

Strasbourg, 13 July 2023

CDCJ(2023)19

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

100th plenary meeting

30 May – 1 June 2023

Strasbourg, Palais de l'Europe, Room 10

MEETING REPORT

**CDCJ website: www.coe.int/cdcj
CDCJ email address: DGI-CDCJ@coe.int**

1-2. Opening of the meeting and adoption of the agenda

1. The European Committee on Legal Co-operation (CDCJ) held its 100th plenary meeting in Strasbourg, on 30 May – 1 June 2023 with Mr Christoph Henrichs (Germany) as the Chair.
2. The agenda of the meeting as adopted is contained in Appendix I. The abridged and full meeting reports as well as the list of participants¹ are available on the CDCJ's website.

3. Statement of the Chair and Secretariat

3. The CDCJ took note of the introductory remarks by the Chair on recent developments that had occurred since its 99th plenary meeting (23-25 November 2022).
4. It welcomed in particular the event organised in conjunction with the 100th plenary meeting to celebrate the 60th Anniversary of the Committee and which was held on the morning of 30 May 2023 (see programme in Appendix II and dedicated webpage). In addition, the CDCJ took note of the opening remarks of Mr Christophe Poirel, Director of the Human Rights Directorate, having regard in particular to the Declaration adopted by the Heads of State and Government of the Council of Europe at their 4th Summit (Reykjavik, Iceland, 16-17 May 2023), and of any possible implications for the CDCJ's operations and activities. Mr Poirel highlighted the political importance of the follow-up to the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (hereinafter "Sofia Action Plan"). He also encouraged the CDCJ to provide comments on the principles of Artificial Intelligence as part of the work on the development of the Council of Europe [framework] Convention on Artificial Intelligence, Human Rights, Democracy, and the Rule of Law.
5. The Chair welcomed Mr Gerald Dunn, recently appointed as the Head of the Division for Legal Co-operation and Secretary to the CDCJ in replacement of Ms Livia Stoica Becht to whom the Committee expressed its gratitude for her support to the CDCJ in the recent past years.
6. The Secretariat presented the main outcomes of the 4th Summit of the Council of Europe in Reykjavik, in particular in connection with the work of the CDCJ. This included the reference to the importance of an independent judiciary in the Reykjavik Principles of Democracy, the relevance of access to justice of children in the Declaration of the situation of children in Ukraine, and the work around artificial intelligence mentioned in the Summit Declaration. The Secretariat also referred to the Secretary General's latest annual Report on the State of Democracy, Human Rights and the Rule of Law published in April 2023, where the independence of the judiciary features prominently and includes a reference to the work carried out by the CDCJ, in particular its report on the review of the implementation of the aforementioned Sofia Action Plan adopted in 2022.

4. Tour de table: interventions by newly designated members of the CDCJ

7. The Chair welcomed the newly appointed members of the Committee (Armenia, Azerbaijan, Montenegro and Türkiye) and the representatives of new observers (Council of Bars and Law Societies of Europe (CCBE) and International Commission of Jurists (ICJ)), who briefly introduced themselves, apart for the ICJ which was not present.

5. Review of progress

8. The CDCJ considered the finalisation of proposals for CDCJ priority deliverables in the areas of public and private law for 2022-2025 in the light of the updated workplan and priority actions (document CDCJ(2022)15 rev4). It also took note of the state of play of the implementation of the CDCJ activities and signatures/ratifications of the conventions and agreements under its responsibility, as well as of the follow-up action by the CDCJ or by the Committee of Ministers in respect of the texts adopted by the Parliamentary Assembly and the Congress of Local and Regional Authorities during the past six years, on which the CDCJ has given its opinion (document CDCJ(2022)09 rev3).

¹ At this plenary meeting of CDCJ, the member States were represented by 35 participants: 21 women and 14 men, 60% and 40% respectively.

Justice and the Rule of Law

5.1 Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (Sofia Action Plan)

9. The CDCJ examined the revised proposals of the Bureau of follow-up to give to the CDCJ report on the review of the implementation of the aforementioned Sofia Action Plan (document CDCJ(2023)01 prov3).

