

## GUIDELINES on Moot Court for 'Moot Court Skills' (5 EC)

### 1. General instructions

There are three different roles for this moot court on either ECHR law (by the ECtHR) or EU law (by the ECJ/CJEU). The complainant/applicant (from now on: **applicant**) and the respondent/defendant (from now on: **defendant**) will draft a (written) pleading paper. The judges will draft a (concept) judgment (in case of four judges: including dissenting/concurring opinion) based on the relevant case on either ECHR or EU law. The fictional case on CANVAS is the basis for the moot court. You can find in which group you are in this document below and when the moot court session (exam) will take place in week A9. **If no group is appointed to you contact the instructor.** You will write your pleading paper or concept judgment together with your fellow students (teams of two to max. three students); in case there are not enough students left to form a team, an individual student may be assigned the role of applicant and/or defendant.

- A) The **applicant and the defendant** hand their written submissions in with the instructor by email and GradeWork in week A6 (**deadline: Monday 4 October 2021 before 9.00 a.m.**).
- B) The **judges** hand in their (concept) judgment by email and GradeWork in week A7 (**deadline: Friday 29 October 2021 before 5.00 p.m.**)

Email:

- ECHR law: [martijn.wools@hu.nl](mailto:martijn.wools@hu.nl) and
- EU law: [martijn.wools@hu.nl](mailto:martijn.wools@hu.nl) and [merijn.maassen@hu.nl](mailto:merijn.maassen@hu.nl)

The moot court will consist of two sessions on ECHR law and two sessions on EU law (4 in total) of approximately 75 minutes in total.

Be certain to be punctual: the moot court will convene exactly at the agreed time at the HU (or via MS teams, if necessary because of COVID-19 measures).

Depending on which group is appointed to you, you play the role of the applicant/applicant's lawyer, the lawyer of the Netherlands (ECHR law)/defendant (EU law) or the judge of the ECtHR/CJEU.

**IMPORTANT NOTICE: DO NOT ADDRESS ISSUES OF ADMISSIBILITY IN YOUR PLEADINGS AND FOCUS ON THE MERITS OF THE RELEVANT CASE!**

#### *The role of the lawyers*

All lawyers are to present an oral pleading **based on their written pleading papers** about the relevant points of law. You must divide the different legal issues between your group members. Be certain that clear agreements have been made so that all group members are aware of the sequence of speakers (who will present first and so on) and which group member is to present a specific argument.

The lawyers are to present their legal argumentation brief but understandably and when necessary, refer to relevant legal sources and/or the facts of the case. ***A separate presentation of the facts of the case is unnecessary, as all should be familiar with these.*** Therefore, start immediately with the presentation of your legal arguments in order to answer the point or points of law. Be certain here that there is not too much overlap of the arguments presented by the different group members and that these are coherently connected.

There is a **total of 14 minutes** for the **oral pleadings** of the lawyers for each party divided between the **1<sup>st</sup> and 2<sup>nd</sup> round** (see below). During each round all group member must have the opportunity to speak and speaking time must be divided equally. The representative(s) of the applicant start the session with a presentation of their arguments. After that the representative(s)

of the defendant present their arguments. The Court must question the lawyer(s) after their presentations; there is a **total of 15 minutes** for the **judges' questions** divided between the **1<sup>st</sup> and 2<sup>nd</sup> round** (see below) and to address the questions by the judges. **All judges must present either the applicant or defendant with questions in the 1<sup>st</sup> and 2<sup>nd</sup> round.** The lawyers immediately respond. Then the lawyers will perform their **reply and rejoinder**; after which the judges must ask (additional) questions (2<sup>nd</sup> round). We then have a short break in order for the judges to discuss (in secret), prepare and state their **final decision/ruling** (3<sup>rd</sup> round).

