



Editorial



The Five-Judge Panel of the Grand Chamber of the European Court of Human Rights: Filtering Body, Judicial Policy Committee, or New Adjudicatory Formation?

1 Introduction

Within the European Court of Human Rights (ECtHR or Court), four judicial formations coexist: the Grand Chamber of 17 Judges, the Chamber of seven Judges, the Committee of three Judges, and the single Judge.¹ Alongside these formations operates the panel of five Judges. This panel provides access to the Grand Chamber when, pursuant to Article 43 of the European Convention on Human Rights (ECHR or Convention), a request for referral is lodged following a Chamber judgment or when a request for an advisory opinion is submitted under Protocol No 16.

Little known, if not altogether mysterious to some, this five-Judge panel is increasingly in the spotlight while also raising questions about its concrete functioning. This contribution aims to shed light on this body and share a few reflections on its role. The following pages will successively examine its composition, mandate, and workings, as well as the effects of its decisions, in both contentious and advisory proceedings. It will be demonstrated that the panel is a key actor within the Convention system. Although it acts discreetly, its decisions exert indeed a significant impact on the Court's judicial policy by

*Opinions expressed in this article are in personal capacity and do not engage the Court.

¹ Article 26(1) ECHR.

granting access to its highest judicial formation. In this respect, this paper underscores the need to strike a proper balance between preserving the Grand Chamber from excessive caseload and ensuring that it can perform its function of shaping and regulating Convention law.

2 The Panel of Five Judges Under the Court's Contentious Jurisdiction

The referral of a case to the Grand Chamber following a Chamber judgment is governed by Article 43 of the Convention. This provides that any party to the proceedings may request, 'in exceptional cases', that the case be referred to the Grand Chamber within three months from the delivery of the Chamber judgment.² The decision to grant such a request rests with a panel of five Judges.³

According to the Rules of Court, this panel is made up of the President of the Court, two Section Presidents appointed by rotation, and two other Judges designated by rotation from among the Judges elected, by the remaining Sections, to serve on the panel.⁴ The Rules of Court expressly prohibit the presence on the panel of the Judges who took part in the consideration of the admissibility or merits of the case in question.⁵

Article 43 of the Convention specifies the criteria for acceptance of a referral request by the panel. It 'shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the Protocols thereto, or a serious issue of general importance'.⁶ The explanatory report to Protocol 11 – which introduced this referral procedure – provides some insightful indication about these criteria:

100. Serious questions affecting the interpretation of the Convention are raised when a question of importance not yet decided by the Court is at stake, or when the decision is of importance for future cases and for the development of the Court's case-law. Moreover, a serious question may be particularly evident when the judgment concerned is not consistent with a previous judgment of the Court.

² Article 43(1) ECHR. There is no possibility of referring judgments delivered by three-Judge Committees to the Grand Chamber; they are final once delivered (Article 28(2) ECHR).

³ Article 43(2) ECHR.

⁴ Article 24(5)(a) of the Rules of Court.

⁵ Article 24(5)(b) of the Rules of Court.

⁶ Article 43(2) ECHR.

101. A serious question concerning the application of the Convention may be at stake when a judgment necessitates a substantial change to national law or administrative practice but does not itself raise a serious question of interpretation of the Convention.

102. A serious issue considered to be of general importance could involve a substantial political issue or an important issue of policy.⁷

The referral to the Grand Chamber is intended to remain exceptional, as it constitutes a form of internal appeal, involving a second examination of the same case by the Court. Such re-examination, however, cannot in itself be regarded as problematic. While some would argue in favour of relinquishment by the Chamber under Article 30 of the Convention for certain cases, others would prefer an initial adjudication by the Chamber with the possibility of a subsequent referral to the Grand Chamber.

