

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 25 January 2020

CJ/ENF-ISE(2020)PV2

**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)**

Second Meeting, 14 and 18 December 2020
Videoconference

Meeting report

Agenda item 1: Opening of the meeting and welcome

1. The second 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 website.¹

Agenda item 2: Adoption of the agenda

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 report of the joint meeting of the Bureaux of the European Committee on Legal Co-operation (CDCJ) and the Steering Committee for the Rights of the Child (CDENF) held on 7 October 2020 (document CDCJ&CDENF/Bu(2020)PV1), meeting during which the Bureaux noted the Committee's ambitious workplan and the potential need to reconsider its schedule at a later stage;
 - the conclusions of the plenary meeting of the CDCJ (4-5 and 23-24 November 2020) and of the CDENF (16-18 November 2020), where both Committees (i) expressed their readiness to show flexibility with the timeframe for the completion of the CJ/ENF-ISE's mandate and (ii) approved the observer status of Missing Children Europe to the CJ/ENF-ISE;
 - the presentations made by the Chair at the plenary meeting of the Consultative Council of European Judges (5 November 2020) and of the Consultative Council of European Prosecutors (18 November 2020);
 - the webinar organised by the Children's Rights Division and the EndOCSEA@Europe Project on Educational measures to prevent risks associated with child self-generated sexual images/videos for the 2020 European Day on the Protection of Children Against Sexual Exploitation and Abuse,² the Lanzarote Committee's monitoring round on this issue,³ and the activities of the Working Group on responses to violence against children on harmful sexual behaviour displayed by children and reporting of violence against children.⁴
5. The Committee took note of the updated working methods and workplan (document CJ/ENF-ISE(2020)04Rev1).

¹ See [https://www.coe.int/en/web/children/cj/enf-ise#{%2262843295%22:\[1\]}](https://www.coe.int/en/web/children/cj/enf-ise#{%2262843295%22:[1]})

² See <https://www.coe.int/en/web/children/-/webinar-on-educational-measures-to-prevent-risks-associated-with-child-self-generated-sexual-images-videos-12-november-2020>

³ See <https://www.coe.int/en/web/children/2nd-monitoring-round>

⁴ See [https://www.coe.int/en/web/children/cdenf-gt-vae#{%2262901371%22:\[2\]}](https://www.coe.int/en/web/children/cdenf-gt-vae#{%2262901371%22:[2]})

Agenda item 4: Presentation of the ECHR's case law on the protection of the best interests of the child in parental separation situations and care proceedings

6. Ms Ksenija Turković, Judge at the European Court of Human Rights (ECtHR), presented the ECtHR' case law on the protection of children in parental separation situations and care proceedings, as well as the different standards set by the Court and good practice identified in these areas. The positive and procedural obligations under Article 8 of the European Convention on Human Rights (ECHR) in relation to situations of parental separation and care proceedings, as well as the consideration given by the Court to the best interest of the child when balancing competing interests, were underlined.
7. It was, in particular, brought to the attention of the Committee:
 - the demographics change in parental situation as an increasing number of children are born out of wedlock (42% in 2018 within the European Union);⁵
 - that the Court may refer in its judgments to non-binding legal instruments, such as the Council of Europe Guidelines on child-friendly justice; and
 - that the Court pays particular attention to new emerging principles, also known as solidarity rights, in its judgments.
8. The Committee held an exchange of views with Judge Ksenija Turković, and discussed:
 - the manner in which the change in demographics of parental situations is impacting the Court's view on the best interests of the child;
 - the child's right to independent legal representation before the Court, in light notably of the recent judgment *A and B v. Croatia*;⁶ and
 - the need to protect children from duress or undue influence from their parents.
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 Court's case law.

Agenda item 5: 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 5.1: Review of 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

Contributions received to the questionnaire

10. The Committee took note of the presentation by Ms Wenke, consultant to the CJ/ENF-ISE, on the contributions to the questionnaire (document CJ/ENF-ISE(2020)05B and

⁵ See [Eurostat](#).

⁶ See [A and B v. Croatia](#) (Application no. 7144/15).

CJ/ENF-ISE(2020)06B), which revealed that, despite the use by the majority of member states of the concept of the best interests of the child in accordance with Article 3.1 of the United Nations Convention on the Rights of the Child (UNCRC), standards and practice are very fragmented. In addition, some challenges and possible areas of conflict were identified, namely:

- the provision of services when a parent or child withholds consent;
 - the balance between confidentiality and reporting obligations;
 - the development of digital services;
 - the placement of children in closed institutions;
 - the treatment of children of imprisoned parents and children in conflict with the law; and
 - transnational proceedings.
11. The Committee acknowledged the importance of gathering additional input of a practical nature from civil society organisations and children’s advocates to complete this overview through consultations with relevant stakeholders; the challenge in addressing this topic due to the wide range of situations falling within the scope of domestic law proceedings to limit parental responsibilities or place a child in care; and the potential conflicts between privacy rights and reporting obligations, bearing in mind that procedural rights should not become obstacles to children’s rights.

