

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 17 April 2023

CJ/ENF-ISE(2023)PV01

**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)

**7th Meeting (6 – 8 March 2023 in Strasbourg, and 24 March 2023 by
video-conference)**

Meeting report

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Agenda item 1: Opening of the meeting and welcome

1. The seventh 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 Thomas Knoll-Biermann (Germany), 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 decisions issued by both steering Committees (CDCJ and CDENF) at their respective plenary meetings in November 2022, namely:
 - that the CJ/ENF-ISE continues its work by drawing up two separate draft recommendations, one relating to parental separation, and the second one on care proceedings, thereby ensuring that one of them would be finalised by the Committee for approval by both steering Committees (CDCJ and CDENF) by the end of 2023 (parental separation) and the second one at its earliest convenience in 2024 (care proceedings);
 - that the Secretariat reviews the workplan of the CJ/ENF-ISE accordingly;
 - that both steering Committees will advise the Committee of Ministers on the need to extend the terms of reference of the CJ/ENF-ISE up to the end of 2024.
5. One member expressed his regret that the Committee would not pursue the work on one hybrid legal instrument with common principles for both parental separation and care proceedings and stressed the need for these new instruments to signal an ambitious level of protection for children’s rights and their best interests in these proceedings.
6. The Committee agreed to adopt a harmonised approach when elaborating the two separate legal instruments and principles contained therein. It affirmed its intention to complete the first instrument swiftly, noting that written consultations of CDCJ, CDENF and of relevant stakeholders, including representatives of relevant groups of civil society, were an important element of the process.
7. The Chair and the Committee members expressed their gratitude to Seamus S. Carroll (Ireland) for his dedicated work as first Chair of CJ/ENF-ISE.

Agenda item 4: Exchange of views on the future work programme and implementation of tasks in 2023 and beyond

8. The Committee examined and approved its revised work programme, timetable and working methods (document CJ/ENF-ISE(2023)01), subject to extension of its mandate by the Committee of Ministers until the end of 2024.

Agenda item 5: Draft recommendation on the protection of the best interests of the child and his/her rights in parental separation situations and its explanatory memorandum (deliverable (1) of the terms of reference)

❖ Draft recommendation

9. The Committee examined and revised the preliminary Draft recommendation on the protection of the best interests of the child and his or her rights in parental separation proceedings, (document CJ/ENF-ISE(2023)02) prepared by a small working group of some members (Chair, Vice-Chair, Croatia and Norway) in the light of written comments received from CJ/ENF-ISE (document CJ/ENF-ISE(2023)03 Mos) and oral observations made during the meeting.

Preamble

10. The Committee agreed to:
- refer to the ECHR and UNCRC and their respective additional protocols in Recital D and refer to other relevant international and European legal instruments in the Explanatory Memorandum (EM);
 - to include a provision on the important role of civil society in supporting children, parents and families (Recital G);
 - to include the term “or, where required by law, the paramount consideration” in the wording of Recital H and throughout the text, where appropriate, and to address this issue in the EM.

Appendix

Definitions and scope

11. The Committee agreed to:
- incorporate the content of the definition of “parental separation proceedings” and “parental separation situations” in the scope and delete these definitions;
 - that the wording of the definition on “contact” also covers persons with whom the child is not living with;
 - delete the definition of “guardian” and “domestic violence”.

Overarching principles

12. The Committee examined the overarching principles and agreed:
- to include with respect to “Rule of law” (C.) wording referring to due process standards; and
 - with respect to “Timeliness” (E.), that the EM should explain the term “exceptional diligence” and that in rare instances, delays might be for the benefit of the child.

Child’s best interests’ assessment

13. The Committee agreed:
- to include in the list of factors the “child’s usual day-to-day activities and hobbies”; “the child’s culture and identity” (lit. i and j);

- to refer to the child developmental needs in the list (see lit. h);
- to include in the list of factors the “history of child’s upbringing and care” (lit. e) and that the EM should consider existing practices and clarify that this factor should not be applied in a way which could lead to a discriminative treatment of a parent, especially for those who have been prevented from participating in the child’s upbringing or denied contact by the other parent.

