

**2023 questionnaire of the 1st Study Commission IAJ-UIM**  
**“The Effects of Remote Work on the Judicial Workplace and the**  
**Administration of Justice”**  
**ITALY**

**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?**

Prior to the Covid-19 pandemic, remote work for judges in Italy was not widely practiced, although there have been various legislative interventions concerning digital justice, including the introduction of telematic civil proceedings and regulations for the computerization of criminal proceedings (see in particular: *art. 4 d.l. 29 dicembre 2009 n. 193, convertito in l. 22 febbraio 2010 n. 24; d.m. 21 febbraio 2011 n. 44; art. 16 e 16 bis d.l. 18 ottobre 2012 n. 179, convertito in l. 17 dicembre 2012 n. 221 e successive modificazioni*). Remote work activities have been facilitated to a greater extent in the civil sector through the legislative provision of telematic civil proceedings and the increasing use of computer tools such as the “SICID” and “SIECIC” registry office systems and the “Consolle del Magistrato”, which have allowed and continue to allow judges to work remotely.

Only during the Covid-19 pandemic emergency, in order to ensure the functionality and performance of every sector and office, the law provided for the possibility of remote work for both the filing of documents and orders, as well as for hearing activities. These measures were aimed at minimizing the spread of infections as much as possible.

Here are some examples of remote work practices for judges in Italy during the pandemic:

1. studying cases at home: judges were provided with electronic access to case files and legal materials, allowing them to review and study cases remotely;
2. videoconferencing and teleconferencing: judges could discuss cases and hold meetings with colleagues and judicial personnel via videoconferencing applications (this helped to reduce the need for in-person meetings and promoted remote collaboration);
3. written hearings and online hearings too, particularly within the civil field and, in certain urgent cases and typical procedures, also in the criminal fields: in response to the pandemic, Italian Courts started conducting hearings online using videoconferencing applications (and in particular with the use of Microsoft Teams). This allowed judges, lawyers, and other participants to join the proceedings remotely, minimizing physical presence in the judicial offices.

Regarding technical equipment, efforts were made to provide judges with the necessary tools to work remotely including laptops (but this even before the pandemic), videoconferencing software and access to electronic case management systems, while secure internet connections were (and are still) provided only in the judicial offices. Of course, the extent of remote work by judges depends on some factors such as the availability of technological infrastructure, the complexity of cases and the field too and the resources allocated to support remote work.

- 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.)**

As a result of the implementation of remote work during the Covid-19 pandemic to avoid the shutdown of the justice system, there is currently an increasingly widespread use of agile work, particularly in the civil field. Recent legislation has specified various activities that can be carried out remotely without the need to access to the judicial offices. This mainly refers to the possibility for civil judges to hold certain hearings via video-conference or even replace them with the submission of written notes.

The increase in the possibility of remote work is closely linked to the information technology infrastructure of judicial offices and the computers equipment and tools of the individual judges too. It should be noted that the underlying objectives of recent legislation require the optimization of working times and, to that end, judges must be able to work remotely and utilize computer applications effectively. This includes accessing to their assigned caseload, organizing hearings, drafting decisions and monitoring outcomes, all with the aim of improving the overall efficiency of the justice system.

It should be noted that remote work and the use of telematic tools by judges are highly advanced and well-established only in civil filed particularly in the Courts of first and second instance. However, in the higher Court, the implementation of remote work is still in an experimental phase.

On the other hand, in criminal filed, despite recent regulatory developments, the adoption of remote work and the use of telematic tools by judges is still limited and there are still limitations for remote work, as currently only the consultation of documents and data is allowed, but not also the performance of substantive procedural activities.

## **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.**
- b. Does the remote work of judges have an impact on the judicial workplace in your country? Negative, positive or both? Please give examples.**
- c. From your point of view, what future effects of remote work on the judicial workplace – negative, positive or both – can be expected?**

Remote work enables savings in terms of human resources, costs and time, facilitating a swift and efficient redistribution of judicial resources.

