



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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**THE GENERAL PRACTICE
FOLLOWED BY THE PANEL OF THE GRAND CHAMBER
WHEN DECIDING ON REQUESTS FOR REFERRAL
IN ACCORDANCE WITH ARTICLE 43 OF THE CONVENTION¹**

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I. INTRODUCTION

In accordance with Article 43 of the Convention, requests for referral to the Grand Chamber are examined by a panel of five judges of the Grand Chamber (hereinafter “the Panel”). The latter is constituted in accordance with Article 43 § 1 of the Convention and Rule 24 § 5 of the Rules of Court.

The current practice of the Panel is not to give reasons for its decisions to accept or reject requests that cases be referred to the Grand Chamber.

This practice is based on Article 45 of the Convention, a provision added by Protocol No. 11 to the Convention which requires reasons to be given only for judgments and for decisions declaring applications admissible or inadmissible. Paragraph 105 of the explanatory report on Protocol No. 11 states that Article 45 “does not concern decisions taken by the panel of five judges of the Grand Chamber in accordance with Article 43”. It should also be noted that Rule 73 § 2 *in fine* of the Rules of Court states that “Reasons need not be given for a refusal of the request [for referral]”.

However, it should not be overlooked that in the İzmir Declaration, under point 2.(e) of the section entitled “The Court”, States expressed the wish to have “decisions of the Panel of five judges to reject requests for referral of cases to the Grand Chamber ... clearly reasoned”. They considered that such a development would contribute to “avoiding repetitive [referral] requests and ensuring better understanding of Chamber judgments”.

The Court notes that since its creation with the entry into force, in November 1998, of Protocol No. 11 to the Convention, the Panel has examined more than 2,000 referral requests. It has therefore developed a series of guiding principles that have come to be accepted by it over the years. It is in this sense that one can speak of the Panel following a practice. A better understanding of the Panel’s decisions may be achieved by making public the main features of its practice, which are summarised in this document.

As with any selection process, it will not always be possible to anticipate the Panel’s decision with a high degree of precision. The aim of this note is simply to assist the parties in assessing the prospects of success of a referral request.

What follows is a description of how the Panel has functioned since it was set up in 1998. It can be seen that in accordance with its practice, there are certain categories of cases which are not likely to be accepted by the Panel for referral to the Grand Chamber because they are not considered to comply with the requirement that only “exceptional cases” be referred. Conversely, there are also categories of cases which are likely to be accepted by the Panel because they raise issues of consistency of the Court’s case-law or because they raise novel issues of law that require an authoritative determination by the Grand Chamber.

II. STATISTICS

Since the entry into force, on 1 November 1998, of Protocol No. 11 to the Convention, the Panel has examined 2,129 requests for referral.² 40.01% of these requests (852) were made by respondent Governments, 56.50% (1,203) by applicants and 3.47% (74) by both parties.

Only 110 requests (approximately 5.16% of all requests) have been accepted so far, resulting in the case being referred to the Grand Chamber. Out of these 110 successful requests, 59 (approximately 2.77% of all requests) were made by the respondent Governments, 44 (approximately 2.06% of all requests) by the applicants and 7 (approximately 0.32% of all requests) by both parties.³

These statistics show that:

(a) requests for referral are accepted in only a small percentage of cases (slightly more than 5%); indeed, only “exceptional cases” are brought before the Grand Chamber, in accordance with the text and spirit of Article 43 of the Convention;

(b) 53.63% of successful requests were made by the respondent Governments, whereas they submitted only 40.01% of the total number of requests; it can therefore be said that to date, Governments have been significantly more successful than applicants in obtaining referrals;

(c) the total number of referral requests is high (and likely to increase); the Court would therefore have a substantial amount of additional work if the Panel had an obligation to give reasons for each of its decisions of acceptance or rejection.

Finally, it may be noted that to date, the majority of cases (110, as indicated above) brought before the Grand Chamber have been the result of the referral procedure, while only 101 cases have resulted from relinquishment of jurisdiction by a Chamber.⁴ It follows that the Grand Chamber’s caseload has originated in referral in approximately 52.13% of cases and in relinquishment in approximately 47.87% of cases.

III. ARTICLE 43 OF THE CONVENTION

The starting point of the Panel’s analysis is necessarily Article 43 § 2 of the Convention, which provides that a request for referral should be accepted “if the case raises a serious question affecting the interpretation or application of the Convention or the Protocols thereto or a serious issue of general importance”. The explanatory report on Protocol No. 11 notes (in paragraphs 99 to 102) that these conditions should be applied “in a strict sense”, which suggests that, in principle, a request for referral

² 2,508 including joined applications.

³ See the summary table annexed to this note indicating the “cases referred to the Grand Chamber by the Panel since the entry into force of Protocol No. 11 to the Convention”.

⁴ 116 including joined applications.

should be granted only when the case is, at least in some respects, exceptional. This interpretation is confirmed by the first paragraph of Article 43 of the Convention, which provides that “any party to the case may, *in exceptional cases*, request that the case be referred to the Grand Chamber” (emphasis added). As exceptional cases are marginal in number, it may be reasonably expected that only a small minority of referral requests will be accepted.⁵

According to the explanatory report, a “serious question affecting the *interpretation* of the Convention” is raised when a question of importance not yet decided by the Court is at stake, or when the decision is of importance for future cases and for the development of the Court’s case-law. This may also be the case when the impugned judgment is not consistent with a previous judgment of the Court.

