



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

## **Guidelines**

**on the implementation of the advisory-opinion procedure**

**introduced by Protocol No. 16 to the Convention**

**(approved by the Plenary Court on 18 September 2017)<sup>1</sup>**

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<sup>1</sup> Update approved by the Plenary Court on 25 September 2023.

# **Guidelines on the implementation of the advisory-opinion procedure introduced by Protocol No. 16 to the Convention**

## **I. Introduction**

1. These Guidelines are intended to offer practical assistance on the initiation of and follow-up to the procedure set out in Protocol No. 16 to the European Convention on Human Rights (“the Convention”) to those courts or tribunals with competence to submit a request for an advisory opinion. The Guidelines are to be viewed in the spirit of dialogue and cooperation between the national authorities and the European Court of Human Rights (“the Court”) which underpins the Protocol. The Guidelines, which are non-binding, should be read in the light of the provisions of Protocol No. 16 to the Convention and the corresponding Rules of the Rules of Court (see Appendix I). In addition, they should be read in light of the elements of judicial practice that have been laid down by the Court, and which are referred to as relevant below.

## **II. The Court’s jurisdiction in respect of requests for advisory opinions**

2. Article 1 of Protocol No. 16 to the Convention confers jurisdiction on the Court to give advisory opinions on questions of principle concerning the interpretation or application of the rights and freedoms defined in the Convention or the Protocols thereto. The aim of the advisory-opinion procedure is to further the interaction between the Court and the national courts and tribunals of the Contracting Parties to the Convention. The promotion of constructive dialogue between the Court and the national courts and tribunals serves to strengthen further the implementation of the Convention at the domestic level, in line with the principle of subsidiarity<sup>2</sup>.

3. It is important to stress at the outset that the advisory-opinion procedure is not available to all courts or tribunals within the High Contracting Parties to the Protocol. The Court’s jurisdiction only extends to requests for advisory opinions submitted by a domestic instance which has been designated as a highest court or tribunal for the purposes of Protocol No. 16 by the High Contracting Party (“the designated court or tribunal”). According to Article 10 of the Protocol:

“Each High Contracting Party to the Convention shall, at the time of signature or when depositing its instrument of ratification, acceptance or approval, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate the courts or tribunals that it designates for the purposes of Article 1, paragraph 1, of this Protocol. This declaration may be modified at any later date and in the same manner.”

4. For that reason, domestic courts or tribunals are advised to satisfy themselves that they have the competence to submit a request for an advisory opinion. To that end, it is

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<sup>2</sup> See *Advisory opinion concerning the recognition in domestic law of a legal parent-child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother* [GC], request no. P16-2018-001, French Court of Cassation, § 25, 10 April 2019.

recommended that they consult the appended list of designated courts or tribunals before any decision is taken to submit a request for an advisory opinion<sup>3</sup>. The Court has no jurisdiction to consider a request which has been submitted by an instance not designated as a highest court or tribunal.

5. It is for the designated court or tribunal to apply the Convention and the Court's case-law to the dispute before it, having regard as appropriate to the parties' arguments on the matter. It may be that the court or tribunal in question concludes that the case before it, in its view, raises a novel point of Convention law, or that the facts of the case do not seem to lend themselves to a straightforward application of the Court's case-law, or that there appears to be an inconsistency in the case-law<sup>4</sup>. In such circumstances, the court or tribunal concerned may avail itself of the possibility of submitting a request for an advisory opinion.

6. It is also important to note that in advisory-opinion proceedings the Court cannot deal with abstract questions of Convention law. Three points must be stressed in this connection.

6.1 Firstly, a request for an advisory opinion must originate in pending domestic proceedings currently being heard by a highest court or tribunal. The Court has no jurisdiction to consider a request which does not fulfill that requirement.

6.2 Secondly, the opinion sought must concern a question or questions of principle relating to the interpretation or application of the rights and freedoms defined in the Convention or the Protocols thereto, and which is considered by the court or tribunal concerned to be necessary for its adjudication of the case. The recommendations set out below provide further guidance on these matters. However, the Court has no jurisdiction either to assess, where relevant, the facts of a case or to evaluate the merits of the parties' views on the interpretation of domestic law in the light of Convention law or to rule on the outcome of the proceedings. The role of the Court is limited to furnishing an opinion on the request submitted to it. Ultimately, it is for the requesting court or tribunal to resolve the issues raised by the case and to draw, as appropriate, the conclusions which flow from the opinion delivered by the Court for the provisions of national law invoked in the case and for the outcome of the case<sup>5</sup>.

6.3 Thirdly, the questions asked must be formulated with sufficient precision to enable the Court to confine its opinions to points that are directly connected to the proceedings pending at domestic level. Where the questions asked are broad and of a general nature, even if the five-judge panel deems the request admissible, the Grand Chamber may subsequently deem it necessary to reformulate them having regard to the specific legal and factual circumstances at issue in the domestic proceedings. Questions which do not fulfil the requirements of Article 1 of Protocol No. 16 will not be examined<sup>6</sup>.

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<sup>3</sup> See also the relevant page of the Council of Europe's treaty office: <https://www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=214&codeNature=0>

<sup>4</sup> See for example *Advisory opinion on the procedural status and rights of a biological parent in proceedings for the adoption of an adult* [GC], request no. P16-2022-001, Supreme Court of Finland, §§ 25-26, 13 April 2023.

<sup>5</sup> See most recently *Advisory opinion P16-2022-001*, cited above, § 44.

