Advisory Opinions under Protocol No. 16 to the ECHR. A Theoretical and Empirical Analysis of the Legal Nature of the 'Questions of Principle'

E. Albanesi*

Department of Law, University of Genoa, Italy

Abstract: One of the most significant legal arguments against the ratification of Protocol No. 16 to the European Convention on Human Rights (ECHR) is that advisory opinions issued by the European Court of Human Rights (ECtHR) would pose a threat to national sovereignty and judicial discretion. Several counterarguments have already been examined by scholars. The counterargument that will be demonstrated here is that advisory opinions cannot pose a threat to national sovereignty or judicial discretion because they are issued on 'questions of principle'. In other words, this means that the requesting domestic highest courts or tribunals keep sufficient margin of discretion, when it comes to the concrete case brought before them. Such hypothesis will be demonstrated from a theoretical perspective, reflecting upon the legal concept of 'principle'; and through an empirical analysis of the advisory opinions issued so far by the ECtHR. Demonstrating the hypothesis would be relevant in order to allow the States to understand that the ratification of Protocol No. 16 would not pose any threat to the discretion of domestic Courts, neither in theory nor in practice.

Keywords: European Convention on Human Rights (ECHR), Protocol No. 16, Advisory Opinion, Questions of Principle, National Sovereignty, Judicial Discretion.

INTRODUCTION

Some of the Contracting States to the European Convention on Human Rights (ECHR) have not signed or ratified Protocol No. 16 to the ECHR. That is due to the controversial issues of a constitutional nature arising from the advisory opinions that the European Court of Human Rights (ECtHR) would be tasked with giving to the requesting domestic highest courts or tribunals under the Protocol itself.

One of the most significant legal arguments against the ratification of Protocol No. 16 is that advisory opinions issued by the European Court of Human Rights would pose a threat to national sovereignty and discretion of domestic highest courts or tribunals.

Several counterarguments have already been examined by scholars. The counterargument that will be stated here is that advisory opinions cannot pose a threat to national sovereignty or to judicial discretion because they are issued on 'questions of principle' (Article 1, paragraph 1, Protocol No. 16): this will be demonstrated here from a theoretical perspective (i.e. analysing the meaning of 'questions of principles') and from an empirical perspective (i.e. examining the advisory opinions issued so far, as they demonstrate that the ECtHR actually limits them to 'questions of principles'). In other words, from the Member states' perspective, this means that the requesting domestic highest courts or tribunals keep enough margin of discretion, when it comes to the specific cases brought before them.

The article will proceed as follows.

First, an overview of the current legal debate among scholars on the ratification of Protocol No. 16 will be conducted. This would be useful to establish a legal framework: advisory opinions are not legally binding on those courts or tribunals that required them; one could consider advisory opinions *de facto* binding (because it might be difficult to disregard the opinion of the ECtHR); in any case, advisory opinions somehow legally affect all Contracting States to the ECHR, including those which have not ratified the Protocol (because they produce some horizontal effects), thus non-ratifying States would be affected by them anyhow and the argument against the ratification of Protocol No. 16, relying on the potential threat to the autonomy of domestic highest courts and tribunals, surprisingly will thus turn into an argument in favour of its ratification (*Section 2*).

Secondly, a theoretical analysis of the legal concept of 'principle' will be carried out here, relying on Dworkin's distinction between 'principles' and 'rules'. According to Dworkin, the main difference between 'rules' and 'principles' is that 'rules are applicable in an all-or-nothing fashion', thus they do not leave any margin of discretion, whereas principles do leave such a margin; on the other hand, a principle 'states a

*Address correspondence to this author at the Department of Law, University of Genoa, Via Balbi, 22, Genoa (GE), 16126, Italy;
E-mail: enrico.albanesi@unige.it

E-ISSN: 2817-2302/25

reason that argues in one direction, but does not necessitate a particular decision'. In the light of such definition, it will be demonstrated here that (from a theoretical perspective) advisory opinions under Protocol No. 16, as they are issued on 'questions of principle', keep enough margin of discretion for the requesting court (*Section 3*).

Thirdly, the advisory opinions issued by the ECtHR so far, will be empirically examined. Eleven requests for advisory opinions under Protocol No. 16 to the ECHR have been lodged so far. Among these, four requests were refused and seven opinions have been issued. The analysis of the aforementioned seven advisory opinions issued so far will demonstrate that the ECtHR, when it issues advisory opinions, is actually self-restraining to questions of principles; once again, this means that the ECtHR actually leaves enough margin of discretion to the requesting Courts (*Section 4*).

Demonstrating such hypothesis would be relevant in order to allow the States to understand that the ratification of Protocol No. 16 would not pose any threat to the discretion of domestic Courts, neither in theory nor in practice (*Conclusions*).

1. PROTOCOL NO. 16 TO THE ECHR. LEGAL ARGUMENTS FOR AND AGAINST ITS RATIFICATION

Protocol No. 16 to the ECHR[1] was done at Strasbourg on 2 October 2013. Under Article 8, Protocol No. 16 entered into force on the first day of the month following the expiration of a period of three months after the date on which ten High Contracting Parties to the Convention expressed their consent to be bound by the Protocol: this was on 1 August 2018. Twenty-four States have ratified the Protocol so far: Albania, Andorra, Armenia, Azerbaijan, Belgium, Bosnia and Herzegovina, Estonia, Finland, France, Georgia, Greece, Lithuania, Luxembourg, Monaco, Montenegro, Netherlands, North Macedonia, Republic of Moldova, Romania, San Marino, Slovak Republic, Slovenia, Sweden, and Ukraine. Four States have signed but not ratified it: Italy, Norway, Spain and Turkey. The remaining Contracting States to the ECHR have not signed it.

The Protocol states that 'Highest court and tribunals' (P. Cragl, 2013, pp. 231-233; T. Voland and B. Schiebel, 2017, pp. 81-82) of a High Contracting Party 'may request [the ECtHR] to give advisory opinion on questions of principle relating to the interpretation or application of the rights and freedoms defined in the Convention or the protocols thereto' (Article 1, paragraph 1) 'only in the context of a case pending before it' (Article 1, paragraph 2). Advisory opinions shall not be binding (Article 5) on the requesting court or tribunal.

The Protocol was done, along with Protocol No. 15[2], within the Interlaken process. Its purposes were to reduce the ECtHR caseload via judicial dialogue; reinforcing the principle of subsidiarity; enhancing the constitutional role of the ECtHR[3].

