

European Court of Human Rights

Human Rights in Criminal Justice Context 2020/2021

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What is the Council of Europe?

- **The Council of Europe** is an international organization founded after World War II to uphold **human rights, democracy** and **the rule of law** in Europe. The Council of Europe was founded in **1949** and has now **47 member states**. The headquarters of the Council of Europe are in **Strasbourg (France)**. English and French are its two official languages.
- There are three main bodies of the Council of Europe – (1) **the European Court of Human Rights**, which enforces the European Convention on Human Rights, **the Committee of Ministers**, which is composed of the foreign ministers of each member state and **the Parliamentary Assembly**, which is composed of members of the national parliaments of each member state.

Main institutions of the Council of Europe



- **THE EUROPEAN COURT OF HUMAN RIGHTS** → created under the European Convention on Human Rights of 1950 and is composed of 47 judges (one judge from each member state)
- **THE COMMITTEE OF MINISTERS** → decision-making body which is composed of the Foreign Affairs Ministers of all the member states; the Committee of Ministers' essential function is to ensure that member states comply with the judgements of the European Court of Human Rights
- **THE PARLIAMENATARY ASSEMBLY** → parliamentary arm of the Council of Europe which is consisted of members from the national parliaments of the Council of Europe's member states; the Parliamentary Assembly does not have the power to create binding laws



The Council of Europe and the European Union

- **The Council of Europe** and **the European Union** are two different international organizations!
- The Council of Europe and the European Union share the same fundamental values – human rights, democracy and the rule of law – but are separate entities which perform different roles
- **The Council of Europe** is the continent's leading human rights organization and **the European Union** focuses on political and economic integration processes

The Council of Europe and the European Union

<u>Council of Europe</u>		<u>European Union</u>
1949	<i>Established</i>	1957
47	<i>Member states</i>	27
835 million	<i>Population</i>	448 million
	<i>Flag</i>	
Ode to Joy	<i>Anthem</i>	Ode to Joy



Legal cooperation

The EU participates in 11 CoE conventions and several of its specialised bodies.



Technical cooperation

42 joint programmes worth a total of €171 million across Europe and beyond*

*As of 01/09/2020

● CoE ● CoE and EU ● Neither

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Source: <https://www.coe.int/en/web/portal/european-union>

The European Convention on Human Rights

- **The Convention for the Protection of Human Rights and Fundamental Freedoms** (better known as a **the European Convention on Human Rights**) was opened for signature in Rome on 4 November 1950 and it entered into force on 3 September 1953.
- The European Convention on Human Rights has been changed to this day by **protocols**. Protocols to the Convention, which adds rights to or amends provisions of Convention **are binding only on those States that have signed and ratified them**.
- The European Convention on Human Rights evolves.
- The European Convention on Human Rights is applicable at national level of member states of the Council of Europe.

Structure of the European Convention on Human Rights

- **SECTION I** → rights and freedoms (article 1 – article 18)
- **SECTION II** → the European Court of Human Rights (article 19 – article 51)
- **SECTION III** → miscellaneous provisions (article 52 – article 59)
- **PROTOCOLS**



The European Court of Human Rights

- **The European Court of Human Rights** is an international court based in Strasbourg (France). It consists of a number of judges equal to the number of member states to the Council of Europe that have ratified the European Convention on Human Rights - currently **47**.
- The judges are elected by the Parliamentary Assembly of the Council of Europe from lists of three candidate proposed by each state. They are elected for **non-renewable term of nine years**.
- The Court's **judges do not represent any state** and are totally **independent**.
- The judges shall be of **high moral character** and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.

Composition of the European Court of Human Rights

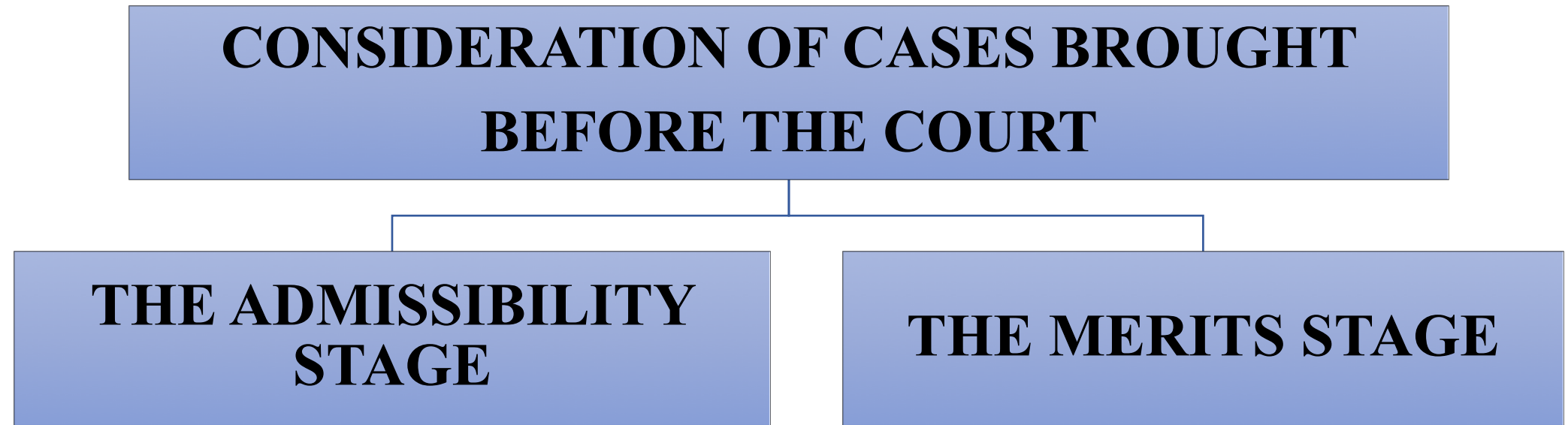
- The cases are heard by the European Court of Human Rights by **one of four main formations**. Manifestly inadmissible applications are examined by a **single judge**. The other composition of the European Court of Human Rights is **three-judge Committee**, which rules on the admissibility and merits of cases. An application may also be assigned to a **seven-judge Chamber** or exceptionally to the **Grand Chamber of seventeen judges**, which hears cases referred to it either after relinquishment of jurisdiction by a Chamber or when a request for referral has been accepted.
- Please look at the scheme of composition of the European Court of Human Rights



