GUIDE
TO DRAFTING THIRD PARTY INTERVENTIONS AT THE EUROPEAN COURT OF HUMAN RIGHTS

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List of Abbreviations

Convention	European Convention on Human Rights
Court, or European Court	European Court of Human Rights
DEJ	Department for the Execution of Judgments of the European Court of Human Rights
ENNHRI	European network of national human rights institutions
HUDOC	Database of documents of the European Court of Human Rights
NGO	Non-governmental organisation
NHRI	National human rights institutions
OSCE	Organisation for Security and Co-operation in Europe
PAO	People's Advocate Office
SDP	Strategic Development Program of the People's Advocate Office for 2023 – 2030
UN	United Nations Organisation

Executive Summary

This is a practical guide prepared for the staff of the People's Advocate Office covering the practice, procedure and strategy relating to the submission of third party interventions to the European Court of Human Rights. It is envisaged that such interventions could strengthen the positions taken by the People's Advocate Office at the national level if they are, in effect, 'endorsed' by, or otherwise reflected in, judgments of the Court. This should then lead to improvements in the rate of implementation of the recommendations of the People's Advocate Office at the national level. In particular, it is proposed that the People's Advocate Office would intervene in cases concerning structural or systemic issues. These interventions will assist the Court in fully understanding the issues raised in cases brought against the Republic of Moldova.

The European Court of Human Rights has a very well-established practice of admitting third party interventions – including from states, international and national organisations and other interested parties. It has a discretion to permit third party interventions from 'any person concerned', which may include national human rights institutions. These are provided in the form of written submissions – it may also be possible, exceptionally, to take part in hearings as an intervenor.

Interventions may have a variety of aims or functions, including for example setting out or clarifying the relevant law (such as comparative international law), or providing relevant factual or evidential material (such as evidence about the implementation of a particular national law) or providing important contextual background. Therefore, interventions are likely to consider issues which go beyond the submissions made by the parties to the case (the applicants or the respondent states).

The Practice Direction of the European Court of Human Rights on third party interventions suggests that '[t]he role of third parties…is to put before the Court, as impartially and objectively as possible, legal or factual points capable of assisting it in resolving the matters in dispute before it on a more enlightened basis'.

The procedure for submitting third party interventions is set out in three primary sources:

- Article 36 of the European Convention on Human Rights
- Rule 44 of the Rules of Court
- Practice Direction: *Third-party intervention under Article 36 § 2 of the Convention or under Article 3, second sentence, of Protocol No. 16*

The President of the European Court of Human Rights may permit a third party intervention if it is considered to be 'in the interest of the proper administration of justice'.

Requests must be submitted within 12 weeks of the publication on the Court's case-law database, HUDOC, of the information that notice of the application has been given to the respondent Contracting Party. The request can be submitted only by post or fax and post.

A request for permission to intervene should be reasoned and submitted in writing in one of the official languages of the European Court of Human Rights - English or French. However, the European Court of Human Rights also permits requests to be submitted in one of the state's national languages, provided that a translation of the request into English or French is also submitted. The requests should be succinct – usually not more than two pages long.

A request for permission to intervene by the People's Advocate Office should briefly set out formal information about its statutory basis under the Law on the People's Advocate, its competencies and responsibilities as a national human rights institution and its accreditation pursuant to the Paris Principles. The request should also summarise the expertise and experience of the People's Advocate Office relating to the issue or issues which are raised by the case at hand. It should also explain what matters it proposes to cover in its submissions, and why it is considered that this will assist the European Court of Human Rights.

The People's Advocate Office will want to give very careful consideration as to when to intervene in cases before the European Court of Human Rights. The factors which the PAO is likely to take into account will include the following:

- *Capacity, resources and timing*
- *Expertise, experience and evidence*
- *Relevance and significance of the issue*

There may be circumstances where the People's Advocate Office might consider submitting a third party intervention jointly with other organisations.

It will be important for the People's Advocate Office to track potentially relevant cases, so that it can decide whether or not to intervene. Searches can be carried out on the Court's HUDOC site for communicated cases between particular dates. At the point of communication of a case, the European Court of Human Rights will publish brief details of the case covering the 'subject matter of the case' and the 'questions to the parties'.

The third party intervention itself should be limited to ten pages and it should not comment on the admissibility or merits of the particular case at hand.

An intervention from the People's Advocate Office is likely to include one or more of the following:

- Information and/or evidence about relevant laws and/or national practice – how the law is applied or interpreted by the courts or other bodies
- Statistics or other data – for example relating to the number of similar cases nationally and their outcomes
- If the issue raised by the case has been the subject of previous cases in which the Court has already published its judgment, it may be useful for the European Court of Human Rights to have further information from the People's Advocate Office about how national laws and practice have changed (if at all) since the earlier judgment
- If the issue is one which has rarely been considered before by the European Court of Human Rights, it may be useful to provide an analysis of relevant comparative international law (for example, UN standards and/or regional instruments)
- Another option is to provide comparative national surveys – submissions which analyse the relevant laws and practices of other Council of Europe member states

It is of course very important that any third party intervention submitted to the European Court of Human Rights should be factually accurate, fair and objective.

The People's Advocate Office should carefully review all judgments in cases in which it intervenes, in order to assess the outcome of the case, and the extent of the impact of its intervention, and to assess the efficacy of its strategy of intervening.

1. Introduction

This guide to drafting amicus curiae to the European Court of Human Rights (the Court or the European Court) is one of the outputs of the Council of Europe Project: 'Support to the Office of the Ombudsperson in the Protection of Human Rights in the Republic of Moldova – Phase I', which is part of the Council of Europe Action Plan for the Republic of Moldova for 2021-2024.

The Council of Europe commissioned Professor Philip Leach (Middlesex University, London, UK) to write this guide. It has been drafted following an online conference held on 11 July 2024, involving staff from the People's Advocate Office (PAO) and from the Council of Europe. The Council of Europe considers further activities during which the PAO will receive mentoring support in submitting *amicus curiae* to the Court.

Objectives and Scope

This is a practical guide for the staff of the PAO covering all aspects of the practice, procedure and strategy relating to the submission of *amicus curiae* (or third party interventions) to the European Court. The PAO has identified the submission of *amicus curiae* as potentially a very useful tool in carrying out its mandate. It is envisaged that such interventions could strengthen the positions taken by the PAO at the national level if they are, in effect, 'endorsed' by, or otherwise reflected in, judgments of the Court. This should then lead to improvements in the rate of implementation of the PAO's recommendations at the national level.

In particular, it is proposed that the PAO would intervene in cases concerning structural or systemic issues. These interventions will assist the Court in fully understanding the issues raised in cases brought against the Republic of Moldova.

This guide does not cover submissions to the Committee of Ministers concerning the execution of judgments of the European Court of Human Rights.

Terminology

This guide refers, without distinction, to both 'third party intervenors' and '*amicus curiae*'.

2. The context: the Republic of Moldova and the European Convention on Human Rights

The Republic of Moldova in the Council of Europe

The Republic of Moldova became a member of the Council of Europe on 13 July 1995 and ratified the European Convention on Human Rights on 12 September 1997. To date, it has ratified 94 Council of Europe treaties.

