



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.

Supremo Tribunal Administrativo – Supreme Administrative Court of Portugal

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.

In Portugal, there were (and perhaps still are) doubts in the jurisprudence of the Supreme Administrative Court on the issue of compensation for delays in justice, and on this point an advisory opinion would be of interest, clarifying essentially the following points:

i) how to count the time that exceeds the reasonable time (which has been set at 3 years for most cases and 4 to 6 years for the entire duration of the case); should the time be considered in absolute terms (the whole duration of the case) or should only the sum of the periods during which the court, for reasons not





attributable to the parties, fails to comply with the maximum procedural time limits set by law for the performance of acts be counted?

(ii) How should the delay caused by the conduct of the other party be taken into account?

iii) How should compensation be calculated, by means of an amount per year of delay or, if there is a delay, by means of an amount for each year, considering the entire period during which the case was pending?

iv) Can the court order the State to pay compensation ex officio or must it be expressly requested by the party (e.g. Case 0777/15.9BEPRT, 14/09/2023)?

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 concerning 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?

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>.





- 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.

In Portugal, there are no specific procedural means for the protection of the environment, and the general rules and the main and precautionary procedural means of administrative litigation apply. However, it should be noted that the mechanism specifically designed to protect the environment is the “popular action” (a sort of class action). Such an action can be brought under both the right to a healthy and ecologically balanced living environment, which is explicitly recognised in the Constitution (Article 66), and the Basic Law on Environmental Policy (Law no. 19/2014 of 14 April), which guarantees everyone full and effective protection of their rights and interests in environmental matters. Article 52(3) of the Constitution of the Portuguese Republic recognises “popular action” as a form of citizen's legal standing (individually or through associations), which may be exercised before any court, for the defense of environmental interests, without the need to invoke a personal and direct interest or to demonstrate any link with the relationship in dispute. Law no. 83/95 of 31 May 1995 regulates the “popular action”. “Popular action” is not a legal remedy, but a legal standing that allows to bring any action (including injunctions) before any court that is deemed necessary to defend general interests, such as the preservation of the environment. Popular action may be brought by any citizen exercising his/her civil and political rights (first part of Article 2(1) of Law no. 83/95 of 31 May), without the need to invoke a qualified interest. It can also be brought by associations and foundations defending the interests referred to in the article [general interests], whether they have a direct interest in the claim' (second part of Article 2(1) of Law no. 83/95), provided, of course, that the intervention is covered by their respective statutes. These associations are exempt from the costs of proceedings [Article 4(1)(b), (f), and (g) of the Regulation on the costs of proceedings]. Finally, local authorities can also bring an action under this legal standing "to the interests for which they are responsible in the territory of their respective districts" (Article 2(2) of Law no. 83/95 of 31 May). Article 9(2) of the Code of Administrative Procedure (CPTA) extends this legal standing to the Public Prosecutor's Office in the context of administrative proceedings. According to Article 20 of the Law on Popular Action, this legal standing does not require any advance on costs.

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?

No.

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 judgement has been identified by the Supreme Administrative Court on the subject.

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.

The Supreme Administrative Court has not yet handed down a judgement referring to *Klimaseniorinnen Schweiz v. Switzerland*.
However, in the Supreme Court of Justice case law, there's a reference to that case in a 2024 judgment.
In 2023, three environmental associations brought a popular action against the Portuguese state, with a formulation of the claim that was considered by the judgment of 19/09/2024, case no. 28650/23.OT8LSB.S1, to be identical to that accepted in climate actions brought in other states, specifically referring to the case of *VEREIN KLIMASENIORINNEN SCHWEIZ AND OTHERS ET AUTRES v. SUISSE* (53600/20).

