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**93rd MEETING OF THE EUROPEAN COMMITTEE
ON LEGAL CO-OPERATION
(CDCJ)**

Strasbourg, 14-16 November 2018

MEETING REPORT

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ADDENDUM

Explanatory Memorandum to the draft guidelines of the Committee of Ministers of the Council of Europe on electronic evidence in civil and administrative proceedings

Introduction

The European Committee on Legal Co-operation (CDCJ) held its 93rd meeting in Strasbourg on 14-16 November 2018. The meeting was chaired by Mr Lennart Houmann (Denmark), chairperson of CDCJ. The agenda, as adopted by the committee, appears in Appendix I to this report. The list of participants is available from the Secretariat.

Items submitted to the Committee of Ministers for decision

- *Electronic evidence*

The Committee of Ministers is invited to examine and adopt the draft guidelines on electronic evidence in civil and administrative proceedings and take note of their explanatory memorandum (see paragraphs 1-3 and Addendum to this meeting report).

- *Administrative detention of migrants (CJ-DAM)*

The Committee of Ministers is requested to provide clarification and instructions on how CDCJ and CJ-DAM should proceed in respect of the scope of its work in codifying existing international standards and on the timetable for this work, and adopt new terms of reference for CJ-DAM in light of such decisions as it might make in this respect (see paragraphs 4-12).

Items submitted to the Committee of Ministers in reply to a request for comments

- *Opinions*

- (i) The opinion of CDCJ on Parliamentary Assembly Recommendation 2121 (2018) - "The case for drafting a European convention on the profession of lawyer" (see paragraph 34);

- (ii) The opinion of CDCJ on Parliamentary Assembly Recommendation 2141 (2018) - "Family reunification of refugees and migrants in the Council of Europe member States" (see paragraph 35).

GENDER REPRESENTATION

At this plenary meeting of CDCJ, the member States were represented by 22 women and 24 men, 48 % and 52 % respectively.

DECISIONS AND ITEMS DISCUSSED

A. Completed activities

- *Electronic evidence*

1. CDCJ took note of the reports of the 1st, 2nd and 3rd meetings of the drafting group responsible for preparing the draft guidelines on electronic evidence in civil and administrative proceedings.
2. CDCJ examined and approved the draft guidelines on electronic evidence in civil and administrative proceedings as they appear in Appendix II¹. 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 2019.
3. In the light of its examination of the draft guidelines, CDCJ examined and adopted the explanatory memorandum to the draft guidelines as it appears in the Addendum to this meeting report and authorised its publication subject to adoption of the guidelines by the Committee of Ministers and any consequent changes that might be required.

B. On-going activities

- *Administrative detention of migrants*

4. CDCJ took note of the reports of the 9th, 10th and 11th meetings of the Committee of Experts on Administrative Detention of Migrants (CJ-DAM) and held a detailed exchange of views on proposals made by the European Union to modify the scope of the work of CJ-DAM.
5. CDCJ noted that in May 2018, the Council of the European Union had endorsed conclusions drawn up by the Presidency of the European Union regarding the work of CJ-DAM, and that these conclusions recorded the agreement of the EU Working Party on Integration, Migration and Expulsion in relation to three principles: namely, (i) reducing the scope of the work of CJ-DAM to the conditions of detention, (ii) ensuring coherence and consistency of the work of CJ-DAM with the existing EU *acquis* whilst not pre-empting the outcome of reform of the Common European Asylum System, and (iii) organising co-ordination meetings to ensure adherence to principles (i) and (ii).
6. The chair of CJ-DAM, Mr João Arsénio de Oliveira (Portugal), explained to CDCJ how, if they were accepted, the EU proposals would modify the draft codifying instrument and he reported on the outcome of the 12th meeting of CJ-DAM that had been held on 12 November 2018 to specifically discuss the EU proposals concerning the scope of the future instrument and other related matters. The chair of CJ-DAM outlined the difficulties created by the EU internal co-ordination for the work of CJ-DAM, in particular the impossibility of achieving a consensus between the European Commission, representatives of EU member States in the committee, non-EU member States, Council of Europe bodies and other international organisations participating in the work of CJ-DAM on the parts of the draft codifying instrument which are the object of the EU proposals.

¹ In favour: 32 votes – Albania, Andorra, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Luxembourg, Malta, Republic of Moldova, Monaco, Netherlands, Portugal, Romania, Serbia, Slovenia, Spain, Sweden, “The former Yugoslav Republic of Macedonia”, Turkey, Ukraine, United Kingdom. Also in favour but absent at the time of the vote – Switzerland; Against: 0 vote; Abstentions: 1 – Russian Federation; Absents: 13 – Armenia, Azerbaijan, Bosnia and Herzegovina, Estonia, Georgia, Latvia, Liechtenstein, Lithuania, Montenegro, Norway, Poland, San Marino, Slovak Republic.