The reduction of the ECtHR caseload has been as one of the main aims of the Council of Europe (C.G. Hioureas, 2006) due to the huge number of applications (R. Harmsen, 2001, p. 24) arising from the enlargement of the ECHR started in 1990 (S. Croft, J. Redmond, G. Wyn Rees and M. Webber, 1999) and the establishment of the 'new' European Court of Human Rights (E. Bates, 2010, p. 432). In this light, advisory opinions have been seen as a tool to clarify the meaning of the Convention in specific types of situation: if so, national courts could apply the relevant

[1]Protocol No. 16 to The Convention for The Protection of Human Rights and Fundamental Freedoms – Protocole n° 16 à La Convention de Sauvegarde des Droits de l'Homme et des Libertés Fondamentales, available at https://www.coe.int/en/web/conventions/full-list, last accessed 28.02.2025.

[2]Protocol No. 15 Amending The Convention for The Protection of Human Rights and Fundamental Freedoms – Protocole n° 15 Portant Amendement à La Convention de Sauvegarde des Droits de L'Homme et des Libertés Fondamentale, available at https://www.coe.int/en/web/conventions/full-list, available at https://www.coe.int/en/web/conventions/full-list, last accessed 28.02.2025.

[3]See HIGH LEVEL CONFERENCE ON THE FUTURE OF THE EUROPEAN COURT OF HUMAN RIGHTS, Interlaken Declaration, 19 February 2010, available at https://www.echr.coe.int/Documents/2010_Interlaken_FinalDeclaration_ENG.pdf, last accessed 28.02.2025; HIGH LEVEL CONFERENCE ON THE FUTURE OF THE EUROPEAN COURT OF HUMAN RIGHTS, Izmir Declaration, 27 April 2011, available at https://www.echr.coe.int/Documents/2011_Izmir_FinalDeclaration_ENG.pdf, last accessed 28.02.2025; HIGH LEVEL CONFERENCE ON THE FUTURE OF THE EUROPEAN COURT OF HUMAN RIGHTS, Brighton Declaration, 20 April 2012, available at https://www.echr.coe.int/Documents/2012_Brighton_FinalDeclaration_ENG.pdf, last accessed 28.02.2025. Advisory opinions are mentioned for the first time in the aforementioned Izmir Declaration, at paragraph D, but the idea comes from the Report of The Group of Wise Persons to The Committee of Ministers in 2006. Cf. COUNCIL OF EUROPE, Report of The Group of Wise Persons to The Committee of Ministers, (2007) 46(1) International Legal Materials, pp. 77-93, paras. 76-86. The ECtHR welcomed the idea of introducing advisory opinions in EUROPEAN COURT OF HUMAN RIGHTS – GOUR EUROPÉENNE DES DROITS DE L'HOMME, Opinion of The Court on The Wise Persons' Report, 2 April 2007, paragraph 4, available at https://www.echr.coe.int/Documents/2007_Wise_Person_Opinion_ENG.pdf, last accessed 28.02.2025. Once advisory opinions were included in the Izmir Declaration, see also EUROPEAN COURT OF HUMAN RIGHTS – GOUR EUROPÉENNE DES DROITS DE L'HOMME, Preliminary Opinion of The Court in Preparation for The Brighton Conference, 20 February 2012, available at https://www.echr.coe.int/Documents/2012_Brighton_Opinion_ENG.pdf, last accessed 28.02.2025 and EUROPEAN COURT OF HUMAN RIGHTS – GOUR EUROPÉENNE DES DROITS DE L'HOMME, Reflection Paper on The Proposal to Extend The Court's Advisory Opinion, March 2012, No. 3853038 available at https://echr.coe.int/Documents/Courts_advisory_jurisdiction_ENG.pdf, last accessed 28.02.2025. An empirical analysis of the Brighton Declaration on the case-law of the ECtHR, see M.R. Madsen, 2013. On the ECtHR's general perspective on protocol No. 16, see recently T. Eicke, 2023.

standards and criteria more easily in their own case-law and at an earlier stage. This would then result in fewer cases requiring consideration by the ECtHR (J. Gerards, 2014, p. 639; critically, K. Lemmens, 2019).

As for judicial dialogue, the request of advisory opinion has been seen as the formal tool that could realize that judicial interaction, so as to allow the ECtHR to clarify the meaning of the Convention concerning questions of principle asked by the courts and thus to prevent controversies (J. Gerards, 2014, p. 637; T. Voland and B. Schiebel, 2017, p. 80; L. Glas, 2020, pp. 139-140; S. O'Leary, 2022). After all, the ECHR lacks such a tool as the preliminary reference procedure of the European Union (on the differences between these two instruments, P. Cragl, 2013, pp. 229-247).

The principle of subsidiarity (a principle that was elaborated by the ECtHR and means that the task of ensuring compliance with the ECHR falls firstly on the domestic courts, with the ECtHR intervening only in the event of a shortcoming on the part of the domestic authorities) is also relevant: the ECtHR's advisory opinions could aid national courts in their consideration of the Convention issues so that problems can be resolved at national level (J. Laffranque, 2015, p. 8; critically, S. Besson, 2016, p. 105). The principle did not appear in the Convention: the ECtHR referred to it in its case-law. However, Protocol No. 15 codified it (S. Besson, 2016, p. 105).

As for the constitutional role of the ECtHR, this was seen by the *Report of Wise Persons to the Committee of Ministers of the Council of Europe* in 2006, as the function to 'lay down common principles and standards relating to human rights and to determine the minimum level of protection which States must observe'[4]. In this light, advisory opinions on questions of principle could be seen as one of the tools to establish those standards (critically, K. Dzehtsiarou and N. O'Meara, 2014, p. 459).

As mentioned, the ratification of Protocol No. 16 has raised several controversial issues of a constitutional nature, such as the threat to the State sovereignty and judicial discretion (G. Cerrina Feroni, 2019, pp. 5-6; M. Luciani, 2019, p. 6), the *de facto* binding effects of advisory opinions (as it might be difficult to disregard the opinion of the ECtHR, due to its esteem) (G. Cerrina Feroni, 2019, p. 7; M. Luciani, 2019, pp. 4-5) and the jeopardising of the role (especially) of the Constitutional Court that would derive from the ratification of Protocol No. 16 (L. Glas and J. Krommendijk, 2022, pp. 326-333).

However, one should reflect that there are several counterarguments in favour of the ratification of Protocol No. 16 that can be considered.