14. The Committee took note of remarks from an observer state addressing the issue that a lack of parents’ resources should not affect decisions on contact or custody.

15. The Committee also convened to include in this section principles relating to children or parents with disabilities (principle 5); custody and contact (principle 6) and supervised contact (principle 7).

Right to be heard

16. The Committee emphasised the importance of the right to be heard, not only as a procedural safeguard, but as a right, warranting its placement in a separate section. It agreed that the EM should:

- refer to existing good practices on the right of the child to express his or her views (principle 10);
- clarify that not all situations might warrant the child’s view to be ascertained and conveyed by a representative and provide examples (principle 12);
- provide examples of children in “need of assistance to express their views” (principle 12);
- emphasis that the child’s view is an important element among others to be taken into in the decision and that the child should not be considered responsible for the competent authority's decision;
- address the term “child-friendly environment” and provide example of good practices (principle 18);
- address in further details ways of communicating the summary report to the parent bearing in mind the protection of the child and aspects of procedural fairness.

17. The Committee further agreed not to refer to an inquiry by the child to be heard in principle 11 and agreed instead to encourage member states to review regularly existing minimum age limits for hearing a child.

Right to information and assistance

18. The Committee agreed to:

- refer in on the need to inform the child, where relevant, on access to appeal and complaint mechanisms (principle 23);
- introduce a provision establishing the child’s right to receive independent support and legal advice (principle 24) and addressing the relationship of the legal instrument with the Committee of Ministers’ Child-Friendly Justice Guidelines in the EM;
- that the EM should clarify that the modalities of implementation of the rights to a separate legal representative and *a guardian ad litem* to the discretion of member states.

Emergency and interim measures

19. The Committee agreed to:
- refer to “imminent” risk to health or safety of the child in case of emergency and interim measures (principle 33);
 - to specify in the EM that interim of emergency measures on contact between a child and his or her parent concern in particular cases where a child is at risk of abuse or harm by a parent (principle 35).

Preventive and alternative dispute resolution mechanisms

20. The Committee agreed that the EM should:
- provide examples of alternative dispute resolution processes usually not governed by rules on mediation (principle 42);
 - refer to the Istanbul convention (CETS No. 200) and make reference to safeguards in this context (principles 43 and 44);
 - underline that mediation should be available at any time (principle 46);
 - emphasise on the role of mediators or other professionals involved to inform parents on their need to focus on the best interests of the child and their primary responsibility for the welfare of their child, including the need for them to inform and consult their child (principle 47).
 - further develop the concept of confidentiality in alternative dispute resolution processes, in particular where disclosure should be permitted (principle 50).

Implementation and Enforcement

21. The Committee agreed that the EM should:
- refer to good practices on compliance with decisions such as ex-post mediation in the enforcement phase (principle 51);
 - emphasise on the need to implement or enforce a decision in a child-friendly manner and refers carefully to possible intervention of law enforcement agencies as a measure of last resort (principle 54).

Specific situations / relocation

22. The Committee examined the sub-section on specific situations and agreed to:
- delete the specific part and reference to “Domestic violence”, including its definition, to avoid inconsistencies with other relevant standards in the area, apart from its potential effect on parents’ capacity to reach a mutual agreement (principle 44);
 - delete the specific part on “persons with disabilities” and address this issue, where relevant, in the EM (see in particular overarching principle on “non-discrimination” and principle 5);
 - delete the specific part on “High conflict separation” and refers, where relevant, throughout the text (see in particular principles 31-33); avoid implying a direct link between parental separation and care proceedings by referring to protective measures (principle 32);

23. The Committee agreed to rename the sub-section on “specific situations” by “relocation” as it convened to delete all other specific situations (see § above).

