

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 18 October 2023

CDCJ(2022)09 rev5

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

101st plenary meeting

15 – 17 November 2023

Strasbourg, Palais de l'Europe, Room 7

**REVIEW OF ACTION TAKEN BY THE
EUROPEAN COMMITTEE ON LEGAL CO-OPERATION (CDCJ)
TO LEGAL INSTRUMENTS PREPARED BY THE CDCJ
AND TO RECOMMENDATIONS ADOPTED BY THE PARLIAMENTARY ASSEMBLY
AND THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES**

Document prepared by the Secretariat
Directorate General Human Rights and Rule of Law – DGI

Review of action taken by the European Committee on Legal Co-operation (CDCJ) to legal instruments prepared by the CDCJ and to recommendations adopted by the Parliamentary Assembly and the Congress of Local and Regional Authorities

Note by the Secretariat

In accordance with its terms of reference the CDCJ is expected to:

- a) promote and facilitate the functioning, implementation and where necessary the ratification of Council of Europe conventions, agreements and protocols within its area of competence;
- b) follow and promote the implementation of the non-binding instruments that it has prepared, and if appropriate, of others, within its area of competence;
- c) advise the Committee of Ministers and the Secretary General on appropriate action to be taken and provide advice as requested.

The present memorandum lists the binding and non-binding legal instruments for which the European Committee on Legal Co-operation agreed to undertake action by reviewing their content and/or implementation and the decisions taken by the Committee in this respect. This document will be regular kept up-to date so that the CDCJ can take stock of progress made and any follow-up required.

It also lists the recommendations adopted by the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe in recent years, which are of relevance for the CDCJ's mandate, and to which the Committee of Ministers either replied (on the basis of comments from relevant committees, including CDCJ's opinions where appropriate) or to which a response has yet to be provided. The document also takes stock of the follow-up given by the Committee of Ministers in response to the recommendations of the Parliamentary Assembly and the Congress of Local and Regional Authorities, specifying the actions to be taken within the framework of the activities of the CDCJ, in order for it to ensure that the actions envisaged are followed up.

I. CDCJ: DECISIONS ON FOLLOW UP ACTIONS TO BINDING AND NON-BINDING LEGAL INSTRUMENTS WITHIN CDCJ'S COMPETENCE

1. European Convention on Information on Foreign Law – ETS No. 62 and Additional Protocol – ETS No. 97

1. At its 95th plenary meeting (4-5 and 23-24 November 2020), the Committee agreed to carry out a review of the European Convention on Information on Foreign Law (ETS No. 62) and its Additional Protocol (ETS No. 97). It entrusted the Bureau to make appropriate decisions in this regard for a possible future update, if necessary, or their further promotion.

2. At its 97th plenary meeting (1-3 December 2021), the Committee agreed on the activities to be undertaken to promote and implement ETS No. 62 and ETS No. 97 (document CDCJ(2021)8 Rev1).

3. The workplan proposed to do so could be reconsidered by the CDCJ at its 98th plenary meeting activities (1-3 June 2022), in particular in the light of discussions held within its Bureau which, at its meeting of February 2022, reaffirmed the demand for flexibility expressed by the CDCJ when, where appropriate, the Committee considers it necessary to modify the priorities and/or related timelines for the deliverables to be produced. Thus, for example, if a priority shall be given regarding the review of a specific legal instrument drawn up by the CDCJ or the implementation of follow-up activities, the focus should first be placed on the most advanced work, while the ongoing work on Recommendation CM/Rec(2015)4 and on Convention ETS No. 62 and its Additional Protocol ETS No. 97 could be delayed.

