

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 15 November 2022

CJ-AV(2022)15

## **Committee of Experts on the Protection of Lawyers (CJ-AV)**

**3<sup>rd</sup> meeting  
8-10 November 2022**

**EDQM, room 100**

**MEETING REPORT**

**CDCJ website: [www.coe.int/cj-av](http://www.coe.int/cj-av)  
CDCJ E-mail address: [DGI-CDCJ@coe.int](mailto:DGI-CDCJ@coe.int)**

## **1-2. Opening of the meeting and adoption of the agenda**

1. The Committee of Experts on the Protection of Lawyers (CJ-AV) held its 3<sup>rd</sup> meeting in person from 8-10 November 2022, under the chairmanship of Mr Christoph Henrichs (Germany).

2. The agenda of the meeting is contained in Appendix I. The list of participants appears in Appendix II.

## **3. CJ-AV Tour de table**

3. The Chair welcomed the CJ-AV members, participants, and observers attending the meeting in person for the first time from the Netherlands, Switzerland, Avocats Sans Frontières France, the International Commission of Jurists and the European Association of Lawyers.

## **4. Statement by the Chair and the Secretariat**

4. The Committee took note of the information provided by the Chair on the organisations having requested observer status within the CJ-AV, about which the European Committee on Legal Co-operation (CDCJ) would take a decision at its 99<sup>th</sup> plenary meeting (23-25 November 2022), in line with its procedure for assessment and the criteria adopted by the committee regarding observer requests.

5. The Chair underlined the importance of having an efficient discussion of the draft provisions by the CJ-AV and a thorough examination of the revisions proposed to the first draft, in order to provide elements for the CDCJ's forthcoming discussion on the possible implementation mechanism for the instrument under elaboration.

## **5. Draft legal instrument aiming at strengthening the protection of the profession of lawyer and the right to practice the profession without prejudice or restraint: scope and issues to be covered by the draft instrument (CJ-AV deliverable)**

5. The CJ-AV expressed its appreciation for the work carried out since its last meeting on 11-13 July 2022 and welcomed the revised draft of the legal instrument (CJ-AV(2022)05 prov2) which was prepared on the basis of the discussions and the contributions received in writing, compiled in the document CJ-AV(2022)11.

6. The committee agreed to postpone the examination of the draft preamble to a later stage. It agreed to discuss first Articles 6 and 7 of the draft instrument which were not reviewed previously due to time limitations and then proceed with the further examination of the rest of the draft text.

7. The CJ-AV members were also invited to put forward elements to be covered by the Explanatory Report.

8. The CJ-AV discussed, in particular, the chapters in the draft text on "Purpose, scope, use of terms or definitions", "Professional associations", "Entitlement to practice", "Professional Rights", "Expression", "Discipline" and agreed on numerous additions and amendments to be made to the preliminary draft, notably:

Chapter I [Purpose, scope, use of terms or definitions]

- To find a common denominator for the definitions used in the draft instrument in light

of the oral comments voiced during the meeting, and in particular, further elaborate the present definition of “lawyer” to ensure that it extends to all lawyers but it is not over broad;

- To define the scope of persons who can also benefit from the protection ensured by the Convention when they are acting on behalf of a lawyer in connection with the practice of law and to clarify what is covered by the phrase “acting on behalf of a lawyer”;
- In accordance with the oral comments received, to narrow some of the definitions for the sake of clarity.

## Chapter II [Substantive provisions]

- To further work on the drafting style and the language used in the draft instrument and check it against the most up-to-date Council of Europe and other international instruments, and bring them in line whenever necessary;
- To clarify that professional associations should be informed of the arrest or detention of a lawyer, in the absence of the consent of the lawyer and with whom the responsibility to inform rests;
- To revise the formulation of the clauses limiting the rights of lawyers and professional associations so that they are expressed in a non-exhaustive manner;
- To clarify whether all disciplinary measures applied against lawyers should be amenable to appeal and who can challenge the lawfulness of a measure;
- To clarify whether inappropriate conduct of lawyers in their private capacity should provoke a disciplinary measure or not.

### General comment:

- To review the text to ensure consistency in the use of terminology throughout the draft legal instrument, as well as to try to find wordings that are universally understandable (to the greatest extent possible) across the jurisdictions, as well as to verify and check the use of the terminology in French in particular.

9. The changes agreed upon will be reflected in a revised version of the draft text to be circulated by 12 December 2022 to the CJ-AV for comments to be submitted by mid-January 2023.

10. The CJ-AV agreed to resolve as many unclear points as possible within the revised text for not leaving them for the Explanatory Report, with an aim to prevent the latter’s unnecessary inflation.

