



COLLOQUIUM ORGANISED BY THE SUPREME ADMINISTRATIVE COURT OF FINLAND

IN CO-OPERATION WITH ACA-EUROPE

HELSINKI 25–27 MAY 2025

**DIALOGUE WITH THE EUROPEAN COURT OF HUMAN RIGHTS –
ADVISORY OPINIONS UNDER PROTOCOL NO. 16 TO THE CONVENTION AND
THE IMPACT OF THE COURT'S JUDGMENTS AT THE NATIONAL LEVEL**

Questionnaire

The Finnish presidency of ACA-Europe during 2023-25, in close co-operation with Sweden, has focused on the dialogue between the national supreme administrative jurisdictions and the European Courts, i.e., the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR). During the Finnish presidency, seminars have been organised on a variety of issues like the duty of the national courts to make a reference for a preliminary ruling to the CJEU (Stockholm, October 2023), mechanisms of counteracting conflicting rulings from the domestic courts and the CJEU and the ECtHR (Zagreb, February 2024) and the multilevel protection of fundamental and human rights in European administrative courts (Inari, May 2024).

In the upcoming Colloquium, which will be held in Helsinki 25-27 May 2025, the focus will be on the judicial dialogue between the national supreme administrative courts and the ECtHR. In this questionnaire, as well as in the Colloquium, this dialogue is approached from two different perspectives.

The first part of the questionnaire examines the procedure in which a national court can seek an opinion from the ECtHR in a case pending before it, namely the mechanism of advisory opinions under Protocol No. 16 to the European Convention on Human Rights and Fundamental Freedoms (ECHR). The aim is to find answers to such questions as: Is the mechanism of advisory opinions perceived as a useful tool? What are the experiences so far? Can we draw any lessons already at this stage? Having in mind that all the participating countries have not acceded to the advisory opinion system, the questions will be different for those States that have done this and the ones that have not.

The second part of the questionnaire will focus on the impact of the judgments of the ECtHR at the national level. While in certain fields of law the jurisprudence of the ECtHR has been well recognised and embedded in the legal orders of the Contracting States, in some other fields the case law has been more contested and even criticised. This may be the case, for example, when the ECtHR is faced with new topics and uses evolutive interpretation of the Convention and its Protocols, or when the judgments are closely linked to politically sensitive areas such as national security or issues that traditionally have belonged to the field of political deliberation. In this questionnaire, the impact of the ECtHR case law is approached from a point of view of two such distinct but similarly pressing issues, namely climate change litigation and summary return of aliens at the border.





In section A of the second part of the questionnaire, we will explore the extremely topical issue of climate change litigation. Even though the ECHR does not contain any particular provisions on climate change or environmental matters, the ECtHR has been called upon to develop its case law in those issues as the exercise of certain Convention rights may be undermined by the serious adverse effects of climate change and the existence of harm to the environment.

In section B of the second part of the questionnaire, we will explore another contemporary issue linked to immigration law. As is well known, the ECtHR has a rich jurisprudence in this field where a wide variety of questions have been assessed under different Convention articles. In this questionnaire, the intention is to focus on a very specific and highly debated topic of summary returns of aliens at the border or shortly after entry into the territory (so called push-backs)¹. The attention is specifically on those situations in which persons trying to enter a particular state have been denied entry at the border or in its close proximity, be it a land or sea border, and which have been assessed by the ECtHR especially against the prohibition of the collective expulsion of aliens.

In brief, the second part of the questionnaire aims at exploring the impact the case law of the ECtHR in the above-mentioned specific fields has had at the national level, both in terms of legislation and its interpretation by national courts. By looking at the national framework we are able to get a better understanding of how the rights protected by the Convention operate in the legal and political reality of the Contracting States, as the Convention is – as often repeated by the ECtHR – a living instrument anchored to the present-day conditions. Moreover, as novel issues of interpretation linked to changing and evolving challenges are first encountered at the level of the national courts, having a closer look at the national jurisprudence can serve to predict the questions to be raised before the ECtHR. This, for its part, underlines the two-way nature of the dialogue between European and national courts.

¹ For the definition and principles drawn from the current case law, see [ECHR-KS Key Theme – Summary returns of migrants and/or asylum-seekers \(“push-backs”\) and related case scenarios \(last updated 31/08/2024\)](#).





