

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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Committee of Experts on the Rights and the Best Interests of the Child in Parental Separation and in Care Proceedings (CJ/ENF-ISE)

Agenda item 4

Excerpts of meeting reports of the CAHENF, CDENF and CDCJ concerning the work of CJ/ENF-ISE

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Excerpts from the Abridged Report of the 7th meeting (Strasbourg, 12 and 14 November 2019) of the Ad hoc Committee for the Rights of the Child (CAHENF)

Items submitted to the Committee of Ministers for information

Draft terms of reference for the next biennium (2020-2021)

7. *The CAHENF examined and took note of the proposed revised terms of reference for 2020-2021 to establish a steering committee for the rights of the child (CDENF) and a subordinate committee of experts on the rights and the best interests of the child in parental separation and in care proceedings (CJ/ENF-ISE), under its joint responsibility with the European Committee on Legal Co-operation (CDCJ).*

8. *The CAHENF instructed the Secretariat to communicate to the Committee of Ministers the position agreed by the CAHENF with respect to the proposed tasks of the Committee of Experts on the rights and the best interests of the child in parental separation and in care proceedings (CJ/ENF-ISE) in relation to protecting the rights and best interests of the child in situations of acrimonious divorce and parental separation, and the proposal examined by the CDCJ regarding broadening the scope of the work of the committee.*

- The CAHENF agreed that, subject to any further decision by the Committee of Ministers in this respect, any change at this point to the scope of the work of the CJ/ENF-ISE should be discussed and agreed jointly by the CAHENF (and subsequently CDENF) and the CDCJ.

- A decision on broadening the scope of the work should carefully examine any resource implications such changes may have in relation to the final deliverables planned under the terms of reference. The CAHENF wished to underline the need to focus and prioritise the situations of acrimonious divorce and separation, as identified in the context of the mid-term evaluation of the Council of Europe Strategy for the Rights of the Child and during discussions held at previous plenary meetings of the respective committees.

- The CAHENF also considered that the current draft terms of reference would not prevent the CJ-ENF/ISE to formulate any additional proposals for further work with respect to divorce and separation following the completion of the planned review, which could be jointly discussed and agreed upon by the CDENF and the CDCJ on the basis of a substantiated report.

**Excerpts from the Abridged Report of the 1st meeting (Strasbourg, 4-6 February 2020)
of the Steering Committee for the Rights of the Child (CDENF)**

At its first meeting, the CDENF:

- *took note of the opening remarks by Ms Gabriella Battaini-Dragoni, Deputy Secretary General of the Council of Europe, who underlined the significance of the Council of Europe's agenda in the area of the rights of the child, the key role played by the newly established steering committee in overseeing the implementation of the priorities set under the Council of Europe Strategy for the Rights of the Child and called upon the CDENF to address a number of pan-European challenges, in particular on: i) upholding the best interests of the child in proceedings related to parental separation and child care proceedings; [...].*

1. *The CDENF discussed its work programme in 2020-2021 and the implementation of tasks under the five priority areas of the Strategy, and endorsed the principle of regular updates of the Action Plan on the Implementation of the Council of Europe Strategy for the Rights of the Child, with a set reporting format, and agreed to develop a specific workplan for the preparation of its contribution to the future Strategy beyond 2021. Furthermore, the CDENF examined and agreed to initiate a number of actions as set out below:*

[...]

Priority area 4 – Child-friendly justice for all children

- *discussed the proposed workplan and planned deliverables under its terms of reference for the organisation of the work on the protection of the best interests of the child in situations of parental separation and child care proceedings, entrusted the Bureau to agree upon a preliminary selection of the members of its subordinate body CJ/ENF-ISE in co-operation with the CDCJ Bureau, and decided to finalise the selection via written procedure, in co-operation with the CDCJ; [...].*

Excerpts from the Report of the 94th plenary meeting (Strasbourg, 13-15 November 2019) of the European Committee on Legal Co-operation (CDCJ)

Items submitted to the Committee of Ministers for decision

- *Biennium 2020-2021*

In relation to the draft terms of reference for the Committee of experts on the rights and the best interests of the child in parental separation and in care proceedings (CJ/ENF-ISE), CDCJ agreed on the importance of broadening the scope of the work to include all situations of parental separation, and that this should be reflected in the terms of reference by deleting the term “acrimonious” as it appears in specific task “(i)” of the proposed draft terms of reference (see paragraphs 15-16).

[...]

d. *Ensuring contact between a child and separated parents and identifying best interests of the child in child-care proceedings*

15. CDCJ took note of the proposed draft terms of reference for a Committee of experts on the rights and the best interests of the child in parental separation and in care proceedings (CJ/ENF-ISE), under its joint responsibility with the Steering Committee for the Rights of the Child (CDENF). It noted also that, following discussions and approval by the Bureau of CDCJ and the Ad hoc Committee for the Rights of the Child (CAHENF), the proposed terms of reference had already been considered by the relevant rapporteur groups of the Committee of Ministers responsible for social and legal questions in accordance with the calendar for the preparation of the Programme and Budget for the 2020 – 2021 biennium.

16. In respect of the proposed work of the Committee of experts in relation to protecting the rights and best interests of the child in situations of parental separation (specific task “(i)” of the proposed draft terms of reference) and following an oral presentation by Mr Seamus Carroll (Ireland) on discussions in the workshop referred to in paragraph 23 below, the CDCJ agreed on the importance of broadening the scope of the work to include all situations of parental separation and not only situations of acrimonious separation as indicated in the proposed terms of reference. CDCJ considered that this change was necessary in order to reflect the debate in the workshop.

17. CDCJ instructed the Secretariat to inform forthwith both CAHENF and the Committee of Ministers of its position on this matter in order that due consideration might be given by these bodies before adoption of the terms of reference.¹

[...] *Miscellaneous*

21. CDCJ instructed its Bureau (1) to approve the composition of the drafting group CDCJ-GT-TRA (see paragraph 14) and (2) to select the five members of the Committee of experts CJ/ENF-ISE (see paragraph 15) to be designated by CDCJ.

¹ In plenary meeting at the same time, CAHENF was able to consider the decision of CDCJ and communicate to it on its position, namely that, subject to any further decision the Committee of Ministers might take, changes to the scope of the proposed work of CJ/ENF-ISE should be agreed jointly by CDCJ and CAHENF (CDENF as from 2020), taking proper account of any resource implications such changes might have on achieving the expected results.