<sup>6</sup> See *Advisory Opinion concerning the use of the "blanket reference" or "legislation by reference" technique in the definition of an offence and the standards of comparison between the criminal law in force at the time of the*

7. An advisory opinion on a request submitted by a designated court or tribunal will be delivered by the Grand Chamber of the Court as constituted under Rule 24 § 2 (g) of the Rules of Court. However, it is important that designated courts or tribunals bear in mind that a request for an advisory opinion will first be examined by a five-judge panel of the Grand Chamber, which will decide on whether or not the request is to be accepted for examination by the Grand Chamber (Article 2 of the Protocol and Rule 93 of Chapter X of the Rules of Court). The panel's examination will be focused essentially on whether the request submitted to the Court concerns a question or questions of principle which relate to the rights and freedoms defined in the Convention and the Protocols thereto and whether it meets the procedural requirements established in Article 1 § 3 of the Protocol and outlined in Rule 92 § 2.1 of Chapter X of the Rules of Court regarding its form and content. In the spirit of cooperation underlying the Protocol, it is desirable that designated courts or tribunals have regard to these Guidelines in order to avoid the rejection *de plano* of the request for failure to comply with the basic substantive and procedural formalities prescribed by the Protocol. The panel may reject a request where it considers that it does not concern an issue on which the requesting court would need the Court's guidance by way of an advisory opinion to be able to ensure respect for Convention rights when determining the case before it<sup>7</sup>.

### **III.**

#### **The decision to request an advisory opinion**

8. As already mentioned in paragraph 3 above, competence to request an advisory opinion lies with a designated court or tribunal. A list of such instances is appended. As noted in paragraph 4 above, courts or tribunals should consult this list in order to ascertain that they have competence to seek an advisory opinion under the Protocol.

9. The decision to request an advisory opinion is optional (Article 1 § 1 of the Protocol and Rule 92 § 1 of Chapter X of the Rules of Court). Bearing in mind the aim of the Protocol (see paragraph 2 above), a designated court or tribunal may avail itself of the advisory-opinion procedure whenever it considers that a case before it raises a question or questions of principle relating to the interpretation or application of the rights and freedoms defined in the Convention or the Protocols thereto, and, in its view, it is necessary to request an advisory opinion in order to resolve the dispute brought before it.

### **IV.**

#### **The appropriate stage at which to make a request for an advisory opinion**

10. A designated court or tribunal may submit a request for an advisory opinion to the Court as soon as it finds that the domestic proceedings before it give rise to a question or questions of principle relating to the interpretation or application of the rights and freedoms defined in the Convention or the Protocols thereto, and it considers that an opinion of the Court should be sought (Article 1 § 2 of the Protocol). Having regard to the various elements which go to

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*commission of the offence and the amended criminal law*, [GC], request no. P16-2019-001, Armenian Constitutional Court, §§ 44-47, 29 May 2020.

<sup>7</sup> See *Decision on a request for an advisory opinion under Protocol No. 16 concerning the interpretation of Articles 2, 3 and 6 of the Convention*, Request by the Supreme Court of the Slovak Republic, request no. P16-2020-001, 14 December 2020, at §§ 17-19.

make up a complete request (see paragraphs 11-17 below), it is recommended that a request be lodged with the Court only after, in so far as relevant, the facts and legal issues, including issues of Convention law, have been identified. Requesting an advisory opinion before central factual or legal issues have been assessed at national level may influence the admissibility of the request or the extent to which the Grand Chamber can answer some of the questions posed<sup>8</sup>. Depending on the position in domestic law, it may well be the case that one or both parties can take the initiative on this matter in their grounds of appeal against the decision of a lower court. In any event, the final decision on whether or not to request an advisory opinion rests with the appellate court or tribunal in so far as it has been designated a highest court or tribunal for the purposes of the Protocol.

## V.

### **The form and content of a request for an advisory opinion**

11. Having regard to the above-mentioned aim of the Protocol, the advisory-opinion procedure requires the Court to provide clear interpretative guidance to the requesting court or tribunal. In order to be in a position to do so, the reasons which led the instance concerned to make a request should be set out and the request should be complete and precise.

12. It is important to stress that the content of any request for an advisory opinion is prescribed by Article 1 § 3 of Protocol No. 16 and Rule 92 § 2.1 of Chapter X of the Rules of Court. Such a request, which must be reasoned, must contain not only the question or questions on which the court or tribunal concerned seeks the guidance of the Court but also the following additional elements:

- a) the subject matter of the domestic case and its relevant legal and factual background;
- b) the relevant domestic legal provisions;
- c) the relevant Convention issues, in particular the rights or freedoms at stake;
- d) if relevant, a summary of the arguments of the parties to the domestic proceedings on the question;
- e) if possible and appropriate, a statement of the requesting court or tribunal's own views on the question, including any analysis it may itself have made of the question.

13. It will be observed that the requesting court or tribunal is left with a degree of discretion in determining whether it is "relevant" to include a summary of the arguments of the parties on the question which is the subject matter of the request and whether or not it is "appropriate" to set out its own views on that question. While these are matters to be addressed by the instance concerned, bearing in mind the spirit of sincere and loyal dialogue and cooperation that imbues Protocol No. 16<sup>9</sup>, the Court would encourage the inclusion of both elements. In any event, what is important is that the requesting court or tribunal, in the exercise of its judgment, places the Court in the most informed position possible in order to

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<sup>8</sup> See *Advisory opinion concerning the use of the "blanket reference" or "legislation by reference" technique in the definition of an offence and the standards of comparison between the criminal law in force at the time of the commission of the offence and the amended criminal law*, [GC], request no. P16-2019-001, Armenian Constitutional Court, § 49, 29 May 2020.

<sup>9</sup> See *Advisory opinion on the difference in treatment between landowners' associations "having a recognised existence on the date of the creation of an approved municipal hunters' association" and landowners' associations set up after that date* [GC], request no. P16-2021-002, French Conseil d'État, § 57, 13 July 2022.

enable it to provide the interpretative guidance sought by the requesting court or tribunal as regards the application of Convention law to the domestic proceedings.

14. Both before the consideration of a request by the panel and after the panel has deemed the request admissible, the Registry of the Court may, at the request of the President, contact the requesting court or tribunal with a view to seeking further particulars on the request and accompanying documentation. Any delay in providing these may well cause delay both in the calculation of the date on which the request is considered to be duly lodged and in the issuing of the advisory opinion.

