

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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**EUROPEAN COMMITTEE ON LEGAL CO-OPERATION
(CDCJ)**

99th plenary meeting

23-25 November 2022

Strasbourg, Palais de l'Europe, Room 2 and by videoconference

MEETING REPORT

**CDCJ website: www.coe.int/cdcj
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Opening of the meeting and adoption of the agenda

The European Committee on Legal Co-operation held its 99th plenary meeting in Strasbourg and by videoconference, on 23-25 November 2022, with Mr Christoph Henrichs (Germany) in the Chair.

The agenda of the meeting is contained in Appendix I. The full report of the meeting including the list of participants¹ is available on the CDCJ's website.

List of items for decision by the Committee of Ministers

The CDCJ invites the Committee of Ministers:

- to take note of the abridged report of its 99th plenary meeting, held in Strasbourg and by videoconference, on 23-25 November 2022;
- to modify deliverable 7 of its current terms of reference, that covers a “review of legal instruments falling under its responsibility in the light of technological developments”, with the “Handbook - “The Administration and you” (revised edition);
- to consider the need to extend the terms of reference of its two subordinate bodies, i.e., the Committee of Experts on the Rights and the Best Interests of the Child in Parental Separation and in Care-Proceedings (CJ/ENF-ISE) and the Committee of Experts on the protection of lawyers (CJ-AV) up to 2024;

List of items for information of the Committee of Ministers

The CDCJ:

- took note of the introductory remarks by the Chair and Ms Livia Stoica Becht, Secretary to the CDCJ, on the report of the high-level reflection group of the Council of Europe, the organisation of a fourth Summit of Heads of State and Government of the Council of Europe to be hosted by the Icelandic authorities on 16-17 May 2023 and the budgetary aspects for the forthcoming biennium;
- welcomed the new representatives to the Committee (Armenia, Azerbaijan, Georgia, Lithuania, Poland, Romania) as well as the members who participated in-person for the first time, who introduced themselves and informed the committee on the CDCJ areas of priority work;
- took note of the information on the exchange of views of the CDCJ Chair with the Committee of Ministers' Rapporteur Group on Legal Co-operation (GR-J) on 17 November 2022 where the CDCJ report to the Secretary General on the review of the implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (Sofia Action Plan) was discussed at length;
- agreed that the Sofia Action Plan remains relevant and that the CDCJ will continue in line with its terms of reference to pay full attention to issues of respect for the Rule of Law and emerging issues in this area; decided on the need to undertake thematic reviews on a regular basis and instructed its Bureau to develop proposals² taking into account the priority themes put forward by the member States during the exchange of views as well as any co-ordination and/or co-operation where appropriate with other relevant Council of Europe bodies and/or committees;
- took note of the oral information provided by the Chair of the Committee of Experts on the protection of lawyers (CJ-AV) on the CJ-AV's work since June 2022 and welcomed the state of progress; held a general discussion on the draft provisions of the proposed text of the Convention, and exchanged views on possible options to be explored as a priority for the implementation mechanism and provided guidance for the next steps to the CJ-AV work;
- took note of the outcome of the International conference “Hear our voices – Rights and determination of the best interests of the child in parental separation and in care proceedings”, organised in the framework of the Irish Presidency of the Committee of Ministers (Dublin, Ireland, 3 October 2022); the hearing of selected stakeholders organised on 4 October 2022; the targeted child consultations carried out in 2022 in three member states (Hungary, Italy and Portugal) and the report of the 6th meeting of the CJ/ENF-ISE; welcomed the progress made by the CJ/ENF-ISE to date and expressed its gratitude for the achievements made under the direction of the outgoing Chair, Mr Seamus Carroll (Ireland);

¹ At this plenary meeting of the CDCJ, the member states were represented by 28 women and 21 men, 57% and 43.% respectively.

² Working document CDCJ(2022)28.

