

Muir, Elise , Sacha Garben , and Inge Govaere , ed. *Activating Human and Fundamental Rights Before the European Courts*. Oxford Dublin: Hart Publishing, 2026. *Modern Studies in European Law*. *Modern Studies in European Law*. Bloomsbury Collections. Web. 4 Jun. 2026. <<http://dx.doi.org/10.5040/9781509987726>>.

Accessed from: www.bloomsburycollections.com

Accessed on: Thu Jun 04 2026 10:14:06 British Summer Time

Copyright © Philip Leach. Elise Muir, Sacha Garben, and Inge Govaere and Contributors 2026. This chapter is published open access subject to a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International licence (CC BY-NC-ND 4.0, <https://creativecommons.org/licenses/by-nc-nd/4.0/>). You may re-use, distribute, and reproduce this work in any medium for non-commercial purposes, provided you give attribution to the copyright holder and the publisher and provide a link to the Creative Commons licence.

Injunctive Relief at the European Court of Human Rights – Progress and Push-back

PHILIP LEACH

1. Introduction

Originating in the 1970s, the interim measures mechanism of the European Court of Human Rights (ECtHR) has garnered ever-greater prominence, and in some quarters, notoriety, in recent years, especially in the UK where its application scuppered the former Government's plans to banish asylum-seekers to Rwanda. Showing an increasing willingness to use this tool to probe further into states' domestic politics, the Court has consequently been subjected to considerable push-back from some member states of the Council of Europe for 'over-reaching'. What is more, commentators have been critical of the procedural opacity of the mechanism,¹ and leading politicians and judges have questioned whether it creates binding obligations on states.²

The ECtHR's injunctive relief mechanism (applying Rule 39 of its Rules of Court) has notably been employed in European 'hotspots' in recent times, including in situations

¹ See, eg, G Gentile and D Sartori, 'Interim Measures as "Weapons of Democracy" in the European Space' (2023) 1 *European Human Rights Law Review* 18; P Leach, 'Urgency at the European Court of Human Rights: New Directions and Future Prospects for the Interim Measures Mechanism?' in E Reiter and K Zwaan (eds), *Urgency and Human Rights – The Protective Potential and Legitimacy of Interim Measures* (The Hague, Asser, 2020); C Marti, 'Provisional Measures: European Court of Human Rights (ECtHR)' in HR Fabri (ed), *Max Planck Encyclopedia of International Procedural Law* (Oxford, Oxford University Press, 2018); P McCormick, 'A Risk of Irreparable Damage: Interim Measures in Proceedings before the European Court of Human Rights' (2009–2010) 12 *Cambridge Yearbook of European Legal Studies* 313; P Tzeng, 'Interim Measures in Inter-State Proceedings – Comparing the ECtHR and the ICJ' (*Völkerrechtsblog*, 26 April 2021) <https://voelkerrechtsblog.org/interim-measures-in-inter-state-proceedings/> accessed 6 August 2024; K Zwaan, 'Urgency in Expulsion Cases before the European Court of Human Rights and the UN Committees – A Bird's Eye View' in Eva Reiter and Karin Zwaan (eds), *Urgency and Human Rights – The Protective Potential and Legitimacy of Interim Measures* (The Hague, Asser, 2020).

² See, eg, R Ekins, 'Rule 39 and the Rule of Law' (Policy Exchange, 2023) <https://policyexchange.org.uk/wp-content/uploads/Rule-39-and-the-Rule-of-Law.pdf> accessed 5 June 2025.

of armed conflict,³ and for the protection of migrants arriving on the continent,⁴ and as exemplified by the spate of applications granted in 2021 and 2022 relating to proposed expulsions to Belarus from Poland, Lithuania and Latvia.⁵ Particular situations arising in individual states (such as Belgium) can lead to quite dramatic fluctuations in the number of interim measures applications received, or in the numbers granted. In 2023, the ECtHR issued interim measures in 1,419 cases, representing an increase of 30 per cent over the 2022 total (1,094). Of that number, 91 per cent related to reception conditions of asylum-seekers in Belgium, and accordingly, it was noted by the Court that 94 per cent of the requests granted concerned issues *other than* expulsion or extradition.⁶

Although the Covid-19 pandemic resulted in the ECtHR receiving nearly 400 interim measures applications between 2020 and 2023, the vast majority were rejected, with only the most vulnerable applicants succeeding (including unaccompanied minors, people with serious medical conditions and pregnant women).⁷

Some of the most prominent individual cases before the ECtHR have also prompted the use of the interim measures mechanism, including on behalf of the late Russian opposition politician, Aleksey Navalnyy. After he was poisoned in 2020, the Court invoked Rule 39 to ensure that his family and doctors had access to him, to establish if he were fit to be transferred to Germany to receive medical treatment.⁸ When he subsequently returned to Russia and was arrested, the Court applied interim measures again in February 2021 in order to direct his immediate release.⁹

This chapter seeks to assess recent developments in the use of the interim measures tool, especially as regards its continually expanding scope, as well as analyse the latest procedural reforms which were introduced by the ECtHR in 2024. There is analysis too of the extent and reasons for push-back from some Council of Europe states, before drawing together conclusions and recommendations.

2. A Further Expanding Scope

Looking back, the interim measures directions ordered by the European Commission of Human Rights, and the ECtHR, were formerly focused almost exclusively on stopping

³ B Griffey, 'Irreparable Harm in the Ukraine Conflict: Protection Gaps and Interim Measures' in E Reiter and K Zwaan (eds), *Urgency and Human Rights – The Protective Potential and Legitimacy of Interim Measures* (The Hague, Asser, 2020); P Leach, 'On Inter-State Litigation and Armed Conflict Cases in Strasbourg' (2021) *European Human Rights Law Review* 2(1).

⁴ See, eg, European Court of Human Rights, Press Release, 'The Court has Applied an Interim Measure Concerning 148 Homeless Asylum-seekers in Belgium', 16 November 2022.