In 2023, the European Court of Human Rights dealt with 536 applications concerning the Republic of Moldova, of which 496 were declared inadmissible or struck out. It delivered 24 judgments (concerning 40 applications), which found at least one violation of the Convention. There were 35 judgments relating to the Republic of Moldova in 2022 and 80 in 2021. As of 1 January 2024, there were 1,143 cases against the Republic of Moldova pending at the Court. In 2023, the Committee of Ministers received 29 cases against the Republic of Moldova from the Court, for supervision of their execution.

According to the Council of Europe's Department for the Execution of Judgments of the European Court of Human Rights, the main issues arising in the Moldovan cases currently under supervision by the Committee of Ministers relate to the following:

- the use of force by the security forces and the effectiveness of investigations
- poor material conditions of detention and lack of medical treatment in detention
- questions concerning the lawfulness of detention
- the failure to protect the victims of domestic violence and ensure the punishment of offenders
- extra-legal transfers
- interferences with journalists' right to freedom of expression

The Council of Europe's third Action Plan for the Republic of Moldova covers the period 2021-2024. Its aim is 'to bring the Republic of Moldova's legislation, institutions and practice further into line with European standards in the areas of human rights, the rule of law and democracy'. The first of its specified 'areas of cooperation' is the 'implementation of the European Convention on Human Rights…and the European Court of Human Rights…case law at national level by the judiciary and human rights institutions'.

In collaboration with the Council of Europe, the inaugural meeting of the Advisory Council under the Government Agent of the Republic of Moldova took place in 2023 in Strasbourg with the participation of the DEJ. It is expected that the Advisory Council will assist with the timely and effective implementation of the Court's judgments by co-ordinating the actions of all national stakeholders and ensure the necessary high-level political support (Committee of Ministers, 2023).

The People's Advocate Office

Originally established in 1998 as the Centre for Human Rights in Moldova (under the Law on Parliamentary Advocates), the PAO was created by the Law on the People's Advocate in 2014 (Law 52/2014), which was subsequently amended in 2023. In May 2018, the PAO was re-accredited by the Global Alliance of National Human Rights Institutions and awarded 'A status', confirming its compliance with the United Nations Paris Principles.

The PAO is an independent public authority whose competencies under the 2014 Law include promoting human rights, contributing to legislative improvements, the submission of recommendations and procedural actions, including court proceedings.

The PAO regularly intervenes as a third party before national courts in the Republic of Moldova, but it has not yet done so at the European Court of Human Rights.

3. Why intervene as a third party at the European Court?

The Court has a very well-established practice of admitting third party interventions – including from states, international and national organisations, and other interested parties. These are in the form of written submissions – it may also be possible, exceptionally, to take part in hearings as an intervenor.

The Court's Practice Direction on third party interventions suggests that their main purpose…

> '…is to enable the Court to become acquainted with the views of States and other persons who are not parties to a case before it on the issues raised by that case, and be presented with information or arguments which are broader than or different from those put forward by the parties' (para. 2).

Interventions may have a variety of aims or functions, such as setting out or clarifying the relevant law (e.g., comparative international law), or providing relevant factual or evidential material (such as evidence about the implementation of a particular national law) or providing important contextual background. Therefore, interventions are likely to consider issues which go beyond the submissions made by the parties to the case (the applicants or the respondent states).

For the Court, the third party intervention process may assist it in a number of ways, in adjudicating on the case at hand, for example by clarifying the context in which a particular policy or practice has been adopted by a Convention state.

The Practice Direction suggests:

> 'The role of third parties…is to put before the Court, as impartially and objectively as possible, legal or factual points capable of assisting it in resolving the matters in dispute before it on a more enlightened basis' (para. 2).

The position of national human rights institutions (NHRIs)

It is suggested that the role and remit of NHRIs means that they are very well-placed to take part in European Court proceedings as third parties. As one commentator has put it:

> 'Unlike interest groups NHRIs do not have a specific agenda or interests that they follow. They monitor the human rights situation in the country in which they have been established. They are, therefore, able to produce more neutral arguments than interest groups. Nor do NHRIs represent the interests of a specific group but the whole of civil society. Thus they have the authority to represent interests of the whole population in a given country' (Bürli 2017, 64).

A former European Court registry lawyer has suggested:

> 'Even an expert tribunal like the Strasbourg Court cannot know all of the law or other materials that may have a bearing on the outcome of a case. The best third party interventions supply those materials. These can include scientific information (for instance, the reports on the utility of DNA databases supplied in *S. and Marper v. UK United Kingdom* or so called "Brandeis briefs" setting out statistics and other studies which show a particular policy or practice amounts to indirect discrimination (see, for instance, *D.H. and others v. the Czech Republic*, on placing Roma in special schools) (Harvey 2015).

Researchers at the University of Liverpool (focusing on children's rights) have set out the benefits of submitting *amicus curiae* interventions in this way:

> 'Well-considered [third party interventions] are a valuable means by which experts can add value where cases concern issues of public importance, and where this may not be adequately addressed by parties to the case itself. They can also add value by providing insights into the broader social implications of legislation, policy or administrative procedures; highlighting good practice in different States; shining a light on relevant sources of international law; offering legal expertise on a particularly specialised issue; or presenting relevant empirical, doctrinal or theoretical research. Interventions can also benefit an organisation, increasing the credibility or visibility of an institution or body, or helping to further a particular campaign' (p 3).

Types of intervenors

Intervenors at the Court have included states, the Council of Europe Commissioner for Human Rights, non-governmental organisations (NGOs), international organisations, NHRIs, the European Network of National Human Rights Institutions (ENNHRI) and 'interested parties'. The section below provides some examples of cases in which they have intervened.

States

The State parties to the Convention have a right to intervene in any case in which one of its nationals is an applicant, and to take part in hearings (Article 36(1)). In any other case, the Court has a discretion to permit third party interventions from states (Article 36(2)).

For example, the Romanian government intervened in the case of *Tănase v. Moldova* (App No. 7/08, 27 April 2010) which related to the right to stand for election, arising from the prohibition on Moldovan nationals holding other nationalities (in this case Romanian) sitting as members of parliament. The Court held that there was a violation of Article 3 of Protocol No. 1 to the Convention.

Council of Europe Commissioner for Human Rights

In a case before a chamber or the Grand Chamber, the Commissioner for Human Rights is entitled to submit a third party intervention and take part in hearings (Article 36(3)).

For example, the Commissioner for Human Rights intervened as a third party in *Buhuceanu and Others v Romania* (App No. 20081/19, 23 May 2023 - see paras 53-59 for the Court's summary of the intervention), a case concerning the absence of any form of legal recognition and protection for same-sex couples, in which the Court found a violation of Article 8 of the Convention (by five votes to two). The Court took express notice of information provided by the Commissioner in finding that as their partnerships were not formally acknowledged, same-sex couples were denied numerous social and civil rights that were provided by law for married couples (para. 78).

The Commissioner also intervened in the case of *Clipea and Iapara v. Moldova* (App No 39468/17) which concerned the ill-treatment of people with psychosocial disabilities at a psychiatric hospital (raising issues under Articles 3, 8 and 14 of the Convention). The intervention analysed the development of the approach towards mental health services at the international and European levels, as well as setting out observations on the protection of the

human rights of persons with psychosocial disabilities under the Convention. At the time of publishing this guide, the Court's judgment had not yet been published.

