
1426th meeting, 23 February 2022

10 Legal questions

10.3 European Committee on Legal Co-operation (CDCJ)

Abridged report of the 97th plenary meeting (1-3 December 2021)

Item to be considered by the GR-J at its meeting on 3 February 2022

Opening of the meeting and adoption of the agenda

The European Committee on Legal Co-operation held its 97th plenary meeting by videoconference on 1-3 December 2021, with Mr João Arsénio de Oliveira (Portugal) in the Chair.

The agenda of the meeting is contained in Appendix I. The full report of the meeting including the list of participants² is available on the CDCJ's website.

List of items for decision by the Committee of Ministers

The CDCJ invites the Committee of Ministers:

- to take note of the abridged report of its 97th plenary meeting (1-3 December 2021);
- to take note of the adoption of its Opinion regarding the Parliamentary Assembly Recommendation 2213 (2021) on addressing issues of criminal and civil liability in the context of climate change and ways forward recommended by CDCJ;
- to take note that with respect to its adopted terms of reference for the period 2022-2025 and the planned main deliverable 3, the CDCJ concluded, following consultations held and additional information received, that it does not consider necessary, at this stage, to revise the Agreement on the Transfer of Corpses (ETS No. 80).

List of items for information of the Committee of Ministers

The CDCJ:

1. took note of the introductory remarks by the Chair as well as those of Mr Daniele Cangemi, Head of the Department for Human Rights, Justice and Legal Co-operation Standard-Setting Activities, and welcomed the Strategic Framework of the Council of Europe and the priorities set out therein, which will serve as a guiding framework for CDCJ's priority areas of work;
2. took note of the progress in the preparation of the draft final report on the review of the implementation in the member States of the Sofia Action Plan on strengthening judicial independence and impartiality, and entrusted the Bureau to review the draft report at its next meeting in 2022 before the launching of the consultation process with all delegations on its content and proposed conclusions and recommendations. The CDCJ is to consider the final report for approval at its 98th plenary meeting in 2022, prior to its communication to the Secretary General for consideration;

¹ This document has been classified restricted until examination by the Committee of Ministers.

² At this plenary meeting of the CDCJ, the member States were represented by 40 women and 28 men, 58,82 % and 41,18 % respectively.

3. took note of the progress in the work of the joint CDCJ-CDENF's subordinate body, the Committee of Experts on the rights and the best interests of the child in parental separation and in care proceedings (CJ/ENF-ISE) as presented by its Chairperson, Mr Seamus Carroll (Ireland), including the publication of the feasibility studies on legal instruments on the protection of the best interests of the child on both the CDCJ and CDENF websites; and in line with the established practice, entrusted its Bureau, in close co-operation with the CDENF Bureau, to finalise the composition of the CJ/ENF-ISE;
4. welcomed the information provided with respect to future priorities of the Irish Presidency of the Committee of Ministers (May-November 2022) which are relevant to the area of family law and the work of the CJ/ENF-ISE, as presented by Ms Lara Hynes (Principal Officer, Child Care Legislation & Children's Rights Policy Unit, Department of Children, Equality, Disability, Integration and Youth), and encouraged CDCJ members to contribute to the planned event in October 2022;
5. took note of the progress in the preparation of the draft comparative study on the right of donor-conceived persons to know their origins, presented by Professor Jean-René Binet, provided further orientations for its finalisation and instructed the Secretariat to disseminate the adopted questionnaire to member States (deadline for replies: 31 January 2022) to complement the comparative analysis and its conclusions; agreed to resume the discussion on this topic at its next plenary meeting with a thematic exchange of views and discussion on the options and feasibility of elaborating a draft recommendation on the right of donor-conceived persons to know their origins;
6. took note of the oral information provided by Professor René de Groot on the outcome of the Technical Meeting of Experts and International Conference on Statelessness and the Right to a Nationality in Europe (Strasbourg, 23-24 September 2021), organised jointly by the CDCJ and the UNHCR, and agreed to prioritise as follow-up activities guidance on child sensitive procedures in administrative and migration law matters for stateless children or children at risk of being stateless and guidance on the establishment of nationality, in particular for children;
7. took note of the progress in the preparation of the draft comparative study in the fields of administrative law and artificial intelligence, approved the outline of the study and the updated workplan for this activity; invited members to send any further comments on the proposed draft questionnaire by 16 December 2021 and requested the Secretariat, with the support of Mr Johan Wolswinkel, to revise the questionnaire and disseminate it for completion (deadline for replies: 31 January 2022); took note of the information provided by one member State in respect of CAHAI's current work and the transversal co-ordination aspects;
8. examined the report outline on the evaluation of the implementation of Recommendation CM/Rec(2014)7 on the protection of whistleblowers, prepared on the basis of the information provided by member States and presented by Ms Anna Myers; held an exchange of views with the participation of Lithuania, Ireland and Serbia on good practices and progress in the implementation of the recommendation; agreed to pursue the preparation of the evaluation report and entrusted the Bureau to examine the completed draft report before its submission to the CDCJ for consideration at its next meeting;
9. held an exchange of views on the draft report on the evaluation of the implementation of Recommendation CM/Rec(2015)4 on preventing and resolving disputes on child relocation, prepared on the basis of the information provided by member States and presented by Ms Cristina González Beilfuss, requested member States to provide their comments and additional information (by 31 December 2021) in order to allow the consultant and the Bureau to finalise the report so that the Committee can approve it by written procedure in 2022;
10. agreed on the activities to be undertaken to promote and implement the European Convention on Information on Foreign Law (ETS No. 62) and its Additional Protocol (ETS No. 97) as set out in document CDCJ(2021)8 Rev1;
11. examined and approved the report on the review of the implementation of the European Convention on the Legal Status of Children born out of Wedlock (ETS No. 85) prepared by Ms Katarina Trimmings under the supervision of the CDCJ (as it appears in document CDCJ(2021)29), agreed to its publication, and entrusted the Bureau to discuss and develop any possible follow-up proposals for examination at its next meeting;

