



Strasbourg, 5 October 2022

CJ/ENF-ISE(2022)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)**

**6<sup>th</sup> Meeting, 4 – 5 October 2022**  
*Dublin, Ireland*

**Meeting report**

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### **Agenda item 1: Opening of the meeting and welcome**

1. The sixth 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, hereafter “the Committee”) was opened by Mr Seamus Carroll (Ireland), Chair of the Committee, who welcomed the participants.
2. The list of participants of the meeting is available on the [CJ/ENF-ISE's website](#).

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

3. The Committee adopted its draft agenda as it appears in the Appendix.

### **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 observations made by CDCJ at its 98<sup>th</sup> plenary meeting (1-3 June 2022) on CJ/ENF-ISE's progress and in particular on the need for the Committee to ensure that the issue of child relocation in the context of disputed parental separation is adequately integrated in the draft recommendation under preparation by the Committee;
  - the findings of the CDCJ [evaluation report on Recommendation CM/Rec\(2015\)4 of the Committee of Ministers to member States on preventing and resolving disputes on child relocation](#);
  - The requests from CDENF and CDCJ to examine the draft Recommendation at their respective next plenary meetings (CDENF: 15-17 November 2022; CDCJ: 23-25 November 2022) in view of providing guidance to the CJ/ENF-ISE to progress with the drafting process.

### **Agenda item 4: Election of CJ/ENF-ISE Chair and Vice-Chair**

5. The CJ/ENF-ISE elected by acclamation:

Chairperson: Mr Thomas Knoll-Biermann (Germany) – for a first one-year term of office.

Vice-chairperson: Ms Stéphanie Hébrard (France) - for a first one-year term of office.

### **Agenda item 5: Draft legal instrument on the protection of the best interests of the child and his/her rights in parental separation situations and/or care proceedings (*deliverable (1) – examination of the draft instrument*)**

6. The Committee examined and revised the operative part, the definitions and the common principles in the appendix of the draft recommendation (document CJ/ENF-ISE(2022)7 prov2) in the light of:
  - Written comments received from CJ/ENF-ISE members, participants and observers on the draft recommendation (version 3 June) – (document CJ/ENF-ISE(2022)08 Mos);
  - The recommendations made by children in the context of the child consultation (document CJ/ENF-ISE(2022)10);

- the outcome of the Conference Hear our voices – the rights and best interests of the child in parental separation and care proceedings” organised on 3 October 2022 under the Irish Presidency to the Committee of Ministers;
  - The outcome of the hearing of selected stakeholders held on the morning of 4 October 2022.
7. Regarding the structure of the draft Recommendation, the Committee had previously decided to present a single instrument, covering the best interests of the child in decisions on parental separation and care proceedings. Some members of the Committee still expressed concerns as to the feasibility of having a single instrument covering both situations due to the difference in public and private law proceedings. In this context, the Chair proposed to proceed with the drafting in a single instrument and to seek guidance from the steering Committees (CDCJ and CDENF).
8. The Committee considered, in particular, the following points to be further elaborated on:
- i. Mediation and alternative dispute resolution, safeguards in mediation, and the participation of children in mediation;
  - ii. The effective and meaningful participation of children in relevant proceedings regardless of their age;
  - iii. Giving the child a safe space to express themselves, including in situations of high conflict, and with regard to children in vulnerable situations that may not be able to express themselves (“quiet children”);
  - iv. Multidisciplinary and interagency approaches (such as the *Barnahus* model);
  - v. Avoiding gender bias when assessing the best interests of the child;
  - vi. Ensuring that information is provided to the child in a timely manner, taking into account factors such as the child’s psychological and emotional needs, heterogenic sources of information, empowerment through information, and the right of the child to express views, and the importance of receiving feedback;
  - vii. Child-friendly remedies of enforcement in the case of non-compliance with custodial decisions, providing appropriate information to parents on the implications of non-compliance, and ensuring appropriate settings for supervised contact;
  - viii. How to uphold the rights of children and determine their best interests in high-conflict situations;
  - ix. Appointing an independent guardian *ad litem* / advocate for children in high-conflict situations;
  - x. Situations of domestic violence;
  - xi. The benefits of having one single “comfort person” / person of trust to support the child throughout both separation and care proceedings;
  - xii. Infants and young children under the age of three that are involved in private law proceedings;
  - xiii. The transition between care-proceedings and adulthood and provision of after-care;
  - xiv. Balancing between the child’s right of confidentiality in the information they convey and the rules of fair procedure in court proceedings;
  - xv. How to recalibrate parental separation and care proceedings in the draft text (by strengthening the part on care proceedings); placement out of the home as a