A serious question affecting the *application* of the Convention is raised when a judgment necessitates a substantial change to national law or administrative practice. This may happen in cases in which the Court has initiated the “pilot-judgment procedure” in accordance with Rule 61 of the Rules of Court and has therefore considered that the facts of the application disclosed the existence, in the Contracting State concerned, of a “structural or systemic problem or other similar dysfunction”.⁶ However, the mere fact that a Chamber judgment has been adopted following the pilot-judgment procedure does not, in itself, mean that the case *must* be referred to the Grand Chamber.

Finally, a “serious issue of general importance” could involve a substantial political issue or an important issue of policy.

The mere fact that the case is factually complex, politically delicate or has given rise to dissenting opinions does not, as such, justify its referral to the Grand Chamber. For example, the Panel systematically rejects requests which challenge the factual findings of the Chamber in cases concerning prison conditions or other issues under Articles 2 and 3 of the Convention where the case-law is well established. However, under certain circumstances, these same facts may be factors militating in favour of the existence of one or more of the grounds for referral set forth in Article 43 § 2 of the Convention (in other words, when the dissenting opinions are, in the Panel’s view, well reasoned on key Convention issues and/or point out inconsistencies in the case-law).

The members of the Panel consider whether the case warrants referral to the Grand Chamber on the grounds that it is exceptional as indicated in the text of Article 43. They do not seek to impose their views on the merits of the case, nor do they vote to refer a case because they disagree with the Chamber’s reasoning or would themselves have voted differently. The members of the Panel thus do not assess the merits of the case but, as in national leave-to-appeal procedures, express views as to whether the case should be referred to the Grand Chamber because it meets the statutory criteria set out above. Disagreement on issues of fact, on the inferences to be drawn from the facts and/or, for instance, on the point at which, in the particular circumstances of the

⁵ As indicated in the previous part of this paper, statistics show that the “acceptance rate” of referral requests is around 5.16%.

⁶ See, for instance, *Hutten-Czapska v. Poland*, no. 35014/97 (referred to the Grand Chamber before the adoption of new Rule 61 of the Rules of Court).

case, the fair balance between conflicting rights should have been struck does not necessarily mean that the conditions for referral are met. Indeed, the Grand Chamber should not be seen as an appeal court whose function is to correct alleged errors of fact or of assessment of the various features of each individual case. The intervention of the Grand Chamber is instead limited to cases which, by their nature and by the nature of their legal, social and political implications, are capable of having a serious impact on the extent and scope of the protection afforded by the Convention.

IV. CASES IN WHICH THE REFERRAL REQUEST MAY BE GRANTED

Although the Panel's decisions are not reasoned, it will usually be clear to the parties from those cases that are accepted for referral why they are considered by the Panel to meet the criteria set out in Article 43. Such cases, for example, may raise new legal issues, may have given rise to issues of consistency at Chamber level or may have a high profile for other reasons relating to the complaints raised or the context of the dispute. For requests that are rejected, the cases fall into a variety of categories (see below) which the Panel will consistently reject as not referable. Needless to say, there are borderline cases which lend themselves to lively discussion amongst Panel members as to whether the case should be referred to the Grand Chamber, and which are consequently difficult to classify.

It should not be overlooked, however, that the Panel and the Grand Chamber are separate and differently composed bodies. Their evaluation of the importance of a case from a case-law or policy perspective may therefore be different. Thus, it is quite conceivable that the Panel's reasons for referral may not be followed by the majority of the Grand Chamber (which may, for instance, decide simply to confirm the Chamber judgment).

It follows that the Panel's practice cannot be inferred only from the Grand Chamber's reasoning and that the analysis should be extended to the parties' requests for referral. When such requests have been accepted, it may be assumed that the Panel has, at least partly, accepted the Government's or applicant's arguments.

Cases that will be sent to the Grand Chamber are likely to belong to the following categories.

(a) Cases affecting case-law consistency

The fundamental role of the Panel is to ensure that Chamber judgments are consistent with the established case-law of the Court. When a Chamber judgment significantly departs from the previous case-law, the Panel exercises the function conferred on it by the Convention by asking the Grand Chamber to settle the interpretation to be pursued and to determine the dispute.

Examples of this kind of situations may be found in the cases of

- *Guiso-Gallisay v. Italy* (no. 58858/00, where the Chamber had "departed from the case-law on the application of Article 41 in cases of constructive expropriation"⁷);

⁷ See *Guiso-Gallisay v. Italy* [GC], no. 58858/00, § 56, 22 December 2009.

- *Scoppola (no. 3) v. Italy* (no. 126/05, currently pending before the Grand Chamber, where the respondent Government challenged, *inter alia*, the consistency of the Chamber's approach with the principles on prisoners' voting rights set forth in *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, ECHR 2005-IX);

- *Herrmann v. Germany* (no. 9300/07, currently pending before the Grand Chamber, where the applicant contested the consistency of the Chamber's judgment on the issue of hunting rights with the principles set forth in *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, ECHR 1999-III);

- *Sabri Güneş v. Turkey* (no. 27396/06, currently pending before the Grand Chamber, where the Chamber departed from the Court's practice in fixing the *dies ad quem* of six-month time-limit set forth in Article 35 § 1 of the Convention⁸).

