

Strasbourg, 30 April 2021

CJ/ENF-ISE(2021)PV1

**EUROPEAN COMMITTEE ON LEGAL
CO-OPERATION
(CDCJ)**

**STEERING COMMITTEE FOR THE
RIGHTS OF THE CHILD
(CDENF)**

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

Third Meeting, 14 and 15 April 2020
Videoconference

Meeting report

Agenda item 1: Opening of the meeting and welcome

1. The third meeting 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) was opened by Mr. Seamus Carroll (Ireland), Chair of the Committee, who welcomed the participants.
2. The list of participants to the meeting is available on the Council of Europe's website¹.

Agenda item 2: Adoption of the agenda and order of business

3. The draft agenda was adopted as it appears in Appendix I.

Agenda item 3: Statement by the Chair and the Secretariat

4. The Committee took note of the information provided by the Chair and the Secretariat on:
 - The preparation of new draft Terms of Reference for the European Committee on Legal Co-operation (CDCJ) and the Steering Committee for the Rights of the Child (CDEF), as well as quadrennial Programme and budgets (2022-2025), including the possibility of extending the Terms of Reference of the CJ/ENF-ISE;
 - The preparation of the new Council of Europe Strategy for the Rights of the Child (2022-2027) by the CDEF;
 - A survey circulated to CDEF and CJ/ENF-ISE as a preparation for the CDEF Regional Discussion on children's rights and alternative care, to be held online on the 1st of June 2021, to contribute to the UN Committee for the Rights of the Child's 2021 Day of General Discussion and to the work of the CJ/ENF-ISE on care proceedings;
 - The appointment of a new Secretary to the CDEF, Ms Katrin Uerpmann, who had joined the Children's Rights Division last February.
5. The Committee took note of the updated working methods and workplan (document CJ/ENF-ISE(2021)01Rev).

Agenda item 4: Presentation by Benoît Van Keirsbilck, member of the UN Committee on the Rights of the Child, on UNCRC standards and principles relevant to the CJ/ENF-ISE work

6. Mr. Benoît van Keirsbilck, independent expert to the UN Committee on the Rights of the Child (CRC), presented the role of the Committee in upholding the rights of the child as enshrined in the Convention on the Rights of the Child (UNCRC), explaining its methods of monitoring as well as the main UNCRC articles and CRC General Comments relevant to the work of the CJ/ENF-ISE.
7. It was, in particular, brought to the attention of the Committee that:
 - the best interests of the child is a threefold concept: a substantive right; a fundamental interpretative legal principle; and a procedural right;
 - the CRC discouraged age limits with regards to child participation, as they may restrict the child's right to be heard;
 - hearing the child should not be a one-off experience and involved five steps: 1) preparation, 2) hearing, 3) assessment of capacity of the child, 4) information about the weight given to the child's views, and 5) complaints, remedies and redress.

¹ [List of participants](#)

8. The Committee held an exchange of views with Benoît van Keirsbilck on:
 - differences in authoritative value of CRC decisions and General Comments across countries and the limited monitoring and follow-up undertaken by the CRC;
 - the issue of children living in border areas and the risk of incompatible decisions being taken by the different jurisdictions involved in such cases;
 - the possibility and practical implications of the child living continuously in a “family home” while the separated parents move alternatively to live with him/her from their respective residences;
 - cases involving domestic violence.
9. The Committee agreed to undertake any necessary follow-up to ensure that the results of its work reflect adequately relevant standards and identified good practices, including in the light of the UNCRC and the CRC decisions.

Agenda item 5: Protection of the best interests of the child and their rights in parental separation

Agenda item 5.1: Examination of the draft feasibility study

10. The Committee took note of the presentation by Ms. Nuala Mole and Ms. Blandine Mallevaey, consultants to the CJ/ENF-ISE, on the draft feasibility study on parental separation (document CJ/ENF-ISE(2021)03A).
11. The consultants underlined that:
 - in contrast to the role of the child in public care proceedings, where the role of the child is central and benefit from some form of representation, the role of the child in parental separation proceedings tends to be seen as more peripheral with the conflict between the parents taking centre stage;
 - the rights of the child in cases of parental separation are not coherently laid down in any of the jurisdictions examined;
 - some European countries do not have custody as a concept, but only residence of the child, and the child’s right to maintain contact with both parents does not always appear to be expressly acknowledged in practice;
 - many member states do not have specific rules on the length of the proceedings in family law cases;
 - specific training for professionals is needed, including for mediators and lawyers.

Agenda item 5.2: Proposal for specific instruments and/or practical tools to give guidance

12. The Committee took note of the presentation by the consultants on the proposals for instruments and/or practical tools to be developed.
13. The Committee discussed the added value of (i) a Committee of Ministers recommendation with practical guidance; (ii) a handbook for professionals complementing the policy instrument and (iii) related child-friendly materials.
14. The Committee agreed on the following:
 - the usefulness and added value of developing a draft policy instrument, in a form of a Recommendation by the Committee of Ministers, with practical guidance included in an Appendix;

- avoiding any attempt of harmonisation of definitions which do not directly fall within the scope of the CJ/ENF-ISE's work;
- the draft instrument should be targeting both policy makers and practitioners;
- the draft instrument should focus on the determination of the best interests of the child in general, and include specific aspects relating to both parental separation and care proceeding situations.

