

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 5 April 2024

CJ/ENF-ISE(2024)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)**

9th Meeting (20-22 March 2024, Strasbourg)

Meeting report

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Item 1: Opening of the meeting

1. The 9th 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 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](#).

Item 2: Adoption of the agenda and order of business

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

Item 3: Statement by the Chair and the Secretariat

4. The Committee welcomed the joint approval, on 17 November 2023, by the CDCJ and CDENF plenaries of the draft recommendation on the protection of the rights and best interests of the child in parental separation proceedings and adoption of its draft explanatory memorandum. The Committee took further note of the timeline for the adoption of both recommendations by the Committee of Ministers in the beginning of 2025 as one package given the linkages between the two recommendations.

Item 4: Draft recommendation on the protection of the rights and best interests of the child in care proceedings (*deliverable (1) of the terms of reference*)

5. The Committee reviewed the draft recommendation on the protection of the rights and the best interests of the child in care proceedings (document CJ/ENF-ISE(2024)02 prov.) and its draft explanatory memorandum (document CJ/ENF-ISE(2024)03 prov.), taking due account of the written comments received from CJ/ENF-ISE members, participants and observers in advance of the meeting (documents CJ/ENF-ISE(2024)04Mos and CJ/ENF-ISE(2024)06Mos).
6. The Committee paid particular attention to the need to align the text of the draft recommendation with that of the draft recommendation on parental separation proceedings as approved by the two parent Committees (CDCJ(2023)28/CDENF(2023)25) for all common issues, and to make adjustments only where the specificities of care proceedings justified it. Furthermore, it decided that the structure of the draft recommendation should follow as closely as possible that of the draft recommendation on parental separation so as to ensure coherence between the two instruments.

❖ Draft recommendation

7. The Committee:
 - Exchanged on the scope of the recommendation, and agreed to limit it to cases where placement in care is under consideration or where the monitoring of the situation of the child at home is at stake;
 - Decided to place the right to respect for private and family life as the first overarching principle of the draft recommendation;
 - Agreed to include an overarching principle on the right to development;

- Discussed about the role of the legal representative, the guardian [ad litem] and the person of support for the child during care proceedings, and agreed to delete the reference to “guardian ad litem” and to keep provisions flexible to seek compatibility with all national legal contexts.
 - Exchanged on the role of alternative dispute resolution mechanisms in the context of care proceedings in different member States and agreed to keep the text general in order to accommodate different national practices.
 - Agreed to strengthen the provisions on care proceedings involving the placement of children in another jurisdiction in the draft recommendation, including by highlighting the important role of the guardian in such context, and decided to exclude cases involving a transfer of jurisdiction from the scope of the instrument.
 - Agreed that the structure of the document should be simplified and aligned as far as possible to the structure of the draft recommendation on parental separation, notably by moving the Chapter on the child’s right to be heard further up in the text and to group all provisions relevant to decision-making and review together.
8. The Committee agreed on a revised text of the draft recommendation and decided to form and entrust a drafting group consisting of the Chair, the Vice-Chair, selected members of the group, the consultant and the Secretariat with finalising the revision of the text during an online meeting to be held on 26 April 2024 before its subsequent submission to the CDCJ, CDENF and selected stakeholders for written consultation.

❖ Draft explanatory memorandum

9. Having carefully examined all written comments, the Committee agreed to explain in the draft explanatory memorandum where the text of the draft recommendation on care proceedings on common issues differs from the text of the draft recommendation on parental separation proceedings.

10. In view of the current extensive length of the draft explanatory memorandum, the Committee instructed the Secretariat, in coordination with the Chair, to propose a revised, shortened version for examination during the upcoming online meeting.

Item 5: Implementation tools on the protection of the rights and best interests of the child in parental separation and in care proceedings (deliverable (2) of the terms of reference)

11. The Committee held an exchange with the consultant, Nuala Mole, who presented preliminary draft implementation tools in the form of checklists for policy makers, court administrators and mediators on the protection of the rights and the best interests of the child in parental separation proceedings. The Committee agreed that, considering the short time available, priority should remain the finalisation of the draft recommendation on care proceedings and any implementation tool should be as concise and practical as possible.

