

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 23 November 2022

CDCJ(2022)28

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

**PLAN OF ACTION ON STRENGTHENING JUDICIAL INDEPENDENCE AND
IMPARTIALITY: POSSIBLE FOLLOW-UP**

Bureau proposal

(examined by the CDCJ at its 99th plenary meeting on 23-25 November 2022)

Summary

At its 115th meeting, the Bureau held an in-depth discussion on the possible follow-up by the Committee to be given to the CDCJ report to the Secretary General of the Council of Europe on the review of the implementation of the Plan of Action on Strengthening Judicial Independence and Impartiality, on the basis of the preliminary proposals prepared by the Secretariat. The Bureau concluded that a continued review of selected actions of the Action Plan at regular intervals by the CDCJ should be put forward for the CDCJ's examination. In line with instructions received, the Secretariat prepared this revised paper for the Plenary's consideration.

Decision by the CDCJ

The CDCJ examined the document CDCJ(2022)28 prov; agreed that the Sofia Action Plan remains relevant and that the CDCJ will continue in line with its terms of reference to pay full attention to issues of respect for the Rule of Law and emerging issues in this area; decided on the need to undertake thematic reviews on a regular basis and instructed its Bureau to develop proposals on the basis of this document, taking into account the priority themes put forward by the member States during the exchange of views as well as any co-ordination and/or co-operation where appropriate with other relevant Council of Europe bodies and/or committees.

I. Introduction

1. In 2016, the Council of Europe's launched its 2016-2021 plan of action on strengthening judicial independence and impartiality (hereinafter the Sofia Plan of Action), with a large support and commitment of its member States and the representatives of the judiciary to take the necessary steps to implement the plan.
2. The Sofia Plan of Action aimed to establish mechanisms to support the implementation of member states' obligations under the European Convention on Human Rights to guarantee access to an independent and impartial tribunal; to improve or establish formal legal guarantees of judicial independence and impartiality and putting in place the necessary structures, policies and practices, as well as to ensure that these guarantees are respected and that the judicial branch functions properly; to safeguard and strengthen the judiciary in its relations with the executive and legislature; to reinforcing the independence of the prosecution service; and to build public trust in the judiciary, including by taking society as a whole into account in the composition of tribunals and the judiciary.
3. The Sofia Plan of Action was based on three lines of action involving a series of measures: 1) Safeguard and strengthen the judiciary in its relation with the executive and legislature; 2) Protect the independence of individual judges and ensure their impartiality; 3) Reinforce the independence of the prosecution service.
4. To recall, the main conclusions of the review of the implementation of the Sofia Plan of Action were:
 - while member States made efforts to safeguard the protection of judges and prosecutors, through initiating and implementing a number of reforms following a number of measures addressing the core issues of independence and impartiality of judges and prosecutors, complying with the lines of actions identified in the Plan of Action, not all these actions translated into positive practices, highlighting a

possible schism between de jure and de facto independence. The review also pointed that the judicial and prosecutorial independence required continuous monitoring and scrutiny as it could be easily undermined by undemocratic reforms even in the stable democracies. The Plan of Action in a sense remains timeless. The line of actions and specific measures contained are universal, they can serve as an invaluable resource for policymakers to rely on and draw the inspiration from, but also as benchmarks for the Council of Europe's competent bodies and committees to follow up on and advise the Secretary General and the Committee of Ministers on any future actions needed.

- additional efforts are still required to enhance the independence of the prosecution as an institution, and the independence of the individual prosecutors from internal and external influence and pressure. The review revealed the need to consider updating existing non-binding standards, such as CM/Rec(2000)19 and to elaborate the standards on prosecutorial independence more in detail to guide the member States.
- the COVID-19 pandemic and the increased use of new technologies in the judicial proceedings clearly pointed to the need of addressing the new challenges ahead which could be achieved by expanding the scope of the Plan of Action beyond the conventional issues and threats to independence of judges and prosecutors. An additional dimension which would merit reflecting is the role of other actors in this context, namely lawyers, and safeguarding their independence in exercising their profession. However, it was also duly noted that several member States expressed a preference of not updating the Sofia Plan of Action when asked about possible follow-up to it.

