



To: Marialena Tsirli, registrar of the European Court of Human Rights

Re: Envisaged amendments to Rules 36 and 44 of the Rules of Court

13 March 2026

Dear Ms. Tsirli,

The present document is submitted on behalf of 15 non-governmental organisations and two law offices following the Registrar's invitation of 23 January 2026 to comment on the envisaged changes to Rules 36 and 44 of the Rules of Court.

These submissions first detail the relevant expertise of the organisations (Section I), followed by an outline of the main structural aspects we have identified (Section II); concrete examples of situations falling under the scope of the Rules (Section III) and Conclusions offering some reflections on possible paths ahead (Section IV).

I. The submitting organisations

Validity Foundation is a non-governmental international human rights NGO with participatory status at the Council of Europe. Validity Foundation works across Europe in partnership with national human rights organisations, representative organisations of people with disabilities and lawyers. Validity Foundation has led on litigating over 250 cases concerning persons with intellectual and psychosocial disabilities before national and international courts including before the European Court of Human Rights, such as the recent cases of *Validity Foundation on behalf of T.J. v Hungary* no. 31970/20, 10 October 2024, *I.C. v the Republic of Moldova* no. 36436/22, 27 February 2025, or *V. v. the Czech Republic* no. 26074/18, 7 December 2023.

Pro Iura ASBL is a Brussels-based non-profit organisation dedicated to the protection of human rights. Its flagship project, The Rule 39 Pro Bono Initiative, promotes litigation before international bodies in the interest of vulnerable migrants and asylum seekers. It has supported more than 100 cases and over 700 individuals in leading cases before the ECtHR, such as, most



recently, the Grand Chamber case *C.O.C.G. and Others v. Lithuania*. In light of its experience representing and assisting vulnerable applicants, Pro Iura ASBL has a direct and practical interest in the Court’s proposed amendments concerning representation.

AsyLex is a non-profit association headquartered in Switzerland, dedicated to providing online legal support to asylum seekers throughout their legal proceedings. Operating as an independent non-governmental organization, AsyLex maintains strict political and religious neutrality. The mission is to offer free, online legal counseling and representation to refugees in Switzerland and globally, irrespective of their origin, religion, age, gender, gender identity, family composition, or financial situation.

The European Human Rights Advocacy Centre (EHRAC) is an apolitical legal centre based within Middlesex University Law School, which advances the protection of human rights in post-Soviet states, including Georgia, Azerbaijan, Armenia, and Ukraine. EHRAC collaborates with human rights defenders in the region to litigate groundbreaking strategic cases to secure justice and challenge impunity. Its activities focus around three thematic programmes: conflict related human rights abuses, discrimination, and democratic accountability and rule of law. Since its inception, EHRAC has been working in partnership with civil society to litigate over 500 legal cases and 1400 applicants.

Equality Now is a global human rights organisation dedicated to securing legal and systemic change to end violence and discrimination against all women and girls. Access to justice for gender-based violence, including for women and girls with disabilities, is one of Equality Now’s key areas of focus. For more information, please visit www.equalitynow.org.

Gentium is a Spanish non-profit organisation whose goal is to improve access to justice for victims of human rights violations. Its work focuses on developing effective legal tools and representing victims before national and international judicial and quasi-judicial bodies to protect and advance human rights.

Kera Foundation is an independent NGO working in Bulgaria in the field of human rights, including the rights of children and persons with disabilities. The organisation aims to promote humane, ethical, and effective care and to achieve full recognition of the potential of children and adults with disabilities.

Network of Independent Experts – NIE is an independent NGO, established in 2022. The Association aims to bring together independent experts who are working in the field of human rights specifically promoting independent living of persons of disabilities, children and adults,



full inclusion and enjoyment of the full spectrum of the human rights. Among the organization’s key activities are monitoring of social and healthcare institutions and providing legal assistance to persons with psychosocial and intellectual disabilities, including through representation before Bulgarian courts and the European Court of Human Rights.

