

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

The role of prosecutors in emergency situations

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)	Quarantine has been instituted throughout Ukraine for the period from 12.03.2020 to 22.06.2020, pursuant to the Resolutions of the Cabinet of Ministers of Ukraine No. 211 “On prevention of COVID-19 acute respiratory disease caused by SARS-CoV-2 coronavirus in Ukraine” dated 11.03.2020 and No. 392 “On the introduction of quarantine to prevent the spread of COVID-19 acute respiratory disease caused by SARS-CoV-2 coronavirus in Ukraine, and stages of mitigation of anti-epidemic measures” dated 20.05.2020.
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.)	<p>The following is prohibited during the period of quarantine:</p> <ul style="list-style-type: none">- attendance at educational institutions by its students;- holding all mass (cultural, entertainment, sports, social, religious, advertising and other) events, except for the events necessary to ensure the work of government agencies and local self-government bodies, etc.;- operation of business entities, which provides for the reception of visitors, in particular food services (restaurants, cafes, etc.), shopping and entertainment centers, etc.;- regular and irregular transportation of passengers by motor transport in suburban, intercity regional and interregional communication;- transportation of passengers by the underground;- transportation of passengers by rail in all types of internal connections (suburban, urban, regional and long-distance);- transportation of passengers by air, sea and river vessels;- movement of a group of more than two people;- stay in public places of persons under the age of 14, unaccompanied by parents,

		<p>adoptive parents, guardians, trustees, foster parents, other persons in accordance with the law or adult relatives of the child;</p> <ul style="list-style-type: none"> - visits to parks, garden squares, recreation areas, forest parks and coastal areas, except for walking pets by one person and in case of business need; - unauthorized leaving of places of self-isolation, observation; - visits to sports and kids playgrounds; - visits to institutions and facilities that provide palliative care; - visits to the places of temporary stay of foreigners and stateless persons who are illegally staying in Ukraine, and places of temporary accommodation of refugees, except for persons who provide legal assistance to persons staying in such places; - taking planned measures for hospitalization by health care institutions, etc.
3	<p>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.)</p>	<p>In case of restriction of rights on public health grounds, principles of legality, proportionality, necessity of the measures, equality and non-discrimination must be observed.</p>
4	<p>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?</p>	<p>Such cases have not been detected.</p>

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 following restraints were imposed on prosecution services: suspension of personal reception of citizens; suspension of admission of outside persons to the premises of the prosecutor's offices on issues not related to the functions of the prosecution service; cancellation and postponement of organizational arrangements such as meetings, seminars, field visits to lower-level prosecutor's offices and calls of their employees, extraordinary all-Ukrainian conference of prosecutors, additional testing within the framework of attestation of prosecutors of regional prosecutor's offices; restrictions on holding events involving 5 or more persons (such events are held via videoconferencing or electronic means of communication); temperature screening of prosecutors at the entrance to the building.
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?		Cases concerning persons subject to preventive measures were heard by courts as a matter of priority with the usual participation of prosecutors. There were no cases of release of criminal suspects in the context of restrictive measures imposed. The duration of quarantine measures did not significantly affect the time limits of hearing of criminal proceedings.
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)		Prosecutor's offices of Ukraine work in the ordinary and usual course, taking into account the restrictions and peculiarities mentioned in paragraph 5.

8	Have there been crisis response teams created within the prosecution service and at which level (central, regional, local)?		<p>Pursuant to the Prosecutor General's Order No. 159 dated 23.03.2020, a coordination headquarters was established within the Prosecutor General's Office for the purpose of monitoring measures to prevent the spread of coronavirus disease (COVID-19). The task of the headquarters is to ensure coordination of preventive and anti-epidemic measures in the prosecutor's offices. The headquarters also optimizes the work of the Prosecutor General's Office, regional and local prosecutor's offices amid quarantine.</p> <p>In order to ensure the proper functioning of the coordination headquarters, task forces have been set up within regional prosecutor's offices.</p>
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?		<p>Pursuant to the Order specified in paragraph 8, the Prosecutor General's Office has developed Recommendations on the peculiarities of the organization and procedure of operation of the prosecutor's office to ensure their sustainable functioning, prevent the spread of coronavirus disease (COVID-19) among the employees of the prosecutor's office, ensure proper sanitation in administrative premises as well as compliance with sanitary and hygienic norms by the employees of the prosecutor's office. The Recommendations provide for restraints and peculiarities in the work of the prosecutor's offices, as referred to in paragraph 5.</p>
10	Has there been specific cooperation with other agencies set up (i.e. law enforcement, courts, etc.)?		<p>No specific cooperation was set up.</p> <p>However, most contacts, meetings and individual court hearings were held via videoconferencing.</p>
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?		<p>Such investigations were not carried out.</p>
12	Has the prosecution service decided on alternatives to prosecution to avoid overcrowding in detention facilities in the emergency situation?		<p>Such decisions were not taken due to lack of necessity.</p>

<p>13 Have there been any specific modalities for action of the prosecution service in the emergency situation as regards:</p> <ul style="list-style-type: none"> - 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 	<p>No specific modalities were introduced.</p> <p>At the same time, the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Aimed at Providing Additional Social and Economic Guarantees in Connection with the Spread of Coronavirus Disease (COVID-19)” amended Economic Procedure Code of Ukraine, Civil Procedure Code Of Ukraine and the Code of Administrative Procedure of Ukraine as regards procedural terms during quarantine. The list of articles concerning the renewal of procedural terms during the quarantine was determined, and it is envisaged that the procedural terms, in particular regarding the appeal, consideration of the appeal, cassation appeal, consideration of the cassation appeal are extended for the period of quarantine. The term set by the court in its decision shall not be less than the term of quarantine. No such amendments were introduced to the Criminal Procedure Code of Ukraine.</p>
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	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)		
Questions relating to the possible new functions of prosecution services as a result of an emergency situation			
14	<p>Have there been any new or extended functions of prosecution services resulting from the emergency situation as regards for example:</p> <ul style="list-style-type: none"> - 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; 		Functions of prosecution services have not changed.

	<p>- interacting with media and highlighting the work of prosecution services in the context of emergency situation;</p> <p>- informing the population about the emergency measures and the corresponding penalties for their non-observation</p>		
Questions relating to the challenges for the prosecution service in an emergency situation			
15	<p>What are, in your opinion, the main challenges faced by prosecution services in an emergency situation and in its aftermath/recovery?</p>		<p>Restrictions on the movement of public transport, other quarantine restrictions which complicate the appearance of persons and the delivery of prisoners to court and thus lead to the postponement of court sessions.</p> <p>Postponement of court hearings will increase prosecutors' workload after the end of quarantine restrictions and the resumption of usual court proceedings.</p>
16	<p>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?</p>		<p>Prioritization of court proceedings is not within the competence of prosecutors. Decisions in criminal proceedings are rendered in accordance with the requirements of applicable law.</p> <p>Additional measures to "return to normal life" were not developed by prosecutor's offices.</p>
17	<p>Are challenges faced by prosecution services in an emergency situation and in its aftermath/recovery related to:</p> <p>- independence and accountability of prosecutors in the context of emergency situations;</p>		<p>International cooperation on sharing experience in overcoming the consequences of the pandemic as well as the actions of prosecution services during emergency situations is extremely important. In this regard, it is considered necessary to obtain informational and advisory international assistance in order to strengthen contacts with the prosecutor's offices of states which have a positive experience of effective action in</p>

	<ul style="list-style-type: none"> - 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) 		such situations.
18	What are, in your opinion, ways and methods to overcome these challenges?		The answer is given in paragraph 17.