



**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)<sup>1</sup>. 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.

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<sup>1</sup> 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.

**The Department of Administrative Cases of the Supreme Court of the Republic of Latvia, the Republic of Latvia.**

## 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?

- 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.





There has never been such a case thus far.

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

- Yes. Please elaborate.  
 No.

As far as the Court is informed, there has never been such a case thus far.

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

### A. CLIMATE CHANGE LITIGATION<sup>2</sup>

*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.

There are no specific rules concerning standing of individuals in the climate change litigation, however, according to the Section 9 Paragraph 3 of the [Environmental Protection Law](#), the public is entitled to contest and appeal the administrative act or actual action of a State institution or local government if it does not meet the requirements of the laws and regulations regarding the environment, creates threats of damage or environmental damage.

The law generally provides that a person may bring an action before the courts if his or her subjective rights have been infringed or if his or her rights have not been directly infringed but the administrative act or the actual conduct constitutes a threat of harm or damage to the environment (*actio popularis*). The mentioned provision would also be applicable in a case regarding climate change.

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<sup>2</sup> 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>.





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

- Yes. Please elaborate.  
 No.

The same answer as for the question No. 16 applies

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.

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.

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?

There has been no case related to this issue so far.

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?

There has been no case related to this issue so far.





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, the Court has not adjudicated cases related to the *Klimaseniorinnen Schweiz v. Switzerland* case.

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.

The Court has not yet ruled on cases directly related to climate change, therefore the Court has not yet distinguished between the legal issues raised by climate change on the one hand, and environmental issues on the other.

## **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”)<sup>3</sup>? Please briefly explain the main points of the national provisions.

On 10 August 2021, the Cabinet of Ministers issued [the Order No. 518 "Regarding the Declaration of Emergency Situation"](#). Paragraph 1 of the Order stipulated that, taking into consideration the huge increase in the number of cases of illegal crossing of the state border of the Republic of Latvia and the Republic of Belarus and also observing the number of cases of illegal crossing of the state border of the Republic of Lithuania and the Republic of Belarus, the emergency situation shall be declared from 11 August 2021 to 10

<sup>3</sup> 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.





February 2022 in certain border administrative territories. On 21 October 2021, the Cabinet of Ministers extended the state of emergency until 10 February 2022, and on 1 February 2022 - until 10 May 2022. Paragraph 6 of the Order stipulated that it shall be determined that the application of persons regarding granting the status of a refugee or alternative status shall not be accepted by units of the State Border Guard and other institutions located in the territory where the emergency situation has been declared. In addition, in accordance with paragraphs 3, 4 and 5 of the Order, the State Border Guard, the National Armed Forces and the State Police were granted the right to: 1) to use the means and procedures at their disposal in order to prevent persons from the illegal crossing of the state border of the Republic of Latvia and the Republic of Belarus; 2) to order a person to immediately stop the attempt to illegally cross the state border of the Republic of Latvia and the Republic of Belarus; 3) to order a person to immediately return to the country from which the person crossed the border; 4) perform the required measures to ascertain that the relevant person complies with such an order; 5) upon establishing that the person does not comply with the order, in a state of extreme necessity, to apply physical force and special means in order to ensure the execution thereof.

During the mentioned period, while the Order was in force, several applications were brought before the District Administrative Court for the annulment of Paragraph 6 of the Order with regard to applicants and imposing an obligation on the State Border Guard to accept and register asylum applications. The Court, including the reference to the judgement *N.D. and N.T. v. Spain*, concluded that Paragraph 6 of the Order, by restricting the applicants' right to apply for asylum, was disproportionate and also violated the principle of non-refoulement and non-collective expulsion. Taking into account the judgements of the District Administrative Court, on 6 April 2022 the Cabinet of Ministers amended Paragraph 6 of [the Order](#) (amendments available in Latvian only), stating that the relevant provision does not apply to border crossing points located in the territories covered by Paragraph 1 of the Order, as well as to the State Border Guard Accommodation Centre for Detained Aliens.

After the expiry of the Order, on 22 June 2023 [the State Border Guard Law](#) was, inter alia, supplemented by adding Subparagraph 5<sup>1</sup> to Paragraph 1 of Section 15 and Subparagraph 1<sup>1</sup> to Paragraph 1 of Section 16. The Subparagraph 5<sup>1</sup> of Paragraph 1 of Section 15 states that a border guard, when performing the service duties, has the right to prevent a person from entering the country at a place and time which is not intended for such purpose (where necessary by providing the person with primary provisions according to possibilities) unless there are objective circumstances that require immediate entry. The Subparagraph 1<sup>1</sup> of Paragraph 1 of Section 16 states that when performing the service duties, a border guard has the right to use physical force, special fighting techniques, and special means, and also to use service dogs, in order to prevent a person from illegally entering the country at a place and time which is not intended for such purpose.

In addition, on 12 March 2024 the Cabinet of Ministers issued [Order No 184 of "On Announcing a Reinforced Operating Regime for the Border Security System"](#) (available in Latvian only). The Order declares a reinforced operating regime for the border surveillance system from 13 March 2024 to 31 December 2024 in certain border administrative territories. The Order provides for the support of the National Armed Forces and the State Police to the State Border Guard in order to prevent illegal border crossings. It also inter alia includes the possibility for law enforcement officers to enter residential and non-residential premises to apprehend or find people who have crossed the border illegally.





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.