- examined the draft recommendation on the protection of the rights and the best interests of the child in parental separation and in care proceedings in the light of the information provided by the Chair and the Vice-Chair of the CJ/ENF-ISE (Mr Thomas Knoll-Biermann and Ms Stéphanie Hebrard respectively); agreed that the subordinate body continues its work by drawing up two separate draft recommendations, one relating to parental separation and one to care proceedings, and instructed the CDCJ Bureau to work in close co-operation with the CDENF to agree on further guidance to be provided to the subordinate body regarding the approach to follow in the drafting process;
- agreed to advise the Committee of Ministers, jointly with the CDENF, on the need to extend the terms of reference of the CJ/ENF-ISE up to 2024; instructed the CJ/ENF-ISE to ensure that a draft legal instrument would be finalised by the committee for approval by both steering committees (CDCJ and CDENF) by the end of 2023 and the second draft recommendation at earliest convenience in 2024, and instructed the Secretariat to review the workplans of the CJ/ENF-ISE and CDCJ accordingly;
- held a first exchange of views on the content of the draft practical guide for mainstreaming gender in public and private law reform processes, and agreed on the need to review the format in order to make the text more concise and practical, to update the examples and case studies from the member States, and to launch a written consultation process with a view to finalise and adopt the draft guide at its 100th plenary meeting in May 2023;
- approved the comparative study on administrative law and the use of artificial intelligence (AI) and other algorithmic systems in administrative decision-making in the member States of the Council of Europe, prepared and presented by the CDCJ consultant, and authorised its publication under the responsibility of the author on the CDCJ's website;
- held an exchange of views with Mr Thomas Schneider, President of the Committee on Artificial Intelligence (CAI) on the work in this area and agreed the usefulness of pursuing such exchanges on the basis of reciprocity;
- took note of the final composition of the CDCJ's limited working group on administration and artificial intelligence (CDCJ-ADMIN-AI) and of the start of the work; analysed the proposals made by the CDCJ-ADMIN-AI concerning possible future work of the CDCJ in the field and provided further orientations to the working group, instructing it to develop proposals on (a) using artificial intelligence (AI) for policing, the administration of justice and borders/migration and (b) using artificial intelligence (AI) or other automated decision-making (ADM) for communication purposes, for their examination by the CDCJ at the 100th plenary meeting in May 2023;
- examined the concept note prepared in the light of the replies received from member States concerning the review of legal instruments falling under the CDCJ's responsibility in the light of technological developments to assess implementing challenges and agreed on the proposal of the Bureau in this context to postpone the review exercise for a later stage as it would require significant resources and time to complete it, and invites the Committee of Ministers to replace this deliverable 7 in the CDCJ's terms of reference with the revision of the Handbook "The administration and you" in the light of developments in the use of artificial intelligence, which falls under the same thematic topic;
- took note of the information provided by the Chair of the CDCJ limited working group on migration (CDCJ-MIG), Mr Francesco Crisafulli (Italy), and welcomed the progress made in the elaboration of the draft guide for practitioners on administrative detention of migrants and asylum seekers; instructed the CDCJ-MIG to review the draft guide in the light of the proposals made during the exchange of views and of the comments by the delegations to be submitted to the Secretariat no later than 13 January 2023; agreed on the need for the CDCJ-MIG to hold one or more meeting(s) in 2023 and decided to extend its terms of reference with a view to finalise the draft guide, and to examine and adopt it at the 100th plenary meeting in May 2023;
- took note of the information provided by the Secretariat on the outcome of the consultation process of State Parties and non-Parties to the Convention on Information on Foreign Law (ETS No. 62) and its Additional Protocol (ETS No.97) and also on the planned activities for promoting and implementing these treaties; agreed to discuss possible follow-up at its next plenary meeting on the basis of the analysis of the replies to the questionnaire;

