

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 3 March 2023

CJ-AV(2023)05

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

**4<sup>th</sup> meeting**

**1-3 March 2023**

**Strasbourg, Palais de l'Europe, Room 6**

### **MEETING REPORT**

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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 fourth meeting in person from 1 to 3 March 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**

3. The Chair welcomed all participants, including the representatives of member States attending the meeting for the first time (Bosnia and Herzegovina, Poland and Türkiye).

## **4. Statement by the Chair and the Secretariat**

4. The Committee took note of the information on the exchange of views of the CDCJ Chair with the Committee of Minister's Rapporteur Group on Legal Co-operation (GR-J) on 17 November 2022, in which the progress by the CJ-AV with respect to the elaboration of the legal instrument was also discussed. The Committee was pleased to hear that all GR-J delegations expressing themselves on the matter supported the preparation of a legally binding instrument, which was a clear support of the approach taken by the CJ-AV, and proposed to the CDCJ. The Chair also informed the Committee that the CDCJ, at its 99<sup>th</sup> plenary meeting (23-25 November 2022), also held a general discussion on the draft provisions of the convention, notably on possible options to be explored as a priority for the implementation mechanism to guide the next steps of the CJ-AV work; and that on this occasion it agreed to propose to the Committee of Ministers that the terms of reference of the CJ-AV be extended up to 31 December 2024.

5. The Committee took note that, at its 99<sup>th</sup> plenary meeting, the CDCJ examined and declined the requests for observer status with the CJ-AV received from the European Young Bar Association (EYBA), the International Partnership for International Law in Advocacy (ILIA) and University of Women (UWE) , in application of the criteria set by the CDCJ and of the procedure set out in Resolution [CM/Res\(2021\)3](#).

## **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 (CJ-AV deliverable)**

6. The CJ-AV discussed the draft text on the basis of the 4<sup>th</sup> working version (set out in document CJ-AV(2022)05 prov4) prepared in the light of the comments and proposals received from CJ-AV members and observers since the 3<sup>rd</sup> meeting of the Committee (see document CJ-AV(2022)05 prov3).

7. The CJ-AV agreed that further harmonisation of the English and French text would be necessary to ensure that the text in both languages is clear and does not leave room for diverging interpretation. The concepts and principles will have to be clearly set in the provisions, while the explanatory report will provide further illustration and possible clarification thereof.

8. The Secretariat was instructed to address some of the points raised throughout the discussion concerning the consistency of the terms and wording used (such as the use of the terms “courts, tribunals, bodies or organisations”) using as a basis the interpretation of case law of the European Court of Human Rights. This was considered important for the purpose of well defining the scope of application of the convention (notably Article 2, paragraph 2) but also for other provisions (such as Article 5, paragraph 2).

9. The Secretariat was also instructed to prepare, for the next meeting, a first draft explanatory report, including also, under the relevant provisions, the required elements that emerged from the discussions.

10. The Committee did not examine the draft Preamble but took note of the explanations provided by the Secretariat for the revisions proposed, specifically to delete a number of articles for the purpose of making this section of the convention clearly focused on the explanations of its purpose and key principles, as opposed to list all the principles subsequently addressed in the operative provisions of the convention.

11. With regard to the Purpose and the Scope of the convention (Articles 1 and 2), the Committee provisionally agreed on a text for most of the provisions discussed. It was notably agreed to refer in Article 1, paragraph 1 to the right to practice the profession without discrimination or unjustified interference. A few delegations expressed concerns about the applicability of the convention to persons having been refused, revoked or suspended the qualification of lawyer or a license to practice, but most delegations stressed the importance of having the convention applicable to such persons. As regards article 2, paragraph 3, it was agreed to reconsider the provision, as revised, after examination of Article 9, to ensure that the convention offers protection to all the relevant persons assisting a lawyer in her or his professional activities.

12. With regard to Article 3 - Use of Terms, the Committee provisionally agreed on a definition of lawyer, which would not refer to the criterion of independence and to national law, to be complemented by a declaration to be made by the Parties at the moment of the signature or ratification indicating the specific professional titles used in their national legislation to which the convention would apply. The Secretariat was instructed to present, at the next meeting, a “standard” clause used in other conventions in similar circumstances. The Committee agreed to revise the definition of “client” without referring to the appointment of the lawyer. The Committee also discussed the need to keep the definition of “prospective client” in the article or not, and agreed to provisionally keep it in the text and to revise all the relevant provisions to make sure that this term is properly used whenever a reference to prospective clients is appropriate. The Committee agreed to a number of changes to other definitions, to make sure notably that they take into consideration the differences in national systems, that the definition of “professional activities of lawyers” covers all relevant activities, and that the Bar-type professional associations and their activities are covered by such definitions and fall within the scope of the convention. It agreed to review these definitions after having examined in detail articles 4 and 9. Finally, as regards the possible need to include a definition of confidentiality or of a similar concept, the Committee agreed to reconsider this matter after having discussed the relevant operative provisions.