First of all, advisory opinions are not legally binding on those courts or tribunals that required them, thus they cannot jeopardise either the sovereignty of the States nor judicial discretion (E. Albanesi, 2021, pp. 119-159; E. Albanesi, 2023; S. O'Leary, 2023, p. 3).

Secondly, there is another element to take into account.

If one considers advisory opinions as *de facto* binding (as it might be difficult to disregard the opinion of the ECtHR), it is true that they may be perceived by domestic highest courts and tribunals as being a possible threat to their autonomy in interpretation, as they encroach upon one of their most important functions. In particular, when a request for advisory opinion would actually imply a matter of compatibility of a national law with the ECHR, the Constitutional Court 'could choose merely to follow the opinion, thereby confirming a pure loss in terms of interpretative powers regarding the assessment of compliance of national legislation with the Convention' (G. Zampetti, 2018, pp. 25-26).

After all, that perception of Constitutional Courts is what *mutatis mutandis* occurred with regards to preliminary ruling by the European Court of Justice (M. Dascola, C. Fasone and I. Spigno, 2015, p. 1410). For many years, Constitutional Courts were reluctant to engage in a dialogue with the European Court of Justice via preliminary ruling procedure, because they used to perceive it as a potential threat to their autonomy: Constitutional Courts such as the Italian Constitutional Court, the Spanish Constitutional Tribunal and the German Constitutional Tribunal changed their mind upon this issue respectively only in 2008 (Pollicino, 2013)[5], in 2011 (M. Rodríguez-Izquierdo Serrano, 2015)[6] and in 2014 (Lohse, 2015)[7].

[4] COUNCIL OF EUROPE, Report of The Group of Wise Persons to The Committee of Ministers, (2007) 46(1) International Legal Materials, para. 24. On the ECHR as a 'constitutional instrument of European public order', see ECtHR, Loizidou v. Turkey (preliminary objections), No. 15318/89, 23.03.1995, para 75.

[5] CORTE COSTITUZIONALE, Order No. 103/2008.

[6] TRIBUNAL CONSTITUCIONAL, auto 86/11.

Other Constitutional Courts, such as the Bulgarian (Vatsov, 2015) or the Hungarian (Gárdos-Orosz, 2015) are still reluctant.

However, advisory opinions of the ECtHR under Protocol No. 16 to the ECHR, although non-legally binding on the requesting court or tribunal of ratifying States, somehow legally affect *all* Contracting States to the ECHR, including those which have not ratified the Protocol. This has already been demonstrated conceptualising the notion of a 'vertical' effect of advisory opinions under Article 5 of Protocol No. 16 (i.e., that effect, regarding the requesting court or tribunal, under Article 5 of Protocol No. 16 which states that 'Advisory opinions shall not be binding') and the notion of a 'horizontal' effectof them (i.e., that legal effect which comes from the fact that advisory opinions are 'valid case-law' which the ECtHR would follow when ruling on potential subsequent individual application) (E. Albanesi, 2022). After all, as has been noted, the ECtHR actually started using its advisory opinions as *res interpretata* in its judgments (K. Gavrysh, 2022).

At the end of the day, those States which are reluctant to ratify Protocol No. 16 due to the aforementioned controversial issues, did not realize that advisory opinions under Protocol No. 16 legally affect *all* Contracting States to the ECHR, including those which have not ratified the Protocol itself. Non-ratifying States would be affected by them anyhow, as valid case-law of the ECtHR; however, at the same time there would be no opportunity for their highest courts or tribunals to contribute to the creation, via judicial dialogue (i.e. by requesting advisory opinions), that case-law itself. At the end of the day, the argument against the ratification of Protocol No. 16 (relying on the potential threat to the autonomy of domestic highest courts and tribunals) surprisingly will turn into an argument in favour of its ratification (E. Albanesi, 2022).

Thirdly, as already mentioned, there is another counterargument that deserves attentions: advisory opinions are issued 'on questions of principle', thus the requesting domestic highest courts or tribunals keep sufficient margin of discretion, when it comes to the specific case pending before them.

It is now time to demonstrate such hypothesis.

[7]134 BVerfGE 366.

2. THE THEORETICAL ANALYSIS: THE CONCEPTS OF 'PRINCIPLE'

In order to understand the meaning of the words 'questions of principles', one could try to examine the preparatory works of Protocol No. 16. However, they do not help much.

The 2006 *Report of Wise Persons* refers to 'questions of principle or general interest'[8]. The 2007 *Opinion of the Court* underlines that advisory opinions are requested on 'points of law in a non-contentious setting'[9]. The 2012 *Reflection Paper* mentions 'questions of principle or of general interest' but also 'cases revealing potential systemic or structural problems'.[10] Nothing more than this.

Another path to understanding the meaning of the words 'questions of principles', could be that of analysing some articles of the ECHR that refer to 'questions' brought before the Grand Chamber or the Committee of Ministers.

For example, this is the case of Article 30 ECHR under which, when a case pending before a Chamber creates rise to a *serious question* affecting the interpretation of the Convention or the Protocols thereto, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects. Similarly, under Article 43 ECHR within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional circumstances, request that the case be referred to the Grand Chamber: a panel of five judges of the Grand Chamber 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*. Finally, under Article 47 ECHR the Court may, at the request of the Committee of Ministers, give advisory opinions on *legal questions* concerning the interpretation of the Convention and the Protocols thereto. Someone also compared the advisory opinions under Protocol No. 16 with pilot-judgments under Rule 61 of the Rules of the

[8]COUNCIL OF EUROPE, Report of the Group of Wise Persons, supra note 4, para. 86.

[9]EUROPEAN COURT OF HUMAN RIGHTS – GOUR EUROPÉENNE DES DROITS DE L'HOMME, Opinion of The Court on The Wise Persons' Report, 2 April 2007, paragraph 4, available at https://www.echr.coe.int/Documents/2007_Wise_Person_Opinion_ENG.pdf, last accessed 28.02.2025, para. 4.

[10]EUROPEAN COURT OF HUMAN RIGHTS – GOUR EUROPÉENNE DES DROITS DE L'HOMME, Reflection Paper on The Proposal to Extend The Court's Advisory Opinion, March 2012, No. 3853038 available at https://echr.coe.int/Documents/Courts_advisory_jurisdiction_ENG.pdf, last accessed 28.02.2025, para. 22.