15. It is to be noted that requests for advisory opinions are treated by the Court as a matter of priority (see Rule 93 § 2 of Chapter X of the Rules of Court). Where a requesting court or tribunal is of the view that a request warrants urgent consideration it should so inform the Court and give reasons for requesting an expedited procedure. The matter of priority is addressed in paragraphs 30-31 below. It is important that the Court be informed immediately of the urgent nature of a request for an advisory opinion. For that reason, requesting courts or tribunals should clearly indicate in the letter accompanying their request their wish that the matter be dealt with urgently. It is further recommended that the words “**URGENT: PROTOCOL No. 16**” be inserted at the top of each page of the request.

16. As regards the presentation of a request for an advisory opinion, requesting courts or tribunals are invited to apply the following guidelines:

- a) the request should be in A4 format, typewritten, and have a margin of not less than 3.5 cm;
- b) the text should be at least 12 pt in the body of the document and 10 pt in the footnotes, with one and a half line spacing;
- c) all numbers should be expressed as figures;
- d) pages should be numbered consecutively;
- e) the request should be divided into numbered paragraphs;
- f) it should be set out in accordance with the requirements of Rule 92 § 2.1 of Chapter X of the Rules of Court.

17. The complete request should not in principle exceed twenty pages.

## **VI.**

### **The language of a request for an advisory opinion**

18. A complete request as defined above may be lodged with the Court in the language of the domestic proceedings where that is an official language of the High Contracting Party to which the requesting court or tribunal pertains. However, an English or French translation of the request must be filed with the Court within the time-limit specified by it (Rule 34 § 7 of the Rules of Court; see also paragraph 14 above).

**VII.**  
**Anonymity**

19. After a request for an advisory opinion has been lodged, the Court may grant persons or entities concerned by the dispute in the domestic proceedings anonymity of its own motion, or at the request of the requesting court or tribunal or of a party to those proceedings.

20. It is for the requesting court or tribunal to ensure that any personal information contained in a request is treated in accordance with the relevant domestic law and practice on anonymity (for example by deleting personal details or rendering anonymous persons or entities concerned by the dispute in the domestic proceedings).

**VIII.**  
**The effects of the request for an advisory opinion on the domestic proceedings**

21. It will be for the requesting court or tribunal to decide whether the domestic proceedings are to be suspended pending the delivery of the Court's advisory opinion.

22. In the interests of the proper conduct of the advisory-opinion proceedings before the Court and in order to maintain their effectiveness, the requesting court or tribunal should inform the Court of any procedural step that may affect the request and, in particular, if any new parties are admitted to the domestic proceedings.

**IX.**  
**Costs and expenses and legal aid**

23. Advisory-opinion proceedings before the Court are free of charge. The Court does not rule on the costs and expenses of the parties to the proceedings pending before the requesting court or tribunal, which is a matter to be settled in accordance with the law and practice of the High Contracting Party to which the requesting court or tribunal pertains (Rule 95 of Chapter X of the Rules of Court).

24. The President of the Court may decide to invite a party to the domestic proceedings to intervene in the advisory-opinion proceedings. If such party has insufficient means and where it is possible under national rules the requesting court or tribunal may grant that party legal aid to cover the costs, including those of lawyers' fees, which it incurs before the Court. The Court itself may also grant legal aid where the party in question is not already in receipt of aid under national rules or to the extent to which that aid does not cover, or covers only partly, costs incurred before the Court (Rule 95 of Chapter X of the Rules of Court).

**X.**  
**Communication between the Court and the requesting court or tribunal**

25. The request for an advisory opinion and the relevant documents are to be sent by the requesting court or tribunal directly to the Registrar of the Court by registered post (The Registrar, European Court of Human Rights, Council of Europe, F-67075 Strasbourg CEDEX). The Registrar will acknowledge receipt of the request and will provide all necessary

information on its processing. The court or tribunal may be requested at this stage to supplement its request where it is considered to be incomplete.

26. When lodging a request for an advisory opinion, a designated court or tribunal is invited to provide the Court with a contact person for the purpose of the proceedings.

27. The Court will inform the requesting court or tribunal of all relevant procedural steps in the proceedings, including:

- a) time-limits for filing a translation of the request and the production of further materials in support of the request;
- b) the decision of the five-judge panel on the request;
- c) the conduct of the proceedings before the Grand Chamber where the request for an advisory opinion is accepted by the five-judge panel, including notification of any submissions made by the High Contracting Party to which the court or tribunal pertains or by any third-party intervener to the proceedings;
- d) any decision to invite the parties to the domestic proceedings or other third party to intervene in the Grand Chamber proceedings;
- e) notification of the advisory opinion adopted by the Grand Chamber on the request.

28. It will be for the requesting court or tribunal to keep the parties to the domestic proceedings informed of the progress in the proceedings. Where the President of the Court has invited the parties to the domestic proceedings to intervene in the advisory-opinion proceedings (Rule 94 § 3), the Court shall assume this function, including the notification of the advisory opinion adopted by the Grand Chamber on the request (Rule 94 § 10 of Chapter X of the Rules of Court).

29. In assessing whether to avail itself of the opportunity afforded by Rule 94 § 6 of the Rules of Court to comment on submissions filed by intervenors under Rule 44, the requesting court or tribunal is left with a degree of discretion as described in paragraph 13 above. The decision of the requesting court or tribunal to avail itself of the said opportunity will not in principle affect the progress of the proceedings before the Court which, for the purposes of Rule 94 § 5, will consider the written procedure to have been closed.

## **XI. Priority**

30. A request for an advisory opinion will be dealt with as a matter of priority in accordance with Rule 41 of the Rules of Court. The requesting court or tribunal should immediately indicate, giving reasons, whether there are any special circumstances which would require an urgent examination of the request and a speedy ruling by the Court. It is desirable that the requesting court or tribunal should have consulted the parties to the proceedings before it on this matter and attach their views to its reasons for the request. It will be for the Court to determine whether the reasons put forward by the requesting court or tribunal are such as to justify an expedited treatment of the request. The Court will have regard to its own criteria governing the order in which applications lodged under Article 34 of the Convention are



handled<sup>10</sup>. It is recommended that designated courts or tribunals familiarise themselves with these criteria before filing a request for an expedited advisory-opinion procedure.

