

# HANDBOOK

## EUROPEAN COURT OF HUMAN RIGHTS



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**MODEL COURTS OF JUSTICE**

**MODEL COURTS OF JUSTICE 2019****EUROPEAN COURT OF HUMAN RIGHTS****HANDBOOK****THE CASE OF *UKRAINE v. RUSSIA* ( re CRIMEA)****A. PROCEDURAL STAGE**

*“1. The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the protocols thereto which are referred to it as provided in Articles 33, 34 and 37.*

*2. In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.”*

Article 32 of the European Convention on Human Rights

During Model Courts of Justice 2019, the European Court of Human Rights shall be simulated with its Compulsory Jurisdiction. The Secretariat decided on the following clause in order to create a simulation atmosphere for the discussion of the cases.

**Any challenges against the jurisdiction of the Court or the admissibility of the case shall be overruled by the Secretariat. Parties to the case are expected to acknowledge the jurisdiction of the Court. Thus, the jurisdiction of the Court shall be established pursuant to Article 32 of the European Convention on Human Rights.**

**B. COMPOSITION OF THE COURT**

The European Court of Human Rights shall be composed of President Judge, Vice-President Judge, Registrar, Judges, two Applicants, and two Respondents.

## **C. WRITTEN PROCEEDINGS: MEMORIAL & COUNTER-MEMORIAL**

### **1. Remarks**

Written Proceedings starts with the submission of the Memorial of the Applicant to the Secretariat via [echr@modelcj.org](mailto:echr@modelcj.org). The Secretariat shall then send it to the Respondent who is expected to write and submit a Counter-Memorial. Detailed information regarding the deadlines shall be duly announced by the responsible Under-Secretary-General.

A memorial is a pleading that is submitted by the Applicant which contains a statement of the relevant facts and law and the submission; on the other hand, a counter-memorial is also a pleading that is submitted by the Respondent which contains an admission or denial of the facts which is stated in the memorial, additional facts, a statement of law in answer, (if deemed necessary) observation the statement of law in the memorial, and lastly the submission.

**As case-law is a binding source of law for the European Court of Human Rights, it is of vital importance for parties to do sufficient research on the case-law of the Court and to provide the necessary case-law in the written proceedings phase as well as the oral proceedings phase.**

In the Model Courts of Justice, the procedure of replies will not be applied. A Memorial and a Counter-Memorial differs by the content. However, the form of pleadings is essentially the same.

#### **a. Sample Memorial/Counter-Memorial:**

### **UKRAINE v. RUSSIA (re. CRIMEA) CASE**

#### **MEMORIAL OF UKRAINE / COUNTER-MEMORIAL OF RUSSIAN FEDERATION**

##### **INTRODUCTION**

*A brief summary of the dispute will be given in this section. References to key developments of the dispute would be appreciated.*

##### **JURISDICTION**

*Both parties are expected to state their acceptance of the Jurisdiction of the Court here. Challenges will be overruled at this stage.*

*The Applicant is expected to apply to the Court by virtue the European Convention on Human Rights indicating the dispute and the Respondent.*

*All in all, the Model Courts of Justice 2019 Secretariat, adopts establishment on forum prorogatum basis.*

## **FACTS**

*Facts that are found relevant to the case will be mentioned in this section. These facts may be related to political and historical issues. Bear in mind that this section will compose the factual bases of legal arguments. Respondents may challenge what is provided and propose their own claims. While preparing the statement of facts part of the Memorial/ Counter-Memorial, the best way is the inclusion of the facts which have relevance with the case before the Court.*

## **APPLICABLE LAW**

*In this part, the legal basis for official claims regarding the cases will be given. You may refer to bilateral treaties, conventions, customary law, principles of law, relevant domestic law, case-law of the European Court of Human Rights, legal literature by scholars or international organizations, etc.. This is the legal reflection of the previous section. Respondents may challenge what is provided and propose their own claims.*

