

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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**97th MEETING OF THE EUROPEAN COMMITTEE
ON LEGAL CO-OPERATION
(CDCJ)**

held by videoconference on 1-3 December 2021

MEETING REPORT

**CDCJ website: www.coe.int/cdcj
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1.-2. Opening of the meeting and adoption of the agenda

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

2. The agenda of the meeting is contained in Appendix I. The abridged report of the meeting and the list of participants¹ are available on the CDCJ's website.

3. Statement of the Chair and the Secretariat

3. The CDCJ took note of the information provided by the Chair and the Secretariat.

4. Tour de table: interventions by newly designated members of the CDCJ

4. The Chair welcomed the new appointed members (i.e. France, Hungary, Monaco, Montenegro, North Macedonia and Serbia) who introduced themselves and presented the priorities of their ministries and countries in the CDCJ's areas of work.

5. Review of progress

Justice

5.1 Implementation of the Sofia Action Plan (CDCJ written contribution to Secretary General's report) – specific task (ii)

5. The CDCJ took note of the oral information provided by the Secretariat concerning the preparation of the CDCJ's contribution to the Secretary General's report on the state of implementation of the [Plan of Action Plan of on Strengthening judicial independence and impartiality](#) ("Sofia Action Plan"). The CDCJ entrusted the Bureau to review the draft report at its next meeting in 2022 before the launching of the consultation process with all delegations on its content and proposed conclusions and recommendations. The CDCJ is expected to examine and approve the final report at its 98th plenary meeting in 2022, prior to its communication to the Secretary General for consideration.

Family law and children's rights

5.2 Rights and best interests of the child in parental separation and in care proceedings (Committee of Experts - CJ/ENF-ISE) (specific task viii)

6. The CDCJ took note of the oral information provided by Mr Seamus Carroll (Ireland), Chair of CJ/ENF-ISE, on the progress of the work made by its subordinate Committee of Experts in preparing the new legal instrument(s) as well as on the work envisaged in 2022-2023. The Chair informed the CDCJ about the completion of the feasibility studies [on the best interest of the child in parental separation situations](#) and [in care proceedings](#) (published in July 2021) to serve as a basis for the preparation of new instrument(s). The Committee took note of the draft working methods and workplan of CJ/ENF-ISE for 2022-2023 (document [CJ/ENF-ISE\(2021\)09 prov](#)) which will be further refined and discussed by the CJ/ENF-ISE at its upcoming meeting from 13-14 December 2021.

¹ At this plenary meeting of CDCJ, the member States were represented by 37 women and 28 men, 56% and 43% respectively.

7. In line with the established practice, CDCJ entrusted its Bureau, in close co-operation with the CDENF Bureau, to finalise the composition of the CJ/ENF-ISE, following the renewal and adoption by the Committee of Ministers of its terms of reference , and 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).

8. The CDCJ took note of the results of the discussions of the 2nd joint meeting of the CDCJ and CDENF Bureaux on 24 June 2021².

9. The CDCJ took note of the priorities of the Irish Presidency of the Committee of Ministers (May - November 2022) in the area of the rights of the child, and took note of the presentation by Ms Lara Hynes, Principal Office, Child Care Legislation & Children's Rights Policy Unit, of the Department of Children, Equality, Disability, Integration and Youth. The CDCJ was invited to contribute to the event aimed at exchanging experiences on good practices in establishing family law courts, planned to be held in Dublin (3-5 October 2022). The event would be held back to back with the meeting of the CJ/ENF-ISE, including a stakeholder consultation process on the elements of the draft legal instrument.

10. The CDCJ Chair invited the delegation of Ireland's to provide further information on the Irish Courts specialised in Family Law Courts and their work, including the types of cases they manage, and encouraged CDCJ members to contribute in due course to the planned event in October 2022.

