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This factsheet does not bind the Court and is not exhaustive

Interim measures

What are interim measures?

The Court may, under Rule 39 of its Rules of Court, indicate interim measures to any State party to the Convention. Interim measures are urgent measures which, according to the Court's well-established practice, apply only where there is an imminent risk of irreparable harm. Such measures are decided in connection with proceedings before the Court without prejudging any subsequent decisions on the admissibility or merits of the case in question.

In the majority of cases, the applicant requests the suspension of an expulsion or an extradition. The Court grants such requests for an interim measure only on an exceptional basis, when the applicant would otherwise face a real risk of serious and irreversible harm. Such measures are then indicated to the respondent Government. However, it is also possible for the Court to indicate measures under Rule 39 to applicants (see, for example, the judgment in Ilaşcu and Others v. Moldova and Russia (§ 11), where the Court asked the applicant to stop a hunger-strike).

Rule 39 of the Rules of Court reads as follows:

Article 39 – Interim measures

"*1. The Chamber or, where appropriate, its President may, at the request of a party or of any other person concerned, or of its own motion, indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or of the proper conduct of the proceedings before it.*

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

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

The Court's practice is to examine each request on an individual and priority basis through a written procedure. Applicants and governments are informed of the Court's decisions on interim measures.

Refusals to apply Rule 39 cannot be appealed against. The length of an interim measure is generally set to cover the duration of the proceedings before the Court or for a shorter period.

The application of Rule 39 may be discontinued at any time by a decision of the Court. In particular, as such measures are related to the proceedings before the Court, they may be lifted if the application is not maintained.

Scope of interim measures

In practice, interim measures are applied only in a limited number of areas and most concern expulsion and extradition. They usually consist in a suspension of the applicant's expulsion or extradition for as long as the application is being examined.

The most typical cases are those where, if the expulsion or extradition takes place, the applicants would fear for their lives (thus engaging Article 2 of the Convention) or would face ill-treatment prohibited by Article 3 (prohibition of torture or inhuman or degrading treatment). More exceptionally, such measures may be indicated in response to certain requests concerning the right to a fair hearing (Article 6 § 1) and the right to respect for private and family life (Article 8).

In the Court's case-law as it currently stands, Rule 39 is not applied in the following cases: to prevent the imminent demolition of property, imminent insolvency, the enforcement of an obligation to do military service, to obtain the release of an applicant who is in prison pending the Court's decision as to the fairness of the proceedings, to ensure the holding of a referendum, or to prevent the dissolution of a political party.

Risks incurred in the event of expulsion or extradition

Asylum seekers
This is the type of situation where the application of Rule 39 is the most frequently requested.

Abdollahi v. Turkey (no. 23980/08)

03.11.2009
The applicant alleged that he was a member of the People's Mujahedin of Iran and that he would therefore face death or be subjected to ill-treatment if deported back to Iran (relying on Articles 2 and 3). The Court granted an interim measure to prevent his deportation pending further information. The application of Rule 39 was lifted after the Registry lost contact with the applicant.

F.H. v. Sweden (no. 32621/06)

20.01.2009
The applicant belonged to the Christian minority in Iraq and alleged that he had been a Major in Saddam Hussein's Republican Guard. Relying on Articles 2 and 3, he claimed that he would risk death or ill-treatment if returned to Iraq. The Court indicated an interim measure to prevent his deportation until his application had been examined. The application of Rule 39 was lifted when the Court's judgment finding that there would be no violation of Articles 2 and 3 became final.

Risk of being sentenced to death or to a whole life term of imprisonment
Rule 39 has also been applied in a number of extradition cases where the applicant alleged that he risked being sentenced to death or to a whole life term of imprisonment.

Nivette v. France (no. 44190/98)

03.07.2001
Rule 39 was applied in the case of a US citizen whom the USA wanted to have extradited on murder charges. The application of Rule 39 was lifted after the Court deemed sufficient the assurances obtained by the French Government from the US authorities to the effect that the applicant would not face the death penalty or whole life imprisonment.

Babar Ahmad and Others v. the United Kingdom (nos. 24027/07, 11949/08, 36742/08, 66911/09 and 67354/09)

10.04.2012

Rule 39 was applied in particular in the case of Abu Hamza, a stateless imam whose extradition was sought by the USA so that he could stand trial for hostage-taking and terrorism-related activities. The applicant complained, among other things, that he risked being sentenced to life imprisonment without parole. The application of Rule 39 was lifted after the Court found, in its judgment on the merits, that such a sentence was not disproportionate to the seriousness of the offences in question.