24. Regarding "Relocation", the Committee took note of the complexity of finding a balance between the legitimate interests of parents in being able to relocate and the interest of the child to preserve existing social relationships. It agreed that the EM should further develop the term “relocation” in line with Recommendation CM/Rec(2015)4 on preventing and resolving disputes on child relocation.

25. An observer state invited the Committee to consider the need for international legal co-operation in cross-border cases, particularly in the context of irregular migration or in case one parent is a national of a country which is not a party to relevant international treaties.

26. The Committee agreed to consult, in May-June 2023, CDCJ and CDEFN delegations as well as selected stakeholders on the draft recommendation accompanied with its preliminary draft explanatory memorandum as it appears in document CJ/ENF-ISE(2023)04.

❖ Preliminary draft explanatory memorandum

27. Due to lack of time, the Committee did not have the opportunity to examine the preliminary draft EM (document CJ/ENF-ISE(2023)02 ADD) prepared by Ms Daja Wenke, consultant to CJ/ENF-ISE, and agreed to send written comments, accompanied by drafting proposals and national practice examples, where available, during the consultation process mentioned above.

Agenda item 6: Draft recommendation on the rights and the best interests of the child in care proceedings (deliverable (1) of the terms of reference)

28. The Chair recalled relevant issues identified by the Committee during its last meeting to be covered by the legal instrument, notably the questions of:

- providing the child with a safe space to express itself;
- multidisciplinary and interagency approaches;
- situations of domestic violence;
- the benefits of having a “comfort person” for the child throughout the proceedings;
- the transition between care-proceedings and adulthood as well as aftercare;
- placement out of home as a measure of last resort and preferred kinship care;
- the child’s right to maintain meaningful contact with family while in care;
- preservation of cultural identity;
- mental health support and stigma-related issues;
- peer support and participation in monitoring processes;
- relocation while in care;
- training and legal aid.

29. Several members stressed the importance of addressing relocation aspects in care proceedings, in particular on the challenges connected to cross-border relocation.

30. The Committee further discussed whether cases of criminal behaviour of children below the minimum age of criminal liability, resulting in their placement in care, should be addressed. Conscious of the boundaries of its mandate, the Committee provisionally agreed that this issue should be dealt with only to the extent that children are below said age limit and where the case is thus not handled by criminal justice systems.

Agenda item 7: Child participation process and development of child friendly materials and other implementing tools (deliverable (2) of the terms of reference)

31. Considering the revised workplan, the Committee convened to postpone this item to its next meeting.

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

32. The Committee took note of the following information provided by participants and observers:

- by the representative of the Council of Europe Conference of INGOs (CINGO) on two events to be organised this year by the Civil Society Committee on the Rights of the Child (CSC-RC) CINGO: a workshop on children's hearing and participation based on the Portuguese Project 12 to be held in May and a webinar on children in migration based on the examples of Cyprus and Ukraine to be held in the autumn.
- by the representative of the European Commission (EC) on work in the area of the rights of the child. The EC indicated that on 26 January 2023, it launched an infringement procedure against Poland (INFR(2021)2001) for failure to fulfil obligations following from the Brussels IIa Regulation to recognise and speedily and effectively enforce judgments ordering the return of abducted children to other EU Member States, setting Poland a two months' time-limit to reply to the EC's letters of formal notice and take the necessary measures to remedy the identified breach of EU law. It was also highlighted that the ruling of the European Court of Justice in case C-638/22 PPU *Rzecznik Praw Dziecka and Others*, which is yet to be implemented by the referring court and the Polish authorities, clarified that Article 11(3) of the Brussels IIa Regulation precludes the national authorities from being able, without needing to provide justification, to obtain the suspension of a final decision requiring the return of a child in accordance with the Polish legislation in question (Article 388, paragraph 1 of the Polish Code of Civil Procedure), which applies since 24 June 2022. The EC also updated the Committee on its initiative to support the development and strengthening of integrated child protection systems and to promote children's participation through mechanisms at local, national and EU level and through a Children's Participation Platform. Support to Ukrainian children and to the authorities is being provided through a range of initiatives, such as in the area of civil judicial cooperation,¹ a political statement on the protection of displaced children from Ukraine following Russia's war of aggression against Ukraine, a pilot project on deinstitutionalisation and support activities for central authorities designated under the 1980 and 1996 Hague Conventions. Furthermore, the EC spoke of the priorities of the Swedish Presidency of the Council of the EU, notably of the process ahead regarding the proposed directive on combating violence against women and domestic violence, as