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 Supreme Administrative Court has not yet addressed the legal issues raised by climate change. The Basic Law on Climate (Law no. 98/2021, of 31 December) is linked to the Basic Law on Environmental Policy (Law no. 19/2014, of 14 April). Like the Basic Environmental Policy Law, the Basic Climate Law provides the right to full and effective protection of legally protected rights and interests in climate matters, including the right to take legal action in defence of subjective rights and legally protected interests and to exercise the right of public and popular action; the right to promote the prevention, cessation, and repair of risks to the climate balance; and the right to demand the immediate cessation of activities that threaten or damage the climate balance. However, the Basic Climate Law directly recognises citizens as subjects of climate action, with the right to participate in the processes of drafting and reviewing climate policy instruments and to have easy access to clear and systematic information, namely through the Climate Action Portal (digital tool). About liability and the sanctioning framework, this law establishes that harmful actions and omissions that accelerate or contribute to climate change give rise to liability, with the definition of a system of administrative offenses that acts as a discouraging and sanctioning instrument for actions and omissions that harm the climate, practices that violate legal and regulatory provisions on the climate, and the improper or abusive use of natural resources. It also recognises new concepts such as climate security (linked to energy security, health security and food and nutrition security), environmental health (linked to public health), climate refugees and climate justice (which is now an objective of climate policy and corresponds to the need to ensure the protection of communities most vulnerable to the climate crisis, respect for human rights, equality and collective rights to common goods).

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.

Currently, there is no specific national legislation applicable to the attempted mass entry of aliens into Portugal and/or to migratory flows considered to be the result of actions by a third country to destabilise the host state.

However, to promote safe, orderly and regular migratory flows, the Agency for Integration, Migration and Asylum, I.P. (AIMA, I.P.) was created in Portugal in 2023. (AIMA, I.P.) was established in Portugal with administrative functions in the field of migration and asylum. The aim behind this creation was to ensure that the implementation of national and European public policies on migration and asylum, in particular those relating to entry and residence and the reception and integration of foreign citizens on national territory, would take place under the umbrella of a single administrative body, pursuing a global approach to the management of migration and asylum, making the system more efficient and more resilient to future migratory pressures and humanitarian crises.

In June 2024, the Portuguese government adopted the [Migration Action Plan](#), which is based on the principle that Portugal needs and wants to welcome more immigrants - for demographic, social and economic reasons, but immigration that must be regulated and monitored, accompanied by humane integration.

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 Supreme Administrative Court has jurisdiction over matters relating to immigration law. Under Law no. 23/2007 of July 4 (entry, residence, departure and expulsion of aliens from the national territory), the following decisions may be appealed, with purely devolutionary effect, before the administrative courts (of which the Supreme Administrative Court is the highest hierarchical body)

- Refusal of entry (Article 39);
- Cancellation of the residence permit (Article 85 (7));
- Rejection of the application for family reunification (Article 106 (7));
- Cancellation of the family member's permit if the marriage, partnership or adoption had the sole purpose of allowing the person concerned to enter or reside in the country (Article 108(7));
- Rejection of an application for long-term resident status or a decision to lose it (Article 132(3));
- Enforced expulsion of an alien who illegally enters or remains on the national territory, issued by the Board of AIMA, I.P. (Article 150(1));
- Expulsion enforcement (Article 171(3)).

However, no case in which the collective expulsion of foreigners, as defined in article 4 of Protocol 4, has been invoked and/or applied and brought before the Supreme Administrative Court.

Most of the cases decided by this Supreme Court in the immigration law field bring challenges to the decisions by the Portuguese administration to reject an asylum application and, consequently, the return of the applicant to the Member State in which he or she first applied for asylum, on the grounds that there is a serious risk that the applicant will be subjected to degrading or inhuman treatment within the meaning of

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.





article 3 of the European Convention on Human Rights and article 4 of the Charter of Fundamental Rights of the European Union.

These actions concern the possible failure of the Portuguese State to provide information to ascertain the reasons why the applicant does not want to or cannot return to the Member State in which he first applied for asylum, in particular by requesting information on the asylum procedure to which he has been subjected (see Article 34(1), (2), (3) and (4) of the Dublin Regulation); by requesting more details about his life during his stay in that State and the assistance he has received.

In the Supreme's view, only when this information has been provided the administration should examine the possible violation of these articles if the applicant's transfer to the responsible state is enforced.

See, for example, the STA judgment of 20.10.2002, case no. 1988/20.0BELSB.

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 national legislation does not directly refer to ECHR case law on the return of foreigners. However, Article 135 of Law 23/2007 sets limits on the forcible removal or expulsion of foreign nationals from the country, clarifying that the most favourable regime resulting from an international law or convention to which the Portuguese State is bound applies to refugees.

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.

As far as we have been able to ascertain, no case has yet been brought before the ECtHR against Portugal for violation of Article 4 of Protocol 4.

