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FEATURES OF THE MECHANISM FOR IMPLEMENTATION OF ADVISORY POWERS IN ACCORDANCE WITH ADDITIONAL PROTOCOL NO. 16

The Article examines the features of the mechanism for implementation of advisory powers in accordance with Additional Protocol No. 16. Implementation of advisory powers is characterized by a certain mechanism defined in the relevant regulatory legal acts. It has been established that the advisory opinion procedure is not available to all courts and tribunals of the High Contracting Parties to the Protocol. The jurisdiction of the Court extends only to requests for advisory opinions submitted by a national authority that has been designated by a High Contracting Party as a higher court or tribunal for the purposes of Protocol No. 16 («designated court or tribunal»). The higher court exercises such a right at its own discretion and at any time this right may be suspended by sending an application to withdraw the request for an advisory opinion. The request for an advisory opinion must arise in pending national proceedings which are currently examined by a higher court or tribunal. The opinion sought must concern a question or questions of principle concerning interpretation or application of the rights and freedoms set out in the Convention or the Protocols thereto and which, in the opinion of the court or tribunal concerned, are necessary for the purpose of giving judgment. The questions raised must be formulated with sufficient precision to enable the Court to limit its findings to matters which are directly relevant to the proceedings pending at national level. The procedure for giving an advisory opinion requires the Court to provide clear guidance on interpretation to the requesting court or tribunal. In order to be able to do this, it is necessary to set out the reasons, which prompted the instance concerned to make the request, and the request must be complete and precise. Such a motion, which shall be reasoned, must contain not only the question or questions on which the court or tribunal concerned seeks guidance from the Court, but also additional elements specified by law. After a request for an advisory opinion has been made, the Court may grant anonymity to persons or organizations involved in a dispute in the national proceedings, either on its own initiative or at the request of the requesting court or tribunal. Provision of an advisory opinion shall be free of charge.

Key words: advisory powers, advisory opinion, implementation mechanism, procedure for examining a request, European Court of Human Rights, Council of Europe, Additional Protocol No. 16.

Statement of the problem. In the modern law-enforcement dimension of the European Court of Human Rights (ECHR), the advisory competence stipulated in Additional Protocol No. 16 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, is a relatively new but extremely important component of its activity. Its introduction was due to both the growing burden on the Court and the need to strengthen the integration dialogue between international and national legal orders, primarily in the field of interpretation and application of the convention norms. At the same time, despite the regulatory consolidation of the procedure for national courts to request advisory opinions, the mechanism for implementation of these powers of the Court reveals a number of conceptual and practical challenges.

Firstly, the limited nature of the circle of subjects authorized to initiate requests raises questions regarding the equality of access to the advisory instrument for the different justice systems of the Member States. Secondly, the voluntary nature of requesting an advisory opinion, despite the foreseen potential benefit in resolving controversial issues of interpretation, makes it difficult to develop a consistent practice of its application. Thirdly, the lack of binding nature of such opinions, combined with the high formal requirements for their admissibility (in particular, in respect to the specifics of requests and connection with the open national proceedings), creates the risks of formalizing the procedure to the detriment of its effectiveness.

Thus, despite the declarative goal of Protocol No. 16 – strengthening the dialogue between the

ECHR and national courts, in practice, there are a number of unresolved issues regarding the institutional and procedural design of advisory competence, its impact on the domestic law enforcement, as well as the place of this function in the general architecture of the protection of human rights in Europe. All this leads to the need in a systematic theoretical and legal analysis of the mechanism for implementation of advisory powers of the ECHR and determining the prospects for its further development.

Analysis of recent research and publications.

In recent years, there has been an active growth of interest in the study of the advisory powers of the European Court of Human Rights, which has become especially relevant after the entry into force of Additional Protocol No. 16. Among the sources studied, one can trace the desire of scholars to comprehensively analyze this institution both from the standpoint of international law and through the prism of national law enforcement.

I. Boyko focuses on the characteristics of the advisory jurisdiction of the ECHR as an important component of the general mechanism for ensuring human rights in Europe. The author carefully analyzes the legal nature of advisory opinions, determines their correlation with the binding decisions of the Court, and also emphasizes the functional flexibility of this mechanism, which, on the one hand, does not have coercive force, but on the other hand, is capable of significantly influencing the interpretation of the Convention in national legal systems. At the same time, the author draws attention to the fact that advisory opinions should not replace precedential jurisdiction, since their purpose is to promote the harmonization of the interpretation of the provisions of the Convention in complex and innovative issues [1].

