interim measures pursuant to Rule 39 of the Rules of Court are binding on a State. A State's failure to comply with interim measures constitutes a violation of Article 34 of the ECHR.[196] As stated by the Court in *Savriddin Dzhurayev v. Russia*:

> "*The crucial significance of interim measures is further highlighted by the fact that the Court issues them, as a matter of principle, in truly exceptional cases on the basis of a rigorous examination of all the relevant circumstances. In most of these, the applicants face a genuine threat to life and limb, with the ensuing real risk of grave, irreversible harm in breach of the core provisions of the Convention. This vital role played by interim measures in the Convention system not only underpins their binding legal effect on the States concerned, as upheld by the established case-law, but also commands the utmost importance to be attached to the question of the States Parties' compliance with the Court's indications in that respect* […]."[197]

The likelihood of obtaining interim measures from international human rights bodies is very limited and concerns cases presenting a real risk of imminent irreparable harm. In practice, the most common cases concern expulsion and extradition. They generally consist of suspending the expulsion or extradition of the applicant while the application is

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[188] ECtHR, Applicants, website (accessed 29 January 2026). See; ECtHR's Press Unit, Factsheet – Interim measure, March 2024; ECtHR, How to contact the Court for lodging a request for an interim measure;
[189] ECtHR, Practice direction: requests for interim measures (Rule 39 of the Rules of Court), last amended 28 March 2024.
[190] ECtHR's Press Unit, Factsheet – Interim measure, March 2024.
[191] ECtHR, How to contact the Court for lodging a request for an interim measure.
[192] Article 6 OP3 CRC; Article 5(1) OP ICESCR; Rule 114 CAT Rules of Procedure; Rule 94(3) CERD Rules of Procedure; Article 5(1) OP CEDAW; Rule 63 CEDAW Rules of Procedure; Article 4 OP CRPD; Article 31(4) CED; Rule 39 ECtHR Rules of Court; the obligation to comply with interim measures issued by the Court arises under Article 34 ECHR and is also related to obligations under Articles 1 and 46 ECHR.
[193] See Héctor Fix-Zamudio, "Prólogo del Presidente de la Corte Interamericana de Derechos Humanos", *Serie E: Medidas Provisionales N° 1 Compendio: 1987-1996*, Organization of American States – Inter-American Court of Human Rights, 1996, p. iii; Antônio Augusto Cançado Trindade, "Prólogo del Presidente de la Corte Interamericana de Derechos Humanos", *Serie E: Medidas Provisionales N° 2 – Compendio: Julio 1996 -2000*, Organization of American States – Inter-American Court of Human Rights, p. ix, para. 7.
[194] See e.g. Article 6(2) OP3 CRC; Article 5(1) OP ICESCR; Rule 114(2) CAT Rules of Procedure; Rule 94(3) CERD Rules of Procedure; Article 5(2) OP CEDAW; Article 4(2) OP CRPD; Article 31(4) CED.
[195] OHCRH, Individual Communications, website (accessed 16 June 2025).
[196] *Mamatkulov and Askarov v. Turkey*, ECtHR, Application Nos. 46827/99 and 46951/99, Judgment of 4 February 2005, paras. 125-129.
[197] *Savriddin Dzhurayev v. Russia*, ECtHR, Application No. 71386/10, Judgment of 25 April 2013, para. 213.

being examined.[198] For example, cases brought before the ECtHR that have resulted in interim measures are those in which he applicants fear for their lives or face a risk of torture or other ill-treatment if the removal takes place.[199] The ECtHR may, upon request of the complainant, ask the State to refrain from carrying out the removal pending its decision on the merits. Interim measures may also be requested in cases of alleged forced eviction, with a view to ensuring that the eviction is "stayed" pending adjudication of the alleged human rights violations. More exceptionally, interim measures may be indicated before the ECtHR in response to certain applications concerning the right to a fair trial,[200] the right to respect for private and family life[201] and freedom of expression.[202] Interim measures are granted for the duration of the proceedings or for a defined period and may be lifted at any point, particularly if the underlying application is not pursued.[203] No appeal is available against a refusal to grant such measures before the ECtHR.[204]

Similarly, **UN Treaty Bodies**, including the HRC and CAT Committee, have clarified that a State's acceptance of the jurisdiction of a Treaty Body to consider individual applications implicitly includes the duty to allow the Treaty Body to examine the complaint and issue its conclusions.[205] This means that a State must not take any action that would prevent or frustrate this process, including by failing to respect a request for interim measures.[206] The fact that interim measures derive from the internal rules of procedure of monitoring bodies rather than from treaty provisions has frequently been invoked by some States as an argument for no-compliance with them.[207] As a result, when new instruments containing communications procedures have been drafted, interim measures have been included within the text of the treaty itself, thus allowing the legal character and nature of interim measures to be reaffirmed and clarifying any disputes concerning their observance.[208] The procedural mechanism for interim measures, contained in the OP CEDAW, the OP CRPD, the CED and the OP ICESCR, contains the following features:[209]

- It enables Committees to require the State to take interim measures after a communication has been received and before admissibility has been determined.

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[198] ECtHR Press Unit, Factsheet – Interim measures, March 2024. See e.g. *Khasanov and Rakhmanov v. Russia*, ECtHR, Applications Nos. 28492/15 and 49975/15, Decision of 29 April 2022. In this case, the interim measure granted on 6 June and 12 October 2015 came to an end on 29 April 2022 upon the delivery of the judgment by the Court.

[199] Article 2 and 3 ECHR. See e.g. *K. v. France*, ECtHR, Application No. 40788/23, Communicated case of 12 March 2024.

[200] Article 6 ECHR. See e.g. *Othman (Abu Qatada) v. the United Kingdom*, ECtHR, Application No. 8139/09, Decision of 17 January 2012.

[201] Article 8 ECHR. *Evans v. the United Kingdom*, ECtHR, Application No. 6339/05, Decision of 7 March 2006.

[202] Article 10 ECHR. *Novaya Gazeta and Others v. Russia*, ECtHR, Application No. 11884/22, decision of 11 February 2025.

[203] ECtHR, Practice direction: requests for interim measures (Rule 39 of the Rules of Court), last amended 28 March 2024, paras. 16-20.

[204] ECtHR, Practice direction: requests for interim measures (Rule 39 of the Rules of Court), last amended 28 March 2024, para. 25.

[205] HRC, General Comment No. 33, Obligations of States parties under the Optional Protocol to the International Covenant on Civil and Political Rights, 25 June 2009, para. 19; *Cecilia Rosana Núñez Chipana v. Venezuela*, CAT, Communication No. 110/1998, Views of 10 November 1998, UN Doc. CAT/C/21/D/110/1998, para. 8

[206] *Ashby v. Trinidad and Tobago,* HRC, Communication No. 580/1994, Views of 19 April 2002, UN Doc. CCPR/C/74/D/580/1994, para. 10.10; *Piandiong et al v. The Philippines*, HRC, Communication No. 869/1999, Views of 19 October 2000, UN Doc. CCPR/C/70/D/869/1999, para. 5.2. *Khalilov v. Tajikistan*, HRC, Communication No. 973/2001, Views of 20 March 2005, UN Doc. CCPR/C/83.D.973/2001, para. 4.1.

[207] See, among others, *Glen Ashby v. Trinidad and Tobago*, HRC, Communication No 580/1994, decision of 26 July 1994; *Gilbert Samuth Kandu-Bo and others v. Sierra Leone*, HRC, Communications Nos 839, 840 and 841/1998 decision of 4 November 1998; *Lincoln Guerra and Brian Wallen v. Trinidad and Tobago*, HRC, Communication N° 575 and 576/1994, decision of 4 April 1995; *Charles Chitat Ng v. Canada*, HRC, Communication N° 469/1991 decision of 7 January 1994; *Peter Bradshaw v. Barbados*, HRC, Communication N° 489/92 decision of 19 July 1994; *Denzil Roberts v. Barbados,* HRC, Communication N° 504/992, decision of 19 July 1994; *Dante Piandiong, Jesus Morallos and Archie Bulan v. Philippines*, HRC, Communication N° 869/1999, decision of 19 October 2000; *Rosana Nuñez Chipana v. Venezuela*, CAT Committee, Communication N° 110/1998, decision of 10 November 1998; *T.P.S. v. Canada,* CAT Committee, Communication N° 99/1997 decision of 16 May 2000. See also HRC, Report on follow-up to the concluding observations of the HRC, 137 Session, CCPR/C/137/2/Add.1, 27 February 2023 - 24 March 2023, para. 12.

[208] See Article 5 OP CEDAW; Article 4 OP CRPD; Article 31 CED; Article 5 OP ICESCR.

[209] See Article 5(1)-(2) OP CEDAW; Article 4(1)-(2) OP CRPD; Article 31(4)-(2) CED; Article 5(1)-(2) OP ICESCR.

- Requests for interim measures transmitted to States parties by the Committee require their urgent consideration.
- It is appropriate for interim measures to be requested if they are necessary to avoid possible irreparable damage to the victim or victims of the alleged violations.
- In cases in which interim measures are requested while a communication is being processed, the adoption of such measures does not imply that any kind of judgment has been made on the admissibility or merits of the communication.

At the request of a party or on its own initiative, the **ECSR** may also indicate any immediate measure necessary to avoid the risk of serious harm and to ensure effective respect for the rights recognized in the European Social Charter. Where a request for immediate measures is made by a complainant organization, it must specify the reasons for the request, the potential consequences of it not being granted and the specific measures sought.[210]

d. Third-party interventions

For further information and guidance on third-party interventions:
- Before the **ECtHR**, see the Practice direction on third-party interventions.[211]
- Before the **UN Treaty Bodies**, see, for example, the International Service for Human Rights' Guide to Third-Party Interventions before the UN Human Rights Treaty Bodies.[212]

Some international human rights redress bodies and mechanisms request and/or accept written submissions concerning legal and factual issues in a case from organizations or individuals who are not parties to the complaint but possess relevant information or expertise.[213] Third-party interventions enable international human rights bodies and mechanisms to hear views on the issues raised by a case, as well as to receive information or arguments, which are more general or different from those put forward by the parties.[214] Depending on the procedural rules of the relevant body or mechanism, third parties invited or granted leave to intervene may comprise *amicus curiae* ("friend of the Court")[215] or "interested third parties".[216] Such interventions can enhance the legitimacy and legal reasoning of a case by providing authoritative perspectives on international and comparative standards, the broader legal and factual context, or wider implications of the case beyond its specific facts.

An intervention by way of an amicus curiae brief is a form of third-party intervention, rather than a party to the proceedings. Such submissions should not address specific facts

[210] Rule 36 ECSR Rules of Procedure.
[211] See ECtHR, Practice direction: Third-party intervention under Article 36 §2 of the Convention or under Article 3, second sentence, of Protocol No. 16, last amended 13 March 2023.
[212] International Service for Human Rights (ISHR), *Guide for Third Party Interventions before the UN Human Rights Treaty Bodies*, 2022.
[213] Rule 96 HRC Rules of Procedure; Rule 63 CAT Rules of Procedure; Rule 118 bis CAT Rules of Procedure; Rule 77 CED Rules of Procedure; Rule 68 *bis* CEDAW Rules of Procedure; Working Methods of the CEDAW Committee and its Working Group on individual communications received under the OP CEDAW, para. 18; Rule 23 OP3 CRC Rules of Procedure; Working methods to deal with individual communications received under the OP3 CRC, paras. 19-22; Rule 72(3) CRPD Rules of Procedure; Rule 32 ECSR Rules of Procedure; Rule 9 OP ICESCR Rules of Procedure; Article 36 ECHR.
[214] See ECtHR, Practice direction: Third-party intervention under Article 36 §2 of the Convention or under Article 3, second sentence, of Protocol No. 16, last amended 13 March 2023.
[215] For *amicus curiae* ("friends of the Court"), the advantage of intervening generally lies in the opportunity to submit observations that may assist the Court and thus serve "the interests of the proper administration of justice". E.g. NGOs, academics, individuals, enterprises, other international organizations, other bodies of the CoE, independent national human rights institutions, etc.
[216] For "interested third parties", the interest in intervening generally lies in the possibility that the decision by the body/mechanism – on the matter which may, even indirectly, affect their rights – may lead to either the reopening of the domestic proceedings, or other individual measures for the execution of the body/mechanism's decision. E.g. the opposing party to the applicant in the domestic proceedings.

or intervene in support of one party or another.[217] Experts in specific areas, Ombudspersons, UN Special Procedures mandate holders or the Council of Europe Commissioner for human rights, as well as many NGOs, often intervene in human rights cases.[218]

Third-party interveners before the **ECtHR** include:

- A State Party of which one of the applicants is a national, which has the right, in all cases before a Chamber or the Grand Chamber, to submit third-party interventions.[219]
- A State party which is not a party to the proceedings or any person concerned who is not the applicant, who may be invited by the President of the Court to submit third-party interventions.[220] Requests addressed to the Court for this purpose must be "duly reasoned" and submitted in French or English, within 12 weeks from the date the Court has communicated the case to the respondent State.[221] The Court may grant such a request if it considers the intervention to be in "the interest of the proper administration of justice."[222]
- The CoE's Commissioner for Human Rights, who may submit third-party interventions in all cases before a Chamber or the Grand Chamber.[223]

The requirements for third- party submissions in collective complaints before the **ECSR** are more restrictive. States Parties to the collective complaints mechanism are automatically invited to submit their observations on a complaint. International organizations of employers and trade unions may also submit views on complaints lodged by national organizations of employers and trade unions or by NGOs. The Chair of the ECSR has the discretion to "invite any organization, institution or person to submit observations".[224]

In the context of third-party interventions, **the HRC, CRC, CAT, CEDAW, CESCR and CED Committees** may receive or request relevant documents from a range of bodies, including NGOs, at any stage before determining the merits of a complaint.[225] Only the CERD Committee does not expressly allow for third-party interventions in its Rules of Procedure.[226]

2.1.2. The procedures of international human rights mechanisms

a. UN Treaty Bodies

Individual communications

Practical information and tools related to submitting individual complaints to UN Treaty Bodies are available online, including:

- General information about individual communications procedures of UN Treaty Bodies competent to consider individual complaints;[227]
- Guidance for submitting an individual communication to the UN treaty bodies;[228]

[217] *Guide for Third Party Interventions before the UN Human Rights Treaty Bodies*, 2022.
[218] Civil Liberties Union for Europe, *Relying on the EU Charter of Fundamental Rights for Human Rights Litigation: A Handbook for Civil Society Organisations and Rights Defenders*, pp. 32-34.
[219] Article 36(1) ECHR
[220] Article 36(2) ECHR.
[221] Rule 44(3)(b) ECtHR Rules of Court.
[222] Rule 44(3)(a) ECtHR Rules of Court.
[223] Article 36(3) ECHR. See further CoE, Third party interventions by the Commissioner for Human Rights, website (accessed 23 April 2025).
[224] Rule 32A ECSR Rules of Procedure.
[225] Rule 96 HRC Rules of Procedure; Rule 23 OP3 CRC Rules of Procedure; Rule 63 CAT Committee's Rules of Procedure; Rule 68 *bis* CEDAW Committee's Rules of Procedure; Rule 27 ICESCR Committee's Rules of Procedure; Rule 77 CED Committee's Rules of Procedure.
[226] Rule 95(2) CERD Committee's Rules of Procedure.
[227] OHCHR, Individual Communications Procedures of Treaty Bodies, website (accessed 2 February 2026).
[228] OHCHR, Guidance for submitting an individual communication to the UN Treaty Bodies.

- A model complaint form for submission of communication to the CEDAW Committee, which may also serve as a helpful guide to the contents of individual complaints to other international human rights redress bodies.[229]

The individual complaints procedures of UN Treaty Bodies, while similar, have not been fully harmonized, despite some streamlining and simplification through the ongoing process of Treaty Body strengthening.[230] The procedures used by each Treaty Body when considering a complaint are set out in the relevant treaty and optional protocol provisions and in their Rules of Procedure, which should be consulted in each case.[231]

Preliminary phase

The complaint is submitted via the Treaty Body Online Submission Portal, and, in exceptional cases where technical difficulties arise, via a downloadable complaint form sent by email.[232] Upon submission, individual complaints are received by the OHCHR Petitions and Enquiries Section, which conducts an initial screening on behalf of the Committees.[233] The OHCHR may request clarification of the information submitted to ensure that the complaint contains the basic information required for assessing its admissibility.[234] Once these preliminary steps are satisfied, the communication is registered and transmitted to the relevant Treaty Body and to the State party requesting that it submit observations on the matter within a set time frame[235]

Admissibility stage

While it is generally the Treaty Body as a whole that determines whether a communication satisfies the formal requirements for admissibility, some Treaty Bodies establish an internal Working Group (WG) to make decisions or recommendations on admissibility.[236]

Decisions on admissibility are generally made by a simple majority vote of Committee members.[237] Where a WG is established, the procedure may require unanimity. The WG may declare a communication inadmissible only by unanimous vote and such decisions must be confirmed by the Committee as a whole,[238] with the exception of the WGs of the CEDAW, CERD and CED Committees, for which only the Committee has this power.[239] A WG may declare a communication admissible only if all members of the WG agree,[240] with

[229] OHCHR, Model form for submission of communications to the Committee on the Elimination of Discrimination Against Women under the Optional Protocol of the Convention.
[230] OHCHR, Treaty body strengthening, website (accessed 30 September 2024).
[231] International Service for Human Rights has an open access learning platform titled ISHR Academy providing useful overviews of the various UN mechanisms and guidance related to human rights advocacy. For instance, a comparison table provides a quick overview of the various mechanisms and allows comparison based on different factors.
[232] See more OHCHR, Individual Communications Procedures of Treaty Bodies, website (accessed 26 January 2026).
[233] OHCHR, Fact Sheet No. 07 (Rev. 2): Individual Complaints Procedures under the United Nations Human Rights Treaties, 1 May 2013.
[234] *Ibid.*
[235] Read more about individual communications and how to make a complaint: OHCHR, Individual Communications: Human Rights Treaty Bodies, website (accessed 24 April 2025).
[236] Rules 6 and 20 OP3 CRC Rules of Procedure; Rules 111-113 CAT Rules of Procedure; and Rules 93-98 HRC Rules of Procedure: Rules 11 and 5 OP ICESCR Rules of Procedure; Rule 62 CEDAW Rules of Procedures; Rules 68-69 CRPD Rules of Procedure; Rule 100 CERD Rules of Procedures.
[237] Rule 97 HRC Rules of Procedure; Rule 20(1) OP3 CRC Rules of Procedure; Rule 10 OP ICESCR Rules of Procedure; Rule 64(1) CEDAW Rules of Procedures; Rule 111(1) CAT Rules of Procedure; Rule 35 CRPD Rules of Procedure; Rule 73(1) CED Rules of Procedure; Rule 52 CERD Rules of Procedures.
[238] Rules 98(4) HRC Rules of Procedure; Rule 11(4) OP ICESCR Rules of Procedure; Rule 20(3) OP3 CRC Rules of Procedure; Rule 69(3) CRPD Rules of Procedure; Rule 73(2) CED Rules of Procedure.
[239] Rule 70 CEDAW Rules of Procedures; Rule 73 CED Rules of Procedure; Rule 102(4) CERD Rules of Procedures.
[240] Rules 98(5) HRC Rules of Procedure; Rules 111(2) CAT Rules of Procedure. Rule 11(5) OP ICESCR Rules of Procedure; Rule 20(2) OP3 CRC Rules of Procedure; Rule 64(2) CEDAW Rules of Procedures; Rules 111(2) CAT Rules of Procedure; Rule 69(2) CRPD Rules of Procedure.

the exception of the CAT WG which may declare a communication admissible by majority vote.[241]

Communications and replies: As a general rule, a Committee transmits the communication to the State Party and informs the complainant. Before making a decision on admissibility and/or merits, the Treaty Body may request additional information from the complainant and seek observations from the State Party, both subject to strict time limits.[242] Each party is then given an opportunity to comment on the information or observations submitted by the other.