⁵ European Court of Human Rights, Press Release, 'Update on Interim Decisions Concerning Member States' Borders with Belarus', 21 February 2022.

⁶ European Court of Human Rights, 'Factsheet – Interim measures', March 2024, 16 www.echr.coe.int/documents/d/echr/FS_Interim_measures_ENG accessed 5 August 2024. In June 2023, the Court lifted interim measures in 1,350 cases against Belgium, because the cases had not been pursued by the applicants. See: European Court of Human Rights, Press Release, 'Striking-out of the List and Lifting of Interim Measures in Respect of 1,350 Incomplete Applications from Asylum-seekers in Belgium', 1 June 2023.

⁷ *ibid* 13–14.

⁸ European Court of Human Rights, Press Release, 'The European Court of Human Rights has Lifted the Interim Measure Granted in Favour of Aleksey Navalnyy', 24 August 2020.

⁹ ECtHR (GC), App no 4743/21, *Navalnyy v Russia* (16 April 2021).

expulsion or extradition. The power was interpreted very strictly by both bodies, predominantly in response to situations of imminent expulsion or extradition, where an applicant could muster *prima facie* evidence of a real risk of torture or inhuman or degrading treatment, or otherwise establish a risk to life (thus invoking Articles 2 or 3 ECHR). Indeed, according to the Court's Factsheet on Interim Measures, in terms of statistics, the majority of cases still relate to requests for the suspension of an expulsion or an extradition.¹⁰

However, the markedly broadening scope of interim measures in more recent years has been charted and scrutinised, certainly no longer just confined to cases of expulsion where a danger of torture or death arises.¹¹

This expansion in scope has also meant a considerable differentiation in the *type* of measures which states are required to carry out. Applicants in a range of very vulnerable situations have successfully invoked the mechanism, including members of the Roma community facing eviction,¹² detainees,¹³ migrants,¹⁴ those seeking asylum¹⁵ and vulnerable children.¹⁶ This developing practice has been extended further, to the realm of media freedom, in order to regulate media ownership in Georgia,¹⁷ to protect a Ukrainian journalist's sources¹⁸ and to prevent the blocking or termination of an independent newspaper in Russia.¹⁹

Over and above these developments, the ECtHR has now for the first time invoked Rule 39 on behalf of a victim of domestic violence. In addition, the Court has been responding to the ongoing rule of law crisis in Europe, by taking steps to try to protect

¹⁰ European Court of Human Rights, 'Factsheet – Interim Measures', March 2024, 1 www.echr.coe.int/documents/d/echr/FS_Interim_measures_ENG accessed 5 August 2024.

¹¹ See, eg, K Dzehtsiarou and V Tzevelekos, 'Interim Measures: Are Some Opportunities Worth Missing?' (2021) 2 *European Convention on Human Rights Law Review* 1; Gentile and Sartori, 'Interim Measures' (2023); C Harby, 'The Changing Nature of Interim Measures before the European Court of Human Rights' (2010) 1 *European Human Rights Law Review* 73; H Keller and C Marti, 'Interim Relief Compared: Use of Interim Measures by the UN Human Rights Committee and the European Court of Human Rights' (2013) 73 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 325; P Leach, 'Urgency at the European Court of Human Rights' (2020); E Özlü, 'A Few, but Very Necessary, Minutes to Devote to Interim Measures: Further Transparency as a Resilience Strategy?' (*Strasbourg Observers*, 15 March 2024) <https://strasbourgobservers.com/2024/03/15/a-few-but-very-necessary-minutes-to-devote-to-interim-measures-further-transparency-as-a-resilience-strategy-1/> accessed 1 August 2024; E Rieter, *Preventing Irreparable Harm – Provisional Measures in International Human Rights Adjudication* (Antwerp, Intersentia, 2010); A Van Baelen, 'Interim Measures by the European Court of Human Rights in the Ukrainian Conflict: United Against the Russian Aggression' (*Strasbourg Observers*, 22 March 2022) <https://strasbourgobservers.com/2022/03/22/interim-measures-by-the-european-court-of-human-rights-in-the-ukrainian-conflict-united-against-the-russian-aggression/> accessed 1 August 2024. See also: European Human Rights Centre, 'Interim Measures at the European Court of Human Rights' (April 2023) https://ehrac.org.uk/wp-content/uploads/2023/06/EHRAC-Interim-Measures-Guide-23_-ENG_v2.pdf accessed 1 August 2024.

¹² See, eg, ECtHR, App no 25446/06 *Yordanova and others v Bulgaria* ECLI:CE:ECHR:2012:0424JUD002544606.

¹³ See, eg, ECtHR, App no 35254/07 *Makharadze and Sikharulidze v Georgia* ECLI:CE:ECHR:2011:1122JUD003525407.

¹⁴ See, eg, ECtHR, App no 5504/19 *YA and Others v Italy* (13 September 2021).

¹⁵ See, eg, ECtHR, App no 34349/18 *MK and others v France* ECLI:CE:ECHR:2022:1208JUD003434918.

¹⁶ See, eg, ECtHR, App no 72850/14 *Soares de Melo v Portugal* ECLI:CE:ECHR:2016:0216JUD007285014.

¹⁷ See, eg, ECtHR, App no 16812/17 *Rustavi 2 Broadcasting Company Ltd and Others v Georgia* ECLI:CE:ECHR:2019:0718JUD001681217.

¹⁸ See, eg, ECtHR, App no 42634/18 *Sedletska v Ukraine* ECLI:CE:ECHR:2021:0401JUD004263418.

¹⁹ European Court of Human Rights, Press Release, 'European Court Applies Urgent Interim Measure in the Case of the Russian Daily Newspaper Novaya Gazeta', 10 March 2022.

human rights defenders, and even judges, who are the subject of state repression. This evolution is discussed further in the following sections.