Agenda item 6: Protection of the best interests of the child in domestic law proceedings by public authorities to limit parental responsibilities or place a child in care

Agenda item 6.1: Examination of the draft feasibility study

15. The Committee took note of the presentation by Ms. Daja Wenke, consultant to the CJ/ENF-ISE, on the draft feasibility study on care proceedings (document CJ/ENF-ISE(2021)03B).
16. The consultant underlined that:
 - already-existing Council of Europe standards remained relevant and useful for determining the child's best interests. Rather than considering a review of existing standards, the focus should be placed in providing guidance on how to apply existing tools in a proactive way;
 - there is a need for law and policy reform to remove any statutory minimum age for children's right to be heard, to legislate for a continuum of information flow for children through all phases of care proceedings and to include criteria guiding the best interests' determinations;
 - two questions are still unresolved among member states, namely the right of the child to act as a party to the proceedings and the right of the child to initiate proceedings;
 - the European Court of Human Rights' caselaw recognises the best interests of the child as a substantive right and its emerging principles are very strongly pronounced towards the best interests of the child in care proceedings.

Agenda item 6.2: Proposal for specific instruments and/or practical tools to give guidance to member States and other stakeholders in this area

17. The Committee took note of the presentation by the consultant on the proposals for instruments and/or practical tools to be developed.
18. The Committee agreed on the following:
 - proposing to develop a single instrument in the form of a recommendation with guidance on both parental separation and care proceedings, which could be complemented by an explanatory report;
 - a child-friendly version of the policy instrument could also be drafted should funding be ensured;
 - the target group addressed by the instrument would cover all actors involved in best interests' determinations: from policy makers to child protection services, judges, lawyers, and guardians/representatives of children. The instrument could include a checklist of considerations that practitioners need to take into account when undertaking best interests' determinations;
 - the recommendation could be followed, at a later stage, by the development of practical tools, such as handbooks, on each of the particular topics;
 - the possibility of a joint initiative with the Parliamentary Assembly could also be further explored to support the CJ/ENF-ISE's work.

Agenda item 7: Organisation of consultations with relevant stakeholders, including child participation

Agenda item 7.1: Organisation of consultations with stakeholders

19. The Committee took note of the update provided by the Secretariat's and state of contributions as a result of consultations with relevant stakeholders (CJ/ENF-ISE(2021)04):
 - 36 replies were received to the survey undertaken on identified gaps and practical guidance in February 2021, which were taken into account in the preparation of the draft studies. The Chair and consultants expressed their gratitude to the respondents having taken part in the survey;
 - A Regional Discussion on "children's rights and alternative care" organised by the CDENF on the 1st of June 2021. CJ/ENF-ISE members and observers are invited to participate in the exchange as the results will inform usefully the work of the CJ/ENF-ISE on care proceedings.
20. Regarding the next steps of consultations and subject to the renewal of the terms of reference in 2022, the Committee agreed to organise:
 - a written consultation of relevant stakeholders on a first draft of the instrument/tool to be developed, taking into account the proposals made by CDCJ and CDENF delegations on national stakeholders relevant to the work of the CJ/ENF-ISE; and
 - a hearing of selected stakeholders on the draft instruments/tools before their finalisation.

Agenda item 7.2: Planning of child participation

21. The Committee took note of the Secretariat's presentation on the workplan to take into account children's views in the work of the Committee (document CJ/ENF-ISE(2021)05), including the planning for a) consulting children on a draft text through national delegations, and b) mapping and taking into consideration other consultations undertaken in member states.
22. The Committee agreed on the workplan for undertaken child consultations, which would be further updated once the work of the CJ/ENF-ISE progresses and there would be more visibility on the timeline for the preparation of the draft instrument/tool to consult children, given that the Committee had agreed that consultations would take place on the basis of a first draft text.

8. Any other business

23. The Secretariat provided an update on the workplan and the next steps for the finalisation of the feasibility studies. CJ/ENF-ISE delegations would have until the 23rd of April 2021 to send comments in writing. The feasibility studies would then be reviewed and circulated for a last round of comments and feedback to CDENF and CDCJ delegations during the month of May.
24. If necessary, the studies would be further amended before communicating them to the joint CDCJ and CDENF bureaus meeting (24th June), during which the bureaus (i) will examine and approve the draft studies; (ii) decide on the type of instrument(s) or tool(s) to be developed by the Committee of Experts; and (iii) agree on the draft terms of reference of CJ/ENF-ISE for the next biennium.

25. The CJ/ENF-ISE also discussed and decided that the CDCJ and CDENF should be informed of the fact that two of its selected members have not taken part or had a very limited contribution to the work of the CJ/ENF-ISE. CDCJ and CDENF may wish to consider replacing them for future meetings by other interested delegations, particularly taking into account the up-coming drafting exercise of CJ/ENF-ISE.

