



Comments and Recommendations on Amendments to Rule 28 of the Rules of the Court

1. ASSEDEL is pleased to welcome the proposed amendment on Rule 28, which provides for the introduction of a concrete monitoring mechanism for the independence and impartiality of judges, through the participation of applicants. We firmly believe that such amendments are important for the credibility and transparency of the Court, in the wake of the adoption of the Resolution on Judicial Ethics in 2021.
2. As a result of the feedback received on this amendment from our lawyers who actively practice the individual application mechanism of the ECtHR, we would like to bring the following comments and suggestions to the Court's attention regarding the proposed recusal procedure.
3. The most crucial point of the amendment is that the recusal procedure will be introduced for all the Court's structures, namely the single-judge formation, the Committee, the Chamber and the Grand Chamber.
4. As regards the recusal procedure proposed for all the composition of the Court, we are of the opinion that the following point should be taken into account regarding the functioning of the single judge composition which is distinct from the working methods of the Committee, the Chamber and the Grand Chamber.
5. With respect to the single judge composition, each single judge is assisted by a non-judicial rapporteur and the role of these rapporteurs have a significant role in the background and outcomes of the single judge decisions.
6. Due to the fact that the review of cases in these formations is mostly done by these rapporteurs, there is a high possibility that a judge may sign and issue a decision without recognizing that an applicant with whom he or she has a dispute or a situation that needs to be withdrawn.
7. Although the recusal mechanism will operate through the judges of the Court with the proposed amendment, we would suggest that non-judicial rapporteurs engaged in the decision-making mechanism could be examined in terms of impartiality and independence by the applicants, especially considering their crucial role in the single-judge formations as mentioned above.



8. While the Court is in the most competent position to establish the rules and procedures of the proposed recusal procedure after the amendment, ASSEDEL takes the liberty of making the following recommendations.

9. In this context, we suggest that an implementation guideline is required to be issued for Rule 28, similar to the some manuals prepared by the Registry after the amendment of Article 47 of the Rules of Court. Particularly the manner of the application for recusal of the judge and the procedural issues such as the duration of the request should be clarified in this context. We are of the opinion that it would be more efficient and faster for both the applicants and the Court to establish a system similar to the recently introduced Rule 39 system rather than the postal system.

10. In terms of the application period, we kindly draw the Court's attention to the fact that the phrase "as soon as possible" envisaged in the amendment requires further clarification as to when this period starts and within what period of time the application should be made.

11. Once individual applications to the Court have been processed, there is no system in place to notify the applicants or their representatives. In fact, it may take years for applicants to even know their application number, and they are often unaware of the inadmissibility decisions rendered regarding their applications. Therefore, for the applicant who does not know the progress of his/her application, the timeframe for requesting the judge's refusal will remain vague. In order for this mechanism to work properly for the applicants and to prevent the Court from creating an excessive workload, it is essential that they are informed about the processing of their applications, the application numbers and the single judge who will examine them.

12. In conclusion, while we fully welcome this amendment to Article 28 of the Rules of Court as being very important for the transparent functioning of the Court, we hereby underline the necessity for the recusal mechanism to take into account the Court's staff who are active in the decision-making process, and draw the Court's attention to the need for a procedural directive and an amendment on the notification of the progress of the applications to the applicants.