2.1. Victims of Domestic Violence

The ECtHR has been seen as resistant to the application of interim measures in cases of domestic violence,²⁰ for reasons that have never been clear, as such cases frequently result in a serious and imminent risk of ill-treatment or even death, and in the course of its decisions the Court will usually analyse the availability and effectiveness of interim measures protections at the *domestic* level. Commentators have convincingly argued that the ECtHR's approach to cases of domestic violence has demonstrated a failure of understanding of gender-based violence.²¹ However, in 2024, in what may be the first time, such an order was made in the case of *RB and NG v Azerbaijan*, in order to protect the applicant from the sudden release of her former husband from a psychiatric hospital.²² This was a case in which a woman was subjected by her former husband to beating, insults and threats to kill her, her children and her mother. He also attacked her with his car and injured her and her mother multiple times with a knife. He was subsequently charged with attempted murder and was admitted to a psychiatric hospital. According to her representatives at the European Human Rights Advocacy Centre (EHRAC), 'he could be released at any time, and would present a significant risk to the woman's life'.²³ In the ECtHR's order, the Azerbaijani authorities were directed to inform the applicant (and the Court) of any plans to release her former husband (including any measure of house arrest), 'as soon as such proceedings are instituted and in any event 72 hours before the date set for the release'.

2.2. Human Rights Defenders

Another significant recent development has arisen in the context of an increasingly repressive environment in parts of Europe for human rights defenders. In December 2021,

²⁰ See further: European Human Rights Advocacy Centre, 'Interim Measures' (2023) 25.

²¹ See, eg, J Evans, 'Gender Mainstreaming at the European Court of Human Rights: The Need for a Coherent Strategy in Approaching Cases of Violence against Women and Domestic Violence' (2023) 54 *University of Miami Inter-American Law Review* 1; L Hasselbacher, 'State Obligations Regarding Domestic Violence: The European Court of Human Rights, Due Diligence, And International Legal Minimums of Protection' (2010) 8 *Northwestern Journal of Human Rights* 190; LM Weinberger, 'Kurt v Austria: A Missed Chance to Tackle Intersectional Discrimination and Gender-based Stereotyping in Domestic Violence Cases' (*Strasbourg Observers*, 18 August 2021) <https://strasbourgobservers.com/2021/08/18/kurt-v-austria-a-missed-chance-to-tackle-intersectional-discrimination-and-gender-based-stereotyping-in-domestic-violence-cases/> accessed 7 August 2024. See also: Department for the Execution of Judgments of the European Court of Human Rights, 'Thematic Factsheet – Domestic Violence' (Council of Europe, March 2022) (noting the establishment or development of domestic interim measures protection mechanisms in Bulgaria, Moldova and Slovakia, as part of the state responses to judgments issued by the European Court of Human Rights).

²² ECtHR, App no 33860/23 *RB and NG v Azerbaijan* (3 May 2024). European Human Rights Advocacy Centre, 'Court Grants Request to Protect Azerbaijani Domestic Violence Victim from Sudden Release of Ex-husband', 2024 https://ehrac.org.uk/en_gb/court-grants-request-to-protect-azerbaijani-domestic-violence-victim-from-sudden-release-of-ex-husband/ accessed 1 August 2024.

²³ European Human Rights Advocacy Centre, 'Court Grants Request' (2024).

the ECtHR decided to apply interim measures in order to require the Russian authorities to suspend the liquidation of two human rights organisations, International Memorial and the Memorial Human Rights Centre, in the course of proceedings concerning the ‘foreign agents law’ in Russia (primarily relating to Article 11 ECHR).²⁴ Although the liquidation order was nevertheless enforced in April 2022, this was a ground-breaking step by the ECtHR, as no such order to ensure the continued existence of an NGO had previously been made by the Court by way of interim measures. Such a progressive development can be contrasted with the Court’s procrastination in deciding on the merits of those proceedings, which Jessica Gavron has described as a ‘devastating case of judicial passivity’.²⁵ This problem was expressly acknowledged by the former President of the Court, Siofra O’Leary in 2023, when she accepted that the ECtHR had taken too long.²⁶

2.3. Rule of Law Crisis in Poland – Threats to the Independence of the Judiciary

The most dramatic recent development and application of the interim measures tool has been in defence of beleaguered judges in Poland. It is well established that the risk of a ‘flagrant denial of justice’ in the event of expulsion or extradition can elicit an interim measures direction from the ECtHR, and therefore the tool has been invoked in Article 6 cases.²⁷ However, the rule of law crisis in Poland has resulted in a further expansion in scope – to a wave of cases concerning interference with judicial independence instigated at the behest of the Law and Justice Party, after the 2015 elections when it gained control over the presidency and *Sejm* (the lower house of Parliament).

Many of the Polish cases have related to the involvement of the National Council of the Judiciary (NCJ), following the introduction of new legislation in 2017 which provided that its judicial members were no longer to be elected by judges, but by the *Sejm*, and removed from office judicial members of the NCJ who had been elected under the former system. By March 2022, in the light of previous judgments from both the ECtHR and the Court of Justice of the European Communities (CJEU), the Strasbourg Court’s Grand Chamber was able to reach the conclusion that ‘... successive judicial reforms were aimed at weakening judicial independence’, including ‘grave irregularities’ in the election of Constitutional Court judges in December 2015, as well as the ‘remodelling’ of the NCJ and the extension of the Minister of Justice’s powers over the courts and judicial discipline, as a result of which the judiciary had been ‘substantially weakened’.²⁸

At this time, the ECtHR received a swathe of interim measures applications from Polish judges, concerning their suspension, disciplinary proceedings brought against

²⁴ ECtHR, App no 9988/13 *Ecodefence and Others v Russia* ECLI:CE:ECHR:2022:0614JUD000998813.

²⁵ J Gavron, ‘The ECtHR and the Russian Foreign Agents’ Law – A Devastating Case of Judicial Passivity’ (*Strasbourg Observers*, 28 April 2022) <<https://strasbourgobservers.com/2022/04/28/the-ecthr-and-the-russian-foreign-agents-law-a-devastating-case-of-judicial-passivity/>> accessed 1 August 2024.

