

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS OF DENMARK

The possibility for IAP to respond to prosecutors in difficulties

Introduction:

At its meetings in Helsinki, 2008, and in Kiev, 2009, the Executive Committee discussed the need for a formalised and proactive response to requests for assistance put forward by IAP members facing, due to political circumstances, difficulties in the performance of their duties.

It was agreed to further elaborate on the feasibility for the IAP more systematically to take action in cases where IAP members are faced with undue pressure, influence, threats or other that may endanger the proper exercise of their functions.

This paper has been drafted by the office of the Director of Public Prosecutions in Denmark. It aims to set out, in a preliminary form, possible ways in which the IAP can respond to such incidents. Its purpose is to facilitate a substantial discussion within the Executive Committee on whether to proceed with the matter. It does not pretend to go into details with the many difficult aspects of the arrangement in question.

Should it be decided to proceed with the matter, a working group would probably need to be set up with the purpose of drafting a formal protocol etc.

The rationale behind the wish for the IAP to offer support to members under pressure:

The IAP is the only worldwide organisation of prosecutors and it is committed to setting and raising standards of professional conduct and ethics for prosecutors worldwide; promoting the rule of law, fairness, impartiality and respect for human rights and improving international co-operation to combat crime.

The objects of the IAP are amongst other

- to promote the effective, fair, impartial and efficient prosecution of criminal offences
- to promote high standards and principles in the administration of criminal justice, including procedures to guard against or address miscarriages, in support of the rule of law
- to promote and enhance those standards and principles which are generally recognised internationally as necessary for the proper and independent prosecution of offences;

Given the unique status of the IAP as the only worldwide organisation for prosecutors and given the vision and objectives of the IAP, it can be argued that the IAP holds both a right and an obligation to react to situations where the proper exercise of the functions of its members is put under pressure and to react where members face undue hardship.

The IAP has on several occasions issued written statements commenting on specific situations of concern. Recently, the IAP thus issued an announcement condemning the constitutional crisis in Fiji (August 2008) under which judges and magistrates were dismissed of their constitutional offices.

The issuing of such announcements must be seen as a natural part of the support that the IAP can offer to members in difficulties. However, it could be considered whether the IAP could react to such incidences in a more forceful, comprehensive and proactive manner.

Possible ways for the IAP to react to situations of concern:

Reactions from other states and NGOs to specific situations in a sovereign state will often be a matter of sensitivity and controversy.

If the IAP is to maintain its legitimacy it must be carefully considered how the IAP can and should react to situations of concern.

As mentioned above, the IAP already reacts, in some cases, to situations of concern – by issuing written statements and announcements.

However, given the unique status of the IAP as the only worldwide organisation for prosecutors and given the vision and objectives of the IAP, it could be seen as natural if the IAP could provide other sorts of support to members under pressure and explore other ways to react to situations of concern.

One way for the IAP to react to a given situation is to send a letter of concern to the Government, the Parliament or head of State of the involved state.

The idea has also been raised to establish a scheme under which the IAP through the performance of country visits and through dialogue with relevant parties could deliver an evaluation on a given situation where a member faces difficulties in the performance of his legitimate tasks.

The idea would be to establish some sort of mechanism within the IAP that would have the responsibility of ensuring a more systematic and comprehensive approach by the association to situations where concern has been raised. Such a mechanism could also be seen as a useful tool in promoting and profiling the IAP and highlighting the assistance that the IAP can provide to its members. The task would be to evaluate specific arisen situations of concern and decide a proper response/reaction to that situation.

In some cases, it might be appropriate to correspond with relevant authorities of the country concerned. In other cases, it might be appropriate to conduct a visit to the country concerned and through meetings and dialogue with relevant partners be able to evaluate the specific situation.

Who should represent the IAP in these matters?

Often, situations of concern arise suddenly, and a response to an urgent request for assistance must be given promptly if it is to have the wanted effect. For that reason, an efficient scheme would probably call for the setting up of a separate committee rather than placing the day-to-day responsibility with the entire Executive Committee itself.

It is also important to ensure consistency in the way that the IAP reacts to situations of concern.

In order to ensure both promptness and consistency in its response to situations of concern, the Executive Committee could identify amongst its members a number of persons (e.g. 5-7) interested in and able to devoting themselves to the task at hand (the committee). The Executive Committee should appoint a chairman to the committee. Given the highly sensitive nature of the issue, it would probably be natural that the President of the IAP chair the committee.

The committee would be responsible for reacting to situations of concern and requests for assistance from IAP members. The committee would, however, obviously act on behalf of, and be accountable to, the Executive Committee and the IAP.

