
1445th meeting, 5 October 2022

10 Legal questions

10.3 European Committee on Legal Co-operation (CDCJ)

Abridged report of the 98th plenary meeting (Strasbourg, 1-3 June 2022)

Item to be considered by the GR-J at its meeting on 28 September 2022

Opening of the meeting and adoption of the agenda

The European Committee on Legal Co-operation held its 98th plenary meeting in Strasbourg, on 1-3 June 2022, with Mr Christoph Henrichs (Germany) in the Chair.

The agenda of the meeting is contained in Appendix I. The full report of the meeting including the list of participants 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 98th plenary meeting, held in Strasbourg, on 1-3 June 2022;
- to take note that the CDCJ agreed on the relevance and added value of elaborating a draft recommendation on the rights of donor-conceived persons to know their origins, and that a proposal to that effect would be prepared in due course for consideration by the Committee of Ministers.

List of items for information of the Committee of Ministers

The CDCJ:

- 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 Ms Livia Stoica Becht, CDCJ Secretary to the CDCJ concerning the potential impact of the exclusion of the Russian Federation from the Council of Europe and suspension of all relations with Belarus on the work of the Committee, particularly in relation to the work envisaged on the legal instruments under the responsibility of the CDCJ;
- completed the review of the implementation of the Action Plan to strengthen the independence and impartiality of the judiciary ("Sofia Action Plan"), adopted a comprehensive report and instructed the Secretariat to communicate to the Secretary General its findings and proposals for follow-up;
- took note of the report of the first meeting of its subordinate body, the Committee of Experts on the Protection of Lawyers (CJ-AV), held an exchange of views concerning the scope of the future legal instrument and its nature, in the light of the proposals made by the CJ-AV and agreed to provide in writing further information on these issues before CJ-AV's second meeting (Strasbourg, 11-13 July 2022);

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

- welcomed the progress made by its subordinate body, the Committee of Experts on the rights and best interests of the child in the context of parental separation and in care proceedings (CJ/ENF-ISE) in the elaboration of the draft recommendation on the best interests of the child and his or her rights in parental separation and care proceedings;
- welcomed the organisation, in the framework of the Irish Presidency of the Committee of Ministers, of an international conference on “Hear Our Voices - Rights and Determination of the Best interests of the Child in Parental Separation and in Care Proceedings”, including a hearing of relevant stakeholders (Dublin, 3-5 October 2022), and called on interested CDCJ members to contribute to this event;
- approved a comparative study on “Access of people conceived by gamete donation to information on their origins” and authorised its publication, subject to any editorial changes required as a result of the written comments received and the exchange of views held in this context; instructed the Bureau to prepare draft terms of reference for a future group of experts to elaborate a draft recommendation on the rights of donor-conceived persons to know their origins for consideration at its next plenary meeting, and to hold, where appropriate, consultations with Chairs and/or secretariats of other relevant committees who were likely to be involved in the drafting process, to appear in the draft terms of reference so that synergies could be taken into account;
- examined the relevance of modernising the Convention on the Legal Status of Children born out of Wedlock (ETS No. 85), following the adoption and publication of a report on this topic² and recommended actions contained therein; took note of the progress underway in other fora, presented by the United Kingdom with respect to the parentage/surrogacy project of the Hague Conference on Private International Law (HCCH) and by the International Social Service (ISS) with respect to the principles for the protection of the rights of the child born through surrogacy (Verona principles); concluded that there was no support for the elaboration of a revised or new legally binding instrument on this issue, took note that several member States were in favour of a future soft law legal instrument which would provide guidance on selected aspects, and agreed to reconsider this issue at a more appropriate time, in the light of progress made by other international organisations and any relevant legislative developments with regard to the parenthood of couples of same sex and surrogacy;
- completed deliverable 6 of its terms of reference, by adopting a Report on the state of play of the implementation of Recommendation CM/Rec(2015)4 on preventing and resolving disputes related to child relocation and authorising its publication; recalled its decision to strengthen efforts for the promotion and awareness raising of this recommendation taken at its 97th meeting on 1-3 December 2021; invited the CJ/ENF-ISE to ensure that the issue of child relocation in the context of disputed separation to be adequately integrated in the draft recommendation under preparation; the CJ/ENF-ISE Chair, on behalf of the committee, expressed the readiness to consider developing guidance to the member States on this issue in the framework of the elaboration of the legal instrument on the rights and best interests of the child in the context of parental separation and in care proceedings;
- took note of the information on the progress made by its working group on administrative detention (CDCJ-MIG) and the outcome of its first meeting (online, 19-20 May 2022); reviewed and agreed the elements of the draft detailed outline of the future Guide for practitioners on administrative detention of migrants under preparation and took note of the group’s next meeting to be held in Rome, from 12 to 13 October 2022;
- approved a report on the International Conference and technical meeting on “Statelessness and the right to a nationality” (Strasbourg, 23-24 September 2021) and authorised its publication; recalled its previous decision taken at the 97th meeting (1-3 December 2021) to prioritise work on statelessness of children and their access to nationality and invited the CDCJ-MIG and interested delegations’ experts to develop further these proposed activities, in preparation of guidance on child sensitive procedures in administrative and migration law matters for stateless children or children at risk of being stateless as well as guidance on the establishment of nationality, in particular for children;

