

PRESS RELEASE

DISCONTINUATION OF ADVISORY OPINION PROCEEDINGS CONCERNING LANDOWNERS' PROPERTY RIGHTS IN RELATION TO BUILDING OF NATIONAL ROADS IN SLOVENIA

ECHR 255 (2026) 15.10.2026

Press release issued by the Registrar of the Court



The European Court of Human Rights has decided to discontinue the advisory-opinion proceedings that it had begun in response to a request (no. P16-2026-003) from Slovenia's Supreme Court under Protocol no. 16 to the European Convention on Human Rights.

The advisory opinion had been sought in the context of judicial review (administrative-dispute) proceedings pending before Slovenia's Supreme Court following an appeal on points of law. At issue in the case was the question of whether allowing the issuance of a building permit and the construction of a motorway without first expropriating the affected land constituted an unjustified interference with the landowners' property rights, as protected by Article 1 of Protocol No. 1 to the Convention and Article 33 of the Constitution of Slovenia.

The request for an advisory opinion was introduced on 5 March 2026 and was accepted by the five-judge Panel of the Grand Chamber on 11 May 2026. At that stage only the question of the admissibility of the request, as such, was decided by the panel.

In the meantime, in June 2026, the parties reached a settlement, and the plaintiffs sought to withdraw their appeal on points of law. Normally, under Slovenian law, that would take effect automatically. However, because the proceedings had been stayed pending receipt of the advisory opinion, no procedural steps could be taken. The plaintiffs therefore asked the Supreme Court to resume the proceedings so that the withdrawal could take effect.

However, the Supreme Court declined, holding that the proceedings could only be resumed after the advisory opinion had been delivered. At the same time, it acknowledged that, once they resumed, it would have to grant the withdrawal request and discontinue the appellate proceedings without examining the merits of the case. The Supreme Court asked the Court to still give the advisory opinion as it would have a significant impact on future cases raising the same issue.

However, given that the Supreme Court could no longer rule on the merits of the case underlying its request for an advisory opinion, the European Court held that the potential usefulness of an advisory opinion for the resolution of future similar cases could not override the requirement that the opinion had to be capable of application in the pending case from which the request had originated.

As the essential requirement set out in Article 1 § 2 of Protocol No. 16 was no longer fulfilled, the Grand Chamber decided, by a majority, to discontinue the advisory-opinion proceedings.

Background

Under the Slovenian Construction Act, as a general rule, a building permit may be issued only if the developer already holds a right to build on the land concerned – be it ownership, an appropriate easement, or another relevant right. However, an exception is made for the construction of certain roads of national importance, including motorways and expressways. For these national roads, a building permit may be issued merely on the basis of a decision to initiate expropriation proceedings, while the land is still under the ownership of another person.

Under the case-law of the Slovenian Constitutional Court, the issuance of a building permit constitutes an interference with the property rights of the owner of the land on which construction is planned and amounts to *de facto* expropriation. When a building permit is issued merely on the basis of a decision to initiate expropriation proceedings, the owners are entitled to financial compensation for the loss of enjoyment of their land from the start of the construction work until the developer acquires ownership or another relevant right in respect of the land in question.

The advisory opinion was sought in the context of judicial review (administrative-dispute) proceedings pending before the Supreme Court following an appeal on points of law. The origin of the dispute lay in the decision of the Ministry of Natural Resources and Spatial Planning to issue a building permit on 12 June 2023 to DARS (*Družba za avtoceste v Republiki Sloveniji*) for the construction of a new expressway. DARS is a company whose founder and sole shareholder is the Slovenian State, and which operates and maintains the national motorway and expressway network. Four landowners, who had the status of third (interested) party in those administrative proceedings, opposed the issuance of the building permit, amongst other things, because no decision had yet been adopted on DARS' request for expropriation in the concurrent expropriation proceedings.

The landowners subsequently brought an action for judicial review against the Ministry to have the building permit annulled. The Administrative Court dismissed their action, relying on the statutory exception allowing a building permit to be issued on the basis of a decision initiating expropriation proceedings. The plaintiffs lodged an appeal on points of law, maintaining that expropriation should have been completed before any construction could begin.

The question asked in the advisory opinion request

“From the perspective of the protection afforded to the owner by Article 1 of Protocol No. 1, in the construction of state roads, is it always sufficient for the owner to receive monetary compensation for *de facto* expropriated property, or must he also be guaranteed protection against interference with his property until a final decision on expropriation has been made?”

[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 European Convention or its Protocols.

An advisory opinion may only be sought in the context of a case pending before the requesting court. Advisory opinions, which are given by the Grand Chamber, are not formally binding.

The Court has delivered [nine advisory opinions](#) since Protocol No. 16 came into force on 1 August 2018. For more information see the [FAQ](#).

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

FOLLOW THE COURT ON:



Contact [ECHRPress](#) to subscribe to the press-release mailing list.

Find the Court's press releases: [HUDOC - Press collection](#)

Press contacts

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

Media enquiries are welcome by email or phone.

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.