²⁶ European Court of Human Rights, ‘Solemn Hearing – Speech by Siofra O’Leary, President of the European Court of Human Rights, Strasbourg, 27 January 2023, 7.

²⁷ See, eg, ECtHR, App no 8139/09 *Othman (Abu Qatada) v the United Kingdom* ECLI:CE:ECHR:2012:0117JUD000813909.

²⁸ ECtHR, App no 43572/18 *Grzęda v Poland* ECLI:CE:ECHR:2022:0315JUD004357218, para 348.

them or the lifting of their immunity, many of whom risked suspension for having applied the case law of the ECtHR or the CJEU relating, in particular, to the Disciplinary Chamber of the Supreme Court and the NCJ. The ECtHR imposed interim measures in 24 cases in 2022.

One such case was *Wróbel v Poland* relating to the lifting of judicial immunity of the Supreme Court judge, Włodzimierz Wróbel, a vocal critic of the Government's judicial reforms.²⁹ In February 2022, the ECtHR intervened in the domestic proceedings to direct the Polish authorities to ensure that the proceedings concerning the lifting of Mr Wróbel's judicial immunity were fair, and in particular that they complied with the Article 6 requirements of an 'independent and impartial tribunal established by law'. The following month, the ECtHR invoked Rule 39 in four cases brought by Polish judges, directing the Government to provide 72 hours' notice of the date of any hearing in camera session scheduled in the applicants' cases before the Disciplinary Chamber of the Supreme Court.³⁰ Demonstrating that the Court found it necessary to closely track and respond to ongoing domestic changes in Poland, in August 2022 it amended its order to refer also to hearings 'before any body competent under the domestic law', as well as directing the authorities to provide information about the composition of the panel which was to examine their cases, and how the members of that panel had been appointed to judicial office.³¹

By December 2022, the ECtHR had decided that further prescription was justifiable, as it directed the Polish Government to ensure the suspension of the transfer of three experienced judges out of the Criminal Division of the Warsaw Court of Appeal.³²

However, the Polish authorities did not take kindly to such stipulations from the ECtHR, and in February 2023 the Court took the unprecedented step of publishing the fact that the Polish Government had informed the Registry of the Court that it would not respect these interim measures directions. The Government's justification was a statement by the President of the Warsaw Court of Appeal, Judge Schab, claiming that interim measures were not binding (citing a judgment of the Polish Constitutional Court).³³

The invocation of interim measures by the ECtHR in the Polish context represents a further expansion in scope, as well as heightened levels of prescriptiveness, in response to an urgent national crisis. For Gentile and Sartori, these developments represent a fully justified response to rule of law backsliding: 'while crises and emergencies are becoming the "new normal" in Europe, regional courts should activate measures which can counterbalance extraordinary events shaking the very foundations of European values'.³⁴

²⁹ ECtHR, App no 6904/22 *Wrobel v Poland* ECLI:CE:ECHR:2004:0720JUD004600299.

³⁰ European Court of Human Rights, Press Release, 'Interim Measure in Cases Concerning Charges Brought against Polish Judges', 24 March 2022.

³¹ European Court of Human Rights, Press Release, 'Interim Measures Amended in Cases Concerning Judges' Immunity', 10 August 2022. See also: European Court of Human Rights, Press Release, 'Interim Measures Amended in Three More Cases Concerning Disciplinary Proceedings Against Judges', 17 August 2022.

³² European Court of Human Rights, Press Release, 'Interim Measure in Cases Concerning Transfers of Polish Judges', 7 December 2022. The Court's press release notes that the decisions to transfer the applicant judges, led to widespread judicial protests.

³³ European Court of Human Rights, Press Release, 'Non-compliance with Interim Measure in Polish Judiciary Cases', 16 February 2023. On that date there were 323 applications pending before the Court concerning the 'reorganisation' of the judicial system.

³⁴ Gentile and Sartori (n 1) 19.

3. State Push-back

Although there have been high profile instances of states rejecting or ignoring interim measures directions,³⁵ in the main states have historically shown willingness to comply. It is therefore of considerable concern that the more recent rule of law backsliding in Europe has also encompassed some states' attitude towards urgent stipulations issued by the ECtHR. Referring in particular to the case of *Ecodefence and Others v Russia* (relating to the 'foreign agents' law' – see above) in 2023 the then President of the ECtHR, Síoifra O'Leary, issued an unprecedented warning that

In view of the vital role played by interim measures in the Convention system, it should be a cause of grave concern that some Contracting States are prepared to flout international rule of law requirements in this manner.³⁶

The following year, she ventured that '... our concern should be heightened. This is because the criticism previously directed at this Court is now, in certain quarters, redirected at national judges'.³⁷ Commentators have discerned increasing levels of push-back by member states: 'an emerging culture of "resistance" – if not fully-fledged opposition – to the law in general, and to European legal standards in particular'.³⁸

Some of the most notorious instances of non-compliance have emanated from Russia, prior to its expulsion from the Council of Europe in March 2022. In February 2021, the ECtHR issued an interim measure ordering the immediate release of opposition politician Aleksey Navalnyy amidst very serious concerns about his state of health in prison.³⁹ However, the Court's order was ignored by the Russian authorities, after the Minister of Justice dismissed it as 'unfounded and unlawful'.⁴⁰ Mr Navalnyy subsequently died in a Siberian prison colony in February 2024.⁴¹ Later in 2021, the Russian authorities also failed to comply with a Court direction to suspend the liquidation of leading human rights NGOs, International Memorial and Memorial Human Rights Center (as discussed above).