NGOs

The Court has a discretion to permit third party interventions from 'any person concerned' (Article 36(2)): both national and international NGOs have been frequent intervenors before the Court.

For example, three NGOs submitted third party interventions in the case of *G.M. v. Moldova* (App No. 44394/15, 22 November 2022), which concerned the imposition of abortions and birth-control measures on three intellectually disabled women, residents in a neuropsychiatric asylum, after they had been repeatedly raped by a doctor. The Court found violations of Article 3 under both its substantive and procedural limbs.

International organisations

The Court can also permit international organisations to intervene, although this is relatively rare in practice.

One example is the third party intervention submitted by the Organisation for Security and Co-operation in Europe (OSCE) in the case of *Blečić v. Croatia* (App No. 59532/00, 8 March 2006) which concerned the termination of the applicant's specially protected tenancy. Another example is the case of *Abdolkhani and Karimnia v. Turkey* (App No. 30471/08, 22 September 2009) which concerned the applicants' threatened deportation to Iran or Iraq, in which the Office of the United Nations High Commissioner for Refugees made third party submissions.

NHRIs

As noted above, the Court has a discretion to permit third party interventions from 'any person concerned' (Article 36(2)), which may include NHRIs.

For example, the Public Defender of Georgia intervened as a third party in the case of *Tkhelidze v. Georgia* (No. 33056/17, 8 July 2021), which concerned the murder of a university lecturer by her former husband. In its judgment, the Court found violations of Articles 2 and 14 of the Convention, in view of the failure of the law-enforcement authorities to take preventive action to protect the victim, against a backdrop of systemic failures and gender-based discrimination, and the failure to effectively investigate the case. The Public Defender decided to intervene in the case due to 'the scope and significance of the issue in the existing context of Georgia'. Its intervention included information about cases of femicide in Georgia between 2014 and 2016, as well as submissions on the problems faced in preventing femicide, in carrying out monitoring and risk assessments and the inadequacies of the investigating authorities.

Other examples of NHRI interventions include the following:

- The Equality and Human Rights Commission intervened in *Armani Da Silva v. UK* (App No. 5878/08, 30 March 2016).
- The Northern Ireland Human Rights Commission intervened in *Shanaghan v. UK* (App No. 37715/97, 4 May 2001).

- The Irish Human Rights Commission intervened in *Donohue v. Ireland* (App No. 19165/08, 12 December 2013).

ENNHRI

The ENNHRI has submitted a number of collective third party interventions to the European Court since 2008. It has also published a very useful guide: Third Party Interventions Before the European Court of Human Rights - ENNHRI Guide for National Human Rights Institutions, October 2020.

For example, ENNHRI lodged third party submissions in the case of *D.D. v. Lithuania* (App No. 13469/06, 14 February 2012) which concerned the applicant's involuntary admission to a psychiatric institution and the unfairness of guardianship proceedings. In the light of comparative European law trends, ENNHRI's submission argued that there should be a strong legal presumption of capacity and an acknowledgement of gradations of capacity and incapacities. They also submitted that there should be a policy of assisting people in their remaining decision-making capacities and maintaining them for as long as possible, and that processes for determining the existence of incapacity should be objective, reflective, independent and genuinely free from presumptions, myths and stereotypes.

Interested third parties

Another category of intervenor are individuals (or organisations) who are themselves involved (or implicated) in the proceedings at issue (for example, having been a party at the national level). Thus their own rights may have been affected.

One example is the case of *Feldek v Slovakia* (App No. 29032/95, 12 July 2001) which concerned defamation proceedings brought against the applicant. In this case, the individual who was allegedly defamed by the applicant lodged submissions at the European Court as a third party intervenor.

The position of the PAO

Intervening as a third party at the European Court of Human Rights is in compliance with the PAO's Strategic Development Program of the People's Advocate Office for 2023 – 2030 (SDP), which states, inter alia, as follows:

> 'In line with the Paris Principles, cooperation with the international human rights mechanisms is a central element of the mandate of the People's Advocate Office. Therefore, PAO will intensify cooperation with the most important human rights institutions, in particular by improving reporting and data exchange on the human rights situation in Moldova'.

4. The practice and procedure for submitting third party interventions at the European Court

The procedure for submitting third party interventions is set out in three primary sources:

- Article 36 of the Convention
- Rule 44 of the Rules of Court
- Practice Direction: *Third-party intervention under Article 36 § 2 of the Convention or under Article 3, second sentence, of Protocol No. 16*

As an NHRI, the PAO is entitled to request permission from the Court to intervene as a third party, in accordance with Article 36(2) of the Convention. This provision entitles the President of the Court to invite 'any person concerned' to submit written comments or take part in hearings. The President of the Court may issue such an invitation if it is considered to be 'in the interest of the proper administration of justice' (Article 36(2)). This wording provides the Court with a very wide discretion to accept interventions that it considers could be helpful, or to reject requests which are considered unlikely to assist the Court. This will primarily depend on who is making the request and what is the intended purpose of the intervention (which will be set out in the letter requesting permission to intervene, which is discussed further below). In practice, it is anticipated that most, if not all, requests to intervene submitted by the PAO are likely to be granted by the Court, as they will be seen as assisting the Court in its tasks.

Timing and manner of request to intervene

There are strict rules about the timing of a request for permission to submit written comments as a third party. Any such request must be submitted within 12 weeks of 'the publication on the Court's case-law database, HUDOC, of the information that notice of the application has been given to the respondent Contracting Party'. The request can be submitted by post or fax and post, but not by email (Practice Direction, para. 28).

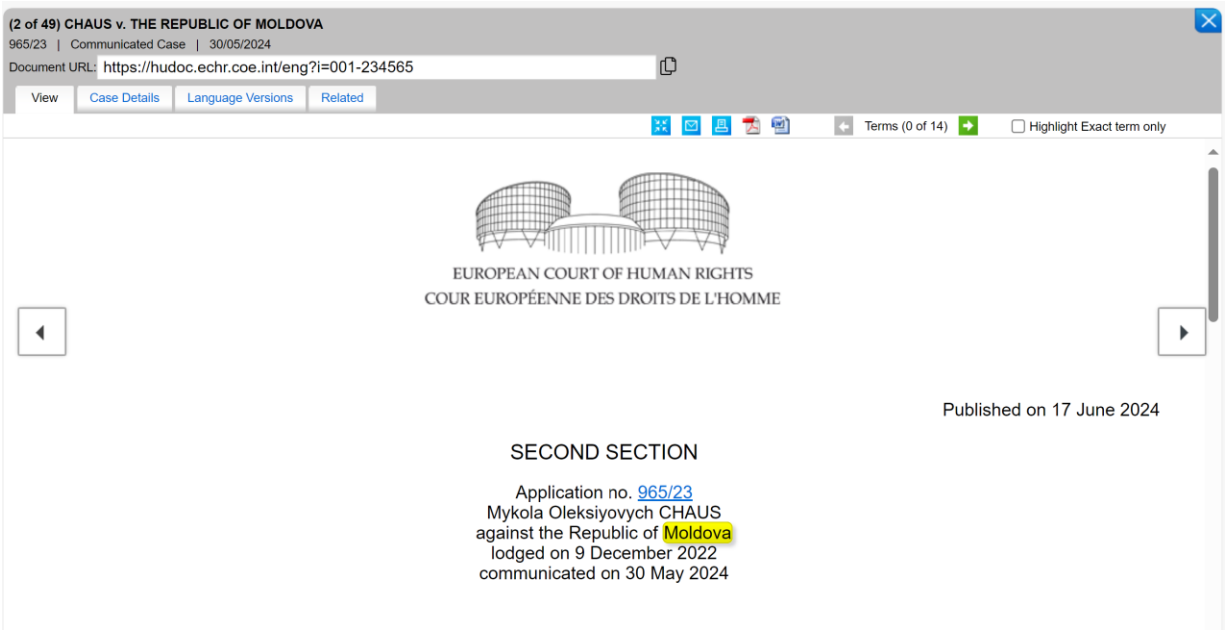
Letters should be sent to:

