

2023 Questionnaire of the 1st Study Commission IAJ-UIM

“The Effects of Remote Work on the Judicial Workplace and the Administration of Justice”

Reponse from AUSTRIA

1) Remote work of judges in your country

a. Were judges permitted to work remotely in your country prior to and/or during the COVID-19 pandemic? If yes, please give examples (for example, studying cases at home; discussing cases with colleagues via videoconference applications or the telephone instead of personal meetings; holding hearings online via videoconferencing applications; etc.). Was technical equipment made available to the judges to enable them to work remotely?

For a better understanding, the following remarks should be put first:

In the ordinary courts in Austria, the electronic file was introduced for the first time in 2016 (in labour and social law). The Ministry of Justice has drawn up a roll-out plan. As far as civil and criminal proceedings are concerned in the meantime all cases of first instance are conducted as electronic files. Partly also cases pending at the court of appeals are conducted electronically. The transition is in progress and is expected to be completed for the entire ordinary jurisdiction by the end of 2025.

At the time of the outbreak of the pandemic in march 2020, the majority of labour and social court cases and some civil cases were already being conducted electronically.

That means that, independently of Covid, the offices and hearing rooms had already been equipped for the electronic file, at least to some extent. The judges working with the electronic file have been provided with notebooks anyway.

Prior to the start of the pandemic remote work was hence possible, but not common among Austrian judges.. During the pandemic most of the judges in Austria worked from their homes. They studied their cases, discussed cases via videoconference application (eventually telephone) and elaborated judgments from home. Hearings were held via videoconference, as far as it was possible. COVID-19 related procedural provisions made it possible to conduct video hearings in which - with the exception of the judge - all other parties to the trial were not present in the hearing

room. The intention of the legislator was that the judges should be present in the courtroom.

The technical equipment was made available for the judges to enable them to work remotely, that means they were provided with notebooks. However, no screens or printers were provided.

During the Covid pandemic, other court staff members were also equipped with notebooks. The courtrooms were outfitted for videoconferencing (cameras, microphones), although this process was sometimes slow due to delivery problems.

b. What is the status of remote work by judges in your country now?

Do many judges still work remotely in your country, and to what extent? (for example, all or just a certain percentage of judges? Only in certain fields of law or for certain types of cases? Only in lower courts or higher courts? Etc.)

Remote work by judges in Austria is widely more common now after the pandemic.

However, this development is only partly due to the pandemic, but primarily to the fact that the implementation of the digital act has advanced (see introductory remarks under question 1a). The pandemic has increased the acceptance of the digital act among judges. During the pandemic, many colleagues set up adequate workrooms at home (two monitors, printer, etc.), so that an increasing number of judges work from home at least one day per week. There are no official figures. By way of example, I can mention that at my court, the regional court in Feldkirch, 11 judges handle civil cases, among them 2/3 work at home at least one day a week.

2) Effect on judicial work

a. Did remote work change judicial work in general for better or worse – or both – in your country? Please give examples.

There are some (minor) changes to be noted:

The number of videoconferences has increased, both in public hearings in civil cases, but also in discussions of judges in chambers.

These changes in practice have also been taken into account by the legislator, who has introduced a draft law which provides the transition of COVID-19 related procedural provisions into 'permanent' procedural law. These amendments affect both civil procedural law

and administrative procedural law, the drafts have been adopted by the second chamber of Austrian parliament on July 13th 2023.

b. Does the remote work of judges have an impact on the judicial workplace in your country? Negative, positive or both? Please give examples.

Remote work carries both positive and negative implications for the judicial workplace.

The advantages of remote work of judges are obvious: The judges avoid having to travel to the court. Time flexibility in general is increased. This makes it easier to reconcile family and work.

On the other hand, social and professional contacts become fewer. The transfer of knowledge and the social environment can be affected negatively. This may have a negative impact on results.

c. From your point of view, what future effects of remote work on the judicial workplace – negative, positive or both – can be expected?

Digitalisation will progress.

The technical obstacles will become fewer and the question will arise as to where the limits of the use of technology are, both externally and internally.

With regard to the functioning of the court, questions such as will arise:

- what is necessary for video conferences to be perceived as court proceedings (and not just as a normal meeting)?
- What are minimum legal requirements, also and especially with regard to rule of law.