² CDCJ(2021)29.

- decided to consult delegations on the draft questionnaire prepared for the collection of information regarding the operation of the European Convention on Information on Foreign Law (ETS No. 62) and its additional protocol (ETS No. 97) until 17 June 2022; agreed to approve the questionnaire by written procedure and issue it for completion; and approved the revised workplan for this activity;
- approved revised terms of reference for a limited working group of CDCJ experts to make proposals for future work of CDCJ in the field of administrative law and Artificial Intelligence and to update the handbook "The Administration and You" (CDCJ-ADMIN-AI – see Appendix II) and a revised workplan for the preparation of a comparative study on the use of Artificial Intelligence and other algorithmic decision-making mechanisms in administrative procedures, and decided to issue a new call for expressions of interest after the plenary meeting;
- examined the concept note and workplan for the review of legal instruments falling under its responsibility in the light of technological developments; agreed to hold further consultations on the scope of this review, in the light of the numerous legal instruments under its competence; instructed the Secretariat to prepare a targeted questionnaire under the supervision of the Bureau and to issue it after the plenary; instructed its Bureau to review the scope and areas of law and/or legal instrument(s) to be covered by this review, on the basis of the contributions received and any indications of priority topics/legal instruments from member States, and agreed to re-examine this issue at its next meeting;
- approved a "Report on the evaluation of Recommendation CM/Rec(2014)7 on the protection of whistleblowers" and authorised its publication, subject to any editorial changes required as a result of the exchange of views held in this context; took note of the recommendations contained therein to consider further standard-setting work, through an update of the existing recommendation and/or explanatory memorandum, and decided, in view of currently still ongoing developments in this field in a number of member States, to consider the project at a later stage;
- in the context of exchanges of views on transversal issues on children's rights and gender equality, took note of the recently adopted Council of Europe Strategy for the Rights of the Child (2022-2027) which includes specific actions to be undertaken by the CDCJ in this area, and welcomed the adoption of Recommendation CM/Rec(2022)17 on protecting the rights of migrant, refugee and asylum-seeking women and girls, whose principles and recommended actions should be considered in the elaboration of its Guide for practitioners on administrative detention of migrants;
- adopted a set of criteria to assess applications by organisations seeking observer status with the CDCJ and/or any of its subordinate bodies, as well as clarifications on the review and decision-making process by the CDCJ; instructed the Secretariat to notify applicant organisations so that a decision on pending requests for observer status be taken by the CDCJ at its next meeting on the basis of the assessment criteria to be communicated to the applicant organisations for their information;
- reviewed the updated workplan (2022-2025), took note of the key CDCJ events planned in 2022-2023 and exchanged views on how to increase the visibility of the work and deliverables of the CDCJ in this biennium;
- held a preliminary exchange of views for the preparation for the CDCJ's 100th Plenary meeting (May 2023) coinciding with the 60th anniversary of the Committee; agreed to provide further orientations and instructed the Bureau and the Secretariat to develop concrete proposals and a draft agenda for consideration at its 99th plenary meeting;
- took note of the information provided by a number of member States on the main recent or envisaged developments in the fields of public and private law in their respective countries, in relation to the work of the CDCJ and invited the Bureau to prepare a template and guidance for a more structured collection of this information and increased use by the Committee;
- heard an update on the work undertaken by the Committee on Artificial Intelligence (CAI) for the elaboration of a binding legal instrument, and explored possible future avenues for consultations, coordination and exchange of views on common areas of interest, including through the participation of the CDCJ and the CAI Chairs in the future meetings of each other's committee;

- agreed to continue to entrust the Chair and/or Vice-Chair to act as Rapporteur(s) on the Rights of Persons with Disabilities, on a transitional basis, until receiving an expression of interest; approved the updated list of nominations of representatives and substitutes to other committees and bodies and decided to launch a new call for expressions of interest for the vacant positions;
- agreed to adopt the abridged report and full report by written procedure after the meeting;
- agreed to hold its 99th plenary meeting in Strasbourg, from 23 to 25 November 2022.