In turn V. Zavgorodny, in his monograph, considers the advisory powers of the ECHR in the broader context of the influence of the Court's practice on the legal system of Ukraine. The researcher pays special attention to the methodological foundations of the implementation of advisory opinions by national courts, emphasizing the need for a deep understanding of their legal force and legitimacy within the constitutional and legal system of the state. The author substantiates the importance of involving domestic courts in a dialogue with the ECHR through the mechanism of advisory appeals, which, in his opinion, not only strengthens inter-judicial exchange, but also contributes to the development of national judicial culture in the spirit of European values [2].

Ukrainian researcher A. Medvid pays attention to the historical origins and evolution of the institution

of advisory powers of the ECHR, tracing the gradual transformation of the concept of advisory opinions from an abstract idea to a normatively enshrined mechanism. Special emphasis is placed on the political, legal and institutional prerequisites for the adoption of Additional Protocol No. 16, which, in the author's opinion, testifies to the Council of Europe's desire to deepen cooperation between national and international jurisdictions. The study emphasizes the importance of this institution for strengthening the preventive function of judicial protection of human rights [3].

K. Gavrysh's study examines the potential of advisory opinions of the ECHR as a source of judicial precedent formation. The author analyzes specific examples of the application of advisory opinions in the law-enforcement practice of various states parties to Protocol No. 16 and highlights their indirect impact on the evolution of European judicial law-making. Particular attention is paid to the mechanisms through which advisory opinions can shape legal doctrine, despite their advisory nature. K. Gavrysh emphasizes that even in the absence of formal binding force, these opinions can act as a catalyst for changes in national legislation and judicial practice [7].

Summarizing the results of the analysis, it can be concluded that modern scientific research demonstrates the multifaceted nature of approaches to understanding the mechanism for implementing the advisory powers of the ECHR under Additional Protocol No. 16. Scientists highlight both the regulatory and legal aspects of the functioning of this mechanism and its practical significance for national legal systems. What is common is the understanding of the advisory powers as a tool that enhances the unity of interpretation of the Convention and contributes to the integration of European standards into the domestic law of the participating states.

Task statement. The purpose of the Article is to consider the features of the mechanism for implementation of advisory powers in accordance with Additional Protocol No. 16.

Outline of the main material of the study. The legally significant outcomes of the ECHR's activity are both its decisions on the admissibility (inadmissibility) of complaints regarding violation of the convention norms, the progress of a statement (or a case) in court, the finding of non-violation or violation by the state of the convention human rights and freedoms, and the award of just satisfaction to the victim, as well as advisory opinions provided by the Court of the Council of Europe at the request of the subjects authorized by the convention norms or the Rules of Procedure of the Strasbourg Court [2, p. 64].

It is worth noting that for the first time the expediency of introducing the specified procedure was expressed in the report of the «Group of Wise Men» (a group of the recognized judges and scholars created in accordance with the «Action Plan» approved on May 16–17, 2005 in Warsaw, at the Third Summit of Heads of State and Government of the Member States of the Council of Europe) for the Committee of Ministers of the Council of Europe in November 2006. It was noted that the possibility of obtaining advisory opinions from the European Court of Justice on interpretation of the Convention and its protocols by the higher national courts, primarily the constitutional courts, would not only improve the dialogue between the ECHR and the national courts, but would also strengthen the «constitutional» role of the Court. In addition, the need for such measures was conditioned by the threat of possible conflicts regarding interpretation of the Convention by the ECHR and the higher national courts, including the constitutional courts [3, p. 41–42].

In 2018, following the ratification by the tenth Member State of the Council of Europe, as required by Article 8, and having been opened for signature on October 2, 2013, Additional Protocol No. 16 to the European Convention on Human Rights [9] entered into force. This instrument is a part of the package of measures taken by the Council of Europe since the Interlaken Conference, for the purpose to relieve the ECHR of the large number of applications submitted each year on the similar legal issues by providing clear guidance to the national judges by clarifying the law at an early stage, thus increasing the possibility for resolving the issue at the national level. This Protocol [9] effectively establishes advisory competence for the Court on the questions of principle concerning interpretation or application of the rights and freedoms set out in the Convention or the protocols thereto.

