

Strasbourg, 12 May 2020

CONSULTATION COUNCIL OF EUROPEAN PROSECUTORS(CCPE)
Questionnaire for the preparation of CCPE Opinion no. 15 (2020):
The role of prosecutors in emergency situations

In your answers, do not send out extracts from the legislation, but briefly describe the situation, including what is happening in practice.

Introduction

This topic - the role of prosecutors in emergency situations - has been chosen by the CCPE members in the context of the current unprecedented situation in the fight against the COVID-19 pandemic worldwide. The aim is to address this in a practical way, as prosecutors have an important role to play in the emergency situations declared in Member States. In this context, the CCPE will demonstrate its response to the current crisis and the challenges faced by prosecutors. Opinion no. 15 will take the lead and explain how prosecutors can address the current challenges based on European standards. The opinion will send a strong signal to the Committee of Ministers of the Council of Europe on how the CCPE is adapting to the new challenges.

Questions

IN YOUR COUNTRY:

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.