Risk of ill-treatment related to sexual orientation

The indication of interim measures under Rule 39 has often been sought by nationals of countries where homosexuals and bisexuals are generally harassed and/or persecuted. For Rule 39 to be applied, the applicant must normally provide convincing evidence that he or she would face an individual and real risk of persecution on account of sexual orientation if returned to his or her country of origin.

K.N. v. France (no. 47129/09)

19.06.2012

Having arrived in France from Greece, the applicant, a homosexual, alleged that he would be killed or ill-treated if returned to Iran. After joining this application to others, the Court found that the relevant asylum requests had been or were being examined by the French authorities and that, consequently, the applicants had not been and would not be returned to Greece or another country without having their asylum requests examined.

Applicant accused of adultery

Jabari v. Turkey (no. 40035/98)

11.07.2000

The applicant alleged that she risked ill-treatment (including lapidation) if she was deported to Iran, on the ground that she had committed adultery. Rule 39 was applied to prevent her deportation until her application had been examined. The Court found in its judgment that there would be a violation of Article 3 if the decision to deport the applicant to Iran was executed.

Female applicant facing deportation alone to Afghanistan

Hossein Kheel v. the Netherlands (no. 34583/08)

16.12.2008

The applicant, an Afghan national, faced being deported on her own to Afghanistan, without her husband and children, who were Dutch nationals. In the light of plentiful information on the vulnerable situation of single women in Afghanistan and the applicant's observation that she had no male relative who could protect her, the Court decided to apply Rule 39 and to request the authorities not to deport her until her application had been examined by the Court. The measure was lifted after the Dutch Government granted her a resident's permit.

Risk of female genital mutilation

Abraham Lunguli v. Sweden (no. 33692/02)

01.07.2003

Relying on Article 3 the applicant alleged that she risked genital mutilation if returned to Tanzania. Rule 39 was applied to prevent her expulsion until her application had been examined. The case was struck out after the applicant was granted indefinite leave to remain.

Risk of sexual exploitation

M. v. the United Kingdom (no. 16081/08)

01.12.2009

The applicant alleged that she had been trafficked and forced into prostitution in her country of origin, Uganda. She alleged that there was a risk she might be found by the traffickers and subjected once again to sexual exploitation if she was deported. The applicant relied on Article 4 (prohibition of slavery and forced labour) and Article 3 (prohibition of torture and inhuman or degrading treatment). Rule 39 was applied to prevent her deportation until her application had been examined. The case was ultimately struck out after the British Government and the applicant reached a friendly settlement.

Risk of family vengeance

H.N. v. the Netherlands (no. 20651/11)

03.10.2012

The applicant, an Afghan national, fled her country to escape a forced marriage. She alleged that if returned to Afghanistan she would face reprisals by her family, even death (relying on Articles 2 and 3). Rule 39 was applied to prevent her expulsion until her application had been examined. The application is currently pending before the Court and has been communicated to the respondent Government.

Risk of harm to private and family life

Exceptionally, Rule 39 has been applied in cases that engage Article 8 (right to respect for private and family life), where there is a potentially irreparable risk to private or family life.

Amrollahi v. Denmark (no. 56811/00)

11.07.2002

The applicant alleged that his deportation to Iran would sever his family relationship with his Danish wife, two children and daughter-in-law, since they could not be expected to follow him to that country. Rule 39 was applied to prevent his expulsion until his application had been examined. The Court ultimately reached the conclusion that there would be a violation of Article 8 if he were deported to Iran.

Eskinazi and Chelouche v. Turkey (no. 14600/05)

06.12.2005

The applicants, a mother and her daughter, alleged that the daughter's removal to Israel, where her father lived, would be in breach of Article 8. Rule 39 was applied to prevent her removal until the application had been examined. The Court, based in particular on the Hague Convention on the civil aspects of international child abduction, ultimately reached the conclusion that there would be no violation of Article 8 in the event of her removal to Israel.

Risk of a flagrant denial of justice

Rule 39 may also be applied in cases where Articles 5 (right to liberty and security) and 6 (right to a fair trial) are engaged, where there is a risk of a "flagrant denial of justice" in the event of expulsion/extradition.

Soering v. the United Kingdom (no. 14038/88)

07.07.1989

In this case the Court indicated to the British Government under Rule 39 that it would be desirable not to extradite the applicant to the United States of America while the proceedings were pending before it. The Court explained in its judgment on the merits that "*an issue might exceptionally be raised under Article 6 by an extradition decision in*

circumstances where the fugitive has suffered or risks suffering a flagrant denial of a fair trial in the requesting country. However, the facts of the present case do not disclose such a risk."