The preamble to Protocol No. 16, inter alia, outlining the reasons for its development, emphasizes that «the expansion of the Court's powers to issue advisory opinions will contribute to further strengthening the interaction between the Court and the national authorities and thereby, enhance implementation of the Convention, in accordance with the principle of subsidiarity» [9]. In respect hereof, Article 1 of Protocol No. 16 determines the right of the higher courts and tribunals of the Member States to the Convention, within the framework of specific cases under consideration by them, to address reasoned requests to the ECHR for advisory opinions on the questions of principle concerning interpretation or application

of the rights and freedoms guaranteed by the Convention and the protocols thereto. The provisions of the following four Articles of Protocol No. 16 determine the conditions and procedure for the exercise of the said right. In particular, inter alia, they indicate that the decision to grant a request for an advisory opinion is taken by a panel of five members of the Grand Chamber. In this case, the Council of Europe Commissioner for Human Rights and the state whose judicial authorities submitted the request have the right to submit their written observations and participate in the hearings of the case [8, p. 11].

It should be mentioned that Protocol No. 16 to the Convention establishes a new mechanism for the provision of advisory opinions to requests from the higher national courts of the Member States on the specific cases considered at the national level. To some extent, such a mechanism may be compared to preliminary ruling requests from the higher national courts to the Court of Justice of the EU. The Protocol stipulates that the request for an opinion should be executed by the highest national courts and tribunals in order not to overload the ECHR and to align the procedure with the requirement of prior exhaustion of the national remedies specified by the individual applications [9].

It is important to underline that the advisory opinion procedure is not available to all courts and tribunals of the High Contracting Parties to the Protocol. The Court's jurisdiction extends only to requests for advisory opinions submitted by the national authority which has been designated by a High Contracting Party as a higher court or tribunal for the purposes of Protocol No. 16 («designated court or tribunal»). According to Article 10 of the Protocol, «Each High Contracting Party to the Convention shall, at the time of signature or when depositing its instrument of ratification, acceptance or approval, by the declaration addressed to the Secretary General of the Council of Europe, indicate the courts or tribunals which it designates for the purposes of Article 1, clause 1, of this Protocol. This declaration may be modified at any other time and in the same manner» [9]. For this reason, national courts or tribunals are advised to ensure that they have jurisdiction to submit the request for an advisory opinion. That is why, it is recommended that the attached list of designated courts or tribunals be consulted before taking any decision on whether to request an advisory opinion. The Court shall not have jurisdiction to hear the request submitted by the authority not designated as the highest court or tribunal. States Parties shall designate such judicial authorities and notify them to the Secretary-General

[8]. The aforementioned instrument of requesting an advisory opinion from the ECHR is purely optional, i. e. the higher court exercises such a right at its own discretion and may at any time suspend this right by submitting a declaration of withdrawal of the request for an advisory opinion [1, p. 67–68].

It should be also mentioned that in the proceeding for an advisory opinion the Court may not examine the abstract questions of the Convention law. Therefore, three points should be emphasized. First, the request for an advisory opinion must arise in the pending national proceedings which are currently examined by a higher court or tribunal. The Court has no jurisdiction to consider the request which does not meet this requirement. Second, the opinion sought must concern a question or questions of principle concerning interpretation or application of the rights and freedoms set out in the Convention or the Protocols thereto and which, in the opinion of the court or tribunal concerned, are necessary for the purpose of making a decision. The Court has no jurisdiction to assess, where appropriate, facts of the case or to assess the substance of the parties' views on interpretation of the domestic law within the Convention law or to make a decision as for results of the proceeding. The Court's role is limited to giving an opinion on the request made to it. Ultimately, it is for the referring court or tribunal to decide the issues raised in the case and to draw, where appropriate, the conclusions to be drawn from the Court's opinion on the provisions of the domestic law applicable to the case and for the outcome of the case [4]. Thirdly, the questions raised must be formulated with sufficient precision to enable the Court to limit its findings to the matters directly relevant to the proceeding pending at the national level. If the questions raised are broad and general in nature, even if the panel of five judges declares the motion to be admissible, the Grand Chamber may subsequently find it to be necessary to reformulate them, taking into account the specific legal and factual circumstances specified in the national proceeding. The issues which do not meet the requirements of Article 1 of Protocol No. 16 will not be examined [5].

The decision on the request for an advisory opinion is optional (Article 1, clause 1, of Protocol and Rule 92, clause 1, of Chapter X of the Rules of Court) [10]. Taking into account to the purpose of the Protocol, a designated court or tribunal may exercise the advisory opinion procedure if it considers that the case considered by it raises the question or questions of principle concerning interpretation or application of the rights and freedoms set out in the Convention or the protocols thereto, and that it considers it to be

necessary to seek an advisory opinion for the purpose of determining the dispute submitted to it [8].

