Practice Directions

Third-party intervention under Article 36 § 2 of the Convention or under Article 3, second sentence, of Protocol No. 16[1]

I. Purpose of this practice direction

1. The purpose of this practice direction is to clarify the manner in which third parties can intervene under Article 36 § 2 of the Convention or under Article 3, second sentence, of Protocol No. 16, the applicable procedures and requirements, and the role of such intervention in the Court's work.

I. Role of third-party intervention in the Court's procedure

A. Third-party intervention under Article 36 § 2 of the Convention

2. Third-party intervention under Article 36 § 2 of the Convention is a procedural device whose chief purpose is to enable the Court to become acquainted with the views of States and other persons who are not parties to a case before it on the issues raised by that case, and be presented with information or arguments which are broader than or different from those put forward by the parties. Such intervention can take place either on the initiative of the Court itself (a possibility expressly envisaged by Article 36 § 2 of the Convention), or on the initiative of the would-be third party. The role of third parties invited or granted leave to intervene under Article 36 § 2 of the Convention is to put before the Court, as impartially and objectively as possible, legal or factual points capable of assisting it in resolving the matters in dispute before it on a more enlightened basis. In consequence, third parties are not entitled to express support directly for one or the other party, make requests as regards the procedures before the Court, seek a remedy from the Court, participate in friendly-settlement negotiations between the parties, or seek the relinquishment or referral of a case to the Grand Chamber.

3. All third-party submissions are invariably placed in the file put before the formation of the Court deliberating on the case, and may be referred to, even if briefly, in the Court's ensuing decision or judgment.

B. Third-party intervention under Article 3, second sentence, of Protocol No. 16

4. Third-party intervention under Article 3, second sentence, of Protocol No. 16 serves the same purpose, but must be compatible with the special nature of the proceedings under that Protocol. All third-party submissions are used by the Court in the same way as in contentious proceedings (see paragraph 3 above).

II. Who can intervene as a third party under Article 36 § 2 of the Convention?

5. The possibility of intervening as a third party is open to "any [High] Contracting Party which is not a party to the proceedings" or to "any person concerned who is not the applicant" (Article 36 § 2 of the Convention and Rule 44 § 3 (a) of the Rules of Court). The phrase "any person concerned" may comprise (a) so-called "*amici curiae*" ("friends of the Court" – see paragraph 10 below) and (b) so-called "interested third parties" (see paragraph 12 below). Unlike intervention under Article 36 § 1 of the Convention by the Contracting State of the nationality of the applicant(s), intervention under Article 36 § 2 is not as of right; it is at the discretion of the Court, and is only possible if the Court is

1. Practice direction issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 13 March 2023.

satisfied that it would be "in the interest[s] of the proper administration of justice". Unlike the position in some other jurisdictions, a would-be third party is not required to have a direct legal interest in the outcome of the case.

6. The would-be third party may have an indirect legal interest in the case, a broader interest in its outcome, or indeed no tangible interest at all. That may depend on whether it is a Contracting State, an *amicus curiae*, or an "interested third party" (see paragraphs 8, 10 and 12 below).

7. Nor is it formally required that the would-be third party be a national of a Contracting State or reside or be based in one.

A. Contracting States other than the Contracting State of the nationality of the applicant(s), and other States

8. For Contracting States other than the Contracting State of the nationality of the applicant(s), the interest in intervening as a third party usually lies in the fact that the Court's judgments, although formally binding only on the respondent Contracting State (Article 46 § 1 of the Convention), also elucidate and develop the rules laid down in the Convention and the Protocols thereto. Contracting States, as bearers of obligations under the Convention and the Protocols thereto, thus normally have a legitimate interest in making their views known about a legal issue arising in a case before the Court, even though the application under examination is not directed against them.

9. Non-Contracting States may also seek to intervene under Article 36 § 2 of the Convention, since they can also fall under the rubric "any person concerned". They must, however, likewise have a legitimate reason to do so.

B. *Amici curiae*

10. The term "any person concerned" can comprise non-governmental organisations, academics, private individuals, business enterprises, other international organisations, other bodies of the Council of Europe, independent national human-rights institutions, and so on. For them, the interest in intervening normally lies in the opportunity to provide submissions which may assist the Court, and thus to further the "interest[s] of the proper administration of justice". In that sense, they are "friends of the Court" (*amici curiae*).