7. CDCJ recalled that the terms of reference of CJ-DAM required it to codify existing international standards relating to the conditions in which migrants are held in closed administrative centres and, as appropriate, in other places of non-penal detention in the form of a recommendation of the Committee of Ministers and using as a model the European Prison Rules.

8. CDCJ noted that CJ-DAM had in its work so far correctly interpreted the legal meaning of the term 'conditions of detention' as envisaged by its terms of reference and that the interpretation of this term by the European Commission would imply omitting existing standards relating to certain key types of conditions, notably duration (detention being for the shortest possible time), the importance of considering alternatives to detention, the exceptional nature of detaining persons in a vulnerable situation (notably children), detention being a measure of last resort, the need for procedures relating to detention to be lawful, not to be detained for the sole reason of having made an application for international protection, decisions to detain to be made only on an individual basis (i.e. not on a collective basis) and in writing, and the right to challenge the decision to detain.

9. CDCJ considered that the interpretation of the term 'conditions of detention' proposed by the European Commission presented CJ-DAM with a political rather than a legal dilemma, which neither it nor CDCJ was competent to resolve. Accordingly, CDCJ decided to request clarification and instructions from the Committee of Ministers on how, in light of the EU proposals, CDCJ, and CJ-DAM, should proceed in respect of the scope of its work in codifying existing international standards and on the timetable for this work.

10. Concerning the second principle endorsed by the Council of the European Union, CDCJ noted that the work of CJ-DAM was broadly in line with the existing EU *acquis* and that accordingly this was not an area of difficulty for the work of CJ-DAM.

11. CDCJ further noted that the current terms of reference of CJ-DAM will expire on 31 December 2018 and agreed that new terms of reference would be necessary in order that the work might be completed in accordance with such decisions as the Committee of Ministers might make in respect of the scope and timetable for this work.

12. In view of its decision to seek clarification from the Committee of Ministers on the issues of scope and timetable mentioned above, CDCJ decided to cancel the next meeting of CJ-DAM which had been convened for the 10-12 December 2018.

- *Online dispute resolution mechanisms*

13. CDCJ examined the technical study prepared and presented by Professor Julia Hörnle (Queen Mary University of London) on online dispute resolution mechanisms (document CDCJ(2018)5) and, on the basis of its conclusions, agreed to develop draft guidelines for the attention of policy-makers responsible for designing online dispute resolution mechanisms with a view to ensuring the compatibility of such mechanisms with Articles 6 and 13 of the European Convention on Human Rights.

14. CDCJ agreed to set up a drafting group of its members for the purpose of preparing the draft guidelines composed of 10 members and instructed its Bureau to agree its composition on the basis of expressions of interest and proposals from CDCJ members by 15 December 2018.

15. CDCJ adopted terms of reference for the drafting group as they appear in Appendix III.

16. CDCJ approved the publication of the technical study on its website.

- *Legal aid*

17. CDCJ took note of the reports of the 1st and 2nd meetings of the CDCJ working group on legal aid schemes and, in particular, the opinion of the working group on the feasibility of CDCJ preparing policy guidance in this area and on the scope of such guidance.

18. On the basis of the opinion, CDCJ agreed to develop draft guidance on improving the effectiveness and efficiency of legal aid schemes in the areas of civil and administrative law.

19. CDCJ agreed to set up a drafting group of its members for the purpose of preparing the draft guidelines composed of 10 members and instructed its Bureau to agree its composition on the basis of expressions of interest and proposals from CDCJ members by 15 December 2018.

20. CDCJ adopted terms of reference for the drafting group as they appear in Appendix IV.

- *Gender equality mainstreaming in the law reform process*

21. CDCJ agreed to hold the planned ad hoc meeting of experts to exchange national experiences on mainstreaming gender equality issues in the process of law reform on the eve of its next plenary meeting.

22. CDCJ approved the draft programme and the other arrangements for the meeting prepared by its Bureau, as set out in the report of its 104th meeting.

23. The Bureau was instructed to agree the persons to be invited to the meeting on the basis of expressions of interest and proposals from CDCJ members. CDCJ took note that the number of persons to be covered by the Council of Europe budget would be subject to available resources.

- *Statelessness*

24. CDCJ agreed to undertake preliminary review of protocols and procedures used by member States to determine and resolve cases of statelessness, in particular of migrant children.

25. CDCJ agreed to set up a working group of its members for the purpose of this review composed of 10 members and instructed its Bureau to agree its composition on the basis of expressions of interest and proposals from CDCJ members by 15 December 2018.

