



Strasbourg, 15 February 2024

CJ-AV(2024)05

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

7th meeting

30 January – 1 February 2024

Strasbourg, Agora, Room G02

MEETING REPORT

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CDCJ E-mail address: 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 7th meeting in Strasbourg from 30 January to 1 February 2024, 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

The Chair welcomed all participants, including the representatives of member states attending a CJ-AV meeting for the first time (Mr Guillaume Vieillard, France; Mr Christophe Raess, Switzerland; and Mr Ömer Yilmaz, Türkiye).

4. Statement by the Chair and Secretariat

3. The Committee took note of the information provided by the Chair concerning the results of the discussions on the work of the CJ-AV at the 101st plenary meeting of the CDCJ (15-17 November 2023). The Chair underlined that the CDCJ considered that the work of the CJ-AV was going in the right direction and reiterated its support for the preparation of a legally binding instrument. He added that the CDCJ recommended that the text of the draft convention should not be overly prescriptive to allow sufficient flexibility given existing differences between the legal systems of member states on a number of aspects and avoid that this may become an obstacle to ratification for some.

4. Concerning the monitoring mechanism proposed by the CJ-AV, i.e. a group of independent experts and a committee of the parties, the CDCJ supported the idea that monitoring the implementation of the convention should be as effective as possible, and that the monitoring system proposed appeared to be the preferable option. At the same time, the CDCJ indicated that it should be ensured that the way this monitoring mechanism operates should not lead to an excessive workload for states parties and, for this purpose, that the CJ-AV should shape it in such a way that ensures both effectiveness and flexibility.

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 explanatory report (CJ-AV deliverable)

5. The CJ-AV carried out a careful examination of the 10th version of the draft text of the future legal instrument (document CJ-AV(2022)05 prov10), in the light of the comments and proposals made by CJ-AV members and observers ahead of the meeting (document CJ-AV(2024)01rev) as well as the guidance given by the CDCJ (document CDCJ(2023)32). It also went through the draft explanatory report taking into account the drafting proposals and comments received from CJ-AV members and observers (documents CJ-AV(2024)03 and CJ-AV(2024)04).

6. With regard to Article 2 (Scope), the CJ-AV decided to add a subparagraph to ensure that the convention provides protection to lawyers who carry out their professional activity in another Party than the Party for which they hold the title of lawyer and are authorised to practice in

accordance with national law. The committee agreed to further refine this provision at its next meeting, also carefully examining the effect of relevant European Union regulations and other international agreements.

7. In respect of Article 3 (Use of terms), the CJ-AV agreed regarding subparagraph (d) that the definition of “professional associations” as explained in the draft explanatory report should exclude trade unions and similar organisations. Further refining of the definition of “professional activities of professional associations” was also agreed to reflect the same wording and all relevant activities mentioned under Articles 4 para. 2. and 7 para. 2. Moreover, it decided that purely commercial activities should be excluded, which should be reflected in the explanatory report.

8. Concerning Article 4 (Professional associations), the CJ-AV agreed to amend the text of the explanatory report on paragraph 1 to ensure that all relevant professional associations and bodies regulating the profession are covered by the convention, underlining the importance of their independence and the existence of safeguards against external influence, in particular from the executive. As to paragraph 4, it was agreed, in the light of discussions on Article 3, to strengthen the explanatory report and include specific examples of what is covered by “other professional associations”. The CJ-AV agreed that the situation whereby an association would be set up and claim to have a similar role as the existing professional association that has competence to regulate the profession should be avoided.

9. As regards Article 5 (Entitlement to practice), it was agreed that the explanatory report be revised in respect of paragraph 2, in the same vein as Article 4, in order to reflect the different settings existing in member states for the bodies responsible for the entry into the profession and continued practice, underlining the importance of the independence of such bodies and the need for safeguards against external influence.

10. In respect of Article 6 (Professional rights of lawyers), the CJ-AV discussed paragraph 1 (i) in connection with the notion of immunity and the question of administrative sanctions imposed on lawyers in a punitive way. It was agreed that the aforementioned provision should focus on civil and criminal immunity which, in contrast to the notion of “administrative immunity”, are established concepts, and that the question of administrative sanctions would be best addressed in relation to Article 9 (Protection) in that it deals with measures that may hamper the free exercise of the profession of lawyer. Consequently, it decided to include language on misused administrative sanctions in the explanatory report in the context of Article 9.

11. The CJ-AV continued refining the drafting of Article 9 (Protection). Regarding the notification of professional associations in cases where a lawyer is arrested or detained mentioned in paragraph 1 (b), the Committee agreed to use the expression “deprivation of liberty” rather than “arrested or detained”, as it was considered legally more precise and corresponded to the notion used in the European Convention for Human Rights. The presence of an independent lawyer or a representative of a professional association during the search of a lawyer or seizure of documents and other materials provided for in paragraph 1 (c) was further discussed as legislation and practice vary amongst member states. It was agreed to reflect these differences in the explanatory report.