Be that as it may, the decision of the panel of five Judges accepting or rejecting a referral request is not laid down in a formal reasoned decision. Only the result is made public (by a press release), with no further details. The vote of each member of the panel and the point as to whether the panel's decision was taken unanimously or by a majority remain confidential. The obligation to provide reasons, prescribed by Article 45(1) of the Convention, is only 'for judgments as well as for decisions declaring applications admissible or inadmissible'. When Protocol No 11 was being drafted, it was expressly stated that the obligation imposed by Article 45 'does not concern decisions taken by the panel of five judges of the Grand Chamber in accordance with Article 43'.⁸

The complete absence of reasoning has, however, been called into question. At the intergovernmental conferences on the future of the Court held in Izmir in 2011⁹ and in Brussels in 2015,¹⁰ the Court was solemnly invited by the

⁷ Council of Europe, 'Explanatory Report to Protocol No 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms' (11 May 1994) ETS No 155, paras 100–102.

⁸ *Ibid* para 105.

⁹ The Izmir Declaration 'invites the Court [...] to consider that decisions of the panels of five judges to reject requests for referral of cases to the Grand Chamber are clearly reasoned'. Council of Europe, 'High Level Conference on the Future of the European Court of Human Rights' (27 April 2011): <https://www.echr.coe.int/documents/d/echr/2011_izmir_finaldeclaration_eng> (Izmir Declaration).

¹⁰ The Brussels Declaration 'invites the Court to consider providing brief reasons for [...] decisions by its panel of five judges on refusal of referral requests'. Council of Europe, 'High-Level Conference on the "Implementation of the European Convention on Human Rights,

states to provide reasoning for decisions by the panel rejecting a request for referral (requests that are granted were not concerned). This invitation did attract the Court's full attention.¹¹ Upon careful consideration, Rule 73(2) of the Rules of Court has, however, remained unamended, stipulating that 'reasons need not be given for a refusal of the request'. One of the principal justifications for this absence of reasoning lies in the need to safeguard the authority and integrity of the Chamber judgment, which could be compromised by reasoning issued by a non-judicial body whose mandate is exclusive to filtering. Another justification stems from the necessity for the panel to preserve sufficient room for manoeuvre to pursue a judicial policy.

In assessing a request for referral, pertinent external factors may indeed be taken into account. These include whether the case at hand is the 'right one' for addressing the issue at stake in all its relevant aspects (another case pending before the Court may be more appropriate to be examined by the Grand Chamber),¹² or the need to let case law develop at Chamber level before any consolidating or corrective intervention by the Grand Chamber. Where doubt arises, the Grand Chamber's workload may also be taken into consideration, even though this factor cannot be decisive. It may happen that some Judges sitting on the panel disagree with the outcome of the Chamber's judgment, yet prefer not to refer the case to the Grand Chamber. This illustrates that the referral procedure is not intended to serve as a second-instance review, but rather as a mechanism for shaping and developing the Court's case law.

The acceptance rate for referral requests remains low (approximately 5%). By way of illustration, in 2024 the panel decided to refer three cases to the Grand Chamber:¹³ *Danileț v Romania*,¹⁴ *Tsaava and Others v Georgia*,¹⁵ and *Yasak v Türkiye*.¹⁶ In practice, referrals decided by the panel of five Judges cover a wide spectrum of situations, including putting an end to a divergence

Our Shared Responsibility": Brussels Declaration' (27 March 2015): <https://www.echr.coe.int/documents/d/echr/brussels_declaration_eng> (Brussels Declaration).

11 ECtHR, 'The Interlaken Process and the Court' (1 September 2016): <https://www.echr.coe.int/documents/d/echr/2016_Interlaken_Process_ENG> paras 16–19.

12 Defining what constitutes a 'good case' is inevitably likely to give rise to endless debates.

13 In 2023, six cases were referred to the Grand Chamber by the panel.

14 *Danileț v Romania* 16915/21 (ECtHR, 20 February 2024) (concerning a disciplinary sanction imposed on a judge for posting messages on his Facebook account).

15 *Tsaava and Others v Georgia* 13186/20 and others (ECtHR, 7 May 2024) (related to alleged use of excessive police force during dispersal of demonstration in front of the Georgian Parliament).