Standards, guidance and practice and related gaps

12. Ms Wenke presented a preliminary summary of standards, guidance, relevant practice, and related gaps (document CJ/ENF-ISE(2020)07B). She highlighted the vagueness of the principle of the best interests of the child, which gives rise to various interpretations in practice and the need for concrete guidance on best interests’ determination in administrative and judicial proceedings, drawing from international and European standards, including relevant jurisprudence.
13. In the light of the presentation, the Committee agreed that the feasibility study should also cover the issues mentioned above and put forward concrete proposals for a policy instrument and/or practical tool(s) on the issue.

Preliminary annotated outline of the draft feasibility study

14. In the light of Ms Wenke's presentation on the proposal for an annotated preliminary outline of the draft feasibility study (document CJ/ENF-ISE(2020)08B), the Committee instructed the consultant to proceed with the preparation of the study, which should include :
- i. An overview of the relevant international and European standards, including conventions, recommendations guidance, human rights principles and fundamental freedoms, procedural safeguards, and principles emerging from the UN Committee on the rights of the child and case law of the European Court of Human Rights;

- ii. Implementation measures and methods of governance, looking at the consequences of weak implementation measures and identifying good practices;
 - iii. Working methods and tools for the best interests' determination;
 - iv. Proposals for a policy instrument and/or practice oriented tools.
15. It was underlined that the scope of the feasibility study should include aspects related to practice of judicial and administrative proceedings, including decisions made by social services.

Agenda item 5.2: Proposal for specific instruments and/or practical tools to give guidance to member States and other stakeholders in this area

16. The Committee discussed a wide range of options including the development of a Committee of Ministers Recommendation or similar policy instrument, such as Guidelines, a Handbook for professionals complementing the policy instrument or child-friendly material, and initiated a discussion of their respective added value and related challenges.
17. Recommendations and Guidelines were considered beneficial in areas where gaps in standards are identified, whereas practical tools were deemed more helpful to provide guidance regarding the proper implementation of existing standards.
18. The Committee also:
- underlined the importance of accompanying any policy instrument or practical tool developed by the Committee with a child-friendly version, inclusive of all children;
 - suggested that a practical tool could benefit all relevant professionals, such as social workers, children's advocates and judges, as well as the government and possibly the general public, it took note that judges may also benefit from a dedicated tool; and
 - highlighted the importance of wide dissemination amongst practitioners and relevant stakeholders.
19. The Committee agreed that a decision on the nature and target audience of the future instrument and/or practical tool, as well as the possibility of having a common instrument and/or practical tool to both care proceedings and parental separation situations, would be taken at a later stage, allowing the Committee to gather a more comprehensive overview of identified issues to be addressed, possible solutions, and practitioners' needs.

Agenda item 6: Protection of the best interests of the child and their rights in parental separation

Agenda item 6.1: Review of law, policy and practice on how the best interests of the child and their rights are protected in situations of parental separation

Contributions received to the questionnaire

20. The Committee took note of the presentation made by Ms Nuala Mole, on behalf of Professor Blandine Mallevaey and herself, consultants to the CJ/ENF-ISE, on the contributions to the questionnaire (document CJ/ENF-ISE(2020)05A and CJ/ENF-ISE(2020)06A).
21. The Committee agreed that in view of the numerous responses received, additional time was necessary to complete the review and instructed the consultants to continue their examination of the law and practice.
22. The Committee also agreed on the need to collect information from practitioners. The International Social Service (ISS) offered to use its network to collect information on practices, particularly in the field of social work, in member states.

Standards, guidelines and practices and related gaps

23. The Committee took note of the presentation by Ms. Mole on the Preliminary Summary of Standards, Guidelines and Practices and Related Gaps (document CJ/ENF-ISE(2020)07B).
24. The Committee was informed of the update by the consultants on the compilation of extracts from relevant international and European legal instruments (document CJ/ENF-ISE(2020)INF2Rev1) and the preparation of a summary table of relevant ECHR case law (document CJ/ENF-ISE(2020)10).