¹ [European e-Justice Portal - Children from Ukraine – civil judicial cooperation \(europa.eu\).](https://european-council.europa.eu/media/en/press-operations/press-conferences/2023/01/23-01-2023-10-10-11-12-13-14-15-16-17-18-19-20-21-22-23-24-25-26-27-28-29-30-31-32-33-34-35-36-37-38-39-40-41-42-43-44-45-46-47-48-49-50-51-52-53-54-55-56-57-58-59-60-61-62-63-64-65-66-67-68-69-70-71-72-73-74-75-76-77-78-79-80-81-82-83-84-85-86-87-88-89-90-91-92-93-94-95-96-97-98-99-100-101-102-103-104-105-106-107-108-109-110-111-112-113-114-115-116-117-118-119-120-121-122-123-124-125-126-127-128-129-130-131-132-133-134-135-136-137-138-139-140-141-142-143-144-145-146-147-148-149-150-151-152-153-154-155-156-157-158-159-160-161-162-163-164-165-166-167-168-169-170-171-172-173-174-175-176-177-178-179-180-181-182-183-184-185-186-187-188-189-190-191-192-193-194-195-196-197-198-199-200-201-202-203-204-205-206-207-208-209-210-211-212-213-214-215-216-217-218-219-220-221-222-223-224-225-226-227-228-229-230-231-232-233-234-235-236-237-238-239-240-241-242-243-244-245-246-247-248-249-250-251-252-253-254-255-256-257-258-259-260-261-262-263-264-265-266-267-268-269-270-271-272-273-274-275-276-277-278-279-280-281-282-283-284-285-286-287-288-289-290-291-292-293-294-295-296-297-298-299-300-301-302-303-304-305-306-307-308-309-310-311-312-313-314-315-316-317-318-319-320-321-322-323-324-325-326-327-328-329-330-331-332-333-334-335-336-337-338-339-340-341-342-343-344-345-346-347-348-349-350-351-352-353-354-355-356-357-358-359-360-361-362-363-364-365-366-367-368-369-370-371-372-373-374-375-376-377-378-379-380-381-382-383-384-385-386-387-388-389-390-391-392-393-394-395-396-397-398-399-400-401-402-403-404-405-406-407-408-409-410-411-412-413-414-415-416-417-418-419-420-421-422-423-424-425-426-427-428-429-430-431-432-433-434-435-436-437-438-439-440-441-442-443-444-445-446-447-448-449-450-451-452-453-454-455-456-457-458-459-460-461-462-463-464-465-466-467-468-469-470-471-472-473-474-475-476-477-478-479-480-481-482-483-484-485-486-487-488-489-490-491-492-493-494-495-496-497-498-499-500-501-502-503-504-505-506-507-508-509-510-511-512-513-514-515-516-517-518-519-520-521-522-523-524-525-526-527-528-529-530-531-532-533-534-535-536-537-538-539-540-541-542-543-544-545-546-547-548-549-550-551-552-553-554-555-556-557-558-559-560-561-562-563-564-565-566-567-568-569-570-571-572-573-574-575-576-577-578-579-580-581-582-583-584-585-586-587-588-589-590-591-592-593-594-595-596-597-598-599-600-601-602-603-604-605-606-607-608-609-610-611-612-613-614-615-616-617-618-619-620-621-622-623-624-625-626-627-628-629-630-631-632-633-634-635-636-637-638-639-640-641-642-643-644-645-646-647-648-649-650-651-652-653-654-655-656-657-658-659-660-661-662-663-664-665-666-667-668-669-670-671-672-673-674-675-676-677-678-679-680-681-682-683-684-685-686-687-688-689-690-691-692-693-694-695-696-697-698-699-700-701-702-703-704-705-706-707-708-709-710-711-712-713-714-715-716-717-718-719-720-721-722-723-724-725-726-727-728-729-730-731-732-733-734-735-736-737-738-739-740-741-742-743-744-745-746-747-748-749-750-751-752-753-754-755-756-757-758-759-760-761-762-763-764-765-766-767-768-769-770-771-772-773-774-775-776-777-778-779-780-781-782-783-784-785-786-787-788-789-790-791-792-793-794-795-796-797-798-799-800-801-802-803-804-805-806-807-808-809-810-811-812-813-814-815-816-817-818-819-820-821-822-823-824-825-826-827-828-829-830-831-832-833-834-835-836-837-838-839-840-841-842-843-844-845-846-847-848-849-850-851-852-853-854-855-856-857-858-859-860-861-862-863-864-865-866-867-868-869-870-871-872-873-874-875-876-877-878-879-880-881-882-883-884-885-886-887-888-889-890-891-892-893-894-895-896-897-898-899-900-901-902-903-904-905-906-907-908-909-910-911-912-913-914-915-916-917-918-919-920-921-922-923-924-925-926-927-928-929-930-931-932-933-934-935-936-937-938-939-940-941-942-943-944-945-946-947-948-949-950-951-952-953-954-955-956-957-958-959-960-961-962-963-964-965-966-967-968-969-970-971-972-973-974-975-976-977-978-979-980-981-982-983-984-985-986-987-988-989-990-991-992-993-994-995-996-997-998-999-1000)

