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**CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS
CONSEIL CONSULTATIF DE PROCUREURS EUROPEENS
(CCPE)**

**Questionnaire for the preparation of the CCPE Opinion No. 15 (2020):
« The role of prosecutors in emergency situations, in particular when facing
a pandemic »**

***Questionnaire en vue de la préparation de l'Avis No. 13 (2018) du CCPE :
« Le rôle des procureurs dans les situations d'urgence, en particulier face à une
pandémie »***

COMPILATION OF REPLIES TO THE QUESTIONNAIRE PREPARED BY THE CCPE SECRETARIAT

COMPILATION DES RÉPONSES AU QUESTIONNAIRE PRÉPARÉE PAR LE SECRÉTARIAT DU CCPE

Table of Contents

Andorra / Andorre	3
Armenia / Arménie	10
Austria / Autriche.....	12
Azerbaijan / Azerbaïdjan	17
Belgium / Belgique	21
Bosnia and Herzegovina / Bosnie et Herzégovine.....	27
Bulgaria / Bulgarie.....	32
Czech Republic / République tchèque	39
Finland / Finlande	53
Germany / l'Allemagne.....	59
Greece / Grèce	68
Hungary / Hongrie.....	73
Ireland / l'Irlande	83
Italy / Italie.....	89
Latvia / Lettonie.....	94
Lithuania / Lituanie.....	101
Luxembourg.....	108
Malta / Malte	124
North Macedonia / Macédoine du Nord.....	132
Poland / Pologne.....	141
Portugal	150
Slovak Republic / République slovaque	159
Slovenia / Slovénie	166
Spain / Espagne.....	174
Sweden / Suède.....	179
Turkey / Turquie.....	186
Ukraine	194

Andorra / Andorre

Questions générales

1. Une situation d'urgence ou comparable a-t-elle été décrétée pour lutter contre la pandémie de covid-19 ? (par quel type de dispositions [constitutionnelles, autres], sur quelle partie du territoire, pour quelle durée)

Il n'a pas été nécessaire de dicter une mesure d'Etat d'Urgence ou d'Exception (ou semblable), qui ait eu pour conséquence la limitation de droits, toutefois que les recommandations de confinement et autres mesures d'urgence sanitaire ont été suivies volontairement et de manière exemplaire par la population dans la plupart des cas, sans nécessité de mesures autres que le rappel des recommandations par la police.

2. La situation d'urgence a-t-elle eu des répercussions sur certains droits ? Lesquels ? (liberté de réunion, liberté de circulation, droit à la santé, liberté de conscience et de religion)

Les mesures d'urgence sanitaire ont comporté toutefois, des limitations de rassemblement, et l'impossibilité des visites de toute personne aux personnes recluses (ayant été prévu tout de même l'utilisation des nouvelles technologies pour continuer les contacts avec les familles), aux patients des hôpitaux, des centres sanitaires et résidences de personnes âgées, ainsi que la prohibition de toute activité commerciale et professionnelle, hormis les activités de première nécessité.

3. Dans le cas où des droits auraient été suspendus ou limités pour des motifs sanitaires, quelles exigences ont été nécessaires (légalité, proportionnalité, bien-fondé des mesures, nécessité) et quels principes (égalité, non-discrimination) et quelles limites ont dû être respectés (fouilles, restrictions liées aux médias, partis politiques, etc.) ?

Aucun droit fondamental n'a été suspendu : les mesures sanitaires adoptées l'ont été sur la base de la loi générale de la santé qui permet l'adoption de mesures préventives adéquates et proportionnées aux buts recherchés.

4. A-t-on relevé une quelconque forme de discrimination, y compris de la part de particuliers, à l'encontre de certains groupes (personnels soignants, minorités raciales et ethniques, etc.), de discours de haine, de racisme, de xénophobie, ou des agressions, des retours forcés de réfugiés et de demandeurs d'asile, des mauvais traitements sur des étrangers et des migrants, ou encore des violences sexuelles ou fondées sur le genre ?

Il n'a pas été constaté, dans notre pays, de formes de discriminations particulières liées à la pandémie de covid-19.

Questions concernant les fonctions habituelles des ministères publics, dans le cas particulier d'une situation d'urgence

5. Comment le ministère public a-t-il travaillé en situation d'urgence ? (contraintes imposées sur les ministères publics : télétravail, possibilités limitées de se rendre sur le lieu de travail, d'utiliser les équipements correspondants, d'entrer en contact avec certains professionnels, etc.)

Dans un esprit de continuité de l'administration de justice en tant qu'activité essentielle de la démocratie, mais tenant compte des nécessités de santé publique qui ont conduit au confinement de la majorité de la population, diverses mesures ont été mises en place :

- Le télétravail : si bien cette mesure ne peut être étendue à toutes les activités du Ministère Public et à toutes les fonctions de ses différents membres, le télétravail a été privilégié. Tout de même, et étant donné que la majorité des délais procéduraux ont été suspendus (sauf ceux concernant les procédures de protection de droits fondamentaux, d'habeas corpus, toutes les procédures concernant les personnes en situation de danger et concernant les gardes à vue et les personnes en situation de détention provisoire), la charge de travail a diminué considérablement, ce qui comportera un surplus de travail dans les prochaines semaines au fur et à mesure de la levée des mesures établies. Toutefois, ce système a permis d'organiser plusieurs réunions du service.
- Limitation de la capacité des locaux de travail : le procureur de permanence a garanti de manière présenteielle la continuité du service public et les services essentiels et minimum, ce qui n'a pas empêché les autres procureurs de se rendre sur son lieu de travail à certains moments de la journée ou le weekend à de fin de récupérer des dossiers pour garantir le télétravail, tout en respectant les limitations établies et les mesures de distanciation.
- Continuité de la gestion des gardes à vues.

6. Comment les personnes soupçonnées d'une infraction pénale et placées en détention provisoire ont-elles été gérées ? L'article 5, paragraphe 3, de la Convention européenne des droits de l'homme exige un jugement dans un délai raisonnable ou une libération pendant la procédure. Or lorsque les tribunaux fonctionnent au ralenti, les procès n'ont pas lieu. Par conséquent, les personnes soupçonnées d'une infraction pénale ont-elles été libérées de la détention provisoire ? (même si elles présentent un danger éventuel). Ou bien les motifs et les délais de garde à vue ont-ils été interprétés différemment, compte tenu des circonstances exceptionnelles, autrement dit, le « délai raisonnable » au sens de l'article 5, paragraphe 3, de la CEDH a-t-il été allongé ?

Une loi a été voté qui a suspendu les délais judiciaires, ainsi que les procédures, sauf -entres autres- les procédures concernant les prévenus en détention provisoire. Toutefois la même loi a prévu que restaient valables tous les actes d'instruction réalisés dans cette période. En pratique, l'instruction des procédures concernant les détenus en détention provisoire ont continué comme en temps normal, sans qu'est été nécessaire la libération par des motifs liés au COVID19 ou au ralenti des procédures.

Si bien un nombre réduit d'audiences ont été suspendus, très peu ont concerné des procédures relatives à des personnes en détention provisoire, et dans la plupart des cas à pétition de la défense. Dans tous les cas, les motifs n'ont pas été intrinsèques à la justice, mais à l'impossibilité de comparaitre de certains témoins depuis leurs pays de résidence à cause des restrictions de mouvement dictées dans les pays limitrophes (Espagne et France) et tenant compte que nous ne disposons pas d'aéroport en Andorre. De toute façon, le recours aux moyens techniques (Vidéo appels) ont été privilégiés quand cela a été possible.

7. Le ministère public est-il intervenu d'une façon ou d'une autre pendant la situation d'urgence (à savoir, dans le cas du Portugal, le Bureau du Procureur général a été en session permanente pendant toute la durée de la situation d'urgence afin de défendre le principe de légalité et les droits du citoyen) ?

En Andorre, le ministère public est intervenu de manière exclusive dans le sens de la continuité de ses attributions et compétences établies par les lois en vigueur avant la covid-19, sans que ne soit constaté aucune autre intervention extraordinaire pendant la situation d'urgence sanitaire.

8. Des équipes de réponse à la crise ont-elles été créées au sein du ministère public et, si oui, à quel échelon (central, régional, local) ?

Non.

9. Des directives ont-elles été émises à l'intention du ministère public pour faire face à la situation d'urgence et si oui, à quel échelon ? Quelles mesures ont été prises concernant les changements d'affectation des procureurs (pour s'occuper d'affaires urgentes ou pendant la période où la plupart des tribunaux ont été fermés ou ont vu leur activité significativement réduite) et concernant le remplacement des procureurs contaminés ?

Aucune directive n'a été émise en ce sens.

Le procureur de permanence s'occupe dans tous les cas des affaires urgentes survenues tant que le dossier n'a pas été attribué à un autre collègue selon la distribution habituelle des dossiers; toutefois si l'urgence dérive d'une affaire déjà attribuée, c'est le procureur affecté qui a suivi l'urgence.

En cas de contamination d'un procureur, les autres vont assumer ses dossiers, sans que soit nécessaire aucune directive écrite, le tout tenant compte des petites dimensions du ministère public andorran (1 Procureur Général et 6 Procureurs Adjoints).

10. Une coopération spéciale avec d'autres services de l'État a-t-elle été mise en place (avec la police, les tribunaux, etc.) ?

Non, les mêmes mécanismes de coopération et de contacts ont été maintenus.

11. Le ministère public a-t-il conduit des enquêtes ou supervisé des enquêtes menées par la police ou d'autres autorités d'instruction pour que les droits de l'homme soient protégés pendant l'état d'urgence ?

Les enquêtes ont été supervisées de la même manière qu'en temps normal, hors covid-19.

12. Le ministère public a-t-il opté pour des solutions de substitution aux poursuites afin d'éviter la surpopulation des lieux de détention en situation d'urgence ?

Aucune solution de cette sorte n'a été adoptée, tenant compte que notre système est un système de légalité des poursuites.

Toutefois, le problème de surpopulation carcérale existant dans d'autre pays n'a pas lieu en Andorre, et donc la question ne s'est même pas posée, par conséquent les poursuites et les réquisitions ont suivi la même ligne qu'auparavant : en ce sens, il faut dire que notre centre pénitencier se trouvait avec la même occupation avant la pandémie qu'à l'actualité, à savoir aux environs du 50% de sa capacité.

Il faut souligner cependant qu'à fin d'éviter les contaminations en milieu carcéral, et outre l'adoption de mesures concernant les visites des détenues et le contact avec l'extérieur citées auparavant, ont été suspendues toutes les peines d'arrestations nocturnes, d'arrestations pour le weekend et de semi-liberté.

Par ailleurs, la Direction du centre pénitencier a adopté différents protocoles à fin d'éviter la contamination de la population recluse, protocoles diffusés amplement auprès du Parquet et des Tribunaux, à fin de pouvoir veiller au respect de droits de détenus.

Enfin, toute la population carcérale, comme le reste de la population en Andorre, a bénéficié de test d'anticorps gratuits de Covid19. Seules 3 des 46 personnes privées de liberté ont refusé la pratique de ce test, le tout sous la supervision du Ministère Public.

13. L'action du ministère public a-t-elle été soumise à des modalités particulières pendant la situation d'urgence pour ce qui concerne :

- l'institution des poursuites (en particulier dans les affaires urgentes, ou dans des affaires liées à l'état d'urgence, par exemple désobéissance aux forces de l'ordre, personnel soignant, intervention dans des cas de violence domestique) : aucune difficulté ni changement est apparue à cet égard pendant la pandémie.

- la conduite des poursuites avant le procès, en particulier si les tribunaux ont significativement réduit leur activité (les tribunaux ont-ils maintenu leur activité, même en mode dégradé ?) : même si les tribunaux pénaux ont maintenu leur activité, il faut noter que en pratique la plupart des audiences ont été annulées tenant compte que de nombreux prévenus et témoins ne pouvaient pas faire le déplacement en Andorre depuis leur lieu de résidence, tenant compte des restrictions de mouvement dictées dans les pays limitrophes (Espagne et France). Seules les audiences des accusés en détention provisoire ont été célébrées quand les circonstances l'ont permis, ayant privilégié le recours aux vidéos appels quand cela a été possible.

- la garantie que les victimes et les témoins et d'autres participants vulnérables ont été assistés et/ou protégés de manière efficace, et que les droits des prévenus/défendeurs ont été respectés tout au long de la procédure : oui ; le respect de ces droits a été le souci principal du ministère public, tant en ce qui concerne les procédures des personnes gardés à vue et des victimes de celles-ci, comme dans tout le reste des affaires, surtout dans les affaires de violences domestiques et dans celles où intervient un mineur (victime ou auteur)

- les recours contre les décisions des tribunaux : la suspension des délais de recours dans toutes les matières a garanti ce droit. Toutefois nous rappellerons que les délais des procédures en ce qui concernent les personnes privées de liberté n'ont pas été suspendus, et les procédures ont continué normalement.

- la supervision de l'exécution des décisions de justice et l'application, si possible, de mesures non privatives de liberté ou la réduction des peines de prison (pour éviter la surpopulation des lieux de détention et la propagation de la maladie) : cf. réponse question 12. Aucune nécessité particulière n'est apparue en ce sens.

- la mise en œuvre d'une stratégie nationale en matière d'infraction (c'est-à-dire lorsque la désobéissance à des directives légales de la police et du personnel

soignant concernant le confinement risquait d'aggraver la propagation de la maladie) : à propos de cette problématique, il n'a pas été nécessaire d'une quelconque stratégie en cette matière ; pendant le confinement, la délinquance a fortement diminué, jusqu'à des valeurs quasi résiduelles, due au fait que la très grande partie de la population a respecté le confinement de façon stricte, et seuls quelques peu d'infractions pénales ont été commises dans lesquelles ont inclus les violences domestiques.

- l'exécution de fonctions, le cas échéant, en dehors du système de justice pénale (c'est-à-dire : le confinement peut augmenter le risque que certaines personnes, notamment les enfants, soient témoins ou victimes de violences et d'abus ; le chômage ou l'application de mesures de limitation des déplacements et de respect de la distance physique peut être un prétexte pour manifester de la discrimination ou de la violence à l'encontre de certains groupes, notamment les étrangers et les groupes vulnérables ; respect du code du travail et de la protection sociale afin de réduire au minimum la contamination des travailleurs et des employés) ? : aucune particularité à signaler en ce sens ; le ministère public a répondu pendant le confinement de la même façon qui lui correspond en toute période.

Questions concernant les éventuelles nouvelles fonctions des ministères publics en raison d'une situation d'urgence

14. Le ministère public a-t-il eu de nouvelles fonctions ou ses fonctions ont-elles été étendues en raison de la situation d'urgence, en ce qui concerne par exemple :

- la supervision du maintien de l'ordre public et de la sécurité ;
- la supervision de l'application de mesures d'urgence telles que le confinement de la population ou la fermeture des espaces publics ;
- la supervision de mesures de protection générales de la population et du maintien des services concernés, notamment en faveur des plus vulnérables pendant et après la pandémie (femmes, enfants, personnes âgées, personnes vivant dans des institutions, personnes privées de liberté, placées en détention ou confinées, personnes déplacées, sans-abri, migrants, réfugiés, habitants de taudis, etc.) ;
- le contrôle des mesures réglementaires visant à empêcher la recherche du profit sur des denrées alimentaires, des produits d'hygiène et des médicaments et fournitures essentiels ;
- la réduction du risque de stigmatisation des groupes vulnérables, notamment des personnes contaminées par le coronavirus, et de comportement néfaste à leur endroit ;
- le contrôle du respect des droits des personnes placées en quarantaine ou confinées ;
- les échanges avec les médias et la visibilité du travail du ministère public dans le contexte de l'état d'urgence ;
- la communication d'informations à la population sur les mesures d'urgence et sur les sanctions correspondantes en cas de non-respect ?

Aucune nouvelle fonction n'a été attribuée au ministère public.

Questions concernant les difficultés rencontrées par les ministères publics en situation d'urgence

15. Quelles sont, selon vous, les principales difficultés rencontrées par les ministères publics pendant une situation d'urgence et à la sortie de cette situation/pendant le retour à la normale ?

Aucune difficulté n'a été rencontrée pendant la situation d'urgence. Cependant, et même si les dispositions légales adoptées disposent clairement que tous les actes procéduraux réalisés durant cette période, même si les délais ont été suspendus, sont valables et efficaces, dans la pratique les organes judiciaires ont effectué très peu de notifications, déclarations et d'audiences (sauf exception précisées ci-dessus), ce qui vraisemblablement pourrait comporter une avalanche de notifications qui pourrait saturer le ministère public.

Cependant, l'activité judiciaire a repris en moitié de semaine du 10 au 14 juin, et dans ces premiers jours il n'a pas été vérifié la saturation du parquet pour le moment, le tout grâce aux prévisions des dernières semaines et à une organisation qui doit permettre récupérer le retard en quelques semaines : il faudra attendre toutefois les deux prochaines semaines pour constater quelles sont les réelles conséquences pour le Parquet du ralentissement de la Justice pendant le confinement dû au COVID19 (surcharge de travail, heures supplémentaires...).

16. Par exemple, le retour à la « vie normale » a-t-il été préparé d'une façon ou d'une autre ? Dans les États membres où les procédures judiciaires ont été suspendues pendant plusieurs mois, le traitement des affaires a pris un retard considérable qu'il va falloir gérer. Est-ce au procureur qu'il revient de définir dans quel ordre ces affaires doivent être traitées ? Des mesures spéciales seront-elles prises (à savoir, procès pendant les week-ends ou paiement d'heures supplémentaires aux procureurs) ? Y a-t-il un risque que les affaires moins graves soient classées sans suite ou que des poursuites soient abandonnées ?

Une organisation des procédures et des actes a été modelée à fin de pouvoir émincer le retard et en même temps de garantir la distance sociale conseillée par les autorités sanitaires, ce qui - ajouté à l'avalanche de notification qui est à prévoir, bien que le nombre par jour sera limité- va diffuser l'évacuation des procédures dans les temps et/ou une augmentation de heures supplémentaires des différents procureurs (sans prévision de compensation).

Les affaires vont être traitées, de la même façon qu'avant le covid19, en privilégiant les affaires concernant les personnes en détention préventives, les affaires concernant les mineurs (auteurs d'infractions, ou en situation de danger), les violences de genre, les affaires les plus anciennes, et après toutes les autres affaires pénales et civiles où intervient le ministère public.

Aucune affaire, plus grave ou moins grave, n'a vocation à être classée sans suite, tenant compte de notre système de légalité des poursuites.

17. Le ministère public rencontre-t-il des difficultés pendant une situation d'urgence et à la sortie de cette situation/pendant le retour à la normale, en ce qui concerne :

- **l'indépendance et la responsabilité des procureurs dans le contexte des situations d'urgence** : aucun difficulté

- **la déontologie et la conduite professionnelle des procureurs pendant et après les situations d'urgence** : aucun problème rencontré

- **la formation des procureurs sur les conditions de travail en situation d'urgence (par exemple, dans le cadre du télétravail) et sur la façon de se protéger du coronavirus** : divers guides et directives ont été publiés, et une assistance technique est à notre disposition en cas de besoin.

- **la création d'équipes pluridisciplinaires, lorsque cela est nécessaire (avec le personnel soignant par exemple)** : aucune difficulté en ce sens.

- **le soutien aux groupes vulnérables, qui, en toute logique, seront les plus touchés par les conséquences économiques de la pandémie (chômage, aggravation des conditions de travail, répercussions sur les droits économiques, sociaux et culturels en général, etc.)** : jusqu'à présent aucun cas n'est apparu en ce sens. Toutefois, le Ministère Public est et sera particulièrement vigilant en ses groupes vulnérables, dans les matières de sa compétence.

- **l'aide et la coopération internationales, compte tenu des conséquences de la pandémie et de la nécessité d'une coopération renforcée entre ministères publics (mise en commun de bonnes pratiques)** : celle-ci a résulté plus difficile dans les affaires d'extradition en cours ; toutefois, la coopération officieuse en vue de préparation des commissions rogatoires n'a pas été stoppée par la pandémie. L'Autorité Centrale a communiqué aux différents partenaires que la voie télématique était ouverte à fin de simplifier les envois et réceptions de pétitions.

18. Quels sont, selon vous, les moyens et les méthodes permettant de surmonter ces difficultés ?

Les moyens pour surmonter ses difficultés passent par l'incorporation de moyens humains supplémentaires de manière générale, difficultés que surpassent les causes liées au Covid19: le ministère public n'est composé en Andorre que par le Procureur Général et 6 procureurs adjoints, ayant des attributions qui vont bien plus loin que le droit pénal, devant comparaître dans toutes les affaires civiles où il y a un mineur ou une personne incapable, et aussi dans toutes les affaires portées devant le Tribunal Constitutionnel quelle que soit la matière, le tout pour un pays d'environ 76.000 habitants, étant en dessus du ratio idéal de procureurs par 1000 habitant. Donc il serait nécessaire d'incorporer au moins un nouveau procureur rapidement, ainsi que promouvoir l'incorporation de manière fixe d'autres membres du bureau, à fin de garantir un travail de qualité et dans les temps.

Armenia / Arménie

1. An emergency situation was declared in the entire territory of the Republic of Armenia by the Government Decree of 16 March 2020. The emergency situation is still going on.
2. The following rights that have been affected by the declaration of emergency situation:
 - The right of freedom of movement;
 - The right to freedom of assembly;
3. The measures implied during the emergency situation are strictly necessary for the protection of public health. The scope of the restrictions may vary given the current situation.
4. Such cases have not been detected.
5. During the first days of the emergency situation the most part of the prosecutors worked remotely due to the fact that a lockdown was declared.
6. During the pandemic pre-trial detention of 20 detainees has been changed by the initiative of the prosecutors.
7. No intervention took place.
8. Crisis response teams have not been created. However, by the order of the General Prosecutor some prosecutors continued to work in a usual manner also during the autoisolation.
9. No, there have not been any guidelines.
10. Cooperation with other agencies continued in a usual manner.
11. No such investigations have been carried out.
12. Taking into account the overall situation created by COVID-19 the number of decisions not to prosecute for the crimes of less or medium gravity has increased.
13. During the emergency situation some criminal proceedings related to the situation created by COVID 19 have been initiated. For example, there was a case when a person disseminated information concerning patients who got infected by COVID-19 and which did not correspond to reality. Also there was a case when an official of the penitentiary institution refused to measure the heat and for that reason a quarrel began between him and the nurse and the official slapped the nurse.

The main impact the Covid-19 pandemic has on the work of the investigative bodies is that almost no investigative activities, which requires participation of persons, for example interrogation of witnesses, are conducted resulted from the spread of pandemic. Also it should be noted that the pandemic had an impact on the time limits of forensic examinations given the fact that the staff of forensic institutions are working remotely and forensic examinations which requires participation of persons are almost not conducted. Based on the abovementioned it should be highlighted that the process of collecting evidence slowed down.

Regarding the cases which have already been sent to court it should be noted that although the trial proceedings go on, in some cases the persons who are in pre-trial detention are not transferred to courts from detention facilities aimed at ensuring the health of those persons and excluding the possibility of the penetration of the pandemic into detention facilities.

14. There are not any new or extended functions of the prosecution service resulting from the emergency situation.

15. In our opinion the main challenge for the prosecution service is the reasonable time of the investigations given the fact that the restrictions have their impact in the process of collecting evidence.

17-18. The emergency situation also had its impact on the process of training of the prosecutors. The trainings are now organised through webinars.

Austria / Autriche

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, lawyers 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 diversionary 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

Azerbaijan / Azerbaïdjan

1. - No state of emergency has been declared in the Republic of Azerbaijan in connection with the COVID-19 pandemic. According to our Constitution, the declaration of a state of emergency falls within the competence of the President of the Republic of Azerbaijan.

In order to prevent the threat of coronavirus disease in the territory of Azerbaijan, and implement preventive and urgent measures, the Task Force consisting of heads of relevant government agencies and institutions has been established under the Cabinet of Ministers. Although the decisions taken by this headquarters cover the entire territory of the republic and most of the restrictions imposed during the special quarantine period have been removed, some of them are still in place.

Since 24th March 2020 starting from 00:00 a.m. special quarantine has been declared in accordance with Article 25 of the Law of the Republic of Azerbaijan on Sanitary and Epidemiological Safety in order to combat Covid-19, protect the health of the population, prevent the spread of coronavirus infection and its possible consequences in the country. The duration of this regime is determined in accordance with the epidemiological situation, COVID-19 infection rate in the whole country.

2,3. During the special quarantine period, decisions were made calling people, especially those over 65 years of age, to leave their places only in cases of urgency and not to attend gatherings of more than 10 people. Although the decision restricted these persons' rights to move freely, it did not deprive them of this right. During the quarantine period, in case of emergencies, they were able to get permission for meeting their vital needs, or receive medical treatment or examination.

In addition, considering the pardon appeals of prisoners over the age of 65 and their families who are in need of special care due to their age and health condition in connection with the spread of COVID-19 infection in the world, taking into account the state of health of convicts, their behavior during their imprisonment and based on the principles of humanism, by the order of the President dated 6th April 2020, 176 people sentenced to imprisonment of the relevant category were released from the unserved part of their personal sentences.

All these temporary restrictions of rights are due to that individuals can be exposed to a contagious disease, namely COVID-19, which can lead to fatal results. It should be noted that without protection of health, safety and security, people cannot enjoy many of the personal and economic freedoms.

4. No information has been received related to discrimination, hatred, racism, xenophobia, attacks on refugees and asylum seekers and their forced return, ill-treatment of foreigners and migrants, sexual and gender-based violence by certain groups in the country.

5. In accordance with the rules established by the Task Force under the Cabinet of Ministers, at the end of March and April 2020, the operational staff not exceeding 50 percent performed their duties with restrictions in shifts. Relevant schedules were set up taking into account the number of employees in the whole prosecutor's office, and a limited number of employees came to work according to these schedules.

Urgent internal events as well as the interaction with the complainants were held via videoconferencing during this period.

6. During the special quarantine period, criminal and civil proceedings in the courts were suspended, and this restriction did not apply to the imposing a restrictive measure and the extension of this kind of measure. During this period, detainees were prosecuted on a general basis, as at other times. The suspects were provided with all the rights provided by law, if charges were brought against them, a restrictive measure had been imposed. The requirements of the criminal and criminal procedure laws were observed.

7. As some suspicions aroused in the commission of embezzlement of social funds belonging to executive powers of several cities, forgery, corruption and abuse of power by respective officials during the special quarantine regime, prompt investigative actions were carried out by prosecuting bodies.

8. After the establishment of the Task Force under the Cabinet of Ministers, a Working Group was created in the Prosecutor General's Office on 14 March, 2020 for effective implementation of legal responsibility measures aimed at combating COVID-19.

9. According to the decision of the Task Force established under the Cabinet of Ministers of the Republic of Azerbaijan from March 14, 2020 at 00:00 in connection with the implementation of social isolation measures in the country, business trips abroad, as well as travel to foreign countries and within the country, reception of citizens accompanied by mass gatherings, as well as large-scale meetings and conferences were required to be suspended. Prosecutors were instructed to use protective masks, carry out strict disinfection measures in the administrative buildings of structural units and provide them with the necessary equipment during the relevant criminal proceedings.

10. The Working Group established by the Prosecutor General's Office Order No. 10/29 of March 14, 2020, together with other law enforcement agencies, carried out some measures to prevent the spread of the pandemic and its consequences in the country.

11. During the special quarantine period, as in ordinary cases, procedural supervision over the investigations conducted in the relevant law-enforcement bodies has been carried out in accordance with the law.

12. In the course of the special quarantine regime there were cases when the courts had chosen restrictive measures not related to detention to avoid overcrowding in detention facilities.

13. A decision was issued on 23 April 2020 at the next meeting of the Plenum of the Supreme Court of the Republic of Azerbaijan “On necessary measures to be taken in courts to prevent possible spread of coronavirus (COVID-19) in Azerbaijan Republic”.

In the decision it was recommended to temporarily postpone consideration of other cases in the proceedings except for cases to be considered urgently or do not require court hearings (selection, extension, change, repeal of restrictive measures, cases of administrative detention, appeals in the execution of a judgment or other final decision of the court when necessary, taking measures to secure the claim, order proceedings, simplified proceedings on minor claims, special proceedings on some categories, etc.)

It was also recommended to use the opportunities to consider cases in administrative judicial proceedings without conducting an oral judicial hearing (oral hearings) taking into account the requirements of Article 16 of the Administrative Procedure Code of the Republic of Azerbaijan and to conduct court proceedings on civil cases and commercial disputes via the “Electronic court” information system in line with the requirements of the Code of Civil Procedure of the Republic of Azerbaijan.

The above-mentioned decision has been in force from 23 April 2020 until 4 May 2020.

According to the information of the Supreme Court of the Republic of Azerbaijan dated 2 May 2020 on the measures necessary to be taken in the courts to prevent the spread of coronavirus (COVID-19) infection in the Republic of Azerbaijan, the acceptance and consideration of cases in the courts of the republic and those in Nakhchivan Autonomous Republic, except for Baku, Sumgayit , Ganja, Lankaran cities and Absheron region was restored, it was suggested to conduct judicial activity in accordance with the necessary social behavior and sanitary-epidemiological rules established by the Task Force under the Cabinet of Ministers of the Republic of Azerbaijan as well as to take into account that it was prohibited to gather in groups more than 10 people together in courtrooms and inside administrative buildings during court proceedings.

The information of the Supreme Court of the Republic of Azerbaijan dated 15 May 2020 noted that all courts situated in Baku, Sumgayit, Ganja, Lankaran cities and Absheron region fully restored the acceptance and consideration of cases from 18 May 2020 and it was recommended to take into account the requirements enshrined in the communiqué dated 02 May 2020.

Obviously, the prosecutors representing public accusation participated in the court hearings in which their participation was considered obligatory according to the legislation while the courts operated partially temporarily and when their operation was fully restored.

14. Press Service of the Prosecutor General’s Office of the Republic of Azerbaijan has regularly monitored media, and in case of detection of any false information related to the epidemic

situation in the country, comprehensive information had been presented to public together with press services of respective state bodies.

15, 17, 18. Restrictions on the movement of citizens in the territory of the republic during the special quarantine period caused a number of problems in their appearance before the investigative bodies. This feature affected the criminal proceedings (there were cases of suspension, extension of the investigation period), and some investigative actions were postponed. These measures have been taken in accordance with law taking into account the current situation

One of the ways to overcome some of challenges has been videoconferencing, which is a useful practice at international level.

16. It should be noted that the number of cases to be considered before the court considerably rose since the operation of courts was suspended partially. As the courts have started to operate fully since 18 May 2020, the cases are being considered at the moment accordingly.

Belgium / Belgique

Questions générales

- 1. Une situation d'urgence ou comparable a-t-elle été décrétée pour lutter contre la pandémie de covid-19 ? (par quel type de dispositions [constitutionnelles, autres], sur quelle partie du territoire, pour quelle durée)**

Réponse

Oui, en Belgique, dès le début de la crise, le gouvernement a été doté de pouvoirs spéciaux par le parlement (dans une loi) afin de lui permettre de prendre des arrêtés d'urgence sans passer par le parlement. Ces pouvoirs sont strictement limités à la crise COVID. Le parlement a continué son travail législatif.

En outre, il a constitué un « centre de crise » rassemblant les responsables politiques de l'Etat fédéral et des Régions pour prendre des mesures d'urgence pour tout le pays.

- 2. La situation d'urgence a-t-elle eu des répercussions sur certains droits ? Lesquels ? (liberté de réunion, liberté de circulation, droit à la santé, liberté de conscience et de religion).**

Réponse.

Oui, les mesures prise par le gouvernement fédéral ont restreint les droits individuels de déplacement, de réunion, la liberté de culte.

- 3. Dans le cas où des droits auraient été suspendus ou limités pour des motifs sanitaires, quelles exigences ont été nécessaires (légalité, proportionnalité, bien-fondé des mesures, nécessité) et quels principes (égalité, non-discrimination) et quelles limites ont dû être respectés (fouilles, restrictions liées aux médias, partis politiques, etc.) ?**

Réponse :

Les mesures d'urgence ont été prises conformément à la loi de pouvoirs spéciaux. Elles ont été basées sur les propositions d'un comité d'expert de la santé réunissant les principaux experts belges spécialisés dans la pandémie, infectiologues, épidémiologiste, etc...

La police n'a pas été autorisée à pénétrer dans les lieux privés pour vérifier l'application des mesures de protection.

Des contestations sur ces limitations ont parfois été constatées mais dans une mesure limitée.

- 4. A-t-on relevé une quelconque forme de discrimination, y compris de la part de particuliers, à l'encontre de certains groupes (personnels soignants, minorités raciales et ethniques, etc.), de discours de haine, de racisme, de xénophobie, ou des agressions, des retours forcés de réfugiés et de demandeurs d'asile, des mauvais traitements sur des étrangers et des migrants, ou encore des violences sexuelles ou fondées sur le genre ?**

Réponse :

Non, de tels phénomènes n'ont pas été constatés. Il a fallu prendre des mesures pour les personnes sans abri, afin qu'elles puissent aussi être prises en charge ne cas de maladie.

Des mesures importantes ont été prises pour éviter que les prisons ne soient infectées. En effet, dans un tel milieu, il existait une grande crainte d'une contamination massive.

Cela ne s'est pas produit et la situation a été parfaitement maîtrisée, mais au prix de mesures importantes : interdiction des visites aux détenus, suppression des activités sociales dans les prisons, remise en liberté d'un grand nombre de personnes (actuellement 9.800 détenus à la place de 11.000), non- exécution des peines d'emprisonnement par les procureurs. Actuellement, les visites ont pu reprendre. D'abord par vidéoconférence (à l'aide d'ordinateurs mis à disposition par l'administration pénitentiaire) puis physiquement avec un écran protecteur.

Questions concernant les fonctions habituelles des ministères publics, dans le cas particulier d'une situation d'urgence

- 5. Comment le ministère public a-t-il travaillé en situation d'urgence ? (contraintes imposées sur les ministères publics : télétravail, possibilités limitées de se rendre sur le lieu de travail, d'utiliser les équipements correspondants, d'entrer en contact avec certains professionnels, etc.)**

Réponse :

Le ministère public a toujours exercé ses missions sans aucune interruption mais avec des adaptations : application du télétravail chaque fois que possible, tant pour les magistrats que pour le personnel, limitation des audiences aux cas urgents : dossiers de détenus, dossiers familiaux, etc. utilisation de masques, de gel hydro-alcoolique, écrans protecteurs, aménagement des locaux public, y compris les salles d'audiences et des bureaux pour limiter la fréquentation et faire respecter la distanciation.

Les règles de procédures ont été adaptées en urgence pour prévoir des audiences par vidéoconférence, la généralisation de la procédure écrite, chaque fois que possible, Application d'un système de transmission automatique des documents des avocats, huissiers de justice etc. par internet.

- 6. Comment les personnes soupçonnées d'une infraction pénale et placées en détention provisoire ont-elles été gérées ? L'article 5, paragraphe 3, de la Convention européenne des droits de l'homme exige un jugement dans un délai raisonnable ou une libération pendant la procédure. Or lorsque les tribunaux fonctionnent au ralenti, les procès n'ont pas lieu. Par conséquent, les personnes soupçonnées d'une infraction pénale ont-elles été libérées de la détention provisoire ? (même si elles présentent un danger éventuel). Ou bien les motifs et les délais de garde à vue ont-ils été interprétés différemment, compte tenu des circonstances exceptionnelles, autrement dit, le « délai raisonnable » au sens de l'article 5, paragraphe 3, de la CEDH a-t-il été allongé ?**

Réponse :

Toutes les audiences de confirmation des mandats d'arrêt se sont tenue en degré d'instance et en appel, et cela dans le respect des délais de procédure Parfois, lorsque c'était techniquement possible par vidéoconférence depuis la prison. Les avocats ont été autorisés à représenter leur client devant la juridiction, sauf décision contraire du président d'audience.

Des dossiers au fond n'ont pu être fixés, ce qui a provoqué un arriéré judiciaire, y compris au pénal. Les délais de prescription des infractions et des délais de procédure ont été suspendus durant quelques semaines. Le délai raisonnable existe et ne peut être allongé.

- 7. Le ministère public est-il intervenu d'une façon ou d'une autre pendant la situation d'urgence (à savoir, dans le cas du Portugal, le Bureau du Procureur général a été en session permanente pendant toute la durée de la situation d'urgence afin de défendre le principe de légalité et les droits du citoyen) ?**

Réponse :

Le collège du ministère public et des procureurs généraux, ainsi que son service d'appui se sont réunis quasi quotidiennement par vidéoconférence pour rédiger les circulaires de politique criminelle contraignantes pour les infractions COVID et donner les instructions utiles aux différentes entités du ministère public. Des magistrats de référence spécialisés COVID ont été désignés dans chaque entité. Le site intranet du ministère public a été aménagé pour donner en temps réel toutes les informations utiles. Un groupe de travail permanent de magistrats a été constitué pour répondre aux questions d'interprétation des textes COVID et un FAQ a été publié à destination des praticiens.

8. Des équipes de réponse à la crise ont-elles été créées au sein du ministère public et, si oui, à quel échelon (central, régional, local) ?

Réponse :

Oui, à l'échelon du collège des procureurs généraux qui est national afin d'uniformiser l'interprétation et l'application des textes (voir question 8)

9. Des directives ont-elles été émises à l'intention du ministère public pour faire face à la situation d'urgence et si oui, à quel échelon ? Quelles mesures ont été prises concernant les changements d'affectation des procureurs (pour s'occuper d'affaires urgentes ou pendant la période où la plupart des tribunaux ont été fermés ou ont vu leur activité significativement réduite) et concernant le remplacement des procureurs contaminés ?

Réponse :

Oui, à l'échelon du collège des procureurs généraux qui est national et qui permet de donner des instructions contraignantes à tous les magistrats du ministère public.

Des magistrats spécialisés ont été désignés pour les infractions COVID. Il n'a pas été nécessaire de prendre des mesures particulières pour remplacer des procureurs malades mais des équipes totalement séparées et n'ayant aucun contact physiques entre elles ont été mises en place pour éviter les risques de contamination et assurer la continuité des activités du parquet.

10. Une coopération spéciale avec d'autres services de l'État a-t-elle été mise en place (avec la police, les tribunaux, etc.) ?

Réponse :

Oui, avec les services du ministère de la justice pour pouvoir disposer des budgets suffisants et du matériel indispensable à la sécurité des magistrats et du personnel. Aussi avec les services de police pour donner des priorités pour la constatation des infractions COVID et répondre aux questions d'application des mesures COVID. Avec les cours et tribunaux pour le jugement rapide des infractions COVID et se concerter sur les affaires urgentes qui devaient encore être traités par les tribunaux

11. Le ministère public a-t-il conduit des enquêtes ou supervisé des enquêtes menées par la police ou d'autres autorités d'instruction pour que les droits de l'homme soient protégés pendant l'état d'urgence ?

Réponse :

Non

12. Le ministère public a-t-il opté pour des solutions de substitution aux poursuites afin d'éviter la surpopulation des lieux de détention en situation d'urgence ?

Réponse :

Oui. Chaque fois que possible, des peines d'emprisonnement n'ont pas été exécutées ; il a été fait usage au maximum du bracelet électronique et des peines de travail d'intérêt général ont été requises par les procureurs.

13. L'action du ministère public a-t-elle été soumise à des modalités particulières pendant la situation d'urgence pour ce qui concerne :

- **l'institution des poursuites (en particulier dans les affaires urgentes, ou dans des affaires liées à l'état d'urgence, par exemple désobéissance aux forces de l'ordre, personnel soignant, intervention dans des cas de violence domestique) ;**

Réponse : Oui : des instructions ont été données aux services de police de réorienter les constatations d'infraction vers les infractions «COVID

- **la conduite des poursuites avant le procès, en particulier si les tribunaux ont significativement réduit leur activité (les tribunaux ont-ils maintenu leur activité, même en mode dégradé ?) ;**

Réponse : Oui, seules les affaires urgentes ont été prises mais les tribunaux ont toujours continué à fonctionner.

