

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 15 March 2021

CDCJ(2020)8 final

**95<sup>th</sup> MEETING OF THE EUROPEAN COMMITTEE  
ON LEGAL CO-OPERATION  
(CDCJ)**

**held by videoconference on 4-5 and 23-24 November 2020**

**MEETING REPORT**

**CDCJ website: [www.coe.int/cdcj](http://www.coe.int/cdcj)  
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## Introduction

The European Committee on Legal Co-operation (CDCJ) held its 95<sup>th</sup> meeting by videoconference on 4-5 and 23-24 November 2020, with Mr João Arsénio de Oliveira (Portugal) in the Chair who welcomed the participants. The agenda, as adopted by the Committee, appears in Appendix I to this report. The list of participants<sup>1</sup> is available on the CDCJ's website.

## Items submitted to the Committee of Ministers for decision

- *Profession of lawyer*

The Committee of Ministers is invited to take note of the study on the feasibility of a new, binding or non-binding, European legal instrument on the profession of lawyer – possible added-value and effectiveness, and to decide on the follow-up action it considers appropriate, taking into consideration the CDCJ's proposal to initiate the drafting of a European legal instrument on the profession of lawyer, including possible draft terms of reference for a subordinate Committee of Experts to the CDCJ responsible for the work.

- *Legal aid schemes*

The Committee of Ministers is invited to examine and adopt the draft guidelines of the Committee of Ministers of the Council of Europe on the efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law, as well as to take note of their explanatory memorandum.

- *Online dispute resolution mechanisms*

The Committee of Ministers is invited to examine and adopt the draft guidelines of the Committee of Ministers of the Council of Europe on online dispute resolution mechanisms in civil and administrative court proceedings, as well as to take note of their explanatory memorandum.

- *Report of the 95<sup>th</sup> meeting of CDCJ (4-5 and 23-24 November 2020)*

The Committee of Ministers is invited to take note of the report of this meeting.

## Item submitted to the Committee of Ministers for information

- *Access to translation and interpretation in civil and administrative proceedings (Drafting group - CDCJ-GT-TRA)*

The Committee of Ministers is invited to take note of the CDCJ decision to discontinue working on the access to translation and interpretation in civil and administrative proceedings as initially foreseen in its work programme for 2020-2021.

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<sup>1</sup> At this plenary meeting of CDCJ, the member States were represented by 28 women and 34 men, 45,16 % and 54,84 % respectively.

## DECISIONS AND ITEMS DISCUSSED

### A. Completed activities

#### - *Profession of lawyer*

1. CDCJ examined the draft study 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 adopted by a large majority of the representatives present<sup>2</sup>, the feasibility study as it appears in document CDCJ(2020)2 final and is reproduced in Addendum 1 to this report, and authorised its publication, with the consent of Mr Jeremy McBride, its author.

2. The CDCJ decided to propose to the Committee of Ministers to initiate the drafting of a European legal instrument on the profession of lawyer, whose nature (binding or non-binding) would be recommended to the Committee of Ministers by the CDCJ in the light of the draft instrument's provisions to be prepared.

3. The Committee of Ministers is invited to take note of the feasibility study and the CDCJ recommendation, and to decide on the appropriate follow-up action.

4. In the event the Committee of Ministers decides to embark on this activity and to task the CDCJ with the preparation of a new European legal instrument, the latter approved draft terms of reference prepared for a subordinate Committee of Experts to the CDCJ tasked with drawing up a draft European legal instrument, binding or non-binding, on the profession of lawyer, as they appear in Appendix II to this report.

5. CDCJ thanked the consultant for his valuable and high quality work, fully in line with the given terms of reference, and instructed the Secretariat to inform the Council of Bars and Law Societies of Europe (CCBE) and the Secretariats of the other relevant Council of Europe bodies including the Parliamentary Assembly, the CDPC, the CDDH and the CEPEJ, of the decision taken on this agenda item.

#### - *Legal aid schemes*

6. CDCJ took note of the reports of the 2<sup>nd</sup> and 3<sup>rd</sup> meetings of the CDCJ drafting group on legal aid schemes - CDCJ-GT-SAJ2 (documents CDCJ-GT-SAJ2(2020)6 and CDCJ-GT-SAJ2(2020)7 respectively), and of the oral information provided by the chair of the group, Mr João Arsénio de Oliveira (Portugal).

7. CDCJ examined and approved the draft guidelines of the Committee of Ministers of the Council of Europe on the efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law as it appears in Addendum 2 to this report<sup>3</sup>. It instructed the Secretariat to transmit the text to the Committee of Ministers, after revision by the legal and editorial services of the Secretariat, with a view to its adoption by the Ministers' Deputies in 2021.

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<sup>2</sup> After the plenary meeting, Turkey has communicated to the Secretariat written comments concerning the adopted feasibility study's paragraph 191. These comments have been shared for information with CDCJ members, participants and observers.

<sup>3</sup> In favour:33 votes; Against: 0 vote; Abstentions: 0; Absent: 14.

8. In the light of its examination of the draft guidelines, CDCJ examined and adopted the explanatory memorandum to the draft guidelines as it appears in Addendum 3 to this report and authorised its publication upon adoption of the guidelines by the Committee of Ministers and subject to any consequent editorial that might be required.

