

Consultative Council of European Prosecutors (CCPE)

CCPE Opinion No. 15 (2020):

«The role of prosecutors in emergency situations, in particular when facing a pandemic»^[1]

[¹] Publicada originalmente em <https://rm.coe.int/opinion-no-15-ccpe-en/1680ao5a1b>.

I. INTRODUCTION: PURPOSE AND SCOPE OF THE OPINION

1. In accordance with the terms of reference entrusted to it by the Committee of Ministers, the Consultative Council of European Prosecutors (CCPE) has prepared the present Opinion on the role of prosecutors in emergency situations, in particular when facing a pandemic.
2. An effective and autonomous prosecution service committed to upholding the rule of law and human rights in the administration of justice is one of the pillars of a democratic state. The responsibility of prosecutors to promote and to strengthen the rule of law has many inherent aspects entailing significant challenges to prosecutors. These challenges are particularly demanding in the context of emergency situations.
3. The Venice Commission defines the state of emergency as a temporary situation in which exceptional powers are granted to the executive and exceptional rules apply in response to, and with a view to overcoming, an extraordinary situation posing a fundamental threat to a country. Examples include natural

disasters, civil unrest, epidemics, massive terrorist attacks, economic crisis, war and military threats^[1].

4. Keeping this in mind and while considering that the challenges to the work of prosecutors and their responsibilities are particularly demanding in the context of all the above-mentioned examples of emergency situations, the CCPE wishes to focus in the present Opinion, for reasons explained below, on the role of prosecutors in the context of the COVID-19 pandemic declared in 2020. Nevertheless, in light of relevant international and constitutional provisions, the Opinion also encompasses the role of prosecutors in cases of emergencies in a general way^[2] and its content may be extended to similar situations in future.
5. The COVID-19 pandemic has caused a global health crisis – a public health emergency – unlike any experienced for more than a century. The unprecedented situation in the world due to the fight against the pandemic has presented equally unprecedented challenges for prosecution services. The pandemic has strongly affected societies, governments, communities, families and individuals' lives, livelihoods and standards of living. Furthermore, the impact of the restriction measures has been felt most severely by the most vulnerable groups. The need for keeping social distancing and applying lockdown measures have resulted, in many instances, in the disruption of courts' and prosecution services' work, delays in proceedings and have impacted on procedural time limits (such as those related to pre-trial detention), and the suspension or reduction of legal aid, as well as public and community services. The measures have significantly affected international cooperation.

^[1] See Venice Commission's Reflections on Respect for Democracy, Human Rights and the Rule of Law

during States of Emergency, Strasbourg, 26 May 2020 (CDL-PI(2020)005rev), para 5.

^[2] See Chapter II of the present Opinion.

The pandemic often also had, as a consequence, the need to replace prosecutors or prosecutorial staff infected or who may have died as a result of infection.

6. The main lesson which prosecutors have learned during the pandemic, and which will be applicable in other future emergency situations as well, is that their ability to effectively perform their functions and observe their duties including by applying, as appropriate, the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter “ECHR”) in member States has been put to the test – quite profoundly – during the pandemic, and will also continue to be during its aftermath (or period of recovery).
7. The restrictions introduced as a result of emergency situations, as the pandemic, may affect not only civil and political rights protected by the ECHR, but also economic, social and cultural rights entailing possible discrimination against certain groups, such as health workers, and racial and ethnic minorities, resulting in hate speech, racism, xenophobia, attacks and forced returns of refugees and asylum-seekers, mistreatment of foreigners and migrants, and sexual and gender-based violence, domestic violence, including violence against women and children^[3].
8. Prosecutors may be confronted with dilemmas as regards putting into practice the most fundamental principles and requirements guiding their mission – such as legality, proportionality, equality and non-discrimination, and evaluating the adequacy, necessity and duration of certain measures – notions

[3] The CCPE relies in this regard on the responses of member States to the questionnaire for the preparation of the present Opinion, see the responses,

as well as their compilation (document CCPE(2020)1 of 7 October 2020), see at <https://www.coe.int/en/web/ccpe/the-role-of-prosecutors-in-emergen->

[cy-situations-in-particular-when-facing-a-pandemic](https://www.coe.int/en/web/ccpe/the-role-of-prosecutors-in-emergen-cy-situations-in-particular-when-facing-a-pandemic).