Othman (Abu Qatada) v. the United Kingdom (no. 8139/09)

17.01.2012

A Jordanian national, suspected of having links with al-Qaeda and tried *in absentia* in his country, Mr Othman arrived in the United Kingdom in September 1993 where he made a successful application for asylum. He was detained in October 2002 under the Anti-Terrorism, Crime and Security Act. In March 2005 he was released on bail and made subject to a control order under the Prevention of Terrorism Act. He was served in August 2005 with a notice of intention to deport him to Jordan. Before the Court, the applicant alleged in particular that he faced a real risk of suffering a flagrant denial of justice in the event of his deportation, on account of the possible use in his new trial of evidence obtained by torture. The Court indicated an interim measure to prevent his expulsion until it had examined his application.
In its judgment on the merits, the Court for the first time reached the conclusion that an expulsion would entail a violation of Article 6. That finding reflected the international consensus that the admission of evidence obtained by torture was incompatible with the right to a fair trial.

Risk for the applicant's health

Rule 39 has also been applied where the risk to the applicant's life and well-being stemmed from the expulsion/extradition measure itself or its effects.

Einhorn v. France (no. 71555/01)

19.07.2001

Having been informed that the applicant had attempted to commit suicide, the Court requested the French Government to give it information on his state of health, and not to extradite him pending a new decision. The interim measure was lifted a week later after the French Government had provided a medical report confirming that Mr Einhorn could be transferred by plane to the USA under medical and police supervision.

D. v. the United Kingdom (no. 30240/96)

02.05.1997

The Court applied Rule 39 to request the British Government not to deport the applicant, who was HIV-positive and at an advanced stage of illness, because he would not have been able to receive medical treatment if he had been sent to his destination country.
The Court took account of the "very exceptional circumstances" and "compelling humanitarian considerations". The applicant was critically ill and appeared to be close to death, could not be guaranteed any nursing or medical care in his country of origin and had no family there willing or able to care for him or provide him with even a basic level of food, shelter or social support.

N. v. the United Kingdom (no. 26565/05)

27.05.2008 (Grand Chamber)

Rule 39 was applied in this case for an applicant who was also HIV-positive but whose condition was not as serious as in the *D. v. the United Kingdom* case cited above.
It appears that Rule 39 will no longer be applied in cases concerning the expulsion of applicants with medical problems unless "exceptional circumstances" are at stake.

Particular situation of expulsion to another State party to the Convention

Even though there is a certain presumption that Contracting States will provide the necessary guarantees to ensure that an applicant is not subjected to ill-treatment and that he or she will continue to enjoy the Convention rights after being sent to such a

State, Rule 39 has been applied to prevent the applicant's expulsion to another Council of Europe State in certain cases.

T.I. v. the United Kingdom (no. 43844/98)

07.03.2000 (decision on the admissibility)

The applicant, a Sri-Lankan national, alleged that he would be summarily deported to Sri Lanka if he was removed from the United Kingdom to Germany, and that he faced treatment in breach of Article 3 in Sri Lanka. Even though the Court took the view that the material provided by the applicant raised concerns about the risks incurred by him if repatriated to Sri Lanka, it was persuaded by the assurances received from the German Government that the applicant did not risk immediate or summary deportation to that third country. It found that the applicant would be entitled to submit a new asylum application on his arrival in Germany and to seek the protection provided for by German law.

Shamayev and 12 Others v. Georgia and Russia (no. 36378/02)

12.04.2005

Rule 39 was applied to suspend the expulsion of Chechen terrorist suspects from Georgia to Russia. The Court lifted the interim measure after receiving undertakings from Russia.

Avcisoy v. the United Kingdom (no. 49277/99)

19.02.2002

Rule 39 was applied to prevent the deportation of a Turkish Kurd to Turkey. The case was ultimately struck out as the applicant withdrew his application.

Other applications of interim measures

Conditions of health and detention

Rule 39 may be applied in cases concerning an applicant's conditions of detention when he or she needs specific medical care to treat a serious, or even fatal, illness.

Paladi v. Moldova (no. 39806/05)

13.03.2009 (Grand Chamber)

Under Rule 39 the Court requested the Moldovan Government not to transfer the applicant (suffering from neurological disorders) from the specialised hospital where he had been admitted back to the hospital of the prison where he had previously been detained, until the Court had been able to examine the case.

Legal representation

Rule 39 has been applied by the Court of its own motion in very exceptional cases to ensure that the applicant would benefit from appropriate representation in judicial proceedings.

Öcalan v. Turkey (no. 46221/99)

12.05.2005 (Grand Chamber)

The Court requested the Turkish Government to take urgent measures under Rule 39 in particular to meet the requirements of Article 6 in the proceedings against the applicant before the State Security Court, and to ensure the effective exercise by the applicant of his right to lodge an individual application with the Court through the lawyers of his choosing.