13. With regard to Article 4 - Professional Associations, the Committee agreed on a number of amendments to the proposed draft, and notably to revise paragraph 1 so to indicate that the legal and regulatory framework governing the profession of lawyer shall ensure the autonomy and independence of professional associations.

14. With regard to Article 5 - Entitlement to practice, the Committee discussed the non-discrimination clause and the proposed prohibited grounds of discrimination, with a view notably to ensure the compatibility of the proposed draft with possible national and EU requirements. The Secretariat was requested to review the provision in the light of other clauses contained in Council of Europe instruments.

15. Concerning Article 6 – Professional rights of lawyers, the Committee examined in detail the various sub-paragraphs, agreeing on a number of changes. It agreed, for instance, with regard to paragraph 1.h) to rephrase and regroup the elements that form part of the issue of confidentiality in substance without referring to abstract legal concepts that might give rise to different interpretations in different legal systems. It agreed also to amend the current text of paragraph 1.k) to refer to “defending, representing or assisting their clients” and instructed the Secretariat to review the other provisions in order to ensure in a consistent manner whether they cover adequately all lawyers’ activities for their clients. The CJ-AV also agreed to widen the scope of paragraph 1.i) to cover the right to refuse to provide information or give evidence to “any matters” (as opposed to only “materials”) in which lawyers provide legal advice, assistance, representation or act in defence of their client. More generally, the Committee instructed the Secretariat to carry out a thorough review of this provision, in order to streamline the text and make proposals to eliminate possible redundancies, notably as regards matters related to the protection of confidentiality, of legal professional privilege and professional secrecy. The CJ-AV agreed to amend paragraph 1.n) and to include the deleted elements in the explanatory report, clarifying that this provision would cover access and communications with international and regional bodies with general and special competence to receive and consider communications relating to human rights and fundamental freedoms. The CJ-AV provisionally agreed not to modify Article 6, paragraph 2. It considered however that the order of paragraphs 2 and 3 should be reversed or, as an alternative, this paragraph should be included in Article 9 (Protection), as proposed by one delegation. With regard to the restrictions set out in paragraph 3, the CJ-AV agreed that further in-depth discussions would be required at its next meeting. On the basis of comments and proposals expressed, the Committee would discuss several options: option 1) a general provision that no restrictions shall be placed on the exercise of the rights other than those prescribed by law and strictly necessary in a democratic society; option 2) a provision setting out a list of restrictions which builds on the grounds stemming from the European Convention on Human Rights and its case law, in so far as those would apply to lawyers and the legal profession, or option 3) deleting this paragraph and including specific restrictions in each sub-paragraph of the rights covered by this Article. One delegation proposed to draw inspiration from Article 11 (Exceptions and restrictions) of the Convention 108+ (Modernised data protection Convention). The CJ-AV agreed that all members and observers should communicate their positions on the option preferred as well as any text suggestions during the consultations that will follow.

16. Lack of time prevented the Committee from completing the review of the other operative provisions. The Committee agreed that all members and observers should provide, as soon as possible and no later than by 7 April 2023, any further comments and drafting proposals on the newly revised version of the draft convention which will be circulated by the Secretariat after the meeting.

## **6. Implementation mechanisms: options and lessons learnt from the experience of other international organisations and Council of Europe bodies**

17. The CJ-AV resumed its discussions on possible options for the implementation and follow-up mechanism, with a focus on inquiry procedures, individual complaints procedures and models of platforms to address ad hoc situations. The Committee exchanged views with the Secretariat of the platform for the protection of journalists – a joint initiative of the Council of Europe and its partner civil society organisations – and discussed notably the procedures for making alerts on the threats to journalists in the member States, as well as the actions from the member States or the partners following these alerts.

18. The CJ-AV exchanged views with the Secretariat of GRETA about its evaluation procedure including possible urgent and ad hoc procedures and the follow-up by the Committee of the Parties to recommendations made by GRETA.

19. The CJ-AV considered that a complaint mechanism should be devised under the convention, although this should not replicate a court-like system. Views diverged with respect to who could lodge such complaints, with some members expressing a preference for limiting such applications to professional associations of lawyers, notably Bar associations or international professional associations of lawyers, and international non-governmental organisations working in the field of human rights on behalf of an individual lawyer in an individual case, while others considered that it would be important for individual lawyers as victims to be able to lodge such complaints. Several speakers acknowledged that such a mechanism would also require a careful consideration of any filtering arrangements and the means to verify the information received. Two members indicated that the Convention committee should be able to have a dialogue with a Party concerned where a lawyer would be kept out of contact and unable to lodge a complaint. Consideration of an emergency procedure and an opportunity to have in-country visits and hearings where necessary was also felt desirable.