9. At this meeting, the CDCJ authorised the publication, on the committee's website, of the comparative analysis of the existing data on civil legal aid schemes in Council of Europe member States (document CDCJ(2016)10), undertaken in 2016 by the consultant, Ms Olga Shepeleva, decision that the CDCJ omitted to take at its 2016 Plenary meeting.

- *Online dispute resolution mechanisms*

10. CDCJ took note of the reports of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> meetings of the CDCJ drafting group on online dispute resolution mechanisms - CDCJ-GT-RLL (documents CDCJ-GT-RLL(2019)4, CDCJ-GT-RLL(2020)2 and CDCJ-GT-RLL(2020)5 respectively), and of the oral information provided by the chair of the group, Mr Christoph Henrichs (Germany).

11. CDCJ examined and approved the draft guidelines of the Committee of Ministers of the Council of Europe on online dispute resolution mechanisms in civil and administrative court proceedings as it appears in Addendum 4 to this report<sup>4</sup>. It instructed the Secretariat to transmit the text to the Committee of Ministers, after revision by the legal and editorial services of the Secretariat, with a view to its adoption by the Ministers' Deputies in 2021.

12. In the light of its examination of the draft guidelines, CDCJ examined and adopted the explanatory memorandum to the draft guidelines as it appears in Addendum 5 to this report and authorised its publication upon adoption of the guidelines by the Committee of Ministers and subject to any consequent editorial changes that might be required.

## B. On-going activities

- *Implementation review of the Sofia Action Plan on strengthening judicial independence and impartiality (preparation of the draft final report)*

13. CDCJ took note of the state of progress in the preparation of the draft final report presented by the Secretariat and in particular the upcoming dissemination of a questionnaire developed by the team of consultants in order to collect the necessary information on the state of the implementation of the Action plan in the member States, the specific measures introduced since its adoption and any identified best practices for strengthening judicial and prosecutorial independence.

14. CDCJ agreed to entrust its Bureau to examine the draft questionnaire prior to its circulation to the member States. The Chair called upon the CDCJ members to reply to the questionnaire as much as possible and within the set time limit.

15. The Committee also noted that the preparation of this draft final report should serve as a contribution towards achieving Goal 16 of the United Nations 2030 Agenda for sustainable development: Peace, Justice and Strong Institutions.

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<sup>4</sup> In favour: 25 votes; Against: 0 vote; Abstentions: 0; Absent: 22.

- *Administrative detention of migrants (preparation of the draft report)*

16. CDCJ took note of the oral information provided by the Chair and the Secretariat on the state of progress in the preparation of the draft final report on the work so far completed by the CDCJ Committee of Experts on administrative detention of migrants (CJ-DAM), together with proposals for possible avenues for its completion.

17. The Committee agreed to entrust its Bureau to examine the draft report at one of its meetings in 2021 before its submission to the CDCJ for adoption either at its next plenary meeting or by written procedure, before submitting it to the Committee of Ministers for their decision on the follow-up to be given to the report. The CDCJ reiterated its wish to complete the work carried out by its former CJ-DAM Committee, and hoped to receive a mandate for this from the Committee of Ministers.

18. In this context, the Chair informed the participants that a draft action plan in the field of migration is in preparation by the Secretary General's Special Representative on Migration and Refugees, Ambassador Drahošlav Štefánek, to be submitted to the Committee of Ministers' Deputies for examination.

- *Rights and best interests of the child in parental separation and in care proceedings (Committee of Experts - CJ/ENF-ISE)*

19. The CDCJ took note of state of progress in the work of the CJ/ENF-ISE as a joint subordinate body of the CDCJ and of the Steering Committee for the Rights of the Child (CDENF), as presented by its Chairperson Mr Seamus Carroll. The latter informed the CDCJ about the composition of the CJ/ENF-ISE, its workplan, working methods, and of the results of the first meeting which took place on 24-25 September 2020. CDCJ took note of the CJ/ENF-ISE meeting report and of discussions held jointly by the Bureaus of CDCJ and CDENF on 7 October 2020.

20. In the framework of the CJ/ENF-ISE work, two questionnaires were prepared and sent for completion to member States. The CDCJ Chair recalled the importance of CJ/ENF-ISE to receive in time the responses of the national authorities in order to avoid delays in starting, as a first step, the reviews on both topics, noting the need for member States to provide input to identify good practices in the participation of children while protecting them from undue influence or duress, and that further consultations and involvement of stakeholders in the work of the CJ/ENF-ISE are being planned for the finalisation of its deliverables.

21. Considering that the CDCJ has only one plenary meeting a year, the Committee entrusted its Bureau to examine and approve the draft studies on its behalf, provided however that the CDCJ members were consulted beforehand on them and in particular, on the nature of the instrument(s) to be developed by the CJ/ENF-ISE.

22. It was recalled that the work of CJ/ENF-ISE is open to the participation of representatives from other member States, at their own expense in line with Resolution CM/Res(2011)24. Their contribution to the work of Committee of Experts is welcomed, particularly when meetings are held by videoconference, provided the CJ/ENF-ISE Secretariat is duly informed about it in advance.

23. The CDCJ examined the request submitted by "Missing Children Europe" for observer status with the CJ/ENF-ISE and decided unanimously to grant it, given their experience and expertise in the fields concerned. It instructed the Secretariat to inform immediately "Missing Children Europe" and the CDENF Secretariat about this decision, taking due note that the

CDENF, at its meeting in November, had also similarly taken a unanimous decision to that effect.

