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One Year of French Single-Judge Decisions Before the European Court of Human Rights

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ABSTRACT

Despite the high level of attention paid by the legal community to the case-law of the European Court of Human Rights, one of its facets remains little-known: single-judge decisions. Because they are not published and because it is currently impossible to access them through a research agreement with the Strasbourg Court, they constitute a blind spot in our knowledge of decided applications. The present article seeks to fill this gap by offering an insider's perspective on the work of the European Court of Human Rights, as it is written by one of the former lawyers of its Registry. Useful lessons emerge, both for the Court and for applicants.

RÉSUMÉ

Malgré le haut niveau d'attention porté par la communauté juridique à la jurisprudence de la Cour européenne des droits de l'homme, une de ses facettes reste profondément méconnue : les décisions adoptées par le juge unique. Du fait de leur absence de publication et de l'impossibilité qui prévaut à l'heure actuelle de les consulter par la voie d'une convention de recherche avec la juridiction strasbourgeoise, elles constituent un angle mort dans la connaissance du traitement des requêtes soumises à celle-ci. Le présent article cherche à lever ce voile en offrant une perspective « endogène » du travail de la Cour européenne des droits de l'homme, sous la plume de l'un de ses anciens référendaires. Les enseignements qui en ressortent sont nombreux, pour la Cour comme pour les requérants.

KEYWORDS: European Court of Human Rights – Single-Judge Decisions – Reasons given – Registry of the ECtHR – Reform of the ECtHR

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One Year of French Single Judge Decisions Before the European Court of Human Rights

Thibaut Larrouturou*

1. INTRODUCTION

The case law of the European Court of Human Rights ('ECtHR') is undoubtedly one of the most closely observed and commented upon in the world. Many citizens, politicians, judges, lawyers, and academics in the 46 Member States of the Council of Europe, as well as beyond the borders of the Old Continent, carefully scrutinise the judgments and decisions adopted by the Strasbourg Court. However, an astonishing paradox is that the vast majority of the Court's judicial activities remain *terra incognita* for the legal community. Let us consider the example of French cases: while the Court's website informs readers that, in 2019, no fewer than 597 applications lodged against France were dealt with (i. e., struck out, declared inadmissible, or decided by judgment), only 42 judgments or decisions are available on the HUDOC database, dealing with a total of 43 applications. In other words, barely 7% of the Court's judgments and decisions concerning France for 2019 are available online. The same observation reveals that, for 2020, 14% of decided applications have been made available to the public.[192] 2021 is in between, with around 12% of decided applications which have been dealt with judgments and decisions published on the Court's database.[193]

These *a priori* surprising figures can be explained by the numerical importance of decisions adopted by the single-judge formation, a formation that it is undoubtedly useful to describe in broad strokes as it may be unfamiliar both to laymen and ECHR specialists. The single-judge formation was created in 2010, when Protocol No. 14 entered into force, in addition to the committees of three judges, the Chambers of seven judges and the Grand Chamber of seventeen judges. It was designed to allow the Court to deal with its backlog while ensuring that a high level of attention would still be paid to each application, which is made clear by the pyramidal structure of the work carried out prior to the adoption of decisions. Once compliance with Rule 47 of the Rules of

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[192] This proportion doubled compared to the previous year due to the adoption of a number of judgments dealing with several applications simultaneously: in 2020, 16 judgments dealt with 60 applications, whereas in 2019 each judgment of the Court dealt with only one application.

[193] Once again, in 2021, some judgments and one decision dealt with multiple applications.

Court has been checked,[194] a first lawyer[195] is responsible for sorting applications in order to direct them to the appropriate judicial formation.[196] He or she then drafts either a referral note, meaning the case is being referred to a committee/chamber, or a single-judge note setting out the facts of the case, the complaints submitted to the Court, and the grounds of inadmissibility which appear to be obvious enough to allow a decision to be taken 'without further examination'[197]. In both cases, this confidential document is first submitted to a second lawyer, called the non-judicial *rapporteur*.[198] The latter must ensure that the note is a perfect reflection of the application submitted to the Court but also, in the case of single-judge notes, that the grounds of inadmissibility suggested by the drafting lawyer are incontestable. Lastly, the single judge appointed by the President of the Court, who may not be the judge elected in respect of the State against which the applications at stake have been lodged,[199] is informed approximately once a month of all the notes prepared for his or her attention in the preceding weeks, if they have been approved by the non-judicial *rapporteur*.[200] After seeking clarification where necessary from the lawyers on questions of fact or law, the single judge may postpone his or her decision until further information is received, agree to declare the application inadmissible (possibly on different grounds of inadmissibility than the ones suggested by the lawyers), or refer the case for examination to a committee or Chamber. Although it is a numerically limited phenomenon in practice, the adoption of referral decisions by the single judge underlines the reality of the control he or she exercises over the lawyers' suggestions to declare an application inadmissible.

