

Strasbourg, 12 May 2020

CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS (CCPE)

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

The role of prosecutors in emergency situations

In your answers, please do not send extracts of your legislation but describe the situation in brief and concise manner, including briefly what is happening in practice.

Introduction

This topic - the role of prosecutors in emergency situations – was selected by the CCPE members in the context of the present unprecedented situation in the world relating to the fight against COVID-19 pandemic. The aim is to address it in a practical way, since prosecutors have an important role to play in emergency situations declared in member States. Consequently, the CCPE will show its response to the present crisis and challenges that the prosecutors face. The Opinion No. 15 will take the lead and illuminate the way in which prosecutors may deal with the present challenges based on European standards. The Opinion will send a strong message to the Committee of Ministers of the Council of Europe about how the CCPE adapts to the new challenges.

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)

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 it's term, cancelling it or replacing with another constraint measure has been decided on 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.

12. 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

13. 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

14. 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).

15. 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).

16. Are challenges faced by prosecution services in an emergency situation and in its aftermath/recovery related to: **Other. See answer to question No. 14.**

- 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)

17. 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.