Within the judiciary, questions such as

- which working environment do we need?
- How much direct personal contact is necessary so that the proper functioning of the judiciary and a transfer of knowledge can continue to be guaranteed, the latter also as a quality requirement?

will arise.

Questions of education and training will also have to be addressed.

This will require an intensive discussion process.

3) Effects on the administration of justice

a. What are the pros and cons of remote work on the administration of justice?

The possibility of remote work has taken on new significance as a result of the pandemic. Many employees see this as an advantage and want their employer to do so. The possibility of remote work increases employee satisfaction. It also facilitates the recruitment of future employees, especially since many employers already grant the possibility of remote work.

One challenge for every workplace, but especially the judiciary as a very sensitive sector, is that – despite remote work - the flow of information must be given, there must be accessibility for the public etc. There are also challenges for training. We will need to address the question of how much personal contact is necessary in a workplace (keyword: identification with workplace).

b. Does remote work have a positive or negative impact on the administration of justice in general in your country? Please give examples that include, but are not limited to, the quality of the administration of justice.

The possibility of remote work is basically positive (see the answer above). It is also a motivation tool for the employees. Motivation is an important factor for a good work performance.

On the other hand, there are challenges associated with remote work when it is not only occasionally undertaken but is part of the structure of the workplace (as described above). In order to avoid synergy losses, a proper organisation is needed. In the end, it will be important to find a balance between the wishes of individuals for remote work and the necessities of the workplace within the judiciary.,

c. Are you aware of the public's perceptions of remote work by judges? Please give examples of positive or negative perceptions.

As the hearings still take place at the courts, remote work by judges mainly is not perceived by the public. It is important that the judges can be reached (e.g. by telephone, eventually emails). This can also be adequately guaranteed in the case of remote work.

d. What are the positive and/or negative effects of holding remote hearings/conferences?

In Austria hearings have to be held at the courts, but the parties can attend via video conference.

Whether a hearing is conducted by way of a video conference is initially decided by the court. Precondition is that it seems appropriate taking into account the specific circumstances.

The parties are entitled to object to the conduct of a hearing by videoconference, but they can not insist on an holding the hearing by videoconference, at the end of the day it is up to the presiding judge to order a video conference. This means that a videoconference will ultimately only take place if the court and the parties agree.

There are hearings that are better suited to video conferencing than others. If an expert briefly explains his expert opinion (just to give an example) and long journeys to the court can be avoided through video conferencing, this is unreservedly positive. It saves time, money, is ecologically sensible etc. In contrast, if it is a question of hearing parties, witnesses, etc., of whom the court needs to get a personal impression, then a video conference will not be appropriate.

Video conferencing facilitates the scheduling of appointments.

Technical problems sometimes occur: mostly they are in the sphere of the parties, rarely in the sphere of the court.

4) Remote work and judicial independence

Do you see any positive or negative effects of remote work on judicial independence? If yes, please give examples.

No, I don't see any at all.

5) Limits on remote work for judges

a. Does your country place any limits on the remote work of judges (for example, limits on remote hearings in criminal cases)? If yes, please give examples.

Judges have always been obliged to work in office as far as their duties required it¹ and – vice versa – were entitled to remote work. Once a day, however, they should look at the new cases and mail pieces.

The legal provisions however restrict the possibility of conducting videoconferences.

The newly adopted amendment to the civil² and administrative³ procedural law regulates the conditions under which videoconferencing is possible.

As far as civil procedural law is concerned, holding a hearing by videoconferencing requires basically the consent of the parties.

The criminal law provisions do not stipulate video trials (after the Covid provisions expired on 30.06.2023).

b. Are there any proposals to change rules or statutes in your country either to permit more, or to limit, remote work by judges?

No.

c. Should there be any changes of rules or statutes in your country either to permit more, or to limit, remote work for judges?

No.

Submitted by Yvonne Summer

¹ § 60 Richter- und Staatsanwaltschaftsdienstgesetz (Judges and Prosecutors Service Act)

² [Zivilverfahrens-Novelle 2023 - ZVN 2023 \(2093 d.B.\) | Parlament Österreich](#)

³ [Allgemeines Verwaltungsverfahrensgesetz, Verwaltungsstrafgesetz u.a., Änderung \(2081 d.B.\) | Parlament Österreich](#)