



Grand Chamber Panel accepts first request for an advisory opinion under Protocol 16

At its last meeting (Monday 3 December 2018) the Grand Chamber panel of five judges accepted the following request for an advisory opinion:

Request for an advisory opinion from the French Court of Cassation, received on 16 October 2018.

Request for an advisory opinion accepted

Request for an advisory opinion from the French Court of Cassation (no. P16-2018-001)

On 16 October 2018 the Court received a request for an advisory opinion from the French Court of Cassation. It is the first request received by the Court since the entry into force of [Protocol No. 16](#) to the European Convention on Human Rights on 1 August 2018. This Protocol allows the highest courts and tribunals, as specified by the member States which have ratified this text, to 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 its protocols.

An advisory opinion may be requested only in the context of a case pending before the domestic 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. Where the panel accepts a request for an advisory opinion, a Grand Chamber shall be constituted to consider the request and to deliver an advisory opinion.

Advisory opinions, given by the Grand Chamber, will give reasons and will not be binding. They will be published and communicated to the requesting court or tribunal and to the relevant High Contracting Party. Judges will be entitled to deliver a separate opinion.

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.

The aim of Protocol No. 16 is to enhance the interaction between the Court and national authorities and thereby reinforce the implementation of Convention rights and freedoms by the requesting court in its adjudication of the pending case.

The Court of Cassation, in a judgment of 5 October 2018, decided to submit to the European Court of Human Rights a request for an advisory opinion on the following questions:

“(1) By refusing to enter, in the civil register of births, the birth of a child born abroad to a surrogate mother, in so far as the foreign birth certificate designates the child's “intended mother” as its “legal mother”, whereas the registration is accepted in so far as it designates the “intended father”, who is also the child's biological father, will a State party be overstepping its margin of appreciation under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms? In this connection should a distinction be drawn as to whether or not the child was conceived using the eggs of the “intended mother”?

(2) In the event of an answer in the affirmative to one of the two questions above, would the possibility for the intended mother to adopt the child of her spouse, the biological father, this being a means of establishing the legal mother-child relationship, ensure compliance with the requirements of Article 8 of the Convention?”

The Court of Cassation has adjourned its proceedings until the Court gives its opinion.

On 3 December 2018 the panel of the Grand Chamber accepted the request for an advisory opinion and on 4 December a Grand Chamber was constituted in accordance with Rule 24 § 2 (h) of the Rules of Court in order to consider it. The President of the Grand Chamber invited the parties to the domestic proceedings to submit written observations by 16 January 2019.

In view of the priority to be given to this request for an advisory opinion, the President of the Grand Chamber decided to shorten the time-limits, in accordance with Rule 44 of the Rules of Court.

Should they wish to exercise the right enshrined in Article 3 of Protocol No. 16, the High Contracting Party and the Commissioner for Human Rights must inform the Registrar in writing by 7 January 2019. They must submit any written observations they wish to make by 31 January 2019.

Any other Contracting Party or interested person other than the parties to the domestic proceedings wishing to submit written observations must request leave to do so by 7 January 2019. If leave is granted the written observations must be sent by 31 January 2019 at the latest.

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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.