Who should take the initiative for the IAP to act?

Often, the attention of the IAP will be drawn to a situation of concern following a request for assistance from an IAP member. However, the IAP may also learn of a given situation from other sources, e.g. the media or other IAP members.

It should therefore be considered whether the IAP would only respond to situations of concern upon request from an IAP member directly affected by the situation at hand – or if the IAP should also, *ex officio*, react to relevant situations.

From a general point of view, it would seem most appropriate if the IAP only reacted to situations of concern where such reaction is requested by IAP members directly affected by the situation. A formal request for assistance would ensure the legitimacy of the IAP involvement and would also ensure that the action of the IAP will not be seen as inappropriate interference and counterproductive to the solution of the arisen difficulties. In this regard, it should be emphasised that prosecutors directly affected by a given situation will be in the best position to assess the need for and usefulness of any interference by the IAP.

The basis for the evaluation of a situation of concern:

The IAP is a non-political organization that represents more than 130 jurisdictions and a broad variety of legal traditions and political systems.

If the IAP were to react to requests from members under undue pressure, it must be ensured that this work is carried out in an unbiased manner in conformity with generally accepted principles. Any reaction to a

situation of concern would need to be – and appear to be – carried out with accuracy, objectivity, transparency and credibility so that doubt could never be raised as to the objective and non-political character of the work carried out by the IAP.

The IAP Standards of the Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors set out a universal minimum standard for the conduct of individual prosecutors and of prosecution services. These standards take into consideration various legal traditions and systems represented by the IAP members and were in 2008 annexed to a UN resolution that called for “Strengthening the rule of law through improved integrity and capacity of prosecution services”.

The resolution requests state parties to take the annexed standards into consideration when reviewing or developing their own prosecution standards.

It could therefore be suggested that any response given by the IAP to a situation of concern should be based on the principles set out in the IAP Standards or in other internationally recognised principles on the status and ethics of prosecutors.

Financing:

The activities of the committee, especially possible country visits, would have financial implications.

In order to enable all interested Executive Committee members to participate in the work of the committee, reasonable expenses stemming from this work could be covered by the IAP budget.

Possible action list/points of decision:

- The Executive Committee of the IAP would identify a group of its members that wish to devote themselves to the task at hand (forming the separate committee).
- The Executive Committee would appoint a chairman of the committee. This would probably need to be the President of the IAP .
- Upon receiving a request for assistance, the committee would consider whether action should be taken and what action would be appropriate in the given situation.
- The committee would be responsible for IAP announcements, press releases or other public statements, correspondence with the country in question, including letters of concern, country visits etc.
- The Executive Committee would need to be informed on relevant steps of action, and the separate committee would need to report closely to the Executive Committee.
- Where the committee would deem a country visit necessary, it should contact relevant authorities in order to obtain an invitation.
- Wherever possible, the committee should have meetings/consultations with all parties relevant to the situation under consideration in order to achieve a balanced and comprehensive picture of the situation.

- During these consultations the committee should aim to enter into dialogue about the situation at hand and seek to express concern as to the relevant standards under pressure.
- Following a country visit, the committee would prepare a written evaluation of the situation at hand and decide whether concern should be expressed/the situation at hand criticised etc .
- The committee would decide on the publication and dissemination of the written evaluation.
- Travel expenses and accommodations and other reasonable expenses arising from the work of the committee should be covered by the IAP budget.

Similar activities in other associations:

Other international lawyer's associations respond to situations where members, due to political circumstances, face difficulties in the performance of their tasks.

The International Association of Judges (IAJ) is a worldwide association consisting of national associations of judges. The aim of the IAJ is to safeguard the independence of the judiciary as an essential requirement of the judicial function and guarantee of human rights and freedom. The association is divided into four regional groups.

According to the general secretary of the IAJ, the association reacts to situations where the independence of national courts is put under pressure. The IAJ has not formalised this procedure but has left it for the relevant regional group to decide the proper action to be taken in situations of concern. Typically, action is taken through the issuing of statements, but country visits and a more thorough evaluation of a given situation can also occur.

The International Bar Association (IBA) is a worldwide association for legal practitioners, bar associations and legal societies. IBA Human Rights Institute (IBAHRI) works to promote, protect and enforce human rights under a just rule of law.

When the IBAHRI receives reliable information that lawyers, judges or other persons involved in the operation of the justice systems have been threatened, detained or abused, the IBAHRI sends out intervention letter to the relevant authorities. The IBAHRI also carries out fact-finding missions to countries where there has been a significant deterioration in the rule of law, for example Fiji and South Africa. After such missions, a report on the situation is issued, possibly with recommendations to the government in question.

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