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Protecting the right to request the recusal of a judge of the European Court of Human Rights

Creating a right to request for a revision of decisions of the European Court of Human Rights

Reply to Written question¹: Written question No. 759 (Doc. 15260) and Written question No. 760 (Doc. 15261)

Committee of Ministers

1. The Committee of Ministers has examined the questions submitted by the Honourable Parliamentarians and given their similarity, provides a single reply.
2. The inability of judges of the European Court to sit in a particular case is regulated by Rule 28 of the Rules of Court, according to which any judge who is prevented from taking part in sittings which he or she has been called upon to attend shall, as soon as possible, give notice to the President of the Chamber (Rule 28 paragraph 1). The Rule also applies to judges acting as a single judge or participating in a Committee.²
3. Rule 28 paragraph 2 lists a number of situations where a judge may not take part in the consideration of a case including and not limited to, where he or she previously acted in the case, whether as the Agent, advocate or adviser of a party or of a person having an interest in the case, or as a member of another national or international tribunal or commission of inquiry, or in any other capacity.
4. In line with the Court's working methods and Rules of Procedure, parties to a case are aware of which Section their case has been assigned to, at the latest as of the communication of a case for observations. The compositions of the various Sections (as well as the list of the judges appointed by the President as Single Judges) being publicly available on the Court's [webpage](#), the parties may at any time verify that composition and request the Court that a particular judge not be involved in deciding their case for duly explained reasons. In such a case, the procedure provided for in Rule 28 shall be followed.
5. As to inadmissibility decisions, such decisions are by their nature final and not amenable to appeal. It is nevertheless possible to reopen a case declared inadmissible when it emerges that the decision was taken on the basis of erroneous information which had a direct effect on the outcome.³
6. The Committee of Ministers is asked what it intends to do about the scope and functionality of the Court's rules of recusal and revision mentioned above. In this respect, the Committee recalls that since its adoption in 1950 the European Convention on Human Rights has provided that the Court shall draw up its own rules and determine its own procedure. Under Article 25 of the European Convention on Human Rights, the plenary court of the European Court of Human Rights adopts the Rules of Court. Therefore, the Committee considers that it is not for it to take any action about the scope and functionality of the Court's rules of recusal and revision, nor comment on individual cases.

1. Adopted at the 1409th meeting of the Ministers' Deputies (7 July 2021).

2. In which case he or she shall inform the President of the Section to which the case has been assigned (Rule 28 paragraph 5).

3. See [Boelens and Others v. Belgium \(20007/09\)](#), paragraph 21).



7. Finally, the Committee takes note of the fact that, in the context of its continuous work under the mandate accorded to the Court by the Convention, the Court's Committee on Working Methods is reviewing the existing Rules of Court, including Rule 28.