- **la garantie que les victimes et les témoins et d'autres participants vulnérables ont été assistés et/ou protégés de manière efficace, et que les droits des prévenus/défendeurs ont été respectés tout au long de la procédure ;**

Réponse : Oui, autant que possible mais avec des aménagements : autorisation pour l'avocat de représenter son client, procédure écrite, utilisation de vidéoconférence.

- **les recours contre les décisions des tribunaux ;**

Réponse : non

- **la supervision de l'exécution des décisions de justice et l'application, si possible, de mesures non privatives de liberté ou la réduction des peines de prison (pour éviter la surpopulation des lieux de détention et la propagation de la maladie) ;**

Réponse : Oui (vois supra)

- **la mise en œuvre d'une stratégie nationale en matière d'infraction (c'est-à-dire lorsque la désobéissance à des directives légales de la police et du personnel soignant concernant le confinement risquait d'aggraver la propagation de la maladie) ;**

Réponse : Oui : demande de constater les infractions en priorité et d'appliquer les amendes administratives lorsqu'elles sont prévues

- **l'exécution de fonctions, le cas échéant, en dehors du système de justice pénale (c'est-à-dire : le confinement peut augmenter le risque que certaines personnes, notamment les enfants, soient témoins ou victimes de violences et d'abus ; le chômage ou l'application de mesures de limitation des déplacements et de respect de la distance physique peut être un prétexte pour manifester de la discrimination ou de la violence à l'encontre de certains groupes, notamment les étrangers et les groupes vulnérables ; respect du code du travail et de la protection sociale afin de réduire au minimum la contamination des travailleurs et des employés) ?**

Réponse : Oui, il a été demandé aux services concernés d'être attentif aux violences intrafamiliales et de les dénoncer rapidement. Les procureurs ont aussi demandé aux services d'inspection sociale de vérifier le respect des mesures de protection dans les entreprises

Questions concernant les éventuelles nouvelles fonctions des ministères publics en raison d'une situation d'urgence

14. Le ministère public a-t-il eu de nouvelles fonctions ou ses fonctions ont-elles été étendues en raison de la situation d'urgence, en ce qui concerne par exemple :

- **la supervision du maintien de l'ordre public et de la sécurité ;**

Réponse : non. Cela ne relève pas des missions du parquet

- **la supervision de l'application de mesures d'urgence telles que le confinement de la population ou la fermeture des espaces publics ;**

Réponse : demande de faire respecter les mesures de protection assorties de peines

- **la supervision de mesures de protection générales de la population et du maintien des services concernés, notamment en faveur des plus vulnérables pendant et après la pandémie (femmes, enfants, personnes âgées, personnes vivant dans des institutions, personnes privées de liberté, placées en détention ou confinées, personnes déplacées, sans-abri, migrants, réfugiés, habitants de taudis, etc.) ;**

Réponse : Non

- **le contrôle des mesures réglementaires visant à empêcher la recherche du profit sur des denrées alimentaires, des produits d'hygiène et des médicaments et fournitures essentiels ;**

Réponse : Non

- **la réduction du risque de stigmatisation des groupes vulnérables, notamment des personnes contaminées par le coronavirus, et de comportement néfaste à leur endroit ;**

Réponse : Non

- **le contrôle du respect des droits des personnes placées en quarantaine ou confinées ;**

Réponse : Non

- **les échanges avec les médias et la visibilité du travail du ministère public dans le contexte de l'état d'urgence ;**

Réponse : Oui le ministère public a communiqué vers la population pour indiquer sa volonté d'appliquer strictement la loi pénale, particulièrement à l'aide d'amendes

- **la communication d'informations à la population sur les mesures d'urgence et sur les sanctions correspondantes en cas de non-respect ?**

Réponse : Oui

Questions concernant les difficultés rencontrées par les ministères publics en situation d'urgence

15. Quelles sont, selon vous, les principales difficultés rencontrées par les ministères publics pendant une situation d'urgence et à la sortie de cette situation/pendant le retour à la normale ?

Réponse : Difficulté d'obtenir les moyens de protection et techniques indispensables. Difficulté d'obtenir du parlement et du gouvernement les mesures d'exécution des amendes nécessaires..

16. Par exemple, le retour à la « vie normale » a-t-il été préparé d'une façon ou d'une autre ? Dans les États membres où les procédures judiciaires ont été suspendues pendant plusieurs mois, le traitement des affaires a pris un retard considérable qu'il

va falloir gérer. Est-ce au procureur qu'il revient de définir dans quel ordre ces affaires doivent être traitées ? Des mesures spéciales seront-elles prises (à savoir, procès pendant les week-ends ou paiement d'heures supplémentaires aux procureurs) ? Y a-t-il un risque que les affaires moins graves soient classées sans suite ou que des poursuites soient abandonnées ?

Réponse : Oui. Des affaires ont pris du retard mais il sera possible de récupérer cet arriéré dans les prochains mois. Le ministère public souhaite aussi faire juger très rapidement les infractions COVID en organisant des audiences thématiques qui sont importantes pour sensibiliser l'opinion publique

17. Le ministère public rencontre-t-il des difficultés pendant une situation d'urgence et à la sortie de cette situation/pendant le retour à la normale, en ce qui concerne :

- l'indépendance et la responsabilité des procureurs dans le contexte des situations d'urgence ;

Réponse : Les textes fixant les infractions COVID ont été très rapidement établis et donnent lieu à des interprétations diverses, ce qui pose d'importantes difficultés pour décider des poursuites par le ministère public

- la déontologie et la conduite professionnelle des procureurs pendant et après les situations d'urgence ;

Réponse : Non

- la formation des procureurs sur les conditions de travail en situation d'urgence (par exemple, dans le cadre du télétravail) et sur la façon de se protéger du coronavirus ;

Réponse : Il n'y avait pas de préparation à cette situation et peu de possibilité de formation. D'où des difficultés pour certains procureurs de s'adapter à la nouvelle réalité

- la création d'équipes pluridisciplinaires, lorsque cela est nécessaire (avec le personnel soignant par exemple) ;

Réponse : Cela ne relève pas de nos fonctions

- le soutien aux groupes vulnérables, qui, en toute logique, seront les plus touchés par les conséquences économiques de la pandémie (chômage, aggravation des conditions de travail, répercussions sur les droits économiques, sociaux et culturels en général, etc.) ;

Réponse : les procureurs belges ne sont pas compétents en ce domaine

- l'aide et la coopération internationales, compte tenu des conséquences de la pandémie et de la nécessité d'une coopération renforcée entre ministères publics (mise en commun de bonnes pratiques) ?

Réponse : des blocages et des retards ont été brièvement constatés mais la coopération s'est poursuivie.

18. Quels sont, selon vous, les moyens et les méthodes permettant de surmonter ces difficultés ?

Réponse : Il faut tirer les leçons de cette crise pour pouvoir, à l'avenir, y faire face plus efficacement. Il faut aussi constater que l'on a été obligé de trouver et d'appliquer de nouvelles méthodes de travail qui méritent d'être analysées et prolongées après la crise.

On peut citer l'exemple du télétravail qui a été massivement appliqué alors qu'il n'existait pratiquement pas. De même, l'application de vidéoconférence pour des audiences avec des détenus et de règles de procédure simplifiées (par exemple la procédure écrite) pourraient être poursuivies.

Bosnia and Herzegovina / Bosnie et Herzégovine

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)

On March, 17th 2020 the Council of Ministers of Bosnia i Hercegovina declared the „State of Emergency“ following the declaration of the WHO concerning the worldwide epidemic caused by Covid-19- virus of March, 11th 2020. On March, 25th 2020 the government of BiH decided to close up its territory for foreigners. The declared „natural disaster“ ended by decision of the governments of the entities on different times, for the Federation of Bosnia and Hercegovina on May, 31st 2020 but for the Republika Srpska on May, 21st 2020. All decisions on base of the State of Emergency were undertaken strictly by health purposes and did concern the closure of schools, universities, nursery schools, kindergarten, hotels, restaurants as well as the prohibition of all kinds of public gatherings including the shopping on all open markets. To the main exceptions of that prohibition did belong groceries, food shops, health stations, chemist's shops and pharmacies. In towns and villages was ordered a closing time, valid from 20.00 hours up to 05.00 hours. People younger than 18 years and elder than 65 years had to stay at home more than one month.

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.)

All above mentioned rights have been affected.

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 restrictions of rights were prepared by emergency staffs with the assistance of specialists of virology, infection, public security, economy, television and under the control of the elected political leaders.

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?

I think we have to regard the restriction of movement of people younger than 18 years and elder than 65 years as a kind of discrimination, because only they were strictly prohibited to leave their flats or houses.

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.)**

The High Judicial and Prosecutorial Council (HJPC) on March, 22nd 2020 ordered to stop all cases and its judicial decisions without those of prison sentence, those, which came under the status of limitation and comparable urgent character. The presidents of court and the Chief prosecutor of BiH got the permission exceptionally to decide the working procedure within their offices according to their assessment of the health situation. Instead of a complete service within crowded offices Courts and State's Prosecutor ordered a special stand by duty for judges and prosecutors, which worked according to a strongly ordered priority list. Additionally some video conferences took place, which included the president of the HJPC and the Chief prosecutor. The working restrictions ended on May, 15th. The State's prosecutor's office started again working in its complete capacity.

- 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?**

In the stand by duty prosecutors went on working on priority cases of prison sentence and the Court went on to decide by proposal of the prosecutor whether to keep a suspected criminal in custody or not. By the way, In prisons of BiH so far nobody was infected by a corona virus.

- 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)**

See above my answer to question No. 5.

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

All prosecutorial offices of BiH had established a crisis team and a stand by duty

- 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 shift of the prosecutor in charge has been diminished to five days.

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

Yes, it has.

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?

Yes, it has. According to the criminal procedures the police cannot conduct any investigation without the supervision of a prosecutor. Hereby the human rights of suspects are secured.

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

So far I know: No, because there wasn't any overcrowding in detention facilities.

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)

Yes, it has. The specific modalities were worked out by the prosecutors and judges in stand by duties.

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, there has not been any new or extended functions of prosecution services resulting from the emergency situation.

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?

In the case of BiH it is too early to assess this question.

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?

Yes, for the cases have been established priorities by internal measures of the several prosecutorial services.

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)**

It seems too early to assess this topic, because the Prosecutor's Office of BiH started normal duty on May 14th 2020. Such assessment has to be carefully tuned in all offices, because the whole situation cannot be overseen so far by single prosecutors.

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

See above answer to question number seventeen.

Bulgaria / Bulgarie

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)

Yes, the Parliament declared state of emergency with a Decision on 13 March 2020 for one month. With another decision from 7 April 2020 the Parliament extended by one month the state of emergency declared on 13 March 2020.¹

In connection to this a Measures and Activities during the State of Emergency Declared by Decision of the National Assembly of 13 March 2020 Act was adopted and amended².

After the end of the state of emergency the Government declared a state of extraordinary epidemic situation until 14 June 2020 and many of the restrictive measures have been prolonged or gradually untighten.

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 in many other countries some of the rights of the people were temporary affected. Among them and on the first place: freedom of assembly; freedom of movement; but also labor rights and the freedom of economic initiative and (to a certain extent) access to court. There were no explicit restrictions concerning freedom of conscience and religion and the political parties.

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.)

The restrictive measures were introduced in the principles of legality (they are based on the specific law), proportionality, adequacy and necessity. They did not affect specifically the media and the political parties. The requirements of equality and non-discrimination were met by imposing the measures as far as possible since the only ground and criterion was the risk of spreading the deadly infection.

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?

In my opinion – rather not.

The only interpretation of possible discrimination which I am aware of was the establishment a more strict quarantine regimes and check – points with restricted movement in some neighbourhoods, villages and cities where infected persons were concentrated. With regard to the neighbourhoods in some cases the measures concerned places where Roma people are

¹ <https://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=147369>

² <https://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=147391>

the prevailing number of inhabitants. I believe the explanation of some more strict measures was the higher risk of infection from pure medical point of view - not the characteristics of the population in terms of their ethnic origin, social status, age, etc.

There was also a quite disputable order issued by the Minister of Health for hospitalization of all infected and ill persons who are over a certain age or have certain health condition – regardless of the concrete development of the disease. The order was canceled by the Minister the following day.

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.)

The prosecution services followed the general rules for all the administration. In the first and most dangerous phase of the disease the heads of the prosecutor`s offices were obliged to take measures for minimum presence of the employees in the working space. Some of them introduced shifts, in other situations people were invited to take annual leaves, where possible prosecutors and staff were asked to work home office with their own equipment. Nevertheless in Bulgaria there was not a total ban to work from the office and everywhere in every working day there were prosecutors and staff on duty in the offices. They were able to take the work which had to be done without delay, including participation in court sessions.

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?

In Bulgaria, the special law on the measures during the state of emergency temporarily suspended the procedural deadlines in all judicial, arbitration and enforcement proceedings with the exception of criminal proceedings, European Arrest Warrant proceedings and proceedings related to coercive measures. The amendments to the law, adopted in April 2020, defined more precisely these exceptions by adding a separate annex containing an exhaustive list of all judicial proceedings for which the suspension did not apply. The amendments also authorised the courts to hold distance hearings, including in criminal proceedings, provided that the direct virtual participation of all parties is duly ensured. In practice, many courts started using Skype for holding open hearings on cases that were not suspended and could not be postponed. Practically all suspects in pre-trial detention were not deprived from their right of access to court and the prosecutors tend to treat the investigations with detained suspects as an absolute priority.

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).

As you might know PORB has quite lot competences outside the pure Criminal Law field. They can be described mainly as monitoring the legality of the actions of other state institutions. Therefore immediately after the National Assembly declared a state of emergency on 13/03/20, **the Prosecutor General established a separate PORB – staff** for action and coordination in emergency situation. Its members are the deputy prosecutors general and the heads of appellate prosecutor`s offices and also other people on managing positions in PORB. The main task is to gather and to report on a daily basis the information about the measures of the competent ministries and other agencies, to activate the coordination and collaboration with the police an Mol, to urge the heads of offices to take direct control on criminal cases connected with avoiding or resisting the anti-epidemic measures etc.

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

See the answer to Question № 7.

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 criminal justice response to the crisis includes the implementation of e specific crime concept in our CC: **Article 355**

A person who violates regulation issued against the spreading or occurrence of contagious disease affecting humans, shall be punished by probation or by a fine from BGN one hundred to three hundred.

If the act has been committed at the time of epidemic, connected with cases of death, the punishment shall be imprisonment for up to one year or probation. A person who violates regulation issued for prevention of food poisonings, shall be punished by probation or by a fine of up to from BGN one hundred to three hundred³.

The PORB supported its **amendment and increasing of the sanctions** which Law has been passed by the Parliament in March 2020 and since 24/03/2020 the sanctions are higher and the scope is wider although there was some criticism about the quality of the legislative changes.

Having decided to treat this cases (which were quite rare so far) as a priority PORB **introduced guidelines** to the prosecutors and investigators how to react on them, how to divide the crime from the administrative offence, what methodology to follow during the investigation incl. implementation of measures of protection etc.

The guidelines were published without delay on the internal site of PORB

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

The cooperation of PORB with other state bodies during the crisis follows the general rules taking into account the new challenges.

³ This is the old text, the amended version still does not have an official translation in English.

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?

I am not aware of specific examples of criminal investigations of with this specific object.

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

No. When deciding on a criminal investigation and choosing the relevant type of remand measure, the prosecutors apply the Law and the general rules, regardless of the possible health risks in the prisons. The reaction on those risks is expected from other institutions and on other stage. Actually in Bulgaria there was not (so far) registered a boom or dramatic spread of the disease in the prisons or detention facilities.

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.);**

Yes, they were introduced with a general guidelines mentioned in answer № 9.

- **conducting prosecution before the courts, particularly when courts have significantly reduced their activity (have courts maintained their activity, even if somewhat reduced?);**

In criminal cases the courts rather maintained their activity.

- **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**

No specific modalities.

- **appealing court decisions;**

No specific modalities.

- **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);**

No specific modalities

- **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)**

No specific modalities.

- 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)

Yes. In Bulgaria, prosecutor's offices across the country organised inspections in the residential care homes for older persons with identified COVID-19 cases to check the measures taken to prevent the spread of COVID-19 infections. Inspections were carried out in the residential care homes for older persons in some regions. At national level, the Supreme Administrative Prosecutor's Office (SAPO) requested information from the Minister of Health and the Minister of Labour and Social Policy about the anti-epidemic measures implemented in all specialised institutions providing social services in the country and provided the methodology for the inspections.

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

This is mainly a task of the police. The prosecution investigates and prosecutes the disturbance of the public order and security if it is a crime;

- supervising implementation of emergency measures including confinement of population, closure of public areas and other relevant measures;

Partly yes – as an usual (not new and specifically developed) function outside the pure Criminal Law field and monitoring the legality of the acts of the administration.

- 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.)

Partly yes – see the end of answer № 13.

- ensuring regulatory measures to prevent profiteering on foodstuffs, hygiene products and essential medicines and supplies;

Partly yes – as an usual (not new and specifically developed) the pure Criminal Law field and monitoring the activity of the regulatory bodies.

- reducing the risk of stigmatising and harmful conduct against vulnerable groups, including those infected by COVID-19;

No.

- **ensuring the rights of persons held in quarantine or confinement;**

No.

- **interacting with media and highlighting the work of prosecution services in the context of emergency situation;**

Partly yes – as a dimension of the focused activity of all the institutions to inform the public about the new work condition and access and to promote the measures against the disease and to clarify the seriousness of their breach.

- **informing the population about the emergency measures and the corresponding penalties for their non-observation.**

Yes.

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 need to reorganize all the work of a relatively open institution in totally new condition which is a challenge for every administration.

The forced stop of the international cooperation and the practical impossibility to surrender persons in execution of final court decisions from/to other country.

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?

There will be certain back load of cases but in Bulgaria there was not a general suspension of the criminal cases at all. Therefore I believe that the risk less serious cases to be closed or prosecution waived is not high. I am not aware of preparation of special measures in terms of prioritisation, planing court proceedings during weekends, extra payment of prosecutors for extra work etc. I do not think that such measures are needed so far.

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**

Yes – to certain extend in terms of accountability, as the public presentation and discussion of the annual results of the work of prosecutors is concerned. The annual reports for 2019 of the POs were not discussed in regional meetings in the presence of all colleagues as before;

- ethics and professional conduct of prosecutors during emergency situations and thereafter;

No, I do not see challenges in this regard.

- training of prosecutors on working modalities at the time of emergency situations (for instance, for teleworking) and protecting themselves from COVID-19;

Yes – practically all training activities in this period were modified in a distance form or postponed.

- creation of multidisciplinary teams, if need be (with health personnel, for instance);

No.

- 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.)

The overcoming of the economic consequences of the pandemic is not among the specific tasks of the prosecution but it increases the expectations for efficiency of the institutions and sharing the burdens of the coming economic crisis.

- 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).

Yes. The back load of pending cases (surrenders, execution of MLA and EIO is a serious one and there is a need of a smooth recovery of the activities which is still connected with many burdens.

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

Sharing best practices, development of common standards for international cooperation, introducing a distant form of interviewing people and gather evidence, finding an alternative of surrendering people, where appropriate.

Czech Republic / République tchèque

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)

There has been declared a **state of emergency** in order to fight against COVID-19 which covered **the whole territory** of the Czech Republic.

The state of emergency was declared (persisted) **from 12th March to 17th May 2020** (a total of **66** days).

The state of emergency was first declared by the Government and then it was extended twice with the consent of the Chamber of Deputies.

Note:

The state of emergency is declared by the Government. In case of danger of delay it can be declared by the Prime Minister. His decision must be approved or revoked by the Government within 24 hours from the announcement.

The Government must immediately inform the Chamber of Deputies about the declaration of a state of emergency. The declaration of a state of emergency by the Government is thus subject to scrutiny by Parliament. The Chamber of Deputies may cancel the declaration of a state of emergency.

The state of emergency may be declared for the whole territory of the state or only for a part of the territory. The state of emergency can be declared for a maximum of 30 days. With the consent of the Chamber of Deputies, the state of emergency may be extended.

The state of emergency may be declared in cases of natural disasters, environmental or industrial accidents, incidents or other dangers, which significantly endanger lives, health or property, or internal order and safety.

In the past, the state of emergency was declared because of the floods, but it was never declared for the entire state territory (always only for a part of the territory).

The terms state of danger, state of emergency and state of threat to the state are defined by Constitutional Act No. 110/1998 Coll., On the security of the Czech Republic.

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.)

During the state of emergency, **the Government took several crisis measures** in accordance with the Act on crisis. Emergency situation has affected and reduced the exercise of certain rights.

It was (e.g.):

- **restrictions on the free movement of persons**
- **restrictions on the freedom of assembly (restrictions on holding mass events, cultural and sporting events)**
- **temporary reintroduction of protection of the internal borders of the Czech Republic (ended with the end of the state of emergency on 17. 5. 2020);**

- ban on entry of foreigners into the territory of Czech Republic, ban on leaving citizens of Czech Republic
- returns from abroad and decision on quarantine
- restrictions on the activities of state authorities
- postponement of additional elections to the Senate
- restrictions on holding meetings of municipal councils
- prisons and institutions for detention - ban on visits
- regulation of school operation, prohibition of personal participation of pupils and students on school lessons
- restrictions on the operation of restaurants and accommodation services

The crisis measures ended with the end of the state of emergency on 17th May 2020.

The **current emergency measures** are already being issued by the **Ministry of Health** (according to the Public Health Protection Act).

From 25th May 2020 are the emergency measures gradually released in Czech Republic.

However, it is still mandatory to wear facemasks in enclosed rooms, in public transport and in all other places where there are at least two persons at a smaller distance than 2 meters (unless they are members of the household).

The majority of Czech citizens understand that the threat of COVID-19 is serious and voluntarily complies with restrictions and follows recommendations.

The **Prosecutor General's Office** monitored individual crisis measures and it also continuously monitors the extraordinary measures of the **Ministry of Health**. It evaluates their impact on the powers of the **Public Prosecutor's Office** (criminal and non-criminal). Attention is also focused on the possible criminal consequences of violating individual crisis and emergency measures.

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.)

Crisis and emergency measures are subject to review by the Constitutional Court.

For example:

Prohibition of travel abroad

A state of emergency has been declared for the territory of Czech Republic. It is therefore questionable whether it can regulate a conduct in the territory of other states. Till now, the Constitutional Court stated, that the travel ban may be imposed only in relation to the territory of the Czech Republic, and not in relation to abroad.

Declaration of a state of emergency

The Constitutional Court rejected the complaint against the government's resolution to declare a state of emergency and against restrictions on movement in Czech Republic. The complainant alleged that the declaration of a state of emergency has affected her right to free movement and residence.

The Constitutional Court stated that the declaration of a state of emergency by the government is an act of application of constitutional law and can be reviewed only by the Chamber of Deputies. The act of declaring a state of emergency itself is not subject to review by the Constitutional Court.

The case of a declaration of a state of emergency declared by the government will be dealt with by the European Court of Human Rights.

The Prosecutor General's Office also monitors whether emergency measures do not interfere with fundamental human rights to a greater extent than is strictly necessary. This is an important activity of the Prosecution service in the non-criminal area, which is focused on the protection of human rights and fundamental human freedoms.

The Prosecutor General therefore addressed a letter to the Minister of Justice (as a member of the Government) in which he emphasized the need of paying attention to the possible interference of emergency measures into the area of fundamental human rights. He is of the opinion that emergency measures (issued by the Ministry of Health) should be subject to parliamentary scrutiny.

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?

Even in an emergency situation the Prosecution Service must take care to protect fundamental rights and human freedoms (see answer to the question no. 3).

The Prosecutor General's Office published on the Extranet a statement on the punishment of cases of domestic and sexual violence (in connection with a state of emergency). Children are more at risk in connection with the current state of emergency in a virtual environment (so-called online sexual abuse).

The Prosecutor General's Office published on the Extranet a GRETA statement, which called for respect for the rights and safety of **victims of trafficking human beings** also in a state of emergency.

By the measure of the Prosecutor General issued in 2013, the positions of **national correspondents** were established at the Prosecutor General's Office. National correspondents and their expert teams are in their areas of activity guarantors of inter-ministerial cooperation, cooperation with foreign countries; they analyse case law and professional articles, and participate in the processing of questionnaires and educational activities.

Individual national correspondents then monitor the development of crime in their areas. Thus for example are monitored hate crimes, extremism, terrorism, human trafficking, illegal migration, domestic and sexually motivated violence, cybercrime.

So far, however, there is no knowledge about the increase in crimes such as hate speech, racism, xenophobia, attacks and forced returns of refugees and asylum-seekers, mistreatment of foreigners and migrants, and sexual and gender-based violence in connection with the crisis situation caused by the COVID-19.

The Prosecutor General's Office also focuses on the evaluation of new trends in crime committed in a state of emergency (attention was focused on selected crimes committed during the state of emergency and crimes committed in connection with the occurrence and spread of COVID-19, see answer to the question no. 11 for details).

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.)

The main priority for the prosecution service is to continue to perform all tasks as if no emergency situation had occurred.

Following the declaration of a state of emergency and the adopted crisis measures of the government, the Prosecutor General **issued a series of security and preventive measures** [temporary closure of building for the public, acceptance of applicants' submissions only by telephone or electronic communication (not orally or by personal); ban on foreign and domestic business trips; ban on participation in educational events, holding meetings within the public prosecutor's office system preferably by videoconference, telephone or other similar means, the possibility of using the so-called home office or flexible working hours].

At the Prosecutor General's Office, for example, the following measures were taken **to prevent the occurrence and spread of COVID -19:**

(a) measures to limit external contact of persons:

- **ban on foreign and domestic business trips**; ban on participation in educational events,
- **holding meetings within the public prosecutor's office system preferably by videoconference, telephone or other similar means,**
- **temporary closure of the Prosecutor General's Office building for the public,**
- **acceptance of applicants' submissions only by telephone or electronic communication (not orally or by personal).** The restriction was published on the Prosecutor General's Office website, InfoDesc platform and hanged out at the entrance to the Prosecutor General's Office building); from the end of April, a gradual change in the conditions for receiving the application occurred, so that the application is always made by only one person, the applicant enters the Prosecutor General's Office building only with the use of a facemask or other face protection and after using hand disinfection.

(b) measures to restrict internal contact among persons

- **the possibility of using the so-called home office or flexible working hours** (especially in relation to the age category of 60 and more years),
- strict regime for the movement of files outside the Prosecutor General's Office building applies (sensitive files must not be carried away from the office),
- **the possibility of carrying employees and public prosecutors to work by official vehicles,**
- duty to inform the employer about the place of stay during the holiday.

(c) measures at the entrance to the Prosecutor General's Office building

- a ban on persons other than employees entering the building
- a ban on a person showing signs of respiratory disease entering the building

(d) arrangements for receiving mail

- external disinfection of delivered consignments, use of protective medical tools

(e) hygiene measures

- movement only in facemasks or other face protection, use disinfection

The restrictive measures taken at the Prosecutor General's Office were repealed with effect from 25 May 2020. Currently (the state of emergency is no longer in force) the restrictive measures in relation to the activities of public authorities are gradually being released.

The **Ministry of Justice was informed** about the Prosecutor General's measures epidemie.info@msp.justice.cz

The measures were also sent (to all) into the public prosecutor's office system. Individual High Public Prosecutor's offices and Regional Public Prosecutor's offices took their own similar measures: (temporary closure of buildings or restrictions on the entry of persons into the public prosecutor's office building, transport of employees to the office, use of the Home Office, preferences of written submissions and complaints from applicants).

Home-office – the working conditions have changed

The working conditions for public prosecutors have changed somewhat in a state of emergency. Prosecutors can use the home-office. Public prosecutors are provided with a computer and a laptop. Through the remote connection, the public prosecutor has access to his working PC in office. Working in the form of a home-office does not differ significantly from the normal working regime. It contains mainly a study of the files, analysis and decision in the case.

Meetings – videoconference, phone, email; to share materials through electronic communication and through the Extranet

The concept of meetings within Prosecutor General's Office, High Public Prosecutor's Offices and Regional Public Prosecutor's Offices **was changed** – it is regularly held by **videoconference or by phone**. Prosecutor General's Office recommends that in the public prosecutor's office system meetings and consultations are held by video conference, if possible. Communication can also place via email correspondence, telephones and mobile phones.

The aim of internal meetings, negotiations and consultations is in particular to respond to currently adopted crisis and emergency measures and to evaluate their possible criminal consequences and the impact on the scope of the Prosecution service. **Materials and documents related to COVID-19 are shared through electronic communication and through the Extranet. The procedure of the public prosecutor's office system in this extraordinary situation is also being unified in this way.**

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?

During the state of emergency **the government forbade visiting of accused persons in custody** (as well as convicted persons serving prison sentences and inmates in detention centres). **With effect from 18th May 2020, visits are limited in that way, that it is allowed that detainee can be visited by only one visitor, while maintaining additional conditions.**

However, **the prohibition does not apply, resp. did not apply to visiting of accused or convicted persons by a lawyer.** The right of persons in detention to receive visits from their lawyer is not affected by the crisis measure. Contact between defendants and lawyers was also provided through online communication (e.g. via Skype).

Special attention is paid to custody procedures. The hearings concerning custody took place during restrictive measures (protection by facemasks, distance longer than 2 meters, etc.), or were held in the form of video conferencing.

A key priority is set for the courts and the prosecution services to continue to perform all tasks as if no emergency situation had occurred. However, the adjournment of the main trial in custody cases must not have the effect of prolonging the duration of detention and restricting the freedom of the accused. Even in times of emergency, detention can only last a maximum of necessary time.

Note:

The detainee must be informed immediately about the reasons for the detention, heard and released within 48 hours or handed over to the court. The judge must hear the detainee within 24 hours from taking over and decide whether to remand him in custody or release him. The Criminal Procedure Code defines the maximum permissible duration of detention.

COVID - 19 must not affect the duration of detention, nor does it cause its extension beyond the framework stipulated by law.

There is no known case where the accused would have to be released from pre-trial or trial detention (due to the limited functioning of the courts).

A "reasonable time" within the meaning of Article 5 (3) of the ECHR is not interpreted differently in an emergency situation.

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)

The prosecution service fulfils all obligations in relation to the police as in standard situation (prosecutors supervise the observance of legality in the preparatory proceedings performed by the police, issue instructions, give consent to the procedure, submit proposals to the court in the preparatory proceedings). The constitutional order is fully preserved. There is no special arrangement for these situations. However, the prosecution service is obliged to act in these situation equally as in standard situations (e.g. via mobile phones, electronic communication, video conferencing).

The Prosecutor General's Office monitored individual crisis measures and it also continuously monitors the extraordinary measures of the Ministry of Health. It evaluates their impact on the powers of the Prosecution service (criminal and non-criminal). Attention is also focused on the possible criminal consequences of violating individual crisis and emergency measures.

The Prosecutor General's Office also monitors whether emergency measures do not interfere with fundamental human rights to a greater extent than is strictly necessary. This is an important activity of the prosecution service in the non-criminal area, which is focused on the protection of human rights and fundamental human freedoms.

The Prosecutor General therefore addressed a letter to the Minister of Justice (as a member of the Government) in which he emphasized the need of paying attention to the possible interference of emergency measures into the area of fundamental human rights. He is of the opinion that emergency measures (issued by the Ministry of Health) should be subject to parliamentary scrutiny (*de lege ferenda*).

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

So far, no special teams have been set up in prosecution service to overcome crisis situations. However, their establishment could take place on the basis of a special measure of the Prosecutor General. Their management could take place at the central level, as well as at the local level (regional public prosecutor's offices).

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?

Following the declaration of a state of emergency and the adopted crisis measures of the government, the Prosecutor General issued a series of security and preventive measures (see answer to the question no. 5).

The measures were also sent (to all) into the Public prosecutor's office system. Individual High Public Prosecutor's offices and Regional Public Prosecutor's offices took their own similar measures: (temporary closure of buildings or restrictions on the entry of persons into the public prosecutor's office building, transport of employees to the office, use of the Home Office, preferences of written submissions and complaints from applicants).

The Ministry of Justice was informed about the Prosecutor General's measures epidemie.info@msp.justice.cz.

Extranet – a special title COVID-19

Every important notices and documents in relation to COVID-19 are published on the Extranet (it means they are available to all prosecution service).

A special title (menu) COVID-19 was created on the Extranet. Here is for example published a regularly updated table with crisis and emergency measures in connection with COVID-19 (overview of measures, effectiveness, possible impacts on the criminal competence of the prosecution service, methodological solution). All-important materials were immediately forwarded to the Public Prosecutor's Office system **in electronic form**.

Meetings – videoconference, phone, email; to share materials through electronic communication and through the Extranet

The concept of meetings within Prosecutor General's Office, High Public Prosecutor's Offices and Regional Public Prosecutor's Offices **was changed** – it is regularly held by **videoconference or by phone**. Prosecutor General's Office recommends that in the public prosecutor's office system meetings and consultations are held by video conference, if possible. Communication can also place via email correspondence, telephones and mobile phones.

The aim of internal meetings, negotiations and consultations is in particular to respond to currently adopted crisis and emergency measures and to evaluate their possible criminal consequences and the impact on the scope of the prosecution service. Materials and documents related to COVID-19 are shared through electronic communication and through the Extranet. The procedure of the public prosecutor's office system in this extraordinary situation is also being unified in this way.

In case that an infection occurs in a public prosecutor, administrative staff member or other prosecution service's employee, the relevant measures would be taken by the relevant chief public prosecutor. For district public prosecutor's offices, it would be a regional public prosecutor. For the Prosecutor General's Office and High Public Prosecutor's Offices it would be the Prosecutor General or the High Public Prosecutor. It would be based on a government resolution on the order of a state of emergency and on extraordinary measures of the Ministry of Health (quarantine, isolation, measures to secure and protect buildings).

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

Throughout the state of emergency, **the co-operation of the prosecution service with other departments or authorities (courts, police) must be maintained**. E.g. in the form of preservation of information systems (ISYZ information system of the Public Prosecutor's Office system, CESO central register of prosecuted persons, RT criminal records).

Materials of a methodological nature of Prosecutor General's Office are always sent to the Public Prosecutor's Office system. They are also shared with other public authorities - Ministry of Interior, Police, Ministry of Foreign Affairs, GIBS (e.g. a table with an overview of government crisis measures in connection with COVID - 19 and their possible impact on the criminal prosecution).

Information on measures taken in the Public Prosecutor's Office system (in connection with the declared state of emergency and the occurrence of COVID-19) **was sent to the e-mail address of Ministry of Justice** epidemie.info@msp.justice.cz too.

The participation of public prosecutors in court proceedings during an emergency (COVID-19)

In connection with the COVID-19 were adopted organizational measures and recommendations on an ongoing basis at individual regional public prosecutor's offices (both for the relevant regional public prosecutor's office and for the district public prosecutor's offices within its scope of competence).

Chief public prosecutors were advised to contact the relevant court presidents in order to limit the ordering of the main hearings and public hearings as possible. The exception are acute things, especially those of custody nature. It turned out that ordering a hearing is sometimes not possible at all, as summoned persons do not appear in court (witnesses, injured parties).

On 17 April 2020 the Ministry of Justice issued a recommendation on the functioning of the courts, recommending that the courts should begin a gradual resumption of activities.

Public prosecutors taking part in court proceedings were equipped with medical facemasks with a nano-liner (the total usability of the mask is up to 12 hours). It was also recommended that as few prosecutors as possible should be rotated on court proceedings during extraordinary state.

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?

Even in emergency situation, general legislation, the Constitution, the Charter of Fundamental Rights and Freedoms applies. The prosecution service fulfils all obligations in relation to the police as in standard situation (prosecutors supervise the observance of legality in the preparatory proceedings performed by the police, issue instructions, give consent to the procedure, submit proposals to the court in the preparatory proceedings). The constitutional order is fully preserved. There is no special arrangement for these situations. **However, the prosecution service is obliged to act in these situation equally as in standard situations** (e.g. via mobile phones, electronic communication, video conferencing).

Even in an emergency situation the prosecution service must take care to protect fundamental rights and human freedoms.

The Prosecutor General's Office issued a **statement on issues of criminal liability during a declared state of emergency in connection with the occurrence and spread of COVID-19**. The current emergency situation can be considered as an aggravating circumstance, which can be taken into account by the court when imposing a sentence. For some crimes the declared state of emergency means a higher penalty (e.g. for theft, spreading of a contagious human disease, spreading of alarming news).

E.g. for theft, fraud, embezzlement or spreading of alarming news, the upper limit of imprisonment may be raised from two years to eight years; a cyber-attack against a hospital in a state of emergency could be punished even more severely.

The Prosecutor General's Office **continuously monitors and analyses cases handled in connection with the declared state of emergency and the spread of COVID-19** (these include the crime of theft, embezzlement, fraud, spreading of a contagious human disease, spreading of alarming news).

The Prosecutor General's Office published on the Extranet of the Prosecutor General's Office a **statement on the criminalization of the spreading of COVID - 19** (COVID - 19 was added to the list of contagious human diseases). This crime can be committed intentionally or negligently.

The Prosecutor General's Office also focuses on the **evaluation of new trends in crime committed in a state of emergency** (see answer to the question no. 4).

The Prosecutor General's Office published on the Extranet a **statement on the punishment of cases of domestic and sexual violence** (in connection with a state of emergency). Children are more at risk in connection with the current state of emergency in a virtual environment (so-called online sexual abuse).

The Prosecutor General's Office published on the Extranet a **GRETA statement**, which called for respect for the rights and safety of **victims of trafficking human beings** also in a state of emergency.

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

The procedure is the same as in standard situation. Therefore it is possible to decide on alternatives to criminal prosecution. The Prosecutor General's Office has recommended that guilt and punishment agreements should be used more frequently for property crimes that are qualified for a higher penalty (committed in a state of emergency).

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)

Here applies adequately what is stated in the answer to questions 7, 10 and 11.

Only certain **restrictions on participation in court hearings and on contacts between persons** applied. **Contact between accused and their lawyers was ensured through online communication** (e.g. via Skype). Some court hearings have been postponed. If the nature of the hearing allowed it, it took place in the form of **videoconferences** (e.g. custody hearing), or **with restrictive measures** (facemasks protection, distance greater than 2 meters, etc.).

The filing of ordinary and extraordinary remedies was not subject to any exceptions, in particular as regards the time limits for filing them. This fully applied to law enforcement authorities.

In relation to persons involved in criminal, civil, insolvency or other proceedings, **the waiver of a missed time limit** could have been applied to a greater extent if this was due to COVID-19 or in connection with a declared state of emergency.

The **protection of victims** of crime and injured parties has been **fully ensured**.

The prosecution service does not supervise the execution of court decisions.

The prosecution service supervised the **places where legal restrictions on personal liberty** are applied without any restrictions. Contact with persons was subject to certain restrictive measures (facemasks, safe distance, and communication via videoconference).

The situation in prisons and detention centres is good. Due to the impossibility of work of convicts outside of prison, the convicts sew cotton facemasks and produce other protective equipment (for prisoners, employees, other needy persons - postal workers).

In connection with the declaration of a state of emergency, prisoners' interest in conditional release from prison is declining. This also results in a reduction in the number of hearings (by about half). Prosecutors are already taking part in court proceedings because they have protective equipment at their disposal. It is not excluded to conduct the hearing via videoconference from prison.

Ministry of Justice refuses considerations about the preparation of an amnesty (see the recommendations of the World Health Organization, the current situation in neighboring countries). An amnesty would not be appropriate in times of emergency and epidemiological situation.

Children's homes (institutional and protective upbringing)

The state of emergency was an extraordinary circumstance that objectively interfered into the supervision of the prosecution service. After the end of the state of emergency, inspections of public prosecutors in these institutions are resumed. The Prosecutor General's Office recommended contacting the relevant director of the institution before the inspection, to find out the current state and valid measures in the institution and to adjust the date and method of the inspection accordingly.

There is no evidence of an increase of children's aggressive behaviour in institutions (due to restrictions on movement). Children could talk to their parents and relatives by phone or mobile. Video calls via Skype were also used.

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

The state of emergency in the Czech Republic has not yet necessitated the extension of the powers of the Public Prosecutor's Office system (public prosecutors). It can be concluded that the current legislation is sufficient on this count.

