

Towards E-justice? A Case for Electronic Submission of Third-Party Interventions before the European Court of Human Rights

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Abstract

With Protocol 11 (which entered into force on 1 November 1998), Council of Europe member states accepted amicus curiae participation in procedures before the European Court of Human Rights (ECtHR or Court), and instances of such participation have been steadily increasing since then (Wiik, 105). The role of third-party interveners is, in the words of former ECtHR judge Pastor Vilanova, “to enlighten the Court with their expertise as to the legal and cultural issues (of a case), both national and international.”

When third parties are interested in intervening in a procedure before the ECtHR, they must request leave to intervene no later than twelve weeks after the publication on the Court’s case-law database and must do so “in writing” to the Court. Only if this step is successful may they submit a substantive third-party intervention to the Court. One critical factor for success is the timing of the intervention, as the time granted for submission is often extremely short (around one month) due to delays in communication. Specifically, both the letter from the Court informing interveners and the intervention itself are sent by post, which further limits the available time.

Permitting electronic communication with interveners and an electronical submission of third-party interventions will thus ensure that the limited timeframe available to interveners can be used to draft high-quality and valuable interventions to the utmost, reduce the cost of an intervention (both for the Court and the intervener) and makes the processing of information in the files more convenient for the parties and the Court.

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1. Introduction

“I know that preparing and writing third party interventions is a labour-intensive activity which can take up much of your time. Sometimes you may wonder what impact they have. On behalf of the Court, I can assure you that all submissions are read with interest and care and that, depending on the case, they can play a very useful role in our decision-making.”¹

Robert Spano, Strasbourg, 17 September 2020

The European Court of Human Rights (ECtHR) has played a pivotal role in upholding human rights across member states of the Council of Europe. With the adoption of Protocol 11, which came into force on 1 November 1998, member states formally recognized the right of third-party interventions, or *amicus curiae* participation, in proceedings before the Court. Since then, the number of such interventions has grown steadily, reflecting their increasing importance in enriching the Court’s deliberations. As former ECtHR judge Pastor Vilanova aptly described, third-party interveners serve to “enlighten the Court with their expertise as to the legal and cultural issues [of a case], both national and international”.

However, the process for submitting third-party interventions poses significant challenges. Prospective interveners must first request permission within twelve weeks of the relevant case’s

¹ Foreword of Robert Spano, Third Party Interventions Before the European Court of Human Rights, Guide for National Human Rights Institutions, October 2020.

publication in the Court's case-law database. If granted permission, they are often faced with tight deadlines – typically around one month – to prepare and submit their interventions. These time constraints are exacerbated by the reliance on traditional postal communication for notifying interveners and receiving their submissions, further limiting the available timeframe.

This position paper argues that permitting electronic communication and submission of third-party interventions would address these challenges by streamlining the process. Such measures would allow interveners to focus on drafting high-quality and insightful contributions, reduce procedural costs for both the Court and participants, and enhance the overall efficiency of case management. By modernizing these practices, the ECtHR could better facilitate third-party contributions, ensuring that their valuable expertise is fully leveraged in support of human rights jurisprudence.

This position paper is structured as follows. First, I will briefly summarize the importance of *amicus curiae* interventions for the functioning of international human rights courts. Second, I will elaborate on how the procedure before the European Court of Human Rights looks and zoom in on the submission in particular. Third, this submission procedure will be compared to the one in place in other systems. Finally, I will conclude whether we can draw lessons from these other systems for the ECtHR.

2. The relevance of *amicus curiae* interventions

The relevance of *amicus curiae* can be approached in various ways. I want to mention to refer here first to Kearney and Merrill. They argued, in relation to the *amicus curiae* procedure before the United States Supreme Court, that one's views on the procedure are linked to the model of judging or the judicial decision-making process one has in mind.² When this model is a more conventional legal model where judges are seen as trying to resolve cases in accordance with what the law requires then *amicus curiae* submissions can have an impact on the judicial decision-making process when they contain new legal arguments or new factual material.³ In

² Kearney, Joseph D., and Thomas W. Merrill. "Influence of *amicus curiae* briefs on the Supreme Court." *University of Pennsylvania Law Review* (1999): 743, 747.