As noted above, the fact of Poland's outright refusal to comply with an interim measures direction as regards the suspension of the transfer of several judges was headlined in a press release issued by the ECtHR in February 2023. In the same year, the French authorities defied an interim measures ruling, reportedly for the first time, as regards

³⁵ See, eg, ECtHR, App no 61498/08 *Al-Saadoon and Mufdhi v the United Kingdom* ECLI:CE:ECHR:2010:0302JUD006149808; ECtHR, App no 71386/10 *Savridin Dzburayev v Russia* ECLI:CE:ECHR:2013:0425JUD007138610; ECtHR, App no 140/10 *Trabelsi v Belgium* ECLI:CE:ECHR:2014:0904JUD000014010; ECHR, App no 12987/15 *Kondrulin v Russia* ECLI:CE:ECHR:2016:0920JUD001298715; ECtHR, App no 11788/16 *Semenova v Russia* ECLI:CE:ECHR:2017:1003JUD001178816; ECtHR, App no 9373/15 *MA v France* ECLI:CE:ECHR:2018:0201JUD000937315.

³⁶ European Court of Human Rights, 'Solemn Hearing' (2023), 7.

³⁷ European Court of Human Rights, 'Solemn Hearing – Opening of the Judicial Year 2024, Speech by Síoifra O'Leary, President of the European Court of Human Rights', 26 January 2024, 3.

³⁸ Gentile and Sartori (n 1) 30.

³⁹ European Court of Human Rights, Press Release, 'The Court Grants an Interim Measure in Favour of Aleksey Navalnyy and Asks the Government of Russia to Release Him', 17 February 2021.

⁴⁰ See, eg, V Isachenkov, 'Russia Rejects European Rights Court's Order to Free Navalny' *Associated Press* (Moscow, 17 February 2021).

⁴¹ See, eg, G Abdul, 'Death of Kremlin Critic Alexei Navalny Confirmed by his Representatives' *The Guardian* (London, 17 February 2021).

the expulsion of an Uzbek national.⁴² However, on 7 December 2023, the French *Conseil d'Etat* ordered the French Government to take all measures for his return to the French territory in accordance with the ECtHR's ruling, describing the actions taken by the Minister of the Interior, Gérald Darmanin, as a 'serious and manifestly illegal violation of a fundamental freedom'.⁴³

Such heightened levels of state resistance have led the ECtHR to lay increasing emphasis on the binding nature of its interim measures jurisdiction, as reflected in its November 2023 announcement about proposed reforms, which referred to Articles 1, 19, 32 and 34 ECHR:

A failure by a respondent State to comply with interim measures undermines the effectiveness of the right of individual application guaranteed by Article 34 of the European Convention on Human Rights and the State's formal undertaking in Article 1 to protect the rights and freedoms set forth in the Convention. When issuing interim measures, the Court exercises its jurisdiction to ensure observance of the engagements undertaken by the High Contracting Parties in the Convention and Protocols thereto, in accordance with Article 19, which jurisdiction extends to all matters concerning their interpretation and application, as provided in Article 32.⁴⁴

Accordingly, 'interim measures are thus binding'.⁴⁵

However, the most striking reactions to an interim measures order in recent times have arisen in the UK, amidst a febrile and toxic domestic political context relating to migration, which is discussed in the next section.

3.1. Blocking UK Deportations to Rwanda

The ECtHR's urgent interlocutory mechanism achieved hitherto unknown levels of public recognition in the UK in 2022 after the Court made a decision which had the effect of completely blocking deportation flights to Rwanda. Seen by the then Conservative Government as a central plank of its strategy to 'stop the boats' from bringing asylum

⁴² J Pascual, *La France procède à l'expulsion en passant outre une décision de la CEDH pour la première fois* *Le Monde* (Paris, 1 December 2023).

⁴³ J Pascual, Gérald Darmanin épinglé pour avoir expulsé un Ouzbek en violation d'une mesure prescrite par la CEDH *Le Monde* (Paris, 12 December 2023).

⁴⁴ European Court of Human Rights, Press Release, 'Changes to the Procedure for Interim Measures (Rule 39 of the Rules of Court)', 13 November 2023.

⁴⁵ European Court of Human Rights, Practice Direction: Third-party intervention under Article 36 § 2 of the Convention or under Article 3, second sentence, of Protocol No 16 para 2. The Bingham Centre has concluded that 'interim measures of the European Court of Human Rights are binding in international law and the Court does have jurisdiction to indicate such binding interim measures ... Taken together with Articles 1, 19 and 34 of the Convention, there is a clear legal basis in the Convention for interim measures being legally binding'. Furthermore, the report states that '[t]he UK Government has itself long accepted that interim measures are binding, not only by acquiescing in this exercise of the Court's jurisdiction (by routinely treating the measures as binding and complying with them), but by proactively promoting their binding force in those intergovernmental statements and advocating that other States, such as Russia, treat them as binding and comply with them'. See: M Hunt, 'Clause 54 of the Illegal Migration Bill: A Rule of Law Analysis for House of Lords Report Stage' (Bingham Centre for the Rule of Law, 3 July 2023) <https://binghamcentre.biicl.org/publications/clause-54-of-the-illegal-migration-bill-a-rule-of-law-analysis-for-house-of-lords-report-stage?cookieset=1&ts=1748594856> accessed 30 May 2025.

seekers across the English Channel, being thwarted in this way led to heightened levels of hostility⁴⁶ towards the Court and calls for the UK to withdraw from the ECHR from the then Prime Minister, Rishi Sunak who announced that 'I won't let a foreign court stop us from getting flights up and running'.⁴⁷ The former Home Secretary, Suella Braverman, argued that interim measures orders 'are not contained in the European convention on human rights, and they are not a product or a content of the original convention. They are a creation of the Strasbourg court and the Strasbourg judges ...'.⁴⁸ She also focused her ire firmly on the European Court:

It is the Court that has become politicised. It is the Court that has become interventionist ... The Strasbourg Court and its judges have distorted the original European convention on human rights into something that bears no reflection to its original intention.⁴⁹

She further suggested that Britain was governed by 'an opaque forum many miles away, in a different country, that is distant, outsourced, foreign and does not share our values'.⁵⁰

Furthermore, it was asserted by commentators such as Richard Ekins and Jonathan Sumption that European Court interim measures are not legally binding.⁵¹ Sumption also averred that 'the ability of a court to torpedo a critical legislative policy without any hearing or substantial consideration of the merits by a purely procedural mechanism, ought to cause concern'.⁵²

The case in question arose as a consequence of the UK Government's April 2022 agreement with Rwanda that asylum seekers whose claims were not being considered by the UK could be relocated to Rwanda. The following month an Iraqi national crossed the English Channel by boat before claiming asylum. After he was informed that he would be removed to Rwanda, he instigated domestic court proceedings which were unsuccessful, but the European Court invoked Rule 39 in directing that he should not be deported pending the national courts' consideration of his case.⁵³ The Court's press release stated that it had taken account of evidence from the United Nations High

⁴⁶ The Joint Committee on Human Rights suggested that 'hostility to human rights' was at the heart of the Safety of Rwanda (Asylum and Immigration) Bill (discussed below): Joint Committee on Human Rights, Safety of Rwanda (Asylum and Immigration) Bill Report, 12 February 2024.

