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**91<sup>st</sup> MEETING OF THE EUROPEAN COMMITTEE**  
**ON LEGAL CO-OPERATION**  
**(CDCJ)**

**Strasbourg, 16-18 November 2016**

**MEETING REPORT**

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Document prepared by the Secretariat  
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## CONTENTS

Introduction .....	3
Items submitted to the Committee of Ministers .....	3
Gender representation .....	3
Decisions and items discussed .....	3
A. Completed activities .....	3
B. On-going activities .....	4
C. Future activities .....	5
D. Other items discussed .....	6

## APPENDICES

APPENDIX I	Agenda .....	9
APPENDIX II	Draft Recommendation CM/Rec(...)... on the legal regulation of lobbying activities.....	11
APPENDIX III	Electronic evidence: starting points for reflection .....	16
ANNEXE IV	Online dispute resolution mechanisms: terms of reference for a technical study.....	17

## ADDENDUM

Explanatory Memorandum to the draft Recommendation CM/Rec(...)...on the legal regulation of lobbying activities

## Introduction

The European Committee on Legal Co-operation (CDCJ) held its 91<sup>st</sup> meeting in Strasbourg on 16-18 November 2016. The meeting was chaired by Ms Zuzana Fišerová (Czech Republic), chairperson of CDCJ. The agenda, as adopted by the Committee, appears in Appendix I. The list of participants is available from the Secretariat.

## Items submitted to the Committee of Ministers for decision

- *Legal regulation of lobbying activities*

The Committee of Ministers is invited to examine and adopt the draft recommendation on the legal regulation of lobbying activities in the context of public decision-making and take note of its explanatory memorandum (Paragraphs 2-3 and Appendix II).

## Items submitted to the Committee of Ministers for information

### GENDER REPRESENTATION

At this plenary meeting of CDCJ, the member States were represented by 19 women and 22 men, 46% and 54% respectively.

## DECISIONS AND ITEMS DISCUSSED

### A. Completed activities

- *Legal regulation of lobbying activities*

1. CDCJ took note of the reports of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> meetings of the draft group responsible for preparing the draft recommendation and explanatory memorandum.

2. CDCJ examined and approved the draft recommendation on the legal regulation of lobbying activities in the context of public decision-making as it appears in Appendix II. It instructed the Secretariat to transmit the text to the Committee of Ministers, after revision by the legal and editorial services of the Secretariat, with a view to its adoption by the Ministers' Deputies in 2017.<sup>1</sup>

3. In the light of its examination of the draft recommendation, CDCJ examined and adopted the explanatory memorandum to the draft recommendation as it appears in the addendum to this meeting report and authorised its publication subject to adoption of the recommendation by the Committee of Ministers and any consequent changes that might be required.

4. CDCJ approved publication of the feasibility study in support of the Council of Europe undertaking this normative work prepared by Dr Tilman Hoppe (consultant) in 2014 (document CDCJ(2014)4), under the responsibility of its author.

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<sup>1</sup> In favour: 33 votes – Albania, Andorra, Armenia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Cyprus, Czech Republic, Denmark, Finland, Georgia, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Malta, Republic of Moldova, Netherlands, Norway, Poland, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom. Also in favour but absent at the time of the vote - Azerbaijan, Montenegro. Against: 0 Abstentions: 1 – Portugal.

**B. On-going activities**

- *Administrative detention of migrants*

5. CDCJ took note of the reports of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> meetings of the Committee of Experts on Administrative Detention of Migrants (CJ-DAM) and of the progress made in preparing a codifying instrument of existing international standards in this area.

- *Free legal aid*

6. CDCJ took note of the report giving a comparative analysis of the key challenges facing free civil legal aid schemes in the member States and possible solutions (document CDCJ(2016)10), after hearing a presentation by its author, Ms Olga Shepeleva (consultant) and discussing its conclusions with her.

7. With a view to delimiting the scope of the Committee's possible future work in this field, CDCJ instructed the Secretariat to consult the Committee's members and submit their proposals to the Bureau at its first meeting in 2017.