It should be observed, however, that there is a distinction between judgments which *depart* from the case-law and judgments which simply *apply the existing case-law to new situations*. The latter do not necessarily lend themselves to referral, as they may be seen as constituting a simple extension of – and not a change in – the case-law. Referral is appropriate only when the Panel feels that such an extension goes beyond the scope of the existing case-law.⁹

(b) Cases which may be suitable for development of the case-law

The Panel may also decide to refer to the Grand Chamber cases which do not disclose, as such, a (potential) inconsistency with the previous case-law, but which present an opportunity for development of the case-law where this is considered appropriate.

Examples of the above are the following cases:

- *Salduz v. Turkey*, no. 36391/02, where the Grand Chamber was called upon to decide whether the time had come to hold that the lack of legal assistance for minors during police custody was contrary to Article 6 of the Convention;

- *Bayatyan v. Armenia*, no. 23459/03, in which the Chamber, considering that an evolutive interpretation of the Convention was not justified in the circumstances, concluded that Article 9, read in the light of Article 4 § 3 (b), did not guarantee a right to refuse military service on conscientious grounds; the Grand Chamber reached different conclusions.¹⁰

⁸ See *Sabri Güneş v. Turkey*, no. 27396/06, §§ 33-44, 24 May 2011.

⁹ See, for instance, *Nejdet Şahin and Perihan Şahin v. Turkey*, no. 13279/05, in which the Chamber applied the principles concerning legal certainty (developed in respect of divergences in decisions adopted by courts belonging to the same branch of the legal system) to a (partly) new situation: discrepancies between judgments of different and hierarchically unrelated types of court (see *Nejdet Şahin and Perihan Şahin v. Turkey*, no. 13279/05, § 52, 27 May 2010). The Grand Chamber confirmed the Chamber's approach (see judgment of 20 October 2011).

¹⁰ See *Bayatyan v. Armenia* [GC], no. 23459/03, 7 July 2011. Further examples of cases which may be falling into this category are *Silih v. Slovenia* ([GC], no. 71463/01, 9 April 2009) and *Varnava and Others v. Turkey* ([GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, 18 September 2009).

It goes without saying that in such cases there is nothing to prevent the Grand Chamber from confirming the existing case-law and refusing to endorse the change in approach envisaged by the majority of the Panel.¹¹

(c) Cases which are suitable for clarifying the principles set forth in the existing case-law

In some cases referred to the Grand Chamber, the Chamber judgment, without being *per se* innovative, touched on an area in which it was felt that clarification of the relevant basic principles was needed. For instance:

- In *Üner v. the Netherlands* (no. 46410/99) the Grand Chamber had the opportunity to enumerate and make more explicit the relevant criteria for assessing whether an expulsion order of an alien was necessary in a democratic society and proportionate to the legitimate aim pursued;

- In *Ramsahai and Others v. the Netherlands* (no. 52391/99) the Grand Chamber was called upon to specify the requirements of an effective and independent investigation into the circumstances of a killing by an agent of the State;

- In *Medvedyev and Others v. France* (no. 3394/03), the referral gave the Grand Chamber the opportunity, *inter alia*, to explain in detail, against the background of its established case-law, the factors that brought the applicants, who were arrested on a ship on the high seas, within the jurisdiction of France for the purposes of Article 1 of the Convention¹².

(d) Cases in which the Grand Chamber may be called upon to re-examine a development in the case-law endorsed by the Chamber

The Chamber may adopt a judgment which, without explicitly conflicting with previous authorities, may be seen as a significant development of the case-law principles. In these cases, the Panel may feel that confirmation (or rejection) of such a development is needed from the Grand Chamber. This is notably the case when the Chamber has found a violation of the Convention in circumstances which, in the past, had not systematically led to such a conclusion.

Examples of this type of situation may be found in the following cases:

- *Mamatkulov and Askarov v. Turkey*, nos. 46827/99 and 46951/99, in which the Chamber found, for the first time, a violation of Article 34 of the Convention in that the respondent Government had failed to comply with the interim measures indicated by the Court under Rule 39 of the Rules of Court; this finding was confirmed by the

¹¹ It can be argued that something of the kind happened in *Gorou v. Greece* (no. 2), ([GC], no. 12686/03, 20 March 2009), in which one of the main questions raised was whether the domestic authorities' positive obligations under Article 6 § 1 of the Convention should be extended to the point of establishing a duty for the public prosecutor to justify his decision not to lodge the appeal sought by the civil party. The Grand Chamber answered in the negative.

¹² See also *Blečić v. Croatia* ([GC], no. 59532/00, ECHR 2006-III), in which the Court had an occasion to clarify its case-law about its competence *ratione temporis*.