10. The CDCJ noted that the first discussion on this point took place at its 99th plenary meeting (23-25 November 2022), where it examined in detail proposals of possible follow-up activities (document CDCJ(2022)28). It then concluded that the Sofia Action Plan remained relevant considering that judicial and prosecutorial independence still faced challenges in a number of member States, as demonstrated by its review of the implementation of the Sofia Action Plan. Therefore, the continued review of the state of play on specific themes and issues was considered as a way forward.

11. At the same meeting, the CDCJ agreed on the need to undertake thematic reviews on a regular basis and instructed its Bureau to develop detailed follow up activity proposals on a number of priority themes (such as selection, promotion, training (initial and in-service), case allocation and distribution, re-assignment of judges to other courts and disciplinary proceedings), the implementation of the lines of action in the Sofia Action Plan on these issues to be further explored.

12. In the light of the views expressed by the Bureau (document CDCJ-BU(2023)02), the Committee agreed to conduct the first periodic review with a focus on the career and training of judges by using the methodology as featured in document CDCJ(2023)01 prov3. The CDCJ decided that a detailed workplan of the first periodic review should be prepared for examination by the Committee at its 101st plenary meeting.

5.2 Protection of lawyers – Committee of Experts – CJ-AV (*main deliverable 1*)

13. The CDCJ took note of the information provided by the Chair of the Committee of Experts on the Protection of Lawyers (CJ-AV), Mr Christoph Henrichs (Germany), on the progress made in the preparation of a draft legal instrument on the protection of lawyers. The CDCJ observed that its elaboration had been steadily advancing, which should allow it to hold a first detailed discussion of the draft instrument at its 101st plenary meeting.

14. The CDCJ held an exchange of views on the nature of the legal instrument. While some members preferred either to go for a non-binding instrument or postpone the decision on the type of instrument, a broad majority of members expressed themselves in favour of the elaboration of a legally binding instrument in the shape of a convention. Some members underlined that the final decision would in any case be taken once the draft instrument has been completed. Given the broad consensus on these points, the CDCJ agreed on the preparation of a legally binding instrument and that the CJ-AV should complete its work accordingly.

15. The CDCJ also took note of the expiration of the current CJ-AV terms of reference on 31 December 2023. Consequently, in order to allow the CJ-AV to fulfil its task, an extension of its terms of reference was proposed until the end of 2024, in line with the proposed revised terms of reference. The Chairperson was re-elected from amongst CDCJ members (see item 11 below).

16. Finally, the CDCJ took note of the report of the 4th meeting of the CJ-AV (Strasbourg, 1-3 March 2023) and of the date of the 5th meeting (3-5 July 2023).

Family law and children's rights**5.3 Rights and best interests of the child in parental separation and in care proceedings – Committee of Experts – CJ/ENF-ISE (main deliverable 2)**

17. The CDCJ took note of the information provided by Mr Thomas Knoll-Biermann, Chair of the Committee of experts on the rights and best interests of the child in parental separation and in care proceedings (CJ/ENF-ISE), on the results of the 7th meeting of the Committee of experts (6-8 and 24 March 2023) and the progress made in the preparation of the CJ/ENF-ISE expected deliverables that it welcomed (see document CJ/ENF-ISE(2023)PV01).

18. The CDCJ held an exchange of views with the Steering Committee for the Rights of the Child (CDENF) on the 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)04) and on its preliminary explanatory memorandum (document CJ/ENF-ISE(2023)05). It instructed the CJ/ENF-ISE to pay particular attention to the following:

- Not overloading the draft recommendation;
- Specifying to whom this draft instrument is addressed;
- The issue that a child is not necessarily a party to parental separation proceedings;
- Including a definition of "child relocation" in the draft instrument; and
- Considering the right of the child not to be heard if he or she wishes not to.

19. The CDCJ took note that a written consultation on the said draft recommendation and its accompanying preliminary draft explanatory memorandum was launched on 22 and 23 May 2023 amongst the CDCJ, the CDENF and selected key stakeholders. It agreed to send their written comments by 31 July 2023.