- considered, the requests of five organisations applying for observer status with the CDCJ and/or its subordinate bodies; took note that ILIA did not have legal personality and did not meet the first and most important criterion set by the CDCJ for observer status; having regard to the assessment criteria adopted by the CDCJ at its 98th plenary meeting, voted and granted observer status with the CDCJ to the Council of Bars and Law Societies of Europe (CCBE) and to the International Commission of Jurists (ICJ), with immediate access to the 99th plenary meeting;
- resumed its discussions on the celebration of the 60th Anniversary of the CDCJ on the occasion of the 100th plenary meeting, in the light of the programme outline prepared by the Secretariat; identified several priority topics with respect to achievements to date, proposed highlights of legal standards in respect of implementation and future issues to be dealt with through new legal standards for improved legal co-operation in the areas of public and private law; put forward additional suggestions, including with respect to possible speakers/contributors; instructed its Bureau, in close co-operation with the Secretariat, to take the necessary steps forward in the organisation of this event, in light of the suggestions and any additional contributions to be sent by delegations in writing to the Secretariat until 9 December 2022;
- adopted a template to be used for collecting, in a structured, targeted manner and in advance of the plenary meetings information from the member states on their main legislative developments in the fields of public and private law, in relation to the work of the CDCJ;
- agreed on a template to be used by the Secretariat for collecting information from other relevant bodies of the Council of Europe, other international organisations and civil society on their ongoing and future activities particularly relevant for the work of the CDCJ; took note of the information reported by the representative of the Council of Bars and Law Societies of Europe (CCBE) on their work of common interest with the CDCJ and their readiness to contribute to the CDCJ's work;
- took note of the information provided by the Head of the Delegation of North Macedonia and by the UNHCR on the outcome of the roundtable on "Access to social and economic rights and integration related services for refugees and stateless persons" (Skopje, 21 September 2022) and organised in the framework of the CDCJ's co-operation with the UNHCR on priority actions in the field of asylum and migration, in the framework of its contribution to the Council of Europe's Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (2021-2025);
- elected its Chair (Mr Christoph Henrichs - Germany), Vice-Chair (Mr Francesco Crisafulli - Italy), and one Bureau member (Mr Abderrazzak Afkyr - The Netherlands) with effect as from 1st January 2023;
- appointed a new Gender Equality Rapporteur (Ms Alexandra Terés Erich – Andorra) and expressed its gratitude to the outgoing Gender Equality Rapporteur, Ms Signe Öhman (Sweden);
- made the necessary appointments of its representatives/substitutes for 2023 to ensure the best possible CDCJ representation in the work of other Council of Europe bodies where the CDCJ input is needed and its expertise, relevant, as they are set out in Appendix II, and invited any other interested delegations to express their interest in the outstanding vacant positions;
- held its annual exchange of views to evaluate the completion of the CDCJ activities, in the light of the document taking stock of the implementation of activities; discussed the preliminary activity proposals for 2023-2024 and beyond; reviewed its workplan and priority actions for 2022-2025 and instructed its Bureau and its working groups to develop further the pending proposals for examination and adoption at the 100th plenary meeting of the CDCJ; agreed to advise the Committee of Ministers on the changes to be made to the CDCJ deliverables as a result of reprioritisation, identification of new activities or delays;
- examined its calendar of activities for 2023 and agreed to hold its 100th plenary meeting in Strasbourg, from 30 May to 1st June 2023;
- adopted the abridged report of the 99th plenary meeting.

Resource implications

The financing of the activities described in this report and implemented in 2022-2023 is ensured through the Ordinary Budget.

Evaluation of completed activities

The CDCJ expressed its satisfaction with the follow-up undertaken to implement the activities and the decisions taken by the CDCJ at its 98th plenary meeting, and its appreciation of the active role of the Bureau in this context.

Any changes to the composition of the Committee Bureau

The CDCJ held elections, in accordance with Resolution CM/Res(2021)3 on intergovernmental committees and subordinate bodies, their terms of reference and working methods, for the following three seats:

Chairperson: Mr Christoph Henrichs (Germany) – re-elected for a second and last term of office, from 1 January to 31 December 2023.

Vice-Chairperson: Mr Francesco Crisafulli (Italy) – re-elected for a second and last term of office, from 1 January to 31 December 2023.

Bureau member:

Mr Abderrazzak Afkyr (The Netherlands) – re-elected for a second and last term of office, from 1st January 2023 to 31 December 2024.