31. Even in the absence of a specific application for urgent treatment of a request for an advisory opinion, the Court may of its own motion decide to deal with it under an expedited procedure. The requesting court or tribunal will be informed accordingly. It will be for the requesting court or tribunal to notify the parties to the domestic proceedings of the Court's decision. Similarly, where the Court deems that a request for the expedited processing of a request is not warranted, it will inform the requesting court or tribunal of its decision, which should in turn inform the parties to the proceedings.

## **XII.**

### **Delivery of the Court's opinion**

32. The advisory opinion may be delivered in writing, in which case the requesting court or tribunal shall receive a certified copy, as will the Contracting Party to which it pertains and any third party that intervened in the proceedings (Rule 94 §§ 9-10). The advisory opinion may also be delivered at a public hearing by the President of the Grand Chamber. The requesting court or tribunal will be informed in advance of the date and time of the public hearing, as will the Contracting Party to which it pertains and any third party that intervened in the proceedings. Immediately after the public hearing, certified copies of the advisory opinion will be sent to the requesting court or tribunal, to the Contracting Party to which it pertains, and to any third party that intervened in the proceedings. The advisory opinion will be published on the Court's HUDOC database immediately following its delivery.

## **XIII.**

### **Follow-up to the Court's opinion**

33. The requesting court or tribunal is invited to inform the Court of the follow-up given to the advisory opinion in the domestic proceedings and to provide it with a copy of the final judgment or decision adopted in the case.

## **XIV.**

### **Review of these Guidelines**

34. The Court will keep these Guidelines under periodic review.

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<sup>10</sup> [http://www.echr.coe.int/Documents/Priority\\_policy\\_ENG.pdf](http://www.echr.coe.int/Documents/Priority_policy_ENG.pdf)

**APPENDIX I**  
**Provisions of the Rules of Court<sup>1</sup> pertaining to**  
**proceedings under Protocol No. 16<sup>2</sup>**

**Rule 1<sup>3</sup> – Definitions**

For the purposes of these Rules unless the context otherwise requires:

- (a) the term “Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto;
- (b) the expression “plenary Court” means the European Court of Human Rights sitting in plenary session;
- (c) the expression “Grand Chamber” means the Grand Chamber of seventeen judges constituted in pursuance of Article 26 § 1 of the Convention;
- (d) the term “Section” means a Chamber set up by the plenary Court for a fixed period in pursuance of Article 25 (b) of the Convention and the expression “President of the Section” means the judge elected by the plenary Court in pursuance of Article 25 (c) of the Convention as President of such a Section;
- (e) the term “Chamber” means any Chamber of seven judges constituted in pursuance of Article 26 § 1 of the Convention and the expression “President of the Chamber” means the judge presiding over such a “Chamber”;
- (f) the term “Committee” means a Committee of three judges set up in pursuance of Article 26 § 1 of the Convention and the expression “President of the Committee” means the judge presiding over such a “Committee”;
- (g) the expression “single-judge formation” means a single judge sitting in accordance with Article 26 § 1 of the Convention;
- (h) the term “Court” means either the plenary Court, the Grand Chamber, a Section, a Chamber, a Committee, a single judge or the panel of five judges referred to in Article 43 § 2 of the Convention and in **Article 2 of Protocol No. 16 thereto**;
- (i) the expression “*ad hoc* judge” means any person chosen in pursuance of Article 26 § 4 of the Convention and in accordance with Rule 29 to sit as a member of the Grand Chamber or as a member of a Chamber;
- (j) the terms “judge” and “judges” mean the judges elected by the Parliamentary Assembly of the Council of Europe or *ad hoc* judges;
- (k) the expression “Judge Rapporteur” means a judge appointed to carry out the tasks provided for in Rules 48 and 49;

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<sup>1</sup> The provisions of the Rules of Court set out in this Appendix reflect the text in force on the date this document was updated.

<sup>2</sup> For ease of reference, the provisions directly relevant to Protocol No. 16 appear in bold text.

<sup>3</sup> As amended by the Court on 7 July 2003, 13 November 2006 and 19 September 2016.

(l) the term “non-judicial rapporteur” means a member of the Registry charged with assisting the single-judge formations provided for in Article 24 § 2 of the Convention;

(m) the term “delegate” means a judge who has been appointed to a delegation by the Chamber and the expression “head of the delegation” means the delegate appointed by the Chamber to lead its delegation;

(n) the term “delegation” means a body composed of delegates, Registry members and any other person appointed by the Chamber to assist the delegation;

(o) the term “Registrar” denotes the Registrar of the Court or the Registrar of a Section according to the context;

(p) the terms “party” and “parties” mean

- the applicant or respondent Contracting Parties;
- the applicant (the person, non-governmental organisation or group of individuals) that lodged a complaint under Article 34 of the Convention;

(q) the expression “third party” means any Contracting Party or any person concerned or the Council of Europe Commissioner for Human Rights who, as provided for in Article 36 §§ 1, 2 and 3 of the Convention and in **Article 3 of Protocol No. 16**, has exercised the right to submit written comments and take part in a hearing, or has been invited to do so;

(r) the terms “hearing” and “hearings” mean oral proceedings held on the admissibility and/or merits of an application or in connection with a request for revision or an advisory opinion, a request for interpretation by a party or by the Committee of Ministers, or a question whether there has been a failure to fulfil an obligation;

(s) the expression “Committee of Ministers” means the Committee of Ministers of the Council of Europe;

(t) the terms “former Court” and “Commission” mean respectively the European Court and European Commission of Human Rights set up under former Article 19 of the Convention.