> The Registrar
> European Court of Human Rights
> Council of Europe
> 67075 Strasbourg Cedex
> FRANCE
> Fax numbers: +33 (0)3 88 41 27 30 or +33 (0)3 90 21 43 10

Thus, the time limit for requesting permission to intervene is linked to the date when the Court notifies a respondent state about a case against it. This is a formal part of the proceedings in individual applications (under Rule 54(2)(b)). It should be noted that prior to this point, it is open to the Court to declare applications inadmissible (by a single judge, committee or chamber), without having to notify the respondent state. For example, if it is clear that an applicant has failed to exhaust domestic remedies, then the Court may declare a case inadmissible without even notifying the respondent state, in which case the possibility of intervening as a third party will not arise. In other words, notification will only take place if the Court cannot discern a clear reason to declare it inadmissible.

Going back to the 12-week timing, this deadline does *not* run from the date of notification of the case to the state, but from the date when the fact of notification was posted by the Court on its HUDOC website. This is illustrated in the screenshot below. Here, the case of *Chaus v*

Moldova was notified (or communicated) to the government on 30 May 2024, but it was only published on HUDOC on 17 June 2024. Therefore, the 12-week time limit for seeking permission to intervene as a third party would run from 17 June 2024.



As the timing of requests to intervene is linked to the date of the publication of the communication of the case on the Court's HUDOC website, this means that prospective third party intervenors will have to keep careful track of the HUDOC website, so that time limits are not missed. The Court only extremely rarely issues a press release at the stage that a case is communicated to the respondent state.[1] There may be other ways for the PAO to be informed about cases in which it may wish to intervene (for example, by being directly notified by applicants) – this is discussed further below in section 6.

In assessing compliance with the 12-week deadline, the Practice Direction states that the relevant date is the certified date of dispatch of the request to intervene or, if there is none, the date of its receipt at the Court's Registry (Practice Direction, para. 24). It also states that '[w]ould-be third parties are, however, strongly encouraged not to await the end of the relevant time-limit to seek leave, but to do so as soon as practicable'.

It is advised that the 12-week time limit should be strictly adhered to. However, the Court does have a discretion to apply other time limits 'for exceptional reasons' (Rule 44(3)(b) and so if a time limit is missed and there are 'exceptional reasons', a request could be made to the Court to allow additional time to submit a request to intervene.

Request to appear at a hearing

The Court Rules provide that requests for leave to take part in a hearing before a Chamber must be submitted within four weeks of the publication on the Court's website of the information on the decision of the Chamber to hold an oral hearing (Rule 44(3)(b)). The Court's

[1] See, for example: European Court of Human Rights, Press Release, 'Notification of case concerning asylum seeker's removal from the UK to Rwanda', 11 April 2023.

practice is to publish press releases setting out dates of forthcoming hearings, and so it would be possible to monitor the Court's website to keep abreast of hearings.

As noted above, the Court has a discretion to extend the four week deadline if there are 'exceptional reasons' (Rule 44(3)(b)).

Content of request for permission to intervene

The Court Rules stipulate that any request for permission to intervene should be 'duly reasoned' and submitted in writing in one of the Court's official languages - English or French (Rule 44(3)(b)). However, the Court also permits requests to be submitted in one of the state's national languages, provided that a translation of the request into English or French is also submitted (Practice Direction, para. 26).

Requests are advised to be succinct – usually not more than two pages long (Practice Direction, para. 27).

The Practice Direction advises that the following points should be addressed in any request for permission to intervene (para. 27):

> (a) the would-be third party
>
> (b) any links between that would-be third party and any of the parties to the case
>
> (c) the reasons why the would-be third party wishes to intervene
>
> (d) if relevant, the would-be third party's special knowledge about an issue or issues arising in the case
>
> (e) the point(s) on which the would-be third party proposes to make submissions and, as far as practicable, the reasons for believing that those submissions will be useful to the Court and different from those of the parties or other third parties, and
>
> (f) whether the third party proposes to make written comments, to take part in a hearing, or both

Therefore, any request for permission to intervene by the PAO should firstly briefly set out formal information about its statutory basis under the Law on the People's Advocate, its competencies and responsibilities as an NHRI and its accreditation pursuant to the Paris Principles. When the PAO has established a record of intervening at the Court, reference could be made to previous cases in which it has acted as an *amicus curiae*. The request should also summarise the PAO's expertise and experience relating to the issue or issues which are raised by the case at hand. It should also explain what matters it proposes to cover in its submissions, and why it is considered that this will assist the Court. Depending on the circumstances of the particular case, this might include information or evidence relating to the relevant law(s) and/or practice, or submissions about the gravity and/or scale of the particular human rights issue nationally. The PAO should specify whether it wishes to participate in the hearing (see above) in addition to filing written submissions.

As noted above, the request letter should be kept succinct (usually two pages).

The Court's decision

The Court does not consult the parties before deciding whether to permit a third party to intervene (Practice Direction, para. 16).

The Court's decision will be communicated to the PAO by letter (usually within 2-4 weeks), which will also state the time limit for submitting the third party intervention. This is at the discretion of the Court, but in practice can be as short as two or three weeks. If time is tight, it is possible to submit a request for a short extension of time (with reasons).

If leave is granted to the PAO to intervene as a third party, this will remain valid throughout all the subsequent stages of the proceedings before the Court (Practice Direction, para. 25). For example, if leave is granted in the course of Chamber proceedings, and the case is referred to the Grand Chamber, the grant of permission to intervene will also apply to the Grand Chamber proceedings.

The form and content of the third party intervention

The Court Rules stipulate that the submission should be written in one of the Court's official languages (English or French), however, it is also possible to request permission to make submissions in one of the state's official languages, in which case a translation into English or French must also be filed (Practice Direction, para. 31).

The Practice Direction provides that the following conditions will usually be laid down by the Court (para. 33):

> (a) they must set forth the name and number of the case to which they relate
>
> (b) they must bear a title which clearly indicates that they have been made by a third party, and which identifies that third party
>
> (c) they must not exceed ten pages (the page limit does not apply to any annexes, but these must not amount to a continuation of the comments themselves)
>
> (d) they must be typewritten in black on a white background, in A4 format, and with page margins of not less than 3.5 cm
>
> (e) their text must be at least 12 pt in the body of the document and 10 pt in the footnotes
>
> (f) their pages must be numbered consecutively
>
> (g) they must be divided into numbered paragraphs
>
> (h) in their text, quotations in excess of fifty words must be indented, and
>
> (i) they must give a reference to every document or piece of evidence mentioned in them and to any annexes

Perhaps the most important practical condition set out here is the limit of ten pages for the third party intervention. However, that page limit does not apply to annexed documents. This may be very important in practice. The documents which the PAO may wish to annex may be central to the intervention – for example, providing evidence of the points being made in the intervention. Therefore, strictly there is no limit to how many pages of additional annexes can be submitted, but the PAO will want to be mindful of what can be feasibly included, and of not over-burdening the Court with excessive amounts of documentation.

