

**Conclusions of the First Study Commission
of the International Association of Judges (“IAJ”) – 2023
“THE EFFECTS OF REMOTE WORK ON THE JUDICIAL WORKPLACE AND
THE ADMINISTRATION OF JUSTICE”**

Remote Work and Hearings Before and During the COVID-19 Pandemic

1. Prior to the COVID-19 pandemic, the remote work of judges varied widely by country. Prior to the pandemic, the vast majority of remote work conducted by judges included studying cases at home, conducting legal research, and occasionally writing judgments. Remote hearings were also generally rare.
2. During the COVID-19 pandemic, remote work of judges increased across the board as judicial systems adapted to protect the health and safety of the judges, court staff, and case participants. In some countries, judges began conducting nearly all work remotely.
3. While most judges conducted some work remotely during the COVID-19 pandemic, there was greater variance regarding the use of remote hearings during the pandemic.
4. Many countries made efforts to provide technical equipment to judges to enable them to work remotely during the pandemic. But some countries were ill-equipped to carry out videoconferencing and remote hearings during the pandemic.
5. Countries that already had an electronic filing system had a smoother transition to remote work following the onset of the pandemic.
6. Currently, in many countries, judges continue to conduct a degree of remote work such as electronically reviewing case files and drafting judgments. But, in other countries, the work of judges has largely gone back to the way of work prior to the pandemic.

Pros and Cons of Judicial Remote Work/Hearings

7. Pros
 - a. An increase in efficiency, due in part due to the reduced time spent travelling to and from court and a reduction in distractions at the workplace.
 - b. Better balance between work life and non-work life (although see also below under “Cons”).
 - a. Speed. With remote work cases move along at a faster rate.
 - c. Decreased Costs.
 - d. Remote work allows for a diversification of working styles and increased court staff satisfaction

- e. Remote hearings allow parties and litigants more flexibility in terms of scheduling and reduced expenses because they can avoid the costs and time associated with travel to and from the courthouse.
 - f. Remote hearings also make it easier for people to comply with judicial notifications and can provide greater access to the court for parties in remote areas.
 - g. Remote hearings are also beneficial for witnesses that only need to provide short and limited testimony.
 - h. The benefits of remote work can also assist the courts in recruiting new judges and other court personnel
 - i. Environmental benefits, such as a reduced need for paper.
8. Cons
- a. A loss of decorum and the solemn and formal character of a court hearing. Some litigants might feel like they are not getting a proper hearing if it is conducted remotely.
 - b. The reduction in personal contact between court colleagues can also be detrimental to the maintenance of a culture of common judicial values and ethics.
 - c. Remote work can be hampered by technological difficulties. The remote technology can be seen as an impediment and obstacle for judicial personnel.
 - d. There may be access to justice difficulties if a party has no access to computer equipment or lives somewhere there is limited (or no) internet.
 - e. It may be more difficult for the judges to properly evaluate the attorneys and witnesses appearing before them.
 - f. It is also more difficult for the court to enforce disciplinary rules and maintain appropriate court behavior in a remote hearing.
 - g. Disruption or delay of the hearing could occur due to technical difficulties with the Court's technology.
 - h. There may be data security risks which will need to be addressed – together with concerns about hearings being broadcast inappropriately.
 - i. Some countries think parties are less likely to settle a case if they appear remotely.

Remote Work and Judicial Independence

9. There are concerns in this respect. The first is as to who makes the decision to hold a remote hearing: if the decision is made not by the judge but by a member of the executive (or a member of court staff), then, the decision is likely to infringe the principle of judicial independence. Furthermore, some countries reported that laws

were being proposed which would require a particular type of hearing to be held remotely. Such laws may again impede judicial independence.

Limits on Remote Work

10. Most countries place limits on the remote work of judges, but there are a few countries that do not have any limits on remote work.
11. For the countries that have limits, almost all of the countries place more restrictive limitations on remote work/hearings in criminal cases than they do in civil cases.
12. Some common restrictions on remote work/proceedings are:
 - a. requiring the consent of the parties before a hearing may be remote;
 - b. no remote proceedings for cases involving minors or people with mental disorders;
 - c. no remote proceedings for more complicated hearings, such as trials or appeals;
 - d. only permitting remote proceedings upon a showing of exceptional circumstances;
 - e. permitting parties to appear remotely but requiring the judge to be in person in the courthouse;
 - f. permitting judges to work remotely, but requiring that judges reside in the judicial district where they preside.
13. Limitations due to the technology and infrastructure currently available can also place restrictions on the judges' ability to perform remote work and conduct remote proceedings.

Recommendations

14. There are undoubted benefits in remote work and holding remote hearings. Those benefits came to the fore during the COVID-19 pandemic: clearly without remote work/hearings, justice systems would have ground to a halt.
15. In more ordinary circumstances, the lessons learned during the COVID-19 pandemic should not be consigned to history. On the contrary and focusing on remote hearings in particular (as opposed to other remote work), there will be some types of case where holding a remote hearing is desirable.
16. It is not feasible to be too generalized in setting out recommendations. However, it is vitally important that the decision whether there should be a remote hearing in any particular case should be a decision for the judge considering that case; it should not be a decision made by the executive.
17. In making that decision, the judge is likely to wish to balance a range of factors, such as (but without limitation, not least because different countries may have different requirements).

- a. The parties' respective ability to access remote facilities: if a party has no such access, then, there will be a denial of justice to insist on there being a remote hearing.
 - b. Open justice considerations.
 - c. Whether the parties are represented by lawyers and, if not, their intellectual and/or technical ability.
 - d. The parties' wishes: it should not be for the parties to dictate but their wishes will need obviously to be taken into account.
 - e. The significance of the hearing: e.g. merely procedural as opposed to substantive and final.
 - f. The wider significance of the hearing: e.g. of considerable constitutional or wider public interest.
 - g. In a civil case the amount of money involved and the costs associated with having to attend an in-person hearing compared with a remote hearing.
 - h. The nature of the issues which need to be considered: the simpler the case, the less the need for there to be an in-person hearing.
 - i. Whether factual or other witnesses are going to be giving evidence. Not all hearings where witnesses give live evidence will require an in-person hearing. However, many cases will require that – in particular where in a criminal trial there is a jury (see below).
 - j. The urgency (or otherwise) of the hearing.
 - k. What data security risks might arise – together with any concern about the hearing being broadcast inappropriately.
18. A distinction between criminal cases, on the one hand, and civil cases, on the other, is likely to be material since experience during the COVID-19 pandemic, at least in some (but not all) jurisdictions, was that, while civil cases (including major commercial cases) were able to be tried without difficulty, the position in relation to criminal cases is not the same.
 19. This applies, in particular, in jurisdictions where a jury decides whether a defendant is guilty or not (or where more than one person is involved in the decision-making process). However, even in countries where there is no jury, there may be good constitutional reasons why the hearing should be in the court building, not remote: e.g. a defendant being seen to be held responsible for his/her crimes.
 20. Lastly and to repeat, the decision should remain one for the judiciary. Neither the executive (and court staff) nor the legislature should make the decision as that may represent an infringement of judicial independence.

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