If, from a statistical viewpoint, most of the ECHR's judicial activity goes unreported, this is because single-judge decisions – which are far more numerous than those adopted by judges sitting as a bench[201] – are hardly within the reach of academics, even though they are not confidential. The reasons why it is virtually impossible to access this part of the Strasbourg Court's case-law are very simple. Until June 2017, no single-judge decision was formalised: the applicants only received an administrative letter from the Registry, which was considered the equivalent of a decision, informing them without any explanation of the inadmissibility of their application. Unfortunately, Professor

[194] This is a decisive step for the applications submitted to the Court: no less than 13,000 of them were administratively closed in 2019, via the application of this article, which prescribes a number of formal requirements for applicants to validly bring cases before the Strasbourg court.
[195] He or she may be a junior/senior lawyer (a staff member recruited by the Council of Europe on the basis of open competitions) or a national judge working as seconded staff. This first lawyer, also known as the 'drafting lawyer', is not necessarily a national of the State against which the application has been lodged.
[196] It should be noted that, at this stage, a case cannot be referred to or relinquished to the Grand Chamber (see Articles 30 and 43 of the Convention).
[197] Article 27 § 1 of the Convention.
[198] This name comes from Article 24 § 2 of the Convention, which states that 'when sitting in a single-judge formation, the Court shall be assisted by rapporteurs who shall function under the authority of the President of the Court. They shall form part of the Court's Registry'. In practice, they are experienced lawyers, who are not necessarily nationals of the State against which the application has been lodged.
[199] Article 26 § 3 of the Convention.
[200] Of course, in practice, communication between these different actors is permanent, in order to make the process as smooth and efficient as possible.
[201] In 2020, 31,069 single-judge decisions were adopted – down from 33,288 in 2019. By way of comparison, the committees, Chambers and Grand Chamber adopted 1,901 judgments/4,443 decisions in 2020, and 2,187 judgments/1,995 decisions in 2019.

David Szymczak's statement that these so-called decisions were 'marked by the double seal of bureaucratic dryness in form and argumentative conciseness in substance'[202] was therefore an understatement: single-judge decisions simply had no substance and it was impossible for anyone to study them – with the exception, indirectly, of the judges and lawyers of the Court.[203] A real turning point occurred in 2017. After the Declaration of the High-Level Conference of States Parties to the Convention, held in Brussels on 26 and 27 March 2015, explicitly supported the Court's stated intention to give reasons for single-judge decisions, the Registry[204] prepared for this small revolution. For almost five years since then, the overwhelming majority of single-judge decisions have given reasons.[205] However, the legal community's access to these decisions has not improved much. On the one hand, they are never published on the Court's HUDOC database, for obvious reasons : they are of very little importance from a case-law perspective, they represent a colossal mass of decisions that would flood the Court's database and they are not, for reasons that will be detailed below, "self-sufficient", since they must be read in conjunction with the application form in order to get a glimpse of the Strasbourg Court's reasoning. On the other hand, it appears for the time being that the Court will not give access to these decisions to academics upon request (other than in a particular case), due to the considerable costs and material difficulties that would be involved in copying or making available a large number of files to persons outside the Court.[206]

Thus, more than ten years after the creation of the single-judge formation and despite the Court's recent efforts to give reasons, the single-judge decisions remain fundamentally inaccessible to scholars. This is unfortunate for several reasons. Indeed, the inadmissibility decisions adopted by the panels and published on HUDOC "by definition concern only the most complex (the least 'obvious') inadmissibility issues and do not in this sense constitute a representative sample of the inadmissibility grounds adopted elsewhere [...] by the new single judge"[207]. It is therefore impossible to deduce the prevalence of a particular admissibility condition within the single-judge decisions simply from the observation of the decisions published by the Court. Could it be, for example, that the 'no significant disadvantage criteria', which is regularly criticised as

[202] Szymczak, '"Le chameau et l'aiguille": à propos de l'accessibilité des requérants individuels au prétoire de la Cour européenne des droits de l'homme', *in La Constitution, l'Europe et le droit, Mélanges en l'honneur de Jean-Claude Masclet*, Paris, Publications de la Sorbonne (2013) at 996.

[203] The judges and the Court's lawyers do have access to the preparatory notes on which the decisions are based. However, given the confidential nature of these notes, it does not seem possible to share the results of any analysis outside the Court.

[204] It should be recalled here that the Court's Registry is an 'entity of a special nature, since it is in fact a service far removed from a national registry and very close to a general and/or legal directorate, which assists the Court in both its administrative and judicial activities' (Dourneau-Josette, 'Les relations entre les avocats et le greffe de la Cour européenne des droits de l'homme', *in* Forowicz, Lambert Abdelgawad and Sevinc (eds), *La défense des requérants devant la Cour européenne des droits de l'homme*, Limal, Nemesis/Anthemis (2012) at 93). The Registry comprises lawyers (around 300), administrative and technical staff and translators.

[205] To be more precise, only the - very rare - inadmissibility decisions adopted by the duty judges at the same time as they reject a request for interim measures currently fail to give reasons. In contrast, all applications decided by the "classic" single-judge formation have given reasons since 2017.

[206] It should be noted that the files relating to single-judge decisions are destroyed one year after the decision has been taken.

