



4 December 2023

Subject: Written Comments on Amendments to Rule 39 of the Rules of the Court

Dear Marialena Tsirli,

We were glad to receive your letter requesting our views on the amendment to the Article 39 of the Rules of Court. We respectfully submit our written comments in the attachment.

Yours Sincerely,
Teoman AYDOGAN
Secrétaire Général

Enc.



Comments on Amendments to Rule 39 of the Rules of the Court

1. I am hereby writing on behalf of ASSEDEL upon the invitation of the Registrar of the Court, Mariena Tsirli, dated November 13, 2023, to submit in writing our written comments on the amendments to the interim measure procedure of the Court.

2. With respect to the proposed text of the Rule 39 circulated to us, paragraphs 1, 3 and 4 of Rule 39 have been amended. In this context;

- In paragraph 1, a sentence has been added to specify the circumstances in which an interim measure may be granted and that an interim measure may now also be granted by the Grand Chamber, the President of the Grand Chamber and the President of the Court.
- In Paragraph 3, in connection with the amendment in Paragraph 1, the authorized persons/entities that may request information from the parties during the implementation of a request for an interim measure have been updated.
- In Paragraph 4, the President of the Court is fully authorized to appoint the Deputy Presidents of the Sections as judges on duty.

3. Furthermore, the Court issued a press release announcing that a Practice Direction will be issued and it has also decided the following:

- Disclosure of the identity of the judges who render the decisions on interim measure requests;
- Maintaining the practice of providing reasons for Rule 39 decisions on an ad hoc basis and issuing press statements where the circumstances of the cases so require;
- Issuing formal judicial decisions to be sent to the parties;
- Maintaining the established practice of adjourning the examination of the requests for interim measures and requesting the parties to submit information in those circumstances where the situation is not extremely urgent and where the information that the applicants could submit to the Court was not sufficient to enable the Court to examine the request.

4. Within this background, we present our comments on the amendment as follows. The disclosure of the identity of the judges who granted the interim measure and the disclosure of the reasons for the decision to the parties is a welcome enhancement concerning the transparency of the Court. Moreover, at this point, it is our view that the Practice Direction should clarify whether the judge who issued the interim measure is subject to the recusal mechanism under Rule 28, which is expected to be amended in the near future.



5. During 2023, since the Court adopted the online Rule 39 platform, ASSEDEL has been actively using this mechanism for the past year. In this context, we have received several pushback applications and two applications for the prevention of deportation.

6. As discussed on October 12, 2023 at the Court's meeting with NGOs and litigators, the decision-making mechanism of the Court for pushback applications is very responsive and decisions are rendered in a short period of time. Thus, it is our concern that the requirement for decisions under Rule 39 to include reasons and to provide a formal judgment may prolong the Court's reaction time in urgent cases such as pushbacks.

7. Regarding the problem we have encountered in our applications for the prevention of deportation, while we have received a refusal decision for applicants that were considered to have fulfilled all the requirements, unfortunately, despite our request, we were unable to receive any clarifying information from the Court regarding the reasons for its refusal. In this respect, we affirmatively believe that the amendment regarding the sending of the official decision to the parties is positive in the face of such complex requests for interim measures, and that the reasons will guide the practitioners in future applications.

8. As a result, while we are concerned that the amendments to Rule 39 may delay the Court's urgent reaction to applications for interim measures, overall we favorably welcome these amendments, particularly as they improve the Court's transparency.