4. At its 98th plenary meeting (1-3 June 2022), the CDCJ took note of the information provided by the Chair on the discussions held within the Bureau after the plenary meeting of December 2021 concerning the CDCJ activities relating to the promotion and assessment of the implementation of the European Convention on Information on Foreign Law (ETS No. 62) and of its Additional Protocol (ETS No. 97) to be carried out by the end of 2023 in line with the CDCJ terms of reference.
5. The CDCJ took note of the additional information and explanations provided by the Secretariat on possible activities for promoting and implementing ETS Nos. 62 and 97 (updated concept paper - document CDCJ(2021)8 rev2) and the merits of the draft evaluation questionnaire prepared by the Secretariat on the use in practice by the member states of ETS Nos. 62 and 97. The Chair pointed out that these treaties of procedural nature are of great importance in terms of legal co-operation which is the very essence of the Committee. Therefore, the exercise to ensure that these instruments are useful and more used in practice would be an excellent contribution by the CDCJ.
6. The CDCJ welcomed the idea of a simple questionnaire targeting the necessary information to assess the relevance and practical use of the two treaties and decided to consult delegations on the draft questionnaire. The CDCJ agreed to approve the questionnaire as revised by written procedure and to issue it for completion by September 2022.
7. Lastly, it approved the concept note and revised workplan for this activity as it appears in document CDCJ(2021)8 rev2.
8. At its 99th plenary meeting (23-25 November 2022), the CDCJ took note of the information provided by the Secretariat on the outcome of the consultation process of Parties and non-Parties to Convention ETS No. 62 and its Additional Protocol ETS No. 97, and also on the planned activities for promoting and implementing these treaties. It agreed to discuss possible follow-up at its next plenary meeting on the basis of the analysis of the responses received to the questionnaire (CDCJ(2022)23 rev). Depending on the CDCJ's decisions in this respect, the activity's workplan as approved in 2021 may have to be revised (document CDCJ(2021)8 rev3).
9. A 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) has been prepared by a consultant on the basis of the replies received from Parties and non- Parties to the questionnaire prepared on the topic.
10. At its 100th plenary meeting (30 May-1 June 2023), the CDCJ examined the draft report (document CDCJ(2023)09 prov2) prepared by the consultant (Mr Nicolas Nord) on the basis of the analysis of the replies to the evaluation questionnaire received from Parties and non-Parties to ETS Nos. 62 and 97 (document CDCJ(2022)23 rev2), and authorised its publication under the responsibility of its author, subject to a final editorial review. The Committee exchanged views with the consultant on the avenues proposed in the report to improve the convention-based mechanisms; as a result, it decided to give priority to a dedicated webpage where other implementation tools would be made available, such as a practical handbook, standard forms and an updated list of national contact points. It also agreed on the workplan for 2024 and the deliverables to produce, as they appear in the appendix to the draft report. It is expected that the implementation tools be disseminated and promoted end of 2024 and/or over 2025.

2. Agreement on the Transfer of Corpses – ETS No. 80

11. At its 97th plenary meeting (1-3 December 2021), the Committee reconsidered the request submitted by France to the CDCJ on 28 October 2019 for a possible revision of the Agreement on the Transfer of Corpses – ETS No. 80 which is reflected in the terms of reference of the CDCJ for 2022-2025, and in light of the additional information and clarifications received from the French authorities, it considered that the elements raised would not warrant a revision of the legal instrument at this stage.

3. European Convention on the Legal Status of Children born out of Wedlock - ETS No. 85

12. At its 95th plenary meeting (4-5 and 23-24 November 2020), the Committee agreed to carry out a review of the European Convention on the Legal Status of Children born out of Wedlock – ETS No. 85 and entrusted the Bureau to make appropriate decisions in this regard for a possible future update, if necessary, or its further promotion. The Bureau instructed the Secretariat to conduct the review of the Convention, with the assistance of a consultant.

13. At its 97th plenary meeting (1-3 December 2021), the Committee examined and approved the report on the review of the implementation of ETS No. 85 (document CDCJ(2021)29), agreed to its publication, and entrusted the Bureau to discuss and develop any possible follow-up proposals for examination at its next meeting.

14. At its 98th plenary meeting (1-3 June 2022), following the adoption and publication of the report on the state of play of the implementation of the European Convention on the Legal Status of Children born out of Wedlock – ETS No. 85)¹, and recommended actions contained therein, the CDCJ examined the relevance of modernising Convention ETS No. 85 and held an exchange on the subject.

15. The CDCJ took note of the progress underway in other fora, presented by the United Kingdom with respect to the parentage/surrogacy project of the Hague Conference on Private International Law (HCCH) and by the International Social Service (ISS) with respect to the principles for the protection of the rights of the child born through surrogacy (Verona Principles); the Czech Republic informed the Committee about the European Union's intentions to prepare a new legislative proposal concerning the recognition of parenthood established abroad.

16. From the subsequent discussions, the CDCJ concluded that there was no support for the elaboration of a revised or new legally binding instrument on this issue, took note that several member States were in favour of a future soft law legal instrument which would provide guidance on selected aspects, and agreed to reconsider this issue at a more appropriate time, in the light of progress made by other international organisations and any relevant legislative developments with regard to the parenthood of couples of same sex and surrogacy.

4. Recommendation CM/Rec(2014)7 on the protection of whistleblowers

17. At its 95th plenary meeting (4-5 and 23-24 November 2020), the CDCJ agreed to evaluate Recommendation CM/Rec(2014)7 on the protection of whistleblowers. A consultant was tasked to conduct this evaluation work, by means notably of a questionnaire approved by the CDCJ Bureau, and to prepare the CDCJ's evaluation report taking account of the member states' responses (document CDCJ(2021)16) and any other relevant legal developments.

18. At its 97th plenary meeting (1-3 December 2021), the Committee examined the report outline on the evaluation of the implementation of CM/Rec(2014)7, agreed to pursue the preparation of the evaluation report and entrusted the Bureau to examine the completed draft report before its submission to the CDCJ for consideration at its next meeting.

19. At its 98th plenary meeting (1-3 June 2022), in the light of the summary presentation of the report on the evaluation of Recommendation CM/Rec(2014)7 by Ms Anna Myers, the CDCJ consultant, the CDCJ approved the report, and authorised its publication, with the consent of the author, subject to any editorial changes required as a result of the exchange of views held at the plenary. The evaluation report on CM/Rec(2014)7 has been published online in 2022.