BACKGROUND INFORMATION

Please state the formal title of your court and the name of your country.

Curia of Hungary

I THE ADVISORY OPINION MECHANISM

In accordance with Protocol No. 16 to the ECHR, the highest national courts or tribunals may request the ECtHR to give an advisory opinion. These requests concern questions of principle relating to the interpretation or application of the rights and freedoms defined in the ECHR or its protocols. The requesting court or tribunal may seek an advisory opinion only in the context of a case pending before it. It must give reasons for its request and must provide the ECtHR with the relevant legal and factual background to the pending case. Protocol No. 16 came into force on 1 August 2018.

1. Has your country ratified Protocol No. 16?

- Yes. Please elaborate (e.g., the ratification year, which courts can make a request).
 No, our country has not ratified Protocol No. 16. Please continue to Question 11.

The following nine questions are addressed to states that have ratified Protocol No. 16:

2. Has your court or any court in your country requested an advisory opinion from the ECtHR? If yes, what was the case about?

- Yes. Please elaborate.
 No.

3. Has your court considered of its own motion in the context of a pending case whether an advisory opinion from the ECtHR could assist in resolving a particular question?

- Yes.
 A request was made.
 No request was made. Please elaborate on the reasons for deciding not to request an advisory opinion.
 No.

4. Has a party to the proceedings asked your court to request an advisory opinion from the ECtHR?



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- Yes. Please elaborate whether the party's request was accepted or rejected and if rejected, did you give reasons for the refusal.
- No.

5. If your court decided to request an advisory opinion, did you give your view on the question(s) posed? If not, for what reasons?

- Yes. Please elaborate.
- No. Please elaborate.
- Not applicable because our court has not requested an advisory opinion.

6. If an advisory opinion was requested and delivered, was it useful when resolving the case?

- Yes. Please elaborate.
- No. Please elaborate.
- Not applicable because our court has not requested an advisory opinion.

7. Was the advisory opinion cited in the decision of your court? Did your court enter into a dialogue with the advisory opinion or did you simply state its findings?

- Yes, the advisory opinion was cited in the decision of our court. Please elaborate.
- No, the advisory opinion was not cited in the decision of our court. Please elaborate.
- Not applicable because our court has not requested an advisory opinion.

8. If an advisory opinion was requested and delivered, did the advisory opinion have any wider impact on the national legal order?

- Yes. Please elaborate.
- No.
- Not applicable because our court has not requested an advisory opinion.





9. Have advisory opinions requested by other courts (in your country or abroad) had an impact on the national legal order?

- Yes. Please elaborate.
 No.

10. The ECtHR is under a duty to give reasons for refusing a request for an advisory opinion. Has such reasoning been useful for your court when deciding whether to request an advisory opinion or when deciding how to formulate it?

- Yes. Please elaborate.
 No.

The following five questions are addressed to states that have not ratified Protocol No. 16:

11. Is it known whether ratification is forthcoming?

- Yes. Please elaborate.
 No, we do not know whether ratification is forthcoming.

12. If it is known that ratification is not forthcoming, do you know the reason(s) for this?

- Yes. Please elaborate.
 No, we do not know the reasons for this.
 Not applicable in the light of the answer to Question 11.

13. After the entry into force of Protocol No. 16 in 2018, has your court dealt with a case in which it might have been useful to be able to request an advisory opinion? If so, what was the nature of the question(s)?

- Yes. Please elaborate.
 No.

14. Does your court make use of advisory opinions requested by courts abroad as sources of case law?

- Yes. Please elaborate.
 No.





15. Have advisory opinions requested by courts abroad had an impact on your national legal order?

- Yes. Please elaborate.
 No.

II THE IMPACT OF THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS ON THE NATIONAL LEVEL

A. CLIMATE CHANGE LITIGATION²

*The intersection between climate change and human rights law can be regarded as an important theme for future climate litigation. On 9 April 2024, the Grand Chamber of the ECtHR issued three separate rulings on cases relating to climate change. In the case of [Verein KlimaSeniorinnen Schweiz and Others v. Switzerland \[GC\], 2024](#), the ECtHR found violations of Article 8 and Article 6.1 of the ECHR. Nonetheless, two other cases – *Duarte Agostinho and Others v. Portugal* and *32 Others and Carême v. France* – were declared inadmissible. These cases illustrate the challenging issues for national courts in relation to climate change, e.g. with regard to holding governments accountable for inadequate national climate policies through the perspective of human rights, admissibility criteria, interpretation of locus standi and national courts' competence to scrutinize political decision-makers' decisions and inaction.*

16. Are there specific rules concerning standing of individuals in the climate change litigation context before your court?