5.3. Right of donor-conceived persons to know their origins

11. The CDCJ took note of the state of progress in the preparation of a draft comparative study on the right of donor-conceived persons to know their origins. The Committee held an exchange of views with the consultant, Professor Jean-René Binet, Council of Europe consultant, who presented the preliminary draft findings of the study and aspects to be considered for a possible future legal instrument at this stage to be confirmed in light of the additional information to be provided by the member States.

12. The Committee expressed its strong support for the work done, which was a good basis for taking the decision on the possible relevant action. The Committee expressed its gratitude to Professor Binet for the clarifications provided during the discussion in light of which the CDCJ gave further guidance to the consultant for the finalisation of the draft study.

13. One delegation proposed to consider this activity jointly with the review of ETS No. 85 given the connection between some of the issues tackled by both the review and the comparative study. Also, the delegation recalled that in 2010, the CDCJ, through its former Committee of Experts on Family Law (CJ-FA), was given a mandate to draft one or more legal instrument(s) on the legal status of children and parental responsibilities, as it was recognised that the ETS No. 85 as well as the Committee of Ministers Recommendation No. R (84) 4 on parental responsibilities were in need of revision. In 2010-2012, the CJ-FA elaborated a draft recommendation on the rights and legal status of children and parental responsibilities, which was finally not adopted (document CDCJ(2011)15 -Appendices II and III). It was also recalled that CDCJ's opinion on Parliamentary Assembly Recommendation 2156 (2019) – "Anonymous donation of sperm and oocytes: balancing the rights of parents, donors and children" (document CDCJ(2019)2, particularly paragraphs 4-6) invited the Committee of Ministers to reopen the examination of the draft Recommendation.

² See the meeting report [CDCJ&CDENF/Bu\(2021\)PV1](#).

14. The DH-BIO Secretariat indicated that it would be also useful to know whether the member States have fully considered the different perspectives of the rights of parents and the rights of the child, and any tensions in this context.

15. The CDCJ approved a draft questionnaire, with amendments, as it appears in document CDCJ(2021)23, in order to complement the comparative analysis and its conclusions, in particular by including information concerning the relevant case-law of constitutional or equivalent highest-level courts of the member States.

16. The CDCJ instructed the Secretariat to disseminate the questionnaire among the members, with a deadline of replies by member States to 31 January 2021 at the latest. All delegations were invited to submit in written any further comments on the draft study and the comments raised by Austria, Finland, Italy, Netherlands, and the United Kingdom during the discussion were taken note of.

17. The CDCJ entrusted its Bureau to review the completed draft comparative study and agreed to resume the discussion on this topic at its next plenary meeting with a thematic exchange of views on options and on the feasibility of elaborating a draft recommendation on the right of donor- conceived persons to know their origins.

Public law

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

18. The CDCJ took note of the oral information provided by Professor René de Groot, General Rapporteur, on the outcome of the technical meeting of experts and international conference on [Statelessness and the right to a nationality in Europe: progress, challenges and opportunities](#) (Strasbourg, 23-24 September 2021), organised jointly by the CDCJ and the United Nations High Commissioner for Refugees (UNHCR) and of the [updated CDCJ Analysis of current practices and challenges regarding the avoidance and reduction of statelessness in Europe](#).

19. As a follow-up, the CDCJ agreed to include the activities below as follow up actions, during its terms of reference (2022-2025)³:

- Elaborate guidance on child sensitive procedures in administrative and migration law matters for stateless children or children at risk of being stateless;
- Elaborate guidance on the establishment of nationality, in particular for children.

Artificial Intelligence

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

20. The CDCJ took note of the progress in the preparation of a draft comparative study in the fields of administrative law and artificial intelligence. It examined and approved the outline of the study and the updated workplan for this activity (document CDCJ-BU(2021)11 rev). CDCJ reviewed the draft questionnaire prepared by Professor Johan Wolswinkel, Council of Europe consultant, and invited members to send further comments on the proposed draft questionnaire by 16 December 2021. It instructed the Secretariat, with the support of the consultant, to revise the questionnaire and disseminate it for completion (deadline for replies: 31 January 2022). The Committee took note of the information provided

³ See also agenda item 10, the role of the CDCJ's limited working groups on migration (CDCJ-MIG) in this respect.

by one member State in respect of CAHAI's current work and the transversal co-ordination aspects necessary for carrying out this activity.

