

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)**

The Government of the Slovak Republic approved in several hospitals with effect from 16 March 2020 the declaration of a state of emergency pursuant to Art. 5 of the Constitutional Act no. 227/2002 Coll. The emergency was gradually extended to other facilities and the government subsequently approved other important measures to prevent the spreading of the new coronavirus causing COVID-19. The emergency situation may last for a maximum of 90 days in accordance with the legislation of the Slovak Republic. At the time of processing the responses to the questionnaire, the state of emergency was not cancelled, with effect from 22.4.2020, the gradual release of the corona measures took place in four phases.

**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.)**

The Central Crisis Staff was established in the territory of the Slovak Republic by the government, which took measures in connection with the Covid-19 disease with effect from 12.3.2020 and ordered a mandatory 14-day domestic quarantine from 13.3.2020 until appealed to persons returning from abroad, closed all airports, restricted international train and bus traffic. On 16 March 2020, there were closed preschool and school facilities, leisure centers, sports centers, catering facilities, banned the organization of mass social, cultural, sports events, banned visits to hospitals and social service providers, forbade the service of public masses.

As a result of the pandemic, freedom of assembly was restricted, freedom of movement was restricted to the Easter holidays from 8.4.2020 to 13.4.2020, with the exception of travel to work or business operations, purchase of essentials (food, medicine), travel to medical facilities. During the Easter holidays, the government did not restrict freedom of movement completely, allowing a visit to nature within the district in which the people lived.

From 25 March 2020, the government ordered the obligation to wear a face mask in public, in public transport and in enclosed spaces.

During pandemic measures, only acute life-threatening surgeries were performed in hospitals, non-acute examinations were postponed, and general practitioners performed medical procedures to the extent necessary in compliance with strict hygiene measures.

The gradual release of government measures has been taking place in four phases since 22.4.2020.

**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.)**

Pandemic measures in connection with ensuring the protection of public health during the emergency state fully respected compliance with the Constitution of the Slovak Republic. The prosecutor's office has no knowledge of a violation of the constitution.

**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 General Prosecutor's Office of the Slovak Republic does not have any information on possible findings of discrimination against certain groups, on hate speech, racism, xenophobia during the emergency.

### **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.)**

The General Prosecutor of the Slovak Republic

- ordered the temporary performance of work from the residence within the Prosecutor's Office of the Slovak Republic from 16 March 2020, provided that in order to maintain the operation of the Prosecutor's Office, the necessary number of prosecutors and administrative staff at the workplace in all divisions of the Prosecutor's Office was ordered a necessary extent of work.

The decision on the operation of the prosecutor's office during the state of emergency was left by the General Prosecutor in the competence of the heads of the organizational units of the General Prosecutor's Office and in the regional prosecutor's offices and subordinate district prosecutor's offices in the competence of the regional prosecutors,

- instructed the directors to ensure a strict record of the files that the prosecutor will have at his disposal during the performance of work from the place of residence and to monitor and control the performance of work from the employee's residence and strict compliance with legal deadlines for settling cases (remand cases),

- imposed during the period of temporary work from the employee's place of residence, a ban on staying at the workplace to those employees who are not ordered to work at the workplace on that day, and prohibited any gathering of employees who will perform their duties at the workplace,

- ordered that oral submissions will not be accepted at the GP SR,

- cancelled consultations, workshops, training for prosecutors and prosecutors' staff and their participation in extra-official workshops,

- decided that the Registry of the General Prosecutor's Office of the Slovak Republic will function for receiving submissions of natural persons and legal entities in a restricted regime.

The General Prosecutor instructed the directors and heads of the organizational units of the General Prosecutor's Office and the regional prosecutors to instruct the prosecutors in their management to decide on their participation in the hearings ordered by the district and regional courts in their local and material jurisdiction. If they considered participation in the court's ordered hearing to be inappropriate in view of the health risk, they reported this to the competent court. They justified their non-participation in the hearing by measures adopted by the Government of the Slovak Republic and the Central Crisis Staff of the Slovak Republic, which restricted the gathering of Slovak citizens in larger numbers to protect their health and prevent further spreading of COVID-19. The guidelines for considering participation in the hearing did not cover remand and other urgent cases in which the competent courts ordered the hearing.

Remote work from home was cancelled in the prosecutor's office with effect from 6.5.2020.

- 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?**

Suspects of a criminal offense, as well as accused persons in pre-trial proceedings, were treated in a standard manner during the state of emergency, fully respecting the Constitution of the Slovak Republic, the Code of Criminal Procedure, and other legal regulations relating to criminal proceedings. Despite the fact that the courts did not hold regular main hearings during this period; the bodies involved in criminal proceedings as well as the courts ruled legally in compliance with all legal deadlines regarding detainees, respectively in custody cases. The prosecutor's office does not have information on the possible release of suspects due to non-compliance with legal deadlines by law enforcement authorities.