In the Public Prosecutor's Office system were identified activities, which must be carried out continuously even in the event of a pandemic/declaration of a state of emergency and which can be limited and in what way (restrictions on office hours, home office).

A) Activities which cannot be restricted in any way:

- detention proceedings (with regard to legal period)
- abbreviated pre-trial proceedings with a detained suspect,
- urgent and non-repeatable actions,
- proceedings on protective treatment and pre-trial detention
- proceedings for which there are legal periods (detention proceedings, filing of regular and extraordinary remedies, filing of administrative lawsuits, deciding on complaints against resolutions to initiate criminal proceedings
- investigation of emergencies in detention centres (e.g. prisoner riots),
- filing indictments and proposals for punishment,

B) Activities that can be limited for a certain time:

- public relations - the personal presence of the applicant is not necessary; Applicants may also turn to the Prosecution service in other ways than filing the submission orally – e.g. by telephone, e-mail, fax, data mail or post. The same applies to the personal delivery of a submission to the registry office of the Prosecution service. Here, one measure may be to limit office hours for the public,
- reducing the number of people in the workplace. However, it is not possible to restrict the functioning of the public prosecutor's office system as a body for public prosecution.

- foreign and domestic business trips,
- participation on seminars and trainings,
- adjournment or non-ordering of the main hearings in which this can be done (not possible in custody proceedings, shortened pre-trial proceedings with a detained suspect, in cases where there is a risk of limitation).

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 experience of a state of emergency is that increased care must be taken to ensure that **the government or other bodies (ministries) do not try to expand their powers solely on the basis of a state of emergency**. Although it may be driven by "good intentions." Even in the Czech Republic were submitted draft laws, although not yet approved, which provided for a significant strengthening of the powers of the Ministry of Health. There was also the idea that some exceptional powers could be given to the government or to the prime minister (based on strong media criticism, it turned out that it was more a mistake, if such a proposal was submitted, it was only a very vague, yet unjustified proposal). There have also been disputes over the interpretation of the provisions of the Crisis Act in terms of compensation for damage caused by a declared state of emergency. It is a question how the courts will deal with this problem in the future. The Prosecution service was not affected by any of these problems, yet it perceived these problems as very serious.

Electronic documents in judiciary

The pandemic necessitated the introduction of distance work, less personal contact. Mainly used were mails, video conferencing, shared storage, remote access to work applications.

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?

The return to "normal life" is currently taking place in the Czech Republic. Given that the state of emergency and the measures associated with it did not last so long (a total of 66 days), no serious problems should arise. **The main priority for the Prosecutor General's Office is to continue to perform all tasks as if no emergency situation had occurred**. Special attention will be paid to detention cases, property seizure cases, crimes of corruption and serious economic and financial crimes.

Chief public prosecutors were advised to contact the relevant court presidents in order to limit the ordering of the main hearings and public hearings as possible. The exception are acute things, especially those of custody nature. It turned out that ordering a hearing is sometimes not possible at all, as summoned persons do not appear in court (witnesses, injured parties).

On 17 April 2020 the Ministry of Justice issued a recommendation on the functioning of the courts, recommending that the courts should begin a gradual resumption of activities.

An example of the reaction on the gradual release of measures against the occurrence and spread of COVID-19 in society is the repeal of restrictive measures on Prosecutor General's Office (effective from 25 May 2020). However, the Prosecutor General requests mutual thoughtfulness and the need to proceed in the performance of work tasks in accordance with binding emergency measures.

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 Czech prosecution services did not have to face any of the challenges indicated in this question in an emergency situation connected with the COVID-19 epidemic.

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

- monitoring of individual emergency measures taken by the government in connection with a state of emergency; responding to the possible overlap of emergency measures into the area of fundamental human rights and freedoms;
- evaluation of the impact of individual emergency measures on the criminal and non-criminal competence of the Public Prosecutor's Office;
- interpretive function - interpretation of possible criminal consequences of violation of individual emergency measures;
- monitoring and analysis of cases dealt with in connection with the declared state of emergency and the spread of COVID-19; evaluation of new trends in crime in this period;
- submitting comments on draft legislation relating to an emergency situation (especially from the point of view of the protection of human rights and fundamental freedoms and the competence of the Public Prosecutor's Office);
- introduction of electronic documents in judiciary, the need to implement distance work and remote access to work applications;
- creation of a catalog of safety and preventive measures to prevent the occurrence and spread of COVID-19 in the system of the Public Prosecutor's Office.

Finland / Finlande

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)**

On 16 March 2020, the Government, in cooperation with the President of the Republic, declared a state of emergency in Finland over coronavirus outbreak. The following day, the Government submitted two Decrees implementing the Emergency Powers Act (29.12.2011/1552) to Parliament and on 25 March 2020. On 6 May 2020 the Government issued further decrees on extending the use of powers under the Emergency Powers Act. These decrees will remain in force until the end of June 2020. Alongside the Emergency Powers Act, the measures to slow down the spreading of coronavirus were enforced in accordance with the Communicable Diseases Act and other relevant legislation.

- 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.)**

The state of emergency has affected the freedom of assembly (e.g. until the end of May, public gatherings were limited to no more than ten persons) and the freedom of movement (e.g. there were restrictions on movement to and from the region of Uusimaa, consisting of i.e. the Helsinki metropolitan area). In addition, as restaurants were closed through May, the emergency situation might have impacted the right to work and the freedom to engage in commercial activity.

The situation has also influenced the rights of the workers. Under the Emergency Powers Act persons working in the field of both public and private health care who have received training in the field and who have reached the age of 18 but not 68 may be invited to work throughout the country.

- 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.)**

Under the Emergency Powers Act, rights of individuals should be restricted only if it is necessary to protect the population. The Government is authorised to use only those emergency powers that are indispensable and proportionate. According to the Constitution of Finland, limitations of basic rights and liberties should be compatible with international human rights obligations, deemed necessary and provided by law. Further, the Finnish Constitutional Law Committee has formulated in its practice the general requirements for limitation of basic rights. These requirements include i.a. the principle of legality, the accuracy and preciseness of law as well as the acceptability and proportionality of the limitation.

- 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?

The Government officially recommended persons over 70 years of age to refrain from contact with other persons and to avoid spending time in public places (in other words, to stay in quarantine-like conditions). Due to this recommendation, the issue of age-based discrimination has been raised. Also, the temporary arrangements for working hours and annual holidays in the healthcare and social services sector have as well drawn public's attention. However, the National Prosecution Authority is not aware of any decisions made by authorities regarding these matters.

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.)**

Personnel of the National Prosecution Authority have been recommended to work remotely and business travels abroad are currently not possible. Until the end of May 2020, prosecutors were recommended to use a video conference as widely as possible instead of being physically present in court. In general terms, the National Prosecution Authority has been able to operate and fulfil its core functions during the COVID-19 situation. Some technical difficulties with the remote access and conference calls have occurred.

- 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?**

The COVID-19 has not had impact on any legally defined deadline conceding pre-trial detention. Such cases are always handled as a matter of urgency. It has not been brought to our knowledge that any detainees have been released from pre-trial detention as a consequence of the COVID-19 situation.

- 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)?**

The Office of the Prosecutor General provides weekly COVID-19 situation reports to the Ministry of Justice. Additionally, the management board of the National Prosecution Authority monitors daily the development of the situation. Information is also collected from the prosecution districts.

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?

In March 2020, information and guidelines were issued several times a week concerning i.a. the Government's measures, teleworking and legal proceedings during the situation. For example, the Deputy Prosecutor General lined that prosecutors were not obliged to be physically present in court at the same time with over ten persons and prosecutors belonging to COVID-19 risk groups were not obliged to attend any court sessions physically. However, as the Prosecutor General or the Deputy Prosecutor General cannot interfere with the prosecutor's independent handling of a criminal case, the given guidelines were rather recommendations than actual orders. After March 2020, several new info's and guidelines have been issued on the National Prosecution Authority's intranet page.

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

Yes. The National Prosecution Authority has cooperated cooperated closely with the courts with the organization of court sessions during the pandemic. The National Courts Administration has published a guide for all courts on using remote connections at a trial for the current exceptional situation. The goal of both authorities has been to use remote connections as effectively as possible to minimise health risks by avoiding gatherings of several people during trials. Many trials have also been postponed by decisions of the courts.

The hearing of 5,587 criminal cases is currently suspended in the district courts. The courts of appeal have suspended the hearing of 286 cases. The National Courts Administration has estimated that clearing the backlog will take at least two years and requires the allocation of significant additional resources to the courts. The National Prosecution Authority is working together with the courts to clear the backlog.

Regarding the operational investigations prosecutors cooperate closely with the competent law enforcement agencies to tackle any obstacles caused by the pandemic for instance is cross border situations.

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?

No.

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

No.

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.);

No.

- conducting prosecution before the courts, particularly when courts have significantly reduced their activity (have courts maintained their activity, even if somewhat reduced?);

Prosecutors have been recommended to issue only absolutely necessary European Arrest Warrants due to the technical difficulties that will occur as the requested persons are surrendered from the executing countries.

- 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;

No.

- appealing court decisions;

No.

- 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);

No. Execution of court decisions nor the supervision of the execution process are not within the jurisdiction of the National Prosecution Authority. The Parliament has adopted an Act (194/2020) temporarily restricting the enforcement of custodial sentences. The Act is in Force until 31 July 2020.

- 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)

Prosecutors handle and make decisions in all criminal matters falling within the prosecutors' power of decision. No special modalities apply to the offences mentioned in the question.

- 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)

No.

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:

No.

- **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**

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 concern of the National Prosecution Authority has been to maintain occupational safety of its staff members. Every effort has been made to continuously assess and monitor risks caused by the pandemic and to ensure the safety and health of employees at work.

I also refer to the answer given under question 10 regarding the backlog of suspended criminal cases.

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?

We expect that time and additional resources are needed to clear backlog of court cases. The cases will be scheduled and dealt in cooperation with the courts. Weekend sessions or extra

payment for over time are not planned. Separate planning is done regarding employees' returning to the offices from remote working.

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;

No.

- ethics and professional conduct of prosecutors during emergency situations and thereafter;

It remains to be seen if the back load of cases will increase the number of decisions of waiving of prosecutions and/or investigations.

- training of prosecutors on working modalities at the time of emergency situations (for instance, for teleworking) and protecting themselves from COVID-19;

More training has been provided as to using remote connections.

- creation of multidisciplinary teams, if need be (with health personnel, for instance);

No.

- 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.)

No.

- 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)

There has been a need for information from other countries on how what impact the situation has had on judicial cooperation. Practical issues have first and foremost concerned the execution of European arrest warrants and request for mutual assistance. Information has been shared via a compilation by Eurojust and the EJM of collected information, which has been updated on a weekly basis.

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

Improving the conditions and remote working and speeding up of digitalization in the criminal process.

Germany / l'Allemagne

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 order to contain the spread of the coronavirus, neither a state of emergency within the meaning of article 5 section 1 of the German Infection Protection Act nor a similar state of emergency has been declared in the Federal Republic of Germany. However, a state of emergency has intermittently been declared by some federal states. The numerous regulatory measures introduced and the restrictions imposed on public life have generally been pursuant to ordinances enacted by the federal states, which are in turn responsible for health care and have for the most part coordinated the respective steps taken among themselves and with the federal government so far. These ordinances are pursuant to the German Infection Protection Act and the intervention provisions contained therein. They include far-reaching restrictions on public life, such as the prohibition to leave home without a valid reason, the prohibition of assembly and ban on gatherings, the ban on public and private events, the prohibition of assembly in churches, mosques, synagogues and places of worship of other denominations, the shutdown of shops, commercial operations open to the public, the hospitality business, accommodation facilities, hotels, places of entertainment, sports facilities, public facilities as well as bans on visiting clinics, retirement and nursing homes. Each of those measures were applied for a limited period of time, i.e. for about 14 days, and were extended several times and adapted to the prevailing status of the pandemic. The restrictions have gradually been relaxed since mid May 2020.

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.)

Due to the numerous regulations and restrictions on public life, constitutionally protected rights were, and still are, considerably restricted, such as the right to free development of one's personality, personal freedom, the right to informational self-determination, the right to freedom of assembly, the right to freedom of movement, the right to the undisturbed practice of religion, the right to freedom of the arts and sciences, the right to freedom of occupation.

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.)

As a consequence of the principle of the rule of law, all measures restricting fundamental rights are subject to an examination of proportionality. Any such restriction must then be imposed by legitimate means and serve a legitimate objective. In principle, any public interest is a legitimate objective, including the protection of public health and the containment of an epidemic situation of national significance within the meaning of article 5 section 1 of the German Infection Protection Act. Any infringement must be appropriate, necessary, reasonable and proportionate in the strict sense. Severe infringements on fundamental rights must be weighed against the benefit of the objective pursued in each individual case. The appropriateness of measures to be taken is ensured if the respective infringement on fundamental rights is not disproportionate to

the objective pursued. When examining the aforesaid, the abstract benefit of any such measure and the abstract benefit of its objective must first be determined. In order to then determine the concrete benefit of such infringement, the concrete severity level of such infringement must be established and to what extent it will achieve its objective. In the final step of the examination, any conflicting interests must be weighed against each other. The continuation of restrictions is subject to the constant assessment of these criteria. Upon request, also by citizens, the Federal Constitutional Court will examine the proportionality of the measures taken at short notice.

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?

There are no valid data on pandemic-related offences. In most federal states there have been no reports on the discrimination of individual sections of the population or other epidemic-related incidents as listed in the questionnaire.

However, there have been isolated xenophobic attacks, particularly on Asian people, who due to their ethnicity were blamed for the outbreak of the pandemic. There was also a report on the attack on a fellow citizen of Jewish faith, who as a Jew was expressly held responsible for the corona crisis by the attacker.

The restrictions imposed to fight the corona pandemic are likely to have led to an increase in domestic violence offences, whereby there is no statistical evidence to substantiate an increase in the number of cases as yet. According to media reports, the Outpatient Clinic for the Protection against Violence at the Charité hospital in Berlin has noted a significant increase in the number of cases of serious abuse. In Berlin facial injuries, strangulation marks and stab wounds normally account for around 60 percent of injuries sustained and rose to 90 percent during the corona crisis.

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.)

Pursuant to articles 143 and 145 of the German Courts Constitution Act it would have been possible to assign the official duties of the authority unable to carry out its work to the offices of public prosecutors in the vicinity if a massive infection incidence had occurred at the office of a public prosecutor.

However, it has been the objective of every public prosecutor's office to keep operating as usual during the pandemic. The vast majority of offices of public prosecutors and prosecutors general divided their staff into two groups that alternated in working from home and at the office. This procedure ensured that there was no direct contact between the members of one group and those of another group. In almost all federal states public prosecutors were provided with the hardware and software equipment required to work from home, thereby enabling them to carry out the day-to-day work at their home offices to a large extent. If the technical equipment available proved to be insufficient, the respective stocks were sometimes already increased during the crisis, such as mobile devices. Communication with colleagues was maintained by phone or via video conferencing. International video conferencing meetings were also held with

Eurojust and the Italian authorities. There have been no significant backlogs in proceedings in any of the federal states.

For technical or factual reasons it was, however, not possible for support teams to work from home, which is why some staff members were exempted from their regular duties, whereby their salaries or remuneration were paid in full.

Limitations in processing, if any, are due to the fact that not all public prosecutors have been provided with mobile workstations as yet and that electronic files have not been introduced yet. The offices of some public prosecutors secured the transportation of files to the head of departments working from home by enlisting the services of the police.

Public access to the offices of public prosecutors and prosecutors general has been severely limited. Visitors are required to comply with strict hygiene measures. Business trips have mostly been cancelled and further training measures have been put on hold until further notice.

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?

Some investigations necessitating the personal contact of police investigators or the office of the public prosecutor with other persons have been postponed for the time being, unless they were deemed urgent. There was a temporary sharp drop in the number of main hearings in criminal courts due to the restrictions. It may therefore be assumed that proceedings will generally take longer in the short term.

In principle, the main hearings in detention cases have continued to be conducted. Due to the organisational measures taken in court rooms it has been possible to conduct hearings in compliance with hygiene rules. Proceedings involving many parties have sometimes taken place in premises other than courts.

Throughout Germany there have been very few cases where prisoners on remand were released due to the special circumstances resulting from the pandemic.

If no sentence has been passed imposing a prison term or the deprivation of liberty or a detention order, the pre-trial detention for the same offence may only be extended beyond a six-month period if the specific complexity or scope of the investigation or another good cause do not yet warrant a sentence to be passed and justify continued detention pursuant to article 121 section 1 of the German Code of Criminal Procedure [StPO]. Once the six-month period has expired the higher regional court must reach a decision as to whether pre-trial detention is to be continued if the main hearing has not yet started or if the main hearing has been adjourned (article 121 section 3 of the Code of Criminal Procedure). The Stuttgart higher regional court recently reached a decision according to which the quarantine of indispensable parties to the proceedings preventing the main hearing from being continued as scheduled constitutes good cause within the meaning of article 121 section 1 of the Code of Criminal Procedure and makes it imperative to adjourn the main hearing and may justify continued pre-trial detention. According to a recent decision reached by the Celle higher regional court, good cause may also be deemed to exist if the court is not able to reduce the risk of infection of the parties to the proceedings, the court's employees, the security guards and the public to an acceptable level in accordance with the rules governing the proceedings, namely those intended to safeguard the rights of the defence and ensure a public main hearing.

The existing provisions on the adjournment of an ongoing main hearing pursuant to article 229 of the Code of Criminal Procedure were supplemented by a provision in article 10 section 1 of the Introductory Act to the Code of Criminal Procedure, which became effective on 28 March 2020 and is applicable until 26 March 2021, pursuant to which the course of adjournment periods is affected if the main hearing cannot be held due to the protective measures in place to prevent the spread of the SARS-CoV-2 virus, irrespective of how long the main hearing may last. However, the adjournment period is limited to a maximum of two months.

Since the start of the coronavirus outbreak extraditions and detentions for the purpose of criminal prosecution and the execution of sentences have virtually come to a halt due to the lack of collective passenger transport possibilities and the virtual suspension of international air traffic. Nevertheless, a few persecuted persons were released in line with the principle of proportionality.

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)

During the crisis no specific interventions have been made or measures taken by the offices of public prosecutors that could be compared to those taken by the office of the prosecutor general in Portugal.

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

Crisis response teams have been set up at the offices of some prosecutors general and public prosecutors which are convened if and when required to perform coordination tasks for the authority concerned and for the offices of subordinate prosecutors. Moreover, the prosecutor general has stayed in constant contact with the district's lead senior public prosecutors mainly by phone or via video conferencing. Far reaching decisions were taken at senior level, whereby staff representatives were involved in most cases.

Contact persons have been assigned to corona-related proceedings at some offices of prosecutors general. Specific jurisdiction to deal with violations of the Infection Protection Act has been provided by some offices of public prosecutors. Other corona-related offences have been subject to general jurisdiction.

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 state governments of some federal states have given instructions to civil servants and employees covered by collective agreements on how to proceed if they are tested positive to COVID-19 or suspect to be infected, regardless of whether they show symptoms nor not. For the most part there have been additional recommendations for court clerks or decrees of the Ministry of Justice of each federal state which are continuously updated and brought up to date. In addition, the offices of some prosecutors general have issued recommendations addressing the specific needs of the offices of public prosecutors. The heads of the respective authorities have issued their own house rules or introduced similar regulations.

The offices of some prosecutors general have drawn up schedules, both for their own offices and those of public prosecutors, which include general regulations and procedures to be followed in the event of an outbreak. Separate work-distribution plans have been prepared in order to ensure that the office concerned can continue operating, even if several people are infected.

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

Most prosecutors have been in close cooperation and consultation with the courts and the investigating authorities. For example, agreements were made with the police with regard to their investigations and as to whether interrogations and searches should be carried out or postponed. Court procedures have often been coordinated, for example, by resorting to summary proceedings or being more generous in closing cases pursuant to articles 153 and 153a of the German Code of Criminal Procedure or by generously reducing fines in misdemeanour cases. When the regulations restricting operations came into effect, agreements with correspondent authorities were sometimes made in order to ensure the efficiency of so-called system-relevant fields. For example, the fields to be kept operational were jointly defined, the mobile numbers of individual officials were made available on a cross-authority basis, duty rosters were exchanged and arrangements were made for the delivery of urgent items by courier service. Agreements with other authorities were reached according to which priority was to be given to any proceedings pertaining to violations of the Infection Protection Act. In individual cases the joint use of the office buildings of other authorities was agreed upon. Files or court exhibits kept by the police were to be handed over at the reception of the offices of public prosecutors. In one district the introduction of file exchange servers between the offices of the public prosecutor, the prosecutor general and the higher regional court was expedited in order to avoid a delay in the transport of files, which is rather common.

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?

The offices of public prosecutors are responsible for leading preliminary investigations at all times, even if specific investigations are carried out by police officers. The respect of human rights in criminal and investigative proceedings is based on the rule of law and is guaranteed by the Constitution at every stage of the proceedings. The protection of human rights is therefore not specifically monitored by the offices of public prosecutors. If violations became known, they would be investigated.

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

With regard to criminal and juvenile enforcement, short prison sentences of up to six months, or up to eight or 12 months in some federal states and up to three years in one federal state, as well as alternatives to imprisonment and juvenile detention were temporarily not enforced, unless compelling specific preventive or other reasons, in particular the impending expiry of the statute of limitations, rendered the immediate enforcement mandatory. Such measures have not been taken with regard to criminal prosecution in preliminary and criminal proceedings. Furthermore, the options for criminal proceedings stated in our answer to question 10 above, i.e. closing preliminary proceedings subject to certain conditions or in the absence of such conditions, were more frequently used if and when appropriate.

The state judicial administration of one federal state ruled that prisoners due for release between 20 March 2020 and 18 May 2020 could in principle be released as early as 19 March 2020. This rule applied to prisoners above the age of 50 and those at risk to be infected with SARS-CoV-2 as per definition of the Robert Koch Institute. Prisoners convicted of serious crimes were excluded from this scheme.

In most federal states pre-trial arrest warrants were unreservedly executed.

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)**

There have been no specific modalities for initiating, conducting and concluding preliminary proceedings, not even with regard to certain offences. However, agreements were reached with the police and other authorities to prioritise corona-related proceedings in order to ensure that they were promptly concluded and had a deterrent effect on the public. Specific communication channels were occasionally provided and standby services were set up for the prosecution of serious violations of the regulations to contain the pandemic, namely domestic violence. With regard to proceedings pertaining to violations of the regulations to contain the pandemic it should, however, be noted that such violations were mostly treated as offences in the past and will almost exclusively be treated as such in the future, the prosecution of which is the responsibility of administrative authorities rather than that of the offices of public prosecutors.

The offices of public prosecutors have endeavoured to reduce the number of cases requiring a main hearing by increasing the number of penalty order requests and have at times issued penalty orders for criminal offences already indicted. With regard to main hearings, the offices of public prosecutors and the courts have been mindful of witnesses who are in the risk group and have spared them from making a personal appearance, for example, by summoning other persons instead.

A significant number of criminal courts have reduced their operations, in particular public main hearings. It has, however, been ensured that urgent investigation orders were issued and that main hearings in detention cases and protracted trials were conducted or continued and verdicts reached.

There have been no limitations on the remedies available. No specific measures have been taken by the offices of public prosecutors.

With regard to the question pertaining to the enforcement of prison sentences we wish to refer to our answer to question 12.

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

The corona pandemic has not led to new or additional responsibilities to be assumed by the offices of public prosecutors. However, their relations with the press had to be adjusted to press inquiries as to what conduct is indictable and what is not. This was a controversial and ambiguous issue, especially in the early days of the corona pandemic. There was a sharp increase in public relations work due to the corona virus. Furthermore, their workload has considerably been affected by the pandemic. There has been an increase in the number of proceedings for violations of the Infection Protection Act. Moreover, far more proceedings for subsidy fraud in connection with the corona aid provided by the federal government and federal states and associated money laundering proceedings are to be expected.

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 biggest challenge is striking a balance between protecting the health of all staff and ensuring the provision of services, so the public continues to have confidence in the proper

functioning of law enforcement agencies. Alternative working methods, such as working from the home office, video conferencing and video negotiations, have proven to be an essential tool in mastering this task.

In the aftermath of the pandemic public prosecutors will have to cope with a higher workload due to the backlog of cases before criminal courts and the resulting higher number of sessions. Furthermore, experience has shown that certain proceedings, except for detention cases, were in particular not pursued by investigators during the first two months of lockdown. So as to avoid an infection, no searches were made or witnesses interviewed. As restrictions have meanwhile been eased, regular operations are to be restored. To this effect, the provision of appropriate protective equipment to investigators in particular is required, which is currently not always the case.

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?

The offices of prosecutors general and public prosecutors have either already resumed or will gradually be resuming normal operations in the weeks to come. Any backlogs will progressively be reduced.

Reducing the considerable backlog of criminal court sessions will be of particular importance. Some courts consider holding sessions on Saturdays. It may also be the task of the offices of public prosecutors to help reduce these backlogs to a reasonable extent by closing minor offence cases before they come to trial. In addition, penalty orders in particular have become an important means of resolving cases. There are concerns that less serious cases will no longer be adequately sanctioned in view of the burden the courts are under.

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)

In this kind of crisis situation particular challenges are primarily posed by the organisational and technical issues involved in the provision of services. For further details, please refer to our answer to question 18.

Unlike judges, public prosecutors are not independent. The existing ministerial right to give instructions has also applied during the emergency situation. When exercising the right to give instructions, no instructions are given in individual cases. There have been no attempts to exert political influence on the manner in which preliminary proceedings, for example, for violating the Infection Protection Act, are conducted.

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

A major challenge that public prosecutors coping with an unrelenting workload while working from home were faced with was that their work environment had at times not been adapted to the situation. It would be desirable to expedite the establishment of home offices. Public prosecutors looking after their children while working from home were under enormous pressure. It is rather difficult to cope with an already high workload under these circumstances. An increase in the number of emergency childcare places would therefore be desirable. It would also be desirable to provide the ideal technical environment for home office work, such as the introduction of electronic files in particular. Apart from better IT equipment, the data network capacity available should also be expanded. Furthermore, employees should be trained in the use of new electronic work instruments, such as Skype, Zoom, MS Teams and public prosecutor-specific data processing programmes. It would also be desirable to provide training in the art of coping with the situation itself, for example, remote leadership skills and remote delegation skills, as well as virtual communication structures.

In order to ensure that international mutual legal assistance and extraditions in particular can continue in such emergency situations, international or at least Europe-wide arrangements for future pandemics would be desirable. International mutual legal assistance in criminal matters will continue to be of major importance and will be affected by the emergency situation for quite a while, as SARS-CoV-2/COVID-19 has impacted the various countries differently. A greater use of electronic legal transactions will also have to be considered.

Greece / Grèce

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)

Measures were taken on time and specifically since the first days that COVID 19 appeared, with governmental decisions and related legislative initiatives for the whole Greek territory.

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.)

There were restrictions of freedom of movement and assemblage as well as of the execution of religious tasks in enclosed places of worship.

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.)

The established measures were necessary.

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?

There weren't observed any phenomena of discrimination, racism, xenophobia, mistreatment or sexist violence of refugees.

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.)

The prosecution services continued to operate, broadening the method of teleworking and restricting the attendance of employees via shift work.

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?

Cases related to people temporarily in custody were adjudicated exceptionally, so the right of people in custody for adjudication of their case within reasonable time, was not infringed, neither dangerous people in custody were released before their trial.

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)

All prosecutors remained and performed their duties in their offices throughout the whole duration of restricting measures.

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

It was not necessary for special groups (of people) to be created in order to manage the crisis in prosecution services.

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?

Related guidelines were delivered and specifically by the General Prosecutor of the Supreme Court of Greece, who issued three (3) Circulars concerning the prevention of the virus' spread and the punishment of people who infringe the measures that were taken to face COVID 19.

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

Prosecution services supervised the implementation of measures and they cooperated with related services, mainly with police for the loyal compliance of the specific measures.

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?

Prosecution services supervised the implementation of measures and they cooperated with related services, mainly with police for the loyal compliance of the specific measures.

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

Please refer to the answer at the end of the Questionnaire

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)

Please refer to the answer at the end of the Questionnaire

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

Please refer to the answer at the end of the Questionnaire

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?

Please refer to the answer at the end of the Questionnaire

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?

Please refer to the answer at the end of the Questionnaire

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)

Please refer to the answer at the end of the Questionnaire

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

Please refer to the answer at the end of the Questionnaire

Answer to the Questions 12-18:

In cooperation with the Ministry of Justice, Prosecution Services have taken all the appropriate measures in order to avoid overcrowding in places of custody, as well as in court halls, in the offices of prosecutors and magistrates without encroaching the rights of defendants and vulnerable groups of people (children, aged, refugees, homeless etc) and there is daily

anticipation of compliance with all the measures for protection of the citizens, predominantly for possible violent discrimination against aforementioned groups of people. They were given instructions for the adjudication of some cases in order of priority, such as when danger of statute of limitations exists or when there are defendants temporarily in custody. There is no possibility that important cases will "close" in any way because of accumulation of a big amount of paper books. The operation of judicial services on weekends is not necessary and there is no extra payment for prosecutors or judges. Problems that arose due to coronavirus will be overcome with a great deal of effort by all participants related to justice (prosecutors, judges, secretaries, lawyers).

Hungary / Hongrie

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)

From 11 March 2020, the Government declared a state of emergency in the entire territory of Hungary for the elimination of the consequences of the human epidemic endangering life and property and causing massive disease outbreaks, and for the protection of the health and lives of Hungarian citizens. The state of emergency was valid for 15 days, with the possibility to be extended and it has been subsequently extended.

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.)

The declaration of a state of emergency affects, in particular, the right to vote (no by-elections, elections already scheduled are cancelled), the right to a referendum (national and local referenda cannot be initiated, those already scheduled are cancelled); the right to free movement, the right to freely choose one's place of residence, the right to assemble, the right to practice religion, the right to culture (provisions for restricting the movement of citizens, closing down of state borders, certain shops may not be open after 3 p.m., only persons above the age of 65 years are allowed to visit grocery stores, drugstores, markets or pharmacies between 9 a.m. and 12 a.m.; sporting events are banned, etc.), the right to health (non-emergency surgeries and health interventions have been postponed).

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.)

The answer to this question does not fall within the competence of the Hungarian Prosecution Service given that the Prosecution Service is not entitled to suspend rights.

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?

The Chief Prosecution Offices prepare regular reports on criminal proceedings related to the state of emergency, but no such cases have been included in recent reports.

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 state of emergency, one of the most important aspects of the work of the Prosecution Service was to prevent and slow down the spread of the epidemic. During the state of emergency, the Prosecution Service has been carrying out its tasks without interruption. The staff of the Prosecution Service fulfil their responsibilities at their place of work and at home in turns. The Prosecution Service has provided an infrastructure for the staff which has enabled them to work effectively within the organization, as well as with external organizations without personal contact.

In addition, between 9 March and 30 June 2020 training programs organized by the Prosecution Service are delayed or will be held in the form of remote learning, the annual evaluation meetings and other Prosecution Service events will not take place or will only take place online. Individual, official trips abroad are also cancelled, with the original deadline of 30 June 2020 extended to 31 August 2020. Referrals and consultations are primarily carried out via e-mail and telephone, and revisions are to be carried out electronically, if possible.

The personal reception of customers is suspended at all prosecution offices, emergency scenarios have been developed, and protection and alert plans have been reviewed and updated.

During the time of the state of emergency, prosecutors supervising the enforcement of punishments have reduced the number of personal inspections and hearings of detainees in detention facilities. At the same time, measures have been taken to ensure that proceedings requiring the presence of a prosecutor are conducted in a secure environment and in accordance with the epidemiological recommendations or with the help of telecommunication devices.

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?

The non-standard procedural rules applicable at the time of the state of emergency did not allow the courts to suspend criminal proceedings in which the accused was in custody with reference to the epidemiological situation. In these cases, after the short extraordinary break of 17 days, the courts sought to take measures that would result in the criminal proceedings being brought forward (e.g., to hold a hearing using a telecommunications device). It should be noted that in case of the application of coercive measures (for example, if a motion to terminate the arrest was made) the courts did decide during the extraordinary break.

In addition, the Prosecution Service has immediately reviewed cases where the absolute deadline for a coercive measure restricting personal liberty is approaching, and in these cases, timely decisions at first instance are strongly encouraged.

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)

There was no such measure, given that the Prosecution Service was able to perform and performed all its duties during the state of emergency. No prosecutorial action has been taken, as respect for human rights is a general principle in all official proceedings regardless of and even if there is a state of emergency.

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

The Prosecution Service has a Defence Working Group consisting of the heads of its centrally designated functional areas. The permanently operating working group seeks and provides solutions to problems arising in connection with the declared state of emergency.

The national executive meeting is held weekly via video conference.

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?

In connection with the interpretation of the extraordinary procedural rules applicable in the event of a state of emergency, the Office of the Prosecutor General has issued a number of guidelines, both in general and in individual cases.

In order to ensure undisturbed work the Prosecution Service also issued several recommendations, guidelines and information leaflets.

These included:

- Recommendation on the conduct to be followed in the buildings of the Prosecution Service during the human epidemic,
- Information on working conditions at home,
- Measure on the procedure for entering, exiting and staying in the buildings of the Prosecution Service during the ordered state of emergency;
- Privacy Notice for the use of Microsoft Teams and Via Video System;
- Guidelines on the handling of deliveries and sent items not received electronically by the Prosecution Service during the state of emergency.

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

The Office of the Prosecutor General worked closely with the court, both at the central administration and at the local level, seeking to find telecommunication means (channels) to replace the personal presence of prosecutors (and participants in the proceedings) at trials.

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?

No prosecutorial action has been taken, as respect for human rights is a general principle in all official proceedings regardless of and even if there is a state of emergency.

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

The Prosecution Service does not have the legal means to alleviate the overcrowding in prisons, but the Hungarian penitentiary organization has been authorized to accommodate detainees in a manner different from the general rules, taking into consideration the overpopulation and the possible contamination of the penitentiary institutions.

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.);**

The state of emergency does not affect the procedural tasks of prosecutors in criminal proceedings, procedural acts must be carried out in accordance with the rules of the Code on Criminal Procedure and the government decree issued with regard to the state of emergency. There is no specific rule on the initiation of criminal proceedings in the event of a state of emergency, but the Prosecution Service must also take action in response to new criminal offenses introduced in connection with the protection of the population.

However, in some special cases, the extraordinary procedure was used. This was the case when fraud had been committed in relation to health face masks as a means of protection for health purposes and then an attempt was made to launder the proceeds of the crime against property.

- **conducting prosecution before the courts, particularly when courts have significantly reduced their activity (have courts maintained their activity, even if somewhat reduced?);**

The non-standard procedural rules applicable at the time of the state of emergency contained a number of provisions aimed at ensuring that criminal proceedings continued in the extraordinary legal system, even after the indictment and were completed within a reasonable time. Thus, penalty order procedures could be applied in a wider scale, allowing criminal proceedings to be concluded easily and quickly without a trial, and the violation of fundamental rights, given that the party (prosecutor, defendant, defence counsel) that disagrees with the content of the decision may request a court trial. Prosecutors have increasingly resorted to the application of this legal institution, and the courts have also made use of the possibility provided by law in many cases and made a final decision without holding a trial. In cases where this form of court proceedings was not applicable, the court hearing was held by ensuring as far as possible the presence of the participants by means of telecommunications.

- **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**

In the field of victim protection, a different rule has been introduced in view of the state of emergency, according to which victims and witnesses above the age of 65 are automatically considered as persons requiring special treatment and a guardian ad litem is to be appointed if in the case of the legal representative of the victim grounds for exclusion can be established. According to the standard rules victims and witnesses shall be given special treatment if the effective participation of this person in the procedure or the fulfilment of their rights and obligations is impaired by their age, mental, physical and health conditions, the grossly violent nature of the act or the person's relationship with another person concerned in the criminal proceedings. According to the standard rules a guardian ad litem shall only be appointed if the victims lack their full legal capacity or the whereabouts of the victim cannot be established and the victim has no legal representative, or, the interests of the legal representative conflict with those of the victim.

No different rules have been laid down in the field of witness protection, so the Prosecution Service does not have any special tasks in this regard.

It is a general obligation of the Prosecution Service to ensure that the rights of parties participating in criminal procedures should be respected and asserted throughout the investigations. This obligation applies to defendants as well and has not changed in the light of the state of emergency as no special rules have been introduced in this field.

The rights of the defendants/accused were limited by the regulations only to the extent strictly necessary to control the epidemic; this was mainly manifested such a way that the authorities attempted to ensure personal presence by the tool of telecommunication.

Assistance and protection of victims, witnesses, persons in need of special treatment / vulnerable participants / is a high priority regardless of the emergency.

- appeal of court decisions;

The legal norms created during the extraordinary legal order did not affect the rights to legal remedy related to criminal procedures, they could be exercised unchanged by everyone.

- 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);

Detainees are not released in Hungary before serving their sentences.

- 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)

In view of the emergency situation, the Prosecution Service does not have any different tasks with regard to new criminal offences created for the purpose of protection against the epidemic. Concerning these criminal offences the same rules are applicable for the Prosecution Service's actions and procedures as in case of other criminal offences. From a procedural point of view, a special rule has also been introduced for prosecutors to allow them to impose a fine on those parties of the criminal procedure who in the case of a procedural act violate the specific rules laid down in accordance with the rules on epidemiological isolation, surveillance, quarantine or control ordered.

In accordance with the relevant law, epidemiological measures shall not preclude the ordering and execution of temporary preventive restraining orders, restraining orders that can be issued in the course of preventive restraining order procedures and of restraining orders in criminal procedures in the event of violence against relatives. In order to ensure the personal and health safety of the protected group, such as the abused relative and the endangered child, the importance of performing prosecutorial tasks in the indicated procedures is of paramount importance during the emergency.

- 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)

Assistance and protection of victims, witnesses, persons in need of special treatment / vulnerable participants / is a high priority regardless of the emergency.

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:

Complaints and notifications related to the procedure of the authorities enforcing to keep the restrictive measures introduced at the time of the epidemic were ensured by in a timely and, if possible, exceptional manner by the Prosecution Service.

- 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.);**

A new function of the prosecutor, created due to the emergency, appeared to be included in the supervision of protection measures related to persons deprived of their liberty or detained. In all cases of suspected viral infection, the measures taken against the person concerned were monitored and reported to the Office of the Prosecutor General.

-ensuring regulatory measures to prevent profiteering on foodstuffs, hygiene products and essential medicines and supplies;

At the time of the emergency, some companies operating online stores published unfair general terms and conditions on their websites referring to the coronavirus epidemic. They defined the state of emergency declared for the coronavirus and the measures taken under the special legal order as unforeseen, so-called “vis maior” event which excluded them from liability for the performance of the contracts.

Under the contractual terms thus defined, some companies have unilaterally deprived consumers of their rights in the event of a breach of contract (withdrawal from the contract, claim for damages). By doing so, violating the requirements of good faith and fairness, they established unfair general terms and conditions, against which the prosecutor took actions. He issued a press release to inform consumers about unfair practices affecting a wide range of the population

- **reducing the risk of stigmatizing 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;**

During the epidemiological situation, the communication activities of the Prosecution Service, as usual, remained active. The Prosecution Service paid special attention to ensure that its press activity did not decrease, but rather increased during this period. The Prosecution Service considered it important to emphasize that citizens can rely on the Prosecution Service even in such an emergency situation, the Prosecution Service performs its duties in all circumstances.

This conduct was also be shown in the data: the network of spokespersons for Prosecution Service increased its press activity by almost 30% in April this year compared to April last year. Spokespersons were expected to inform the public about measures taken by prosecutors in all cases, out of turn, in connection with crimes related to the epidemiological situation. Spokespersons have fully fulfilled this task. The Prosecution Offices also informed the citizens about the changed procedural rules and their open hours through the media.

The Prosecutor General presented in an extraordinary video message the measures taken by the Prosecution Service for the benefit of the employees and the threefold objective of the Prosecution Service in the epidemic situation (protection of health, ensuring functionality, protection of workplaces). The video message was also posted on the website of the Prosecution Service, so the general public was also informed about it.