11. Although they can also fall under the rubric "any person concerned", State authorities – such as legislatures, courts, or local or regional authorities – are normally not considered to be entitled to intervene. That is because in international litigation the authorities of a State should, in principle, be represented by its central government (see *Assanidze v. Georgia* [GC], no. 71503/01, § 12, ECHR 2004-II). This concerns both the authorities of the respondent State and the authorities of another Contracting or non-Contracting State.

C. "Interested third parties"

12. The term "any person concerned" can also include persons whose legal rights may be affected, albeit indirectly, if the Court finds a violation of the Convention or the Protocols thereto – for instance, the applicant's opponent(s) in the domestic civil proceedings which gave rise to an individual application before the Court, or the other parent in cases relating to the custody of children. For such "interested third parties", the "interest[s] of justice" may require that they be heard before the Court rules on a question which may, even if indirectly, affect their rights. The usual reason for such persons' wish to intervene is that a finding of a violation by the Court may lead to (a) the reopening of the domestic proceedings in which the case before the Court originated, or (b) other individual measures for the execution of the Court's judgment which may directly affect their domestic legal position.

III. Who can intervene as a third party under Article 3, second sentence, of Protocol No. 16?

13. In proceedings under Protocol No. 16, the request for an advisory opinion originates from a court or tribunal of a Contracting State, and must relate to a case pending before that court or tribunal (Article 1 §§ 1 and 2 of Protocol No. 16). Furthermore, the Court's advisory opinion, although not binding (Article 5 of Protocol No. 16), is intended to provide the relevant national court with guidance on the application of the Convention or the Protocols thereto, and thus to influence the further conduct and outcome of the domestic case in connection with which it is given. It follows that the parties to that domestic case are in a special position and should normally be able to intervene as third parties in the proceedings before the Court (Rule 94 § 3 of the Rules of Court), even if they are State authorities. The Court's practice is to systematically invite them to do so.

14. Any Contracting State or other "person" may also be invited or granted leave to intervene (Article 3, second sentence, of Protocol No. 16, and Rule 44 § 7 read in conjunction with Rule 44 § 3 (a) of the Rules of Court). Their reasons for seeking to intervene will usually be similar to those prompting intervention under Article 36 § 2 of the Convention.

IV. When is third-party intervention invited or permitted?

15. Third-party intervention under Article 36 § 2 of the Convention or under Article 3, second sentence, of Protocol No. 16, will be invited or permitted only if the Court is satisfied that it would be "in the interest[s] of the proper administration of justice" (Article 36 § 2 of the Convention; Article 3, second sentence, of Protocol No. 16; and Rule 44 § 3 (a) of the Rules of Court).

16. The Court does not consult the parties before deciding whether to invite or permit a third party to intervene.

V. Representation of third parties

17. If the third party is a Contracting State, it must be represented by its Agent, who may have the assistance of advocates or advisers (Rule 35 of the Rules of Court). Other third parties intervening under Article 36 § 2 of the Convention or under Article 3, second sentence, of Protocol No. 16 do not need to be represented at any stage of the proceedings.

If a third party chooses to be represented, it is subject to the same prohibitions as a party on being represented by a former judge of the Court, by a current *ad hoc* judge, or by a person featuring on a current list of persons whom a Contracting Party has designated as eligible to serve as *ad hoc* judges (see Rule 4 § 2 and Rule 29 § 1 (a) *in fine* and (c) *in fine* of the Rules of Court).

18. For joint representation of third parties at hearings, see paragraph 43 below.

VI. What does third-party intervention involve?

19. A third party intervening under Article 36 § 2 of the Convention or under Article 3, second sentence, of Protocol No. 16 is normally granted leave solely to submit written comments. It may be allowed to take part in a hearing and make oral submissions only "in exceptional circumstances" (Rule 44 § 3 (a) of the Rules of Court).

In the case of third-party intervention in an investigation under the Annex to the Rules of Court, the third party may "participate in an investigative measure" (Rule A1 § 6 of the Annex to the Rules of Court). The nature and extent of that participation will depend on what specific investigative measure is being carried out: production of documentary evidence, hearing of a witness or expert, or the conduct of an inquiry or on-site investigation. A third party may request the hearing of a witness or expert, but such a request is subject to the discretion of the Court (Rule A1 § 1 read in conjunction with Rule A5 § 6). The President of the Chamber or the delegates carrying out the investigation may

lay down the conditions of the third party's participation and limit it if these are not complied with (Rule A1 § 6 and Rule A4 § 1).