well as the EU accession process to the Istanbul Convention (CETS No. 210), indicating that it could possibly be finalised at the JHA Council meeting on 9 June 2023. Last, the EC briefly spoke about the Commission's proposal for a Council regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood, issued on 7 December 2022.

Agenda item 10: Any other business

33. None

Agenda item 11: Date and place of next meeting

34. The Committee took note that the next meeting of CJ/ENF-ISE would be held, in person, in Strasbourg on 4th-6th October 2023.

Agenda item 12: Approval of the meeting report

35. The Committee agreed to approve the draft meeting report by written procedure.

APPENDIX

Agenda and order of business (6-8 March and 24 March 2023)

1.	Opening of the meeting	<u>Reference document</u> <ul style="list-style-type: none"> • CJ/ENF-ISE(2023)LoP1
2.	Adoption of the agenda and order of business	<u>Working documents</u> <ul style="list-style-type: none"> • Draft agenda - CJ/ENF-ISE(2023)OJ1 prov • Draft annotated agenda – CJ/ENF-ISE(2023)OJ1 ANN prov
3.	Statement by the Chair and the Secretariat	<u>Reference documents</u> <ul style="list-style-type: none"> • Abridged Report of the 99th CDCJ plenary meeting – CDCJ(2022)39 • Abridged Report of the 6th CDEFN plenary meeting – CDEFN(2022)AR03
4.	Exchange of views on the future work programme and implementation of tasks in 2023 and beyond	<u>Working document</u> <ul style="list-style-type: none"> • Working methods and workplan – CJ/ENF-ISE(2023)01
5.	Draft recommendation on the protection of the best interests of the child and his/her rights in parental separation situations and its explanatory memorandum (deliverable (1) of the terms of reference)	<u>Working documents</u> <ul style="list-style-type: none"> • Preliminary Draft Recommendation on parental separation (revised working document – CJ/ENF-ISE (2023)04 prov (<i>restricted</i>)) • Preliminary Draft recommendation on the best interests of the child in parental separation situations – CJ/ENF-ISE(2023)02 (<i>restricted</i>) • Preliminary Draft recommendation – Compilation of comments – CJ/ENF-ISE(2023)03Mos (<i>restricted</i>) • Preliminary Draft Explanatory Memorandum – CJ/ENF-ISE(2023)02 ADD (<i>restricted</i>) <u>Reference documents</u> <ul style="list-style-type: none"> • Draft recommendation on the best interests of the child in parental separation situations and care proceedings – CJ/ENF-ISE(2022)07 prov3 (<i>restricted</i>) • Compilation of comments from CJ/ENF-ISE on the draft legal instrument, following the 6th meeting (4-5 October 2022) – CJ/ENF-ISE(2022)16Mos (<i>restricted</i>) • Compilation of ECtHR case law – CJ/ENF-ISE(2022)INF1
