

Austrian Report
on the questionnaire for the preparation of the CCPE Opinion No. 15
The role of prosecutors in emergency situations

General questions

- 1. Has there been an emergency or similar situation declared in order to fight against COVID-19? (by which provisions (constitutional, other), part of the territory covered, duration)**

In Austria it was not necessary to declare a state of emergency to enforce the necessary measures to fight against COVID-19.

On the Federal Level the Austrian government was able to adopt specific by-laws and regulations based on the Epidemic Act as well as on the basis of specific laws adopted by the Parliament solely on behalf of the current situation.

Most of these provisions are/were only valid for an appropriate period of time.

Beside that some Provinces had to impose quarantine upon specific areas for a duration of several weeks.

- 2. Which rights have been affected as a result of this emergency situation? (i.e. freedom of assembly, freedom of movement, right to health, freedom of conscience and religion, etc.)**

As the measures taken during the current emergency situation had an impact on several areas of public and private life, they affected the freedom of movement, the freedom to carry on a business, the freedom of assembly, the freedom of conscience and religion as well as the right to respect for private and family life.

To a certain extent, lawers complaint, that the current rules established for visiting a defendant in detention may affect the right to have adequate facilities for the preparation of the defence.

- 3. In case of suspension or restriction of rights on public health grounds, which requirements have been necessary (i.e. legality, proportionality, adequacy of the measures, necessity) and which principles (equality, non-discrimination) and limits must have been observed? (i.e. searches, restrictions relating to media, political parties, etc.)**

All measures and restrictions were based on legal provisions adopted within the ordinary legislative procedure (see 1./). As a consequence also these provisions followed all legal principles applicable.

- 4. Has there been detected any kind of discrimination, also originating from private persons, against certain groups (for instance, health workers, racial and ethnic minorities), hate speech, racism, xenophobia, attacks and forced returns of refugees and asylum-seekers, mistreatment of foreigners and migrants, and sexual and gender-based violence?**

No

Questions relating to the usual functions of prosecution services but in an emergency situation

- 5. How the prosecution service has worked in emergency situation? (i.e. restraints imposed on prosecution services such as teleworking and limited possibilities to get to the working premises, to use the corresponding equipment, to interact with relevant professionals etc.)**

During the intensive phase of the pandemic situation all courts and public prosecution services reduced their activities to a certain extent.

As a consequence all activities in public (court hearings etc) were reduced to a minimum or postponed; nevertheless it was always ensured, that urgent cases (explicitly including also all cases of detention) were processed without any delay, even if also in these cases measures had to be taken to reduce contact between all parties as much as possible (video interrogation etc).

As long as the process of urgent cases was not affected, all public prosecutors – as well as all other members and staff of the judiciary – were asked to work from home as far as possible. Nevertheless the offices of all prosecution services remained accessible for all public prosecutors.

- 6. How criminal suspects in pre-trial detention have been dealt with? Article 5(3) of the European Convention on Human Rights requires trial within a reasonable time or release pending trial. But if the criminal courts are scarcely functioning, trials do not take place. Consequently, have criminal suspects been released from pre-trial detention? (even if they could have been dangerous). Or have the grounds for detention in custody and custody time limits been interpreted differently, according to the exceptional circumstances - in other words, has a "reasonable time" within the meaning of Art. 5(3) of the ECHR become longer?**

As the reduction of court activities did not affect urgent cases, the pandemic situation did not lead to a longer duration of cases, where suspects were held in pre-trial detention.

- 7. Has there been any particular intervention of the prosecution service in the emergency situation (i.e. in the case of Portugal, the Prosecutor General's Office has been in permanent session during the whole duration of the emergency situation in order to defend the principle of legality and the rights of citizens)**

No

- 8. Have there been crisis response teams created within the prosecution service and at which level (central, regional, local)?**

No

- 9. Have there been guidelines to address the emergency situation issued for the prosecution service and at which level? What measures have been taken regarding shifts of prosecutors (for urgent matters, or during the period where courts have been mostly closed or with their activity significantly reduced) and the replacement of infected prosecutors?**

The Federal Ministry of Justice issued general guidelines related to the attendance at the office, the use of video conferences etc., but it was not necessary to establish specific rules on shifts or replacement of prosecutors.

10. Has there been specific cooperation with other agencies set up (i.e. law enforcement, courts, etc.)?

No

11. Has the prosecution service conducted or supervised investigations carried out by police and other investigation authorities to ensure the adequate protection of human rights in the emergency situation?

By virtue of the Austrian Code of Criminal Procedure the prosecution authority leads the investigation proceeding. This always includes the supervision of investigations carried out by the police or other investigation authorities.

12. Has the prosecution service decided on alternatives to prosecution to avoid overcrowding in detention facilities in the emergency situation?

The Austrian Code of Criminal Procedure (Strafprozessordnung – StPO) provides various alternatives to prosecution (discontinuation because of trifling nature and diversional measures like a payment of a fine, community service, the set of a probation period or victim-offender mediation) as well as various alternatives to detention (house detention, conditional suspension, conditional release). These measures are always applicable and basically proved to be sufficient also during the current emergency situation.