## **CLAIMS**

*In this section, parties are expected to make a synthesis of the facts and applicable law and, finally, state their official claims. The facts will be explained with the law. Respondents may challenge what is provided and propose their own claims.*

## **SUBMISSION**

*A submission contains the request of the parties from the Court to act and decide in their*

*favour; parties to the case should briefly describe what conclusion they hope the Court will reach. Applicants usually seek a declaration of the rights or duties they think exists between disputing parties, or ask the Court to direct the Respondent to reinstate the justice. They may ask the Court to render or a Verdict that orders a compensation to be paid by the Respondent, while Respondents requests dismissal of the case or seek counter relief against the Applicant.*

**Submitted respectfully, on behalf of the Government of Ukraine / Russia**

**by (names of the advocates)**

## **D. ORAL PROCEEDINGS**

Parties are expected to submit material evidence before the Court. The Secretariat shall ensure that all of the Judges and the Opposing Party receive a copy of the materials during the Conference. In order to ensure this procedure, **the Advocates are expected to hand-in their materials which will be presented, to the Secretariat, before the Conference.** Detailed information regarding the deadlines shall be duly announced by the responsible Under Secretary-General. Such materials may include **maps, case-law or non-binding sources of law or any other visuals (videos and the like)** that would aid the presentation of the case.

The Secretariat allows the Judges to call upon a legal experts before the Court. Legal Experts will be responsible for their statements during Oral Proceedings. Detailed profiles of the Legal Experts will be given by the Secretariat.

### **1. JUDGES AND THE REGISTRAR**

#### **a. Remarks for Preparation to Oral Proceedings**

The Secretariat finds the objectivity of the Judges towards the case to be very important. Therefore Judges are recommended to read the Study Guide carefully. Within due time before the Conference, the Secretariat will provide all of the Judges the Memorial and the Counter-Memorial. **We strongly recommend the Judges to not to make any additional research**

**with regards to material evidence.** However, doing extra readings on the sources of law mentioned in the Study Guide, the Memorial or the Counter-Memorial would be in your benefit.

All in all, the Judges are expected to evaluate evidence material, obtain witness testimonies, listen to and thoroughly question Parties **and then** come to a conclusion on the prospective Verdict. In other words, as opposed to Advocates who need to make a strong preparation before the Conference; **the Judges have to save their full concentration to the sessions.**

The Registrar shall take copious notes of the sessions. He/she needs to be careful in this mission; as, in case any of the Judges misremember the testimonies of Witnesses or speeches of the Parties, the truth shall lie in the Report. By also taking the oaths of all Members and Witnesses, the Registrar's role is to ensure the credibility of the Oral Proceedings. The Registrar is therefore asked to read the Study Guide, the Memorial and the Counter-Memorial carefully; in order not to confuse terms and names in the Report. The Report shall be the basis of Sections II and III of the Verdict, while also aiding the precise reflection of the Deliberations.

#### **b. Sample Verdict**

### **EUROPEAN COURT OF HUMAN RIGHTS**

#### **Decision on the case of Ukraine v. Russia ( re Crimea)**

#### **Date of the Verdict**

In case concerning the numerous human rights violations in Crimea, against the ethnic groups in the region such as Crimean Tatars:

*Russian Federation* is represented by agents (names of the Advocates); and

*Ukrainian Republic* is represented by agents (names of the Advocates).

