

European Court accepts request by the Supreme Court of Finland for an advisory opinion on adoption of an adult child

The European Court of Human Rights has accepted a request (no. P16-2022-001) for an advisory opinion under Protocol No. 16 to the European Convention on Human Rights received from the Supreme Court of Finland on 10 October 2022.

In its request, the Supreme Court of Finland has asked the European Court of Human Rights to provide an advisory opinion on the procedural rights of a biological mother in proceedings concerning the adoption of her adult child.

The request will be dealt with by the Grand Chamber, comprising 17 judges, which will be constituted in accordance with Rule 24 § 2 (g) 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.

[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. The advisory opinions are not binding. The Court has delivered [five advisory opinions](#) since Protocol No. 16 came into force on 1 August 2018. For more information see the [FAQ](#).

The request for an advisory opinion was introduced on 10 October 2022. It was accepted by the Panel of the Grand Chamber on 7 November 2022. At this stage only the question of the admissibility of the request, as such, was examined by the Panel. When the Panel accepts the request, a Grand Chamber is constituted in accordance with Rule 24 § 2 (g) of the Rules of Court to deal with the request and to deliver the advisory opinion.

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, who had been asked to make submissions 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 real reason for the adoption was tax related.

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 is now asking for guidance from the European Court on what the Convention requires in terms of the biological mother's procedural rights in adoption proceedings. Specifically, it asks 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 has 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 has the right to appeal against the grant of adoption.

The President of the Grand Chamber has invited the parties to the domestic proceedings before the Supreme Court of Finland to submit written observations by 9 January 2023.

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

The Finnish Government and the Commissioner for Human Rights must inform the Registrar in writing by 5 December 2022, should they wish to exercise their right enshrined in Article 3 of Protocol No. 16 to submit written observations. They must submit any written observations they wish to make by 9 January 2023.

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 5 December 2022. If leave is granted the written observations must be sent by 9 January 2023 at the latest.

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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 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.

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.

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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.