ECtHR: from this perspective, advisory opinions could be seen as a sort of preliminary pilot-judgments, that allow the Court to tackle some *questions of general interest* before the case is brought before the Court (G. Raimondi, 2014, p. 468).

However, none of these articles refers to the words 'questions of principle': the words 'serious question' refer to the complexity of the question, not to the legal nature of the question (as in the case of 'questions of principles'); the same could be said when it comes to 'serious issue of general importance'; the words 'legal questions' cover a wider area (viz., 'questions of principles' are a species of the genus 'legal questions'); pilot-judgments (under Rule 61 of the Rules of the ECtHR) concern a very specific issues (viz., 'the existence of a structural or systemic problem or other similar dysfunction which has given rise or may give rise to similar applications'). Finally, if one reads the *Explanatory Report*, they would realise that the tool taken as a model was that under Article 43 ECHR; however, it is clear from the *Explanatory Report* itself that the aim of the two tools is different, thus one cannot automatically assume that the meaning of 'questions of principle' is the same as the words 'serious question'/'serious issue of general importance'[11].

The only way to understand the meaning of the words 'questions of principles', is to reflect on the theoretical concept of 'principle', thus.

According to Dworkin, the distinction between 'principles' and 'rules' is that only rules 'are applicable in an all-or-nothing fashion' (R. Dworkin, 1978, p. 24); on the other hand, a principle 'states a reason that argues in one direction, but does not necessitate a particular decision' (R. Dworkin, 1978, p. 26). Crisafullli underlined the relational nature of principles, as principles are principles of detailed norms (V. Crisafulli, 1952, pp. 36-37). Bartole analysed their resilience, as they can be adjusted (S. Bartole, 1983, p. 573). Bin stressed their undefined nature (R. Bin, 1988, p. 199-200). As Zagrebelsky noted, rules tell us to behave in one way or another, whereas principles do not: principles give us abstract criteria in order to decide how to behave in practice (G. Zagrebelsky, 1992, p. 149).

At the end of the day, 'questions of principle' under Protocol No. 16 can be seen as legal questions that are controversial not in the particular dimension of the pending case brought before the court: 'questions of principle' are controversial legal questions to which a solution can be given from a general perspective. Thus, such a solution states a reason that argues in one direction, keeping enough margin of discretion for the requesting court when it comes to the specific decision that the court is going to take.

As was noted by some scholars before ECtHR started issuing its advisory opinions, 'too much specificity could risk usurping the role of the national court, limiting its discretion' (K. Dzehtsiarou and N. O'Meara, 2014, p. 465).

3. THE EMPIRICAL ANALYSIS: THE ADVISORY OPINIONS ISSUED SO FAR

Once the hypothesis has been theoretically demonstrated, it is now time to demonstrate it from a practical perspective.

Eleven requests for advisory opinions under Protocol No. 16 to the ECHR have been lodged so far.[12] Among these, four requests were refused and seven opinions have been issued. The aforementioned seven advisory opinions issued so far will be analysed here, so as to see whether the ECtHR, when it issues advisory opinions, actually restricts itself to questions of principles.

It is interesting to note that the titles of the advisory opinions do not include the names of the parties of the specific domestic cases nor of the relevant State party, as happens in the title of judgments issued in contentious cases. They always refer to the question of the refer only. That looks as a further argument supporting the hypothesis: the perspective of the ECtHR's advisory opinions is that of *principles*, not of the domestic pending case.

(*i*) The first advisory opinion issued by the ECtHR under Protocol No. 16 was given on 10 April 2019[13] to the French Court of Cassation.

The French Court of Cassation (within a pending case concerning surrogate motherhood) had asked the

[11] Explanatory Report to Protocol No. 16 to The Convention for The Protection of Human Rights and Fundamental Freedoms, 2 October 2013, paragraph 9.

[12] An analysis of the level of abstractness/concreteness of the first two advisory opinions has been carried out in T. Moon and L. Lavrysen, 2021, pp. 766-785.

[13] ECtHR, Advisory Opinion Concerning the Recognition in Domestic Law of A Legal Parent-child Relationship between A Child Born through A Gestational Surrogacy Arrangement Abroad and The Intended Mother, No. P16-2018-001.

ECtHR to rule whether a State party would be overstepping its margin of appreciation under Article 8 ECHR by refusing to enter (in the register of births, marriages and deaths) the details of the birth certificate of a child born abroad as the result of a gestational surrogacy arrangement, in so far as the certificate designates the 'intended mother' as the 'legal mother'; while accepting registration in so far as the certificate designates the 'intended father', as the child's biological father. The ECtHR also asked, in the event of an answer in the affirmative to the question above, whether the possibility for the intended mother to adopt the child of her spouse (viz. the biological father), this being a means of establishing the legal mother-child relationship, ensures compliance with the requirements of Article 8 ECHR[14].

The first relevant element concerns some preliminary considerations carried out by the ECtHR about advisory opinions in general. The ECtHR argued that 'the aim of the procedure is not to transfer the dispute to the Court, but rather to give the requesting court or tribunal *guidance* on Convention issues when determining the case before it' (emphasis added). The ECtHR also stressed that the Court has no jurisdiction either to assess the facts of a case or to evaluate the merits of the parties' views on the interpretation of domestic law in the light of Convention law, or to rule on the outcome of the proceedings. Its role is limited to furnishing an opinion in relation to the questions submitted to it. It is for the requesting court to resolve the issues raised by the case and '*to draw*, as appropriate, *the conclusions which flow from the opinion* delivered by the ECtHR' (emphasis added) for the provisions of national law invoked in the case and for the outcome of the case[15].

The second relevant element is the nature of the answer itself, given by the ECtHR to the French Court of Cassation: the ECtHR gave an answer that stood within the borders of 'principles' (as intended here), keeping enough margin of discretion for the domestic court with regards to the specific case.

As for the first question, the ECtHR answered that the child's right to respect for private life within the meaning of Article 8 ECHR requires that domestic law provide *a possibility of recognition* of a legal parent-child relationship with the intended mother, designated in the birth certificate legally established abroad as the 'legal mother'. In other words, only the general and absolute impossibility of obtaining recognition of the relationship between a child born through a surrogacy arrangement (entered into abroad) and the intended mother, is incompatible with the child's best interest, which requires, as a minimum, that each situation be examined *in the light of the particular circumstances of the case*.[16] In the light of the reflections carried out here, 'a possibility of recognition' is the *principle* given in the advisory opinion, whereas the *rule* should be given by the French Court of Cassation 'in the light of the particular circumstances of the case'.