12. thanked France for the clarifications provided regarding their proposal for the revision of the Agreement on the Transfer of Corpses (ETS No. 80), which is reflected in the terms of reference of the CDCJ for 2022-2025, and in light of this additional information and clarifications received, considered that the elements raised would not warrant a revision of the legal instrument at this stage;
13. approved a checklist to assess the gender equality aspects and impact on CDCJ deliverables and agreed its subsequent inclusion in the updated working methods of the Committee;
14. considered that all CDCJ activities contribute and support member States' efforts to achieve UNSDG Goal 16: Peace, Justice and Strong Institutions;
15. took note of Resolution CM/Res(2021)3 and in line with it, examined and adopted the updated working methods of the Committee, to enter into force as of 1st January 2022;
16. welcomed the adoption by the Committee of Ministers of the CDCJ terms of reference for 2022-2025 and its two subordinate bodies for 2022-2023, namely the Committee of experts on the rights and the best interests of the child in parental separation and in care proceedings (CJ/ENF-ISE) and the Committee of experts on the protection of lawyers (CJ-AV);
17. held an exchange of views on its future work programme and modalities of implementation as it appears in document CDCJ(2021)30 prov and agreed, as and when necessary, to update them in light of the progress made and decisions taken by the CDCJ to reprioritise certain activities;
18. decided to establish two limited working groups (CDCJ-MIG and CDCJ-ADMIN-AI, see Appendices III and IV); instructed the Secretariat to issue, as soon as possible, the respective calls for expressions of interest and entrusted the Bureau to lead the selection process in accordance with its working methods and practice;
19. welcomed the progress and results achieved in 2020-2021, taking into account the challenging context of the pandemic and the fact that the CDCJ operated only online, due to the health situation; expressed concerns about the technical difficulties experienced during this plenary meeting which, at times, prevented some members from contributing to the meeting; expressed its wish that in the next biennium it would resume meetings in person if the health situation permits or hybrid meetings if possible;
20. took note of the update provided by the Secretariat concerning the visibility of the Committee and its work, including the first Legal Co-operation Newsletter to be issued in December 2021 and called upon delegations to widely disseminate it;
21. took note of the information related to the external co-operation with other international organisations and internal co-operation with other Council of Europe bodies, including the legal co-operation projects, provided by the Secretariat; took note of the work of the working group on Cyberjustice of the European Commission for the Efficiency of Justice (CEPEJ-GT-CYBERJUST), called for stronger co-ordination and welcomed continuing exchange of views and information on CDCJ and CEPEJ common areas of work; welcomed the information on progress made towards the finalisation of the Council of Europe Strategy for the Rights of the Child, its priority areas, including those falling within the CDCJ mandate and its planned launching during the Italian Chairmanship of the Committee of Ministers in 2022;
22. elected its new Chairperson, Vice-chairperson and Bureau members (see the composition below);
23. appointed Ms Signe Öhman (Sweden) as its Gender Equality Rapporteur; agreed for a transitional period to entrust the Chair and/or the Vice-Chair to act as Rapporteur on the Rights of Persons with Disabilities and invited any interested member to put forward their candidature; noted that there was no candidate for the position of Rapporteur on Children's Rights; called upon previously appointed members to renew their interest and all members to put forward their candidatures as CDCJ representatives or substitutes in the work and meetings of other Council of Europe bodies and to inform the Secretariat accordingly; entrusted the Bureau to make appointments at its first meeting in 2022 ;

