



## A request by the Court of Cassation of Armenia for an advisory opinion under Protocol No. 16 has been accepted

The European Court of Human Rights has accepted a request (no. P16-2021-001) for an advisory opinion submitted by the Court of Cassation of Armenia on 11 March 2021.

In its request, the Court of Cassation of Armenia has asked the European Court of Human Rights to provide an advisory opinion on whether the non-application of limitation periods for imposing criminal responsibility in respect of torture or equivalent criminal offences with reliance on sources of international law is compatible with Article 7 of the Convention, if domestic law does not require such non-application of those limitation periods.

The request will be considered by the Grand Chamber, comprising 17 judges, which has been constituted in accordance with Rule 24 § 2 (h) of the Rules of Court.

The President of the Grand Chamber has also established a time frame for submissions from the parties to the domestic proceedings or any other interested party.

### Request for an advisory opinion accepted

The request for an advisory opinion was introduced on 11 March 2021<sup>1</sup>. It was accepted by the Panel of the Grand Chamber on 10 May 2021. A Grand Chamber was formed on 12 May in accordance with Rule 24 § 2 (h) of the Rules of Court.

The advisory opinion requested by the Court of Cassation of Armenia relates to the execution of the [Virabyan v. Armenia](#) judgment delivered by the European Court of Human Rights in 2012, with the applicant's "ill-treatment" in police custody in 2004 being qualified as "torture" by the Court. Following the judgment, a criminal case was instituted against two police officers in 2016 but dropped ten months later on the grounds that the limitation period had expired, in accordance with domestic law.

The criminal case was resumed in late 2017, the prosecutor finding that the investigator had failed to examine the acceptability of terminating the proceedings in the context of international law, including the requirements of Article 3 of the Convention. In February 2019, the first-instance court found both officers guilty of exceeding authority accompanied with use of violence but exempted them from "criminal responsibility" – from sentencing/punishment in the circumstances of the case – by applying the limitation period contained in the Criminal Code. On appeal, initiated by both the prosecutor and the accused, the Criminal Court of Appeal, on 4 July 2019, upheld the judgment of the first-instance court.

On 30 August 2019 the prosecutor lodged an appeal of points of law, arguing, among other things, that the application of limitation periods in respect of acts of torture was prohibited under Article 3 of the Convention. He argued in particular for the need to determine whether there was an absolute prohibition on application of limitation periods in cases of torture and other forms of ill-treatment, in the light of the European Court's case-law and the UN Convention Against Torture.

On 27 January 2021 the Court of Cassation, having admitted the prosecutor's appeal for examination, held a hearing on the appeal and concluded that, in order to rule on the appeal, there was a need to apply to the European Court of Human Rights with a request for an advisory opinion,

<sup>1</sup> The request, initially submitted on 1 February 2021 and received at the Court on 8 February 2021, was completed on 11 March 2021 and thus formally lodged on the latter date.

taking into account, on the one hand, the legal standards developed by the European Court and other international bodies regarding the *jus cogens* nature of the prohibition of torture, and, on the other hand, the importance of observing the requirements of Article 7 of the Convention.

The President of the Grand Chamber has invited the parties to the domestic proceedings before the Armenian Court of Cassation, namely the General Prosecutor's Office and Mr Movsisyan and Mr Arsenyan, the two defendants in the above-mentioned criminal case, to submit written observations by 2 July 2021.

Should they wish to exercise the right enshrined in Article 3 of Protocol No. 16, the Government and the Commissioner for Human Rights must inform the Registrar in writing by 14 June 2021. They must submit any written observations they wish to make by 7 July 2021.

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 14 June 2021. If leave is granted the written observations must be sent by 7 July 2021 at the latest.

It is the second time that Armenia has sought an advisory opinion under [Protocol No. 16](#) to the European Convention on Human Rights. The Armenian Constitutional Court made a request in August 2019, and the Court delivered its [opinion](#) in May 2020.

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Protocol No. 16 allows for enhanced interaction between the Court and national authorities and thereby reinforces the implementation of Convention rights and freedoms by requesting courts in their adjudication of pending cases.

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.

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.

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

#### Useful links:

- [What is a request for an advisory opinion?](#)
- [Advisory opinions under Protocol No. 16](#)

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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.