Resource implications

The financing of the activities described in this report and implemented in 2022 is ensured through the Ordinary Budget.

Evaluation of completed activities

The CDCJ expressed its satisfaction with the follow-up undertaken to implement the activities and the decisions taken by the CDCJ at its 97th plenary meeting, and its appreciation of the active role of the Bureau in this context.

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 and the Rule of Law**
- 5.1 **Review of the implementation of the Sofia Action Plan on judicial independence and impartiality**
 - 5.2 **Protection of the profession of lawyer – Committee of Experts - CJ-AV (main deliverable 1)
Family law and children’s rights**
 - 5.3 **Rights and best interests of the child in parental separation and in care proceedings –
Committee of Experts - CJ/ENF-ISE) (main deliverable 2)**
 - 5.4 **Rights of donor-conceived persons to know their origins (main deliverable 10)**
 - 5.5 **Report on the state of play of the implementation of the European Convention on the Legal
Status of Children born out of Wedlock - ETS No. 85, including proposals for follow-up
deliverables (main deliverable 12)**
 - 5.6 **Report on the state of play of the implementation of Recommendation CM/Rec(2015)4 on
preventing and resolving disputes related to child relocation, including proposals for follow-
up deliverables (main deliverable 6)**
- Public Law**
- 5.7 **Administrative detention of migrants - Limited working group of CDCJ - CDCJ-MIG: Guide for
practitioners (main deliverable 8)**
 - 5.8 **Statelessness and the right to a nationality: follow-up activities
Promoting and facilitating the functioning of Conventions within the CDCJ’s area of
competence (main task (iii))**
 - 5.9 **Report on the state of play and assessment of the implementation of the European
Convention on Information on Foreign Law (ETS No. 62) and its additional protocol (ETS No.
97); proposals for follow-up deliverables, communication and awareness-raising activities
(main deliverable 4)**
- Technological developments, including artificial intelligence**
- 5.10 **Administration and artificial intelligence - CDCJ-ADMIN-AI**
 - 5.11 **Review of legal instruments falling under its responsibility in the light of technological
developments to assess implementing challenges and proposals for follow-up deliverables
(main deliverable 7)**
- Follow-up and promotion of the implementation of the non-binding instruments prepared by
CDCJ and, if appropriate, of others within its area of competence) (main task iv)**

- 5.12 **Report on the state of play of the implementation of Recommendation CM/Rec(2014)7 on the protection of whistleblowers, including proposals for follow-up deliverables** (*main deliverable 12*)
6. **Transversal issues:**
Mainstreamed perspectives: gender, youth, children's rights, rights of persons with disabilities, and Roma and Traveller issues (*main task xiv*)
7. **Observers**
8. **Visibility of the work and deliverables of the CDCJ**
9. **Legislative developments in member States in the areas of public and private law**
10. **Co-operation with other international organisations and civil society and with other relevant Council of Europe bodies and committees**
11. **Appointments**
12. **CDCJ Opinions (if any)** (*main deliverable 15*)
13. **Any other business**
14. **Date and place of the next meeting**
15. **Approval of the abridged meeting report**

Appendix II

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

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)³ 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 making proposals on the direction the CDCJ should take in respect of the future work on administrative law and AI and elaborating the updated Handbook “The Administration and You”. The update should address the use of artificial intelligence (AI) and other 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 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 experts, interested to contribute to this work, as follows:

- up to three CDCJ experts designated by the heads of delegation,
- two independent consultants,
- three experts from research institutes or organisations with expertise on artificial intelligence aspects.

4. The experts and consultants should have a thorough knowledge of administrative law, and/or 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.

Working methods and expected results

5. The CDCJ-ADMIN-AI will perform its functions and responsibilities online between September 2022 and December 2023, with a possible finalisation of the updated handbook in December 2023.

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 independent consultants.

³ “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.”