

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 31 July 2023

CJ-AV(2023)09

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

5th meeting

3-5 July 2023

Strasbourg, Palais de l'Europe, Room 6

MEETING REPORT

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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 5th meeting in Strasbourg from 3 to 5 July 2023, 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 all participants, including the representatives of member States and observers attending the meeting for the first time (Ms Susanne MÜNCH (Germany), Ms Nadia Giacomina Germana TASCONA (Italy), Mr Edmond-Claude FRETU (OIAD) and Ms Lydia ANTONIO DE LA GARZA (Mexico)). The Chair also welcomed Mr Gerald Dunn, as new Secretary of the CDCJ.

4. Statement by the Chair and Secretariat

4. The Committee took note of the information provided by the Chair concerning recent developments of relevance to the work of the committee, including the decision taken by the CDCJ at its 100th plenary meeting to continue the elaboration of the instrument as a legally binding instrument in the form of a convention. The work of the CJ-AV is expected to be completed by the end of 2024, according to the extended terms of reference proposed by the CDCJ for adoption by the Committee of Ministers.

5. The Committee took note that, at its 100th plenary meeting, the CDCJ examined and rejected the request for observer status with the CJ-AV received from the Association “European Democratic Lawyers” (EDL) on grounds of absence of unanimity amongst CDCJ members, as required by applicable rules. However, the CDCJ invited EDL to contribute to the work of the CJ-AV and the elaboration of the draft convention on the protection of lawyers by participating in the stakeholder consultation process that will feed into the work on finalising the draft instrument.

6. The Committee also took note of the exchange of views between the Chair of the CJ-AV (in his capacity as chair of the CDCJ) and the Steering Committee for Human Rights (CDDH), which took place on 29 June 2023. The Chair discussed with the CDDH current and future activities of the CDCJ that were of relevance to the CDDH, and in particular the work on the CJ-AV.

7. The Committee was also informed about the outcome of the Fourth Summit of Heads of State and Government of the Council of Europe in Reykjavík, Iceland, which took place on 16-17 May 2023. Member States reconfirmed their support to strengthening the Council of Europe’s work in the field of human rights, democracy and the rule of law, including through the Reykjavik

Principles for Democracy. The work of the CJ-AV would therefore contribute to the new impetus given by the Summit.

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: examination of the draft text and the draft outline of points to be addressed in the explanatory report (CJ-AV deliverable)

8. The CJ-AV carried out a careful examination of the 6th version of the draft text of the future legal instrument (document CJ-AV(2022)05 prov6, version dated 21 June 2023), in the light of the comments and proposals made by CJ-AV members and observers to the draft text resulting from the 4th meeting, as reflected in document CJ-AV(2023)06.

9. Whilst the previous version of the **Preamble** remained unchanged, the Committee acknowledged the significance of referring to the United Nations Declaration on Human Rights Defenders in the Explanatory Report.

10. With regards to **Chapter I – Purpose, Scope and Use of terms of the Convention** (Articles 1, 2 and 3), the Committee reached a provisional agreement on the majority of the discussed provisions. Specifically, the Committee agreed that the provisions outlined in Articles 6 (Professional rights), 7 (Freedom of Expression), and 9.3 (Protection) should extend to persons recognised by an international court or tribunal, or a body established under the authority of an international organisation as competent to act in proceedings before it when advising on or acting in such proceedings.

11. Under Article 2, paragraph 2, the Committee emphasised that the protection provided by Article 9.3 of the draft Convention should also cover persons employed or engaged to assist lawyers in their professional activities (see also para. 24).

12. With regards to Article 3, the Committee agreed to maintain a simplified definition of “lawyer”, making reference to national law. Moreover, the Committee agreed that as part of the ratification process, each State party should be required to submit a declaration specifying the professional titles that fall within the scope of the Convention, as outlined in Article 3, paragraph a. The Committee agreed on the definition of “professional associations” and decided that the explanatory report should provide further clarification on the fact that the convention should apply to lawyers and professional associations whether membership therein is mandatory or not and that both systems were possible.

13. With regard to the **Chapter II – substantive provisions**, the Committee discussed and agreed the following:

- Article 4 – Professional associations

14. The Committee considered that the current description of professional associations activities would need to be reviewed in line with Article 3 for the sake of consistency. The terms “policy and practice” in paragraph 3 were considered too broad and lending themselves to diverging interpretations depending on the countries. Therefore, it was agreed to replace them with “procedural and administrative rules” and “codes of conduct”. The Committee considered that the notion of “other associations” in paragraph 4 would have to be illustrated by examples in the explanatory report in order to avoid any misunderstanding as to the nature of such associations.