[207] Szymczak, 'France', *in* Dourneau-Josette and Lambert Abdelgawad (eds.), *Quel filtrage des requêtes par la Cour européenne des droits de l'homme?*, Strasbourg, Council of Europe Publishing (2011) at 344.

tending towards an 'erosion of the right of individual application'[208], is very frequently used by single judges, whereas it is extremely rarely used by the panels?[209] Answering such a question is impossible without access to a significant sample of relevant decisions. Another difficulty is the lack of knowledge of the cases dealt with by single judges, as in the absence of an analysis of these cases, it is not possible for applicants and their legal representatives to be aware of any recurrent inadmissibility that would justify action on their part to avoid it, or to refrain from lodging an application that is doomed to inadmissibility. In other words, studying single-judge decisions is likely to be of interest both to Strasbourg observers (since it reveals a lot about the Court's practice in terms of admissibility) and to practitioners and prospective applicants (as it allows the identification of certain pitfalls which should be avoided).

Despite the obstacles involved, it is precisely such a study that will be carried out here. The author, who worked for four years at the European Court of Human Rights as a lawyer assigned to the processing of applications lodged against France, had access in this capacity to the single-judge decisions of his choice, as well as to the corresponding application forms,[210] without the Court incurring the slightest expense or material difficulty. Since it is not possible to cover the colossal number of decisions adopted each year by all the single judges, the 538 decisions adopted in 2019[211] for France[212] by the single judge appointed by the President of the Court for that State[213] have been selected for examination in this study. This approach can provide an almost exhaustive view of a year of 'invisible' French case-law.[214] The overview that emerges is particularly enlightening on two points, which it should be noted only apply to France, given the specific nature of national cases and the organisation of each national unit within the Court. Firstly, from a formal point of view, this overview enables an assessment of the consequences of the Court's efforts to give reasons for single-judge decisions and highlights that, although there has been a positive change in that regard, there is still room for improvement. Secondly, from a more substantive point of view, while the wide variation of French cases brought before the Court is striking, it seems that a significant proportion of the inadmissibility decisions in question could be avoided by the action or abstention of the applicants. The perfectibility of the Court's reasoning (2) is therefore matched by the perfectibility of the applications lodged to the Court (3).

2. THE PERFECTIBILITY OF THE COURT'S REASONING

[208] Sudre, 'À propos de la "vocation constitutionnelle" de la Cour européenne des droits de l'homme', *in Constitution, Justice, Démocratie, Mélanges en l'honneur du professeur Dominique Rousseau*, Paris, LGDJ (2020) at 237.

[209] In 2019, only about ten decisions published on HUDOC were based on the "no significant disadvantage criteria". This number was even lower in 2020 and 2021, with only half a dozen decisions in each case.

[210] Of course, the single-judge notes drafted by the lawyers were not consulted in the context of this study, due to their confidential nature.

[211] 2019 was chosen for two reasons: in recent years, it had the highest the proportion of single-judge decisions; also, it was unaffected by the various disruptions caused by the Covid-19 pandemic.

[212] The choice of this State is justified by the author's knowledge of it, but also by the language barrier that arises when reading application forms against other States (which may be written in any official language of a Council of Europe Member State).

[213] This judge was Mr Carlo Ranzoni, elected in respect of Liechtenstein.

[214] The handful of decisions adopted in 2019 by the duty judge ruling on requests for interim measures against France could not, for the reasons given above, be included in this study.

The search for the right level of reasoning, allowing both the understanding of the Court's decisions and the preservation of the strength of its judges and lawyers to cope with the backlog of applications, is a perpetual quest for the Strasbourg court. This is evidenced by the recent launch of an experiment focusing on a 'significantly more concise and focused manner' to draft cases falling within the competence of the Committees.[215] Balancing these *a priori* contradictory requirements obviously governs the choices made by the Court in terms of giving reasons for single-judge decisions. Indeed, a formal examination of the French decisions leads to the conclusion that the reasoning is extremely summary (A), which raises the question of whether there is room for improvement (B).

A. An extremely summary reasoning

One of the reasons why the reasoning of single-judge decisions may be considered minimalist is the absence of summary of the facts of the case brought before the Court. Each decision therefore begins with the ritual statement that 'The European Court of Human Rights, sitting on [date] in a single-judge formation pursuant to Articles 24 § 2 and 27 of the Convention, has examined the application as submitted'. Apart from preventing the applicant from determining which facts were considered relevant by the Strasbourg Court, this absence requires the outside observer to consult the application form submitted to the Court in order to understand what is at stake. The extreme conciseness of single-judge decisions is also caused by the absence of a presentation of the applicant's complaints: only the articles invoked are mentioned, which again requires the observer to refer to the application form in order to build a sufficiently detailed overview of the case. This is normally followed, article by article, by a mention of the condition of admissibility which was not met (such as "manifestly ill-founded", the non-exhaustion of domestic remedies, incompatibilities related to the Court's jurisdiction, or non-compliance with the four-month time-limit). Such a mention does not, however, go hand-in-hand with the reasons justifying the Court's conclusion on that matter.

While the statement of reasons for inadmissibility is therefore the main achievement of the introduction of reasoning for single-judge decisions, there is one important limitation to this improvement, namely the practice of giving reasons through what the Court Registry calls the 'global formula'. This is an established formula that does not enable the condition of admissibility which was not met by the application to be determined. It reads as follows:

> "The Court finds, in the light of all the material in its possession and in so far as the matters complained of are within its competence, that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or the Protocols thereto and that the admissibility criteria set out in Articles 34 and 35 of the Convention have not been met".

[215] See on this point the website of the European Court of Human Rights.

This deliberately imprecise statement was used to deal with about 40% of the approximately 1,000 complaints identified in the application forms associated with the 538 decisions at issue.