- *Access to translation and interpretation in civil and administrative proceedings (Drafting group - CDCJ-GT-TRA)*

24. The CDCJ had decided in 2019 to set up a drafting group in order to prepare draft guidelines on access to translation and interpretation in civil and administrative proceedings (CDCJ-GT-TRA). The CDCJ agreed to discontinue work on access to translation and interpretation in civil and administrative proceedings during its work programme for 2020-2021 due to an insufficient number of available experts, which rendered composing a drafting group difficult. The Committee took this as a sign of a lack of member States' interest concerning this activity and decided to inform the Committee of Ministers accordingly.

- *International Conference on Statelessness*

25. Having regard to the Covid-19 related sanitary measures and travel restrictions, the CDCJ agreed to postpone to 2021 the organisation of the international conference on statelessness expected to be held in 2020. The conference, which should include a series of technical meetings, is expected to raise awareness and promote implementation of Council of Europe standards in this field to the general public, experts and professionals.

26. Consequently, the CDCJ instructed its Bureau to determine the necessary organisational arrangements for the conference (programme, participants, topics, dates, etc.).

- *Administration and Artificial Intelligence*

27. CDCJ examined the concept paper on a CDCJ activity proposal in the fields of administrative law and artificial intelligence prepared and presented by Ms Kai Härmand (Estonia), as complemented by the Chair and the Vice-Chair, Mr Christoph Henrichs (Germany), the CDCJ representative to the Ad hoc Committee on Artificial Intelligence (CAHA).

28. Work on Artificial Intelligence (AI) has increasing impact on the Council of Europe's standards on human rights, democracy and the rule of law. Addressing the implications of this development on all domains of the work of the Council of Europe is high on the Organisation's priorities, through CAHA's transversal work, or through the distinct areas of competence of the CDCJ and other committees. The CDCJ decided to retain the proposal and initiate work related to "Administration and Artificial Intelligence". The approved activity proposal, including working methods, appears in Appendix III to this report.

29. The CDCJ instructed the Secretariat to draw up draft terms of reference for a drafting group of CDCJ members and a draft workplan for implementing the activity, and to submit them to the Bureau for consideration and approval at one of its meetings of 2021 given its timeliness, which would allow to start the work as soon as possible in 2021, taking into account that this activity should continue in 2022-2023, considering the importance of undertaking other work related to artificial intelligence.

30. CDCJ took note of the work European Commission on the Efficiency of Justice (CEPEJ), notably of its working group on cyber-justice and artificial intelligence (CEPEJ-GT-CYBERJUST). The CDCJ noted the existence of topics of mutual interest with the CEPEJ and drew attention to the possible overlap work need to be addressed. To avoid such an overlap, it instructed the Secretariat to co-ordinate with CEPEJ Secretariat to address this concern, with the support of the Bureau members if required.

- *Mainstreaming equality between women and men in (preparing) new legislation*

31. CDCJ took note of oral presentations by the two Gender Equality Rapporteurs (GERs) of the Committee, Ms Zuzana Fišerová (Czech Republic) and Mr Rodrigo Rodriguez (Switzerland), explaining the difficulties they and the Bureau encountered when identifying proposals for specific activities to be undertaken by CDCJ in 2022-2023 on gender equality mainstreaming in (preparing) new legislation. Consequently, the Chair invited the CDCJ members to share their ideas, examples and best practices by submitting their contributions to the Secretariat (DGI-CDCJ@coe.int) no later than 15 December 2020<sup>5</sup>, with a view to preparing the discussion between the Bureau and the GERs at the next meeting of the Bureau in 2021.

32. CDCJ agreed to return to this issue at its 96<sup>th</sup> plenary meeting in 2021 on the basis of the proposals submitted by its Bureau.

- *Right of donor-conceived persons to know their origins (comparative study)*

33. CDCJ examined and adopted terms of reference for one or several consultants to undertake, in 2021, a comparative study related to the right of donor-conceived persons to know their origins as they appear in Appendix IV to this report. This comparative study would be a preliminary step of a possible future CDCJ activity on the topic, if considered appropriate.

34. The CDCJ agreed to prepare a draft questionnaire for the purpose of the comparative study and to submit it to the Bureau for its approval before sending it to member States for completion.

- *Conventions for which the CDCJ is the reference committee (possible review of the operation or the implementation of a selection of conventions, or promotion)*

35. CDCJ examined the proposals made by its Bureau for a selection of conventions under the responsibility of the Committee to review their operation or their implementation, or to promote them. The Committee agreed by a large majority to carry out a review of the following conventions which fall under its responsibility, namely:

- The European Convention on the Legal Status of Children born out of Wedlock (ETS No. 85), and
- The European Convention on Information on Foreign Law (ETS No. 62) and its Additional Protocol (ETS No. 97).

36. CDCJ considered this exercise as a preliminary step to a possible future update, if required, of the provisions these instruments, or their further promotion. It agreed to entrust its Bureau to make appropriate decisions in this regard.

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<sup>5</sup> The deadline has been extended until 31 December 2020 following the consultation and approval by the Chair.



### C. Future activities

37. CDCJ agreed on proposals for activities to be undertaken during the biennium 2022-2023 on the topics set out below, taking account of the possible continuation of existing activities:

- *Mainstreaming equality between women and men in (preparing) new legislation*

38. The Committee decided that activity proposals to further mainstream gender equality in CDCJ work in 2022-2023 should be agreed at its 96<sup>th</sup> plenary meeting in 2021 on the basis of the proposals submitted by its Bureau.