12. The Committee was informed by the CEPEJ Working Group on Quality of Justice (CEPEJ/GT-QUAL) of the intention of the latter to develop toolkits on access to justice for vulnerable groups, starting with toolkits for all legal professionals on how to implement the Council of Europe standards on children’s access to justice.

Item 6: Exchange of views on the future work programme and implementation of tasks in 2024

13. The Committee examined and approved its revised work programme, timetable and working methods for 2024 (document ENF-ISE(2024)01prov) and agreed to prioritise finalising the draft Recommendation and draft Explanatory Memorandum over the preparation of implementation tools. The Committee also proposed the organisation of an event to ensure appropriate visibility of both Recommendations following their adoption by the Committee of Ministers.

Item 7: Update on key developments and other events by members and observers

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

- An update of current activities of the Conference of INGO's, notably regarding the elections to be held in April and the future work of the Committee on the rights of children and adolescents (to be created), focusing on support for the work of Council of Europe in relation to priorities for children and adolescents, particularly those who are most marginalised by poverty, discrimination and other structural disadvantages, access to services, opportunities and civil society participation for all ages.
- An update of current activities of the European Commission, in particular the on-going work on a Parenthood Proposal, which received a positive opinion by the European Parliament in December 2023 and is pending adoption by the Commission; the draft Commission Recommendation on integrated child protection systems, to be adopted in April 2024; and the functioning of the EU Children's Participation Platform. A more comprehensive document with updates from the European Commission was circulated separately.

Item 8: Any other business

15. Participants raised no other business.

Item 9: Date and place of next meeting

16. The Committee took note that the following dates:

- 26 April 2024 Informal online meeting of CJ/ENF-ISE
- 14-16 October 2024 (Strasbourg): 10th CJ-ENF-ISE meeting
- 4 December 2024 (Strasbourg/hybrid): joint session of CDENF and CDCJ for adoption/approval of the remaining CJ/ENF-ISE deliverables.

Item 10: Approval of the meeting report

17. The Committee adopted the report in written proceedings.

APPENDIX**Agenda****20-22 March 2024**

1.	Opening of the meeting	<u>Reference document</u> <ul style="list-style-type: none"> • CJ/ENF-ISE(2024)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(2024)OJ1prov2 • Annotated draft agenda - CJ/ENF-ISE(2024)OJ1ANN
3.	Statement by the Chair and the Secretariat	<u>Reference documents</u> <ul style="list-style-type: none"> • Report of the 101st CDCJ plenary meeting – CDCJ(2023)32 • Report of the 8th CDENF plenary meeting – CDENF(2023)PV03
4.	Draft recommendation on the protection of the rights and best interests of the child in care proceedings and its draft explanatory memorandum <i>(deliverable (1) of the terms of reference)</i>	<u>Working documents</u> <ul style="list-style-type: none"> • Draft recommendation on the protection of the rights and best interests of the child in care proceedings (version 2) – CJ/ENF-ISE(2024)02 (<i>restricted</i>) • Draft Explanatory Memorandum (version 2) – CJ/ENF-ISE(2024)03 (<i>restricted</i>) • Compilation of comments received on the draft recommendation and its draft EM (version 1) – CJ/ENF-ISE(2024)04 Mos (<i>restricted</i>) • Compilation of comments received on the draft recommendation and its draft EM (version 2) – CJ/ENF-ISE(2024)06 Mos (<i>restricted</i>) <u>Reference documents</u> <ul style="list-style-type: none"> • Draft recommendation on the protection of the rights and best interests of the child in care proceedings (version 1) – CJ/ENF-ISE(2023)09 (<i>restricted</i>) • Draft Explanatory Memorandum (version 1, exists in English only) – CJ/ENF-ISE(2023)10 (<i>restricted</i>) • Draft recommendation on the protection of the rights and the best interests of the child in parental separation proceedings – CDCJ(2023)28/CDENF(2023)25 (<i>restricted</i>) • Explanatory Memorandum to the Draft recommendation on the protection of the rights and the best interests of the child in parental separation proceedings -