VII. Stages in the proceedings before the Court when third-party intervention is possible and time-limits for seeking leave to intervene

A. In contentious proceedings under Article 33 or 34 of the Convention

20. In contentious proceedings under Articles 33 or 34 of the Convention, third-party intervention is possible:

(a) After the respondent Contracting State is given notice of an application (or part of it) (Rule 44 § 3 (a) of the Rules of Court). The time-limit for seeking leave to intervene in this situation is twelve weeks, and starts to run when information that notice of the application has been given to the respondent Contracting Party is published on the Court's case-law database, HUDOC (Rule 44 § 3 (b)). In some cases the President of the Chamber may, however, fix a shorter or a longer time-limit (Rule 44 § 3 (b) *in fine*).

(b) In the course of a hearing before a Chamber (Rule 44 § 3 (a) *in fine* of the Rules of Court). This is possible only in "exceptional cases" (ibid.). Requests for leave to take part in a hearing before a Chamber must be submitted not later than four weeks after the publication on the Court's website of the information on the decision of the Chamber to hold an oral hearing (Rule 44 § 3 (b)).

(c) After a Chamber decides to relinquish jurisdiction in favour of the Grand Chamber (Rule 44 § 4 (a) of the Rules of Court). The time-limit is again twelve weeks, which starts to run on the date on which information about the decision of the Chamber to relinquish jurisdiction is published on the Court's website (ibid.). In some cases the President of the Grand Chamber may, however, fix a shorter or a longer time-limit (Rule 44 § 3 (b) *in fine* read in conjunction with Rule 71 § 1).

(d) After the panel of the Grand Chamber accepts a party's request for referral of a case to the Grand Chamber (Rule 44 § 4 (a) of the Rules of Court). The time-limit is again twelve weeks, which starts to run on the date on which information about the decision of the panel to accept the request is published on the Court's website (ibid.). In some cases the President of the Grand Chamber may, however, fix a shorter or a longer time-limit (Rule 44 § 3 (b) *in fine* read in conjunction with Rule 71 § 1).

(e) In the course of an investigation carried out by the Court (Rule A1 § 6 of the Annex to the Rules of Court). The time-limit is fixed by the President of the Chamber (ibid.).

21. Third-party intervention before the panel deciding under Article 43 of the Convention whether to accept a request for referral of a case to the Grand Chamber is not possible. See also paragraph 42 below.

B. In proceedings for an advisory opinion under Protocol No. 16

22. In proceedings for an advisory opinion under Protocol No. 16, third-party intervention is possible after the panel of five judges of the Grand Chamber accepts the request for an advisory opinion (Article 3, second sentence, of Protocol No. 16). The parties to the domestic case are normally invited to intervene (Rule 94 § 3 of the Rules of Court; see also paragraph 13 above), and do not therefore need to seek leave to do so. For other third parties, the time-limit for seeking leave to intervene is normally eight weeks, which starts to run on the date on which information about the decision of the panel to accept the request is published on the Court's website (Rule 44 § 7 read in conjunction with Rule 44 § 4 (a)).

23. Third-party intervention before the panel deciding whether to accept a request under Protocol No. 16 is not possible.

C. Observing the time-limit

24. For the purposes of observing the above-mentioned time-limits, the material date is the certified date of dispatch of the request to intervene or, if there is none, the date of its receipt at the Court's Registry (Rule 38 § 2 of the Rules of Court). Would-be third parties are, however, strongly encouraged not to await the end of the relevant time-limit to seek leave, but to do so as soon as practicable.

D. Effect of the grant of leave to intervene as a third party

25. Leave to intervene as a third party by making written comments remains valid throughout all subsequent stages of the proceedings before the Court (for instance, leave granted in the course of Chamber proceedings remains valid in Grand Chamber proceedings). See also paragraphs 41 and 42 below.