24. considered the decisions of the Committee of Ministers relevant to its work, examined and adopted its comments on Parliamentary Assembly Recommendation 2213 (2021) on “Addressing issues of criminal and civil liability in the context of climate change”, as reflected in Appendix II and instructed the Secretariat to send the opinion as adopted to the Committee of Ministers by 15 January 2022;

25. took note of the University Women of Europe (UWE)'s request for observer status and instructed the Bureau to gather further information on the UWE and its activities, to enable the CDCJ to make an informed decision at its next plenary meeting in 2022; also instructed the Bureau to develop a set of criteria for assessing similar requests;

26. agreed to hold its 98th plenary meeting on 1-3 June 2022 and approved the calendar of meetings as it appears in document CDCJ(2021)4-Rev2prov, noting that the format (physical, virtual, or hybrid) of the meetings will depend on the evolution in the health situation at that time.

27. adopted the present abridged report and instructed the Secretariat to submit it to the Committee of Ministers for information.

Resource implications

28. The financing of the activities described in this report is assured.

Evaluation of completed activities

29. The CDCJ expressed its satisfaction with the follow-up undertaken to implement the activities and the decisions taken by the CDCJ as a result of its 96th plenary meeting, and its appreciation of the active role of the Bureau in this context. It took note that all envisaged activities have started, and although delays were noted for a few activities, nevertheless progress was achieved, and activities are expected to be completed in 2022.

Any changes to the composition of the Committee Bureau

30. The CDCJ held elections, in accordance with *Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods*. The CDCJ Bureau is composed as follows:

Chairperson: Mr Christoph Henrichs (Germany) – elected for a first term of one year, from 1 January to 31 December 2022.

Vice-chairperson: Mr Francesco Crisafulli (Italy) – elected for a first term of office, from 1 January to 31 December 2022.

Bureau members:

Ms Zuzana Fišerová (Czech Republic) – re-elected for a second two-year term of office, from 1 January 2022 to 31 December 2023;

Mr Lennart Houmann (Denmark) – elected for a first two-year term of office (renewable), from 1 January 2022 to 31 December 2023;

Mr Abderrazzak Afkyr (The Netherlands) – elected for a first term of office of one-year under Article 13.d of the Rules of Procedure (renewable), from 1 January 2022 to 31 December 2022;

Mr Rodrigo Rodriguez (Switzerland) – re-elected for a second two-year term of office, from 1 January 2022 to 31 December 2023;

Mr Eral Knight (United Kingdom) – re-elected for a second two-year term of office, from 1 January 2022 to 31 December 2023.

Appendix I

Agenda

1. Opening of the meeting
2. Adoption of the agenda and order of business
3. Statement of the Chair and Secretariat
4. Tour de table: interventions by newly designated members of the CDCJ
5. Review of progress

Justice

- 5.1 Review of the implementation of the Sofia Action Plan on strengthening judicial independence and impartiality (specific task ii) - examination and approval of final report

Family law and children's rights

- 5.2 Rights and best interests of the child in parental separation and in care proceedings (Committee of Experts - CJ/ENF-ISE) (specific task viii)
- 5.3 Right of donor-conceived persons to know their origins

Public law

- 5.4 Statelessness and the right to a nationality: follow-up activities (specific task vii)

Artificial Intelligence

- 5.5 Draft comparative study on Administration and Artificial Intelligence (specific task iii)

Evaluation of recommendations prepared by the CDCJ, including their implementation by the member States (main task iii)

- 5.6
 - a. Evaluation of Recommendation CM/Rec(2014)7 on the protection of whistleblowers
 - b. Evaluation of Recommendation CM/Rec(2015)4 on preventing and resolving disputes on child relocation

Examination of conventions under the CDCJ's responsibility (main task xii)