16 *Yasak v Türkiye* 17389/20 (ECtHR, 27 August 2024) (regarding the applicant's conviction for membership of an armed terrorist organisation).

in case law,¹⁷ dealing with a case raising a novel issue of contemporary importance,¹⁸ departing from previous case law,¹⁹ or consolidating a new jurisprudential development.²⁰ Sometimes, separate opinions annexed to the Chamber judgment can influence the referral decision. Some Judges do not hesitate to argue explicitly in their opinions for the case to be referred to the Grand Chamber.²¹ However, in the absence of a reasoned decision, it is naturally difficult for an outside observer to speculate on the grounds for acceptance of a referral. As these reasons are not binding on the Grand Chamber, they will not necessarily be reflected in its judgment. It can be observed that some Judges did not hesitate to express their surprise at referral decisions made by the panel.²²

For the sake of transparency, a comprehensive note was published by the Registry of the Grand Chamber in 2011, and updated ten years later, in order to shed light on the practice followed by the panel under Article 43 of the Convention.²³

It should be added that in ruling on referral requests, the panel benefits from the opinion of the Jurisconsult,²⁴ who seeks to identify cases on the agenda submitted to the panel that may deserve consideration by the Grand Chamber, although this opinion is not binding on the panel.

17 See, for instance *Sergueï Zolotoukhine v Russia* [GC] 14939/03 (ECtHR, 10 February 2009) (with respect to the *ne bis in idem* principle).

18 See, for instance, *Hurbain v Belgium* [GC] 57292/16 (ECtHR, 4 July 2023) (concerning the right to be forgotten); *Semenya v Switzerland* [GC] 10934/21 (ECtHR, 10 July 2025) (relating to the regulations applicable to athletes with Differences of Sex Development and the review of the awards delivered by the Court of Arbitration for Sport).

19 See, for instance, *Paposhvili v Belgium* [GC] 41738/10 (ECtHR, 13 December 2016) (which reconsidered its approach to the removal of seriously ill foreigners).

20 See, for instance, *Fedotova and Others v Russia* [GC] 40792/10 and others (ECtHR, 17 January 2023) (on the recognition and protection of same-sex couples).

21 See, for example, *Mutu and Pechstein v Switzerland* 40575/10 and others (ECtHR, 2 October 2018) Joint Partly Dissenting, Partly Concurring Opinion of Judges Keller and Serghides para 30; *Isaia and others v Italy* 36551/22 and others (ECtHR, 25 September 2025) Dissenting Opinion of Judge Sabato paras 99-101.

22 See, in that sense, *Kinglsey v the United Kingdom* [GC] 35605/97 (ECtHR, 28 May 2002) Partly Dissenting Opinion of Judge Casadevall joined by Judges Bonello and Kovler, para 6: 'in the light of the decision adopted by the majority, I have difficulty understanding why the panel of five judges agreed to refer this case to the Grand Chamber'.

23 ECtHR, 'Practice Followed by the Panel of the Grand Chamber When Deciding on Request for Referral Under Article 43 of the Convention' (2 June 2021): <https://www.echr.coe.int/documents/d/echr/note_gc_eng>.

24 The institution of the Jurisconsult is provided for in Rule 18B of the Rules of Court. Their task is to ensure 'the quality and consistency' of the Court's case law, and to 'provide opinions and information' in that regard.

Once the referral request has been accepted by the panel, ‘the Grand Chamber has no option but to examine the case’.²⁵ The ‘case’ referred to the Grand Chamber embraces all aspects of the application previously examined by the Chamber in its judgment, and not only the serious ‘question’ or ‘issue’ at the basis of the referral.²⁶ The Grand Chamber rules on all aspects of the case, meaning all elements of the application that have not been declared inadmissible so far.²⁷ This implies that, despite the panel’s referral, the application may still be declared inadmissible (because of abuse of the right of individual application²⁸ or non-exhaustion of domestic remedies)²⁹ or even struck out of the list³⁰ by the Grand Chamber. On the other hand, the case referred to the Grand Chamber cannot pertain to an application or a complaint which has been declared inadmissible at the Chamber’s level, including on the ground that it is manifestly ill-founded pursuant to Article 35(3)(a) of the Convention. Therefore, the Chamber’s ruling that a complaint is ‘manifestly ill-founded’, rather than merely unfounded, is not without consequences under Article 43, since that decision is final and cannot be challenged before the Grand Chamber.³¹