		CDCJ(2023)29/CDENF(2023)26 (restricted)
5.	Implementation tools on the protection of the rights and best interests of the child in parental separation and in care proceedings (<i>deliverable (2) of the terms of reference</i>)	<p><u>Working documents</u></p> <ul style="list-style-type: none"> Preliminary draft implementation tool(s) on the protection of the rights and the best interests of the child in parental separation proceedings – CJ/ENF-ISE(2024)05 (restricted) <p><u>Reference documents</u></p> <ul style="list-style-type: none"> Initial reflections on practical tools to be developed for practitioners (CJ/ENF-ISE(2022)09) Draft recommendation on the protection of the rights and the best interests of the child in parental separation proceedings – CDCJ(2023)28/CDENF(2023)25 (restricted) Explanatory Memorandum to the Draft recommendation on the protection of the rights and the best interests of the child in parental separation proceedings - CDCJ(2023)29/CDENF(2023)26 (restricted)
6.	Exchange of views on the future work programme and implementation of tasks in 2024	<p><u>Working document</u></p> <ul style="list-style-type: none"> Working methods and workplan for 2024 – CJ/ENF-ISE(2024)01 prov. <p><u>Reference document</u></p> <ul style="list-style-type: none"> Terms of reference of the CJ/ENF-ISE 2024
7.	Update on key developments and other events by members and observers	
8.	Any other business	
9.	Date and place of next meeting	
10.	Approval of the meeting report	<ul style="list-style-type: none"> Draft meeting report - CJ/ENF-ISE(2024)PV01 prov.

ORDER OF BUSINESS

Date	Time (UTC+1)	Agenda items
20 March 2024	Morning 09.30 am -1.00 pm	Items 1, 2, 3, 4
	Afternoon 2.30 pm - 6.00 pm	Item 4 (continued)
21 March 2024	Morning 09.00 am - 12.30 pm	Item 4 (continued)
	Afternoon 2.00 pm - 5.30 pm	Item 4 (continued)
22 March 2024	Morning 09.00 am -12.30 pm	Items 4 (continued), 5
	Afternoon 2.00 pm – 5.00 pm	Items 6, 7, 8, 9, 10

GENERAL REFERENCE DOCUMENTS

Terms of reference of the CJ/ENF-ISE 2024
Resolution CM/Res(2021)3 on intergovernmental committees and subordinate bodies, their terms of reference and working methods

REPORTS

CJ/ENF-ISE(2022)10	Summary report on child consultations
CJ/ENF-ISE(2022)15	Report of the Stakeholder hearing
CJ/ENF-ISE(2023)PV2	Report of the 8 th meeting of the CJ/ENF-ISE
CJ/ENF-ISE(2023)PV1	Report of the 7 th meeting of the CJ/ENF-ISE
CJ/ENF-ISE(2022)PV2	Report of the 6 th meeting of the CJ/ENF-ISE
CJ/ENF-ISE(2022)PV1	Report of the 5 th meeting of the CJ/ENF-ISE
CJ/ENF-ISE(2021)PV2	Report of the 4 th meeting of the CJ/ENF-ISE
CJ/ENF-ISE(2021)PV1	Report of the 3 rd meeting of the CJ/ENF-ISE
CJ/ENF-ISE(2020)PV2	Report of the 2 nd meeting of the CJ/ENF-ISE
CJ/ENF-ISE(2020)PV1	Report of the 1 st meeting of the CJ/ENF-ISE

CDCJ&CDENF/Bu(2021)PV1	Report of the 2nd joint meeting of CDCJ and CDENF Bureaus
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PREPARATORY WORKS

Feasibility study on a legal instrument on the protection of the best interests of the child in situations of parental separation
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
<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

ECHR case-law

ECHR case-law relating to the child's best interest in care proceedings (June 2022-February 2024)
ECHR Knowledge Sharing platform (ECHR-KS)
Right of the child to be heard in domestic proceedings on family matters (31/08/2023)
Guide on Article 8 ECHR (31/08/2023)