

**Answers to the Questionnaire for the preparation of the CCPE Opinion No. 15 (2020):  
The role of prosecutors in emergency situations**

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, kindergartens or the other parent, to be 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 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 obliging 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 occure.

- 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 propesed 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 autorization, 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 acsess 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 chefs, 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?

- In regards to the inability to fulfil all of its duties, the working conditions in the Prosecutors Office have to be adapted in an emergency situation. The circulation of people and employees in the Prosecution office and in the Courts have to be reduced, and working in shifts, while securing all the health protocols might be one way of addressing this issue. Also, other modalities for conducting the working duties should be implemented, and technical conditions and training should be provided for that.