- informing the population about the emergency measures and the corresponding penalties for their non-observation**

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 declared emergency created new challenges typically in the functional areas (eg logistics, infrastructure), which the prosecutorial organization was able to solve effectively.

Due to the lower intensity of the work of the courts and the investigation authorities, a significant increase in the case can be expected with the return of these partner authorities to normal operation after the end of the emergency, a significant increase in cases can be expected and it should be prepared for this.

It is also necessary to prepare for the contingent possibility of the second wave of the epidemic, in particular by further acquiring technical equipment to facilitate work from home, and

measures to minimize the risk of infection in office buildings. This requires collecting, evaluating past experience and drawing conclusions for the future, on the basis of which, supposedly there will be a smooth reorganization following the epidemic situation.

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?

As far as HR matters are concerned our aim is to gradually ease the strict measures. In compliance with governmental decisions, first, in counties that were less affected with the pandemic prosecutorial employees having been ordered to stay at home with the obligation of being available for work have been required to return to their place of work and work there. We continue to lay strong emphasis on home-office work. At the same time, as the intensity of the pandemic situation decreases and the workload is expected to grow, it is necessary that more and more prosecutorial employees return to their place of work, where safe and secure work conditions should be ensured, and the risk of infection should be minimized. Prosecutorial employees should be made to go back to their places of work gradually by continuing to provide the highest level of protection to the most endangered age group (chronically ill persons above the age of 62).

Specific procedures falling into the competence of penitentiary judges have been suspended in accordance with provisions of law. The law does not allow prosecutors to prioritize cases in the subsequent conduct of – naturally cumulating – procedures.

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;

No, the independence and accountability of prosecutors were not affected by the emergency situation.

- ethics and professional conduct of prosecutors during emergency situations and thereafter;

No, in the operation of the Prosecution Service of Hungary the professional “accountability”, ethics and professional conduct did not raise any problems that would have required special regulations during the emergency situation. As far as the professional conduct is concerned, I consider it important that priority would be given primarily to those cases that may be related to the protection against the pandemic.

- training of prosecutors on working modalities at the time of emergency situations (for instance, for teleworking) and protecting themselves from COVID-19;

Yes, in accordance with Paragraph 9 the Defence Working Group has drawn up recommendations for prosecutorial employees on the conduct to be followed in buildings of the Prosecution Service during the time of the pandemic, has issued information on conditions of home-office work, has drafted measures for the entry, exit and staying in

buildings of the Prosecution Service during the emergency situation, and has also provided assistance to the use of Microsoft Teams and Via video system in its data protection informative note.

In case of teleworking it was necessary to safely organize the transmission of information on the appropriate use of tools needed for teleworking, and in order to ensure secure office work to create a work schedule based on rotation, on the one hand, and a code of conduct based on health recommendations, on the other hand. At the same time, a slowdown of international cooperation and the narrowing of usable communication channels were seen in criminal matters.

-creation of multidisciplinary teams, if need be (with health personnel, for instance);

No/none.

- 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.)

No/none.

- 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)

Electronic and online contact keeping was preferred, the importance of which already increased even before the time of the COVID-19 pandemic, and that trend is presumed to intensify after the pandemic as well.

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

In the field of justice and public order and security problems and challenges caused by the pandemic can only be overcome as a part of a comprehensive protection strategy covering all segments of society. Experiences show that in various phases of the pandemic different methods may lead to a successful protection and, at the same time, to the maintenance of effective work.

The Prosecution Service used the solutions and methods almost without exception, and these have proven to be effective even in spite of the short amount of time available for preparation adjusted to the special features of the organization of the Prosecution Service. One of the most important tasks was the reduction of personal contacts via teleworking, and – in case of working at the actual places of work – keeping proper social and hygienic distance, using and prescribing the use of personal protective equipment including facial masks, gloves, hand washing for sanitizing reasons, and the use of paper towels. I consider it important to continuously review and flexibly use the applied protective measures in view of the current situation of the pandemic.

The pandemic situation also affected contact keeping with the media. Spokespersons were required to respond to journalists' questions mainly electronically or by phone, but interviews could still be given. For in-person interviews online telecommunication applications were used. Interviews where the person concerned had to be physically present could only be carried out in exceptional cases, by obeying security rules (e.g. in fresh air, by keeping distance).

In the field of international cooperation continuous case management can be ensured and challenges can be tackled by the creation of a duty system and by sharing contact details in this regard.

Ireland / l'Irlande

General

The Director of Public Prosecutions (DPP) has no investigative function and no function in relation to many of the matters set out in the questionnaire. Instead, the investigation of crimes and maintenance of public order is a function of An Garda Síochána (National Police). In addition there are specialised investigating authorities in relation to certain particular categories of crime, including the Competition and Consumer Protection Commission in relation to offences against the Competition Acts, the investigation branch of the Revenue Commissioners in relation to revenue offences, the Health and Safety Authority in relation to offences relating to safety and welfare at work, and the Office of the Director of Corporate Enforcement which deals with offences against company law. This list is not exhaustive.

Complaints of criminal conduct made to the DPP cannot be investigated by her but are transmitted to the Garda Commissioner or to one of the other investigating authorities to take the appropriate decisions and action. While the DPP has no investigative function, the Office of the DPP cooperates with An Garda Síochána and the other investigating agencies on an ongoing basis during the course of criminal investigations, particularly in furnishing relevant legal and prosecutorial advice. The relationship between prosecutors and investigators is dealt with more fully in Chapter 7 of the Guidelines for Prosecutors, (link attached).

<https://www.dppireland.ie/app/uploads/2019/12/Guidelines-for-Prosecutors-5th-Edition-eng.pdf>

While many investigative agencies have the power to prosecute summarily without reference to the DPP, the sole power to prosecute on indictment rests with her (apart from a limited number of cases still dealt with by the Attorney General).

When an offence is or may be sufficiently serious to be tried on indictment the investigator sends a file to the Office of the DPP. The decision whether to initiate or continue a criminal prosecution is made by the Director or one of the Director's professional officers who decide independently of those who were responsible for the investigation what, if any, charges to bring. In some cases, a summary prosecution may be directed.

The Director of Public Prosecutions is independent in the performance of her functions and prosecutors carry out their functions in accordance with;

- the Guidelines for Prosecutors which set out in general terms principles and ethics which guide the initiation and conduct of prosecutions in Ireland
- the European Union Victims Directive 2012/29/EU and the Criminal Justice (Victims of Crime) Act 2017, as well as other measures for the rights, support and protection of victims of crime under existing law and prosecution policies. Further information is available in the Victims Charter on the Office website at www.dppireland.ie

Covid19 restrictions – an update on the restrictions in place as of 18 August 2020

A new law in March 2020 gave the Minister for Health the power to make regulations to introduce measures to slow down the spread of the virus (such as travel restrictions, stopping gatherings, closing premises etc).

Health (Preservation and Protection and Other Emergency Measures in the Public Interest) Act 2020

The legislation contains the following preamble:

“An Act, to make exceptional provision, in the public interest and having regard to the manifest and grave risk to human life and public health posed by the spread of the disease known as Covid-19 and in order to mitigate, where practicable, the effect of the spread of the disease known as Covid-19, to amend the Health Act 1947 to confer a power on the Minister for Health to make regulations prohibiting or restricting the holding of certain events or access to certain premises and to provide for enforcement measures; to provide for powers for certain medical officers of health to order, in certain circumstances, the detention of persons who are suspected to be potential sources of infection with the disease known as Covid-19 and to provide for enforcement measures in that regard; and to confer on the Minister for Health the power to designate areas as areas of infection of Covid-19 and to provide for related matters; to amend and extend the Social Welfare Acts to provide for amendments in relation to entitlement to illness benefit for persons who have been diagnosed with, or are a probable source of infection with the disease known as Covid-19; and to provide for amendments in relation to jobseeker’s benefit and jobseeker’s allowance to mitigate the economic effects of the spread of the disease known as Covid-19; and to provide for related matters.

WHEREAS an emergency has arisen of such character that it is necessary for compelling reasons of public interest and for the common good that extraordinary measures should be taken to deal with the immediate, exceptional and manifest risk to human life and public health posed by the spread of the disease known as Covid-19;

AND WHEREAS the State is and its citizens are, in significant respects, highly exposed to the effect of the spread of the disease known as Covid-19; and having regard to the constitutional duty of the State to respect and, as far as practicable, by its laws to defend and vindicate the rights of citizens to life and to bodily integrity, it is necessary to introduce a range of extraordinary measures and safeguards to prevent, minimise, limit or slow the risk of persons being infected with the disease known as Covid-19;

AND WHEREAS as a consequence it is necessary for the State to take the measures in this Act to address the emergency and to defend and vindicate the rights of citizens to life and to bodily integrity;”

Under this legislation the Minister for Health could make regulations to:

- Restrict travel to and from Ireland
- Restrict travel within Ireland to stop people moving to and from affected areas
- Stop gatherings of people from taking place, and to make organisers of these gatherings put safeguards in place to prevent the virus from spreading
- Make businesses (such as shops) put safeguards in place to protect their staff and customers
- Close premises, including schools

Other measures

On 27 March 2020, the President signed the [Emergency Measures in the Public Interest \(Covid-19\) Act 2020](#) into law. The legislation includes measures to:

- Prevent the termination of residential tenancies and increases in rent
- Allow for the disregard of certain time periods and deadlines in planning and building legislation
- Extend the period that an employee must be temporarily laid off or on short time for before they can claim redundancy
- Simplify the registration process to help recruit retired health professionals
- Facilitate the operation of the mental health tribunals during the pandemic
- Introduce a temporary wage subsidy scheme
- Support re-enlistment of former members of the permanent defence force

Removing restrictions: Roadmap for Reopening Society and Business

The Government set out a Roadmap for Reopening Society and Business to ease the COVID-19 restrictions. The plan set out 4 phases for unlocking restrictions, at 3-week intervals starting 18 May 2020. The phases give an indication of the stages to be followed but the date of each change could vary and depended on the circumstances at the time. Phase 4 was planned to commence on 10 August but has since been delayed until at least 31 August. In addition, restrictions specific to 3 Irish counties were imposed on 7 August.

Detentions and penalties

During the COVID-19 emergency, various regulations have given An Garda Síochána (National Police) additional powers, including arrest without warrant (for failure to comply with a direction of a member of An Garda Síochána to enforce the regulations, for failure refusal to provide a name and address or for providing a false name or address). These powers aimed to prevent or slow the spread of COVID-19 but have since been amended to reflect the easing of some restrictions in line with Phases 1, 2 and 3 of the updated Roadmap for Reopening Society and Business.

It is an offence not to comply with the regulations. This includes:

- Organising a cultural, entertainment, sporting, social, community or educational event for more than 50 people indoors or 200 people outdoors
- Allowing public access to places or entertainment which are not yet allowed to reopen (such as nightclubs or casinos) or pubs and bars which do not serve food.

Any offence is punishable by a fine of up to €2,500, up to six months imprisonment, or a combination of both.

Prosecution decisions on Covid19 Regulation offences are currently centralised within the Directing Division of the Office of the Director of Public Prosecutions

Other penalties

The above legislation also allows for detention where it is believed by a qualified medical person that a person is a potential source of infection and a risk to public health and the detention is necessary to slow the spread of COVID-19. A person will only be detained if they refuse to remain in a specified place like their home or a hospital, or cannot be isolated in any other way.

A person detained will be tested as soon as possible and will be able to ask for a review of their detention by an independent person on the grounds they are not a source of infection. Failure to comply with a detention, or interfering with the detention of a person will be a criminal offence.

Public commentary

The Policing Authority: The Policing Authority in a report on its assessment of policing performance by the Garda Síochána (Irish Police) during the COVID-19 crisis found that the relatively low level of reported use of the COVID-19 powers supported the graduated approach adopted by the Garda Síochána at the outset of the emergency and more importantly its implementation by members on the ground. An examination of the geographic distribution of the reported use of powers in detail did not identify any concerns with regard to the use of powers being disproportionately used in any particular region.

In discussing the reported experience of policing during COVID-19, the majority of organisations the Authority engaged with referred to an overwhelmingly positive experience of engagement with the Garda Síochána. The importance of good community policing has been raised consistently, as the basis for a community's trust and confidence in the policing service and as the foundation on which policing during the COVID 19 emergency has been built.

However, the Authority indicated that, inevitably, this positive engagement has not been experienced consistently and that there are communities where the relationship with the Garda Síochána has not been as would have been wished. In communities where feedback has been negative, the reported experiences of the community attribute this to factors such as the frequent turnover in community Gardaí which mitigates against relationship building, non-responsiveness to call-outs, and a lack of consistency of tone and respect from all Garda members.

Bail pending trial

While the final decision is a matter for the court, the Guidelines for Prosecutors provide that, where an accused person has been detained in custody prior to the first court appearance, the prosecutor should, in addition to considering the charges to be presented to the court, also consider any continuing need to remand that person in custody. The prosecutor should only request that the court remands an accused person in custody where it is determined (having given due consideration to the nature and gravity of the alleged offence and any relevant criminal history of the accused and having considered the views of the Garda Síochána) that there is a risk of the accused:

- a) absconding;
- b) interfering with witnesses, evidence, or the course of justice generally;
- c) if charged with a serious offence, committing a further serious offence which would form the basis for an objection to bail.

The Garda Síochána must also consider whether there are any bail conditions which could sufficiently counter the risks identified by them in relation to the above grounds.

The prosecutor should consider seeking a revocation of bail where there is a serious breach of a condition attached to its grant.

Prisons

The Director of Public Prosecutions has no function in relation to the management of prisons or release of prisoners. The Minister for Justice approved a number of actions to reduce the number of prisoners in our prisons in March this year to support a more effective infection control regime, including greater physical distancing and cocooning. These included:

- The granting of temporary release (TR) (which is already a normal part of prisoner management) to low risk prisoners, who were assessed on a case-by-case basis. As always TR is conditional on a prisoner being of good behaviour and each prisoner would be subject to re-arrest in the event of a breach. This gradual and planned reduction of the prison population has seen a decrease in the number in custody from 4,235 on 11 March 2020 to 3,833 on 7 April 2020, a reduction of approximately 400 or 9%.
- Providing for longer periods for those prisoners currently on TR to have to sign in with IPS, in order to reduce footfall in and out of the prisons, and to free up administrative staff to mitigate any depletion in prison officer numbers. Rather than signing in weekly, the requirement is currently monthly.

It is important to note that a number of key constraints on the power of release remain:

- the primary one is public safety - no prisoner who poses an undue risk to public safety will be granted TR;
- no one who is remanded for trial can be released;
- factors such as housing and health status are also taken into account. The IPS is coordinating with the Department of Housing, Planning and Local Government and the HSE.

Working arrangements

There has been a lot of change in Ireland in relation to how people work due to the COVID19 crisis. This has also been reflected in arrangements made in the prosecution service. Prosecution services, along with Courts Services, Government Departments and agencies have been working to modify work practices and modes of delivery to meet the challenges faced. The Courts and the Office of the Director of Public Prosecutions remain open with extended opening hours to facilitate differing staff attendance patterns. Many staff are working from home using lap-tops. Office meetings can be held using video conferencing and the Office of the Director of Public Prosecutions continues to have ongoing discussions with the Courts Service and An Garda Síochána (National Police).

There has been an increased use of video conferencing in relation to bail /extradition hearings and also in conducting some hearings on legal issues such as the Supreme Court and Court of Appeal hearings, where it is intended for much of the Court's work to be done remotely where this is suitable. However, these arrangements do not extend to cases where oral testimony is required. Legislation is also due to come into force shortly allowing for the disposal via video conferencing of a lot of procedural business in the lowest criminal court and in trial courts.

Training

It has been necessary for staff to quickly adapt to a range of new work practices and these new practices will give rise to a host of new training needs. In addition, it will be necessary to consider how best to meet the “normal” training needs of staff using the video conferencing tools.

Challenges

Challenges faced by prosecution services in an emergency situation and in its aftermath/recovery include recognising the risk in advance, preparedness to address such risk, implementation of a pre-prepared plan to deal with the immediate effects of the emergency, adapting to changing circumstances.

Overcoming these challenges will involve learning from our experiences in past and present emergencies, planning for recognising risks in advance, preparedness to address such risks, and adapting to changing circumstances. In the current context very significant work was done in a short space of time to enable encrypted remote access for prosecutors to their files and to update court practices and procedures to facilitate much greater use of video-conferencing technology during court proceedings.

Italy / Italie

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)**

Yes. In Italy, the emergency was declared for the whole nation, by law and by decrees of the President of the Council of Ministers (main period: March-May 2020; phase No. 2: June-July). In addition, specific rules were passed for some regions and areas because of their higher exposure to the infection.

- 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.)**

Restrictions were imposed to the right of assembly and to freedom of movement, as well as to commerce and to various aspects of social life.

- 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.)**

The principles of legality, necessity, proportionality and adequacy of the measures were respected.

- 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?**

Nothing to report.

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.)**

Access to the working premises was restricted and regulated by the head of each prosecution office. Teleworking was encouraged, as well as professional training by videoconference. Only urgent hearings were held by courts, through videoconference whenever possible. Also office

meetings were regularly convened by chief prosecutors and by general prosecutors through videoconference.

- 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?**

The problem was dealt with mainly through court hearings in videoconference.

- 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)**

Urgent activities were carried out through videoconference and teleworking, both by prosecutors and by the personnel. For appearance of prosecutors in the office premises, rotation criteria were defined by the head of each office.

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

Yes, at district and local level.

Real-time emergency communication tools have been implemented, through the internet and also by WhatsApp chat groups, to link heads of prosecution offices and courts with health, government and civil protection authorities.

- 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?**

Guidelines were issued by the Italian High Council for the Judiciary (CSM) and by general prosecutors. As far as resources and personnel were concerned, the Ministry of Justice issued real-time information and circular letters containing instructions.

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

Yes, cooperation with the judiciary and with health authorities was constant.

- 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?**

Yes.

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

The existing procedural tools were rationally applied taking into account the pandemic.

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)

Prosecution was initiated, where appropriate, notwithstanding the limited access to the office premises. The reduced court activities were carried out mainly through hearings held by videoconference, with full respect of fundamental rights. The pandemic was taken into consideration, together with aspects of public and private security, in every decision and action to be taken with respect to the execution of court decisions and to the adoption of restrictive or non-custodial measures.

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

Some investigations were started by the prosecution service on profiteering on foodstuffs, hygiene products and essential medicines and supplies. Investigations are carried out also in relation to complaints filed for possible criminal responsibilities related to the transmission of the infection or to its medical treatment.

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?

Main challenges:

- during the acute phase of the pandemic: reduction of ordinary activities; urgent tasks, mainly connected with fundamental rights, to be carried out notwithstanding the emergency situation;
- during the “phase No. 2”: need of a rational plan to gradually return to “normal life”, always taking into serious account the persistent risk of infection;
- later on: dealing with the backlog accumulated during the emergency; carrying on investigations on criminal responsibilities related to the transmission of the infection or to its medical treatment.

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?

In Italy, every chief prosecutor (as well as every court president) is requested to draw up a plan for his/her office to return to “normal life”, after consultation of health authorities and confrontation with bar representatives and trade unions. On such plans, the agreement of the president of the court of appeals and of the prosecutor general is prescribed by law. Due to the accumulated backlog of cases, the statute of limitations poses risks to the effectiveness of prosecution.

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)**

Many of the challenges listed above have to be faced by the prosecution service, both in an emergency and in its aftermath/recovery. Highly ethical conduct is required to each member of the prosecution. Future professional training should address in depth topics like working modalities, organization and communication in emergency situations.

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

We should learn from our experience and draw up guidelines for possible future emergencies. Technical tools for teleworking of prosecutors and their personnel, as well as for possible court hearings by videoconference, should be implemented. Specific legislation should be passed, to face future emergencies through such technical tools without prejudice for the right of defense and other fundamental rights and principles.

Latvia / Lettonie

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)

By the order of the Cabinet of Ministers on 12 March 2020 in Latvia was declared an emergency situation. Pursuant to the provisions of the Law "On Emergency Situation and State of Exception", the Parliament of the Republic of Latvia, which has the competence to decide on the justification of the emergency situation, was duly notified about the decision taken. On 13 March 2020 the Parliament approved the government's decision to declare an emergency situation in connection with the confinement of the coronavirus Covid-19. The emergency situation was declared throughout the country from the moment of declaration of the decision and until 14th of April, in order to confine the spread of Covid-19 during the period of the emergency situation. By further orders of the Cabinet of Ministers, which were approved by the Parliament of the Republic of Latvia, the emergency situation was extended until 9 June 2020. After the 9th of June the emergency situation was no longer extended but some of the restrictions were included in a separate Law "On Management of the Spread of Infection Covid-19" passed by the Latvian Parliament as a matter of urgency. Its purpose is to restore the general legal order after the expiration of the term determined in relation to the emergency situation, by ensuring due extent of rights and obligations of individuals proportionate to the interests of public safety and health, and efficient work of the state and local government institutions.

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 a result of the emergency situation there were affected such rights as freedom of assembly, for example, by determining the number of people who may gather at the same time during events, the allowable time limit for events spent indoors and the necessity to adhere to the restrictions imposed on the participants of events, including observance of the necessary distance. Regarding the right to movement, we can point out that in Latvia there were no such strict restrictions on movement as in other countries. During the emergency situation in Latvia, natural persons were urged to refrain from traveling abroad, while the persons who had returned from abroad were assigned a period of self-isolation for 14 days to be spent at their own place of residence; self-isolation was also determined for Covid-19 contact persons, whereas persons with the confirmed Covid-19 diagnosis were strictly isolated. With some exceptions, the state banned all international passenger transport through airports, ports, buses and railway transport. During the emergency situation, the provision of health care services was curtailed, maintaining life-saving health care services and those requiring continuity of therapy. Certain prisoners' rights were also restricted, such as restriction on visiting places of detention for third parties. There were also imposed certain prohibitions and restrictions on religious activity in relation to gatherings. Many of these restrictions, depending on the situation in the state, were mitigated already during the emergency situation.

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.)

In Latvia, the permissible amount of restrictions on rights during an emergency situation is specified in the Law "On Emergency Situation and State of Exception". Pursuant to the provisions of the said law, administrative decisions taken during an emergency situation, which impose certain restrictions and additional obligations, must have a legitimate aim and must be proportionate, non-discriminatory, justified and necessary in each specific case of national threat. Measures ensuring the emergency situation shall be taken only to the extent necessary for the normalization of the situation, and they may not be in conflict with the international human rights law that is binding on Latvia.

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?

We have no information at our disposal about any possible discrimination directed towards certain groups of people in connection with the spread of Covid-19 infection, as well as no information regarding ill-treatment of foreigners and migrants. In one case, prosecution office initiated a prosecution and forwarded a criminal case to court regarding a man charged with inciting national hatred and discord on Facebook, as well as hooliganism, namely, a person had published false information about the spread of the coronavirus Covid-19 in Latvia. In general, the number of crimes committed within the state during the emergency situation has slightly decreased; in some regions there was a slight increase in the number of thefts, crimes committed on the Internet and crimes related to domestic violence.

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.)

Following the declaration of emergency situation in the state, the Prosecutor General issued an order requiring, inter alia, the heads of units of the prosecution office to organize their own work and the work of the subordinate prosecutors and employees of the prosecution office in such a way as to be able to carry out their duties, as far as it was possible, in a remote manner, simultaneously strictly ensuring fully, accurately and timely performed fulfilment of the obligations specified both in the law and the internal legal acts of the prosecution office. At the same time, in cases when prosecutors were only able to perform their duties while being personally present in the work premises, they were provided with the possibility to be on the work premises and to use the relevant equipment. During the emergency situation, communication with other institutions was mostly maintained either by telephone or by electronic means, including usage of various telecommunications applications. In urgent cases, meetings were also organized in person. As far as possible, the circulation of documents was carried out electronically, including signing the documents with a secure electronic signature. In several units, in order to ensure the prosecution, there were organised separate premises or

areas where persons were interrogated while taking the necessary precautions, including distancing.

- 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?**

There were no significant changes related to performance of pre-trial proceedings during the emergency situation, however, many investigative activities involving face-to-face contacts between the parties were postponed as far as such postponement was possible. Criminal cases in which the accused persons were subjected to a restraint measure – detention – were continued to be tried in courts without conveying the accused to court, they were tried by videoconferencing instead.

- 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)**

As already indicated above in the answer to question 5, the work of prosecutors was organized in such a way as to ensure full and timely performance of the duties of prosecutors. Work duties were performed both remotely and, if necessary, in person.

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

No crisis response teams were created within the prosecution service of the Republic of Latvia.

- 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?**

There were not created any specific guidelines related to prevention of the emergency situation. As it was already mentioned, prosecutors were urged to organise their work as remotely as possible. In accordance with the Latvian Criminal Procedure Law, in emergency cases a prosecutor is entitled to give consent to performance of several investigative actions requiring a decision of an investigating judge, for example, to perform such actions as searches or special investigative actions. This possibility was used also during the emergency situation. Moreover, prosecutors were also as always on duty outside working hours in order to ensure the performance of the urgent actions specified in the Criminal Procedure Law.

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

Cooperation with other law enforcement authorities was maintained electronically, as much as it was possible. As far as possible, procedural documents were also signed with an electronic signature and sent to the addressee in electronic form. In cases where on-site activities were required, these activities were carried out in accordance with national security measures, as far as such was possible.

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?

In accordance with the Latvian Criminal Procedure Law, the Prosecution Office carries out supervision in all criminal proceedings initiated in investigative institutions, regardless of the classification of these cases, including criminal proceedings initiated in connection with restrictions violated during an emergency situation.

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

The Latvian Criminal Procedure Law provides for a number of alternative ways to terminate criminal proceedings, for example, in cases specified by law, a prosecutor may not hand over a case to court but rather complete the case himself by drawing up a prosecutor's penal order, as well as to terminate the criminal case by conditionally releasing the person from criminal liability. Moreover, a prosecutor may enter into an agreement with the accused regarding the admission of guilt and a punishment. In this case, the criminal case is forwarded to court for approval of such signed agreement, but the court may try such case in a written procedure.

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)

Regarding the situations referred to in Paragraph 13, no specific modalities were established in Latvia. The courts also continued their work during the emergency situation, however, in order to mitigate the potential risks during the emergency situation, oral proceedings not connected neither to some serious breach of law nor to objective urgency were removed from the schedule of hearings or postponed. At the same time, it was determined that, as soon as the emergency situation comes to an end, there will be organised out-of-schedule hearings of the postponed cases. During the emergency situation court hearings in connection with deprivation of liberty, limitation of legal capacity, etc., were held, as far as it was possible, by videoconference. Some court hearings were also held with personal participation of the relevant parties, but in such cases there were taken the necessary precautions, such as observing a distance of two meters. By a separate law it was determined that appellate criminal cases may be adjudicated in a written procedure also in cases not specifically mentioned in the Criminal Procedure Law, if it is not objected to by a prosecutor or a person whose interests and rights are violated by the relevant complaint or protest. When submitting their protests to court, prosecutors used the possibility to sign them with a secure electronic signature and send them to the court electronically.

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**

In Latvia the Prosecution Office had no new or extended functions during the emergency situation.

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?

Due to the emergency situation in the state and the restrictions imposed, in several investigative institutions many investigative activities within certain criminal proceedings were temporarily suspended. In addition, during the emergency situation many people involved in criminal proceedings refused to appear before an investigator or prosecutor. Although the law provides for a possibility to carry out many procedural actions using video communication or telephone conference, this option was not used too widely within pre-trial criminal proceedings. However, several other possibilities provided for by the law – such as questioning by electronic means of communication, or signing of procedural documents with a secure electronic signature and then sending these documents electronically to the addressee – were widely used so that persons could be as rarely as possible invited to appear in person in the premises of the prosecution office or investigative authority. However, prosecutors also identified several situations where, respecting the restrictions set in place within the state, it was very difficult or even impossible to carry out certain procedural actions, such as conveyance of a person by force, confrontation, performance of forensic psychiatric examination or implementation of a settlement at the State Probation Service. There is now a gradual return to the "normal situation", but it is still too early to talk about some significant challenges.

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?

At present, no initiatives referred to in Paragraph 16 have been developed in Latvia, and we also do not have information at our disposal that it is planned to have court proceedings during weekends or to close certain categories of criminal proceedings.

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)

In Latvia, the public is widely enough informed about the measures to be taken in order to protect themselves from Covid-19 infection. Of course, any institution, including the prosecution office, is facing new challenges related to ensuring the safety of its employees. With regard to the challenges faced by prosecutors during the performance of their duties that are prescribed for by law, a major challenge is to carry out procedural actions in person, especially with the participation of several persons. However, solutions are being sought both in practice and at the legislative level in order to facilitate the work of law enforcement authorities during the emergency situation. For example, by the Law “On the Operation of State Authorities During the Emergency Situation Related to the Spread of Covid-19” it was determined that a person directing the proceedings may suspend criminal proceedings for the period of the emergency situation declared in the State in accordance with the procedures laid down in the Criminal Procedure Law, provided that all the procedural actions which are possible without the participation of a suspect or accused have been performed, and provided that the circumstances preventing the suspect or the accused from participating in the criminal proceedings due to the emergency situation declared in the State have been ascertained. Procedural activities were also facilitated by using certain technical means. Such facilitated procedure allowed prosecutors to remotely – using video conferencing mode, e-signature and public administration services portal – verify a person's identity, issue indictments and conduct procedural actions involving defendants who were located abroad and were unable to arrive to Latvia due to the emergency situation. Regarding the international cooperation, we would like to indicate that the only area hampered by the closure of external borders and the abolition of air traffic is the extradition procedure. At the same time, there also arises the issue about the possibility of places of detention to provide quarantine conditions for persons taken over from abroad, and also about medical examinations for the convoy and extradited persons, the sufficient number of convoy if self-isolation is required after the performance of their functions, etc. Requests for legal assistance are dealt with in accordance with the common procedures, the only reason for a delay might be the possibility of physical contact with the person to be prosecuted who is concerned about the possible danger to his or her health due to the necessity to arrive to the investigating authority in person. In this case, alternative solutions are sought – video conferencing, questioning via phone, etc. In any case, this does not affect neither the performance of search nor the performance of other investigative actions relevant to the case, especially when the legal aid is requested in relation to the commission of a serious crime.

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

In our opinion, it is possible to overcome some of the challenges by carrying out, as far as it is possible, criminal procedural activities without direct contact with those involved in the proceedings, using technical means, signing and sending documents electronically, hearing cases in court via video conference and, where possible, by written proceedings. However, as practice shows, technical means are not always used successfully during the performance of procedural actions, since the officials conducting criminal proceedings lack some practical knowledge and skills, therefore staff training is required. Moreover, Latvia is currently working on the introduction of a single e-case, the aim of which is to achieve a united electronic process lasting from the initiation of an investigation until the completion of court proceedings and proceedings related thereto. The introduction of such e-case could significantly facilitate prosecutors' work during emergency situations.

Lithuania / Lituanie

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 view of the situation regarding the spread of coronavirus, further to its resolution No 207 of 14 March 2020 the Government of the Republic of Lithuania introduced quarantine regime within the entire territory of the Republic of Lithuania. The duration of quarantine regime: 16 March (start) – (date of revocation).

- 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 a result of emergency situation in Lithuania the following rights have been affected: freedom of assembly (prohibition of gatherings), freedom of movement (restricted movement across the border and within the country itself, compulsory quarantine regime upon returning from abroad or upon contacting infected persons), right to healthcare (restricted right to access a doctor, adjourned planned operations, planned hospitalizations etc.), right to religious freedom (churches closed), right to education (suspended education and childcare activities and education process in all kinds of education facilities, daycare and employment centres, introduction of distance learning), etc.

- 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.)**

Quarantine restrictions imposed in Lithuania are applied uniformly.

- 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?**

Any.

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.)**

Prosecutor General, in view of the restrictions imposed by the Government, ordered the following:

1. To provide possibilities and conditions for prosecutors and prosecution service staff to work remotely for maximum period of their working time.
2. To cancel secondments to foreign countries (with the exception of secondments related to specific procedural actions in foreign countries);
3. To cancel training events, meetings, consultations, inter-agency meetings etc. and, if possible, hold such meetings by using IT and communication technologies.

The following orders have been given in the field of criminal proceedings:

1. To record the performance of procedural activities by means of online forms.
2. To seek to ensure that lawyers, other parties to the proceedings and persons who have been made subject to procedural constraint measures would submit, in accordance with the procedure prescribed by legal acts, procedural and other documents during pre-trial investigation by means of online communication.
3. To conduct the planning and coordination of actions of prosecutors and pre-trial investigation officers by using Integrated Criminal Procedure Information System (IBPS) and by means of telephone and e-mail.
4. In cases where there is an urgency to conduct investigation inquiries and questionings of witnesses, victims and suspects during the state of emergency, to conduct them, if possible, by using relevant measures allowing remote transmission of audio and video. If questioning may be adjourned without hindering successful course of pre-trial investigation, it has been recommended to draw up a plan on questioning relevant parties to the proceedings whereas the questioning itself had to be adjourned.
5. To restrict the performance of pre-trial investigation actions involving direct contact with persons with the exception of cases where such actions must be conducted urgently since failure to perform them might hinder successful course of investigation. All necessary precautions must be taken during the performance of investigation actions in order to ensure the recommended safe distance and comply with all safety recommendations.
6. When dealing with issues regarding imposing constraint measures and extending their duration, to use, if possible, measures allowing remote transmission of audio and video.
7. To negotiate each case of using measures allowing remote transmission of audio and video with relevant pre-trial investigation authorities where such measures have been installed.
8. Practical surrender of the requested persons under EAW, extradition to third states and transfer of prisoners under 2008/909/JHA has been suspended.

- 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?**

It must be noted that work with criminal cases has not been stopped completely. Oral court hearing have been organised, where possible, by using remote video transmission measures and in cases where case handling could not be arranged in this manner and in cases of urgency

(where this was related to the performance of a compulsory procedural action in cases being dealt with, e.g. imposition/extension of the constraint measure of arrest, removing a child from unsafe environments etc.) oral court hearings were being held in compliance with the prescribed safety requirements.

In cases where a person has been made subject to a constraint measure of arrest, the necessity of extending its term, cancelling it or replacing with another constraint measure has been decided on a case by case basis, considering the term already spent in custody, the seriousness of the criminal offence, personality of the person and the possibility of applying less restrictive provisional measures.

In cases of arresting the person requested for extradition from the Republic of Lithuania or referral to the International Criminal Court or for surrender on the grounds of the European Arrest Warrant, the issue of imposing a constraint measure upon such person is being dealt with by taking account of the nature and scale of threat posed by the committed crime, personality of the suspect, defendant/accused or the convicted person and his social links. It is assessed whether any other constraint measures provided for in the Criminal Procedure Code may be applied if they are sufficient to ensure that a particular person does not escape (go into hiding from) law enforcement authorities of the Republic of Lithuania (Article 72 (5) of the Criminal Procedure Code).

In cases of the decision to surrender or extradite a person addressed to the Republic of Lithuania on the grounds of the European Arrest Warrant, arrest warrant or extradition request, the Prosecutor General's Office has requested competent authorities of the EU Member State or foreign country in question to postpone the deadline of the actual surrender of the requested person.

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)

In the view of the fact that health care institutions and laboratories did not have enough supplies of measures and resources for disinfection and health care needs as well as aiming to contribute to liquidation of nation-wide state of emergency and handling consequences thereof, Prosecutor General requested that prosecutors, who handle pre-trial investigations where any amounts of ethyl alcohol have been seized, made procedural decisions as soon as practically possible regarding unremunerated transfer of the seized ethyl alcohol for social needs.

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

Prosecution service has a permanent Emergency Management Working Group which is responsible for responding to states of emergency, events or any other types of hazard, estimation of strategies and procedures, sufficient capacities, material resources, and this group also organises and coordinates handling of consequences of hazardous events or states of emergency, rescuing people and assets situated in prosecution services etc.

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?

No additional measures have been taken regarding shifts or replacement of prosecutors, regular procedures have been applied. See also answers to question No. 5.

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

In the beginning of quarantine the prosecution service initiated a meeting between the heads of the prosecution service, police and the judiciary wherein the issues of inter-agency work organisation and co-operation were discussed. Later on the information regarding any changes in work organisation in different institutions was being exchanged on a regular basis, work measures were being negotiated and common solutions regarding situations in question were being sought.

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?

No. It must be noted that the right of appeal has not been restricted during the quarantine.

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

No, however, constraint measures have been mitigated. See also answer to question No. 6.

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.);

No

- conducting prosecution before the courts, particularly when courts have significantly reduced their activity (have courts maintained their activity, even if somewhat reduced?);

In all cases being dealt with in accordance with oral proceedings court hearings were being held by using remote transmission means and in cases where it was not possible to organise the handling of cases in this manner the court hearing allocated for oral proceedings have been postponed with the exception of cases where it was related to the performance of necessary procedural actions in the context of the cases being heard

- 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

No.

- appealing court decisions;

No.

- 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);

n/a

- 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)

n/a

- 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)

n/a

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;

No.

- 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

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?

Currently effective legal regulation in Lithuania does not provide for the possibility to perform all required pre-trial investigation actions remotely or to ensure that all parties to the proceedings (without excluding anyone) take part in the trial of criminal case by means of measures allowing remote transmission of audio and video. Relevant amendments to the Criminal Procedure Code have been drawn up and initiated with a view to introducing relevant legal provisions which would allow performance of pre-trial investigation actions without interruption or would provide for the possibility for all parties to criminal proceedings to take part in the trial via remote means.

There is a lack of means for remote work (laptops, equipment for video conferences).

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?

The quarantine regime has been announced in Lithuania since 16 March. Since 28 April the quarantine conditions have been mitigated so the Lithuanian courts started gradually resuming oral proceedings, however, the possibilities for remote participation of parties to the proceedings in court hearings as provided for in legal acts are still actively exploited (by means of centralised videoconference equipment of the judiciary system, video conference programmes such as Zoom, Microsoft Teams, telephone etc.). In cases where there is no possibility to ensure the participation of parties to the proceedings in court hearings remotely, only persons whose participation in a specific court hearing is mandatory are summonsed to court.

In accordance with the recommendations of the Judicial Council, when resuming oral proceedings the preference is given to those cases adjourned during the quarantine which, if further adjourned, would result in adverse outcomes (e.g. statute of limitations for delivering a judgment of conviction will expire or the rights to a speedy trial (especially for persons held in custody) may not be guaranteed) and also to the cases in the final stages of proceedings (e.g. where closing arguments of parties to the proceedings only remain).

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

Other. See answer to question No. 14.

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

The performance pre-trial investigation actions without interruption as well as relevant measures taken to ensure that all parties to criminal proceedings took part in trial proceedings remotely would be put in place by approving relevant amendments to the Criminal Procedure Code as specified in our answer to Question No 14.

In addition, prosecution service has received supplementary financing from the funds of Norwegian financial instruments for the purposes of acquiring laptops and equipment for video conferences.

Luxembourg

Questions générales

1. Une situation d'urgence ou comparable a-t-elle été décrétée pour lutter contre la pandémie de covid-19 ? (par quel type de dispositions [constitutionnelles, autres], sur quelle partie du territoire, pour quelle durée)

Suite à la pandémie de COVID-19, provoquée par le CORONAVIRUS, le gouvernement luxembourgeois a, en date du 18 mars 2020, déclaré l'état de crise.

Ce dernier est prévu et réglementé par la Constitution (Article 32, paragraphe 4) :

- L'état de crise suppose, à titre de première condition, soit une crise internationale, soit des menaces réelles pour les intérêts vitaux de tout ou partie de la population, soit un péril imminent résultant d'atteintes graves à la sécurité publique.
- Il suppose, à titre de seconde condition, le constat d'une urgence résultant de l'impossibilité pour le Parlement de légiférer dans les délais appropriés.
- Il autorise le gouvernement de prendre en toutes matières des mesures réglementaires, qui peuvent même déroger aux lois existantes.
- Ces mesures sont subordonnées à la condition qu'elles soient nécessaires, adéquates et proportionnées au but poursuivi et conformes à la Constitution et aux traités internationaux, dont la Convention de sauvegarde des droits de l'homme et des libertés fondamentales.
- L'état de crise ne peut être maintenu que pendant une durée maximale de dix jours, sauf s'il est prorogé par une loi qui doit être adoptée à la majorité constitutionnelle (donc à une majorité qui serait suffisante pour modifier la Constitution) qui est de 2/3 des députés.
- Cette prorogation peut avoir lieu pour une durée maximale de trois mois.
- Pendant l'état de crise, le Parlement ne peut être dissout, donc continue à siéger.
- A la fin de l'état de crise tous les règlements pris par le gouvernement au cours de cet état cessent leurs effets.