26. CDCJ adopted terms of reference for the working group as they appear in Appendix V.

- *Implementation of the Sofia Action Plan on Judicial Independence and Impartiality*

27. CDCJ examined the interim report prepared by the Secretariat on measures taken by member States in respect of the implementation of the five-year Council of Europe Plan of Action on strengthening judicial independence and impartiality which had been adopted on 13 April 2016, and took note of the information therein.

28. CDCJ took note of the weaknesses highlighted by the Secretariat in the quality of the information presented in the report. The committee instructed the Bureau to reflect on how best to overcome them in preparation for the final report at the end of the five-year action plan in 2021 and make proposals in this regard to CDCJ.

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

29. CDCJ approved the various proposals submitted by its Bureau as a follow-up to the review carried out in 2017 on the implementation by member States of Recommendation CM/Rec(2009)11 on principles concerning continuing powers of attorney and advance directives for incapacity, as set out in the report of the 104th meeting of the Bureau. Furthermore CDCJ agreed that these proposals, which concern the development of promotional materials, publication of legislative developments on the CDCJ website, and support and assistance to member States, should be implemented progressively and as resources and time so permit. CDCJ instructed its Bureau to oversee implementation of these activities and make such decisions as necessary.

- *Calendar of activities for 2019*

30. CDCJ agreed the calendar of meetings for 2019 as it appears in Appendix VI.

31. CDCJ took note that the budgetary situation of the Organisation in 2019 might require changes to the calendar of activities and instructed its Bureau to adapt their implementation, and the calendar of activities, in consequence.

C. Future activities

32. CDCJ instructed the Bureau to prepare, in consultation with the committee members, proposals for activities to be undertaken during the next biennium (2020-2021), taking account of the possible continuation of existing activities and of the following topics:

- Guidelines on how courts should determine applications by public authorities to suspend, limit, or cancel parental responsibilities;
- Guidelines on access to translation and interpretation in civil and administrative proceedings;
- Review of follow-up action by member States to Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe.

D. Other items discussed

- *Instruments prepared by CDCJ*

33. CDCJ took note of changes in the state of signature, ratification, accession, and entry into force of conventions for which it is the reference committee.

- *CDCJ Opinions*

34. CDCJ held a detailed exchange of views in relation to Parliamentary Assembly Recommendation 2121 (2018) on “*The case for drafting a European convention on the profession of lawyer*” and adopted its opinion as it appears in Appendix VII.

35. CDCJ also adopted its opinion on Parliamentary Assembly Recommendation 2141 (2018) on “*Family reunification of refugees and migrants in the Council of Europe member States*” as it appears in Appendix VIII.

36. The Secretariat was instructed to transmit the opinions to the Committee of Ministers.

- *Co-operation projects with member States in the field of justice and civil and administrative law*

37. CDCJ took note of the information provided by members of the Secretariat responsible for co-ordinating and implementing co-operation projects on legal aid schemes and the profession of lawyer.

38. CDCJ also took note of the information presented by the Secretariat General Structural Reform Support Service of the European Commission (SRSS) to increase awareness of the committee on (i) the funding scheme of co-operation projects supported by the SRSS to assist EU member States, (ii) the funding application process and (iii) the possibilities for using CDCJ expertise in the framework of relevant projects.

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

39. CDCJ took note of the information provided by Croatia, France and Turkey on legislative developments in the areas of public and private law and thanked the respective delegations for this information.

- *Work of other Council of Europe bodies*

40. 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 CDCJ, as well as other events, as posted on its website throughout the year, or in the meeting reports of these bodies and committees in the absence of CDCJ participation.

41. CDCJ also took note of the information which appears in document CDCJ(2018)9 on the ongoing and planned activities of other Council of Europe bodies and committees which are relevant to CDCJ work.

- *External co-operation*

42. CDCJ noted that there was no information to report on this item of the agenda.

- *Elections and appointments*

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

44. Mr João Arsénio de Oliveira (Portugal) was unanimously re-elected as vice-chairperson for a second term of office of one year.

45. Ms Kai Härmand (Estonia) was unanimously re-elected as a member of the Bureau for a second term of office, this time for two years.

46. Ms Judith Vailhé (France) was unanimously elected as a member of the Bureau for a term of office of one year (Article 13.d of the rules).

47. As a result of the above-mentioned elections², the Bureau of CDCJ is composed as follows:

Chairperson: Mr Lennart Houmann (Denmark)

Vice-chairperson: Mr João Arsénio de Oliveira (Portugal)

Bureau members: Ms Kai Härmand (Estonia), Ms Judith Vailhé (France), Mr Christoph Henrichs (Germany), Mr Rodrigo Rodriguez, (Switzerland), and Mr Nic Turner (United Kingdom).