- *Administration and Artificial Intelligence*

39. The activity in the fields of administrative law and artificial intelligence, which will start in 2021 should continue in 2022-2023, considering the importance of undertaking other work related to artificial intelligence.

- *Right of donor-conceived persons to know their origins (comparative study)*

40. Depending on the outcome of the comparative study undertaken by CDCJ in 2021, the Committee could identify and propose an activity on the topic to be carried out by the CDCJ in 2022-2023.

- *Agreement on the Transfer of Corpses - ETS No. 80*

41. Following the request by France to the CDCJ to consider a possible revision of the Agreement on the Transfer of Corpses (ETS No. 80), the CDCJ examined the information provided, upon its request, by the member States on the difficulties they encountered in implementing the provisions of this Agreement. It took into account also the additional information provided orally by the Chair and the representative of France to CDCJ and agreed to discuss the issue at its next meeting if need be, on the basis of additional information to be provided by the French authorities.

42. If CDCJ decides positively to the French authorities' request for revision, the Committee will have to agree on a proposal for a future activity either in the biennium 2022-2023 or the following one.

- *Drafting a European legal instrument on the profession of lawyer*

43. CDCJ expressed its readiness to work on setting a new standard in the field related to the profession of lawyer. This activity proposal is conditional to the Committee of Ministers' decision on drafting a new European legal instrument on the profession of lawyer and on giving the CDCJ a mandate to do so through a subordinate Committee of Experts.

- *Conventions for which the CDCJ is the reference committee (possible review of the operation or the implementation of a selection of conventions, or promotion)*

44. CDCJ could envisage, as one of its future activities and a follow-up to the review of Conventions ETS Nos. 85, 62 and 97 which is being undertaken in 2021, if it appeared necessary, an update of the provisions of one or several of these conventions.

- *Administrative detention of migrants (possible completion of suspended work)*

45. This activity is conditional to a decision by the Committee of Ministers' Deputies on the follow-up action to the report to be submitted by CDCJ, in accordance with its terms of reference, by 31 December 2021.

#### **D. Other items discussed**

- *Evaluation of completed activities*

46. CDCJ took note of the background information provided by the Secretariat orally and the objective of the evaluation exercise which is to inform the Committee of Ministers on the effectiveness of its completed activities.

47. On the basis of its Bureau's proposals, CDCJ agreed to evaluate the following recommendations, including their implementation by the member States by means of a brief evaluation questionnaire to member States to be developed for each topic:

- Recommendation CM/Rec(2014)7 on the protection of whistleblowers, and
- Recommendation CM/Rec(2015)4 on preventing and resolving disputes on child relocation.

48. CDCJ instructed the Secretariat to submit the draft questionnaires to the Bureau for approval before their circulation for completion to member States.

- *Improving the visibility of the work of CDCJ*

49. CDCJ examined the proposal submitted by its Bureau concerning the CDCJ communication plan for 2020-2021 and approved it as it appears in Appendix V to this report.

50. CDCJ took note of the fact that the Bureau will further reflect on the practical implementation of the communication plan as currently approved by preparing additional proposals to be submitted to CDCJ for consideration at its next plenary meeting.

51. Furthermore, the CDCJ instructed the Secretariat to include this item on the draft agenda of the next Bureau meeting and also to start developing draft promotional materials and communication means in line with the communication plan.

52. It was noted that the success of the CDCJ's communication and visibility depends on the level of involvement of its members, which is expected to be as high as possible regarding both intergovernmental and co-operation activities.

- *Involving CDCJ members in legal co-operation projects*

53. CDCJ took note of the oral information provided by the Chair and the Secretariat to give effect to the decision made by the Bureau at its 107<sup>th</sup> meeting (20-21 February 2020) to further involve the CDCJ members in legal co-operation projects.

54. CDCJ invited its members to respond, as much as possible, to the calls for consultancy services in the framework of co-operation projects they receive from the Secretariat, and give them the benefit of their expertise in their field(s) of competence or that of experts they could also recommend to the Secretariat.

55. CDCJ agreed that the participation of CDCJ members in co-operation projects could also contribute to enhancing the visibility of the Committee and its work in the areas covered by the co-operation projects concerned.

- *Elections and appointments*

56. Mr João Arsénio de Oliveira (Portugal) was unanimously re-elected as chairperson for a second and last term of office of one year in this capacity.

57. Mr Christoph Henrichs (Germany) was unanimously re-elected as vice-chairperson for a second and last term of office of one year in this capacity.

58. Ms Zuzana Fišerová (Czech Republic), Ms Signe Öhman (Sweden) and Mr Rodrigo Rodriguez (Switzerland) were unanimously elected as members of the Bureau for a first term of office of one year (Article 13.e of the rules).

59. Mr Eral Knight (United Kingdom) was unanimously elected as a member of the Bureau for a first term of office of one year (Article 13.d of the rules).

60. As a result of the above-mentioned elections,<sup>6</sup> the Bureau of CDCJ is composed as follows:

Chairperson: Mr João Arsénio de Oliveira (Portugal)

Vice-chairperson: Mr Christoph Henrichs (Germany)

Bureau members: Ms Zuzana Fišerová (Czech Republic), Mr Francesco Crisafulli (Italy), Ms Signe Öhman (Sweden), Mr Rodrigo Rodriguez (Switzerland) and Mr Eral Knight (United Kingdom).

