

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 22 July 2022

CJ-AV(2022)10

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

2nd meeting

11-13 July 2022

Agora G02

MEETING REPORT

**CDCJ website: www.coe.int/cj-av
CDCJ e-mail address: DGI-CDCJ@coe.int**

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

1. The Committee of Experts on the Protection of Lawyers (CJ-AV) held its second meeting in person from 11 to 13 July 2022 with Mr Christoph Henrichs (Germany) in the Chair, who welcomed the participants.

2. The agenda of the meeting is contained in Appendix I. The list of participants appears in Appendix II.

3. CJ-AV Tour de table

3. The Committee took note of the introductions of the CJ-AV members, participants and observers attending the meeting, particularly the ones who had not been present at the first meeting.

4. Statement by the Chair and the Secretariat

4. The CJ-AV took note of the oral information provided by the Chair and the Secretariat on the discussion held during the CDCJ plenary meeting (1-3 June 2022). It took note of the elements and positions communicated by several CDCJ members regarding the nature of the future legal instrument, the majority being in support of the elaboration of a legally binding instrument. The Chair also shared with the CJ-AV the CDCJ members' written comments on the proposed outline of the future legal instrument (document CJ-AV(2022)06).

5. Draft legal instrument aiming at strengthening the protection of the profession of lawyer and the right to practice the profession without prejudice or restraint: scope and issues to be covered by the draft instrument (CJ-AV deliverable)

5. The CJ-AV expressed its appreciation on the work carried out since its last meeting and welcomed the preliminary draft text of the legal instrument (document CJ-AV(2022)05 prov1). It discussed in-depth the preliminary draft provisions, by examining the scope of obligations to be established, their content, and any other issues which could be either excluded or addressed, including those to be covered by an explanatory report.

6. The CJ-AV agreed that the preamble of the draft convention should be elaborated at a later stage for examination at one of its next meetings, after having completed the first review of the draft instrument. It thanked the Council of Bars and Law Societies of Europe (CCBE) for its proposed draft preamble, which was communicated before the meeting.

7. The CJ-AV recalled that the main purpose of the legal instrument is the strengthening of the protection of the profession of lawyer, and that as such, the provisions of the draft convention should include clear standards which address shortcomings identified in existing legal instruments.

8. The CJ-AV discussed in particular the chapters in the draft text on “Purpose, scope, use of terms or definitions”, “Professional associations”, “Admission”, “Professional rights”, “Protection” and “Implementation mechanism” and agreed on numerous additions and amendments to be made to the preliminary draft, notably:

Chapter I [Purpose, scope, use of terms or definitions]

- to further clarify the purpose of the convention, including with a stronger reference to the right to practice the profession with independence;
- to further refine the proposed definitions in line with the suggestions and proposals from the CJ-AV, and include a new proposed definition for “professional activities”;
- to review in the light of other existing Council of Europe standards, the definition of “public authorities”;

Chapter II [Substantive provisions]

- to re-arrange the order of certain provisions, and to clarify and/or strengthen the obligations set for the Parties, on the basis of the proposals made during the discussion;
- where relevant, together with each of the rights discussed to include a provision referring to their limitations, which could then be further explained in the explanatory report;
- to clarify, whenever necessary, the applicability of the provisions to specific proceedings, or all;
- to ensure that the current provisions take into account the standards established by the case law of the European Court of Human Rights and the relevant terminology;
- to review the concepts of “legal professional privilege”, and “professional secrecy” in the different legal systems and spell out their meaning for the purpose of the convention, to ensure that these concepts are mindful of the differences in national legal frameworks;
- to review the status, regulatory functions, membership status and composition of governing bodies of professional associations to ensure that the obligations under the convention take into account the different types of associations in the various national jurisdictions;
- to restructure and rephrase the obligations of the Parties in view of protection in line with the proposals made during the discussion;

Chapter III [Implementation mechanism]

- the need to have as far as necessary an innovative approach for the elaboration of the implementation mechanism of the draft convention, taking into account the fact that this mechanism should contribute to guarantee an effective protection of the profession of lawyer, while seeking inspiration from the practice of the wide range of models of monitoring bodies set out by the Council of Europe;
- the need to be mindful of the budgetary implications when developing the proposed provision.

The changes agreed on will be reflected in a revised version of the draft text to be presented for the next meeting of the CJ-AV.

9. Due to lack of time, the CJ-AV decided to examine at its next meeting the provisions regarding “Expression” and “Discipline”.

10. The CJ-AV agreed that members should provide additional information on professional associations in their jurisdictions (especially on regulatory functions and membership), on immunities and any limits applicable, on the provisions of the preliminary text which were not yet discussed, as well as additional written elements on key aspects of the future implementation mechanism.