- 5.7
 - a. European Convention on Information on Foreign Law – ETS No. 62 and Additional Protocol – ETS No. 97
 - b. Agreement on the Transfer of Corpses - ETS No. 80: possible revision
 - c. European Convention on the Legal Status of Children born out of Wedlock – ETS No. 85

6. Transversal issues:

- a. Mainstreaming equality between women and men in (preparing) new legislation (main task xi)
- b. Contribution to the UNSDGs, in particular Goal 16 - Peace, Justice and Strong institutions (main task xiii / specific task xi)

7. Working methods of CDCJ

8. Terms of reference of the CDCJ and its subordinate bodies for 2022-2025: exchange of views on the future work programme and implementation of tasks

9. Evaluation of completed activities / Annual exchange of views to evaluate its activities and to advise the Committee of Ministers and the Secretary General on future priorities in its sector, including possible new activities and those that might be discontinued (main task x)
10. Co-operation with other international organisations and civil society, and with other relevant Council of Europe bodies and intergovernmental committees
11. Elections and appointments
12. CDCJ opinions
Draft CDCJ opinion on Parliamentary Assembly Recommendation 2213 (2021) - Addressing issues of criminal and civil liability in the context of climate change
13. Any other business
14. Date and place of next meeting
15. Approval of the abridged meeting report

Appendix II

Addressing issues of criminal and civil liability in the context of climate change

Parliamentary Assembly Recommendation 2213 (2021)

Opinion of the CDCJ

1. The European Committee on Legal Co-operation (CDCJ) has taken note of Recommendation 2213 (2021) of the Parliamentary Assembly on “Addressing issues of criminal and civil liability in the context of climate change”.

2. CDCJ shares the Parliamentary Assembly’s concerns in the context of climate change and its impact on the environment, notably from a legal point of view. It takes note of the recommendation to the Committee of Ministers to examine the reasons for non-ratification of the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (ETS No. 150, also referred to as the “Lugano Convention”); to encourage member States that have not yet done so to ratify it, and to consider whether the revision of this convention (in particular by updating its Appendix I on dangerous substances) would be desirable or to replace it by another legal instrument better adapted to the current environmental challenges, or even to conduct a study on national climate litigation cases.

3. Concerning the recommendation to review the reasons for the lack of ratifications of the Lugano Convention (point 3.2 of Recommendation 2213), the CDCJ recalls that its Bureau undertook in 2011 a review of conventions within the field of competence of the Committee and assessed this Convention as “inactive”. This assessment was confirmed by the classification of conventions set out in the report by the Secretary General on this matter, dated 16 May 2012.³ As the Lugano convention has not come into force 28 years after its opening for signature, the CDCJ does not find it appropriate to encourage member States that have not yet done so to ratify it, as proposed by the Parliamentary Assembly.

4. Furthermore, the CDCJ considers that undertaking future work along the lines of the recommendation of the Assembly is premature. The setback given to the Lugano Convention reflects the fact that its provisions do not enable it to achieve an internationally accepted solution to liability systems and compensation arrangements for damage resulting from activities dangerous to the environment that can be accepted by Council of Europe member States. Embarking on a process of revision of this convention or of elaboration of a new legal instrument, as recommended by the Parliamentary Assembly in point 3.3 of Recommendation 2213, requires a careful review of the relevance and added-value of improving and adapting the international legal framework, taking into account the existing sector specific civil liability regimes set out in international treaties and other binding legal instruments developed since the Lugano Convention, whether at European or international level, as well as their effectiveness.

5. Without ruling out the possible preparation of a convention in the longer term, should the Committee of Ministers instruct it to do so, the CDCJ considers it more appropriate, at this stage, to undertake the study on national climate litigation cases mentioned in point 3.4 of Recommendation 2213 and could also consider the extent to which other legal instruments achieve the aims of the Lugano Convention. Depending on the decision of the Committee of Ministers, and on the urgency of the issue, the CDCJ could prioritise this work if necessary.

³ Document CDCJ-BU(2011)10. See Document [SG/Inf\(2012\)12](#), Report by the Secretary General on the Review of Council of Europe Conventions (16 May 2012), and its Executive Summary in document [SG/Inf\(2012\)12-Add](#).

Appendix III

CDCJ Limited Working Group on Migration (CDCJ-MIG)

Terms of reference

Role

1. In line with Resolution CM/Res(2021)3 on intergovernmental committees and subordinate bodies, their terms of reference and working methods (applicable as of 1 January 2022), and article 14 (b)⁴ of Appendix I, a limited working group of CDCJ on migration (CDCJ-MIG) will be established to assist the CDCJ in its mandate related to the elaboration of a Guide for practitioners on administrative detention of migrants to support the implementation of existing standards in this field (deliverable 8 of its terms of reference).

