

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 16 October 2024

CJ/ENF-ISE(2024)PV02

**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)**

**10<sup>th</sup> meeting (14-16 October 2024, Strasbourg)**

**Meeting report**

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### **Item 1: Opening of the meeting**

1. The 10<sup>th</sup> 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 to this final meeting of the Committee.
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 I.

### **Item 3: Statement by the Chair and the Secretariat**

4. Regina Jensdottir, Head of the Children’s Rights Division, congratulated the experts on the remarkable progress achieved, and informed them about preparations towards a launch event of the two Recommendations, once adopted by the Committee of Ministers, together with its first implementation tools, during one of the upcoming presidencies to the Committee of Ministers, as a kick-off to the process of implementation.
5. The Committee was further informed on the first steps undertaken towards the thematic review of the Guidelines on child-friendly justice to be carried out jointly by the CDENF, CDCJ and CDPC, through the preparation of a report taking into account relevant developments since 2010, and notably the evolving case-law of the European Court of Human Rights, and on the appreciation of the Bureaus of CDENF and CDCJ on the work undertaken by CJ/ENF-ISE.
6. The Committee also took note of the information on the [ENOC 2024 Annual Conference](#) "Protecting and Promoting the Rights of Children in Alternative Care" (Helsinki, 18-20 September 2024), of the related [ENOC Policy statement](#) and of the [2024 report and recommendations](#) by the European Network of Young Advisors – ENYA.

### **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*)

7. The Committee reviewed the draft recommendation on the protection of the rights and best interests of the child in care proceedings (document CJ/ENF-ISE(2024)07 prov) and its draft explanatory memorandum (document CJ/ENF-ISE(2024)08 prov), taking due account of the written comments received from the CDCJ and CDENF members and selected stakeholders (document CJ/ENF-ISE(2024)09Mos).

#### ❖ Draft recommendation

8. Having carefully examined all written comments, the Committee agreed on a revised text of the draft recommendation (document CJ/ENF-ISE(2024)07) and instructed the Secretariat to make the necessary last editorial changes, in consultation with the Chair, before its submission to the CDCJ and CDENF for approval at their joint plenary meeting to be held on 3 December 2024.

❖ Draft explanatory memorandum

9. Having carefully examined all written comments, the Committee agreed on a revised text of the draft explanatory memorandum (document CJ/ENF-ISE(2024)08) and, subject to last editorial changes to be dealt with by the Secretariat and the consultant, in consultation with the Chair, decided to send it to the CDCJ and CDENF for adoption at their joint plenary meeting to be held on 3 December 2024.

**Item 5: Draft 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)

10. Having carefully examined all written comments provided by CJ/ENF-ISE (document CJ/ENF-ISE(2024)12 Mos), the Committee entrusted its Vice-Chair, Stéphanie Hebrard (France), supported by the Secretariat, with the finalisation of the draft checklist for policy makers on the protection of the rights and best interests of the child in parental separation proceedings in the light of the guidance provided by the Committee, notably by adjusting the introductory part and by inserting more open questions as appropriate, in view of presentation of the draft checklist to the CDCJ and CDENF for adoption at their joint plenary session.

11. Having carefully examined all written comments provided by CJ/ENF-ISE (document CJ/ENF-ISE(2024)12 Mos), the Committee entrusted its member Bente Therese Bekkhus (Norway), supported by the Secretariat, with the finalisation of the draft checklist for policy makers on the protection of the rights and best interests of the child in care proceedings in the light of the guidance provided by the Committee, notably by adjusting the introductory part and by inserting more open questions as appropriate, in view of presentation of the draft checklist to the CDCJ and CDENF for adoption at their joint plenary session.

**Item 6: Update on key developments and other events by members and observers**

12. The Committee took note of the information provided by the European Commission (see Appendix II).

**Item 7: Any other business**

13. The Committee thanked the current and past Chairs, Thomas Knoll-Biermann (Germany) and Seamus Carroll (Ireland), for the excellent work carried out under their respective Chairmanships.