The UN Treaty Body requests the respondent State to provide a written reply to the communication within six months, addressing both admissibility and merits unless the Committee specifies that only observations on admissibility are required.[243]Additional written submissions may be authorized exceptionally upon the request of one of the parties with due consideration given to the circumstances of the case.[244] Depending on the relevant Rules of Procedure, the WG or a Special Rapporteur may request the parties to provide updates on the current status of the case,[245] and the Committee may request the parties to submit, within fixed time limits, additional written explanations or observations relevant to issues of admissibility or merits.[246]

Revision of inadmissibility decisions: A decision of inadmissibility may be reviewed by the Committee at a later stage if requested by or on behalf of the complainant or by a Committee member, provided that it is established that the grounds for inadmissibility no longer apply.[247]

Decisions on admissibility and merits: In practice, Committees often decide on admissibility and merits in a single decision rather than in two separate phases when the information available is sufficient to reach a final determination.[248]

Examination of the merits

Closed meetings: Committees examine communications, both at the admissibility and merits stage, in closed meetings.[249]

Hearings: The CRC, CERD and CAT Committees may invite the parties to participate in a closed oral hearing in order to answer questions and provide additional information.[250]

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[241] Rule 111(2) CAT Rules of Procedure. Rule 11(5) OP ICESCR Rules of Procedure
[242] Most of the time within 6 months. e.g. Rule 18 OP3 CRC Rules of Procedure; Rule 115 CAT Rules of Procedure; Rule 10 OP ICESCR, but Rule 92 CERD Rules of Procedure; Rule 68 CRPD Rules of Procedure; Rule 100 CERD.
[243] See e.g. Rul 92 HRC Rules of Procedure; Rule 5(5) OP ICESCR Rules of Procedures; Rule 18(3) OP3 CRC Rules of Procedure; Rule 68(4) CRPD Rules of Procedure.
[244] See e.g. Rule 92(7) HRC Rules of Procedure; Rule 5(7) OP ICESCR; Rule 68 CRPD Rules of Procedure .
[245] See e.g. Rule 92(12) HRC Rules of Procedure; Rule 5(11) OP ICESCR; Rule 68 CRPD Rules of Procedure
[246][246] See Rule 18(9) OP3 CRC Rules of Procedure.
[247] Rule 21(2) OP3 CRC Rules of Procedure; Rule 116(2) CAT Rules of Procedure; Rule 93(2) CERD Rules of Procedure; Rule 70(2) CEDAW Rules of Procedure; Rule 100(2) HRC Rules of Procedure; Rule 14(2) OP ICESCR Rules of Procedure; Rule 71(2) CRPD Rules of Procedure; Rule 74(2) CED Rules of Procedure.
[248] Rules 102 HRC Rules of Procedure; Rule 16 OP ICESCR Rules of Procedure; Rule 73 CRPD Rules of Procedure; Rule 76 CED Rules of Procedure; Rule 113 CERD Rules of Procedure; Rule 72 CEDAW Rules of procedure; Rule 18 OP3 CRC Rules of Procedure; Rule 118 CAT Rules of Procedure. See e.g. *Alan v. Switzerland*, CAT Committee, Communication No. 21/1995, 8 May 1996*; E.L.A. v. France*, CED Committee, Communication No.003/2019, View of 25 September 2020; *Isatou Jallow v. Bulgaria*, CEDAW Committee, Communication No. 032/2011, Views of 23 July 2012; *H.M. v. Sweden*, CRPD Committee, Communication No. 003/2011, Views of 19 April 2012; *I.A.M. v. Denmark*; CRC Committee, Communication No. 003/2016, Views of 25 January 2018; *D.R. v. Australia*, CERD Committee, Communication No. 042/2008, Views of 14 August 2009; *I.D.G. v. Spain*, CESCR Committee, Communication No. 2/2014, Views of 17 June 2015; *M.M.M. et al. v. Australia*, HRC, Communication No. 2136/2012, Views of 25 July 2013.
[249] Rule 29(1) OP3 CRC Rules of Procedure; Rules 110 and 111 HRC Rules of Procedure; Article 8 OP ICESCR; Article 22(4-6) CAT; Rule 98 CERD Rules of Procedure; Article 7 OP CEDAW; Rule 74 CEDAW Rules of Procedure.
[250] Rule 19 OP3 CRC Rules of Procedure; Rules 88 and 94(5) CERD Rules of Procedure; Rule 117 CAT Rules of Procedure.

While the procedural rules allow for closed oral hearings, such instances are rare, and there is limited public documentation of specific cases where they have occurred.[251]

Documentation: When considering complaints, Treaty Bodies take into consideration all the information made available by the parties.[252] They also take into account their own case law, their General Comments and Concluding Observations, including those adopted in the context of the review of the relevant State party's periodic report, and previous decisions taken. Treaty Bodies may also consider relevant documentation from other "UN bodies, specialized agencies, funds, programmes and mechanisms, and other international organizations, including regional intergovernmental organizations or bodies as well as State institutions, agencies or offices".[253]

Decision: Treaty Bodies adopt their decisions (Views) on a case and transmit them to both parties.[254] These decisions are made public, including on the UN official website.[255]

***E. B. and others. v. Belgium*, CRC Committee, Communication No. 55/2018, Views of 3 February 2022[256]**

Background of the case: The case concerns a Roma mother, who settled in Belgium in 2010, and her four young children born in Belgium in 2012, 2013, 2014 and 2017 (from newborn to age seven at the time of arrest). On 14 August 2018, the mother and children were arrested at their home, subjected to a removal order, and taken to a "family home" in a closed centre for foreigners near the airport. No legal procedures had been initiated concerning the children's residency until an asylum application was submitted on their behalf on 23 August 2018. The family was detained for more than two weeks with no effective legal remedy. At the time, Belgian law permitted the detention of minors in closed centres on migration-related grounds, provided that such detention was in accordance with the law, not arbitrary, used only as a last resort and for the shortest appropriate period of time, and adapted to children.[257]

Litigation before the CRC Committee: The family, supported by the Belgian Ombudsman and Defence for Children International, brought their case to the CRC Committee arguing that, as the children's asylum applications were pending, their detention was neither lawful nor justified as a measure of last resort. They alleged that

[251] See OHCHR, Complaints procedures under the human rights treaties, website (accessed 4 July 2025). For example, in *Sacchi and Others v. Argentina and Others*, CRC Committee, Communication No. 104/2019, Decision adopted on 22 September 2021, the CRC Committee held oral hearings under the individual communications procedure for the first time.
[252] See Article 8 OP ICESCR; Article 22(4-6) CAT; Rule 16 OP ICESCR Rules of Procedure; Rule 23 OP3 CRC Rules of Procedure; Rule 96 HRC Rules of Procedure; Rule 118(1) CAT Rules of Procedure; Article 14(7)(a) ICERD; Article 7 OP CEDAW; Rule 72 CEDAW Rules of Procedure; Rule 113 CERD Rules of Procedure.
[253] OHCHR, Fact Sheet No. 07 (Rev. 2): Individual Complaints Procedures under the United Nations Human Rights Treaties, 1 May 2013. See Rule 14 ICESCR Rules of Procedure; Rule 23 OP3 CRC Rules of Procedure; Rule 96 HRC Rules of Procedure; Article 8 OP ICESCR; Article 22(4-6) CAT; Rule 118(1) CAT Rules of Procedure; Article 14(7)(a) ICERD; Article 7 OP CEDAW; Rule 72 CEDAW Rules of Procedure.
[254] Rule 102 HRC Rules of Procedure; Rule 118(3) CAT Rules of Procedure; Rule 72(5) CEDAW Rules of Procedure; Rule 73(5) CRPD Rules of Procedure; Rule 27(3) OP3 CRC Rules of Procedure; Rule 16(3) OP ICESCR Rules of Procedure.
[255] Rules 102 and 111 HRC Rules of Procedure; Rules 16 and 25(7) ICESCR Rules of Procedure; Rules 27(3) and 29(7) OP3 CRC Rules of Procedure; Article 22(7) CAT; Article 14(7)(b) ICERD; Article 7 OP CEDAW; Rules 72 and 74 CEDAW Rules of Procedure.
[256] *E. B. and other v. Belgium*, CRC Committee, Communication No. 55/2018, Views of 3 February 2022.
[257] Article 2 Act of 16 November 2011 inserting an article 74/9 into the Act of 15 December 1980 on the entry, temporary or permanent residence and removal of aliens, as regards the prohibition on detaining children in closed centres. See also Constitutional Court of Belgium, Decision No. 166/2013, 19 December 2013, para. B(14)(2). Since then, the Belgian Royal Decree of 12 May 2024 implements the Government's commitment to prohibit the detention of migrant children in closed detention centres (see Royal Decree of 12 May 2024 amending the Royal Decree of 2 August 2002 determining the regime and regulations to be applied in the places on the Belgian territory managed by the Immigration Office where an alien is detained, placed at the disposal of the Government or withheld, and the Royal Decree of 14 May 2009 establishing the regime and rules of operation applicable to accommodation facilities.

their detention caused serious harm, particularly due to breastfeeding needs, the children's mental health, and extreme noise near the airport where they were being held.

On 25 September 2018, the CRC issued interim measures requesting Belgium to release the family and halt their deportation. The Belgian Government refused to comply, arguing the CRC's decisions were not binding. The family was deported to Serbia in October 2018. One child was hospitalized upon arrival in Serbia, and the family was placed in a refugee camp for Roma.

In December 2022, the CRC Committee found that the children's detention in closed family detention centres violated the prohibition of ill-treatment (Article 37 of the CRC), read alone and in conjunction with the best interests of the child principle (Article 3 of the CRC). The Belgium's failure to consider alternatives to detention, including the option of allowing the family to remain in their own home, while they pursued appeals and other judicial remedies, was an element in its finding that Belgium had not taken the children's best interests as a primary consideration.

Impact of the decision: The family received financial compensation, and strong civil society advocacy concerning child immigration detention in Belgium helped ensure reform. In May 2024, Belgium amended its law to fully comply with the CRC's standards, marking a significant legislative and policy shift rooted in the recognition of children's rights in migration contexts.

Friendly settlement

Except for the HRC, UN Treaty Bodies expressly provide for the possibility of reaching a friendly settlement.[258] Such a settlement must be based on respect for the obligations set forth in the relevant treaty and brings the communication procedure to a close.[259]

Inquiries

Practical information on inquiry procedures is available on the OHCHR website,[260] with further details provided on the relevant UN Treaty Body page.

An inquiry is a confidential procedure through which a UN Treaty Body investigates reliable information indicating grave or systematic violations of a State's treaty obligations.[261] The Committees under the ICESCR, CRC, CRPD, CAT, and CEDAW may conduct inquiries,[262] whereas the HRC and the CERD do not have inquiry procedures. The CED Committee does not have a procedure designated as an "inquiry", however, it may initiate a comparable procedure based on reliable information indicating that a "State Party is seriously violating the Convention."[263] Inquiry procedures are rarely initiated by Treaty Bodies, which conduct only one inquiry at a time due to the grave or systematic nature of the alleged violations, confidential nature, and the significant time and resources they demand.[264]

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[258] Rule 25 OP3 CRC Rules of Procedure; Article 7 OP ICESCR; Rule 20 OP ICESCR Rules of Procedure; Rule 75 CRPD Rules of Procedure; Rule 110 CERD Rules of Procedure; Rule 98 CAT Rules of Procedure; Working Methods of the CEDAW Committee and its Working Group on individual communications received under the OP CEDAW, para. 15. See e.g. *Olga del Rosario Diaz v. Argentina*, CEDAW Committee, Communication No. 127/2018, Decision 24 October 2023.

[259] Rule 25 OP3 CRC Rules of Procedure; Rules 20 OP ICESCR Rules of Procedure; Rule 75 CRPD Rules of Procedure; Rule 110 CERD Rules of Procedure; Rule 98 CAT Rules of Procedure; Working Methods of the CEDAW Committee and its Working Group on individual communications received under the OP CEDAW, para. 15.

[260] OHCHR, Inquiries, website (accessed 2 February 2026).

[261] See OHCHR, Inquiries, website (accessed 2 February 2026); International Service for Human Rights, Treaty bodies: 3.12 Engaging in inquiries, website (accessed 19 June 2025).

[262] Rules 28-41 OP ICESCR Rules of Procedure; Rules 30-42 OP3 CRC Rules of Procedure; Rules 79-92 CRPD Rules of Procedure; Rules 75-90 CAT Rules of Procedure; Rules 76-91 CEDAW Rules of Procedure.

[263] Article 33 CED; Rules 91-102 CED Rules of Procedure.

[264] Inquiries differ from individual communications or petitions, which request a determination by a Committee on whether treaty provisions have been violated in an individual case. For the purposes of this Guide, inquiries are examined as an effective procedure which are not strictly speaking a type of litigation before a Treaty Body.

Preliminary phase

The inquiry procedure is initiated on the basis of information indicating grave or systematic violations of the respective human rights treaty perpetrated by a State party.[265] The CESCR, CEDAW Committee, CAT Committee, CRPD Committee, CRC Committee, and CED Committee are mandated to conduct inquiries.[266] NGOs, civil society actors, individuals, or other stakeholders may bring information about such grave or systemic violations to the attention of the relevant Treaty Body.

The Treaty Body then examines the reliability of the information and assesses whether the situation meets the gravity threshold necessary to justify an inquiry; for the CRPD, CEDAW, and ICESCR Committees, this requires information "indicating grave or systematic violations by the State party concerned of rights set forth in the Covenant"; for the CRC Committee, the "existence of grave and systematic violations against children in a State party"; for the CAT Committee, "well-founded indications that torture is being systematically practised in the territory of a State party"; and for the CED Committee, information that "indicates serious violations of the provisions of the Convention."[267] This threshold is higher than that of individual complaints; it focuses on widespread or recurrent violations affecting a significant number of individuals or entrenched patterns of abuse.[268]

Examination of the information

If the Committee considers that the information is reliable and indicates the existence of "grave or systematic violations" – or "serious violations" in the case of the CED – of the rights protected under the relevant treaty, it informs the State Party concerned confidentially and invites it to comment on the allegations.[269] The Committee takes into account any observations submitted and may ask for additional information from the State party, as well as from intergovernmental organizations, UN bodies, specialized agencies, funds, programmes and mechanisms, international organizations, national human rights institutions, NGOs, and/or individuals (except for the CESCR which do not accept information from individuals).[270]

Conduct of the inquiry

From the preliminary stage onward, the inquiry procedure is strictly confidential and governed by principles of fairness and cooperation with the State Party.[271] With the State's consent, the Committee may carry out a visit to its territory to investigate the allegations firsthand, conduct hearings, and collect supplementary information.[272] Following the visit, if applicable, and upon reviewing all information from multiple sources, the Committee conducts internal deliberations. If the Committee concludes that grave or systematic violations have occurred, it shares a report containing its findings, comments and

[265] OHCHR, Inquiries, website (accessed 16 June 2025).
[266] Article 11 OP ICESCR; Article 8 OP CEDAW; Article 20 CAT; Article 6 OP CRPD; Articles 13 and 14 OP3 CRC ; Article 33 CED.
[267] Rule 33(2) OP ICESCR Rules of Procedure; Rule 82(2) CEDAW Rules of Procedure; Rule 81(1) CAT Rules of Procedure; Rule 83(2) CRPD Rules of Procedure; Rule 34(2) OP3 CRC Rules of Procedure; Rules 94(2) CED Rules of Procedure.
[268] See, e.g., CRC Committee, Inquiry concerning Chile under Article 13 of the OP3 CRC, CRC/C/CHL/IR/1, 6 May 2020, para. 112.
[269] Rule 34 OP ICESCR Rules of Procedure; Rule 83 CEDAW Rules of Procedure; Rule 82 CAT Rules of Procedure; Rule 84 CRPD Rules of Procedure; Rule 35 OP3 CRC Rules of Procedure; Rule 95 CED Rules of Procedure.
[270] Rule 34 OP ICESCR Rules of Procedure; Rule 83 CEDAW Rules of Procedure; Rules 82 and 83 CAT Rules of Procedure; Rule 84 CRPD Rules of Procedure; Rule 35 OP3 CRC Rules of Procedure; Rule 95(2)-(3) CED Rules of Procedure.
[271] Rules 32 and 36 OP ICESCR Rules of Procedure; Rules 80 and 83 CEDAW Rules of Procedure; Rules 78 and 85 CAT Rules of Procedure; Rules 81 and 86 CRPD Rules of Procedure; Rules 33 and 37 OP3 CRC Rules of Procedure; Rule 97 CED Rules of Procedure.
[272] Rules 37 and 38 OP ICESCR Rules of Procedure; Rules 86 and 87 CEDAW Rules of Procedure; Rules 86 and 87 CAT Rules of Procedure; Rules 87 and 88 CRPD Rules of Procedure; Rules 38 and 39 OP3 CRC Rules of Procedure; Rule 96 and 98 CED Rules of Procedure.

recommendations with the State Party, which is invited to respond within six months or within a time limit established by the Committee.[273]

The State Party's cooperation and follow-up are essential aspects of the inquiry process. In subsequent sessions, the Committee may monitor the implementation of its recommendations and request updates.[274] The publication of the Treat Body's report depends on the State Party's consent; while the procedure is confidential by default, the Committee may decide to publish a summary or the full report in the interest of transparency.[275]

Interim measures

Only the CRC Committee may request a State party to adopt interim measures to avoid possible irreparable damage to the victim(s) of the alleged violation pending the Committee's final findings in the context of an inquiry.[276] The CRC Committee may request interim measures at any time during the procedure.

b. European Court of Human Rights

The procedure and requirements for submitting a complaint to the ECtHR are set out in the ECHR and some of its Protocols, the Rules of Court and the Practice Directions issued by the President of the Court. More detailed and up to date information on lodging an individual application can be found on the ECtHR website,[277] including:

- the Practice direction on Institution of proceedings;[278]
- the Practical guide on admissibility criteria;[279]
- the application form;[280]
- notes for filing the application form;[281]
- guidance on the common mistakes and how to avoid them;[282]
- a document explaining how to apply and applications are processed;[283]
- the frequently asked questions.[284]

The Court's State of Proceedings search engine allows verification of the current procedural status of an application once it has been allocated to a judicial formation.[285]

Application: An application to the European Court of Human Rights must normally be submitted using the application form available on the Court's website, in one of its official languages (English or French).[286] The application must be sent by post, and be

[273] Rule 40 OP ICESCR Rules of Procedure; Rule 89 CEDAW Rules of Procedure; Rule 89 CAT Rules of Procedure; Rule 90 CRPD Rules of Procedure; Rule 41 OP3 CRC Rules of Procedure; Rule 100 CED Rules of Procedure.
[274] Rule 41 OP ICESCR Rules of Procedure; Rule 90 CEDAW Rules of Procedure; Rule 90 CAT Rules of Procedure; Rule 91 CRPD Rules of Procedure; Rule 42 OP3 CRC Rules of Procedure; Rule 101 CED Rules of Procedure.
[275] Rule 80 CEDAW Rules of Procedure; Rule 90 CAT Rules of Procedure; Rule 7 OP3 CRC Rules of Procedure Rule 100 CED Rules of Procedure.
[276] Rule 42 OP3 CRC Rules of Procedure.
[277] ECtHR, Applicants, website (accessed 29 January 2026). See;
[278] ECtHR, Practice Directions: Institution of proceedings (Individual applications under Article 34 of the Convention), last amended 1 February 2022. This practice direction supplements Rules 45 and 47 ECtHR Rule of Court.
[279] ECtHR registry, Practical Guide on Admissibility Criteria, last updated on 31 August 2025.
[280] ECtHR, Application Form, February 2022.
[281] ECtHR, Notes for filling in the application form, January 2022.
[282] ECtHR, Common Mistakes in Filling in the Application Form and How to Avoid Them, 1st February 2022;;
[283] ECtHR's Public Relations Unit, Your application to the ECHR: How to apply and how your application is processed.
[284] ECtHR, Questions & Answers.
[285] ECtHR, State of Proceedings Online, website (accessed 2 February 2026).
[286] The Court's official languages are English and French but alternatively, if it is easier for the applicant it is possible to write to the Registry in an official language of one of the States that have ratified the Convention. During the initial stage of the proceedings the applicant may also receive correspondence from the Court in that language. However at a later stage of the proceedings, namely if the Court decides to ask the Government to submit written comments on your complaints, all correspondence from the Court will be sent in English or French and the applicant or their representative will also be required to use English or French in subsequent submissions.