There was a partial, but not legally relevant delay in criminal proceedings, in non-custodial criminal cases, as interrogations of accused persons and witnesses, or even expert evidence from the fields of psychiatry and psychology, were commonly postponed. As a rule, however, this did not apply to remand criminal cases, which were carried out as a matter of priority, even in a limited working regime, while the prosecutor's office does not have information on possible violations of procedural rights of suspects or prosecuted persons.

- 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)**

There was no need for such measures during the pandemic.

- 8. Have there been crisis response teams created within the prosecution service and at which level (central, regional, local)?**

During the pandemic, it was not necessary to set up a specialized team in the prosecutor's office. In the combination of ordered work at the workplace and the performance of work remotely from home, all components of the prosecutor's office functioned properly and the agenda was smoothly processed at all levels of the prosecutor's office.

- 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 was no need for such measures during the pandemic.

- 10. Has there been specific cooperation with other agencies set up (i.e. law enforcement, courts, etc.)?**

There was no need for such measures during the pandemic.

**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?**

There was no need for such measures during the pandemic.

**12. Has the prosecution service decided on alternatives to prosecution to avoid overcrowding in detention facilities in the emergency situation?**

During the state of emergency, the prosecutor's office operated in a limited working mode, but nevertheless decided in the standard way with the intentions of the effective provisions, without the need to implement purposeful alternatives to criminal prosecution in order to prevent overcrowding of prisons. During the state of emergency, there was no exceptional increase in the number of persons in custody and imprisonment institutions.

**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)**

During the state of emergency, the prosecutor's office, despite operating in a limited working mode, made decisions in the standard way in the intentions of the effective provisions.

## **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

The state of emergency did not require the creation of new or expanded functions during the pandemic or after her.

However, the General Prosecutor's Office of the Slovak Republic, as the first state power body in the Slovak Republic, drew the attention of the general public at the beginning of April 2020 to live broadcasts about the possibility of increased domestic violence during the Covid-19 crisis, causes and consequences of domestic violence in this situation. As part of the live entries, specific procedures for potential victims or other persons when reporting domestic violence and the existing line at the General Prosecutor's Office of the Slovak Republic for abused persons was brought to the public's attention (free telephone line and also e-mail, which potential victims can use even if they fear that the attacker could hear a phone call).

Based on the above-mentioned media coverage, the General Prosecutor's Office of the Slovak Republic recorded a significant increase in reports on the line for abused persons as of May 2020 (compared to the same period in 2019, the number of criminal proceedings for the crime of torture of a close person and the entrusted person increased by 49% and the number of cases in which charges were brought by 47%).

Given the powers of the prosecutor's office, preventive measures and the prompt and effective handling of reported facts are important tools in the fight against domestic violence, and this needs to be given close attention in the event of similar emergencies.

## **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 Prosecutor's Office of the Slovak Republic operated during the state of emergency in an appropriate regime so that the tasks of the Prosecutor's Office were performed on an

ongoing basis. Due to this, it was not necessary to take special measures to return to full working mode.

In relation to international cooperation for restrictions on the service of documents by post, urgent matters were sent abroad electronically, as long as the character of the cases allowed them to be sent electronically. The contribution would be to complete the general delivery addresses of the central judicial authorities of the world for international cooperation during emergencies and exceptional situations relating to global pandemic, including the development of best practices for the follow-up to PCOC-UN-UNODC and EJNI "Communication of Central Authorities in relation to work and emergency measures related to the Covid-19 health crisis" published on its website by UNODC.

**16. For example, have specific plans been made with regard to the returning to "normal life"? In member States where court proceedings have been suspended for months, there will be a huge back load of cases now to be dealt with. Is it the task of prosecutor to decide how these cases should be prioritised? Will special initiatives be taken, i.e. court proceedings during weekends, extra payment of prosecutors for extra work? Is there a risk that less serious cases will be closed or prosecution waived?**

In accordance with the effective legal regulation, it is in the competence of the court to decide on the date of court proceedings and to determine the priority handling of individual cases. According to Slovak national law, the prosecutor has no interference in this selection.

**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)

See answer to questions no. 5, 15 and 18.

The Judicial Academy of the Slovak Republic launched the planned educational events in the remote form (online seminars) from April 20, 2020.

**18. What are, in your opinion, ways and methods to overcome these challenges?**

At the transnational level, it seems necessary to strengthen the international judicial cooperation of central judicial authorities in emergency situations caused by pandemics, and the RE, UN and EJM initiative has great potential in this regard in the material mentioned in question no. 15, which needs to be supplemented by other states and focus on practical solutions for the manner of performing cross-border acts, which cannot be postponed.

With the worldwide growing trend of domestic violence during a pandemic, active media communication of the prosecutor's office focusing on vulnerable persons / victims, the causes and consequences of domestic violence in this situation and ways of solving it at the criminal level appear to be effective at the national level.

**Enclosure:**

File of UNODC "Communication of Central Authorities in relation to work and emergency measures related to the Covid-19 health crisis".