However, various technical issues may arise that are not easily solvable without the assistance of specialized personnel, which may not be consistently available in every judicial office. Over time, distance can also affect interpersonal relationships among judges and between judges and court clerks and staff. In this way, remote work can also become alienating, resulting in a negative impact on social interactions within the judicial office.

In Italy, even the recent legislation following the Covid-19 pandemic, although it has regulated certain specific remote work activities, still aims to ensure a hybrid work approach (remote or in judicial offices) at the discretion of individual operators and depending on specific needs that may arise in concrete cases. As a result, a structural change in judicial workplaces is not foreseeable, except in terms of continuously improving and more efficient of the technological equipment.

### 3) Effects on the administration of justice

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

Certainly, remote work has allowed during the Covid-19 pandemic to avoid a complete halt of the administration of justice and the negative consequences that would have ensued for the entire justice system.

Once the pandemic emergency has been overcome, the advantages of remote work can be identified in streamlining many procedures that can be managed without the need to access to the judicial offices. However, at the same time, this aspect can also be seen as a disadvantage insofar as the lack of the “contact” with the judge and the absence of physical access to the courtrooms may undermine the necessary decorum, formality, and in some cases, even the solemnity of judicial proceedings, resulting in the perception by the user of a simplification and trivialization of their quest for justice.

Among the additional advantages of remote work, there is the saving of human resources, economic resources and time too.

Among the disadvantages that are more immediately perceived are the technical problems that may occur (including system failures) and that, in some cases, are not easily solvable without the assistance of specialized personnel, which may not be consistently available in every judicial office. Another disadvantage is the distance that could be created over time between individuals, thereby affecting working relationships between judges and between judges and administrative and secretarial staff.

More generally, regarding the effects of remote work on the administration of justice and the use of computer applications and tools by judicial offices and judges, more complex issues arise.

It should be noted that in December 2018, the CEPEJ (European Commission for the Efficiency of Justice) adopted the “*European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems*”, and in Italy, article 8 of legislative decree 51/2018 established that “*decisions based solely on automated processing, including profiling, which produce negative effects on the data subject are prohibited unless authorized by European Union law or specific legislation*”.

That being said, in Italy, for example, projects have been launched in some judicial offices aimed at experimenting with the use of artificial intelligence systems in judicial activities to create a database that can be queried using natural language to assess the potential judicial outcome of a given case. This project is based on the idea that predictability of judicial decisions represents an indicator of the quality of judicial activity. However, there is a risk of “judicial conformism” whereby the use of certain computer applications and tools impoverishes and misrepresents the quality of jurisdiction, producing negative effects on the administration of justice and, in particular, on the perception of the independence and autonomy of the judiciary (see below: answer at question 4 too).

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

While remote work by judges and the overall computerization of the justice sector can lead to various user perceptions, the streamlining of many procedures that can be handled without the need to physically access the court offices is generally appreciated. However, it is often the case that users prefer direct contact with the judge (see above the first part of the answer at the questions 3.a and 3.b).

From the perspective of lawyers, while there is a general appreciation for the increasing computerization of the justice system, some issues have been raised. These include concerns regarding the computer infrastructure, which can often lead to errors in data processing and lack clarity in automated communications sent through certified email. There are also challenges related to accessing and consulting the digital case file, as it is not designed as an homogeneous unit, but it is rather subject to individual operator choices (these concerns are mentioned in the *“Report on the State of Telematic Justice – 2021”* by the Italian Consiglio Superiore della Magistratura).

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

There are no particular issues reported regarding remote meetings, which are certainly convenient and allow for direct discussions among judges in a very timely manner.

However, concerning remote hearing, it should be noted that, following the pandemic emergency, it can be conducted in the civil sector and have been subject to specific law provisions, most recently in 2022 (see below), which have institutionalized the practice.

Among the critical points, it is worth highlighting that in proceedings involving multiple parties or cases where the participation of several authorized individuals must be ensured, it is difficult to guarantee a proper conduct of the hearing. Typically, the civil judge is alone in managing and organizing the hearing, with a workstation that lacks an integrated videoconferencing system (such as Microsoft Teams) with the telematic application of the “Consolle del Magistrato”. As a result, the judge has to oversee the hearing while simultaneously managing the use of multiple applications during the proceedings, performing various operations across different software (e.g.: Teams and Word opened within the Consolle del Magistrato) for the drafting of decisions and hearing report.