As for the second question, the ECtHR was even more cautious. The *principle* (once again) is that an effective mechanism should exist enabling the relationship between the child and the intended mother to be recognised, in accordance with the child's best interest.[17] That being said, as for the *rule*, 'it is not for the Court to express a view in the context of its advisory opinion on whether French adoption law satisfies *the criteria* set forth' above (emphasis added): that is a 'a matter for the domestic courts to decide'.[18]

The French Court of Cassation actually gave the rule: it ordered the recording (in the register of births, marriages and deaths) of the details of the birth certificate of the child, designating the 'intended mother' as the 'legal mother': that was seen as the best solution in the light of the child's best interest.[19]

(*ii*) The second advisory opinion issued by the ECtHR under Protocol No. 16 was given on 29 May 2020[20] to the Armenian Constitutional Court.

A question of constitutionality, concerning an article of the criminal code (Article 300.1) entered into force in 2009, was pending before the Armenian Constitutional Court. The question arose within the criminal proceedings against the former Armenian President Robert Kocharyan, charged with overthrowing the constitutional order of Armenia for having repressed some protests in February-March 2008. The question

[14] Ibid., para. 9.
[15] Ibid., para. 25.
[16] Ibid., para. 42.
[17] Ibid., paras. 54-55.
[18] Ibid., para. 58.
[19] Cour de cassation – Ussemblee pleniere, Arrêt n° 648 du 4 octobre 2019 (10-19.053).
[20] ECtHR, Advisory Opinion Concerning The Use of The 'Blanket Reference' or 'Legislation by Reference' Technique in The Definition of An Offence and The Standards of Comparison between The Criminal Law in Force at The Time of The Commission of The Offence and The Amended Criminal law, No. P16-2019-001.

of constitutionality regarded: (*i*) the compatibility of Article 300.1 with the principle of legal certainty (under Article 79 of the Armenian Constitution), as the criminal provision, containing references to some articles of the Constitution, was drafted using the 'blanket reference' technique; (*ii*) the compatibility of Article 300.1 with the principle of non-retroactivity of less favourable criminal law (under Articles 72 and 73 of the Armenian Constitution), as the criminal provision, entered in force in 2009, was less favourable than that in force when the crime was committed in 2008.

The Constitutional Court of Armenia had asked the ECtHR: whether the concept of 'law' under Article 7 ECHR (no punishment without law) shall respect quality requirements such as certainty, accessibility, foreseeability and stability; if not, what the standards of delineation are; whether the criminal law that defines a crime and contains a reference to certain legal provisions of a legal act with supreme legal force and higher level of abstraction meet the requirements of certainty, accessibility, foreseeability and stability; what, in the light of the principle of non-retroactivity of criminal law, the standards established for comparing the criminal law in force at the time of committal of the crime and the amended criminal law are, in order to identify their essential similarities or differences[21].

The first relevant element, again, is the nature of the answer itself, given by the ECtHR to the Constitutional Court of Armenia: the ECtHR gave an answer that stood within the borders of 'principles', keeping enough margin of discretion for the domestic court with regards to the specific case.

The ECtHR issued its advisory opinion on the third and the fourth questions only, declaring inadmissible the first and the second questions. Under Article 1 of Protocol No. 16, the requesting court or tribunal may seek an advisory opinion only in the context of a case pending before it: on the contrary, the first two questions were of an abstract and general nature and the Court were not able to discern any direct link between the two questions and the pending domestic proceedings[22].

As for the third question, the ECtHR answered that the use of 'blanket reference' technique in criminalising acts is not in itself incompatible with the requirements of Article 7 ECHR. However, the referencing provision and the referenced provision, read together, must enable the individual concerned to foresee, if need be with the help of appropriate legal advice, what conduct would make them criminally liable. This requirement applies equally to situations where the referenced provision has a higher hierarchical rank in the legal order concerned or a higher level of abstraction than the referencing provision. In the light of the reflections carried out here, that is the *principle* given in the advisory opinion, whereas the *rule* should be given by the Constitutional Court of Armenia: as the ECtHR stated, 'it is up to the court applying both the referencing provision and the referenced provision to assess whether criminal liability was foreseeablein the circumstances of the case'[23].

As for the fourth question, the ECtHR answered that in order to establish whether a law passed after an offence has allegedly been committed is more or less favourable to the accused than the law that was in force at the time of the alleged commission of the offence, regard must be had to the specific circumstance of the case, thus the comparison has to be carried out by the competent court.[24] The ECtHR's case-law does not offer to this end 'a comprehensive set of *criteria*' (emphasis added), apart from the fact that the comparison should not be carried out with regards to the definitions of the offences *in abstracto* but, as said, having regard to the specific circumstances of the case[25].

(*iii*) The third advisory opinion issued by the ECtHR under Protocol No. 16 was given on 8 April 2022[26] to the Lithuanian Supreme Administrative Court.

The Lithuanian Supreme Administrative Court required an advisory opinion within a pending case concerning the refusal of the Central Electoral Commission of Lithuania to register, as a candidate to 2020 parliamentary election, a former member of Parliament who had been impeached and removed from her position in 2014, due to the general and unlimited ban under the Lithuanian Law on election. It had asked the ECtHR to know what the criteria are, when it comes to determine the scope of the

[21] Ibid., para. 11.
[22] Ibid., paras. 52-56.
[23] Ibid., para. 74.
[24] Ibid., para. 88.
[25] Ibid., para. 86.
[26] ECtHR, Advisory Opinion on The Assessment, under Article 3 of Protocol No. 1 to the Convention, of The Proportionality of A General Prohibition on Standing for Election After Removal from Office in Impeachment Proceedings, No. P16-2020-002.

application of the principle of proportionality of a general prohibition restricting the exercise of the rightsimplied by Article 3 of Protocol No. 1 to the ECHR (right to free election)[27].

As for the nature of the answer given by the ECtHR to the Lithuanian Supreme Administrative Court, once again the ECtHR gave an answer that stood within the borders of 'principles', keeping enough margin of discretion for the domestic court, with regards to the specific case. The ECtHR sates that the *criteria* (emphasis added) which are relevant in deciding whether or not a ban on the exercise of a parliamentary mandate in impeachment proceedings has exceeded what is proportionate under Article 3 of Protocol No. 1, should be objective in nature and allow relevant circumstances connected not only with events which led to the impeachment of the person concerned but also – and primarily – with the functions sought to be exercised by that person in the future to be taken into account in a transparent way. The purpose of the impeachment and the subsequent ban is not primarily to impose another sanction on the person concerned in addition to a criminal sanction but to protect parliamentary institutions.