The intervention should *not* comment on the admissibility or merits of the particular case at hand. This is a very important proviso. The Practice Direction states as follows:

> 'The comments of an amicus curiae should not touch upon the particular circumstances of the case or upon the admissibility or merits of the application as such, but rather deal with the general issues raised by the case, usually on the basis of the third party's special expertise or knowledge' (para. 34(b)).

If the conditions laid down by the Court are not complied with, the Court may refuse to include the third party intervention in the case file (Rule 44(5) of the Rules of Court), or it may direct the submission of a new intervention which is in compliance with the conditions (Practice Direction, para. 37).

Three copies of the intervention should be sent by post to the Court (or a copy sent by fax, followed by three copies by post) (Practice Direction, para. 36). It cannot be submitted by email.

The third party intervention will be sent to the parties to the case who are entitled to make written observations in reply or, where appropriate, to reply at the hearing (Rule 44(6) of the Rules of Court). Third party intervenors are not given the opportunity to respond to any written observations submitted by the parties (Practice Direction, para. 38).

Grand Chamber proceedings

The third party intervention process in the Grand Chamber proceedings is very similar to chamber cases, although there are specific provisions about timing. If a Chamber relinquishes jurisdiction to the Grand Chamber (Article 30), the 12-week time limit starts to run from the date on which information about the decision of the Chamber to relinquish jurisdiction is published on the Court's website. If a case is referred to the Grand Chamber under Article 43, the 12 weeks starts to run from the date on which the information about the decision of the panel to accept the request is published on the Court's website.

In both of these situations, the Court has a discretion to lay down alternative time limits.

If a third party has already intervened in chamber proceedings, and jurisdiction is subsequently relinquished in favour of the Grand Chamber (Article 30) or the case is referred to it by the panel of the Grand Chamber (Article 43), the third party's written comments addressed to the Chamber will usually be included in the file put before the Grand Chamber. However, the Court may offer the third party the opportunity to submit fresh written comments to the Grand Chamber (Practice Direction, para. 41).

Oral submissions at a hearing

If a third party intervenor is given leave to make oral submissions at a hearing, the Court will usually stipulate that the oral submissions should not last longer than ten minutes (Practice Direction, para. 43). The content of oral submissions is subject to the same conditions as the content of written comments by a third party (see above).

Participation in investigative measures

Very exceptionally, in order to adjudicate on individual or inter-state cases, the European Court may decide to carry out 'investigative measures', which would usually comprise witness hearings or on-the-spot investigations. In such circumstances, the Court may allow a third party to participate in such investigative measures ((Rule A1(6) of the Annex to the Rules of Court)). The Court will decide what steps can be taken by the intervenor and will lay down conditions (Practice Direction, para. 19).

Proceedings for an advisory opinion under Protocol No. 16

Protocol No. 16 to the Convention allows the highest courts and tribunals of a State Party to request the European Court to give advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms defined in the Convention. The Republic of Moldova ratified Protocol No. 16 in 2023 (Law No. 100 of 27 April 2023) and designated the Constitutional Court and Supreme Court of Justice to be the courts which can request an advisory opinion from the European Court (in the context of a case pending before it).

In such proceedings, the European Court can accept third party interventions from 'any person' and/or allow them to take part in a hearing (Article 3 of Protocol No. 16). For example, the Court received written submissions from the French Ombudsman's Office (and other intervenors) in advisory proceedings requested by the French Court of Cassation, resulting in an advisory opinion being published by the Court in 2019.

Accordingly, if the Moldovan Constitutional Court or Supreme Court were to make a request to the European Court for an advisory opinion under Protocol No. 16, it would be open to the PAO to make a request to submit a written intervention and/or to take part in the hearing.

The provisions of Rule 44 of the Rules of Court apply *mutatis mutandis* to advisory proceedings, and the President of the Court will decide what time limits will apply (Rule 44(7) of the Rules of Court).

It is possible to submit a third party intervention in proceedings for an advisory opinion after the panel of five judges of the Grand Chamber accepts the request for an advisory opinion (Article 3 of Protocol No. 16). The parties to the domestic case are normally invited by the European Court to intervene, but for other third parties, the time-limit for seeking leave to intervene is usually eight weeks from the date on which information about the decision of the panel to accept the request is published on the Court's website (Rules 44(7) and 44(4)(a) of the Rules of Court).

If the PAO were granted leave to intervene in advisory proceedings, its written submissions would be sent to the requesting court, which would then be entitled to comment on them (Rule 94(5) of the Rules of Court). The PAO would subsequently be sent a copy of the Court's advisory opinion.

5. The strategy – how to decide when to intervene

Relevant factors

The PAO will want to give very careful consideration as to when to intervene in cases before the European Court of Human Rights.

As Robert Spano, former President of the Court, has noted, third party interventions from NHRIs 'can provide various perspectives for the Court: a picture of the law and practice at the national level of one particular State; data and statistics on the ground; a comparative overview of domestic practices across Council of Europe Member States; an analysis of international jurisprudence on the issue at question or on the Court's own case-law' (ENNHRI, 2020 (p. 3)).

Jenny Sandvig from the Norwegian National Human Rights Institution has said the following about identifying suitable cases in which to intervene:

> 'A Third Party Intervention is technical and resource-intensive. When considering whether to undertake a third-party Intervention, NHRIs need to be convinced that their contribution is of strategic importance and goes beyond the information the parties to the case (and other possible intervenors) will provide. Strategic cases for NHRIs to intervene, for example, are those which involve issues that are of broad public importance and could have a significant impact on the interpretation or protection of human rights law in the country'.

The ENNHRI has published guidelines to assist NHRIs in developing a strategic litigation policy (ENNHRI, 2020 (pp 12-13)).

The factors which the PAO is likely to take into account will include the following:

Capacity, resources and timing – does the PAO have sufficient capacity and resources available, in the time allowed, to research, draft and submit an intervention? This will primarily relate to PAO staff time, but it would also be possible to engage external experts to produce a submission on behalf of the PAO (which would have cost implications). Financial resources may be needed, for example, to carry out research required for the intervention.

Expertise, experience and evidence – does the PAO have relevant expertise in the issue(s) raised by a case, or does it have relevant experience? Does it have relevant evidence which could be submitted as part of the third party intervention, or is the PAO in a position to obtain such evidence in the time available?

Relevance and significance of the issue – does the importance of the case justify an intervention from the PAO? Does the nature of the case, and the issues that it raises, call for input from the PAO? This may be because the issue has become, or is becoming, a systemic or structural problem in Moldova. Or the case may be important because of its scale (how widespread it is) or its gravity. Also critical for the PAO will be its own strategy which may make a particular case a priority. Account should be taken of the Strategic Development Program of the People's Advocate Office for 2023 – 2030 and other strategic documents. For example, the SDP identifies the following priorities:

- the right to health, education, social security, employment, the right to a healthy environment, to a fair trial, the right to freedom and security, and the prohibition of torture and ill-treatment.

