

Equality and Human Rights Commission  
equalityhumanrights.com

## Practical aspects of involvement in a case before the ECtHR

**EQUINET**  
18 March 2013  
Clare Collier, Senior Lawyer,  
Equality and Human Rights Commission

---

---

---

---

---

---

---

---

### Content

- Commissions remit
- Use of our Legal powers
- Introduction to the jurisdiction of the ECHR
- ECtHR procedure
- Third party interventions - rules and practice points
- Using the court's website to find important cases
- Commission's relevant cases: examples
- Summary and conclusions
- More information and contact details

---

---

---

---

---

---

---

---

### Role of the Equality and Human Rights Commission

- EHRC has a remit across the three nations of Britain and:
  - Provides advice and guidance
  - Works to implement an effective legislative framework
  - Raises awareness and understanding of everyone's rights
  - Monitors progress - Triennial Review and Human Rights Review
- Tripartite mandate: to promote and protect equality and human rights, and to foster good relations across 9 grounds
- Accredited UN National Human Rights Institution
- Legal enforcement powers and power to bring and intervene in court proceedings
- Statutory duty to do these things set out in Act of Parliament

---

---

---

---

---

---

---

---

## Legal powers

- EHRC has a unique suite of enforcement powers
- Assist and represent individuals taking cases (equality cases only)
- Judicial Review or other court proceedings in Commissions name (equality and human rights)
- Formal inquiries, investigations and assessments - disclosure powers, can lead to further legal action such as compliance notices
- Intervene in Commissions own name as an independent third party in cases brought by others in the domestic courts and in Europe (equality and human rights)

---

---

---

---

---

---

---

---

## Jurisdiction of the ECtHR: overview

- Right of petition to the court for any individual to claim a violation of their ECHR rights
- Admissibility criteria (art.34 +35):
  - Victim test
  - Exhaustion of domestic remedies
  - Six month time limit (soon to be reduced to 4)
  - Manifestly ill-founded
- In practice unless clearly inadmissible will usually now be rolled up with merits

---

---

---

---

---

---

---

---

## ECtHR procedure

- Applicant introduces complaint to the court by letter or using the courts own application form
- Court allocates case number
- Follow up with full application and supporting documents
- Wait
- Admissibility decision or communication to Respondent state
- State party's observations
- Applicant's observations in reply

---

---

---

---

---

---

---

---

### ECtHR procedure (2)

- Admissibility or admissibility + merits together
- Fact finding/friendly settlement/strike out
- Final written submissions ('Memorial')
- Oral hearing - rarely
- Wait... then, eventually... Judgment
- Becomes final 3 months later if no referral to the Grand Chamber
- Implementation by the Respondent State, monitored by the Dept for Execution of Judgments

---



---



---



---



---



---



---



---

### Third party interventions - why

- To support the position of one of the parties on an important point of law or public policy
- To highlight to the court the wider public impact of the case
- To provide expert legal analysis on one or more of the issues raised in the case
- To provide input on comparative and international law aspects of the case (particularly welcome in ECHR cases)
- To provide expert evidence on the issues based on research
- To signal the importance of the issues in the case by virtue of your involvement

---



---



---



---



---



---



---



---

### Third party interventions - rules

- [http://www.echr.coe.int/ECHR/Homepage\\_EN](http://www.echr.coe.int/ECHR/Homepage_EN)
- Rule 44:
  - the President of the Chamber may, in the interests of the proper administration of justice,... invite, or grant leave to, ...any person concerned who is not the applicant, to submit written comments or, in exceptional cases, to take part in a hearing.
  - Requests for leave for this purpose must be duly reasoned and submitted in writing in one of the official languages ... not later than twelve weeks [from the date of communication].

---



---



---



---



---



---



---



---

### Communicated cases

- [http://www.echr.coe.int/ECHR/Homepage\\_EN](http://www.echr.coe.int/ECHR/Homepage_EN)
- Need to check regularly
- Published 3 weeks in arrears, so 12 weeks is in fact 9 - not long to assess case, make decision, prepare application
- Have a strategy - types of cases, subject matter or right (e.g. Art.14 cases)
- Tie in with strategy for all your strategic litigation

---

---

---

---

---

---

---

---

### Third party interventions - how to

- Write to the court within 12 weeks
  - Why you? What additional expertise or perspective will you add?
  - What in outline you want to say
- Get ready for permission to be granted as turnaround is fast
  - Permission is usually granted, limited to 10 or 12 pages, submissions within 3 weeks, no comments on facts or merits of the case
  - i.e. Legal submissions (not repeating the applicant), expert evidence e.g. Relevant research, statistics

---

---

---

---

---

---

---

---

### Third party interventions - what to include

- Seeking to develop the law in a particular way - this may involve putting an alternative view of the law not being advanced by either party
- Provide evidence / research that the parties may not present - particularly where you can rely on your own organisations research or policy work
- Describe academic work / learning
- Include comparative law e.g. across the EU
- Include relevant International law - both treaties and decisions (e.g. US, Canada, Australia, South Africa, India)
- Address statements of value, for instance if the interpretation or application of a convention right should be informed by a human rights value (dignity, the rule of law etc.)

---

---

---

---

---

---

---

---

### EHRC legal strategy

- <http://www.equalityhumanrights.com/legal-and-policy/legal-strategy/>
  - a) strategic litigation principles,
  - b) strategic litigation criteria,
  - c) strategic priority issues.
- Deliberately drawn widely but helps to direct decision-making process

---

---

---

---

---

---

---

---

### EHRC interventions -some examples

- *Asuquo v UK* - the definition of forced labour, the incidence of forced labour in the UK based on our Inquiry work and the adequacy of UK legislation to protect victims. Article 4.
- *Pritchard v UK* - UK troops serving abroad are within the HRA jurisdiction of the UK Arts 1&2.
- *Eweida & Chaplin v UK* - UK case law fails to adequately protect individuals from religious discrimination in the workplace because high thresholds have been set. Art.9
- *Greens v UK* - Voting rights of prisoners. A3P1.

---

---

---

---

---

---

---

---

### EHRC interventions - examples (2)

- *O'Donoghue v UK* - Discriminatory marriage certificates of approval scheme for immigrants. Art.14 with Art 9 and 12.
- *JM v UK* - Whether same-sex couples are a 'family' for Art.8 purposes or merely covered by the 'private life' aspect. Also A1P1 & art.8.
- full list at:  
<http://www.equalityhumanrights.com/legal-and-policy/human-rights-legal-powers/>

---

---

---

---

---

---

---

---

### Conclusion

- ECHR interventions are straightforward, but
- Need to stick to time limits - extensions rarely granted (esp to initial 12 week window), and other court rules
- Make it helpful to the court
- Be clear what your 'added value' is

---

---

---

---

---

---

---

---

### Contact details

- [clare.collier@equalityhumanrights.com](mailto:clare.collier@equalityhumanrights.com)
- [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

---

---

---

---

---

---

---

---