³ *Ibid*, 748. Kearney and Merrill also discuss the attitudinal model of judging and its impact on how *amicus curiae* are perceived. They argue as follows: "Under this view, *amicus* briefs should have little or no impact on the outcomes reached by a court, because each judge's vote in a case is assumed to be the product of his or her preestablished ideological preferences with respect to the issue presented." I have not included this in the article as it is based on the system in which judges are nominated by political parties and there is a close connection between the judges' ideological preferences at the ones of the parties.

line with an “interest group model” of judging, judges are “empty vessels” who aim to decide cases in a manner that aligns with the interests of the most influential groups in society involved in the matter at hand.⁴ This is important to keep in mind as we proceed.

In what follows, I will first discuss the relevance of *amicus curiae* for the supranational courts in general and then include some findings about their relevance in the framework of the ECtHR in particular.

2.1. General relevance

This section outlines the key rationales for *amicus curiae* participation. It explores how these interventions enhance judicial decisions through comparative legal insights, amplify underrepresented voices, strengthen the democratic legitimacy of court rulings, and offer a low-cost platform for public engagement in legal processes.

A first rationale is that the *amicus* contributes something to the judging process that is beneficial for arriving at the **best judicial decision**. The assistance of the *amicus* can thus improve the overall epistemic quality of the decision that the Court produces.⁵ By bringing information about state practice in other member states or comparative analysis, the Court is informed of legal solutions that are adopted in other systems which are important material to consider during a proportionality analysis.⁶

Second, *amicus curiae* briefs are considered as an important medium to get an understanding how these **wider interest groups** would want a case to be decided. It allows parties to intervene and make their arguments heard to a court even if they would not have standing to bring an individual case before one of these courts.⁷ In such a way, the court is provided with “underrepresented relevant information” by parties that would not have a direct and personal interest.⁸ As such, a wide spectrum of views can be presented to the Court which counters

⁴ Ibid, 748.

⁵ Wiik, Astrid. *Amicus curiae* before international courts and tribunals. Nomos Verlagsgesellschaft mbH & Co. KG, 2018, 44.

⁶ Hennebel, ‘Le rôle des amici curiae devant la Cour européenne des droits de l’homme’ (2007) 71 *Revue Trimestrielle des Droits de l’Homme* 641, 658.

⁷ Tobias, Carl. "Standing to Intervene." *Wisconsin Law Review* (1991): 415.

⁸ Hennebel, Ludovic. "Le Rôle des Amici Curiae Devant la Cour Européenne des Droits de L'Homme (The Role of the Amici Curiae Before the European Court of Human Rights)." *Revue Trimestrielle des Droits de l'Homme* 71 (2007): 641-642. Viljoen, Frans, and Adem Kassie Abebe. "Amicus curiae participation before regional human rights bodies in Africa." *Journal of African Law* 58.1 (2014): 22-44.

criticism that the Court is “detached and indifferent to the public”.⁹ NGOs can use them to send a signal to the parties involved that they are watching in and staying vigilant on a specific issue.¹⁰

A third rationale for *amicus curiae* interventions goes beyond the outcome of the decision-making process but rather focuses on the democratic **legitimacy** in the process of adjudication.¹¹ Legitimacy is concerned with what exactly justifies the exercise of public authority by a certain body. In order to satisfy this, it is important to reach a final outcome that is accepted by those that are affected by it.¹²

A fourth and final rationale is based on the benefit it provides to the persons or organisations. They have the **possibility to bring arguments** before the Court without bearing the significant burden on their time and finances that parties bear.¹³ Currently, besides the delivery by courier of the letter to ask leave to intervene or the final third-party intervention, no great financial barriers exist for third-party interveners before the ECtHR.¹⁴

2.2. Usefulness to judges at the ECtHR

In a round of exploratory interviews with Judges at the European Court of Human Rights in June and October of 2033, they were asked about the importance of third-party interventions for them in their role. This provided some interesting insights relating to what makes an intervention more useful to the Court which will be discussed briefly in this section.

It was mentioned that their usefulness rises when they are well-researched “in terms of either facts or law”.¹⁵ For technical issues, it is very relevant if the Court receives scientific expert information. The Judges mentioned several cases where such information would have been useful to have to deal with: the public policy of mass vaccination, questions around euthanasia

⁹ Simmons, Omari Scott. "Picking friends from the crowd: Amicus participation as political symbolism." *Connecticut Law Review* 42 (2009): 185.

¹⁰ N Ahmed, Public Interest Litigation, Constitutional Issues and Remedies (Legal Aid and Trust 1999) 155.

¹¹ Viljoen, Frans, and Adem Kassie Abebe. "Amicus curiae participation before regional human rights bodies in Africa." *Journal of African Law* 58.1 (2014): 26.

