Practice Directions

Recusal of judges[1]

I. Background

1. Preserving the independence and impartiality of judges is crucial for upholding the rule of law, protecting human rights, and ensuring a fair and just administration of justice. This is also one of the key principles characterising proceedings before the European Court of Human Rights, enshrined in a number of legally binding provisions.

2. Pursuant to Article 21 of the Convention, during their term of office judges are not to engage in any activity which would be incompatible with their independence or impartiality.

3. In the interest of the clear and transparent application of the requirement set out in Article 21 of the Convention, in June 2021 the Court updated the Resolution on Judicial Ethics, which sets out a series of rules on judges' integrity, independence, impartiality, limits to their freedom of expression, additional activities, acceptance of favours, advantages, decorations and honours. According to point III of that Resolution, judges shall exercise their function impartially, ensure the appearance of impartiality, avoid conflicts of interest including situations in and outside of the Court that may be reasonably perceived as giving rise to a conflict of interest. Judges shall not be involved in dealing with a case in which they have a personal interest. They shall refrain from any activity, expression and association that may be considered to affect adversely public confidence in their impartiality. Several provisions of the Resolution also apply to former judges.

4. Further safeguards related to independence and impartiality may be found in Article 26 § 3 of the Convention and Rule 27A § 3 of the Rules of Court, according to which a judge shall not sit as a single judge in cases concerning the State Party in respect of which he or she has been elected or of which he or she is a national. Furthermore, Rule 13 provides that judges may not preside in cases in which the State Party of which they are nationals or in respect of which they were elected is a party. Rule 24 § 5 (c) excludes the participation of the judge elected in respect of a State Party, or a national thereof, in the panel examining a referral request to the Grand Chamber concerning a case against that country.

5. The substantive criteria for a judge's inability to sit in a particular case, as well as the core procedural framework to be uniformly applied by all Court formations in all cases, are set out in Rule 28 of the Rules of Court, which aims to ensure the rigorous implementation of the principle of judicial impartiality. Rule 28 of the Rules of Court was amended and further reinforced by the Plenary Court in December 2023.

6. The purpose of the present Practice Direction is to clarify the modalities provided for in that Rule which ensure, *inter alia*, the practical and effective possibility for the parties to the proceedings to raise any concerns about the impartiality of a judge and the procedure to be followed in such instances.

II. Withdrawal of judges of their own motion

7. Whether a judge shall sit in a case is in principle not a matter of the judge's own discretion; it is a matter of duty. Rule 28 § 1 of the Rules of Court therefore reiterates a judge's obligation to sit, in principle, in all cases assigned to him or her.

1. Practice direction issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 22 January 2024.

8. The reasons for which a judge cannot sit in a particular case are set out in Rule 28 § 2 of the Rules of Court. They include, among other situations, any case in which the judge concerned may have a personal (spousal, parental or other) interest, in which he or she had previously acted (in any capacity, such as judge, party, representative or other) or on which he or she had expressed a public opinion.

9. In cases where a judge considers that for one of the reasons enumerated in Rule 28 § 2 of the Rules of Court, he or she is unable to sit in a particular case, that judge will notify the President of Section / President of the Grand Chamber about his/her concerns, explaining the relevant reasons. It will be for the President of Section / President of the Grand Chamber to decide whether the situation raises an appearance of bias and, in cases where it does, to accept the judge's request for withdrawal from a particular case. In case of doubt, the President of Section / President of the Grand Chamber may refer the matter to the Chamber / Grand Chamber for discussion and decision (Rule 28 § 3).

III. External request for recusal

10. It has been the Court's consistent practice to allow the parties to the proceedings – i.e. the applicant(s) and the respondent Government(s) – to challenge the impartiality of a judge appointed to sit in their case[1]. In line with that practice, Rule 28 § 4 of the Rules of Court now clearly sets out that parties to the proceedings – i.e. the applicant(s) and the respondent Government(s) - may request recusal of any judge of the Court assigned to sit in their case (external request). A request for the recusal of a judge by another person, State or entity, which are not party to the particular case before the Court, is not allowed. This does not mean that information which comes to the attention of the Court will not be considered where warranted.

11. Should the judge whose impartiality is being challenged by one of the parties accept the reasons stated in an external request for recusal and immediately wish to withdraw from sitting in the case in question, the procedure prescribed for requests for withdrawal of the judge's own motion shall apply (see above under II).

12. In all other cases, external requests for recusal shall be decided as follows.

13. In all cases assigned to a Committee or a Chamber, a Chamber of the Section to which the case has been allocated shall hear the views of the judge in question concerning the recusal request. The Chamber shall then deliberate and vote on the request, without the judge whose impartiality is being called into question being present.

14. Similarly, in Grand Chamber cases, the relevant Grand Chamber formation shall first hear the views of the judge whose impartiality is being challenged, and then deliberate and vote on the external recusal request without that judge being present.

15. Requests for recusal in cases which are to be decided by a single judge formation shall be decided by the President of the Court, that is to say, the same authority which appoints individual judges to sit as single judges in respect of one or more Contracting Parties.

16. In all cases the party which requested recusal shall be informed of the Court's decision in writing in due course, and a mention of any decision on recusal shall be duly recorded in the Court's judgment or decision.

17. The Court shall also keep a record of cases in which a Judge withdraws of his or her own motion and in which external recusal requests are received and the decisions taken in their regard.