Suite à la déclaration de l'état de crise par le gouvernement en date du 18 mars 2020, le Parlement a, conformément à la Constitution, adopté en date du 24 mars 2020, à majorité constitutionnelle, une loi prorogeant de trois mois l'état de crise (qui, à défaut d'une telle loi, aurait, comme exposé ci-avant, dû prendre fin après dix jours).

En application de la loi de prorogation du 24 mars 2020, l'état de crise prendra, conformément à la Constitution, fin le 24 juin 2020.

L'état de crise s'applique à tout le territoire (qui, dans le cas du Luxembourg, est, il est vrai, peu étendu).

Au cours de l'état de crise, le gouvernement a géré la situation, que ce soit du point de vue sanitaire, économique ou social, par le biais de règlements. En tout une centaine de règlements de ce type a été adoptée. Le législateur a en parallèle adopté une dizaine de lois, visant notamment à accorder des régimes d'aide en faveur des entreprises en difficulté financière.

Comme le risque pandémique n'est à l'heure actuelle pas encore définitivement écarté, le Parlement est en train d'élaborer des lois aux fins de permettre de reconduire un certain nombre des mesures, de nature sanitaire, économique ou sociale, qui avaient été adoptées par le gouvernement par voie réglementaire au cours de l'état de crise.

2. La situation d'urgence a-t-elle eu des répercussions sur certains droits ? Lesquels ? (liberté de réunion, liberté de circulation, droit à la santé, liberté de conscience et de religion)

L'état de crise a provoqué, comme partout en Europe, d'importantes restrictions dans l'exercice de droits.

Dès le 16 mars 2020, donc avant même le début de l'état de crise le 18 mars 2020, le gouvernement a, sur base d'une loi en matière de maladie contagieuses adopté des mesures qui ont, suite à la déclaration de l'état de crise, été reconduites par des règlements adoptés dans ce cadre. Ces mesures avaient pour objet de

- suspendre toutes les activités de nature culturelle, sociale, festive, sportive et récréative, cette suspension implique implicitement les activités collectives à caractère religieux et les activités susceptibles d'être exercées dans l'exercice de la liberté de manifester,
- fermer les établissements relevant des secteurs culturel, récréatif, sportif, ainsi que les cafés et restaurants, sous réserve de services de « take out » et de livraison à domicile,
- fermer les activités commerciales et artisanales qui accueillent un public, sous réserve de certains commerces essentiels, tels que les magasins de vente de produits alimentaires, les pharmacies et les stations-service,
- obliger les établissements hospitaliers et les cabinets médicaux à limiter leurs activités à celles qui sont urgentes, non-déprogrammables et aiguës,
- interdire la circulation sur la voie publique, sauf dans certains cas de figure limitativement énumérés, notamment en vue de l'acquisition de denrées alimentaires, de produits pharmaceutiques ou des produits de première nécessité, du déplacement vers le lieu de travail pour l'exercice de l'activité professionnelle ou vers les structures de santé, pour des activités de loisir en plein air à titre individuel ou limitées aux personnes qui cohabitent ou en raison d'un cas de force majeure ou d'une situation de nécessité,
- maintenir des activités qui sont essentielles pour les intérêts vitaux de la population et du pays, dont, notamment, les services publics nécessaires au bon fonctionnement de l'Etat, telle la justice.

Le non-respect de ces restrictions était soumis à sanction pénale, constituée, pour les personnes physiques, d'une amende de 145.- euros à l'occasion de la première contravention et de 250.- euros à partir de la deuxième contravention. Le non-paiement de l'amende dans un délai de 30 jours impliquait, à condition que le Procureur d'Etat ait validé l'avertissement taxé, à un doublement de l'amende. A l'égard des commerçants, artisans et professionnels le non-respect des mesures de fermeture était susceptible de donner lieu à des amendes administratives d'un montant maximum de 4.000.- euros, qui était doublé en cas de nouvelle infraction.

Entre le 16 mars 2020 et le 4 mai 2020, s'agissant des lycées, et le 25 mai 2020, s'agissant des écoles primaires et des crèches, toutes les écoles et les crèches ont été fermées. La reprise des cours à partir des 4 et 25 mai 2020 a eu lieu de façon progressive et dans le respect de strictes conditions hygiéniques.

A partir du 20 mars 2020 et jusqu'au 20 avril 2020, les chantiers de construction et les activités artisanales hors atelier ont été interdites.

Depuis le 20 avril 2020 le port d'un masque ou de tout autre dispositif permettant de recouvrir le nez et la bouche d'une personne physique est obligatoire en toute circonstance dans les transports publics, pour les activités qui accueillent un public et à l'occasion de l'exercice de toute autre activité si une distance interpersonnelle de deux mètres ne peut pas être respectée, sauf s'agissant des personnes qui cohabitent. Le gouvernement a, à cet effet, mis gratuitement à disposition de toute personne résidant au Luxembourg et à toute personne non résidente qui y exerce son activité professionnelle, dans un premier temps, en avril 2020, cinq masques et dans un second, en mai 2020, cinquante masques.

Cette obligation s'applique également dans les salles d'audience des juridictions, sauf si la salle est équipée d'une installation permettant d'empêcher la propagation du COVID-19 dans la même mesure que le port d'un masque ou d'un dispositif équivalent.

Les cabinets médicaux ont pu rouvrir à partir du 4 mai 2020, sous réserve du respect de conditions hygiéniques strictes.

Les restrictions à la liberté de circulation ont été levées à partir du 11 mai 2020. Depuis lors la circulation sur la voie publique n'est plus restreinte, sous réserve que, du 11 mai au 10 juin, les rassemblements à caractère privé organisés à domicile devaient se limiter à un nombre maximal de six personnes s'ajoutant aux personnes vivant déjà dans le même foyer et que les regroupements en plein air dans un lieu public étaient limités à vingt personnes. Dans le cadre de ces rassemblements l'obligation du port d'un masque était à respecter si une distance interpersonnelle de deux mètres ne pouvait pas être respectée. A partir du 10 juin 2020 les restrictions pour des rassemblements accueillant jusqu'à vingt personnes ont été levées.

A partir du 27 mai 2020, les terrasses des restaurants et cafés sont à nouveau ouvertes, sous réserve du respect de règles hygiéniques et les restaurants, bars et cafés eux-mêmes l'ont été, sous le respect de ces mêmes règles, à partir du 29 mai 2020.

A partir du 29 mai 2020, les rassemblements accueillant au-delà de vingt personnes, à l'occasion d'événements publics exercés dans un établissement ou dans un lieu ouvert, y compris les cérémonies religieuses, ont été à nouveau autorisés sous la double condition de la mise à disposition de places assises assignées aux personnes qui assistent à l'événement et le respect d'une distance de deux mètres entre les personnes, sans que le port du masque soit obligatoire (ce port étant, en revanche, obligatoire pour le personnel encadrant et pour les participants lorsqu'ils ne sont pas assis). La limitation des places assises ne s'applique pas pour l'exercice de la liberté de manifester ni à l'occasion de cérémonies de funérailles à l'extérieur.

Aux fins de mitiger les effets économiques et sociales de ces mesures, le gouvernement et le Parlement ont notamment adopté un programme d'aides directes à l'économie, mis en place un régime de chômage « coronavirus, force majeure » dans le cadre duquel l'Etat indemnise à raison de 80 % de leur salaire les salariés d'entreprises dont les activités ont dû être arrêtées par suite des mesures prises dans le cadre de l'état de crise, tout en obligeant les employeurs à ne pas licencier les salariés bénéficiant de ce régime et un régime de congé pour raisons familiales.

3. Dans le cas où des droits auraient été suspendus ou limités pour des motifs sanitaires, quelles exigences ont été nécessaires (légalité, proportionnalité, bien-

fondé des mesures, nécessité) et quels principes (égalité, non-discrimination) et quelles limites ont dû être respectés (fouilles, restrictions liées aux médias, partis politiques, etc.) ?

Il est renvoyé à la réponse à la question n° 2. Les mesures y exposées ont été adoptées sur base des pouvoirs spéciaux conférés par la Constitution au gouvernement dans un état de crise. Or, la Constitution exige, comme rappelé ci-avant dans le cadre de la réponse à la question n° 1, que les mesures ainsi adoptées soient nécessaires, adéquates et proportionnées et qu'elles respectent la Constitution et le droit international (Article 32, paragraphe 4, de la Constitution).

Le gouvernement a donc été obligé de respecter ces critères dans l'adoption des mesures. Eu égard aux dispositions constitutionnelles relatives à l'état de crise, il avait compétence de les adopter sans devoir les soumettre au préalable au Parlement ou au Conseil d'Etat. Ce pouvoir conféré au gouvernement d'adopter des mesures sans contrôle préalable par d'autres autorités ou institutions s'explique et se justifie au regard de l'urgence qui est sous-jacent à l'état de crise et dont le bien-fondé a été confirmé par le Parlement, à majorité constitutionnelle, par sa loi du 24 mars 2020 prorogeant l'état de crise pendant trois mois. Ce pouvoir trouve son contreponds dans le caractère temporaire des mesures, qui cessent leurs effets de plein droit à la fin de l'état de crise.

Il est à préciser que la pertinence des mesures et leur portée n'ont guère été critiquées, y compris par l'opposition parlementaire, si ce n'est pour certaines questions concernant leurs modalités de mise en œuvre. Ces critiques, assez limitées, ont porté, par exemple, sur la date de la reprise des activités des écoles et des mesures sanitaires accompagnant cette reprise, sur les restrictions des visites de proches aux malades hospitalisés, aux mourants ou aux résidents de Centres intégrés pour personnes âgées ou sur la persistance au-delà du 29 mai 2020 de la fermeture des aires de jeux pour enfants (ces aires ont été ouvertes à nouveau le 10 juin).

La relative rareté des critiques s'explique en partie par le succès manifeste de la stratégie sanitaire du gouvernement, qui a contribué à permettre au Luxembourg de réduire très rapidement et d'une façon spectaculaire les infections nouvelles au COVID-19 (qui avaient augmenté d'une façon exponentielle en début de crise, laissant présager le pire), d'éviter une surcharge des établissements hospitaliers et, contrairement à certains autres pays, de prévenir une surmortalité. Le Luxembourg n'a ainsi pas dû subir la situation en partie très dramatique qui se présenta, à quelques kilomètres, en Alsace ou en Lombardie.

Il est assez difficile d'évaluer dans l'abstrait le caractère proportionné des mesures. Si celles-ci ont été, de par leur objet et leur portée, incisives du point de vue des droits individuels, cette relative sévérité est à mettre en balance avec le danger auquel elles répondaient avec succès.

Les mesures ont été assez comparables à celles applicables en Allemagne, quoi qu'elles aient été sans doute quelque peu plus sévères que ces dernières. Elles ont, en revanche, été moins sévères que celles appliquées en France et en Belgique, sans parler de l'Italie et de l'Espagne.

Le caractère éventuellement disproportionné des mesures n'a jusqu'à présent pas fait l'objet de recours à caractère juridictionnel, contrairement à d'autres pays, comme l'Allemagne.

Il est à préciser que les mesures, pour drastiques qu'elles aient été, ont été très largement acceptées et respectées par la population, qui les a considérées comme un mal nécessaire,

ayant manifestement été traumatisée par les images, provenant du Grand-Est français ou de l'Italie du Nord, d'hôpitaux débordés et de cortèges incessants de corbillards.

Les limites propres aux mesures ont été exposées ci-avant dans le cadre de la réponse à la question n° 2.

S'agissant plus particulièrement de la liberté de presse, celle-ci n'a à aucun moment été mise en cause. Le gouvernement a tenu des conférences de presse régulières, la seule restriction applicable ayant été de limiter le nombre des journalistes admis dans la salle, tout en admettant que ces derniers posent des questions au nom de leurs collègues reliés par Internet. Devant les juridictions, la publicité des débats n'a à aucun moment été restreinte, de sorte que la presse restait libre d'assister aux audiences.

S'agissant de la liberté de manifester et de la liberté religieuse, il est vrai que l'exercice de celles-ci a été fortement réduite entre le 16 mars et le 29 mai 2020, les restrictions ayant cependant été levées à ce moment, sous réserve du respect de certaines règles sanitaires, évoquées ci-avant.

4. A-t-on relevé une quelconque forme de discrimination, y compris de la part de particuliers, à l'encontre de certains groupes (personnels soignants, minorités raciales et ethniques, etc.), de discours de haine, de racisme, de xénophobie, ou des agressions, des retours forcés de réfugiés et de demandeurs d'asile, des mauvais traitements sur des étrangers et des migrants, ou encore des violences sexuelles ou fondées sur le genre ?

La période du « lock-down » a été caractérisée au Luxembourg par un grand calme de la population, qui s'explique sans doute par une sorte d'état de choc émotionnel dû aux circonstances exceptionnelles et aux images traumatisantes provenant de pays limitrophes. Aucune manifestation de discrimination n'a pu être constatée, que ce soit de la part des autorités étatiques ou des particuliers.

Les autorités ont notamment pris soin, pour des motifs sanitaires, des sans-abris en élargissant les conditions d'accueil des foyers destinés à les héberger.

Il n'y a pas eu de retours forcés de demandeurs d'asile. Tout au contraire, le Luxembourg a accepté en pleine période de « lock-down », en date du 15 avril 2020, d'accueillir des mineurs d'âge non-accompagnés, âgés entre 11 et 15 ans, en provenance de camps de réfugiés grecques à Lesbos, Samos et Chios.

La période n'a été caractérisée ni par une recrudescence des discours de haine, ni par une augmentation des violences domestiques.

Questions concernant les fonctions habituelles des ministères publics, dans le cas particulier d'une situation d'urgence

5. Comment le ministère public a-t-il travaillé en situation d'urgence ? (contraintes imposées sur les ministères publics : télétravail, possibilités limitées de se rendre sur le lieu de travail, d'utiliser les équipements correspondants, d'entrer en contact avec certains professionnels, etc.)

Le ministère public qui fait, ensemble avec les juridictions, partie des services publics nécessaires au bon fonctionnement de l'Etat, dont le maintien des activités a été réservé par les règlements adoptés dans le cadre de l'état de crise, a, bien entendu, continué à tout moment de la crise à fonctionner et à exercer ses fonctions.

Aux fins de limiter le risque sanitaire et toute rupture de service à cause de mises en quarantaine massives d'agents par suite de contagions, il a été décidé dès le début de la crise, en date du 13 mars 2020, de limiter dans toute la mesure du possible la présence des magistrats et du reste du personnel au bureau et de prévoir des plans de rotation de façon à éviter tout contact physique inutile, générateur de risque de contagion et de quarantaine.

Le recours au télétravail a été largement préconisé. A cette fin, il a été veillé, dans la mesure du possible, d'équiper le personnel des outils techniques nécessaires à cette fin (ordinateurs portables, possibilité d'un accès à distance aux dossiers et aux données, recours privilégié à des vidéoconférences). Les exceptions aux restrictions à la liberté de circulation permettaient cependant en droit aux magistrats et aux autres collaborateurs du ministère public de rejoindre à tout moment leurs bureaux en cas de besoin.

Outre ces mesures d'organisation internes, le gouvernement a, en concertation avec les autorités judiciaires, dont le ministère public, et le Barreau, mis en place des procédures spéciales, notamment en matière pénale, de façon à limiter les contacts physiques :

- Les incidents de procédure en matière pénale, telles les demandes de mise en liberté provisoire, les demandes en nullité de procédure, les demandes en restitution d'objets saisis, les décisions rendues sur la remise de personnes dans le cadre du mandat d'arrêt européen ou sur des demandes d'extradition, ainsi que les décisions en matière de renvoi ou de non-lieu après instruction préparatoire (qui sont en droit commun jugés en première instance par procédure écrite et en appel par procédure orale) sont jugés dans le cadre d'une procédure exclusivement écrite, évitant toute audience, toute plaidoirie et tout transport de détenus. La procédure orale a été, en revanche, maintenue pour ce qui concerne les interrogatoires et auditions devant le juge d'instruction et la procédure devant les juridictions pénales de fond.
- Les appels contre les jugements en matière pénale, qui, en droit commun, sont à relever par déclaration par l'appelant ou par son avocat au greffe, peuvent être formés par tous moyens écrits, y compris par voie de courrier électronique.
- Le juge d'instruction peut notifier des ordonnances de perquisition et de saisie aux fins de saisie de documents ou de données stockées, traitées ou transmises dans un système de traitement ou de transmission automatisé de données à la personne auprès de laquelle l'ordonnance est à exécuter par lettre recommandée avec avis de réception, par télécopie ou par courrier électronique (donc non nécessairement par notification par officier de police judiciaire, impliquant le déplacement de ce dernier et, partant, un risque de contagion). La personne qui se voit notifier l'ordonnance est, sous peine d'amende, tenu d'y prêter son concours et de communiquer les documents ou données par courrier, télécopie ou courrier électronique dans le délai imparti par le juge d'instruction (ce qui dispense les officiers de police judiciaire de se déplacer aux fins de saisir formellement les documents et saisies). Cet allègement de procédure, qui permet d'éviter des contacts physiques, est pertinent dans les cas fréquents de perquisitions et saisies exécutées auprès de professionnels du secteur financier au sujet de documents ou données de leurs clients et lorsque, eu égard aux circonstances de la cause, il est manifeste que le professionnel coopérera (ce qu'il doit d'ailleurs, lorsqu'il s'agit de mesures visant des tiers, au regard de ses obligations professionnelles et de ses

obligations légales au titre de la prévention du blanchiment et du financement du terrorisme).

- Cette même forme allégée de notification et d'exécution est prévue en matière de saisie de fonds ou de biens. Elle est pertinente dans le cadre de l'exécution de telles saisies auprès des professionnels évoqués ci-avant et visant des fonds et biens de leurs clients.
- Les auditions de témoins par les officiers ou agents de police judiciaire peuvent avoir lieu par des moyens de télécommunication audiovisuelle ou par audioconférence (de façon à minimiser les contacts physiques entre le témoin et les fonctionnaires de police).
- L'assistance par un avocat d'une personne détenue, que ce soit au cours d'interrogatoires ou dans le cadre de rencontres en privé peut avoir lieu, de l'accord de la personne détenue et de son avocat, par l'intermédiaire d'un moyen de communication électronique, y compris téléphonique, dans des conditions garantissant la confidentialité des échanges. Il s'agit là encore de favoriser une réduction des contacts physiques, susceptibles d'être source de contagion et d'infection.
- Aux fins de limiter les risques de contagion dans le cadre des établissements pénitentiaires, les conditions d'exécution fractionnée de peines privatives de liberté ont été assouplies, de façon à permettre le recours à de tels fractionnements pour des peines privatives de liberté ou des reliquats de peines privatives de liberté inférieures ou égales à trois ans (alors qu'en droit commun, auquel il est ainsi dérogé, de tels fractionnements de peine ne se conçoivent que pour des peines ou reliquats de peine inférieurs ou égaux à un an).

Il est, à ce stade, envisagé, dans le cadre d'un projet de loi, de maintenir ces règles procédurales après la fin de l'état de crise, le 24 juin 2020, jusqu'à, provisoirement, le 31 décembre 2020.

Le Gouvernement a également, dans le cadre d'un règlement du 25 mars 2020, suspendu tous les délais prescrits dans les procédures devant toutes les juridictions, y compris pénales. Cette suspension avait pour effet d'empêcher les jugements de devenir définitifs et de créer une incertitude sur le sort des procédures pendantes. Au regard de ces difficultés, il y a été mis fin en matière pénale en date du 17 avril 2020 (si ce n'est pour ce qui est de la matière des contraventions et de la voie de recours de l'opposition, susceptible d'être formée par une personne qui a été jugée en absence ; dans ces matières résiduelles, la suspension prendra fin à l'issue de l'état de crise). Cette parenthèse, qui était source d'incertitude, a donc été assez rapidement levée, après trois semaines.

6. Comment les personnes soupçonnées d'une infraction pénale et placées en détention provisoire ont-elles été gérées ? L'article 5, paragraphe 3, de la Convention européenne des droits de l'homme exige un jugement dans un délai raisonnable ou une libération pendant la procédure. Or lorsque les tribunaux fonctionnent au ralenti, les procès n'ont pas lieu. Par conséquent, les personnes soupçonnées d'une infraction pénale ont-elles été libérées de la détention provisoire ? (même si elles présentent un danger éventuel). Ou bien les motifs et les délais de garde à vue ont-ils été interprétés différemment, compte tenu des circonstances exceptionnelles, autrement dit, le « délai raisonnable » au sens de l'article 5, paragraphe 3, de la CEDH a-t-il été allongé ?

La justice pénale a continué à fonctionner au Luxembourg tout au long de l'état de crise :

- Si les nécessités de la poursuite pénale le commandaient, des détentions préventives ont été ordonnées.

- L'état de crise n'a pas mis en cause le droit commun de tout détenu préventif de demander sa mise en liberté provisoire. Ces demandes ont été examinées et tranchées dans les mêmes délais qu'avant la crise.
- Les juridictions d'instruction ont, tout au long de la crise, continué à décider, après clôture de l'instruction préparatoire, donc après la procédure d'instruction dirigée par le juge d'instruction, si les charges constatées contre le suspect étaient suffisantes pour justifier un renvoi devant la juridiction pénale de fond.
- Ces juridictions pénales de fond ont, tout au long de la crise, continué à fonctionner notamment et prioritairement pour juger des affaires concernant des détenus préventifs.

Par analogie à un corps qui, en cas de crise aiguë, se concentre sur le maintien de ses fonctions vitales, une priorité absolue a été portée en matière pénale aux poursuites concernant des détenus. Si des affaires moins urgentes ont été décommandées et si le nombre des audiences a été réduit, il a, à tout moment, été veillé à évacuer les poursuites concernant des détenus.

Il est à préciser que dès le début de la crise, c'est-à-dire à partir du 16 mars 2020, les services judiciaires ont réduit leurs activités, donc n'ont continué à fonctionner que dans un mode de « service réduit ». Cette réduction s'est justifiée par le souci de prévenir tout risque de paralysie du service judiciaire susceptible d'être provoquée par des contaminations et/ou des mesures de quarantaines affectant des services entiers. Aux fins de prévenir ce risque, il a été décidé de limiter la présence du personnel sur les lieux de travail par un système de roulement, le reste du personnel étant invité à avoir recours au télétravail. Il s'ajoute que les disponibilités du personnel ont été réduites par suite, d'une part, de la nécessaire sauvegarde des intérêts de personnes vulnérables à la maladie et, surtout, d'autre part, des impératifs familiaux de ceux des collaborateurs qui sont des parents de jeunes enfants qui, suite à la fermeture des écoles et des crèches, ensemble avec le recours par les écoles à des cours à distance, devaient prendre en charge la garde et le suivi scolaire de leurs enfants et étaient de ce chef forcés de recourir au télétravail.

Ce mode de « service réduit » a perduré jusqu'au 4 mai 2020. A partir de ce moment, le nombre d'audiences pénales de fond a repris son rythme de croisière d'avant la crise. Eu égard aux restrictions à la liberté de circuler dans les pays limitrophes du Luxembourg et à la fermeture des frontières, les audiences ont dû se limiter dans un premier temps à des poursuites pénales dirigées contre des personnes résidant au Luxembourg, par opposition aux personnes résidant à l'étranger. A partir du 2 juin 2020, les services fonctionnent à nouveau à leur rythme d'avant la crise.

Aux fins d'évacuer le résidu accumulé par suite du ralentissement provoqué par la crise, les autorités judiciaires ont décidées de leur propre initiative de reporter la date de début du service réduit estival (qui dure en principe du 16 juillet au 16 septembre) au 3 août 2020.

Ces restrictions de service n'ont cependant, comme exposé ci-avant, à aucun moment mis en cause l'évacuation des affaires de détenus préventifs.

Ainsi qu'il a été évoqué dans le cadre de la réponse donnée à la question n° 5, les demandes de mise en liberté provisoire ont été jugées dans le cadre d'une procédure exclusivement écrite. Le détenu n'a donc, pour l'instant, pas la possibilité de comparaître en personne devant le juge décidant de sa mise en liberté.

Eu égard à la crise et au souci d'éviter, dans ce contexte, tout risque de surpopulation carcérale, le ministère public a, conclu dans une mesure plus large que d'habitude, à des mises en liberté provisoires sous contrôle judiciaire. Il a été partiellement suivi par les juridictions.

Dans ce même souci, le ministère public a veillé à réduire le recours à la détention préventive.

7. Le ministère public est-il intervenu d'une façon ou d'une autre pendant la situation d'urgence (à savoir, dans le cas du Portugal, le Bureau du Procureur général a été en session permanente pendant toute la durée de la situation d'urgence afin de défendre le principe de légalité et les droits du citoyen) ?

Le ministère public a été directement associé à l'élaboration des règlements d'urgence adoptés en matière de procédure pénale, évoqués ci-avant dans la réponse à la question n° 5, ainsi qu'à la définition des sanctions applicables aux violations aux restrictions aux libertés dans le cadre de la crise. Il est de même associé à l'élaboration des projets de loi visant à proroger certaines des mesures après l'état de crise, qui cessera, comme rappelé, le 24 juin 2020.

Il a également été associé à la présentation publique des restrictions aux libertés au début de l'état de crise.

8. Des équipes de réponse à la crise ont-elles été créées au sein du ministère public et, si oui, à quel échelon (central, régional, local) ?

La hiérarchie du ministère public (du Parquet général du Grand-Duché et des deux Parquets de tribunal d'arrondissement qui composent le ministère public au Luxembourg) a été en constante concertation sur la marche à suivre, qu'il s'agisse de l'organisation des services, de la mise en œuvre de la procédure, de l'élaboration des règlements d'urgence ou de l'évocation de difficultés survenues. Les contacts ont été quotidiens et ont eu lieu à toute heure. La charge de travail supplémentaire a été considérable.

Cette concertation, pour constante et intense qu'elle était, restait informelle. Il n'y a donc pas eu de constitution de structures bureaucratiques nouvelles. Il a, en revanche, été veillé à faciliter les contacts électroniques entre les cadres concernés.

Ainsi qu'il a déjà été évoqué ci-avant, sous n° 5, il a été veillé à organiser les services de telle sorte à minimiser les risques sanitaires, notamment par un roulement des personnes se trouvant au bureau et en télétravail.

9. Des directives ont-elles été émises à l'intention du ministère public pour faire face à la situation d'urgence et si oui, à quel échelon ? Quelles mesures ont été prises concernant les changements d'affectation des procureurs (pour s'occuper d'affaires urgentes ou pendant la période où la plupart des tribunaux ont été fermés ou ont vu leur activité significativement réduite) et concernant le remplacement des procureurs contaminés ?

Le ministère public est, en fait, au Luxembourg indépendant. Le Gouvernement s'abstient traditionnellement à intervenir. Le ministère public a donc lui-même élaboré les modalités de réaction à la crise en ce qui concerne ses services.

Il est cependant à préciser que le Ministère de la Justice a réuni en début de crise l'ensemble des autorités judiciaires pour discuter des grandes lignes de la réponse à donner, notamment le

recours au service réduit. Ce dernier doit, en effet, être autorisé par règlement à adopter par le Ministre. Cette décision a été prise en concertation avec les autorités judiciaires, dont le ministère public.

La gestion de la crise a été, par ailleurs concertée entre le ministère public et les juridictions.

Au sein de chacune des composantes du ministère public (c'est-à-dire le Parquet général du Grand-Duché de Luxembourg, le Parquet du tribunal d'arrondissement de Luxembourg et le Parquet du tribunal d'arrondissement de Diekirch) le chef hiérarchique respectif a décidé, en concertation avec ses collaborateurs, du mode d'organisation de son service, donc du plan de service, du roulement du personnel, de la présence au bureau ou du recours au télétravail, etc.

Le ministère public a eu un seul cas de magistrat ou de fonctionnaire infecté. Le magistrat concerné a été, sans difficulté, remplacé par ses collègues au cours de sa quarantaine. Les règles de distanciation, les plans de roulement, l'encouragement du télétravail avaient évidemment pour but d'éviter toute interruption de service par suite de contaminations/quarantaines massives. Cette situation ne s'est heureusement présentée à aucun moment.

10. Une coopération spéciale avec d'autres services de l'État a-t-elle été mise en place (avec la police, les tribunaux, etc.) ?

Tout au long de la crise les chefs hiérarchiques des différents services judiciaires, y compris les juridictions, ont été en constante concertation.

Cette même concertation a existé entre le ministère public et la police.

11. Le ministère public a-t-il conduit des enquêtes ou supervisé des enquêtes menées par la police ou d'autres autorités d'instruction pour que les droits de l'homme soient protégés pendant l'état d'urgence ?

Le contrôle et les sanctions des restrictions aux libertés consécutives à l'état de crise n'ont pas donné lieu à des contestations particulières. En fait, les règles imposées ont été massivement respectées. Les cas de non-respect ont été rares. Les services de police avaient, de par leur Ministère de tutelle, pour instruction d'appliquer les règles avec bon sens.

Vu l'absence de difficultés d'exécution constatées, la nécessité d'enquêtes ne s'imposait pas. Il est à préciser que la Police grand-ducale est contrôlée au Luxembourg par une Inspection générale de la Police. D'éventuelles plaintes sont à adresser à celle-ci, qui est en charge de les enquêter.

12. Le ministère public a-t-il opté pour des solutions de substitution aux poursuites afin d'éviter la surpopulation des lieux de détention en situation d'urgence ?

Les lieux de détention constituent des endroits propices à la propagation du COVID-19 et regroupent de surcroît une forte proportion de personnes vulnérables. Il importe dès lors d'éviter dans toute la mesure du possible une surpopulation de ces lieux tant que la pandémie perdure.

Le ministère public a opté de deux points de vue pour des solutions de substitution.

D'une part, il s'est efforcé de limiter le recours à la détention préventive aux cas où ce recours s'imposait manifestement au regard des circonstances de la cause. Il a par ailleurs conclu dans ce même esprit dans toute la mesure du possible à des mises en liberté sous contrôle judiciaire dans le cadre de ses réquisitoires dans les demandes de mise en liberté provisoire.

D'autre part, le Parquet général du Grand-Duché, qui est en charge de l'exécution des peines, a veillé de favoriser la libération de condamnés, notamment en ayant recours au fractionnement de peines, dont le domaine a été étendu, comme rappelé ci-avant dans le cadre de la réponse à la question n° 5, par les règlements pris dans le cadre de l'état de crise.

13. L'action du ministère public a-t-elle été soumise à des modalités particulières pendant la situation d'urgence pour ce qui concerne :

Au Luxembourg, le ministère public est en fait indépendant, même s'il ne l'est pas en droit. Il n'a donc pas été le destinataire de directives de politique criminelle dans le contexte de la pandémie.

Du point de vue procédural, certaines dérogations ont été introduites. Ces dérogations au droit commun ont été présentées ci-avant dans le cadre de la réponse donnée à la question n° 5. Elles présentent le point de commun de permettre de maintenir l'activité judiciaire, tout en évitant les risques de contagion par une diminution des contacts physiques.

- **l'institution des poursuites (en particulier dans les affaires urgentes, ou dans des affaires liées à l'état d'urgence, par exemple désobéissance aux forces de l'ordre, personnel soignant, intervention dans des cas de violence domestique) ;**

Ainsi qu'il a été vu ci-avant dans le cadre de la réponse à la question n° 2, les restrictions à la liberté de circulation et aux autres libertés dans le cadre de la crise, ont été sanctionnées par des amendes sous forme d'avertissements taxés établis par les services de police et donnant, en cas de non-paiement, lieu à un contrôle de la part du ministère public. Vu que les règles du « lock-down » ont été en règle très générale bien suivies et que leur mise en œuvre par les services de police a été effectuée avec bon sens, le contentieux y relatif est fort réduit. Dans ce cadre il appartiendra aux juridictions de trancher les éventuelles contestations.

- **la conduite des poursuites avant le procès, en particulier si les tribunaux ont significativement réduit leur activité (les tribunaux ont-ils maintenu leur activité, même en mode dégradé ?) ;**

Il a été vu ci-avant que les juridictions pénales, y compris les juridictions d'instruction et les juges d'instruction, ont poursuivi leurs activités tout au long de la crise, et ce plus particulièrement dans toutes les affaires impliquant des détenus préventifs. Les poursuites avant procès ont, dans ces circonstances, suivi leur sort habituel, même si, il est vrai, par suite du contexte de crise et de l'institution d'un service réduit, l'évacuation a été moins efficace qu'en période normale.

- **la garantie que les victimes et les témoins et d'autres participants vulnérables ont été assistés et/ou protégés de manière efficace, et que les droits des prévenus/défendeurs ont été respectés tout au long de la procédure ;**

Les règles procédurales évoquées ci-avant dans le cadre de la réponse à la question n° 5 ont contribué à minimiser les risques de contagion dans le cadre de la procédure pénale, tout en sauvegardant les droits de prévenus.

- les recours contre les décisions des tribunaux ;

Les recours contre les décisions ont été maintenus.

Ainsi qu'il a été précisé ci-avant sous n° 5, les délais de recours ont été suspendus en matière pénale du 25 mars au 17 avril 2020. A partir de cette date, les délais de recours ont commencé à nouveau à courir.

Comme relevé ci-avant sous n° 5, les recours sont susceptibles d'être formés d'une façon simplifiée. Les appels peuvent être formés non seulement par déclaration au greffe (ce qui suppose un contact physique et le maniement de documents), mais également par voie électronique.

Les recours portant sur des incidents de procédure pénale (telles les demandes de mise en liberté provisoire) sont jugés par procédure écrite, sans audience. En revanche, les recours contre les jugements pénaux au fond continuent à donner lieu à une audience.

- la supervision de l'exécution des décisions de justice et l'application, si possible, de mesures non privatives de liberté ou la réduction des peines de prison (pour éviter la surpopulation des lieux de détention et la propagation de la maladie) ;

Comme rappelé ci-avant sous n° 5, il a été veillé de prévenir tout risque de surpopulation carcérale en favorisant les alternatives à la détention.

- la mise en œuvre d'une stratégie nationale en matière d'infraction (c'est-à-dire lorsque la désobéissance à des directives légales de la police et du personnel soignant concernant le confinement risquait d'aggraver la propagation de la maladie) ;

Comme rappelé ci-avant sous n° 9 et n° 13, au Luxembourg le ministère public est en fait indépendant. Il n'est donc pas le destinataire de directives de politique pénale. Il a également été précisé que les restrictions aux libertés aux fins de combattre la pandémie ont été bien accueillies et bien respectées, de sorte que la question d'une stratégie de lutte contre la désobéissance ne s'est pas posée.

- l'exécution de fonctions, le cas échéant, en dehors du système de justice pénale (c'est-à-dire : le confinement peut augmenter le risque que certaines personnes, notamment les enfants, soient témoins ou victimes de violences et d'abus ; le chômage ou l'application de mesures de limitation des déplacements et de respect de la distance physique peut être un prétexte pour manifester de la discrimination ou de la violence à l'encontre de certains groupes, notamment les étrangers et les groupes vulnérables ; respect du code du travail et de la protection sociale afin de réduire au minimum la contamination des travailleurs et des employés) ?

Le ministère public et la police sont restés vigilants en ce qui concerne des risques éventuels d'une recrudescence de la violence conjugale ou de mauvais traitements d'enfants par suite du confinement. Ces craintes ne se sont toutefois pas avérées être fondées. Les infractions de ce

genre n'ont pas augmenté. Les stratégies de lutte contre ces phénomènes en place avant la crise ont été maintenues au cours de celle-ci.

Questions concernant les éventuelles nouvelles fonctions des ministères publics en raison d'une situation d'urgence

14. Le ministère public a-t-il eu de nouvelles fonctions ou ses fonctions ont-elles été étendues en raison de la situation d'urgence, en ce qui concerne par exemple :

- **la supervision du maintien de l'ordre public et de la sécurité ;**

Le ministère public n'a pas eu de nouvelles fonctions en matière de supervision du maintien de l'ordre public et de la sécurité. Ces fonctions sont, dans le système luxembourgeois, confiées aux services de police.

- **la supervision de l'application de mesures d'urgence telles que le confinement de la population ou la fermeture des espaces publics ;**

Idem.

- **la supervision de mesures de protection générales de la population et du maintien des services concernés, notamment en faveur des plus vulnérables pendant et après la pandémie (femmes, enfants, personnes âgées, personnes vivant dans des institutions, personnes privées de liberté, placées en détention ou confinées, personnes déplacées, sans-abri, migrants, réfugiés, habitants de taudis, etc.) ;**

Sous réserve de la supervision de ses propres services et de sa responsabilité dans le cadre de la procédure pénale, y compris l'exécution des peines, le ministère public ne s'est pas vu confier de nouvelles fonctions de ce genre.

- **le contrôle des mesures réglementaires visant à empêcher la recherche du profit sur des denrées alimentaires, des produits d'hygiène et des médicaments et fournitures essentiels ;**

Idem.

- **la réduction du risque de stigmatisation des groupes vulnérables, notamment des personnes contaminées par le coronavirus, et de comportement néfaste à leur endroit ;**

Idem.

- **le contrôle du respect des droits des personnes placées en quarantaine ou confinées ;**

Dans le cadre d'un projet de loi visant à réglementer le traitement du COVID-19 après la fin de l'état de crise, le 24 juin 2020, il est prévu qu'il appartiendrait au procureur d'Etat près le tribunal d'arrondissement de décider d'une hospitalisation forcée d'une personne infectée ou d'une personne de contact lorsque celle-ci refuse de se soumettre à la mesure de quarantaine décidée par les services sanitaires ou ne dispose pas de localités adéquates à cette fin. Cette disposition donne actuellement lieu à des discussions.

- les échanges avec les médias et la visibilité du travail du ministère public dans le contexte de l'état d'urgence ;

Le ministère public a veillé à communiquer avec la presse aux fins de rendre attentif sur la continuité du service de la justice et à illustrer et établir la réalité de cette continuité de service.

- la communication d'informations à la population sur les mesures d'urgence et sur les sanctions correspondantes en cas de non-respect ?

Madame la Procureur général d'Etat a participé à une conférence de presse qui a été organisée par le Ministre en charge de la police au début de l'état de crise pour attirer l'attention sur les sanctions susceptibles d'être appliquées en cas de non-respect des restrictions décidées, notamment à celles relatives à la liberté de circulation.

Questions concernant les difficultés rencontrées par les ministères publics en situation d'urgence

15. Quelles sont, selon vous, les principales difficultés rencontrées par les ministères publics pendant une situation d'urgence et à la sortie de cette situation/pendant le retour à la normale ?

L'état de crise a entraîné une période de service réduit, ensemble avec une limitation de la disponibilité des services de police (qui étaient concernés par des absences pour cause notamment de congé familial et affectés prioritairement au contrôle des restrictions imposées aux fins de combattre la pandémie). La bonne évacuation des dossiers et des affaires en a évidemment souffert. Des retards se sont accumulés. Ils seront difficiles à rattraper, même si la période estivale de service réduit a été raccourcie de deux semaines aux fins de permettre de réduire certains retards. Un certain nombre de procès d'envergure a dû être déplacé. La crise fournit des prétextes supplémentaires pour certains prévenus et leurs avocats de retarder le cours des procédures. La crise, même si, dans l'ensemble, elle a été bien gérée, provoque inexorablement des retards qui ne pourront être corrigés dans l'immédiat.

Ces retards concernent essentiellement les audiences des juridictions pénales de fond. En revanche, les incidents de procédure et le contentieux de l'instruction préparatoire ont été évacués à rythme normal, dans le cadre de procédures écrites. La réduction de la disponibilité des services de police a également prolongé la durée de traitement de certaines enquêtes et instructions leur confiées.