- *Impact of internet and new technologies on rules of evidence and modes of proof*

8. CDCJ approved publication of the comparative study prepared by Mr Stephen Mason and Mr Uwe Rasmussen (consultants) on the impact of the internet and new technologies on rules of evidence and modes of proof, primarily in areas of civil and administrative law proceedings (document CDCJ(2015)14 final), under the responsibility of its authors.

9. As a follow-up to the study, CDCJ agreed to prepare guidelines providing practical advice in this field. In order to clarify the precise scope of these guidelines it instructed the Secretariat to organise an ad hoc meeting of the Committee's members, which should also involve the relevant Council of Europe bodies with expertise and responsibilities in this field, particularly the CEPEJ, the CCJE, the CCPE and the CDPC. The issues raised in Appendix III will serve as a basis for discussion. The meeting will be held in 2017 and the participation costs of 10 Committee members (or designated experts) will be covered by the Council of Europe budget. Other CDCJ delegations who so wish may take part in the meeting, but at their own expense.

10. The Bureau is instructed to determine the composition of the group at its first meeting in 2017.

- *Continuing powers of attorney and advance directives for incapacity*

11. CDCJ took note of the progress made in preparing a review of follow-up by member States to Committee of Ministers Recommendation CM/Rec(2009)11 on principles concerning continuing powers of attorney and advance directives for incapacity.

12. It was agreed that, when the Bureau examines the consultant's preliminary draft report, the Bureau should be enlarged to include the members of the CDCJ (or designated experts) representing Austria, Italy and the United Kingdom, and that their participation costs will be covered by the Council of Europe budget. Other CDCJ delegations who so wish may take part in the meeting, but at their own expense.

13. In preparation for this exchange of views, the Committee agreed that the consultant's preliminary draft report should be forwarded to all the CDCJ delegations as soon as it is available.

- *Protection of whistleblowers (promotion)*

14. The Economic Crime Division of the Secretariat presented to CDCJ several co-operation projects with member States with components relating to the promotion of Recommendation CM/Rec(2014)7 on the protection of whistleblowers. CDCJ also took note of the information set out in the annotated draft agenda (document CDCJ(2016)9) on other initiatives taken by the Secretariat to promote the recommendation.

- *Child-friendly justice guidelines (promotion)*

15. CDCJ took note of the information set out in the annotated draft agenda (document CDCJ(2016)9) and in particular (i) the outcome of the thematic session organised by the CDCJ Secretariat in the framework of a High-level conference for the Rights of the Child held in Sofia (Bulgaria) on 5-6 April 2016 and (ii) the organisation of a regional seminar (Andorra, Portugal, Spain) by the Portuguese authorities on "Hearing the child in civil proceedings" (Lisbon, 25 November 2016).

- *Online dispute resolution mechanisms*

16. CDCJ took note of the preliminary feasibility study on online dispute resolution mechanisms (document CDCJ(2016)3) after hearing a presentation by its author, Professor Julia Hörnle (Consultant), and discussing its conclusions with her.

17. As a follow-up to this report, CDCJ took note of the proposals set out in document CDCJ(2016)12 and approved the content thereof. It agreed to undertake stage 1 of the activity and instructed the Secretariat to commission a technical study in accordance with the terms of reference as set out in Appendix IV.

### **C. Future activities**

18. CDCJ examined various proposals for possible activities to be undertaken within the framework of the Programme and Budget for 2018-2019, as set out below.

#### Proposals with priority

- Online dispute resolution mechanisms;
- Administrative detention of migrants (completion of the codifying instrument – if not completed in 2017);
- Impact of internet and new technologies on rules of evidence and modes of proof (topic and working methods to be confirmed in the light of the results of the work which will be carried out in 2017).

Proposals with lower priority

CDCJ agreed to undertake, but subject to the results of the work which will be carried out in 2017, the following activities:

- Role of court clerks in the resolution of court cases;
- Continuing powers of attorney and advance directives for incapacity;
- Free legal aid.