The reasons why this formula appears so regularly in the single-judge decisions are to be found in the working methods of the Court itself, which should therefore be briefly explained here. Broadly speaking, there are three possible reasons for the use of the global formula. Firstly, the single judge may voluntarily choose to use the global formula in the case of particularly confused or fanciful applications, when the grounds for inadmissibility are so numerous and inextricably linked that it seems preferable to adopt a general and abstract reasoning. However, this is much rarer than the other two hypotheses, which are linked to the limitations of the application processing software used by lawyers. Thus, it should be pointed out that, in the words of the former president of the Court, Guido Raimondi, the introduction of reasoning for single-judge decisions was not permitted by an increase of the staff designed to this task, but rather by the 'efficient IT system' of the Strasbourg Court.[216] In addition to the confidential single-judge note that the lawyer has to draft, the latter currently only has to select the article(s) invoked by the applicant, as well as the grounds of inadmissibility for each one, in the application processing software so that the corresponding decision can be automatically generated. In this context, the main reason for using the global formula is the invocation of more than three articles of the Convention by the applicant, if the complaints are declared inadmissible on different grounds. In such a case, the software limitations currently applied by the Court mean that all the articles invoked are associated with the global formula.[217] Finally, if three or fewer articles are invoked, and because of the same software limitations, the global formula is used when two or more complaints are based on the same article but are declared inadmissible on different grounds: for example, if an applicant invokes Article 6 of the Convention to raise, on the one hand, a complaint about the length of proceedings found inadmissible for the non-exhaustion of domestic remedies and, on the other, a complaint about the impartiality of a judge which is found to be manifestly ill-founded, then the two complaints are merged together in the decision, combined with a global formula.[218]

For the sake of completeness, it should also be pointed out here that some of the single-judge decisions deviate from the reasoning automatically generated by the application processing software, either by including a reference to a judgment or decision of the Court when presenting the ground of inadmissibility, or by giving reasons freely drafted by the lawyer (for example to specify in their own way the domestic remedy that has not been exhausted or the decision taken as the starting point of the four-month time-limit). However, these "individualised" reasonings, which are submitted by lawyers to the single judge in parallel with the note on which the decision is based,

[216] See President Guido Raimondi's speech at the opening ceremony of the Court's judicial year on 26 January 2018 (Court's Annual Report 2018, p. 17).
[217] Unless the drafting lawyer has identified a 'main article' within the application, which can then be associated with a specific admissibility condition in the decision. However, the other articles are then associated with the global formula.
[218] In such a case, the other one or two articles invoked in the application are not necessarily dealt with by the global formula.

represent a small minority, as only about 10% of the 538 decisions studied include a reference to case-law that could enlighten the applicant on the reasoning underlying the inadmissibility decision, while 5% of decisions are characterised by a 'non-standard' statement of reasons. Ultimately, while the introduction of reasoning for single-judge decisions has been a real step forward, it may still be insufficient in the eyes of applicants, practitioners, and academics. It is therefore worth considering whether there is still room for improvement in this area, and more specifically, whether there is room for improvement that would be compatible with the burden imposed on the Court.

B. A narrow room for improvement

Any reflection on the level of reasoning of single-judge decisions cannot avoid consideration of the pressure under which the European Court of Human Rights works. While the Court is composed of only 47 judges, assisted by some 300 lawyers of the Registry, 44,250 applications were allocated to a judicial formation in 2021, whereas 36,092 applications were decided by decision or judgment. On 31 December 2021, approximately 70,150 applications were pending before a judicial formation. These statistics explain why strengthening the reasoning of single-judge decisions does not appear to be an imperative for the Court, particularly in a strategic context that has recently focused on the priority resolution of applications likely to have a high impact on States Parties to the Convention.[219] Consequently, any realistic analysis of the room for improvement in the reasoning of these decisions has to take as its premise the constancy of the human resources allocated to their processing.

In this context, the first objective that might seem relevant to pursue is undoubtedly a reduction in the very high proportion of complaints that are being dealt with the global formula. Two avenues can be explored in this respect. The first is to increase the number of articles of the Convention that an applicant can invoke without the global formula necessarily being applied if several grounds of inadmissibility are found. Currently set at a conservative level of three, probably in order to avoid drowning the lawyer in the 'article invoked/ground of inadmissibility' associations to be made within the application processing software, it could probably be increased to five without any significant reduction in productivity. Such a change would have significant effects: a high proportion of the applications against France in 2019 that were declared inadmissible under the global formula would have four or five articles of the Convention invoked without this appearing unreasonable, given the subject matter of the applications in question.[220] At the same time, applications that are awkwardly based on a dozen or more articles that are not relevant to the case could continue to be rejected on the basis of the global formula. A second way of reducing the proportion of global formulas might be to allow drafting lawyers to 'force' an automatic reasoning when several complaints are based on the same article but are declared inadmissible for

[219] See, *inter alia*, the document entitled 'A Court that matters' on the website of the European Court of Human Rights, dated 17 March 2021.