In most cases, the Department of Administrative Cases of the Supreme Court of the Republic of Latvia does not have a jurisdiction in the field of Immigration Law. Questions regarding the immigration are brought before the District Administrative Court. However, there are few exceptions, for example, according to Paragraphs 1 and 2 of Section 50<sup>1</sup> of the [Immigration Law](#), a decision of a higher authority on the issue of the voluntary return decision or the removal order, and the decisions included therein on the inclusion in the list of foreigners banned from entering the Republic of Latvia and prohibition to enter the Schengen Area may be appealed to the District Administrative Court and a judgment of the District Administrative Court may be appealed by submitting a cassation complaint to the Department of Administrative Cases of the Supreme Court.

As mentioned before, the District Administrative Court has adjudicated cases concerning the Order No. 518 "Regarding the Declaration of Emergency Situation" in which the Article 4 of Protocol No. 4 was applied.

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.

Yes, the case law of the European Court of Human Rights has had an impact both on the national legislation and the interpretation of it by the national courts. Please see this answer in conjunction with the answer to question No. 25.

The annotation of the before mentioned Order No. 518 "Regarding the Declaration of Emergency Situation" contains references to judgement *N.D. and N.T. v. Spain*. However, the District Administrative Court, also having regard to the mentioned judgement, found that it was on the basis of Paragraph 6 of the Order that a genuine and effectively available possibility to lawfully enter Latvia for the purpose of seeking international protection in the territory where the state of emergency had been declared had been denied to the applicants. The provision in Paragraph 6 of the Order excluded a genuine and effective possibility to apply for refugee or subsidiary status at a border crossing point or in a border transit zone before entering the Republic of Latvia.

Reference was also made to the judgement *N.D. and N.T. v. Spain*, as well as to the judgement *A.A. and Others v. North Macedonia, 2022*, judgement *Shahzad v. Hungary, 2021*, and other judgements of the European Court of Human Rights in the annotation of the amendments of the State Border Guard Law.

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.

On 5 May 2022, the European Court of Human Rights delivered its decision in the case of [M.A. and Others v Latvia](#), declaring the complaints inadmissible on the merits and terminating the proceedings.

On 23 May 2018, a family of seven Russian citizens (father, mother and their five minor children) lodged complaints with the Court alleging violations of Article 3 (prohibition of torture, inhuman or degrading





treatment) and Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens) of the Convention, both individually and in conjunction with Article 13 (right to an effective remedy) of the Convention in the Republic of Latvia. The applicants submitted that on 24 November 2017 they and 22 other persons arrived at the border checkpoint on the border between the Republic of Latvia and the Republic of Belarus in order to seek asylum in Latvia. However, their asylum applications, expressing concerns about persecution in their country of origin and the poor living conditions in Belarus, from where they had come, were rejected without consideration, with decisions to refuse them entry to Latvia being taken because they did not have documents valid for entry. The applicants alleged that the State Border Guard officials, by taking decisions to refuse entry to Latvia and without assessing their individual situation, subjected the first applicant to a chain of refoulement from Latvia to Belarus and on to Russia, where he was subsequently subjected to torture, while the other members of his family were left in a situation of uncertainty, stress and fear. The applicants also alleged that they had been subjected to collective expulsion and had no effective remedy available to them in this respect.

The Court concluded that the applicants had not submitted sufficient evidence to indicate that they had indeed sought asylum in Latvia on 24 November 2017. Taking these considerations into account, the Court declared the applicants' complaints concerning alleged violations of Articles 3 and 13 of the Convention in Latvia inadmissible on the merits. In assessing the applicants' complaints alleging violations of Articles 4 and 13 of Protocol No 4 to the Convention, the Court, referring to its case-law, stated that similar decisions taken in respect of several foreign nationals could not in themselves lead to the conclusion that there had been collective expulsion where each person had had the opportunity to present his or her case against expulsion to the competent authorities. The Court concluded that the applicants had had sufficient opportunity to individually present their arguments against expulsion to the competent authorities.

On 20 August 2021 an application in the case [H.M.M. and Others v. Latvia](#) (application No. 42165/21) was lodged with the European Court of Human Rights. The applicants are twenty-six Iraqi nationals of Kurdish origin. According to the applicants, on different dates between 10 August 2021 and March 2022, they crossed the Latvian-Belarusian border on foot outside official border crossing points. They submit that their requests for asylum were not registered and reviewed by the Latvian authorities, they suffered from regular pushbacks to Belarus and were stranded near the border in inadequate conditions. On 20 August 2021 11 of the applicants were allowed to enter Latvia, while 14 others were allowed into the country on various dates from 26 October 2021 to 23 March 2022. They were all detained and placed in an accommodation centre for detained foreigners and held there until they were removed to Iraq on various dates from November 2021 to April 2022. The applicants also allege that before being allowed to enter Latvia, they were frequently pushed back to Belarus. Certain applicants allege that before being pushed back to Belarus they were sometimes allowed to stay in a tent on the Latvian territory for short periods of time.

Relying on Article 3 and Article 4 of Protocol No. 4 the applicants complain that they were removed to Belarus without any assessment of their asylum claims. They also complain under Article 3 that in August 2021 they were stranded near the Latvian-Belarusian border in the forest in inadequate conditions. Those who were held in a tent in the Latvian territory for various short periods of time complain that they were held there in inadequate conditions. Relying on Article 13 they complain that they did not have an effective remedy regarding the above complaints. Furthermore, some of the applicants (adults and children) complain under Article 5 §§ 1 and 4 about their deprivation of liberty in the accommodation centre and that they could not challenge its lawfulness or that their appeal was deprived of all substance.

On 25 August 2021 the European Court of Human Rights decided to indicate interim measures in the case.





On 2 July 2024 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber. The Court will be holding a hearing in this case on 12 February 2025.