Partnership for Human Rights (PHR) is a Tbilisi-based non-governmental organisation dedicated to the protection of human rights and the promotion of equality for vulnerable groups in Georgia, including persons with disabilities, survivors of gender-based violence, children, and ethnic and religious minorities. Through strategic litigation, legal advocacy, and awareness-raising, PHR provides free legal aid and represents disadvantaged persons before domestic and international forums.

Sapari is a women’s rights organisation based in Georgia with a mission to promote and sustain an equal, non-discriminatory, and non-violent environment. To achieve this, Sapari engages in strategic litigation, advocacy, research, capacity building for professionals, and public awareness campaigns, as well as provides legal aid and psychosocial support to women and children who are survivors of gender-based violence. Sapari is currently litigating cases before the European Court of Human Rights, including *M.B. v. Georgia*, Application No. 54409/21; *X. v. Georgia*, Application No. 35640/22; *M.D. v. Georgia*, Application No. 33066/22; *N.M. and others v. Georgia*, Application No.16764/23; *Tevdorashvili v. Georgia*, Application No. 34267/23; etc

StraLi is a nonprofit organization committed to protecting fundamental rights and freedoms through strategic litigation. By addressing individual cases, we work to expand rights and secure recognition of violations, driving meaningful change for both individuals and society as a whole.

The Bulgarian Helsinki Committee (BHC) is the largest and oldest non-governmental human rights NGO in Bulgaria. The organisation has litigated dozens of cases for human rights violations before the ECtHR, including cases of people with various vulnerabilities: people with intellectual and psychosocial disabilities (like *Varbanov v. Bulgaria*, no. 31365/96; *Anatoliy Marinov v. Bulgaria*, no. 26081/17); children (like *A. and Others v. Bulgaria*, no. 51776/08; *D.L. v. Bulgaria*, no. 7472/14, *I.G.D. v. Bulgaria*, no. 70139/14; *I.P. v. Bulgaria*, no. 72936/14); refugees and migrants (like *M.A. and Others v. Bulgaria*, no. 5115/18; *O.D. v. Bulgaria*, no. 34016/18); and others.



The International Rescue Committee (IRC) responds to the world’s worst humanitarian crises and helps people survive and rebuild their lives, offering life-changing assistance to refugees forced to flee from conflict, persecution, or disaster. IRC Italy (Fondazione International Rescue Committee Italia ETS) is part of the global IRC network and began implementing activities in Italy in 2018. In Italy, IRC provides essential services in the areas of safety, empowerment, education, economic wellbeing, and health to migrants, refugees, and asylum seekers. Our work addresses the needs of people seeking protection by providing direct support, collaborating with local civil society organizations, and working alongside national and local authorities and institutions to strengthen the asylum system and improve humanitarian conditions.

The Lithuanian Red Cross has been helping refugees, asylum seekers, stateless people and other migrants irrespective of their legal status for over 25 years. The activities carried out in this field include legal aid, monitoring, advocacy, strategic litigation on both national and international level.

Women’s Initiatives Supporting Group (WISG) is a feminist NGO in Georgia that focuses on protecting the rights of women and LGBTI individuals, ensuring equality and equal participation in society. WISG monitors human rights violations, researches public attitudes towards sexual orientation, gender identity, and expression, and engages in strategic litigation, advocacy, and lobbying to support its objectives. WISG, alongside its partners, is co-litigating strategic cases and facilitating the implementation of ECtHR judgments on hate crimes and discriminatory violence by police, as highlighted in cases like *Identoba and others v. Georgia*, 73235/12, 12 May 2015, *Women’s Initiatives Supporting Group and others v. Georgia*, 73204/13 and 74959/13, 16 December, 2021, and *Aghdgomelashvili and Japaridze v. Georgia*, 7224/11, 8 October, 2020.

And the following attorney’s offices:

Tereza Bártoová, LL.M., attorney at law practicing in the Czech Republic and specialised in public interest litigation and litigation for defending the human rights of persons with disabilities

Kollarics Flóra Ügyvédi Iroda is a law firm registered in Hungary, whose practice includes constitutional and human rights law, civil law, administrative law, and labor law. We have a



special focus on public interest litigation cases involving vulnerable persons and representing our clients before domestic courts as well as the ECtHR.