Grand Chamber on the basis of an attentive analysis of the scope of interim measures and of the right of individual petition;

- *Kovačić and Others v. Slovenia*, nos. 44574/98, 45133/98 and 48316/99, in which the Chamber struck out the cases, concerning the freezing of foreign-currency bank accounts, on the grounds that the matter had been resolved and that it was no longer justified to continue the examination of the application; the Grand Chamber confirmed these findings;

- *Paladi v. Moldova*, no. 39806/05, where the Chamber found that the delay in complying with an interim measure, even if it had not caused irreparable damage to the applicant and had not prevented him from pursuing his application before the Court, had violated Article 34 of the Convention; the Grand Chamber agreed;

- *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)*, no. 32772/02, where the Chamber considered that the domestic authorities' refusal to review a judgment which had been adopted in breach of Article 10 of the Convention amounted to a fresh violation of that provision; this finding was endorsed by the Grand Chamber after careful scrutiny of the principles governing the execution of the Court's judgments;

- *Kart v. Turkey*, no. 8917/05, in which the Chamber concluded that the refusal to lift the immunity which the applicant enjoyed as a Member of Parliament had violated his right to access to a court for the determination of the criminal charges against him; the Grand Chamber reversed this finding;

- *Kononov v. Latvia*, no. 36376/04, in which the Chamber found that the applicant could not have reasonably foreseen his punishment for war crimes for acts committed in 1944; the Grand Chamber reversed this verdict, finding that the applicant's acts constituted offences defined with sufficient accessibility and foreseeability by the laws and customs of war;

- *Taxquet v. Belgium*, no. 926/05, where the Chamber found a violation of Article 6 § 1 of the Convention on account of the lack of reasoning in the Assize Court's judgment; the Grand Chamber endorsed this finding in the light of, *inter alia*, a comparative-law study and the submissions of the third-party interveners, the United Kingdom, Irish and French Governments;

- *Perdigão v. Portugal*, no. 24768/06, where the Chamber considered that the concrete application of Portugal's method of calculating and fixing court fees had led to a complete lack of compensation for the expropriation of the applicants' property; the Grand Chamber agreed that there had been a violation of Article 1 of Protocol No. 1.

(e) Cases concerning “new” issues

A reason in favour of referral might be that the Chamber judgment touches on a (relatively new) field of law which has not previously been examined by the Court, and/or which is socially and politically sensitive. In these cases it is frequently felt that guidance is needed from the Court's enlarged formation on issues which, on account of their original character and the debate they generate in society and the

media, should be subjected to the most careful scrutiny. Thus, the Grand Chamber may be given the opportunity to adapt the existing case-law to new situations and/or to develop new principles, having regard to the possible implications for future, similar cases.

For instance, “new issues” were raised in the following cases:

- *Leyla Şahin v. Turkey*, no. 44774/98 (ban on wearing the Islamic headscarf in higher-education institutions);
- *Evans v. the United Kingdom*, no. 6339/05 (dispute over the implantation of an embryo notwithstanding the withdrawal of consent by the male gamete provider);
- *D.H. and Others v. the Czech Republic*, no. 57325/00 (discriminatory treatment of Roma children in the field of education);
- *Dickson v. the United Kingdom*, no. 44362/04 (right to access to artificial insemination for prisoners);
- *S.H. and Others v. Austria*, no. 57813/00 (*in vitro* fertilisation);
- *Gillberg v. Sweden*, no. 41723/06 (conviction for refusal to disclose medical research material).

(f) Cases raising a “serious issue of general importance”

A sub-group of the category of cases mentioned in section (e) above is that of cases which, without addressing a “new” field of law, raise an important issue at European or global level. Examples of cases of this kind may be the following:

- *Medvedyev and Others v. France*, no. 3394/03, concerning the key issue of the fight on the high seas against drug trafficking and other crimes;
- *Mangouras v. Spain*, no. 12050/04, about the protection of the marine environment from pollution;
- *D.H. and Others v. the Czech Republic*, no. 57325/00, *Aksu v. Turkey*, nos. 4149/04 and 41029/04, and *Oršuš and Others v. Croatia*, no. 15766/03, touching on the topical issue of protection of Roma minorities in today’s Europe.

(g) “High-profile” cases

Finally, some cases are referred to the Grand Chamber both because of the complexity of the legal issues they raise and because of the serious implications for the State concerned. The latter may stem from the identity of the applicant or from the fact that the application concerns matters which are at the centre of a sensitive national, European or global debate. These cases relate to historical, geopolitical or religious issues. They may also concern a specific incident or crime which has attracted exceptional media attention.

The following are examples of “high-profile” cases:

- *Refah Partisi (the Welfare Party) and Others v. Turkey*, nos. 41340/98, 41342/98, 41343/98 and 41344/98, concerning the dissolution of a political party which after the 1995 general election was the largest political party in Turkey, with a total of 158 seats (out of 450) in the Grand National Assembly, and which in June 1996 had come to power by forming a coalition government;
- *Öcalan v. Turkey*, no. 46221/99, in which, prior to his arrest, the applicant was the leader of the PKK (Workers' Party of Kurdistan);
- *Leyla Şahin v. Turkey*, no. 44774/98, concerning the ban on wearing the Islamic headscarf in higher-education institutions;
- *Ramirez Sanchez v. France*, no. 59450/00, in which the applicant, who claimed to be a revolutionary by profession, was held responsible for a series of terrorist attacks in France;
- *Yumak and Sadak v. Turkey*, no. 10226/03, concerning the compatibility with Article 3 of Protocol No. 1 of the imposition of an electoral threshold of 10% in parliamentary elections;
- *Gäfgen v. Germany*, no. 22978/05, concerning a nationally well-known case of kidnapping and murder;
- *Lautsi and Others v. Italy*, no. 30814/06, concerning the presence of religious symbols (in particular, crucifixes) in classrooms;
- *Giuliani and Gaggio v. Italy*, no. 23458/02, concerning the killing of a demonstrator by a police officer during the demonstrations on the fringes of the G8 summit in Genoa in July 2001.

