

## European Court introduces new rules on highly sensitive documents

### new Rule 44F and amended Rule 33 § 1

The European Court of Human Rights has today published on its website a new version of the Rules of Court, which incorporates the new Rule 44F on treatment of highly sensitive documents. Rule 33 § 1 (public character of documents) has been amended in the light of this. These amendments were adopted by the Plenary of the Court on 25 September 2023 and entered into force on 30 October 2023.

The purpose of this new Rule is to establish a specific regime for the handling of highly sensitive documents which a State party considers require special treatment for reasons of national security, or which an applicant considers require special treatment for other equally compelling reasons. It aims to alleviate concerns that might prevent a party from submitting such documents to the Court and to enable the Court to find appropriate counterbalancing measures or to draw adverse inferences where such documents cannot be disclosed to another party or the public, should the information be necessary in order to conclude a given case. The Rule sets out how the Court will treat specific requests of the party concerned, in particular having them examined by a Committee of three judges who are not part of the Chamber composition which will consider the admissibility and/or merits of the case. The aim is to resolve the matter by cooperative means in a most pragmatic way, in order to provide the Chamber with the essential information to decide on the admissibility and/or merits of the case while ensuring respect for the adversarial principle. There remains an obligation on parties to cooperate with the Court in order to ensure that they comply with their obligations under Article 38 (obligation to provide necessary facilities for the examination of the case) of the European Convention on Human Rights and Rule 44A (duty to cooperate with the Court) of the Rules of Court.

As a result, Rule 33 § 1, which covers the public character of documents, has also been amended to reflect the new Rule 44F.

The changes follow extensive consultation with the relevant stakeholders since 2017, in particular with the Contracting Parties, organisations with experience in representing applicants, and several bar associations, who submitted their written comments.

The full text of the amendments to the Rule 44F and amended Rule 33 § 1 of the Rules of Court can be found [here](#).

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.