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

5.6.a. Evaluation of Recommendation CM/Rec(2014)7 on the protection of whistleblowers

21. The CDCJ examined and approved the outline of the evaluation report of the implementation of Recommendation CM/Rec(2014)7 on the protection of whistleblowers (document CDCJ(2021)26), prepared on the basis of the information provided by member States and presented by Anna Myers, Council of Europe consultant. The CDCJ underlined that the chapter of the report relating to other relevant instruments should not draw up an extensive inventory of all existing instruments, but rather identify instruments on which the Recommendation CM/Rec(2014)7 had a direct impact.

22. The Chair invited all delegations to submit written comments by 16 December 2021, to allow the consultant to take them into account for the preparation of the draft report.

23. The Committee entrusted its Bureau to examine the completed draft report before its submission to the CDCJ for consideration at its first plenary meeting in 2022.

24. The CDCJ also held an exchange of views and thanked representatives from Lithuania, Ireland and Serbia who presented their experience in implementing the recommendation's principles and any related challenges.

5.6.b. Evaluation of Recommendation CM/Rec(2015)4 on preventing and resolving disputes on child relocation

25. The CDCJ examined the preliminary draft report on the evaluation of the implementation of Recommendation CM/Rec(2015)4 on preventing and resolving disputes on child relocation (document CDCJ(2021)27 prov) prepared by the Council of Europe consultant, Professor Cristina González Beilfuss.

26. The CDCJ instructed its Bureau to review the final draft report, to be completed by the consultant before its circulation for approval by CDCJ by written procedure.

27. The CDCJ also discussed the conclusion and recommendations for further steps proposed by the consultant in the report. In this regard, the CDCJ agreed, subject to any further proposals submitted by the CDCJ members to the Secretariat to consider carrying out the following actions:

- ensure a wider dissemination of CM/Rec(2015)4, and particularly its explanatory memorandum, including by means of its translation into other languages, targeted awareness raising among the member states, including possibly through the Hague Conference and training activities for the judiciary, or any other means;
- organise an international conference or seminar on child relocation, focusing *inter alia* on the issue of cross-border contact broadly.

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

5.7.a. European Convention on Information on Foreign Law – ETS No. 62 and Additional Protocol – ETS No. 97

28. The CDCJ examined the activity proposals set out in document CDCJ(2021)8 Rev1 to promote the above-mentioned conventions and agreed to include them in the CDCJ's workplan. The CDCJ entrusted the Bureau to lead the preparation of the next steps of the planned activities, and to consider the timeframes proposed.

5.7.b. Agreement on the Transfer of Corpses – ETS No. 80: possible revision

29. The CDCJ held a third exchange of views concerning the difficulties (whether practical or factual) faced in implementing the Agreement on the Transfer of Corpses (ETS No. 80) in order to take a decision on France's proposal to revise the Convention.

30. The Committee expressed its gratitude to France for all the efforts made to provide additional information and necessary clarifications to the members. In light of the elements provided by the French representatives, and responses received from other member states, the CDCJ observed that only France appeared to experience such difficulties in the transfer of corpses involving a limited number of countries, yet to be determined, and those relate in particular to very practical aspects (e.g., type of coffin) due to domestic regulation. Therefore, the Chair noted that the problem could be solved by changing national legislation rather than revising an international treaty. The CDCJ pointed out that, even in case of a revised agreement, there was a risk of lack of ratification of this instrument given that this did not appear to be an issue of concern for the other member States.

31. The CDCJ thanked France for the clarifications provided regarding their proposal for the revision of the Agreement on the Transfer of Corpses (ETS No. 80), which is reflected in the terms of reference of the CDCJ for 2022-2025, and in light of this additional information and clarifications received, considered that the elements raised would not warrant a revision of the legal instrument at this stage.