Other observations

Appendix I

Agenda

1. Opening of the meeting
2. Adoption of the agenda and order of business
3. Statement of the Chair and Secretariat
4. Interventions by newly designated members of the CDCJ
5. Review of progress

Justice and the Rule of Law

- 5.1 Review of the implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (Sofia Action Plan)
- 5.2 Protection of the profession of lawyer – CJ-AV (*main deliverable 1*)

Family Law and children's rights

- 5.3. Rights and best interests of the child in parental separation and in care proceedings – CJ/ENF-ISE (*main deliverable 2*)
- 5.4 Practical guide for mainstreaming gender in public and private law reform processes (*main deliverable 5*)

Technological developments, including artificial intelligence

- 5.5 Administration and artificial intelligence – CDCJ-ADMIN-AI
- 5.6 Review of legal instruments falling under the CDCJ's responsibility in the light of technological developments to assess implementing challenges and proposals for follow-up deliverables (*main deliverable 7*)

Migration

- 5.7 Draft guide for practitioners on administrative detention of migrants (*main deliverable 8*)
- 5.8 Report on the state of play and assessment of the implementation of the European Convention on Information on Foreign Law (CETS 62) and its additional protocol (CETS 97) and proposals for next steps (*main deliverable 4*)
6. Observers: requests for observer status with the CDCJ and/or its subordinate bodies
7. Visibility of the work and deliverables of the CDCJ
8. Legislative developments in member States in the areas of public and private law
9. Co-operation with other Council of Europe bodies and committees, with international organisations and civil society
10. Elections and appointments
11. Evaluation of completed activities / Annual exchange of views to evaluate CDCJ's activities and to advise the Committee of Ministers on future priorities in its sector, including possible new activities and those that might be discontinued (*main task xiii*)
12. CDCJ Opinions (if any) (*main deliverable 15*)

13. Any other business
14. Date and place of next meeting
15. Approval of the abridged meeting report

Appendix II

Appointments by the CDCJ for 2023

CDCJ Thematic Rapporteurs

Rapporteur on Gender Equality (GER)	Ms Alexandra Terés Erich (Andorra)
Rapporteur on Children's Rights	M. Schütz (Austria)
Rapporteur on the Rights of Persons with Disabilities ³	Mr Henrichs (Germany) – Chair and/or Mr Crisafulli (Italy) – Vice-Chair

CDCJ representatives/substitutes in other Council of Europe bodies

Consultative Council of European Prosecutors (CCPE)	Representative: Mr Arsénio de Oliveira (Portugal) Substitute: None appointed
Consultative Council of European Judges (CCJE)	Representative: Mr Juan Fernando Armengot (Spain) Substitute: Mr Arsénio de Oliveira (Portugal)
European Commission for the Efficiency of Justice (CEPEJ)	Representative to CEPEJ: Mr Arsénio de Oliveira (Portugal) Substitute to CEPEJ: Mr Rodriguez (Switzerland) Representative to the Working Group on Cyber-Justice (CEPEJ-GT-CYBERJUST): Ms Dugré (France)
Steering Committee for Human Rights (CDDH)	Representative: Mr Rodriguez (Switzerland) Substitute: None appointed
Steering Committee for Human Rights in Biomedicine and Health (CDBIO)	Representative: Mr Rodriguez (Switzerland) Substitute: None appointed
Steering Committee on Media and Information Society (CDMSI)	Representative: Mr Knight (United Kingdom) Substitute: None appointed
<i>Committee of Experts on the Integrity of Online Information (MSI-INF)</i>	
<i>Committee of Experts on increasing Resilience of Media (MSI-RES)</i>	
<i>Committee of Experts on Strategic Lawsuits against Public Participation (MSI-SLP)</i>	

³ At its 97th, 98th and 99th plenary meetings the CDCJ agreed, by lack of other candidates, to entrust for a transitional period the Chair and/or the Vice-Chair to act as Rapporteur on the Rights of Persons with Disabilities and invited any interested member to put forward their candidature.

Committee on Artificial Intelligence (CAI)	Representative: Mr Afkyr (Netherlands) Substitute: Mr Rodriguez (Switzerland)
Steering Committee for the Rights of the Child (CDENF)	Representative: Mr Schütz (Austria) Substitute: None appointed
Gender Equality Commission (GEC)	Representative (= CDCJ Gender Equality Rapporteur): Ms Alexandra Terés Erich (Andorra)