

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 31 October 2023

CJ-AV(2023)12

**Committee of Experts on the Protection of Lawyers
(CJ-AV)**

6th meeting

17-19 October 2023

Strasbourg, Palais de l'Europe, Room 11

MEETING REPORT

**CDCJ website: www.coe.int/cj-av
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1-2. Opening of the meeting and adoption of the agenda

1. The Committee of Experts on the Protection of Lawyers (CJ-AV) held its 6th meeting in Strasbourg from 17 to 19 October 2023, under the chairmanship of Mr Christoph Henrichs (Germany).

2. The agenda of the meeting is contained in Appendix I. The list of participants appears in Appendix II.

3. CJ-AV Tour de table

The Chair welcomed all participants, including the representatives of observers attending the meeting for the first time (Ms Elise Martin-Vignerte, ECBA), and the registry of the European Court of Human Rights (Ms Tamara Trifonova).

4. Statement by the Chair and Secretariat

3. The Committee took note of the information provided by the Chair concerning recent developments of relevance to the work of the committee, and by the Secretariat concerning the extension of the terms of reference of the CJ-AV in 2024, as proposed by the CDCJ for adoption by the Committee of Ministers. The Chair also mentioned the upcoming CDCJ plenary on 15-17 November 2023, where the Committee will examine the text of the draft convention for the first time and provide the necessary feedback to the CJ-AV to facilitate further work on the text of the draft convention.

5. Draft legal instrument aiming at strengthening the protection of the profession of lawyer and the right to practice the profession without prejudice or restraint: examination of the draft text and the draft explanatory report (CJ-AV deliverable)

4. The CJ-AV carried out a careful examination of the 8th version of the draft text of the future legal instrument (document CJ-AV(2022)05 prov8, version dated 10 October 2023), in the light of the comments and proposals made by CJ-AV members and observers to the draft text resulting from the 5th meeting, as reflected in document CJ-AV(2023)11. These comments were used as a basis for the discussion of the draft provisions, and specifically for the examination of Articles 3 (Use of terms), 4 (Professional associations), 5 (Entitlement to practice), 6 (Professional rights of lawyers), 8 (Discipline) and 9 (Protection).

5. With regard to Article 3 para. a, it was decided that the definition of “lawyer” requires an additional link to the declaration to be made under Article 10 para 2 on declarations. As regards Article 3 paras. g and h, the Committee discussed whether the definition of “public authorities” should be kept as the expression had been removed from most provisions where it initially was as a result of successive revisions of the text. Having examined places where alternative wording was used, the Committee decided to harmonise references and, in particular, to use “competent public authorities” where needed. It considered also relevant that “public authorities” was a generally accepted definition used in other instruments of the Council of Europe. The Committee also agreed to include in Article 3 para i the definition of the terms “prescribed by law” and “necessary in a democracy”, which are the concepts and expressions taken directly from the European Convention on Human Rights, and to illustrate them with relevant case law of the European Court of Human Rights in the explanatory report.

6. With regard to Article 4 para. 3, the Committee agreed to add language in the explanatory report to the effect that professional associations be consulted on changes to legislation affecting the rights and obligations of lawyers, for example legislation to combat money laundering and its implications on lawyers' obligations.

7. Concerning Article 6 para. 1 subpara. c, the Committee decided that the explanatory report should refer to the UN Basic Principles on the Role of Lawyers, specifically principle 16(b), and the fact that having access to their client, as set out in this provision of the convention, can require that lawyers enjoy freedom of movement. In this regard, reference should be made to lawyers' access to their clients and prospective clients in detention facilities and related safeguards.

8. The Committee agreed to underline and further explain in the explanatory report that Article 6 para. 1 subpara. e concerns access to the materials related to a particular case connected to their client and is subject to national procedural rules applicable to such situations.

9. The Committee discussed at length the use of the expression "without negligence" as a standard of immunity under Article 6 para. 1, subpara. i. It agreed to replace it with "diligently" which conveys the idea that lawyers would perform checks as part of the normal exercise of their duties when making oral and written statements on behalf of their clients. The explanatory report will provide further detail on the extent of such immunity. One delegation raised the issue of adding to civil and criminal immunity the notion of "administrative immunity" in connection with administrative fines. The member raising the issue agreed to provide further explanations at the next meeting.