II. Structural aspects concerning the envisaged changes

Access to a court is an essential element of the right to a fair trial¹. As such it is important that the Court takes a step in ensuring that the right to access to a court can be exercised by everyone, without discrimination.

We welcome the possibility laid out in Rule 36 3bis, para 2, for the Court to request the respondent Government to bear the costs of legal representation. We have encountered many situations where applicants' human rights are breached and they are not able to bring their cases before domestic courts, due to costs or insufficient legal aid schemes at national level. The same applies to cases before the European Court of Human Rights.

At the same time, we believe that any changes to the Rules of Court should comply with the existing case law of the European Court of Human Rights and other relevant rules of international law. It should be recalled that the “conditions governing individual applications are not necessarily the same as national criteria relating to locus standi. National rules in this respect may serve purposes different from those contemplated by Article 34 of the Convention and, whilst those purposes may sometimes be analogous, they need not always be so” (Zehentner v. Austria, app. no. 20082/02, §39; see also Scozzari and Giunta v Italy, app. nos. 39221/98 and 41963/98, §139; Norris v Ireland, app. no. 10581/83, §31).

In this light, this letter draws attention to the following aspects, which should be taken into account in the envisaged changes: (i) Central relevance of the principles of agency and autonomy; (ii) Vagueness of the proposed changes; (iii) Power imbalance between the parties in ECtHR's proceedings; (iv) Problematic deferral to domestic law.

(i) Central relevance of the principles of agency and autonomy.

The proposed amendments do not clarify if the President of the Court is entitled to supersede the wishes and preferences of the applicants themselves, whose vulnerability does not prevent them to have indicated a representative of choice for the proceedings in Strasbourg. This can lead to a violation of the existing international law standards regarding the rights of persons with disabilities, but also of minors or other individuals which may fall into the category of ‘vulnerable’ envisaged by the Rules (for the vagueness of which, see also below point (ii)).

¹ *Goldor v. The United Kingdom*, no. 4451/70, 21 February 1975.



Indeed, the principles of agency and autonomy underpin all major human rights treaties, as well as the European Convention of Human Rights.

For example, the rights of persons with disabilities should be interpreted in light of the 2007 United Nations Convention on the Rights of Persons with Disabilities (the CRPD) which has been ratified by all Contracting parties. Article 12 CRPD establishes that persons with disabilities enjoy the right to legal capacity on an equal basis with others in all areas of life. The UN CRPD Committee in General Comment no 1 clarifies that deprivations of legal capacity are contrary to Article 12 CRPD. Instead, persons with disabilities should be entitled to support in decision making, and such support should respect their will and preferences. Paragraph 4 of Article 12 CRPD equally prioritizes the will and preferences of persons with disabilities in the exercise of their legal capacity and in ensuring that national measures provide for effective safeguards against abuse.

Similarly, with respect to the rights of children, Article 12 of the UN Convention on the Rights of the Child lays down the right of children to be heard. Here, the threshold is different than of the CRPD, in that the weight to be ascribed to the will and preferences of children is dependent on their age and maturity. At the same time, as opposed to the CRPD, the best interests of the child allows in certain circumstances for overriding the wishes and preferences. This, nevertheless, it is important to note that agency and participation are important principles underpinning the CRC, and that subsequent commentaries of the UN CRC Committee have clarified that the best interests of the child should be determined as far as possible in light of the child's wishes.²

To conclude, we respectfully highlight that the wishes and preferences of the applicants should guide the appointment of the legal representative before the Court, and a different representative should be appointed only in limited circumstances, such as when (i) the applicant cannot be contacted due to objective circumstances, (ii) they have not indicated a legal representative, despite having been instructed to this effect or (iii) there is a demonstrated conflict of interest between the applicant and their representative. In all cases, this should be done on a 'disability-neutral' basis and in no case should be applied because an adult person

² UN CRC Committee, General comment no. 14 (2013) on the right of the child to have his or her best interests taken as primary consideration (art. 3, para. 1), 29 March 2013,



has been deprived of their legal capacity or is perceived to be ‘in a comparable situation of vulnerability’.