accompanied by copies of relevant documents, including judicial or other decisions or measures being challenged, as well as evidence demonstrating the exhaustion of available domestic remedies.[287] A list of the documents submitted must be included.[288]

As noted in Section 2.1.1. the application must be postmarked within four months of the final decision of the highest national body competent to consider the complaint.[289] It must include a brief description of the facts, the complaints, and an explanation of how the applicant has fulfilled the requirement to exhaust domestic remedies and other admissibility criteria.[290] The submission may also include additional information, not exceeding twenty A4 pages.[291] However, the information included in the application form itself must be sufficient to enable the Court to assess the nature and scope of the application.[292]

Upon receipt of the initial communication, the Registry opens a file, the number of which must be referenced in all subsequent correspondence.[293] Applicants are informed of this reference number by letter.[294] At this stage, applicants may also be requested to provide additional information or documents.[295]

Legal representation: Applications may be submitted to the ECtHR directly by the victim or through a representative.[296] However, as a general rule, the Court requires the applicant to be represented once the application has been communicated to the Contracting State.[297] The applicant may request permission to present their own case, which, the President of the Chamber may "exceptionally" allow.[298]

The representative of an applicant must be a lawyer authorized to practice law in one of the States Parties to the ECHR and be a resident in one of them, or be another person approved by the President of the Chamber.[299] The representative must have an adequate knowledge French or English, unless the President of the Chamber grants permission to use another language.[300] The President of the Chamber may also remove a representative if their conduct is deemed to impede the effective representation of the interests of their the applicant.[301]

Legal aid: The ECtHR operates a legal aid system. The President of the Chamber may grant legal aid when it is deemed necessary for the proper conduct of the case and provided that the applicant lacks sufficient means to cover all or part of the costs incurred.[302] Legal aid may be granted either upon the applicant's request or on the

[287] Rule 47(3)(1)(a) ECtHR Rules of Court.
[288] ECtHR, Practice Directions: Institution of proceedings (Individual applications under Article 34 of the Convention), last amended 1 February 2022, para. 10.
[289] The time period available was changed following the adoption of Optional Protocol 15, which entered into force in 2021.
[290] Rule 47(3)(1)(b) ECtHR Rules of Court.
[291] Rule 47(2)(b) ECtHR Rules of Court.
[292] ECtHR, Practice Directions: Institution of proceedings (Individual applications under Article 34 of the Convention), last amended 1 February 2022, para. 5, 7.
[293] Rule 47(2)(b) ECtHR Rules of Court; ECtHR, Practice Directions: Institution of proceedings (Individual applications under Article 34 of the Convention), last amended 1 February 2022, para. 5.
[294] Rule 47(2)(a) ECtHR Rules of Court; ECtHR, Practice Directions: Institution of proceedings (Individual applications under Article 34 of the Convention), last amended 1 February 2022, para. 7.
[295] ECtHR, Practice Directions: Institution of proceedings (Individual applications under Article 34 of the Convention), last amended 1 February 2022.
[296] Rules on representation are enshrined in Rule 36 of the ECtHR Rules of Court.
[297] A constant failure, through a long period of time, of the applicant to contact his representative might lead the Court to rule that they have lost interest in the proceedings and to strike the case off the list. See *Ramzy v. the Netherlands*, ECtHR, Application No. 25424/05, Admissibility Decision, 20 July 2010.
[298] Rule 36(3) ECtHR Rules of Court.
[299] Rule 36(4)(a) ECtHR Rules of Court.
[300] Rule 36(5) ECtHR Rules of Court.
[301] Rule 36(4)(c) ECtHR Rules of Court.
[302] Rule 106 ECtHR Rules of Court.

President's own initiative.[303] This decision is taken either after the respondent State has submitted its written observations on the admissibility of the case or when the time limit to do so has expired.[304] If granted, legal aid covers all stages of the proceedings, unless the President of the Chamber determines that the conditions for granting it are no longer met.[305] Applicants seeking legal aid must complete a declaration, certified by the relevant national authorities, detailing their income, capital assets, and any financial commitments in respect of dependents, or any other financial obligations.[306]

Composition of the Court: The ECtHR may sit in a single-judge formation, a committee of three judges, a Chamber of seven judges or a Grand Chamber of seventeen judges.[307] A single judge may declare an application inadmissible or strike it out of the Court's list of cases to expedite clearly inadmissible applications, but may not rule on the merits of a case.[308] Single judges are appointed by the President of the Court and do not sit on cases against their own State.[309] Committees of three judges have the same competence but may in addition deliver judgments on the merits where the case concerns a matter that is already well-established in the Court's case-law.[310] Most substantive judgments are delivered by Chambers of seven judges, including a President, the national judge, and five other judges designated by the President.[311] Each Contracting Party elects one national judge through the Parliamentary Assembly of the Council of Europe (PACE), which selects the judge from a list of three candidates nominated by the State.[312] Chambers examine both admissibility and merits unless the application has already been declared admissible.[313] The Grand Chamber is the highest formation of the Court and consists of 17 judges, including the President, Vice-Presidents, Section Presidents, and the national judge.[314]

Relinquishment of jurisdiction to the Grand Chamber: At any time before it has rendered a judgment, a Chamber may "relinquish jurisdiction in favour of the Grand Chamber" for cases pending before a Chamber that raises "a serious question affecting the interpretation of the Convention or the Protocols" or where its resolution might a result in a decision "inconsistent with a judgment previously delivered by the Court".[315]

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[303] Rule 105(1) ECtHR Rules of Court.
[304] Rule 107 ECtHR Rules of Court.
[305] Rule 110 ECtHR Rules of Court.
[306] Rules 105-110 ECtHR Rules of Court concerning legal aid.
[307] Article 26 ECHR; Rules 24-30 ECtHR Rules of Court.
[308] Article 27(1) ECHR.
[309] Rule 27A(3) ECtHR Rules of Court: "In accordance with Article 26 § 3 of the Convention, a judge may not examine as a single judge any application against the contracting Party in respect of which that judge has been elected. In addition, a judge may not examine as a single judge any application against a contracting Party of which that judge is a national".
[310] Article 28(1) ECHR; Protocol No. 14 to the ECHR.
[311] Article 26 ECHR; Rule 26(1) ECtHR Rules of Court: "The Chambers of seven judges provided for in Article 26 §1 of the Convention for the consideration of cases brought before the Court shall be constituted from the Sections as follows. (a) Subject to paragraph 2 of this Rule and to Rule 28 §4, last sentence, the Chamber shall in each case include the President of the Section and the judge elected in respect of any contracting Party concerned. If the latter judge is not a member of the Section to which the application has been assigned under Rules 51 or 52, he or she shall sit as an ex officio member of the Chamber in accordance with Article 26 §4 of the Convention. Rule 29 shall apply if that judge is unable to sit or withdraws. (b) The other members of the Chamber shall be designated by the President of the Section in rotation from among the members of the relevant Section. (c) The members of the Section who are not so designated shall sit in the case as substitute judges."
[312] Article 22 ECHR; PACE, Committee on the Election of Judges to the ECtHR, website (accessed 22 May 2025).
[313] Article 29 ECHR. Rule 1(e) ECtHR Rules of Court: "the term 'Chamber' means any Chamber of seven judges constituted in pursuance of Article 26 §1 of the Convention […]"
[314] Article 26 ECHR; Rule 24 ECtHR Rules of Court.
[315] Article 30 ECHR: "Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber.". See also Rule 72 ECtHR Rules of Procedure. See e.g. ECtHR Registry, Relinquishment in favour of the Grand Chamber in the case Mansouri v. Italy, Press release, 22 February 2024.

Referral to the Grand Chamber: Any party may request a referral of the case to the Grand Chamber. A panel of five judges of the Grand Chamber examines the request and may accept the request for referral for cases that raises "a serious question affecting the interpretation of the Convention or the Protocols" or "a serious issue of general importance".[316]

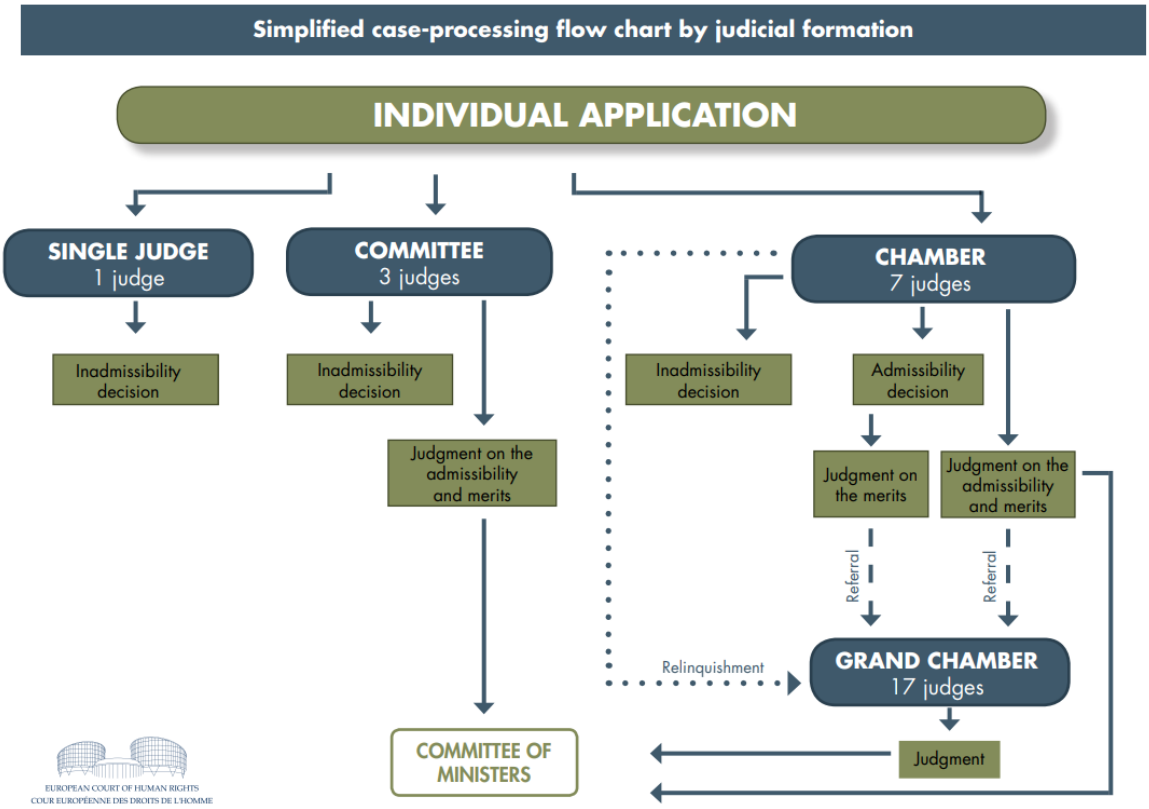

Figure 1. ECtHR Simplified Case Processing Chart[317]

Admissibility stage

The President of the Court assigns the case to a designated Section of the Court.[318] The President of the Section constitutes Chambers of seven judges.[319] Individual applications may be declared inadmissible or struck out of the Court's list of cases by a single judge "where such a decision can be taken without further examination."[320] Single-judge decisions taken under Article 27 of the ECHR are final.[321] Otherwise, the single judge refers the case to a Chamber or to a Committee of three judges.[322]

The President of the Chamber appoints a Judge Rapporteur for the case.[323] The Judge Rapporteur may request additional information from the parties, decide whether the case should be considered by a single judge, a Committee or a Chamber, and may submit

[316] Article 43 ECHR: "Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber. 2. A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the Protocols thereto, or a serious issue of general importance. 3. If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment." See also Rule 73 ECtHR Rules of Procedure.
[317] Image source: ECtHR, Simplified case processing flow chart before the Court, website (accessed 2 February 2026).
[318] Rule 52(1) ECtHR Rules of Court.
[319] Article 26 ECHR; Rule 52(2) ECtHR Rules of Court.
[320] Article 27(1) ECHR.
[321] Article 27(2) ECHR.
[322] Article 27(3) ECHR; Rules 49, 52A, 53 and 54 ECtHR Rules of Court.
[323] Article 24 ECHR; Rule 49(2) ECtHR Rules of Court.

reports, drafts or documents to the Chamber, Committee or the President.[324] At this stage, the case may be transferred to a Committee of the Chamber, composed of three judges. The Committee gives notice of the application to the respondent State and may request additional information from both parties.[325]

The Committee may, by unanimous vote, declare the case inadmissible, strike it out of the list or declare it admissible and immediately reach a decision on the merits when the underlying question in the case is already the subject of well-established case-law of the Court.[326] Otherwise, the Committee refers the case to the Chamber.[327] A decision of the Committee is final.[328] The Chamber may also request further information from the parties and decide to declare the application inadmissible or strike it out of the list at once.[329] Before taking a decision on admissibility, it may hold a hearing at the request of a party or on its own motion, and, if considered appropriate, decide on both admissibility and merits simultaneously.[330]

Examination on admissibility and merits

The decision on admissibility may be taken separately or at the same time as the judgment on the merits.[331] If the application was not declared inadmissible or struck out of the Court's list of cases, the Chamber may invite the parties to submit further evidence and observations and may decide to hold a hearing.[332] If an individual seeks just satisfaction in the event that the Court finds the State has violated their rights, both the claim and supporting documentation should be provided at this stage.[333]

The Chamber then examines the case.[334] Hearings are public, as are the documents deposited with the Registrar of the Court.[335] However, in exceptional circumstances the Court may decide to restrict access in the interest of morals, public order or national security in a democratic society, or where the interests of juveniles or the protection of private life of the parties so require.[336] Access may also be restricted in special circumstances where publicity would prejudice the interests of justice.[337]

Judgments of the Chamber are final either when: (a) the parties declare that they do not request referral to the Grand Chamber; (b) three months have passed from the date of the judgment without any referral to the Grand Chamber requested; or (c) the panel of the Grand Chamber rejects a request for referral submitted by a party.[338]

Just satisfaction: If the Court finds a violation, it considers any claims made by the applicant for just satisfaction.[339] An applicant's claim for just satisfaction should include itemised particulars of the claim together with any relevant supporting documents, and should, as a general rule, be submitted within the time limits set by the President of the

[324] Articles 24 and 27 ECHR; Rules 49 and 52A ECtHR Rules of Court.
[325] Article 26 ECHR; Rule 51(4) ECtHR Rules of Court.
[326] Article 28 ECHR; Rule 53(2) ECtHR Rules of Court.
[327] Article 28 ECHR; Rule 53(6) ECtHR Rules of Court.
[328] Article 28 ECHR; Rule 53(4) ECtHR Rules of Court.
[329] Article 28 ECHR; Rule 53(1) ECtHR Rules of Court.
[330] Article 29 ECHR; Rule 54 ECtHR Rules of Court.
[331] Articles 28-29 ECHR.
[332] Article 29 ECHR; Rule 59(1) ECtHR Rules of Court.
[333] Article 41 ECHR; Rule 60(2) ECtHR Rules of Court.
[334] Article 38 ECHR.
[335] Article 40 ECHR; Rules 33(1) and 63(1) ECtHR Rules of Court.
[336] Rules 33(2) and 63(2) ECtHR Rules of Court.
[337] Article 40 ECHR; Rules 33 and 63 ECtHR Rules of Court.
[338] Article 44 ECHR: "1. The judgment of the Grand Chamber shall be final. 2. The judgment of a Chamber shall become final (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) when the panel of the Grand Chamber rejects the request to refer under Article 43. 3. The final judgment shall be published".
[339] Article 41 ECHR.

Chamber for submission of the applicant's observations on the merits of their application.[340]

In addition to awarding compensation to be paid as just satisfaction:

> *"[i]n certain particular situations, […] the Court may find it useful to indicate to the respondent State the type of measures that might be taken in order to put an end to the – often systemic – situation that gave rise to the finding of a violation […]. Sometimes the nature of the violation found may be such as to leave no real choice as to the measures required […]"*.[341]

***A.D. v. Malta*, ECtHR, Application No. 12427/22, Judgment of 17 October 2023[342]**

Background of the case: The case concerns an Ivorian unaccompanied asylum-seeker who stated he was 17 years old upon his arrival in Malta in November 2021. He was detained for a total of 225 days in various immigration detention settings, without access to information and communication in a language he understood, including, initially, when he was held in quarantine. The applicant had not known that he had a guardian. Despite being diagnosed with pulmonary tuberculosis, he did not receive timely, appropriate, or consistent access to medical care. Notwithstanding the fact that he had stated he was 17 years of age, he was initially detained with adults, was subjected to poor sanitary conditions, limited outdoor access, isolation, and experienced mental health difficulties.

Litigation before the ECtHR: Among other things, the applicant complained that:

(i) contrary to Article 3 of the ECHR, he had been detained for 225 days in inhuman and degrading conditions;
(ii) from 10 December 2021 to 10 February 2022 his deprivation of liberty amounted to a detention which had not been lawful and was therefore contrary to Article 5(1) of the ECHR;
(iii) his detention following the issuance of a detention order on 10 February 2022, was arbitrary, and therefore contrary to Article 5(1) of the ECHR; and
(iv) contrary to Article 13 of the ECHR, he lacked access to an effective remedy to complain under Article 3 about his detention conditions.

In its judgment of 17 October 2023, the Court held that:

(i) "in the light of the applicant's vulnerabilities (presumed minor age and health situation), the conditions in which he had been accommodated were not adapted to his needs, nor to the reasons behind such holding, which persisted for over seven months, and, bearing in mind all the relevant circumstances, constituted inhuman and degrading treatment. […] There has accordingly been a violation of Article 3 of the Convention";
(ii) his detention between 10 December 2021 and 20 February 2021 was not prescribed by law and thus violated Article 5(1) of the ECHR;
(iii) his detention from 10 February 2022 was not in compliance with Article 5(1)(f) (namely, detention for immigration control purposes), as a result it violated Article 5(1) of the ECHR;
(iv) The Court reiterates that, in line with its established case-law concerning Malta, constitutional redress proceedings do not constitute an effective remedy in respect of complaints relating to ongoing conditions of detention under Article 3. In the absence of any other remedy available, the Court concludes that there has been a violation of Article 13 taken in conjunction with Article 3.

[340] Article 41 ECHR; Rule 60 ECtHR Rules of Court.
[341] *Hirsi Jamaa and Others v. Italy*, ECtHR, Application 27765/09, Judgment of 23 February 2012, para. 209. The measures are ordered under Article 46 ECHR.
[342] *A.D. v. Malta*, ECtHR, Application No. 12427/22, Judgment of 17 October 2023. The ICJ, European Council for Refugees and Exiles (ECRE), the AIRE Centre and the Global Campus of human rights have submitted a joint third party intervention, see ICJ, Malta: joint third party intervention on detention of a migrant child, 18 October 2022, website (accessed 3 February 2026).

In particular, the Court found that, in violation of Article 13 taken together with Article 3, the applicant did not have access to an effective remedy, reiterating that such a remedy must be adequate, accessible, and rapid when the speediness is needed for the remedial action to be effective. The Court stressed that Malta needed to take general measures to ensure that "vulnerable" individuals are not detained, that detention be connected to at least one permissible legal ground, and that detention conditions must be appropriate. The Court awarded just satisfaction to the applicant.