- *CDCJ Representatives to other Council of Europe bodies*

61. CDCJ instructed the Bureau to confirm or make new appointments as necessary for the representatives of the Committee in the work and meetings of other Council of Europe bodies in 2021.

- *CDCJ Gender Equality Rapporteurs*

62. CDCJ renewed the mandates of Ms Zuzana Fišerová (Czech Republic) and Mr Rodrigo Rodriguez (Switzerland) as its Gender Equality Rapporteurs.

63. The Committee agreed that one or both, of its Gender Equality Rapporteurs, where appropriate, should attend the meetings of the Bureau in 2021 at the cost of the Council of Europe budget.

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<sup>6</sup> The respective terms of office will take effect from 1<sup>st</sup> January 2021.

- *CDCJ Rapporteur on the Rights of Persons with Disabilities*
- *CDCJ Rapporteur on Children's Rights*

64. In the absence of other candidatures at the time of the vote the CDCJ appointed, on a transitional basis, the Committee's Chairperson and Vice-Chairperson, one as its Rapporteur on the Rights of Persons with Disabilities and the other as its Rapporteur on Children's Rights, the division of responsibilities to be agreed between themselves. It agreed to call upon CDCJ members to express their interest to be one of these rapporteurs, and to entrust its Bureau to make new appointments. The CDCJ instructed the Secretariat to inform the relevant Secretariats accordingly.

- *Parliamentary Assembly Recommendation 2188 (2020) - "The principles and guarantees of advocates"*

65. CDCJ took note of the Parliamentary Assembly Recommendation 2188 (2020) on "The principles and guarantees of advocates" adopted by the Parliamentary Assembly of the Council of Europe on 23 October 2020, and of the decision made by the Committee of Ministers' Deputies on 12 November 2020 to communicate this recommendation to the CDCJ notably for opinion by 10 January 2021. The CDCJ entrusted its Bureau to prepare the CDCJ opinion and to adopt it on behalf of the CDCJ on the basis of the draft terms of reference for a committee of experts tasked with drawing up a European legal instrument on the profession of lawyer that the CDCJ approved at this meeting.

66. The Secretariat was instructed to transmit the CDCJ opinion to the Committee of Ministers within the fixed time limit.

- *Request by Missing Children Europe for observer status with the CJ/ENF-ISE*

67. The CDCJ examined the request submitted by "Missing Children Europe" for observer status with the CJ/ENF-ISE and decided unanimously to grant it, given their experience and expertise in the fields concerned.

- *Date and place of the next meeting*

68. CDCJ considered that it was difficult to select dates for its next plenary meeting to be held either physically in Strasbourg (preferably) or by videoconference (if necessary), as it was difficult to predict the evolution of the Covid-19 sanitary situation and the related constraints. Nevertheless, it agreed that the 96<sup>th</sup> plenary meeting should take place at the end of October 2021 or at the beginning of November 2021. It instructed its Bureau to agree on the preliminary dates, that will be communicated by the Secretariat to the CDCJ members and participants. The Secretariat is instructed to propose three alternative dates to the Bureau.

## APPENDIX I

### AGENDA

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- I. Opening of the meeting
- II. Adoption of the agenda
- III. Statement of the Chair and Secretariat
- IV. On-going activities (progress review)
  - i. Feasibility study concerning a European convention on the profession of lawyer (draft report)*
  - ii. Implementation review of the Sofia Action Plan on Judicial Independence and Impartiality (preparation of the draft final report)*
  - iii. Administrative detention of migrants (preparation of the draft report)*
  - iv. Rights and best interests of the child in parental separation and in care proceedings (Committee of Experts - CJ/ENF-ISE)*
  - v. Access to translation and interpretation in civil and administrative proceedings (Drafting group - CDCJ-GT-TRA)*
  - vi. International conference on statelessness*
- V. Online dispute resolution mechanisms – draft Guidelines of the Committee of Ministers and Explanatory Memorandum
- VI. Legal aid schemes – draft Guidelines of the Committee of Ministers and Explanatory Memorandum
- VII. Programme & Budget for 2022-2023 (activity proposals)
  - i. Mainstreaming equality between women and men in (preparing) new legislation*
  - ii. Administration and artificial intelligence*
  - iii. Rights of donor-conceived persons to know their origins (comparative study)*
  - iv. Agreement on the Transfer of Corpses – ETS No. 80*
  - v. Protection of the profession of lawyer (possible drafting of a legal instrument – draft terms of reference)*
  - vi. Conventions for which the CDCJ is the reference committee (possible review of the operation or the implementation of a selection of conventions, or promotion)*
- VIII. Working methods
  - i. Evaluating completed activities*
  - ii. Improving visibility of the work of CDCJ*
  - iii. Involving CDCJ members in legal co-operation projects*
- IX. Elections and appointments
  - i. Elections*
  - ii. Appointments:*
    - *CDCJ representatives*
    - *CDCJ Gender Equality Rapporteurs (equality between men and women)*
    - *CDCJ Rapporteur on Children's Rights*
    - *CDCJ Rapporteur on the Rights of Persons with Disabilities*
- X. CDCJ Opinions (if appropriate)
- XI. Any other business
- XII. Date and place of next meeting

