

PROTOCOL

2021

The conduct of
cases of prosecutors
in difficulty



IAP
INTERNATIONAL
ASSOCIATION OF
PROSECUTORS

1 Preamble

- a) This protocol regulates the ways in which the International Association of Prosecutors (IAP) processes requests for assistance from prosecutors, prosecution agencies or associations of prosecutors claiming to be in difficulty.

2 Commitment

- a) Article 8.2 of the IAP Constitution requires the IAP Executive Committee to assist members in accordance with the objects of the Association.
- b) Article 1.3 of the Constitution identifies the objects of the IAP; these include, inter alia: to promote the effective, fair, impartial and efficient prosecution of criminal offences; to respect and seek to protect human rights as laid down in the Universal Declaration of Human Rights; to promote high standards and principles in the administration of criminal justice; to promote the professional interests of prosecutors and to enhance recognition of their crucial role in achieving justice; and to promote good relations between individual prosecutors and prosecution agencies.
- c) Whenever a prosecutor, prosecution agency or association of prosecutors claims to be in difficulty and requests assistance, the IAP is committed to having in place mechanisms to ensure the effective, just, and timely processing of the request, and further recognizes the need to achieve an outcome which appropriately addresses the basis of the request, satisfies the objects of the IAP, and promotes the rule of law.

The IAP Executive Committee resolves that:

3 Standing Committee

- a) There should be established in accordance with Article 8.2.m of the Constitution, the Standing Committee on Prosecutors in Difficulty (the Standing Committee).
- b) The Standing Committee shall be comprised of three persons who are either members of the Executive Committee or the Senate and serviced by the Secretariat. The Standing Committee will be drawn from a list of members of the Executive Committee and the Senate, who have indicated a willingness to serve on the Standing Committee, as required.
- c) The Standing Committee, and its Chair, will be appointed by the Executive Committee for three-year terms, after consultation with the Secretariat and the Chair of the Senate. If in any case a member of the Standing Committee is not available, the President may invite a member from the list of members in 3 b) to sit on the Standing Committee for the purposes of that case. To facilitate the work of the Standing Committee on cases, and if its Chair so requests, the President will appoint a member of the Executive Committee, ideally a Vice-President, or else a Senator,

from the region involved, and he/she will be invited to assist the Standing Committee to conduct its investigation.

- d) The Standing Committee is responsible to the President for:
 - I) investigating requests for assistance referred to it,
 - II) complying with timeframes,
 - III) considering what responses will be most effective,
 - IV) identifying possible solutions,
 - V) making recommendations to the President,
 - VI) drafting statements of principle and/or letters of support,
 - VII) identifying the authorities in the jurisdiction to whom representations should be made,
 - VIII) drafting public statements/press releases, and
 - IX) advising generally on strategy.

4 The circumstances in which the IAP will become involved in a request for assistance from a prosecutor, prosecution agency, or association of prosecutors

- a) The IAP is prepared to consider any request for assistance from an IAP member who claims to be in difficulty if, prima facie, there is, or may have been, a breach of the IAP Standards (and/or other international legal instrument).
- b) The IAP is prepared, having regard to its constitutional objects, to consider a request for assistance from a non-member of the IAP claiming to be in difficulty, if, prima facie, there is, or may have been, a breach of the IAP Standards (and/or another international legal instrument).
- c) The IAP is prepared, if a prosecutor is incapacitated or otherwise unable to act, to accept a third-party representation on his/her behalf, ideally from a member of the Executive Committee or of the Senate, but also from any prosecutor or organization apprised of the actual situation.
- d) The IAP Secretariat will arrange for the prosecutor, etc., who requests the assistance of the IAP to supply full details of the request and related background information, together with an indication of how the Standards (and/or another international legal instrument) have been or are being infringed.
- e) The IAP, when it evaluates a request for assistance; will look to see if the difficulty complained of has real substance, when tested against the IAP Standards (and/or other international legal instrument), although there will be cases which are minor or trivial, and these may be screened out, following a preliminary evaluation.

- f) The IAP will assess each request for assistance on the basis that the more serious the complaint the more likely is it that the matter will be accepted for further consideration.

5 The mechanisms for processing a request for assistance from a prosecutor, prosecution agency or association of prosecutors

- a) Once the prosecutor or prosecutors who request assistance have supplied the information necessary for the processing of the case to the Secretariat, the President and the Secretariat will assess the merits of the request, if necessary, in consultation with members of the Executive Committee and/or the Senate. If the case is considered unsuitable for further processing by the IAP, the Executive Committee will be advised.
- b) If, however, further action is required, and the case is not straightforward, the matter should be referred to the Standing Committee. If, on the other hand, the case is straightforward, and the facts are clear, and no more than a statement of principle and/or a letter of support is required, the President, having notified the Executive Committee, will issue such a document (s) to the relevant authority. If the matter is urgent, but the final response is contingent upon the advice of the Standing Committee, the President, as an interim measure, will, having notified the Executive Committee, issue a statement of principle to the relevant authority, indicating that a request for assistance has been received, noting that there may have been a breach of the IAP Standards (and/or other legal instrument), advising that the matter is subject to investigation, and seeking the cooperation of the addressee with the inquiry.
- c) After the President has received the report of the Standing Committee, he/she will decide whether to accept the advice, in whole or in part.
- d) Although the Standing Committee will rarely need to arrange a fact-finding visit to a particular jurisdiction, if this is unavoidable its Chair should seek the endorsement of the President, and, once a visit has been approved, the Secretariat will be responsible for facilitating the visit. Every effort will be made to contain the costs of any such visit, to seek local funding for the visit, and, if practicable, the services of members of the Executive Committee or the Senate who are based in the region should be enlisted.
- e) If an IAP factfinder(s) is sent to a jurisdiction, the President will, if appropriate, notify the local authorities that he/she is coming, that he/she will be acting as a special representative of the IAP, disclose the nature of the mission, and invite the authorities to extend every courtesy and support to the visitor.