A designated court or tribunal may request the Court for an advisory opinion as soon as it finds that the national proceeding before it raises a question or questions of principle concerning interpretation or application of the rights and freedoms set out in the Convention or the Protocols thereto, and it considers that the Court's opinion should be sought (Article 1 § 2 of the Protocol). Nevertheless, it is advisable to submit a request to the Court only after the facts and legal issues, including the question of the Convention law, have been appropriately determined. Requesting an advisory opinion before the key factual or legal issues have been assessed at the national level may affect admissibility of request or the extent to which the Grand Chamber may answer some of the questions raised. Depending on the position of the national law, it may rather be the case that one or both parties may take the initiative on this issue in their appeal against decision of the lower court. In any case, the final decision on whether or not to request an advisory opinion remains with the appellate court or tribunal, as it was designated by the higher court or tribunal for the purposes of the Protocol [9].

The procedure for providing an advisory opinion requires the Court to provide clear guidance on interpretation to the requesting court or tribunal. In order to be able to do so, it is necessary to set out the reasons which caused the authority concerned to make the request, and such request must be complete and precise. It is important to underline that the content of any request for an advisory opinion is determined by Article 1, clause 3, of Protocol No. 16 and Rule 92, clause 2.1, of Chapter X of the Rules of Court. Such a motion, which shall be reasoned, must contain not only the question or questions on which the court or tribunal concerned seeks guidance from the Court, but also the following additional elements:

- a) the subject matter of the national case and its relevant legal and factual basis;
- b) the relevant national legal provisions;
- c) the relevant issues of the Convention, in particular, the rights or freedoms concerned;
- d) if applicable, a brief summary of the arguments of the parties to the national proceeding on the issue;
- e) if possible and appropriate, presentation of the requesting court or tribunal's own views on the matter, including any analysis it may have made of the matter itself [8].

The request for an advisory opinion must not be of an abstract nature, but must be based on the ongoing judicial proceeding, thus, making the ECHR's assess-

ment necessary to resolve a specific legal issue in the context of a national case pending before it. The request must also be reasoned and accompanied by the certain information concerning the national proceeding, including its subject matter, the relevant factual and legal basis, the applicable national provisions and a reference to the relevant provisions. The motion formulated in such a way will be submitted to a panel of five judges of the Grand Chamber for an assessment of its admissibility, with due reasons for any possible refusal, as provided for in Article 2 (1) of the Protocol. Admissibility of the request for an advisory opinion, as stipulated by the Guidelines on the Implementation of Protocol No. 16 adopted on September 18, 2017, appears to depend on whether it «infringes a new point of the Convention law» or where «the facts of the case do not appear to be directly applicable to the Court's case-law or [...] there appears to be an inconsistency in the case-law». Therefore, in one of these situations, competence will be transferred to the assessment of the Grand Chamber [8]. A reasoned advisory opinion of the ECHR is issued by the Grand Chamber of the Court and is addressed to the requesting court or tribunal and to the State to which the said judicial body belongs, and it is also subject to publication. However, such an opinion does not have the binding legal force.

It should be noted that the requesting court or tribunal has a certain margin of discretion in determining whether it is «appropriate» to include a summary of the parties' arguments on the issue that is the subject of the request and whether it is «appropriate» to set out its own views on that issue. Though these are matters for the relevant instance to consider, bearing in mind the spirit of sincere and friendly dialogue and cooperation that pervades Protocol No. 16, the ECHR encourages inclusion of both elements. In any case, it is important that the requesting court or tribunal, when implementing its judgment, places the Court in the most informed position enabling it to provide the interpretative guidance sought by the requesting court or tribunal, on application of the Convention law to national proceedings.

Both before the request is considered by the panel and after the panel has declared the request admissible, the Secretariat of the Court may, at the request of the Chairman, contact the requesting court or tribunal in order to obtain the additional information on the request and supporting documents. Any delay in providing them may rather cause a delay both in calculating the date on which the request is deemed to have been duly submitted and when issuing the advisory opinion.

It should also be mentioned that if the requesting court or tribunal considers that the request requires urgent consideration, it must inform the ECHR and give reasons for the need for an expedited procedure. It is important that the Court is informed immediately of the urgent nature of the request for an advisory opinion. For this reason, the requesting courts or tribunals should clearly indicate in the letter: «URGENT: PROTOCOL No. 16» (at the top of each page of the request) [8, p. 6]. However, the full request should not in principle exceed twenty pages. It may be submitted to the Court in the language of the national proceeding, if that is an official language of the High Contracting Party to which the requesting court or tribunal belongs. Nevertheless, translation of the request into English or French must be submitted to the Court within the time limit specified by it (clause 7 of Rule 34 of the Rules of Court) [10].