⁴⁷ D Casciani, 'European Court President Warns over Rwanda Rulings' *BBC News* (London, 25 January 2024). See also: J Grogan and A Donald, 'Explainer: Leaving the European Convention on Human Rights' (*UK in a Changing Europe*, 15 May 2024) <https://ukandeu.ac.uk/explainers/leaving-the-european-convention-on-human-rights/> accessed 6 August 2024.

⁴⁸ Hansard, Safety of Rwanda (Asylum and Immigration) Bill, Volume 743: debated on Wednesday 17 January 2024.

⁴⁹ *ibid.*

⁵⁰ *ibid.* However, Grogan and Donald have noted that from 2017 to 2023 660 requests for interim measures were made in relation to the UK, of which 15 were granted (about 2% of requests, or, on average, two per year). See Joelle Grogan and Alice Donald, 'The UK's ECHR Record: How Common are Rule 39 Orders and How Often is the UK Found to Have Violated Rights?' (*UK in a Changing Europe*, 4 April 2024) <https://ukandeu.ac.uk/explainers/the-uks-echr-record-how-common-are-rule-39-orders-and-how-often-is-the-uk-found-to-have-violated-rights/> accessed 6 August 2024.

⁵¹ Ekins, 'Rule 39 and the Rule of Law' (2023); R Ekins, 'Judicial Independence, Rule 39 and the Safety of Rwanda Bill' (Policy Exchange, 2023) <https://policyexchange.org.uk/publication/judicial-independence-rule-39-and-the-safety-of-rwanda-bill/> accessed 5 June 2025.

⁵² *ibid* 5–6.

⁵³ ECtHR, App no 28774/22 *NSK v the United Kingdom* ECLI:CE:ECHR:2024:1003DEC002877422.

Commissioner for Refugees that procedures in Rwanda for determining refugee status might not be fair, and it had also noted that the High Court had found that the question whether Rwanda was a safe third country raised 'serious triable issues.' Furthermore, the decision was made in light of the fact that Rwanda was not itself bound by the ECHR, and that there was no enforceable mechanism to ensure the applicant's return from Rwanda, if he were successful before the UK domestic courts.⁵⁴

The Government's response was to introduce the Illegal Migration Act 2023 which, amongst other things, provided ministers with the discretion to disregard interim measures directions by the European Court.⁵⁵ However, to the Government's further dismay, in November 2023, the Supreme Court found the Rwanda policy to be unlawful, as Rwanda was not deemed a safe third country due to its defective asylum processes, as a result of which people could be returned to countries where they faced persecution.⁵⁶

The Government then negotiated a new Treaty with Rwanda and introduced the Safety of Rwanda (Asylum and Immigration) Act 2024 which provided that '[e]very decision-maker must conclusively treat the Republic of Rwanda as a safe country', and gave ministers the power to decide whether to comply with any interim measures decision issued by the ECtHR in respect of a decision to remove a person to Rwanda.⁵⁷

Both domestic and international responses to the introduction of this legislation expressed dismay that the UK Government was thereby breaching its international obligations. The Joint Committee on Human Rights averred that the provision gave ministers permission to 'breach international law' and affirmed that 'to ignore an interim measure of the ECtHR would be a breach of the UK's legal obligations'.⁵⁸ The UN High Commissioner for Human Rights, Volker Türk, and UN High Commissioner for Refugees, Filippo Grandi, suggested that the Act was 'at variance with the country's obligations under international human rights and refugee law' and urged the UK authorities to reverse it.⁵⁹

The Government's actions were also condemned by commentators such as Veronika Fikfak who ventured that '[l]ike Russia and Poland, the government is therefore willing to openly defy explicit instructions from Strasbourg'.⁶⁰ Without referring directly to the UK, the then President of the European Court, Síoira O'Leary, lamented that

Parliamentary debates or ministerial speeches in more than one Council of Europe Member State fixate on the need to defy interim measures issued by a 'foreign court'. The consequences

⁵⁴ European Court of Human Rights, Press Release, 'The European Court Grants Urgent Interim Measure in Case Concerning Asylum Seeker's Imminent Removal from the UK to Rwanda', 14 June 2022.

⁵⁵ See, eg, J Grogan and A Donald, 'Explainer – Illegal Migration Act 2023' (*UK in a Changing Europe*, 15 March 2024) <https://ukandeu.ac.uk/explainers/illegal-migration-act-2023/> accessed 5 August 2024.

⁵⁶ *R (on the application of AAA and others) v Secretary of State for the Home Department* [2023] UKSC 42.

⁵⁷ Safety of Rwanda (Asylum and Immigration) Act 2024, ss 2 and 5.

⁵⁸ Joint Committee on Human Rights, Legislative Scrutiny: Illegal Migration Bill, Twelfth Report of Session 2022–23, 6 June 2023, 11 and paras 125–33.

⁵⁹ Office of the Commissioner for Human Rights, Press Release, 'UK Illegal Migration Bill: UN Refugee Agency and UN Human Rights Office Warn of Profound Impact on Human Rights and International Refugee Protection System', 18 July 2023 www.ohchr.org/en/press-releases/2023/07/uk-illegal-migration-bill-un-refugee-agency-and-un-human-rights-office-warn#:~:text=The%20Bill%20extinguishes%20access%20to,matter%20how%20compelling%20their%20circumstances accessed 5 August 2024.