¹ CDCJ(2021)29.

20. The CDCJ took note of the recommendations contained in the report to consider further standard-setting work, through an update of the existing recommendation and/or explanatory memorandum. In this context, the Chair recalled the discussions that took place in the Bureau in March 2022 which found it premature to update the recommendation at this stage, as a large number of member States of the Council of Europe were concerned with the transposition into national law of Directive (EU) 2019/1937 on the protection of persons reporting violations of Union law. The CDCJ followed the Bureau's proposal, and decided to consider this project at a later stage, in view of currently still ongoing developments in this field in a number of member States.

5. Recommendation CM/Rec(2015)4 on preventing and resolving disputes on child relocation

21. At its 95th plenary meeting (4-5 and 23-24 November 2021), the CDCJ agreed to assess Recommendation CM/Rec(2015)4 on preventing and resolving disputes on child relocation and its implementation by the member States. A consultant was tasked to conduct this evaluation work, by means notably of a questionnaire approved by the CDCJ Bureau, and to prepare the CDCJ's evaluation report taking account of the member states' responses (document CDCJ(2021)17).

22. At its 97th plenary meeting (1-3 December 2021), the Committee held an exchange of views on the draft report on the evaluation of the implementation of CM/Rec(2015)4 (document CDCJ(2021)27 prov) and requested member States to provide their comments and additional information by 31 December 2021 to allow the consultant and the CDCJ Bureau to finalise the report in view for the Committee to approve it by written procedure in 2022.

23. At its 98th plenary meeting (1-3 June 2022), the CDCJ examined the revised draft report on the state of play of the implementation of Recommendation CM/Rec(2015)4 and adopted it with the amendments agreed during the meeting, as it appears in document CDCJ(2021)27, completing deliverable 6 of its Terms of reference. It authorised its publication, with the consent of her author. The evaluation report on CM/Rec(2015)4 has been published online in 2022.

24. The CDCJ recalled its decision to strengthen efforts for the promotion and awareness raising of this recommendation taken at its 97th meeting (1-3 December 2021) and invited the CJ/ENF-ISE to ensure the adequate integration of the issue of child relocation in the context of disputed separation in the draft recommendation under preparation; the CJ/ENF-ISE Chair, on behalf of the committee, expressed the readiness to consider developing guidance to the member States on this issue in the framework of the elaboration of the legal instrument on the rights and best interests of the child in the context of parental separation and in care proceedings.

25. On this last point, it should be noted that, at its 99th plenary meeting (23-25 November 2022), the CDCJ 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) and it agreed that the subordinate body would continue its work by drawing up two separate draft recommendations, one relating to parental separation and one to care proceedings. It also 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. Moreover, it agreed to instruct 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.

II. COMMITTEE OF MINISTERS – REPLIES TO THE PARLIAMENTARY ASSEMBLY AND THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES ON THEIR ADOPTED TEXTS

26. Below is the follow-up given by the Committee of Ministers to the recommendations adopted by the Assembly and the Congress of Local and Regional Authorities during the six past years, on which the CDCJ provided an opinion to the Committee of Ministers.

27. To-date, two Parliamentary Assembly's recommendations on which the CDCJ transmitted its opinion to the Committee of Ministers are pending for response by the Committee of Ministers:

- Recommendation 2255 (2023) – “Health and social protection of undocumented workers or those in an irregular situation”, and
- Recommendation 2254 (2023) – “Safeguarding democracy, rights and the environment in international trade”.

*
* *

Recommendation 2255 (2023) adopted by the Parliamentary Assembly on 21 June 2023

“Health and social protection of undocumented workers or those in an irregular situation”

At their 1471st meeting (5 July 2023), the Committee of Ministers' Deputies agreed to communicate Recommendation 2255 (2023) to the European Committee of Social Rights (ECSR), to the Governmental Committee of the European Social Charter and the European Code of Social Security (GC), to the Steering Committee for Human Rights (CDDH), the European Committee on Legal Co-operation (CDCJ), to the Steering Committee for Human Rights in the fields of Biomedicine and Health (CDBIO) and to the Special Representative on Migration and Refugees, for information and possible comments by 15 September 2023.

The CDCJ opinion was adopted, on behalf of the CDCJ, by the Bureau of the Committee on 14 September 2023 after examination at its 118th meeting (13-14 September 2023 and transmitted to the Committee of Ministers. The opinion states that the “CDCJ notes that, while an important topic in our societies, it does not come within the fields of competence of the Committee or conventions for which it has been given responsibility.”

The Committee of Ministers' Rapporteur Group for Social and Health Questions (GR-SOC) will prepare a draft reply for adoption at one of their forthcoming meetings.

Recommendation 2254 (2023) adopted by the Parliamentary Assembly on 27 April 2023

“Safeguarding democracy, rights and the environment in international trade”

At their 1466th meeting (9-12 May 2023), the Committee of Ministers' Deputies agreed to communicate Recommendation 2254 (2023) to the Steering Committee for Human Rights (CDDH) and to the European Committee on Legal Co-operation (CDCJ), for information and possible comments by 16 June 2023.