5.7.c. European Convention on the Legal Status of Children born out of Wedlock – ETS No. 85

32. The CDCJ examined the draft report on the review of the implementation of the European Convention on the Legal Status of Children born out of Wedlock (ETS No. 85) (document CDCJ(2021)29) prepared by Professor Katarina Trimmings, Council of Europe consultant. The Committee approved the report and agreed to its publication, following editorial amendments.

33. The CDCJ held an exchange of views on selected aspects of the report, particularly existing gaps in protection of children born out of wedlock under the Convention, which at the time when it was negotiated and finalised could not have taken into account the developments that followed in the area of assisted reproductive technology. A number of remarks were made by the CDCJ members, particularly on the possibility of modernisation of the Convention, and the proposed recommendations. With regard to the latter, it was suggested to limit the scope, by also taking out procedural issues. Furthermore, delegations considered that as possible option was to consider addressing some of these gaps in the framework of the discussion of the legal instrument, if CDCJ deemed it necessary, on the right of donor-conceived persons to know their origins (point 5.3. of the agenda).

34. The CDCJ entrusted the Bureau to discuss the recommendations provided by the consultant, weigh the factors that could facilitate or hinder resolving the gaps identified, and propose to the CDCJ any possible solutions or follow up actions for consideration by the Committee at one of its next plenary meetings.

6. Transversal issues

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

35. The CDCJ examined the draft checklist (document CDCJ-BU(2021)15 rev1), to be used for pre- and post- assessment of gender equality implications for CDCJ activities aspects, as revised by the Bureau at its 111th meeting (14-15 October 2021).

36. Following the discussion, the committee approved the checklist as amended and agreed to include it in the updated working methods of the CDCJ (see para. 39 below).

37. The drafting of the checklist was one of the two activities decided at its 96th plenary meeting in this area, which is not completed. The second activity, a publication reflecting the experience and best practices of member States on mainstreaming gender equality in (preparing) new legislation, in the form of a practical toolkit, is planned to be completed in 2022.

38. The CDCJ agreed that all activities undertaken by the Committee in the framework of 2020-2021 biennium contributed to achieving UN sustainable Goal 16: Peace, Justice and Strong Institutions.

7. Working methods of CDCJ

39. The CDCJ examined the proposal for revision of the working methods of the CDCJ as of 1 January 2022 (document CDCJ(2021)24 prov rev1). The CDCJ took note of Resolution CM/Res(2021)3 and in line with it, examined and adopted the updated working methods of the Committee, as amended. The Secretariat was instructed to finalise and publish the final version of the updated text on CDCJ's website.

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

40. The CDCJ welcomed the adoption by the Committee of Ministers of the CDCJ's terms of reference for 2022-2025 and of its two subordinate bodies for 2022-2023, namely the Committee of experts on the rights and the best interests of the child in parental separation and in care proceedings (CJ/ENF-ISE) and the Committee of experts on the protection of lawyers (CJ-AV).

41. The CDCJ examined also draft terms of reference for two CDCJ's limited working groups (up to 8 experts each) to support the implementation of CDCJ's activities on migration (CDCJ-MIG) and administrative law (CDCJ-ADMIN-AI) as well as their working methods, as proposed in document CDCJ(2021)21 prov). The CDCJ decided to establish these two limited working groups and approved the terms of reference, including their working methods with the amendments agreed, as they appear in Appendices II and III respectively.

42. The CDCJ instructed the Secretariat to launch a call for expression of interest by CDCJ members to take part in the work of the subordinate committee CJ-AV and working groups, pointing out that any candidature shall be submitted to the Secretariat (DGI-CDCJ@coe.int) in line with the set deadlines (no later than 31 January 2022 for the CJ-AV and the CDCJ-MIG, and 31 March for the CDCJ-ADMIN-AI), and be accompanied by biographies or short curriculum vitae of the candidate. The Committee entrusted the Bureau to lead the selection processes in accordance with its working methods and practice.