- Yes. Please elaborate.
 No.

17. Are there specific rules concerning standing of associations in the climate change litigation context before your court?

- Yes. Please elaborate.
 No.

Hungary promulgated the Climate Protection Act in 2020 (Act XLIV of 2020).

² The phrase “climate change litigation” usually refers to cases that raise material issues of law or fact relating to climate change mitigation, adaptation or the science of climate change. Such cases are brought before a range of administrative, judicial and other adjudicatory bodies. For more details, see <https://climate.law.columbia.edu/content/climate-change-litigation> and <https://www.unep.org/resources/report/global-climate-litigation-report-2023-status-review>.





Hungarian law treats climate change litigation as part of the definition of environmental litigation, in the same way as any other litigation that concern the environment.

The Environmental Protection Act (Act LIII of 1995) contains provisions on environmental associations that differ from the general litigation rules, in accordance with the Aarhus Convention.

Under Section 99 (1) of the Environmental Protection Act, environmental associations have the status of clients in environmental administrative proceedings in the territory in which they operate.

Section 17 (d) of Act I of 2017 on the Code of Administrative Procedure states that, in matters specified by a law or government decree, a civil organization shall be entitled to initiate administrative proceedings if its registered activity is affected by the administrative activity, a civil organization that has been carrying out its registered activity for at least one year in the geographical area affected by the administrative activity in order to protect a fundamental right or to promote a public interest.

Consequently, with regard to administrative proceedings, those environmental associations which have been operating for at least one year in the area covered by the case may be plaintiffs in proceedings pending before the courts.

The Environmental Protection Act also expressly states that, in the event of environmental endangerment, environmental pollution or damage to the environment, the environmental organization is entitled to take action to protect the environment and to request the state organization or local government to take appropriate measures within its competence or to bring legal proceedings against the user of the environment.

18. Have there been any climate related cases before your court during recent years in which Article 8 (right to respect for private and family life) of the ECHR has played a role? Please elaborate and/or provide examples.

- Yes.
- Article 8 has been only a part of the argumentation.
- Article 8 has formed an essential part of the court's reasoning.
- No.

19. Have there been any climate related cases before your court during recent years in which Article 6.1 (right to a fair trial/access to court) of the ECHR has played a role? Please elaborate and/or provide examples.

- Yes.
- No.

In Case No. Kfv.IV.37.700/2020/5, the Curia explained that the right to participate in environmental matters and the right to justice are not absolute and unlimited, and that, in environmental administrative proceedings, the legislation grants the status of a client to organisations operating in the affected area.

20. Have there been climate related cases before your court during recent years in which there has been a link to the rights of future generations? Please elaborate and/or provide examples.





- Yes.
 No.

According to Article P (1) of the Fundamental Law of Hungary, natural resources, particularly arable land, forests and water resources, as well as biological diversity, in particular native plant and animal species and cultural values shall comprise the nation's common heritage; responsibility to protect and preserve them for future generations lies with the State and every individual.

The Curia stated in as many as two cases that the courts, as state organizations, have a duty to facilitate the protection of the interests of future generations under Article P (1) of the Fundamental Law, inter alia by informing, ex officio, the Commissioner for Fundamental Rights of the possibility of joining the action in proceedings that directly affect the interests of future generations in lawsuits over the state of the environment (Kfv.VI.38.029/2021/7, Kfv.III.37.158/2024/7).

Both cases concerned the issuance of an operating license (sand and gravel quarry and waste recovery activity), and the participation of the Commissioner for Fundamental Rights was relevant to the case from a procedural point of view in order to protect the interests of future generations.

21. Have there been any climate or other environmentally related cases before your court during recent years in which your court's competence to scrutinize political decision-makers' decision or inaction has been dealt with?

No, there have not.