**Item 8: Approval of the meeting report**

14. The Committee adopted the report at the end of the meeting.

**APPENDIX I****AGENDA**

1. <b>Opening of the meeting</b>	<u>Reference document</u> <ul style="list-style-type: none"> <li>• CJ/ENF-ISE(2024)LoP2</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(2024)OJ2 prov</li> <li>• Annotated draft agenda – CJ/ENF-ISE(2024)OJ2ANN</li> </ul>
3. <b>Statement by the Chair and the Secretariat</b>	<u>Reference documents</u> <ul style="list-style-type: none"> <li>• Report of the 102<sup>nd</sup> CDCJ plenary meeting – <a href="#">CDCJ(2024)12</a></li> <li>• Report of the 9<sup>th</sup> CDENF plenary meeting – <a href="#">CDENF(2024)PV01</a></li> <li>• <a href="#">ENOC Statement on the Promotion and the Protection of the Rights of Children in Alternative care</a></li> </ul>
4. <b>Draft recommendation on the protection of the rights and best interests of the child in care proceedings and its draft explanatory memorandum</b> <i>(deliverable (1) of the terms of reference)</i>	<u>Working documents</u> <ul style="list-style-type: none"> <li>• Draft recommendation on the protection of the rights and best interests of the child in care proceedings (version 3) – <a href="#">CJ/ENF-ISE(2024)07 prov</a> <i>(restricted)</i></li> <li>• Draft Explanatory Memorandum to the draft recommendation on the protection of the rights and best interests of the child in care proceedings (version 3) – <a href="#">CJ/ENF-ISE(2024)08 prov</a> <i>(restricted)</i></li> <li>• Compilation of comments received from CDCJ, CDENF and key stakeholders on the draft recommendation on care proceedings and its draft Explanatory memorandum – <a href="#">CJ/ENF-ISE(2024)09 Mos</a> <i>(restricted)</i></li> </ul> <u>Reference documents</u> <ul style="list-style-type: none"> <li>• Draft recommendation on the protection of the rights and best interests of the child in care proceedings (version 2) – <a href="#">CJ/ENF-ISE(2024)02</a> <i>(restricted)</i></li> <li>• Draft Explanatory Memorandum to the draft recommendation on the protection of the rights and best interests of the child in care proceedings (version 2) – <a href="#">CJ/ENF-ISE(2024)03</a> <i>(restricted)</i></li> <li>• Draft recommendation on the protection of the rights and the best interests of the child in parental separation proceedings – <a href="#">CDCJ(2023)28/CDENF(2023)25</a> <i>(restricted)</i></li> <li>• Explanatory Memorandum to the Draft recommendation on the protection of the rights and the best interests of the child in parental</li> </ul>

	separation proceedings - <a href="#">CDCJ(2023)29/CDENF(2023)26</a> (restricted)
<b>5.</b>	<p><b>Draft implementation tools on the protection of the rights and best interests of the child in parental separation and in care proceedings</b> (deliverable (2) of the terms of reference)</p> <p><u>Working documents</u></p> <ul style="list-style-type: none"> <li>• Draft implementation tool for policy makers on the protection of the rights and the best interests of the child in parental separation proceedings – <a href="#">CJ/ENF-ISE(2024)10 prov2</a> (restricted)</li> <li>• Draft implementation tool for policy makers on the protection of the rights and the best interests of the child in care proceedings – <a href="#">CJ/ENF-ISE(2024)11 prov2</a> (restricted)</li> <li>• Compilation of comments received from CJ/ENF-ISE on the draft implementation tools for policy maker on parental separation and care proceedings – <a href="#">CJ/ENF-ISE(2024)12 Mos</a> (restricted)</li> </ul> <p><u>Reference documents</u></p> <ul style="list-style-type: none"> <li>• Preliminary draft implementation tools for policy makers on the protection of the rights and the best interests of the child in parental separation proceedings – <a href="#">CJ/ENF-ISE(2024)10 prov</a> (restricted)</li> <li>• Preliminary draft implementation tool for policy makers on the protection of the rights and the best interests of the child in care proceedings – <a href="#">CJ/ENF-ISE(2024)11 prov</a> (restricted)</li> <li>• Draft recommendation on the protection of the rights and the best interests of the child in parental separation proceedings – <a href="#">CDCJ(2023)28/CDENF(2023)25</a> (restricted)</li> <li>• Explanatory Memorandum to the Draft recommendation on the protection of the rights and the best interests of the child in parental separation proceedings - <a href="#">CDCJ(2023)29/CDENF(2023)26</a> (restricted)</li> <li>• Draft recommendation on the protection of the rights and best interests of the child in care proceedings (version 3) – <a href="#">CJ/ENF-ISE(2024)07 prov</a> (restricted)</li> <li>• Draft Explanatory Memorandum (version 3) – <a href="#">CJ/ENF-ISE(2024)08 prov</a> (restricted)</li> </ul>
<b>6.</b>	<b>Update on key developments and other events by members and observers</b>
<b>7.</b>	<b>Any other business</b>
<b>8.</b>	<ul style="list-style-type: none"> <li>• Draft meeting report – CJ/ENF-ISE(2024)PV02 prov</li> </ul>