⁶⁰ V Fikfak, 'The UK's Defiance of the European Court of Human Rights' (*The Constitution Unit Blog*, 1 June 2023) <https://constitution-unit.com/2023/06/01/the-uks-defiance-of-the-european-court-of-human-rights/> accessed 5 August 2024.

of particular judgments which don't appeal either to a majority in society or to a ruling party are rejected.⁶¹

Such a stark and belligerent response from the then UK Government was a factor in the ECtHR's implementation of changes to the interim measures mechanism,⁶² which are discussed in the next section which follows below.

4. Interim Measures – System Changes in 2024

The ECtHR's relatively fresh, broader approach to injunctive relief, as discussed above, was also reflected in its 2023 announcement of changes to the interim measures system, in which the mechanism was summarised in this way:

They play a vital role in avoiding irreversible situations that would prevent national courts and/or the Court from properly examining Convention complaints and, where appropriate, securing to the applicant the practical and effective benefit of the Convention rights asserted.⁶³

In November 2023 the ECtHR published a series of proposed reforms to the interim measures mechanism, which appeared, at least in part, to amount to a response from the criticisms emanating from the UK authorities, arising from the blocking of flights from the UK to Rwanda.⁶⁴ These changes were to include the disclosure of the identity of judges making interim measures decisions⁶⁵ and issuing formal judicial decisions to be sent to the parties to the case. At the same time, the Court announced that it would be maintaining the practice of providing reasons for interim measures decisions on ad hoc basis and issuing press statements 'where desirable'. It would also maintain the practice of adjourning the examination of interim measures requests and requesting the parties to submit information, if the situation in question is not extremely urgent and where the information submitted to the Court by the applicant is not sufficient to enable it to examine the request.

The text of Rule 39 was subsequently amended in February 2024 and a revised Practice Direction issued in March 2024 (with the changes coming into effect

⁶¹ S O'Leary, 'The Challenged, Challenging but Very Necessary European Convention on Human Rights' (*Institute of International and European Affairs*, 15 March 2023) www.iiea.com/events/the-challenged-challenging-but-very-necessary-echr accessed 30 May 2025.

⁶² Commentators have suggested that previous instances of push-back from the UK (including from the courts, the media and politicians) have resulted in the Court showing more deference to domestic decisions. See, eg, M Rask Madsen, 'The European Court of Human Rights: From the Cold War to the Brighton Declaration and Backlash' in KJ Alter, LR Helfer and M Rask Madsen (eds), *International Court Authority* (Oxford, Oxford University Press, 2018) 268.

⁶³ European Court of Human Rights, Press Release, 'Changes to the Procedure for Interim Measures (Rule 39 of the Rules of Court)', 13 November 2023.

⁶⁴ *ibid.* See further: J Rozenberg, 'Strasbourg Tightens Rule 39', 29 March 2024 <https://rozenberg.substack.com/p/strasbourg-tightens-rule-39> accessed 5 August 2024.

⁶⁵ The anonymity of the judge was one of the issues raised in the UK by commentators and in the intemperate media coverage. See, eg, M Robinson and J Tapsfield, 'Fury as Strasbourg Officials REFUSE to Identify Nameless Judge who Torpedoed Rwanda Deportation Flight Amid Fears it Could be RUSSIAN Who is Still Sitting on European Court of Human Rights' *Mail Online* (London, 15 June 2022).

on 28 March 2024).⁶⁶ The revisions to the Practice Direction were said to be aimed at ensuring greater clarity and transparency.⁶⁷

The ECtHR's reforms exhibit a degree of duality, even ambiguity, as on the one hand they only serve to confirm the expanding scope of interim measures, while on the other hand the Court doubles down on their exceptionality.

These changes, as flagged by the ECtHR, included the new stipulation in Rule 39 that interim measures are applicable in cases where there is 'an imminent risk of irreparable harm to a Convention right'.⁶⁸ Thus, it is clear beyond any doubt whatsoever that interim measures are not limited to cases of 'irreparable harm' in the sense of injury to the person, but that they will apply in situations where there is a risk of such harm to *one of the Convention rights*. The Practice Direction (at para 6) further clarifies the Court's approach in this way:

The notion of 'irreparable harm to a Convention right' has been defined as harm which, on account of its nature, would not be susceptible to reparation, restoration or adequate compensation. In this connection, the term 'restoration' should be understood as referring to return to the situation before any harm was done. Interim measures are thus indicated by the Court where there is a risk that the absence of such measures would lead to a situation in which *restitutio in integrum* and other forms of reparation would not be possible if the Court were to consider them warranted at the end of the proceedings before it.

None of this is inconsistent with the ECtHR's novel approach of, for example, applying interim measures in order to maintain a pluralistic media landscape or to prevent an NGO from being liquidated (as discussed above).

However, at the same time, the ECtHR was at pains to emphasise that '[t]he circumstances of a case must therefore exceed a high threshold of seriousness for Rule 39 to be engaged' and also that most cases will require 'a clearly arguable case of a genuine threat to life and limb'.⁶⁹

4.1. Who Makes the Interim Measures Decisions?

The ECtHR has also clarified that most decisions are made by duty judges, who are the Section Vice-Presidents (who do not make decisions in cases against states in respect of which that judge has been elected or is a national). However, the decisions can also be referred on to a President of the Section, a Chamber, the President of the Grand Chamber, the Grand Chamber or the President of the Court (Rule 39(2)). Such referrals will depend on 'the nature of the request, the case in which the request is made, and the degree of urgency involved'.⁷⁰

⁶⁶ According to paragraph 3 of the revised Practice Direction, 'The text of Rule 39 was amended on 23 February 2024 with a view to further clarifying the circumstances in which interim measures may be indicated and the threshold to be reached in relation to their request and application. The amendment also sought to align the text of the Rule with the Court's well-established case-law and practice in relation to interim measures.'