48. 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 2019.

49. CDCJ appointed Ms Zuzana Fišerová (Czech Republic) and Mr Joseph Croonen (Netherlands) as its two Gender Equality Rapporteurs.

50. The committee agreed that one of its Gender Equality Rapporteurs should attend the meetings of the Bureau in 2019 at the cost of the Council of Europe budget.

- *Date and place of the next meeting*

51. CDCJ agreed to hold its next plenary meeting in Strasbourg on 13-15 November 2019.

² The respective terms of office will take effect from 1st January 2019.

APPENDIX I

Agenda

- I. Opening of the meeting
- II. Adoption of the agenda
- III. Statement of the Chair and Secretariat
- IV. On-going activities (Progress review)
 - Administrative detention of migrants
 - Continuing powers of attorney and advance directives for incapacity
 - Online dispute resolution mechanisms
 - Statelessness
 - Legal aid
 - Gender mainstreaming in the process of legal reform
- V. Guidelines of the Committee of Ministers on electronic evidence in civil and administrative proceedings
- VI. Implementation of the Sofia Action Plan on Judicial Independence and Impartiality (interim report)
- VII. Programme & Budget for 2020-2021 (CDCJ activities - proposals)
- VIII. Co-operation Projects with member states in the field of justice and civil and administrative law, and promotion of instruments prepared by CDCJ
- IX. Legislative developments in member states in the areas of public and private law
- X. Work of other Council of Europe bodies
- XI. External co-operation
- XII. Elections and appointments
- XIII. CDCJ Opinions
- XIV. Any other business
- XV. Date and place of next meeting

APPENDIX II**Draft guidelines of the Committee of Ministers of the Council of Europe
on electronic evidence in civil and
administrative proceedings³**

*(Adopted by the Committee of Ministers on ...
at the ... meeting of the Ministers' Deputies)*

Preamble

The Committee of Ministers,

Considering that the aim of the Council of Europe is to achieve a greater unity between the member States, in particular by promoting the adoption of common rules in legal matters;

Considering the necessity of providing practical guidance for the handling of electronic evidence in civil and administrative proceedings to courts and other competent authorities with adjudicative functions; professionals, including legal practitioners; and parties to proceedings;

Considering that these guidelines seek to provide a common framework rather than a harmonisation of the national legislation of the member States;

Considering the need to respect the diversity in the legal systems of the member States;

Acknowledging the progress made in the member States towards the digitisation of their justice systems;

Noting, nonetheless, obstacles to the effective management of electronic evidence within justice systems, such as the lack of common standards and the diversity and complexity of evidence-taking procedures;

Highlighting the need to facilitate the use of electronic evidence within legal systems and in court practices;

Recognising the need for member States to examine current deficiencies in the use of electronic evidence and to identify the areas where electronic evidence principles and practices could be introduced or improved;

Noting that the aim of these guidelines is to provide practical solutions to the existing deficiencies in law and practice,

Adopts the following guidelines to serve as a practical tool for the member States, to assist them in adapting the operation of their judicial and other dispute-resolution mechanisms to address issues arising in relation to electronic evidence in civil and administrative proceedings, and invites them to disseminate these guidelines widely with a view to their implementation by those responsible for, or otherwise handling, electronic evidence.

³ Version of the draft guidelines subsequent to their revision by the editorial and legal services of the Council of Europe.

Purpose and scope

The guidelines deal with:

- oral evidence taken by a remote link;
- use of electronic evidence;
- collection, seizure and transmission of evidence;
- relevance;
- reliability;
- storage and preservation;
- archiving;
- awareness-raising, review, training and education.

The guidelines are not to be interpreted as prescribing a specific probative value for certain types of electronic evidence and are to be applied only insofar as they are not in conflict with national legislation.

The guidelines aim to facilitate the use and management of electronic evidence within legal systems and in court practices.

Definitions

For the purposes of these guidelines:

Electronic evidence

“Electronic evidence” means any evidence derived from data contained in or produced by any device, the functioning of which depends on a software program or data stored on or transmitted over a computer system or network.

Metadata

“Metadata” refers to electronic information about other electronic data, which may reveal the identification, origin or history of the evidence, as well as relevant dates and times.

Trust service

“Trust service” means an electronic service which consists of:

- a. the creation, verification and validation of electronic signatures, electronic seals or electronic time stamps, electronic registered delivery services and certificates related to those services; or
- b. the creation, verification and validation of certificates for website authentication; or
- c. the preservation of electronic signatures, seals or certificates related to those services.

Court

The term “court” includes any competent authority with adjudicative functions in the performance of which it handles electronic evidence.

Fundamental principles

It is for courts to decide on the potential probative value of electronic evidence in accordance with national law.