## APPENDIX II

### DRAFT TERMS OF REFERENCE FOR A COMMITTEE OF EXPERTS TASKED WITH DRAWING UP A DRAFT EUROPEAN LEGAL INSTRUMENT, BINDING OR NON-BINDING, ON THE PROFESSION OF LAWYER

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*Set up by the Committee of Ministers under Article 17 of the Statute of the Council of Europe and in accordance with Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods*

**Type of committee:** Subordinate Body

Terms of reference valid from: **1 January 2022 until 31 December 2023**

#### **PILLAR/PROGRAMME/SUB-PROGRAMME**

**Pillar:** Rule of Law

**Programme:** Rule of Law based institutions

**Sub-programme:** Legal co-operation

#### **MAIN TASKS**

Under the authority of the European Committee on Legal Co-operation (CDCJ), the committee of experts is instructed to prepare a draft legal instrument, binding or non-binding, aiming at strengthening the protection of the profession of lawyer and the right to practice the profession without prejudice or restraint. On the basis of the draft legal instrument prepared by the committee of experts, the CDCJ, in its plenary, will then propose to the Committee of Ministers the nature of the legal instrument, binding or non-binding.

The draft legal instrument will provide a comprehensive set of minimum standards applicable to the right of lawyers to freely exercise their professional activities, and ensure protection and independence of the profession. This may include establishing a mechanism entrusted with the implementation of the standards by member States or giving guidance on their application.

The committee of experts should draw upon the conclusions of the CDCJ feasibility study on the possible added-value and the effectiveness of a new legal instrument on the profession of lawyer, which includes a possible outline of the instrument. It should also take into account the Council of Europe [Recommendation No. R\(2000\)21 on the freedom of exercise of the profession of lawyer](#) and other existing and currently used international standards in relation to the issue, including *inter alia* the European Convention on Human Rights and the case law of the European Court of Human Rights, the “Rule of Law Checklist” of the European Commission for Democracy through Law, the International Covenant on Civil and Political Rights, the United Nations Basic Principles on the Role of Lawyers (the UN Basic Principles), the CCBE Charter of Core Principles of the European Legal Profession & Code of conduct for European lawyers, the Turin Principles of Professional Conduct for the Legal Profession in the 21<sup>st</sup> Century, the standards for the Independence of the Legal Profession, International Principles on Conduct for the Legal Profession, and findings of the holders of a mandate of Special Procedures of the United Nations Human Rights Council such as the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the situation of human rights defenders.

## **SPECIFIC TASKS**

Develop a draft legal instrument, binding or non-binding, and the first outline of possible provisions of the future instrument on the protection of the profession of lawyer and the right to practice the profession without prejudice or restraint.

## **COMPOSITION**

### **Members:**

The committee will be composed of 15 members, of which 14 experts designated by the member States and selected by the CDCJ and the chairperson designated by the CDCJ from amongst its members. The experts shall be of the highest possible rank (judges, prosecutors, lawyers, civil servants or researchers or other highly qualified specialists) and have 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.

The Council of Europe will bear the travel and subsistence expenses of each member of the committee.

Member States may send other representatives (or additional representatives as the case may be), without defrayal of expenses. The composition of the committee will reflect an equitable geographic distribution amongst the member States and will take account of the gender equality dimension.

The member State whose representative has been elected as Chair may send a representative with defrayal of expenses.

Each member of the committee shall have one vote. Where a government designates more than one member, only one of them is entitled to take part in the voting.

### **Participants:**

The following may send representatives, without the right to vote and at the charge of their corresponding administrative budgets:

- the Parliamentary Assembly of the Council of Europe;
- the European Court of Human Rights;
- the Council of Europe Commissioner for Human Rights;
- the Conference of INGOs of the Council of Europe;
- the European Commission for Democracy through Law ("the Venice Commission");
- the European Commission for the Efficiency of Justice (CEPEJ);
- the Consultative Council of European Judges (CCJE);
- the Consultative Council of European Prosecutors (CCPE);
- the Steering Committee for Human Rights (CDDH);
- the European Committee on Crime Problems (CDPC);
- other Committees or bodies of the Council of Europe engaged in related work, as appropriate.

The following may send a representative without the right to vote and without defrayal of expenses:

- the European Union (including, as appropriate, the Fundamental Rights Agency (FRA));
- the Observer States to the Council of Europe: Canada, Holy See, Japan, Mexico, United States of America;
- the Office of the United Nations High Commissioner for Human Rights (OHCHR);

- the United Nations Special Rapporteur on the Independence of Judges and Lawyers;
- the United Nations Special Rapporteur on the Situation of Human Rights Defenders;
- the Organisation for Security and Co-operation in Europe (OSCE);
- the Office for Democratic Institutions and Human Rights (OSCE-ODIHR).

**Observers:**

The following may send representatives, without the right to vote and without defrayal of expenses:

- Belarus;
- non-member States with which the Council of Europe has a Neighbourhood Partnership including relevant co-operation activities;
- Avocats Sans Frontières;
- the Council of Bars and Law Societies of Europe (CCBE);
- the European Bars Federation (FBE);
- the European Criminal Bar Association (ECBA);
- the International Bar Association (IBA) and its Human Rights Institute ((IBAHRI);
- the International Commission of Jurists (ICJ);
- the International Association of Lawyers (UIA);
- the “Lawyers for Lawyers” foundation;
- the International Observatory of Endangered Lawyers (OIAD).