19. CDCJ instructed its Bureau to prepare proposals for the implementation of the above-mentioned activities, including any draft terms of reference as may be necessary.

**D. Other items discussed**

- *Judicial independence and impartiality*

20. CDCJ took note of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality adopted by the Committee of Ministers on 13 April 2016. It also took note of the High-Level Conference of Ministers of Justice and Representatives of the Judiciary organised by the Ministry of Justice of Bulgaria in co-operation with the Council of Europe, under the Bulgarian Chairmanship of the Committee of Ministers, held in Sofia on 21-22 April 2016, and at which the Plan of Action was launched.

21. CDCJ agreed to reflect the objectives of the Plan of Action in its programme of activities.

22. CDCJ took note of oral presentations on several ongoing co-operation projects relating to the judiciary and justice sector reform between the Council of Europe and member States.

23. CDCJ took note of the report prepared by Professor Dr Lorena Bachmaier (consultant) on the review of measures taken by member States on their follow-up to Recommendation CM/Rec(2010)12 on judges: independence, efficiency and responsibilities, and agreed to publish it under the responsibility of the Committee, with the following statement:

*“This report has been prepared on behalf of the European Committee on Legal Co-operation (CDCJ), at the request of the Secretary General of the Council of Europe, as a follow-up to his 2015 report entitled “State of Democracy, Human Rights and the Rule of Law in Europe – a shared responsibility for democratic security in Europe”.*

*CDCJ took note of the report at its 91st plenary meeting (16-18 November 2016), expressed its appreciation to Professor Dr Lorena Bachmaier for the quality of her work and approved publication of the report.”*

- *Conventions and Recommendations within the field of competence of CDCJ*

24. CDCJ took note of the written information provided by Armenia, Switzerland and Ukraine (document CDCJ(2016)15) and thanked the respective delegations for this information.

- *Legislative developments in member States in the areas of public and private law*

25. CDCJ took note of the written information provided by Ukraine on legislative developments in the areas of public and private law (document CDCJ(2016)18) and thanked the delegation for this information.

- *Gender mainstreaming*

26. CDCJ agreed to modify its working methods in order to strengthen the mainstreaming of equality perspectives in its work, and instructed the Secretariat to revise the working methods in line with the proposals set out in document CDCJ(2016)13 and submit them to the Bureau for approval.

27. CDCJ also agreed to increase the number of Gender Equality Rapporteurs to two.

- *Work of other Council of Europe bodies*

28. CDCJ took note of the reports of its representatives in the meetings of other Council of Europe bodies and committees whose work is of relevance to it, as posted on its website throughout the year, or in the meeting reports of these bodies or committees in the absence of CDCJ participation.

- *External co-operation*

29. CDCJ took note of the preparation of a casebook on the jurisprudence of the European Court of Human Rights in relation to fair trial standards in administrative law proceedings, co-published by the Council of Europe and the Folke Bernadotte Academy (Swedish Ministry of Foreign Affairs), which should be available by the beginning of 2017.

- *Elections and appointments*

30. Ms Zuzana Fišerová (Czech Republic) was unanimously elected as chairperson for a second term of one year.

31. Mr Lennart Houmann (Denmark) was unanimously elected as vice-chairperson for a second term of one year.

32. Ms Ildiko Nemeth (Hungary) was unanimously elected as a member of the Bureau for a first term of one year (Article 13.d of the rules).

33. As a result of the above-mentioned elections<sup>2</sup>, the Bureau of CDCJ is composed as follows:

Chairperson: Ms Zuzana Fišerová (Czech Republic)

Vice-chairperson: Mr Lennart Houmann (Denmark)

Bureau members: Mr Christoph Henrichs (Germany), Ms Ildiko Nemeth (Hungary), Mr Mikhail Vinogradov (Russian Federation), Mr Francisco Javier Forcada Miranda (Spain) and Mr Rodrigo Rodriguez (Switzerland).

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<sup>2</sup> The respective terms of office will take effect from 1<sup>st</sup> January 2017.

34. CDCJ instructed the Bureau to confirm or make such new appointments as necessary for the representatives of the Committee in the work and meetings of other Council of Europe bodies in 2017.