Lastly, it is important to stress that once the panel accepts a referral request, ‘the judgment delivered by the Chamber does not become final [...] and thus produces no legal effect’.³² Only the judgment of the Grand Chamber will constitute *res judicata* and will be binding on the respondent state under Article 46 of the Convention.³³

3 The Panel of Five Judges Under the Court’s Advisory Jurisdiction

Protocol No 16 to the Convention allows the highest courts of a state party to request the Court to give advisory opinions ‘on questions of principle relating to the interpretation or application of the rights and freedoms defined in the

²⁵ *Pisano v Italy* [GC] 36732/97 (ECtHR, 24 October 2002) para 26.

²⁶ *K and T v Finland* [GC] 25702/94 (ECtHR, 12 July 2001) para 140.

²⁷ *Fedotova and Others* (n 20) para 83; *Ilias and Ahmed v Hungary* [GC] 47287/15 (ECtHR, 21 November 2019) para 177.

²⁸ *Gross v Switzerland* [GC] 67810/19 (ECtHR, 30 September 2014).

²⁹ *Communauté genevoise d’action syndicale (CGAS) v Switzerland* [GC] 21881/20 (ECtHR, 27 November 2023); *Azinas v Cyprus* [GC] 56679/00 (ECtHR, 28 April 2004).

³⁰ Pursuant to Article 37 ECHR. See *VM and Others v Belgium* [GC] 60125/11 (ECtHR, 17 November 2016); *ME v Sweden* [GC] 71398/12 (ECtHR, 8 April 2015).

³¹ See *Semenya* (n 18) paras 92–93.

³² *VM and Others* (n 30) para 39.

³³ *Ibid.*

Convention or the protocols thereto'.³⁴ Protocol No 16 is an optional protocol. It was opened for signature on 2 October 2013 and entered into force on 1 August 2018. To date,³⁵ 25 ratifications have been received, which represents a slight majority of the states parties to the Convention.

Only the Grand Chamber is competent to issue advisory opinions.³⁶ The Grand Chamber's intervention is equally subject to the prior filtering of a panel of five Judges, assigned with deciding whether to accept a request for an advisory opinion.³⁷

This panel under Protocol No 16 is composed of the President of the Court, two Section Presidents appointed by rotation, a Judge appointed as Judge Rapporteur by the President, and the Judge elected in respect of the Contracting Party to which the requesting court pertains (ie, the 'national' Judge).³⁸ Two notable differences can immediately be observed in comparison to the composition of the panel acting under Article 43 of the Convention. The first concerns the designation of a Judge Rapporteur in the panel, whereas no such designation is made under Article 43. The task of the Judge Rapporteur is to submit a proposal to the panel for its decision. The second difference pertains to the '*ex officio*' presence of the 'national' Judge within the panel operating under Protocol No 16,³⁹ which is expressly excluded by the Rules of Court regarding the panel of five Judges ruling on a referral request.⁴⁰

Moreover, it should be noted that, unlike the referral procedure, the Jurisconsult is not invited to express their views. This could change in the future as the opinion of the Jurisconsult is also precious for questions submitted under Protocol No 16.