⁶⁷ European Court of Human Rights, Press Release, 'The Court Amends Rule 39 and the Practice Direction on Interim Measures', 28 March 2024.

⁶⁸ *ibid.*

⁶⁹ European Court of Human Rights, Practice Direction (see n 45 above), para 6.

⁷⁰ *ibid.*, para 11.

Interim measures requests in inter-state cases will usually be decided by the President of the Court, the President of the Grand Chamber or Section Presidents, although it is again possible to refer the decision to a collegiate body of the ECtHR.⁷¹

4.2. Other Procedural Changes

As a result of the reforms, the ECtHR's practice now is to provide the parties with a decision signed by the relevant judge (whose name is also provided). This applies to any decision relating to interim measures, including rejections and adjournments. The nature and extent of the reasoning provided is at the discretion of the Court.⁷²

For example, limited reasoning was provided by the ECtHR when issuing an order to prevent the expulsion of a Russian national of Chechen origin from France, the Court's press release noting that the Court had decided 'that an imminent risk of irreparable harm could not be ruled out', in view in particular of the Russian authorities' request for his extradition.⁷³ Apparently cognisant of recent state criticism, the ECtHR was at pains to acknowledge 'the in-depth examination by the national authorities of the applicant's situation'.

A further response to the level of state push-back recently received by the ECtHR about the supposedly unfairly 'ex parte' nature of the proceedings, is the clarification in the Practice Direction that respondent states can appeal (without time limit). The Practice Direction explains that state parties are entitled to ask the Court to reconsider its decision 'if they consider that the measures are no longer necessary or where they possess information which was not available at the relevant time or not made available to the Court in a timely fashion' (para 26).

The prospect of more detailed reasoning is indeed a welcome development which denotes a considerable improvement on the prior practice of simply informing the parties by letter, usually without providing any reasons, or only skeletal, formulaic reasoning. This will assist in making the interim measures mechanism more transparent. However, something which still could be introduced is a publicly available, systematic record of individual interim measures decisions, as well as commentary on the extent of their implementation.

This author has argued elsewhere that the tool could also very usefully be used, exceptionally, to ensure the preservation of evidence and to stimulate investigations at the national level.⁷⁴

⁷¹ *ibid*, para 12.

⁷² European Court of Human Rights, Practice Direction (see n 45 above), paras 13 and 24.

⁷³ European Court of Human Rights, Press Release, 'Court Grants Interim Measure Suspending Applicant's Removal to Russia', 28 November 2023.

⁷⁴ P Leach, 'The Right to Life – Interim Measures and the Preservation of Evidence in Conflict Situations' in Lawrence Early et al (eds), *The Right to Life under Article 2 of the European Convention on Human Rights – Twenty Years of Legal Developments Since McCann v the United Kingdom* (Oisterwijk, Will-Jan van der Wolf, 2016).

5. Conclusion

This chapter has borne witness to the European Court of Human Rights' continuing practice of broadening the scope of its injunctive relief mechanism. No longer confined just to expulsion cases, it encompasses a broad range of situations which create a serious risk of jeopardy to an individual's safety and security, including for asylum seekers and migrants, prisoners, vulnerable children and the victims of domestic violence. But the ECtHR has gone further still, by endeavouring to provide urgent protection for those targeted by the state, amidst an ever-threatening rule of law crisis in parts of the European continent. Thus, journalists, human rights defenders, NGOs and even judges have been looking to the Court and successfully eliciting urgent directions from the Court in order to uphold their ECHR rights at the national level. This has meant that the substantive legal basis for the application of Rule 39 has spread from a predominant focus on the right to life and inhuman and degrading treatment (Articles 2 and 3 ECHR), also to encompass the rights to freedom of expression and association and the right to a fair hearing (Articles 10, 11 and 6).

These are remarkable developments, for an international court to seek to have decisive influence at the coalface, by stepping in to intervene in highly fraught domestic contexts and cases, whether to halt the liquidation of a human rights organisation or the closure of an independent news outlet, to stop a journalist from having to reveal her sources, to ensure that a woman receives prior notification of the release of her abusive ex-husband or to prevent sitting judges from being subjected to banishment. Such cases also represent a proliferation of the type of steps required from states and an increasing prescriptiveness. In the absence of detailed reasoning from the ECtHR, it may not be easy to discern the causes of such a turn of events, but there can be little doubt that the rule of law crisis that has been playing out in a number of Council of Europe states is a significant factor. Although state compliance leaves much to be desired, these developments offer the most vulnerable people some prospect of urgent relief at the international level. The speed at which the Court *can* act, to impose interim measures directions (within days or even hours) is in stark contrast to the excessive periods of time (several years) before the Court reaches a decision on the merits. A case in point is that of the Russian human rights organisation, Memorial, which secured an order preventing its liquidation within a few days, whereas the judgment on the merits of that case took more than nine years.⁷⁵ A compelling argument can be made that the urgency in applying interim measures needs to be coupled with the fast-tracking of merits decisions.

In the face of such progressions at the ECtHR, it is perhaps unsurprising that the levels of state resistance seem to have been ratcheted up. The furore created amongst certain politicians and commentators by the ECtHR's decision to suspend an asylum seeker's transfer to Rwanda from the UK, was a sorry tale indeed. At the highest political level, this decision was challenged on both legal grounds (was it in fact binding?) and

⁷⁵ ECtHR, App no 9988/13 *Ecodefence and Others v Russia* ECLI:CE:ECHR:2022:0614JUD000998813.

on a procedural basis (it was delivered by an anonymous judge), and even seemed to provide the basis for the UK to turn its back altogether on the Strasbourg system. However, it ought to be underlined that the ECtHR's order was in fact complied with – even under intense political pressure, there were no deportations at all in the period of two years after the Court issued its direction in June 2022, up to the point when the electorate ushered the Conservative party out of power in the July 2024 general election.