It should be clarified that the above distinctions are made in order to provide, in outline form, a better understanding of the Panel's practice and should not be seen as rigid or mutually exclusive. A case referred to the Grand Chamber may also fall within more than one of the categories described above¹³ or "in between" some of them. Moreover, referral may sometimes be granted for a number of reasons, none of which would be decisive if taken alone. In connection with this, it is worth noting that the scarcity of case-law on a particular Convention provision, although not *per se* decisive, may be a factor in favour of referring the case to the Grand Chamber.¹⁴

Finally, it is to be noted that the practice of the Panel is not set in stone, but is subject to constant potential evolution. Therefore, it cannot be ruled out that new criteria for referral – not examined in the present paper – might be developed in the future.

¹³ It can be argued, for instance, that the case of *Öcalan*, cited above, fell within both categories (b) and (g), while *Lautsi and Others* belonged to both (e) and (g) and *Kart* to (d) and (e).

¹⁴ See, for instance, *Mangouras v. Spain* (no. 12050/04), concerning, *inter alia*, the "guarantees to appear for trial" by which, according to Article 5 § 3 of the Convention, release pending trial may be conditioned. Before the Grand Chamber judgment, the Court's case-law was scarce on this issue.

V. REQUESTS THAT ARE IN PRINCIPLE REJECTED

The Panel has developed the practice of systematically rejecting referral requests which challenge:

(a) Decisions by the Chamber to declare a complaint inadmissible

Applicants should be reminded that according to the Court's case-law, the content and scope of the "case" referred to the Grand Chamber are delimited by the Chamber's decision on admissibility; this means that the Grand Chamber may examine the case in its entirety in so far as it has been declared admissible; it cannot, however, examine those parts of the application which have been declared inadmissible by the Chamber (see, amongst other authorities, *Sisojeva and Others v. Latvia* [GC], no. 60654/00, §§ 61-62, ECHR 2007-II).

(b) Awards made by the Chamber under Article 41 of the Convention

The award at issue constitutes the application of Article 41 to the nature of the violation found and may be seen as a factual assessment; moreover, in many cases the Chamber decides the amount of just satisfaction on an "equitable basis", and such an assessment does not, by its very nature, lend itself to a review by the Grand Chamber.

An exception to this principle may be found in the case of *Guiso-Gallisay v. Italy* (no. 58858/00), in which the main question submitted to the Grand Chamber was the pecuniary damage suffered by the applicants following the unlawful expropriation of their land. However, in that case the Grand Chamber was not called upon to review the assessment of the amount of the applicants' losses, but to clarify the criteria governing the calculation of the losses at stake (and indeed it came to the conclusion that it was appropriate to change the Court's position, to avoid the application of the *Papamichalopoulos* case-law to cases of constructive expropriation and to adopt a new approach¹⁵). There was, therefore, a "serious question affecting the interpretation of [Article 41 of] the Convention"¹⁶.

(c) The Chamber's assessment of the facts

As indicated above, the Grand Chamber should not be seen as an appeal court with the function of correcting errors of fact allegedly made by the Chamber. If that were the case, there would be no need for filtering by the Panel, and the parties would have direct access to the Grand Chamber whenever the establishment of a fact by the Chamber ran counter to their interests. Thus, for instance, it could be said that a State would have very little prospect of success in requesting referral with a view to challenging the Chamber's finding that use of force was imputable to agents of the State.

¹⁵ See *Guiso-Gallisay v. Italy* [GC], no. 58858/00, §§ 102-107, 22 December 2009.

¹⁶ See also *Arvanitaki-Roboti and Others v. Greece* ([GC], no. 27278/03, 15 February 2008), and *Kakamoukas v. Greece* ([GC], no. 38311/02, 15 February 2008), where the main question addressed by the Grand Chamber was the amount of the award to be made in cases of excessive length of proceedings.

(d) The application of well-established case-law

Unless the Panel considers that it is time for development of the Court's case-law (see section IV (b) above), judgments entailing "normal" application of well-established case-law are in principle not referred to the Grand Chamber.¹⁷

Moreover, it should be emphasised that in principle the case will not be referred to the Grand Chamber if the main legal question raised concerns the specific and peculiar legislation of one country only and is not likely to be of interest to the other High Contracting Parties, thus not raising an issue of general interest at European level.¹⁸

VI. WORKING PROCEDURES OF THE PANEL

A meeting of the Panel of the Grand Chamber is organised when a sufficient number of referral requests are ready for examination. On average, the Panel meets at intervals of eight or nine weeks and examines between forty-five and sixty referral requests. Taking into account the periods of light schedule and judicial recess, the Panel is likely to meet no more than six times per year. The composition of the Panel is outlined in Rule 24 § 5 of the Rules of Court.