Following the request for an advisory opinion, the Court may grant anonymity to the persons or entities involved in a dispute in the national proceeding, either on its own initiative or at the demand of the requesting court or tribunal. The requesting court or tribunal shall ensure that any personal information contained in the request is processed in accordance with the relevant national legislation and practice on anonymity (for example, by deleting the personal data or providing the anonymous information to the persons or entities involved in a dispute in the national proceeding) [9].

The requesting court or tribunal shall decide whether to stay the national proceeding pending the Court's advisory opinion. However, in the interests of the proper conduct of the advisory opinion proceeding and for maintaining its efficiency, the requesting court or tribunal shall inform the ECHR of any procedural steps which may affect the request and, in particular, whether any new parties are admitted to the national proceeding [9].

The request for an advisory opinion and the relevant documents must be sent by the requesting court or tribunal directly to the Secretary of Court by the registered letter (Secretary of the European Court of Human Rights, the Council of Europe, F – 67075 Strasbourg CEDEX). The Registrar will acknowledge receipt of the request and provide all necessary information on its processing. At this stage, the court or tribunal may be asked to complete its request, if it is considered incomplete. A designated court or tribunal is also offered to provide the Court with a contact person for the purposes of examination.

The ECHR shall inform the requesting court or tribunal of all relevant procedural steps in the proceeding, including:

a) deadlines for submitting translation of the request and producing additional materials to support the request;

b) decision of a panel of five judges on the request;

c) holding the proceeding before the Grand Chamber when the request for an advisory opinion is taken by a panel of five judges, including notification of any submissions made by the High Contracting Party to which the court or tribunal belongs, or by any third party involved in the case;

d) any decision inviting the parties to the national proceeding or another third party to participate in the proceeding before the Grand Chamber;

e) notification of the advisory opinion approved by the Grand Chamber on the request [8, p. 8].

In its turn, the requesting court or tribunal must inform the parties to the national proceeding of the progress of such proceeding. If the Chairman of the Court has offered the parties to the national proceeding to participate in the proceeding for provision of an advisory opinion, the Court shall assume this function, including notification of the advisory opinion taken by the Grand Chamber on the request. In assessing whether to avail itself of the opportunity to comment on the applications submitted by the parties involved in the case in accordance with Rule 44, the requesting court or tribunal has a certain freedom of discretion. The decision of the requesting court or tribunal to avail itself of this opportunity will not principally affect the progress of the proceeding before the Court [8, p. 8].

Provision of an advisory opinion shall be free of charge. The Court shall not take a decision on the costs of the parties to the proceeding. However, the Chairman of the Court may take a decision to invite a party to the national proceeding to participate in the procedure for provision of an advisory opinion and, if that party does not have sufficient means and if it is possible under the national rules, the requesting court or tribunal may grant that party the legal aid to cover the costs, including those of lawyers incurred before the Court. The Court itself may also grant the legal aid, if the party concerned has not already received any aid under the national rules, or to the extent that such aid does not cover or covers only in part the costs incurred before the Court (Rule 95, Chapter X, of the Rules of Court) [10].

Conclusions. Thus, in conclusion, it may be noted that the mechanism for exercising advisory powers in accordance with Additional Protocol No. 16 has a number of features: firstly, the advisory opinion procedure is not available to all courts and tribunals of the High Contracting Parties to the Protocol. The

Court's jurisdiction extends only to requests for the advisory opinions submitted by the national instance designated by a High Contracting Party as a higher court or tribunal for the purposes of Protocol No. 16 («designated court or tribunal»); secondly, the aforementioned instrument of requesting an advisory opinion from the ECHR is exclusively optional, i. e. the higher court exercises such a right at its own discretion and at any time this right may be suspended by sending a statement to withdraw the request for an advisory opinion; thirdly, the request for an advisory opinion must arise in the pending national proceeding currently being considered by a higher court or tribunal; fourthly, the requested opinion must concern a question or questions of principle concerning interpretation or application of the rights and freedoms set out in the Convention or the protocols thereto and which, in the opinion of the court or tribunal concerned, are required for taking the decision; fifth, the questions raised must be formulated with sufficient precision to enable the Court to limit its findings to the matters, which are directly relevant to the proceeding pending at the national level. If the questions raised are broad and general in nature, even if the panel of five judges declares the motion admissible, the Grand Chamber may subsequently find it to be necessary to reformulate them, taking into account the specific legal and factual circumstances specified in the national proceeding.