## **6. Implementing mechanisms: options and lessons learned from other Council of Europe bodies` experience**

11. The CJ-AV held exchange of views with the representatives of the Secretariat of the European Committee of Social Rights (ECSR) and the Group of States against Corruption (GRECO) on their respective monitoring and implementation mechanisms. The committee agreed to continue further discussion of this point, and to hold exchange of views with representatives of other committees, taking in particular into consideration those that have specific inquiry procedures/ad-hoc procedures as well as to look into the added value of lessons learnt from other mechanisms (e.g. United Nations’ mechanisms, including special procedures and individual complaints, models of platforms to address ad-hoc situations, petitions before the PACE), in order to have a full and comprehensive overview of all the possibilities before deciding on this point. There were concurring views among CJ-AV members on having a follow-up intergovernmental system based on a periodic thematic review and assessment. Consideration should be given to complementing it by a complaint mechanism, the details of which should be further discussed.

## **7. Examples of Council of Europe conventions with a flexible system of optional commitments**

12. The committee took note of the information provided by the representative of the Treaty Office concerning the Council Europe conventions with a flexible system of optional commitments and had a possibility to discuss also the practice of reservations to the treaties, as well as the differences between the two approaches. The CJ-AV clarified the points related to the process of adopting conventions. The committee agreed to continue the exchange of views with the Treaty Office and to hold regular consultations during the progress on the elaboration of the legal instrument.

## **8. Annual exchange of views to evaluate the CJ-AV activities**

13. The CJ-AV considered that substantial progress has been made in a short period of time. The CJ-AV considered that more time would be needed for completing the preparation of the legal instrument as well as its explanatory report and most importantly, for holding the necessary consultation processes within the Council of Europe and with the relevant stakeholders and the civil society. The CJ-AV also discussed its working methods and the need to revisit them for the work to go forward, including with respect to the circulation of individual comments and drafting suggestions from members and observers, of the revised text (consolidating proposals received). It clarified the calendar of deadlines for contributions and agreed to reconsider at a later stage whether it will be necessary to involve members of the committee in smaller groups for drafting purposes, in order to finalise its work in a timely and efficient manner. The CJ-AV agreed to propose to the CDCJ to inform the Committee of Ministers of the need of the extension of its mandate until 2024.

## **9. Information on on-going and planned activities in other fora of relevance to the work of CJ-AV**

14. The CJ-AV held a fruitful exchange of views with Ms Liudmila ULYASHYNA, Associate professor of the Academic Department of the Social Science, Head of the Centre for Constitutionalism and Human Rights (CCHR), EHU and Ms Lela METREVELI, Head of ILIA Partnership Director of Human Rights Embassy, Associate member of the CCHR/EHU. Both representatives of ILIA expressed their full support to the work of the CJ-AV and to the elaboration of a legally binding instrument which they consider most needed. ILIA representatives stressed that the situation in the countries in which ILIA is active has worsened dramatically as regards the protection of profession of lawyer, especially following the aggression of the Russian Federation against Ukraine. They shared their concerns about the need to have truly independent professional associations, operating freely from any undue interference, and stressed that in some cases, even if the formal independence of the professional associations is guaranteed under law, the legal provisions are either denied in practice or independence granted to such associations has illusory nature. They underlined that this dimension is particularly important and should be assessed by the implementation mechanism of the future legal instrument. ILIA representatives pointed out that the instrument under elaboration will have significant added value in improving the existing situation as regards the protection of the profession of lawyer. They also invited the CJ-AV to consider the specific situation of "human rights lawyers" under the draft instrument so that these could enjoy the necessary protection level.

## **10. Any other business**

15. None.

## **11. Date and place of next meeting**

16. The CJ-AV agreed to hold its next meeting on 1-3 March 2023.

**12. Approval of the meeting report**

17. The Committee approved the meeting report (CJ-AV(2022)15).

## APPENDIX I

### AGENDA

1. Opening of the meeting
2. Adoption of the agenda and order of business
3. CJ-AV tour de table
4. Statement by the Chair and the Secretariat
5. Draft legal instrument aiming at strengthening the protection of the profession of lawyer and the right to practice the profession without prejudice or restraint: scope and issues to be covered by the draft instrument (CJ-AV deliverable)
6. Implementing mechanisms: options and lessons learnt from other Council of Europe bodies' experience
7. Examples of Council of Europe conventions with a flexible system of optional commitments
8. Annual exchange of views to evaluate the CJ-AV activities
9. Information on on-going and planned activities in other fora of relevance to the work of the CJ-AV
10. Any other business
11. Date and place of next meeting
12. Approval of the meeting report