At its 100th plenary meeting (30 May-1 June 2023), the CDCJ took note of the request made by the Committee of Ministers and 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.

The Committee of Ministers' Rapporteur Group on Human Rights (GR-H) will prepare a draft reply for adoption of the final reply by the Committee of Ministers' Deputies at one of their forthcoming meetings.

Recommendation 2244 (2023) adopted by the Parliamentary Assembly on 23 January 2023

“Addressing the issue of Daesh foreign fighters and their families returning from Syria and other countries to the member States of the Council of Europe”

At their 1456th meeting (8-9 February 2023), the Committee of Ministers’ Deputies agreed to communicate Recommendation 2244 (2023) to the Committee on Counter-Terrorism (CDCT), to the Steering Committee for the Rights of the Child (CDENF) and to the European Committee on Legal Co-operation (CDCJ), for information and possible comments by 17 March 2023.

The CDCJ opinion was adopted, on behalf of the CDCJ, by the Bureau of the Committee on 15 March 2023, by written procedure, and transmitted to the Committee of Ministers.

In its reply CM/AS(2023)Rec2244-final of 4 October 2023, the Committee of Ministers agrees that, on the question of deprivation of nationality, children of foreign fighters should be treated first and foremost as children and should not bear the consequences of the offences committed by their family members. In this context it recalls the safeguards set out in the 1961 UN Convention on the Reduction of Statelessness and the 1997 European Convention on Nationality (ETS No. 166), as well as in Recommendation CM/Rec(2009)13 on the Nationality of Children. It informs the Assembly that further work is planned on specific issues related to statelessness of children and their access to nationality.” Furthermore it agrees, “in principle, that children of foreign fighters who are nationals of member States, when they are repatriated, it can be with their mothers where possible. This is for each member State to decide. In the judicial procedures against parents upon their arrival on the national territory of a member State, maintaining the link with their children should then be considered on a case-by-case basis, taking into account the best interests of the children. It informs the Assembly that work connected with these challenging questions is currently ongoing or planned, including draft recommendations on the rights and best interests of the child in parental separation and in child care proceedings; guidance on (re)integration programmes for children exposed to terrorist violence and ideologies; assessment of the needs and challenges of child victims and witnesses of violent crimes within the justice system, including re-integration and rehabilitation of children affected by terrorism; and children’s rights in crisis and emergency situations, including armed conflict and terrorism.”

Recommendation 2241 (2022) adopted by the Parliamentary Assembly on 25 November 2022

“The impact of the Covid-19 restrictions on civil society space and activities”

At their 1452nd meeting (14 December 2022), the Committee of Ministers’ Deputies agreed to communicate Recommendation 2241 (2022) to the Steering Committee for Human Rights (CDDH), the European Committee on Legal Co-operation (CDCJ), the Conference of INGOs and the Joint Council on Youth (CMJ), for information and possible comments by 15 February 2023.

The CDCJ opinion was adopted, on behalf of the CDCJ, by the Bureau of the Committee on 8 February 2023, by written procedure after examination at its 116th meeting (2-3 February 2023), and transmitted to the Committee of Ministers on 14 February 2023.

In its reply CM/AS(2023)Rec2241-final of 6 September 2023, the Committee of Ministers, *inter alia*, affirms that it continues to implement the decisions adopted at its 129th Session in Helsinki (17 May 2019) on “the need to strengthen the protection and promotion of civil society space in Europe. It reiterates its call on member States to implement Recommendations CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe and encourages member States which have not yet done so to sign and/or ratify the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (ETS No. 124).

Recommendation 2213 (2021) adopted by the Parliamentary Assembly on 29 September 2021

“Addressing issues of criminal and civil liability in the context of climate change”

In its reply CM/AS(2022)Rec2213-final of 5 October 2022, the Committee of Ministers considers that “undertaking future work relating to the Lugano Convention along the lines proposed by the Assembly in paragraphs 3.2 and 3.3 would require a careful review of the relevance and added-value of improving and adapting the international legal framework, taking into account the existing sector-specific civil liability regimes set out in international treaties and other binding legal instruments developed since then and their effectiveness. In this respect, the Committee considers it more appropriate, at this stage, to undertake the study on national climate litigation cases mentioned in paragraph 3.4 of the Assembly’s recommendation, which could also examine the extent to which other legal instruments achieve the aims of the Lugano Convention.”

Therefore, “it invites the CDCJ to propose a calendar for undertaking this work” (see paragraph 4 of the reply).

Furthermore, in paragraph 3 of its reply, the Committee of Ministers “notes with interest the Assembly’s call for a study on the notion of “ecocide” and will take this into account as appropriate in its consideration of future work related to the environment. As for the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (Lugano Convention, ETS No. 150), the Committee of Ministers recalls that this convention was classified as “inactive” in the report by the Secretary General on the review of Council of Europe conventions of 16 May 2012 (see SG/Inf(2012)12-add), and therefore it considers that it is inappropriate to encourage member States that have not yet done so to ratify it.”

