

Address by Mr Joao Arsenio de Oliveira

Chair of the European Committee on Legal Co-operation

15 June 2021

Distinguished Chairman,

Ladies and Gentlemen,

I am delighted to appear today before your Committee to present a brief overview of the activities of the European Committee on Legal Cooperation, and also share with you a few thoughts concerning the results achieved to date and the priority areas of work for the years ahead.

It was very gratifying for our Committee to hear during our last plenary session in May, that the GR-J was pleased with the achievements so far of the CDCJ in the current biennium, in particular as regards our [feasibility study](#) on a new European legal instrument to protect the profession of lawyer, or the [guidelines](#) prepared to improve the functioning of national systems of legal aid in the fields of civil and administrative law, which were already adopted by the Committee of Ministers in April 2021. In the same line, the CDCJ has finalised a set of guidelines on online dispute resolution mechanisms in civil and administrative court proceedings, for your consideration today and, hopefully, adoption.

Our mandate requires us to address and reflect on the far-reaching and continued impact of COVID-19 on human rights and the rule of law, the challenges faced by justice systems in each of our member states, and how this affects co-operation on legal aspects – be it in the civil, administrative or criminal fields. The pandemic has impacted on all aspects of life, namely:

- on adults coming into contact with administrations and with the justice system,
- on legal professionals providing legal advice and representation,
- on children in situations where families were faced with custody arrangements nearly impossible to respect due to the restrictive situations or children in need of protection through placement in care.

These are a just a few of many issues that constitute an important dimension of the mandate of the CDCJ, which focuses on the support to policy-makers and legal professionals in implementing standards of public and private law, with due respect for human rights and the rule of law.

Since the pandemic started, we have witnessed and need to continue reflecting on how the past months have both accelerated change in the delivery of justice and exposed the fragility of the rule of law, one of the pillars of democracy that is so important to us, as lawyers, and as human beings and citizens.

It is extremely hard to say that this has been a good year for the rule of law in a large number of states, even globally. It is with this in mind, and the need for an inclusive approach which takes account of contributions from a large range of stakeholders, including civil society, that the CDCJ will elaborate and present to the Secretary General in 2021 its review of the implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (2016-2021), the so-called Sofia Action Plan.

I do not wish to dwell on the numerous challenges brought by the pandemic since 2020 to the Council of Europe's standard-setting operations and negotiation processes. As you can imagine, the CDCJ was no exception, especially given that it has a very wide mandate in the areas of rule of law and justice, private and public law, and that this was not helped by the fact that it can only hold one plenary a year.

We have had to make full use of technologies available, and despite difficulties and some delays, our members have remained truly and energetically committed to deliver our programme of work as anticipated. I expect that by the end of this year, you'll be able to fully appreciate the CDCJ's positive record of achievements.

Let me also present some of the proposed priorities for the CDCJ's terms of reference for the next quadrennial programme until 2025.

The CDCJ's work on the feasibility of the elaboration of a legal instrument on the profession of lawyer has given rise to increased attention. Progress in this respect by the CDCJ and its proposed subordinate body will support the strengthening of the Rule of law and in doing so, the protection of lawyers, whose work is fundamental for the administration of justice and the protection of fundamental rights.

With respect to migration aspects, the current state of affairs regarding administrative detention of migrants offers good reasons why we should not shy away and give up, but rather examine critically the needs of the professionals and address those, pending a political consensus to be reached on a codification process of rules. As our report presented today

shows, there is no holistic guidance available for all 47 member states, while international rules continue to be «scattered, inadequate, inconsistent and not effective», as originally assessed when this work, which I was honoured to chair, started, a long time ago, I would say, more than 6 years ago. This has prompted the CDCJ to propose as a first step the elaboration of a Practical Guide for relevant professionals.

Furthermore, the CDCJ will lead a few actions, in close coordination and co-operation with other committees and partners, in the framework of the newly adopted [Action Plan](#) on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (2021-2025). It will also follow-up, if need be, on the conclusions of the International conference on the right to a nationality and statelessness which we are organising on the 23rd and 24th of September of this year, jointly with the UNCHR.