VIII. Language, content and manner of filing of a request for leave to intervene

A. Language

26. The request for leave to intervene must be in one of the Court's official languages, English or French (Rule 44 § 3 (b) of the Rules of Court). The initial request may, however, be in one of the official languages of the Contracting States (Rule 44 § 3 (b) read in conjunction with Rule 34 § 4). In that case, it must be followed by a translation into one of the Court's official languages, filed within a time-limit fixed by the President of the Chamber (or of the Grand Chamber) (Rule 34 § 4 (b)).

B. Content

27. The request must be succinct, normally not more than two pages long. It must identify the name and number of the case to which it relates, and contain enough information about:

(a) the would-be third party;

(b) any links between that would-be third party and any of the parties to the case;

(c) the reasons why the would-be third party wishes to intervene;

(d) if relevant, the would-be third party's special knowledge about an issue or issues arising in the case;

(e) the point(s) on which the would-be third party proposes to make submissions and, as far as practicable, the reasons for believing that those submissions will be useful to the Court and different from those of the parties or other third parties; and

(f) whether the third party proposes to make written comments, to take part in a hearing, or both.

All those details are needed to enable to the Court to assess whether it would be "in the interest[s] of the proper administration of justice" to permit the intervention.

C. Manner of filing

28. The request must be submitted in writing (Rule 44 § 3 (b) of the Rules of Court), and sent by post, or by fax and post. Filing by email is not accepted (paragraphs 3 and 4 of the Practice Direction on Written Pleadings).

IX. Third parties' written comments

A. Time-limit for submission

29. A third party's written comments should be submitted within a time-limit fixed by the President of the Chamber (or of the Grand Chamber) (Rule 44 § 5 of the Rules of Court). That time-limit will usually be set out in the letter informing the third party that leave to intervene has been granted.

30. For the purposes of observing that time-limit, the material date is the certified date of dispatch of the written comments or, if there is none, the date of their receipt at the Court's Registry (Rule 38 § 2 of the Rules of Court).

B. Language

31. A third party's written comments must be in one of the Court's official languages, English or French (Rule 44 § 6 of the Rules of Court). Interveners may seek leave to use one of the official languages of the Contracting States (Rule 34 § 4 (a) read in conjunction with Rule 34 § 4 (d)). In that case, they must provide a translation of their written comments into English or French within a time-limit fixed by the President of the Chamber (or of the Grand Chamber) (Rule 34 § 4 (b)(i) read in conjunction with Rule 34 § 4 (d)).

C. Form and content

32. Any invitation or grant of leave to intervene under Article 36 § 2 of the Convention or under Article 3 of Protocol No. 16 is subject to conditions set by the President of the Chamber (or of the Grand Chamber) (Rule 44 §§ 5 and 7 of the Rules of Court).

33. The Court's usual practice is to set the following conditions for the form of written comments by third parties:

(a) they must set forth the name and number of the case to which they relate;

(b) they must bear a title which clearly indicates that they have been made by a third party, and which identifies that third party;

(c) they must not exceed ten pages (the page limit does not apply to any annexes, but these must not amount to a continuation of the comments themselves);

(d) they must be typewritten in black on a white background, in A4 format, and with page margins of not less than 3.5 cm;

(e) their text must be at least 12 pt in the body of the document and 10 pt in the footnotes;

(f) their pages must be numbered consecutively;

(g) they must be divided into numbered paragraphs;

(h) in their text, quotations in excess of fifty words must be indented; and

(i) they must give a reference to every document or piece of evidence mentioned in them and to any annexes.

34. The Court's usual practice is to set the following conditions for the content of such written comments:

(a) The comments of a Contracting State or a non-Contracting State intervening under Article 36 § 2 of the Convention should relate solely to the aspects of the case that are relevant to its interest(s) in it.

(b) The comments of an *amicus curiae* should not touch upon the particular circumstances of the case or upon the admissibility or merits of the application as such, but rather deal with the general issues raised by the case, usually on the basis of the third party's special expertise or knowledge.

(c) The comments of an "interested third party" should relate solely to the factual and legal aspects of the case which relate to its specific interest in it.

35. In cases in which two or more third parties have been granted leave to intervene, the Court may direct them to make joint written comments rather than do so individually.

D. Manner of filing

36. A third party's written comments, as well as all annexes to them, must be filed in three copies sent by post, or in one copy by fax, followed by three copies sent by post. Filing by email is not accepted (paragraphs 3 and 4 of the Practice Direction on Written Pleadings).