10. The Committee discussed at length the wording of Article 8 para. 3. It decided that the principles of legality, non-discrimination and proportionality set out in the first sentence should be the rule for any disciplinary sanction imposed on lawyers. The Committee decided to use in the second sentence the expression "breaches of professional standards" (in French, "manquements aux obligations professionnelles") instead of "professional misconduct" (in French, "faute professionnelle") in order to better convey that such breaches can occur in the exercise of lawyers' professional activities as well as in their private lives where their behaviour or action may bring disrepute to the profession. Finally, it considered that this second sentence should focus on the prohibition on the right to practice as the most serious sanction which should only be imposed for "the most serious breaches of professional standards".

11. Concerning Article 9, the Committee agreed to include a reference to the UN Basic Principles on the Role of Lawyers in the explanatory report, in particular principle 16(b) on free movement to be able to have access to their clients and principles 16(c) and 17 regarding any sanctions and threats related to actions taken as a result of carrying out their professional duties.

12. The Committee examined at the length both Article 9 para. 1 subpara. c and Article 9 para. 2 subpara. c. Regarding Article 9 para. 1 subpara. c, it decided to break it down so that the new wording would differentiate between the search of lawyers themselves, searches of their premises, vehicles or devices and the seizure or copying of documents, or any other data. It further decided that in such cases lawyers should have access to an independent lawyer or a representative of a professional association. It was agreed that the explanatory report underline that the use of "or" should not prevent states parties where lawyers can be assisted by both an independent lawyer and a representation of a lawyers' association from being in conformity with this provision. The notion of independent lawyer would be explained in the

explanatory report. In addition, it agreed to further clarify in the explanatory report that searches of premises should also include the private homes of lawyers or any place where they may have documents concerning their clients. Finally, it considered that Article 9 para. 2 subpara. c which was meant to cover the assistance of professional associations during searches and seizures was redundant as professional associations were already referred to under para. 1 subpara. c, and therefore agreed to delete it.

13. Regarding Article 9 para. 2 subpara. d, the Committee decided to add that the authorities should only be required to inform professional associations of the instances where lawyers were threatened, assaulted or killed when they are aware of such instances. It decided not to keep the notion of “harassment” here as it was not considered realistic that the authorities would be in possession of more information on such instances as the notion was not defined in the criminal law of a number of member state, thus making it difficult for them to possess information to be shared with professional associations.

14. As to Article 9 para. 2 subpara. f, the Committee agreed to revise the text to the effect that professional associations should be able to attend hearings, including in disciplinary proceedings. It decided to keep the subparagraph short, but to provide further detail on the types of proceedings concerned in the explanatory report.

15. With regard to Article 9 para. 3 subpara. a, the Committee discussed the possible obligations of the parties, arising from this provision, particularly in relation to preventing harassment or intimidation, as none of these were considered as criminal offences under different jurisdictions. It was agreed that the explanatory report should make it clear that parties would be under no obligation to amend their national legislation to criminalise these offences. Moreover, the choice of possible measures to deal with such situations would be left to the parties. There are a variety of possible measures that parties could use, such as ensuring that they do not contribute to an environment conducive to harassment or intimidations, reacting to such occurrences by issuing public statements, etc. The Committee agreed to make this clear in the explanatory report, referring to any relevant case-law of the European Court of Human Rights.

16. The Committee also discussed comments provided to Chapter III (Implementation of the Convention), taking into account that this chapter and the relevant articles would be completed and drafted to reflect all the elements of the implementation mechanism decided at its 5th meeting in July. A suggestion was made to consider the possibility of the future group of independent experts to receive and deal with collective complaints and to hold similar competences to UN special rapporteurs, in order to address and report on new issues as they arise. As mentioned at the last meeting, it was reiterated that, in addition to their regular monitoring rounds, existing groups of independent experts can react to information pointing to a serious risk of violation of the convention concerned and launch an urgent procedure with ad hoc visits and reports.

17. With regard to Chapter V (Signature and entry into force), the Committee discussed the possibility of States parties making a declaration whereby they may decide to apply the provisions of the convention before its entry into force. It noted however that no legal obligations would arise from such voluntary declarations. The Secretariat was asked to further clarify the issue and possible consequences with the Treaty Office, with a view to the possible inclusion of a provision to this effect.

