



NATIONAL INSTITUTE OF JUSTICE

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The European Court of Human Rights

Rule 39

Interim Measures

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What are Interim Measures?

If a person requests the Court to stop his/her removal, deportation or extradition from a Member State and the request is urgent, the Court will consider the request under Rule 39 of the Rules of Court, which reads:

"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."



The test – Mamatkulov and Askaraoz v. Turkey §104

“an imminent risk of irreparable harm”

- ❑ Interim measures are only applied in exceptional cases. Requests usually concern the right to life, the right not to be subjected to torture or inhuman treatment and exceptionally, the right to respect for private and family life or other rights guaranteed by the Convention.
- ❑ Most requests for interim measures concern expulsion and extradition cases (conditions upon arrival to destination country) but can sometimes concern other matters.

Burden of Proof

☑ On the applicant

➤ In principle for the applicant to submit all decisions and all relevant information to the Court.

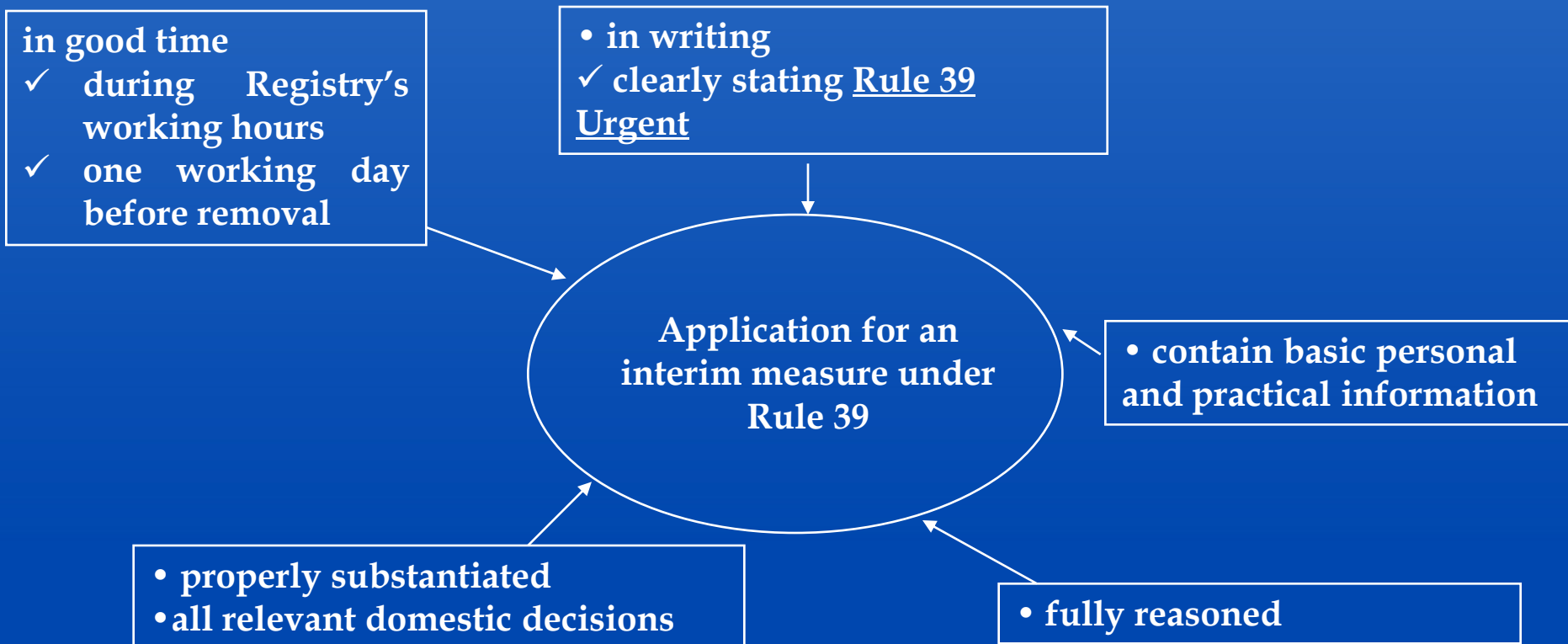


Some procedural points

- ❑ An application form is not required
- ❑ Legal representation is not required
- ❑ Contact details must be provided (and where available a fax number to facilitate quick communication)
- ❑ The request has to be written in any official language of a Member State (consequently, not in Farsi, Arabic, Chinese ...).
- ❑ Requests can be made via post or by fax. The Court does not correspond by e-mail
- ❑ Cases will be dealt with as a matter of priority



Processing Rule 39 requests



Fully reasoned and substantiated?

