



Strasbourg, 15 October 2012

GT-GDR-B(2012)R2 Addendum III

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

**DRAFTING GROUP 'B' ON THE REFORM OF THE COURT
(GT-GDR-B)**

Draft Protocol No. 16 to the Convention

Preamble

The High Contracting Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4th November 1950 (hereinafter referred to as “the Convention”) signatory hereto,

Having regard to the provisions of the Convention and, in particular, Article 19 establishing the European Court of Human Rights (hereinafter referred to as “the Court”);

Considering the need to increase the effectiveness of the Convention mechanism;

Considering that extension of the Court’s competence to give advisory opinions will further enhance the interaction between the Court and national authorities and thereby reinforce implementation of the Convention, in accordance with the principle of subsidiarity;

Having regard to Opinion No. ... (20...) adopted by the Parliamentary Assembly of the Council of Europe on ...;

Have agreed as follows:

Article 1

1. Highest courts or [/ and] tribunals of a High Contracting Party, as specified under Article 6, may request the Court to give advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms defined in the Convention or the Protocols thereto.
2. The requesting court or tribunal may seek an advisory opinion [only] in the context of a case pending before it.¹
3. The requesting court or tribunal shall give reasons for its request and shall provide the relevant legal and factual background of the pending case.

Article 2

1. A panel of five judges of the Grand Chamber shall decide whether to accept the request for an advisory opinion, having regard to the criteria defined in Article 1. The panel shall give reasons for any refusal to accept the request.

¹ Alternative proposal: “An advisory opinion shall be sought in the context of a case pending before the requesting court or tribunal.”

2. If the panel accepts the request, the Grand Chamber shall deliver the advisory opinion.

3. The panel and the Grand Chamber, as referred to in the preceding paragraphs, shall include *ex officio* the judge elected in respect of the High Contracting Party to which the requesting court or tribunal pertains.

Article 3

The High Contracting Party of which a court or tribunal requested an advisory opinion shall have the right to submit written comments and take part in any hearing. The President of the Court may, in the interest of the proper administration of justice, invite any other High Contracting Party or person also to submit written comments or take part in any hearing.

Article 4

Advisory opinions shall not be binding.

Article 5

1. Reasons shall be given for advisory opinions.

2. If the advisory opinion does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

3. Advisory opinions shall be communicated to the requesting court or tribunal and to the High Contracting Party to which that court or tribunal pertains.

4. Advisory opinions shall be published.

Article 6

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.

Article 7

For High Contracting Parties to the Convention which are bound by this Protocol, the provisions of the preceding Articles of this Protocol shall be regarded as additional Articles to the Convention.

Article 8

1. This Protocol shall be open for signature by High Contracting Parties to the Convention, which may express their consent to be bound by:

- a signature without reservation as to ratification, acceptance or approval, or
- b signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

2. The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 9

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which [three] High Contracting Parties to the Convention have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 8.

2. In respect of any High Contracting Party to the Convention which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the expression of its consent to be bound by the Protocol in accordance with the provisions of Article 8.

Article 10

The Secretary General of the Council of Europe shall notify the High Contracting Parties to the Convention of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance or approval;
- c any date of entry into force of this Protocol in accordance with Article 9;
- d any other act, notification or declaration relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at xxx, this xxx, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each High Contracting Party to the Convention.