In the area of family law and children's rights, we should pursue our work and finalize draft legal instruments :

- on the best interests of the child in parental separation and in care proceedings, and child-friendly justice, jointly with the Steering Committee for the Rights of the Child,
- on the rights of donor-conceived persons to know their origins, with expert support from DH-BIO, and in consultations with other relevant stakeholders.

We intend also to actively follow-up on issues arising from the implementation of selected conventions (in particular the European Convention on Information on Foreign Law, the [European Convention on the Legal Status of Children born out of Wedlock](#)) and recommendations (for example preventing and resolving disputes on child relocation).

The CDCJ intends to continue promoting the practitioners' understanding and use of relevant standards, particularly those that are directly relevant in the current context of COVID-19 such as: 1) the Guidelines on the use of electronic evidence, adopted by the Committee of Ministers in 2019, 2) the Recommendation on principles concerning continuing powers of attorney and advance directives for incapacity and last, but not least, the Recommendation on the protection of whistleblowers.

Also, our Handbook "The Administration and You" is being further developed to cover aspects related to the use of artificial intelligence in decision-making processes by public administration, before embarking on a wider stream of actions with respect to new technologies and law.

Mr Chairman,

The measures and changes recommended by CDCJ through its legal standards, in respect of legislative frameworks, practices and institutions are not always so visible to the general public, as they are sometimes targeting technical experts and professionals working in the public and private law areas.

We may at time have decided to deal with topics what others do not consider to be “hot” topics that trigger wide media attention. But these topics are in fact real lifetime topics for the professionals and citizens involved.

We are aware that enhanced visibility is critical in a world where numerous international organisations, committees and other institutional stakeholders are struggling for attention and funding. However, the efforts to increase the visibility of our work also have a clear policy purpose, namely to mobilise domestic actors to contribute to the practical implementation of Council of Europe standards in the public and private law area. We are progressing on this front through the release next month of our first bi-annual newsletter and more importantly, through an increased transparency effort regarding our tools and activities through the Council of Europe’s public website and other means.

Our involvement in multiple cooperation activities, not only in Europe, but also in Africa, Asia and hopefully in other geographies in the near future, reflects the importance of the standards we have produced.

The increase in the overall interest in our work is also dependent on the efficient support by our members to translate the standards and tools into their national languages and disseminate them. I can only hope that more and more members will actively disseminate the legal instruments prepared by the CDCJ and contribute to our follow up processes by sharing inspiring practices or bringing upfront any legal challenges they’re facing. Discussing new trends and developments and how to overcome challenges in the public and private law areas can only support building trust among our members for future legal co-operation at pan European level.

Mr Chairman,

As my mandate expires this year, this is the first but also the last time I will have the privilege to represent the CDCJ in my capacity as its President in this honourable forum.

I have been involved in the CDCJ since 2010. Throughout the years, I led numerous drafting groups and subordinate bodies, and am also familiar with other Council of Europe committees, advisory bodies or monitoring mechanisms. But my experience with the CDCJ is most

gratifying, both from a professional and personal point of view, despite the numerous challenges the Committee has faced over the years.

I am fully convinced that the CDCJ is excellent value for money and a key asset in the area of standard-setting in private and public law for the Organisation. There is a reason why it is the oldest standard setting committee within the structure of the Council of Europe.

I therefore hope that for the next quadrennium, the CDCJ can count on your support to be given the necessary resources to address the priorities identified, while still remaining flexible to adjust and include new ones if need be. Equally, and most importantly, the CDCJ should be able to hold 2 plenary sessions a year, as it used to do so in the past, in order to make timely progress. The quadrennial programme presented to you stands on that assumption, giving the high number of activities proposed, their complexity and usefulness for all stakeholders.

I will conclude by saying that I am confident that work in the proposed areas will further increase the CDCJ's and as such the Council of Europe 's visibility – and the respect they enjoy in the international community in public and private law.

You can count on the fact that the CDCJ will step up its efforts and deliver on your expectations.

I thank you for your invitation and for your attention.