¹² Wiik, Astrid. *Amicus curiae before international courts and tribunals*. Nomos Verlagsgesellschaft mbH & Co. KG, 2018, 55..

¹³ Hennebel, Ludovic. "Le Rôle des Amici Curiae Devant la Cour Européenne des Droits de L'Homme (The Role of the Amici Curiae Before the European Court of Human Rights)." *Revue Trimestrielle des Droits de l'Homme* 71 (2007): 643.

¹⁴ Read for instance: Farber, Shai. *The Amicus Curiae Phenomenon: Theory, Causes and the Significance of Third Party Interventions*. Vol. 119. Springer Nature, 2024, 325.

¹⁵ Interview 4

or the impact of natural hormones on sport performance.¹⁶ When comparative data is provided in an intervention, it is important that it “covers a sufficiently broad range of countries”.¹⁷ Otherwise, if the included data is selective or incomplete, additional comparative data will have to be collected by the Court itself. One judge indicate that third party interveners can also submit useful information on the appropriateness of terminology to describe certain individuals, groups or processes.¹⁸

Overall, one could conclude that the further the friends of the court stay away from merely reiterating the parties’ arguments the better. The more they succeed at bringing additional relevant information which the parties could not have supplied the better.

3. Third party interventions before the European Court of Human Rights

When we consider timing, the European Court of Human Rights needs to balance competing interests. On the one hand, it wants to ensure a speedy and efficient processing of cases as there exists a huge backlog in the applications. On the other hand, it is necessary in order for *amicus curiae* submissions to fulfil the abovementioned purposes that the contributors are given enough time to prepare a valuable contribution.¹⁹ A limited available time frame to ask for permission to intervene as well as for the intervention itself that has a negative impact on who intervenes as well as the quality of the interventions.

Procedure. The ECtHR has a procedure which allows a third party to the case to provide information to the Court.²⁰ Article 36.2 of the Convention states in this regard: ‘The President of the Court may, in the interest of the proper administration of justice, invite [...] any person concerned who is not the applicant to submit written comments or take part in hearings.’²¹ Groups such as national human rights institutions, non-governmental organisations, interest groups, bar associations, universities can assist it as *amici curiae* or ‘friend of the court’ in

¹⁶ Interview 2, Interview 5, Interview 7,

¹⁷ Interview 3

¹⁸ Interview 4.

¹⁹ This has also been stressed in the book by Astrid Wiik on international courts and tribunals in general on p. 269.

²⁰ Besides the discussed *amicus curiae*, this procedure is open to State Parties of the applicant’s nationality, States which are neither a party to the proceedings (of which the applicant does not have the nationality), the Commissioner for Human Rights and other persons who are also “concerned” by the proceedings.

²¹ The procedure is further explained in Rule 44 of the Rules of Court. <https://www.echr.coe.int/pages/home.aspx?p=basictexts/rules&c>

the process reaching a decision.²² The role of these interveners is ‘to enlighten the Court with their expertise as to the legal and cultural issues, both national and international’.²³

The time limit to submit an intervention is always quite short, giving interveners usually no longer than a month. As both the letter granting leave and the submission of the intervention happen by mail, in reality, this period is closer to two weeks. To find any mentioning of the rejection of interventions on formal grounds in the case law of the ECtHR is quite rare.²⁴ One example constitutes the case of *Neulinger and Shuruk v. Switzerland* where the second applicant’s father obtained leave to intervene but in the end his submission was rejected for being out of time.²⁵

Actors involved. In recent years, there has been an increase of interventions by third parties before the Court.²⁶ Laura Van den Eynde attempted to map the interventions before the ECtHR and found that the majority of third-party interventions before the ECtHR involve *amicus curiae* interventions by organisations without no direct legal interest in the case but rather with a certain expertise on the theme of the case that is pending before the Court.²⁷ Overall, submissions to the Court are made by non-governmental organisations (both local and international) first and foremost but additionally academic institutions, trade unions, private individuals and so on.²⁸ On average, more third party interventions are submitted in cases before the Grand Chamber than in other court compositions.²⁹

4. Submission in other systems

The fact that there is no specification of the form of a third-party intervention before the ECtHR is noted as surprising as the provision is quite detailed compared to other provisions.³⁰ In this section, this will be compared to other regional systems for human rights protection.