Electronic evidence should be evaluated in the same way as other types of evidence, in particular regarding its admissibility, authenticity, accuracy and integrity.

The treatment of electronic evidence should not be disadvantageous to the parties or give unfair advantage to one of them.

Guidelines

Oral evidence taken by remote link

1. Oral evidence can be taken remotely, using technical devices, if the nature of the evidence so permits.
2. When deciding whether oral evidence can be taken remotely, the courts should consider, in particular, the following factors:
 - the significance of the evidence;
 - the status of the person giving evidence;
 - the security and integrity of the video link through which the evidence is to be transmitted;
 - costs and difficulties of bringing the relevant person to court.
3. When taking evidence remotely, it is necessary to ensure that:
 - a. the transmission of the oral evidence can be seen and heard by those involved in the proceedings and by members of the public where the proceedings are held in public; and
 - b. the person being heard from a remote location is able to see and hear the proceedings to the extent necessary to ensure that they are conducted fairly and effectively.
4. The procedure and technologies applied to the taking of evidence from a remote location should not compromise the admissibility of such evidence and the ability of the court to establish the identity of the persons concerned.
5. Irrespective of whether evidence is transmitted via a private or a public connection, the quality of the videoconference should be ensured and the video signal encrypted to protect against interception.

Use of electronic evidence

6. Courts should not refuse electronic evidence and should not deny its legal effect only because it is collected and/or submitted in an electronic form.

7. In principle, courts should not deny the legal effect of electronic evidence only because it lacks an advanced, qualified or similarly secured electronic signature.
8. Courts should be aware of the probative value of metadata and of the potential consequences of not using it.
9. Parties should be permitted to submit electronic evidence in its original electronic format, without the need to supply printouts.

Collection, seizure and transmission

10. Electronic evidence should be collected in an appropriate and secure manner, and submitted to the courts using reliable services, such as trust services.
11. Having regard to the higher risk of the potential destruction or loss of electronic evidence compared to non-electronic evidence, member States should establish procedures for the secure seizure and collection of electronic evidence.
12. Courts should be aware of the specific issues that arise when dealing with the seizure and collection of electronic evidence abroad, including in cross-border cases.
13. Courts should co-operate in the cross-border taking of evidence. The court receiving the request should inform the requesting court of all the conditions, including restrictions, under which evidence can be taken by the requested court.
14. Electronic evidence should be collected, structured and managed in a manner that facilitates its transmission to other courts, in particular to an appellate court.
15. Transmission of electronic evidence by electronic means should be encouraged and facilitated in order to improve efficiency in court proceedings.
16. Systems and devices used for transmitting electronic evidence should be capable of maintaining its integrity.

Relevance

17. Courts should engage in the active management of electronic evidence in order, in particular, to avoid excessive or speculative provision of, or demand for, electronic evidence.
18. Courts may require the analysis of electronic evidence by experts, especially when complex evidentiary issues are raised or where manipulation of electronic evidence is alleged. Courts should decide whether such persons have sufficient expertise in the matter.

Reliability

19. As regards reliability, courts should consider all relevant factors concerning the source and authenticity of the electronic evidence.
20. Courts should be aware of the value of trust services in establishing the reliability of electronic evidence.
21. As far as a national legal system permits, and subject to the court's discretion, electronic data should be accepted as evidence unless the authenticity of such data is challenged by one of the parties.
22. As far as a national legal system permits, and subject to the court's discretion, the reliability of the electronic data should be presumed, provided that the identity of the signatory can be validated and the integrity of the data secured, unless and until there are reasonable doubts to the contrary.
23. Where applicable law provides special protection for categories of vulnerable persons that law should have precedence over these guidelines.
24. As far as a national legal system so provides, where a public authority transmits electronic evidence independently of the parties, such evidence is conclusive as to its content, unless and until proved to the contrary.

Storage and preservation

25. Electronic evidence should be stored in a manner that preserves readability, accessibility, integrity, authenticity, reliability and, where applicable, confidentiality and privacy.
26. Electronic evidence should be stored with standardised metadata so that the context of its creation is clear.
27. The readability and accessibility of stored electronic evidence should be guaranteed over time, taking into account the evolution of information technology.

Archiving

28. Courts should archive electronic evidence in accordance with national law. Electronic archives should meet all safety requirements and guarantee the integrity, authenticity, confidentiality and quality of the data as well as respect for privacy.
29. The archiving of electronic evidence should be carried out by qualified specialists.
30. Data should be migrated to new storage media when necessary in order to preserve accessibility to electronic evidence.