11. The CJ-AV also instructed the Secretariat to review the quality of the French version of the text and the terminology used, and took note of the need to ensure that the text is drafted in a gender-sensitive manner.

12. The CJ-AV agreed to provide further written comments to the Secretariat on selected issues before 12 August 2022.

6. Drafting practice within the Council of Europe

6.1 Implementing mechanisms: overview and options

13. The CJ-AV took note of the information provided by the Secretariat concerning Council of Europe selected implementation or monitoring mechanisms and the oral presentation of their key features (document CJ-AV(2022)08). The Committee held a first exchange of views on the aim of such mechanisms, the possible monitoring processes, the options for the composition of a monitoring body, monitoring timeframes or possible reporting options. The CJ-AV invited its members and observers to provide further written contributions by 12 August 2022, so that a draft text could be developed and discussed at its next meeting. Subject to the input received, an exchange of views with one or more representatives of selected monitoring bodies could be organised at its next meeting.

6.2 Examples from practice regarding optional commitments under Council of Europe conventions

14. This item was postponed to the next meeting.

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

15. The CJ-AV held a fruitful exchange of views with the UN Special Rapporteur on the independence of judges and lawyers, Mr García-Sayán, who spoke about the importance of the preparation of the new legal instrument at the backdrop of a global increase in practices that undermine, limit, restrict and hinder the practice of lawyers, particularly of those whose activities are focused on the fight against corruption, the defence of human rights or the protection of groups in vulnerable situations. The Special Rapporteur expressed his full support to the work of the CJ-AV, underlining the possible global impact that such a convention would have beyond Europe and the desirability of offering a stronger protection to lawyers worldwide. He also invited the CJ-AV to take into consideration in its work the principles established by the case law of the Inter-American Court of Human Rights and the UN bodies.

8. Elections and appointments

16. Following the call for expressions of interests, the Secretariat received one application for the position of Gender Equality Rapporteur. The CJ-AV appointed Mr Anthony Fisher (United Kingdom) for a mandate corresponding to the duration of the mandate of the committee.

9. Any other business

17. None.

10. Date and place of next meeting

18. The CJ-AV agreed to hold its next meeting on 8-10 November 2022.

11. Approval of the meeting report

19. The Committee agreed to approve the meeting report by written procedure.

APPENDIX I

AGENDA

1. Opening of the meeting at 9.30 am
2. Adoption of the agenda and order of business
3. CJ-AV tour de table
4. Statement by the Chair and the Secretariat
5. Draft legal instrument aiming at strengthening the protection of the profession of lawyer and the right to practice the profession without prejudice or restraint: scope and issues to be covered by the draft instrument (*CJ-AV deliverable*)
6. Drafting practice within the Council of Europe
 - 6.1 Implementing mechanisms: overview and options
 - 6.2 Examples from practice regarding optional commitments under Council of Europe conventions
7. Information on on-going and planned activities in other fora of relevance to the work of the CJ-AV
8. Elections and appointments
9. Any other business
10. Date and place of next meeting
11. Approval of the meeting report

APPENDIX II
LIST OF PARTICIPANTS

MEMBERS / MEMBRES

AUSTRIA / AUTRICHE	Dr Marcella PRUNBAUER GLASER Lawyer Österreichischer Rechtsanwaltskammertag / Austrian Bar
CZECH REPUBLIC / REPUBLIQUE TCHEQUE	Mr/M. Ondřej RICHTER Senior Ministerial Counselor Legislative Department Ministry of Justice
DENMARK / DANEMARK	Mr/M. Nicolai PII Legal director, Attorney The Danish Bar and Law Society
FRANCE	Mr/M. Gilles ACCOMANDO Directeur de l'Ecole de Formation des Barreaux (EFB) du ressort de la cour d'appel de Paris
GERMANY / ALLEMAGNE	Mr/M. Christoph HENRICHS Head of Section "International Law, Law of International Organisations" Federal Ministry of Justice
IRELAND / IRLANDE	Ms/Mme Claire LOFTUS Sollicitor
LITHUANIA / LITUANIE	Ms/Mme Vaida RUDENAITE Senior adviser Legal Services Policy Group Ministry of Justice
LUXEMBOURG	Ms/Mme Valérie DUPONG Avocate Etude Dupong, Krieps, Du Bois & Dias Videira Bâtonnière de l'Ordre des avocats
NETHERLANDS / PAYS- BAS	Mr/M. Jacques WIJNEN Senior Policy Advisor Judicial System Department Ministry of Justice and Security
PORTUGAL	Mr/M. Joao PERRY DA CAMARA Partner / Lawyer / Arbitrator Law Firm - Rogério Alves & Associados - Sociedade de Advogados, R.L
SPAIN / ESPAGNE	Mr/M. Alfredo IRUJO ANDUEZA Lawyer, Law office in Pamplona Professor of Master in Law, Public University of Navarre Chair of Council of Navarre