[220] For example, applications that clumsily invoke Articles 6 and 13 of the Convention, on the one hand, and Article 8 in conjunction with Article 14 of the Convention, on the other; as things stand, if all the complaints in such an application are not rejected on the same grounds of inadmissibility, the global formula applies by default, since four separate articles of the Convention have been invoked by the applicant.

different reasons. At present, in such a case, the lawyer only has a choice between the global formula proposed by default by the application processing system or the personalised (and therefore more time-consuming) drafting of a decision explaining each complaint and the associated ground of inadmissibility, on the other. It might therefore be appropriate to propose a third option, also automated, of defining an order of complaints according to their order of presentation within the application form. This would allow applicants to understand, simply by reading their application form and the Court's decision, which complaint is associated with which ground of inadmissibility, without the lawyer having to take up the pen to explain the complaints in question ('as regards the first complaint submitted in the application form on the basis of Article 6 § 1 of the Convention…; as regards the second complaint in the application form under Article 6 § 1 of the Convention…'). Again, without being more cumbersome for lawyers, such an option would greatly reduce the proportion of complaints rejected by the global formula, particularly in relation to the many applications which raise two or more complaints under Article 6 § 1 of the Convention. At the same time, it would still allow the use of the global formula in those cases where querulous applicants raise a large number of obviously irrelevant complaints under the same Article.

The second project that could be carried out seems, at first sight, much more difficult: it would consist of reinforcing the precision of the reasoning when a specific ground of inadmissibility is mentioned in the single-judge decision. As the Court's practice stands, the mere statement of this ground may not allow a full understanding of the decision. For example, by default, the dismissal of a complaint for the non-exhaustion of domestic remedies does not explain to the applicant the remedy he or she should have lodged, or the grounds he or she should have raised before the national courts. Similarly, except in the few cases in which a non-standard decision is drafted, an inadmissibility decision based on non-compliance with the four-month time-limit does not specify the domestic decision that is considered to represent the starting point of the time-limit.[221] This is even more true when the single judge comes to the conclusion that a complaint is manifestly ill-founded, since such a conclusion often comes down to a 'stance on the merits of the case regarding compliance with the Convention'[222] which may therefore involve a genuine proportionality review. The mere fact that this is the ground for finding a given complaint inadmissible sheds very little light on the reasoning. The indication of a relevant precedent or the drafting of an individualised decision, because of their rarity, only correct the insufficiency of the reasoning for single-judge decisions in a few cases. On this point, the margins for progress unfortunately appear to be very thin. Indeed, it hardly seems possible to give more reasons when the Court comes to the conclusion that a complaint is manifestly ill-founded, as such a reform would require major drafting efforts. Similarly, questions raised by the Court's jurisdiction very often involve substantial reasoning, which is difficult to set out in a few words. The only conditions of admissibility that could *a priori* allow more detailed reasoning without making the task of the Court's lawyers more cumbersome are the exhaustion of domestic

[221] Even though it is obviously not always easy for a layman to determine which decision is final in the eyes of the Court.
[222] Eudes, 'L'examen du grief manifestement mal fondé : le cas de l'article 8', *in* Dourneau-Josette and Lambert Abdelgawad (eds.), *Quel filtrage des requêtes par la Cour européenne des droits de l'homme ? supra* at 167.

remedies and the time-limit for bringing a case before the Strasbourg Court. If the drafting lawyer were to indicate, by default, which remedy has not been exhausted, which complaint has not been brought before the national courts, or the date on which the four-month time-limit began to run, it would be much easier for the applicant (possibly assisted by his or her counsel) to understand why the application has been declared inadmissible. This would not make the processing of applications substantially more time-consuming. Indeed, these details are, of course, set out in the single-judge notes, thus it would take very little time to fill them out in the application processing software.

While it is interesting to observe the formal presentation of single-judge decisions alone, cross-checking the pieces of information they contain with the corresponding application forms also reveals a great deal, particularly with regard to the perfectibility of the applications lodged to the Court.

3. THE PERFECTIBILITY OF THE APPLICATIONS LODGED TO THE COURT

The study of French single-judge decisions is rich in lessons. The first of them is the highly protean nature of the cases brought before the Strasbourg Court. Unlike some States, against which hundreds of applications may be lodged on the same grounds by persons in similar situations,[223] there has been no real massive influx of identical applications against France. The single-judge decisions studied here are therefore characterised by the diversity of the Convention articles invoked, of the complaints raised, and of the national litigation that gave rise to the applications. Nevertheless, it is still possible to identify several categories of complaints which, while not having the slightest chance of success, are regularly raised by applicants even though there is no link between their respective situations. Thus, the wide variety of French cases (A) does not prevent the recurrence of certain inadmissible complaints (B).

A. The wide variety of French cases

The impressive diversity of the applications studied here is mostly explained by the variety of the national situations brought to the Court's attention: town planning, conditions of detention of prisoners, access to administrative documents, compulsory hospitalisation, residence of aliens or neighbourhood disturbances are just a few examples, among many other issues and disputes. Nevertheless, it must be noted that certain disputes are particularly likely to give rise to an application before the Strasbourg Court, especially if the applicant is not represented at the earliest stage of procedure.[224] Thus, around 18% of the applications declared inadmissible by the single judge in 2019 in the case of France were related to criminal proceedings, most often against the applicant, and less frequently against third parties. No less than 12% of the applications

[223] For example, public employees dismissed following the attempted coup of 15 July 2016 in Turkey, or people imprisoned in various different Eastern European States and criticising their conditions of detention.
[224] As a reminder, being represented by an advocate or another approved representative only becomes compulsory following notification of the application to the respondent Contracting Party (Rule 36 of Court).

concerned a dispute relating to labour law or the law concerning civil servants. Finally, approximately 7% of the applications dealt with family law issues, and almost 5% concerned tax law issues. The predominance of these four fields is because the disputes in question clearly have a particular impact on the claimants, either in human or financial terms. Thus, in these matters more than in others, it seems that "the fantasy that the European Court of Human Rights represents for applicants who are disappointed with their national judicial system leads them [...] to bring their case before the Court, without any real demonstration of the violation of the fundamental rights and principles that they invoke"[225], to quote Patrice Spinosi.