22. Have there been cases before your court during recent years in which the court has examined whether the competent national authorities, be it at legislative, executive or judicial level, have met relevant requirements pursuant to the domestic climate framework?

No, there have not.

23. Has the *Klimaseniorinnen Schweiz v. Switzerland* case had an impact in your country? For instance, have new cases been brought to your court after that case? Please elaborate.

No, we have not spotted such an impact.

24. Can you identify any major differences between the legal questions raised by climate change, on one hand, and environmental matters, on the other hand, addressed so far in your court? Please elaborate and/or provide examples.

At the moment, there is not a sufficient amount of case-law on climate change to be able to answer this question.

B. SUMMARY RETURNS OF ALIENS AT THE BORDER OR SHORTLY AFTER ENTRY INTO THE TERRITORY ("PUSH-BACKS")

In this questionnaire, the focus is particularly on the cases that have been assessed by the ECtHR primarily under Article 4 of Protocol No. 4 to the ECHR. Consequently, the focal question has been whether there has





been a violation of the prohibition of the collective expulsion of aliens. The ECtHR cases in point are, in particular, *N.D. and N.T. v. Spain* [GC], 2020, and *Shahzad v. Hungary*, 2021. In addition, the existence of a sufficient remedy, in particular whether individuals were afforded an effective possibility of submitting arguments against their removal, has been assessed under Article 13 in conjunction with Article 4 of Protocol No. 4 for example in *Khlaifia and Others v. Italy* [GC], 2016. In *Hirsi Jamaa and Others v. Italy* [GC], 2012, the extraterritorial scope of Article 4 of Protocol No. 4 was confirmed with respect to State's action on the high seas aiming at preventing migrants from reaching the borders of the State or even to push them back to another State. Furthermore, there are several cases pending at the ECtHR, and three cases concerning alleged summary returns of individuals to Belarus from neighbouring states have been grouped to be heard together on 12 February 2025 by the Grand Chamber.

25. Is there specific national legislation applicable to returns of aliens at the border within the meaning of the ECtHR case law above? In particular, are there any specific national provisions intended to cover situations where entry is attempted by aliens *en masse* and/or where migratory flows are deemed to result from actions of a third country with the aim of destabilising the receiving state (“instrumentalised migration”)³? Please briefly explain the main points of the national provisions.

Hungary, as a member of the European Union, applies its national legislation in accordance with the provisions of the so-called Return Directive (Directive 2008/115/EC) also with regard to the return of aliens at the border.

Section 5 (1a) of Act LXXXIX of 2007 on State Borders (hereinafter referred to as the “State Borders Act”) regulates the escorting of foreign nationals across the border, foreign nationals who are staying illegally in the territory of Hungary, by referring it to the discretionary powers of the police and contract border hunters; this is because the police and contract border hunters who perform law enforcement tasks may stop those aliens who are staying illegally in the territory of Hungary within a radius of 8 km from the border or the border sign and may escort them through the nearest gate of a facility described in Section 1 of the State Borders Act, unless the commission of a criminal offence is suspected.

In the case of instrumentalized migration, there is no specific legal provision. However, in the case of mass immigration, Act LXXX of 2007 on the Right of Asylum (hereinafter referred to as the “Asylum Act”) should be highlighted; Section 19 of this Act stipulates that Hungary shall provide temporary protection to those who belong to a group of asylum seekers fleeing to the territory of Hungary *en masse* whom the Council of the European Union recognized as persons eligible for temporary protection under Council Directive 2001/55/EC or to those whom the Government recognized as persons eligible for temporary protection because they had to flee their country due to an armed conflict, civil war or ethnic clashes, or due to general, systematic and frequent violation of human rights, especially torture, cruel, inhuman and degrading treatment.

³ The term “instrumentalised migration” is used, *inter alia*, in Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14 May 2024 addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147.





In the event of the aforementioned mass immigration, the Government may declare a state of emergency for up to six months, which may be extended if conditions specified in Section 80/A (1) of the Asylum Act exist.

If a state of emergency has been ordered due to mass immigration, the police and border hunters may apprehend, in the entire territory of Hungary, those aliens who are staying illegally in the territory of Hungary and escort them through the nearest gate of a facility that serves to protect the border [Section 5 (1b) of Act LXXXIX of 2007 on the State Border (hereinafter referred to as the “State Border Act”)]. The Curia’s relevant practice is described in the second part of the answer to question 26.