1. Opening of the Court by the judges: max. 2 min in total
2. Applicants (1<sup>st</sup> round: based on written pleadings): max. 8 min in total;
3. Defendants (1<sup>st</sup> round: based on written pleadings): max. 8 min in total;
4. Judges (1<sup>st</sup> round: questions): max. 9 min in total (incl. answers by applicant/defendant);
5. Applicants (2<sup>nd</sup> round: reply with possible new arguments): max. 6 min in total;
6. Defendants (2<sup>nd</sup> round: rejoinder with possible new arguments): max. 6 min in total;
7. Judges (2<sup>nd</sup> round: questions on reply and rejoinder): max. 6 min in total;
8. Judges (3<sup>rd</sup> round: short discussion and then final ruling): max. 10 min in total
  - o by the three judges together (in secret) and both examiners;
9. Examiners (Mr. Wools and Maassen: evaluations and possible feedback): max. 20 min.
10. Total max. time: 75 min

### *The role of the judges*

The role of the judges is to guide the entire process (i.e. time, order, mutual respect, ensuring that what is addressed is limited to the case and points of law, etc.). Furthermore, the judges are to direct critical pertinent questions to the lawyers of both parties. The judges choose a chief judge and a registrar judge. The chief judge leads the process and opens and closes the session. The registrar is responsible for safeguarding time limits and indicates when the lawyer has just one minute left for his or her pleading; and when time has run out. Therefore it may be handy to take a stopwatch with you. At the end of the seminar lesson, the judges pronounce their final (joint) decision.

### *Procedural requirements*

The following procedural requirements are to be observed during the moot court:

1. Judges can be addressed collectively as "Your Excellencies" or individually as "Your Excellency," and the head judge, commonly referred to as the president, should be addressed as "Madam President" or "Mister President." When addressing the opposing counsel, oralists should address them with courtesy and respect, such as "My learned friends," "My Honorable friends," "Agents for Applicant," or "Agents for Respondent."
2. The chief judge leads the proceedings of the Court and calls upon the lawyers, as requested.
3. The registrar keeps track of the time the lawyers speak and indicate when there is one minute left before conclusion of the argument and when the speaking time limit has been reached.
4. The lawyers stand during their pleading while facing the Court (not necessary in case of a moot court session via MS teams).
5. The first lawyer to speak opens by introducing him/herself and her colleagues and stating which party you are representing.  
At the beginning of the pleading, explain briefly, the points of law you will be treating, the topics of your argument and the order of their presentation.  
The point is to provide the judges with a clear impression of the structure and substance of your pleading. Be certain to clearly communicate to the judges when you progress from one argument to another and also in case that you present **new argument(s) (not already stated in your written pleadings) in the 2<sup>nd</sup> round**
6. Understand that your time for argumentation is limited but use the time you have to the fullest! Ensure, furthermore, that the time is equally divided between your group members.
7. Speak clearly and address the judges and the opposing party!

8. Be aware of your speaking tempo (do not speak too quickly) and be certain your sentences have a clear beginning and end (do not run your sentences together).
9. Do not read your pleading word for word from paper.
10. Present your pleading calmly and maintain eye contact with the judges; when suitable, use emphasis and brief pauses (e.g. after completing a sentence or an argument).
11. Substantiate (support) your arguments with (by briefly) referencing relevant judicial sources.
12. Wind up your pleading with a clear conclusion and briefly restate your key arguments if time allows (think about: short and long version of your conclusions).
13. Be prepared for questioning from the judges.

**Written submissions: pleading paper (for the applicants and defendant s) or (for the judges) concept judgment.**

You will write your pleading paper or judgment together with your fellow students. You will find below under 'groups' what kind of document you will have to write. In addition, all students are expected to present an **oral** pleading during the moot court or to pronounce a decision in the role of judge.

**Assessment criteria**

Check: RUBRIC for MOOT COURT SKILLS (HU) 2021-2022 based on: HINTON MOOT COURT BALLOT (on CANVAS)

**2a. Pleading Paper**

The minimum requirements for presentation and content of the pleading paper are the following.

*Presentation*

The pleading paper is to be typed. Hand-written assignments will not be considered for grading. Further requirements for the assignment are a table of contents and a **length of 1200-2100 words**. The word count shall be conducted using the standard "Word Count" feature in Microsoft Word not including footnotes. Make a note of the word total on the cover page.