Preliminary outline of the draft feasibility study

25. In the light of Ms Mole's presentation on the proposal for an annotated preliminary outline of the draft feasibility study (document CJ/ENF-ISE(2020)08B), the Committee agreed that the scope of the feasibility study should cover all situations relating to parental separation.
26. The Committee stressed the importance of close co-operation between the consultants (parental separation situations and care proceedings) in order to be able to coordinate the two strands of work and agreed that the two feasibility studies should, as far as possible, follow a similar approach.

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

27. The Committee agreed that further research and information gathering was needed in order to formulate concrete proposals for the development of a specific instrument and/or practical tool. It took note of the suggestion that a Recommendation would carry significant weight, with the understanding that it would need to be accompanied by an explanatory memorandum and a handbook to assist practitioners.

28. The Committee also held an exchange of views on the discussion paper prepared by the Chair on practical guidelines in situations of parental separation (document CJ/ENF-ISE(2020)09) and took note that it would be further developed.
29. The Committee made preliminary proposals on possible practical instruments and/or tools that could be developed by the CJ/ENF-ISE:
 - an instrument specific to children's rights in situations of parental separation, such as a Recommendation to develop standards or social policies, and/or practical tool(s) aimed at practitioners, institutions and possibly parents;
 - an instrument on children's rights in situations of parental separation and care proceedings, which would provide common guidelines, for example on the best interests' determination or the child's right to be heard.
30. The European Commission expressed its support for the development of guidelines to assist practitioners in the implementation of legal instruments. A reference to such guidelines could be usefully integrated in the upcoming Practice Guide on the Brussels II(a) recast Regulation.⁷
31. Several members pointed to the need for the instrument to cover the aspects related to enforcement of decisions adopted. One participant suggested the development of separate instruments or guidelines specifically addressing the situation of vulnerable children, such as children of imprisoned parents, children in institutional care or children with disabilities.
32. The Committee agreed that a decision on the type of instrument and/or tool(s) to be proposed and further developed would be taken at a later stage.

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

Agenda item 7.1: Organisation of consultations with stakeholders

33. The Committee took note of the Secretariat's presentation on options for undertaking consultations with stakeholders and implementation of related processes (document CJ/ENF-ISE(2020)11), namely:
 - i. A consultation on identified gaps and practical guidance;
 - ii. A written consultation of relevant stakeholders on the draft instruments/tools; or
 - iii. A hearing of selected stakeholders on the draft instruments/tools.
34. The Committee agreed on the above-mentioned proposals and stressed the importance of undertaking consultations with selected stakeholders through targeted consultations to allow more focused discussions and benefit to the maximum from the stakeholders' expertise in an efficient manner.

⁷ See [Regulation Brussels II\(a\) recast](#), which will enter into application on 1 August 2022.

35. To this end, the Committee instructed the Secretariat to consult the CDCJ and CDENF delegations in order to collect their suggestions on possible national stakeholders to be involved (professional associations, networks, etc.). At its next meeting, the CJ/ENF-ISE will carry out a mapping exercise in order to identify the categories of stakeholders concerned and to prioritise these categories according to established criteria.

Agenda item 7.2: Planning of child participation

36. The Committee took note of the Secretariat's presentation on child participation (document CJ/ENF-ISE(2020)12), outlining options for the CJ/ENF-ISE could to take into account children's views by : a) consulting children on a draft text through national delegations, b) reviewing other consultations undertaken in member states, or both of the aforementioned options.
37. Ms Maria Corbett, consultant to CDENF, made a presentation on undertaking participatory consultations of children in the context of care proceedings, including on the particularities to take into consideration when consulting children who have experienced care proceedings. She underlined the need for the consultations to have clear goals, the importance of consulting children with care experience, and of making use of already established channels of communications to ensure that children are in a trusted environment.
38. The Committee noted the possible difficulties in obtaining parents' consent for consultation of children in the context of parental separation; the importance of reaching all categories of children affected by care proceedings, taking into account the possible overlap between the juvenile justice and care system, and the possibility of consulting both children with care experience as well as children's rights advocates.
39. The Committee entrusted the Secretariat to circulate the concept note on child consultations (CJ/ENF-ISE(2020)13) in order to consult CJ/ENF-ISE delegations on preferred options.

Agenda item 8: Council of Europe Contribution to the UNCRC Day of general discussion on "children's rights and alternative care"

40. The Committee took note of the planned contribution of the CDENF, through the organisation of a regional discussion, to the 2021 Day of General Discussion of the UNCRC on the following themes: strengthening families and preventing the separation of children from families, provision of high-quality alternative care, prevention and phasing out of institutionalisation, full and meaningful engagement of children in decision-making, and the protection of children's rights in alternative care.
41. The Committee instructed the Secretariat to liaise with the UNCRC Committee and extend an invitation to one of its representatives to the CJ/ENF-ISE meeting.