- the protection and empowerment of the most vulnerable groups, including but not limited to children, women, persons with disabilities, LGTBQ+, the elderly, Roma community, Muslims, people of African descent, NEET young people, detainees and former detainees, post-institutionalized persons, people living with HIV, persons from the rural areas, refugees, stateless people and migrants.
- human rights in the digital space.

The SDP identifies particular priorities for the period from 2023-2026, and for 2027-2030 (p 13). It also expressly refers to the PAO's submission of amicus curiae on the right to social security and the right to independent living in the community and on international children's rights (pp 16 and 19). As the SDP states, 'prioritization is not easy, but essential and necessary' (p 11).

Joint interventions

There may be circumstances where the PAO might consider submitting a third party intervention jointly with other organisations. This is likely to be quite rare, but there may be situations where this could be beneficial. Joint submissions can increase the impetus and credibility of an intervention, reflecting the views of more than one organisation. Joint interventions could be submitted with national organisations, especially if they have particular expertise or experience which they can draw on. If a human rights issue arises in Moldova which is also a problem in other states, the PAO might consider intervening jointly with other NHRIs from those states.

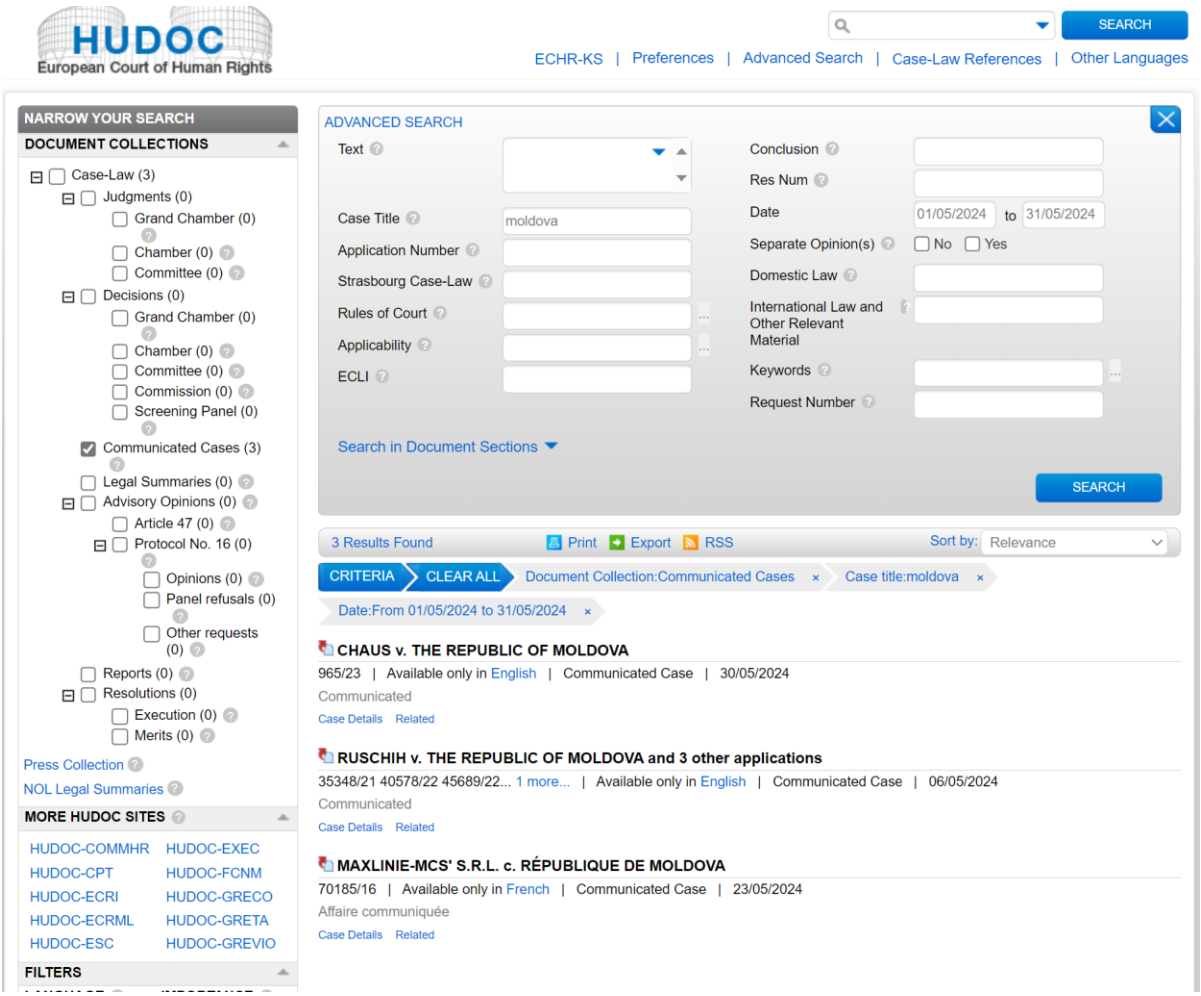
In some circumstances, the ENNHRI may submit a collective intervention, where (i) the NHRI from the state concerned supports an ENNHRI intervention, (ii) it is a priority area of concern with a systemic human rights issue arising, and (iii) an intervention is feasible and appropriate, taking into account the European Court's deadlines (ENNHRI, 2020 (pp 14-16)).

6. Third party interventions by the PAO – a step-by-step guide

Identifying and tracking cases

As there are strict time limits within which to apply to intervene in a case (generally 12 weeks after the Court published information about the communication of a case to the respondent government – see above), it is important that the PAO is able to track potentially relevant cases, so that it can decide whether or not to intervene. As discussed above, the Court publishes information on the HUDOC site, and only rarely publishes a press release at the communication stage. Therefore, the PAO will need to keep track on the HUDOC site, which it might do weekly, for example. As shown by the Court's statistics (p 14), in 2023 53 cases were communicated against Moldova (76 in 2021 and 150 in 2022).

Searches can be carried out on the HUDOC site for communicated cases between particular dates. For example, the screen shot below shows a HUDOC 'advanced search' for communicated cases (by ticking the 'communicated cases' box in the left hand column) relating to Moldova during May 2024, producing three results.