Awareness-raising, review, training and education

31. Member States should promote awareness of the benefits and value of electronic evidence in civil and administrative proceedings.
32. Member States should keep technical standards related to electronic evidence under review.
33. All professionals dealing with electronic evidence should have access to the necessary interdisciplinary training on how to handle such evidence.
34. Judges and legal practitioners should be aware of the evolution of information technologies which may affect the availability and value of electronic evidence.
35. Legal education should include modules on electronic evidence.

APPENDIX III

Online Dispute Resolution Mechanisms

Terms of reference for a CDCJ Drafting Group

Tasks

The drafting group has the following tasks:

1. Draw up, on the basis of the conclusions of the Technical Study on online dispute resolution mechanisms (CDCJ(2018)5), guidelines for the attention of policy-makers responsible for designing online legal dispute resolution mechanisms in the member states with a view to ensuring that such mechanisms are compatible with Articles 6 and 13 of the European Convention on Human Rights.
2. The guidelines should address, in particular, the key principles of a fair trial and effective remedy identified by the European Court of Human Rights in its case-law, for example, the principles of oral hearing, public hearing, and equality of arms.
3. The guidelines should be accompanied by an explanatory memorandum.
4. The drafting group should take full account of the draft guidelines of the Committee of Ministers on electronic evidence in civil and administrative proceedings (submitted to the Committee of Ministers for adoption by CDCJ at its 93rd plenary meeting).
5. The guidelines should not cover alternative dispute resolution. They also should not cover internal court case management of electronic files as these are electronic document and filing systems which are internal to the court system without access by external court users (such as the general public, parties or their representatives).
6. The drafting group should present the interim results of its work to the plenary meeting of CDCJ in 2019 with a view to presenting the final results of its work to the plenary meeting of CDCJ in 2020, and taking into account that in 2020 the Bureau of CDCJ should be able to consider the final results so that they can be submitted to CDCJ members thereafter at least three months before the committee's plenary meeting.

Composition

The drafting group will be composed of 10 CDCJ members with expertise in online dispute resolution with an appropriate legal and/or IT profile provided that both profiles are fairly represented. The Council of Europe budget will bear the travel and subsistence expenses of these persons.

In addition, all member States may send representatives (or additional representatives as the case may be) to the drafting group at their own expense.

The group will be assisted by one or more consultants with an appropriate legal and IT profile.

Observers

Representatives of the following international and non-governmental organisations may be invited to participate in the work of the drafting group:

- World Intellectual Property Organisation (WIPO)
- Society for Computers and Law (SCL), United Kingdom
- International Hague Network of Judges
- Consultative Council of European Judges (CCJE)
- European Commission of Effectiveness of Justice (CEPEJ)
- Steering Committee on Human Rights (CDDH).

Working methods

The drafting group may organise hearings, in particular with national bodies in member states, with a view to acquiring a better understanding of relevant national practices.

Meetings

Four two-day meetings in total during 2019 and 2020.

APPENDIX IV

Legal Aid Schemes

Terms of reference for a CDCJ Drafting Group

The drafting group is established in light of the positive opinion of the CDCJ drafting group (CDCJ-GT-SAJ) on the feasibility on CDCJ preparing policy guidance on improving the effectiveness and efficiency of legal aid schemes and on the scope of such guidance as set out in the report of its 2nd meeting (document CDCJ-GT-SAJ(2018)6) and approved by CDCJ at its 93rd plenary meeting (14-16 November 2018).

Tasks

The drafting group has the following tasks:

1. Develop guidelines based on relevant practice in member states in the form of guidelines aimed at improving the efficiency and effectiveness of legal aid schemes (including advice, assistance and representation) in the member states in the areas of civil and administrative law.
2. The guidelines should address the following areas:
 - Early intervention with the help of legal aid systems (preliminary legal aid)
 - Quality assurance mechanisms in the legal aid schemes
 - Means and merits testing
 - Availability of legal aid providers
 - Data collection on legal aid schemes.
3. The guidelines should be accompanied by an explanatory memorandum.
4. The guidelines should seek to provide generic solutions that can help make national legal aid schemes function more efficiently and effectively without changing their particular overall organisational framework.
5. The guidelines should be accompanied with information on how in practical terms particular elements of relevant practices in one member state can be adapted successfully to another. This may be done by, for example, identifying the critical factors that have enabled a particular practice to work successfully in a given policy environment.
6. The drafting group should take into account any existing work of governmental and non-governmental organisations, including the reports and studies of the European Commission for the Efficiency of Justice (CEPEJ).
7. The drafting group should present the interim results of its work to the plenary meeting of CDCJ in 2019 with a view to presenting the final results of its work to the plenary meeting of CDCJ in 2020, and taking into account that in 2020 the Bureau of CDCJ should be able to consider the final results so that they can be submitted to CDCJ members thereafter at least three months before the committee's plenary meeting.