At its 100th meeting, the CDCJ will examine a draft calendar proposed by its Bureau after consideration of the issue in the light of an exchange of views with expert(s) in the field.

Recommendation 2192 (2020) adopted by the Parliamentary Assembly on 4 December 2020

“Rights and obligations of NGOs assisting refugees and migrants in Europe”

In its reply CM/AS(2022)Rec2192-final of 2 March 2022, the Committee of Ministers does not require any specific action by the CDCJ.

However, the following elements of its reply should be noted: “[L]ike any individual, refugees and migrants enjoy fundamental freedoms and universal human rights, which must be respected, protected and exercised in all circumstances. The Committee also recalls that refugees, migrants in a regular situation and those in an irregular situation, fall under distinct legal frameworks. It also underlines the relevance of the Council of Europe’s other existing legal instruments, including of the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (ETS No. 124), which those States which have not yet done so are encouraged to sign and/or ratify, and Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe as well as Recommendation CM/Rec(2018)1 on the need to strengthen the protection and promotion of civil society space in Europe. [...] In the light of the above, and in the absence of clearly identified legal lacunae, the Committee considers that priority should be given to implementing the existing legal standards which apply to NGOs assisting refugees and migrants who are in Europe. In this context, it recalls that all actors should act in accordance with relevant legal standards and stresses that NGOs need to be able to carry out their activities freely in accordance with the rights enshrined in the European Convention on Human Rights.”

Recommendation 2191 (2020) adopted by the Parliamentary Assembly on 4 December 2020 **“Investment migration”**

In its reply [CM/AS\(2022\)Rec2191-final](#) of 15 June 2022, the Committee of Ministers reiterated the importance of the treaties mentioned in paragraph 1 of the Assembly’s recommendation concerning nationality, the fight against money laundering and corruption, mutual assistance in criminal and tax matters, and the movement of persons between Council of Europe member States [...]. Hence, it agreed with the Parliamentary Assembly regarding the importance of ensuring that national programmes of member States for the award of citizenship, residence permits and tax domiciles to foreign investors respect the legal standards of the Council of Europe and other relevant bodies to avoid becoming gateways for corruption, organised crime, money laundering, the financing of terrorism and tax evasion. It informed the Assembly that MONEYVAL has assessed several member States which have implemented individual investment programmes, and that its mutual evaluation reports have defined and analysed such programmes as high risk for money laundering and terrorism financing. [...]

Several of the measures called for in paragraph 2 of the recommendation have featured in the monitoring work of GRECO which, in its Second Evaluation Round, recommended the establishment of public and centralised company registers, the carrying out of rigorous due diligence checks for public bodies and private operators, as well as whistleblower protection.

As concerns the other recommended actions, the Committee of Ministers invited the above bodies to take them into account to the extent possible under their terms of reference, and to engage with their international partners and observers as necessary. Where relevant, the Committee may also consider the need for work on those issues at the time of its mid-term review of the terms of reference of intergovernmental committees towards the end of 2023.

Recommendation 2188 (2020) adopted by the Parliamentary Assembly on 23 October 2020 **“The principles and guarantees of advocates”**

In its reply [CM/AS\(2021\)Rec2188-final](#) of 30 June 2021, the Committee of Ministers recalls that it recently took note of the study carried out by the European Committee on Legal Co-operation (CDCJ) on “The feasibility of a new, binding or non-binding, European legal instrument on the profession of lawyer – possible added-value and effectiveness”. [...] The Committee of Ministers also took note of draft terms of reference of a committee of experts subordinate to the CDCJ tasked with drawing up a draft European legal instrument, binding or non-binding, on the profession of lawyer, which will be examined in the context of the discussions on the next Programme and Budget in the autumn of 2021. Pending its decision on the development of a new legal instrument, the Committee of Ministers encourages member States to pursue their efforts in fully implementing the provisions of Recommendation Rec(2000)21, inter alia, through Council of Europe co-operation and training activities.

The Committee of Ministers is also mindful of the Parliamentary Assembly’s repeated call for the establishment of a platform for the protection of advocates from any interference with the exercise of their professional activities. In its reply to Parliamentary Assembly Recommendation 2121 (2018), the Committee stated that it would consider the merits of the proposal for early-warning mechanisms to protect the various professions involved in defending human rights at a later date, in the light of the CDCJ feasibility study and the practice of existing early-warning procedures and mechanisms. In view of the upcoming Programme and Budget exercise, which will include the examination of future work of the Council of Europe on the profession of lawyer as indicated above, the Committee of Ministers maintains this position.

Recommendation 2162 (2019) adopted by the Parliamentary Assembly on 1 October 2019

“Improving the protection of whistleblowers all over Europe”

In its reply CM/AS(2020)Rec2162-final of 22 April 2020, the Committee of Ministers [...] points out that, in the pursuit of its terms of reference, the CDCJ is, in particular, responsible for providing legislative advice, training and awareness-raising to national authorities and other relevant bodies relating to public interest disclosures and the protection of whistle-blowers.