26. Does your court have jurisdiction in the field of immigration law? If so, has your court dealt with cases involving alleged summary returns of aliens? In particular, have there been cases where the notion of collective expulsion as defined in Article 4 of Protocol No. 4 has been invoked and/or applied? If yes, please briefly explain the main points of the national jurisprudence.

The Curia has narrower competences in the area of immigration law. Hungarian law distinguishes between cases relating to immigration and cases relating to asylum - the Curia has no jurisdiction to review decisions on asylum matters.

The Curia’s competence does not extend to expulsion cases either, as there is no opportunity for further procedural remedy – that is, for further appeal – or extraordinary legal remedy (cassation procedure) before the Curia against a court decision in an administrative lawsuit that was launched to challenge an expulsion order.

The Curia has proceeded in several cases regarding the escort-across-the-border measure, stating that, under Section 5 (1b) of the State Border Act, the escort-across-the-border is classified as an individual decision, and as such, may become the subject of an administrative legal dispute (Decisions Nos. Kfv.III.37.126/2023/8, Kfv.II.37.290/2023/4, and Kfv.I.37.37.006/2024/10).

The Curia also stated that, under the above provision of the State Border Act, the Aliens Policing Authority does not have the power to order the escort-across-the-border and that the law places it under the jurisdiction of the police or border hunters who perform law enforcement duties, and therefore, the Aliens Policing Authority’s decision that orders the escort-across-the-border and does not take the form of a formal decision, shall be null and void (Decision No Kfv.I.37.006/2024/10).

27. Has the case law of the ECtHR in the field of summary returns of aliens and specifically the Court’s interpretation of the scope of Article 4 of Protocol No. 4 had an impact on the content of the national legislation and/or on its interpretation by the national courts? If yes, please briefly explain the main developments.

The Curia’s case-law demonstrates that the principle of effective legal remedy enshrined in Hungary’s Fundamental Law is being applied, according to which everyone has the right to seek legal remedy against judicial, official or other administrative decisions that violate their rights or legitimate interests. This principle (like the ECtHR’s case-law on Article 4 of Protocol No. 4 in relation to Article 13 of the ECHR) is reflected in the Curia’s decisions cited in the answer to question 26, according to which an administrative





action may be brought against a decision that orders the escort-across-the-border and does not take formal form.

28. Have any cases been brought against your state in the ECtHR alleging that there has been a violation of Article 4 of Protocol No. 4 (alone or in conjunction with Article 13 of the ECHR) in the field of immigration law? If yes, please briefly explain the main features of these cases.

In recent years, several cases have been launched against Hungary before the ECtHR in which the applicant alleged a violation of Article 4 of Protocol No. 4.

The factual and legal bases of these cases are similar.

In the case of *Shahzad v. Hungary*,¹ the applicant crossed the border illegally with a group of people, and a few hours later, he and the other members of the group were apprehended by the Hungarian police and were escorted to the other side of the border fence between Hungary and Serbia.

The ECtHR found that the “apprehension and escort” measure constituted an expulsion according to Article 4 of Protocol No. 4, and that the applicant's expulsion was “collective” and lacked individual criteria, which led to a violation of his rights under Article 4 of Protocol No. 4. Furthermore, it established that the applicant had not had an adequate remedy at his disposal. Due to this, the ECtHR established a violation of Article 13 of the ECHR, too.

In the case of *M.D. and others v. Hungary*, the ECtHR's decision is not final yet.

The applicants in the case are the members of an Afghan family who alleged a violation of their rights enshrined in the ECHR and who were escorted from the transit zone to Serbia overnight without a formal decision after their asylum application was rejected.

The ECtHR found a breach of Article 4 of Protocol No. 4 on the basis of the same test as in the *Shahzad* case, since it could not be established that the applicants' case had been examined one by one by the authorities.

In the case of *S.S. and others v. Hungary*, the applicants entered Hungary via an international airport and used, during border checks, fake diplomatic travel documents that were discovered by the police, which led to their arrest.

The applicants applied for asylum and the group was escorted across the border toward Serbia at night.

The ECtHR found that the applicants had been escorted to Serbia without having been given a real opportunity to present arguments against their expulsion and that their expulsion was therefore collective.

