

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)

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.