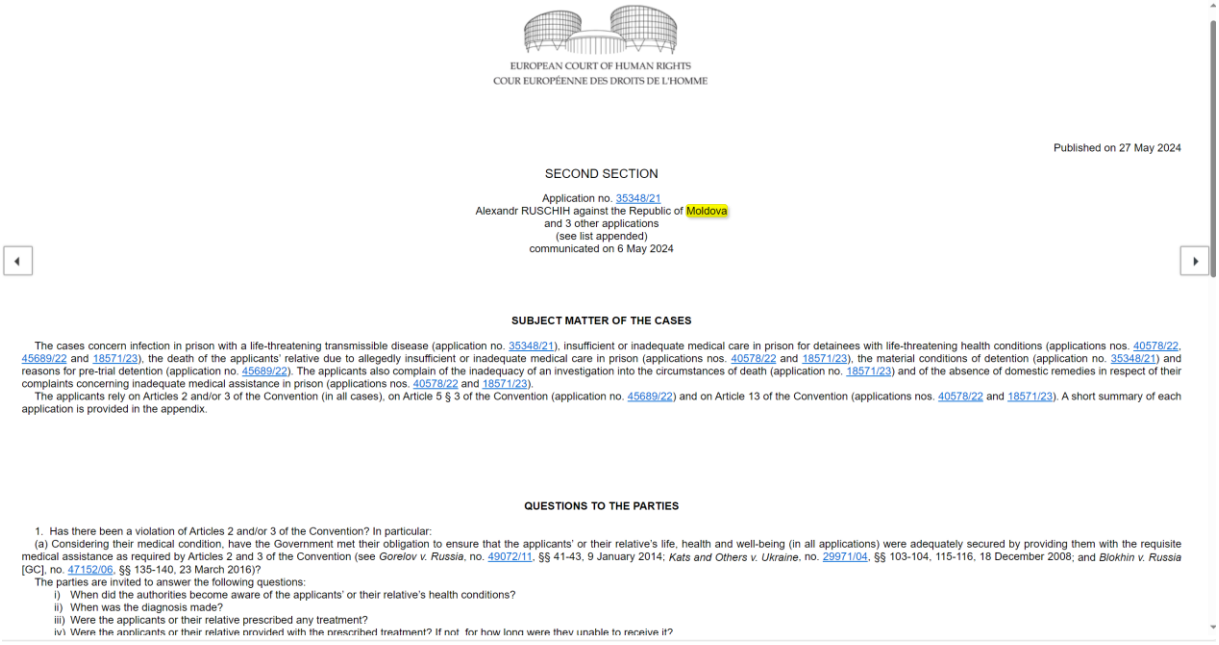
There may be other means by which the PAO could be alerted to recently communicated cases, for example, by being notified by one of the parties to a case, or by being informed by an NGO or other organisation which has a particular interest in a case.

The Court regularly issues press releases about the relinquishment of a case to the Grand Chamber (Article 30) and about the referral of a case to the Grand Chamber (Article 43), and so the PAO should also regularly track the Court's press releases (by searching the 'press collection' on HUDOC).

What information about a case will be available to a third party intervenor?

It will be important for the PAO to glean as much information as possible about a case, both in order to decide whether to seek to intervene, and in order to draft any intervention.

At the point of communication of a case, the Court will publish brief details of the case covering the 'subject matter of the case' and the 'questions to the parties'. This is illustrated by the screenshot below relating to the case of *Ruschih v Moldova*.



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

Published on 27 May 2024

SECOND SECTION

Application no. 35348/21
Alexandr RUSCHIH against the Republic of Moldova
and 3 other applications
(see list appended)
communicated on 6 May 2024

SUBJECT MATTER OF THE CASES

The cases concern infection in prison with a life-threatening transmissible disease (application no. 35348/21), insufficient or inadequate medical care in prison for detainees with life-threatening health conditions (applications nos. 40578/22, 45689/22 and 18571/23), the death of the applicants' relative due to allegedly insufficient or inadequate medical care in prison (applications nos. 40578/22 and 18571/23), the material conditions of detention (application no. 35348/21) and reasons for pre-trial detention (application no. 45689/22). The applicants also complain of the inadequacy of an investigation into the circumstances of death (application no. 18571/23) and of the absence of domestic remedies in respect of their complaints concerning inadequate medical assistance in prison (applications nos. 40578/22 and 18571/23).
The applicants rely on Articles 2 and/or 3 of the Convention (in all cases), on Article 5 § 3 of the Convention (application no. 45689/22) and on Article 13 of the Convention (applications nos. 40578/22 and 18571/23). A short summary of each application is provided in the appendix.

QUESTIONS TO THE PARTIES

1. Has there been a violation of Articles 2 and/or 3 of the Convention? In particular:
(a) Considering their medical condition, have the Government met their obligation to ensure that the applicants' or their relative's life, health and well-being (in all applications) were adequately secured by providing them with the requisite medical assistance as required by Articles 2 and 3 of the Convention (see *Gorelov v. Russia*, no. 49072/11, §§ 41-43, 9 January 2014; *Kats and Others v. Ukraine*, no. 29971/04, §§ 103-104, 115-116, 18 December 2008; and *Blokhin v. Russia* [GC], no. 47152/06, §§ 135-140, 23 March 2016)?
The parties are invited to answer the following questions:
i) When did the authorities become aware of the applicants' or their relative's health conditions?
ii) When was the diagnosis made?
iii) Were the applicants or their relative prescribed any treatment?
iv) Were the applicants or their relative provided with the prescribed treatment? If not, for how long were they unable to receive it?

These are very important documents to analyse, because the section on the 'subject matter of the case' will briefly summarise the scope of the case, and the section on the 'questions to the parties' will provide a reasonably clear picture of where the Court's focus will lie. For example, if the applicant has raised an article of the Convention which has not been referred to by the Court in the 'questions to the parties', then this is a clear indication that the Court will not address that point (for example, because the Court has taken the view that the argument is irrelevant, inadmissible or not sustainable enough on the merits).

Therefore, the PAO will need to study this information carefully in deciding what issues are raised by the case, and therefore whether and how it should intervene as a third party.

In addition to the information published by the Court, there may be other relevant information publicly available which the PAO will want to obtain and analyse (for example, government statistics, parliamentary or NGO reports etc relevant to the issue raised by the case). Furthermore, information could also be obtained directly from the parties (see next section below).

Contact with the parties

It is not necessary for the PAO to have any contact with the parties to a case before requesting permission to intervene (and the parties' consent is certainly not required). However, applicants may make contact with the PAO, for example, to notify it about their case. It may be useful for the PAO to make prior contact with a party (likely to be the applicant), for example, to ascertain what information or evidence (for example in the form of reports) has already been submitted by the applicant (in which case there would be no need for the PAO also to do so). It may be useful for the PAO to receive copies of the pleadings in the case.

In the course of making contact with any of the parties, the PAO should of course always maintain its neutral and independent position as a third party to the proceedings.

What substantive issues could be covered by a third party intervention from the PAO?

What matters are addressed in a third party intervention will of course depend on the particular case at hand, its context and history. However, an intervention is likely to include one or more of the following:

- Information and/or evidence about relevant laws and/or national practice – how the law is applied or interpreted by the courts or other bodies.

- Statistics or other data – for example relating to the number of similar cases nationally and their outcomes.

- If the issue raised by the case has been the subject of previous cases in which the Court has already published its judgment, it may be useful for the Court to have further information from the PAO about how national laws and practice have changed (if at all) since the earlier judgment.

- If the issue is one which has rarely been considered before by the European Court, it may be useful to provide an analysis of relevant comparative international law (for example, UN standards and/or regional instruments).

- Another option is to provide comparative national surveys – submissions which analyse the relevant laws and practices of other (Council of Europe) states.

It is certainly *not* necessary to cover all of these, and it is anticipated that most of the interventions submitted by the PAO are likely to explain and analyse national practice in Moldova, which is the area where the PAO has undoubted expertise and which will invariably assist the Court.

Reference is likely to be made to the caselaw of the European Court, but such references should be relatively limited. The Court is of course an expert on its own caselaw and so there is no point setting out the caselaw at length in an intervention. Nevertheless, some further analysis may be useful and justified, for example, where there has been divergence in the Court's caselaw on a particular point, where an issue has only recently arisen in Moldova or where there has been a recent change in the Court's caselaw.