## **APPENDIX II**

### **INFORMATION PROVIDED BY THE EUROPEAN COMMISSION ON KEY DEVELOPMENTS**

#### **I. EU Strategy on the rights of the child**

- The European Union is entering a new political cycle. In her speech before the European Parliament to present the Political Guidelines for the new Commission, President von der Leyen stressed that one of the most fundamental choices we face is what kind of society we want for our children and grandchildren.
- President von der Leyen notably flagged key areas of work in relation to children, such as child participation, protecting the mental health of children and young people – particularly online and announcing an action plan against cyberbullying.
- Among other areas of progress of the EU Strategy on the rights of the child<sup>1</sup>, including the ones that will be mentioned below, EU Member States are submitting the reports on implementation of the European Child Guarantee.
- The Directive on violence against women and domestic violence has entered into force.
- The recast of the Trafficking in Human Beings Directive has been adopted.
- The Commission has proposed new rules, including improved protection of child victims, which are being negotiated.
- The Child Sexual Abuse Directive, with its new recast and the Regulation to tackle child-sexual abuse on-line, set the EU framework to tackle child sexual abuse. The new Asylum and Migration Pact also contains provisions for the protection of children in migration procedures.
- The next meeting of the EU Network for children's rights will take place on 18 and 19 November.

#### **II. Initiative on integrated child protection systems**

- On 17 April 2024, the European Commission adopted a Commission Recommendation on integrated child protection systems. The aim is to build a shield of protection centred on children's needs, embracing the local, regional, national and EU levels, towards a society of zero-tolerance on violence against children. It will concretely support and encourage all relevant authorities and services to work together in systems that put the child at the centre, to prevent and protect children from violence.
- It presents how existing EU tools (legislation, policies, and funding) can help Member States make their child protection systems more integrated and robust, by avoiding silos.
- The Commission is kicking-off the work on the implementation of the Recommendation together with Member States.
- This initiative builds on a consultation on gaps and good practices. 1,000 children were consulted on what they need to feel safe, for the first time under the new EU Children's Participation Platform. The Fundamental Rights Agency made a mapping of child protection systems across the EU, and we

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<sup>1</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021DC0142>

consulted stakeholders (Member States, European Parliament, civil society, and international organisations).

### III. **EU Children's Participation Platform**

- The EU Children's Participation Platform, a hub connecting child participation mechanisms at local, national and EU level, involves children in the decision-making processes at EU level. Currently over 80 organisations from 24 EU Member States are part of the Platform.
- In addition to the child consultation in relation to the initiative on integrated child protection systems on "feeling safe"<sup>2</sup>, the reports of which are available on-line, as well as the child-friendly version of the Recommendation, work is being undertaken in relation to democracy<sup>3</sup>.

### IV. **Digitalisation Package**

- On 1 December 2021, the European Commission adopted a proposal for a Regulation on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation and a proposal for a Directive amending certain acts in the field of judicial cooperation. The proposals were adopted and published in December – Regulation (EU) 2023/2844 and Directive (EU) 2023/2843.
- The main objective of the Digitalisation Regulation is to make the digital communication channel between competent authorities **mandatory**. The intention is to build upon our achievements to date, namely, to extend existing IT tools such as e-CODEX and the e-Evidence Digital Exchange System (eEDES), which already support digital exchanges of European Investigation Orders and Mutual Legal Assistance (in criminal matters) requests. The Service of Documents / Taking of Evidence IT systems will also be based on the existing solutions and will start applying from May 2025.
- The Digitalisation Regulation will also apply also to the EU legislation on the matter of child abduction and child protection (the Brussels IIb Regulation and the Maintenance Regulation). The authorities under these acts will be obligated to communicate electronically in these cross-border situations with each other and the applicants (natural and legal persons or their representatives) will have the possibility to communicate with their Central Authority through the European Electronic Access Point that will be established on the European e-Justice Portal. The implementing acts specifying the technical aspects of this communication need to be adopted by 17 January 2028 and the switch to electronic communication will take place 2 years from the entry into force of those implementing acts (so approximately from 1 March 2030).
- To help with the preparations regarding the digitalisation of the Brussels IIb Regulation a dedicated Working Group within the European Judicial Network in civil and commercial matters (EJN-civil) has been set up in May 2024.
- Furthermore, the Digitalisation Regulation will also provide for a legal basis for convening hearings through videoconferencing or other distance communication technology in civil and commercial