As a temporary measure in view of the Covid-19 situation convicted persons sentenced to imprisonment for less than three years got the possibility to postpone the execution of the sentence until the beginning of Mai 2020 (unless they were already imprisoned or they were sentenced because of specific severe offences, including offences against sexual integrity). Generally persons in quarantine are not considered to be fit for imprisonment.

13. Have there been any specific modalities for action of the prosecution service in the emergency situation as regards:

- **initiating prosecution (particularly in urgent cases, or cases relating to the emergency situation – for instance, disobedience to law enforcement agencies, health personnel, intervention in cases of domestic violence, etc.);**
- **conducting prosecution before the courts, particularly when courts have significantly reduced their activity (have courts maintained their activity, even if somewhat reduced?);**
- **ensuring that victims and witnesses and other vulnerable participants were effectively assisted and/or protected and defendants had their rights respected through the whole procedure**
- **appealing court decisions;**
- **supervising the execution of court decisions and applying whenever possible non-custodial measures or reduction of prison sentences (to avoid overcrowding in detention facilities and to prevent the dissemination or spread of the disease);**

- implementing national crime policy (i.e. in cases where disobedience to lawful orders of law enforcement and health personnel, regarding confinement, may add spreading the disease)
- carrying out functions, where applicable, outside the criminal justice system (i.e. lockdowns may result in heightened risk of people, namely children, witnessing or suffering violence and abuse, unemployment/enforcement of movement restrictions and physical distancing measures can serve as a cover for discrimination and violence against particularly groups, namely foreigners or vulnerable groups, observation of labour laws and social protection, minimising the risks of contagion of workers and employees)

Despite the fact that most of the courts reduced their public activities during the emergency period to court sessions in urgent cases (including all cases of pretrial custody), the emergency situation did not affect the actions and activities of public prosecution services related to these issues. In this field it was not necessary to establish specific modalities of action.

Questions relating to the possible new functions of prosecution services as a result of an emergency situation

14. Have there been any new or extended functions of prosecution services resulting from the emergency situation as regards for example:

- supervising maintenance of public order and security;
- supervising implementation of emergency measures including confinement of population, closure of public areas and other relevant measures;
- supervising general protective measures for the population and maintenance of provision of relevant services, including to the most vulnerable groups during and after the pandemic (women, children, elderly, people living in institutions, deprived of their liberty or in detention or confinement, displaced, homeless, migrants, refugees, slum-dwellers, etc.);
- ensuring regulatory measures to prevent profiteering on foodstuffs, hygiene products and essential medicines and supplies;
- reducing the risk of stigmatising and harmful conduct against vulnerable groups, including those infected by COVID-19;
- ensuring the rights of persons held in quarantine or confinement;
- interacting with media and highlighting the work of prosecution services in the context of emergency situation;
- informing the population about the emergency measures and the corresponding penalties for their non-observation

No

Questions relating to the challenges for the prosecution service in an emergency situation

15. What are, in your opinion, the main challenges faced by prosecution services in an emergency situation and in its aftermath/recovery?

The main challenge faced by public prosecution services in an emergency situation is to ensure an undelayed process of urgent cases (including all cases related to pretrial custody).

To make teleworking an effective tool to keep public prosecution services operational also in emergency situations it is absolutely crucial to provide every public prosecutor with the necessary technical equipment.

16. For example, have specific plans been made with regard to the returning to “normal life”? In member States where court proceedings have been suspended for months, there will be a huge back load of cases now to be dealt with. Is it the task of prosecutor to decide how these cases should be prioritised? Will special initiatives be taken, i.e. court proceedings during weekends, extra payment of prosecutors for extra work? Is there a risk that less serious cases will be closed or prosecution waived?

It is obvious that the emergency situation led to a back load of cases to a certain extent. Of course this situation will have an impact on the work load of courts and prosecution services during the coming months. But so far there are no signs that this situation would require special initiatives in the above mentioned way or that it would affect the treatment of pending cases.

17. Are challenges faced by prosecution services in an emergency situation and in its aftermath/recovery related to:

- independence and accountability of prosecutors in the context of emergency situations;
- ethics and professional conduct of prosecutors during emergency situations and thereafter;
- training of prosecutors on working modalities at the time of emergency situations (for instance, for teleworking) and protecting themselves from COVID-19;
- creation of multidisciplinary teams, if need be (with health personnel, for instance);
- support to vulnerable groups, which are to be the most impacted by the economic consequences of the pandemic (unemployment, worsening working conditions, impact on economic, social and cultural rights in general, etc.)
- international assistance and cooperation, taking into account the consequences of the pandemic and the need for a reinforced cooperation among prosecution services (sharing best practices)

The actual situation proved that a pandemic period requires specific modalities in the field of international assistance and cooperation. As an example most of the countries refused to send or accept paper documents, it was impossible to hold meetings and conferences in a traditional setting etc.

18. What are, in your opinion, ways and methods to overcome these challenges?

These challenges require sufficient resources, technical equipment and specific training

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