Under the advisory mechanism, the five-Judge panel is called upon to examine whether the request for an opinion fulfils the admissibility conditions laid down in Article 1 of Protocol No 16. Firstly, it verifies whether the request is made by one of the highest courts designated by the state party in accordance with Article 10 of Protocol No 16 and as part of a case pending before that court. In practice, these conditions do not raise any significant issues. The admissibility condition that requires more careful attention is that the request submitted to the Court concerns 'questions of principle relating to the interpretation or

34 Article 1(1) of Protocol No 16 ECHR.

35 As of 22 September 2025.

36 Article 2(2) of Protocol No 16 ECHR.

37 Article 2(1) of Protocol No 16 ECHR.

38 Article 93(1.1) of the Rules of Court.

39 Article 2(3) of Protocol No 16 ECHR.

40 Article 24(5)(c) of the Rules of Court.

application of the rights and freedoms defined in the Convention or the protocols thereto' within the meaning of Article 1 (1) of Protocol 16. In this respect, it emerges from the panel's practice that 'questions of principle' are:

those which, on account of their nature, degree of novelty and/or complexity or otherwise, concern an issue on which the requesting court would need the Court's guidance by way of an advisory opinion to be able to ensure respect for Convention rights when determining the case before it.⁴¹

To date, over the course of seven years, the Court has received 12 requests for advisory opinions. Eight have been accepted,⁴² while the panel has rejected four requests. In each of these refusals, the panel considered that that they did not concern a valid 'question of principle'. This is notably the case when the request for an advisory opinion does not relate to points that are directly connected to proceedings pending at domestic level,⁴³ when the requesting court itself has previously provided relevant indications as to the answer to the question submitted to the Court,⁴⁴ when the question asked by the requesting court 'is the subject of well-established case-law of the Court',⁴⁵ or when an individual application raising the same issue is currently under consideration by the Court.⁴⁶

⁴¹ *Decision on a Request for an Advisory Opinion Under Protocol No 16 Concerning the Interpretation or Application of Article 6 of the Convention and of Article 1 of Protocol No 1 to the Convention* P16-2024-001 (ECtHR, dec, 28 June 2024) para 29, with further references.

⁴² Last September, the panel accepted a request for an advisory opinion submitted by Ukraine's Supreme Court (P16-2025-001). See ECtHR, 'European Court Accepts Request by Ukraine's Supreme Court for an Advisory Opinion on Whether a Nun's Cell Can Qualify as Her Home' (16 September 2025) ECHR 208(2025): <<https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-8323375-11737701&filename=Request%20for%20advisory%20opinion%20lodged%20by%20Ukraine%27s%20Supreme%20Court%20on%20whether%20a%20nun%E2%80%99s%20cell%20can%20qualify%20as%20her%20home.pdf>>.

⁴³ *Decision on a Request for an Advisory Opinion Under Protocol No 16 Concerning the Interpretation of Articles 2, 3 and 6 of the Convention* P16-2020-001 (ECtHR, dec, 14 December 2020) para 19.

⁴⁴ *Ibid* para 22.

⁴⁵ *Decision on a Request for an Advisory Opinion Under Protocol No 16 Concerning the Interpretation of Article 4 of Protocol No 7 to the Convention* P16-2023-002 (ECtHR, dec, 19 February 2024) para 30. See also *Decision on a Request for an Advisory Opinion Under Protocol No 16 Concerning the Interpretation or Application of Article 8 of the Convention* P16-2024-002 (ECtHR, dec, 20 December 2024).

⁴⁶ *Decision on a Request for an Advisory Opinion Under Protocol No 16 Concerning the Interpretation or Application of Article 6 of the Convention and of Article 1 of Protocol No 1 to the Convention* (n 41) para 47.

Decisions accepting requests for advisory opinions are not reasoned. However, by contrast with the referral procedure, Article 2(1) of Protocol No 16 expressly provides that ‘the panel shall give reasons for any refusal to accept the request’. According to the explanatory report to Protocol No 16:

[t]his is intended to reinforce dialogue between the Court and national judicial systems, including through clarification of the Court’s interpretation of what is meant by “questions of principle relating to the interpretation or application of the rights and freedoms defined in the Convention or the Protocols thereto”, which would provide guidance to domestic courts and tribunals when considering whether to make a request and thereby help to deter inappropriate requests.⁴⁷

