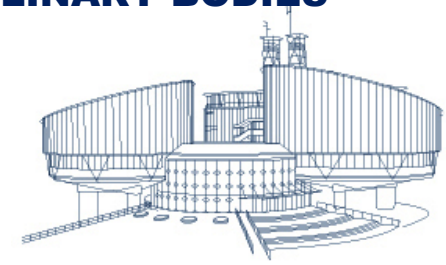
EUROPEAN COURT OF HUMAN RIGHTS

PRESS RELEASE

ADVISORY OPINION ON THE OBLIGATION FOR LAWYERS TO APPEAR IN PERSON BEFORE DISCIPLINARY BODIES



ECHR 260 (2026) 20.10.2026

Press release issued by the Registrar of the Court

The European Court of Human Rights has today delivered its opinion in response to a request (no. P16-2026-002) for an advisory opinion made by the Constitutional Court of Grand Duchy of Luxembourg, under Protocol No. 16 to the European Convention on Human Rights.

The request concerned the compatibility with Article 6 (right to a fair hearing) of the European Convention of the obligation for a lawyer facing disciplinary proceedings to appear in person at the hearing before the disciplinary body and, in the event of failure to do so, the resulting inability to be represented by counsel instead and to apply to the body in question to set aside an adverse decision entered in default (section 26 of the Law of 10 August 1991).

It was made in the context of proceedings in which a former lawyer of the Luxembourg Bar had been disbarred for life by the Luxembourg disciplinary authorities.

The Court clarified that the right to a fair hearing did not in principle preclude domestic legislation from requiring a lawyer facing disciplinary proceedings to appear in person before the competent disciplinary body. However, where the lawyer in question failed to appear in person, the disciplinary body could not refuse on principle to hear explanations from his or her representative as to the reasons for his or her absence, to enable it to ascertain whether this absence was such as to constitute an unequivocal waiver of the right to a defence or an intention to evade disciplinary justice.

Where domestic law precluded representation before the appellate disciplinary body, while at the same time failing to afford a remedy capable of securing a fresh adversarial examination of the case – and it was not established that the person concerned had unequivocally waived the right to a defence or had sought to evade disciplinary justice – the combination of these restrictions was liable to upset the fair balance between the legitimate aims pursued by the legislature and the requirements of the right to a fair hearing.

The Court has now delivered ten advisory opinions since Protocol No. 16 came into force on 1 August 2018.

A legal summary of this case will be available in the Court's database HUDOC (link).

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. Advisory opinions are not formally binding. For more information see the FAQ.

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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BACKROUND

In May 2013, F.C., a lawyer, resigned from the Luxembourg Bar. Subsequently, on an unspecified date, disciplinary proceedings were brought against her by the Bar Association for acts committed while she was still a member of the Bar.

In July 2023 she was disbarred for life in a default decision of the Disciplinary and Administrative Board. She appealed to the Disciplinary and Administrative Board of Appeal (*Conseil disciplinaire et administratif d'appel* – "CDAA"), which set the hearing for 6 November 2024 after five adjournments, including two at F.C.'s request.

On the day of the hearing, F.C. failed to appear in person before the CDAA. The CDAA refused to grant leave to her counsel to represent her in her absence and to put forward arguments in her defence. It based its decision on section 26 of the Law of 10 August 1991, which provided that "the respondent lawyer [was to] appear in person. He or she [could] be assisted by counsel. Should he or she fail to appear in person, a decision [would] be given by default, with no possibility of applying to set aside that decision and rehear the case".

The CDAA, ruling on the merits in F.C.'s absence, upheld the first-instance decision to disbar her for life. F.C. appealed to the Court of Cassation, arguing, in particular, that section 26 of the Law of 10 August 1991 was unconstitutional, as it imposed a significant, unjustified restriction on the right to a fair hearing and on defence rights.

On 16 October 2025 the Court of Cassation referred a question to the Constitutional Court for a preliminary ruling. On 27 February 2026 the Constitutional Court decided to request an advisory opinion from the Court and to adjourn its preliminary ruling pending the Court's reply.

QUESTIONS SUBMITTED IN THE ADVISORY OPINION

The Court observed that all the questions submitted, which the requesting court had organised into four groups, related mainly to two issues: the representation of F.C., in her absence, before the CDAA and her inability to lodge an application to set aside the default decision against her as a result of her failure to appear in person. It decided to focus its examination on these two issues accordingly.

THE COURT'S OPINION

Article 6 § 1 of the Convention (right to a fair hearing) did not in principle preclude domestic legislation from requiring a lawyer facing disciplinary proceedings to appear in person before the competent disciplinary body. The domestic authorities enjoyed a margin of appreciation in deciding how to address unjustified absences and delaying tactics, and how to ensure the proper functioning of the legal profession. These aims constituted legitimate grounds for an obligation to appear in person.

However, where the lawyer concerned failed to appear in person while having instructed counsel to represent him or her at the hearing, a disciplinary body could not refuse on principle to hear explanations from counsel as to the reasons for the lawyer's absence, to enable it to ascertain whether this absence was such as to constitute an unequivocal waiver of the right to a defence or an intention to evade disciplinary justice.

In the absence of any such waiver or established intention to evade disciplinary justice, it fell to the competent disciplinary body to ensure that the person concerned was given a genuine opportunity to put forward a defence, in particular by granting an adjournment or by allowing that person to be represented by counsel despite his or her absence. Where a disciplinary system provided for two levels of jurisdiction, this requirement had to be met at the very least in the appellate proceedings.

Given the importance of hearing counsel for the person concerned, both for the protection of defence rights and for the proper administration of disciplinary justice, a refusal to hear the lawyer he or she had instructed was likely to amount to a disproportionate restriction on the right to a fair hearing guaranteed by Article 6 § 1 of the Convention. This was especially so where the disciplinary

proceedings could lead to sanctions which had serious consequences for the practice, career, professional reputation and/or livelihood of the person concerned.

Moreover, the inability to apply for a default decision to be set aside was of particular importance having regard to the specific characteristics of the Luxembourg procedure at issue in the present request. If the person concerned was unable to have his or her defence heard, through counsel, at a hearing which resulted in a judgment given by default on appeal, then the unavailability of that remedy was more than just an additional procedural limitation. It deprived that person of the opportunity to have a competent disciplinary authority conduct an adversarial examination, covering both the facts and the law, of the arguments that he or she had been precluded from putting forward in the proceedings which gave rise to the decision. This situation was not remedied by the possibility of a cassation appeal, since such an appeal afforded neither a fresh adversarial hearing of the case on the merits, nor an examination of the arguments which the appellate disciplinary body had been barred from entertaining.

Consequently, where domestic law precluded the representative of the person concerned from being heard by the appellate disciplinary body, while at the same time failing to afford a remedy capable of securing a fresh adversarial examination of the case on points of both fact and law, whether by means of an application to have a default decision set aside or through any other mechanism offering equivalent safeguards, and where it was not established that the person concerned had unequivocally waived the right to a defence or had sought to evade disciplinary justice, the combination of these restrictions was liable to upset the fair balance which had to be struck between the legitimate aims pursued and the requirements of the right to a fair hearing under Article 6 § 1 of the Convention.

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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.