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<sup>2</sup> [https://eu-for-children.europa.eu/system/files/2024-03/ConsultationReport\\_ICPS\\_FINAL\\_08.03.2024.pdf](https://eu-for-children.europa.eu/system/files/2024-03/ConsultationReport_ICPS_FINAL_08.03.2024.pdf); <https://eu-for-children.europa.eu/feeling-safe>

<sup>3</sup> [Online Democracy Survey | EU Child Participation \(europa.eu\)](https://europa.eu/online-democracy-survey)

matters where one or more parties are abroad. This will also allow children, who are considered a party to proceedings under national law to participate to hearings remotely. This specific part of the Regulation will become applicable from 1 May 2025.

#### V. ANTI-SLAPP Directive

- The **Commission's anti-SLAPP initiative** (Strategic Lawsuits Against Public Participation) was adopted on **27 April 2022**. It is a package of a legislative component (proposal for a directive) in the field of civil justice, and a horizontal non-legislative component (a Commission recommendation). The initiative is **one of the actions under the European Democracy Action Plan that aim to protect European democracy and freedom of expression**. SLAPPs are groundless or exaggerated court proceedings typically initiated by powerful natural or legal persons against parties (for example a journalist or a human rights defender) who express criticism against them in a matter of public interest. The aim of SLAPPs is to censor, intimidate and silence critics by burdening them with abusive court proceedings. A robust system of safeguards is needed to enable those involved in public debate to fulfil their crucial role as watchdogs on matters of legitimate public interest. The **directive covers SLAPP in civil matters with cross-border implications**. The Commission Recommendation is horizontal and covers all types of procedures, civil, criminal and administrative, and also domestic cases. The Recommendation is directly applicable and its implementation has already started.
- The Directive was adopted on 11 April 2024 and entered into application on 6 May. The Member States now have two years until 7 May 2026 to transpose the Directive into national law.
- The three key pillars of protection in the Directive are early dismissal of manifestly unfounded claims, remedies against abusive court proceedings and protection against third country SLAPP-judgements. A court can also decide to require that the person who started a SLAPP case provides a financial security.
- The Council and the European Parliament agreed on how to define the cross-border nature of a SLAPP case. A matter will be considered to have cross-border implications unless both parties are domiciled in the same Member State as the court seised and all other elements relevant to the situation are located in that Member State. In addition to the original proposal, the Directive provides that Member States shall ensure that information on the procedural safeguards and remedies is accessible in one single place (so called 'one-stop shop'). Member States shall also gather specific available data on SLAPP cases from the courts.

#### VI. Protection of Adults Package

- The legislative package proposed by the Commission in May 2023 concerns adults who cannot protect their interest and who are in a cross-border situation. In those situations, protection measures taken by courts, or powers of representation or advance directives established by the adults in advance, need to swiftly produce their effects in all EU Member States.



- This initiative will significantly mitigate the existing difficulties faced by adults in need, their representatives as well as public authorities in cross-border situations. It is an important step towards completing a functioning Area of Freedom, Security and Justice.
- The legislative package consists of two proposals: first, the proposal for a Regulation applying to cross-border cases for the protection of adults among EU Member States. It will provide modern and efficient cooperation tools, based on the principle of mutual trust in the EU. This includes rules establishing mandatory digital communication, a European Certificate of Representation and interconnected registers of protection. Second, the proposal for a Council Decision that will oblige Member States to join the existing international instrument in this area (the HCCH 2000 Convention on the international protection of adults). This Convention will apply to cross-border cases with non-EU countries.

#### Current state of play:

- In the Council, both proposals seem to be welcomed by Member States. After a slower start of the negotiations, the work on the proposed Regulation is advancing under the Belgian and Hungarian Presidency, with the first reading of the proposal to be finished soon. The examination of the second part of the package in the Council - the Council Decision - showed no significant issues.
- The Parliament should start its work on the legislative package on the protection of adults (the proposal for a Regulation and the proposal for a Council decision) in the JURI committee in the current mandate.