It is worth recalling that at the time of the drafting of Protocol No 16, the Court had expressed its reluctance to justify refusal decisions. In the Court’s view, it seemed preferable for it to have ‘a discretion and not a duty to give reasons for the refusal of a request for an advisory opinion’.⁴⁸ Later, it acknowledged that ‘it may be useful to give reasons. Such an approach would enhance the aim of creating a constructive dialogue with the national courts’.⁴⁹ However, it added that ‘such reasons will normally not be extensive’.⁵⁰

Since they are reasoned, the panel’s refusal decisions are published and made available on the Court’s online database (Hudoc).⁵¹ They indicate whether the refusal was adopted unanimously or by majority, without further details. It can be noted that of the four refusal decisions made so far, only one was unanimous.⁵² The Judges sitting on the panel do not have the possibility of issuing separate opinions.

47 Council of Europe, ‘Protocol No 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms: Explanatory Report’: <https://www.echr.coe.int/documents/d/echr/protocol_16_explanatory_report_eng> para 15.

48 ECtHR, ‘Reflection Paper on the Proposal to Extend the Court’s Advisory Jurisdiction’: <https://www.google.com/url?sa=t&rc=tj&q=&esrc=s&source=web&cd=&ved=2ahUKEwivtoz-3b2QAxUpTkEAHdIPBlAQFnoECBcQAQ&url=https%3A%2F%2Fwww.echr.coe.int%2Fdocuments%2Fd%2Fechr%2Fcourts_advisory_jurisdiction_eng%3Fdownload%3Dtrue&usg=AOvVawonpG_XebokA_Jf-jwVthD-&opi=89978449> para 35.

49 ECtHR, ‘Opinion of the Court on Draft Protocol No 16 to the Convention Extending its Competence to Give Advisory Opinions on the Interpretation of the Convention’ (6 May 2013): <https://www.echr.coe.int/documents/d/echr/2013_protocol_16_court_opinion_eng>.

50 Ibid.

51 <<https://hudoc.echr.coe.int/>>.

52 *Decision on a Request for an Advisory Opinion Under Protocol No 16 Concerning the Interpretation or Application of Article 8 of the Convention* (n 45).

It emerges from the four aforementioned refusal decisions that they are not just summarily reasoned. Out of respect for the requesting national court that seeks to engage in dialogue with the Court, the panel takes care to provide reasons as to why it cannot accede to the request. In this regard, it is striking to observe from practice that refusal decisions may amount to a swift response to the request, rendering the word 'refusal' somewhat inappropriate. In turn, this may, however, raise certain questions. Since the panel is not a judicial formation, it cannot answer the question posed, as in doing so it would substitute itself for the Grand Chamber. It cannot add to the existing case law nor develop its own reading of it. Therefore, providing reasoning for a refusal constitutes a highly delicate exercise for the panel.

It is quite evident from the Court's current practice that it does not intend to throw wide open the doors of its advisory office. One of the underlying reasons is certainly the fact that the competence to issue advisory opinions lies exclusively with the Grand Chamber. The involvement of the Grand Chamber triggers the activation of a heavy machinery, which is likely to affect not only the time needed for delivering the advisory opinion but may also have significant repercussions on the handling of other pending cases before it. The Grand Chamber is a luxury that must be used judiciously.⁵³ At the same time, a refusal to accept a request for an advisory opinion submitted by a supreme court does not sit very well with the spirit of judicial dialogue that has been consistently promoted over recent years. Moreover, repeated refusals by the panel may have a deterrent effect on domestic courts considering turning to Strasbourg for clarification on a point of interpretation or application of the Convention. Some might add that such refusals are unlikely to encourage the still significant number of states that have not ratified Protocol No 16 to join the advisory mechanism.

In truth, it is a question of striking a balance between, on the one hand, the willingness to enter into a dialogue with the requesting court and not to dissuade other courts from making use of the advisory mechanism and, on the other, the need to avoid being overwhelmed by requests that would compromise the work of the Grand Chamber and, consequently, the functioning of the Court. In this respect, the experience has been very reassuring so far: the requests are quite rare, and the Court has shown its ability to respond within a more than reasonable timeframe (around six months). It should be

53 It may be assumed that, in case of serious doubts, the workload of the Grand Chamber is one of the factors that can be taken into consideration by the panel in deciding whether to accept a request for an opinion, without, of course, being decisive.

added that in 2023 the Court adapted its internal working methods to deal even more efficiently with requests for advisory opinions.