35. CDCJ appointed Ms Ildiko Nemeth (Hungary) as the Gender Equality Rapporteur of the CDCJ. In the absence of a candidate for the second position, CDCJ instructed the Secretariat to consult with members of the Committee with a view to the Bureau making an appointment in 2017.

- *Request for observer status*

36. CDCJ took note of the request for observer status in the Committee from the International Social Service (ISS). CDCJ welcomed the interest of ISS but, before making a decision, expressed its wish for ISS to provide information on its activities relevant to the work of CDCJ and explain the reasons for its request and how it would contribute to the work of the Committee.

- *Website of the Committee*

37. CDCJ held an exchange of views on the content and presentation of its website (public and restricted). The Committee confirmed its satisfaction with the content of the site and its clear wish to maintain a restricted site, whilst expressing its wish for easier access to the restricted site.

- *Date and place of the next meeting*

38. CDCJ agreed to hold its next plenary meeting in Strasbourg on 22-24 November 2017 or from 29 November to 1 December 2017, subject to further confirmation.



**APPENDIX I****AGENDA**

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- I. Opening of the meeting
- II. Adoption of the agenda
- III. Statement of the Chair and Secretariat
- IV. Judicial independence and impartiality
  - *Report on the High-Level Conference of ministers of justice and representatives of the judiciary (Sofia, Bulgaria, 21-22 April 2016)*
  - *Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality*
  - *Co-operation projects relating to judicial and justice sector reform (presentation)*
  - *Review of member State follow-up to Recommendation CM/Rec(2010)12 (take note of the report; authorisation of its publication)*
- V. Progress review of ongoing activities
  - *Administrative detention of migrants*
  - *Review of follow-up to Recommendation CM/Rec(2009)11 on principles concerning continuing powers of attorney and advance directives for incapacity (draft report)*
  - *Child-friendly justice guidelines (promotion)*
  - *CM/Rec(2014)7 on the Protection of Whistleblowers (promotion) – including presentation of co-operation projects on whistleblowing*
  - *Free legal aid (comparative analysis; possible follow-up)*
  - *Impact of internet and new technologies on rules of evidence and modes of proof (publication of the study; possible follow-up)*
  - *Online dispute resolution mechanisms (preliminary feasibility study; activity proposal)*
- VI. Legal regulation of lobbying activities
  - *Final reading of the draft recommendation and its explanatory memorandum*
- VII. Conventions and Recommendations within the field of competence of CDCJ
- VIII. Legislative developments in member States in the areas of public and private law
- IX. Gender equality mainstreaming (proposals on working methods)
- X. CDCJ work programme for 2018-2019
- XI. Work of other Council of Europe bodies

- XII. External co-operation
- XIII. Elections and appointments
- XIV. Any other business
- XV. Date and place of next meeting

**APPENDIX II****DRAFT RECOMMENDATION CM/REC(...)...  
ON THE LEGAL REGULATION OF LOBBYING ACTIVITIES  
IN THE CONTEXT OF THE PUBLIC DECISION-MAKING**

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The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Recalling that the aim of the Council of Europe is to achieve a greater unity between its members, inter alia, for the purpose of safeguarding and realising the ideals and principles which are their common heritage,

Considering that promoting the adoption of common rules in legal matters can contribute to the achievement of the aforementioned aim,

Considering that the right to participate in the conduct of public affairs is one of the democratic principles that are shared by all member States of the Council of Europe,

Recognising that lobbying can make a legitimate contribution to open government and well-informed public decision-making,

Recognising that increasing transparency and accountability in lobbying can strengthen public confidence in political systems,

Recognising that regulating lobbying can strengthen its legitimacy and integrity and provide a transparent framework in which stakeholders can contribute to public decision-making,

Recognising that regulating lobbying activities shall not prevent the consideration of technical advice or individual opinions in the process of public decision-making,

Recognising that the European Court of Human Rights has established a right of access to information as an inherent part of the right to freedom of expression protected by Article 10 of the European Convention on Human Rights,