*Title page*

The *title page* of the pleading paper contains the following:

- Name of the legal body;
- Name of the case;
- Name of the state or party that is represented;
- All the student names and numbers responsible for the assignment;
- Word total

*Structure*

The pleading paper contains an introduction, the central part of your work and an understandable conclusion.

The introduction contains, in any event, an account of the structure of the pleading paper. In addition, you can, for example, provide an account of the questions/issues presented to the legal body.

The main arguments are presented in the central part of the pleading paper; these are presented per point of law and comprehensively substantiated. The central part makes up the core of the pleading paper and is where a well-argued answer to all points of law, based on all relevant legal sources, can be found.

A brief and concise answer to all points of law is given in the conclusion. Furthermore, the most important arguments should be summarized. It is without a question inadequate to conclude your work by simply repeating the points of law, already submitted to the legal body.

**When writing the pleading paper, in addition to the usage of the assigned material, you are expected to carry out independent research into relevant rules, case law and literature.**

#### *Tips for writing the pleading paper*

First and foremost, in order to write a good pleading paper, it is essential to start on time; stick to a well-planned schedule; and make definite and clear agreements with one another. It goes without saying, that the points of law are divided among the group members but it is essential that the finished work is a coherent whole. This means a critical view of every member's contribution, especially to see if relevant arguments and legal sources have been found and appropriately applied (at the right place and fittingly).

Before starting to write the pleading paper, it is of course essential to read all the assigned literature. This provides the basis for the identifying the most relevant legal sources as well as the key arguments. It is advised to do this per point of law. The following step is to make a structure for your pleading paper, in which you organize your key points of law, point by point, with relevant legal sources.

Select the most advantageous arguments for your position and work each point of law out, point by point. A pleading paper is not a neutral piece but an attempt to support your position as effectively as possible by presenting as many as possible relevant arguments. Focus on discovering these and use critical judgment on the arguments to use or not to use. It is also advised to accumulate legal argumentation you can use for the purpose of refuting that of the opposing party. When writing the pleading paper, do not reproduce the facts of the case unconnectedly. It is of course feasible that a brief reference to the facts might be needed. It is strictly prohibited to make up new 'facts.'

Be certain when writing the pleading paper that your arguments to the legal bodies in response to the points of law are adequately juridical substantiated. In this regard, always note the specific sources on which your arguments have been based (i.e. treaty articles, case law (including the relevant paragraph of the case), reliable literature). Be aware of the fact that the judges will ask for this information. When making reference to your sources of law, be certain to be as detailed and specific as possible.

It is important, as it were, to layer argumentation and (where possible) to use more than one relevant argument to substantiate your point of law, for example:

*Consider that State A has taken a measure that according to Ms. B is in violation of ECHR. Consider further that the case between A and B is brought before the ECHR and that State A asks that the Court pronounce that the measure taken is not in violation of the ECHR. State A can thus argue that the measure is by no means in violation of regulation X.*

*This however is not the only possibility to substantiate the point of law. State A could also state the following: "In the case that the Court is of the opinion that regulation X has been violated, we will argue that the measure can be justified on grounds pursuant to ECHR article ...".*

#### *Guidelines for referencing sources*

Carefully indicate when and what sources you have used. It is recommended to make use of footnotes for this purpose. General known facts do not require accounting for. Use quotation marks when using citation followed by a footnote with reference to the source. Remember to use the correct citation conventions for reference to rules, jurisprudence, literature and Internet sources (check the video's for week A2 'how to moot' for MCS).

In addition, the author, title, date and year of Internet consultation is always indicated: (or: the relevant hyperlinks).

### *Plagiarism*

Verbatim copying of texts written by others without referencing your source is strictly prohibited. The literal reproduction of a text with reference to the source without but without quotations marks is also plagiarism and thus not allowed. All forms of plagiarism will be sanctioned. The weight of the sanctions depends on the specific plagiarism. **In case of plagiarism during the written pleadings that team/student will be excluded from participation of the oral pleadings.**

### **2b. Concept judgment**

The minimum requirements for the presentation and content of motion for judgment are the following:

#### *Presentation*

The motion for judgment is to be typed. Hand-written assignments will not be considered for grading. Further requirements for the assignment are a table of contents and a **length of 1500-2600 words**. Make a note of the word total on the cover page.