Style and tone of a third party intervention

It is of course very important that any third party intervention submitted to the European Court should be factually accurate, fair and objective, as the PAO will be acting as an 'amicus curiae' (a friend to the Court). The Court's Practice Direction states that submissions should be put 'as impartially and objectively as possible' (para. 2).

Submissions should also incorporate and/or refer to a clear evidential basis (which might, for example, be in the form of statistical or other reports), and all sources should be fully and accurately referenced.

In this way, through its practice, the PAO will want to establish a strong reputation with the Court of its reliability and objectivity.

Requests to appear at a hearing

As noted above, it is possible for a third party to request to appear at a hearing, in addition to lodging written submissions. In practice, this is rare and it is likely only to be relevant to the PAO exceptionally (possibly because of the exceptional gravity or importance of a case, or its controversy at the national level).

Cases against states other than the Republic of Moldova

It is anticipated that most, if not all, interventions submitted by the PAO will relate to cases brought against the Republic of Moldova. However, the PAO would also be entitled to submit interventions in cases brought against other states. This might become relevant, for example, where an important issue has arisen in Moldova and the same (or very similar) issue was the subject of a pending case against another state, before any Moldovan case had reached the European Court. In those circumstances, in could be useful for the Court to receive information about the situation and practice in Moldova.

Tracking cases against other states represents a significant burden for any organisation, and so this may only arise in practice where the PAO is directly informed about an important case against another state.

Options other than intervening as a third party

As noted above, it can be difficult to keep track of cases before the European Court, and it is quite possible that the 12-week time limit for intervening could be missed. If that happens, there might be other possibilities for the PAO to submit relevant material. This could be done, for example, by providing material to one of the parties (such as the applicant) for them to submit it to the Court. As discussed above, the Council of Europe Commissioner for Human Rights has a right to intervene (under Article 36(3) of the Convention), so it may be possible for material to be passed on to the Commissioner's Office which can then lodge it with the Court.

7. The follow up to interventions

As a third party intervenor, the PAO will be informed of the Court's ensuing judgment or decision, and will be sent a copy of it (Practice Direction, para. 50).

It is suggested that it is important that the PAO should carefully review all judgments in cases in which it intervenes. It will want to assess the outcome of the case, and the extent of the impact of its intervention. This may be difficult to discern, as the Court frequently makes only brief references to the submissions made by third parties. However, some judgments, such as *Iacov Stanciu v. Romania* (App No. 35972/05, 24 July 2012), include lengthy summaries of the third party's arguments (paras 145-164). In some cases, there may references to the intervention in the Court's reasoning, in which case it will more be evident that those submissions have influenced the Court in reaching its conclusions (as to fact and/or law), and judges will occasionally refer to them in their separate opinions.

In any event, the PAO will want to review whether the Court appeared to take account of, or 'accepted', its submissions, in order to assess the efficacy of its strategy of intervening. Is its strategy proving effective or not (and is it 'cost effective' in comparison with other tools and strategies at its disposal)?

Another critical question in practice is how states respond to European Court judgments, which are binding on them, pursuant to Article 46(1) of the Convention. In most, if not all, cases in which the PAO has intervened, it is likely to be important in practice for the PAO to monitor compliance at the national level. If the state's responses are considered to be inadequate, the PAO may wish to continue to focus on the issue raised by the particular case by making submissions at the national level (for example to the government or parliament). If there are problems with implementation, it is quite likely that another case (on the same issue) will be taken to the European Court, in which case the PAO may wish to intervene again, in order to provide the Court with up-to-date information about the status of implementation.

Submissions to the Committee of Ministers

It would also be open to the PAO to send submissions to the Committee of Ministers of the Council of Europe whose role it is to supervise the implementation of judgments. This process is not further covered in this guide, but advice and resources for NHRIs are made available by the Council of Europe here and by ENNHRI here.

8. Further resources

European Court documents

European Convention on Human Rights

Rules of the Court

Practice Direction: Third-party intervention under Article 36 § 2 of the Convention or under Article 3, second sentence, of Protocol No. 16

Press Country Profile: Republic of Moldova

Other Council of Europe documents and sources

Committee of Ministers' Annual Report 2023

Council of Europe Action Plan for the Republic of Moldova, 2021-2024

Department for the Execution of Judgments, Main issues: Republic of Moldova

Third party interventions by the Council of Europe Commissioner for Human Rights

UN standards

United Nations Paris Principles

Moldovan legislation

Law No. 100 of 27 April 2023

PAO documents

Strategic Development Program of the People's Advocate Office for 2023 – 2030

Books and articles

Nicole Bürli, Third Party Interventions before the European Court of Human Rights, Intersentia, 2017

Paul Harvey, Third Party Interventions before the ECtHR: a Rough Guide, Strasbourg Observers, 24 February 2015

Philip Leach, Taking a Case to the European Court of Human Rights (4th ed.), Oxford University Press, 2017

Reports and submissions

Deborah Lawson, Helen Stalford and Sarah Woodhouse, Promoting Children's Rights in the European Court of Human Rights: The Role and Potential of Third-Party interventions, University of Liverpool, June 2023 (this report includes in an annex links to the full texts of 18 third party interventions).

European Network of National Human Rights Institutions: Third Party Interventions Before the European Court of Human Rights - ENNHRI Guide for National Human Rights Institutions, October 2020

NHRIs COP26 Symposium, The role of National Human Rights Institutions in bridging the accountability gap in the climate emergency, Summary of Discussions, 2022.

Third party intervention by the ENNHRI in *D.D. v Lithuania* (22 April 2008)

European Court cases

Abdolkhani and Karimnia v. Turkey, App No. 30471/08, 22 September 2009.

Armani Da Silva v. UK, App No. 5878/08, 30 March 2016.

Blečić v. Croatia, App No. 59532/00, 8 March 2006.

Boicenco v. Moldova, App No. 41088/05, 11 July 2006.

Buhuceanu and Others v. Romania, App No. 20081/19, 23 May 2023.

Clipea and Iapara v. Moldova, App No 39468/17 (communicated 15 January 2021).

D.D. v. Lithuania, App No. 13469/06, 14 February 2012.

D.H. and others v. the Czech Republic, App No. 57325/00, 13 November 2007.

Donohue v. Ireland (App No. 19165/08, 12 December 2013).

Feldek v. Slovakia, App No. 29032/95, 12 July 2001.

Iacov Stanciu v. Romania, App No. 35972/05, 24 July 2012.

G.M. v. Moldova, App No. 44394/15, 22 November 2022.

Modârca v. Moldova, App No. 1443/07, 10 May 2007.

Paladi v. Moldova, App No. 29806/05, 10 March 2009.

S. and Marper v. UK, App No. 30562/04, 4 December 2008.

Șarban v. Moldova, App No. 3456/05, 4 October 2005.

Shanaghan v. UK, App No. 37715/97, 4 May 2001.

Tănase v. Moldova, App No. 7/08, 27 April 2010.

Tkhelidze v. Georgia, App No. 33056/17, 8 July 2021.

European Court of Human Rights advisory opinions

European Court of Human Rights advisory opinions can be found here.

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, Requested by the French Court of Cassation (Request no. P16-2018-001), 10 April 2019