In parallel, one of the questions raised by the advisory mechanism unavoidably concerns its relationship with the preliminary ruling mechanism before the Court of Justice of the European Union (CJEU). This point was notably at the heart of the well-known Opinion 2/13 of the Court of Justice,⁵⁴ which found that the previous draft agreement on the accession of the European Union to the Convention was not compatible with EU law. From the perspective of the ECtHR, the decision to submit a request for an advisory opinion is the sole responsibility of the requesting national court. The panel of five Judges is not empowered to supervise compliance with the rules⁵⁵ governing requests for preliminary rulings to the CJEU, which fall outside its jurisdiction.

However, things could change if the Union were to accede to the Convention. In its current version the draft agreement provides that the Court's jurisdiction to deliver advisory opinions is excluded 'if the question falls within the field of application of European Union law'.⁵⁶ It is explained that the aim of this provision is 'to preclude recourse to the advisory opinion procedure before the Court where EU law, as interpreted by the CJEU, requires a court or tribunal to instead submit a request to the CJEU for a preliminary ruling under Article 267 of the TFEU'.⁵⁷ The panel would therefore be expected to verify whether the question asked 'falls within the field of application of European Union law',⁵⁸ which is not an easy task.

Another important point to consider concerns the effects of a decision by the panel to accept a request. Article 2(2) of Protocol No 16 provides that '[i]f the panel accepts the request, the Grand Chamber shall deliver the advisory

54 In this opinion, the Court of Justice considered, among other points, that the draft agreement on the accession of the European Union to the European Convention on Human Rights 'is not compatible with Article 6(2) TEU or with Protocol No 8 EU in that it is liable adversely to affect the specific characteristics and the autonomy of EU law in so far it [...] makes no provision in respect of the relationship between the mechanism established by Protocol No 16 and the preliminary ruling procedure provided for in Article 267 TFEU' (Opinion 2/13 *Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms* [2014] ECLI:EU:C:2014:2454, operative part; see also paragraphs 196–199).

55 Consolidated Version of the Treaty on the Functioning of the European Union [2007] OJ C15/01, Article 267.

56 Council of Europe, 'Final Consolidated Version of the Draft Accession Instruments' (17 March 2023) 46+1(2023)36 (DAA 2023), Article 5.

57 Ibid 26.

58 Ibid.

opinion'. The question has arisen, however, as to 'whether, once a request for an advisory opinion has been brought before it, the Grand Chamber may decide not to answer one or more questions'.⁵⁹ The second advisory opinion, delivered at the request of the Constitutional Court of Armenia, answered this question in the affirmative:

It thus remains open to the Grand Chamber to verify whether the questions that are the subject of a request fulfil the requirements set out in Article 1 of Protocol No. 16 on the basis of the original request, the observations received and all other material before it (...). Should it come to the conclusion, taking due account of the factual and legal context of the case, that certain questions do not fulfil these requirements, it will not examine these questions and will make a statement to this effect in its advisory opinion.⁶⁰

In the light of the foregoing, one might ask whether the Grand Chamber could completely call into question the panel's acceptance decision by considering, after due examination, that none of the submitted questions meet the requirements set out in Article 1 of Protocol No 16. The above extract suggests that the panel's decision is not definitively binding on the Grand Chamber, as the latter is still entitled to verify its jurisdiction with regard to the fulfilment of those requirements.

Finally, since the five-Judge panel is not a judicial formation, its decisions do not have *res interpretata* effect and are not intended, as such, to become part of the Court's case law. This would imply that the Court would not be expected to rely on the panel's decisions when adjudicating in contentious cases. By way of exception, the panel or the Grand Chamber may refer, in the context of proceedings under Protocol No 16, to a previous decision that the panel has issued in relation to the examination of a request for an advisory opinion.