Turning to the provisions invoked in the applications, the variety is also impressive: there is hardly any right or freedom guaranteed by the Convention and its Protocols that has not been subject to at least one single-judge decision, except the right to marry. However, there is no balance in that regard. For example, no less than 77% of the applications lodged against France and dealt with by the single judge in 2019 included at least one complaint alleging a breach of Article 6 § 1 of the Convention, concerning the right to a fair trial. This finding will come as no surprise to specialists in European human rights law, since this number is close to the share of Article 6 § 1 in the findings of violation adopted against France since the Court was set up, at 63%.[226] On the other hand, the other articles most frequently invoked in the cases dealt with by a single judge are more surprising as they appear to be over-represented. This is the case for the articles guaranteeing the protection of property (25% of the applications studied include at least one complaint based on Article 1 of Protocol No. 1, whereas this article accounts for only about 3% of the violations found by the Court in the case of France since 1959), the right to respect for private and family life (20% as opposed to less than 6%), the right to an effective remedy (20% as opposed to about 4%), and lastly, the prohibition of discrimination (18% as opposed to just over 1%).[227] The particular weight given to these articles in single-judge decisions is probably due to their affinity – at least from some applicants' viewpoints – with the above-mentioned areas of criminal law, labour law, family law and tax law.[228]

The Court is able to deal with this wide variety of complaints by, in most cases, wielding four conditions of admissibility. After the global formula, which, as mentioned above, provides a response to approximately 40% of the complaints examined, the "manifestly

[225] Spinosi, 'L'approche d'un praticien français face à la procédure d'examen de la recevabilité des requêtes', *in* Dourneau-Josette and Lambert Abdelgawad (eds.), *Quel filtrage des requêtes par la Cour européenne des droits de l'homme? supra* at 249.
[226] Between 1959 and 2020, no less than 566 violations of Article 6 § 1 were found regarding France, out of a total of 903 violations.
[227] Regarding the other articles of the Convention, the proportions in which the applications examined included at least one corresponding complaint were as follows, in descending order: Article 6 §§ 2 and 3: 10%; Article 3: 10%; Article 7: 8%; Article 5: 6%; Article 10: 5%; Article 17: 4%; Article 2: 3%; Article 1: 3%; Article 9: 3%; Article 1 of Protocol No. 12: 2%; Article 4: 2%; and the other articles: 1% or less. These data also reflect certain errors specific to single-judge cases, such as the number of applications invoking Article 17 (prohibition of abuse of rights) as without any relevance or invoking Article 1 of Protocol No. 12 (general prohibition of discrimination), even though the latter has not been ratified by France.
[228] It should also be pointed out that many applicants seem to ignore that Article 6 § 1 constitutes a *lex specialis* in relation to Article 13 of the Convention, guaranteeing the right to an effective remedy. The requirements of the latter are therefore often absorbed by those of the former.

ill-founded" condition is most regularly raised against applicants (28% of complaints), in the form of a 'fourth instance' in a quarter of cases.[229] Non-exhaustion of domestic remedies comes in third place with about 15% of the complaints, of which about a fifth are "premature" applications.[230] Incompatibility *ratione materiae* (mainly with regard to Article 6 § 1) and failure to comply with the six-month time-limit[231] complete this quatrain of admissibility conditions which are frequently present in single-judge decisions, with 7% and 4% of complaints respectively.[232] It is worthwhile pointing out that the much-criticised "no significant disadvantage criteria" (Article 35 § 3 (a) of the Convention) was only found in one application based on Article 6 § 1 of the Convention, relating to a dispute arising from a speeding fine of 74 euros and 80 cents imposed on the applicant. Such a finding may be reassuring outside the Human Rights Building,[233] but it will hardly come as a surprise within the Court, since as it is a condition of admissibility that is rarely applied by the Chambers and Committees, the case-law relating to it is very rare. Because single-judge decisions are limited to the application of well-established principles, the absence of significant disadvantage can only exceptionally be demonstrated with certainty by the lawyers involved in the processing of applications, who therefore favour the other admissibility conditions laid down in the Convention. Therefore, in order for this condition of admissibility to be more widely wielded by the single judge, nothing less than a proactive case-law policy[234] would be required, which appears not to be in vogue despite the recent entry into force of Protocol No. 15 to the Convention.[235]

The lack of reasons for each ground of inadmissibility in the single-judge decisions makes it impossible to gauge the diversity of the reasonings adopted to find the applications inadmissible. However, there is little doubt that this diversity is quite real, given the variety of situations at issue and the rights and freedoms at stake, as well as the very uneven quality of the cases submitted to the Court : alongside applications that

[229] As is pointed out in the Practical Guide on Admissibility Criteria prepared by the Court's Registry, 'Manifestly ill-founded complaints can be divided into four categories: 'fourth-instance' complaints, complaints where there has clearly or apparently been no violation, unsubstantiated complaints and, finally, confused or far-fetched complaints'. Only the first category is tied to specific reasons in the standard single-judge decisions.

