

Erik Fribergh
Registrar
European Court of Human Rights
Council of Europe
F-67075 Strasbourg CEDEX

30 November 2015

Dear Mr Fribergh,

Further to your letter of 30th July inviting contributions from interested non-governmental organisations with regard to the possible amendments to the Rules of Court arising out of the implementation of Protocol 16, please find herewith the joint comments of the civil society groups named below.


After consultation, we have three main concerns with regard to the draft Rules of Procedure.

- *No role for parties in the domestic proceedings.* Article 3 of Protocol 16 provides that the High Contracting Party and the Commissioner for Human Rights have the right to intervene in an advisory opinion reference, and permits the President to invite another state or person to do the same. Paragraph 20 of the Explanatory Report to the Protocol states that “It is expected that the parties to the case in the context of which the advisory opinion had been requested would be invited to take part in the proceedings”. The amended Rules of Procedure do not appear to reflect this explanation, and would seem to place the claimant in the domestic proceedings in the same position as any other third party. We would propose that the rules be amended to require that a request for an advisory opinion, or a decision to accept such a request, be sent to the parties in the domestic proceedings, and that they be invited to participate as third parties.
- *Arguments of the parties.* Draft Rule X(B)(d) provides that a summary of the arguments of the parties to the domestic proceedings on the question put to the ECtHR should only be included with the advisory opinion request “if relevant”. It seems unlikely that arguments made on the issue would not be relevant, and this rule risks excluding the voice of the victim entirely from the proceedings, particularly if they have not been invited to intervene in the advisory opinion. We would propose that the rule be amended to clarify that the domestic court should include summaries of the arguments of the parties where they address the issue on which the advisory opinion is sought, as these will always be relevant.
- *Views of the Domestic Court.* Article 1(3) of Protocol 16 requires the requesting court to give reasons for its request and to provide the relevant legal and factual background of the case. Draft Rule X(B)2.1(e) also invites the requesting court to give their own views on the question referred. There is some risk that the domestic court might pre-judge the issue before they have heard from the ECtHR, and without full arguments of the domestic parties. We would propose that the rule be used to clarify what would not be appropriate to include in the request, such as any opinion on the issue under review that might amount to pre-judging the question referred.

In addition, our consultation identified some further issues where the Court might provide further clarification in the rules.

- *Costs/Legal aid.* The draft rules do not specify whether the Court should award costs to applicants when a national court seeks an advisory opinion in their case and they participate in the proceedings before the ECHR. The proposals also omit any guidance on the availability of legal aid to the parties. We would propose that these issues be clarified in the Rules.
- *Languages.* Rule 34 allows the national court to submit a request in the national language, and to then provide a translation. The Rules should clarify that all subsequent proceedings should be conducted in one of the official languages of the Court, as the translation of subsequent documents would cause delays and expense.
- *Publication.* Paragraph 4 of Article 4 of the Protocol calls for the publishing of advisory opinions. It would be helpful if the draft rules could clarify which documents will be published and at what stage in the proceedings, so as to facilitate the participation of interested parties. It may also be advantageous for advisory opinions to be sent to all member states, so as to ensure the widest dissemination of the jurisprudence of the Court.

Finally, several of the NGOs involved in our consultation had not received the communication from the Registry, we suspect due to out-of-date email addresses. For your convenience, we have included contact details of each of the NGOs below.

Yours sincerely,


On behalf of:

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