Specific Tasks

2. The CDCJ-MIG will support the work of the CDCJ by:

a) finalising, for examination and adoption by the CDCJ in December 2022, the draft Guide for practitioners, taking into account the work previously carried out by the Committee of experts on administrative detention of migrants (CJ-DAM) and any relevant legal developments since then;

b) referring to the CDCJ any significant issues arising in the context of the drafting process, with proposed solutions if possible;

c) providing, upon CDCJ's request, support to the implementation of actions or activities related to statelessness decided by the CDCJ as a follow-up to the 2021 International Conference.

Composition

3. The CDCJ-MIG will be composed of up to eight experts designated by CDCJ heads of delegations⁵ which are interested in contributing to the Guide, and have a thorough knowledge of law, policy and practice in the field of administrative law and administrative detention, including experience in developing practical guidance in this area for relevant professionals.

4. Participation is also open to one representative from participating institutions, organisations, bodies and committees with relevant experience in this area, in line with the terms of reference of the CDCJ.

Working methods and expected results

5. The working group will perform its functions and responsibilities online between February and October 2022, with a possible finalisation of the handbook for adoption by the CDCJ in December 2022.

6. It shall be assisted in its work by the Secretariat of the CDCJ, and within the limits of budgetary appropriations, by up to two consultants with specific knowledge and expertise relating to immigration detention issues at international level and/or in different member States, as well as relevant case law of the European Court of Human Rights.

7. CDCJ delegations' substantive input and comments would also be sought by electronic means, in between meetings and at appropriate stages, to enable the working group to deliver a proposed text that would reflect the views of the membership. The CDCJ will take the final decision on any changes of a substantive nature of the draft text of the Guide for practitioners submitted by the CDCJ-MIG.

⁴ "Where necessary, in order to expedite the progress of their work, committees may entrust a rapporteur or a limited number of committee members with a specific task to be fulfilled by their next meeting, using primarily information technologies."

⁵ In case of a large number of nominations, the participation of designated experts will be confirmed following a selection process led by the CDCJ Bureau, taking into account experts' established expertise in the relevant field, and due regard being given to geographical and gender representation.

Appendix IV

CDCJ Limited Working Group of experts to update the handbook “The Administration and You” (CDCJ-ADMIN-AI)

Terms of reference

Role

1. In line with Resolution CM/Res(2021)3 on intergovernmental committees and subordinate bodies, their terms of reference and working methods (applicable as of 1 January 2022), and article 14 (b)⁶ of Appendix I, a limited working group of CDCJ is established to assist the Committee in its mandate related to the updating of the handbook on “The Administration and You” prepared and published by the CDCJ in 2018.

Specific task

2. The CDCJ-ADMIN-AI is tasked with elaborating the updated Handbook “The Administration and You”. The update should address the use of artificial intelligence (AI) and non-AI algorithmic systems in administrative law. The basis of this work will be a comparative report, examining aspects of the use of AI in administrative law, the impact and changes artificial intelligence technology has brought to administrative rule of law, relations between individuals and public authorities, as well as how the principles of the good administration (equal treatment; transparency; access etc.) are applied in practice in a user-friendly way.

Composition

3. The CDCJ-ADMIN-AI is composed of up to eight CDCJ experts designated by the heads of delegation and who are interested to contribute to updating the handbook, and may be assisted by up to three independent consultants. The CDCJ experts and consultants should have knowledge of the relevant legal areas (administrative, labour or health law) and of artificial intelligence governance, good understanding of AI, machine learning, or the broader AI ecosystem (i.e., Internet of Things, big data, etc.), and have experience in policy development and decision making nationally or internationally on these issues. Experience of working in the specific sectors such as health care, social services, labour or education and AI or other would be desirable for the second step of the research.

Working methods and expected results

4. The CDCJ-ADMIN-AI will perform its functions and responsibilities online between June-October 2022, with a possible finalisation of the updated handbook in December 2022.

5. It shall be assisted in its work by the Secretariat of the CDCJ, and within the limits of budgetary appropriations, by up to three independent consultants.

⁶ “Where necessary, in order to expedite the progress of their work, committees may entrust a rapporteur or a limited number of committee members with a specific task to be fulfilled by their next meeting, using primarily information technologies.”