[230] That is to say, applications for which domestic remedies are still pending. This inadmissibility does not prevent applicants from lodging another application after a final domestic decision has been adopted.

[231] This time-limit was cut down to four months with the entry into force of Protocol No. 15 to the Convention, but the reduction only took effect on 1st February 2022.

[232] Again, for the sake of completeness, it is possible to specify the percentages of complaints deemed inadmissible under the other Convention requirements. Absence or loss of victim status: 2%; application substantially the same as a matter that has been examined by the Court: 2%; incompatibility *ratione personae* due to the involvement of a Protocol to the Convention which the respondent State has not ratified: 1%. The other admissibility conditions were never wielded by the single-judge, with the exception of incompatibility *ratione personae* (lack of standing regarding three applications lodged by municipalities), abuse of the right of application (one application), incompatibility *ratione temporis* (one application) and "no significant disadvantage criteria" (one application, which will be mentioned again).

[233] All the more so since, in the author's experience, it is extremely rare for the "no significant disadvantage criteria" to be 'hidden' behind the use of the global formula.

[234] Some applications in which the "no significant disadvantage criteria" does not seem to be met could be referred on purpose to the Chambers, in order to clarify the case-law in this area.

[235] This Protocol deleted one of the 'safeguard clauses' attached to the "no significant disadvantage criteria" (i.e. the proviso that the case has been duly considered by a domestic tribunal) with the aim of giving greater effect to the maxim *de minimis non curat praetor*.

can be described as genuinely confused, or even fanciful,[236] there are also applications that would probably be found inadmissible by any law graduate,[237] as well as applications that require a full proportionality review to be carried out based on well-established case-law.[238] Nevertheless, despite the great heterogeneity of French cases dealt with by the single judge, it is possible to identify a certain number of recurring grievances whose manifest inadmissibility should be explained to both applicants and their counsels.

B. The recurrence of certain inadmissible complaints

An observer of one year of French single-judge decisions cannot help but be struck by the existence of certain complaints that are raised by many applicants despite the certainty of their inadmissibility, regardless of whether the applications in question are lodged by a natural or legal person, and with or without the assistance of counsel. In most cases, the reasons why these applications are inadmissible are 'specific' to the French State and are therefore not necessarily highlighted in the Court's information notes or guidelines – in particular in the Practical Guide on Admissibility Criteria published by the Registry – and can most often only be found in old and/or little-known decisions. It is therefore highly likely that a more targeted communication by the Court on the reasons why some specific complaints are inadmissible would be likely to dissuade some applicants from unnecessarily bringing cases before the Strasbourg Court. No fewer than 150 complaints, i. e. around 15% of the total number of complaints declared inadmissible in 2019 by the single judge for France, were manifestly inadmissible for the following reasons.

Regarding the "manifestly ill-founded" condition, it should be recalled that Article 6 § 1 of the Convention does not require detailed reasons to be given for a decision in which an appellate court, applying a specific legal provision, dismisses an appeal as having no prospects of success. The Court has applied this case-law to declare inadmissible complaints concerning the dismissal of appeals to the final court of appeal, due to lack of grounds, both by the Council of State[239] and by the *Cour de cassation*[240]. The fifty or so complaints submitted to the Court in 2019 concerning the principle of the absence of a statement of reasons for decisions rejecting an appeal on this ground were therefore inevitably bound to be inadmissible. Similarly, it is worthwhile pointing out for the

[236] These are, of course, subjective qualifications that the author would associate with approximately one in eight of the applications studied.
[237] For example, a student excluded from a university claimed, from the standpoint of Article 3 of the Convention and while domestic proceedings were still pending, that his expulsion was an 'incompressible life-lasting sentence' contrary to the prohibition of inhuman and degrading treatment. The author's subjective view is that only about one fifth of the applications in question are that simple to deal with. This includes applications on particularly sensitive issues - placement of children or conditions of detention, to cite just two examples - which unfortunately can only be rejected for failure to exhaust domestic remedies or because, as presented, they are manifestly ill-founded.
[238] For example, in one of the applications in question, the applicant company relied on Articles 6 and 8 of the Convention to contest the lawfulness of the searches and seizures carried out by some inspectors on its premises.
[239] European Court of Human Rights, *Société anonyme Immeuble Groupe Kosser v. France*, Application no 38748/97, Admissibility (partial), 9 March 1999.
[240] European Court of Human Rights, *Burg and others v. France*, Application no 34763/02, Admissibility, 28 January 2003.

record that, insofar as the scheme set up by the French legislature offers individuals substantial guarantees to protect them from arbitrariness, challenging the refusal of an application for legal aid by the *Cour de cassation*[241] and the Council of State[242] appears to have no chance of success. Finally, the monopoly on making oral representations before these courts, enjoyed by the *avocats aux Conseils*[243], does not infringe the applicants' right to a fair trial within the meaning of Article 6 of the Convention.[244] Nevertheless, almost one in seven applications studied included at least one of these three complaints.