- measure of last resort, preference for kinship care, ensuring adequate care facilities, and the right for a child to maintain meaningful contact with family, including siblings, friends, and foster parents;
- xvi. Preservation of cultural identity in care settings;
  - xvii. Mental health support and addressing stigma-related issues;
  - xviii. Peer support and child participation in monitoring processes;
  - xix. How to provide effective and meaningful training to professionals;
  - xx. Situations of relocation;
  - xxi. Cases concerning issues arising from cohabitation in the lives of infants and young children;
  - xxii. Ensuring access to legal aid in proceedings, including in mediation and ensuring there is enough awareness of legal aid.

9. With a view to progressing further with the draft Recommendation, the Committee invited the Secretariat to consider convening a meeting with the Chair and Vice-Chair, as soon as possible. In this respect, the Committee agreed that comments should be sent to the Secretariat on the text as revised, and on the specific parts on parental separation and care proceedings which had not yet been reviewed, by 21 October 2022.

10. In view of enriching the text of the draft Recommendation and of its Explanatory Memorandum, the Committee would welcome input from member States representatives in CDCJ and CDENF on existing national mechanisms, including best practices, to facilitate enforcement of decision in parental separation cases.

**Agenda item 6: Implementation tool(s) on the rights and the best interests of the child in parental separation and in care proceedings (*deliverable 2, agreement on the format and the scope of implementation tools*)**

11. The Committee exchanged views on the initial reflection paper prepared by the Secretariat on practical tools to be developed for practitioners (document CJ/ENF-ISE(2022)09). Should resources and timeframe allow, the Committee agreed to develop a series of guidelines/checklists to be used by judges and other relevant professionals.

12. In view of the elaboration of the practical tools, the following members agreed to act as rapporteur / reviewer of the practical tools and assist the consultant(s) before their submission for approval to CJ/ENF-ISE:

- Ms Stéphanie Hebrard, France, for guidelines/checklists for use in vocational training of judges;
- Ms Alma Benat, Croatia, for practical tools/checklists for social workers;
- Ms Bente Therese Bekkhus, Norway, for practical tools/checklists for care proceedings.

13. The Committee underlined the need for consulting relevant umbrella organisations and international networks of practitioners when elaborating the practical tools.

### **Agenda item 7: Child participation process and development of child friendly materials**

14. The Committee took note of the presentation of the report of the targeted child consultations carried out in three member states (Hungary, Italy and Portugal) (document CJ/ENF-ISE(2022)10) presented by Ms Barbara Németh, CJ/ENF-ISE consultant, in co-operation with national delegations.

15. The following, non-exhaustive key messages were expressed by the children that were consulted:

- Adults should think about the child's well-being and family in the first place, and care about the present too;
- Children need preparation for their involvement in a legal proceeding, both mentally and practically, to have their situation thoroughly explained to them by adults in a language that they can understand, and time to express their own concerns and questions;
- Children need a person to trust and turn to throughout the processes within proceedings. Their attitude, presence, accessibility and personality are factors of more importance than who these appointed persons are;
- Adults should hear the opinion of the child attentively, respectfully and with patience, and take them seriously;
- No argument or proposal can be generalised; an individual assessment is considered very important;
- Age and maturity are not the same.