12. The CJ-AV decided to delete paragraph 2 (a) concerning the information of professional associations on the deprivation of liberty of lawyers as it was considered already covered by paragraph 1 (b). With regard to Article 9 para. 2 (d) regarding secret surveillance conducted in

respect of lawyers, the CJ-AV noted that there were diverging views within its members on the scope of this provision and, for instance, on possible implications on legitimate investigations that rely on such investigative methods. The possibility of whether to accept reservations on this article was discussed. However, before deciding whether such an option should be possible or not, the CJ-AV decided to reexamine this provision at its next meeting with a view to attempting consensus on the text of the provision and the accompanying text in the explanatory report.

13. Concerning Chapter III (Monitoring mechanism), the CJ-AV decided that the group of independent experts responsible for monitoring the implementation of the convention should be called Group of Experts on the Protection of Lawyers (*Groupe d'experts sur la protection des avocats*) and that its acronym would be GRAVO, following the long-standing practice of the Council of Europe to use French for the purpose of deciding on the acronyms of bodies established by the organisation. It also decided on the number of experts that should compose GRAVO, namely from 8 to 12 depending on the number of states parties.

14. The CJ-AV decided to streamline the two articles addressing the selection and election of members of the group of independent experts and to put in one provision all selection criteria. The CJ-AV introduced a separate provision for urgent procedures triggered in exceptional circumstances to underline the distinction between, on the one hand, regular monitoring work applying to all states parties and based on cycles and, on the other, the possibility of a fast-reaction procedure where a situation raises an immediate risk of breach of the convention. The CJ-AV decided to change the title of Article 13 from “General recommendations” to “Opinions” to describe what the group of independent experts would be able to address on specific themes to all states parties and in order to avoid any possible confusion, for instance, with the recommendations that a committee of the parties would typically address to a state party in connection with the conclusions of a group of independent experts regarding the situation in this particular state party. The CJ-AV clarified that each state party would be entitled to one representative in the committee of the parties. In view of the experience of other similar monitoring mechanisms, it was decided that the explanatory report should specify that until GRAVO and the Committee of the Parties adopt their own rules of procedure, the rules established in the Committee of Ministers’ [Resolution CM/Res\(2021\)3](#) on intergovernmental committees and subordinate bodies, their terms of reference and working methods, would apply *mutatis mutandis* to both GRAVO and the Committee of the Parties, for instance for the quorum necessary for decisions and the election of the chair and vice-chair. In respect of all the above, the CJ-AV agreed that the explanatory report would be adjusted as needed.

15. With regard to Chapter V (Final clauses), the CJ-AV decided to introduce a paragraph on costs generated by the accession of non-member states. As regards the possibility of reservations, the CJ-AV did not identify at this stage any provision of the convention that could be the subject of reservations and decided to revisit this issue at its next meeting.

16. With the exception of the few points mentioned above, which will be further discussed at its next meeting, the CJ-AV agreed to the text of the draft convention and explanatory report as revised during this meeting. It entrusted the Secretariat, with the help of the consultant, to finalise both documents accordingly so that they can be shared with relevant stakeholders for the consultation process which is to take place from mid-February to mid-April, in accordance with its workplan (document CJ-AV(2024)02).

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

17. The committee did not have the opportunity to discuss this point.

7. Any other business

18. None.

8. Dates and places of next meetings

19. The CJ-AV agreed to the proposed workplan, including the details of the stakeholder consultation process (document CJ-AV(2024)02). In addition to its own members and observers, the draft convention and explanatory report are to be shared with the CDCJ, including its observers, and other relevant bodies of the Council of Europe as well as a number of INGOs defending the rights and interests of lawyers that do not have the status of observer with the CJ-AV but have expressed interest in its work on the draft convention.

20. The CJ-AV agreed to hold its 8th meeting on 13-15 May 2024 and its 9th and final meeting on 9-11 September 2024, in Strasbourg. The focus of the 8th meeting will be the results of the stakeholder consultation process in order to revise the draft convention and explanatory report before their submission to the CDCJ for a detailed examination at its 102nd plenary meeting (11-13 June 2024). Its final meeting will be devoted to finalising the draft convention and explanatory report in the light of the observations received from the CDCJ with a view to the approval of the draft convention and the adoption of the explanatory report by the CDCJ at its 103rd plenary meeting (19-21 November 2024).

9. Adoption of the meeting report

21. The CJ-AV agreed to adopt the report of its 7th 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 explanatory report (*CJ-AV deliverable*)

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

 7. Any other business

 8. Dates and places of next meetings

 9. Adoption of the meeting report

Appendix II

MEMBERS / MEMBRES

| | |
|-----------------------------------|--|
| AUSTRIA / AUTRICHE | Dr Marcella PRUNBAUER GLASER Lawyer Österreichischer Rechtsanwaltskammertag / Austrian Bar |
| CZECHIA / TCHÉQUIE | 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'École 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 Étude Dupong, Krieps, Du Bois & Dias Videira |
| NETHERLANDS / PAYS-BAS | Mr/M. Jacques WIJNEN Apologised/ Excusé 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. |

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| UNITED KINGDOM / ROYAUME-UNI | Mr/M. Tony FISHER Partner Fisher Jones Greenwood LLP – Solicitors |

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