Agenda item 9: Dates of next meeting

42. The Committee agreed to hold its next meeting on 14 and 15 April 2021, slightly later than envisioned in the current workplan, in light of the considerable amount of work to be undertaken until then. The meeting will be held in Strasbourg or by videoconference, depending on the sanitary situation.

Agenda item 10: Any other business

43. No issue was raised under this agenda item.

Agenda item 11: Adoption of the meeting report

44. 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 2nd meeting
(14 and 18 December 2020)

1. Opening of the meeting and welcome

Reference document

- CJ/ENF-ISE(2020)LOP2

2. Adoption of the draft agenda and order of business

Working documents

- CJ/ENF-ISE(2020)OJ2Rev1 / [CJ/ENF-ISE\(2020\)OJ2ANN](#)

3. Statement by the Chair and the Secretariat

Update on the state of implementation of the CJ/ENF-ISE work and next actions.

Reference documents

- [Terms of reference of the CJ/ENF-ISE](#)
- Report of the CDCJ/CDENF joint Bureaux meeting - [CDCJ&CDENF/Bu\(2020\)PV1](#)
- Working methods and workplan - [CJ/ENF-ISE\(2020\)04Rev1](#)

4. Presentation on the ECHR's case law on the protection of the best interests of the child in parental separation situations and care proceedings

5. 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

5.1 Review of 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

5.2 Proposal for specific instruments and/or practical tools to give guidance to member States and other stakeholders in this area

Working documents

- Compilation of contributions received from member states and observers to the questionnaire on care proceedings - CJ/ENF-ISE(2020)05B (restricted)
- Compilation of contributions received from civil society to the questionnaire on care proceedings - CJ/ENF-ISE(2020)06B (restricted)
- Working paper - Preliminary summary of standards, guidance and practice and related gaps - [CJ/ENF-ISE\(2020\)07B](#)
- Preliminary annotated outline of a draft feasibility study - [CJ/ENF-ISE\(2020\)08B](#)

Reference documents

- Questionnaire on care proceedings – CJ/ENF-ISE(2020)3B
 - Best interests of the child in care proceedings - relevant international and European instruments - [CJ/ENF-ISE\(2020\)INF3](#)
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6. Protection of the best interests of the child and their rights in parental separation**6.1 Review of law, policy and practice on how the best interests of the child and their rights are protected in situations of parental separation****6.2 Proposal for specific instruments and/or practical tools to give guidance to member States and other stakeholders in this area**Working documents

- Compilation of contributions received from member states and observers to the questionnaire on parental separation – CJ/ENF-ISE(2020)05A (restricted)
- Compilation of contributions received from civil society to the questionnaire on parental separation – CJ/ENF-ISE(2020)06A (restricted)
- Analysis of international and European standards and practical tools, identification of gaps and possible proposals – [CJ/ENF-ISE\(2020\)07A](#)
- Preliminary outline of a draft feasibility study – [CJ/ENF-ISE\(2020\)08A](#)
- Working paper prepared by the Chair of CJ/ENF-ISE for discussion purposes on practical guidelines in situations of parental separation – CJ/ENF-ISE(2020)09 (restricted)
- Summary table of ECHR Jurisprudence – [CJ/ENF-ISE\(2020\)10](#) (English only)

Reference documents

- Questionnaire on parental separation – CJ/ENF-ISE(2020)3A
 - Best interests of the child and children’s rights in parental separation - relevant international and European instruments - [CJ/ENF-ISE\(2020\)INF2Rev1](#)
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7. Organisation of consultations with relevant stakeholders, including child participation**7.1 Organisation of consultations with stakeholders****7.2 Planning of child participation**Working documents

- Concept note on the organisation of consultations with stakeholders – [CJ/ENF-ISE\(2020\)11](#)
- Concept note on child participation: options for taking into account children’s views in the work of the CJ/ENF-ISE – [CJ/ENF-ISE\(2020\)12](#)
- Concept note on child consultations – [CJ/ENF-ISE\(2020\)13](#)

Reference documents

- [Council of Europe child participation approach](#)

8. Council of Europe Contribution to the UNCRC Day of general discussion on “children’s rights and alternative care”

Reference documents

- [Concept Note](#)
- Proposal for a possible contribution by the CDENF to the 2021 UN Day of General Discussion on “Children’s Rights and Alternative Care” - [CDENF\(2020\)24](#)

9. Dates of next meetings

10. Any other business

11. Adoption of the abridged meeting report