SWITZERLAND / SUISSE	Mr/M. François BOHNET Avocat et Associé - KGG Avocats au barreau et notaires Professeur à l'Université de Neuchâtel Directeur de l'Académie suisse de la magistrature
TÜRKIYE	Mr/M. Halid Haki BARUT Head of Department General Directorate for Civil Affairs Ministry of Justice
UKRAINE	Mr/M. Valentyn GVOZDIY [Apologised / Excusé] Vice-president of the Ukrainian National Bar Association Managing partner / International Law Firm GOLAW
UNITED KINGDOM / ROYAUME-UNI	Mr/M. Tony FISHER Partner Fisher Jones Greenwood LLP – Solicitors

MEMBER STATES / ETATS MEMBRES

AZERBAIJAN / AZERBAÏDJAN	Mr/M. Allahveran ORUJLU Member Azerbaijani Bar Association
BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE	Ms/Mme Slavica Graorac Lawyer Bar association Republic of Srpska
FRANCE	Ms/Mme Marie DUGRE Magistrate Cheffe du bureau de l'Europe et des questions institutionnelles Ministère de la Justice
IRELAND / IRLANDE	Mr/M. Fiachra BYRNE Justice Attaché / Deputy to the Permanent Representative Permanent Representation of Ireland to the Council of Europe
ROMANIA / ROUMANIE	M. Mihai FLORIOU Ministre conseiller Adjoint au Représentant Permanent Représentation Permanente de la Roumanie auprès du Conseil de l'Europe

PARTICIPANTS / PARTICIPANTS

<p>EUROPEAN UNION / UNION EUROPEENNE</p> <p>DELEGATION OF THE EUROPEAN UNION TO THE COUNCIL OF EUROPE / DELEGATION DE L'UNION EUROPEENNE AUPRES DU CONSEIL DE L'EUROPE</p>	<p>Ms/Mme Yumi CODRUS-FUJITA Legal Affairs Trainee</p>
<p>UNITED NATIONS SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS / LE RAPPORTEUR SPECIAL DES NATIONS UNIES SUR L'INDEPENDANCE DES JUGES ET DES AVOCATS</p>	<p>Mr/M. Diego GARCÍA-SAYÁN Special Rapporteur</p>

OBSERVERS / OBSERVATEURS

<p>COUNCIL OF BARS AND LAW SOCIETIES OF EUROPE / CONSEIL DES BARREAUX EUROPEENS (CCBE)</p>	<p>Mr/M. Laurent PETTITI Avocat au Barreau de Paris Président de la Délégation des Barreaux de France à Bruxelles Président du Groupe de travail « Convention européenne » du CCBE</p>
<p>EUROPEAN ASSOCIATION OF LAWYERS (EAL) / ASSOCIATION EUROPEENNE DES AVOCATS (AEA)</p>	<p>Ms/Mme Maria ŚLAZAK [Apologised / Excusée] Attorney of Law President of the European Association of Lawyers (AEA-EAL)</p>
<p>EUROPEAN BARS FEDERATION / FEDERATION DES BARREAUX D'EUROPE (FBE)</p>	<p>Ms/Mme Dominique ATTIAS Avocate Présidente de la Fédération des Barreaux d'Europe</p>
<p>INTERNATIONAL BAR ASSOCIATION (IBA) & HUMAN RIGHTS INSTITUTE (IBAHRI)</p>	<p>Ms/Mme Zara Iqbal IBAHRI Program Lawyer</p>

INTERNATIONAL ASSOCIATION OF LAWYERS / UNION INTERNATIONALE DES AVOCATS (UIA)	Mr/M. Georges-Albert DAL Président du Comité de réflexion de l'UIA sur les règles professionnelles
“LAWYERS FOR LAWYERS” FOUNDATION / FONDATION « LAWYERS FOR LAWYERS »	Ms/Mme Judith LICHTENBERG Board member
INTERNATIONAL OBSERVATORY OF ENDANGERED LAWYERS / OBSERVATOIRE INTERNATIONALE DES AVOCATS EN DANGER (OIAD)	Mr/M. Massimo AUDISIO Lawyer – Founding and Managing Partner Law Firm Audisio et Associati

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

CONSULTANT OF CJ-AV / CONSULTANT DU CJ-AV	Mr/M. Jeremy McBRIDE Barrister Monckton Chambers United Kingdom
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SECRETARIAT / SECRETARIAT**DGI - DIRECTORATE GENERAL HUMAN RIGHTS AND RULE OF LAW / DIRECTION GÉNÉRALE DROITS DE L'HOMME ET ÉTAT DE DROIT**

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