18. It was agreed by the Committee that paragraph 1 of the article on reservations and

declarations will be left open for the time being, and the Committee will return to it at the end of the drafting procedure. It was also agreed to add another paragraph, reminding the parties that the principle that declarations should not be incompatible with the object and purpose of the Convention. The new paragraph would be drafted on the basis of the proposal made by the CCBE and discussed at the next meeting.

19. The Committee examined the draft explanatory report (document CJ-AV(2023)10 prov1 working version 1), specifically the parts concerning the Preamble, Chapters I and II, and Articles 4, 5 and 6 of Chapter III.

20. The Committee will receive for its next meeting revised versions of both the draft convention and the draft explanatory report that reflect the changes that were agreed by the Committee at this meeting, as well as any suggestions and comments made by the CDCJ.

6. Information on on-going and planned activities in other fora of relevance to the work of the CJ-AV

21. The committee did not have the opportunity to discuss this point.

7. Any other business

22. None.

8. Dates and places of next meetings

23. The CJ-AV agreed to hold its 7th meeting on 30 January – 1 February 2024 in Strasbourg. The focus of the 7th meeting will primarily be on Article 9 as revised, the provisions dealing with the monitoring mechanism, the final clauses, the revised explanatory report and the feedback received from the CDCJ.

9. Adoption of the meeting report

24. The CJ-AV agreed to adopt the report of its 6th meeting by written procedure.

Appendix I

Agenda

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1. Opening of the meeting

 2. Adoption of the agenda and order of business

 3. CJ-AV tour de table

 4. Statement by the Chair and Secretariat

 5. Draft legal instrument aiming at strengthening the protection of the profession of lawyer and the right to practice the profession without prejudice or restraint: examination of the draft text and the draft explanatory report (*CJ-AV deliverable*)

 6. Information on on-going and planned activities in other fora of relevance to the work of the CJ-AV

 7. Any other business

 8. Dates and places of next meetings

 9. Adoption of the meeting report

Appendix II

Participants

MEMBERS / MEMBRES

AUSTRIA / <i>AUTRICHE</i>	Dr Marcella PRUNBAUER GLASER Lawyer Österreichischer Rechtsanwaltskammertag / Austrian Bar
CZECH REPUBLIC / <i>REPUBLIQUE</i> <i>TCHEQUE</i>	Mr/M. Ondřej RICHTER Senior Ministerial Counselor Legislative Department Ministry of Justice
DENMARK / <i>DANEMARK</i>	Mr/M. Nicolai PII Apologised/ <i>Excusé</i> Legal director, Attorney The Danish Bar and Law Society
FRANCE	Mr/M. Gilles ACCOMANDO Directeur de l'Ecole de Formation des Barreaux (EFB) du ressort de la cour d'appel de Paris
GERMANY / <i>ALLEMAGNE</i>	Mr/M. Christoph HENRICHS (Chair / <i>Président</i>) Head of Section "International Law, Law of International Organisations" Federal Ministry of Justice
IRELAND / <i>IRLANDE</i>	Ms/Mme Claire LOFTUS Solicitor
LITHUANIA / <i>LITUANIE</i>	Ms/Mme Vaida RUDENAITE Senior adviser Legal Services Policy Group Ministry of Justice
LUXEMBOURG	Ms/Mme Valérie DUPONG Avocate Etude Dupong, Krieps, Du Bois & Dias Videira
NETHERLANDS / <i>PAYS-BAS</i>	Mr/M. Jacques WIJNEN Senior Policy Advisor Judicial System Department Ministry of Justice and Security
PORTUGAL	Mr/M. Joao PERRY DA CAMARA Partner / Lawyer / Arbitrator Law Firm - Rogério Alves & Associados - Sociedade de Advogados, R.L
SPAIN / <i>ESPAGNE</i>	Mr/M. Alfredo IRUJO ANDUEZA Lawyer, Law office in Pamplona Professor of Master in Law, Public University of Navarre Chair of Council of Navarre
SWITZERLAND / <i>SUISSE</i>	Ms/Mme Simone FÜZESSÉRY Avocate Département fédéral de justice et police DFJP Office fédéral de la justice OFJ Domaine de direction Droit public Unité Projets législatifs II