Bearing in mind the Criminal Law Convention on Corruption (ETS No. 173), the Civil Law Convention on Corruption (ETS No. 174), Recommendation No. R (2000) 10 of the Committee of Ministers to member States on codes of conduct for public officials, and the work of the Group of States against Corruption (GRECO),

Bearing in mind the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and the principles on protecting personal data therein contained,

Recalling Recommendation 1908 (2010) of the Parliamentary Assembly – reiterated by Resolution 1744 (2010) and Recommendation 2019 (2013) – in which the Assembly recommends that the Committee of Ministers of the Council of Europe elaborate a European code of good conduct on lobbying,

Taking note of the OECD's "Recommendation of the Council on Principles for Transparency and Integrity in Lobbying",

Recognising and valuing the work of civil society organisations and other bodies seeking to promote transparency in lobbying,

Noting that many member States of the Council of Europe have rules governing conflicts of interest, access to public officials and transparency of the legislative process, but most of them have no comprehensive framework for the regulation of lobbying,

Bearing in mind that any national lobbying regulation has to comply with national constitutional law,

Considering that there is a need to encourage the adoption of such frameworks in the member States based on common principles,

Recommends that governments of member States establish or further strengthen, as the case may be, a coherent and comprehensive framework for the legal regulation of lobbying activities in the context of public decision-making in accordance with the principles contained in the appendix hereto and in the light of their own national circumstances.

*Appendix to Recommendation CM/Rec(...) ...*

Principles with the aim of guiding member States in developing policy at the national level to regulate lobbying.

## **Definitions**

- a) "*Lobbying*" means promoting specific interests by communication with a public official as part of a structured and organized action aimed at influencing public decision-making.
- b) "*Lobbyist*" means any natural or legal person who engages in lobbying activities.
- c) "*Public decision-making*" means decision-making within the legislative and executive branches, whether at national, regional or local level.
- d) "*Public official*" means any person exercising a public function, whether elected, employed or otherwise, in the legislative or the executive branches.
- e) "*Legal regulation*" means statutory regulation, a system of self-regulation or a combination of both.

## **A. Objective**

1. Legal regulation of lobbying should promote the transparency of lobbying activities.

**B. Scope**

2. Lobbying activities by at least the following categories should be subject to legal regulation:

- a. Consultant lobbyists acting on behalf of a third party;
- b. In-house lobbyists acting on behalf of their employer;
- c. Organisations or bodies representing professional or other sectoral interests.

3. Exemptions to legal regulations on lobbying should be clearly defined and justified.

**C. Freedom of expression, political activities and participation in public life**

4. Legal regulation of lobbying activities should not in any form or manner whatsoever infringe the democratic rights of individuals:

- a. to express their opinions and petition public officials, bodies and institutions, whether individually or collectively;
- b. to campaign for political change and change in legislation, policy or practice within the framework of legitimate political activities, individually or collectively.

**D. Transparency**

5. Information on lobbying activities in the context of public decision-making processes should be disclosed.

6. The rules on disclosure should be proportionate to the importance of the subject matter of the public decision-making process and should reflect constitutional guarantees.

**E. Public registers of lobbyists**

7. A register of lobbyists should be maintained by public authorities or other designated bodies.

8. Information held in the register should be of a declaratory character. Lobbyists should be responsible for ensuring the information is accurate and up to date.

9. The register should be easily accessible and user-friendly. It should be available online with easy to use search facilities, open to the public, and consultation should be free of charge.

10. The processing of personal data from the register should comply with applicable standards on personal data protection.

11. Information held in the register should include as a minimum:

- a. Lobbyist identification and contact data;
- b. Subject-matter of the lobbying activities;
- c. Identity of client or employer, where applicable.

12. In order to further promote transparency, registers may include additional information in accordance with national conditions and requirements.

13. In the case where a member State can demonstrate that alternative mechanisms guarantee public access to information on lobbying activities and ensure equivalent levels of accessibility and transparency, it may be considered that the requirement for a public register is satisfied.