E. Consequences of failure to comply with the above conditions

37. If the above conditions have not been complied with, the President of the Chamber (or of the Grand Chamber) may refuse to include the third party's written comments in the case file (Rule 44 § 5 of the Rules of Court), or, if appropriate, may direct the third party to submit fresh written comments which comply with those conditions.

F. Right of reply of the parties (in contentious proceedings) or of the requesting court or tribunal (in proceedings for an advisory opinion)

38. In contentious proceedings, written comments by a third party are sent to the parties to the case, who are entitled, subject to any conditions, including time-limits, fixed by the President of the Chamber (or of the Grand Chamber), to make written observations in reply or, where appropriate, to reply at the hearing (Rule 44 § 6 of the Rules of Court). In practice, the parties are often invited to incorporate the reply in their observations on the admissibility or merits of the case.

39. In proceedings for an advisory opinion, written comments by a third party (including the parties to the domestic proceedings) are sent to the requesting court or tribunal, which may comment on them (Rule 94 § 5 of the Rules of Court).

40. Third parties are not entitled to respond in turn to the observations or comments made in reply to their written comments.

G. Written comments already made at an earlier stage of the proceedings

41. If a third party has intervened in the proceedings before a Chamber, and jurisdiction is then relinquished in favour of the Grand Chamber or the case is referred to it by the panel of the Grand Chamber, the third party's written comments addressed to the Chamber will normally be included in the file put before the Grand Chamber. The Court may, however, ask the third party whether it wishes to submit fresh written comments to the Grand Chamber.

42. By contrast, any written comments by a third party, including a third party granted leave to intervene in the proceedings before the Chamber, are not put before the panel of the Grand Chamber when it decides under Article 43 of the Convention whether to accept a request for referral of the case to the Grand Chamber.

X. Third parties' oral submissions at hearings

43. If a third party is, exceptionally, granted leave to take part in a hearing, such leave is usually subject to the condition that the third party's oral submissions must not last longer than ten minutes. If two or more third parties (in particular, Contracting States) are granted leave to take part in a

hearing, they may be requested to designate one or two speakers to make oral submissions on behalf of all of them jointly. All these conditions are imposed with a view to ensuring respect for the procedural equality of the parties, which must not be upset by the grant of leave to a third party to take part in a hearing.

44. The content of oral submissions by a third party at a hearing is subject to the same conditions as the content of written comments by a third party (see paragraph 34 above).

XI. Miscellaneous points

A. Just satisfaction (in particular, costs and expenses)

45. Third parties cannot be awarded just satisfaction. This follows from the wording of Article 41 of the Convention, according to which just satisfaction can only be afforded to "the injured party", that is, the applicant or persons who have pursued the application on the applicant's behalf. This means, in particular, that third parties must bear their own costs and expenses.

46. The question of costs and expenses incurred by a party to the domestic proceedings invited to intervene as a third party under Article 3, second sentence, of Protocol No. 16 in proceedings for an advisory opinion is a matter reserved for the national courts of the Contracting State from which the request for an advisory opinion emanates, and is to be decided by them in accordance with the law and practice of that Contracting State (Rule 95 § 1 of the Rules of Court).

47. A third party may be ordered to bear the costs incurred for the appearance of a witness, expert or other person called at its request in the course of an investigation carried out by the Court (Rule A5 § 6 of the Annex to the Rules of Court).

B. Legal aid

48. Third parties intervening in contentious proceedings under Articles 33 or 34 of the Convention are not entitled to legal aid from the Court; only applicants are (Rule 105 of the Rules of Court).

49. The same applies to third parties intervening in proceedings for an advisory opinion under Protocol No. 16, with the exception of the parties to the domestic case when they are invited to intervene by the Court. In that case, they may seek legal aid from the Court if they lack sufficient means to meet all or part of the costs entailed by their intervention in the proceedings before it (Rule 95 § 2).

C. Right of third parties to be informed of, and to receive a copy of, the Court's ensuing judgment, decision or advisory opinion

50. All third parties will be informed of the Court's ensuing judgment, decision or advisory opinion, and sent a copy of it (Rule 56 § 2, Rule 77 § 3 and Rule 94 § 10 of the Rules of Court). This applies also to interpretation judgments under Article 46 § 3 of the Convention and to judgments in infringement proceedings under Article 46 § 5 (Rules 99 and 104).