Composition

The drafting group will be composed of 10 CDCJ members with expertise in legal aid policy and practice. The Council of Europe budget will bear the travel and subsistence expenses of these persons.

In addition, all member States may send representatives (or additional representatives as the case may be) to the drafting group at their own expense.

The group will be assisted by one or more consultants, one of which should be familiar with legal aid schemes in civil law systems.

Observers

Representatives of the following international organisations and non-governmental organisations, focusing their work on access to justice and legal aid, may be invited to participate in the work of the drafting group:

- United Nations (UN)
- Organisation for Economic Co-operation and Development (OECD)
- European Union (EU)
- World Bank (WB)
- Open Society Justice Initiative (OSJI)
- International Legal Aid Group (ILAG)
- Council of Bars and Law Societies of Europe (CCBE)
- European Commission for the Efficiency of Justice (CEPEJ).

Working methods

The drafting group may organise hearings, in particular with national bodies in member states, including civil society representatives, with a view to acquiring a better understanding of relevant national practices.

Meetings

Four two-day meetings in total during 2019 and 2020.

APPENDIX V

Protocols and procedures in cases of statelessness

Terms of reference for a CDCJ Working Group

Main tasks

The working group is instructed to review the protocols and procedures used by member States (i) to determine, in cases where it is uncertain, the nationality of recently arrived migrants (in particular, children) as well as (ii) to resolve cases of statelessness, and identify:

- Possible gaps and new challenges in this field;
- Practical difficulties encountered by both national authorities and stateless persons;
- Recent initiatives and practices undertaken in the different Member States in response to these difficulties and new challenges;
- Ongoing initiatives by other key stakeholders;
- Possible activities that could be carried out by the CDCJ within the framework of its mandate for 2019-2020.

Composition

The working group will be composed of 10 CDCJ members or national colleagues with expertise in determining, processing and resolving cases of statelessness at national level. The Council of Europe budget will bear the travel and subsistence expenses of these persons.

Additional experts from the member States may be invited to participate in the working group at the expense of the Council of Europe, subject to available resources.

In addition, all member States may send representatives (or additional representatives as the case may be) to the working group at their own expense.

Observers

The Bureau of CDCJ is instructed to identify possible observers working directly on statelessness which may be invited to participate in the work of the working group.

Working methods

The working group will hold one ad hoc meeting (2 days). A consultant will be appointed to prepare a detailed analysis of the review which shall be presented to CDCJ at its plenary meeting in 2019.

APPENDIX VI

Calendar of meetings for 2019

CDCJ-BU	105 th meeting of CDCJ Bureau	21-22 March
CDCJ-GT-RLL	1 st meeting of the CDCJ Drafting Group on Online Dispute Resolution Mechanisms	March
CDCJ-GT-APA	Ad hoc meeting of the working group of CDCJ members (or national experts) and key stakeholders on statelessness	April/May
CDCJ-GT-SAJ2	1 st meeting of the CDCJ drafting group on Legal Aid Schemes	June
CJ-DAM	13 th meeting of the Committee of Experts on Administrative Detention of Migrants	To be confirmed
CDCJ-BU	106 th meeting of CDCJ Bureau	Paris, 16-17 September (to be confirmed)
CDCJ-GT-RLL	2 nd meeting of the CDCJ Drafting Group on Online Dispute Resolution Mechanisms	September
CDCJ-GT-SAJ2	2 nd meeting of the CDCJ drafting group on Legal Aid Schemes	October
CDCJ-AH-AIE	Ad hoc meeting of CDCJ members on gender equality mainstreaming in the process of law reform	12 November
CDCJ	94 th plenary meeting of CDCJ	13-15 November

APPENDIX VII**Parliamentary Assembly Recommendation 2121 (2018)**

“The case for drafting a European convention on the profession of lawyer”

CDCJ opinion

adopted at its 93rd plenary meeting (14-16 November 2018)