Furthermore, in managing the hearing, the judge could face difficulties in verifying the active participation of the parties and ensuring that they maintain an uninterrupted audiovisual connection throughout the entire hearing, without engaging in conversations that are inaudible to the judge and other parties.

See above also the answer at the questions 3.a and 3.b:

The advantages can be identified in streamlining many procedures that can be managed without the need to access to the judicial offices. However, at the same time, this aspect can also be seen as a disadvantage insofar as the lack of the “contact” with the judge and the absence of physical access to the courtrooms may undermine the necessary decorum, formality, and in some cases, even the solemnity of judicial proceedings, resulting in the perception by the user of a simplification and trivialization of their quest for justice.

Among the additional advantages of remote work, there is the saving of human resources, economic resources and time too.

Among the disadvantages that are more immediately perceived are the technical problems that may occur (including system failures) and that, in some cases, are not easily solvable without the assistance of specialized personnel, which may not be consistently available in every judicial office.

#### **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.**

It has already been mentioned, in the second part of the response to questions 3.a and 3.b (see above), regarding the “predictive justice” and the use of certain artificial intelligence applications in the administration of justice, that there is a risk of “judicial conformism” and, therefore, of a decline in the quality of jurisdiction, which can have negative effects on the perception of the independence and autonomy of the judiciary.

Regarding the consequences on the independence of the judiciary of remote work and the use of computer applications and tools provided to judicial offices and judges, it should be noted that the progressive digitization of procedural documents, their digital management and the overall telematic process do not simply represent a technical and organizational modification of judicial offices and of the administration of justice. They should not interfere with judicial activity and the exercise of jurisdiction, as they can indeed influence and impact the autonomy and independence of the judiciary.

The configuration and functioning of the software made available to judges (including to facilitate remote work) for the management of procedural documents can also affect their formation and structure. Therefore, the adoption of such software must be carefully evaluated to ensure that it does not compromise the independence and integrity of judicial decision-making.

This concern has been raised particularly in the field of criminal justice in the “Report on the State of Telematic Justice – 2021” by the Italian Superior Council of the Judiciary (Consiglio Superiore della Magistratura). It states that the installation and functioning of the technical infrastructure (hardware and software) that will manage all procedural activities in the future (with specific reference to the criminal process) “*today conditions and will increasingly condition the concrete methods of exercising judicial activity and, ultimately, the autonomy and independence of the judiciary*”. This statement highlights the potential impact of the technological infrastructure on the actual exercise of judicial functions and emphasizes the need for careful consideration to ensure that the implementation of such systems does not compromise the independence and autonomy of the judiciary.

## **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.**
- b. Are there any proposals to change rules or statutes in your country either to permit more, or to limit, remote work by judges?**
- c. Should there be any changes of rules or statutes in your country either to permit more, or to limit, remote work for judges?**

In Italy, there are no particular limitations on the use of remote work in the civil field and the holding of remote hearings or hearings in written form has been expressly provided for by legislation in November 2022 (see Legislative Decree of October 10, 2022 n. 149). In more detail, the holding of remote hearings can be ordered by the judge when the presence of individuals other than the lawyers, parties, public prosecutor and court officers is not required. In the same cases, the hearing can also be replaced by the exchange of written notes containing only requests or conclusions of the parties.

On the contrary, in the criminal field, there are still many limitations for remote work, as currently only the consultation of documents and data is allowed, but not also the performance of substantive procedural activities (see above the last part of the answer at the questions 1.b).

In particular, with the recent regulatory reform of 2022 (see Legislative Decree of October 10, 2022, n. 150), a telematic criminal procedure has been envisioned, similar to what has already been happening in the civil field. This includes the drafting of acts in electronic form and their deposition in the digital case file, the possibility of electronic notifications, audio and video recording of testimonies and interrogations and the remote holding of certain types of hearings too.