16. Par exemple, le retour à la « vie normale » a-t-il été préparé d'une façon ou d'une autre ? Dans les États membres où les procédures judiciaires ont été suspendues pendant plusieurs mois, le traitement des affaires a pris un retard considérable qu'il va falloir gérer. Est-ce au procureur qu'il revient de définir dans quel ordre ces affaires doivent être traitées ? Des mesures spéciales seront-elles prises (à savoir, procès pendant les week-ends ou paiement d'heures supplémentaires aux procureurs) ? Y a-t-il un risque que les affaires moins graves soient classées sans suite ou que des poursuites soient abandonnées ?

Il appartient au ministère public de décider quelles affaires seront fixées devant les juridictions de fond pour être jugées. Il lui appartient dès lors de déterminer selon quelles priorités ces fixations ont lieu. Il s'entend que les affaires impliquant des détenus préventifs présentent de ce point de vue le rang prioritaire le plus élevé.

Ainsi qu'il a été relevé ci-avant sous n° 6 et 15, les autorités judiciaires ont-elles-mêmes décidées de réduire la période estivale de service réduit de deux semaines aux fins de favoriser l'évacuation des affaires.

Comme précisé ci-avant n° 15, le retard concerne surtout les audiences des juridictions de fond (dont le nombre a été fortement réduit au cours de l'état de crise, à partir du 16 mars 2020, même s'il a progressivement repris à partir du 4 mai et a pris son rythme de croisière à partir du 2 juin 2020). Le retard concerne, en revanche, moins les enquêtes et instructions en cours (même si, eu égard à une moins grande disponibilité des services de police au cours de la période du « lock-down », du 16 mars au 11 mai, l'évacuation de ces dossiers a également pris un retard).

Le ministère public est fermement décidé de ne pas abandonner des affaires moins graves aux fins de rattraper le relatif retard accumulé.

17. Le ministère public rencontre-t-il des difficultés pendant une situation d'urgence et à la sortie de cette situation/pendant le retour à la normale, en ce qui concerne :

- **l'indépendance et la responsabilité des procureurs dans le contexte des situations d'urgence ;**
- **la déontologie et la conduite professionnelle des procureurs pendant et après les situations d'urgence ;**
- **la formation des procureurs sur les conditions de travail en situation d'urgence (par exemple, dans le cadre du télétravail) et sur la façon de se protéger du coronavirus ;**
- **la création d'équipes pluridisciplinaires, lorsque cela est nécessaire (avec le personnel soignant par exemple) ;**
- **le soutien aux groupes vulnérables, qui, en toute logique, seront les plus touchés par les conséquences économiques de la pandémie (chômage, aggravation des conditions de travail, répercussions sur les droits économiques, sociaux et culturels en général, etc.) ;**
- **l'aide et la coopération internationales, compte tenu des conséquences de la pandémie et de la nécessité d'une coopération renforcée entre ministères publics (mise en commun de bonnes pratiques) ?**

La question soulève certaines difficultés de compréhension.

Le ministre public n'a pas rencontré de difficultés en ce qui concerne l'indépendance et la responsabilité des procureurs, la déontologie et la conduite professionnelle, la formation ou la coopération internationale.

Il ne s'est non plus posé la question de la création d'équipes pluridisciplinaires ou du soutien aux groupes vulnérables. Ces questions ont été prises en charge par le gouvernement dans le cadre de groupes de travail auxquels le ministère public n'était pas associé.

Le ministère public a été pleinement occupé par la tâche d'assurer la continuité de son service, de contribuer à assurer celle de la justice et d'assister le gouvernement dans l'élaboration des règlements visant cette même finalité.

Les magistrats et le personnel du ministère public ont été extrêmement disponibles, flexibles et motivés pour donner leur meilleur aux fins d'atteindre ces objectifs, qui ont été réalisés. Dans cet ordre d'idées posé aucune question d'ordre déontologique ne s'est posée. Au contraire, la crise a été l'occasion pour beaucoup de prouver leur total dévouement à leur service et à leur profession, même et précisément au cours d'une période si difficile.

La crise a finalement été l'occasion de constater les vertus insoupçonnées du télétravail, qui permet de concilier continuité de service, distanciation sociale et impératifs familiaux.

18. Quels sont, selon vous, les moyens et les méthodes permettant de surmonter ces difficultés ?

La réponse du ministère public à la crise paraît satisfaisante, même s'il manque à ce stade le recul nécessaire. Aucune difficulté propre au ministère public différente de celles procédant de l'état de crise, n'a pu être recensée. Ce tableau positif s'explique évidemment aussi par la circonstance que le Luxembourg a été relativement épargné par la pandémie, de sorte que celle-ci n'a, par chance, à aucun moment réussi à désorganiser les services (ce qui aurait été parfaitement concevable si les taux d'infection avaient été plus importants).

Le seul regret qui est à signaler est la décision du gouvernement de suspendre tous les délais de procédure en date du 25 mars 2020, ce qui a eu pour effet le blocage de toute procédure en cours. Cette suspension paraît rétrospectivement disproportionnée. Elle aurait tout au plus été pertinente dans une situation où les juridictions auraient totalement cessé de fonctionner, ce qui n'a été le cas à aucun moment. Il a fallu, par voie de conséquence, rapporter cette mesure en date du 17 avril 2020. Celle-ci a causé certains retards parfaitement inutiles.

Malta / Malte

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)

A situation of a public health emergency was declared on the 7th March 2020 in terms of an order issued by the Superintendent of Public Health under the Public Health Act . On this basis several extraordinary measures ordering limitations on various activities such as on gatherings, travel, closure of businesses, schools, markets and closure of the Courts except for urgent cases and cases where the Court deemed that the public interest in the hearing of the case should prevail, were implemented by other orders (subordinate legislation) issued under that Act.

The Emergency Powers Act was also amended to include health emergencies as situations which could give rise to the proclamation of a state of emergency under that Act but this power was not resorted to.

The Law Courts were closed on the 16th March 2020 subject to the limitations described above. All legal time limits were suspended.

The Court Registry was re-opened on the 4th May 2020 and the Law Courts on the 5th June 2020.

There was no recourse to a declaration of a State of Emergency under the Constitution or under Article 15 of the ECHR.

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.)

The above rights, with the exception of the right to health, were all affected by the restrictions on the number of persons who could be together in public places, and by the closure of a number of establishments including places of religious worship. The right to health was affected by the postponement of non-urgent appointments and surgical operations in the health sector due to the situation caused by the pandemic. Fear of contacting the disease also scared a number of persons away from doctors' clinics and hospitals, at times with serious consequences.

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.)

Respect of the above mentioned principles is required on a constitutional and fundamental human rights level for the imposition of restrictions of rights on health grounds but one can presume that public authorities enjoy a certain margin of appreciation in determining the necessity and the proportionality of the measures. Needless to say, if such measures are challenged it will be for the courts to decide whether the above principles were properly applied or not.

Several new de-penalised offences some of which carrying significant penalties (EUR 100, EUR 1000, EUR 3000 and EUR 10,000) were introduced in order to deter people from violating quarantine rules and other orders imposed as a result of the pandemic. The police visited

homes where persons were supposed to be in quarantine in order to ascertain the presence of those persons in accordance with mandatory quarantine requirements.

There were no restrictions on reporting by the media or on statements made by political parties or any other civil society actors during the crisis.

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?

The closure of the ports and the airports during the emergency restricted the possibility for irregular migrants to come ashore. Steps were however taken to protect the safety of life of the migrants and several groups of migrants were also taken ashore during the crisis. Situations of migrants at sea and the fear of admitting large and disproportionate numbers of irregular migrants at such a time of health emergency did however cause fear and tensions. Reports on racist hate speech also increased and anti-immigrant demonstrations were also held by some small but vociferous groups.

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.)

At the beginning and for a few weeks into the crisis almost all law offices, including private law offices, were closed or were teleworking or working from behind closed doors.

The prosecution service functioned on the basis of having a small skeleton staff at the Office premises on a rotation basis with the rest of the staff working from home. When court cases or bail applications were appointed for hearing however the lawyers concerned had to be in court irrespective of whether they had to be teleworking on the particular day.

Meetings were in the great majority held online.

After about two months into the crisis the situation developed into one where half the staff would be present in the office on any working day.

As from the 5th June 2020 all staff were required to attend the office regularly subject to necessary health precautions. Special teleworking arrangements were made only for vulnerable persons such as pregnant women.

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

There were no releases from prison attributable to the crisis. Bail hearings were still carried out and time limits for periods of arrest continued to be respected. The hearing of many cases on the merits was however postponed. The postponement of hearings on the merits was challenged in one case and the Court, delivering judgment at the time when the courts were still

closed, decided that the situation in the particular case breached the rights of the accused under article 5(3) ECHR. The judgment is currently under appeal before the Constitutional Court.

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)

The prosecution service continued to function on a continuous basis during the crisis. albeit in the situation of significantly reduced court activity described above. Prosecutors continued to be available on a 24x7 basis for urgent cases and advice.

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

Apart from the Police who prosecute before the Magistrates Courts, the Office of the Attorney General is the only prosecution service in Malta and is housed in one office. Responses were decided either between the highest officials or, in many cases at meetings of all prosecutors. There was consultation with the police on specific measures related to the crisis.

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?

There were luckily no infected prosecutors and prosecutors suffering from certain conditions which made them more vulnerable were reasonably accommodated in the duties which they were asked to perform other than from their homes. Prosecutors were always kept available seven days a week for urgent matters and a skeleton staff system operated throughout the crisis. The office premises were never closed. Directives or guidelines were issued on an 'ad hoc' basis as the situation unfolded by the Attorney General and the Deputy Attorney General in consultation with the other prosecutors.

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

Cooperation with the judiciary, the court administration and the police was essential and ongoing. The cooperation relied on normal channels of work contact and meetings. It was not formalised by way of a special structure. The prosecution however played a role in the formal structure to meet the crisis which was set up on a national basis within the whole public sector by the Office of the Prime Minister.

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?

In our system the prosecution does not investigate but it is often called to assist by giving advice and other assistance to investigators, mainly the Police. It therefore supervises or reviews investigations insofar as the situation calls for such supervision or review for example after a complaint by any investigated persons or at the request of the Police for advice. Investigations

conducted by Magistrates in the course of inquests are referred to the Office of the Attorney General upon conclusion. There were no cases during the crisis period where the prosecution had to exercise such review or supervision on grounds specifically related to the crisis.

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

Prosecutors were encouraged to adopt a more open approach to sentence bargains when the appropriate punishment could reasonably and legally not involve an effective prison sentence. The number of sentence bargains concluded during the crisis however was not above the normal average also because defence lawyers whose clients were not likely to conclude a sentence bargain which did not involve an effective prison term were wary of seeking such bargains if their clients were on bail. The Parole Board met online and did not apply any more liberal policy on release on parole because of the crisis. The only couple of exceptions involved foreign detainees who were released a few days before their sentence expired in order to match the flight timetable to their home countries.

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.);**

In the Maltese legal system interventions of the kind described above are carried out by the Police with the prosecution service acting in an advisory role. Apart from the general measures adopted during the COVID-19 crisis there were no other special measures to deal with the above situations.

- **conducting prosecution before the courts, particularly when courts have significantly reduced their activity (have courts maintained their activity, even if somewhat reduced?);**

Court activity was drastically reduced but a number of cases, particularly involving situations where the accused was in preventive custody and bail applications were heard. Lawyers from the prosecution service always participated and were physically present at such hearings.

- **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**

The fact that court activity was drastically reduced except for urgent and particularly important cases practically eliminated the need for such measures insofar as they are to be implemented in court since most cases were not heard. Victim protection and support is a matter taken care of in the Maltese legal setup by the Police, Social Welfare and Probation services.

- **appealing court decisions;**

Time limits for the filing of appeals were suspended during the height of the crisis but a number of urgent and human rights cases were still treated according to the normal procedure even with regard to appeals;

- **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);**

In Malta the prosecution service does not supervise the execution of sentences except for the fact that the Attorney General is ex officio a 'visitor' of the prison facility. With regard to efforts to avoid custodial sentences where this was possible through sentence bargaining the situation is explained in the reply to question 10 above.

- **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)**

Law enforcement of the nature described above is done by the Police. Confinement imposed by the health regulations was in the form of quarantine and not imprisonment. Breach of quarantine was made subject to hefty administrative fines. Persons admitted to prison were subject to a period of quarantine in a separate detention facility.

- **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)**

These functions are not within the remit of the prosecution service in the Maltese legal system. The involvement of the prosecution service is therefore limited to the giving of advice to law enforcement and other authorities when required.

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**

The answer to this question is in the negative. The activities indicated above are not within the remit of the prosecution service in the Maltese legal system. The involvement of the prosecution service in this regard is therefore limited to the giving of advice to law enforcement authorities and to dealing with particular claims and requests as required.

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

An emergency situation such as that created by COVID-19 drastically effected the momentum of work within the prosecution service both directly, due to the adoption of different working methods involving restrictions of movement and extraordinary health precautions, and indirectly by imposing severe limitations on the workings of the courts, through the extraordinary demands placed on law enforcement authorities and through the limitations on international travel which impacted international legal cooperation.

As a result of the length of the crisis the return to normality poses strong challenges both because of the backlog of work accumulated during the peak of the crisis and because the timeframe for return to a normal situation has to be worked out within the limits of maintaining a COVID safe environment.

The effects of the crisis on the economy, the possible deterioration of social and employment situations, both within national and immigrant communities, which may be conducive to an increase in crime are also major challenges for the law enforcement and prosecution services.

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?

The courts have re-opened as from the 5th June 2020 but there are still restrictions on the use of the court building in order to provide for social distancing and limit the number of persons present in the same place. These measures tend to impact the efficiency of the workings of the Courts. It is the courts which decide on any prioritisation of cases but all cases are now being heard or are appointed for hearing. The Courts will reduce their normal summer recess in order to try and compensate for the time lost during the crisis. There are no plans to drop cases because of this situation and the pre-crisis court schedule was retained. It is very unlikely that the legal profession will be able to take on a 7 day work week for the hearing of cases other than urgent cases and such a move is not considered as a viable option.

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;**

The independence and accountability of prosecutors was not seen as having been in any way impacted by the emergency COVID-19 situation. It is however understood that the stress placed on prosecutors to take decisions in emergency situations has the potential of impacting their image as regards accountability and possibly independence;

- ethics and professional conduct of prosecutors during emergency situations and thereafter;

Same as with the above question of accountability and independence. The crisis produced no evidence of a challenge to prosecutor's ethics and professional conduct but it is recognised that it has the potential to pose such a challenge.

- training of prosecutors on working modalities at the time of emergency situations (for instance, for teleworking) and protecting themselves from COVID-19;

The crisis struck quite quickly and unexpectedly and any training and adaptation to new working methods was done on the job as the prosecution service coped with the situation. Protective measures with regards to health were widely advertised both by the health authorities and within the public service.

- creation of multidisciplinary teams, if need be (with health personnel, for instance);

The prosecution service participated in an overall multi-disciplinary structure set up by the public service to respond on a national level to issues raised by the crisis;

- 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.)

As stated above, the economic and social effects of the crisis, both short and long term, pose a serious challenge to prosecution services by potentially creating a social environment which is more conducive to certain crime. The financial assistance provided by Governments and the assistance given by Non-Governmental Organisations to various sectors to soften the effects of the crisis also represents a significant contribution towards containing the challenge to prosecution services

- 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)

This practically unprecedented event has had a severe impact on international cooperation in criminal matters mainly because of the very severe restrictions which it imposed on international travel. It has however also pointed to the need to seek ways and means in which prosecution services can still cooperate effectively in times of such crises.

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

Although every legal system has its own unique characteristics the general principles of law which emerge from the European Convention on Human Rights and the other many legal instruments of the Council of Europe and key international organisations provide guidance about the limits of permissible actions and restrictions in particular situations including situations of emergency and health crisis.

Efforts to provide guidance through the sharing of common experiences are an important tool in developing the necessary strategies to overcome the challenges of such a crisis and to ensure compatibility and complementarity of approaches.

The COVID-19 crisis has in fact been characterised by a large number of very welcome efforts to provide training and fora for discussion for the international community of prosecutors and to enable prosecutors to identify the particular threats and demands of the times.

The decision of the CCPE to change the topic of Opinion No 15 to one dealing with emergency situations as soon as the pandemic emerged and despite the work already done on the previous topic provides a clear example of the importance of international cooperation and of the solidarity between prosecution services in their efforts to overcome the emerging challenges of the crisis situation.

North Macedonia / Macédoine du Nord

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 Republic of North Macedonia, with the spread of the Corona virus pandemic, a state of an emergency has been declared since 18th March, on the territory of the whole country. Before the pandemic started, on 16th February, our Parliament self-dissolved, as a result of a decision of the 2/3 majority of members of Parliament, with an aim to go on an early elections. Since then, the Parliament has not been in session and has not enacted any laws or other legal acts. In a state of an emergency, the Government has legislative powers, and in this case our Government (which is technical at the moment) has been making decisions with a law power, that are important for dealing with the corona virus pandemic. These decisions incorporate different restrictions and prohibitions for the citizens, in order to stop the spreading of the virus. According to our **Constitution**, the **state of an emergency** is declared with a decision of the Parliament, by 2/3 of its members, and in cases when the Parliament cannot meet, the decision is brought by the President of the Republic, but this decision has to be verified additionally by the Parliament. The decision for declaring a state of an emergency has only 30 days validity. Our President has brought four decisions for declaring a state of an emergency, so far. Until 13th June, our President will have to decide whether the emergency situation will continue. We still don't know whether the elections will take place at the beginning of July, because our country unfortunately is having second wave of Covid 19 infection, with much higher number of infectious people, following the relaxation of the measures.

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 a result of the emergency situation, several human rights have been affected in our country. Mostly the freedom of movement has been affected, because in our country we had multiple curfews that lasted even for 3-4 days continually, especially during the weekends and holidays. Also many people were state quarantined or self-quarantined in their homes, for several weeks, according to the health protocols, when arriving in our country from abroad, or when having a contact with an infectious patient. The freedom of assembly has also been restricted, and even in daily life, people are forbidden to gather even in small groups. The right to health has been partly affected, because the State hospitals have been preoccupied with patients treated with Covid 19. During this time, several doctors got infected, some doctors had to be temporary self-isolated, and many operations and check-ups were postponed. Basically, the urgent cases are being treated during this period, because the State hospitals are not working with their full capacity. The freedom of conscience and religion has not been restricted, but in some cases when long curfews were put in place, some of the religious customs and ceremonies were not carried out.

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.)

In our country, the Government (which is technical at the moment, consisted with oppositional political parties also) have been making decisions with a law power, for suspension and restrictions of human rights, based on the recommendations of the Commission for infectious diseases, within the Ministry of health. These measures are being implemented, according to the ongoing situation with the number of infectious people with Covid 19. The measures apply to all people equally, without discrimination. The adequacy and the proportionality of the measures (especially the long curfews) have been debated in the media, but the Health authorities are certain that these measures are necessary for our country, in specific phases of expansion of the disease. These measures are being implemented transparently, and the media and the citizens have access to all the information from the Ministry of health, regarding the pandemic situation. Our Minister of health, on daily basis, answers to all the questions to the media regarding the situation with Covid 19, and explain the necessity of the measures that are being implemented.

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?

The non-government organizations in our country, like the Macedonian Helsinki Committee for Human Rights, which is focusing on these issues, has established increased statistics of hate speech on the social media, during the Covid 19 pandemic and the state of emergency. Mostly, these cases occurred on political grounds, since we are in a pre- election period, but also on ethnic grounds. At the beginning of the crisis, as the number of infectious people increased and the restrictive measures got more rigid, critics and hate statements were addressed to the responsible politicians dealing with the crisis (from health and economic point of view). In May, as the number of infectious people decreased and the restrictive measures got loosen, some citizens and companies unfortunately failed to obey the preventive measures for physical distance, and also religious celebrations and group gatherings took place without protective measures, which led to a rapid increase of number of infected people from Covid 19. This resulted in an overflow of hate speech not only towards the politicians and the doctors from the Health commission that proposed and implemented the relaxation of the measures, but also on ethnic and religious grounds, putting blame on who is responsible for the new larger spread of the virus.

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 emergency situation, The Public Prosecutors office of Republic of North Macedonia, has been working in restrictive conditions. According to a Decision of the Government with a law power, all state and private employees that have some sort of chronic health condition that could be a risk factor, and all employees that have small children that need a day care, that is

not provided by schools, kinder gardens or the other parent, are excused from work, until the stabilization of the situation with the Covid 19 pandemic. In that sense, part of the prosecutors and administration workers are not present at the Office. Also, the limited office space that have adequate physical distance, do not allow the prosecutors to safely examine all the witnesses and defendants on regular basis, so the investigative activities are reduced, and are focused on urgent cases, cases with custody measures, and cases relating to the emergency situation, connected to the disrespect of the health measures, disobedience to law enforcement agencies etc. Teleworking, outside the office is hardly applicable, since all the case files are in paper, placed in the prosecutor's offices, where the official duties can be adequately fulfilled. The courts do not use videoconference as a way to hold a trial. The communication with the relevant professionals and institutions is carried out by mail, email and telephone. The on call duties are reinforced, since the crimes connected to the emergency situation and the disrespect of the health measures are frequent and urgently dealt with.

- 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?**

The cases with custody measures have been dealt urgently and with a speedy dynamic. The Criminal Courts, during the Covid - 19 crisis, have been effectively functioning and holding trials only for cases with custody measures, urgent cases and cases connected to the emergency situation and the disrespect of the health measures. Criminal suspects are being kept in custody, in pre- trial and trial phase, as long as the legal grounds are present, in more severe cases where other measures are not sufficient. The legal time for custody is being strictly followed.

- 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)**

During the emergency situation, The Public Prosecutors office of Republic of North Macedonia, has been working with reduced capacity, but with prioritized assignments. According to a Decision of the Government with a law power, all state and private employees that have some sort of chronic health condition that could be a risk factor, and all employees that have small children that need a day care, which is not provided by schools, kinder gardens or the other parent, are excused from work, until the stabilization of the situation with the Covid 19 pandemic. In that sense, part of the prosecutors and administration workers are not present at the Office. Also, the limited office space that have adequate physical distance, do not allow the prosecutors to safely examine witnesses and defendants on regular basis, so the investigative activities are reduced, and are focused on urgent cases, cases with custody measures, and cases connected to the emergency situation and the disrespect of the health measures. The on call duties of the prosecutors are reinforced, since the crimes connected to the emergency situation and the disrespect of the health measures are frequent and urgently dealt with.

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

There hasn't been special response teams, but the Chief prosecutors of all Basic Public prosecutor's offices in the country, the Chief prosecutors of all Higher Public Prosecutor's offices, and the Public Prosecutor of RNM, are adequately following the work of their subordinate prosecutors, especially regarding the cases and crimes connected to the emergency situation and the disrespect of the health measures.

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?

Yes, there have been guidelines that address the emergency situation, that were issued on the highest level, by the Public Prosecutors office of RNM. These guidelines were partly connected to the decision of the Government with a law power, that provided all state and private employees, that have some sort of chronic health condition that could be a risk factor, and all employees that have small children that need a day care, which has not been provided by schools, kinder gardens or the other parent, to excused from work, until the stabilization of the situation with the Covid 19 pandemic. In that sense, the issued guidelines approved the use of this measure for the prosecutors and administration workers that needed it. Also, the guidelines provide that the public prosecutors should undertake only urgent investigative activities, act upon on urgent cases, cases with custody measures, cases and crimes connected to the emergency situation and the disrespect of the health measures, disobedience to law enforcement agencies, etc.

The crimes connected to the emergency situation and the disrespect of the health measures are treated urgently, in speedy time. The on call duties of the prosecutors are reinforced and mostly concentrated on acting upon crimes connected to the emergency situation. On 3th of June, the Criminal courts announced that they will trial all cases, and published the trial dates. But in practice, the trials for regular cases are rarely held, because many people are avoiding to come to court, worried about their health and the pandemic situation in our country.

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

Yes, there has been increased cooperation between the law enforcement agencies and the Public prosecutor's Office, and the Public prosecutor's Office with the courts, especially regarding the cases involving crimes connected to the emergency situation and the disrespect of the health measures. These cases are being dealt urgently, the police officers are actively informing the prosecutors on duty, of all the cases, and afterwards the proceeding of the police is thoroughly checked by the prosecutors, upon arrival of the criminal applications. The courts are acting urgently upon the proposals and indictments issued by the Prosecutor's office, regarding the emergency situation.

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?

The Prosecutors office, in the emergency situation, as well as in regular circumstances, within its duties, is obliged to secure adequate protection of human rights. In the emergency situation, some of the basic human rights have been affected and restricted, and everyone is obliged to respect the imposed restrictive measures. Outside these restriction, any violation of the citizens rights, that is considered to be a crime, could be a subject of an investigation.

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

The custody measures are being proposed in cases where there is an imperative need and legal grounds for applying this most severe measure for securing presence of the defendant. The courts do take in consideration the emergency situation and the conditions in the detention cells, when deciding upon custody measure or the prison sentence. Usually, the custody measure or prison sentence are proposed in cases where severe crimes are committed, or by known recidivists, in which cases the prosecution office does not have the possibility to avoid prosecution, or agree with alternative sanction.

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)**

- Regarding the urgent cases and the cases relating to the emergency situation (in our country these cases are mostly crimes connected to disrespecting of the health measures for curfews and quarantines), the Prosecution office is acting promptly on daily basis, and is initially proposing court verdicts without a trial, with fine sentences in high amounts for the defendants.

- The courts have reduced their activity, but the courts are holding trials for the urgent cases and the cases relating to the emergency situation. Most of the cases related to the emergency situation are dealt without a trial, based on the submitted written evidence by the prosecution office. But if the defendant objects to the court decision, a trial is promptly scheduled.

- The defendant's rights, as well as the rights of the witnesses are adequately respected through the criminal procedure, according to the norms of the Criminal procedure code. The courts also provide their health security in general matter, with the obligation for everyone to wear masks, use disinfection on hands, and keep 2 meter distance in court rooms.

- The right for an appeal to the court decisions is guaranteed by the law - the Criminal procedure code. But with a decision of the Government with a law power, during the emergency state, a prolonged timeline is provided for the right to appeal, which means that during the emergency state, if someone was not able to reach in time to submit an appeal against a court decision, they can appeal after the emergency state ends, in the prescribed legal period of time for submitting an appeal.

- The courts are taking in consideration the emergency state and the conditions in the prison cells, whenever deciding upon a custody measure or a reduction of prison sentence, within the law. So far, there has been only one case of Covid 19 infected prisoner, whose infection was determined post mortem. Afterwards, large number of prisoners and personnel were tested, but other cases of Covid 19, have not been found since. The Government brought a decision with a law power, according to which all administrative acts for serving prison sentence in duration of maximum 3 years, will be postponed until the 1st September 2020, unless there is a danger for statute of limitation for executing the sanction.

- Regarding the criminal cases related to the emergency situation and the disrespect of the health measures, the national crime policy is being implemented in a way that all authorized state organs should act firmly and equally in all cases, should treat these cases in urgent manner, and should use adequate fine sanctions, in order to react preventively to the citizens and secure collective discipline.

- regarding the implementation of the labour laws and minimising the risks of contagion of workers and employees, there were cases in our country where textile companies from one city, transported female textile workers to the factories in crowded busses, which resulted in a large number of infected workers. These companies are a subject to a criminal proceeding, and will be liable according to the Criminal Code, for not oblaging the health measures.

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**

- Regarding the supervising maintenance of public order and security, which is primarily a police responsibility, in our country the disrespect of the curfews as a health measure, is considered to be a crime, and in that sense, the Prosecution office has extended its authorization in this area, by prosecuting these cases.

- The implementation of the emergency measures are a subject of supervision by the Prosecution office, in a way that the disrespect of the prescribed health measures, especially the curfews and the quarantines are considered to be a crime.

- The supervision of the general protective measures for the population and maintenance of provision of relevant services, including to the most vulnerable groups during and after the pandemic is in authorization of the Public Prosecutors office, in cases where illegal and criminal activities occur.

- Ensuring regulatory measures to prevent profiteering on foodstuffs, hygiene products and essential medicines and supplies - This is primarily an authorization of different inspections within the Ministries, but the Public Prosecutors office gets involved in cases where criminal activities occur.

- Reducing the risk of stigmatising and harmful conduct against vulnerable groups, including those infected by COVID 19 - In cases where hatred, discrimination or violence is spread in the media, by xenophobic statements, and on a discriminatory basis, the Prosecution office can undertake criminal procedure for a crime - Spreading racist and xenophobic materials by computer system in public.

- Ensuring the rights of persons held in quarantine or confinement - The persons held in quarantine are obliged to respect the measure for selfisolation for a limited time, and during that time, the Ministry of health and the Ministry of interior, are authorized to supervise the implementation of these measures. If human rights are violated, the Public Prosecutors office gets involved in cases where criminal elements occur.

- Interacting with media and highlighting the work of prosecution services in the context of emergency situation - The Public Prosecution Office of RNM, on daily basis, through the Sector for public relations and on its web page, informs the public regarding the number and type of decisions that the prosecutors make, in relation to the emergency state.

- Informing the population about the emergency measures and the corresponding penalties for their non-observation - The Public Prosecution Office of RNM, on regular basis, informs the

public regarding the proposed penalties to the courts, for the perpetrators of crimes related to the disrespect of the emergency measures.

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 challenges faced by the prosecution services in an emergency situation (caused by a pandemic) is the impossibility to effectively execute all of its authorization, prescribed by the law. On regular basis, the Prosecutors offices and the Courts are crowded with people, regarding different criminal procedures that are undergoing. In these institutions, there is a big circulation of people waiting to give statements, submit evidence or have access to case files, which activities and interactions take for hours. The health provisions for constant physical distance can not be applied adequately, if all cases are conducted simultaneously, with the regular manner and dynamic. That's why the Prosecution office is currently dealing only with certain type of cases, and the circulation of people is limited. In the aftermath, once the situation is normalized, the work overload for the prosecutors will be extensive, but also the fear will remain, whether there will be secure working conditions for all employees, healthy wise.

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?

On 3th of June 2020, the Criminal courts in our country announced that they will trial all cases, and they published the trial dates. The Prosecutors, are obliged to go on all case trials, but during the emergency state, the prosecutors are instructed by their chiefs, to contact the judges by phone, prior to the trials, in order to get an information whether the legal conditions for holding a trial are secured by the court. In practice, the trials for regular cases are rarely held, because many people are avoiding to come to court, worried about their health. So far, since the emergency state is still in force, there hasn't been an initiative, for finding solution for the accumulated case load.

In our country, formally, the prosecutors are obliged to act upon all cases where there are grounds of suspicion for a committed crime that is officially prosecuted, and prosecutors are also obliged to check all criminal applications and try to preserve evidence. According to a Government decision with a law power, during the emergency state, the legal time line for prosecution is suspended, meaning that the deadlines for taking procedural actions are prolonged until the emergency state is over. Once the conditions are normalized, all cases should be adequately checked or investigated. But, in practice, the extensive back load of cases, will significantly influence the quality of the prosecutors work and also the success of some cases in terms of sufficient evidence provided.

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 prosecution services are facing some of these challenges in an emergency situation. The independence and the accountability of prosecutors are put in question, having in mind that the prosecutors are not able to effectively conduct all of their official duties and execute the necessary investigative activities in all cases. Also, there is a need for training of prosecutors for working with other modalities, but technical conditions must be secured for that. The international cooperation among prosecution services during the pandemic situation is important, in order to address the mutual problems and find adequate solutions.

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

Poland / Pologne

General questions

1. Has a state of emergency or similar been declared to combat COVID-19? (under which legislation (constitutional, other), part of the territory, duration)

No state of emergency has been declared in Poland. By the Regulation of the Minister of Health of 20 March 2020 on declaring the state of epidemic within the territory of the Republic of Poland, pursuant to Article 46 paragraph 2 and 4 of the Act of 5 December 2008 on preventing and combating infections and infectious diseases in humans (Journal of Laws of 2019, item 1239 and 1495, and of 2020, item 284, 322 and 374), in the period from 20 March 2020 until further notice, the state of epidemic was declared within the territory of the Republic of Poland in connection with SARS- CoV-2 virus infections.

2. What rights have been violated because of this emergency? (i.e. freedom of assembly, freedom of movement, right to health, freedom of conscience and religion, etc.)

In accordance with the provisions of the abovementioned Ordinance of the Minister of Health and the Ordinances of the Council of Ministers on the establishment of certain restrictions, orders and prohibitions in connection with the occurrence of the state of epidemic issued on 31 March 2020, 10 April 2020, 19 April 2020, 2 May 2020, 16 May 2020 and 29 May 2020, the following were introduced, but were not limited to:

- restrictions on a particular mode of movement,
- restrictions on the circulation and use of certain items,
- restrictions on the functioning of certain institutions or workplaces, including, but not limited to
 - the possibility for entrepreneurs to carry out certain types of activities,
 - activities of libraries, archives, museums and other cultural activities
 - health resort treatment activities,
 - religious worship in public places,
 - commercial, service, catering and entertainment activities,
- the organization of shows and other gatherings of the population was prohibited,
- an obligation was introduced to provide access to real estate, premises and areas provided for in anti-epidemic plans,
- a restriction on the use of premises or land and an obligation to secure them was introduced,
- a specific mode of movement was prescribed, alongside mandatory preventive equipment.

3. If rights were suspended or restricted on public health grounds, what requirements were necessary (i.e. legality, proportionality, adequacy of measures, necessity) and what principles (equality, non-discrimination) and restrictions must be respected? (i.e. searches, restrictions related to the media, political parties, etc.)

Requirements, principles and grounds for introducing restrictions were defined in Article 46 section 2 of the Act of 5 December 2008 on preventing and combating infections and infectious diseases in humans (Journal of Laws of 2019, item 1239, as amended), which provides for the introduction of an epidemic or pandemic state, by way of an ordinance of the minister in charge of health in agreement with the minister in charge of public administration, at the request of the Chief Sanitary Inspector, if an epidemic threat occurred in the area of more than one

voivodeship. The provision of Article 46 in paragraph 4 of the abovementioned Act provides for the possibility of introducing temporary restrictions described in point 2 of the questionnaire.

Further possible restrictions and prerequisites for their introduction are provided for in Article 46a and Article 46b points 1-6 and 8-12 of the Act of 5 December 2008 on preventing and combating infections and infectious diseases in humans (Journal of Laws of 2019, item 1239, as amended). All restrictions were introduced and updated on a regular basis in a legal manner, with the principle of proportionality and adequacy to the existing threat.

4. Has any discrimination, including from individuals, against certain groups (for example health professionals, racial and ethnic minorities), hate speech, racism, xenophobia, attacks and forced returns of refugees and asylum seekers, ill-treatment of foreigners and migrants, as well as sexual violence and gender-based violence been detected?

As a result of a search carried out by the department responsible for monitoring hate crimes, it was revealed that 4 proceedings were being conducted in the country concerning crimes committed to the detriment of doctors, nurses, midwives, paramedics and other medical personnel in connection with their tasks of providing assistance to patients infected with COVID-19 and working in health care facilities dedicated to providing such assistance.

In one case, a passenger car was damaged (doused with an unknown substance, with three tires punctured), the user of which is a nurse. Two other cases involve insulting and defamatory actions against doctors and nurses providing health services via the Internet, and one case concerns threats of life imprisonment against doctors employed in one of the hospitals. Proceedings in these cases are ongoing.

Questions about the ordinary functions of the prosecutor's office, but in emergency situations

5. How did the prosecutor's office work in emergencies? (i.e. restrictions imposed on prosecutor's offices, such as teleworking and limited possibilities to reach the premises, use appropriate equipment, interact with relevant specialists, etc.)

In view of the state of epidemic and the situation related to the spread of SAR-CoV-2 coronavirus, the National Prosecutor's Office has taken all necessary measures to protect life and health and ensure safe working conditions for prosecutors and employees of the prosecutor's office. The result of these actions is the implementation of improved sanitary standards and rules to ensure the proper functioning of the prosecutors' offices. The solutions introduced, in accordance with the guidelines of the First Deputy General Prosecutor - National Prosecutor, in the scope of work organization, including in the initial period the use of so-called "work from home" and rotation of employees staying within the buildings of the prosecutor's offices, and from 20 May 2020 the introduction of a two-shift work system and limitation of contact between the 1st and 2nd shift of employees ensures continuity of performance of tasks by all organizational units of the prosecutor's office. At the same time, application of the guidelines provided in the scope of conditions for conducting procedural activities allows for ongoing performance of the tasks of the prosecutor's office related to the conducted preparatory proceedings.

6. What was done in the case of pre-trial detention of suspects? Article 5 section 3 of the European Convention on Human Rights requires a trial within a reasonable time or release pending a trial. But if criminal courts are barely working, trials do not take place. Have the suspects been released from pre-trial detention as a result? (even if they could

be dangerous). Or have the grounds for detention and the time limits for detention been interpreted differently depending on the exceptional circumstances - in other words, is the "reasonable period" within the meaning of Article 5 section 3 of the ECHR extended?

Decisions to extend the duration of pre-trial detention or release from custody were taken individually by prosecutors and courts, on a case-by-case basis, depending on the stage of pre-trial proceedings and possible cessation of the grounds for an isolating preventive measure.

7. Has there been any particular intervention by the prosecutor's office in an emergency situation (i.e. in the case of Portugal, the General Prosecutor's Office is holding a standing session throughout the emergency in order to defend the principle of legality and citizens' rights)

In view of effective assurance of continuity of tasks performed by all organizational units of the prosecutor's office, there was no need to undertake actions referred to in the question.

8. Have crisis response teams been established within the prosecutor's office and at what level (central, regional, local)?

In the National Prosecutor's Office, on 24 March 2020, a Team for coordination of activities in common organizational units of the Prosecutor's Office was established in order to counteract the COVID-19 epidemic. The work of the Team is chaired by the National Prosecutor. The tasks of the team include assessment of both existing and potential threats to life and health of prosecutors and employees of the prosecutor's office, as well as ensuring continuity of operation of the prosecutor's office units. The team also undertakes activities related to securing the supply of necessary protective equipment, as well as monitors the safety standards of conducting procedural activities with persons who are justifiably suspected of being infected with coronavirus.

Furthermore, by Order of 28 April 2020, the National Prosecutor appointed a Team for coordination of activities of entities participating in conducting preparatory proceedings and development of solutions ensuring safety of persons participating in the activities of preparatory proceedings, in connection with the state of the COVID-19 epidemic. The work of the Team is managed by the Deputy National Prosecutor, and its composition includes, among others, representatives of entities participating in conducting preparatory proceedings, including the Police, Internal Security Agency, Central Anti-Corruption Bureau, Border Guard, Military Police and National Revenue Administration. The tasks of the Team include in particular monitoring, analysis and forecasting of threats related to the COVID-19 epidemic, for the effectiveness and efficiency of conducted preparatory proceedings, coordination of cooperation between entities participating in the conduct of preparatory proceedings and development and implementation of organizational solutions to ensure efficient execution of procedural activities and protection of life and health of all persons participating in them.

In addition, by Order of 16 March 2020, the National Prosecutor appointed a team of prosecutors in the National Prosecutor's Office to coordinate the fight against economic crime in connection with the state of epidemic threat. The tasks of this team include in particular: collecting and analyzing information on conducted proceedings, which are the subject of the team's activities, in order to assess the nature, dynamics of growth and scale of this type of crime, ongoing coordination and supervision of proceedings conducted in particular organizational units of the prosecutor's office and assessment of the legitimacy of undertaken procedural activities in the most serious proceedings, including adopted legal qualifications, applied preventive measures, in order to unify the practice of proceedings and increase their effectiveness.

Notwithstanding the appointment of the aforementioned teams, the heads of the organizational units of the prosecutor's office at all levels have been obliged by the National Prosecutor to conduct ongoing cooperation with the relevant court heads, police unit commanders, sanitary inspectors and other services in order to implement organizational activities allowing for efficient performance of activities, while minimizing the risk of COVID-19 transmission.