20. The CDCJ took note that a second joint meeting with the CDENF will be held on 16 November 2023, in the margins of the CDCJ's 101st plenary meeting with a view to approving the draft recommendation and adopting its explanatory memorandum.

21. The CDCJ also took note of the expiration of the current CJ/ENF-ISE terms of reference on 31 December 2023. Consequently, in order to allow the CJ/ENF-ISE to fulfil its task, an extension of its terms of reference was proposed until the end of 2024, in line with the proposed revised terms of reference.

22. The CDCJ also took note of the next steps and workplan 2023-2024 of the CJ/ENF-ISE for the finalisation and the joint approval of the draft recommendation on the protection of the best interests of the child and his or her rights in care proceedings, and also the practical tools and child friendly materials for promoting the two legal instruments developed by the CJ/ENF-ISE (document CJ/ENF-ISE(2023)01).

Technological developments, including artificial intelligence**5.4 Administration and artificial intelligence – CDCJ working group – CDCJ-ADMIN-AI (new main deliverable 7)**

23. The CDCJ examined the draft concept note prepared by its limited working group on administration and artificial intelligence (CDCJ-ADMIN-AI) pursuant to the decision made at its 99th plenary meeting, on the use of artificial intelligence (AI) for policing, the administration of justice and borders/migration and the use of AI or other automated decision-making (ADM) for communication purposes.

24. The CDCJ decided to develop a draft recommendation on the use of AI for policing, the administration of justice, and borders/migration as part of its future work in the area of administrative law and AI. It agreed on discussing the details of this future activity at one of its upcoming plenary meetings.

25. The CDCJ took note of oral information provided by the Secretariat on the progress made by the CDCJ-ADMIN-AI on its task to update the handbook “The Administration and You”. It agreed with the proposal of the CDCJ-ADMIN-AI to address the issues related to the use of AI or ADM for communication purposes as part of the updated handbook “The Administration and You”.

26. Furthermore, the CDCJ tasked the Bureau, with the support of the Secretariat, to elaborate comments on the draft text of the Council of Europe’s [framework] Convention on Artificial Intelligence, Human Rights, Democracy, and the Rule of Law and submit them to the CAI on behalf of the CDCJ.

Public Law

5.5 Administrative detention of migrants – CDCJ working group – CDCJ-MIG (*main deliverable 8*)

27. The CDCJ examined the draft guide for practitioners on administrative detention of migrants and asylum seekers (document CDCJ-MIG(2023)04) prepared by its limited working group on migration (CDCJ-MIG) in light of the written comments from CDCJ delegations (document CDCJ(2023)14).

28. Underlining the non-binding nature of this instrument, the CDCJ adopted the guide with several small amendments and authorised its publication, subject to a final editorial review.

29. The CDCJ took note of the fact that the lack of expert knowledge in statelessness issues of the current members of the CDCJ-MIG prevented the group from developing further proposed activities in preparation of guidance on child sensitive procedures in administrative and migration law matters for stateless children or children at risk of being stateless, as well as guidance on the establishment of nationality for stateless children. Consequently, the Committee agreed to review the composition of the CDCJ-MIG and instructed the Secretariat to launch a new call to CDCJ delegations to express interest in providing suitable experts in this field.

30. Finally, the CDCJ took note of the technical meeting on “Access to nationality for stateless persons” to be jointly organised with the European Migration Network (EMN) in Luxembourg on 22 June 2023, welcomed it and encouraged CDCJ members to actively participate.

Promoting and facilitating the functioning of conventions within the CDCJ’s area of competence (*main task (iii)*)

5.6 European Convention on Information on Foreign Law (ETS No. 62) and its Additional Protocol (ETS No. 97) (*main deliverable 4*)

31. The CDCJ examined the draft report on the state of play and assessment of the implementation of the European Convention on Information on Foreign Law (ETS No. 62) and its additional protocol (ETS No. 97) (document CDCJ(2023)09 prov2) prepared by Mr Nicolas Nord, consultant, on the basis of the analysis of the replies received from States and non-States Parties to the evaluation questionnaire (document CDCJ(2022)23 rev2). Subject to a final editorial review, the CDCJ authorised its publication under the responsibility of its author.