[...] In addition, it encourages member States which have not yet done so to sign and/or ratify the Civil Law Convention on Corruption (ETS No. 174), which, among other things, protects employees who report suspicions of corruption in good faith from unjustified sanctions.

[...] Lastly, with regard to the Assembly’s recommendation that a legally binding instrument be drawn up, the Committee of Ministers reiterates the position set out in its reply to Assembly Recommendation 2073 (2015) on “Improving the protection of whistle-blowers”.² Given the complexity of the subject and the range of solutions adopted by the member States to protect whistle-blowers, it believes that the negotiation of a binding instrument, such as a convention, would be time consuming and there would be no certainty as to its outcome. At this stage, the Committee considers it more appropriate to encourage States fully to implement the recommendations which have been adopted by the Committee of Ministers or other bodies such as GRECO. In this connection, it points out that the relevant Council of Europe committees and bodies are ready to respond to any requests for technical assistance from member States.

Recommendation 2161 (2019) adopted by the Parliamentary Assembly on 28 June 2019

“Pushback policies and practice in Council of Europe member States”

In its reply CM/AS(2020)Rec2161-final of 12 February 2020, the Committee of Ministers states inter alia [...] that migration issues have been discussed by the Ministers’ Deputies. The Committee of Ministers recalls that the Commissioner for Human Rights has addressed the issue of pushbacks calling for laws and regulations that specifically prohibit practices that would lead to collective expulsions or refoulement and for investigations of any allegations that such pushbacks occur. In June 2019, the Deputies had an exchange of views with the Commissioner for Human Rights, during which she presented her Recommendation “Lives saved. Rights protected. Bridging the protection gap for refugees and migrants in the Mediterranean”, which addresses in detail the issue of collective expulsions and refoulement of migrants at sea. The Commissioner has also repeatedly addressed the issue of solidarity within the European Union with regard to the sharing of responsibility for the reception and processing of migrants and asylum seekers and in providing for their relocation as appropriate. In addition, the new Special Representative of the Secretary General on migration and refugees started his mandate in January 2020 and his task is to promote the human rights standards of the Organisation in his interactions with member States as well as with the relevant international organisations and bodies in respect of activities or legislative processes conducted by them.

[...] The Committee of Ministers recalls the need to continue shared efforts in addressing the challenges arising from global migration, based on a balance of responsibility and on solidarity. It also wishes to point out that, while continuously promoting compliance with the human rights standards of the Organisation in respect of migration-related activities in its member States, it strives to focus its efforts on the priority areas lying within its competence, where it can provide real added value. Accordingly, there will be work in the next biennium on different topics relating to migration and in particular the situation of migrant women and children.

² [CM/AS\(2016\)Rec2073-final](#) of 22 January 2016.

Recommendation 2160 (2019) adopted by the Parliamentary Assembly on 27 June 2019

“Stop violence against, and exploitation of, migrant children”

In its reply CM/AS(2019)Rec2160-final of 11 December 2019, the Committee of Ministers does not require any specific action by the CDCJ.

Recommendation 2156 (2019) adopted by the Parliamentary Assembly on 12 April 2019

“Anonymous donation of sperm and oocytes: balancing the rights of parents, donors and children”

In its reply CM/AS(2019)Rec2156-final of 9 October 2019, the Committee of Ministers [...] considers that any proposal for regulation in this particularly sensitive area should be based on a careful consideration of the implications of anonymous gamete donation from the ethical, legal and societal perspective, give due consideration to the consequences of changing national practices and should not be legally binding. These consequences may include the potential impact on the supply and availability of donated gametes and embryos, the destiny of the cryopreserved gametes and embryos donated before potential legislative changes and the impact this life-altering information might have not only on donors, but also on their families and children.

[...] Given the importance of this issue, and the evolution of legislation and practices of member States in this field, the Committee of Ministers invites the CDCJ, in consultation with the DH-BIO, the CD-P-TO and the CAHENF, to consider, in its future activities, the feasibility and desirability of preparing a draft recommendation or other non-binding instrument to assist member States in protecting the rights of donor-conceived persons to know their origins, whilst ensuring a balance with the interests and rights of other parties involved in sperm and oocyte donation, and of the interests of society and obligations of the State.

At their 1445th meeting (5 October 2022), the Committee of Ministers' Deputies took note that the CDCJ, at its 98th plenary meeting (1-3 June 2022), agreed on the relevance and added value of elaborating a draft recommendation on the rights of donor-conceived persons to know their origins, and that a proposal to that effect would be prepared in due course for consideration by the Committee of Ministers.

