



Strasbourg, 23 May 2022

CJ/ENF-ISE(2022)05

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

5th meeting, 2 to 4 May 2022

Item 7.2 : Hearing of stakeholders

Concept note

HEARING OF STAKEHOLDERS: DRAFT CONCEPT NOTE

Note by the secretariat

Background

Under the upcoming Irish Presidency of the Committee of Ministers, a conference touching upon selected issues regarding the rights of the child and their best interests in family proceedings will be organised in Dublin on October 3 - 5, with a high-level opening on 3rd October 2022. The conference will be followed by a 1-day hearing of selected stakeholders to enable relevant professionals and other stakeholder representatives to provide further input to the work of CJ/ENF-ISE, following which the CJ/ENF-ISE would hold its 6th meeting.

At its 5th meeting on 2-4 May 2022, the CJ/ENF-ISE examined the proposals for the preparation of a hearing of selected stakeholders and entrusted the Secretariat to finalise the concept note below in light of its discussion for submission to CDCJ and CDENF.

Background

1. The CJ/ENF-ISE decided that its working methods would enable an inclusive participation and consultation of a broad range of stakeholders as early as possible, taking into account the composition of the committee, as set out in its terms of reference, and the need to involve any other additional stakeholders where appropriate.
2. Before finalising the first reading of the draft instrument and initiating the written consultation of stakeholders on the draft text, it is proposed to organise a hearing of key stakeholders on selected issues which require further reflection and development in the draft recommendation.

Timeline

3. A 1-day hearing would be organised on 4 October 2022, following the conference (3 October) and before the 6th meeting of CJ/ENF-ISE (5 October).

Format

4. The CJ/ENF-ISE and selected stakeholders (see below) would be invited to attend in person the hearing. Other stakeholders could be invited to attend the event on-line (viewer access only) and to provide their comments during the written consultation which would follow the hearing.
5. The hearing would be divided into two sessions. Each session would be led by a moderator who would be responsible for directing the discussion, reframing the debate, and for the time management.

6. To facilitate the exchange of views and experiences in this area, selected speakers to each session would address the identified questions. Meaningful involvement of children in the event, as appropriate, would be further explored.
7. A rapporteur would be responsible for presenting concluding remarks at the end of the hearing. The rapporteur's report would be considered by the CJ/ENF-ISE in the drafting process and transmitted to CDCJ and CDENF for information.

Participants

8. Taking into consideration the time allotted for the hearing, the latter would involve up to 20 representatives from umbrella organisations, professional associations and international networks (judges, lawyers, family mediators, administrative authorities (social services), etc.), selected among the following ones :
 - ❖ Association internationale francophone des intervenants auprès des familles séparées (AIFI) ;
 - ❖ Child Friendly Justice European Network (CFJ-EN)
 - ❖ Council of Bars and Law Societies of Europe (CCBE)
 - ❖ Cross-Border Family Mediators (CBFM);
 - ❖ Defence for Children International (DCI);
 - ❖ Eurochild;
 - ❖ European Judicial Network (in civil and commercial matters);
 - ❖ European Judges and Public Prosecutors for Democracy and Fundamental Rights (MEDEL);
 - ❖ European Network of Ombudspersons for Children (ENOC);
 - ❖ European Federation of Psychologists' Associations (EFPA);
 - ❖ European Parents' Association (EPA);
 - ❖ European Disability Forum (EDF).
 - ❖ European Family Therapy Association (EFTA);
 - ❖ International Association of Youth and Family Judges and Magistrates (IAYFJM);
 - ❖ International Academy of Family Lawyers (IAFL);
 - ❖ International Hague Network of Judges (IHNJ);
 - ❖ International Federation of Social Workers (IFSW);
 - ❖ International Foster Care Organisation (IFCO) ;
 - ❖ International Mediation Centre for Family Conflict and Child Abduction (MIKK);
 - ❖ International Social Service (ISS);
 - ❖ Missing Children Europe;
 - ❖ Professional Association for Children's Guardians, Family Court Advisers and Independent Social Workers (NAGALRO);
9. The final selection of stakeholders will also depend on the specific subjects which will be addressed and taking into account the added value of their participation to the hearing as opposed to taking part in the written consultations that would follow the hearing.

Scope

10. The hearing is expected to add value to the scope of the draft recommendation and measures recommended. The discussion for each session would cover selected issues related to the best interests of the child and his/her rights in (1) parental separation situations and (2) care proceedings. As some issues might be equally applicable to both situations (e.g., right to be heard; child relocation), participants may be called upon to share their views on these issues from different angles and raise any other issues of concerns.
11. The issues below will be further refined prior to the organisation of the hearing:

Session 1: Protection of the best interests of the child and his/her rights in parental separation proceedings

- ❖ Consideration of the views of the child under undue influence or duress and appropriate safeguards.
- ❖ Consideration of the best interests of the child and his or her rights in case of breakdown of stepfamilies.
- ❖ Consideration of the best interests of the child and his or her rights in case of his/her relocation with one parent, including abroad.
- ❖ Implementation and enforcement of the decision in high-conflict parental separation.
- ❖ Consideration of the best interests of the child and his or her rights in cases of parental mediation and amicable separation.
- ❖ Consideration of the best interests of the child and his or her rights in situations involving babies and very young children.
- ❖ Consideration of the best interests of the child and his or her rights in specific cases, such as cases of alleged domestic violence or abuse.
- ❖ Special consideration for children and parents facing specific barriers/with specific needs.

Session 2: Protection of the best interests of the child and his/her rights in care proceedings

- ❖ How to ensure the child's right to be heard in care proceedings?
- ❖ What mechanism are most effective in representing the child's best interests during such proceedings?
- ❖ How to ensure that alternative placement is only used as a last resort?
- ❖ Consideration to be given where parental separation situations and childcare proceedings intersect in the context of high conflict parental situations.
- ❖ How can mediation/dialogue processes be used in care proceedings?
- ❖ How can the child's best interests and his or her rights be secured where he or she is placed in alternative care outside their country of habitual residence?
- ❖ How and by what means to support the exercise of parental responsibilities in relation to children in care?
- ❖ How to facilitate contact between parents and children (including siblings)?