Proceedings before the European Court of Human Rights

- The Convention makes a distinction between two types of application: **individual application** lodged by any person, group of individuals, company or NGO having a complaint about the violation of their rights and **inter-state application** brought by one State against another.
- Most applications before the European Court of Human Rights are individual applications lodge by private persons.
- Cases can only be brought against one or more States that have ratified the Convention. Any applications against third states or individuals will be declared inadmissible.

Stages of the proceedings before the European Court of Human Rights



Please look at the scheme of “The life of an application”

What are the conditions of admissibility of the application?

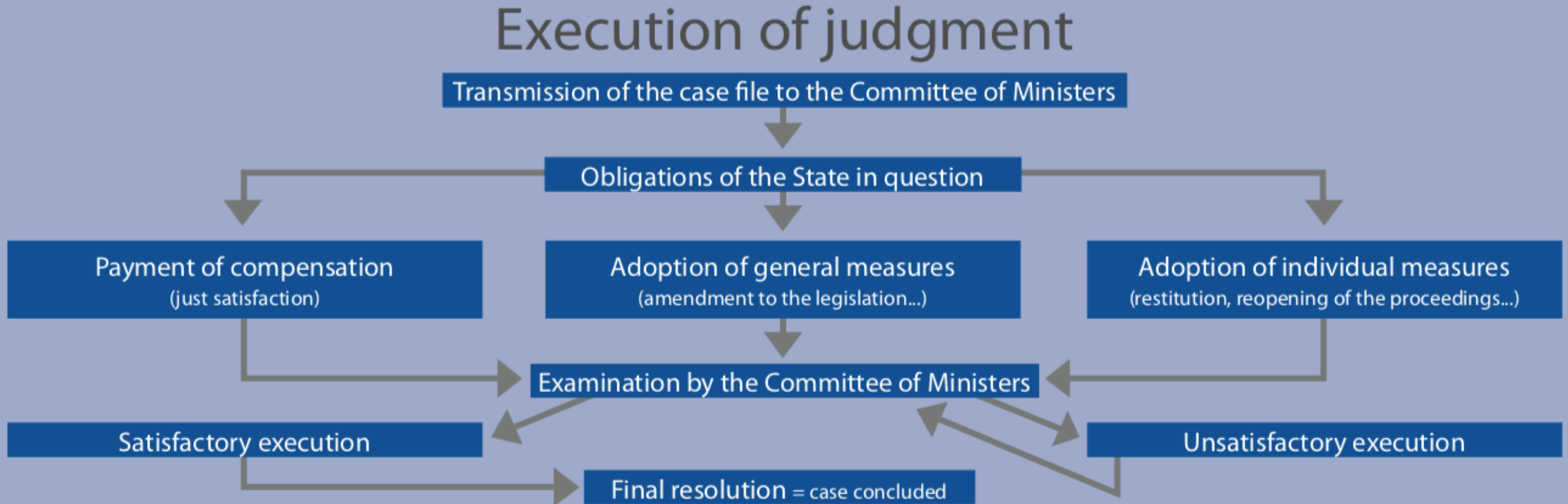
- **Exhaustion of domestic remedies** → individuals complaining of violations of their rights must first have taken their case through the national courts, up to the highest level; **the principle of subsidiarity**
- **6-month deadline for applying to the Court** → applicants have only 6 months from the date of the final decision at domestic level to lodge an application, after that period application cannot be accepted by the Court
- **Complaints must be based on the European Convention** → an applicant's allegations must concern one or more of the rights defined in Convention
- **Direct violations of the European Convention** → the applicant must be personally and directly a victim of the violation of the Convention and must have suffered a significant disadvantage

Proceedings before the European Court of Human Rights



- **The court basically has a written procedure but occasionally decides to hold public hearings in specific cases.**
- **If the Court decides that public hearing is necessary, it takes place in the Human Rights Building in Strasbourg.**
- **Before the European Court of Human Rights it is possible to reach a friendly settlement.**
- **The European Court of Human Rights may decide that a state should take certain measures provisionally during the proceeding before the Court (interim measures).**

Execution of ECHR judgment



The pilot case procedure

- **The pilot case procedure (the pilot judgment procedure)** was developed by the European Court of Human Rights a dozen years ago to deal with the large groups of identical cases that derive from the same underlying problem.
- Where the Court receives several applications that share a root cause, it can select one or more for priority treatment under the pilot procedure. **In a pilot judgment, the Court's task is not only to decide whether a violation of the European Convention on Human Rights occurred in the specific case but also to identify the systemic problem and to give the Government clear indications of the type of remedial measures needed to resolve it.**
- The first pilot judgment was a **case of Broniowski vs. Poland.**



Relationship between ECHR and CJUE

- **The European Court of Human Rights** rules on the European Convention on Human Rights and **the Court of Justice of the European Union** interprets EU law to make sure it is applied in the same way in all EU countries, and settles legal disputes between national governments and EU institutions.
- The location of **the European Court of Human Rights** is **Strasbourg**.
- The location of **the Court of Justice of the European Union** is **Luxembourg**.