

Newsletter | January - December 2021

LEGAL CO-OPERATION (CDCJ, CCJE, CCPE) IN 2021



Livia Stoica Becht, Head of the Legal Co-operation Division (CDCJ, CCPE, CCJE)

Editorial

I have great pleasure in introducing you to the first issue of the Council of Europe's Legal Co-operation Division's newsletter. It will be of no surprise that this issue examines the many ways in which Council of Europe committees, working in this field, continue to work through the pandemic, and focuses primarily on the latest legal standards they have developed.

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IN CONVERSATION WITH...

... MR JOÃO ARSENIO DE OLIVEIRA

CDCJ President, Mr João Arsénio de Oliveira (Ministry of Justice, Portugal), discusses the impact of the guidelines on the efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law, and how they improve legal aid assistance.



Mr João Arsénio de Oliveira (Ministry of Justice, Portugal), CDCJ President, 1 January 2020 to 31 December 2021

The European Committee on Legal Co-operation (CDCJ) has worked on a number of new recommendations and guidelines in recent years. We would like to discuss with you the guidelines on the efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law that the Committee of Ministers of the Council of Europe adopted on 31 March 2021. Could you tell us why the Committee decided to embark on developing these guidelines and the reasons behind this decision?

There were a number of reasons, the most important being the significance of access to effective legal aid and assistance, that should not be denied to those who do not have the financial means and cannot afford a lawyer. There was a need to further explore this issue in the context of the civil and administrative justice systems and give more substantial guidance to member states wishing to improve or strengthen the legal aid schemes in place. Legal aid is a critical component to ensuring access to justice and particularly has a prominent role in the criminal law context. Therefore, relevant European legal instruments have been already established for quite some time, unlike in areas of civil and administrative law. The right to legal aid at all stages of the criminal process is a fundamental procedural right for all those accused or suspected of crime and all member states safeguard this right to legal representation for all vulnerable persons using the criminal justice system. However, most international standards limit this right to legal aid (often referred to as legal assistance), to legal advice, assistance and representation in court proceedings or otherwise related to litigation, particularly in the context of criminal matters. This is the case of Article 6 of the European Convention on Human Rights. However, the Committee of Ministers of the Council of Europe, in its Resolution (78) 8 (on Legal Aid and Advice), recommends Council of Europe member states to ensure that persons in an economically weak position are able to obtain necessary legal advice on civil, commercial, administrative, social or fiscal matters and that such advice should be free or subject to a contribution based on their resources. In its Recommendation No. R (93) 1 (on Effective Access to the Law and to Justice for the Very Poor) the Committee of Ministers invites Council of Europe member states to promote legal services for the poor by defraying the cost of legal advice through legal aid schemes, developing advice centres in underprivileged areas, and by enabling NGOs or voluntary organisations providing support to the very poor, to give legal assistance.

Why are these guidelines unique?

The answer to this question lies in what I have just mentioned - before these guidelines were developed by the CDCJ, no other international legal instrument addressed the principles and issues relating to legal aid schemes in civil and administrative law, either at European or international level. The principles and standards of legal aid in the criminal justice system are inherited from the European Convention on Human Rights and European Court of Human Rights case law, and are also outlined in the

International Covenant on Civil and Political Rights, the UN Human Rights Committee, the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, the European Committee for the Prevention of Torture, and the UN Subcommittee on Prevention of Torture. However, the legal aid schemes in civil and administrative law standards are poorly covered. In addition to what was already mentioned, there are two European Union legal instruments relevant in this context, firstly on legal aid for cross-border disputes - the Legal Aid Directive (Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes, OJ L 26, 31 January 2003), and on mediation - the Mediation Directive (Directive 2008/52/EC of 21 May 2008 on certain aspects of mediation in civil and commercial matters, OJ L 136, 24 May 2008). Thus, for the Committee it was equally important to address this evident need and gap by developing the relevant legal instrument. The adoption of the guidelines is a significant step forward and a strong catalyst in promoting the commitment of the Council of Europe to legal aid issues and supporting member states towards implementing UNSDG Goal 16: peace, justice and strong institutions.

What aspects of legal aid scheme do you consider as the most important? To which aspects should member States considering improving the efficiency of their legal aid schemes pay attention to according to the guidelines?