32. The CDCJ exchanged views with the consultant on proposed avenues for improving the convention-based mechanisms. It decided to give priority to a dedicated webpage where other tools would be made available, such as a practical handbook, standard forms and an updated list of national contact points. It agreed on the workplan and deliverables as they appear in the appendix to the approved report.

5.7 Mainstreaming gender in public and private law reform processes (*main deliverable 5*)

33. The CDCJ examined both the draft practical guide on mainstreaming gender in public and private law reform processes and the factsheet extracted from it (documents CDCJ(2022)30 and

CDCJ(2023)15 respectively). The documents were revised by the consultants in light of the comments received by member States on the first draft guide, the suggestions made by CDCJ members at their 99th plenary meeting and subsequently those made by the Secretariat following the CDCJ Bureau's discussions at its 116th and 117th meetings (2-3 February and 3-4 May 2023).

34. The representative of Türkiye indicated that her country could not endorse the guide as it stood as the notion of "gender" was not defined in Turkish legislation. The CDCJ underlined that the guide was not a legally binding instrument creating new standards, its aim being to provide guidance to member States in ensuring mainstreaming gender in their public and private law reform processes in line with the Council of Europe Gender Equality Strategy 2018-2023 adopted by the Committee of Ministers on 7 March 2018.

35. The CDCJ adopted the practical guide and its factsheet, and authorised their publication, subject to a final editorial review.

6. Programme and budget for 2024-2027

36. The CDCJ examined and agreed with the proposals for revised draft terms of reference of the CDCJ and its subordinate bodies for 2024-2027 as they stood.

37. The CDCJ took note of the oral account given by the CDCJ Chairperson of the exchange of views that the Bureau held with two academics specialised on the issue of climate change litigation; shared the Bureau's views about the complexity of the issue and the importance of several relevant cases currently pending before the European Court of Human Rights and the advisability of waiting for the Court's decisions on the admissibility of those applications and possible subsequent judgments, and, consequently, that any study should be completed by the end of 2025. It agreed, at this stage, to propose this timeline to complete the study on national climate litigation cases expected by the Committee of Ministers, in line with its decisions of 5 October 2022 regarding its reply to the Parliamentary Assembly on Recommendation 2213 (2021) – "Addressing issues of criminal and civil liability in the context of climate change".

7. Developments in member States in the area of private law

38. The CDCJ took note of the information on recent developments in the area of private law at national level (document CDCJ(2023)10 rev), provided by member States by making use, for the first time, of the template approved by the CDCJ at its 99th plenary meeting to collect such information.

8. Co-operation with other relevant Council of Europe bodies and committees, other international organisations and civil society in the area of private law

39. The CDCJ took note of the information in the area of private law provided by other relevant Council of Europe bodies and committees, international organisations, and civil society (document CDCJ(2023)11) by making use, for the first time, of the template approved by the CDCJ at its 99th plenary meeting to collect such information.

9. CDCJ Opinions (if any) (*main deliverable 15*)

40. The CDCJ took note of the decision made by the Committee of Ministers at its 1466th meeting (9-12 May 2023) asking for possible comments by the CDCJ on Parliamentary Assembly Recommendation 2254 (2023) – "Safeguarding democracy, rights and the environment in international trade". It decided not to submit any comments as there were no obvious links between the content of the recommendation and the fields of activity of the CDCJ.

10. Observers

41. The CDCJ considered a request for observer status with the Committee of experts on the protection of lawyers (CJ-AV) by the European Democratic Lawyers (EDL). The request and the information provided by EDL was assessed against the criteria adopted by the CDCJ at its 98th plenary meeting. Unanimity is required to grant observer status, failing which the decision may be taken to refer the matter to the Committee of Ministers for decision, pursuant to the rules set out in Resolution CM/Res(2021)3, Section III C 8 (a), for granting an observer status to steering and ad hoc committees or any subordinate body answerable to them.