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[1]. See, for instance, *Cyprus v. Turkey* [GC], no. 25781/94, § 8, ECHR 2001-IV; *Lekić v. Slovenia* [GC], no. 36480/07, § 4, 11 December 2018; and *Rustavi 2 Broadcasting Company Ltd and Others v. Georgia*, no. 16812/17, § 6, 18 July 2019.

IV. Form and timing of the recusal request

18. Any external request for recusal must be duly reasoned and submitted to the Court in writing in one of the official languages as provided in Rule 34 of the Rules of Court. Such a request should be lodged as soon as the party concerned becomes aware of the existence of one of the reasons set out in Rule 28 § 2 of the Rules of Court resulting in a specific judge's inability to sit in a particular case.

19. There is no set time-limit for lodging such external requests, the Court having clarified that the responsibility for the implementation of Rule 28 and, in particular, of the principle of objective impartiality, cannot be left to the sole initiative of the parties[1]. However, while flexibility may be accorded where warranted by the particular circumstances of a case, the Court will ensure that the recusal procedure is not subject to abuse (see further below).

20. For applicants this will normally mean that they should submit any recusal request at the earliest possible moment. They can also request recusal at a later stage of the proceedings, for instance if a new judge meanwhile takes up office, or an *ad hoc* judge is appointed in their case. The respondent Government should ideally raise any concerns of bias at the time of filing their observations with the Court, and only exceptionally thereafter.

V. Composition deciding the case

21. In order to have a real and effective opportunity of raising a possible concern about the impartiality of a particular judge before their case has been examined, parties to the proceedings must have means of knowing which judges are likely to be deciding their case. Due to the volume of cases with which the Court has to deal, and its working methods, it is not possible to inform the parties in advance of the names of the judges who will be deciding each and every case. In fact, such notification can and is systematically done only in Grand Chamber cases.

22. However, with a view to ensuring the fullest possible transparency and accessibility to the judicial process before it, the Court has published online complete lists of the different judicial formations operating within each of its five Sections, including the list of single judges designated by State, thus making it possible for the parties in most cases to identify in advance the judges which will most likely be deciding their case.

23. What this means in practice is that all applicants can consult the list of single judges appointed to decide cases against one or more respondent Contracting Parties. They are thus in a position to identify beforehand which judge may be deciding their case, should it not be notified to the respondent Contracting Party under Rule 54 § 2 (b) of the Rules of Court.

24. As regards cases which have been notified to the respondent Contracting Party under Rule 54 § 2 (b) of the Rules of Court, at the latest at that moment the parties are informed of the allocation of their case to a particular Section. They can consult the publicly available lists of Chamber and Committee formations operating within the Section concerned, in order to verify the possible judicial compositions that may be deciding their case. Should they consider that a particular judge should not be involved in deciding their case for one of the reasons listed in Rule 28 of the Rules of Court, they may request that judge's recusal, providing duly explained reasons.

25. Where an *ad hoc* judge has been appointed in a case against a Contracting Party, the parties shall be informed thereof by a letter as soon as such an appointment has been made. They may then ask for recusal of an *ad hoc* judge for the same reasons and following the same procedure prescribed by Rule 28 of the Rules of Court.

[1]. See *X v. the Czech Republic* (revision), no. 64886/19, § 15, 30 March 2023.

VI. Exceptional avenues after a case has been decided

26. There may be very rare situations in which the parties did not have objective means of knowing which judge(s) would be involved in deciding their case.

27. As regards judgments, under Rule 80 of the Rules of Court the parties may ask for a revision of a judgment in the event of the discovery of a fact which might by its nature have a decisive influence and which, when a judgment was delivered, was unknown to the Court and could not reasonably have been known to that party. Given the principle of finality of judgments in Article 44 of the Convention and, in so far as it calls into question the final character of judgments of the Court, revision, which is not provided for in the Convention but was introduced by the Rules of Court, is an exceptional procedure. Requests for revision of judgments are therefore subjected to strict scrutiny (see *Pardo v. France* (revision – admissibility), 10 July 1996, § 21, Reports of Judgments and Decisions 1996-III). As attested by the Court's recent case-law, the possibility of revision may include issues of impartiality (see *X v. the Czech Republic* (revision), no. 64886/19, §§ 7-21, 30 March 2023). The imperative to apply rigorously the principle of objective impartiality may call exceptionally for the revision of the Court's judgment where grounds for a judge's inability to sit have been shown to exist.

28. At the same time, it is not possible to request revision in relation to inadmissibility decisions, which are by their nature final and not amenable to appeal. In such situations it is nevertheless possible for the Court to reopen a case. Although neither the Convention nor the Rules of Court expressly provide for such reopening, according to its case-law, in very exceptional circumstances, where there has been a manifest error of fact or in the assessment of the relevant admissibility requirements, in the interests of justice the Court has the inherent power to reopen a case which had been declared inadmissible and to rectify any such errors (see, for instance, *Boelens and Others v. Belgium* (dec.), no. 20007/09 et al, § 21, 11 September 2012). It cannot be excluded that such errors may also relate to the impartiality of a judge.

29. However, it is important to stress that neither of these avenues are available as a means of appeal against the Court's judgments or decisions. As described above, they are only to be used in those very rare and exceptional circumstances in which the parties had no way of knowing that a particular judge would be deciding their case, and of his or her inability to sit for one of the reasons listed in Rule 28 of the Rules of Court. The Court will carefully scrutinise any requests raising concerns of impartiality submitted after a case has been decided. It will ensure that any abusive, frivolous, vexatious or unsubstantiated complaints in this respect shall not be taken into consideration (see, *mutatis mutandis*, Rule 36 § 4 (b) of the Rules of Court).