Recommendation 435 (2019) adopted by the Congress of Local and Regional Authorities on 3 April 2019

**“The protection of whistleblowers
Challenges and opportunities for local and regional government”**

In its reply CM/Cong(2020)Rec435-final of 22 April 2020, the Committee of Ministers [...] refers to Recommendation CM/Rec(2014)7 to member States on the protection of whistle-blowers, which represented a major international advance in that it established a comprehensive set of principles to guide member States when reviewing relevant legislation and institutional set-ups aimed at protecting those who alert the public and/or competent authorities to potential threats or harm to the public interest. The recommendation also urged member States to make periodic assessments of the effectiveness of national frameworks for whistle-blower protection. A guide to facilitate implementation of the recommendation by member States was prepared by the CDCJ and published in 2016. The Committee points out that, in the pursuit of its terms of reference, the CDCJ is, in particular, responsible for providing legislative advice, training and awareness-raising to national authorities and other relevant bodies relating to public interest disclosures and the protection of whistle-blowers.

[...] In addition, the Committee of Ministers encourages member States which have not yet done so to sign and/or ratify the Civil Law Convention on Corruption (ETS No. 174), which, among other things, protects employees who report suspicions of corruption in good faith from unjustified sanctions.

[...] the Committee of Ministers has noted the recommendations made by the Congress of Local and Regional Authorities and urges Council of Europe member States to disseminate them among the relevant national authorities and be guided by them when drawing up or further developing legislation and regulations concerning whistle-blower protection. It nevertheless expresses reservations about the Congress's proposal regarding anonymous reporting, which was deliberately omitted by the CDCJ in preparing Recommendation CM/Rec(2014)7 because of this committee's concerns about its

potential for misuse. The Committee of Ministers refers the Congress to the detailed opinion on the subject adopted by CDCJ (*in the appendix to the Committee of Ministers' reply*).

Recommendation 2145 (2019) adopted by the Parliamentary Assembly on 25 January 2019

“Withdrawing nationality as a measure to combat terrorism: a human rights-compatible approach?”

In its reply CM/AS(2019)Rec2145-final of 5 November 2019, the Committee of Ministers [...] notes that the European Convention on Nationality provides a sufficient legal framework both for depriving a person of their nationality, as long as they have at least one other nationality (Article 7), and for protecting persons from being arbitrarily deprived of their nationality (Article 4). It encourages Council of Europe member States which have not already done so to consider signing and/or ratifying the Convention. It also notes that the Convention states that States Parties may provide for the loss of nationality where a person's conduct is seriously prejudicial to the vital interests of the State (Article 7.1.d). Guidelines on the manner in which this provision is to be implemented by the States Parties might indeed be examined.

As for the Assembly's recommendation 1.1, the Committee of Ministers notes that a comparative study on Council of Europe member States' laws allowing for deprivation of nationality could serve as a basis for future discussions among member States on the usefulness of this measure as a way to prevent terrorism and on the legal problems that it may pose, as well as on possible alternatives to withdrawing nationality. This study could be part of the prevention activities of the Council of Europe Counter-Terrorism Strategy (2018-2022), and in particular of activity 3.1 concerning the collection of best practices with regard to de-radicalisation, disengagement and social reintegration. Any future guidelines as recommended by the Assembly in its recommendation 1.2 could, subsequently, be part of a broader set of recommendations to member States on de-radicalisation, disengagement and social reintegration. The Committee of Ministers will keep the Assembly informed of any developments in this area.

Recommendation 2141 (2018) adopted by the Parliamentary Assembly on 11 October 2018

“Family reunification of refugees and migrants in the Council of Europe member States”

In its reply CM/AS(2019)Rec2141-final of 27 March 2019, the Committee of Ministers does not require any particular action from the CDCJ. However, strongly supporting the work of the International Red Cross and Red Cross and Red Crescent societies, it encourages member States to co-operate, as appropriate, with those bodies in their action for finding missing family members of refugees.

Recommendation 2139 (2018) adopted by the Parliamentary Assembly on 29 June 2018

“Deliberate destruction and illegal trafficking of cultural heritage?”

The Committee of Ministers' reply CM/AS(2018)Rec2139-final of 12 December 2018 does not require any specific action by the CDCJ.

Recommendation 2135 (2019) adopted by the Parliamentary Assembly on 27 June 2018

“Extra-territorial processing of asylum claims and the creation of safe refugee shelters abroad”

In its reply CM/AS(2018)Rec2135-final of 28 November 2018, the Committee of Ministers [...] notes that before considering whether or not work should be undertaken to revise the European Agreement on the Abolition of Visas for Refugees, further analysis would be required in order to ascertain whether new international standards are required to address the issues raised by the Parliamentary Assembly, whether there is political support among member states to develop new standards, and if so what form they should take (e.g. revision of existing instruments or adoption of new instruments). Furthermore, it notes that the Convention in question pre-dates the European Union and has only been ratified by 23 member States, two of which have suspended its application. In the light of these considerations, the Committee of Ministers does not consider at present that there are any compelling reasons to modify the European Agreement on the Abolition of Visas for Refugees. [...]