**External consultant(s):**

The committee may have recourse to the services of one or two scientific expert(s) within the limits of its budgetary appropriations.

**Working methods**

15 members, 3 meetings in 2022, 3 days

15 members, 3 meetings in 2023, 3 days

The committee shall consult CDCJ members at each stage of the preparation of the draft legal instrument and take into account their comments.

As appropriate, should the CDCJ or its Bureau agree, the committee can organise public consultation(s), including a hearing with practitioners, government officials, and other stakeholders on the draft legal instrument, binding or non-binding, in preparation in order to ensure wider consultation possible.

The committee will also appoint a Gender Equality Rapporteur from amongst its members.

The rules of procedure of the committee are governed by Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods.

Whenever appropriate, it will prioritise environmentally sound working methods, such as virtual meetings facilitated by information technology and written consultations.



## APPENDIX III

### ADMINISTRATION AND ARTIFICIAL INTELLIGENCE

Activity proposal, task, concept and working methods

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#### **Activity proposal**

1. Renew [The Administration and You handbook](#) in the light of the use of artificial intelligence (AI) and non-AI algorithmic systems.

#### **Task**

2. Expand and develop the Council of Europe handbook *The Administration and You: Principles of administrative law concerning relations between individuals and public authorities*, in the light of the use of artificial intelligence (AI) and non-AI algorithmic systems in administrative law. How the principles of good administration – equal treatment; transparency; access etc. could be highlighted in a user-friendly way.

#### **Concept**

3. It is assumed that algorithmic decision-making systems are contributing to better, accessible and more tailor-made public services in the best interests of the general public. What are the most important issues for a citizen while an AI system is affecting public services? What are the questions a service provider has to think about to grant non-biased and transparent services?
4. It is necessary to examine what are the most relevant principles of good administration that are affected by algorithmic decision making. Transparency and other good administration principles are, at the same time, legal and ethical categories, but how should these principles be implemented and integrated in public services in everyday life?
5. All factors relevant to a particular administrative decision should be considered by a public authority when making its decision, with each factor given its proper weight. This could be illustrated through examples of how to ensure that algorithms are designed with this principle in mind.
6. The State has the responsibility to set the standards for algorithmic decision-making systems to ensure the respect of principles. There may be a need to define supervision in order to ensure that these standards are respected.
7. Where decision making is conducted via an internet platform, the physical location of a public authority may not be relevant. Nonetheless, the principles apply equally, irrespective of the location or whether or not the service is delivered via an internet platform or digitally. Given the specific character of online services provided by public authorities, it is particularly important that steps are taken by them to ensure that the principles in [The Administration and You handbook](#) are properly applied.

**Working methods**

8. Mapping different implementation activities in member States of the use of algorithmic decision-making systems and administrative support-systems in a comparative study to allow for more information on the use of AI and other algorithmic systems in administrative procedures more broadly. For example, what AI and non-AI applications are currently being used in member States and how are they used? Why are they being used and what are the potential advantages and the benefits of doing so? What are the typical or most important risks to people's human rights, and what should people perhaps be wary of? Does a person have the right to know when AI technology is being used, are there any differences in a person's rights or the state's responsibilities if an application is used?
9. On the basis of the study, as the first step, renew the handbook with the help of a group of experts, if appropriate, in relation to specific fields like health care, social services, labour or education.
10. Include an additional chapter and supplement every chapter with relevant examples.
11. Identify possible further CDCJ work related to artificial intelligence beyond this activity, which, if necessary, could/should lead to the renewal of existing legal instruments or to the development of a new legal instrument.

## APPENDIX IV

### RIGHTS OF DONOR-CONCEIVED PERSONS TO KNOW THEIR ORIGINS

#### COMPARATIVE STUDY

Terms of Reference for one or several consultants

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#### Tasks

A comparative study will be drawn up by one or several consultants who shall:

- conduct a desk research and analyse the existing literature, European Court of Human Rights' case-law, the relevant case-law of the Constitutional Courts of the member States and information concerning recent developments on the rights of donor-conceived persons to know their origins.
- identify the elements that such a right could entail, including but not limited to medical (access to a person's medical family history and genetic heritage), identity (right to have access to information about the donor as a person, information that person considers relevant and important to their sense of self), relational (right to know the identity of the donor in order to make contact and initiate a potential relationship), parental disclosure (right of a donor's offspring to be unaware of the circumstances of their conception);
- prepare a questionnaire, addressed to the member States to collect the information concerning the existing legal framework and developments, as well as their future policy direction with regard to this issue. The questionnaire will also help to identify examples of good practices in this area;
- analyse the replies to the questionnaire;
- prepare a draft comparative study on the basis of the desk research and the replies to the questionnaire.

The draft comparative study shall take into account existing or related Council of Europe instruments in this area, including in the area of bioethics. The draft comparative study shall identify existing shortcomings and needs with this regard, contain preliminary proposals on a possible legal instrument to regulate this issue, considering the indications for the future of legal and policy development in this area.

#### Required qualifications

- Master's degree or higher in law, political science, social science, public administration or a related discipline;
- Knowledge of laws, regulations and practices of Council of Europe member States in the field of medically assisted procreation;
- Knowledge of international human rights law and specifically issues pertinent to children's right to an identity and to personal development;
- Knowledge of multi-disciplinary research methodology and experience in conducting such a research, covering the relevant social, ethical, and legal issues;
- Practical experience in the field (researchers, academics or practitioners).

