European Court clarifies third-party intervention: amendments to Rules of Court and new guidelines

The European Court of Human Rights has today published on its website a new version of the Rules of Court, which incorporates amendments in respect of Rule 44 §§ 2 and 3 (b) on third-party intervention. These amendments were adopted by the Plenary of the Court on 3 March 2023 and entered into force on the same date.

These amendments concern third-party intervention of the Council of Europe’s Commissioner for Human Rights (Rule 44 § 2) and set out the conditions and deadlines for requests to intervene as a third party both in written procedure and in a hearing before a Chamber (Rule 44 § 3 (b)).

In parallel, new guidelines (a Practice Direction) have been issued by the President of the Court (Rule 32 of the Rules of Court) with a view to clarifying the manner in which third parties can intervene, in particular as concerns time-limits for making written submissions, the content and scope of such submissions, and the way in which the Court uses them when examining cases.

The practice direction only concerns Article 36 § 2 of the European Convention on Human Rights, namely leave to intervene of any State which is not a party to the proceedings or any person concerned who is not the applicant. It also concerns Protocol No. 16, which enables member States’ highest national courts and tribunals to ask the Court to give advisory opinions, and specifically the second sentence of Article 3 of the Protocol regarding the participation of any other High Contracting Party or person in the advisory-opinion proceedings.

The practice direction aims to provide comprehensive guidance on the following matters:

- the role of third-party intervention in the Court’s procedure;
- who is allowed to intervene as a third party under Article 36 § 2 of the Convention or under Article 3, second sentence, of Protocol No. 16;
- when is a third party invited or permitted to intervene;
- the representation of third parties;
- what third-party intervention involves;
- the stages in the proceedings before the Court when a third-party intervention is possible, and the time-limits for seeking leave to intervene in each possible scenario;
- the language, content and manner of requesting leave to intervene;
- the requirements which the interveners’ written comments and oral submissions must meet.

These clarifications are the culmination of a process initiated after the 2018 high-level conference in Copenhagen on reform of the Convention system, which encouraged the Court, among other things, to support third-party intervention.

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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.