It is worth pointing out that while referral to the Grand Chamber is to be granted "if the case raises a serious question affecting the interpretation or application of the Convention or the Protocols thereto or a serious issue of general importance", 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 at least one of the parties is a reason for requesting revision of the judgment (see, in particular, Rule 80 of the Rules of Court). Therefore, where a referral request is based on the discovery of such a fact, the Panel may decide to refuse referral but to transmit the party's observations to the original Chamber, which should in turn examine whether the conditions for revising its judgment are complied with.

The Panel declares inadmissible any referral requests which:

- (a) challenge the Chamber's decision declaring a complaint inadmissible (see section V (a) above); or
- (b) do not comply with the three-month rule set out in Article 43 § 1 of the Convention.

¹⁷ See, for instance, the "Chechen cases", in which, without submitting any new information, the Government essentially challenged the role of the Court in assessing the existence of a substantive or procedural violation of Article 2 of the Convention: see, *inter alia*, *Shokkarov and Others v. Russia*, no. 41009/04; *Amuyeva and Others v. Russia*, no. 17321/06; *Matayeva and Dadayeva v. Russia*, no. 49076/06.

¹⁸ See, for instance, *RTBF v. Belgium*, no. 50084/06, in which the Chamber judgment of 29 March 2011 concerned the existence of a legal basis, in Belgian law and in the light of the case-law of the Belgian Court of Cassation, for prohibiting the broadcasting of television programmes. The Government's request for referral of 29 June 2011 was rejected by the Panel of the Grand Chamber on 15 September 2011.

In this connection, it is to be noted that the Panel has constantly held that the period of three months within which referral may be requested starts to run from the day which follows the day of the delivery of the Chamber judgment¹⁹, irrespective of whether the party concerned may have learned about it at a later stage. It expires three calendar months later and is not interrupted by bank holidays or periods of judicial recess. Thus, for example, for a Chamber judgment delivered on 10 January, the time-limit set forth in Article 43 § 1 of the Convention expires at midnight on 10 April (central european time). The request for referral should reach the Registry of the Court before the expiry of the above-mentioned period (see *Kovacic and Others v. Slovenia* [GC], nos. 44574/98, 45133/98 and 48316/99, § 197, 3 October 2008²⁰). Where no request has been received the judgment will become final at midnight on the same day.

¹⁹ This approach is consistent with the one followed by the Court on the six-month rule provided for by Article 35 § 1 of the Convention (see *Otto v. Germany* (dec.), no. 21425/06, 10 November 2009, and *Praha v. the Czech Republic* (dec.), no. 38354/06, 28 September 2010).

²⁰ See also Rule 73 § 1 of the Rules of Court, according to which "... any party to a case may exceptionally, within a period of three months from the date of delivery of the judgment of a Chamber, *file in writing at the Registry* a request that the case be referred to the Grand Chamber" emphasis added.

ANNEX

Cases referred to the Grand Chamber by the Panel since the entry into force of Protocol No. 11 to the Convention²¹

	CASE	Party requesting referral	Date of Panel's decision to refer the case	Date of Grand Chamber judgment
1	25702/94 K. and T. v. Finland*	Government	4.10.2000	12.7.2001
2	36732/97 PISANO v. Italy	Applicant	13.12.2000	24.10.2002 (striking out)
3	35605/97 KINGSLEY v. UK	Applicant	17.1.2001	28.5.2002
4	24952/94 N.C. v. Italy	Applicant	5.9.2001	18.12.2002
5	36590/97 GÖÇ v. Turkey	Applicant and Government	5.9.2001	11.7.2002
6	32911/96 MEFTAH and Others v. France (joined with 2 other cases)	Applicant and Government	5.9.2001	26.7.2002
7	41340/98 REFAH PARTİSİ v. Turkey (joined with 3 other cases)	Applicant	12.12.2001	13.2.2003
8	48898/99 PERNA v. Italy*	Applicant and Government	12.12.2001	6.5.2003
9	36022/97 HATTON and Others v. the United Kingdom*	Government	27.3.2002	8.7.2003
10	31871/96 SOMMERFELD v. Germany*	Government	27.3.2002	8.7.2003
11	30943/96 SAHIN v. Germany*	Government	27.3.2002	8.7.2003
12	44158/98 GORZELIK and Others v. Poland	Applicant	10.7.2002	17.2.2004
13	26307/95 ACAR v. Turkey*	Applicant	4.9.2002	8.4.2004
14	39665/98 EZEH v. the United Kingdom (joined	Government	6.11.2002	9.10.2003

²¹ In the cases marked with an asterisk, the Grand Chamber has departed from the Chamber's judgment as to the merits and/or as the admissibility of one or more complaints. No asterisk appears when the Grand Chamber has confirmed the Chamber's findings, has decided to deal with a complaint which was not examined by the Chamber or has adopted a striking-out judgment. Out of the 94 cases so far decided by the Grand Chamber further to a referral, there has been a departure from the Chamber's findings in 29 cases (16 following a referral requested by Government, 11 when the referral has been requested by the applicant and 2 in cases in which both parties requested the referral).