- ❑ Any request lodged with the Court must state reasons. Notably the applicant must specify in detail the grounds on which his or her particular fears are based, the nature of the alleged risks and the Convention provisions alleged to have been violated.
- ❑ In cases concerning extradition or deportation, details should be provided, of available, of the expected date and time of removal and the applicant's address or place of detention. The Court must be notified of any change to these details as soon as possible.
- ❑ All relevant domestic decisions should be submitted to the Court. If there is other relevant material, for example, medical reports, these should also be provided at the time the request is made.
- ❑ If certain details are missing and there is sufficient time, the Registry can ask the applicant to provide such information or documents

Possible Outcomes

- ❑ Incomplete letter / No further action
- ❑ Too late
- ❑ Out of Scope
- ❑ Decision to refuse or to apply Rule 39



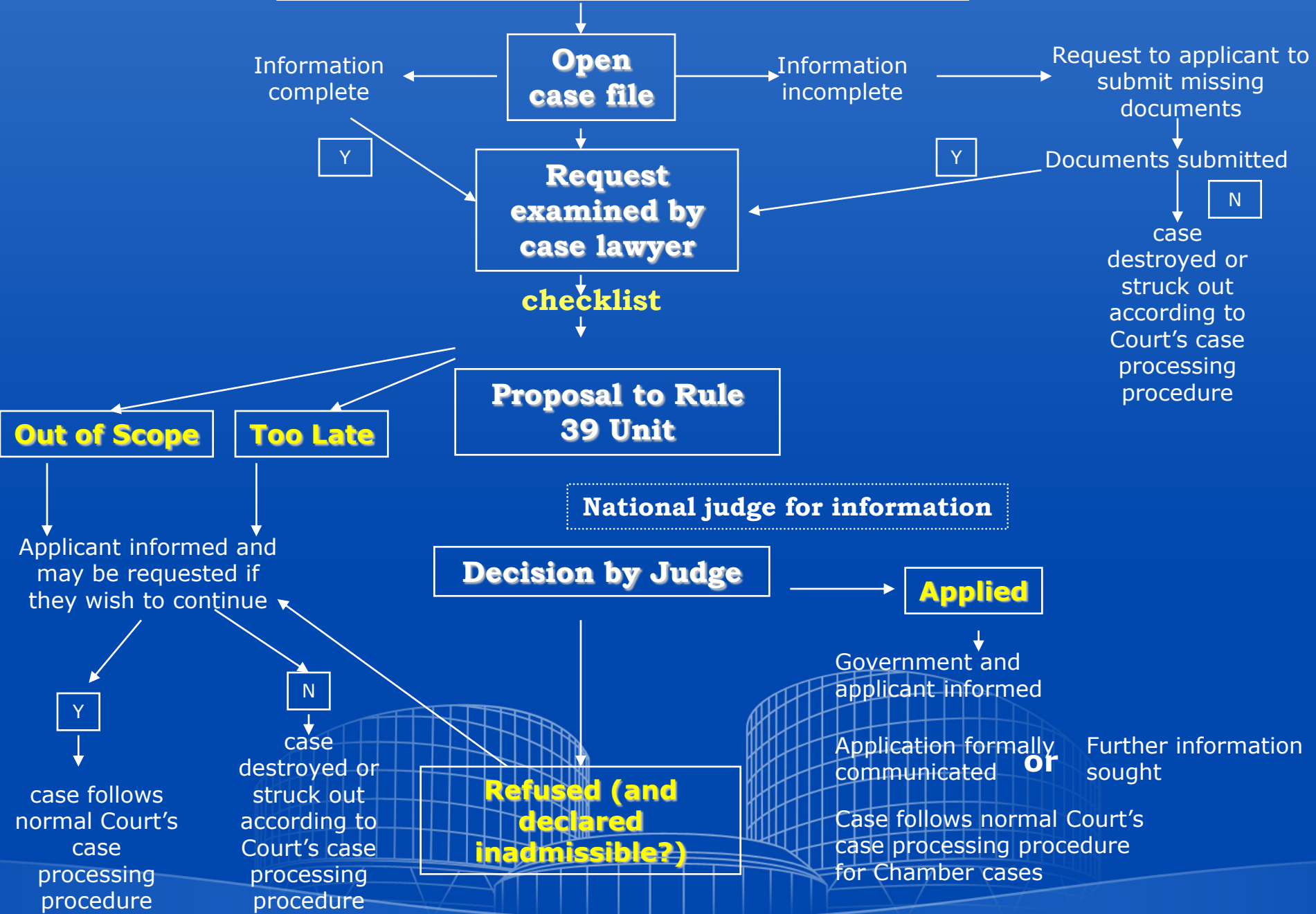
Rule 39 –out of scope

- Requests that clearly fall outside the scope of Rule 39 are not submitted to the Acting President for a decision and applicants receive a letter advising them of same. For example:
 - an expulsion case in which Articles 2 or 3 is not at issue (e.g. a migrant worker who does not want to go back to his own country for financial reasons or individual who wishes to remain in a Member State to complete a course of study)
 - complaints about property and financial matters in general
 - the majority of Article 6 fair trial complaints (see as an exception *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, § § 259-260, ECHR 2012 (extracts) 2011)
 - to prevent the exhumation of a corpse
 - to prevent the issuing of a bankruptcy order
 - to make changes to conditions of release on criminal licence

Checklist

- ❑ When the case-file is complete, the request is dealt with immediately as a matter of priority by a specialised Rule 39 unit
- ❑ All relevant domestic decisions and reports are carefully read and considered
- ❑ In respect of the applicant's specific complaints, recourse can also be had to:
 - country guidance cases from domestic asylum and immigration appeal courts ;
 - information on the country of return from:
 - ❑ Other Council of Europe Bodies
 - ❑ Government Bodies
 - ❑ Leading NGOs
 - ❑ United Nations Bodies (eg UNHCR)
 - the Court's case-law
- ❑ The Acting President (a judge) will decide whether to refuse or grant the request.

Individual Application for an Interim measure under Rule 39 received



Request refused

- ❑ If the Acting President decides to refuse the request then the applicant is informed about this (by telephone/fax if really urgent, otherwise by letter). This decision cannot be appealed against.
- ❑ If the Acting President finds that the application as a whole is manifestly ill-founded, he/she can reject the application at the same time as a Single Judge; or if there are other possible serious and urgent complaints, the applicant will be asked whether he/she wants to maintain the application; if yes then the Court will deal with the case in due course.