#### **F. Standards of ethical behaviour of lobbyists**

14. Lobbyists should be guided by the principles of openness, transparency, honesty and integrity. In particular, they should be expected to:

- a. Provide accurate and correct information on the lobbying assignment to the targeted public official;
- b. Act honestly and in good faith in relation to the lobbying assignment and in all contacts with public officials;
- c. Refrain from undue and improper influence over public officials and the public decision-making process;
- d. Avoid conflicts of interest.

#### **G. Sanctions**

15. Legal regulations on lobbying should contain sanctions for non-compliance. These sanctions should be effective, proportionate and dissuasive.

#### **H. Public sector integrity**

16. Appropriate measures tailored to national circumstances should be in place in order to avoid risks to public sector integrity that might be created by lobbying activities.

17. The measures referred to in the preceding paragraph might include:

- a. "Cooling-off" periods that establish a period of time that has to elapse before either a public official may become a lobbyist after leaving public employment or office, or a lobbyist may become a public official after ceasing to exercise this occupation;
- b. Guidance to public officials on their relations with lobbyists, in particular on:
  - Refusing or disclosing the receipt of gifts and hospitality offered by a lobbyist;
  - How to respond to communications from lobbyists;
  - Reporting violations of the regulations or rules of conduct on lobbying activities;
  - Disclosing conflicts of interest;
  - Preserving the confidentiality of data.

**I. Oversight, advice and awareness**

18. Oversight of the regulations on lobbying activities should be entrusted to designated public authorities.

19. Oversight may include the following tasks:

- a. Monitoring compliance with the regulations;
- b. Providing guidance to lobbyists and public officials on the application of the regulations;
- c. Raising awareness amongst lobbyists, public officials and the public.

**J. Review**

20. The framework for the legal regulation of lobbying activities should be kept under review.

### **APPENDIX III**

#### **THE USE OF ELECTRONIC EVIDENCE IN CIVIL AND ADMINISTRATIVE PROCEEDINGS**

Starting points for reflection at the ad hoc meeting in 2017

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- how electronic evidence might be collected or seized, taking into account the need for authenticity and the rights of parties to obtain evidence before a legal action has been initiated;
- rules on the submission of evidence, especially regarding electronic signatures when submitting evidence in administrative proceedings;
- procedures pertaining to the establishment of the identity of a person, where a party claims, for instance, that an e-mail message caused damage (defamation, trade secrets, etc.) but the identity of the sender cannot be ascertained;
- the classification of electronic evidence in terms of reliability of the evidence;
- the admissibility of electronic evidence, including questions as to its quality, integrity and authenticity;
- requirements for the storage and preservation of electronic evidence and the requirements to provide for the security of evidence after a trial;
- the transmission of electronic evidence between judicial authorities.



**APPENDIX IV**  
TECHNICAL STUDY ON  
ONLINE DISPUTE RESOLUTION MECHANISMS

TERMS OF REFERENCE  
FOR A GROUP OF 3 INDEPENDENT EXPERTS

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The 3 consultants shall produce a Technical Study on the online dispute resolution mechanisms, comprising:

- a. A detailed analysis of whether existing or planned ODR mechanisms are compatible with Article 6 and a clear description of the standards different types of ODR have to comply with to be Article 6 compatible. The analysis will make a distinction between the different types of ODR processes examined. This analysis will contain a typology of different types of disputes and different forms of ODR processes in terms of how they relate to formal court procedures.
- b. An assessment of how the use of ODR can improve access to justice, by bolstering Article 6 rights and lowering the costs of dispute resolution, including the question to what extent ODR may be used to provide redress for infringements of ECHR rights (Article 13).
- c. An analysis of the interface between ODR processes and the civil and administrative justice system in different Council of Europe States to the extent that this implicates Article 6 of the ECHR.

The study shall be based on research undertaken by the consultants, including a review of existing research, questionnaires and follow-up contacts with CDCJ members and private bodies, and field work.

The consultants shall undertake their work in consultation with the Bureau of the European Committee on Legal Co-operation (CDCJ) and its Secretariat.