43. The Committee also exchanged views and agreed on its future work programme and modalities of implementation as it appears in document CDCJ(2021)30 and agreed, as and when necessary, to update the document in light of the progress made and decisions taken by the CDCJ to reprioritise certain activities, maintaining flexibility for addressing and including emerging and topical issues if needed.

9. Evaluation of completed activities / Annual exchange of views to evaluate its activities and to advise the Committee of Ministers on future priorities in its sector, including possible new activities and those that might be discontinued (main task x)

44. The CDCJ expressed its satisfaction with the follow-up undertaken to implement the activities and the decisions taken by the CDCJ as a result of its 96th plenary meeting, and its appreciation of the active role of the Bureau in this context. It took note that all envisaged activities have started. Although delays were noted for a few activities, it welcomed the progress and results achieved in 2020-2021, taking into account the challenging context of the pandemic and the fact that the CDCJ operated only online, due to the health situation.

45. At the same time, the Committee expressed concerns about the technical difficulties experienced during this plenary meeting which, at times, prevented some members from contributing fully to the meeting. The CDCJ expressed its wish that in the next biennium it would resume meetings in person if the health situation permitted or that it would hold hybrid meetings if possible.

46. The CDCJ took note of the update provided by the Secretariat concerning the visibility of the Committee and its work, including the first Legal Co-operation Newsletter to be issued in December 2021 and called upon delegations to widely disseminate it.

10. Co-operation with other international organisations and civil society, and with other relevant Council of Europe bodies and intergovernmental committees

47. The CDCJ took note of the information related to the external co-operation with other international organisations and internal co-operation with other Council of Europe bodies, including the legal co-operation projects, provided by the Secretariat. The Committee held exchange of views with the Secretariat of the European Commission for the Efficiency of Justice (CEPEJ) and took note of the work of the working group on Cyberjustice of the CEPEJ (CEPEJ-GT-CYBERJUST).

48. The Committee called for stronger co-ordination and welcomed continuing exchange of views and information on CDCJ and CEPEJ common areas of work; welcomed the information on progress made towards the finalisation of the Council of Europe Strategy for the Rights of the Child, its priority areas, including those falling within the CDCJ mandate and its planned launching during the Italian Chairmanship of the Committee of Ministers in 2022.

11. Elections and appointments

a. Elections (Chair, Vice-Chair and Bureau members)

49. The Chair submitted to the Committee the names of the candidatures for the vacant positions as Chairperson, Vice-Chairperson and Bureau members. The CDCJ held elections, in accordance with Resolution CM/Res(2011)24.

50. The CDCJ Bureau was composed as follows:

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

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

Bureau members:

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

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

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

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

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

b. Appointments (CDCJ Representatives and Rapporteurs).

51. In line with its Terms of reference for 2022-2025, which provide for the appointment of up to five Rapporteurs on mainstreamed perspectives, the Committee appointed Ms Signe Öhman (Sweden), as CDCJ Gender Equality Rapporteur (GER).

52. The CDCJ agreed for a transitional period to entrust its Chair and/or its Vice-Chair to act as Rapporteur on the Rights of Persons with Disabilities. Furthermore, the CDCJ invited any interested members to put forward their candidatures for this position, as well as the position of Rapporteur on Children's Rights.

53. The Committee also called upon interested members to either renew their interest or put forward their names to act as CDCJ representatives or substitutes in the work and meetings of other Council of Europe bodies, taking into account their roles and duties as set out in the document CDCJ(2021)31 prov.

54. The CDCJ entrusted the Bureau to finalise these appointments at its first meeting in 2022.

12. CDCJ opinions

55. At its 1416th meeting (3 November 2021), the Committee of Ministers' Deputies agreed to communicate Recommendation 2213 (2021) of the Parliamentary Assembly on "Addressing issues of criminal and civil liability in the context of climate change" to the Steering Committee for Human Rights (CDDH), to the European Committee on Crime Problems (CDPC) and to the European Committee on Legal Co-operation (CDCJ), for information and possible comments by 15 January 2022.