(ii) Vagueness of the proposed change

The proposed amendment is formulated in terms that are excessively vague and indeterminate, leaving considerable room for interpretation and creating legal uncertainty as to their scope and application.

First, the amendment does not specify the criteria on the basis of which the **vulnerability** of an applicant would be assessed. This ambiguity is particularly problematic given that the Court itself has developed a broad and evolving understanding of vulnerability in its case-law, which encompasses, for instance, asylum seekers.³ If interpreted in this broader sense, the amendment could potentially allow the Court to intervene in the choice of legal representation of applicants. Further, as outlined under point (iv) below, the deferral to domestic rules of representation in relation to persons with disabilities deprived of legal capacity is contrary to international law.

Moreover, the proposal does not clarify whether applicants would have the opportunity to challenge the Court’s assessment of their alleged vulnerability, nor whether their own wishes regarding representation would be duly taken into account. The absence of procedural safeguards raises serious concerns regarding respect for the autonomy of applicants and the adversarial character of the proceedings.

Second, the expression “**if the circumstances so warrant**” introduces an additional layer of uncertainty. This open-ended formulation suggests that the provision could apply to a wide range of very different situations, which should not necessarily be treated under a single procedural framework.

For instance, it remains unclear whether the mechanism is intended to apply only in situations where an applicant lacks any form of representation under domestic law, or whether it could also extend to cases in which representation already exists but the application has been introduced before the Court by another person acting on the applicant’s behalf. This situation could arise, for example, where a minor already has a legal representative appointed under

³Baumgärtel, M. (2020). Facing the challenge of migratory vulnerability in the European Court of Human Rights. *Netherlands Quarterly of Human Rights*, 38(1), 12-29; Boutier, I. (2024). Understanding vulnerability through the eyes of the European court of human rights’ jurisprudence: Challenges and responses. *Peace Human Rights Governance*, 8(Peace Human Rights Governance 8/1), 27-52.



domestic law, but an application is nonetheless brought to Strasbourg by a parent or another close relative.

In such circumstances, the amendment raises difficult questions. Would the representative appointed at the request of the Court effectively replace the person who brought the application? Would the choice made through a domestic authority at the request of the respondent Government override the position of another individual who may legitimately be seeking to protect the applicant’s rights—for example where the existing legal representative appointed under domestic law may be acting contrary to the minor’s interests? Also, do the envisaged amendments allow applicants to object to their designated representatives, and what would the mechanism for such objection look like?

The proposed amendment does not address these issues, leaving significant uncertainty as to how conflicts of representation or competing claims to act in the applicant’s best interests would be resolved.

(iii) Power imbalance between the parties in ECtHR’s proceedings.

The envisaged amendments do not propose any mechanism to offset the power imbalance between the applicant and the government: on the contrary, they exacerbate it.

In proceedings before the Court, the Government is the defendant party. The change in the Rules of Court will also result in the Government being responsible of ensuring representation in proceedings where they are a defendant. Such a position is capable of casting legitimate doubts over the interest of the government in ensuring effective legal representation in general, and most particularly in those cases where the applicant’s complaints relate directly to actions or inactions of State-appointed legal representatives.

In this last regard it should be recalled the Court’s longstanding case law enshrining the right to effective legal representation and condemning governments for failing to ensure such representation to applicants, thus demonstrating that governments’ failure to provide appropriate representation is often an issue per se in the Convention system.⁴ Moreover, it is well known that legal aid/ pro bono schemes differ widely across Council of Europe Member States. In some countries, and especially in countries across Central and Eastern Europe, the legal aid schemes have been consistently held to be in violation of the Convention, and the current supervision process before the Committee of Ministers shows that such schemes remain

⁴ Handbook on European law relating to access to justice, 22 June 2016.



largely deficient, especially for persons with disabilities and other individuals which are the ones in a position of vulnerability as identified in the Courts proposed change of rules.⁵

(iv) Problematic deferral to domestic law

The envisaged changes in the Rules of Court defer entirely to domestic laws concerning the appointment of a legal representative, thus omitting that legal representation is an autonomous notion within the Court’s own case law, and that this autonomy serves the purpose of an effective protection of the Applicants’ rights.