²² <https://www.echr.am/en/functions/representation/third-party-intervention.html>

²³ Pastor Vilanova, Pere. "Third Parties Involved in International Litigation Proceedings. What Are the Challenges for the ECHR?." *Judicial Power in a Globalized World*. Springer, Cham, 2019: 382.

²⁴ Wiik (n 28) 343.

²⁵ **Check source after response to email from Astrid Wiik.**

²⁶ See figure 1 on page 280 of Van den Eynde, Laura. "An empirical look at the *amicus curiae* practice of human rights NGOs before the European Court of Human Rights." *Netherlands Quarterly of Human Rights* 31.3 (2013): 271-313.

²⁷ Van den Eynde, Laura. "An empirical look at the *amicus curiae* practice of human rights NGOs before the European Court of Human Rights." *Netherlands Quarterly of Human Rights* 31.3 (2013): 271-313.

²⁸ Wiik, Astrid. *Amicus curiae before international courts and tribunals*. Nomos Verlagsgesellschaft mbH & Co. KG, 2018, 235. See also annex 1 at the end of the book for a full overview.

²⁹ Van den Eynde (n 27) 280

³⁰ Wiik (n 28) 340.

4.1. Inter-American System

In accordance with Article 44 of the American Convention on Human Rights, any person or institution seeking to act as *amicus curiae* can submit such a brief.³¹ Within the procedure before the Inter-American Court for Human Rights, it is possible to submit an *amicus curiae* to the Court by email (besides other means)³² and such electronic submissions have become quite common.³³ An important requirement here is that submission by e-mail is possible as long as the brief is signed by all authors to ensure its authenticity.³⁴ If this has not happened, parties can still submit the original document within 7 days after the deadline. If they fail to do so, the third-party intervention will be “archived without further processing”.³⁵ Yet, the practice is that often one representative of the organisation that submitted the brief will sign it.³⁶

Unlike the two-tier procedure at the ECtHR, where first permission is asked and only then an intervention can be submitted, an *amicus curiae* can be submitted within 15 days following either the public hearing (if it takes place) or following the Order setting deadlines for the submission of final document.³⁷

4.2. African Court on Human and Peoples’ Rights

The African Court on Human and Peoples' Rights (AfCHPR) permits the participation of *amici curiae*, to offer independent expertise and insights that may assist the Court in its deliberations but the practice is not wide-spread and frequently used for now.³⁸ Although the Protocol

³¹ Article 44. 1. of the Rules of Procedure of the Inter-American Court of Human Rights.

³² All briefs addressed to the Court may be presented in person or by courier, facsimile, post, or electronic mail, and must be signed in order to ensure their authenticity. (article 28.1 Rules of Procedure).

³³ Wiik, Astrid. *Amicus curiae* before international courts and tribunals. Nomos Verlagsgesellschaft mbH & Co. KG, 2018, 240.

³⁴ Article 44. 1. together with Article 28.1. of the Rules of Procedure of the Inter-American Court of Human Rights. Available at <https://www.corteidh.or.cr/reglamento.cfm?lang=en> (last accessed 21 January 2025). The International Court of Justice has a similar requirement to allow for authentication: Submission from the International League for the Rights of Man. See No. 67 (The Deputy-Registrar to Mr. Asher Laans, Counsel to the International League for the Rights of Man), International Status of South West Africa, Advisory Opinion of 11 July 1950, Part III: Correspondence, ICJ Rep. 1950, pp. 320, 346.

³⁵ Article 44 2. of the Rules of Procedure of the Inter-American Court of Human Rights.

³⁶ Wiik (n 28) 341.

³⁷ Article 44 3. of the Rules of Procedure of the Inter-American Court of Human Rights.

³⁸ Wiik (5) 459. In 2019, TPIs had been submitted in 6 out of 51 finalised cases. In four cases, the interventions were unsolicited: *Umuhoza v Rwanda*; *African Commission on Human and Peoples’ Rights v Libya*, 2013; *Konaté v Burkina Faso*, 2014; *Guehi v Tanzania*, 2018); in three cases, they were solicited (*Actions pour la protection des droits de l’homme (APDH) v Cote d’Ivoire*; *Anudo v Tanzania*; *Guehi v Tanzania*). (Astrid Wiik, ‘Amicus Curiae: African Court on Human and Peoples’ Rights (ACtHPR), African Commission on Human and Peoples’ Rights (ACommHPR)’, *Max Planck Encyclopedia of International Procedural Law*. Available at <https://opil.ouplaw.com/display/10.1093/law-mpeipro/e3646.013.3646/law-mpeipro-e3646#law-mpeipro-e3646-div1-3> (last accessed 15 February 2025))

establishing the Court does not explicitly mention *amicus curiae* participation, the Rules of Court do mention that the decision of the Court shall mention (where applicable) the submissions of *amicus curiae*.³⁹ Yet, the Court has developed its own practices to accommodate such contributions which are detailed in its Practice Directions.⁴⁰