	with another case)			
15	48939/99 ÖNER YILDIZ v. Turkey	Government	6.11.2002	30.11.2004
16	56679/00 AZINAS v. Cyprus*	Government	6.11.2002	28.4.2004
17	44912/98 KOPECKÝ v. Slovakia*	Government	21.5.2003	28.9.2004
18	46827/99 MAMATKULOV v. Turkey (joined with another case)	Government	21.5.2003	4.2.2005
19	46221/99 ÖCALAN v. Turkey	Applicant and Government	9.7.2003	12.5.2005
20	30324/96 SMOLEANU v. Romania	Applicant	24.9.2003	6.4.2006 (striking out)
21	31549/96 POPOVICI and DUMITRESCU v. Romania	Applicant	24.9.2003	6.4.2006 (striking out)
22	35671/97 LINDNER and HAMMERMAYER v. Romania	Applicant	24.9.2003	6.4.2006 (striking out)
23	33348/96 CUMPĂNĂ and MAZĂRE v. Romania*	Applicant	3.12.2003	17.12.2004
24	49017/99 PEDERSEN and BAADSGAARD v. Denmark	Applicant	3.12.2003	17.12.2004
25	39647/98 EDWARDS v. the United Kingdom (joined with another case)	Government	3.12.2003	27.10.2004
26	46720/99 JAHN v. Germany (joined with 2 other cases)*	Government	14.6.2004	30.6.2005
27	73797/01 KYPRIANOU v. Cyprus	Government	14.6.2004	15.12.2005
28	43577/98 NACHOVA and HRISTOVA v. Bulgaria (joined with another case)*	Government	7.7.2004	6.7.2005
29	44774/98 LEYLA ŞAHİN	Applicant	10.11.2004	10.11.2005
30	74025/01 HIRST v. the United Kingdom (no. 2)	Government	10.11.2004	6.10.2005
31	58278/00 ŽDANOKA v. Latvia*	Government	10.11.2004	16.3.2006

32	59532/00 BLEČIĆ v. Croatia*	Applicant	15.12.2004	8.3.2006
33	36813/97 SCORDINO v. Italy (no. 1)	Government	2.2.2005	29.3.2006
34	64886/01 COCCHIARELLA v. Italy	Government	30.3.2005	29.3.2006
35	65075/01 PROCACCINI v. Italy	Government	30.3.2005	29.3.2006
36	64699/01 MUSCI v. Italy	Government	30.3.2005	29.3.2006
37	64705/01 MOSTACCIUOLO v. Italy (no. 1)	Government	30.3.2005	29.3.2006
38	65102/01 MOSTACCIUOLO v. Italy (no. 2)	Government	30.3.2005	29.3.2006
39	62361/00 RICCARDI PIZZATI v. Italy	Government	30.3.2005	29.3.2006
40	64897/01 ZULLO v. Italy	Government	30.3.2005	29.3.2006
41	64890/01 APICELLA v. Italy	Government	30.3.2005	29.3.2006
42	67335/01 ACHOUR v. France*	Government	30.3.2005	29.3.2006
43	56581/00 SEJDOVIC v. Italy	Government	30.3.2005	1.3.2006
44	59450/00 RAMIREZ SANCHEZ v. France	Applicant	6.6.2005	4.7.2006
45	35014/97 HUTTEN-CZAPSKA v. Poland	Applicant	6.7.2005	19.6.2006
46	46410/99 ÜNER v. the Netherlands	Applicant	30.11.2005	18.10.2006
47	60654/00 SISOJEVA and Others v. Latvia	Government	30.11.2005	15.1.2007 (striking out)
48	18114/02 HERMI v. Italy*	Government	30.11.2005	18.10.2006
49	73049/01 ANHEUSER-BUSCH INC. v. Portugal	Applicant	15.2.2006	11.1.2007
50	44302/02 J.A. PYE (OXFORD) LAND LTD v. the United Kingdom*	Government	12.4.2006	30.8.2007
51	52391/99 RAMSAHAI and Others	Government	12.4.2006	15.5.2007

	v. the Netherlands			
52	57325/00 D.H. and Others v. the Czech Republic*	Applicant	3.7.2006	13.11.2007
53	6339/05 EVANS v. the United Kingdom	Applicant	3.7..2006	10.4.2007
54	44362/04 DICKSON v. the United Kingdom*	Applicant	13.9.2006	4.12.2007
55	19324/02 LÉGER v. France	Applicant	13.9.2006	30.3.2009 (striking out)
56	69698/01 STOLL v. Switzerland*	Government	13.9.2006	10.12.2007
57	27278/03 ARVANITAKI-ROBOTI and Others v. Greece	Government	13.9.2006	15.2.2008
58	38311/02 KAKAMOUKAS and Others v. Greece	Government	23.10.2006	15.2.2008
59	58822/00 SHEVANOVA v. Latvia	Government	23.10.2006	7.12.2007 (striking out)
60	59643/00 KAFTAILOVA v. Latvia	Government	23.10.2006	7.12.2007 (striking out)
61	13229/03 SAADI v. the United Kingdom	Applicant	11.12.2006	29.1.2008
62	44574/98 KOVAČIĆ v. Slovenia (joined with 2 other cases)	Applicant	23.5.2007	3.10.2008 (striking out)
63	13378/05 BURDEN v. the United Kingdom	Applicant	23.5.2007	29.4.2008
64	34503/97 DEMİR and BAYKARA v. Turkey	Government	23.5.2007	12.11.2008
65	10226/03 YUMAK and SADAK v. Turkey	Applicant	9.7.2007	8.7.2008
66	36391/02 SALDUZ v. Turkey*	Applicant	24.9.2007	27.11.2008
67	1638/03 MASLOV v. Austria	Government	24.9.2007	23.6.2008
68	12686/03 GOROU v. Greece (no. 2)	Applicant	12.11.2007	20.3.2009
69	14939/03 ZOLOTUKHIN v. Russia	Government	12.11.2007	10.2.2009
70	71463/01 ŠILIH v. Slovenia	Government	12.11.2007	9.4.2009