1. The European Committee on Legal Co-operation (CDCJ) has taken note of Recommendation 2121 (2018) of the Parliamentary Assembly on “The case for drafting a European convention on the profession of lawyer”. The recommendation and the merits of embarking on the drafting of the proposed convention were the object of a plenary debate at the 93rd meeting of CDCJ (14-16 November 2018).
2. CDCJ has also taken note of the opinions of the Steering Committee for Human Rights (CDDH) and the European Commission for the Efficiency of Justice (CEPEJ).
3. CDCJ recognises the importance of lawyers in the administration of justice and the vital role they play in acting as an intermediary between the justice system and ordinary people. In this context, it notes that the users of member states’ legal systems are dependent on having access to the support and assistance of practising lawyers in order to access their human and other legal rights effectively.
4. CDCJ recalls the provisions of the Council of Europe Recommendation No. R (2000) 21 and the protection afforded to lawyers in the practice of their profession by the European Convention on Human Rights and, in particular, the case-law of the European Court of Human Rights, notably in respect of Articles 5, 6, 8 and 10.
5. CDCJ recognises that these instruments might not provide sufficient guarantees to the profession of lawyer in the member States. It notes, for example, that the rights guaranteed by the European Convention on Human Rights are of a general character and do not offer specific guarantees in relation to the professional activities of lawyers, notably in respect of their independence and in the protection and defence of their clients’ interests. It also notes that the provisions of Recommendation No R (2000) 21 may now require complementing in the light of developments since its adoption. In this respect, CDCJ draws attention to the absence of any comparative assessment on the effectiveness of existing international standards and, in particular, on the follow-up action taken by member states to Recommendation No. R (2000) 21.
6. CDCJ considers there are risks in drafting a convention, notably the possibility that it will fail to achieve a consensus within the member States on securing a higher level of protection than is currently afforded by international standards, that the convention will not be ratified by member states where it appears there is most need to protect the profession of lawyer, that there will be a low level of ratifications (for one reason or another), or that the convention will not be strong enough to bring about the changes sought by its promoters.

7. CDCJ is also aware of the advantages of flexibility offered by a non-binding instrument such as Recommendation No. R (2000) 21.
8. Nonetheless, CDCJ also considers that there are several advantages in drafting a binding instrument. These include:
 - i. The vital nature of the role of lawyers in the administration of justice and the importance of their independence require a higher level of international protection than is currently afforded by non-binding instruments.
 - ii. A binding instrument would be advantageous in the context of the observed and prevailing threats to lawyers' independence in some member States. It also provides an opportunity for member states to confirm their commitment to protecting an independent legal profession.
 - iii. A convention can be open to accession by non-member States, which is not the case for non-binding instruments which are addressed solely to member States. The participation of non-member states in the proposed convention will help strengthen it and the protection it offers.
 - iv. A convention provides a structured framework for international dialogue and co-operation which will facilitate the circulation of factual information concerning the situation of lawyers, agreement on solutions, and the sharing of good practice between the contracting parties.
9. Other than the advantages of a binding instrument indicated in paragraph 8 above, CDCJ considers the following as positive factors in its favour:
 - i. At a political level, and bearing in mind the level of future ratification, there appears to be strong support for the drafting of the convention amongst many ministries of justice of the member States.
 - ii. At a technical level, the task is facilitated by the existence of a non-binding instrument which is relatively broad in scope, enjoys general support, and will provide a base-line reference for the higher standards of a convention.
 - iii. The proposal is strongly supported by the relevant professional bodies, both at international and national level, who have already proposed a draft outline.
10. CDCJ considers that, should there be a decision to draft a convention, it would be essential that it aims for a higher level of protection for lawyers than is provided by existing instruments and that its focus should be on the protection of lawyers in the exercise of their profession, with guarantees of professional independence and security.
11. More particularly as concerns the scope of the proposed convention, CDCJ considers that this should be clarified before the drafting work starts in order to facilitate the process.

12. In light of these considerations, CDCJ considers that before embarking on the task of drafting a convention a study on its feasibility should be undertaken, covering in particular the following elements:
 - i. Identify the possible added value of drafting a convention, taking account of the protection provided by other Council of Europe instruments, in particular the European Convention on Human Rights and the case-law of the European Court of Human Rights,
 - ii. Identify and evaluate alternatives to drafting a convention,
 - iii. Define, if appropriate, the personal and material scope of the proposed convention,
 - iv. Draw up, if appropriate, draft terms of reference for a committee of experts responsible for drafting the convention, and advise on the appropriate working methods.
13. CDCJ confirms its readiness to undertake the proposed feasibility study in 2019 with a view to submitting its conclusions to the Committee of Ministers before the end of the year, should the Committee of Ministers wish it to do so.

APPENDIX VIII

Parliamentary Assembly Recommendation 2141 (2018)

“Family reunification of refugees and migrants in the Council of Europe member States”

CDCJ opinion

adopted at its 93rd plenary meeting (14-16 November 2018)

1. The European Committee on Legal Co-operation has taken note of Recommendation 2141 (2018) of the Parliamentary Assembly on “Family reunification of refugees and migrants in the Council of Europe member States” and Resolution 2243 (2018) related thereto.
2. CDCJ has no specific comment to make on the recommendation, other than to highlight the importance of establishing, for the purposes of legal certainty, clear legal rules that reflect social reality.
3. CDCJ confirms its willingness to undertake or contribute to any standard-setting work in the area of family reunification of refugees and migrants that the Committee of Ministers might consider appropriate, particularly in relation to the implications for family law.