- Article 5 – Entitlement to practice

15. The Committee discussed the grounds and aspects for admission, re-admission or continued authorisation of lawyers and agreed that the existing draft, specifically the reference to the transparency and objectivity of the criteria, was addressing all relevant aspects. The Committee considered that the reference to “independent bodies” in paragraph 2 would need to be illustrated by examples in the explanatory report for this provision to address the different systems in place in member States to deal with the admission, re-admission or continuous licencing.

- Article 6 – Professional rights of lawyers

16. The Committee decided to keep subparagraphs 1.a, b, c, f, g, h and j as they stood. It agreed to streamline the terms and concepts used in this article and throughout the text regarding the notion of activities of lawyers, including in relation to clients.

17. Subparagraph 1.d. was discussed at length and particularly the importance of keeping the reference to the fact that lawyers should be recognised by the competent authorities as the person advising, assisting and representing their client. It was reaffirmed that this provision would serve to address the situations where lawyers are denied access to their clients, for instance on the ground that the said client would already be represented by a lawyer assigned by the authorities.

18. With regard to subparagraph 1.e. dealing with access of lawyers to relevant materials to defend their clients, the Committee considered that it may be necessary to narrow it down to criminal and administrative proceedings, as this provision could raise a number of issues if it were to apply to civil proceedings.

19. As regards subparagraph i, in line with the case law of the European Court of Human Rights (ECtHR) and given the importance of lawyers to act upon instruction of their clients except where they have knowledge that information given to them is incorrect, the Committee agreed that reference should be made to both “good faith” and absence of “negligence” in connection with the conduct of lawyers during proceedings and criminal and civil immunity. The

Committee considered that this was an issue separate from freedom of expression as dealt with under Article 7 (see para. 21).

20. Concerning paragraph 2, the Committee discussed the notion of “prospective client” and whether contacts of lawyers with them should be protected or one should change the perspective of the drafting wherever reference was made to “prospective client” and refer instead to lawyers chosen by their clients themselves and state appointed lawyers. However, the Committee decided to keep the notion of “prospective clients” as referring to preliminary contacts before a lawyer has accepted to act as a person’s lawyer, which should also be protected. It was agreed to consider adding in the explanatory report further detail on the protection of lawyers and their prospective clients (e.g. outside judicial proceedings, non-disclosure of lawyer-client relationship).

21. With reference to the terms “prescribed by law” and “necessary in a democratic society” under paragraph 3, it was also agreed that an explicit reference should be made in Article 3 to the fact these terms should be read within the meaning of the European Convention of Human Rights (ECHR) as interpreted by the ECtHR in order to frame possible restrictions on Article 6 paragraphs 1 and 2. The Committee underlined that no restrictions should be possible to the right of lawyers to be identified with their client’s cause, as drafted in paragraph 4.

Article 7 – Freedom of Expression

22. The Committee discussed the limitation clause of this article. It was clarified that permissible restrictions had to be prescribed by law in connection with professional responsibilities, the requirements of the administration of justice and respect for private life and be necessary in a democratic society within the meaning of the ECHR and the case law of the ECtHR.

- Article 8 – Discipline

23. The Committee agreed to ensure coherence of the text between English and French, particularly considering the discrepancy in the concepts currently used: “professional standards of conduct”/“règles de conduite professionnelles” et “misconduct”/“fautes professionnelles”.

- Article 9 – Protection

24. The Committee discussed the aspects pertaining to the protection of lawyers covered by this article. In general, it was agreed to avoid excessive detail in order to allow State parties to enjoy flexibility on how best implement this provision depending on their national systems. The future monitoring body would also be in a position to interpret the convention and assess the appropriateness of its implementation by States parties.

25. The Committee agreed to re-examine at a later stage this provision in order to identify which persons carrying out tasks for lawyers should be protected and the degree of protection that should extend to them when doing so.

26. As regards the protection of lawyers under paragraph 1 and what States parties should ensure, it was once more decided to underline that any restrictions should be in line with the ECHR and the case law of the ECtHR and aim to prevent, investigate and prosecute crimes. The Committee decided to keep the text of subparagraph a. and c. as they stood.

27. Regarding subparagraph b., the Committee also discussed the role of professional associations in cases of search and seizure and the right of lawyers to choose their own legal representation or having professional associations present, depending on whether membership to the latter is compulsory in the State concerned.

28. As regards paragraph 2 and the role of professional associations in protecting lawyers, the Committee noted that professional associations sometimes have the dual role of protecting lawyers and initiating disciplinary proceedings in case of possible wrongdoing. However, it was emphasised that the Convention should focus on the former, i.e. the protection of lawyers. It was underlined that any restrictions should be strictly necessary for preventing, investigating, and prosecuting crime and protecting the rights of others. The Committee discussed in detail the issue of informing professional associations about the arrest or detention of lawyers and their right to be assisted by their association or an independent lawyer when they so wish. The need to protect lawyers from harassment was highlighted. In this context, the definition and scope of "harassment" as well as possible actions expected from the Parties/member States to prevent such harassment were also discussed. The Committee also examined the question of national security in the context of the secret surveillance of lawyers, with suggestions to clarify the extent of surveillance and means of informing the professional associations.