Impact of the decision: Following the judgment, Malta reduced the automatic two-week detention upon arrival for public health reasons to a couple of days. However, in 2024, the Principal Immigration Officer (PIO) introduced a new policy of automatic detention based on the Detention Order for a minimum of around two months for all asylum seekers, excepting those flagged as vulnerable at the point of disembarkation.[343]

Friendly settlement

Throughout the proceedings the Court may assist the parties in reaching a friendly settlement of the case.[344] Discussions regarding a friendly settlement are confidential and are conducted under the guidance of the Court's Registry, following instructions from the Chamber to which the case has been assigned or its President.[345] If a settlement is reached, the case will be struck out of the list.[346] The decision of the Court in such cases is limited to a brief statement of the facts and the terms of the settlement, which is then transmitted to the Committee of Ministers, which monitors the progress of the implementation of the settlement.[347] The agreement reached must not contravene any of the provisions of the ECHR.[348]

Striking out of the list

At any stage of the proceedings, the Court may decide to strike an application out of its list of cases.[349] This may take place if it is determined that the applicant no longer intends to pursue the application, the matter has been resolved, or, for any other reason established by the Court, it is no longer justified to continue the examination of the application.[350]

The Court may also strike out a case when a respondent State makes a unilateral declaration, even if the applicant wishes the case to continue.[351] The Court's decision in such cases depends on whether it considers that respect for human rights, as defined in the Convention and its Protocols, requires further examination.[352] The Court has held that in making this determination it considers "the nature of the complaints made, whether the issues raised are comparable to issues already determined by the Court in previous cases, the nature and scope of any measures taken by the respondent Government in the context of the execution of judgments delivered by the Court in any such previous cases, and the impact of these measures on the case at issue".[353]

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[343] European Council on Refugees and Exiles (ECRE), aditus Foundation, Malta Country Report – Update on 2024, August 2025, p. 115.
[344] Article 39 ECHR; Rule 62 ECtHR Rules of Court.
[345] Article 39(1) ECHR; Rule 62(2) ECtHR Rules of Court.
[346] Article 39(3) ECHR; Rules 43(3) and 62(3) ECtHR Rules of Court.
[347] Article 39(4) ECHR; Rule 56(2) ECtHR Rules of Court.
[348] Article 39(1) ECHR; Rule 62 ECtHR Rules of Court.
[349] Article 37(1) ECHR; Rule 43(1) ECtHR Rules of Court.
[350] Article 37(1) ECHR.
[351] *Akman v. Turkey*, ECtHR, Application No. 37453/97, Admissibility Decision, 26 June 2001, paras. 28-32; *Tahsin Acar v. Turkey*, ECtHR, Application No. 26307/95, Judgment of 8 April 2004, paras. 75-76.
[352] Article 37(1) ECHR.
[353] *Tahsin Acar v. Turkey*, ECtHR, para. 76. The list is not exhaustive. This practice is now reflected in Rule 62(a) ECtHR Rules of Court.

In certain circumstances, justified by exceptional reasons, the Court may decide to restore to its list an application that has previously been struck out.[354]

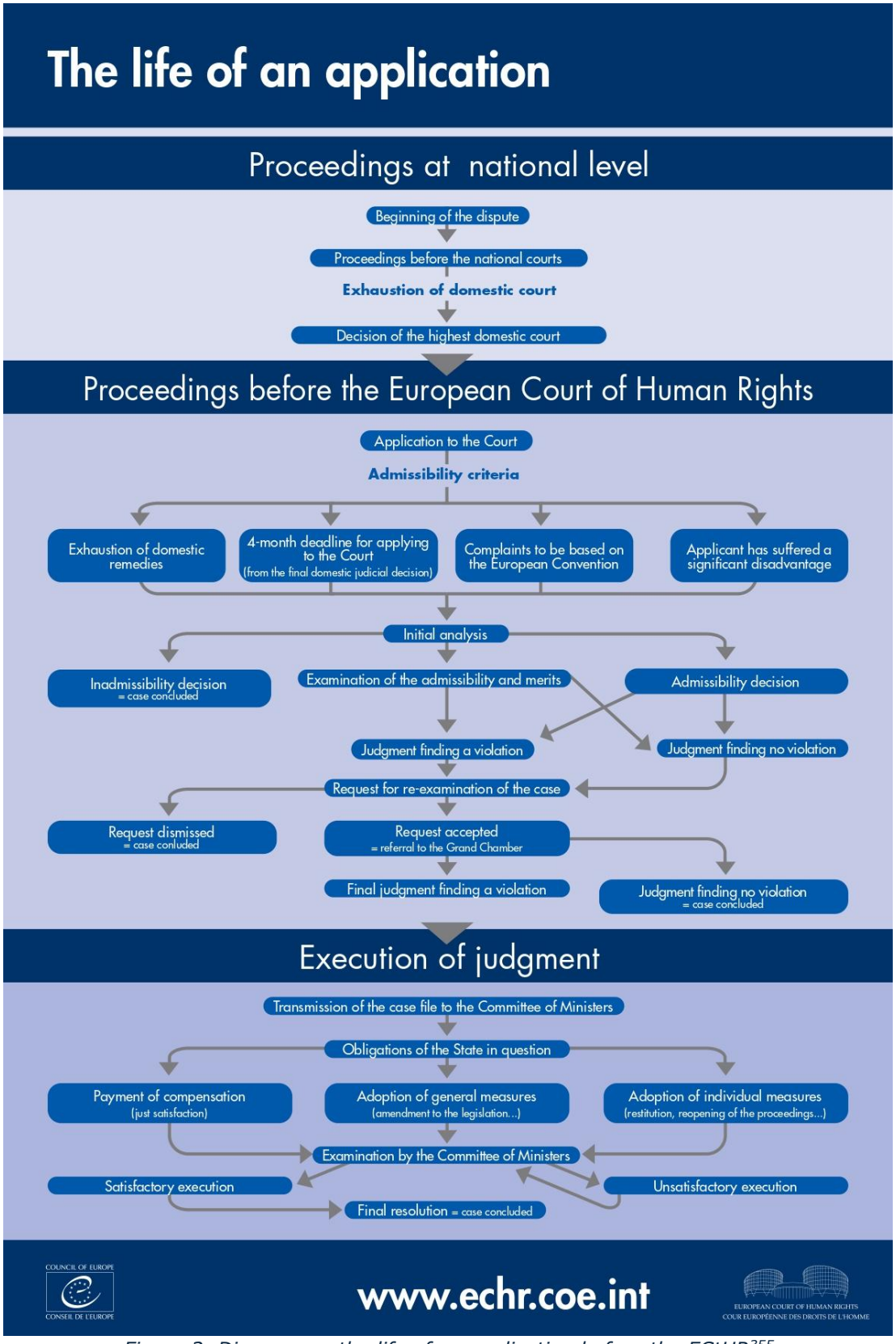

Figure 2. Diagram on the life of an application before the ECtHR[355]

[354] Article 37 ECHR; Rule 43(5) ECtHR Rules of Court.
[355] Image source: ECtHR, The life of an application, website (accessed 2 February 2026).

c. European Committee of Social Rights

Collective complaints mechanism

For further information on the collective complaints procedure, see the Council of Europe website[356] and the ESC case law database.[357]

Preparatory phase: Collective complaints to the ECSR must be addressed to the Executive Secretary of the European Committee of Social Rights,[358] who acknowledges receipt, notifies the State Party concerned and transmits the complaint to the ECSR.[359]

Admissibility phase: For each case, the President (Chair) of the ECSR appoints one of its members as Rapporteur.[360] The Rapporteur prepares a draft decision on admissibility and, where appropriate, a draft decision on the merits.[361] The ECSR may request additional information from the complainant relevant to the admissibility of the complaint.[362] The ECSR consider collective complaints submitted by social partners and non-governmental organizations.[363] It may make a decision on admissibility without inviting the respondent State to submit observations if it considers the complaint to be either manifestly ill-founded or that the admissibility requirements have been fulfilled.[364] Before deciding on admissibility, the ECSR may instead request observations from the respondent State within a specific time limit.[365] If the State submits observations, the ECSR will also ask the complainant to respond.[366] The decision on admissibility is transmitted to the parties as well as to all contracting States to the Charter and is published on the Council of Europe website.[367]

Examination of the merits: The Committee may request additional information from the parties and may organize a hearing at the request of one of the parties or on its own initiative.[368] Any contracting States that have accepted the collective complaints procedure may submit comments.[369] In addition, on the recommendation of the Rapporteur, the Chair of the ECSR may invite any institution, organization or person to submit observations on the case and the issues under consideration in the context of the complaint of which the Committee is seized.[370] All observations are transmitted to both the complainant and the respondent State and are also published on the CoE website.[371]

After considering the written and oral submissions, if any, the Committee drafts a report with its reasoning and conclusions as to whether the State has violated one or more of its obligations under the European Social Charter, and transmits it confidentially to the parties

[356] CoE, Collective complaints, website (accessed 16 June 2025).
[357] CoE, ESC HUDOC, website (accessed 16 June 2025).
[358] Executive Secretary of the European Social Charter, Directorate General Human Rights and Rule of Law, Council of Europe, Strasbourg Cedex, F-67075, France.
[359] Article 5 AP ESC and Rule 23 ECSR Rules of Procedure.
[360] Rule 27 ECSR Rules of Procedure.
[361] Rule 27 ECSR Rules of Procedure.
[362] Article 6 AP ESC.
[363] Article 1 AP ESC : "The Contracting Parties to this Protocol recognise the right of the following organisations to submit complaints alleging unsatisfactory application of the Charter: (a) international organisations of employers and trade unions referred to in paragraph 2 of Article 27 of the Charter; (b) other international non-governmental organisations which have consultative status with the Council of Europe and have been put on a list established for this purpose by the Governmental Committee; (c) representative national organisations of employers and trade unions within the jurisdiction of the Contracting Party against which they have lodged a complaint.
[364] Rule 29(4) ECSR Rules of Procedure.
[365] Rule 29(1) ECSR Rules of Procedure.
[366] For (international) NGOs the admissibility criteria is that the complaint concerns a matter for which they are recognized as having a particular competence.
[367] Articles 7(1) AP ESC; Rules 29 and 30 ECSR Rules of Procedure.
[368] Article 7 AP ESC; Rules 31 and 33 ECSR Rules of Procedure.
[369] Article 7(1) AP ESC
[370] Rules 32 and 32A ECSR Rules of Procedure
[371] Rules 32 and 32A ECSR Rules of Procedure.

and to the Committee of Ministers of the Council of Europe, which are not at liberty to publish it.[372]

On the basis of the report of the ECSR, the members of the Committee of Ministers who represent States parties to the ESC adopt a resolution.[373] Where the ECSR has found that the Charter has not been satisfactorily applied, the Committee of Ministers must adopt, by a two-thirds majority of those voting, a recommendation addressed to the State concerned.[374] The Committee of Ministers may not change the legal assessment of the complaint made by the ECSR.[375] The State concerned must then report on the measures it has taken with respect to the recommendation in its regular reporting to the Council of Europe.[376] The ECSR report (decision) on a complaint is published when the Committee of Ministers adopts a resolution on the case or, in any event, no later than four months after its transmission to the Committee of Ministers.[377]

***ICJ and ECRE v. Greece*, ECSR, Complaint No. 173/2018, Decision of 26 January 2021[378]**

Background of the case: In Greece, unaccompanied and accompanied migrant children on the North Eastern Aegean Islands, as well as unaccompanied migrant children on the Greek mainland, faced severe overcrowding in reception facilities intended to assure basic care and protection of children. Migrant children were subject to deleterious conditions for lengthy periods of time as a result of serious shortcomings in reception and care, and such conditions posed significant risks to children's mental and physical health.

Litigation before the ECSR: In 2018, the ICJ and the European Council on Refugees and Exiles (ECRE), in collaboration with the Greek Council for Refugees, brought a collective complaint before the ECSR against Greece. The complaint emphasized that the poor reception conditions, and the homelessness of children constituted violations of the Revised European Social Charter. It raised violations of a range of substantive ESC rights: the right to adequate housing and the right to a shelter (Articles 31(1) and (2)); the right of the family to social and economic protection (Article 16); the right of the child to special protection (Article 7(10)); the right to health (Articles 11(1) and (3)); the right to social and medical assistance (Article 13); and the right to education (Article 17(2)). It also addressed the absence of guardianship, the use of detention, and the long-lasting impact of substandard living conditions on children's physical and mental well-being.

In May 2019, the Committee issued interim measures, instructing the Greek Government to urgently provide all migrant children with adequate shelter, nutrition, education, and medical care. It further ordered the removal of unaccompanied children from detention and border RICs and their placement in age-appropriate facilities, along with the appointment of guardians. The ECSR stressed that the conditions described risked causing irreparable harm and irreversible developmental damage to the children affected.

In its 2021 merits decision, the ECSR found that Greece had violated several provisions of the Revised ESC including: the right to housing (Article 31); the right of children and young persons to social, legal and economic protection (Article 17); the right of children and young persons to protection (Article 7); and the right to protection of health (Article 11). The Committee confirmed that children had been exposed to homelessness, prolonged periods of detention and substandard reception facilities, and lacked access to necessary services and protections.

[372] Article 8 AP ESC.
[373] Rules 35 ECSR Rules of Procedure.
[374] Article 9 AP ESC.
[375] CoE, Explanatory Report to the Additional Protocol to the ESC Providing for a System of Collective Complaints, No. 158, 1995, para. 46.
[376] Article 10 AP ESC.
[377] Article 8(2) AP ESC.
[378] *ICJ and ECRE v. Greece*, ECSR, Complaint No. 173/2018, Decision of 26 January 2021.

Impact of the decision: The case had a significant impact on child protection policy in Greece. One major outcome was the abolition of the detention of migrant children under so-called protective custody in police stations in 2020,[379] following the decision on interim measures. In response to the ECSR's findings, and other litigation and advocacy efforts at national and international levels, Greece established a National Guardianship System for unaccompanied minors and created a Special Secretariat for the Protection of Unaccompanied Minors in 2020. It also launched the National Emergency Response Mechanism (NERM), designed to identify and provide immediate shelter to homeless or vulnerable unaccompanied minors. Reception conditions were reportedly improved, and several of the most problematic facilities on the islands were dismantled. However, concerns remain, as recent reports suggest that poor conditions and *de facto* detention continue in some border reception centres, and follow-up on the implementation of the decision is required.[380]

d. Special Procedures

UN Special Procedure communications can be accessed through the corresponding OHCHR database.[381]

As noted above in Section 1.4.3., many of the Special Procedures (Special Rapporteurs, Independent Experts or Working Groups) mandated and appointed by the UN Human Rights Council to address particular thematic human rights concerns are empowered to receive and consider individual communications, alleging violations of rights that fall within their mandates.

Once a communication is received, the relevant Special Procedure assesses it and determines whether to contact the State concerned to request a response to the allegations.[382] The Special Procedure may help bring the case to the attention of the authorities, request further information, raise concerns or recommend action.[383] Information about communications sent by a Special Procedure to a State is generally published in the Special Procedure's Annual Report to the Human Rights Council.[384]

The mandate of the Special Procedures to consider individual communications does not depend on whether the State concerned is a party to a particular human rights treaty. A complaint may be brought concerning any State, and there is no requirement to exhaust domestic remedies before submitting a case to a Special Procedures.[385] Furthermore, it is possible to present the same complaint to more than one Special Procedure or both to a Special Procedure and to a judicial or quasi-judicial international human rights body.[386]

Special Procedures whose mandates are relevant to children in immigration detention, in alternatives to immigration detention, and in other migration-related situations include:

- The UN Special Rapporteur on the human rights of migrants;[387]

[379] Article 43 Law 4760/2020; AIDA, GCR, ECRE, Update on 2024: Country Report Greece, September 2025; pp. 224-225.
[380] See ICJ, Greece: ICJ and ECRE call the European Committee of Social Rights to ensure Greece's compliance with migrant and refugee children's rights, 6 November 2025, website (accessed 28 January 2026).
[381] OHCHR, Communication report and search, website (accessed 16 June 2025). See the list of the 46 thematic mandates and the list of the 14 country mandates, UNHRC website (accessed 8 April 2025).
[382] OHCHR, Manual of Operations of the Special Procedures of the HRC, August 2008.
[383] See further OHCHR, What are Communications?, website (accessed 28 April 2025).
[384] OHCHR, Annual reports on Special Procedures, website (accessed 28 April 2025).
[385] OHCHR, Leaflet on Special procedures communications, December 2018, p. 1.
[386] See criteria laid down in the Article 9 of the Code of Conduct for Special Procedures Mandate-holders of the HRC, A/HRC/RES/5/2, 18 June 2007.
[387] See OHCHR, Special Rapporteur on the human rights of migrants, website (accessed 28 January 2026).

- The UN Special Rapporteur on trafficking in persons, especially women and children;[388]
- The UN Special Rapporteur on the right to health;[389]
- The UN Special Rapporteur on the right to education;[390]
- The UN Special Rapporteur on torture;[391]
- The UN Special Rapporteur on violence against women and girls;[392]
- The UN Working Group on Arbitrary Detention (WGAD);[393]
- The UN Working Group on discrimination against women and girls (WGDAW).[394]

Working Group on Arbitrary Detention (WGAD) – Individual complaints[395]

Among other things, the Working Group considers individual complaints. It is the only non-treaty-based Special Procedure whose mandate expressly provides for the consideration of individual complaints.[396] Individuals anywhere in the world may submit complaints concerning instances of arbitrary detention, regardless of whether the State concerned is a party to an international treaty guaranteeing the right to be free from arbitrary arrest or detention.

The Working Group acts on information submitted by individuals, their families, their representatives or non-governmental civil society organizations. Governments and inter-governmental organizations may also submit information regarding alleged cases of arbitrary detention. Complaints should be submitted using the WGAD's model questionnaire, preferably by email. Allegations are then transmitted to the Government concerned for comments and observations, which are subsequently transmitted to the complainant for final comments. It may also request further information, or where insufficient information is available, file the case provisionally or definitively.

Following this procedure, the WGAD may render an opinion on whether the deprivation of liberty in question is arbitrary, regardless of whether the detention is ongoing, and make recommendations to the Government. The opinion and any recommendations are sent to the Government, and, 48 hours later, provided to the complainant and published online.[397]

For its assessment, the WGAD applies five criteria to determine whether deprivation of liberty is arbitrary:

- Category I: When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (e.g. when a person remains in detention after the completion of their sentence or despite the applicability of an amnesty law);
- Category II: When the deprivation of liberty results from the exercise of rights or freedoms guaranteed by Articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States Parties are concerned, by Articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights;
- Category III: When the total or partial failure to observe international norms relating to the right to a fair trial, as set out in the Universal Declaration of Human

[388] See OHCHR, Special Rapporteur on trafficking in persons, especially women and children, website (accessed 28 January 2026).
[389] See OHCHR, Special Rapporteur on the right to health, website (accessed 28 January 2026).
[390] See OHCHR, Special Rapporteur on the right to education, website (accessed 28 January 2026).
[391] See OHCHR, Special Rapporteur on torture, website (accessed 28 January 2026).
[392] See OHCHR, Special Rapporteur on violence against women and girls, website (accessed 28 January 2026).
[393] See OHCHR, Working Group on Arbitrary Detention, website (accessed 28 January 2026).
[394] See OHCHR, Working Group on discrimination against women and girls, website (accessed 28 January 2026).
[395] HRC, Methods of work of the WGAD, A/HRC/36/38, 13 July 2017. For further information see OHCHR, Working Group on Arbitrary Detention: Complaints and urgent appeals, website (accessed 28 April 2025).
[396] OHCHR, Complaints and urgent appeals Working Group on Arbitrary Detention, website (accessed 28 January 2026.
[397] WGAD opinions can be found online at OHCHR, Opinions adopted by the Working Group on Arbitrary Detention, website (accessed 28 April 2025).

Rights and other relevant international instruments accepted by the State concerned, is of such gravity, that it renders the deprivation of liberty arbitrary;
- Category IV: When asylum seekers, migrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy; and
- Category V: When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; disability or other status, when such deprivation of liberty either aims towards or may result in disregarding the equality of human rights.