56. At its 111th meeting, the Bureau discussed the issues contained therein falling within the CDCJ's mandate, in particular the Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment (ETS No. 150) and provided orientations on possible comments that the CDCJ could make in this respect, which were reflected in the draft opinion prepared by the Secretariat and circulated for written comments. As of 29 November 2021, comments were received from the United Kingdom and the Russian Federation, reflected in the version of the draft CDCJ opinion on Parliamentary Assembly Recommendation 2213 (2021) that the Plenary examined (see para. 57 below).

57. In light of the comments received from the members and discussion held at the plenary, the CDCJ examined and adopted its opinion on Parliamentary Assembly Recommendation 2213 (2021) on "Addressing issues of criminal and civil liability in the context of climate change", as reflected in Appendix IV, and instructed the Secretariat to send the opinion, as adopted, to the Committee of Ministers by 15 January 2022.

13. Any other business

58. The CDCJ was informed that the University Women of Europe (UWE) (civil society representative with participative status at the INGO Conference of the Council of Europe) expressed its interest to obtain observer status with the CDCJ. In its written request, UWE indicated being an umbrella organisation of civil society organisations working on issues regarding gender equality and violence against women in Europe.

59. The CDCJ instructed the Secretariat to contact the representatives of the University Women of Europe to provide further information concerning their mandate, the reasons for requesting an observer status of the CDCJ and their expertise in the areas of competency of the CDCJ and decided to invite a representative of the University Women of Europe to present their work and request to the Committee's members.

60. The Committee noted that it was important to establish clear criteria for handling such requests, possibly in the form of a checklist allowing the CDCJ to assess them. Until now, such requests were treated case by case, and using ad-hoc assessment requirements. The CDCJ entrusted the Bureau to develop a proposed set of criteria and agreed to return to this point at its next plenary meeting in 2022.

14. Date and place of next meeting

61. The CDCJ agreed to hold its 98th plenary meeting on 1-3 June 2022 and approved the calendar of meetings as proposed in document CDCJ(2021)4 Rev2, to be updated regularly, in 2022 and following years, noting that the format (physical, virtual, or hybrid) of the meetings would depend on the evolution of the health situation at that time.

15. Approval of the abridged meeting report

62. The CDCJ adopted the abridged report and instructed the Secretariat to submit it to the Committee of Ministers for information and agreed to adopt the full meeting report by written procedure after the meeting.

Appendix I

Agenda

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

Justice

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

Family law and children's rights

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

Public law

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

Artificial Intelligence

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

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

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

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

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

6. Transversal issues:
 - a. Mainstreaming equality between women and men in (preparing) new legislation (main task xi)
 - b. Contribution to the UNSDGs, in particular Goal 16 - Peace, Justice and Strong institutions (main task xiii / specific task xi)
7. Working methods of CDCJ
8. Terms of reference of the CDCJ and its subordinate bodies for 2022-2025: exchange of views on the future work programme and implementation of tasks
9. Evaluation of completed activities / Annual exchange of views to evaluate its activities and to advise the Committee of Ministers and the Secretary General on future priorities in its sector, including possible new activities and those that might be discontinued (main task x)
10. Co-operation with other international organisations and civil society, and with other relevant Council of Europe bodies and intergovernmental committees
11. Elections and appointments
12. CDCJ opinions

Draft CDCJ opinion on Parliamentary Assembly Recommendation 2213 (2021) - Addressing issues of criminal and civil liability in the context of climate change
13. Any other business
14. Date and place of next meeting
15. Approval of the abridged meeting report

Appendix II

CDCJ Limited Working Group on Migration (CDCJ-MIG)

Terms of reference

Role

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

Specific Tasks

2. The CDCJ-MIG will support the work of the CDCJ by:
 - a) finalising, for examination and adoption by the CDCJ in December 2022, the draft Guide for practitioners, taking into account the work previously carried out by the Committee of experts on administrative detention of migrants (CJ-DAM) and any relevant legal developments since then;
 - b) referring to the CDCJ any significant issues arising in the context of the drafting process, with proposed solutions if possible;
 - c) providing, upon CDCJ's request, support to the implementation of actions or activities related to statelessness decided by the CDCJ as a follow-up to the 2021 International Conference.

