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COMMUNICATION OF THE APPLICATION

5.1 General

5.2 Observations on Admissibility and Merits of the Application

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If the application is assigned to a Chamber or referred to the Chamber from a Committee, it will either be declared inadmissible or notification of it will be given to the respondent Government. The notification of respondent Governments is referred to as “communication” of the application. Pursuant to Article 30 of the Convention, the Chamber may also refer the case to the Grand Chamber. However, such a course of action is extremely rare at this stage of the proceedings.

Both the Chamber and its President may decide to communicate an application. This decision is made on the basis of a report provided by the judge rapporteur.⁴⁴⁴ If the Chamber or its President agrees with the judge rapporteur’s proposal, the case will be communicated to the government of the respondent Contracting Party⁴⁴⁵ which will be invited to respond to the applicant’s allegations and submit its observations on the admissibility and merits of the case pursuant to Rule 54 § 2 (c). It is also possible that at this stage one or more of the complaints will be declared inadmissible and the remainder of the application is communicated. Such a decision can only be taken by the Chamber, the President not being authorised to reject complaints.

In certain circumstances, prior to or instead of the case being communicated, the Chamber, its President, or the judge rapporteur may ask both or one of the parties to submit any factual information, documents and other material which they consider to be relevant.⁴⁴⁶ Such a course of action will usually occur in cases in which the Court needs to refer to documents, information or clarifications which the applicant him or herself is unable to obtain and submit to the Court without the respondent Government’s assistance. Upon receipt of the documentation and/or information, the case will either be communicated or declared inadmissible.

When a case is communicated, the respondent Government will be asked to respond to a number of issues in its observations, which it is required to submit within twelve weeks of the notification (in urgent cases, a shorter time limit may be fixed). It is not uncommon for Governments – nor, indeed, for applicants – to request an extension of the deadline. The first such request will generally be granted.

The nature of the questions with which the respondent Government will be asked to deal in its observations will depend on the applicant’s allegations

444 Rule 49 § 3 (c).

445 Rule 54 § 2 (b).

446 Rule 54 § 2 (a).

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and the circumstances of the case, but in an application concerning ill-treatment in police custody, questions along the following lines may be expected:

“Did the applicant comply with the admissibility requirements set out in Article 35 of the Convention?”

“Was the applicant subjected to treatment in police custody in breach of Article 3 of the Convention?”

“Did the authorities carry out an effective official investigation into the applicant’s complaints of ill-treatment in compliance with the requirements of Articles 3 and 13 of the Convention?”

When the case is communicated, applicants who were until then unrepresented will be required, pursuant to Rule 36 § 2, to be represented by an advocate authorised to practice in any of the Contracting Parties and resident in the territory of one of them, or any other person approved by the President of the Chamber.⁴⁴⁷

If, at the time of communication, the Chamber or its President decides to apply the joint procedure, the parties will be informed accordingly. As set out above, this procedure has become the rule rather than the exception.⁴⁴⁸ This means at this stage of the proceedings that, in addition to observations on admissibility and merits, the respondent Government is also invited to inform the Court of its position regarding a friendly settlement of the case and of any proposals it might wish to make in that connection.⁴⁴⁹

5.2 Observations on Admissibility and Merits of the Application

The respondent Government will in most cases submit its observations in one of the official languages of the Court, i.e. English or French. However, the President of the Chamber may invite the respondent Contracting Party to provide a translation into an official language of that Party in order to facilitate the applicant’s understanding of those submissions.⁴⁵⁰ An applicant may make a request to that effect. Furthermore, the President of the Chamber may also ask the respondent Contracting Party to provide a translation into, or a summary in, English or French of all or certain annexes to its written submis-

447 Rule 36 § 4; see also Section 1.8 above.

448 Article 9 of Protocol No. 14 provides that “... a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 34. The decision on admissibility may be taken separately.”

449 See Section 8 below for friendly settlement related issues.

450 Rule 34 § 5.

sions or of any other relevant documents.⁴⁵¹ In the alternative, the applicant can arrange for the translation of the respondent Contracting Party's observations and of any documents and subsequently claim the costs under Article 41 of the Convention.⁴⁵²

The observations and any documents submitted to the Court by the respondent Contracting Party will be forwarded to the applicant, who must respond to them within a certain time limit (usually six weeks). It is possible to request an extension of the time limit, but any such request must be reasoned and made within the time limit. Failure to submit the observations – or to request an extension – within the given time limit, may result in the exclusion of those observations from the case file unless the President of the Chamber decides otherwise.⁴⁵³ For purposes of observing the time limit, the material date is the certified date of dispatch of the document or, if there is none, the actual date of receipt by the Registry. Applicants must send three copies of the observations by surface post and, if possible, a copy by facsimile.

In principle, the applicant's observations should be drafted in one of the official languages of the Court. However, the applicant may seek leave from the President of the relevant Chamber for the continued use of the official language of a Contracting Party.⁴⁵⁴

In preparing observations, applicants should refer to the "Practice Direction on Written Pleadings".⁴⁵⁵ The form which should be followed in preparing the observations and the contents required are set out in Part II of the Practice Direction. It is imperative that the observations be legible; it is recommended that they be typed.

The fact that the applicant has the opportunity to respond to the observations of the Contracting Party is a consequence of the adversarial nature of the Court's proceedings. In certain circumstances, the applicant may also be requested by the Court to address in his or her observations specific issues identified by the Court or answer specific questions posed by the Court.

In their observations, applicants should respond to any objections raised by the respondent Government to the admissibility of the application. For example, if the Government contends that the applicant has failed to comply with the requirement of exhaustion of domestic remedies, it is the applicant who,

451 Rule 34 § 4 (c).

452 See Section 7.

453 Rule 38 § 1.

454 Rule 34 § 3 (a).

455 Issued by the President of the Court on 1 November 2003. See Appendix No. 3.

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at this stage of the proceedings, bears the burden of establishing that:

“the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement...”⁴⁵⁶

A failure by the applicant to counter the Government’s objections to the admissibility of the application may result in the application being declared inadmissible for non-exhaustion of domestic remedies. In their observations applicants should also describe any developments which might have taken place since the introduction of the application.⁴⁵⁷

456 See *Akdivar and Others v. Turkey*, cited above, § 68.

457 Relevant parts of observations submitted by the Netherlands Government in the case of *Van der Ven v. the Netherlands*, cited above, and observations submitted by the applicants’ representatives in the cases of *Akkum and Others v. Turkey* and *Kişmir v. Turkey*, both cited above, are included in Appendices Nos. 14, 12 and 13, respectively, and may be consulted as to the form and content of observations in cases concerning allegations of ill-treatment.