By order of the National Public Prosecutor of 16 March 2020, a Team of Public Prosecutors was appointed to coordinate the fight against economic crime, in connection with the state of epidemic threat, and then the state of epidemic. At present the monitoring and coordination covers 137 criminal proceedings, including

- 126 proceedings concern acts under Article 286 § 1 of the Criminal Code (fraud) with the total damage amount of approximately PLN 13 million, of which the amount of approximately PLN 12 million relates to extortion related to offers to sell masks and protective gloves, disinfectants and tests,
- 2 proceedings relate to acts under Article 287 § 1 of the Criminal Code (computer fraud)
- 1 relates to an offence under Article 124 of the Pharmaceutical Law Act (marketing a medicinal product without a marketing authorization)
- 2 relate to an offence under Article 126b of the Pharmaceutical Law Act (manufacture and sale of a counterfeit product used for hygienic and surgical disinfection to the detriment of an authorized entity),
- 1 relates to an offence under Article 126c of the Pharmaceutical Law Act (attempts to export medical devices outside the territory of the Republic of Poland at risk of lack of availability within the territory of the Republic of Poland without notifying this to the Chief Pharmaceutical Inspector)
- 1 relates to an offence under Article 305 of the Industrial Property Law Act (sale of antibacterial gel for washing hands, marked with a fake trademark "Barlon"),
- 1 relates to an offence under Article 304 of the Criminal Code (offering protective masks for sale at inflated prices).

Within the framework of the team's activities, including coordination of proceedings, a letter was sent to prosecutor's offices concerning proceedings demonstrating a relationship in terms of type of crime and victims, among others with established Internet shops.

Notifications incoming directly to the National Prosecutor's Office are continuously processed and data coming from public prosecutor's offices from all over the country are entered into the list, which are analyzed in terms of their relationship, in order to designate units to conduct collective proceedings.

Furthermore, by letter of 1 April 2020 of the National Prosecutor's Office, recommendations were submitted to the subordinate prosecutor's offices, as to the performance of ongoing activities in cases related to economic or financial and fiscal crime, during the state of epidemic. By letter of 21 May 2020, the National Public Prosecutor's Office provided explanations to the subordinate prosecutor's offices as regards the time of applicability of Article 232b of the Code of Criminal Procedure. (provision introduced on 31.03.2020, allowing for free of charge transfer of seized objects during the state of epidemic threat or the state of epidemic).

9. Are there guidelines for resolving the emergency issued to the prosecutor's office, and at what level? What measures have been taken to deal with changes of prosecutors (in urgent cases or when courts have been mostly closed or when there has been a significant reduction in their activities) and with replacing the infected prosecutors?

In view of the state of epidemic and the situation related to the spread of SAR-CoV-2 coronavirus, the National Prosecutor's Office has taken all necessary measures to protect life

and health and ensure safe working conditions for prosecutors and employees of the prosecutor's office. Since the outbreak of the epidemic, the National Prosecutor systematically sent letters to all heads of common prosecutor's office units containing orders and guidelines related to the work organization mode, security of buildings, reception of customers, specific conditions for conducting procedural activities, etc. The National Prosecutor's Office has taken all necessary measures to protect life and health and to ensure safe working conditions for prosecutors and employees of the prosecutor's office. The effect of these activities is the implementation of increased sanitary standards and rules to ensure proper functioning of the prosecutor's offices, including, inter alia, reduction of the number of people staying in the buildings, examination of the body temperature of people entering the prosecutor's office buildings, equipping all employees with appropriate personal protective equipment and introducing rotational and remote work, and from 20 May 2020 – work in a two-shift system. The measures taken have guaranteed the continuity of the performance of statutory tasks by all organizational units of the prosecutor's office. In view of the low number of COVID-19 cases in prosecutors (3 cases have been reported so far in the country), there was no need to introduce special regulations related to replacements.

10. Has specific cooperation with other bodies (i.e. Law Enforcement Agencies, courts, etc.) been established?

As indicated in point 8, the decision of the National Prosecutor appointed a Team for coordination of activities of entities participating in conducting preparatory proceedings and development solutions to ensure the safety of persons participating in the activities of preparatory proceedings, in connection with the state of the COVID-19 epidemic. Representatives of the Ministry of Justice, Police, Internal Security Agency, Central Anti-Corruption Bureau, Border Guard, Military Police, National Revenue Administration and Military Counterintelligence Service take part in the work of the Team. Moreover, in connection with the extraordinary situation caused by the COVID-19 epidemic, the National Prosecutor's Office conducts ongoing cooperation with institutions whose cooperation contributes to solving the threats resulting from the COVID-19 epidemic, including in particular the Ministry of Justice, the Ministry of Health and the Chief Sanitary Inspectorate.

Regardless of the above, managers of individual prosecutor's offices conduct permanent, ongoing cooperation with competent presidents of courts, commanders of police units, sanitary inspectors and other services, the aim of which is to implement organizational activities allowing for effective implementation of statutory tasks, while ensuring maximum health protection for all persons employed in prosecutor's offices and taking part in conducted proceedings.

11. Has the prosecutor's office conducted or supervised an investigation by the police and other investigative bodies to ensure adequate protection of human rights in an emergency?

The answer to the question is set out in point 13.

12. Has the prosecutor's office decided on alternatives to prosecution to avoid overcrowding in emergency detention centers?

The Polish Prosecutor's Office is bound by the principle of legalism, which obliges the prosecutor to initiate and carry out preparatory proceedings, as well as to file and support an indictment for an act prosecuted ex officio. Except in cases specified by law or international law, no one can be released from responsibility for the crime committed. In view of the above, the behavior of the perpetrators of crimes is assessed from the perspective of the applicable

regulations, and the punishment imposed takes into account, inter alia, the degree of social harmfulness of the act, as well as its preventive and educational goals. The Polish Criminal Code has provisions concerning the rules of the penalty, which provide for the primacy of non-custodial sentences, but their application depends on the circumstances of committing the crime and the level of imprisonment envisioned for such a crime.

13. Were there any particular ways in which the prosecutor's office acted in an emergency situation with regard to.:

- **initiating criminal proceedings (especially in emergencies or crisis situations - for example, disobedience to law enforcement agencies, health care personnel, intervention in cases of domestic violence, etc.);**
- **conducting proceedings before the courts, especially when the courts have significantly reduced their activities (have the courts maintained their activities, even if they have been somewhat reduced?);**
- **ensuring that victims and witnesses and other vulnerable participants are effectively supported and/or protected and that the rights of defendants are respected throughout the procedure**
- **the decisions of the appellate court;**
- **supervising the execution of judicial decisions and applying non-custodial measures or reducing prison sentences where possible (to avoid overcrowding in detention centers and prevent the spread or spread of disease);**
- **implementation of national criminal policy (i.e. where disobedience to lawful orders from law enforcement agencies and health care personnel, in relation to isolation, may contribute to the spread of the disease)**
- **exercising functions, where appropriate, outside the criminal justice system (i.e. blocking can lead to increased risks for people, namely children, witnesses or victims of violence and abuse, unemployment / enforcement of movement restrictions and physical distancing measures can serve as a safeguard, discrimination and violence against particularly vulnerable groups, namely foreigners or vulnerable groups, compliance with labor law and social protection, minimizing the risk of contagion to workers and workers)**

Due to the announcement of the state of epidemic within the territory of the Republic of Poland in connection with SARS-CoV-2 virus infections, the National Prosecutor's Office monitors proceedings for crimes under Article 160 (exposure of a human to danger), 161 § 2 of the Criminal Code (exposure of a human to infection) and 165 of the Criminal Code (bringing about conditions commonly dangerous to life and health) committed by persons under quarantine due to suspicion of infection or infected with the abovementioned virus (violation of quarantine rules).

Therefore, all Regional Prosecutors in the country were obliged to present information about proceedings already registered, concerning the abovementioned crimes and to inform about subsequent cases on an ongoing basis, not later than on the day following the registration of the case.

Regional Prosecutors were also obliged to send systematic supplementary information in relation to already registered proceedings. The information obligation includes, inter alia, indication of:

- whether or not a SARS-CoV-2 test has been carried out on the person concerned by the proceedings, if so, what was the result and whether that person was informed thereof.
- the number of victims disclosed.

By 10 June 2020, Regional Prosecutors provided information on 349 registered proceedings, which remain in the constant interest of the relevant Department of the National Prosecutor's Office, some of which have already been concluded with a procedural decision.

The purpose of the monitoring is to harmonize the practice as regards the adoption of appropriate legal qualifications and to ensure the proper conduct of criminal proceedings initiated for the abovementioned acts.

Regarding the other disclosed offences referred to in the questionnaire, no data were collected to allow a reply. As far as questions concerning procedural issues are concerned, it should be noted that preparatory proceedings are conducted on the basis of applicable provisions of the Code of Criminal Procedure, which do not provide for procedural "emergency situations", taking into account the instructions of the National Prosecutor.

Questions on possible new functions of the prosecutor's office as a result of an emergency situation

14. Have there been any new or extended functions of the prosecutor's office resulting from the emergency, for example:

- **supervising the maintenance of public order and security;**
- **supervising the implementation of emergency measures, including population reduction, public area closures and other appropriate measures;**
- **supervising general protective measures for the population and maintaining the provision of appropriate services, including for vulnerable groups during and after a pandemic (women, children, elderly people, people in institutions, those deprived of their liberty or imprisoned, displaced, homeless, migrants, refugees, slum dwellers, etc.);**
- **providing regulatory measures to prevent speculation on foodstuffs, hygiene products and essential medicines and supplies;**
- **reducing the risk of stigmatization and harmful behavior towards vulnerable groups, including those infected with COVID-19;**
- **ensuring the rights of persons held in quarantine or confinement;**
- **interacting with the media and highlighting the work of the prosecutor's office in the context of the emergency;**
- **informing the population about emergency measures and appropriate penalties for failure to comply with them**

In accordance with the current legislation, the prosecutor's office carries out tasks in the field of prosecution and guards the rule of law. These functions shall not be extended or changed due to the existing state of epidemic or its end.

The introduction of the state of epidemic threat, and then the state of epidemic, has resulted in the fact that the media were not provided with information in the form of direct contact by authorized persons. In particular, the organization of press conferences was stopped, prosecutors did not provide information through personal participation in TV or radio programs. On the other hand, information was provided to the mass media by ICT systems and in writing. This information, in addition to the previous, routine scope, also included a presentation of the functioning of the prosecutor's office and the work of the prosecutors in the pandemic.

At present, during the reduction of the sanitary rigors in force, the form of direct contacts of the prosecutor's office representatives with the media has been reinstated, however, all while maintaining the lawful principles of sanitary safety.

Data partially contained in point 8.

Questions on challenges for the prosecutor's office in emergency situations

15 and 16. What are, in your opinion, the main challenges facing law enforcement agencies in an emergency situation and after its conclusion / recovery?

For example, have specific plans been developed for returning to 'normal life'? In Member States where judicial proceedings have been suspended for months, there will be a large backlog of cases to deal with. Is it up to the prosecutor to decide how to prioritize these cases? Will special initiatives be taken, i.e. court proceedings on weekends, extra prosecutors' fees for extra work? Is there a risk that less serious cases will be closed or that the charge will be dropped?

The main challenge facing the prosecutor's office in a state of epidemic is to ensure effective implementation of statutory tasks, regardless of external circumstances. After the end of the state of epidemic it will be necessary to restore the prosecutor's office's activities efficiently and effectively to the intensity with which they were conducted before the pandemic occurred. This task will be facilitated by the fact that thanks to good organization of work during the state of epidemic, it was possible to ensure continuity of operation of all units of the prosecutor's office and to avoid major disruptions in the implementation of statutory tasks. The Prosecutor's Office has no direct influence on the decisions taken by the courts concerning the way of catching up with the backlog of rulings, including the order of cases and the organization of court calendars. Regardless of the solutions adopted in this respect, no new regulations on prosecutors' remuneration will be necessary. Due to the existing regulations, there is also no risk that less important cases will be closed, or charges will be dropped.

17 and 18. Are the challenges facing law enforcement authorities in an emergency situation and after its conclusion / recovery related to:

- **the independence and accountability of prosecutors in the context of emergency situations;**
- **ethics and professional conduct of prosecutors in emergency situations and beyond;**
- **training of prosecutors on working conditions in emergency situations (for example, teleworking) and protection against COVID-19;**
- **setting up interdisciplinary teams, if necessary (for example with medical staff);**
- **support for the most vulnerable, the social groups that will be most affected by the economic impact of the pandemic (unemployment, deterioration of 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 enhanced cooperation between law enforcement agencies (exchange of best practices)**

What do you think are the ways: methods of overcoming these challenges?

Ending the state of epidemic will pose numerous challenges to the prosecutor's office bodies in relation to the need for a full return to the duties in the "normal" mode. Thanks to the commitment and organizational solutions adopted, no significant backlog of statutory tasks of the prosecutor's office has been allowed to arise. Therefore, all units should be fully operational soon. At the same time, due to the possibility of another wave of the epidemic indicated by specialists, it will be necessary to maintain high standards ensuring health safety of prosecutors, employees of the prosecutor's office and all persons, in any form participating in proceedings conducted by the prosecutor's office. It will certainly make sense to provide a wide range of training to prepare prosecutors and prosecutor's office employees to meet the challenges posed by the state of epidemic and the changed situation after it is over. Undoubtedly, initiatives

concerning international cooperation of law enforcement agencies in the field of exchange of good practices and practical solutions to the problems that have arisen should be evaluated positively.

Portugal

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)

Yes. By the Decree of the President of the Republic No 14-A/2020 of 18 March 2020, in accordance with Articles 19, 134 (d) and 138 of the Constitution and with Law No 44/86 of 30 September 1986, as amended by Organic Law No 1/2011 of 30 November 2011 and by Organic Law No 1/2012 of 11 May 2012, after hearing the Government and obtaining the necessary authorisation from the Assembly of the Republic in its Resolution No 15-A/2020 of 18 March 2020, the President of the Portuguese Republic decreed the state of emergency, on the basis of a situation of public disaster (article 1), which covered the whole of the national territory (article 2), initially for 15 days, starting on 19th March 2020 at 0:00 AM and ending on 2nd April 2020 (article 3). It was renewed twice, for 15 days each time (Presidential decrees 17-A/2020, of 2/04/2020, and 20-A/2020, of 17/04/2020), and ended on the 2nd of May 2020.

The Presidential Decrees were then implemented by Decrees No 2-A/2020, of 20 March 2020, 2-B/2020, of 2/04/2020, and 2-C/2020, of 17/04/2020, that regulated the implementation of the state of emergency and stated the mandatory confinement (article 3), special protection duty (article 4) and the general duty to stay home (article 5), among other measures concerning trade, service provisions and work.

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.)

The rights affected as a result of the emergency situation were (article 4):

a) Right of movement and fixation anywhere in the national territory: the competent public authorities may impose the necessary restrictions so as to reduce the risk of contagion and enforce measures to prevent and combat the epidemic, including compulsory confinement at home or in a health establishment, the adoption of sanitary fences as well as, to the strictly necessary and proportionate extent, the ban on unjustified travel and stay on public roads, in particular when not necessary for the performance of professional activities, for the acquisition of healthcare, the assistance to third parties, the supply of goods and services and for other important reasons. In this event, the Government shall specify the situations and purposes for which individual free movement right, preferably non-accompanied, is maintained;

b) Private property and economic initiative: the competent public authorities may request the provision of any services and the use of movable and immovable property, of healthcare facilities, of business and industrial establishments, of undertakings and of other production units, and may determine the compulsory opening, working and operation of undertakings, establishments and means of production, or their closure, and may impose other limitations or changes in their activity, including changes in the quantity, nature or price of goods produced and marketed, or in their distribution and marketing procedures and movements, as well as changes to their operating arrangements;

c) Workers' rights: the competent public authorities may determine that any staff of public or private entities, irrespective of the type of connection, shall present themselves to perform their service and, if necessary, perform tasks in a different venue, for a different entity and under conditions and timetables other than those corresponding to the existing connection, in particular in the case of workers in the health, civil protection, security and defence sectors, as

well as in other activities necessary for the treatment of patients, the prevention and fight against the spread of the epidemic, the production, distribution and supply of essential goods and services, the operation of vital sectors of the economy, the functioning of critical networks and infrastructures, and the maintenance of public order and democratic rule of law. The exercise of the right to strike shall be suspended insofar as it may compromise the functioning of critical infrastructures or health care facilities, as well as in economic sectors that are vital to the production, supply and provision of essential goods and services to the population;

d) International movement: in articulation with European authorities and in strict compliance with the European Union Treaties, the competent public authorities may establish border controls on persons and goods, including sanitary controls at ports and airports, in order to prevent the entry into national territory or to make such entry conditional upon compliance with the necessary conditions to avoid the risk of the epidemic spreading or the burden of the resources allocated to combating it, in particular by imposing compulsory containment of persons. Measures may also be taken to ensure the international movement of essential goods and services;

e) Right of assembly and demonstration: the competent public authorities may impose, based on the position of the National Health Authority, the necessary restrictions to reduce the risk of contagion and to implement measures to prevent and fight the epidemic, including the limitation or prohibition of meetings or events which, by the number of persons involved, may potentiate the transmission of the new Coronavirus;

f) Freedom of religion in its collective dimension: the competent public authorities may impose the necessary restrictions in order to reduce the risk of contagion and implement measures to prevent and fight the epidemic, including the limitation to, or prohibition of religious celebrations and other religious events involving an agglomeration of persons;

g) Right of resistance: any act of active or passive resistance to orders issued by the competent public authorities in compliance with this state of emergency shall be prevented.

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.)

The rights to life, personal integrity, personal identity, civil capacity and citizenship, the non-retroactivity of criminal law, the protection of defendants and the freedom of conscience and religion were not affected, as well as freedoms of expression and information. According to the constitution and Law No 44/86 of 30 September 1986, the suspension or restrictions of rights were conceived as proportional to the serious public health situation and restricted to the necessary safeguard of human life and public health.

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?

According to data collected so far, the answer is negative, though some indicators lead to believe that domestic violence cases may have grown during the period of confinement.

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.)

Article 7, of Law 1-A/2020, of March 19, in the wording of Law 4-A/2020, of April 6, set out the rules concerning court functioning and time-limits during the pandemic situation: procedural and legal steps which must be carried out in the context of proceedings and procedures before the courts of justice, administrative and tax courts, the Constitutional Court, the Court of Auditors and other judicial bodies, arbitration tribunals, Public Prosecution bodies, courts of peace, alternative dispute resolution bodies and tax enforcement bodies, shall be covered by the system of judicial holidays until the end of the exceptional situation of prevention, confinement, mitigation and treatment of the epidemiological infection by SARS-CoV-2 and COVID-19 disease, as determined by the national public health authority. The Law also stated that this exceptional situation is also a cause of suspension of the statute of limitations and expiry periods for all types of proceedings and procedures and that, in urgent cases, the time limits shall be suspended, except under circumstances covered by paragraphs 8 and 9. Paragraph 8 privileged, whenever technically feasible, the practice of any procedural and legal steps by means of appropriate distance communication, in particular by teleconferencing or video call. And paragraph 9, concerning urgent acts, that these and respective steps shall be held in person in respect of which fundamental rights are at stake, in particular procedural steps relating to children at risk or educational guardianship cases of urgency, measures and trials regarding detained defendants, as long as those acts do not entail the presence of more than the number of persons provided for in the recommendations of health authorities and in accordance with the guidelines laid down by the competent superior councils.

The Superior Prosecutorial Council (Deliberation of 27 March 20 and 21 April 20) and the Prosecutor General (Directives nº 2 and 3/2020, of the Prosecutor General), set out also some rules concerning prosecution services namely stating that procedural acts or diligences shall be processed and practiced, without suspension or interruption of time limits, in all proceedings that are of an urgent nature, or in which fundamental rights are at stake, and that in these cases acts shall be practiced by means of distance communication, if this is technically feasible and appropriate. The proceedings that require the physical presence of the parties, their representatives or other procedural intervening parties, in urgent cases, shall be carried out through appropriate means of distance communication, namely teleconferencing, videoconferencing or other equivalent. When this was not possible, the directives ruled that the proceedings may be carried out in person when the life, physical integrity, mental health, freedom or immediate subsistence of the parties involved are at stake, provided that this does not involve the presence of more people than foreseen by the recommendations of the health authorities. Only when it was not possible to carry out the diligence under the terms of the previous points, the respective time limits should be, in urgent cases, suspended.

In cases where legally and operationally possible, the procedural documents should be delivered electronically, without prejudice to what the magistrate deems to be minimally justified, given the specific circumstances and safety conditions verified. The physical media and other expedients necessary for the processing of any urgent process, which cannot be sent by electronic means, may be delivered physically provided that the recommendations issued by the health authorities in their delivery and handling are respected.

Regarding Non Urgent Processes, the prosecution services rules stated that their acts, although suspended for the duration of the procedural deadlines, may be ensured by means of remote communication, namely through remote access to the computer applications for processing the cases (via VPN), teleconferencing or videoconferencing or other equivalent, whenever possible

and appropriate, v. g. in the light of the volume of service and the specific cases in question and, in particular, in order to recover pending cases and, where necessary, where the parties/subjects/intervening parties consider that they are in a position to do so.

General rules stated that:

- the Magistrates of the Public Prosecution Service will decide on a case-by-case basis whether or not to submit the defendants to trial in summary proceedings, the performance of their non-judicial questioning or their submission to judicial questioning for the application of coercive measures that may be imposed in the circumstances, taking into account the health safety conditions available in the Court, the safeguarding of the public interest associated with the declaration of a state of emergency, the need to protect victims and to ensure that justice is served immediately, as well as the susceptibility to the immediate application of coercive measures.
- Priority should be given to the means of distance communication, in the articulation to be carried out, in particular with the criminal police and other support and assistance entities, as well as with the Commissions for the Protection of Children and Young People.
- Public Prosecutors shall abstain from attending their respective workplaces, giving preference to teleworking and restricting their displacement to specific and indispensable situations

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?

Directives nº 2 and 3/2020, of the Prosecutor General ruled that prosecutors will carefully re-evaluate the necessity, adequacy and proportionality of the measure in relation to all defendants subjected to a measure of coercion of pre-trial detention. In such a reweighing, in which the risks to the health and life of the accused that are in any of the above-mentioned situations are great, they shall take into account all the relevant mitigating circumstances, namely the crimes in question and the effective subsistence of the general requirements provided for in article 204 of the Code of Criminal Procedure.

If they conclude that the precautionary requirements that led to the imposition of pre-trial detention have been relaxed and, consequently, that the measure of coercion of pre-trial detention should be replaced, they should in particular consider the submission of the accused to an obligation to remain in the home, especially with electronic surveillance, whenever the assumptions and dangers that led to the imposition or maintenance of the measure of coercion of pre-trial detention persist and whenever they conclude that other coercive measures are inadequate and insufficient. This re-evaluation will take particular care, taking into account the crimes in question and the risks to the health and life of the accused, if the dangers that motivated the application of the coercive measure, namely the possible continuation of criminal activity and the precautionary need to ensure the effective protection of victims, particularly the most vulnerable, allow at this time the replacement or revocation of the measure, especially for defendants over 65 years of age and proven to have a physical or mental illness, or a degree of autonomy incompatible with a normal stay in prison, in the context of this pandemic. Magistrates of the Public Prosecutor's Office shall endeavour, whenever possible, to prioritise an extraordinary review of the measure of coercion of pre-trial detention in relation to defendants who have some physical or psychological illness, or a degree of autonomy incompatible with

normal detention, in the context of the current pandemic, namely because clinical evidence to this effect has already been included in the case file.

Some criminal suspects, due to the limited functioning of courts, were released from pre-trial detention during the pandemic to avoid extending their detention beyond legal time limits. The grounds for detention on remand and detention time limits were not interpreted differently during the pandemic, even in light of the exceptional circumstances.

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)

A crisis cabinet was created to deal with the emergency situation and the Prosecutor General's Office was in permanent contact with all other relevant authorities.

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

Centrally, yes (see answer to the previous question). Representation of the prosecution was ensured in all Supreme Courts and Courts of Appeal in the different jurisdictions (penal, civil, administrative, labour courts, etc.). At a regional level, contingency plans were set-up at the level of Regional Prosecutorial Offices and offices for the prosecution in the courts, to always ensure the presence of prosecutors in particular cases: acts of the procedure concerning detained persons, procedures in risk of time-barred prosecutions (statute of limitation), domestic violence cases, in particular those with a higher risk for victims, urgent procedures under the Mental Health Law, cases requiring urgent measures for the protection of children and juveniles, namely when in danger, to allow for decisions concerning their appearance in court or the choice of protection measures to be applied to them, urgent procedures concerning international legal cooperation and, in general, all procedures requiring urgent attention by the prosecution services. There were plans ensuring shifts of prosecutors, to allow for their permanent presence in courts, when and wherever needed.

There was an exceptional pardon regime set-up in order to greatly reduce the number of people in detention (Law 9/2020, of April 10), concerning more than 1.300 persons and so there was a reinforcement of prosecutors in the courts for the execution of sentences, in order to allow for a quicker handling of all pending cases.

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?

Directives n^o 2 and 3/2020, of the Prosecutor General, ruled that shift plans already implemented for the contingency period were to be activated when it was not possible to ensure the rule regarding legal replacements, so no particular measures were necessary.

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

Yes. The Prosecutor General's Office was in permanent contact with the Internal Security System and the Prosecution Services were cooperating with the Superior Judicial Council.

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?

In Portugal, the prosecution is responsible for all criminal investigations and coordinates the activity of law enforcement agencies, in order to ensure the adequate protection of human rights.

During the period of the pandemic, particular attention was given to vulnerable victims (in cases of domestic violence, cases affecting the elderly, children or juveniles, disabled persons, migrants, etc.) and the concern was to ensure a better coordination with all concerned stakeholders (for instance, law enforcement agencies, Institute for Legal Forensics, Commissions for the Protection of Children and Young People).

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

General instructions were given to take into account the pandemic situation and prison facilities conditions, which could favour the spreading of the disease, when prosecuting or questioning coercive measures, such as pre-trial detention. Alternative solutions to imprisonment or pre-trial detention were therefore privileged.

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)

Most of these aspects are dealt with under answers 5 and 6. The hierarchical orders were to prioritise the serious cases, when fundamental rights were at stake. Victims and defendants'

rights were always a major concern. Domestic violence and child protection had specific plans. To avoid overcrowding in prisons, a law was passed (Law 9/2020, of 10 April) to set free prisoners convicted of small crimes with a short period of imprisonment to serve (2 years or less) and courts for the execution of sentences and prosecution services worked together to do this in a record time. Part of prison sentences were pardoned, a special regime for presidential pardon was set up, an extraordinary regime of administrative leave for convicted inmates was designed and there was an extraordinary anticipation of probation decisions

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

Formally, no new or extended functions of prosecution services resulted from this situation for the Portuguese prosecution service. It was already its duty to oversee the respect for the rule of law in all aspects of public life. Nonetheless, of course, new challenges arose from this situation, which was, and still is, dynamic and unpredictable, needing particular care and attention in its monitoring

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 challenges are related to the special need for the public prosecutor's office to monitor the activity of the authorities and the possible restriction of citizens' rights in order to prevent, correct and punish abuses, particularly those impacting on more vulnerable groups of the population.

In the aftermath, the backlog of cases and the hidden figures concerning criminal activity must be addressed urgently, as well as the need for upholding victim's rights and the rights of those

particularly affected by the pandemic (the unemployed, the poor, children, women affected by domestic violence, elderly, etc.).

16. For example, have specific plans been made with regard to the returning to “normal life”?

These plans are currently being designed in Portugal.

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?

This is still being outlined, but, most likely, these instructions will be designed by the hierarchy, and cases will be dealt with respecting the Law and hierarchical guidelines already in force concerning the execution of criminal policies. In any event, there does not seem to exist a risk that less serious cases will be closed or prosecution waived due to the pandemic situation, although priorities to their handling may be issued.

Will special initiatives be taken, i.e. court proceedings during weekends, extra payment of prosecutors for extra work?

Plans are still being made in this regard and it will all depend on the real impact of the pandemic on the activity of courts and prosecution services.

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)

Yes. All of the above are challenges faced by prosecutors, which will require particular attention by them.

The pressure on prosecutors is far greater in emergency periods, when their daily work has to be done while, at the same time, they still have to be vigilant and protect fundamental rights in an environment where their violation, seemingly for a greater good, is more easily socially acceptable.

Prosecutors in Portugal always have to bear in mind that their essential duty is to defend the rule of law and the Constitution. Of course, in an emergency situation, cases of professional misconduct or negligence are more likely to occur, not only because pressure is higher, but also

because prosecutors are human beings and have their families, so it's natural they may feel inclined to protect themselves and their loved ones. This requires higher-ranking prosecutors to monitor, supervise and give adequate counselling to their subordinates.

Situations where prosecutors fail to appear in court audiences in urgent cases can occur. In any event, such conduct needs to be assessed, explained and justified to the hierarchy.

Vulnerable groups were largely affected by this pandemic and prosecution services and justice systems have to put in place strategies to help them recover, dealing with backlogs, simplifying procedures, resorting more and more to information technology systems and leaving no one behind in this endeavour. Teamwork is, more than ever, needed, not only across the prosecution services themselves but with judges, law enforcement agencies and other public and private bodies.

The pandemic has also shown that international cooperation is vital and new cooperation measures will have to be designed in order to overcome the shutdown of borders, the suspension of travels and the suspension of courts' activity in emergency situations.

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

More teamwork will be needed, not only inside the prosecution service, but with any other relevant institutions (courts, law enforcement agencies, social services, other public or private bodies).

Specific goals will have to be defined and implemented for the aftermath of the pandemic, dedicated teams will have to be set up to address backlogs and delays in proceedings.

There will be a need for a more persistent and effective use of information technology systems, keeping in mind the need for their continued security and the protection of personal data. Procedures, in general, will have to be more flexible and effective to reduce backlogs and overcome possible bottlenecks in courts' systems. New forms of participation will have to be designed, reserving in-person participation to the most essential acts of the procedure and allowing for the possibility of a wider use of computerised transmission of documents to and from the courts in the proceedings.

Slovak Republic / République slovaque

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)

The Government of the Slovak Republic approved in several hospitals with effect from 16 March 2020 the declaration of a state of emergency pursuant to Art. 5 of the Constitutional Act no. 227/2002 Coll. The emergency was gradually extended to other facilities and the government subsequently approved other important measures to prevent the spreading of the new coronavirus causing COVID-19. The emergency situation may last for a maximum of 90 days in accordance with the legislation of the Slovak Republic. At the time of processing the responses to the questionnaire, the state of emergency was not cancelled, with effect from 22.4.2020, the gradual release of the corona measures took place in four phases.

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.)

The Central Crisis Staff was established in the territory of the Slovak Republic by the government, which took measures in connection with the Covid-19 disease with effect from 12.3.2020 and ordered a mandatory 14-day domestic quarantine from 13.3.2020 until appealed to persons returning from abroad, closed all airports, restricted international train and bus traffic. On 16 March 2020, there were closed preschool and school facilities, leisure centers, sports centers, catering facilities, banned the organization of mass social, cultural, sports events, banned visits to hospitals and social service providers, forbade the service of public masses.

As a result of the pandemic, freedom of assembly was restricted, freedom of movement was restricted to the Easter holidays from 8.4.2020 to 13.4.2020, with the exception of travel to work or business operations, purchase of essentials (food, medicine), travel to medical facilities. During the Easter holidays, the government did not restrict freedom of movement completely, allowing a visit to nature within the district in which the people lived.

From 25 March 2020, the government ordered the obligation to wear a face mask in public, in public transport and in enclosed spaces.

During pandemic measures, only acute life-threatening surgeries were performed in hospitals, non-acute examinations were postponed, and general practitioners performed medical procedures to the extent necessary in compliance with strict hygiene measures.

The gradual release of government measures has been taking place in four phases since 22.4.2020.

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.)

Pandemic measures in connection with ensuring the protection of public health during the emergency state fully respected compliance with the Constitution of the Slovak Republic. The prosecutor's office has no knowledge of a violation of the constitution.

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?

The General Prosecutor's Office of the Slovak Republic does not have any information on possible findings of discrimination against certain groups, on hate speech, racism, xenophobia during the emergency.

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.)

The General Prosecutor of the Slovak Republic

- ordered the temporary performance of work from the residence within the Prosecutor's Office of the Slovak Republic from 16 March 2020, provided that in order to maintain the operation of the Prosecutor's Office, the necessary number of prosecutors and administrative staff at the workplace in all divisions of the Prosecutor's Office was ordered a necessary extent of work.

The decision on the operation of the prosecutor's office during the state of emergency was left by the General Prosecutor in the competence of the heads of the organizational units of the General Prosecutor's Office and in the regional prosecutor's offices and subordinate district prosecutor's offices in the competence of the regional prosecutors,

- instructed the directors to ensure a strict record of the files that the prosecutor will have at his disposal during the performance of work from the place of residence and to monitor and control the performance of work from the employee's residence and strict compliance with legal deadlines for settling cases (remand cases),

- imposed during the period of temporary work from the employee's place of residence, a ban on staying at the workplace to those employees who are not ordered to work at the workplace on that day, and prohibited any gathering of employees who will perform their duties at the workplace,

- ordered that oral submissions will not be accepted at the GP SR,

- cancelled consultations, workshops, training for prosecutors and prosecutors' staff and their participation in extra-official workshops,

- decided that the Registry of the General Prosecutor's Office of the Slovak Republic will function for receiving submissions of natural persons and legal entities in a restricted regime.

The General Prosecutor instructed the directors and heads of the organizational units of the General Prosecutor's Office and the regional prosecutors to instruct the prosecutors in their management to decide on their participation in the hearings ordered by the district and regional

courts in their local and material jurisdiction. If they considered participation in the court's ordered hearing to be inappropriate in view of the health risk, they reported this to the competent court. They justified their non-participation in the hearing by measures adopted by the Government of the Slovak Republic and the Central Crisis Staff of the Slovak Republic, which restricted the gathering of Slovak citizens in larger numbers to protect their health and prevent further spreading of COVID-19. The guidelines for considering participation in the hearing did not cover remand and other urgent cases in which the competent courts ordered the hearing.

Remote work from home was cancelled in the prosecutor's office with effect from 6.5.2020.

- 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?**

Suspects of a criminal offense, as well as accused persons in pre-trial proceedings, were treated in a standard manner during the state of emergency, fully respecting the Constitution of the Slovak Republic, the Code of Criminal Procedure, and other legal regulations relating to criminal proceedings. Despite the fact that the courts did not hold regular main hearings during this period; the bodies involved in criminal proceedings as well as the courts ruled legally in compliance with all legal deadlines regarding detainees, respectively in custody cases. The prosecutor's office does not have information on the possible release of suspects due to non-compliance with legal deadlines by law enforcement authorities.

There was a partial, but not legally relevant delay in criminal proceedings, in non-custodial criminal cases, as interrogations of accused persons and witnesses, or even expert evidence from the fields of psychiatry and psychology, were commonly postponed. As a rule, however, this did not apply to remand criminal cases, which were carried out as a matter of priority, even in a limited working regime, while the prosecutor's office does not have information on possible violations of procedural rights of suspects or prosecuted persons.

- 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)**

There was no need for such measures during the pandemic.

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

During the pandemic, it was not necessary to set up a specialized team in the prosecutor's office. In the combination of ordered work at the workplace and the performance of work remotely from home, all components of the prosecutor's office functioned properly and the agenda was smoothly processed at all levels of the prosecutor's office.

- 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?**

There was no need for such measures during the pandemic.

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

There was no need for such measures during the pandemic.

- 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?**

There was no need for such measures during the pandemic.

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

During the state of emergency, the prosecutor's office operated in a limited working mode, but nevertheless decided in the standard way with the intentions of the effective provisions, without the need to implement purposeful alternatives to criminal prosecution in order to prevent overcrowding of prisons. During the state of emergency, there was no exceptional increase in the number of persons in custody and imprisonment institutions.

- 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)

During the state of emergency, the prosecutor's office, despite operating in a limited working mode, made decisions in the standard way in the intentions of the effective provisions.

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**

The state of emergency did not require the creation of new or expanded functions during the pandemic or after her.

However, the General Prosecutor's Office of the Slovak Republic, as the first state power body in the Slovak Republic, drew the attention of the general public at the beginning of April 2020 to live broadcasts about the possibility of increased domestic violence during the Covid-19 crisis, causes and consequences of domestic violence in this situation. As part of the live entries, specific procedures for potential victims or other persons when reporting domestic violence and the existing line at the General Prosecutor's Office of the Slovak Republic for abused persons was brought to the public's attention (free telephone line and also e-mail, which potential victims can use even if they fear that the attacker could hear a phone call).

Based on the above-mentioned media coverage, the General Prosecutor's Office of the Slovak Republic recorded a significant increase in reports on the line for abused persons as of May 2020 (compared to the same period in 2019, the number of criminal proceedings for the crime of torture of a close person and the entrusted person increased by 49% and the number of cases in which charges were brought by 47%).

Given the powers of the prosecutor's office, preventive measures and the prompt and effective handling of reported facts are important tools in the fight against domestic violence, and this needs to be given close attention in the event of similar emergencies.

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 Prosecutor's Office of the Slovak Republic operated during the state of emergency in an appropriate regime so that the tasks of the Prosecutor's Office were performed on an ongoing basis. Due to this, it was not necessary to take special measures to return to full working mode.

In relation to international cooperation for restrictions on the service of documents by post, urgent matters were sent abroad electronically, as long as the character of the cases allowed them to be sent electronically. The contribution would be to complete the general delivery addresses of the central judicial authorities of the world for international cooperation during emergencies and exceptional situations relating to global pandemic, including the development of best practices for the follow-up to PCOC-UN-UNODC and EJM "Communication of Central Authorities in relation to work and emergency measures related to the Covid-19 health crisis" published on its website by UNODC.

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?

In accordance with the effective legal regulation, it is in the competence of the court to decide on the date of court proceedings and to determine the priority handling of individual cases. According to Slovak national law, the prosecutor has no interference in this selection.

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)**

See answer to questions no. 5, 15 and 18.

The Judicial Academy of the Slovak Republic launched the planned educational events in the remote form (online seminars) from April 20, 2020.

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

At the transnational level, it seems necessary to strengthen the international judicial cooperation of central judicial authorities in emergency situations caused by pandemics, and the RE, UN and EJM initiative has great potential in this regard in the material mentioned in question no. 15, which needs to be supplemented by other states and focus on practical solutions for the manner of performing cross-border acts, which cannot be postponed.

With the worldwide growing trend of domestic violence during a pandemic, active media communication of the prosecutor's office focusing on vulnerable persons / victims, the causes and consequences of domestic violence in this situation and ways of solving it at the criminal level appear to be effective at the national level.

Enclosure:

File of UNODC "Communication of Central Authorities in relation to work and emergency measures related to the Covid-19 health crisis".

Slovenia / Slovénie

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)

Under Art. 92 of the Constitution of the Republic of Slovenia (Constitution) (1) A state of emergency shall be declared whenever a great and general danger threatens the existence of the state. The declaration of war or state of emergency, urgent measures, and their repeal shall be decided upon by the National Assembly on the proposal of the Government.(2) The National Assembly decides on the use of the defence forces. (3) In the event that the National Assembly is unable to convene, the President of the Republic shall decide on matters from the first and second paragraphs of this article. Such decisions must be submitted for confirmation to the National Assembly immediately upon its next convening.

Under Art. 16 of the Constitution (1) Human rights and fundamental freedoms provided by this Constitution may exceptionally be temporarily suspended or restricted during a war and state of emergency. Human rights and fundamental freedoms may be suspended or restricted only for the duration of the war or state of emergency, but only to the extent required by such circumstances and inasmuch as the measures adopted do not create inequality based solely on race, national origin, sex, language, religion, political, or other conviction, material standing, birth, education, social status, or any other personal circumstance.

Observing this no state of emergency was declared during the COVID-19 pandemic and no suspensions or limitations to basic human rights and fundamental freedoms were imposed under these provisions.