42. As a result of this assessment, there was no unanimity amongst CDCJ members for granting observer status with the CJ-AV to EDL. Therefore, the CDCJ decided not to grant observer status and not to refer the matter to the Committee of Ministers for decision, having reservations as to the possible added value of the EDL's contribution to the work of committee, given that several other observers and lawyers' professional organisations already represented in the CJ-AV. However, it invited EDL to contribute to the work of the CJ-AV and the elaboration of the new legal instrument on the protection of lawyers by participating in the stakeholder consultation process that will feed into the work on finalising the draft instrument.

11. Elections

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

43. The CDCJ noted that the Committee of Ministers established the CJ-AV in January 2022. The CDCJ selected and appointed its current members and designated Mr Christoph Henrichs (Germany) as Chair in March 2022, while the Vice-Chair was appointed by CJ-AV members themselves at the Committee's first meeting on 6-8 April 2022. The terms of office for both positions were of one year and expired in April 2023.

44. According to the terms of reference of the Committee, the CJ-AV is composed in accordance with Article 6 of Resolution CM/Res(2021)3 on intergovernmental committees and subordinate bodies, their terms of reference and working methods. It consists of 15 representatives of the highest possible rank (judges, prosecutors, lawyers, civil servants or researchers or other highly qualified specialists) with thorough knowledge of law, policy and practice in their respective countries relating to the exercise of professional activities of lawyers, and the increasing challenges for conducting them freely, safely and independently. Amongst 15 members, 14 are designated by the member States and selected by the CDCJ, and the Chair is designated by the CDCJ from amongst its members.

45. The CDCJ extended the mandate of the current Chair, Mr Christoph Henrichs, as the only CDCJ member to also be a CJ-AV member. The mandate was prolonged until the expiration of the CJ-AV's proposed extended terms of reference until 31 December 2024, taking into account that it was neither expedient nor advisable to change the Chair in the middle of the final year of activity of the Committee, especially given the importance of completing the elaboration and adoption of the draft legal instrument by the end of 2024.

Bureau of the CDCJ

46. Mr Abderrazzak Afkyr (The Netherlands) announced that he was taking on new duties and would no longer be in a position to continue being a member of the CDCJ and its Bureau. The Chair warmly thanked Mr Afkyr on behalf of the whole CDCJ for his dedication to the work of the CDCJ during his term of office.

47. The CDCJ held an election for the seat of Bureau member left vacant by Mr Afkyr, in accordance with Resolution CM/Res(2021)3 on intergovernmental committees and subordinate bodies, their terms of reference and working methods. Ms Signe Öhman (Sweden) was elected as Bureau member to complete Mr Afkyr's term of office which expires on 31 December 2024, pursuant to Article 13.e of Resolution CM/Res(2021)3.

12. Any other business

48. No other business.

13. Dates of the next meetings

49. The CDCJ took note of the updated calendar of meetings and events expected to take place from 2023 to 2025 and agreed to hold its 101st plenary meeting on 15-17 November 2023 in Strasbourg.

14. Adoption of the abridged meeting report

50. The CDCJ adopted its abridged report at the end of the plenary meeting.

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. Tour de table: interventions by newly designated members of the CDCJ
5. Review of progress
 - Justice and the Rule of Law*
 - 5.1 Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (Sofia Action Plan)
 - 5.2 Protection of lawyers – Committee of Experts – 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 – Committee of Experts – CJ/ENF-ISE (*main deliverable 2*)
 - Technological developments, including artificial intelligence*
 - 5.4 Administration and artificial intelligence – CDCJ working group – CDCJ-ADMIN-AI (*new main deliverable 7*)
 - Public Law*
 - 5.5 Administrative detention of migrants – CDCJ working group – CDCJ-MIG (*main deliverable 8*)
 - Promoting and facilitating the functioning of conventions within the CDCJ's area of competence (main task (iii))*
 - 5.6 European Convention on Information on Foreign Law (ETS No. 62) and its Additional Protocol (ETS No. 97) (*main deliverable 4*)
 - 5.7 Mainstreaming gender in public and private law reform processes (*main deliverable 5*)
6. Programme and budget for 2024-2027
7. Developments in member States in the area of private law
8. Co-operation with other relevant Council of Europe bodies and committees, other international organisations and civil society in the area of private law
9. CDCJ Opinions (if any) (*main deliverable 15*)
10. Observers
11. Elections (Chair of the CJ-AV)
12. Any other business
13. Dates of the next meetings
14. Adoption of the abridged meeting report