Recommendation 2134 (2018) adopted by the Parliamentary Assembly on 27 June 2018

“New restrictions on NGO activities in Council of Europe member States”

In its reply CM/AS(2019)Rec2134-final of 16 January 2019, the Committee of Ministers [...] reiterates its call on member States to fully implement Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe. The European Committee on Legal Co-operation (CDCJ) will review the follow-up given by member States to Recommendation CM/Rec(2007)14 within the framework of biennium 2020-2021, subject to the availability of the necessary resources. The Conference of INGOs has indicated its readiness to contribute to this review, in particular through the work of its Expert Council on NGO Law.

As part of its review of the implementation of Recommendation CM/Rec(2007)14, the CDCJ will study *inter alia* the desirability and feasibility of establishing an “alert mechanism” as proposed by the Parliamentary Assembly, subject to the availability of budgetary resources. The Committee of Ministers will only consider creating such a mechanism, however, if it would offer real added value, and taking due account of all existing procedures. [...]

In response to the recommendation made in paragraph 1.7 to develop guidelines on foreign funding of NGOs, the Committee confirms that the European Commission for Democracy through Law (Venice Commission) is preparing a report on this subject. The Committee has been informed that this report could lead to the adoption of general recommendations by the Venice Commission. The CDCJ, meanwhile, has indicated that the issue of foreign funding for NGOs will be dealt with as part of the review of the implementation of Recommendation CM/Rec(2007)14 mentioned above.

Recommendation 2121 (2018) adopted by the Parliamentary Assembly on 24 January 2018

“The case for drafting a European convention on the profession of lawyer”

In its reply CM/AS(2019)Rec2121-final of 30 January 2019, the Committee of Ministers [...] notes that its Recommendation No. R(2000)21 on the freedom of exercise of the profession of lawyer is still a benchmark instrument, but recognises that, almost twenty years after its adoption, its implementation in member States could be reviewed and even improved, notably by means of training activities carried out as part of bilateral co-operation. It therefore encourages the relevant Council of Europe committees and departments to step up their action in this area. It considers desirable to take account of the challenges facing lawyers in today's society and in the daily exercise of their professional activities, and to adopt tailored and efficient provisions for ensuring the protection and independence they need.

From a longer-term perspective, the Committee of Ministers notes that the Parliamentary Assembly's proposal that a convention on the profession of lawyer be drafted (§7.1 of the recommendation) has met with interest from the consulted committees. It also notes the need to further examine the added value and effectiveness of such a binding instrument in terms of raising the level of protection, before embarking on its possible preparation, and even exploring other alternatives which could address the Parliamentary Assembly's concerns. A new convention would add value only if it provides a higher level of protection for lawyers than that provided by the existing instruments, by guaranteeing the necessary professional independence and security. Hence, given the importance for the rule of law

and the protection of the fundamental rights of an independent legal profession, the Committee of Ministers is in favour of conducting a feasibility study on the basis of which it will decide whether it is appropriate to embark on the drafting of a new convention to be primarily focused on the protection of lawyers in the exercise of their profession.

The Committee of Ministers instructs its European Committee on Legal Co-operation (CDCJ), in close consultation with the other relevant committees, and in particular the European Committee on Crime Problems (CDPC), to prepare, by the end of 2019, a feasibility study covering the following points:

- a. identifying the possible added value of drafting a convention, taking account of the protection provided by other Council of Europe instruments, in particular the European Convention on Human Rights and the case-law of the European Court of Human Rights,
- b. identifying and assessing the possible alternatives to drafting a convention, including, for instance a new recommendation or guidelines,
- c. defining, if appropriate and depending on the conclusions under items a and b, a tentative outline of the personal and material scope of a convention,
- d. drawing up, if appropriate and depending on the conclusions under items a and b, a tentative outline of draft terms of reference for a committee of experts responsible for drafting the convention, and advising on appropriate working methods.

With regard to the proposal to establish an early-warning mechanism for lawyers (§7.2), the Committee of Ministers notes that the Assembly made a similar proposal for human rights defenders in Recommendation 2133 (2018) "Protecting human rights defenders in Council of Europe member States". At this stage, the Committee of Ministers believes it is preferable not to set up increasing numbers of early-warning mechanisms to protect the various professions involved in defending human rights. It will consider the merits of the proposal at a later date, in the light of the above-mentioned feasibility study and the practice of existing early-warning procedures and mechanisms. [...]

The feasibility of a new, binding or non-binding, European legal instrument on the profession of lawyer has been the subject of a study in the form of a report that the CDCJ adopted at its 95th plenary meeting (4-5 and 23-24 November 2020), on which occasion it also agreed to its publication. This feasibility study has been published online in 2021. Having regard to the study's findings that the Committee of Ministers examined, the latter gave mandate to the CDCJ to prepare, in the period 2022-2023, a draft legal instrument aiming at strengthening the protection of the profession of lawyer and the right to practice the profession without prejudice or restraint, which sets out a comprehensive set of minimum standards applicable to a lawyer's right to freely exercise their professional activities and ensure protection and independence of the profession, and may include establishing a mechanism entrusted with the implementation of the standards by member States or giving guidance on their application.