Practice Direction

Appointment of an independent representative in respect of children[1]

(Rules 36 and 44 of the Rules of Court)

I. Purpose of this practice direction, legal basis and scope of application of Rule 36 § 3bis of the Rules of the Court

1. Rule 36 § 3bis concerns special circumstances in which, in a case pending before the Court at the stage after giving notice of it to the respondent Government, the interests of an applicant who is a minor would not be adequately protected before the Court unless an independent representative for them is appointed.

2. The special circumstances which may warrant the appointment of an independent representative for a child applicant could encompass, *inter alia*,

- A situation of serious conflict of interest, concerning the issues at stake before the Court, between the child applicant and their parent, guardian or legal representatives appointed by them;
- Death of a parent or guardian, situations of abandonment;
- Other situations in which a child applicant is objectively not in a position to appoint a representative and their interest would not be adequately protected without the appointment of an independent representative.

3. Rule 36 § 3bis is an expression of the Contracting Parties' general obligation to furnish necessary facilities to the Court, in accordance with Article 38 of the Convention, for the effective conduct of proceedings. The Government of a Contracting Party which is not the respondent State may be invited to ensure the appointment of an independent representative of a child where, for example, the child applicant is on the territory of that Contracting Party or its assistance is required for other objective reasons.

II. Procedure of appointment and the role of the Government

4. The President of the Chamber may take a decision under Rule 36 § 3bis at any time after notice of the application has been given to the respondent Government, where special circumstances so warrant. If considered necessary and practicable, the President of the Chamber may request the parties' views on the need to appoint an independent representative before taking a decision.

5. Once a decision under Rule 36 § 3bis has been taken, the role of the Government to which it is addressed is limited to ensuring the initiation of a relevant domestic procedure necessary to secure the appointment of the child's representative, following up on that procedure and communicating with the Court regarding it. In order to ensure the independence of the representative, Governments themselves will not be responsible for making the appointment, which must be entrusted to a court, another competent authority or a Bar Association, in accordance with a relevant domestic procedure.

[1] Practice direction issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 3 November 2026 and entering into force on 25 March 2027.

III. Choice and role of the representative

6. The provisions of Rules 36 § 4 (a) and 36 § 5 (a) of the Rules of Court setting out the requirements applicable to representatives are also applicable with regard to a representative to be appointed under Rule 36 § 3bis.

7. The courts, other competent authorities or Bar Associations entrusted with the appointment shall designate the representative with due regard to the principles of independence from the other party to the proceedings before the Court and the absence of any conflict of interest.

8. As provided for in Rule 36 § 3bis, the representative's authority to act derives from the Court's decision requesting the appointment. Accordingly, a power of attorney signed by the applicant, a parent or a legal guardian is not required.

9. The representative shall act in the best interests of the child. Depending on the age of the child, the representative shall have due consideration to the child's views, where possible. Where the need to appoint an independent representative does not stem from a situation of conflict of interest, the representative may also have regard to views expressed by parents or other close family members or a person taking care of the child, and only insofar as such consultation is not incompatible with the best interest of the child.

10. The Court may refuse to admit as representative a person not meeting the requirements of Rules 36 § 4 (a) and 36 § 5 (a) and may exclude the representative under Rule 36 § 4(b) and (c) and Rule 44D.

IV. Costs of representation

11. Unless the Court has been informed that the costs of legal representation by an independent representative have already been covered, the President of the Chamber shall consider on his or her own motion granting free legal aid under Rule 105 of the Rules of Court. In so doing, the President of the Chamber may decide to derogate from the insufficient means requirement set out in Rules 106 and 107.

V. Appointing a representative for a third party under Rule 44 3(c)

12. It is recalled that no requirement of legal representation applies to any person concerned who has been granted leave to intervene under Rule 44 § 3(a) of the Rules of Court.

13. Therefore, Rule 44 § 3 (c), which allows the President of the Chamber to request the appointment of an independent representative for the purposes of representing a child who has been invited or granted leave to intervene under Article 36 § 2 of the Convention, only applies in exceptional circumstances. Such a decision can only be taken with regard to a child who is an "interested third party", i.e. in a situation where a finding by the Court of a violation of the Convention or its Protocols may affect their legal rights[2]. The situation must be exceptional in that it must concern important legal rights of the child who is a third party and must involve circumstances in which it is manifest that the child's interests related to those rights would not be adequately protected before the Court unless an independent representative is appointed.

14. The procedural and substantive points set out above with regard to Rule 36 § 3bis apply *mutatis mutandis* with regard to a decision under Rule 44 § 3(c).

[2] See Practice Direction on Third Party Intervention, §§ 5 and 12.

Approval by the President of the Court

Date: 3 November 2026



M. Guyomar