5. The European Consultative Council of Prosecutors (CCPE), on the basis of the discussions held at the European Conference of Prosecutors Generals (May 2022) decided during its 17th Plenary meeting (October 2022) to entrust the Bureau to elaborate a proposal for the attention of the European Committee on Crime Problems (CDPC) regarding the possible need to review and update Recommendation CM/Rec(2000)19 of the Committee of Ministers on the role of public prosecution in the criminal justice system. This possible follow-up action would therefore fall within the competence of the European Committee on Crime Problems, in co-operation or consultations with the European Consultative Council of Prosecutors, and if considered appropriate, the Venice Commission. A complementary action could also be considered in this context by the Venice Commission, through the update of its Report on European Standards as regards the Independence of the Judicial System: Part II – The Prosecution Service, which dates from December 2010. The role of the CDCJ in this context would be to continue to support any future work in this area by the CDPC, through participation to its meetings, given the Committee's overall responsibility in the area of Rule of Law related to standard setting work.

II. Follow-up proposal regarding the Sofia Plan of Action: review of implementation of selected actions at regular intervals

6. At its 115th meeting (24-25 October 2022), the Bureau discussed the possible follow-up by the Committee to be given to the CDCJ report to the Secretary General of the Council of Europe on the review of the implementation of the Plan of Action, on the basis of the preliminary proposals prepared by the Secretariat.

7. The Bureau members underlined the importance of continued attention to be given by the CDCJ to the actions set out in the Sofia Plan of Action, taking into account the findings of the report, including the lack or limited progress identified in a number of member states, and the fact that justice and rule of law aspects fall within the mandate of the CDCJ. The Bureau also agreed that there was still a need for continued efforts towards achieving the objectives set out in the Plan of Action beyond the timeframes originally defined for its implementation.
8. It was also noted in this context that the Council of Europe's Secretary Generals have reported on this issue from the point of the Rule of Law situation in the member States in the annual reports or also by dedicating the annual report to this specific topic and until now. The Report of the High-Level Reflection Group of the Council of Europe of October 2022 recommends that the "Council of Europe should consider issuing its own report on the rule of law based on the judgments of the court and the conclusions of the monitoring bodies".
9. The Sofia Plan of Action remains actual and topical. Its implementation timeframe should not be limited to five years only, as the review of its implementation demonstrated the need of having such a tool for the member States who are starting or continuing their judicial and prosecutorial reforms. It is therefore proposed, that without necessarily considering a revision of the Plan of Action, its implementation and review of progress could be considered and undertaken at regular intervals (every 3 or 5 years for example). Such reviews should cover selected actions, and the topics could be selected by the CDCJ based on consultations with member states on identified priority areas or topical issues of concern.
10. Considering that a number of Council of Europe bodies and sectors provide support and cover areas related to judicial and prosecutorial independence, such a focused review could be undertaken at the intergovernmental level by the CDCJ, alone or together with other bodies, or at secretariat level, through a specific transversal action, which could bring together representatives of the relevant Council of Europe sectors.
11. The methodology of the elaboration of such a report could be elaborated and agreed with the member States, in order to enable a qualitative involvement and their ownership of this exercise, and also to ensure the complementarity and synergies required with other related rule of law related processes. It would take into account the challenges experienced by the CDCJ when preparing its last report, including with respect to the collection and verification of the information provided by members.
12. It would thus be important that future reports remain focused and would possibly integrate tailored recommendations for actions to remedy identified shortcomings, as well as any further considerations regarding mechanisms for further action, where required. These reports could be adopted by the CDCJ in plenary meetings and communicated to the Committee of Ministers to take note of them.