The Court has accepted in its case law that national rules on representation do not apply before it. When it concerned children, the Court reasoned that a mother may represent them even if or especially if there is a conflict of interest between her and the authorities and she criticizes their decisions as contrary to the rights prescribed in the ECHR.

The deferral to domestic laws is even more problematic when it comes to persons with disabilities who have been placed under guardianship for several reasons.

First, the institution of ‘guardianship’ in itself is contrary to international law. Article 12 of the CRPD affirms the right of persons with disabilities to equal recognition before the law and places an obligation on States to ensure that persons with disabilities benefit of adequate support in the exercise of their legal capacity. The CRPD Committee in General Comment no 1, has distinguished the concept of support which ensures that the will and preferences of persons with disabilities are respected from guardianship where a third party substitutes their decision for that of persons with disabilities.

Legal representation is a fundamental element of the right to access to justice, as contained in Article 13 CRPD and Principle 6(e) of the International Principles and Guidelines on access to justice for persons with disabilities⁶ which calls on states to “[r]epeal or amend any laws, regulations, policies, guidelines or practices that restrict the legal capacity of persons with disabilities to retain and instruct a lawyer” and Principle 6(j) which requires that they “[r]epeal or amend all laws, regulations, policies, guidelines and practices that impose substituted decision-making in legal proceedings, including those that allow for the appointment of

⁵ see Committee of Ministers decisions in Centre for Legal Resources on behalf of Valentin Câmpeanu group (Application No. 47848/08), Cristian Teodorescu group (Application No. 22883/05), Parascineti (Application No. 32060/05) and N. group (Application No. 59152/08) v. Romania, available at [https://hudoc.exec.coe.int/#;!%22execidentifier%22:%22004-13375%22!}, last accessed on 9 March 2026.](https://hudoc.exec.coe.int/#;!%22execidentifier%22:%22004-13375%22!)

⁶ [https://www.ohchr.org/en/special-procedures/sr-disability/international-principles-and-guidelines-access-justice-persons-disabilities.](https://www.ohchr.org/en/special-procedures/sr-disability/international-principles-and-guidelines-access-justice-persons-disabilities)



decision makers against the will of persons with disabilities (e.g. guardians ad litem, next friends and similar arrangements); or decisions made on the basis of the “best interests” of the persons concerned, as opposed to being based on their own will and preferences”.

Second, the Court itself has found violations of the Convention on account of domestic guardianship laws and has condemned the inefficiency of the guardianship laws. For example, in the recent case of *Validity Foundation on behalf of T.J. v Hungary* (no. 31970/20, 10 October 2024) the Court noted the systemic failures in the manner of implementation of the guardianship system that left persons with disabilities without protection or effective legal assistance (para 79 of the judgment). In our submissions to the Committee of Ministers in the context of the execution of the aforementioned judgment we have noted the continued failure of the Hungarian guardianship system. In addition, states continue to use guardianship systems to deny persons with disabilities access to justice. This has happened in cases before this Court such as *Shtukaturov v Russia* (no. 44009/05, 27 March 2008), where the state attempted to use guardianship laws to block the applicant’s access to the Court or in *N v Romania (no 2)* (no 38048/18, 16 November 2021) and in *Stanev v Bulgaria* (no. 36760/06, 17 January 2012) and *Stankov v Bulgaria* (no. 25820/07, 17 March 2015) which were brought to this Court by lawyers, other than those which would have been officially appointed by the state authorities in light of their powers derived from guardianship laws.

III. Practical examples

The submitting organisations provide examples from their own practice which can serve the purpose to illustrate how the proposed amendments could be problematic in practice.

