

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 13 October 2020

CJ/ENF-ISE(2020)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)**

First Meeting, 24-25 September 2020

Videoconference – 2.00 pm -5.30 pm

Meeting report

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Agenda item 1: Opening of the meeting and welcome

1. The first 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 S. Carroll (Ireland), Chair of the Committee, who welcomed the participants.
2. Mr Christophe Poirel, Director of Human Rights, Directorate General Human Rights and Rule of Law highlighted the importance of the CJ/ENF-ISE's work in furthering the fourth pillar of the Council of Europe Strategy for the Rights of the Child (2016-2021) on a child-friendly justice for all children and recalled in this respect the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice. He underlined that judicial procedures, particularly civil and administrative procedures, often overlook children's needs. He drew attention that children's first contact with the justice system often occurs following their parents' separation or their placement in care and that, in these processes, the justice system is often not built to protect and hear children despite Article 12 of the UN Convention on the Rights of the Child, according to which all children have the right to be heard in all matters concerning them.
3. Mr Jeroen Schokkenbroek, Director of Anti-Discrimination, Directorate General of Democracy, highlighted the innovative work of the Committee through the multi-disciplinary expertise of CJ/ENF-ISE members and observers, and expressed his wish that the work of the Committee can pave the way for the development of common standards for member states and relevant tools for professionals to protect children's rights in parental separation situations and in care proceedings. He invited Committee members to review and identify solutions to the numerous issues and challenges faced by member states in this area, including in particular with respect to guaranteeing children's best interest in conflictual parental separation situations, in the context of custody and visitation rights, taking into account also the context of the COVID-19 pandemic and the challenges it poses to judicial and child care systems, the need for adequate protection of children in cases of sexual exploitation and abuse, and for rigorous short and long-term impact assessments of placement in care decisions.

Agenda item 2: Adoption of the agenda

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

Agenda item 3: CJ/ENF-ISE Tour de Table

5. The Committee took note of the introductions of the CJ/ENF-ISE members, participants and observers present at the meeting, and of their experience and expertise in the fields of children's rights and justice. The Committee noted also the broad range of professional backgrounds represented with the participation of ministries officials, judges, lawyers, social workers, psychologists, civil society representatives.
6. The list of participants is available for consultation on the Committee's webpage.¹

¹ See <https://www.coe.int/en/web/children/cj/enf-ise>

Agenda item 4: Terms of reference of the CJ/ENF-ISE for 2020-2021

7. Ms. Regína Jensdóttir, Children's Rights Coordinator of the Council of Europe and Head of the Children's Rights Division, presented the CJ/ENF-ISE's terms of reference and specific tasks for 2020 and 2021.
8. The Committee took note of the key deliverables expected, namely
 - a) to undertake a review the law, policy and practice on how the best interests of the child and their rights are protected in situations of parental separation;
 - b) to undertake a review of the law, policy and practice on how the best interests of the child are protected in domestic law proceedings by public authorities to limit parental responsibilities or place a child in care; and
 - c) to prepare, as appropriate, on the basis of the above-mentioned reviews, guidelines or other policy instruments or practical tools to give guidance to member States and other stakeholders in this area.

Agenda item 5: Presentation of the Council of Europe's typology of legal instruments

9. The Committee took note of the presentation made by the Secretariat on the overview of the types of legal instruments and tools elaborated by the Council of Europe, such as conventions, soft law legal instruments (i.e. recommendations, guidelines) and implementing instruments such as toolkits for professionals, handbooks, good practice guides and child friendly tools.

Agenda item 6: Exchange of views on the preparation of the reviews and on the scope and nature of the Council of Europe's possible legal instruments and/or tools to be prepared

10. The Committee held two separate exchanges of views on the preparation of the reviews and their respective questionnaires and concluded that the reviews should be conducted separately, notwithstanding the fact that there may be common issues between private and public law that the Committee could consider with respect to ensuring the protection of the child and of his rights and best interests.

Agenda item 6.1: Protection of the best interests of the child and their rights in situations of parental separation

11. Amongst issues drawn to the attention of the Committee by the Secretariat, the following aspects were highlighted: the need of expedited procedures; children's active involvement in judicial and administrative proceedings, the need of decisions adapted to the child's age and situation, the provision child's independent representation, the enforceability of access and contact rights, the accessibility of effective and child-friendly remedies in case of non-compliance with custody and access decisions and the regularity of review of decisions to ensure that they take into account the child's evolving needs and wishes.

