European Court of Human Rights: Protocol No. 16 to the European Convention on Human Rights

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Bojana Kostić
Institute for Information Law (IViR), University of Amsterdam

On 12 April 2018, the French Government became the tenth High Contracting Party to ratify Protocol 16 to the European Convention on Human Rights (ECHR) and thus triggered the entry into force of the Protocol that establishes a referral mechanism between the national courts and the European Court of Human Rights (ECtHR). As the preamble states, the extension of the ECtHR's competence to give advisory opinions will further enhance the interaction between the ECtHR and national authorities, and thereby reinforce the implementation of the ECHR, in accordance with the principle of subsidiarity

Under Article 1 of Protocol No. 16, the highest courts and tribunals of a High Contracting Party, which are to be designated by the High Contracting Party, can request the ECtHR to give advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms set forth in the ECHR. The requesting court or tribunal may seek an advisory opinion only in the context of a case pending before it, and must give reasons for its request and shall provide the relevant legal and factual background of the pending case. Under Article 2, a panel of five judges of the ECtHR's Grand Chamber shall decide whether to accept the request for an advisory opinion, and if the panel accepts the request, the Grand Chamber shall deliver the advisory opinion. Moreover, while the Grand Chamber must give reasons for its advisory opinions, an individual Grand Chamber judge may deliver a separate opinion, including concurring or dissention opinions. Notably, Article 5 provides that advisory opinions are not legally binding.

It should be noted that under Article 47 of the ECHR, the Court may also, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the Protocols thereto.

Following the French Government's ratification of Protocol No. 16, Article 8 has now been triggered, and the protocol will enter into force on 1 August 2018 ("the first day of the month following the expiration of a period of three months").

Council of Europe, Protocol No. 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Council of Europe Treaty Series - No. 214, Strasbourg, 2 October 2013

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https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680084832

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