Whether an *amicus curiae* participation is initiated by the Court or by external parties, the decision to allow submissions lies with the Court. The Court may invite individuals or organizations to act as *amici curiae* in specific cases.⁴¹ Alternatively, individuals or organizations may submit a request to the Court seeking permission to participate.⁴² In this case, they shall submit to the Court the contribution they intend to make regarding the pending application. When the Court grants a request or invites an individual or institution to submit one, the rest of the procedure is dealt with by the Registrar which “ shall notify the individual or institution and serve them with the Application and any other relevant pleadings relating to the Application” and inform the *amicus curiae* of the time set by the Court for the filing of the *amicus curiae* brief.⁴³ Upon receipt of the submission, the Court transmits the brief and any annexes to all parties involved in the case for their information.⁴⁴

Unlike other regional courts, the Practice Directions do not contain any formal guidelines for the submission of a request for leave to intervene.⁴⁵ Additionally, no precise information could be found on how to file *amicus curiae* submissions but stipulates that pleadings can be submitted via electronic mail, registered post, hand delivery, or through the Court's electronic case management system.⁴⁶

The two courts above have jurisdiction over a vast territory and are located quite centrally within that territory. Just as for other supranational or regional courts, is important that the

³⁹ African Court on Human and Peoples' Rights, Rules of Court (1 September 2020). Available at <https://www.african-court.org/wpafc/wp-content/uploads/2021/04/Rules-Final-Revised-adopted-Rules-eng-April-2021.pdf> (last accessed 14 February 2025).

⁴⁰ African Court on Human and Peoples' Rights, *Practice Directions on Submissions by Amicus Curiae* (5 March 2024), title V. Available at <https://www.african-court.org/wpafc/wp-content/uploads/2020/06/Practice-Directions-to-Guide-Potential-Litigants-En.pdf> (last accessed 14 February 2025)

⁴¹ Article 26

⁴² Article 25

⁴³ Article 28.

⁴⁴ Article 29.

⁴⁵ See also Astrid Wiik, 'Amicus Curiae: African Court on Human and Peoples' Rights (ACtHPR), African Commission on Human and Peoples' Rights (ACommHPR)', Max Planck Encyclopedia of International Procedural Law. Available at <https://opil.ouplaw.com/display/10.1093/law-mpeipro/e3646.013.3646/law-mpeipro-e3646#law-mpeipro-e3646-div1-3> (last accessed 15 February 2025)

⁴⁶ Article 10.

ECtHR tries to be as equally open and accessible to both *amici* from within the country in which the Court is based as for *amici* from states on the periphery of its territory. It is quite straightforward that to deliver mail with a courier from Baku to Strasbourg is going to take longer and be more costly than from Paris, thereby making it more difficult for interveners from outside of Strasbourg to weigh in.

5. Conclusion

As Wiik argued: “for all international courts and tribunals, timing appears to be the most relevant formal concern with respect to the participation of *amicus curiae*”.⁴⁷ Accepting online submission of third-party interventions is a very straightforward way towards ensuring that third party interveners do not lose valuable time and at the same time do not hold up the procedure once it starts. This is especially important as it allows them to prepare the most relevant and well-researched brief. Such a brief provides information to the Court either zooming in on the national factual context of the issue before it or zooming out to a significant degree to all the member states of the Council of Europe.

Additionally, when providing factual evidence, comparative material or scientific data relevant to the case at hand, third party interveners can include links to the referenced material that makes it easier for the lawyers of the registry and judges to find and verify the validity of the sources they include. This applies to the parties of the case as well who have the possibility to comment on the findings that are included in the intervention and quickly find cited materials.

Finally, foreseeing the possibility of an online request for leave to intervene or the online submission of a third-party intervention does not have to preclude postal submission of either of these documents which should still be available to both interveners and parties to the case. As a third-party intervener before the ECtHR has to go through a two-step procedure where first leave to intervene is asked (and has to be granted) before an intervention can be submitted. An authentication of the intervener can already be imposed during the first step and at this point interveners can leave an email address on which they can be contacted when their request is granted.

⁴⁷Wiik (n 28) 343.