12. The Committee agreed that the review should:
- encompass the protection of the best interests of the child and his/her rights throughout the entire parental separation process (i.e. before, during and after the proceedings);
 - capture all situations of parental separation (married or not / cohabiting or not)
 - include examples of assessed good practices and their results (if available)
 - examine the implementation of the child's rights, safeguards and guarantees in the proceedings of parental separation; the child's right to be heard and to information; the rules and procedures in separation cases when specific considerations arise, such as child protection in the case of domestic violence and sexual abuse; child relocation; children in vulnerable situations (e.g. neglected children; children with disabilities; in situations of social distress or in suffering situations); tools and training of professionals in assessing a child's best interests and multi-disciplinary approaches in justice proceedings related to separation, including mediation.
13. Two members pointed out the need to take into account and contextualise information received in the light of available data.

Agenda item 6.2: 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

14. The Committee agreed that the review should:
- cover the entire care proceedings (before, during and after the child's placement, that is at reunification);
 - consider the wide range of decisions in care proceedings (placement of children in foster care, institution or adoption from care);
 - examine the implementation of the child's rights, safeguards and guarantees in the care proceedings; the child's right to be heard and to information; the child's right of appeal (including his/her parents) against the placement decision, including when reviewing the decision; the rules and procedures in care proceedings when specific considerations arise, such as child protection in the case of domestic violence and sexual abuse; eligibility for adoption; children in vulnerable situations (e.g. neglected children; children with disabilities; in situations of social distress or from national or ethnic minorities) and children in detention following law breaking ; tools and training of professionals in assessing a child's best interests and multi-disciplinary approaches in justice or administrative proceedings related to care proceedings.

Agenda item 6.3: Preliminary exchange of views on possible legal instruments/tools to be prepared in the above-mentioned fields, considerations related to the structure of future guidelines, common factors and differences

15. The Committee held a preliminary exchange of views on the scope and nature of the Council of Europe's possible legal instruments and/or tools which could be prepared. The majority of experts expressed, at this stage, a preference for the development of soft law instruments, possibly in the form of practical guidelines or handbook for

professionals (e.g. judges, lawyers, mediators, social workers) dealing with parental separation situations and/or care proceedings, including practical checklists.

16. The Committee agreed that all instruments to be developed will be linked with the existing international standards and with the UNSDG goals which are relevant for reforms in the child protection sector. References to relevant international standards will be made in the respective explanatory memorandum of the draft instruments, as well as in the recitals.

Agenda item 6.4: Identification of information gaps, discussion and approval of draft questionnaires

17. The Committee examined the draft questionnaires prepared by the Secretariat. As a result of the discussions held, the Committee:
 - agreed that the structure and relevant questions of the draft questionnaires should be similar;
 - instructed the Secretariat to review the draft questionnaires and agreed to provide their final feedback and further suggestions for changes on both questionnaires through a written procedure by the set deadline. The Secretariat will then finalise the draft questionnaires jointly with the CJ/ENF-ISE Chair, so that they could be communicated to the Bureaux of the steering committees (CDCJ and CDENF) for an examination at their next meeting scheduled on 7 October 2020.
18. The Chair invited also members, participants and observers to share through the Secretariat any existing national reports or researches which fall into the area of work of the committee.

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

19. The Committee held a first discussion on stakeholders which should be involved in these processes. It agreed that it should ensure, through its working methods, an inclusive participation and consultation of a broad range of stakeholders, including children, judges, lawyers, administrative authorities and Council of Europe's relevant bodies, and that these should be included in consultations at a very early stage.
20. The Committee took note of preliminary ideas for this consultative process, and the suggestion to explore cooperation and synergies with relevant networks, such as the European Judicial Network (EJN), the Committee to the Consultative Council of European Judges, the Consultative Council of European Prosecutors, the HELP network, ENOC, including the possibility for the Chair of the CJ/ENF-ISE to present to them the planned work and invite them or their members to contribute to planned consultations. The Conference of international non-governmental organisations of the Council of Europe (INGO) indicated that some NGOs had also established channels for consultation that could support such process. The European Commission's representative provided an update on ongoing work in this area, including the fact that the new rules revising Council Regulation (EC) No 2201/2003 (the "Brussels IIa Regulation"), as of 2022, introduce that the courts of the Member States shall, in

accordance with national law and procedure, provide the child who is capable of forming his or her own views with a genuine and effective opportunity to express his or her views, either directly, or through a representative or an appropriate body, and that this cannot constitute an absolute obligation, but must be assessed taking into account the best interests of the child; and that an EJN factsheet on foster families was being prepared.