71	39806/05 PALADI v. Moldova	Government	30.1.2008	10.3.2009
72	32772/02 VEREIN GEGEN TIERFABRIKEN SCHWEIZ (VgT) v. Switzerland	Government	31.3.2008	30.6.2009
73	2334/03 KOZACIOĞLU v. Turkey	Government	31.3.2008	19.2.2009
74	11364/03 MOOREN v. Germany	Applicant	2.6.2008	9.7.2009
75	16064/90 VARNAVA v. Turkey (joined with 8 other cases)	Government	7.7.2008	18.9.2009
76	17056/06 MICALLEF v. Malta	Government	7.7.2008	15.10.2009
77	22978/05 GÄFGEN v. Germany*	Applicant	1.12.2008	1.6.2010
78	15766/03 ORŠUŠ and Others v. Croatia*	Applicant	1.12.2008	16.3.2010
79	3394/03 MEDVEDYEV and Others v. France	Applicant and Government	1.12.2008	29.3.2010
80	8917/05 KART v. Turkey*	Government	1.12.2008	3.12.2009
81	58858/00 GUIISO-GALLISAY v. Italy	Applicant	26.1.2009	22.12.2009
82	36376/04 KONONOV v. Latvia*	Government	26.1.2009	17.5.2010
83	42184/05 CARSON and Others v. the United Kingdom	Applicant	6.4.2009	16.3.2010
84	7/08 TĂNASE v. Moldova	Government	6.4.2009	27.4.2010
85	41615/07 NEULINGER and SHURUK v. Switzerland*	Applicant	5.6.2009	6.7.2010
86	12050/04 MANGOURAS v. Spain	Applicant	5.6.2009	28.9.2010
87	926/05 TAXQUET v. Belgium	Government	5.6.2009	16.11.2010
88	3976/05 ŞERİFE YİĞİT v. Turkey	Applicant	14.9.2009	2.11.2010
89	38224/03 SANOMA UITGEVERS B.V. v. the Netherlands*	Applicant	14.9.2009	14.9.2010
90	21272/03	Government	14.9.2009	2.11.2010

	SAKHNOVSKIY v. Russia			
91	24768/06 PERDIGÃO v. Portugal	Government	10.12.2009	16.11.2010
92	26766/05 AL-KHAWAJA v. the United Kingdom (joined with another case)	Government	1.3.2010	Currently pending before the Grand Chamber
93	23458/02 GIULIANI and GAGGIO v. Italy*	Applicant and Government	1.3.2010	24.3.2011
94	30814/06 LAUTSI and Others v. Italy*	Government	1.3.2010	18.3.2011
95	23459/03 BAYATYAN v. Armenia*	Applicant	10.5.2010	7.7.2011
96	28955/06 PALOMO SANCHEZ v. Spain (joined with 3 other cases)	Applicant	10.5.2010	Currently pending before the Grand Chamber
97	54522/00 KOTOV v. Russia	Government	28.6.2010	Currently pending before the Grand Chamber
98	13279/05 NEJDET ŞAHİN and PERİHAN ŞAHİN v. Turkey	Applicant	4.10.2010	20.10.2011
99	57813/00 S.H. and Others v. Austria	Government	4.10.2010	Currently pending before the Grand Chamber
100	4149/04 AKSU v. Turkey (joined with another case)	Applicant	22.11.2010	Currently pending before the Grand Chamber
101	29226/03 CREANGĂ v. Romania	Government	22.11.2010	Currently pending before the Grand Chamber
102	26828/06 KURIĆ and OTHERS v. Slovenia	Applicant and Government	21.2.2011	Currently pending before the Grand Chamber
103	30078/06 KONSTANTIN MARKIN v. Russia	Government	21.2.2011	Currently pending before the Grand Chamber
104	41723/06 GILLBERG v. Sweden	Applicant	11.4.2011	Currently pending before the Grand Chamber
105	37575/04 BOULOIS v. Luxembourg	Government	11.4.2011	Currently pending before the Grand Chamber
106	9300/07 HERRMANN v. Germany	Applicant	20.6.2011	Currently pending before the Grand Chamber

107	16354/06 MOUVEMENT RAELIEN SUISSE v. Switzerland	Applicant	20.6.2011	Currently pending before the Grand Chamber
108	126/05 SCOPPOLA v. Italy (no. 3)	Government	20.6.2011	Currently pending before the Grand Chamber
109	71243/01 VISTIŅŠ AND PEREPJOLKINS v. Latvia	Applicant	15.9.2011	Currently pending before the Grand Chamber
110	27396/06 SABRI GÜNEŞ v. Turkey	Government	15.9.2011	Currently pending before the Grand Chamber