### **VII. Parenthood Proposal**

- The Commission adopted the proposal on 7 December 2022.
- As the proposal is based on Art 81(3) TFEU on measures concerning family law with cross-border implications, it must be adopted by a special legislative procedure whereby the Council must act unanimously after consulting the European Parliament.
- The proposal is politically sensitive as it covers children with same-sex parents and children born through surrogacy.

#### In Council

- Council discussions started on 19 December 2022 and are constructive. To date, no Member State has officially stated its intention to veto the adoption of the proposal.
- A first reading of the provisions of the proposal was completed in January 2023. Since then, detailed discussions are being held on what amendments will be needed to take into account the concerns expressed by the Member States.
- Last June, the Council endorsed as a way forward a package of solutions addressing the Member States' concerns on surrogacy. The solutions take into account the case law of the European Court of Human Rights on the recognition of parenthood established abroad through surrogacy.

#### In the European Parliament

- The European Parliament adopted a positive opinion on the Commission proposal in December 2023 by a comfortable majority. This opinion is not binding on the Member States, which will have to adopt the Commission proposal by unanimity.

## **VII. PACT**

On many accounts, the Pact legislation reinforces the protection available to migrant children, and in particular the unaccompanied ones. Examples include:

- Reinforcement of the rules on guardianship: the introduction of a deadline for the appointment of representatives/guardians for the unaccompanied children applying for protection (maximum 30 days from making the application), of a maximum ratio of children per guardian (30), of more clearly spelled out rules on vetting and on qualifications, and not in the least, the introduction of the obligation to monitor the performance of guardians and to investigate complaints against their performance from the children.
- Lowering of the age for the registration of biometric data in Eurodac from 12 years old to 6 years old, primarily for the purpose of being able to better protect the children (including by performing family tracing and following up in case of disappearance).
- Shortening the timeline for providing access to education, from 3 months at present to maximum 2 months in the new system.
- Reinforcing the exceptional character of detention on migration grounds for the children, and the obligation to set in place effective alternatives.
- The introduction for the first time of rules on performing age assessment in cases of doubt about the minority of the applicants.
  - Exemption of the unaccompanied from the future mandatory border procedure, etc.

On a side note, although contrary to the Commission proposal (and Parliament's initial position), families with children can be placed in the mandatory border procedure if the relevant grounds apply., there will however be close scrutiny of the reception conditions for them there, and the examination of their applications will be prioritised.

The Pact rules must be applied as of mid-2026, and the Commission published in June 2024 a Common Implementation Plan ('CIP'), which lays out common priorities to be observed by the Member States when preparing their national implementation plans by December 2024. The protection of vulnerable applicants and children is one of the main building blocks of the CIP. At present, the Commission is working closely with the Member States to identify gaps and needs in their asylum systems that will need to be addressed in order to enable an effective application of the Pact. The EU will support the Member States to address these gaps, including by providing funding and additional resources, as needed.

## **VII. Victim's Right Directive**

- When children fall **victims of crime**, it is essential to ensure that they can rely on all available support and protection measures.

- The **Victims' Rights Directive** adopted in 2012 recognizes the special needs for support and protection of child victims. Under the Directive, where the victim is a child, the child's best interests shall be a primary consideration.
- On 12 July 2023, the Commission adopted a **proposal for the revision of the Victims' Rights Directive**. The proposal will further strengthen the rights of victims of crime in the EU, including the rights of the most vulnerable victims, such as child victims. In particular, with the proposed amendments, the Commission aims to ensure that child victims are better supported and protected – via improved access to integrated and multidisciplinary support and protection services.
- In addition, under the **EU Strategy on victims' rights (2020 – 2025)**, the Commission is working on non-legislative actions to improve the rights of child victims in the EU. Such actions include creation of child-friendly conditions in the aftermath of crime, promotion of structures providing for targeted and integrated support and protection services for child victims, implementation of the [EU campaign on victims' rights](#) with a focus on child victimisation. An important addition to the campaign is the ['The Girl Who Kept Her Eyes Open'](#) book. It raises awareness about the rights of victims of war crimes, and child victims in particular, under the EU rules and encourage the EU citizens to have the "eyes open" to their situation.