6 How the IAP can assist a prosecutor, prosecution agency or association of prosecutors whose request for assistance is legitimate

- a) If the dispute is between a prosecutor or prosecutors and a prosecution agency, the President will write, if appropriate, to the head of the prosecution agency, and, if necessary, to other responsible authorities in the jurisdiction, and indicate: the role of the IAP; that the complaint has been investigated and adjudged legitimate; that there has been a breach of the IAP Standards (and/or other international legal instrument); that a function of the IAP is to promote good relations between prosecutors and prosecution agencies; the suggested solution; and that the IAP expects/hopes that the matter will be resolved as soon as possible.
- b) If the dispute is between a prosecutor or prosecutors and others in government, (apart from the prosecution agency itself), the President will write, depending on the gravity of the matter, to the heads of state and/or government, to those complained of, to the minister of justice/ law minister/attorney general, and indicate: the role of the IAP; that the complaint has been investigated and adjudged legitimate; that there has been a breach of the IAP Standards (and/or other international legal instrument); the suggested solution; and that the IAP expects/hopes that the matter will be resolved as soon as possible.
- c) If the complaint of the prosecutor or prosecutors relates to persons or organizations which are not themselves governmental in nature, the President will write, if appropriate, to those in government, in terms similar to those indicated in (b)(above), and then, depending on the circumstances, urge that the complainant be given appropriate support, resources, protection, etc., so as to redress the basis of the complaint, and also, if expedient, write, in similar terms, to those about whose conduct complaint is made.
- d) If the Standing Committee has advised that a wider strategy is expedient in handling the case of a prosecutor or prosecutors in difficulty, such as invoking the support of other international bodies, and/or issuing a press release/public statement, and/or offering to arbitrate a dispute, the President will consider invoking these options at an appropriate time.

7 How the IAP will respond if the basis of a request for assistance from a prosecutor, prosecution agency or association of prosecutors is not established, but where there are nonetheless grounds for concern

- a) The President will write, in neutral terms, to those complained of and, if appropriate, to other responsible organizations in the jurisdiction, to indicate the role of the IAP, to advise that although the complaint has not been substantiated there are nonetheless grounds of concern over the situation of the prosecutor, to refer to the IAP Standards (and/or other international legal instrument), to ask all concerned to ensure that the rights of the prosecutor or prosecutors are fully respected, and, if appropriate, to urge the parties to resolve their differences amicably.
- b) The President will, in an appropriate case, invite the parties to the dispute to have recourse to the good offices of the IAP in resolving areas of disagreement, and may, at his/her discretion, advise the parties that, under its Constitution, one of the objects of the IAP is to promote good relations between prosecutors and prosecution agencies.

8 How the IAP will respond if the basis of a request from a prosecutor, prosecution agency or association of prosecutors for assistance is not established and there are no grounds of concern

- a) The President will write to those in the jurisdiction who have been involved in the investigation, informing them that the inquiry is complete, that the complaint has not been established, and that the IAP has closed its file on the case.

9 The international legal instruments to be relied upon in cases of prosecutors in difficulty

- a) The IAP Standards will invariably be referred to in a submission by the President, as also, in many situations, will the Constitution, and reference may be had, if a right enshrined therein is engaged in the request for assistance, to the relevant international legal instrument, to support the submission. [Relevant international legal instruments, for the purposes of this Protocol, might include: The Universal Declaration of Human Rights (1948); The UN Guidelines on the Role of Prosecutors (“The Havana Declaration”) (1990); Recommendation (2000) 19 of the Committee of Ministers of the Council of Europe on the Role of Public Prosecutions in the Criminal Justice System; The Bordeaux Declaration of the Consultative Council of European Judges, and the Consultative Council of European Prosecutors on “Judges and Prosecutors in a Free Society” (2009); The European Guidelines on Ethics and Conduct for Public Prosecutors (“The Budapest Guidelines”) (Council of Europe) (2005); The Report on European Standards as regards the Independence of the Judicial System: Part II-The Prosecution service, adopted by the Venice Commission at its 85th plenary session (2010)].

10 How the IAP can promote greater consistency in its processing of requests for assistance from a prosecutor, prosecution agency or association of prosecutors

- a) The Secretariat will maintain, for the reference of the Executive Committee and the Standing Committee, a library containing the details of all requests for assistance from a prosecutor or prosecutors claiming to be in difficulty.

This Protocol was adopted by the Executive Committee of the International Association of Prosecutors at its meeting on 4 May 2021, in The Hague