

CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS (CCPE)

Questionnaire for the preparation of the CCPE Opinion No. 15 (2020):

The role of prosecutors in emergency situations

ITALY – Answers by Mr Antonio Mura, 31/5/2020

Questions

IN YOUR COUNTRY:

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.