It is important to note that the ECtHR underlined that the Lithuanian Administrative Court's request was 'for *guidance on the criteria* which are relevant' (emphasis added) for the purpose of determining the proportionality of the ban.[28] Such a general and unlimited ban is a direct consequence of the Lithuanian legal regulations on impeachment, which the ECtHR (with regards to the ban of an impeached and removed President of the Republic from holding parliamentary office) found in 2011 to be in breach of Article 3 of Protocol No. 1 on the grounds that a general and unlimited ban, as laid down in those regulations, amounted to a disproportionate sanction.[29] However, the Lithuanian authorities have not executed that 2011 judgment yet. In particular, the Lithuanian Constitution has not been amended so faras the Lithuanian Constitutional Court noted, that would be the only possible way to execute the 2011 judgment. At the end of the day, this is the reason why the Lithuanian Supreme Administrative Court were seeking guidance (with regards to a different specific case) in order to deal with a piece of legislation that the ECtHR had already declared not to be in compliance with the ECHR[30].

Once again, the ECtHR gave its criteria (*principles*), keeping enough margin of discretion for the Lithuanian Supreme Administrative Court (*rules*): 'it is not for the Court', the ECtHR stated, 'to take a stance on whether the national court is in a position to apply the Convention in a pending case taking account of rules if constitutional nature, by which all domestic courts are obliged to abide'[31].

(*iv*) The fourth advisory opinion under Protocol No. 16 was given by the ECtHR on 26 April 2022[32] to the Armenian Court of Cassation.

The specific case before the Armenian Court of Cassation concerned an appeal that had upheld a judgment of first instance regarding the exemption of two officers from criminal responsibility of torture, due to the expiration of the statute of limitation period. The controversial issue regarded the fact that under some Articles of the Armenian Criminal Code/Code of Criminal Procedure a person is exempted from criminal responsibility, if ten years have passed from the moment of commission of a grave offence. However, under Article 75, paragraph 6, of the Criminal Code, 'no limitation periods apply to persons who have committed offences […] envisaged by international treaties to which Armenia is a party if such treaties prohibit the application of limitation periods'. Within international law, the prohibition of torture has achieved the status of *jus cogens* and the ECtHR stated that 'in cases concerning torture or ill-treatment inflicted by State agents, criminal proceedings ought not to be discontinued on account of a limitation period'[33].

The Armenian Court of Cassation asked the ECtHR to know whether the non-application of the limitation for criminal responsibility for torture by invoking international law sources would be in compliance with Article 7 ECHR (no punishment without law), when the domestic law does not require the non-application of such a limitation[34].

The answer of the ECtHR (that, in the light of the reflections carried out here, one could call: the

[27] Ibid., para. 7.
[28] Ibid., para. 73.
[29] ECtHR, Paksas v. Lithuania, No. 34932/04, 06.01.2011.
[30] Ibid., paras. 68-73.
[31] Ibid., para. 92.
[32] ECtHR, Advisory Opinion on The Applicability of Statutes of Limitation to Prosecution, Conviction and Punishment in Respect of An Offence Constituting, in Substance, An Act of Torture, No. P16-2021-001.
[33] ECtHR, Mocanu and Others v. Romania, No.10865/09, 05.05.2022.
[34] Ibid., para. 10.

'*principle*') was as follows: Article 7 ECHR precludes the revival of a prosecution in respect of a criminal offence, when the criminal offence is subject to a statute of limitation pursuant to domestic law and the applicable limitation period has already expired, on account of the absence of a valid legal basis[35].

Also here, the ECtHR left enough margin of discretion for the requesting court (that, in the light of the reflections carried out here, one could call: the '*rule*'). It noted that in the specific context, there is no legislative extension of the limitation period but a situation where the requesting court is to determine whether to apply or not a limitation period, pursuant to the aforementioned different domestic provisions. In this case, as the ECtHR argued, it is first and foremost for the national court to determine, 'with the context of its domestic constitutional and criminal law rules', whether rules of international law having legal force in the national legal system, can provide for a sufficiently clear and foreseeable legal basis within the meaning of Article 7 of the Convention to conclude that the criminal offence in question is not subject to a statute of limitation[36].

(*v*) The fifth advisory opinion under Protocol No. 16 wasissued by the ECtHR on 13 July 2022[37] on a request of the French State Council.

The French State Council asked what the relevant *criteria* are, when it comes to assess the proportionality under Article 14 ECHR (prohibition of discrimination), taken together with Article 1 of Protocol No. 1 (protection of property), of the difference in treatment between landowners' associations (as the French law sets out), in order to pursue the public interest to prevent the unregulated exercise of hunting and promote rational use of game stocks[38].

The ECtHR stated that, in assessing the proportionality of the measure establishing the contested difference in treatment, the requesting court should take into account criteria such as: the nature of the criterion of differentiation introduced by the law and its impact on the national authorities' margin of appreciation; the choice of means employed to achieve the aim(s) pursued; the appropriateness of the means employed in relation to the aim(s) sought to be realised; the impact of the means employed.[39]

Once again, the distinctions between *principle* (the criteria to assess the proportionality) and *rule* (the actual assessment of the proportionality) looks clear in the advisory opinion of the ECtHR.

(*vi*) The sixth advisory opinion under Protocol No. 16 was given by the ECtHR on 13 April 2023[40] to the Supreme Court of Finland.

The specific case before the Supreme Court of Finland concerned an appeal (of the decision of a District Court to grant the adoption of an adult) by the mother of the adult that was adopted by a third person. The appeal had been dismissed by a Court of Appeal on the grounds that the parent of the adult is not a party to a matter concerning adoption and has no right of appeal against a decision concerning the adoption.

The mother applied to the Supreme Court of Finland, which then asked the ECtHR whether legal proceedings concerning the granting of an adoption of an adult are covered by the protection of a biological parent referred to in Article 8 ECtHR (right to private life)[41].

The ECtHR answered that such proceedings may be regarded as affecting a biological parent's private life under Article 8 ECHR, that the parent must be given the opportunity to be heard and the argument made must be taken into account to the extent relevant (that is the *principle*). The 'choice of the means calculated to secure compliance with Article 8' (the *rule*), the ECtHR stated, 'is, in principle, a matter that falls within each Contracting States' margin of appreciation'[42].

