

Procedure for Third Party Interventions before the European Court of Human Rights

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Procedure for Third Party Interventions before the European Court of Human Rights on behalf of the European Network of National Human Rights Institutions (ENNHRI)

1. The Paris Principles underline the role of NHRIs in cooperating with international, regional and national institution that are competent in the areas of the protection and promotion of human rights. Many NHRIs have the ability to appear as Third Parties in human rights cases before national, regional and/or international courts and tribunals in cases concerning constitutional and international human rights provisions. In this capacity NHRIs and ENNHRI may appear before the European Court of Human Rights ("ECtHR") as neutral parties in selected cases, providing expertise on human rights matters.
2. Article 36 § 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") allows for Third Party Intervention, by way of written, and in exceptional circumstances, oral submissions. Article 36 § 2 provides that the President of the Court,
...may, in the interest of the proper administration for justice, invite ... any person concerned who is not the applicant to submit written comments or take part in the hearing.
3. Rule 44 § 3 (b) of the Court Rules provides that the request for leave to intervene by the Third Party must be "duly reasoned" and submitted not later than **12 weeks after notice of the application has been communicated to the respondent Contracting Party**¹, or decision of the Chamber to accept a referral, or decision to relinquish jurisdiction in favour of the Grand Chamber. This request will describe who the Third Party Intervener is (a national institution or ENNHRI) and what it intends to address in its submissions.
4. Where the European Court grants leave to intervene, it is open to the President of the Chamber to include conditions to the application, including time-limits set by the President of the Chamber. The standard form of conditions is for a deadline

¹ ECtHR, Rules of the Court, 1 January 2016. Note though, that in practice, publication on HUDOC of communicated cases regularly faces a delay

three weeks from the date of notification and a page limit of 10 pages (to which annexes may be added). It is important to note that where such conditions **are not** complied with the President may decide not to include the comments. (Rule 44 § 5)

5. The submission must be made in one of the official languages of the Court, English or French. (Rule 34 § 4 (a))
6. Nothing in this document will prevent one or more NHRIs from individually or collectively intervening in a case before the ECtHR. It is open to one or more NHRIs to make a Third Party application for intervention on their own behalf. In this regard, the NHRI(s) concerned may or may not wish to request technical assistance from the ENNHRI Legal Working Group, through addressing the Chair of the Legal Working Group.

Monitoring cases

7. All cases communicated to respondent States which are pending before the ECtHR are reported on the European Court of Human Rights website on a weekly basis (HUDOC).
8. Most members of the ENNHRI Legal Working Group have agreed to monitor the cases relevant to their own State. In addition the Chair of the Legal Working Group monitors all Grand Chamber cases (against any state). Members from all ENNHRI working groups are encouraged to monitor cases, particularly related to their thematic focus and their own State.
9. The criteria for intervention are that (1) the NHRI from the State concerned supports an ENNHRI intervention, (2) it is a priority area of concern for ENNHRI with a systemic human rights issue arising and (3) an intervention may be feasible and appropriate taking into account the court's deadlines.
10. When monitoring cases, all members will consider each time if a case addresses a systemic human rights issue and lies within the priority areas of ENNHRI. When an ENNHRI member considers these criteria are met, the member may develop a proposal for an ENNHRI Third Party Intervention. The proposal should set out the facts of the case, a summary of the law, the reasons for proposing the intervention and an overview of what the submission would cover.
11. The member should send the proposal for intervention to the Chair of its working group, the Chair of the Legal Working Group, and the ENNHRI Secretariat. It is strongly recommended that such a proposal is made within 4 weeks of the date of communication of the case. It is important to bear in mind that the publication on HUDOC of communicated cases often faces a delay, and that regular monitoring of

HUDOC is particularly important to manage the 12 week deadline for proposal of an intervention to the Court.