A case currently pending before the ECtHR [REDACTED] provides for a vivid example of a situation where the applicant’s complaints relate directly to the (in-)actions of state-appointed legal representatives, casting doubt on the government’s commitment to ensuring effective legal representation. The case concerns [REDACTED]

[REDACTED] Art. 3 ECHR. First, the respondent State was reluctant to appoint a representative for the applicant at all. Proceedings to appoint a representative were only initiated after [REDACTED] the Court had already had to intervene with interim measures. Second, even the subsequent proceedings to appoint the representative were slow and ineffective in providing the necessary urgent protection. It took the competent judge further two months to months to [REDACTED]





██████████ appoint the applicant’s representative. Third, a further month passed before the representative obtained judicial authorisation to act on the applicant’s behalf before the ECHR. The representative was not permitted to pursue domestic remedies by the ██████████ judge. The slowness and ineffectiveness of the government’s processes is underscored by the fact that by the time the representative was finally appointed and ready to act on the applicant’s behalf, the ECHR had already ordered interim measures in the applicant’s favour. Furthermore, the domestic rules governing the appointment of representatives often fail to address for potential conflicts of interest between applicants and their legal representatives.

Validity Foundation is also currently working on a case concerning a young woman with disabilities who is being moved by the Georgian authorities between institutions and psychiatric hospitals. Guardianship proceedings are being used to deprive her of access to her chosen lawyers and her location has been changed so that her lawyers cannot identify her whereabouts. Validity Foundation and their national partners filed a request for interim proceedings at the CRPD Committee, and contact between the young woman and the lawyers could only be restored after several interventions of the CRPD Committee.⁷

Abuses of guardianship proceedings in relation to access of persons with disabilities to their lawyers have been documented in cases decided by the European Court of Human Rights.⁸

IV. Conclusions and recommendations

In light of the above, the submitting organisations respectfully request the Court to defer the adoption of the proposed amendments to the proposed Rules of Court and to engage in further consultations with affected parties including lawyers and organisations routinely representing applicants before the Court. In light of our comments above, we highlight that the current drafting of the Rules may worsen the position of vulnerable applicants before the Court and allow governments to exploit the vulnerability of applicants with impunity.

Should the Court consider further discussions in relation to the proposed amendments we make the following recommendations:

⁷ More information about this case is available here: <https://validity.ngo/a-call-for-action-marias-fight-for-safety-freedom-and-her-child/>.

⁸ *Shtukaturov v. Russia*, no. 44009/05, 27 March 2008, when the authorities refused to allow the applicant to contact his own lawyer even after the Court’s interim measures; the *N v. Romania* cases also show how legal guardianship can be used to deprive applicants of access to their lawyer. See also: <https://www.einnetwork.org/n-v-romania>.



- a) The amended Rules of Court should clarify that the wishes and preferences of the applicant shall guide the appointment of their legal representative;
- b) The Rules of Court should lay down a (summary) procedure whereby the applicants are given the possibility to challenge the representative appointed by the Court under the amended Rules. The objections as well as the Court’s decision should be made public, subject to the applicant’s consent;
- c) The Rules of Court should not defer to domestic law for the appointment of representative, but rather to the Court’s autonomous interpretation of representation;
- d) The Government should not be in charge of appointing a representative. Rather, the Court, through its Registry or through the Council of Europe, should take this task. This could be done, for example by creating (on transparent and experience-basis), a list of qualified lawyers/specialised organisations that could represent applicants in proceedings. In turn, either the applicant or the Court, should the applicant wish, designate one attorney/organisation from the existing list to represent a specific client.

The submitting organisations look forward to engaging into further consultations with the Court on this matter.

Sincerely,

Simona Florescu,

Litigation Director, Validity Foundation
 PhD, Lawyer@ Bucharest Bar Association (Romania)



Website: www.validity.ngo

Daria Sartori,

Director and Rule 39 Initiative Supervisor, Pro Iura ASBL
 PhD, Lawyer @ Verona Bar Association (Italy) | Toulouse Bar Association (France)