The answer to this question lies in the article on the topic provided in this newsletter which explains in more detail the emerging trends and new challenges that deserve more attention from policy makers wishing to reform the legal aid schemes in place or wishing just to develop the system. However, both from the research conducted by the Committee before embarking on the development of the guidelines, as well as the feedback from member States during working group's discussions, it became apparent to me that without prompt access to legal aid at all stages of the criminal, civil or administrative justice process, a sufficiently staffed and resourced nationwide legal aid system, a diversity of legal aid providers including lawyers, university legal clinicians and paralegals, it would be impossible to build a viable and sustainable system. Member States should strive to design and implement innovative, comprehensive and sustainable legal aid systems, which are attainable and also with the assistance of IT technology being more affordable and widespread. Effective legal aid schemes produce significant positive outcomes both for individuals and for the wider society by improving the performance of the justice system at large and increase accountability and respect for the rule of law long term.

Now that there are new Council of Europe guidelines, what are the next steps for the member states? What are the challenges and what should be expected from the CDCJ in the future on this issue?

The guidelines are of an advisory nature, it is up to the member states to make use of the existing examples of good practices and of the interesting approaches already implemented. For the Committee, it is critical now that the member states are well informed and aware of the content of these guidelines and use them to improve their legal aid schemes, address gaps and obstacles, and adopt practical solutions suitable to their needs.

It is difficult to envisage now what could be the possible future challenges in this area. Certainly, it remains to be seen if and how the COVID-19 pandemic affected the provision of legal aid services. We can only speculate, as the economy and resources of all member states are restrained, and as previous experience has shown, it is often the legal aid systems that suffer the drastic budget cuts when such global events occur. If the issues and cases leading to homelessness or debt escalate and increase, access and availability to preliminary, early legal advice becomes paramount.

The CDCJ and the Council of Europe can provide support through their co-operation projects and bilateral guidance for reforming national legal aid systems. The Committee periodically revisits the state of implementation of its instruments, including these guidelines, and will continue to document best practices and follow the developments in legal aid schemes in civil and administrative law areas.

LEGAL CO-OPERATION ACTIVITIES



**Council of Europe
Guidelines on legal aid
schemes in the areas
of civil and
administrative law**



**Council of Europe
Guidelines on Online
Dispute Resolution
Mechanisms**

Existing legal aid schemes are not always practical and can be confusing and difficult for those who need to use them. Stephanie Lemke examines the Guidelines and how they can help member States improve the functioning of their legal aid systems in the areas of civil and administrative law.

[Read our expert's insights ›](#)

Legal dispute resolution using online techniques and mechanisms has become increasingly widespread as it allows faster and less costly access to courts and dispute resolution more effective and efficient. However, this form of dispute resolution can present challenges. Remigijus Jokubauskas and Marek Świerczyński present the Guidelines.

[Read our expert's insights ›](#)



Protection of the rights and best interests of the child in parental separation and in care proceedings

Council of Europe experts have undertaken a review of law, policy and practice in respect of parental separation and in care proceedings in order to provide guidance to members states on how to protect the best interests of the child in such situations. As a result of this review two distinct feasibility studies on these two topics have been prepared and published.

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International Conference and Technical meeting of experts on Statelessness: Progress, Challenges and Opportunities

23-24 September 2021

The Council of Europe, through the CDCJ, and the United Nations High Commissioner for Refugees (UNHCR) organised an international conference and a technical meeting of

experts on statelessness on the 23-24 September 2021. Having a stateless status directly impacts the exercise of fundamental human rights and freedoms. In the videos below, Lynn, Raymond and Christina bear witness to the daily hardships and difficulties of statelessness.