29. In view of the complexity of this provision, the Committee agreed to re-examine it in full at its next meeting, in the light of drafting suggestions to be provided ahead of the next meeting.

30. Moreover, in respect of the whole text, Committee members agreed to provide additional information, such as examples of the national legislation and good practices, or additional points to be addressed in the explanatory report, in addition to the ones that have been already mentioned in the draft outline (document CJ-AV(2023)07), as well as during the examination of the draft provisions during this meeting. A preliminary draft text for the explanatory report will be examined at the 6th meeting of the Committee, alongside the revised draft provisions.

6. Discussion on the implementation mechanisms: options and lessons learnt, experiences of Council of Europe bodies and other international organisations.

31. The CJ-AV resumed its discussions on options for a mechanism to monitor the implementation of the convention by States Parties. In this respect, the Committee heard Ms Gioia Scappucci, Executive Secretary of the Committee of the Council of Europe Convention

on the Protection of Children against Sexual Exploitation and Sexual Abuse (T-ES), and Mr Ludovic Hennebel, Chair of the United Nations Committee on Economic, Social and Cultural Rights Working Group on Communications.

32. Additional information was also provided by the Secretariat, presenting the different types of monitoring mechanisms existing at the Council of Europe, whether around a Committee of the Parties alone or in combination with a group of independent experts. While it was emphasised again that none of the existing monitoring mechanisms provides for an individual application system, it was underlined that monitoring bodies of the Council of Europe are now equipped with rapid-reaction procedures allowing them to examine urgent situations, based on reliable information received from a variety of stakeholders where it is considered, upon examination of this information, that there is a serious risk of a violation of provisions of the convention concerned. Such procedures come in addition to the regular thematic and/or country-specific assessments of the implementation of the provisions of the conventions concerned.

33. In the light of the aforementioned information, the Committee agreed to propose that the convention be supervised by a Committee of Parties and a group of independent experts. The functioning of this mechanism should be elaborated in the next version of the draft convention, bearing in mind that further details should be left for the rules and procedure of both bodies in order to allow for more flexibility in adapting and improving their functioning in the light of their practice. The Committee also examined the possibility of linking the future mechanism to the petition mechanism existing in the framework of the Parliamentary Assembly of the Council of Europe, as an entry point, but it was not considered to be a viable option, although information transmitted via this petition procedure could be taken into account as part of the monitoring process of the future mechanism.

7. Progress review of the CJ-AV activities

34. The Committee reviewed the progress made to date in the elaboration of the draft legal instrument and examined the revised calendar of CJ-AV activities for 2023-2024 (document CJ-AV(2023)03 prov2), in the light of the Committee's current terms of reference. It noted that a request for an extension of the latter in view to complete the work by the end of 2024 will be submitted to the Committee of Ministers for approval.

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

35. The Committee did not have time to discuss this agenda item. The Secretariat will continue collecting relevant information and updating the CJ-AV on latest developments.

9. Elections (Vice-Chair of the CJ-AV)

36. The Committee noted that, given the one-year terms of office for the positions of Chair

and Vice-Chair of the CJ-AV expired in April 2023, the CDCJ agreed, at its 100th plenary meeting, to appoint, amongst its members, Mr Christoph Henrichs (Germany) as Chair of the CJ-AV and to extend his mandate until the expiration of the CJ-AV's proposed extended terms of reference until 31 December 2024.

37. In accordance with its terms of reference, the CJ-AV was to elect its Vice-Chair amongst its members for a term of office running until 31 December 2024 (see document CJ-AV(2023)08). The CJ-AV re-elected Mr Valentyn GVOZDIY (Ukraine) as Vice-Chair.

10. Any other business

38. None.

11. Dates and places of next meetings

39. The CJ-AV agreed to hold its 6th meeting on 17-19 October 2023 in Strasbourg.

12. Adoption of the meeting report

40. The CJ-AV agreed to adopt the report of its 5th meeting by written procedure.

Appendix I

Agenda

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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 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: examination of the draft text and the draft outline of points to be addressed in the explanatory report (*CJ-AV deliverable*)

 6. Discussion on the implementation mechanisms: options and lessons learnt, experiences of Council of Europe bodies and other international organisations