4 Conclusion: At the Crossroads of Filtering and Judicial Vision

In the Convention system, the panel of five Judges plays a role whose importance should not be underestimated. Its function varies depending on

⁵⁹ *Advisory Opinion Concerning the Use of the "Blanket Reference" or "Legislation by Reference" Technique in the Definition of an Offence and Standards of Comparison Between the Criminal Law in Force at the Time of the Commission of the Offence and the Amended Criminal Law* [GC] P16-2019-001 (ECtHR, 29 May 2020) para 46.

⁶⁰ *Ibid* para 47.

whether the panel is acting in contentious or advisory proceedings. In contentious cases, acceptance of a request for referral to the Grand Chamber is intended to remain exceptional. Conversely, in advisory proceedings, which are based on dialogue between Judges, the rejection of a request for an advisory opinion should be the exception. Accordingly, when doubt arises as to whether a case warrants referral to the Grand Chamber, this doubt should, in principle, lead to rejection. Regarding the advisory mechanism, doubt should, instead, lead to acceptance.

Generally, it is certainly not desirable to expand the possibilities of challenging judgments handed down by the Chambers. I am convinced that a strict selection must continue to be made by the panel when it acts under Article 43 of the Convention. At the same time, it cannot be overlooked that the authority of the Court is also measured by the significance of its Grand Chamber judgments, which carry greater weight, not least because of their inherently serious character and the more solemn forms they take. A ‘Court that matters’⁶¹ is a Court whose Grand Chamber judgments emerge as key landmarks in the development of case law when addressing the most important contemporary challenges. In this sense, the panel’s selection of cases for referral constitutes a crucial strategic element for the Court’s authority.

As for Protocol No 16, some might have expected – or hoped for – greater success. To put it frankly: for the time being, this ‘protocol of dialogue’ – to use former President Spielmann’s words⁶² – has not generated overwhelming enthusiasm among the Convention states, nor among the courts entitled to request an advisory opinion. One might even be tempted to add, somewhat provocatively, that the Court itself does not appear particularly enthusiastic either.

Does this mean that Protocol No 16 is of limited or an insignificant utility? Not at all. The advisory mechanism offers undeniable advantages, as was clearly demonstrated by the last opinion delivered at the request of the Belgian Conseil d’État.⁶³ Admittedly, the Court’s role in contentious cases, based on the right of individual application, remains, and must remain, its primary focus. Nonetheless, the advisory mechanism is capable of providing

61 See M Tsirli, ‘Developing and Maintaining a Court That Matters’ (Strasbourg Observers, 1 July 2025): <<https://strasbourgobservers.com/2025/07/01/developing-and-maintaining-a-court-that-matters-une-cour-qui-compte/>>.

62 D Spielmann, ‘Opening Speech’ (Strasbourg, 31 January 2014): <https://www.echr.coe.int/documents/d/echr/speech_20140131_spielmann_eng>.

63 *Advisory Opinion as to Whether an Individual May Be Denied Authorisation to Work as a Security Guard or Officer on Account of Being Close to or Belonging to a Religious Movement* [GC] P16-2023-001 (ECtHR, 14 December 2023).

highly insightful responses in a wide range of situations, in particular when it is not possible to wait for a hypothetical case to be brought before the Court on a novel issue or when it is necessary to clarify an important point in Strasbourg case law. Therefore, an overly restrictive approach by the panel regarding the conditions for advisory opinion requests would risk depriving Protocol No 16 of its intended benefits. It must be recalled that dialogue with highest national courts is essential, as the Court and domestic courts belong to the same system and operate as partners in accordance with the principle of subsidiarity that underpins the Convention.

In conclusion, returning to the initial question of whether the five-Judge panel of the Grand Chamber constitutes a filtering body, a judicial policy committee or a new adjudicatory formation, the first two propositions must be answered in the affirmative. As the Grand Chamber's filtering body, the panel exerts a significant influence on the Court's judicial policy. It discreetly but undoubtedly plays a pivotal role within the Convention system.

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