6.	Draft recommendation on the rights and the best interests of the child in care proceedings (deliverable (1) of the terms of reference)	

7.	Child participation process and development of child friendly materials and other implementing tools (<i>deliverable (2) of the terms of reference</i>)
8.	Update on key developments and other events by members and observers
9.	Any other business
10.	Date and place of next meetings
11.	Approval of the meeting report

ORDER OF BUSINESS

Date	Time (UTC+1)	Agenda items
6 March 2023	Morning 09.30 am -12.30 pm	Items 1, 2, 3, 4
	Afternoon 2.00 pm - 5.00 pm	Item 5
7 March 2023	Morning 09.30 am - 12.30 pm	Item 5 (continued)
	Afternoon 2.00 pm - 5.00 pm	Item 5 (continued)
8 March 2023	Morning 09.00 am -12.00 pm	Items 5 (continued), 8
	Afternoon 1.30 pm - 4.30 pm	Item 5 (continued)
24 March 2023 (online)	Morning 09.30 am -12.30 pm	Item 5 (continued)

<p align="center">24 March 2023 (online)</p>	<p>Afternoon 2.00 pm – 5.00 pm</p>	<p>Items 5 (continued), 7,9,10,11</p>
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GENERAL REFERENCE DOCUMENTS

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

MEETING REPORTS

<p>CDCJ&CDENF/Bu(2021)PV1</p>	<p>Report of the 2nd joint meeting of CDCJ and CDENF Bureaus</p>
<p>CJ/ENF-ISE(2022)15</p>	<p>Report of the Stakeholder hearing</p>
<p>CJ/ENF-ISE(2022)PV2</p>	<p>Report of the 6th meeting of the CJ/ENF-ISE</p>
<p>CJ/ENF-ISE(2022)PV1</p>	<p>Report of the 5th meeting of the CJ/ENF-ISE</p>
<p>CJ/ENF-ISE(2021)PV2</p>	<p>Report of the 4th meeting of the CJ/ENF-ISE</p>
<p>CJ/ENF-ISE(2021)PV1</p>	<p>Report of the 3rd meeting of the CJ/ENF-ISE</p>
<p>CJ/ENF-ISE(2020)PV2</p>	<p>Report of the 2nd meeting of the CJ/ENF-ISE</p>
<p>CJ/ENF-ISE(2020)PV1</p>	<p>Report of the 1st meeting of the CJ/ENF-ISE</p>

PREPARATORY WORKS

<p>Feasibility study on a legal instrument on the protection of the best interests of the child in situations of parental separation</p>
<p>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</p>
<ul style="list-style-type: none"> • Best interests of the child and children's rights in parental separation - relevant international and European instruments – CJ/ENF-ISE(2020)INF2Rev1 • Best interests of the child in care proceedings - relevant international and European instruments - CJ/ENF-ISE(2020)INF3