 7. Progress review of the CJ-AV activities

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

 9. Elections (Vice-Chair of the CJ-AV)

 10. Any other business

 11. Dates and places of next meetings

 12. Adoption of the meeting report

Appendix II

Participants

MEMBERS / MEMBRES

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

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

BOSNIA AND HERZEGOVINA / <i>BOSNIE ET HERZEGOVINE</i>	Ms/Mme Slavica LJUBIŠIĆ Attorney at law Bar association of the Republic of Srpska Ms/Mme Tanja HADŽAGIĆ Lawyer from Sarajevo Bar Association of the Federation of Bosnia and Herzegovina
FRANCE	Ms/Mme Marie DUGRE Magistrate Cheffe du bureau de l'Europe et des questions institutionnelles Ministère de la Justice
GERMANY / <i>ALLEMAGNE</i>	Ms/Mme Susanne MÜNCH Head of unit dealing with the law of lawyers Ministry of Justice
IRELAND / IRLANDE	Ms/Mme Aoife BYRNE Justice Attaché / Deputy to the Permanent Representative Permanent Representation of Ireland to the Council of Europe
ITALY / ITALIE	Ms/Mme Nadia Giacomina Germana TASCONA Attorney / <i>Maître</i>

OBSERVERS / OBSERVATEURS

AVOCATS SANS FRONTIÈRES FRANCE	Mr/M. Ivan PANEFF Membre du conseil d'administration de l'association
COUNCIL OF BARS AND LAW SOCIETIES OF EUROPE / CONSEIL DES BARREAUX EUROPEENS (CCBE)	Mr/M. Laurent PETTITI Avocat au Barreau de Paris Président de la Délégation des Barreaux de France à Bruxelles Président du Groupe de travail « Convention européenne » du CCBE Mr/M. Nathan ROOSBEK Legal adviser
EUROPEAN ASSOCIATION OF LAWYERS (EAL) / ASSOCIATION EUROPÉENNE DES AVOCATS (AEA)	Ms/Mme Maria ŠLAŽAK Attorney of Law President of the European Association of Lawyers (AEA-EAL)
EUROPEAN BARS FEDERATION / FEDERATION DES BARREAUX D' EUROPE (FBE)	Ms/Mme Dominique ATTIAS 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

INTERNATIONAL BAR ASSOCIATION (IBA) & HUMAN RIGHTS INSTITUTE (IBAHRI)	Ms/Mme Zara IQBAL IBAHRI Program Lawyer
EUROPEAN CRIMINAL BAR ASSOCIATION (ECBA)	Mr/M. Vincent ASSELINEAU Chair of ECBA
INTERNATIONAL ASSOCIATION OF LAWYERS / UNION INTERNATIONALE DES AVOCATS (UIA)	Mr/M. Georges-Albert DAL Président du Comité de réflexion de l'UIA sur les règles professionnelles
“LAWYERS FOR LAWYERS” FOUNDATION / FONDATION « LAWYERS FOR LAWYERS »	Ms/Mme Judith LICHTENBERG Board member
INTERNATIONAL OBSERVATORY OF ENDANGERED LAWYERS / OBSERVATOIRE INTERNATIONALE DES AVOCATS EN DANGER (OIAD)	Mr/M. Edmond-Claude FRET Secretary General / <i>Secrétaire Général</i>

PARTICIPANTS / PARTICIPANTS

SEXUAL VIOLENCE AGAINST CHILDREN – LANZAROTE COMMITTEE / VIOLENCE SEXUELLE CONTRE LES ENFANTS – COMITE DE LANZAROTE	Ms/Mme Gioia SCAPPUCCI Executive secretary of the Lanzarote Committee / <i>Secrétaire exécutive du Comité Lanzarote</i>
OBSERVER STATES TO THE COUNCIL OF EUROPE / ÉTATS OBSERVATEURS AUPRÈS DU CONSEIL DE L'EUROPE	
MEXICO / MEXIQUE	Ms/Mme Lydia ANTONIO DE LA GARZA Deputy Permanent Observer / <i>Observatrice Permanente Adjointe</i> Permanent Representation of Mexico to the Council of Europe / <i>Mission Permanente du Mexique auprès du Conseil de l'Europe</i>

EXTERNAL / SPEAKERS / INTERVENANTS EXTERIEURS

UN COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS // COMITE DES DROITS ECONOMIQUES, SOCIAUX ET CULTURELS DES NU (CESCR)	Prof. dr. Ludovic HENNEBEL Avocat à la Cour - Hennebel Avocats Doughty Street Chambers, London, Associate Tenant Director of the Institute for International Humanitarian Studies, Law School of Aix-en-Provence Director of Aix Global Justice - Human Rights Law Clinic Expert Member of the UN Committee on Economic, Social and Cultural Rights
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CONSULTANT OF THE CJ-AV / CONSULTANT DU CJ-AV	Mr/M. Jeremy McBRIDE Barrister Monckton Chambers United Kingdom
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