- ❑ Where a person whose request for an interim measure has been refused is deported to another Member State, he or she can, if necessary, introduce a fresh request against that State under Rule 39 of the Rules of Court or an application under Article 34 of the Convention (including the Dublin Returns procedure)

Request granted

- ❑ If the Acting President decides to grant the request, then the respondent Government will immediately be contacted by fax/telephone to be able to stop the expulsion/extradition. The applicant will also be informed.
- ❑ The case will then, normally, be communicated officially to the Government for observations and the case will continue as a Chamber case but with continued priority in order to ensure that the case is dealt with speedily.
- ❑ The interim measure may be indicated for the duration of the proceedings before the Court or for a more limited period of time. An order under Rule 39 can be lifted at any time by a decision of the Court.
- ❑ The decision to grant interim measures does not have an influence of subsequent decisions in the case.

Cases where Rule 39 has been applied

- ❑ Nivette v France – concerning the risk of being sentenced to death or to whole life imprisonment
- ❑ Abraham Lunguli v. Sweden – the risk of genital mutilation in Tanzania
- ❑ D. v. the United Kingdom – HIV positive and at an advanced stage of illness
- ❑ Shamayev and 12 others v. Georgia and Russia – Chechen terrorist suspects

The Acting President's decision

Options:

Refuse
Rule 39

Refuse
Rule 39
+
declare
inadmissible

Refuse Rule 39
but urgently
communicate
other complaints
(Art 8 or Article
5?) to
Government for
observations

Apply Rule 39
+ communicate
application
immediately or
shortly
afterwards

Apply Rule 39 +
request
information
from
Government

*(President's request
Rule 54 § 2 (a) or
Judge Rapporteur's
request Rule 49 § 3
from the parties) with
deadline for Acting
President to reconsider
in due course*

+ Automatically also: Rule
41 priority and, often,
anonymity and
confidentiality

Binding Nature of Rule 39

- A decision to grant Rule 39 is binding on the respondent State (*Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 128, ECHR 2005-I):

“A failure by a Contracting State to comply with interim measures is to be regarded as preventing the Court from effectively examining the applicant’s complaint and as hindering the effective exercise of his or her right and, accordingly, as a violation of Article 34.”



Statistics

❑ This is an exceptional measure and only applied in a limited number of cases. Thus:

❑ 2012

❑ Total decisions: 1972

❑ Refused: 1203

❑ Granted: 103

❑ Out of scope: 666

2013

Total decisions: 1588

Refused: 817

Granted: 108

Out of scope: 663

❑ Bulgaria

❑ 2012 – 1 grant (out of four decisions made)

❑ 2013 – 2 grants (out of five decisions made)