X. v. Croatia (no. 11223/04)

17.07.2008

Under Rule 39 the Court indicated to the Croatian Government that they had to appoint a lawyer to represent the applicant in the proceedings before the Court, since she was

suffering from schizophrenic paranoia and was deprived, within the meaning of domestic law, of her capacity to choose a legal representative.

Destruction of crucial evidence for pending application

Evans v. the United Kingdom (no. 6339/05)

10.04.2007 (Grand Chamber)

In this case the applicant complained that domestic law authorised her ex-partner to withdraw his consent to the conservation and use of embryos created by them together. The Court decided to indicate to the British Government, under Rule 39, that the necessary measures should be taken to ensure that the embryos were not destroyed before the Court had finished examining the case.

Obligation to comply with interim measures

Although interim measures are provided for only in the Rules of Court and not in the European Convention on Human Rights, States are under an obligation to comply with them. Two Grand Chamber judgments have given the Court an opportunity to clarify this obligation, based particularly on Article 34 of the Convention.

Article 34 of the Convention reads as follows:

Article 34 – Individual applications

"The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

Mamatkulov and Askarov v. Turkey (nos. 46827/99 and 46951/99)

04.02.2005 (Grand Chamber)

In this judgment the Court found a violation for the first time because of a State's failure to comply with an interim measure.

The facts of the case show that the Court was prevented from examining the applicants' complaints appropriately because of their extradition to Uzbekistan, despite the fact that an interim measure had been indicated to Turkey to suspend the extradition.

The Court pointed out that under the Convention system interim measures played a vital role in avoiding irreversible situations that would prevent the Court from properly examining the application and, where appropriate, securing to the applicant the practical and effective benefit of the Convention rights asserted. Accordingly, a failure by a State which had ratified the Convention to comply with interim measures would undermine the effectiveness of the right of individual application guaranteed by Article 34.

The Court reiterated that under that Article, Contracting States undertook to refrain from any act or omission that might hinder the effective exercise of an individual applicant's right of application. A failure to comply with interim measures had to be regarded as preventing the Court from effectively examining the applicant's complaint and as hindering the effective exercise of his or her right and, accordingly, as a violation of Article 34.

Paladi v. Moldova (no. 39806/05)

10.03.2009 (Grand Chamber)

In this judgment the Court explained: "Article 34 will be breached if the authorities of a Contracting State fail to take all steps which could reasonably have been taken in order to comply with the measure indicated by the Court."

The Court pointed out that the interim measures it indicated under Rule 39 had the purpose of ensuring the effectiveness of the right of individual petition under Article 34.

In addition, it was not open to a Contracting State to substitute its own judgment for that of the Court in verifying whether or not there existed a real risk of immediate and irreparable damage to an applicant at the time when the interim measure was indicated, or to decide on the time-limits for complying with such a measure.

In line with this case-law the Court has found violations in a number of cases for failure by States to comply with interim measures. The most recent examples include: Mannai v. Italy (no. 9961/10) (27.03.2012); Abdulkhakov v. Russia (no. 14743/11) (02.10.2012); Toumi v. Italy (no. 25716/09) (05.04.2011); Rrapo v. Albania (no. 58555/10) (25.09.2012); Labsi v. Slovakia (no. 33809/08) (15.05.2012); Trabelsi v. Italy (no. 50163/08) (13.04.2010); Makharadze and Sikharulidze v. Georgia (no. 35254/07) (22.11.2011); Al-Saadoon and Mufdhi v. the United Kingdom (no. 61498/08) (02.03.2010); D.B. v. Turkey (no. 33526/08) (13.07.2010); and Ben Khemais v. Italy (no. 246/07) (24.02.2009).

Statistics

The Court has made available on line statistics for interim measure requests in the period 2008-2011 and statistics for interim measure requests in the first half of 2012.

These statistics show that the United Kingdom, France, the Netherlands and Sweden are the States against which most interim measure requests have been made.

As interim measures are indicated by the Court only in well-defined circumstances (where there is a risk of a serious and irremediable violation of the Convention), most requests are rejected. In the years 2008-11, the Court rejected about 70% of requests for interim measures. In the first half of 2012, this percentage rose to 90%.

In February 2011, faced with an alarming increase in the number of requests for interim measures in cases of expulsion or extradition[1], the President of the Court published a statement reminding governments and applicants (and their representatives) of the proper, albeit limited, role of the Court in immigration and asylum matters, and stressing their respective responsibilities as regards full cooperation with the Court (see the press release).

Practical information

The Court has made practical information and instructions available to potential applicants.

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1.The number of such requests rose by 4,000% between 2006 and 2010.