#### **Rule 24<sup>4</sup> – Composition of the Grand Chamber**

1. The Grand Chamber shall be composed of seventeen judges and at least three substitute judges.

2. (a) The Grand Chamber shall include the President and the Vice-Presidents of the Court and the Presidents of the Sections. Any Vice-President of the Court or President of a Section who is unable to sit as a member of the Grand Chamber shall be replaced by the Vice-President of the relevant Section.

(b) The judge elected in respect of the Contracting Party concerned or, where appropriate, the judge designated by virtue of Rule 29 or Rule 30 shall sit as an *ex officio* member of the Grand Chamber in accordance with Article 26 §§ 4 and 5 of the Convention.

(c) In cases referred to the Grand Chamber under Article 30 of the Convention, the Grand Chamber shall also include the members of the Chamber which relinquished jurisdiction.

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<sup>4</sup> As amended by the Court on 8 December 2000, 13 December 2004, 4 July and 7 November 2005, 29 May and 13 November 2006, 6 May 2013, 19 September 2016 and 11 October 2021.

(d) In cases referred to it under Article 43 of the Convention, the Grand Chamber shall not include any judge who sat in the Chamber which rendered the judgment in the case so referred, with the exception of the President of that Chamber and the judge who sat in respect of the State Party concerned, or any judge who sat in the Chamber or Chambers which ruled on the admissibility of the application.

(e) The judges and substitute judges who are to complete the Grand Chamber in each case referred to it shall be designated from among the remaining judges by a drawing of lots by the President of the Court in the presence of the Registrar. The modalities for the drawing of lots shall be laid down by the Plenary Court, having due regard to the need for a geographically balanced composition reflecting the different legal systems among the Contracting Parties.

(f) In examining a request under Article 46 § 4 of the Convention, the Grand Chamber shall include, in addition to the judges referred to in paragraph 2 (a) and (b) of this Rule, the members of the Chamber or Committee which rendered the judgment in the case concerned. If the judgment was rendered by a Grand Chamber, the Grand Chamber shall be constituted as the original Grand Chamber. In all cases, including those where it is not possible to reconstitute the original Grand Chamber, the judges and substitute judges who are to complete the Grand Chamber shall be designated in accordance with paragraph 2 (e) of this Rule.

(g) In examining a request for an advisory opinion under Article 47 of the Convention, the Grand Chamber shall be constituted in accordance with the provisions of paragraph 2 (a) and (e) of this Rule.

**(h) In examining a request for an advisory opinion under Protocol No. 16 to the Convention, the Grand Chamber shall be constituted in accordance with the provisions of paragraph 2 (a), (b) and (e) of this Rule.**

3. If any judges are prevented from sitting, they shall be replaced by the substitute judges in the order in which the latter were selected under paragraph 2 (e) of this Rule.

4. The judges and substitute judges designated in accordance with the above provisions shall continue to sit in the Grand Chamber for the consideration of the case until the proceedings have been completed. Even after the end of their terms of office, they shall continue to deal with the case if they have participated in the consideration of the merits. These provisions shall also apply to proceedings relating to advisory opinions.

5. (a) The panel of five judges of the Grand Chamber called upon to consider a referral request submitted under Article 43 of the Convention shall be composed of

- the President of the Court. If the President of the Court is prevented from sitting, he or she shall be replaced by the Vice-President of the Court taking precedence;
- two Presidents of Sections designated by rotation. If the Presidents of the Sections so designated are prevented from sitting, they shall be replaced by the Vice-Presidents of their Sections;
- two judges designated by rotation from among the judges elected by the remaining Sections to serve on the panel for a period of six months;
- at least two substitute judges designated in rotation from among the judges elected by the Sections to serve on the panel for a period of six months;

(b) When considering a referral request, the panel shall not include any judge who took part in the consideration of the admissibility or merits of the case in question.

(c) No judge elected in respect of, or who is a national of, a Contracting Party concerned by a referral request may be a member of the panel when it examines that request. An elected judge appointed pursuant to Rules 29 or 30 shall likewise be excluded from consideration of any such request.

(d) Any member of the panel unable to sit, for the reasons set out in (b) or (c) shall be replaced by a substitute judge designated in rotation from among the judges elected by the Sections to serve on the panel for a period of six months.

**(e) When considering a request for an advisory opinion submitted under Article 1 of Protocol No. 16 to the Convention, the panel shall be composed in accordance with the provisions of Rule 93.**

#### **Rule 29<sup>5</sup> – *Ad hoc* judges**

1. (a) If the judge elected in respect of a Contracting Party concerned is unable to sit in the Chamber, withdraws, or is exempted, or if there is none, the President of the Court shall choose an *ad hoc* judge, who is eligible to take part in the consideration of the case in accordance with Rule 28, from a list submitted in advance by the Contracting Party containing the names of three to five persons whom the Contracting Party has designated as eligible to serve as *ad hoc* judges for a renewable period of two years and as satisfying the conditions set out in paragraph 1 (c) of this Rule.

The list shall include both sexes and shall be accompanied by biographical details of the persons whose names appear on the list. The persons whose names appear on the list may not represent a party or a third party in any capacity in proceedings before the Court.

(b) The procedure set out in paragraph 1 (a) of this Rule shall apply if the person so appointed is unable to sit or withdraws.

(c) An *ad hoc* judge shall possess the qualifications required by Article 21 § 1 of the Convention and must be in a position to meet the demands of availability and attendance provided for in paragraph 5 of this Rule. For the duration of their appointment, an *ad hoc* judge shall not represent any party or third party in any capacity in proceedings before the Court.

2. The President of the Court shall appoint another elected judge to sit as an *ad hoc* judge where

(a) at the time of notice being given of the application under Rule 54 § 2 (b), the Contracting Party concerned has not supplied the Registrar with a list as described in paragraph 1 (a) of this Rule, or

(b) the President of the Court finds that less than three of the persons indicated in the list satisfy the conditions laid down in paragraph 1 (c) of this Rule.