9. Dates of next meetings

26. The next meeting of the CJ/ENF-ISE will be held on 16-17 September, later than originally envisaged, which would enable to make progress on preliminary elements of a draft instrument. The format of the meeting (in Strasbourg, by videoconference or hybrid) will depend on the sanitary situation. In this fourth meeting, the first preliminary draft elements of the instrument(s)/tool(s) should be examined.
27. The fifth meeting of the CJ/ENF-ISE will be held on 13-14 December 2021.

10. Approval of the meeting report

28. The CJ/ENF-ISE agreed that the approval of the report of the meeting would be undertaken through a written procedure after the meeting.

APPENDIX I
Agenda of the 3rd meeting
(14-15 April 2021)

1. Opening of the meeting and welcome	<p><u>Reference document</u> CJ/ENF-ISE(2021)LOP1</p>
2. Adoption of the agenda and order of business	<p><u>Working documents</u></p> <ul style="list-style-type: none"> • CJ/ENF-ISE(2021)OJ1 • CJ/ENF-ISE(2021)OJ1ANN
3. Statement by the Chair and the Secretariat	<p><u>Reference documents</u></p> <ul style="list-style-type: none"> • Terms of reference of the CJ/ENF-ISE • Working methods and workplan - CJ/ENF-ISE(2021)01rev • Concept note for CDENF's Regional Discussion on "children's rights and alternative care" (restricted) • ECtHR Thematic Factsheet on children's rights
4. Presentation by Mr Benoît Van Keirsbilck, member of the UN Committee on the Rights of the Child, on UNCRC standards and principles relevant to the CJ/ENF-ISE work	<p><u>Working document</u></p> <ul style="list-style-type: none"> • Draft feasibility study on parental separation – CJ/ENF-ISE(2021)03A (restricted) <p><u>Reference documents</u></p> <ul style="list-style-type: none"> • Contributions to the survey for practitioners on parental separation – CJ/ENF-ISE(2021)02A (restricted) • Summary table of ECHR Jurisprudence – CJ/ENF-ISE(2020)10 (English only) • Analysis of international and European standards and practical tools, identification of gaps and possible proposals – CJ/ENF-ISE(2020)07A
5. Protection of the best interests of the child and their rights in parental separation	
5.1 Examination of the draft feasibility study	
5.2 Proposal for specific instruments and/or practical tools to give guidance to member States and other stakeholders in this area	<ul style="list-style-type: none"> • Questionnaire on parental separation – CJ/ENF-ISE(2020)3A • Contributions from member states and observers to the questionnaire on parental separation – CJ/ENF-ISE(2020)05ARev3 (restricted) • Contributions from civil society to the questionnaire on parental separation – CJ/ENF-ISE(2020)06A (restricted) • Best interests of the child and children's rights in parental separation - relevant international and European instruments – CJ/ENF-ISE(2020)INF2Rev1
6. Protection of the best interests of the child in domestic law proceedings by public authorities to limit parental responsibilities or place a child in care	<p><u>Working document</u></p> <ul style="list-style-type: none"> • Draft feasibility study on care proceedings - CJ/ENF-ISE(2021)03B (restricted)

6.1 Examination of the draft feasibility study	<u>Reference documents</u>
6.2 Proposal for specific instruments and/or practical tools to give guidance to member States and other stakeholders in this area	<ul style="list-style-type: none">• Contributions to the survey for practitioners on care proceedings – CJ/ENF-ISE(2021)02B (restricted)• Summary of standards, guidance and practice and related gaps - CJ/ENF-ISE(2020)07B• Questionnaire on care proceedings – CJ/ENF-ISE(2020)3B• Contributions from member states and observers to the questionnaire on care proceedings - CJ/ENF-ISE(2020)05BRev3 (restricted)• Compilation of contributions from civil society to the questionnaire on care proceedings - CJ/ENF-ISE(2020)06B (restricted)• Best interests of the child in care proceedings - relevant international and European instruments - CJ/ENF-ISE(2020)INF3
Organisation of consultations with relevant stakeholders, including child participation	<u>Working documents</u>
7. 7.1 Organisation of consultations with stakeholders	<ul style="list-style-type: none">• Concept note on the organisation of consultations with stakeholders – CJ/ENF-ISE(2021)04• Concept note on child consultations – CJ/ENF-ISE(2021)05
7.2 Planning of child participation	<u>Reference document</u>
	<ul style="list-style-type: none">• Council of Europe child participation approach
8. Any other business	
9. Date and place of next meeting	
10. Approval of the meeting report	

Documents relevant for several points

Terms of reference of the CJ/ENF-ISE

- [CJ/ENF-ISE\(2021\)01Rev](#) - Working methods and workplan
- [CJ/ENF-ISE\(2020\)PV2](#) - Report of the 2nd meeting of the CJ/ENF-ISE
- [CJ/ENF-ISE\(2020\)PV1](#) - Report of the 1st meeting of the CJ/ENF-ISE