## APPENDIX II

## LIST OF PARTICIPANTS

## MEMBERS / MEMBRES

<b>AUSTRIA / AUTRICHE</b>	<b>Dr Marcella PRUNBAUER GLASER</b> Lawyer Österreichischer Rechtsanwaltskammertag / Austrian Bar
<b>CZECH REPUBLIC / REPUBLIQUE TCHEQUE</b>	<b>Mr/M. Ondřej RICHTER</b> Senior Ministerial Counselor Legislative Department Ministry of Justice
<b>DENMARK / DANEMARK</b>	<b>Mr/M. Nicolai PII</b> Legal director, Attorney The Danish Bar and Law Society
<b>FRANCE</b>	<b>Mr/M. Gilles ACCOMANDO</b> Directeur de l'Ecole de Formation des Barreaux (EFB) du ressort de la cour d'appel de Paris
<b>GERMANY / ALLEMAGNE</b>	<b>Mr/M. Christoph HENRICHS (Chair / Président)</b> Head of Section "International Law, Law of International Organisations" Federal Ministry of Justice
<b>IRELAND / IRLANDE</b>	<b>Ms/Mme Claire LOFTUS</b> Sollicitor
<b>LITHUANIA / LITUANIE</b>	<b>Ms/Mme Vaida RUDENAITE</b> Senior adviser Legal Services Policy Group Ministry of Justice
<b>LUXEMBOURG</b>	<b>Ms/Mme Valérie DUPONG</b> Avocate Etude Dupong, Krieps, Du Bois & Dias Videira
<b>NETHERLANDS / PAYS-BAS</b>	<b>Mr/M. Jacques WIJNEN</b> Senior Policy Advisor Judicial System Department Ministry of Justice and Security
<b>PORTUGAL</b>	<b>Mr/M. Joao PERRY DA CAMARA</b> Partner / Lawyer / Arbitrator Law Firm - Rogério Alves & Associados - Sociedade de Advogados, R.L
<b>SPAIN / ESPAGNE</b>	<b>Mr/M. Alfredo IRUJO ANDUEZA</b> Lawyer, Law office in Pamplona Professor of Master in Law, Public University of Navarre Chair of Council of Navarre
<b>SWITZERLAND / SUISSE</b>	<b>Ms/Mme Simone FÜZEŠSÉRY</b> Avocate Département fédéral de justice et police DFJP Office fédéral de la justice OFJ Domaine de direction Droit public Unité Projets législatifs II
<b>TÜRKIYE</b>	<b>Mr/M. Halid Haki BARUT</b> Head of Department General Directorate for Civil Affairs Ministry of Justice
<b>UKRAINE</b>	<b>Mr/M. Valentyn GVOZDIY (Vice-Chair / Vice-Président)</b> Vice-president of the Ukrainian National Bar Association Managing partner / International Law Firm GOLAW

<b>UNITED KINGDOM /</b> <i>ROYAUME-UNI</i>	<b>Mr/M. Tony FISHER</b> Partner Fisher Jones Greenwood LLP – Solicitors
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**MEMBER STATES / ETATS MEMBRES**

<b>AZERBAIJAN /</b> <i>AZERBAIDJAN</i>	<b>Mr/M. Allahveran ORUJLU</b> Member of Azerbaijan Bar Association
<b>BOSNIA AND</b> <b>HERZEGOVINA /</b> <i>BOSNIE ET</i> <i>HERZEGOVINE</i>	<b>Ms/Mme Slavica LJUBISIC</b> Attorney at law Bar association of Republic of Srpska/ Bosnia and Herzegovina