However, under Art. 7 of the Communicable Diseases Act (CDA) an epidemic was declared which lasted from 12.3.2020 until 31.5.2020 and covered the whole territory of the Republic of Slovenia. The state of epidemic was declared by the minister of health according to this act. These provisions of the act were amended during the epidemic so that the minister of health can since then only declare a state of epidemic covering parts of the territory of the state. If the state of epidemic should cover the whole state this decision is now adopted by the Government of the Republic of Slovenia (Government). The declaration of an epidemic gives the Government power to impose some restrictions and limitations to people's rights prescribed in the act which will be discussed in some more detail in further responses to this questionnaire.

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.)

Under the provisions of Art. 39 of the CDA (also amended) the Government may adopt the following measures if other measures under the CDA cannot prevent the entry or spread of a communicable disease:

- lay out conditions of travel into countries, where there is a possibility of infection with a dangerous communicable disease and conditions for entry from such countries into Slovenia;
- prohibit or limit the movement of population in infected or directly endangered areas;

- prohibit gathering of people in schools, cinemas, public businesses and other public places until the danger of spreading of the communicable disease ceases;
- limit or prohibit trade of specific goods or products.

The Government must immediately notify the National Assembly and the public of adopting measures from the former paragraph.

During the epidemic in very broad terms the government restricted travel into and from the country, closed educational institutions, limited gathering of people in public places, including non-essential public businesses, limited movement of population between municipalities and imposed some restrictions on selling drugs and medical equipment. These measures were applied in various levels of intensity corresponding to the assessment of the threat posed by the epidemic. Notably, the restriction of freedom of movement did not affect members of the judiciary, since this measure specifically did not apply to individuals who needed access to perform tasks related to the functioning of judicial authorities.⁴ Some restrictions, e.g. limits to the freedom of assembly, are still temporarily in place after 31. 5. 2020.

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.)

Under our Constitution any suspension or restriction of human rights and fundamental freedoms must correspond to principles of legality, proportionality, adequacy of the measures and necessity. Any suspensions or limitations of human rights and fundamental freedoms must also observe the principles of equality stated in Art. 16 (1) cited above.

The Ordinance on the temporary prohibition of the gathering of people at public meetings at the public places, surfaces and other areas in the Republic of Slovenia was challenged before the Constitutional court of the Republic of Slovenia by a citizen, but a final decision on the constitutionality of these measures has not yet been reached. The Constitutional Court did however already find irregularities in the process of the adoption of the Ordinance on the temporary prohibition of the gathering of people at public meetings at public events and other events in public places in the Republic of Slovenia and prohibition of movement outside the municipalities and instructed the Government to assess with the aid of professional opinion the necessity of measures adopted in this act without any hesitation after the receipt of this decision of the Constitutional court and every seven days following since then.⁵

No significant limits to searches, restrictions relating to media or political parties on public health grounds were adopted. The government did not take press conferences *in camera* but through means of electronic communication during the epidemic for health reasons.

⁴ 3. člen Odloka o začasni splošni prepovedi gibanja in zbiranja ljudi na javnih mestih in površinah v Republiki Sloveniji, Ur. l. RS št. 60/20 in 69/20 - Art. 3 of the Ordinance on the temporary prohibition of the gathering of people at public meetings at the public places, surfaces and other areas in the Republic of Slovenia, Official gazette of the Republic of Slovenia nr. 60/20 and 69/20; 3. člen Odloka o začasni splošni prepovedi gibanja in zbiranja ljudi na javnih mestih in površinah v Republiki Sloveniji ter prepovedi gibanja izven občin, Ur. l. RS št. 38/20, 51/20 in 25/20 – Art. 3 of the Ordinance on the temporary prohibition of the gathering of people at public meetings at public events and other events in public places in the Republic of Slovenia and prohibition of movement outside the municipalities, Official gazette of the Republic of Slovenia nr. 38/20, 51/20 and 25/20.

⁵ <https://www.us-rs.si/zacasno-zadrzanje-izvrsevanja-7-clena-odloka-o-zacasni-splosni-prepovedi-gibanja-in-zbiranja-ljudi-n/>

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?

Few such events were detected. From media reports it was possible to detect increased sensitivity towards some citizens of neighbouring countries crossing the border into Slovenia, especially if they were coming from countries perceived to have increased risk of spreading the infection (most notably Italy). Media reported of an incident where a citizen of Italy driving a minivan was beaten and threatened with a chainsaw by the perpetrator in an area close by Italian border.⁶ An Italian citizen also reported that a person wearing Slovene military uniform had pointed a rifle at him while he was strolling near the Italian border with his girlfriend, roughly in the same area as in the former case,⁷ although the Slovenian military investigation concluded that no operations of theirs were being performed in the area at the time. This increased sensitivity may be connected to reports that several Italian citizens were crossing the border into Slovenia despite the adopted restrictions.⁸

The epidemic, all the adopted measures to counter it, as well as the change in Government which happened on the day of the declaration of the epidemic, all helped to alleviate existing political and social tensions existing in the country. In May anti-governmental protests were taking place in the capital city using very strong political speech by left-wing protesters which was characterised by some members of the government as hate speech, but the competent prosecutor reached the decision not to prosecute these cases given all the circumstances. It is becoming increasingly common that visible politics in Slovenia accuse people of different political views of hate speech and the danger of politicising any prosecution of hate speech in Slovenia is very real.

A separate incident was caused by a quasi-paramilitary group called Štajerska varda, whose members gather near the border with the intention to try to oversee the Schengen border and the influx of illegal immigrants into Slovenia. In this incident they came in numbers to a police station in Slovenska Bistrica and protested against the conduction of police officers handling a specific case of a gathering. The protest seemed to have had a threatening intent. Notably their leader Andrej Šiško was formerly convicted of incitement to change the constitutional arrangement of the Republic of Slovenia (Art. 359 of the Criminal code of the Republic of Slovenia) and can be connected to extremist groups.

In the original questionnaire we have reported a notification by an Italian citizen that a person wearing a Slovene military uniform had pointed a rifle at him while he was strolling near the Italian border.⁹ We have also reported, based on publicly disclosed information at the time, that an investigation by the Slovenian military concluded that no operations of theirs were performed in the area at the time of the incident. To shed clarity to the matter we would like to add to the questionnaire that a following joint military and police investigation concluded that the alleged incident happened, however a day earlier than originally investigated by the military, and that a further investigation is under way.

⁶ <https://www.24ur.com/novice/crna-kronika/sredi-ceste-ustavil-italijanskega-voznika-ga-pretepel-in-grozil-z-motorno-zago.html>

⁷ <https://www.primorski.eu/se/stoj-sit-down-nato-mu-je-z-avtomatsko-pusko-meril-v-glavo-YD522526>

⁸ <https://www.sta.si/2767256/italijani-prehajajo-zaprto-mejo-predvsem-zaradi-rekreativnih-dejavnosti>

⁹ <https://www.primorski.eu/se/stoj-sit-down-nato-mu-je-z-avtomatsko-pusko-meril-v-glavo-YD522526>

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.)**

Apart from essential staff and prosecutors and staff that were called on duty the prosecution service staff were sent to work from home during most of the course of the epidemic with various possibilities allowed to use access to the information system and databases of the Prosecutor's office. Several employees were asked to consent to use their own electronic equipment for work and to leave their private phone number with the employer in order to ensure the operational ability of the service. The guidelines stated that work from the office and coming to the premises of the Prosecutor's Offices should be reduced to a minimum for health reasons and by obliging to all measures to reduce the spread of infection.

- 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?**

Judicial investigations and trials in criminal matters in which the suspect or the accused are detained or are introduced against foreigners not residing in Slovenia are considered urgent matters under Art. 83. and 82.a of the Courts Act. Due to this there were no changes to the time limits for detention in custody or the functioning of the courts in these cases (e.g. court sessions, service of documents, deadlines) nor to the grounds for detention in custody and custody time limits during the epidemic.

- 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)**

Similarly to the case described in the question the Office of the State Prosecutor General has designated essential staff of a sufficient number of supreme state prosecutors, legal advisors and other staff to tackle any issues during the whole duration of the emergency.

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

The Supreme State Prosecutor's Office designated their essential staff as mentioned above. Prosecutor's offices on the first level also appointed prosecutors and judicial advisors on duty as described in some more detail under questions 7. And 9.

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 prosecution service in Slovenia exists on two levels. The first level consists of eleven District State Prosecutor's Offices (DPO) and the Specialised State Prosecutor's Office (SPO) and the second level is the Supreme State Prosecutor's Office (SSPO). Guidance to address the emergency situation were issued at the level of the SSPO, however the DPO and SPO could adopt their own additional guidance.

The adopted guidance can be divided into following topics:

- on measures to ensure the health of the prosecutors and staff and prevent the spread of infection when working in office;
- on health safety measures addressing meetings, socialising and travel when working in office;
- on measures addressing work from home for prosecutors and staff under conditions prescribed by law;
- on measures to ensure safety of personal and classified information and the access to the Prosecutor's Office's computer systems and databases while working from home;
- on measures on how to report on the work in progress and finished work from home for organisational reasons,
- on measures addressing entry of third persons into the prosecutor's office premises and conducting procedure inside these premises.

Apart from defining essential staff in the SSPO as mentioned above the DPO's and the SPO appointed prosecutors and judicial advisors constantly on duty during the emergency in order to ensure the functioning of the prosecution service in matters of detention in custody and investigative measures such as house searches and covert investigative measures as well as temporary insurance and temporary seizure of assets of illicit origin.

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

Meetings took place on high levels between the prosecution service and both the courts and the police to discuss any open questions and obstacles in the functioning of the judiciary or the services ensuring public order.

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?

Under the criminal procedure provisions the prosecution service already has a role to guide and supervise criminal investigations conducted by the police and an accused has the right to complain to the Prosecutor's Office against acts of the police during the pre-trial phase. It was not brought forward that the Prosecutor's Office would have an increased or special role in conducting or supervising police actions during the epidemic other than the existing one.

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

No specific action was taken by the prosecutor's service in order to avoid overcrowding in detention facilities.

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)

Considering the comparatively relatively short period when deeper measures to counter the epidemic in Slovenia were put in place no specific modalities for action of the prosecution service were adopted other than already mentioned in regard to the other questions in this questionnaire.

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

Formally no new or extended functions of prosecution services resulted from the emergency situation regarding the above-mentioned situations. Although the function of the prosecution service exceeds the single role of dealing only with criminal matters, it systemically does not have the function of maintaining public order in a broader sense, dealing with emergencies in case of epidemic or protecting more vulnerable parts of the population.

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?

Increased case load and organisational challenges regarding increased work from home but also ensuring a strong and independent position of the prosecutor under constitutional and international provisions.

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?

The task of assigning an (even) load of cases by prosecutors is trusted to the leader of the Prosecutor’s offices who may in this manner also prioritize cases. Insofar no extended court proceedings or payments for extra work of prosecutors are foreseen.

The service seemed to manage cases in stage of written procedure in consequence to a comparatively relatively short period of measures adopted because of the emergency, but there is expected an increase of hearings which did not take place during the emergency. It is difficult to assess the impact of the back load of cases in this stage to the functioning of the service or if it will affect the nature of completion of less serious cases, but some effect is deemed inevitable.

The period between 15.7. and 15.8. when by law (Art. 86 of the Courts Act) the courts only hold hearings in urgent matters as well as hold service of documents and deadlines in usual circumstances was halved this year, which means the prosecutors will have to exploit their vacations in a more concentrated manner and prepare for more hearings.

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)

It is to be emphasized that the prosecutor's pay for work was reduced by 30 % during the epidemic, however prosecutors (and staff) working in did receive bonus payment if they were working in conditions deemed to be more hazardous to their health (also if they were working in office). This measure was not adopted in the whole judiciary (e.g. also for judges) and was therefore protested by the Prosecutors Society before the MoJ and the Constitutional Court. There may be affect to the position of prosecutors if they will further be differentiated from the position of judges when it comes to pay, organisational position in the judiciary and working conditions. The Constitutional Court refused to take this matter into consideration stating the lack of direct effect of the measure towards the position of the independence of Prosecutors under the constitution.

There is a need for training of prosecutors on working modalities at the time of emergency situations (teleworking and other aspects of working from home).

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

Ensuring the independence and position of the prosecutor, similar to the position of the judge on an organisational and functional level, including equal pay for equally demanding work. To increase possibilities of working from home for prosecutors and making it an integral part of the functioning of the service.

Spain / Espagne

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, how does emergency situation cease)**

The exceptional measure (state of alarm) was approved by the Spanish Cabinet on March 14 and came into effect the following day. It was set to last until March 29 but was extended by Congress for another 15 days until April 11. Since then, it has been extended every 15 days by the Parliament. The Spanish government has announced plans to gradually relax some confinement measures in phases over the next six to eight weeks.

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

The state of alarm consisted, mainly, in deprivation of movement, that is, confinement measures, affecting, as a result, to education, commerce, right to practice religion in public places, and everything that affects to the right of movement, etc. to avoid concentration of people. The Spanish Constitutional Court also prohibited public demonstrations, to avoid the political demonstrations that currently take place when the First of May.

- 3. Which rights may have not been affected under any circumstance? (i.e. the right to life, to personal integrity, access to courts, personal identity, citizenship capacity, rights of defence in criminal proceedings, non-retroactivity of criminal law, etc.)**

The rest of rights have been preserved.

- 4. Has there been 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?**

Not at all, to my knowledge.

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.)**

The above described options and modus operandi are those introduced to keep Prosecutors doing their job.

- 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?

There was an agreement by the Plenary of the Constitutional Court of 16 March 2020, regarding the suspension of procedural and administrative deadlines while the state of alarm is in force. However, that decision does not apply to the penal order, habeas corpus cases, pre-trial detention, orders of protection, inmates control in jails, precautionary measures on gender or minor crimes. No criminal suspects have been released as a result of the state of alarm.

7. 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.)

Demands and appeals to judicial bodies can be submitted, according to the Constitutional Court, by those who consider that their rights have been affected as a result of the state of alarm.

8. 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)

The Attorney General's Office has been coordinating Prosecutors and Specialised Prosecutors in order to be able to face the different problems which may appear as a result of the Coronavirus crisis since March 23 up to now.

9. Has there been suspension of procedural delays (except in urgent cases or cases affecting human rights) imposed by a particular law or other legal instrument?

As mentioned before (para. 6), there has been an agreement by the Plenary of the Constitutional Court of 16 March 2020, regarding the suspension of procedural and administrative deadlines while the state of alarm is in force. However, that decision does not apply to the penal order, habeas corpus cases, pre-trial detention, orders of protection, inmates control in jails, precautionary measures on gender or minor crimes. No criminal suspects have been released as a result of the state of alarm. Non the less, there is a certain level of confusion on that specific subject, since the case law is quite complex, and the number of possibilities is high. Eventually the Courts will have to put order in the matter.

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

No response team has been created.

11. 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 Attorney General's Office has issued a number of measures to cope with those problems, following the same scheme followed by the Judges regarding reinforcements and replacements of judicial bodies.

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

Most of the initiatives regarding the matter of our concern adopted have been agreed by the General Council of the Judicial Power, the Public Prosecutor's Office and the Ministry of Justice.

13. 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?

Not, in a specific manner

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

Mediation, as well as the partial use of the discretionary principle in criminal prosecutions, are right now on the table of debate.

15. 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)

There has been an important number of administrative fines imposed to those who did not respect the confinement measures. In those cases, where there has been physical resistance by the offender, arrest may follow as a possible crime of resistance or disobedience to the authorities. In fact, there are some procedures, in development, based on that approach.

On the other hand, while videoconferences were beginning to be used in the judicial context before the present pandemic, the tendency right now is to resort to videoconferences in the majority of cases. It is for sure that a higher degree of digitalization will be one of the results of the present events.

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

16. 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

There have not been special initiatives adopted in the direction described above. Perhaps, the powers and capacities existing into the professional context of the Public Prosecutors are being executed with a higher level of awareness and caution to avoid excesses that may occur under the present circumstances.

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

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

I think that when giving the opinion required one has to be aware of some aspects which, occasionally, are put aside under the present circumstances and that, by no means, have to be taken into consideration. On the one hand, it is true, that more police surveillance has been applied and more control has been introduced, which may result in police abuses. It is also true

that cybercriminality has increased since more trade is taking place through internet. Besides, incidents related to gender violence have increased up to a 47,3%, according to Spanish statistics, as well as assaults on minors but. Not to forget cases of death of old people hosted in nursing homes, as a result of the possible negligent treatment of the nursing home staff regarding the coronavirus threat. But, on the other hand, it is also true that the average level of crime in general has decreased more than 50 %.

Accordingly, I think it is convenient to wait still for some time until the moment we have a proper picture of the whole situation, since there may still be, or appear, factors which we cannot evaluate properly right now.

18. Are such challenges 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)**

I partially refer to the answer provided at para. 17 for para. 18. Non the less, there are new aspect, as a result of the Coronavirus crisis, which are quite interesting, and we may have to consider. First of all, the fact that digitalization will develop, should demand different and new procedural safeguards and measures, in line with this new approach. Secondly, as mentioned, cybercriminality and gender violence has seriously increased, and we will need to update Prosecutors on those specialties, and, thirdly, it is worth mentioning that the environmental issues are arising everywhere. In fact, the origin of the pandemic has a clear environmental background, besides, the way the virus spreads it is through the air, which is in the same way than any other form of dangerous pollution spreads, etc., etc. What has been said may require new initiatives to face those new aspects.

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

Besides the need to face those points mentioned in para 18, all those novelties may affect human rights, since there are new perspectives being introduced and we lack the proper training, capacity, skills, etc. in those new area, or, at least, not in the necessary level. Accordingly, we should care about protecting society, specially from the human rights point of view on those novelties.

Sweden / Suède

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)

No. It is not possible to declare an emergency situation in order to fight against COVID-19 in Sweden.

The Communicable Diseases Act has been temporarily amended to allow the government to take special measures against the corona virus.

Provisions have been introduced in the Communicable Diseases Act, which means, within the framework of the Constitution, the government is entitled to issue certain regulations on specific measures. The regulations may, for example, apply to temporary closure of shopping malls and restaurants. All regulations that the government issues have to be examined (observed) by the Parliament.

The government has taken a number of measures due to the ongoing spread in the community of the virus that causes the Covid-19 disease.

The measures include:

- On 1 February 2020 the Government took a decision to apply the provisions of the Swedish Prevention of Infectious Diseases Act to Covid-19. The decision gives the Swedish Public Health Agency and the Infection Protection Doctor, if needed, the opportunity to take decisions on certain extraordinary infection prevention measures.
- On 11 March 2020 the Government issued a regulation banning public gatherings and public events with more than 500 participants. The government issued a new regulation amending the same regulation on 27 March 2020, which means that the ban on March 29, 2020 instead applies to more than 50 participants. The regulation is valid for the time being, but will be repealed if the ban is no longer needed.
 - o The Government used the possibility in the Public Order Act (Chapter 2, Section 15) to prohibit public gatherings and public events since it is necessary to counteract the epidemic. The ban is announced in a regulation.
 - o According to the Constitution of Sweden, the government, after being authorized by law, is allowed to limit the freedom of assembly and the freedom of demonstration to combat an epidemic. The restrictions are not allowed to go beyond what is necessary in view of its purpose. Each restriction must therefore be proportionate.

On 16 April 2020 (the law became effective on April 18), the Parliament adopted new provisions in the Communicable Diseases Act, which gives the Government, within the framework of the Constitution, the right to issue certain public-law regulations on specific measures related to the virus that causes covid-19.

The Government may issue special regulations on the relationship between individuals and the general that apply to obligations on individuals or otherwise relate to interference with individuals' personal or financial circumstances. However, only if it is needed for infection protection to deal with the spread of the virus that causes covid-19.

The regulations may relate to:

- temporary restrictions on public gatherings;
- temporary closure of shopping malls and other trading venues;
- temporary closure of social and cultural meeting places, such as
 - bars, nightclubs, restaurants, cafeterias, gym and sports facilities, libraries, museums and public meeting rooms,
- temporary closure or other restrictions on transport or infrastructure such as ports, airports or buses or railway stations;
- temporary enabling of mutual trade or redistribution of medicines or protective materials and other medical equipment for private healthcare providers and other private operators; or
- temporary measures of a similar nature.

Decisions under regulations promulgated under the new provisions may be appealed to the General Administrative Court, if necessary, to satisfy the right to a civil or judicial review under Article 6 (1) of the European Convention of 4 November 1950 on the protection of human rights and the fundamental freedoms.

The regulation will apply temporarily until 1 July 2020.

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.)

See question 1. The government has among other things restricted freedom of assembly by prohibiting gatherings with over 50 people. The decision constitutes an infringement of citizens' political freedoms and rights.

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.)

See question 1.

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, the prosecution service has not 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 due to the emergency situation.

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.)

The prosecution service has invited all employees of the service to follow the recommendations of the Public Health Agency of Sweden / general advice e.g. to avoid public transport, teleworking, to, if possible, hold meetings via video link and not IRL.

However, note that the prosecution service in Sweden has not significantly been affected by the COVID-19 pandemic. What has been mainly affected is international cooperation. The consequences of various countries' actions (in form of closure of communities, introduction of quarantine, ban on certain categories of police personnel for foreign travel) have led to delays regarding e.g. European Investigation Order, Mutual Legal Assist and European Arrest Warrant.

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?

There are currently no indications that the suspects have been released from pre-trial detention or have been detained during a longer period due to the COVID-19 pandemic.

No legislative changes have been made in Sweden regarding this situation. The Swedish Code of Judicial Procedure is still applicable, i.e. customary legislation. The proportionality principle should always be considered.

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, there has been no particular intervention of the prosecution service due to the emergency situation in Sweden.

The authority management has appointed/created a crisis response team. The team has daily meetings in order to be updated and to be able to take the necessary measures to ensure that the prosecutor's office functions in the best possible way.

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

See question 7. Locally, it is the management who forms a crisis response team regarding the employees.

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?

No, there have been no guidelines to address the emergency situation in Sweden as the ongoing prosecutorial operations have worked relatively well in Sweden.

It can be mentioned that The Swedish Code of Judicial Procedure is permissible by e.g. telephone interviews, which means that many trials have been held as planned.

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

Yes, the law enforcement authorities have been meeting regularly (weekly) to be able to make the necessary adjustments in the various activities based on the general recommendations.

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?

No, the prosecution service has not conducted or supervised investigations carried out by police and other investigation authorities to ensure the adequate protection of human rights in the emergency situation. There have been no changes in the legislation regarding this as mentioned before (question 6).

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

No, the prosecution service has not decided on alternatives to prosecution to avoid overcrowding in detention facilities in the emergency situation.

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

1. 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.);

- No

2. conducting prosecution before the courts, particularly when courts have significantly reduced their activity (have courts maintained their activity, even if somewhat reduced?);

- No

3.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

- No

4.appealing court decisions;

- No

5.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);

- No

6.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)

- No

7.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)

- No

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:

1.supervising maintenance of public order and security;

2.supervising implementation of emergency measures including confinement of population, closure of public areas and other relevant measures;

3.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.);

4.ensuring regulatory measures to prevent profiteering on foodstuffs, hygiene products and essential medicines and supplies;

5.reducing the risk of stigmatising and harmful conduct against vulnerable groups, including those infected by COVID-19;

6.ensuring the rights of persons held in quarantine or confinement;

7.interacting with media and highlighting the work of prosecution services in the context of emergency situation;

8.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?

Guarantee staff health (during and after an emergency situation (i.e. back load of cases after an emergency situation - higher workload). It is important to point out that it is not only about ordinary illness but also psychological/mental illness and stress due to the situation. The leadership is challenged when the managers has to a greater extent lead/manage the chambers/offices at distance (teleworking). This challenge requires more of the managers in the organization. There is a risk that the social work environment will deteriorate.

Internal communication with clear directives to managers and employees is very important in reducing worries and questions about working conditions.

Ensure cooperation with other stakeholders – police, courts, etc.

Secure a well-functioning IT structure inside prosecution service and between the prosecution service and other stakeholders.

Ensure a close collaboration with the Government Offices of Sweden.

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?

No, as mentioned before the prosecution service in Sweden has not significantly been affected by the COVID-19 pandemic.

However, there will be challenges ahead but as the situation is for the moment it seems to be resolving. It may be more work for the prosecutors after the pandemic, but it is expected to be possible to work down the back load of cases during normal working hours.

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;

No, this is nothing the Prosecutor's Office has observed so far.

- ethics and professional conduct of prosecutors during emergency situations and thereafter;

No, this is nothing the Prosecutor's Office has observed so far.

- training of prosecutors on working modalities at the time of emergency situations (for instance, for teleworking) and protecting themselves from COVID-19;

No, this is nothing the Prosecutor's Office has observed so far.

**- 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.)**

No, creation of multidisciplinary teams regarding the above-mentioned purposes is not the mandate of the service.

- 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)

This can be a challenge in the future. Sweden is positive to contribute to a reinforced cooperation.

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

It is important to be prepared for the next emergency situation - ways and methods to overcome future challenges are among other things

Secure a well-functioning IT structure inside prosecution service and between the prosecution service and other stakeholders both nationally and internationally.

Ensure that employees are able to telework with the necessary equipment.

Ensure cooperation with other stakeholders – the Swedish courts, the police Authority, the Government Offices of Sweden, the Swedish bar association etc.

Ensure that existing legislation is useful in various types of crises. Avoid temporary changes which may jeopardize legal certainty in an undesirable way.

Finally, evaluating the management of a crisis is extremely important in order to be better prepared for the next time a major crisis occurs.

Turkey / Turquie

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)

There has been no general emergency or similar situation declared in our country. In fact, certain regulative measures have been adopted to implement without restricting the rights and freedoms in a general setting. This process has been conducted in line with the decisions taken by the ministries, the other institutions and organizations, and notably the Presidency.

On the other hand, the steps taken have been determined under the Pandemic Action Plan issued by the Ministry of Health. Moreover, the National Pandemic Coordination Board and the pandemic coordination boards of districts have been established.

General restrictive measures have been conducted by the Ministry of Interior.

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.)

With a view to reducing the impacts of the pandemic period, containing the spread of virus and protecting the health of citizens and public health, our country has taken certain administrative measures that restrict the freedom of assembly, freedom of movement, freedom to trade, freedom of artistic activities and freedom of conscience and religion.

Since no general restriction has been ordered, it is not the case that the rights and freedoms have been restricted in a general sense. But, there have been restrictions imposed on entrances and exits of certain cities with the aim of fighting against the pandemic. Moreover, in this context, weekend curfews have been imposed. Stay-at-home curfews have been introduced for the citizens aged 65 and over – the age group most at risk from the pandemic – and also those under 20 as potential carriers of the virus, with the proposal of the Scientific Advisory Board of Turkish Republic. (The needs of the citizens aged 65 and over have been supplied by the governors' offices.) But, the exceptions to these restrictions have also been provided and that's what has prevented the possible grievances of people.

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.)

The restrictive measures, as stated above, have been implemented in accordance with the principles of legality, proportionality and necessity.

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?

There has been no such case detected against certain groups including the health workers and/or the racial and ethnic minorities.

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.)

In the meantime there have been no delays in the prosecution service.

A number of measures have been introduced for courts and prosecution offices by the Decision no. 21255, dated 30 March 2020, of The Council of Judges and Prosecutors. In this context, the offices of the chief public prosecutors have been allowed to assign a sufficient number of public prosecutors to deal with the urgent and pre-trial detention files, while the remaining public prosecutors have been allowed to work from home through the National Judiciary Informatics Project (UYAP).

It has been decided to suspend the files except for the urgent and pre-trial detention files along with the cases for which the statute of limitations period is close to expiring, until 30 April 2020 (including this date). Subsequently this period has been extended until 15 June 2020.

In fact, it has been specifically pointed out that judicial services would not entirely cease to be provided during the suspension period; notices and complaints related to crimes and criminals would continue based on the right to file a lawsuit and right to file a claim and necessary sensitivity should be observed in this regard.

The number of staff at the courthouses has been reduced considering the workload of each prosecution office and court. Reduced number of staff have been on the shift while the rest of the staff are required to work from home.

Face to face contact has been reduced between staff and parties. SEGBIS (Audio-visual Informatics System) and UYAP have been used to ensure communication between parties and staff, especially for the urgent matters. Thanks to these measures, circulation of people in courthouses has been reduced by 95%.

All measures on hygiene in the courthouses have been meticulously implemented.

To prevent all the risks that may occur during the hearings, all hearings and face to face proceedings have been postponed until the end of April, with the exception of the matters related to arrest, other preventive measures in criminal proceedings, the matters related to alimony and violence against women, etc. This suspension period has been extended to 15th of June.

All judicial inspection proceedings have been suspended, except urgent matters.

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?

The offices of chief prosecutors have implemented a work order in which public prosecutors have conducted investigations on a daily basis regarding the files of suspects in detention for which they are responsible, assessed those files within a period not to exceed 30 days in accordance with legislation and ensured the assessments without violating the reasonable time requirement by requesting support from the vacation courts within the framework of general legislative rules and using SEGBIS and UYAP systems.

Pre-trial detention files have been considered as among the urgent files during the pandemic. The procedures for the extension of detention or release of detainee have been carried out by the prosecution service and the courts without being affected by the pandemic. Therefore, it is not the case that the reasonable time has been extended.

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)

The judicial activities have been ensured to continue within the scope of the measures taken; compliance with the measures has been achieved; and the activities have been carried out continuously through the flexible and remote work system. The judicial rights of persons have not been interrupted.

In Turkey, the prosecution service has been in permanent session in order to protect the fundamental rights and freedoms as well as the public order.

It should be stated that the investigations related to the disobedience to the measures taken against the infectious diseases, along with the files of other crimes have been conducted by the public prosecutors.

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

General measures regarding the courts and prosecution offices have been determined and declared by the CJP. But it has been stated that, taking into consideration the extent of the pandemic and the needs of the courthouses, the chief prosecutors shall immediately adopt and implement the supplementary measures deemed necessary within the scope of their duties and powers.

The Ministry of Justice has issued a "Guide on New Working Principles for Judicial Services under the COVID-19 Measures" to set out the measures to be taken in the courthouses and execution offices.

This Guide states that the chief public prosecutors should monitor whether the measures taken against the COVID-19 pandemic have been complied with and should remove the detected disruptions therein.

It is stated that the responsible persons shall be named for this purpose in each office of chief public prosecutor.

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?

A series of measures have been imposed by the Decision no. 21255, dated 30 March 2020, of The CJP regarding the courts and prosecutors.

Also the Ministry of Justice has worked out and launched the “Emergency Action Plan” on 13 March 2020.

All efforts as part of the fight against the COVID-19 pandemic have been conducted according to the aforesaid emergency action plan and the decisions of the Scientific Advisory Board set up by the Ministry of Health.

The Ministry of Justice has published a “Guide on New Working Principles for Judicial Services under the COVID-19 Measures” to set out the measures to be taken in the courthouses and execution offices. It is available at the following website address:

<http://www.dhdb.adalet.gov.tr/Resimler/Dokuman/Yeni%20%C3%87al%C4%B1%C5%9Fma%20Esaslar%C4%B1%20Klavuzu-29.05.2020.pdf>

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

Judicial services could have been provided continuously by ensuring the constant communication with the law enforcement, health and other agencies.

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?

Based on the general procedure of investigation, judicial investigations have been conducted under the instructions and supervision of public prosecutors themselves.

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

Thanks to the measures adopted and effective management of the pandemic process there has been no need for any alternative prosecution methods.

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.);

Prosecution has been initiated without being subject to any interruption or suspension.

- conducting prosecution before the courts, particularly when courts have significantly reduced their activity (have courts maintained their activity, even if somewhat reduced?);

All judicial proceedings have been suspended, except urgent matters.

- 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;

The prosecution service has continued to use its authority in this matter.

- appealing court decisions;

All the routine activities have continued.

All the time limits to take actions before the courts, enforcement offices and the time limits in alternative dispute resolutions have been suspended until 15 th of June.

- 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);

Although the administrative and legislative regulations have been implemented, it has been tried to avoid the overcrowding in the prisons/detention facilities by applying the provisions of judicial control instead of detention as protective measures.

An amendment was made by Grand National Assembly regarding the shortening of the imprisonment. The term of imprisonment of convicts who have been entitled to release on probation has been shortened. Normally, a convict having served two thirds of his or her term of imprisonment will be released from the prison. After this amendment, if a convict having served half of his or her term of imprisonment will be released. This is a permanent change in the law, not a temporary measure regarding coronavirus.

However, we have an important temporary measure for prisoners. In this amendment, the Covid-19 temporary release has been introduced for convicts in open prisons and convicts who are in closed prisons and will obtain the condition of moving to an open prison have started to be released. These convicts have been sent to their homes and they are considered on parole until May 31 to reduce the risks in the fight against the COVID-19 outbreak.

If the outbreak persists, the Ministry will be able to extend the period of leave three times by a maximum of two months each.

- 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)

General regulations and the measures applied have been observed.

- 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)

The office of the chief public prosecutor has not powers and duties herein, but these services have been provided by the Ministry of Health, Ministry of Interior and Ministry of Family, Labour and Social Services.

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

In this context, general measures have been sufficient and there is nothing else to add.

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 challenges faced therein would be the backload of files relating with the judicial rights (such as in the case that the hearings could not be held at the stage of prosecution) except for the urgent matters (such as pre-trial detention and its assessment) and too much work load to be dealt with in case the emergency situation (epidemic or pandemic etc.) ends.

To handle these challenges, technological means (audio-visual and other equipment) should be used and access for the parties and staff from where they are to the proceedings should be ensured (such as remote connection by judges from their home, by defendants through SEGBIS from prison and by lawyers from their office)

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?

This issue needs to be addressed under two separate titles, namely, investigation and prosecution.

In the prosecution service, there is no priority set for the files except for the urgent and pre-trial detention files. On this matter public prosecutors have worked devotedly and assumed workloads by remote work if required.

Stage of prosecution has been conducted by the courts.

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;

Suspension period of cases will not have negative effect on the promotion of judges and prosecutors.

- 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)

There has been no negativity occurred related to the above mentioned issues.

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

As in our country, it may be ensured to implement administrative measures in accordance with the scientific advisory boards. Furthermore, district sanitation boards has taken some decisions in accordance with the recommendations of the Scientific Advisory Board convening under the presidency of the Minister of Health.

Likewise, the productive capacities and facilities of the prisons may be organized to support the fight to handle the emergency situation.

It should be aimed at ensuring and promoting the use of technological means for minimizing the social mobility.

Ukraine

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)

Quarantine has been instituted throughout Ukraine for the period from 12.03.2020 to 22.06.2020, pursuant to the Resolutions of the Cabinet of Ministers of Ukraine No. 211 "On prevention of COVID-19 acute respiratory disease caused by SARS-CoV-2 coronavirus in Ukraine" dated 11.03.2020 and No. 392 "On the introduction of quarantine to prevent the spread of COVID-19 acute respiratory disease caused by SARS-CoV-2 coronavirus in Ukraine, and stages of mitigation of anti-epidemic measures" dated 20.05.2020.

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.)

The following is prohibited during the period of quarantine:

- attendance at educational institutions by its students;
- holding all mass (cultural, entertainment, sports, social, religious, advertising and other) events, except for the events necessary to ensure the work of government agencies and local self-government bodies, etc.;
- operation of business entities, which provides for the reception of visitors, in particular food services (restaurants, cafes, etc.), shopping and entertainment centers, etc.;
- regular and irregular transportation of passengers by motor transport in suburban, intercity regional and interregional communication;
- transportation of passengers by the underground;
- transportation of passengers by rail in all types of internal connections (suburban, urban, regional and long-distance);
- transportation of passengers by air, sea and river vessels;
- movement of a group of more than two people;
- stay in public places of persons under the age of 14, unaccompanied by parents, adoptive parents, guardians, trustees, foster parents, other persons in accordance with the law or adult relatives of the child;
- visits to parks, garden squares, recreation areas, forest parks and coastal areas, except for walking pets by one person and in case of business need;
- unauthorized leaving of places of self-isolation, observation;
- visits to sports and kids playgrounds;
- visits to institutions and facilities that provide palliative care;
- visits to the places of temporary stay of foreigners and stateless persons who are illegally staying in Ukraine, and places of temporary accommodation of refugees, except for persons who provide legal assistance to persons staying in such places;
- taking planned measures for hospitalization by health care institutions, etc.

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.)

In case of restriction of rights on public health grounds, principles of legality, proportionality, necessity of the measures, equality and non-discrimination must be observed.

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?

Such cases have not been detected.

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.)

The following restraints were imposed on prosecution services: suspension of personal reception of citizens; suspension of admission of outside persons to the premises of the prosecutor's offices on issues not related to the functions of the prosecution service; cancellation and postponement of organizational arrangements such as meetings, seminars, field visits to lower-level prosecutor's offices and calls of their employees, extraordinary all-Ukrainian conference of prosecutors, additional testing within the framework of attestation of prosecutors of regional prosecutor's offices; restrictions on holding events involving 5 or more persons (such events are held via videoconferencing or electronic means of communication); temperature screening of prosecutors at the entrance to the building.

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?

Cases concerning persons subject to preventive measures were heard by courts as a matter of priority with the usual participation of prosecutors.

There were no cases of release of criminal suspects in the context of restrictive measures imposed.

The duration of quarantine measures did not significantly affect the time limits of hearing of criminal proceedings.

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)

Prosecutor's offices of Ukraine work in the ordinary and usual course, taking into account the restrictions and peculiarities mentioned in paragraph 5.

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

Pursuant to the Prosecutor General's Order No. 159 dated 23.03.2020, a coordination headquarters was established within the Prosecutor General's Office for the purpose of monitoring measures to prevent the spread of coronavirus disease (COVID-19). The task of the headquarters is to ensure coordination of preventive and anti-epidemic measures in the prosecutor's offices. The headquarters also optimizes the work of the Prosecutor General's Office, regional and local prosecutor's offices amid quarantine.

In order to ensure the proper functioning of the coordination headquarters, task forces have been set up within regional prosecutor's offices.

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?

Pursuant to the Order specified in paragraph 8, the Prosecutor General's Office has developed Recommendations on the peculiarities of the organization and procedure of operation of the prosecutor's office to ensure their sustainable functioning, prevent the spread of coronavirus disease (COVID-19) among the employees of the prosecutor's office, ensure proper sanitation in administrative premises as well as compliance with sanitary and hygienic norms by the employees of the prosecutor's office. The Recommendations provide for restraints and peculiarities in the work of the prosecutor's offices, as referred to in paragraph 5.

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

No specific cooperation was set up. However, most contacts, meetings and individual court hearings were held via videoconferencing.

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?

Such investigations were not carried out.

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

Such decisions were not taken due to lack of necessity.

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)

No specific modalities were introduced.

At the same time, the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Aimed at Providing Additional Social and Economic Guarantees in Connection with the Spread of Coronavirus Disease (COVID-19)” amended Economic Procedure Code of Ukraine, Civil Procedure Code Of Ukraine and the Code of Administrative Procedure of Ukraine as regards procedural terms during quarantine. The list of articles concerning the renewal of procedural terms during the quarantine was determined, and it is envisaged that the procedural terms, in particular regarding the appeal, consideration of the appeal, cassation appeal, consideration of the cassation appeal are extended for the period of quarantine. The term set by the court in its decision shall not be less than the term of quarantine. No such amendments were introduced to the Criminal Procedure Code of Ukraine.

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

Functions of prosecution services have not changed.

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?

Restrictions on the movement of public transport, other quarantine restrictions which complicate the appearance of persons and the delivery of prisoners to court and thus lead to the postponement of court sessions.

Postponement of court hearings will increase prosecutors' workload after the end of quarantine restrictions and the resumption of usual court proceedings.

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?

Prioritization of court proceedings is not within the competence of prosecutors. Decisions in criminal proceedings are rendered in accordance with the requirements of applicable law. Additional measures to "return to normal life" were not developed by prosecutor's offices.

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)**

International cooperation on sharing experience in overcoming the consequences of the pandemic as well as the actions of prosecution services during emergency situations is extremely important. In this regard, it is considered necessary to obtain informational and advisory international assistance in order to strengthen contacts with the prosecutor's offices of states which have a positive experience of effective action in such situations.

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

The answer is given in paragraph 17.