16. The Committee expressed its appreciation of the children's input, and thanked Ms Németh and the national delegations who had supported the consultation process. The members of the Committee asked Ms Németh to warmly thank the children for having shared their views, to inform them about the way these views have been heard, and to let them know that these views will be discussed by the Committee as a very important element for the finalisation of the draft Recommendation and for the elaboration of its explanatory memorandum and implementation tools.

17. The Committee also exchanged views with Ms Németh on the child-friendly materials to be prepared by the Committee in 2023 and considered that the following tools could be helpful:

- Child-friendly comprehensive information tools on parental separation and care proceedings addressed to children that are involved in such proceedings, which outline the reasons for the proceedings; the child's role in the proceedings; the likely duration of the proceedings; the child's rights before, during, and after proceedings, and the services available to children to support them in this process;
- A child-friendly version of the Recommendation, to be prepared following the adoption of the Recommendation by the Committee of Ministers.

### **Agenda item 8: Update on key developments and other events by members and observers**

18. The Committee took note of the oral information provided by Mr Michel Grangeat, representative of the Council of Europe Conference of INGOs (CINGO), on the outcome of the webinar "Determining and Evaluating the Best Interests and Rights of Children in Parental Separation and Care Proceedings: exploring perspectives and best practices across Europe", held on 21 June 2022, as contained in the report on the event, available online on the dedicated [website](#).

19. The European Commission representative informed the Committee about:

- The new Practice Guide for the application of the Brussels IIb Regulation, adopted by the European Judicial Network, which entered into application on 1 August 2022, and is available on the [e-Justice portal](#). The guide is available in English, translations into other EU languages would follow soon;
- The high-level conference “What’s new in EU Family Law?”, hosted by the European Commission and the European Parliament on 8 September 2022, had the objective of drawing attention to the important changes introduced by the new Brussels IIb Regulation. It also was an opportunity for the participants to hear from experts in EU family law on the key changes introduced in the Brussels IIb Regulation and provided a forum for an exchange of views with legal practitioners on cross-border family disputes involving children in the European Union;
- The 14th European Forum on the rights of the child organised by the European Commission from 27 – 29 September 2022. This year’s theme was: “Bringing children to the centre: Empowering, protecting and including children”. The recording of the Plenary sessions can be found [here](#);
- The report of the webinar organised by CINGO (see point 18 above), would be circulated among the members of the European Judicial Network.

**Agenda item 9: Exchange of views on the future work programme and implementation of tasks in 2022-2023**

20. The Committee instructed the Secretariat to revise the proposed work programme, timetable and working methods of the Committee for 2022-2023 (as it appears in document CJ/ENF-ISE(2022)01Rev2) in line with the decisions taking during this meeting.

**Agenda item 10: Any other business**

21. No additional issues were raised.

**Agenda item 11: Date and place of next meeting**

22. The Committee took note that the next meeting of CJ/ENF-ISE would be held, in person, in Strasbourg on 6 – 8 March 2023.

