



Advisory opinion concerning adoption of an adult

The European Court of Human Rights has today delivered, unanimously, its response to a request (no. [P16-2022-001](#)) made by the Supreme Court of Finland for an advisory opinion, under Protocol no. 16 to the European Convention on Human Rights, on issues that arose out of proceedings for the adoption of an adult.

The Supreme Court of Finland notably asked for guidance on the procedural rights and status of a biological mother in the adoption proceedings of her son, C, now an adult. C had gone to live with his aunt at the age of three. The aunt had applied to the courts to adopt C when he was 25 years old and he had moved out to live independently. The mother had objected, but the national courts had granted the adoption. Her appeal is currently pending before the Supreme Court.

Firstly, the Court found that legal proceedings concerning the adoption of an adult child affected a biological parent's private life and that Article 8 (right to respect for private life) was therefore applicable in the case. It concluded that safeguards, such as the right to be treated as a party to such proceedings and the right to appeal, were not required to satisfy the procedural requirements of Article 8 of the European Convention on Human Rights from the biological mother's perspective.

Furthermore, it was for the Supreme Court of Finland to determine whether the legal proceedings concerning the adult adoption involved any right of the biological mother that was recognised under national law. In the negative, Article 6 (right of access to Court) would not be applicable in the case pending before it.

[Protocol No. 16](#) enables member States' highest national courts and tribunals to ask 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 its Protocols. The advisory opinions are not binding. The Court has delivered five other [advisory opinions](#) since Protocol No. 16 came into force on 1 August 2018. For more information see [What is a request for an advisory opinion?](#)

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

The background to the case and the domestic proceedings

The advisory opinion requested relates to a case pending before the Supreme Court of Finland with regard to the adoption of an adult.

The adoption concerns C, born in 1993. For the first four years of his life his primary carer was his biological mother. In late 1996 he went to live with his aunt. Shortly after the aunt was given supplementary custody of the child at the request of and in agreement with the biological mother, who at the time was in an unstable situation as a student and single mother of three. The biological mother remained involved in C's upbringing and they still have contact.

After C became an adult, and with his consent, his aunt applied to the courts to adopt him. The District Court granted the adoption, finding that the conditions set out under the relevant domestic law governing the adoption of an adult had been met. Those conditions included it being established that the child, while still a minor, had been taken care of by the prospective adopter or that they had had a relationship comparable to that of child and parent.

The biological mother, whose submissions were heard by the District Court, objected to the adoption. She considered that the relationship of mother and child existed between her and C, not between the aunt and C, and that the adoption had been for inheritance and tax purposes.

She lodged an appeal, which was rejected as inadmissible. The Court of Appeal ruled that the biological mother did not have the right to bring an appeal as she was not a party to the adoption proceedings.

The biological mother appealed against that decision to the Supreme Court of Finland. That court asked for guidance from the European Court on what the Convention required in terms of the biological mother's procedural rights in adoption proceedings. Specifically, it asked whether, by virtue of Article 6 (right of access to courts) and Article 8 (right to respect for private and family life) of the Convention, the biological mother had to be heard by the court dealing with the issue, and if she should also be given the status of a party to the proceedings so that she had the right to appeal against the adoption decision.

Procedure

The request for an advisory opinion was lodged on 10 October 2022. It was accepted by the Panel of the Grand Chamber on 7 November 2022. A Grand Chamber was formed on 15 November 2022 in accordance with Rule 24 § 2 (g) of the Rules of Court.

The President of the Chamber invited the parties to the proceedings before the Supreme Court of Finland to submit written observations by 9 January 2023. Written observations were received from the biological mother within that time-limit. These were transmitted to the Supreme Court, which informed the Court that it would not be submitting comments on them (Rule 94 § 6). Neither the Council of Europe Commissioner for Human Rights nor the Government of Finland exercised their right to submit written comments.

The Court's opinion

Firstly, the Court considered that legal proceedings concerning the adoption of an adult, which discontinued the legal relationship between parent and adult child, affected a biological parent's private life under Article 8. It emphasised, however, that such proceedings also, and if anything to a greater degree, also concerned the right to private life of the adopter and the adult adoptee.

It went on to point out that an elementary procedural safeguard of the biological parent's right to private life was that they be given the opportunity to be heard and their arguments taken into account to the extent relevant in the adoption proceedings.

That was what had apparently happened before the District Court, which had heard the biological mother in person as well as several more witnesses proposed by her. It had also expressly referred to that evidence, in particular the nature and quality of the biological mother's relationship with her son throughout his childhood, in assessing whether the conditions for granting the adoption had been satisfied.

While the biological mother might view that as insufficient, the Court did not consider that additional and specific safeguards, such as the right to be treated as a party to the proceedings and the right to appeal, were required in order to satisfy the procedural requirements of Article 8 from her perspective.

Certain other legal systems among the Contracting States¹ do give biological parents such standing or rights in adult adoption proceedings. However, the Court stated that Contracting States were entitled to wide discretion ("margin of appreciation") when regulating the procedure for adult adoption.

¹ The consent of the biological parents is required in adult adoption proceedings in Italy and Malta (see paragraph 37 of the advisory opinion), while the legal systems in Germany and the Czech Republic take the interests of the biological parents into account (see paragraph 36).

As concerned Article 6, the Court reiterated that it was not its place to create a substantive right which had no legal basis in the domestic law of the State concerned. It was therefore for the Supreme Court of Finland to determine whether the right claimed by the biological mother was recognised in national law. If the Supreme Court of Finland confirmed that such a right did not exist in law, from the biological mother's perspective Article 6 would not be applicable to the proceedings for the adoption of an adult.

The Court expressed its advisory opinion as follows:

“Legal proceedings concerning the grant of adoption of an adult child may be regarded as affecting a biological parent's private life under Article 8 of the Convention. That parent must be given the opportunity to be heard and the arguments made must be taken into account by the decider to the extent relevant. However, having regard to the wide margin of appreciation to which the State is entitled in the regulation of the procedure for adult adoption, respect for Article 8 does not require that a biological parent be granted the status of a party or the right to appeal the granting of the adoption.

If the requesting court determines that the right claimed by the biological mother does not exist, even on arguable grounds, in domestic law, it would follow that, from her perspective, Article 6 of the Convention is not applicable to the proceedings for the adoption of an adult.”

* * * * *

[Protocol No. 16](#) allows the highest courts and tribunals, as specified by the member States that have ratified it, to request advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms defined in the European Convention or its Protocols.

The aim of Protocol No. 16 is to enhance interaction between the Court and national authorities and thereby it reinforces the implementation of Convention rights and freedoms by requesting courts in their adjudication of pending cases.

An advisory opinion may only be sought in the context of a case pending before the requesting court. The acceptance or refusal of a request is left to the Court's discretion. A panel of five judges decides whether to accept the request, giving reasons for any refusal. The panel and the Grand Chamber include *ex officio* the judge elected in respect of the High Contracting Party to which the requesting court or tribunal pertains.

Advisory opinions, which are given by the Grand Chamber, are not binding. Judges are entitled to deliver a separate opinion.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter [@ECHR_CEDH](https://twitter.com/ECHR_CEDH).

Press contacts

echrpres@echr.coe.int | tel: +33 3 90 21 42 08

We would encourage journalists to send their enquiries via email.

Tracey Turner-Tretz (tel.: + 33 3 88 41 35 30)

Denis Lambert (tel.: + 33 3 90 21 41 09)

Inci Ertekin (tel.: + 33 3 90 21 55 30)

Neil Connolly (tel.: + 33 3 90 21 48 05)

Jane Swift (tel.: + 33 3 88 41 29 04)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.