



**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.

Supreme Administrative Court of Sweden (*Högsta förvaltningsdomstolen*)

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.

Sweden has not yet (26-11-24) ratified the protocol, but the Parliament has on 6th of November 2024 adopted a law that makes it possible for the Supreme Court, the Supreme Administrative Court, the Labour Court, the Migration Court of Appeal and the Real estate and environmental Court of Appeal to refer questions at a later date as decided by the government. Ratification may therefore be imminent.

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.

See above at 1.

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.

It is possibly that it in some cases could have been useful to request an advisory opinion. In one quite recent case the court dealt with the issue of whether national legislation on compulsory care of the young was in accordance the article 5 of the Convention, as Swedish law made possible to forcibly care for a young person up to the age of 20, while the convention states that only “minors” can be subject to the care in question (HFD 2022 ref. 11). See also next question.





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

- Yes. Please elaborate.
 No.

In a case that concerned the question of discrimination of a same-sex couple (HFD 2020 ref. 13) the Supreme Administrative Court made use of the advisory opinion in *request no. P16-2018-001 (10 April 2019)* concerning similar issues in France.

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

- Yes. Please elaborate.
 No.

In interpreting the convention – which is Swedish law – the advisory opinion had some impact on the reasoning of the court.

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.

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>.





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

- Yes. Please elaborate.
 No.

Concerning the special procedure when a governmental decision is challenged before the Supreme Administrative court (legality review, "rättsprövning") the rules on standing are modeled on the Århus-convention in order to make it possible for environmental associations to appear before the court.

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.

In the context of legality review of governmental decisions, especially concerning larger infra-structural projects such as building of new roads (motorways), affected persons have argued on the basis of Article 8 of the ECHR, but only as one of many arguments for considering the governments decision to be illegal. So far, no such argument has been successful.

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.

As the applicable legislation in legality review (see above) refers directly to article 6.1 in order for an individual to have standing to challenge a governmental decision, that article is relevant in all such cases.

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?

As explained above, the Supreme Administrative Courts contact with climate/environmental issues is almost exclusively through the legality review of governmental decisions, so all such cases deal with political decision-makers actions.

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?

Not really. In HFD 2021 not 18 the court did state that the national climate-law did not entail individual rights that could be decided upon by a court of law.

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.

Not in the Supreme Administrative Court. Climate issues are usually dealt with by the general courts and the Supreme Court currently deals with a case – Aurora – concerning issues closely related to *Klimaseniorinnen*.

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 administrative courts in Sweden deals only indirectly with climate and environmental law issues, such cases are dealt with in the general courts and in special real estate and environmental courts (that are part of the general court system). It is therefore difficult to answer the question, as these issues seldom or never comes up as independent legal questions.

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.

No.

However, since a large inflow of refugees in 2015 Swedish law was amended as to allow for more restrictive policy concerning migrants and refugees. A temporary law was adopted by parliament in 2016 in which certain groups of refugees were not to be allowed rights of residence in Sweden, contrary to what was the situation before. The purpose was to give these groups reason to apply for asylum in other countries than Sweden. The law expired in 2021, after an extension in 2019. At the same time, the ordinary legislation about migrants was changed so that all rights of residence was to be temporary instead of permanent.

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.

No.

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.

See 26.

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.

To our knowledge, no cases have been brought against Sweden in the ECtHR alleging a violation of Article 4 of Protocol No. 4.

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.





Korkein hallinto-oikeus
Högsta förvaltningsdomstolen

Finnish Presidency of ACA-Europe 2023-2025
Présidence finlandaise de l'ACA-Europe 2023-2025



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