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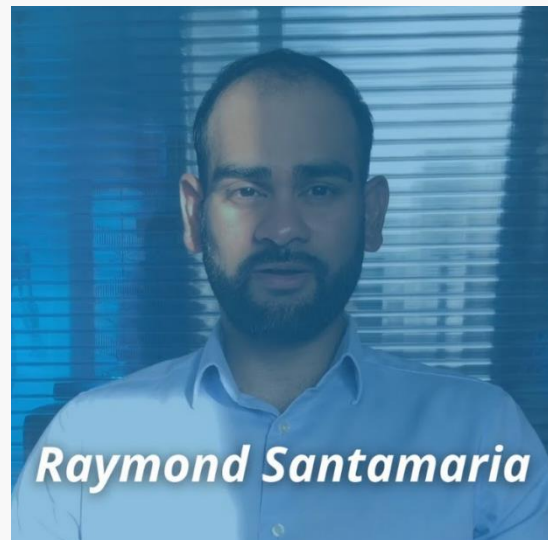
Christiana Bukalo

Christiana Bukalo is a driving force for social change and the founder of Statefree e.V.

Born in Germany as a stateless person, her experience directly reinforced her commitment and led her to create a digital platform, www.statefree.world, a space for communication and collaboration around statelessness.

[Listen to her story ›](#)

Raymond Santamaria was born in Goa and travelled to the UK on a British passport issued by the British High Commission in Mumbai. His passport and British citizenship were revoked by the Home Office a few months after his arrival. Since then, he has become a stateless person with a temporary residence permit.



Raymond Santamaria

[Listen to his story ›](#)

**How does
your stateless
status affect
your
day-to-day
life?**

*Lynn Al-khatib
Statelessness activist*



Lynn Al-khatib was born in Syria to a Palestinian family. In 2014, Lynn arrived in Sweden as a stateless person. Since then, she has been committed to raising awareness about the impact of statelessness on people living in Europe, and advocates for better treatment of stateless people and respect for their rights.

[Listen to her story >](#)

ABOUT JUDGES AND PROSECUTORS

JUDGES



*Ms Nina Betetto - CCJE President, 1 January 2020 to 31
December 2021*

**The role of
associations of judges
in supporting judicial
independence**

PROSECUTORS



*Mr Antonio Vercher Noguera - CCPE President since
January 2021*

**The role of
prosecutors in
emergency situations,
in particular when
facing a pandemic**

Opinion No. 23 (2020), adopted by the Consultative Council of European Judges (CCJE) in November 2020, calls on member States to provide the framework in which the right of judges to associate and the right to freedom of expression can effectively be exercised, and to refrain from any interventions which might infringe on the independence of the associations of judges.

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Opinion No. 15 (2020), adopted by the Consultative Council of European Prosecutors (CCPE) in November 2020, highlights not only the implementation of their usual but also new or extended functions in emergency situations, and how to overcome any challenges in such situations. The Opinion provides concrete examples of practices in the Council of Europe member States and sets out a number of recommendations.

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Evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems

Opinion No. 24 (2021), adopted by the CCJE in November 2021, provides further guidance to policymakers, legislators and judges on the key aspects covering the key bodies of judicial autonomy called upon to



Implications of the decisions as regards the practical independence of prosecutors

Opinion No. 16 (2021), adopted by the CCPE in November 2021, provides an overview of the relevant jurisprudence of international courts, principally that of the European Court of Human Rights and other courts and treaty bodies concerning the independence of the judiciary in

safeguard the independence and impartiality of judges.

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general, and of public prosecutors in particular.

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PUBLICATIONS

ONLINE DISPUTE RESOLUTION MECHANISMS IN CIVIL AND ADMINISTRATIVE COURT PROCEEDINGS



Legal instruments

Guidelines
and explanatory memorandum



*Guidelines on online dispute resolution mechanisms in
civil and administrative court proceedings*

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COLLECTION OF OPINIONS



Consultative Council of European Judges | www.coe.int/ccje



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THE EFFICIENCY AND THE EFFECTIVENESS OF LEGAL AID SCHEMES IN THE AREAS OF CIVIL AND ADMINISTRATIVE LAW



Legal instruments

Guidelines
and explanatory memorandum



*Guidelines on the efficiency and the effectiveness of
legal aid schemes in the areas of civil and
administrative law*

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PROFESSION OF LAWYER: STUDY ON THE FEASIBILITY OF A NEW EUROPEAN LEGAL INSTRUMENT



Report prepared by Jeremy McBride, consultant,
under the supervision of the European
Committee on Legal Co-operation (CDCJ)



*Study on the feasibility of a new, binding or non-
binding, European legal instrument on the profession of
lawyer*

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