2.2. Mechanisms under EU law

Another important source of law and mechanisms relevant for strategic litigation is the European Union. Today, EU law regulates many areas of daily life.[398] Particularly relevant in this regard is the EU Charter, which lays down rights and freedoms that the EU and its Member States must respect and ensure when acting within the scope of EU law. Member States are directly bound by the EU Charter provisions and must respect and promote their application when acting within the EU Charter's scope. All domestic courts are also bound to give effect to the EU Charter within their national legal systems. Individuals can invoke it in national proceedings, irrespective of whether the State's constitutional system recognizes the direct application of international law.[399]

The scope of application of the EU Charter of Fundamental Rights

In human rights litigation, it is important to note the limitations on the applicability of the EU Charter. Article 51(1) of the EU Charter defines its scope, clarifying that it applies to EU institutions and bodies with "due regard to the principle of subsidiarity", and to Member States only when they are implementing EU law. In practice, this means that Member States are legally bound to respect human rights under the EU Charter, only when their actions fall within the scope of EU law. Article 51(2) further clarifies that the EU Charter does not establish new powers or tasks for the EU, nor does it modify those defined by the Treaties. When acting outside the scope of EU law, States remain bound by their other international law obligations, but the Charter is not directly applicable to their actions. Consequently, EU mechanisms relevant for strategic litigation may be a useful forum for cases related to the application of EU law.

Before EU institutions and bodies, the EU Charter, as higher-ranking primary EU law, serves as a particularly relevant legal instrument for strategic litigation.

In practice, EU law extensively regulates migration and asylum, particularly as regards immigration detention.[400] As of 2024, the exhaustive list of legal grounds allowing the detention of migrants in the EU is set out in the Asylum Procedures Directive, the Reception Conditions Directive, the Dublin III Regulation and the Return Procedures Directive.[401] Issues related to child immigration detention would therefore usually fall within the scope of the Charter.

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[398] See EU, How is the EU relevant to your daily life?, website (accessed 29 April 2025).
[399] E.g. whether the State is a monist or a dualist legal system. European Union Agency for Fundamental Rights (FRA), Handbook: Applying the Charter of Fundamental Rights of the European Union in law and policymaking at national level, 2020, pp. 30-33.
[400] Consider e.g. the Common European Asylum System, in particular Reception Conditions Directive and the Asylum Procedure Directive; as well as the 2024 EU Migration and Asylum Pact (which enters into force in June 2026), in particular the Reception Conditions Directive, Screening Regulation, Asylum Procedure Regulation, and Return Border Procedure Regulation, which regulate the use of migration detention. See ICJ, *Never in the best interests of the child: Risks of child detention in the screening and border procedures under the 2024 EU Migration Pact*, Briefing Paper, November 2024.
[401] Maria Margarita Mentzelopoulou with Nefeli Barlaoura, European Parliamentary Research Service, Briefing: Detention of migrants, A measure of last resort, September 2023, p. 3.

In addition, the EU Charter includes rights that may not be fully covered by other sources of human rights law, or that may supplement rights provided in domestic constitutions and international human rights instruments. These include, for instance, the right to asylum,[402] which is not explicitly included in the ECHR.[403] It also sets out citizens' rights specific to EU citizens[404] and contains explicit prohibitions of discrimination on the basis of e.g. genetic features, colour, membership of a national minority, and sexual orientation.[405] In some cases, the Charter offers wider protection than other instruments covering similar rights.[406]

When considering the EU Charter, reference should be made to the Explanations relating to the Charter,[407] which provide guidance for the interpretation of its provisions, and to the case law of the CJEU.[408] In addition, the ECHR and the ECtHR case law,[409] "constitutional traditions common to the Member States",[410] other relevant sources of international law, in particular the ESC,[411] and relevant national laws, where applicable may inform the interpretation of the EU Charter.[412] Even before EU institutions and bodies, international human rights instruments, particularly the ECHR, remain highly relevant. The Preamble of the EU Charter "reaffirms […] the rights as they result, in particular, from […] international obligations common to the Member States, the [ECHR], the Social Charters adopted by the Union and by the Council of Europe and the case-law of the Court of Justice of the European Communities and of the European Court of Human Rights."[413] According to Article 52 of the EU Charter: "In so far as this Charter contains rights which correspond to rights guaranteed by the [ECHR], the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection."[414]

A variety of practical tools on the application of the EU Charter are available, including resources provided by the European Union Agency for Fundamental Rights (FRA).[415]

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[402] Article 18 EU Charter: "Right to asylum: The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union."

[403] The right to seek and enjoy asylum from persecution is guaranteed in the Universal Declaration of Human Rights. The right of the child to receive appropriate protection and humanitarian assistance is guaranteed under Article 22 CRC. See also CEDAW Committee, General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, CEDAW/C/GC/32, 14 November 2014.

[404] Chapter V EU Charter.

[405] Article 21 EU Charter.

[406] For instance, the right to education under Article 14 of the Charter has a broader scope than its counterpart in the ECHR, as it includes access to vocational and continuing training and guarantees free compulsory education. For an overview of provisions as compared to the ECHR, see e.g. FRA, Handbook: Applying the Charter of Fundamental Rights of the European Union in law and policymaking at national level, 2020, p. 27, 29.

[407] EU, Explanations relating to the Charter of Fundamental Rights, Official Journal of the EU, OJ C 303, 14 December 2007, pp. 17-35; Article 6(1) TEU; Article 52(7) EU Charter.

[408] Available at Curia or EUR-Lex.

[409] Article 52(3) EU Charter.

[410] Article 52(4) EU Charter.

[411] Direct references are made to e.g. the ESC, the ICCPR, the CRC, and the Rome Statute of the International Criminal Court. See e.g. EU, Explanations relating to the Charter of Fundamental Rights, Official Journal of the EU, OJ C 303, 14 December 2007, pp. 17-35 (Explanation on Article 3 – Right to the integrity of the person, Explanation on Article 5 – Prohibition of slavery and forced labour, Explanation on Article 14 – Right to education, Explanation on Article 15 – Freedom to choose an occupation and right to engage in work, Explanation on Article 19 – Protection in the event of removal, expulsion or extradition, Explanation on Article 24 – The rights of the child).

[412] FRA, Handbook: Applying the Charter of Fundamental Rights of the European Union in law and policymaking at national level, 2020, p. 44.

[413] Preamble EU Charter.

[414] Article 52(3) EU Charter.

[415] See e.g. FRA, Handbook: Applying the Charter of Fundamental Rights of the European Union in law and policymaking at national level, 2020, including its Practical tools provided in Part II of the Handbook.

2.2.1. Court of Justice of the European Union

The CJEU plays a central role in the enforcement of EU law as the ultimate authority on its interpretation and application. It consists of two courts: the Court of Justice and the General Court. Their primary function is to review the legality of EU measures and ensure the uniform interpretation and application of EU law.[416] While the CJEU does not directly assess the compatibility of national law with EU law, it plays a key role in clarifying applicable EU law, which guides national courts in their determinations. The CJEU may also find provisions of EU law to be incompatible with EU primary law, including the EU Charter of Fundamental Rights.

As the EU judicial system is decentralized, national courts serve as the "principal judicial enforcers" of EU law.[417] The CJEU has held that: "every national court must, in a case within its jurisdiction, apply [EU] law in its entirety and protect rights which the latter confers on individuals and must accordingly set aside any provision of national law which may conflict with it, whether prior or subsequent to the [EU] rule."[418]

Unlike procedures before the ECtHR, UN Treaty Bodies and Special Procedures described above, there is no right to individual petitions or applications alleging a violation of an individual's human rights before the CJEU – the CJEU hears direct actions challenging legally binding EU acts (see Section 2.2.1.c.). The main way of litigating before the CJEU is by way of a reference from a national court, while the European Commission may bring cases before the Court through infringement proceedings.[419] For private applicants, including NGOs and individuals, the most relevant avenue is the preliminary ruling procedure as part of litigation taking place at the domestic level. Individuals must persuade the domestic court to make a reference to the CJEU.[420] Preliminary ruling proceedings before the CJEU do not determine the case as such but answer the questions posed by the national court, to which the case is then referred back for determination.[421] This Guide focuses primarily on preliminary references and to a lesser extent on infringement proceedings and direct actions.

a. Preliminary references

Most litigation on human rights issues, including cases concerning children and others affected by immigration detention, reaches the CJEU through requests for preliminary rulings made by domestic courts in EU Member States. These requests seek clarification on issues of EU law concerning either "the interpretation of the Treaties" or "the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union".[422] In 2023, a significant portion of preliminary rulings concerned the interpretation of rules on the right of asylum and the system of international protection,[423] illustrating the importance of preliminary references before the CJEU for migration and asylum-related cases.

The preliminary ruling procedure ensures uniform interpretation and application of EU law, clarifies whether national laws or practices are compatible with EU law, and assists national courts in interpreting EU law correctly.[424] Such references can only be made by a domestic

[416] CJEU, Curia: Procedures, website (accessed 19 November 2024).
[417] Robert Schüutze, *European Union Law*, 4th ed., Oxford University Press, June 2025, see Part II Governmental Powers.
[418] *Amministrazione delle Finanze dello Stato v. Simmenthal SpA*, CJEU, C-106/77, Judgment of 9 March 1978, para. 21.
[419] Articles 258, 260, and 267 TFEU.
[420] Article 267 TFEU.
[421] Article 267 TFEU.
[422] Article 267 TFEU.
[423] CJEU, Judicial statistics 2023: confirmation of the structural increase in litigation before the Court of Justice, 22 March 2024, p. 3.
[424] *Slowakische Republik v. Achmea BV.*, CJEU, C-284/16, Judgment of 6 March 2018, para. 37.

court; parties to the proceedings domestically may only request that the domestic court make a reference to the CJEU, but ordinarily, it is for the domestic court to decide whether or not to do so, unless the "question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law", in which case "that court or tribunal shall bring the matter before the Court."[425] To persuade the domestic courts to make a reference for a preliminary ruling to the CJEU, litigants must frame their claims in a manner that implicates EU law and convince the judge that a ruling from the CJEU "is necessary to enable it to give judgment", and request the Court to give a ruling thereon.[426] The Statute of the CJEU lists the specific areas for which the General Court has the jurisdiction to hear and determine requests for a preliminary ruling.[427] To facilitate a referral, parties may wish to raise and formulate the specific legal questions for the national court to refer to the CJEU.

The request for a preliminary ruling is usually at the discretion of domestic courts, except where a legal question is raised before a court of last resort, such as the Supreme Administrative Court or the Constitutional Court.[428] If a first instance court declines to make a reference, it may be strategic to pursue the case on points of law before the highest instance, as these courts are under an obligation to make a referral to the CJEU.[429]

Exceptions to the obligation for national courts of last resort to refer questions on the interpretation or validity of EU law to the CJEU apply where the question before the national court is not relevant to the outcome of the case; the matter has already been addressed in established EU case law; or the rule of law is sufficiently clear and does not necessitate further clarification from the CJEU.[430]

To be admissible, a request for a preliminary ruling must concern the interpretation or validity of EU law, not national law or factual issues.[431] The CJEU can only rule if the question concerns EU law applicable to the case.[432] The decision must also be necessary for the referring national court to issue its judgment.[433] This is particularly relevant where the case involves new questions of general interest or where existing case law is insufficient.[434] The case law search engine on the Court's Curia website helps in determining whether an issue has already been answered or can be inferred from existing jurisprudence.[435]

The request for a preliminary ruling, submitted by the judge in the domestic case, should be concise, clear, and precise, avoiding unnecessary detail.[436] It must include the questions to be referred, a summary of the dispute, relevant findings of fact, applicable EU and national law provisions, relevant national case law, and the reasons for seeking guidance

[425] Article 267 TFEU.
[426] Article 267 TFEU.
[427] Article 50b Statute of the CJEU
[428] Article 267 TFEU. See further *Köbler v. Austria*, CJEU, C-224/01, Judgment of 30 September 2003, para. 59. See also *Hochtief Solutions AG Magyarországi Fióktelepe v. Fővárosi Törvényszék*, CJEU, C-620/17, Judgment of 29 July 2019; *Tomášová v. Slovakia Republic*, CJEU, C-168/15, Judgment of 28 July 2016; *Diageo Brands BV v. Simiramida-04 EOOD*, CJEU, C-681/13, Judgment of 16 July 2015, para. 66; *Traghetti del Mediterraneo SpA v. Repubblica italiana*, CJEU, C-173/03, Judgment of 13 June 2006.
[429] Civil Liberties Union for Europe, *Relying on the EU Charter of Fundamental Rights for Human Rights Litigation: A Handbook for Civil Society Organisations and Rights Defenders*, p. 24.
[430] *CILFIT v. Ministero della Sanità*, CJEU, C-283/81, Judgment of 6 October 1982.
[431] Article 267 TFEU.
[432] Article 267 TFEU; Articles 93-94 CJEU Rules of Procedure of the Court of Justice; Articles 196-199 CJEU Rules of Procedure of the General Court..
[433] Article 267 TFEU; Articles 93-9 CJEU Rules of Procedure of the Court of Justice; Articles 196-199 CJEU Rules of Procedure of the General Court. See also *Srl CILFIT and Lanificio di Gavardo SpA v. Ministry of Health*, CJEU, C-283/81, Judgment of the Court of 6 October 1982.
[434] CJEU, Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (2019/C 380/01), para. 5.
[435] EU Academy, "The reference for a preliminary ruling: a dialogue on European law with the European Court of Justice at the initiative of national judges – VIDEO", 2024 (accessed 26 July 2024).
[436] CJEU, Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (2019/C 380/01), para. 14.

on the interpretation or validity of EU law.[437] The request should be drafted in the language of the referring court and may include the main arguments of the parties and the referring court's view on the questions.[438] This information is particularly useful in expedited or urgent procedures.[439] The questions should be presented in a separate section, at the beginning or end of the document and must be understandable on their own.[440]

The average length of proceedings, before the Court was 16.1 months in 2023.[441] For cases requiring expedited handling, the CJEU provides special procedures.[442] The expedited procedure is used when the nature of a case requires swift handling.[443] The urgent preliminary ruling procedure applies to cases related to the area of freedom, security, and justice, especially when a person is in custody or the case relates to parental authority.[444] Where a request for a preliminary ruling is made in regard to a person in custody, the CJEU must act without delay.[445] Such urgent procedures can be crucial in immigration detention cases, particularly to protect detained children's rights and welfare.

Proceedings before the CJEU involve both written and oral stages.[446] Decisions are often delivered following an opinion of the Advocate-General, who provides a non-binding recommendation on how the case should be decided.[447] The CJEU may hold oral hearings where it deems them valuable for understanding the factual or legal context of the domestic proceedings and the EU law issues raised.[448] A **hearing** is always held where a preliminary ruling is handled under an expedited or urgent procedure.[449] Participants may receive questions from the Court in advance and be asked to focus on specific issues during their oral submissions.[450] The hearing is an opportunity to clarify and expand on written submissions, rather than repeat them.[451] Lawyers should focus on key points and be prepared to answer questions from the judges.[452] Simultaneous interpretation is provided

[437] Article 94 CJEU Rules of Procedure of the Court of Justice; Article 199 CJEU Rules of Procedure of the General Court.
[438] Articles 37(3) and 94 CJEU Rules of Procedure of the Court of Justice; Article 199 CJEU Rules of Procedure of the General Court.
[439] CJEU, Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (2019/C 380/01), para. 18; Articles 105-114 CJEU Rules of Procedure of the Court of Justice; Articles 237-238 CJEU Rules of Procedure of the General Court.
[440] CJEU, Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (2019/C 380/01), paras. 14-19.
[441] CJEU, Judicial statistics 2023: confirmation of the structural increase in litigation before the Court of Justice, 22 March 2024, p. 2.
[442] Articles 105-114 CJEU Rules of Procedure of the Court of Justice; Articles 237-238 CJEU Rules of Procedure of the General Court.
[443] E.g. a judgment under an expedited procedure can be delivered five months after the case has been brought before the General Court; CJEU, *Annual Report 2022: The Year in Review*, 2023, p. 36, 56.
[444] Article 23 Statute of the CJEU; Title III, Chapter 2 and 3 CJEU, Rules of Procedure of the Court of Justice; CJEU, Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (2019/C 380/01), paras. 34-36; CJEU, Curia: Procedures, website (accessed 19 November 2024). See e.g. in 2023, the CJEU issued its judgments under urgent preliminary ruling procedures within 3.5 and 5 months after receiving requests from national courts; CJEU, Curia: Statistics concerning the judicial activity of the Court of Justice - 2023, website (accessed 17 February 2025).
[445] Article 267 TFEU.
[446] Article 96 CJEU Rules of Procedure of the Court of Justice; Articles 199-205 and 213-224 CJEU Rules of Procedure of the General Court; CJEU, Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (2019/C 380/01), para. 35.
[447] Article 20 TFEU Protocol No. 3 on the Statute of the CJEU; Article 221 CJEU Rules of Procedure of the General Court.
[448] CJEU, Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (2019/C 380/01), para. 36.
[449] Articles 105(2) and 113 CJEU Rules of Procedure of the Court of Justice; Article 237 CJEU Rules of Procedure of the General Court.
[450] Articles 105(3) and 113 CJEU Rules of Procedure of the Court of Justice; Articles 210 and 237 CJEU Rules of Procedure of the General Court.
[451] Igor Taccani, "The Role of the CJEU in immigration law" Session, RELEASE Transnational Exchange Workshop, Luxembourg, 1 April 2025.
[452] Council of Bars and Law Societies of Europe (CCBE), The European Court of Human Rights Questions & Answers for Lawyers, 2023, p. 29.

to facilitate communication in the multilingual environment of the Court.[453] Where a party cannot fully or partially cover the costs of the proceedings, legal aid may be available.[454]

Once the CJEU issues its ruling, the **national court resumes the proceedings**, which remain suspended during the preliminary ruling procedure.[455] The CJEU's judgment is binding on the referring court and all other national courts involved in the case.[456] The referring court must also inform the CJEU of any action taken upon the decision in the main proceedings.[457]

***FMS and Others v. Országos Idegenrendészeti Főigazgatóság*, CJEU, Cases No. C-924/19 and C-925/19 PPU, Judgment of 14 May 2020[458]**

Background of the case: The case concerns Afghan and Iranian nationals, including an infant child, who arrived in Hungary and applied for asylum in the Röszke transit zone. They claimed that they passed through Bulgaria and Serbia before entering Hungary. Their asylum applications were dismissed as inadmissible, and return decisions to Serbia were issued. Serbia, however, refused to readmit them, and Hungarian authorities amended the return decisions by changing the destination country from Serbia to their countries of origin – Afghanistan and Iran respectively. The applicants were ordered to continue their stay in the transit zone, where the perimeter was closed and movements were limited and monitored. They challenged these decisions and the legality of their detention in the transit zone.

Litigation before the CJEU: The Hungarian court referred several questions to the Court for a preliminary ruling concerning the interpretation of Directives 2008/115 (Return Directive), 2013/32 (Procedures Directive), and 2013/33 (Reception Directive), laying down standards for the reception of applicants for international protection. The questions concern: (1) the inadmissibility ground of safe transit country under EU law; (2) the procedure and consequences when an inadmissibility decision is found unlawful under EU law; (3 and 4) the transit zone as place of detention in the context of an asylum procedure; and (5) the effectiveness of remedy against a return decision amending the destination country under the Return Directive. The domestic court also requested that the references for a preliminary ruling be dealt with under the urgent preliminary ruling procedure in light of the deteriorating mental and physical health of the child in the transit zone. The CJEU granted the request for urgent preliminary ruling and decided that the cases should be referred to the Grand Chamber, noting that any delay in the judicial decision could prolong the detention and risk causing serious, possibly irreparable, harm to the child's development.