## APPENDIX V

### CDCJ COMMUNICATION PLAN FOR 2020-2021

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1. The objective of a CDCJ communication plan is to improve the visibility of the Committee's work. Various channels available to Council of Europe Secretariat are used to achieve this goal in an effective and efficient manner.
2. Every year, the CDCJ identifies up to 3 topics which it considers the most relevant to promote during the year concerned and assigns, if necessary, an order of priority. The selected topics can target the ongoing work or notable past achievements. CDCJ also identifies the relevant fora, meetings or events organised by other Council of Europe bodies or by the Committee of Minister's Chairmanship where the selected Committee's activities or legal instruments prepared by the CDCJ in relation to the topics are to be promoted.
3. If CDCJ selects several legal instruments for their promotion in the framework of its communication plan, their number and priority are determined in view of their alternate and complete promotion over the coming years.
4. The established CDCJ communication plan can be updated on an annual basis, in order to include recently adopted legal instruments prepared by the CDCJ, and to reflect the calendar of meetings and events envisaged during the year concerned. The CDCJ communication plan is submitted to the CDCJ Bureau for approval every year, provided it has the Committee's permission to do this.
5. The CDCJ Secretariat and the Committee's members share the responsibility to publicise CDCJ work, including the preparation of promotional materials. Current or former members of CDCJ or CDCJ Bureau including the Chair, or other interested parties are invited to volunteer or to recommend relevant people to do so, subject to their subsequent consent. Moreover, the CDCJ provides as much as possible guidance to whoever is concerned on how to carry out the promotional work in the simplest and most effective way possible. The involvement of CDCJ members is such that it enables a fair distribution of tasks and an active participation of the largest number of them.
6. The CDCJ can use its own social media accounts (to be created) or the existing DGI accounts in order to communicate better and directly with the largest audience possible. The creation and the management of CDCJ specific accounts need to be further clarified.
7. CDCJ representatives/substitutes (or other members) could also, as and when appropriate and if the agendas permit, promote CDCJ legal instruments or ongoing work, when participating at the meetings or events organised inside or outside the Council of Europe. This may include the Chair or Vice-chair or former Chair of the CDCJ (or another member) occasionally doing an interview by video or podcast on the topic of the meeting/event in order to raise awareness of CDCJ achievements or work in progress in the field concerned. Promotional activity of specific instruments is to be coordinated and organised in close co-operation with other relevant Council of Europe bodies on the occasion of their own promotional events (and vice-versa if appropriate).

8. The CDCJ would like to organise further thematic conferences when new activities are completed, and new legal instruments are developed. For example, when the manual “The Administration and You” is prepared, complemented with additional information on developments related to use of the artificial intelligence in administrative justice, this will create the opportunity to discuss current issues and to present CDCJ achievements.
9. The European Day of Justice, celebrated each year on 25 October, is another opportunity for the CDCJ to further demonstrate and showcase its achievements in multiple areas of its expertise, by involving the members of the Committee particularly in the national events and activities held on this occasion in the member States.
10. In addition to the above, current and/or former CDCJ Chair, Vice-Chair and members, or even other experts in relevant fields, can be involved, on a voluntary basis, in the preparation of videos and/or podcasts on the topics selected annually to be made available on the CDCJ website and social media. At least two months before the preparation of such videos/podcasts, the Secretariat will make necessary contacts and arrangements in accordance with the decisions made by the Committee and/or its Bureau.
11. Subject to availability of resources, the Secretariat prepares itself or in co-operation with an appropriate expert the relevant promotional materials on a given topic that will be posted on the CDCJ and other relevant Council of Europe websites, subject to prior approval of the CDCJ Chair or Vice-Chair or the CDCJ Bureau if found necessary.
12. A Newsletter, to be issued every six months, serves the purpose of informing the member States, European and international organisations and the general public on the CDCJ work. It highlights the CDCJ key achievements in a given legal field and related European Court of Human Rights’ case-law and recent major legislative developments or examples of good practices in member States, subject to the availability of resources, the agreement and readiness of member States to provide such information. It is understood that the preparation of such a Newsletter is a time and resource consuming exercise for the Secretariat and the Committee. The Newsletter may also include, to a certain extent, the developments in the CDCJ work in other areas it would like to develop further. The content and modalities of the Newsletter are decided well in advance to its preparation. The envisaged Newsletter is drafted by an “editorial board” composed of some, if not all, members of the Bureau and other members who wish to participate in this drafting exercise started by the Secretariat. For sake of efficiency, the Newsletter is drafted in a rather concise way, in the two Council of Europe official languages, and is made available online on the CDCJ and DGI websites and social media. A draft version of the Newsletter is submitted to the Bureau for consideration and subsequent approval, provided it has the Committee’s permission to do this.
13. The activities undertaken in the framework of co-operation projects concerning justice sector reform in member States are easy and efficient channels to promote the CDCJ work when the co-operation activities carried out concern specific legal areas of CDCJ competence. The topics selected by the CDCJ to promote its activities and achievements may differ from the topics addressed in the ongoing co-operation projects. In that case, the CDCJ or its Bureau identifies a set of different relevant topics to promote during the year concerned and assigns, if necessary, an order of priority for their promotion.