#### *Title page*

The *title page* of the motion for judgment contains the following:

- Name of the legal body;
- Date of the motion for judgment;
- Name of the case;
- All the student names and numbers responsible for the assignment;
- Word total

#### *Structure*

The motion for judgment contains an introduction, the central part of your work and an understandable conclusion.

The introduction contains, in any event, an account of the structure of the pleading paper and an account of the questions/issues presented to the legal body.

The main arguments are presented in the central part of the motion for judgment; these are presented per point of law and comprehensively substantiated based on law. The central part is the core of the motion for judgment and is where a well-argued answer to all points of law, based on all relevant legal sources, can be found.

In the conclusion, you provide a concise answer to all points of law.

When writing the motion for judgment, in addition to the usage of the assigned material, you are expected to carry out independent research into relevant rules, jurisprudence and literature.

#### *Tips for writing the motion for judgment*

First and foremost, in order to write a good motion for judgment, it is essential to start on time; stick to a well-planned schedule; and make definite and clear agreements with one another. It goes without saying, that the points of law are divided among the group members but it is essential that the finished work is a coherent whole. This means a critical view of every member's contribution, especially to see if relevant arguments and legal sources have been found and appropriately applied (at the right place and fittingly).

Before starting to write the motion for judgment, it is of course essential to read all the assigned literature. This provides the basis for the identifying the most relevant legal sources as well as the key arguments. It is advised to do this per point of law. The following step is to design a structure for your motion for judgment, in which you organize your key points of law, point by point, with relevant legal sources.

You are to provide a motivated and (provisional) answer to all presented points of law in the motion for judgment, with reference to the relevant juridical sources. You provide, in addition, the most comprehensive answer possible to all points of law with reference to the arguments and

juridical sources on which you have based your decision. Furthermore, you establish the legal consequences resulting from the decision.

Be certain that the law adequately substantiates your arguments in response to the points of law when writing the motion for judgment. In this regard, always note the specific sources, on which your arguments have been based (i.e. treaty articles, jurisprudence, reliable literature). When making reference to your sources of law, be certain to be as detailed and specific as possible.

Refer to an actual decision of the ECRM for an example of a motion for judgment.

*Guidelines for referencing sources*

Carefully indicate when and what sources you have used. It is recommended to make use of footnotes for this purpose. General known facts do not require accounting for. Use quotation marks when using citation followed by a footnote with reference to the source. Remember to use the correct citation conventions for reference to rules, jurisprudence, literature and Internet sources.

In addition, the author, title, date and year of Internet consultation is always indicated: no hyperlinks!

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Verbatim copying of texts written by others without referencing your source is strictly prohibited. The literal reproduction of a text with reference to the source without but without quotations marks is also plagiarism and thus not allowed. All forms of plagiarism will be sanctioned. The weight of the sanctions depends on the specific plagiarism. **In case of plagiarism during the written pleadings that team/student will be excluded from participation of the oral pleadings.**

**GROUPS:**

	A	B	C	D
1	<b>Case 1: ECHR law</b>		student name	Practice (HRLIE TU A2)
2	<b>team1: applicant</b>	student1		
3		student2?		
4	<b>team2: defendant</b>	student1		
5		student2?		
6	<b>team3: judges</b>	student1		
7		student2		
8		student3		
9				
10	<b>team4: applicant</b>	student1		
11		student2?		
12	<b>team5: defendant</b>	student1		
13		student2?		
14	<b>team6: judges</b>	student1		
15		student2		
16		student3		
17				
18	<b>Case 2: EU law</b>			
19	<b>team7: applicant</b>	student1		
20		student2?		
21	<b>team8: defendant</b>	student1		
22		student2?		
23	<b>team9: judges</b>	student1		
24		student2		
25		student3		
26				
27	<b>team 10: applicant</b>	student1		
28		student2?		
29	<b>team 11: defendant</b>	student1		
30		student2?		
31	<b>team 12: judges</b>	student1		
32		student2		
33		student3		
34				