In its judgment of 14 May 2020, the Grand Chamber of the Court found that the obligation imposed on a third-country national to remain permanently in a transit zone the perimeter of which is restricted and closed, within which that national's movements are limited and monitored, and which they cannot legally leave voluntarily, in any direction whatsoever, appears to be a deprivation of liberty, characterized by "detention" within the meaning of those directives. The Court emphasized that detention must comply with EU law, including: (i) reasoned decision ordering detention must be adopted prior to enforcement; (ii)

[453] EU Academy. 2024. Preliminary reference procedure introduction specificities for lawyers - VIDEO. https://academy.europa.eu/mod/hvp/view.php?id=42112 (Accessed 26 July 2024).
[454] Title III, Chapter 4 CJEU Rules of Procedure of the Court of Justice; Title III, Chapter 15 CJEU Rules of Procedure of the General Court.
[455] CJEU, Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (2019/C 380/01), para. 25.
[456] *Georgi Ivanov Elchinov v. Natsionalna zdravnoosiguritelna kasa*, CJEU, C-173/09, Judgment of the Court of 5 October 2010.
[457] Articles 23 and 50b Statute of the CJEU; Article 231 CJEU Rules of Procedure of the General Court; EU Academy, "The reference for a preliminary ruling: a dialogue on European law with the European Court of Justice at the initiative of national judges – VIDEO", 2024 (accessed 26 July 2024).
[458] *FMS and Others v. Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság*, CJEU, Cases No. C-924/19 and C-925/19 PPU, Judgment of 14 May 2020.

detention must be necessary, proportionate, and limited in duration; (iii) national courts must have the power to review detention and order release or alternative measures if detention is unlawful. The CJEU also clarified that amended return decisions constitute new return decisions for the right to an effective judicial remedy.

Impact of the decision: In reaction to the CJEU judgment, Hungary first publicly rejected the ruling's implications. However, the Government swiftly closed the transit zones and relocated asylum seekers either to open reception facilities or closed facilities, introduced with the new asylum system on 26 May 2020, known as the called "embassy procedure."[459]

***Actio popularis* before the CJEU** enables a third party to sue on behalf of a broader group or the public interest. It can be a useful tool for strategic human rights litigation, where such cases are accepted. An *actio popularis* may help address two common challenges. First, no individual claim is needed to initiate court proceedings before the CJEU rather, a third party may bring a case by demonstrating that an action or policy change would cause harm or undermine a public interest value.[460] Second, it enables civil society groups to act proactively in safeguarding judicial independence, allowing them to challenge an action before its negative impacts have fully materialised. The CJEU will hear *actio popularis* claims if the domestic court requesting a preliminary ruling sits in a jurisdiction that allows them.[461] While only a limited number of EU countries, such as Malta, Portugal, and Hungary, today accept *actio popularis* claims, it provides an additional potential avenue for strategic litigation where it is available.

b. Infringement proceedings

Cases concerning human rights protection may also reach the CJEU through infringement proceedings, which are initiated by the European Commission or by Member States in response to alleged breaches of EU law obligations by another Member State. These proceedings are intended to ensure that Member States comply fully with their obligations under EU law.[462] Most infringement proceedings are initiated by the Commission in its role as "guardian of the Treaties"[463] and typically concern failures to properly transpose EU legal acts.[464] Private individuals cannot directly initiate infringement proceedings, but they may submit a complaint to the Commission through the official complaints procedure.[465] The Commission retains discretion as to whether to investigate the matter, open infringement proceedings and ultimately refer the case to the CJEU.[466]

The CJEU has exclusive competence over infringement proceedings, which consist of two phases: a pre-litigation phase and a judicial phase.[467] The pre-litigation phase allows Member States to clarify points of fact or law, justify their conduct or legislation, or comply with their obligations to avoid litigation.[468] If the matter proceeds to the judicial phase,

[459] European Council on Refugees and Exiles (ECRE), Hungarian Helsinki Committee (HHC), Access to the territory and push backs Hungary, website (access 3 February 2026). See Government Decree 361/2024. (XI. 28.) on the applicability of the transitional rules of the asylum procedure.
[460] For more information on how *actio popularis* claims work, see Helsinki Committee for Human Rights, Use of actio popularis in Cases of Discrimination, November 2016.
[461] See e.g. *Repubblika v. Il-Prim Ministru*, CJEU, C-896/19, Judgment of 20 April 2021, in which the CJEU accepted an *action popularis* case brought by a Maltese NGO, Rebubblika, concerning the independence of the judiciary in Malta.
[462] Article 4(3) TEU; Articles 288(3) and 291(1) TFEU.
[463] Articles 258 and 259 TFEU.
[464] European Commission, Type of infringement cases open at year-end per Member State and the UK, website (accessed 12 May 2025).
[465] European commission, Report a breach of EU law by an EU country, website (accessed 12 May 2025).
[466] See further e.g. European Commission, How to make a complaint at EU level, website (accessed 18 November 2024). The Commission deals with complaints according to the procedure set out in: European Commission, Communication from the Commission 'EU law: Better results through better application', 2017/C 18/02, 2017.
[467] European Commission, Communication from the Commission, 'EU Law: Better Results through Better Application', 2017/C 18/02, 2017, Annex.
[468] EU Academy, "Different types of procedures at the CJEU and the general court – VIDEO", 2024 (accessed 26 July 2024).

the CJEU will assess whether an infringement has occurred.[469] In this phase, the burden of proof lies with the applicant - usually the Commission - which must substantiate each claim,[470] while the Member State concerned must cooperate in good faith.[471] Where necessary, the Court may indicate interim measures, which are legally binding on the Member State, to prevent serious and irreparable harm.[472] Such measures are intended to ensure the full effectiveness of the Court's final decision.[473]

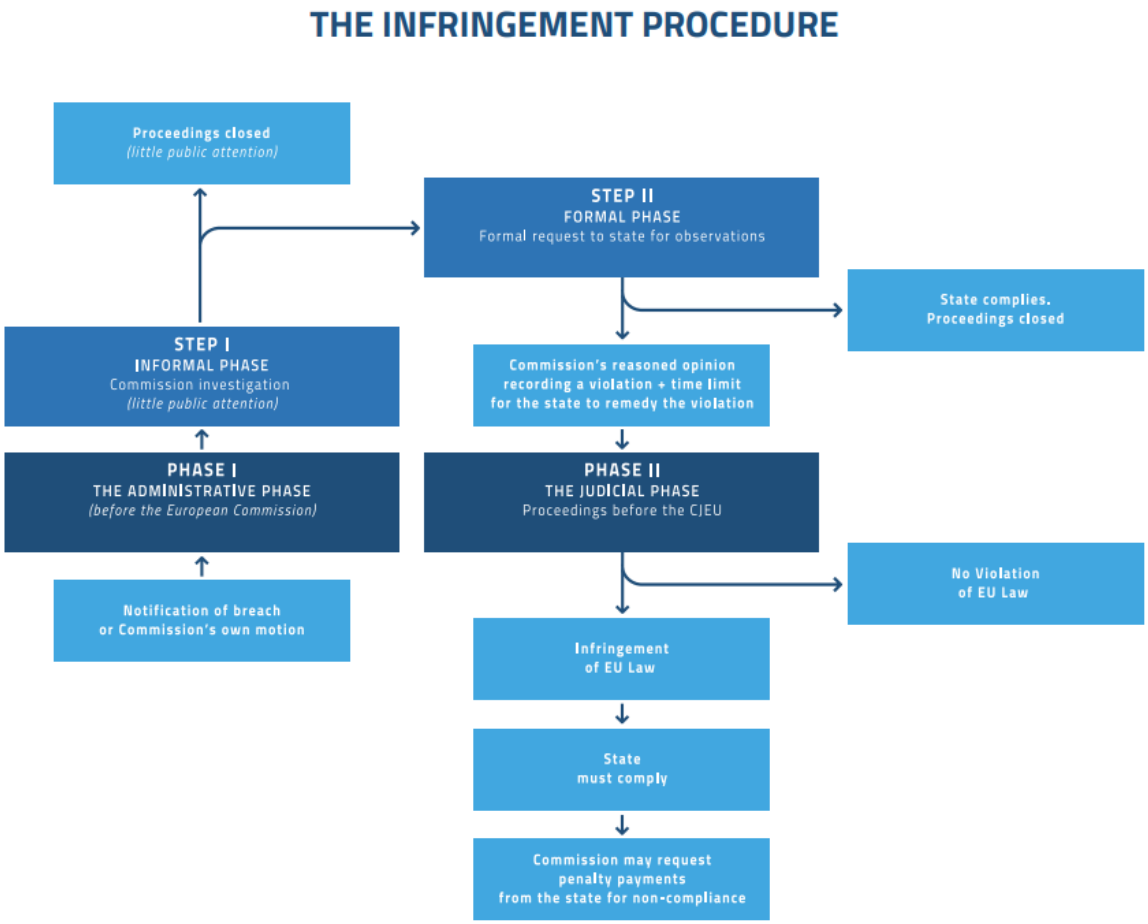

Figure 3. Overview of infringement proceedings[474]

A judgment in infringement proceedings is declaratory, meaning that it does not render national acts unlawful, void, or inapplicable.[475] However, a judgment finding a breach of a Member State's obligations under EU law may facilitate the establishment of State liability for damages caused by the breach.[476] If a Member State fails to comply with the judgment and take corrective action, the Commission may request the imposition of financial penalties, such as a lump sum or a daily penalty payment, to discourage future

[469] European Commission, Communication from the Commission, 'EU Law: Better Results through Better Application', 2017/C 18/02, 2017, Annex.
[470] *Commission v. Ireland*, CJEU, C-494/01, Judgment of 26 April 2005, para. 41.
[471] EU Academy, "Different types of procedures at the CJEU and the general court – VIDEO", 2024 (accessed 26 July 2024).
[472] Article 279 TFEU; Article 160(2) and (7) CJEU Rules of Procedure of the Court of Justice.
[473] Olivier De Schutter, *Infringement proceedings as a tool for the enforcement of fundamental rights in the European Union*, Open Society Foundations, 2017, pp.16-17.
[474] Image source: Simona Florescu, Validity Foundation et al., Strategic Litigation Guidebook, Litigate Project, p. 45.
[475] *Commission v. Italy*, CJEU, C-362/90, Judgment 31 March 1992, para. 10.
[476] *Brasserie du Pêcheur SA v. Bundesrepublik Deutschland and The Queen v Secretary of State for Transport, ex parte: Factortame Ltd and others*, CJEU, C-46/93, Judgment of 5 March 1996, paras. 90-96.

infringements.[477] These penalties take into account the nature, duration, and gravity of the infringement, as well as the Member State's capacity to pay.[478] The Commission may also request financial penalties for failing to notify measures transposing a legislative directive, without the need for an initial infringement procedure.[479]

Although submitting a complaint to the European Commission does not ensure that infringement proceedings will be initiated, and such proceedings often require systemic breaches of a State's obligations,[480] engaging with the Commission with a view to convincing the Commission to open infringement proceedings against a Member State may be a useful alternative avenue for civil society and other relevant actors. Indeed, a study on the Commission's enforcement of EU law has shown that active civil society engagement increases the likelihood of the Commission pursuing a Member State's compliance with EU law.[481] This is particularly the case where serious problems with compliance arise, making civil society engagement vital.[482]

From the perspective of strategic human rights litigation, infringement proceedings may be useful in several ways. First, the Commission may be willing to initiate infringement proceedings where national courts of last resort fail to refer preliminary questions to the CJEU, in breach of their obligations.[483] As this may amount to an infringement of Article 267 of the TFEU, failure to make mandatory preliminary references may be addressed through infringement proceedings.[484] Second, infringement proceedings can be used to challenge systemic breaches of EU law by Member States. Furthermore, in contrast to preliminary references, infringement proceedings may rely solely on the EU Charter as the legal basis for action.[485] Finally, in many cases, Article 4(3) of the TFEU, which establishes the principle of sincere cooperation, has been invoked in infringement proceedings.[486] This provision states: "Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties."[487]

[477] Articles 260(2), 260(3) and 279 TFEU.
[478] *Commission v. Greece*, CJEU, C-387/97 Judgment of 4 July 2000, paras. 85-92.
[479] EU Academy, "Different types of procedures at the CJEU and the general court – VIDEO", 2024 (accessed 26 July 2024).
[480] European Commission, Communication from the Commission, 'EU Law: Better Results through Better Application', 2017/C 18/02, 2017.
[481] Asya Zhelyazkova and Reini Schrama, "When Does the EU Commission Listen to Experts? Analysing the Effect of External Compliance Assessments on Supranational Enforcement in the EU", in *Journal of European Public Policy* (2023) 31 (9): 2663–91.
[482] Asya Zhelyazkova and Reini Schrama, "When Does the EU Commission Listen to Experts? Analysing the Effect of External Compliance Assessments on Supranational Enforcement in the EU", in *Journal of European Public Policy* (2023) 31 (9): 2663–91.
[483] See e.g. *Commission v. France*, CJEU, C-416/17, Judgment of 4 October 2018.
[484] See e.g. *Commission v. France*, CJEU, C-416/17, Judgment of 4 October 2018; *Commission v Spain,* CJEU, C-154/08, Judgment of 12 November 2009.
[485] See e.g. *Commission v. Hungary*, CJEU, C-66/18, Judgment of 6 October 2020, and contrast with *Commission v. Hungary*, CJEU, C-235/17, Judgment of 21 May 2019.
[486] See e.g. *Commission v. Slovenia*, CJEU, C-316/19, Judgment of 17 December 2020.
[487] Article 4(3) TFEU.

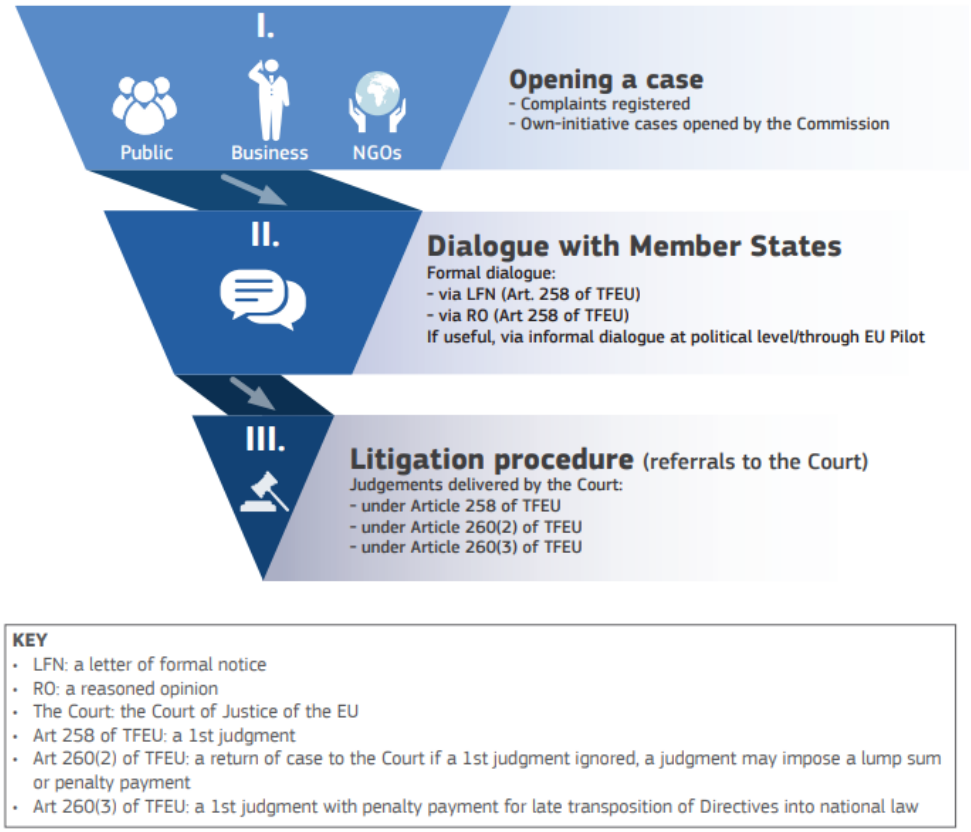

Figure 4. Stages of the EU infringement procedure in a nutshell[488]

c. *Direct actions before the CJEU*

The CJEU also hears direct actions, which may be used exclusively to challenge legally binding acts of EU institutions and bodies. Direct actions include actions for annulment of EU acts, actions for failure to act and actions for damages. However, the possibilities for individuals and legal persons to bring such actions are extremely limited.

For individuals to bring an action for annulment, the applicant must demonstrate that the contested act is either addressed to them or is of "direct and individual concern" to them; or that it is "a regulatory act which is of direct concern to them and does not entail implementing measures".[489] Establishing that an act is of "direct and individual concern" is particularly challenging, as the applicant must demonstrate that the act affects them "by reason of certain attributes that are peculiar to them or by reason of circumstances in which they are differentiated from all other persons, and by virtue of these factors distinguishes them individually just as in the case of the addressee".[490] If the CJEU finds an action for annulment well-founded, for instance due to its incompatibility with higher-ranking EU law, it declares the contested act null from the moment of its adoption.[491] Such an annulment has *erga omnes* effect, meaning that it is binding not only on the parties to the litigation but also on all EU institutions, national administrations, judiciaries, as well as all legal and natural persons.[492] Where it is not clear whether the requirements for standing

[488] European Commission, Stages of the EU infringement procedure in a nutshell, website (accessed 2 February 2026).
[489] Article 263(4) TFEU.
[490] *Plaumann & Co. v. Commission*, CJEU, C-25/62, Judgment of 15 July 1963.
[491] *Ex tunc* effect, see *Commission v. Council*, CJEU, C-22/70, Judgment of 31 March 1971.
[492] Koen Lenaerts, Ignace Maselis, Kathleen Gutman, EU Procedural Law, *Oxford University Press*, United Kingdom, 2014, pp. 414-415.

are fulfilled, it may be more strategic to bring the case before domestic courts and to request a preliminary ruling on the validity of the EU act in question.[493]

Actions for failure to act, when brought by individual applicants, concern failure "to address to that person any act other than a recommendation or an opinion".[494] To succeed, the applicant must demonstrate that there was a clear and precise legal obligation for the institution, body, or office concerned to act and that this obligation is enforceable by a court.[495] The action targets a failure to take a required decision or to define a position, rather than the adoption of a specific measure sought the applicant. The primary challenge for the applicant is proving that the obligation to act is sufficiently clear and precise to be enforced by a court.[496]

Finally, individuals and legal persons whose interests have been harmed as a result of action or inaction by the EU or its staff may bring actions for damages, seeking compensation for damage caused by EU institutions, bodies, offices, agencies, or their servants in the performance of their duties.[497] To succeed in an action for damages, the applicant must prove three elements: first**,** the unlawful conduct by the institutions or their servants; second**,** the existence of real and certain damage; and third, a causal link between the conduct and the damage claimed.[498] The most demanding requirement is establishing an illegal act, which entails demonstrating a sufficiently serious breach of EU law intended to protect individual rights.[499] This breach must show that the institution "manifestly and gravely" overstepped its discretionary limits.[500] The greater the discretion enjoyed by the institution, the more difficult it is to establish liability.