**Agenda item 12: Approval of the meeting report**

23. The Committee approved this report at the end of the meeting.

**APPENDIX**  
**Agenda**  
**(4-5 October 2022)**

1.	<b>Opening of the meeting at 2.30 pm</b>	<u>Reference document</u> <ul style="list-style-type: none"> <li>• <a href="#">CJ/ENF-ISE(2022)LOP2</a></li> </ul>
2.	<b>Adoption of the agenda and order of business</b>	<u>Working documents</u> <ul style="list-style-type: none"> <li>• Draft agenda - CJ/ENF-ISE(2022)OJ2 prov</li> <li>• Draft annotated agenda - <a href="#">CJ/ENF-ISE(2022)OJ2 ANN</a></li> </ul>
3.	<b>Statement by the Chair and the Secretariat</b>	<u>Reference documents</u> <ul style="list-style-type: none"> <li>• Abridged Report of the 98th CDCJ plenary meeting - <a href="#">CDCJ(2022)18</a></li> <li>• Abridged Report of the 5th CDEF plenary meeting – <a href="#">CDEF (2022)AR02</a></li> </ul>
4.	<b>Elections of CJ/ENF-ISE Chair and Vice-Chair</b>	<u>Working document</u> <ul style="list-style-type: none"> <li>• Elections of Chair and Vice-Chairperson – <a href="#">CJ/ENF-ISE(2022)13</a></li> </ul>
5.	<b>Draft recommendation on the protection of the best interests of the child and his/her rights in parental separation situations and/or care proceedings</b> <i>(deliverable (1) – examination of the draft instrument)</i>	<u>Working document</u> <ul style="list-style-type: none"> <li>• Draft recommendation on the best interests of the child in parental separation situations and care proceedings – CJ/ENF-ISE(2022)07 prov2 (<i>restricted</i>)</li> </ul> <u>Reference documents</u> <ul style="list-style-type: none"> <li>• Compilation of comments from CJ/ENF-ISE on the draft recommendation (version - 3 June) - CJ/ENF-ISE(2022)08Mos (<i>restricted</i>)</li> <li>• Best interests of the child and children's rights in parental separation - relevant international and European instruments – <a href="#">CJ/ENF-ISE(2020)INF2Rev1</a></li> <li>• Best interests of the child in care proceedings - relevant international and European instruments - <a href="#">CJ/ENF-ISE(2020)INF3</a></li> <li>• Compilation of ECtHR case law – <a href="#">CJ/ENF-ISE(2022)INF01</a></li> </ul>
6.	<b>Implementation tool(s) on the rights and the best interests of the child in parental separation and in care proceedings</b> <i>(deliverable 2, agreement on the format and the scope of implementation tools)</i>	<u>Working document</u> <ul style="list-style-type: none"> <li>• Initial reflections on practical tools to be developed for practitioners - <a href="#">CJ/ENF-ISE(2022)09</a></li> </ul>
7.	<b>Child participation process and development of child friendly materials</b>	<u>Working document</u> <ul style="list-style-type: none"> <li>• Report of the child consultation process – <a href="#">CJ/ENF-ISE(2022)10</a></li> </ul> <u>Reference document</u> <ul style="list-style-type: none"> <li>• <a href="#">Council of Europe's child participation approach</a></li> </ul>

8.	Update on key developments and other events by members and observers	
9.	Exchange of views on the future work programme and implementation of tasks in 2022-2023	<u>Working document</u> • Working methods and workplan - <a href="#">CJ/ENF-ISE(2022)01 Rev1</a>
10.	Any other business	
11.	Date and place of next meetings	
12.	Approval of the meeting report	CJ/ENF-ISE(2022)PV2 prov.

### **GENERAL REFERENCE DOCUMENTS**

<a href="#">Terms of reference of the CJ/ENF-ISE 2022-2023</a>
Resolution <a href="#">CM/Res(2021)3</a> on intergovernmental committees and subordinate bodies, their terms of reference and working methods

### **MEETING REPORTS**

<a href="#">CDCJ&amp;CDENF/Bu(2021)PV1</a>	Report of the 2nd joint meeting of CDCJ and CDENF Bureaus
<a href="#">CJ/ENF-ISE(2022)PV1</a>	Report of the 5th meeting of the CJ/ENF-ISE
<a href="#">CJ/ENF-ISE(2021)PV2</a>	Report of the 4th meeting of the CJ/ENF-ISE
<a href="#">CJ/ENF-ISE(2021)PV1</a>	Report of the 3rd meeting of the CJ/ENF-ISE
<a href="#">CJ/ENF-ISE(2020)PV2</a>	Report of the 2nd meeting of the CJ/ENF-ISE
<a href="#">CJ/ENF-ISE(2020)PV1</a>	Report of the 1st meeting of the CJ/ENF-ISE

### **PREPARATORY WORKS**

<a href="#">Feasibility study on a legal instrument on the protection of the best interests of the child in situations of parental separation</a>
<a href="#">Feasibility study of a legal instrument on the 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</a>