



Strasbourg, 30 November 2012

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STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

Draft Protocol No. 16 to the Convention

Preamble

The member States of the Council of Europe and other High Contracting Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 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 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 and tribunals of a High Contracting Party, as specified in accordance with Article 10, 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.
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 Article 1. The panel shall give reasons for any refusal to accept the request.
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. If there is none or if that judge is unable to sit, a person chosen by the President of the Court from a list submitted in advance by that Party shall sit in the capacity of judge.

Article 3

The Council of Europe Commissioner for Human Rights and the High Contracting Party to which the requesting court or tribunal pertains 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

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 5

Advisory opinions shall not be binding.

Article 6

As between the High Contracting Parties the provisions of Articles 1 to 5 of this Protocol shall be regarded as additional articles to the Convention, and all the provisions of the Convention shall apply accordingly.

Article 7

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 8

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 ten High Contracting Parties to the Convention have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 7.

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 7.

Article 9

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

Article 10

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 11

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe and other 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 8;
- d any declaration made in accordance with Article 10;
- e 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 member State of the Council of Europe and to other High Contracting Parties to the Convention.