The exhaustion of domestic remedies is also relevant. The Court solemnly stated that, with regard to the length of proceedings, an application under Article L. 141-1 of the Code of Judicial Organisation, regarding ordinary courts,[245] or an action against the State based on a deficiency in the administration of justice, regarding administrative courts,[246] is one that has to be used for the purposes of Article 35 § 1 of the Convention. However, in 2019, more than thirty applications regarding lengths of proceedings were lodged even though these remedies had not been exhausted. Moreover, it seems necessary to underline two points. On the one hand, an applicant who wishes to challenge the partiality of a judge must have previously raised the issue before the domestic courts, if such a remedy was available.[247] On the other hand, if the rejection of an application for legal aid by the *Cour de cassation* or the Council of State can allow the applicant to lodge an application to the Court even if the Supreme Court in question did not examine the merits of the case, it is provided that the decision of the legal aid office must already have been challenged before the First President of the *Cour de cassation* or the President of the Judicial Division of the Council of State.[248]

The other two admissibility conditions most frequently invoked by the single judge call for more concise developments. Incompetence *ratione materiae* is a common ground of inadmissibility, especially in the field of Article 6 § 1 of the Convention (approximately 3% of applications are affected), despite repeated warnings by the Court and legal scholars that this provision cannot be invoked in matters of tax proceedings,[249] entry,

[241] European Court of Human Rights, *Del Sol v. France*, Application no 46800/99, Merits, 26 February 2002.
[242] European Court of Human Rights, *Kroliczek v. France*, Application no 43969/98, Admissibility (partial), 14 September 2000.
[243] I.e. the members of the *Cour de Cassation* and the Council of State Bar.
[244] For the *Cour de cassation*: European Court of Human Rights, GC, *Meftah v. France*, Application no 32911/96, 35237/97 & 34595/97, Merits and Just Satisfaction, 26 July 2002; for the Council of State: European Court of Human Rights, *G.L. and S.L. v. France*, Application no 58811/00, Admissibility, 6 March 2003.
[245] European Court of Human Rights, GC, *Mifsud v. France*, Application no 57220/00, Admissibility, 11 September 2002.
[246] European Court of Human Rights, *Broca and Texier-Micault v. France*, Application no 27928/02 & 31694/02, Merits and Just Satisfaction, 21 October 2003.
[247] For example, by challenging: European Court of Human Rights, *De Villepin v. France*, Application no 63249/09, Admissibility, 21 September 2010.
[248] See, by analogy: European Court of Human Rights, *Comité des quartiers Mouffetard et des bords de Seine and others v. France*, Application no 56188/00, Admissibility, 21 November 2000.
[249] Except for tax surcharges proceedings: European Court of Human Rights, GC, *Jussila v. Finland*, Application no 23/11/2006, Merits and Just Satisfaction, 23 November 2006.

residence and removal of aliens,[250] citizenship[251] or electoral sanctions,[252] nor is it invocable in certain specific procedures.[253] On the four-month time-limit, the only interesting thing to note is that when an applicant is represented by an *avocat aux Conseils* before the *Cour de cassation* or the Council of State, the starting date of the four-month period is not the date when the final judgment is served to the applicant or to his/her lawyer, it is the date on which it is delivered, in view of a constant practice whereby a certified copy of the judgment is automatically deposited, on that day, in the box of the *avocat aux Conseils* who represents the applicant.[254] Although it is difficult to determine from an application form what led an applicant to lodge a late application to the Court, it seems clear that at least ten applications against France were declared inadmissible by the single judge in 2019 because the applicant had failed to take account of this specific case-law about the *avocats aux Conseils*.

4. CONCLUSION

Ultimately, there are many lessons to be learned from studying the single-judge decisions. They shed a different light on the practice of the European Court of Human Rights, as well as on the practice of the applicants who turn to it. It therefore seems appropriate for the Court and the academic world to consider together how to open up this particular area of litigation to research in a way that would not strain the budget or human resources of the Registry. The joint exploration of ways to provide more detailed reasons for single-judge decisions, on the one hand, and to improve the knowledge of applicants of certain grounds for declaring a complaint inadmissible, on the other hand, are objectives that would undoubtedly justify any efforts made by the Strasbourg Court to give access to its archives.

[250] European Court of Human Rights, GC, *Maaouia v. France*, Application no 39652/98, Merits and Just Satisfaction, 5 October 2000.
[251] European Court of Human Rights, *Sergey Smirnov v. Russia*, Application no 14085/04, Admissibility, 6 July 2006.
[252] European Court of Human Rights, *Pierre-Bloch v. France*, Application no 24194/94, Merits and Just Satisfaction, 21 October 1997.
[253] For example: the application to challenge an investigating judge (European Court of Human Rights, *Schreiber and Boetsch v. France*, Application no 58751/00, Admissibility, 11 December 2003), the application to refer a case on grounds of reasonable suspicion that the judge is not impartial (European Court of Human Rights, *Mitterrand v. France*, Application no 39344/04, Admissibility, 7 November 2006), or the proceedings concerning a request for a new trial (European Court of Human Rights, *Jussy v. France*, Application no 42277/98, Merits and Just Satisfaction, 8 April 2003).
[254] European Commission of Human Rights, *Legendre v. France*, Application no 25924/94, Admissibility, 15 January 1997.