Composition

3. The CDCJ-MIG will be composed of up to eight experts designated by CDCJ heads of delegations⁵ which are interested in contributing to the Guide, and have a thorough knowledge of law, policy and practice in the field of administrative law and administrative detention, including experience in developing practical guidance in this area for relevant professionals.
4. Participation is also open to one representative from participating institutions, organisations, bodies and committees with relevant experience in this area, in line with the terms of reference of the CDCJ.

Working methods and expected results

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

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

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

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

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

Appendix III

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

Terms of reference

Role

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

Specific task

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

Composition

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

Working methods and expected results

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

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

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

Appendix IV

Addressing issues of criminal and civil liability in the context of climate change Parliamentary Assembly Recommendation 2213 (2021)

Opinion of the CDCJ

1. The European Committee on Legal Co-operation (CDCJ) has taken note of Recommendation 2213 (2021) of the Parliamentary Assembly on “Addressing issues of criminal and civil liability in the context of climate change”.
2. CDCJ shares the Parliamentary Assembly’s concerns in the context of climate change and its impact on the environment, notably from a legal point of view. It takes note of the recommendation to the Committee of Ministers to examine the reasons for non-ratification of the [Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment \(ETS No. 150, also referred to as the “Lugano Convention”\)](#); to encourage member States that have not yet done so to ratify it, and to consider whether the revision of this convention (in particular by updating its Appendix I on dangerous substances) would be desirable or to replace it by another legal instrument better adapted to the current environmental challenges, or even to conduct a study on national climate litigation cases.
3. Concerning the recommendation to review the reasons for the lack of ratifications of the Lugano Convention (point 3.2 of Recommendation 2213), the CDCJ recalls that its Bureau undertook in 2011 a review of conventions within the field of competence of the Committee and assessed this Convention as “inactive”. This assessment was confirmed by the classification of conventions set out in the report by the Secretary General on this matter, dated 16 May 2012.⁷ As the Lugano convention has not come into force 28 years after its opening for signature, the CDCJ does not find it appropriate to encourage member States that have not yet done so to ratify it, as proposed by the Parliamentary Assembly.
4. Furthermore, the CDCJ considers that undertaking future work along the lines of the recommendation of the Assembly is premature. The setback given to the Lugano Convention reflects the fact that its provisions do not enable it to achieve an internationally accepted solution to liability systems and compensation arrangements for damage resulting from activities dangerous to the environment that can be accepted by Council of Europe member States. Embarking on a process of revision of this convention or of elaboration of a new legal instrument, as recommended by the Parliamentary Assembly in point 3.3 of Recommendation 2213, requires a careful review of the relevance and added-value of improving and adapting the international legal framework, taking into account the existing sector specific civil liability regimes set out in international treaties and other binding legal instruments developed since the Lugano Convention, whether at European or international level, as well as their effectiveness.
5. Without ruling out the possible preparation of a convention in the longer term, should the Committee of Ministers instruct it to do so, the CDCJ considers it more appropriate, at this stage, to undertake the study on national climate litigation cases mentioned in point 3.4 of Recommendation 2213 and could also consider the extent to which other legal instruments achieve the aims of the Lugano Convention. Depending on the decision of the Committee of Ministers, and on the urgency of the issue, the CDCJ could prioritise this work if necessary.

⁷ Document CDCJ-BU(2011)10. See Document [SG/Inf\(2012\)12](#), Report by the Secretary General on the Review of Council of Europe Conventions (16 May 2012), and its Executive Summary in document [SG/Inf\(2012\)12-Add](#).