**OBSERVERS / OBSERVATEURS**

<b>AVOCATS SANS</b> <b>FRONTIÈRES FRANCE</b>	<b>Mr/M. Ivan PANEFF</b> Membre du conseil d'administration de l'association
<b>COUNCIL OF BARS</b> <b>AND LAW SOCIETIES</b> <b>OF EUROPE /</b> <i>CONSEIL DES</i> <i>BARREAUX</i> <i>EUROPEENS (CCBE)</i>	<b>Mr/M. Laurent PETTITI</b> Avocat au Barreau de Paris Président de la Délégation des Barreaux de France à Bruxelles Président du Groupe de travail « Convention européenne » du CCBE
<b>EUROPEAN</b> <b>ASSOCIATION OF</b> <b>LAWYERS (EAL) /</b> <i>ASSOCIATION</i> <i>EUROPÉENNE DES</i> <i>AVOCATS (AEA)</i>	<b>Ms/Mme Maria ŠLAŽAK</b> Attorney of Law President of the European Association of Lawyers
<b>EUROPEAN BARS</b> <b>FEDERATION /</b> <i>FEDERATION DES</i> <i>BARREAUX</i> <i>D'EUROPE (FBE)</i>	<b>Ms/Mme Dominique ATTIAS</b> Avocate Présidente du Conseil d'Administration de la Fondation des Avocats Européens Ancienne Présidente de la Fédération des Barreaux d'Europe Ancienne Vice-Bâtonnière de l'Ordre des Avocats à la Cour d'Appel de Paris
<b>EUROPEAN CRIMINAL</b> <b>BAR ASSOCIATION</b> <b>(ECBA)</b>	<b>Mr/M. Vincent ASSELINEAU</b> Chair of ECBA
<b>INTERNATIONAL</b> <b>COMMISSION OF</b> <b>JURISTS (ICJ) /</b> <i>COMMISSION</i> <i>INTERNATIONALE DE</i> <i>JURISTES (CIJ)</i>	<b>Ms/Mme Roisin PILLAY</b> Director of the ICJ Europe and Central Asia Programme
<b>INTERNATIONAL</b> <b>ASSOCIATION OF</b> <b>LAWYERS / UNION</b> <i>INTERNATIONALE</i> <i>DES AVOCATS (UIA)</i>	<b>Mr/M. Georges-Albert DAL</b> Président du Comité de réflexion de l'UIA sur les règles professionnelles



<b>“LAWYERS FOR LAWYERS” FOUNDATION /</b> <i>FONDATION « LAWYERS FOR LAWYERS »</i>	<b>Ms/Mme Judith LICHTENBERG</b> Board member
<b>INTERNATIONAL OBSERVATORY OF ENDANGERED LAWYERS /</b> <i>OBSERVATOIRE INTERNATIONALE DES AVOCATS EN DANGER (OIAD)</i>	<b>Ms/Mme Laurence ROQUES</b>

### **PARTICIPANTS / PARTICIPANTS**

<b>EUROPEAN COURT OF HUMAN RIGHTS /</b> <i>COUR EUROPÉENNE DES DROITS DE L'HOMME</i>	<b>Mr/M. Adrien RAIF-MEYER</b> Senior Lawyer
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### **ONLINE SPEAKERS / INTERVENANTS EN LIGNE**

<b>INTERNATIONAL LAW IN ADVOCACY (ILIA) NETWORK</b>	<b>Dr Liudmila ULYASHYNA</b> Associate professor of the Academic Department of the Social Science Head of the Centre for Constitutionalism and Human Rights (CCHR), EHU  <b>Ms/Mme Lela METREVELI</b> Head of the ILIA partnership Director of Human Rights Embassy Associate member of the CCHR/EHU
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### **COUNCIL OF EUROPE EXPERT / EXPERT DU CONSEIL DE L'EUROPE**

<b>CONSULTANT OF THE CJ-AV / CONSULTANT DU CJ-AV</b>	<b>Mr/M. Jeremy McBRIDE</b> Barrister Monckton Chambers United Kingdom
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### **SECRETARIAT / SECRETARIAT**

<b>DIRECTORATE OF LEGAL ADVICE AND PUBLIC INTERNATIONAL LAW /</b> <i>DIRECTION DU CONSEIL JURIDIQUE ET DU DROIT INTERNATIONAL PUBLIC (DLAPIL)</i>	<b>Ms/Mme Anna GOMEZ</b> Head of Division / <i>Cheffe de Division</i>
<b>PUBLIC INTERNATIONAL LAW DIVISION AND TREATY OFFICE /</b>	

DIVISION DU DROIT INTERNATIONAL PUBLIC ET BUREAU DES TRAITES	
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<b>ACTION AGAINST ECONOMIC CRIME / LUTTE CONTRE LA CRIMINALITE ECONOMIQUE</b>  <b>GROUP OF STATES AGAINST CORRUPTION / GROUPE D'ETATS CONTRE LA CORRUPTION (GRECO)</b>	<b>Mr/M. Janson BJORN</b> Deputy Executive Secretary / <i>Secrétaire exécutif adjoint</i>
<b>EUROPEAN COMMITTEE OF SOCIAL RIGHTS / COMITE EUROPEEN DES DROITS SOCIAUX</b>	<b>Mr/M. Henrik KRISTENSEN</b> Deputy Executive Secretary of the European Committee of Social Rights / <i>Secrétaire exécutif adjoint du Comité européen des Droits sociaux</i>

**INTERPRETERS / INTERPRETES**

INTERPRETERS / INTERPRETES	<b>Mr/M. Jean-Jacques PEDUSSAUD</b> <b>Ms/Mme Elisabetta BASSU-RIGHI</b> <b>Ms/Mme Lucie DEBURLET-SUTER</b>
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