20. Several delegations considered that the budgetary implications of the proposed mechanism should be carefully considered.

21. The Committee agreed to continue examining and discussing the implementation mechanism in the next meeting, looking also at UN-system mechanisms, before taking a decision.

## **7. Progress review of the CJ-AV activities**

22. The CJ-AV reviewed the progress made to date in the elaboration of the draft convention and examined the calendar of CJ-AV activities proposed for 2023-2024 (document CJ-AV(2023)03 prov), in the light of the Committee's current terms of reference and of the proposed request for extension of the latter.

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

23. This item was not examined due to lack of time.

**9. Any other business**

24. The Chair and the CJ-AV members and observers thanked the Permanent Representation of France to the Council of Europe for hosting, on the occasion of the 4<sup>th</sup> meeting of the CJ-AV, a reception for raising awareness on the work of the Committee to the representatives of all member States and especially of those States that are not involved in the CJ-AV's work.

**10. Dates and places of next meetings**

25. The CJ-AV agreed to hold its 5<sup>th</sup> and 6<sup>th</sup> meetings as follows: 3-5 July 2023 in Strasbourg and 17-19 October 2023 in Strasbourg.

**11. Adoption of the meeting report**

26. The CJ-AV adopted the report of its 4<sup>th</sup> meeting.

**Appendix I****Agenda**

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1. Opening of the meeting

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  2. Adoption of the agenda and order of business

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  3. CJ-AV tour de table

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  4. Statement by the Chair and Secretariat

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  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 (*CJ-AV deliverable*)

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  6. Implementation mechanisms: options and lessons learnt from the experience of other international organisations and Council of Europe bodies

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  7. Progress review of the CJ-AV activities

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

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  9. Any other business

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  10. Dates and places of next meetings

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  11. Adoption of the meeting report
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**Appendix II**  
**Participants**

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**MEMBERS / MEMBRES**

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



<b>UNITED KINGDOM / ROYAUME-UNI</b>	<b>Mr/M. Tony FISHER</b> Partner Fisher Jones Greenwood LLP – Solicitors
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**MEMBER STATES / ETATS MEMBRES**

<b>AZERBAIJAN / AZERBAIDJAN</b>	<b>Mr/M. Allahveran ORUJLU</b> Member of the Bar Association of Azerbaijan
<b>BOSNIA AND HERZEGOVINA / BOSNIE ET HERZEGOVINE</b>	<b>Ms/Mme Slavica LJUBISIC</b> Attorney at law Bar association of the Republic of Srpska  <b>Ms/Mme Tanja HADŽAGIĆ</b> Lawyer from Sarajevo Bar Association of the Federation of Bosnia and Herzegovina
<b>IRELAND / IRLANDE</b>	<b>Ms Aoife BYRNE</b> Justice Attaché / Deputy to the Permanent Representative Permanent Representation of Ireland to the Council of Europe
<b>POLAND / POLOGNE</b>	<b>Mr/M. Rafał CZARSKI</b> Deputy to the Permanent Representative Permanent Representation of Poland to the Council of Europe
<b>TÜRKIYE</b>	<b>Mr/M. Ömer YILMAZ</b> Counsellor (Ministry of Justice) Permanent Representation of Türkiye to the Council of Europe  <b>Mr/M. Mustafa CELAYİR</b> Counsellor (Ministry of Justice) Permanent Representation of Türkiye to the Council of Europe

**OBSERVERS / OBSERVATEURS**

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<b>EUROPEAN BARS FEDERATION / FEDERATION DES BARREAUX D'EUROPE (FBE)</b>	<b>Ms/Mme Dominique ATTIAS</b> Avocate Présidente du Conseil d'Administration de la Fondation des Avocats Européens Ancienne Présidente de la Fédération des Barreaux d'Europe

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**COUNCIL OF EUROPE EXPERT / EXPERT DU CONSEIL DE L'EUROPE**

<b>CONSULTANT OF THE CJ-AV / CONSULTANT DU CJ-AV</b>	<b>Mr/M. Jeremy McBRIDE</b> Barrister Monckton Chambers United Kingdom
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<b>PLATFORM FOR THE PROTECTION OF JOURNALISTS / PLATEFORME POUR LA PROTECTION DU JOURNALISME</b>	<b>Mr/M. Florent DUPLOUY</b> Legal adviser / <i>Conseiller juridique</i>

**INTERPRETERS / INTERPRETES**

<b>INTERPRETERS / INTERPRETES</b>	<b>Mr/M. Jean-Jacques PEDUSSAUD Mr/M. Luke TILDEN Ms/Mme Lucie DEBURLET</b>
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