3. The President of the Court may decide not to appoint an *ad hoc* judge pursuant to paragraph 1 (a) or 2 of this Rule until notice of the application is given to the Contracting Party

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<sup>5</sup> As amended by the Court on 17 June and 8 July 2002, 13 November 2006, 29 March 2010, 6 May 2013, 19 September 2016, 16 April 2018 and 3 June 2019.

under Rule 54 § 2 (b). Pending the decision of the President of the Court, the first substitute judge shall sit.

4. An *ad hoc* judge shall, at the beginning of the first sitting held to consider the case after the judge has been appointed, take the oath or make the solemn declaration provided for in Rule 3. This act shall be recorded in minutes.

5. *Ad hoc* judges are required to make themselves available to the Court and, subject to Rule 26 § 2, to attend the meetings of the Chamber.

**6. The provisions of this Rule shall apply *mutatis mutandis* to proceedings before a panel of the Grand Chamber in connection with a request for an advisory opinion submitted under Article 1 of Protocol No. 16 to the Convention, as well as to proceedings before the Grand Chamber constituted to examine requests accepted by the panel.**

### Rule 34<sup>6</sup> – Use of languages

1. The official languages of the Court shall be English and French.

2. In connection with applications lodged under Article 34 of the Convention, and for as long as no Contracting Party has been given notice of such an application in accordance with these Rules, all communications with and oral and written submissions by applicants or their representatives, if not in one of the Court's official languages, shall be in one of the official languages of the Contracting Parties. If a Contracting Party is informed or given notice of an application in accordance with these Rules, the application and any accompanying documents shall be communicated to that State in the language in which they were lodged with the Registry by the applicant.

3. (a) All communications with and oral and written submissions by applicants or their representatives in respect of a hearing, or after notice of an application has been given to a Contracting Party, shall be in one of the Court's official languages, unless the President of the Chamber grants leave for the continued use of the official language of a Contracting Party.

(b) If such leave is granted, the Registrar shall make the necessary arrangements for the interpretation and translation into English or French of the applicant's oral and written submissions respectively, in full or in part, where the President of the Chamber considers it to be in the interests of the proper conduct of the proceedings.

(c) Exceptionally the President of the Chamber may make the grant of leave subject to the condition that the applicant bear all or part of the costs of making such arrangements.

(d) Unless the President of the Chamber decides otherwise, any decision made under the foregoing provisions of this paragraph shall remain valid in all subsequent proceedings in the case, including those in respect of requests for referral of the case to the Grand Chamber and requests for interpretation or revision of a judgment under Rules 73, 79 and 80 respectively.

4. (a) All communications with and oral and written submissions by a Contracting Party which is a party to the case shall be in one of the Court's official languages. The President of the Chamber may grant the Contracting Party concerned leave to use one of its official languages for its oral and written submissions.

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<sup>6</sup> As amended by the Court on 13 December 2004 and 19 September 2016.

- (b) If such leave is granted, it shall be the responsibility of the requesting Party
- (i) to file a translation of its written submissions into one of the official languages of the Court within a time-limit to be fixed by the President of the Chamber. Should that Party not file the translation within that time-limit, the Registrar may make the necessary arrangements for such translation, the expenses to be charged to the requesting Party;
  - (ii) to bear the expenses of interpreting its oral submissions into English or French. The Registrar shall be responsible for making the necessary arrangements for such interpretation.
- (c) The President of the Chamber may direct that a Contracting Party which is a party to the case shall, within a specified time, provide a translation into, or a summary in, English or French of all or certain annexes to its written submissions or of any other relevant document, or of extracts therefrom.
- (d) The preceding sub-paragraphs of this paragraph shall also apply, *mutatis mutandis*, to third-party intervention under Rule 44 and to the use of a non-official language by a third party.
5. The President of the Chamber may invite the respondent Contracting Party to provide a translation of its written submissions in the or an official language of that Party in order to facilitate the applicant's understanding of those submissions.
6. Any witness, expert or other person appearing before the Court may use his or her own language if he or she does not have sufficient knowledge of either of the two official languages. In that event the Registrar shall make the necessary arrangements for interpreting or translation.
- 7. In respect of a request for an advisory opinion under Article 1 of Protocol No. 16 to the Convention, the requesting court or tribunal may submit the request as referred to in Rule 92 to the Court in the national official language used in the domestic proceedings. Where the language is not an official language of the Court, an English or French translation of the request shall be filed within a time-limit to be fixed by the President of the Court.**

#### **Rule 44<sup>7</sup> – Third-party intervention**

1. (a) When notice of an application lodged under Article 33 or 34 of the Convention is given to the respondent Contracting Party under Rules 51 § 1 or 54 § 2 (b), a copy of the application shall at the same time be transmitted by the Registrar to any other Contracting Party one of whose nationals is an applicant in the case. The Registrar shall similarly notify any such Contracting Party of a decision to hold an oral hearing in the case.
- (b) If a Contracting Party wishes to exercise its right under Article 36 § 1 of the Convention to submit written comments or to take part in a hearing, it shall so advise the Registrar in writing not later than twelve weeks after the transmission or notification referred to in the preceding sub-paragraph. Another time-limit may be fixed by the President of the Chamber for exceptional reasons.

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<sup>7</sup> As amended by the Court on 7 July 2003, 13 November 2006, 19 September 2016, 3 June 2022 and 3 March 2023.

2. If the Council of Europe Commissioner for Human Rights wishes to exercise the right under Article 36 § 3 of the Convention to submit written observations or take part in a hearing, he or she shall so advise the Registrar in writing not later than twelve weeks after transmission of the application to the respondent Contracting Party or notification to it of the decision to hold an oral hearing. Another time-limit may be fixed by the President of the Chamber for exceptional reasons.

Should the Commissioner for Human Rights be unable to take part in the proceedings before the Court himself, he or she shall indicate the name of the person or persons from his or her Office whom he or she has appointed to represent him. He or she may be assisted by an advocate.

3. (a) Once notice of an application has been given to the respondent Contracting Party under Rules 51 § 1 or 54 § 2 (b), the President of the Chamber may, in the interests of the proper administration of justice, as provided in Article 36 § 2 of the Convention, invite, or grant leave to, any Contracting Party which is not a party to the proceedings, or any person concerned who is not the applicant, to submit written comments or, in exceptional cases, to take part in a hearing.