The questions, which do not meet the requirements of Article 1 of Protocol No. 16, will not be examined; sixth, a designated court or tribunal may request the Court to give an advisory opinion as soon as it finds that the national proceeding before it raises a question or questions of principle concerning interpretation or application of the rights and freedoms set out in the Convention or the Protocols thereto, and it considers that the Court's opinion should be sought. Moreover, it is recommended that a request shall be made to the Court only after the facts and legal issues, including the Convention law, have been determined, to the extent appropriate; seventh, the advisory opinion procedure requires the Court to provide clear interpretative guidance to the requesting court or tribunal.

In order to be able to do this, it is necessary to set out the reasons, which prompted the instance concerned to make the request, and the request must be complete and precise. Such a motion, which shall be reasoned, must contain not only a question or questions on which the court or tribunal concerned seeks guidance from the Court, but also the additional elements stipulated by law; eighth, the requesting court or tribunal has a certain discretion in determining

whether it is «appropriate» to include a summary of the parties' arguments on the issue that is the subject of the request, and whether it is «appropriate» to set out its own views on that issue; tenth, both before the request is considered by the panel and after the panel has declared the request admissible, the Secretary of Court may, at the request of the Chairman, contact the requesting court or tribunal for obtaining the additional information on the request and the supporting documents. Any delay in their provision may rather cause a delay both in calculation of the date on which

the request is deemed to have been duly submitted and in the issuance of the advisory opinion; eleventh, after the request for an advisory opinion has been submitted, the Court may grant anonymity to the persons or entities involved in the dispute in the national proceeding, either on its own initiative or at the request of the requesting court or tribunal; twelfth, provision of an advisory opinion shall be free of charge.

Finally, we note that the issue of the mechanism for implementation of advisory powers requires further scientific research.

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Полежака К.О. ОСОБЛИВОСТІ МЕХАНІЗМУ РЕАЛІЗАЦІЇ КОНСУЛЬТАТИВНИХ ПОВНОВАЖЕНЬ ЗГІДНО З ДОДАТКОВИМ ПРОТОКОЛОМ № 16

У статті розглянуто особливості механізму реалізації консультативних повноважень відповідно до Додаткового протоколу № 16. Реалізації консультативних повноважень властивий певний механізм, визначений у відповідних нормативно-правових актах. Встановлено, що процедура консультативного висновку доступна не для всіх судів і трибуналів Високих Договірних Сторін Протоколу. Юрисдикція Суду поширюється лише на запити про консультативні висновки, подані національною інстанцією, яка була призначена Високою Договірною Стороною як вищий суд або трибунал для цілей Протоколу № 16 («призначений суд або трибунал»). Вищий суд таке право реалізує за власною волею та в будь-який момент це право може бути зупинене шляхом направлення заяви

про відкликання звернення за консультативним висновком. Запит на консультативний висновок має виникати в незавершеному національному провадженні, яке зараз розглядається вищим судом чи трибуналом. Запитуваний висновок має стосуватися питання чи принципових питань, пов'язаних із тлумаченням або застосуванням прав і свобод, визначених у Конвенції чи протоколах до неї, і які, на думку відповідного суду чи трибуналу, є необхідними для винесення рішення. Поставлені запитання мають бути сформульовані з достатньою точністю, щоб Суд міг обмежити свої висновки питаннями, які безпосередньо пов'язані з провадженням, яке триває на національному рівні. Процедура надання консультативного висновку вимагає від Суду надати чіткі вказівки щодо тлумачення запитувачому суду або трибуналу. Для того, щоб бути в змозі зробити це, необхідно викласти причини, які спонукали відповідну інстанцію подати запит, і запит повинен бути повним і точним. Таке клопотання, яке має бути вмотивованим, має містити не лише питання або питання, щодо яких відповідний суд або трибунал просить вказівок Суду, але також нормативно визначені додаткові елементи. Після подання запиту на консультативний висновок Суд може надати особам або організаціям, залученим у спорі у внутрішньодержавному провадженні, анонімність за власною ініціативою або на прохання суду чи трибуналу, який запитує. Надання консультативного висновку є безкоштовним.

Ключові слова: консультативні повноваження, консультативний висновок, механізм реалізації, процедура розгляду запиту, Європейський Суд з прав людини, Рада Європи, Додатковий протокол №16.