21. The Committee was informed by the Secretariat of the Children's Rights Division of its experience in conducting consultations with children for the purpose of preparing policy and legal instruments, such as the Council of Europe Strategy for the Rights of the Child, and in processes towards the finalisation of several draft recommendations touching upon children's rights in the digital environment and the rights of children in migration, notably with respect to guardianship and age assessment procedures.
22. Due to the limited time available, the Committee agreed to pursue this discussion at its next meeting to be held in December and instructed the Secretariat to prepare a short working paper on possible options on how best to proceed with this consultation.

Agenda item 8: Discussion of the proposed workplan and organisation of future work

23. The Committee took note of the Secretariat's presentation of the draft workplan (document CJ/ENF-ISE(2020)04) and that the latter would be updated on a regular basis.
24. The Committee took note also the need to report regularly to CDCJ and CDENF on the state of progress of its work, through its Chair

Agenda item 9: Dates of next meetings

25. The Committee agreed the proposed calendar of meetings and took note that its next meeting will take place in December 2020 by videoconference. The Chair invited those participants who had experienced connectivity difficulties to check their equipment and as necessary, liaise with the Secretariat for further technical support in advance of the next meeting, so that they could contribute fully to the discussions.

Agenda item 10: Any other business

26. No issue was raised under this agenda item.

Agenda item 11: Adoption of the abridged report

27. 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 First meeting (24-25 September 2020)

1. Opening of the meeting and welcome

2. Adoption of the draft agenda and order of business

Working documents

CJ/ENF-ISE(2020)OJ1 / [CJ/ENF-ISE\(2020\)OJ1ANN](#)

3. CJ/ENF-ISE Tour de Table

Reference documents

[CJ/ENF-ISE\(2020\)LOP1](#) / [List of members](#)

4. Terms of reference of the CJ/ENF-ISE for 2020-2021

Reference documents

- [Terms of reference of the CJ/ENF-ISE](#)
 - Background information – excerpts of meeting reports of the CAHENF, CDENF and CDCJ concerning the work of the CJ/ENF-ISE - [CJ/ENF-ISE\(2020\)INF1](#)
 - [Council of Europe Strategy for the Rights of the Child \(2016-2021\)](#)
 - [Report: Workshop 7 – The Power of Family Relations respecting the best interests of the child in divorce or separation](#)
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5. Presentation of the Council of Europe’s typology of legal instruments

6. Exchange of views on the preparation of the reviews and on the scope and nature of the Council of Europe’s possible legal instruments and/or tools to be prepared

6.1 Protection of the best interests of the child and their rights in situations of parental separation

6.2 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

6.3 Preliminary exchange of views on possible legal instruments/tools to be prepared in the above-mentioned fields, considerations related to the structure of future guidelines, common factors and differences

6.4 Identification of information gaps, discussion and approval of draft questionnaires

Working documents

- Table of contributions received - [CJ/ENF-ISE\(2020\)01](#)
- Compilation of written contributions - CJ/ENF-ISE(2020)02 (restricted document)
- Draft questionnaires - CJ/ENF-ISE(2020)03A and CJ/ENF-ISE(2020)03B

Reference documents

- Best interests of the child and children’s rights in parental separation - relevant international and European instruments - [CJ/ENF-ISE\(2020\)INF2](#)
 - Best interests of the child in care proceedings - relevant international and European instruments - [CJ/ENF-ISE\(2020\)INF3](#)
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7. Organisation of consultations with relevant stakeholders, including child participation

8. Discussion of the proposed workplan and organisation of future work

Working documents

[CJ/ENF-ISE\(2020\)04](#) –Working methods and workplan

9. Dates of next meetings

10. Any other business

11. Adoption of the abridged report