(b) Requests for leave for this purpose must be duly reasoned and submitted in writing in one of the official languages as provided in Rule 34 § 4 not later than twelve weeks after notice of the application has been given to the respondent Contracting Party. Another time-limit may be fixed by the President of the Chamber for exceptional reasons.

4. (a) In cases to be considered by the Grand Chamber, the periods of time prescribed in the preceding paragraphs shall run from the notification to the parties of the decision of the Chamber under Rule 72 § 1 to relinquish jurisdiction in favour of the Grand Chamber or of the decision of the panel of the Grand Chamber under Rule 73 § 2 to accept a request by a party for referral of the case to the Grand Chamber.

(b) The time-limits laid down in this Rule may exceptionally be extended by the President of the Chamber if sufficient cause is shown.

5. Any invitation or grant of leave referred to in paragraph 3 (a) of this Rule shall be subject to any conditions, including time-limits, set by the President of the Chamber. Where such conditions are not complied with, the President may decide not to include the comments in the case file or to limit participation in the hearing to the extent that he or she considers appropriate.

6. Written comments submitted under this Rule shall be drafted in one of the official languages as provided in Rule 34 § 4. They shall be forwarded by the Registrar to the parties to the case, who shall be entitled, subject to any conditions, including time-limits, set by the President of the Chamber, to file written observations in reply or, where appropriate, to reply at the hearing.

**7. The provisions of this Rule shall apply *mutatis mutandis* to proceedings before the Grand Chamber constituted to deliver advisory opinions under Article 2 of Protocol No. 16 to the Convention. The President of the Court shall determine the time-limits which apply to third-party interveners.**



## Chapter X – Advisory Opinions under Protocol No. 16 to the Convention<sup>8</sup>

### Rule 91 – General

In proceedings relating to advisory opinions requested by courts or tribunals designated by Contracting Parties pursuant to Article 10 of Protocol No. 16 to the Convention, the Court shall apply, in addition to the provisions of that Protocol, the provisions which follow. It shall also apply the other provisions of these Rules to the extent to which it considers this to be appropriate.

### Rule 92 – The introduction of a request for an advisory opinion

1. In accordance with Article 1 of Protocol No. 16 to the Convention, a court or tribunal of a Contracting Party to that Protocol may request the Court to give an advisory opinion on questions of principle relating to the interpretation or application of the rights and freedoms defined in the Convention and the Protocols thereto. Any such request shall be filed with the Registrar of the Court.

2.1 The request shall be reasoned and shall set out

- (a) the subject matter of the domestic case and its relevant legal and factual background;
- (b) the relevant domestic legal provisions;
- (c) the relevant Convention issues, in particular the rights or freedoms at stake;
- (d) if relevant, a summary of the arguments of the parties to the domestic proceedings on the question; and
- (e) if possible and appropriate, a statement of the requesting court's or tribunal's own views on the question, including any analysis it may itself have made of the question.

2.2 The requesting court or tribunal shall submit any further documents of relevance to the legal and factual background of the pending case.

2.3 The requesting court or tribunal shall notify the Registrar in the event of the withdrawal of its request. On receipt of such a notification the Court shall discontinue the proceedings.

### Rule 93<sup>9</sup> – Examination of a request by the panel

1.1 The request for an advisory opinion shall be examined by a panel of five judges of the Grand Chamber. The panel shall be composed of

- (a) the President of the Court. If the President of the Court is prevented from sitting, he or she shall be replaced by the Vice-President of the Court taking precedence;
- (b) a judge designated as Judge Rapporteur in accordance with Rule 91 and, *mutatis mutandis*, Rule 49;
- (c) two Presidents of Sections designated by rotation. If the Presidents of the Sections so designated are prevented from sitting, they shall be replaced by the Vice-Presidents of their Sections;

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<sup>8</sup> Inserted by the Court on 19 September 2016.

<sup>9</sup> Inserted by the Court on 19 September 2016.

- (d) the judge elected in respect of the Contracting Party to which the requesting court or tribunal pertains or, where appropriate, a judge appointed pursuant to Rule 29; and
- (e) at least two substitute judges designated in rotation from among the judges elected by the Sections to serve on the panel for a period of six months.

1.2 Judges serving on the panel shall continue to serve where they have participated in the examination of a request for an advisory opinion and no final decision has been taken on it at the date of expiry of their period of appointment to the panel.

2. Requests for advisory opinions shall be processed as a matter of priority in accordance with Rule 41.

3. The panel of the Grand Chamber shall accept the request if it considers that it fulfils the requirements of Article 1 of Protocol No. 16 to the Convention.

4. The panel shall give reasons for a refusal of a request.

5. The requesting court or tribunal and the Contracting Party to which it pertains shall be notified of the panel's decision to accept or refuse a request.

#### Rule 94<sup>10</sup> – Proceedings following the panel's acceptance of a request

1. Where the panel accepts a request for an advisory opinion in accordance with Rule 93, a Grand Chamber shall be constituted pursuant to Rule 24 § 2 (g) to consider the request and to deliver an advisory opinion.

2. The President of the Grand Chamber may invite the requesting court or tribunal to submit any further information which is considered necessary for clarifying the scope of the request or its own views on the question raised by the request.

3. The President of the Grand Chamber may invite the parties to the domestic proceedings to submit written observations and, if appropriate, to take part in an oral hearing.

4. Written comments or other documents shall be filed with the Registrar in accordance with the time-limits laid down by the President of the Grand Chamber. The written procedure shall then be deemed to be closed.

5. The provisions in Rules 59 § 3 and 71 § 2 shall apply, *mutatis mutandis*, to proceedings before the Grand Chamber constituted to deliver advisory opinions under Article 2 of Protocol No. 16 to the Convention. At the latest after the close of the written procedure, the President of the Grand Chamber shall decide whether an oral hearing should be held.