(*vii*) The seventh advisory opinion under Protocol No. 16 wasissued by the ECtHR on 14 December 2023[43] on a request of the Belgian State Council.

The specific case that was brought before the Belgian State Council, regarded the case of a man who

[35] Ibid., para. 77.
[36] Ibid., para. 78.
[37] ECtHR, Advisory Opinion on The Difference in Treatment between Landowners' Association 'Having a Recognised Existence on The Date of The Creation of An Approved Municipal Hunters' Association' and Landowners' Association Set Up After That Date, No. P16-2021-002.
[38] Ibid., para. 9.
[39] Ibid., paras. 98-110.
[40] ECtHR, Advisory Opinion on The Procedural Status and Rights of A Biological Parent in Proceedings for The Adoption of An Adult, No. P16-2022-001.
[41] Ibid., para. 8.
[42] Ibid., paras. 55 and 57.
[43] ECtHR, Advisory Opinion as to Whether An Individual May Be Denied Authorisation to Work As A Security Guard or Officer on Account of Being Close of Belonging to A Religious Movement, No. P16-2023-001.

applied against the denial of an authorization to work as a security guard/officer on account of being close to Salafism. The State Council asked the ECtHR to rule on whether the mere fact of being close to or belonging to a religious movement that, in view to its characteristics, is considered by the competent administrative authority to represent a threat to the country in the medium to long term, constitutes sufficient grounds, in the light of Article 9 ECHR (right to freedom of thought, conscience and religion), for taking an unfavourable measure against an individual, such as a ban on employment as a security guard[44].

In its advisory opinion, the ECtHR stated it would indicate '*in a general manner*, the *criteria* under the Convention that it considers relevant' (emphasis added).[45] In this light, the ECtHR argued that such personal conditions may justify a refusal to authorise that individual to work as a security guard or officer, provided that the measure in question: has an accessible and foreseeable legal basis; is adopted in the light of the conduct of the individual concerned; is taken, having regard to the individual's occupational activity, for the purpose of averting a real and serious risk for democratic society, and pursues one or more of the legitimate aims under Article 9 ECHR; is proportionate to the risk that it seeks to avert and to the legitimate aim or aims to which it pursues; may be referred to a judicial authority for a review that is independent, effective and surrounded by appropriate procedural safeguards, such as to ensure compliance with the requirements listed above[46].

Once again, the ECtHR identified five conditions that established *principles*, keeping enough margin of discretion for the requesting court with regards to the specific circumstances of the case.

CONCLUSION

The initial hypothesis has been demonstrated.

From a theoretical perspective, relying on Dworkin's distinction between 'principles' and 'rules', it has been demonstrated here thatadvisory opinions under Protocol No. 16 keep enough margin of discretion for the requesting court, as they are issued on 'questions of principle': in light of Dworkin's definition of principle, thus, they state a reason that argues in one direction, but does not necessitate a particular decision. This decision (the rule) is on the requesting court.

From an empirical perspective, the analysis of the seven advisory opinions issued so far, has demonstrated here that the ECtHR, when it issues advisory opinions, is actually restricting itself to questions of principles, leaving enough margin of discretion to the requesting Courts. The words themselves used by the ECtHR reflect such attitude of the Court: the Courts often refer to 'guidance' and 'criteria', given 'in a general manner' to the requesting court via the advisory opinions (and such words look to be synonymous with 'principles'), also often stressing that the 'decision' (the 'rule') is on the requesting court 'in the light of the particular circumstances of the case'.

The theoretical and empirical analysis that has been carried out here, adds to the scholarly debate an extra counterargument to the argument against the ratification of Protocol No. 16. It has shown to the States, that are still reluctant to ratify Protocol No. 16, that such a ratification would not pose any threat to discretion of domestic Courts, neither in theory nor in practice. Even if one considers advisory opinions as *de facto* binding, the ECtHR must keep,in theory (and has actually kept in practice),the advisory opinions within the borders of 'principles', leaving thus enough margin of discretion to domestic courts.

No threat to domestic sovereignty in sight…

REFERENCES

Albanesi, Enrico. 2021. Corte Costituzionale e Parere della Corte Europea dei Diritti dell'Uomo tra Questioni di Principio e Concretezza del Giudizio Costituzionale. Torino: Giappichelli.

Albanesi, Enrico. 2022. "The European Court of Human Rights' Advisory Opinions Legally Affect Non-Ratifying States: A Good Reason (from A Perspective of Constitutional Law) to Ratify Protocol No. 16 to the ECHR". European Public Law 28(1): 1-18. https://doi.org/10.54648/EURO2022001

Albanesi, Enrico. 2023. "The Academic's Perspective". Available at https://www.echr.coe.int/documents/d/echr/summary-20231013-albanesi-conference-p16-eng. Last accessed 14.04.2025.

Bartole, Sergio. 1983. "Elasticità dei principi e verifiche di fatto sulla loro applicazione". Giurisprudenza costituzionale 28(2): 563-589.

Bates, Ed. 2010. The Evolution of the European Convention on Human Rights. From its Inception to the Creation of a Permanent Court of Human Rights. Oxford: Oxford University Press. https://doi.org/10.1093/acprof:oso/9780199207992.001.0001

Besson, Samantha. 2016. "Subsidiarity in International Human Rights Law – What Is Subsidiarity about Human Rights?". American Journal of Jurisprudence 61(1): 69-107. https://doi.org/10.1093/ajj/auw009

Bin, Roberto. 1988. Atti normativi e norme programmatiche. Milano: Giuffrè.

Cerrina Feroni, Ginevra. 2019. "Il disegno di legge relative alla ratifica dei Protocolli 15 e 16 recanti emendamenti alla Convenzione per la salvaguardia dei diritti dell'uomo e delle libertà fondamentali". Federalismi.it (5): 1-11.

[44] Ibid., para. 10.
[45] Ibid., para. 65.
[46] Ibid., paras. 93-112.

Cragl, Paul. 2013. "(Judicial) Love Is Not A One-way Street: The EU Preliminary Reference Procedure As A Model for ECtHR Advisory Opinions under Draft Protocol No. 16". European Law Review 38(2): 229-247.

Crisafulli, Vincenzo (1952). La Costituzione e le sue disposizioni di principio. Milano: Giuffrè.