Jurisdiction over direct actions brought by individuals lies with to the CJEU General Court, with appeals on points of law possible before the CJEU.[501]

d. Third party interventions

Parties, Member States, the European Commission and, the entity that issued the disputed act may intervene after a national court has referred a **preliminary question** to the **CJEU**.[502] Therefore, third-party interveners involved in national proceedings may seek permission to intervene before the CJEU. Alternatively, informal interventions, such as annexing observations to formal submissions may help highlight key provisions of the EU Charter of Fundamental Rights.[503] Interveners with a demonstrable interest in the outcome of the case may also intervene in **direct actions** before the CJEU.[504] However, restrictions apply in disputes involving Member States or EU institutions.[505] It may therefore be

[493] See e.g. Civil Liberties Union of Europe, Relying on the EU Charter of Fundamental Rights for Human Rights Litigation: A Handbook for Civil Society Organisations and Rights Defenders, pp. 31-32.
[494] Article 265(3) TFEU.
[495] *Ryanair v. Commission*, CJEU, C-615/11 P, Judgment of 16 May 2013.
[496] EU Academy, "Different types of procedures at the CJEU and the general court – VIDEO", 2024 (accessed 26 July 2024).
[497] Article 268 TFEU.
[498] EU Academy, "Different types of procedures at the CJEU and the general court – VIDEO", 2024 (accessed 26 July 2024).
[499] Armin Cuyvers, "Judicial Protection under EU Law: Direct Actions", in East African Community Law: Institutional, Substantive and Comparative EU Aspects, Brill, 2017, p. 259.
[500] *Brasserie du Pêcheur SA v. Bundesrepublik Deutschland and The Queen v Secretary of State for Transport, ex parte: Factortame Ltd and others*, CJEU, Joint cases C-46 and 48/93, Judgment of 5 March 1996.
[501] European Parliament, Competences of the Court of Justice of the European Union, website (accessed 25 November 2024).
[502] Article 23 Statute of the CJEU. See e.g. *The Queen, on the application of: MA, BT, DA v. Secretary of State for the Home Department*, CJEU, C-648/11, Judgment of 6 June 2013..
[503] Civil Liberties Union for Europe, *Relying on the EU Charter of Fundamental Rights for Human Rights Litigation: A Handbook for Civil Society Organisations and Rights Defenders*, pp. 32-34.
[504] Article 40 Statute of the CJEU.
[505]Articles 142-145 CJEU Rules of Procedure of the General Court; Articles 142-145 and Articles 129-132 CJEU Rules of Procedure of the Court of Justice.

strategic to draw the case to the attention of an EU institution or a Member State, requesting intervention in accordance with the procedural rules of the CJEU.[506]

2.2.2. European Commission

The European Commission is responsible for enforcing and ensuring the correct application of EU law.[507] It monitors compliance with EU law, relying in part on reports from businesses and civil society to identify potential violations by Member States.[508]

Complaints to the European Commission regarding breaches of EU law may be submitted by individuals and organizations where a Member State has legal obligations that are not fulfilled, where the country's laws, regulations, or actions (or omissions) are inconsistent with EU requirements, and where supporting evidence can be provided.[509] Filing a complaint serves as a means of prompting the Commission to act and exert pressure on national authorities through an infringement procedure.[510] The primary objective of an infringement procedure is not to resolve individual cases but to ensure that the Member State complies with EU law.[511] Anyone may file a complaint with the Commission free of charge.[512] Complainants do not require to demonstrate a formal interest in the case or prove that they are directly affected by the infringement.[513] Complaints must be submitted in writing, and can be written in any of the official languages of the EU.[514] To facilitate the process, the Commission provides a standard complaint form. In addition to complaints, the Commission may receive information about potential infringements from various sources, including petitions to the European Parliament Committee on Petitions and complaints to the European Ombudsman.[515]

After submitting a complaint, the complainant receives confirmation of receipt within 15 working days.[516] The Commission assesses the complaint and aims to decide within 12 months whether to initiate a formal infringement procedure against the Member State concerned.[517] Even where a breach of EU law is identified, the Commission may decide not to open infringement proceedings.[518] Where it does initiate a procedure, the Commission often begins by engaging in informal dialogue with the State before moving to the formal stage notifying the State and engaging in an exchange of letters, allowing the Member

[506] Civil Liberties Union for Europe, Relying on the EU Charter of Fundamental Rights for Human Rights Litigation: A Handbook for Civil Society Organisations and Rights Defenders, pp. 32-34.
[507] Article 17(1) TEU.
[508] European Commission, Communication from the Commission, 'EU Law: Better Results through Better Application', 2017/C 18/02, 2017, p. 2.
[509] European Commission. Report a breach of EU law by an EU country, website (accessed 19 May 2025).
[510] Olivier De Schutter, *Infringement proceedings as a tool for the enforcement of fundamental rights in the European Union*, Open Society Foundations, 2017, pp. 16-17.
[511] CEE Bankwatch Network, Citizens' guide to European complaint mechanisms, 2006, p. 18 (accessed 9 August 2024); European Commission. Report a breach of EU law by an EU country, website (accessed 19 May 2025).
[512] Communication from the Commission to the Council and the European Parliament, Updating the handling of relations with the complainant in respect of the application of Union law, COM(2012) 154 final, 2 April 2012, para. 2.
[513] Commission communication to the European Parliament and the European ombudsman on relations with the complainant in respect of infringements of community law COM/2002/0141 final, Annex para. 2.
[514] Communication from the Commission to the Council and the European Parliament, Updating the handling of relations with the complainant in respect of the application of Union law, COM(2012) 154 final, 2 April 2012, para. 5.
[515] Olivier De Schutter, *Infringement proceedings as a tool for the enforcement of fundamental rights in the European Union*, Open Society Foundations, 2017, p. 11.
[516]Communication from the Commission to the Council and the European Parliament, Updating the handling of relations with the complainant in respect of the application of Union law, COM(2012) 154 final, 2 April 2012, para. 4.
[517] European Commission, Report a breach of EU law by an EU country, website (accessed 19 May 2025).
[518] Communication from the Commission to the Council and the European Parliament, Updating the handling of relations with the complainant in respect of the application of Union law, COM(2012) 154 final, 2 April 2012, Introduction. See e.g. *Commission v. Greece*, CJEU, C-329/88, Judgment of 6 December 1989; Commission v. Greece, CJEU, C-200/88.

State an opportunity to rectify the situation before escalation.[519] The Commission informs complainants in writing about each step taken in response to their complaint.[520] Where multiple complaints are filed on the same issue, individual responses may be replaced by a notice in the Official Journal or on the Europa website.[521] The identity of the complainant remains confidential unless express permission for disclosure is granted.[522] If the Member State fails to comply during the infringement procedure, the Commission may take the case to the CJEU.[523]

According to the Commission, particular priority is given to infringements that expose systemic weaknesses, undermine the functioning of the EU's institutional framework, or limit national courts' ability to uphold the primacy of EU law. [524] The Commission also prioritises cases where national laws fail to provide effective remedies for breaches of EU law or hinder judicial systems from ensuring compliance with the rule of law, as required by Article 47 of the EU Charter.[525] Cases of persistent failure by a Member State to apply EU law correctly are also given priority.[526]

2.2.3. European Parliament

a. Committees of inquiry

The European Parliament has the authority to establish temporary committees of inquiry to investigate "alleged contraventions or maladministration in implementation of Union law".[527] While not constituting litigation *per se*, inquiries are avenues that may be pursued in connection with, or in support of, strategic litigation. These inquiries can be directed at actions taken by EU institutions or bodies, public administrative authorities of Member States, or individuals authorized under EU law to enforce it.[528] A "contravention" refers to a violation of EU law, while "maladministration" encompasses a range of situations, such as administrative irregularities, omissions, abuse of power, unfairness, malfunction or incompetence, discrimination, avoidable delays, refusal to provide information, and negligence.[529] While these temporary committees of inquiry do not provide a direct legal remedy in individual cases, they may serve as a powerful tool to highlight systemic issues and prompt institutional reforms or accountability.

Committees of inquiry are formed at the request of at least one-quarter of the members of the European Parliament.[530] They may not investigate matters that are already the subject of proceedings before a national or EU court until the legal case has concluded.[531] A committee of inquiry has the right to request documents, expert reports, and witness testimony, conduct fact-finding missions within Member States, and request cooperation

[519] Olivier De Schutter, *Infringement proceedings as a tool for the enforcement of fundamental rights in the European Union*, Open Society Foundations, 2017, pp. 16-17.
[520] Commission communication to the European Parliament and the European ombudsman on relations with the complainant in respect of infringements of community law COM/2002/0141 final, Annex para. 7.
[521] Commission communication to the European Parliament and the European ombudsman on relations with the complainant in respect of infringements of community law COM/2002/0141 final, Annex para. 7.
[522] European Commission. How to make a complaint at EU level, website (accessed 9 August 2024).
[523] European Commission, Infringement procedure, website (accessed 19 May 2025). See above Section 2.2.1.b. on Infringement Proceedings.
[524] European Commission, Communication from the Commission, 'EU Law: Better Results through Better Application', 2017/C 18/02, 2017, p. 8
[525] European Commission, Communication from the Commission, 'EU Law: Better Results through Better Application', 2017/C 18/02, 2017, p. 5.
[526] European Commission, Communication from the Commission, 'EU Law: Better Results through Better Application', 2017/C 18/02, 2017, p. 6.
[527] Article 226 TFEU; European Parliament, *Committees: Introduction*, website (accessed 23 September 2024).
[528] Rule 215 European Parliament Rules of Procedure, para. 1.
[529] European Parliament, *Examples of Parliament's impact: 2019 to 2024*, 2024, p. 8.
[530] Rule 215 European Parliament Rules of Procedure, para. 1.
[531] Decision 95/167/EC on the detailed provisions governing the exercise of the European Parliament's right of inquiry, 19 April 1995, Article 2(3).

from national authorities and parliaments.[532] The committee's work must be completed within 12 months of its constitutive meeting, although the European Parliament may extend this period.[533] At the end of the inquiry, the committee submits a report on its findings to the European Parliament, which is made publicly available.[534] The report may be debated in the European Parliament and may include recommendations.[535] The President of the European Parliament monitors whether the relevant institutions or bodies implement those recommendations . [536]

Since 1993, only seven committees of inquiry have been established by the European Parliament, including two during the 2019-2024 parliamentary term: one on animal transport (ANIT) and another on the use of Pegasus spyware (PEGA). In response to the PEGA committee's conclusion on violation of EU laws, European Parliament recommended stronger safeguards, stricter oversight, and new laws on spyware use. Although PEGA's mandate ended in June 2023, the Parliament committed to continue scrutiny of these concerns through other parliamentary mechanisms.[537]

b. The Committee on Petitions (PETI)

Every EU citizen, resident, company, organization, and association based in the EU, either individually or jointly, has the right to petition the European Parliament.[538] While not constituting litigation *per se*, petitions are avenues that may be pursued in connection with, or in support of, strategic litigation. A petition may take the form of a complaint, request, or observation regarding the application of EU law, or an appeal for the Parliament to take a position on a specific issue.[539] It enables the Parliament to highlight infringements of citizens' rights by Member States, local authorities, or institutions that directly affect the petitioner.[540] The petition must be written in an official EU language, clearly presented, and free from offensive language, and must include the petitioner's name, nationality, permanent address, and signature.[541] Similar petitions may be handled together.[542] Once registered, petitions become public documents with no confidentiality regarding the identity of the petitioner.[543]

The Committee on Petitions (PETI) may handle petitions in several ways: it may ask the European Commission to investigate compliance with EU law, refer the petition to other parliamentary committees or EU institutions for further action, or request information from national authorities.[544] In exceptional cases, the Committee may prepare reports, submit resolutions to the European Parliament, conduct fact-finding visits, or invite the petitioner to participate in a meeting.[545] A petition is closed if the petitioner fails to respond or once the Committee determines that it has been sufficiently addressed.[546] This may occur after a remedy or relevant information has been provided, or where no further action can be taken. In all cases, the petitioner is informed in writing of the decision and its reasons.[547]

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[532] Rule 215 European Parliament Rules of Procedure, para. 10.
[533] Rule 215 European Parliament Rules of Procedure, para. 11.
[534] Rule 215 European Parliament Rules of Procedure, para. 11.
[535] Rule 215 European Parliament Rules of Procedure, paras. 11-12.
[536] Rule 215 Rules of Procedure of the European Parliament, 10th parliamentary term, July 2024, paras. 12-13.
[537] European Parliament, *Examples of Parliament's impact: 2019 to 2024*, 2024, pp. 8, 14-15
[538] Article 227 TFEU; Article 44 EU Charter; Rule 232 European Parliament Rules of Procedure, para. 1; European Parliament, Petitions, website (accessed 24 September 2024).
[539] Petitions European Parliament, *Eligibility and requirements*, website (accessed 19 May 2025).
[540] Petitions European Parliament, *Eligibility and requirements*, website(accessed 19 May 2025).
[541] Rule 232 European Parliament Rules of Procedure, para. 6; Petitions European Parliament, Eligibility and requirements, website (accessed 19 May 2025).
[542] Rule 226 European Parliament Rules of Procedure, paras. 2, 6, 8.
[543] Rule 226 European Parliament Rules of Procedure, para. 12.
[544] Rule 233 European Parliament Rules of Procedure.
[545] Rules 233 and 234 European Parliament Rules of Procedure; Petitions European Parliament. *Treatment and follow-up*, website (accessed 20 May 2025).
[546] Petitions European Parliament. *Treatment and follow-up*, website (accessed 20 May 2025).
[547] Rules 232 and 233 European Parliament Rules of Procedure.

If new evidence arises capable of causing the case to be reconsidered, it may be submitted for possible reconsideration by the Committee.[548]

In cases concerning the detention of migrant children, the PETI may be relevant.[549] Although the Committee on Petitions does not have the authority to enforce legislation, it may serve as a mechanism to draw public and political attention to specific issues and to raise awareness about the shortcomings in existing policies and laws.[550] Once a resolution has been presented, it is good practice to engage with Members of the European Parliament (MEPs) to clarify the issue and encourage support.[551] In order to increase visibility, complainants may also encourage others to formally support their petition via the Petitions Online Portal. While this does not directly affect the outcome of the complaint, it can be a useful mechanism to show support for the issue at hand.[552]

Example: A petition was submitted against Denmark concerning the precarious detention conditions of children at the Sjælsmark centre for rejected asylum seekers. The petitioner argued that the conditions at the centre violated the principle of the best interests of the child and posed a serious threat to the mental and physical well-being of children. The PETI declared the petition admissible, albeit it found that the petitioner had not provided evidence of significant structural shortcomings in the application of existing regulations. Moreover, the Danish authorities had announced measures to address these concerns, which, once implemented, were expected to resolve the issues raised by the petitioner.[553]

2.2.4. European Ombudsman

Procedures before the European Ombudsman, while not constituting litigation *per se*, are avenues that may be pursued in connection with, or in support of, strategic litigation. The European Ombudsman investigates complaints concerning maladministration within EU institutions, bodies, offices, or agencies, with the exception of the Court of Justice of the European Union in its judicial role.[554] The Ombudsman may also initiate inquiries on its own initiative.[555] Maladministration occurs where an institution fails to uphold "fundamental rights", legal rules or principles, or the principles of good administration.[556] This may include administrative irregularities, unfair treatment, discrimination, or abuse of power, particularly in areas such as the management of EU funds, procurement, or recruitment policies.[557] Additionally, it encompasses failures to respond to requests or unjustified delays in granting access to information of public interest.[558]

Submitting a complaint does not require the complainant to be directly affected by the alleged maladministration.[559] Any citizen of an EU Member State or resident may lodge a complaint, as may businesses, associations, or other entities with a registered office in the

[548] Petitions European Parliament. *Treatment and follow-up*, website (accessed 24 September 2024).
[549] See e.g. European Parliament resolution of 28 April 2016 on safeguarding the best interests of the child across the EU on the basis of petitions addressed to the European Parliament, 2016/2575(RSP); European Parliament's Committee on Petitions, Report under Rule 216 (7) on the deliberations of the Committee on Petitions during the year 2016, A8-0387/2017, 2017.
[550] Deliberations of the Committee on Petitions in 2021, European Parliament resolution of 15 December 2022 on the outcome of the Committee on Petitions' deliberations during 2021, 2022/2024(INI), para. S.
[551] Rules 233 European Parliament Rules of Procedure.
[552] European Disability Forum, How can the European Parliament enforce your rights?, website (accessed 20 November 2024).
[553] Petition No 0635/2019 by W. A. (Occupied Palestinian Territory) on poor detention conditions of children at Sjælsmark Centre in Denmark (accessed 24 September 2024).
[554] Article 228(1) TFEU.
[555] Article 228(1) TFEU.
[556] Rules 238 European Parliament Rules of Procedure; European Union, *The European Ombudsman's guide to complaints*, 2011, p. 7.
[557] European Union, European Ombudsman, website (accessed 20 May 2025).
[558] European Ombudsman, Make a complaint to the European Ombudsman, website (accessed 16 September 2024).
[559] CEE Bankwatch Network, Citizens' guide to European complaint mechanisms, 2006, p. 10.

EU.[560] It is, however, necessary to first attempt to resolve the issue directly with the relevant EU institution or body.[561] If those efforts fail, a complaint may be filed within two years of the complainant becoming aware of the issue.[562]

Approximately half of the Ombudsman's inquiries reveal that the institution acted correctly, with no maladministration found.[563] In many cases, the institution settles the issue during the inquiry by means of a friendly solution.[564] If maladministration is found, the Ombudsman refers the matter to the relevant EU institution, which has three months to respond.[565] Where conciliation fails, the Ombudsman may issue recommendations, and if those are not accepted, a special report may be submitted to the European Parliament.[566] The Ombudsman's decisions are not legally binding but compliance with its findings remains consistently high.[567]

Although the European Ombudsman's mandate covers alleged breaches of the rule of law and human rights by EU institutions, it has historically received relatively few complaints alleging violations of human rights. According to a former European Ombudsman this is because EU institutions do not themselves exercise coercive powers over individuals.[568] Nevertheless, the Ombudsman's case law database contains hundreds of complaints concerning human rights, including child rights issues.[569] Recent examples of human rights related inquiries include the Ombudsman's criticism of the Commission's failure to inform the public how it assessed human rights risks in a migration agreement between the EU and Tunisia.[570] Other notable cases include inquiries into how the Commission ensures respect for human rights in EU-funded "detention-like" migration management facilities in Greece,[571] the conduct of experts in interviews with asylum seekers organised by the European Asylum Support Office,[572] and the handling of complaints concerning alleged human rights breaches by the European Border and Coast Guard Agency (Frontex) through its Complaints Mechanism.[573]

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[560] Article 228(1) TFEU.
[561] Article 2(3) Regulation 2021/1163 of the European Parliament of 24 June 2021 laying down the regulations and general conditions governing the performance of the Ombudsman's duties (Statute of the European Ombudsman) and repealing Decision 94/262/ECSC.
[562] European Ombudsman, *Make a complaint to the European Ombudsman*, website (Accessed 16 September 2024).
[563] European Union, *The European Ombudsman's guide to complaints*, 2011, p. 8.
[564] European Union, *The European Ombudsman's guide to complaints*, 2011, p. 8.
[565] Article 228(1) TFEU.
[566] Article 4 Regulation 2021/1163 of the European Parliament of 24 June 2021 laying down the regulations and general conditions governing the performance of the Ombudsman's duties (Statute of the European Ombudsman) and repealing Decision 94/262/ECSC.
[567] European Union, *The European Ombudsman's guide to complaints*, 2011, p. 8.
[568] Paraskevas Nikiforos Diamandouros, The Ombudsmen as human rights protection mechanisms, speech, 7 May 2010.
[569] See European Ombudsman, Search results for: Fundamental rights, website (accessed 20 November 2024).
[570] In October 2024, an EU Ombudsman investigation found that the European Commission had in fact carried out a "risk management exercise" for Tunisia before the MoU was signed, including "the state of human rights, democracy, the rule of law, security and conflict" in the country and criticized the Commission for its failure to make the findings of the risk management exercise public. See ICJ, The Price of Complicity: Tunisia-EU Partnership Agreement fuels egregious human rights abuses against refugees, asylum-seekers and migrants, December 2024. See also European Ombudsman, Case OI/2/2024/MHZ: Ombudsman criticises Commission failure to inform public how it assessed human rights risks in EU-Tunisia agreement, 23 October 2024; European Ombudsman, Case OI/2/2024/MHZ: How the European Commission intends to guarantee respect for human rights in the context of the EU-Tunisia Memorandum of Understanding, 21 October 2024.
[571] European Ombudsman, Case OI/3/2022/MHZ: Decision in strategic inquiry OI/3/2022/MHZ on how the European Commission ensures respect for fundamental rights in EU-funded migration management facilities in Greece, 7 June 2023.
[572] European Ombudsman, Case 1139/2018/MDC: European Asylum Support Office (EASO) accepts Ombudsman's suggestions on how it reacts to problems concerning interviews with asylum seekers, decision of 30 September 2019.
[573] European Ombudsman, Case OI/5/2020/MHZ: Decision in OI/5/2020/MHZ on the functioning of the European Border and Coast Guard Agency's (Frontex) complaints mechanism for alleged breaches of fundamental rights and the role of the Fundamental Rights Officer, 15 June 2021. Further on the Frontex complaint mechanism, see also the following Section 2.2.5. of this Guide.