6. Copies of any submissions filed in accordance with the provisions of Rule 44 shall be transmitted to the requesting court or tribunal, which shall have the opportunity to comment on those submissions, without this affecting the close of the written procedure.

7. Advisory opinions shall be given by a majority vote of the Grand Chamber. They shall mention the number of judges constituting the majority.

7B. Advisory opinions shall be given in both official languages of the Court, and both language versions shall be equally authentic.

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<sup>10</sup> As amended by the Court on 4 November 2019 and 11 October 2021.

**8. Any judge may, if he or she so desires, attach to the advisory opinion of the Court either a separate opinion, concurring with or dissenting from the advisory opinion, or a bare statement of dissent.**

**9. The advisory opinion shall be signed by the President of the Grand Chamber and by the Registrar. The original copy, duly signed, shall be placed in the archives of the Court. The Registrar shall send certified copies to the requesting court or tribunal and to the Contracting Party to which that court or tribunal pertains.**

**10. Any third party who has intervened in the proceedings in accordance with Article 3 of Protocol No. 16 to the Convention and Rule 44 of the Rules of Court shall also receive a copy of the advisory opinion.**

#### **Rule 95 – Costs of the advisory-opinion proceedings and legal aid**

**1. Where the President of the Grand Chamber has invited a party to the domestic proceedings to intervene in the advisory-opinion proceedings pursuant to Rule 44 § 7 and Rule 94 § 3, the reimbursement of that party's costs and expenses shall not be decided by the Court but shall be determined in accordance with the law and practice of the Contracting Party to which the requesting court or tribunal pertains.**

**2. The provisions of Chapter XII shall apply *mutatis mutandis* where the President of the Grand Chamber has invited pursuant to Rules 44 § 7 and 94 § 3 of this Chapter a party to the domestic proceedings to intervene in the advisory-opinion proceedings and that party lacks sufficient means to meet all or part of the costs entailed.**

## APPENDIX II

### List of the courts or tribunals designated by the High Contracting Parties pursuant to Article 10 of Protocol No. 16

Article 10 provides:

“Each High Contracting Party to the Convention shall, at the time of signature or when depositing its instrument of ratification, acceptance or approval, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate the courts or tribunals that it designates for the purposes of Article 1, paragraph 1, of this Protocol. This declaration may be modified at any later date and in the same manner.”

For ease of reference, the courts or tribunals that have been designated by the Parties to Protocol No. 16 are listed below. The titles used and the order of presentation appear as given by the States concerned. The official text of the declarations may be consulted on the relevant page of the website of the Treaty Office of the Council of Europe: <https://www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=214&codeNature=0>

#### **Albania**

The Supreme Court of the Republic of Albania  
The Constitutional Court of the Republic of Albania

#### **Andorra**

The Constitutional Court  
The High Court of Justice

#### **Armenia**

The Constitutional Court of the Republic of Armenia  
The Court of Cassation of the Republic of Armenia

#### **Azerbaijan**

The Supreme Court of the Republic of Azerbaijan  
The Constitutional Court of the Republic of Azerbaijan

#### **Belgium**

The *Cour constitutionnelle*  
The *Cour de Cassation*  
The *Conseil d'État*

#### **Bosnia and Herzegovina**

The Constitutional Court of Bosnia and Herzegovina  
The Court of Bosnia and Herzegovina  
The Supreme Court of the Federation of Bosnia and Herzegovina  
The Supreme Court of Republika Srpska

#### **Estonia**

The Supreme Court of Estonia

**Finland**

The Supreme Court  
The Supreme Administrative Court  
The Labour Court  
The Insurance Court

**France**

The Constitutional Council  
The State Council  
The Court of Cassation

**Georgia**

The Supreme Court of Georgia  
The Constitutional Court of Georgia

**Greece**

The Supreme Special Court  
The Supreme Civil and Criminal Court  
The Council of State  
The Court of Audit

**Lithuania**

The Constitutional Court of the Republic of Lithuania  
The Supreme Court of Lithuania  
The Supreme Administrative Court of Lithuania

**Luxembourg**

The Constitutional Court  
The Administrative Court  
The Court of Cassation  
The Court of Appeal

**Montenegro**

The Supreme Court of Montenegro  
The Constitutional Court of Montenegro

**Netherlands**

The Supreme Court of the Netherlands  
The Administrative Jurisdiction Division of the Council of State  
The Central Appeals Tribunal\*  
The Administrative High Court for Trade and Industry\*  
The Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba\*

*According to the declaration of the Kingdom of the Netherlands, the courts marked by \* possess the powers arising from this Protocol only when acting as domestic courts of last resort.*

**North Macedonia**

The Constitutional Court of the Republic of North Macedonia

The Supreme Court of the Republic of North Macedonia

**Republic of Moldova**

The Constitutional Court

The Supreme Court of Justice

**Romania**

The High Court of Cassation and Justice

The Constitutional Court

The Court of appeal of Alba Iulia

The Court of appeal of Bacău

The Court of appeal of Braşov

The Court of appeal of Bucureşti

The Court of appeal of Cluj

The Court of appeal of Constanţa

The Court of appeal of Craiova

The Court of appeal of Galaţi

The Court of appeal of Iaşi

The Court of appeal of Oradea

The Court of appeal of Piteşti

The Court of appeal of Ploieşti

The Court of appeal of Suceava

The Court of appeal of Târgu-Mureş

The Court of appeal of Timişoara

**San Marino**

The Court of the Republic of San Marino

**Slovak Republic**

The Supreme Court of the Slovak Republic

The Supreme Administrative Court of the Slovak Republic

The Constitutional Court of the Slovak Republic

*According to the declaration of the Slovak Republic, the Supreme Court of the Slovak Republic possess the powers arising from the Protocol only when acting as a court of cassation or as a court of appeal on points of law.*

**Slovenia**

The Supreme Court of the Republic of Slovenia

The Constitutional Court of the Republic of Slovenia

**Ukraine**

The Supreme Court