Croft Stuart, Redmond John, G. Wyn Rees and Mark Webber, eds. 1999. The Enlargement of Europe. Manchester: Manchester University Press.

Dascola Maria, Fasone Cristina and Spigno Irene. 2015. "The Prospective Role of Constitutional Courts in The Advisory Opinion Mechanism Before the European Court of Human Rights: A First Comparative Assessment with The European Union and The Inter-American System". German Law Journal 16(6): 1387-1428. https://doi.org/10.1017/S2071832200021192

Dzehtsiarou, Kastanzin and O'Meara, Noreen. 2014. "Advisory Jurisdiction and The European Court of Human Rights: A Magic Bullet for Dialogue and Docket-control". Legal Studies 34(3): 444-468. https://doi.org/10.1111/lest.12025

Dworkin, Ronald. 1978. Taking Rights Seriously, 2nd edition. Cambridge, Massachusetts: Harvard University Press.

Gárdos-Orosz, Fruzsina. 2015. "Preliminary Reference and the Hungarian Constitutional Court: A Context of Non-Reference". German Law Journal 16(6): 1569-1590. https://doi.org/10.1017/S2071832200021271

Gavrysh, Khrystyna. 2022. Establishing Judicial Precedents Through Advisory Opinions of the European Court of Human Rights. The Italian Review of International and Comparative Law 2: 266-295. https://doi.org/10.1163/27725650-02020004

Gerards, Janneke. 2014. "Advisory Opinions, Preliminary Rulings and The New Protocol No. 16 to The European Convention of Human Rights. A Comparative and Critical Appraisal". Maastricht Journal of European and Comparative Law 21(4): 630-651. https://doi.org/10.1177/1023263X1402100404

Glas, Lize. 2020. "From Interlaken to Copenhagen: What Has Become of The Proposals Aiming to Reform The Functioning of The European Court of Human Rights?" Human Rights Law Review 20(1): 121-151. https://doi.org/10.1093/hrlr/ngaa001

Glas, Lize and Krommendijk, Jasper. 2022. "A Strasbourg Story of Swords and Shields: National Courts' Motives to Request an Advisory Opinion from The ECtHR under Protocol No. 16". European Convention on Human Rights Law Review 3: 311-349. https://doi.org/10.1163/26663236-bja10042

Harmsen, Robert. 2001. "The European Convention on Human Rights after The Enlargement". International Journal of Human Rights 5(4): 18-43. https://doi.org/10.1080/714003732

Hioureas, Christina. 2006. "Behind the Scenes of Protocol No. 14: Politics in Reforming the European Court of Human Rights?". Berkeley Journal of International Law 24(2): 718-757.

Laffranque, Julia. 2016. "Presentation". P. 8-9 in Subsidiarity: a two-sided coin? edited the European Court of Human Rights. Strasbourg: European Court of Human Rights.

Lemmens, Koen. 2019. "Protocol No 16 to The ECHR: Managing Backlog through Complex Judicial Dialogue?" European Constitutional Law Review 15(4): 691-713. https://doi.org/10.1017/S1574019619000373

Luciani, Massimo. 2019. "Note critiche sui disegni di legge per l'autorizzazione alla ratifica dei protocolli n. 15 e n. 16 della CEDU. Available at https://www.sistemapenale.it/it/documenti/massimo-luciani-audizione-su-autorizzazione-alla-ratifica-protocollo-15-e-protocollo-16-cedu Last accessed: 14.04.2025.

Madsen, Mikael Rask. 2018. "Rebalancing European Human Rights: Has The Brighton Declaration Engendered A New Deal on Human Rights in Europe?" Journal of International Dispute Settlement 9(2): 199-222. https://doi.org/10.1093/jnlids/idx016

O'Leary, Siofra. 2022. "Advisory Opinions and Judicial Dialogue Strasbourg-Style". Common Law Market Review. 59(SI): 87-104.

O'Leary, Siofra. 2023. "Judicial Dialogue through the Advisory Opinion Mechanism under Protocol No. 16". https://doi.org/10.54648/COLA2022145

Lohse, Eva Julia. 2015. "The German Constitutional Court and Preliminary References – Still a Match not Made in Heaven?". German Law Journal 16(6): 1491-1508. https://doi.org/10.1017/S2071832200021234

Moon, Toon and Lavrysen, Laurens. 2021. "Abstract but Concrete, or Concrete but Abstract? A Guide to the Nature of advisory Opinions under Protocol No 16 of the ECHR". Human Rights Law Review 21: 752-785. https://doi.org/10.1093/hrlr/ngaa065

Pollicino, Oreste. 2013. "The Italian Constitutional Court and the European Court of Justice: a Progressive Overlapping between the Supranational and the Domestic Dimension". Pp. 101-129 in The Role of Constitutional Courts in Multilevel Governance, edited by P. Popelier, A. Mazmanyan and W. Vanderbruwaene. Antwerp: Intersentia.

Raimondi, Guido. 2014. "Corte di Strasburgo e Stati: Dialoghi Non Sempre Facili. Intervista a Cura di Diletta Tega a Guido Raimondi". Quaderni costituzionali 34(2): 463-469.

Rodríguez-Izquierdo Serrano, Miryiam. 2015. "The Spanish Constitutional Court and Fundamental Rights Adjudication After the First Preliminary Reference". German Law Journal 16(6): 1509-1528. https://doi.org/10.1017/S2071832200021246

Vatsov, Mihail. 2015. "European Integration Through Preliminary Rulings? The Case of the Bulgarian Constitutional Court". German Law Journal 16(6): 1591-1622. https://doi.org/10.1017/S2071832200021283

Voland, Thomas and Schiebel, Britta. 2017. "Advisory Opinion of The European Court of Human Rights: Unbalancing the System of Human Rights Protection in Europe?" Human Rights Law Review 17(1): 73-95. https://doi.org/10.1093/hrlr/ngw034

Zagrebelsky, Gustavo. 1992. Il Diritto Mite. Legge Diritti Giustizia.Torino: Einaudi.

Zampetti, Giovanni. 2018. "The Recent Challenges for The European System of Fundamental Rights: Protocol No. 16 to The ECHR and Its Role Facing Constitutional and European Level of Protection". Available at https://www.econstor.eu/bitstream/10419/185058/1/1040654460.pdf Last accessed 14.04.2025.

Received on 15-04-2025 Accepted on 18-05-2025 Published on 22-07-2025

https://doi.org/10.6000/2817-2302.2025.04.03