## **I. HISTORY OF THE CASE**

*Under this chapter, a brief summary of the case and dispute should be written, previous developments regarding the case such as the date and the institution of proceedings before the Court should be mentioned. Brief information about the geography would be appreciated.*

## **II. SUBMISSIONS OF THE APPLICANT PARTY**

*This section will be a summary of the Applicant's Memorial, Evidence Material and Statement of Legal Expert. The focus shall be the submission of the Applicant.*

## **III. SUBMISSIONS OF THE RESPONDENT PARTY**

*This section will be a summary of the Respondent's Memorial, Evidence Material and Statement of Legal Expert. The focus shall be the submission of the Respondent.*

## **IV. STATEMENT OF FACTS**

- **STIPULATIONS**

*If there was a stipulation made by the state parties during the stipulation phase, judges need to specify it in their verdicts, so as to go as follows:*

*“The Stipulation concluded by the parties of the dispute on (date of submission of the stipulation) reads as;”*

- **COURT'S FINDINGS**

*The evidence presented and the witness testimonies that form the material ground of the verdict will be indicated here. The Court is free to disregard any piece of evidence or testimony; the reasons shall be given in this section.*

## V. APPLIED LAW

*Since the legal grounds are crucially important for the decision, the Court must determine the applicable law. So any violations on the Conventions and Declarations other than European Convention on Human Rights cannot be a subject of a complaint on ECHR. However, in order to reach an unbiased, fair, and just judgement, it is believed that all related conventions and treaties which both parties are a side of, on the context of the case, must be heard by the esteemed judges of the ECHR.*

## VI. DECISION

*This section makes a synthesis of the Facts and Applied Law and gives the final decision of the Court on the dispute. This section constitutes the core of the Verdict. This part is expected to be detailed and to continue with the phrase “the Court considers that” followed by an explanation thereby. After the Court comes to a conclusion, it needs a phrase before stating the decision such as “The Court concludes that,” should be written at the beginning of the main decision as a commencement phrase and the rest of the decision should be clear, and expected to be a whole sentence. If there is more than one decision, any other one should also be in the same format except the beginning since it is sort of an oppositional decision to the first. The final decision shall be in its traditional format;*

For these reasons,

European Court of Human Rights, with

JUDGES (surnames of the Judges in the Majority) and JUDGES (surnames of the Judges Dissenting)/Unanimously)

### 1. Finds

JUDGES(Specify the President or Vice-President) (surnames of the Judges in the Majority) and JUDGES (surnames of the Judges Dissenting)/Unanimously

### 2. Decides

JUDGES (surnames of the Judges in the Majority) and JUDGES (surnames of the Judges Dissenting)/Unanimously

3. Rejects

**DISSENTING OPINION OF JUDGE 1**

*If there are Judges in the minority, disagreeing with the Court; he/she may write a dissenting opinion. The dissent should cover Sections IV, V and VI from the Judge's perspective.*

**CONCURRING OPINION OF JUDGE 2**

*If there are Judges in the majority; who have arrived to the same conclusion with the majority but on different grounds; he/she might write a concurring opinion.*

**DECLARATION OF JUDGE 3**

*The Judges in the majority may make a declaration on how they assume the Verdict should be perceived and what should be kept in mind in the meantime; may write a declaration.*

## **REMINDER FOR ALL PARTICIPANTS**

Participants of Model Courts of Justice 2019 are kindly reminded that plagiarism in the Memorials or the Verdict shall not be tolerated by the Secretariat.

Parties are recommended the Oxford Referencing System in their submissions. Yet, the Secretariat is comfortable with any other method that is found to be more efficient by the participants as long as the Memorial is consistent in itself. A bibliography shall be appreciated.

As for evidence material, the sources must be shown in order not to face an objection of immaterial by the opposing Party or to eliminate the risk of the Judges to disregard the evidence. Participants are asked to keep in mind that fictional evidence that is not included as a fact in the Study Guide will be inadmissible.

The Secretariat is fully aware of the fact that the Verdict writing process in the Conference can be stressful. Therefore the Secretariat shall not seek a list of references. The evidence materials need not be referenced; yet a clear indication that those segments belong to the presented cases is necessary. The Court must give references to case-law and is recommended the Oxford Referencing System. Yet, the Secretariat is comfortable with any other method that is found to be more efficient by the participants as long as the Verdict is consistent in itself.