Appendix II

Programme of the celebration event marking the 60th Anniversary of the CDCJ (30 May 2023)

9:30 **Opening Session**

Introduced by Mr Daniele Cangemi, Head of the Department for Human Rights, Justice and Legal Co-operation standard-setting activities, Directorate of Human Rights, Directorate General Human Rights and Rule of Law, Council of Europe

- Mr Bjørn Berge, Deputy Secretary General of the Council of Europe
 - Mr Christoph Henrichs, Chair of the European Committee on Legal Co-operation (CDCJ) of the Council of Europe
 - Ambassador Petr Válek, Chair of the Committee of Ministers' Rapporteur Group on Legal Co-operation (GR-J) of the Council of Europe
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10:00 **Session I - Looking back at achievements of the CDCJ in public and private law over the last 60 years**

Moderator: Ms Margaret Killerby, former Secretary to the CDCJ and retired Director of Co-operation for Human Rights and Legal Affairs of the Council of Europe

Safeguarding judicial independence and the rule of law

- Mr Eberhard Desch, former member and Chair of the CDCJ and retired Head of International Law Division at the Federal Ministry of Justice of Germany

Contributing to a more transparent and democratic society in the public and private law fields

- Mr Miloš Haťapka, former member and Chair of the CDCJ, Counsellor for Civil Law at the Permanent Representation of the Slovak Republic to the European Union
- Ms Zuzana Fišerová, member and former Chair of the CDCJ, Deputy Minister International and EU co-operation, Ministry of Justice of the Czech Republic

Advancing family law standards and the rights of the child

- Professor Inge Lorange Backer, former member and Chair the CDCJ, retired Director General of the Legislation Department at the Ministry of Justice of Norway, Professor emeritus at the University of Oslo, Institute for public law

Questions & Answers

11:00

- Coffee break

11:20

11:20 Session II - Strengthening legal co-operation to meet challenges ahead

Moderator: Ms Signe Öhman, member of the CDCJ

Towards an instrument for the protection of lawyers

- Ms Vaida Rudėnaitė, member of the Council of Europe Committee of Experts on the Protection of Lawyers (CJ-AV), Lithuania
- Mr Laurent Pettiti, Lawyer at the Paris Bar, President of the Delegation of the French Bars in Brussels, Chair of the “European Convention” Working Group of the Council of Bars and Law Societies of Europe (CCBE)

Impact of artificial intelligence and new technologies in the context of public administration

- Mr Abderrazzak Afkyr, member of the CDCJ, Coordinating adviser, International Affairs and Projects, Directorate for European and International Affairs (DEIA), Ministry of Justice and Security (The Netherlands)

Adapting family law and the rights of the child to our modern societies

- Mr Seamus Carroll, former member and Chair of the CDCJ, former Chair of the Council of Europe Committee of Experts on the Rights and the Best Interests of the Child in Parental Separation and in Care Proceedings (CJ/ENF-ISE), retired Principal Officer, Civil Justice and Equality/Legislation, Department of Justice and Equality of Ireland
- Ms Velina Todorova, member and Vice-Chair of the United Nations Committee on the Rights of the Child

Questions & Answers

12:30 Closing Session

Concluding remarks by Mr Christophe Poirel, Director of Human Rights of the Council of Europe

12:45 Family Photo (Ante-room of the Committee of Ministers)

13:00 Lunch (upon invitation)