Although the European Ombudsman cannot serve as a direct forum for challenging migration detention, which is carried out by Member States, it may be a relevant mechanism for CSOs, for instance, in connection with the implementation of the EU Migration and Asylum Pact.[574]

2.2.5. Frontex individual complaint mechanism

A central player in 'migration management' in the EU is the European Border and Coast Guard Agency (Frontex), which supports Member States in border and migration management.[575] Frontex mechanisms, while not constituting litigation *per se*, are avenues that may be pursued in connection with, or in support of, strategic litigation.

Since its founding, Frontex has faced criticism over various issues, including alleged human rights violations, such as involvement in pushbacks at the EU's external borders.[576] This has led to increased focus, at least formally, on fundamental rights protection in the agency's operations.[577] It is therefore important that the agency today has an internal, albeit not always effective, accountability system, centred around the Frontex Fundamental Rights Officer (FRO) and the FRO's office.[578] The FRO is responsible for assessing the fundamental rights compliance of the agency's activities, providing advice and assistance and contributing to the promotion of fundamental rights.[579]

Another accountability mechanism is the Frontex Individual Complaints Mechanism (ICM).[580] A complaint may be submitted free of charge to Frontex by an individual or a person acting on their behalf if they believe that a Frontex staff member's actions or omissions directly violated their human rights during a Frontex operation.[581] Complaints must be submitted in writing, either through the Frontex complaint form or by email or letter, and should describe how and where the alleged violations occurred.[582] Only complaints that allege concrete violations of fundamental rights and are sufficiently substantiated are deemed admissible.[583] Complaints must be submitted within one year of the alleged violation.[584] There is no requirement to exhaust national remedies, and filing a complaint does not preclude the use of other legal actions.[585]

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[574] The EU Pact on Migration and Asylum is a set of legislative texts which were approved by the EU Parliament on 10 April 2024 and adopted by the Council on 14 May 2024. While the final texts entered into force on 11 June 2024, full implementation of the EU Pact will commence on 12 June 2026 (apart from the EU Resettlement Framework Regulation). See further ICJ, EU: Unaccompanied children must not be placed in asylum border procedures, 1 December 2025, website (accessed 27 January 2026).
[575] Article 1 Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624.
[576] See e.g. Human Rights Watch, Frontex Failing to Protect People at EU Borders: Stronger Safeguards Vital as Border Agency Expands, 23 June 2021.
[577] See e.g. Constantin Hruschka, 'Frontex and the Duty to Respect and Protect Human Rights', *Verfassungsblog*, 7 February 2020.
[578] Articles 109 and 110 Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624.
[579] See further Frontex, Fundamental rights at Frontex, website (accessed 22 November 2024).
[580] Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC.
[581] Article 111(2) Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624.
[582] Frontex, *Your right to complain to Frontex*, 2023, p. 3.
[583] Article 111(3) Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624.
[584] Article 5(3)(f)-(g) Frontex Management board decision 19/2022 of 16 March 2022 adopting the Agency's rules on the complaints mechanism .
[585] Article 3(2) Frontex, Management board decision 19/2022 of 16 March 2022 adopting the Agency's rules on the complaints mechanism.

The FRO handles complaints in line with the right to good administration.[586] Additional information or documentation may be requested during the review process.[587] Complaints are treated confidentially unless the complainant expressly waives confidentiality.[588] Where a complaint is admissible, the complainant is informed of the next steps, including expected timelines.[589] Where a complaint is found inadmissible, the complainant is provided with a reasoned decision and information on possible alternative avenues to address their concerns.[590] The FRO may reconsider inadmissible complaints if new evidence is provided.[591] Where a complaint concerns actions by team members from a participating Member State, it is referred to the relevant national authorities for investigation, and the complainant is provided with the contact details of the authorities that received the case.[592] For complaints concerning Frontex staff, the Executive Director is responsible for ensuring appropriate follow-up and must report to the FRO.[593] The time required to process a complaint may vary depending on the specifics of the case.[594]

An overview of complaints and their handling is provided in the FRO's annual report.[595] Overall, a relatively small number of complaints have been submitted since the mechanism's establishment, and only a small number of these have been declared admissible.[596] Complaints are often found inadmissible where no Frontex operational activity was involved or where no human rights issues were identified.[597] The individual complaint mechanism has been criticized, among other things, for lack of independence, its unduly narrow scope, and the fact that follow-up on complaints remains within the discretion of the Executive Director, without sufficient regulation regarding consequences or timelines.[598] Although the complaint mechanism has significant limitations, and while Frontex does not generally carry out immigration detention, it cannot be excluded that, in certain specific situations, it may constitute a useful additional and early mechanism in cases of violations of the rights of child migrants and refugees. In any event, submitting a complaint does not preclude the use of other available mechanisms and tools.

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[586] Article 111(4) Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624.
[587] Article 111(4) Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 .
[588] Frontex, Management board decision 19/2022 of 16 March 2022 adopting the Agency's rules on the complaints mechanism, Article 20(2).
[589] Article 111(5) Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624.
[590] Article 111(5) Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624.
[591] Article 111(5) Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624.
[592] Article 111(5) and (7) Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624.
[593] Article 111(6) Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624.
[594] Frontex, *Your right to complain to Frontex*, 2023, p. 5.
[595] Article 111(9) Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624.
[596] In 2023, only four out of 64 complaints were found admissible, with ten others still pending. See ECRE, Holding Frontex to account: ECRE's proposals for strengthening non-judicial mechanisms for scrutiny of Frontex, p. 13; Frontex, 2023: Annual Report of the Fundamental Rights Officer of Frontex, 2024 p. 28-30.
[597] Frontex, 2023: Annual Report of the Fundamental Rights Officer of Frontex, 2024 p. 29.
[598] ECRE, Holding Frontex to account: ECRE's proposals for strengthening non-judicial mechanisms for scrutiny of Frontex, p.14.

3. Follow-up and advocacy work

Strategic litigation does not end with a court decision. Whether a case is successful or not, follow-up work is essential to increase the prospects of meaningful and lasting impact. Litigation may help draw attention to human rights violations and prompt legal or policy reform, but it rarely achieves these outcomes on its own. Implementation of decisions, political will, and broader public awareness play a decisive role.

This section describes how follow-up, advocacy, and communication efforts may support strategic litigation in achieving its goals. It also explores how litigation can be one part of a wider strategy to challenge structural issues, and how cooperation between lawyers, civil society organizations, and other actors can strengthen the impact of legal efforts.

Litigation will often achieve some of its objectives, while failing to meet others. This is why identifying objectives from the outset is essential to prevent unrealistic expectations.[599] It may be ambitious and aspirational and can often accomplish more than advocates anticipate. However, it must also be approached with a pragmatic outlook that recognizes the limitations of litigation as a tool for change. Litigation alone can only achieve so much, and many of the factors that influence its impact lie beyond the control of litigators and advocates. This speaks to paying attention to how litigation affects broader political and social trends. Litigation must not be conducted in isolation or treated as superior to other forms of advocacy and activism, but may constitute one element of a broader strategy for change, distinct from but complementary to other tools, such as grassroots organizing, lobbying, coalition-building, and public awareness campaigns. Litigation should be understood significant yet limited component of a broader effort to address entrenched human rights problems, rather than as a substitute for other strategies.

The capacity of strategic litigation in bringing about broader and longer-term change rests to a large part on the surrounding and subsequent activities supporting the litigation and its objectives, including advocacy, communication and follow-up. Effective communication and widespread mobilization before, during, and after legal proceedings help foster a broader movement for change. Litigation is far more likely to achieve its intended impact, when complemented by such "litigation +" efforts. Where litigation is led by lawyers, they should seek to build alliances and cooperation with other relevant actors experienced in advocacy and communications, such as CSOs or other relevant stakeholders. Building alliances and cooperation at an early stage can have a decisive impact not only on the case itself, but also on wider litigation and policy efforts beyond the specific case at hand.

This cooperation creates opportunities to move from individual complaints towards collective action, shifting the focus from a single claim to addressing broader systemic issues.[600] This approach may reduce the burden placed on individual applicants, while opening the door to pursuing systemic solutions. Additionally, it facilitates the inclusion of third-party support in litigation,[601] which can strengthen the case and amplify its impact.

3.1. Communication and advocacy

Advocacy efforts can take many forms, including direct engagement with policy makers at both national and EU levels. Campaigns aimed at raising public awareness about policy issues also play a key role, employing approaches such as open letters, email or social media campaigns, and organizing events including roundtables and discussions. Press releases are also commonly used to share information and draw attention to specific topics.

[599] ICJ, Human Rights in Practice, *Justice Under Pressure: Strategic Litigation of Judicial Independence in Europe*, January 2025, p. 60.
[600] ICJ, Human Rights in Practice, *Justice Under Pressure: Strategic Litigation of Judicial Independence in Europe*, January 2025, p. 60.
[601] See Section 2.1.1.d.

Networking among lawyers across EU Member States enables the exchange of experiences, practical tips, and strategic insights for litigation. Cooperation fosters international advocacy, strengthening legal collaboration and cross-border solidarity.[602]

However, when communicating with the public or other non-expert audiences, CSOs often adopt approaches that research has shown to be ineffective in changing opinions. For instance, presenting statistics on unequal outcomes in areas such as education, housing, and health may fail to persuade those who are sceptical about the existence of structural discrimination. To influence public opinion effectively, a strategic approach is required. The following steps that can be effective in persuading the public have been outlined:[603]

1. **Show your audience why they should care:** This is done by connecting the issue directly to something tangible in their own lives. For instance, the rule of law is needed to make sure that politicians play by the rules and fund services people need.
2. **Explain the 'who', 'why' and 'what' of the problem:** Explaining the context of the issue, and who you are opposing and why, is important to allow the public to feel empathy and align their understanding of the issue with that of the applicant, litigator, or CSO in question.
3. **Show that there is a solution to the problem** but do not set it out in policy terms when communicating with a non-expert audience – focus on how the solution allows you to overcome the problem.
4. Where feasible and relevant, **include a call to action and a reminder of past successes**. This is important to motivate action and to overcome cynicism and fatalism among the target audience.

3.2. Follow-up and implementation of judgments and decisions

Winning a case or resolving it through a friendly settlement, is only the first step towards achieving the broader social or policy change that strategic litigation seeks to bring about. Enforcing judgments and decisions has historically been one of the most significant challenges in strategic litigation, particularly where rulings have been issued by international courts or mechanisms, which often lack strong enforcement powers. Politically sensitive areas, such as migration and the treatment of migrants in Europe today, may present particular enforcement challenges. In many situations, a lack of political will on the part of the responsible authorities is a key obstacle, particularly where implementation would require substantial legal and policy reforms. As opposed to decisions only redressing individual cases, decisions that mandate and ensure systemic changes, such as those addressing unlawful detention practices, access to asylum procedures, or violations of *non-refoulement* obligations, are often the most difficult to enforce, as they may conflict with entrenched State policies or political interests. Follow-up work is therefore crucial to maximize the prospects of implementation, and to raise awareness where this is not done.

Ensuring effective remedies is a critical aspect of implementation. Courts and Treaty Bodies may issue declaratory decisions, leaving States significant discretion in determining compliance measures. Where possible, lawyers should explicitly request concrete and enforceable remedies consistent with international human rights law and standards.[604]

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[602] ICJ, Human Rights in Practice, *Justice Under Pressure: Strategic Litigation of Judicial Independence in Europe*, January 2025, p. 71.

[603] See further and more detailed examples in Civil Liberties Union for Europe, *Relying on the EU Charter of Fundamental Rights for Human Rights Litigation: A Handbook for Civil Society Organisations and Rights Defenders*, pp. 38-42.

[604] UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Resolution 60/147, adopted 16 December 2005, paras. 1-3; HRC, General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, 29 March 2004.

These could include restitution measures, such as reopening asylum procedures for wrongly rejected applicants or releasing individuals unlawfully detained. Additionally, guarantees of non-repetition may require legislative or policy changes, such as repealing restrictive migration laws that contravene human rights standards.

At EU level, advocacy may be directed towards the European Commission through both formal complaints and informal advocacy. The Commission can engage in dialogue with Member States to encourage them to implement judgments. It also oversees the implementation of the CJEU's rulings and has the power to fine Member States for refusing to abide by such judgments.[605] The Commission can also freeze and withhold critical budgetary contributions from Member States on the basis of non-implementation of judgments,[606] which can serve as a powerful enforcement mechanism.

International mechanisms, such as the HRC or the CEDAW Committee, oversee the implementation of their respective conventions. These bodies may issue recommendations or concluding observations that place political pressure on non-compliant States. Certain treaty-based mechanisms allow for the adoption of formal measures, and State periodic reporting procedures before UN Treaty Bodies provide follow-up opportunities on individual communications during implementation.[607] For the ICESCR, CRC, CRPD, CED and CEDAW Committees, States parties are required within six months of the transmission of a decision or friendly settlement on an individual communication, or by a specified date, to submit a written response, including information on any action taken.[608] The Committee may invite the State party to submit further information if needed.[609] All information received by the Committee shall be transmitted to the author of the communication, who may reply.[610] Before all UN Treay Bodies, the relevant Committee, working group and/or rapporteur on communications, may make contacts, take action, and/or make recommendations with a view to ensuring that the States parties give effect to decisions, recommendations or friendly settlements.[611]

The ECtHR, monitors the execution of its judgments through the Committee of Ministers of the Council of Europe. Committee of Ministers may adopt interim resolutions, exert political pressure, and in exceptional circumstances initiate infringement proceedings.[612] Where execution is unsatisfactory supervision may be increased through more frequent reviews, demanding updated action plans, and inviting State representatives to respond publicly.[613] Under the Rule 9, the Committee of Ministers may receive communication from NGOs and national human rights institutions concerning the execution of ECtHR

[605] See Section 2.2.2.
[606] Under the Conditionality Regulation (Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget), which links the disbursement of EU funds to respect for the rule of law.
[607] See OHCHR, Reporting procedure Human Rights Committee, Reporting guidelines Committee on the Elimination of Discrimination against Women, Reporting guidelines Committee against Torture, Reporting guidelines Committee on the Rights of the Child, Reporting guidelines Committee on the Elimination of Racial Discrimination, Reporting guidelines Committee on the Rights of Persons with Disabilities, Reporting guidelines Committee on Economic, Social and Cultural Rights, Reporting guidelines Committee on Enforced Disappearances, websites (accessed 27 January 2026).
[608] Rules 21(1) OP ICESCR Rules of Procedure; Rules 28(1) OP3 CRC Rules of Procedure; Rule 76(1) CRPC Rules of Procedure; Rule 81(1) CED Rules of Procedure; Rule 73(1) CEDAW Rules of Procedure.
[609] Rules 21(2) OP ICESCR Rules of Procedure; Rules 28(2) OP3 CRC Rules of Procedure; Rule 76(2) CRPC Rules of Procedure; Rule 81(2) CED Rules of Procedure; Rule 73(2) CEDAW Rules of Procedure.
[610] Rules 21(3) OP ICESCR Rules of Procedure; Rules 28(3) OP3 CRC Rules of Procedure; Rule 76(3) CRPC Rules of Procedure; Rule 81(3) CED Rules of Procedure.
[611] Rules 21 OP ICESCR Rules of Procedure; Rules 28 OP3 CRC Rules of Procedure; Rule 106 HRC Rules of Procedure; Rule 76 CRPC Rules of Procedure; Rule 81 CED Rules of Procedure; Rule 115 CERD Rules of Procedure; Rule 120 CAT Rules of Procedure; Rule 73 CEDAW Rules of Procedure.
[612] Article 46 ECHR.
[613] Rules 6-9 Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements; see Committee of Ministers, iGuide to procedures and working methods of the Committee of Ministers, 1 September 2024.

judgments.[614] It may consider similar communication from applicants; international intergovernmental human rights organizations, bodies entitled to intervene before the Court.[615] Engaging in the Rule 9 procedure allows civil society organizations and legal practitioners to draw attention to non-compliance and urge more effective execution measures.[616]

An NGO network dedicated to monitoring the execution of ECtHR judgments facilitates collective action and strategic follow-up aimed at holding States accountable.[617] In more complex cases, the Committee of Ministers may adopt interim resolutions expressing concern or criticism, and may escalate to infringement proceedings.[618] The Committee of Ministers may in rare instances refer a case back to the ECtHR to determine whether a State has failed to comply with a judgment.[619] States may also face political and reputational consequences, including damage to their standing or, in exceptional cases, restrictions on participation in international bodies.[620]

Since 2023, the reform of the ESC system has introduced a new periodic reporting cycle.[621] States that have not accepted the collective complaints procedure now report every two years on one of two groups of Charter provisions, ensuring full coverage every four years. States that have accepted the complaints procedure report on one group every four years, covering all accepted provisions over an eight-year cycle.[622] To enhance focus, "targeted questions" are prepared by the ECSR and the Governmental Committee. In cases where the Committee of Ministers issues recommendations following ECSR findings of non-compliance in collective complaints, States must submit a single follow-up report two years later. The ECSR's assessment of this report is forwarded to the Committee of Ministers, which may then close the case, renew the recommendation, or refer it back to the Governmental Committee. The reform also allows for *ad hoc* reports on urgent or broad issues.

Find the reporting table on the Council of Europe website and visit the country profiles web page for more information.

Finally, mechanisms such as the Universal Periodic Review (UPR) allow States and civil society to draw attention to non-compliance during periodic reviews of a country's human rights record.[623] For example, failure to implement ECtHR judgments may be raised in UPR submissions, prompting other States to express concerns and encourage compliance. Use of these mechanisms can increase political and legal pressure on States to meet their international obligations.

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[614] Rule 9(2) Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements. See Article 46(2) ECHR.
[615] Rule 9(1), (3) and (4) Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements. See Article 46(2) ECHR.
[616] For an overview of the Rule 9 Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, see CoE, Department for the Execution of Judgments of the European Court of Human Rights, "Communications by NHRIs/CSOs", website (accessed 18 February 2025).
[617] The European Implementation Network (EIN) assists NGOs and others to engage in effective follow up particularly within Strasbourg.
[618] Article 46(4) ECHR; Rules 10 and 11 Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.
[619] To date, infringement proceedings have been used in only two cases: *Ilgar Mammadov v. Azerbaijan*, ECtHR, Application No. 15172/13, 29 May 2019; *Kavala v. Türkiye*, ECtHR, Application No. 28749/18, 11 July 2022.
[620] See e.g. Parliamentary Assembly, Consequences of the Russian Federation's aggression against Ukraine, Opinion 300 (2022), 15 March 2022, para. 7.
[621] Committee of Ministers, Implementation of the Report on Improving the ESC system - Operational proposals for the reform of the ESC system, CM(2022)114-final, 27 September 2022.
[622] CoE, Reporting system of the European Social Charter, website (accessed 17 June 2025).
[623] OHCHR, Universal Periodic Review, website (accessed 27 January 2025)

Continuous monitoring, by CSOs and other actors is crucial to ensure that the progress achieved is sustained and not reversed. Collaboration with partners capable of submitting information, monitoring developments and maintaining continued advocacy efforts, is particularly valuable.

Follow-up and advocacy are central to transforming litigation outcomes into meaningful, lasting change. Strategic litigation is most effective when embedded within a broader framework that includes alliance-building, public outreach, political advocacy, and sustained monitoring. Strategic litigation does not only hinge on courtroom outcomes but on the coordinated efforts that accompany and follow legal action.

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