TÜRKIYE	Mr/M. Halid Haki BARUT Head of Department General Directorate for Civil Affairs Ministry of Justice
UKRAINE	Mr/M. Valentyn GVOZDIY (Vice-Chair / Vice-Président) Vice-president of the Ukrainian National Bar Association Managing partner / International Law Firm GOLAW
UNITED KINGDOM / ROYAUME-UNI	Mr/M. Tony FISHER Partner Fisher Jones Greenwood LLP – Solicitors

MEMBER STATES / ETATS MEMBRES

BOSNIA AND HERZEGOVINA / BOSNIE ET HERZEGOVINE	Ms/Mme Slavica LJUBIŠIĆ Attorney at law Bar association of the Republic of Srpska Ms/Mme Tanja HADŽAGIĆ Lawyer from Sarajevo Bar Association of the Federation of Bosnia and Herzegovina
GERMANY / ALLEMAGNE	Ms/Mme Susanne MÜNCH Head of unit dealing with the law of lawyers Ministry of Justice
IRELAND / IRLANDE	Ms/Mme Aoife BYRNE Justice Attaché / Deputy to the Permanent Representative Permanent Representation of Ireland to the Council of Europe
ITALY / ITALIE	Ms/Mme Nadia Giacomina Germana TASCONA Attorney / <i>Maître</i>

OBSERVERS / OBSERVATEURS

AVOCATS SANS FRONTIÈRES FRANCE	Mr/M. Ivan PANEFF Vice-Président Avocats Sans Frontières France
COUNCIL OF BARS AND LAW SOCIETIES OF EUROPE / CONSEIL DES BARREAUX EUROPEENS (CCBE)	Mr/M. Laurent PETTITI Avocat au Barreau de Paris Président de la Délégation des Barreaux de France à Bruxelles Président du Groupe de travail « Convention européenne » du CCBE Mr/M. Nathan ROOSBEK Legal adviser
EUROPEAN BARS FEDERATION /	Ms/Mme Dominique ATTIAS Avocate

FEDERATION DES BARREAUX D'EUROPE (FBE)	Présidente du Conseil d'Administration de la Fondation des Avocats Européens Ancienne Présidente de la Fédération des Barreaux d'Europe Ancienne Vice-Bâtonnière de l'Ordre des Avocats à la Cour d'Appel de Paris
INTERNATIONAL BAR ASSOCIATION (IBA) & HUMAN RIGHTS INSTITUTE (IBAHRI)	Ms/Mme Zara IQBAL IBAHRI Program Lawyer
EUROPEAN CRIMINAL BAR ASSOCIATION (ECBA)	Ms/Mme Elise MARTIN-VIGNERTE Advisory Member Solicitor Avocate au Barreau de Strasbourg
EUROPEAN ASSOCIATION OF LAWYERS (EAL) / ASSOCIATION EUROPÉENNE DES AVOCATS (AEA)	Ms/Mme Maria ŚLAŻAK Attorney of Law President of the European Association of Lawyers (AEA-EAL)
“LAWYERS FOR LAWYERS” FOUNDATION / FONDATION « LAWYERS FOR LAWYERS »	Ms/Mme Judith LICHTENBERG Board member
INTERNATIONAL OBSERVATORY OF ENDANGERED LAWYERS / OBSERVATOIRE INTERNATIONAL DES AVOCATS EN DANGER (OIAD)	Mr/M. Massimo AUDISIO Lawyer – Founding and Managing Partner Law Firm Audisio et Associati

PARTICIPANTS / PARTICIPANTS**EUROPEAN COURT OF HUMAN RIGHTS / COUR EUROPEENNE DES DROITS DE L'HOMME**

REGISTRY OF THE EUROPEAN COURT OF HUMAN RIGHTS / GREFFE DE LA COUR EUROPEENNE DES DROITS DE L'HOMME	Ms/Mme Tamara TRIFONOVA Lawyer/ Référendaire
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COUNCIL OF EUROPE EXPERT / EXPERT DU CONSEIL DE L'EUROPE

CONSULTANT OF THE CJ-AV / CONSULTANT DU CJ-AV	Mr/M. Jeremy McBRIDE Barrister Monckton Chambers United Kingdom
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SECRETARIAT / SECRETARIAT

DGI - DIRECTORATE GENERAL HUMAN RIGHTS AND RULE OF LAW / DIRECTION GÉNÉRALE DROITS DE L'HOMME ET ÉTAT DE DROIT

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