12. If the proposal is made by a member other than the NHRI from the State concerned, the Chair of the LWG with support of the ENNHRI secretariat will verify whether the NHRI from the State concerned agrees with the proposal for ENNHRI intervention and its preferred level of involvement in the development of the submission.
13. Upon agreement of the NHRI from the State concerned, the LWG Chair will circulate the proposal amongst LWG members, or, in case the initiative arises from another ENNHRI working group, the Chair of the initiating working group will circulate the proposal amongst the relevant working group.
14. The ENNHRI Common Positions Policy determines that the rule for adoption is one of consensus². The ENNHRI Common Positions Policy's **normal procedure** includes a 5 day consultation with the working group concerned, followed by a 5 day consultation with the full ENNHRI membership. Past experience tells us that in view of the short deadlines for Third Party Interventions, it is likely that the accelerated or urgent procedure will need to be used. The **accelerated procedure** implies a three day consultation with the working group concerned, followed by a three day consultation with the full membership. The **urgent procedure** implies a three day consultation with the Board only.
15. The question of whether a Third Party Intervention is "feasible and appropriate" refers to whether ENNHRI has the capacity, in the time available, to make a submission in the case, having regard to the availability to members of a) an analysis of relevant principles that can be drawn from law and practice beyond the ECHR itself and/ or b) an analysis of law reforms trends on the subject across Europe in various States.
16. The member making the proposal will be expected to make a significant contribution to the work involved in preparing the submission, with the assistance and involvement of as many other members who are willing and able to assist. The member co-ordinating the intervention and acting for ENNHRI in the case will usually be a lawyer from the institution proposing the intervention. Alternatively, the LWG Chair can act as co-ordinator, or any available member of the LWG, in consultation with the member taking the initiative.

² If there is no consensus, the intervention may become a collective request for leave to intervene (and later, a collective intervention) of the individual members having expressed their support. Their membership of ENNHRI may be mentioned in the intervention, but ENNHRI's logo should not be used

Application to intervene

17. Once the proposal has been agreed, an application to intervene will be drafted by the coordinating member in accordance with the proposal document.
18. The coordinating member sends the final version of the request for leave to intervene to the Secretariat and to the LWG Chair, at least 3 working days in advance of the 12 week deadline as provided for in Rule 44 § 3(b) of the ECtHR Rules. The LWG Chair and Secretariat may make any final changes (editorial or in line with the approved proposal document), in consultation with the coordinating member.
19. The ENNHRI Secretariat ensures house branding and ensures timely dispatch of the letter to the ECtHR (through fax).

Intervention

20. Where the ECtHR grants an application made by ENNHRI for it to intervene in a case, the deadline set by the ECtHR will dictate the procedure used, in accordance with ENNHRI's Common Positions Policy (2017). The ENNHRI Common Positions Policy's **normal procedure** includes a 5 day consultation with the working group concerned, followed by a 5 day consultation with the full ENNHRI membership. Past experience tells us that it is likely that the Court will set a very short deadline, and therefore the accelerated or urgent procedure is likely to be used also at this stage. The **accelerated procedure** implies a three day consultation with the working group concerned, followed by a three day consultation with the full ENNHRI membership. The **urgent procedure** implies a three day consultation with the Board only.
21. Expertise or assistance from experts within the Legal Working Group or the Secretariat may be requested when drafting the intervention but the NHRI that made the proposal is responsible for ensuring that a full draft submission is sent timely to the LWG Chair and secretariat, for possible final amendments and sign-off in line with ENNHRI's Common Position Policy. This implies, with the normal procedure, that the initiating NHRI sends the final draft at least 8 working days in advance of the deadline for submission to the LWG Chair and ENNHRI Secretariat, to allow a five day consultation with the ENNHRI membership. Under the **accelerated or urgent procedure**, the initiating NHRI should send on the final draft submission at least 6 working days in advance of the deadline for submission to the LWG Chair and ENNHRI Secretariat, to allow for a 3 day consultation, and the integration of any final amendments needed before submission.

22. The ENNHRI Secretariat ensures house branding and submission to the ECtHR (through fax) before the deadline.

To be agreed by ENNHRI General Assembly in November 2020.

How can NHRIs Intervene before the ECtHR?

