

PORTUGAL ASJP – GROUP 1

2023 Questionnaire of the 1st Study Commission IAJ-UIM

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

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?

Answer

Most of the files of all judicial cases are dematerialized and remotely accessible to judges, prosecutors and lawyers for the written actions (applications, decisions on procedure, judgments, etc.) within their competence.

Before the pandemic, the use of these mechanisms by first instance judges was more or less residual. As a rule, judges of first instance went personally to the courts quite frequently, on a daily basis.

Appeal court judges usually worked from their homes, discussing the cases by phone or email, and only attending court sessions weekly or once every two weeks.

Remote trials and other hearings were technically possible and widely used before the pandemic, but only for situations in which it was impossible or not convenient for witnesses or defendants to be present in courts. The presence of the judge in the courtroom was mandatory.

During the pandemic, special provisions were approved allowing remote trials and other hearings with the judge and all other participants at his/her residences.

This system was widely used but the special laws that allowed it expired in July 2023.

After the pandemic, the legal framework went back to the previous system.

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.)

Answer

After the pandemic, despite the special legislation being revoked and the previous system being returned, there was a lot of resistance for judges to return to the courts in person.

Appeal court judges began to miss weekly or bi-weekly sessions in greater numbers. In the rest of these judges work, there was no appreciable change because it was already done remotely as a rule.

In the courts of first instance, it was noted that judges began to resort more to remote work tools and to concentrate trials and other hearings in the fewest possible days to reduce the need to travel to the courts.

In many courts the daily presence of judges has been reduced to less than 1/3. The situation is widespread. However, in jurisdictions where there are more trials and other in-person hearings, judges appear in court more often. There are jurisdictions, where the work is essentially written, where judges go weeks without going to court.

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.

Answer

There are no studies that allow us to know the impact of the increase in remote work on the work of judges.

Empirically, it can be said that there is an increase in efficiency, for two reasons: firstly, because the time spent traveling to court can be allocated to judicial work in greater quantity; secondly, because in court work the judge's attention is more dispersed, due to the interruptions caused by interaction with co-workers and other people.

In terms of the quality of work, without studies it is not possible to say with certainty that there has been a decrease in work done remotely from home. However, the concentration of audiences in the fewest possible days increases the pressure to do everything very quickly, and it is therefore possible to assume, with relative certainty, that this has an impact on the quality of the work.

One of the aspects where the negative impact is already evident is the breakdown of hierarchical authority between the judge and his/her support staff. Without personal leadership, administrative support staff tends to seek professional guidance and support from other middle managers and no longer see the judge as the leader of their organizational unit.

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

Answer

Not yet, but if the situation doesn't change, it's a matter of time before the organization of workspaces changes. Judges now have individual offices in the courts, fully equipped with computers, printers and scanners. If they stop using these spaces, it is clear that

in the long run they will lose these amenities and start sharing offices in smaller buildings or with more judges and other staff.

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

Answer

In addition to what was mentioned in the previous answer, the greatest consequence that the absence of the court judge will have for the organization of work will be the loss of hierarchical authority over the administrative staff and the reduction of possibilities for sharing information, experience and knowledge with other colleagues.

3) Effects on the administration of justice

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

Answer

The generalization of remote judicial work can have positive impacts, namely with regard to efficiency and cost reduction.

However, we must be concerned about the negative impacts, which can be summarized as follows:

-The judge working at home prefers to do it quickly because he/she does not personally feel the responsibility to do it better.

- The concentration of hearings on the same days also increases the pressure to do everything quickly and pay less attention to the submissions of the parties and the particularities of the case

- The absence of the judge will also have an impact on the symbolism of justice. The court is a human judge; it is not a building like any other public building. The lesser the personal contact, the lesser the respect for the symbolic figure of the judge.

- The reduction of personal contacts between colleagues will have a negative impact because it is detrimental to the maintenance of a culture with common judicial values and ethics.

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.

Answer:

Despite being perhaps inevitable, the impact will be negative on the quality of the judicial decision, on the symbolism of justice, on the judge's leadership over the staff in the organization and on the loss of culture, values and common identity. All of this will bring in the future a bureaucratic judge, closer to the figure of any public servant, less cultured, less attentive to cases, less fair and with a greater probability of error.

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

Answer:

With regard to the general public, the attitude may be one of disinterest or ignorance.

Lawyers are complaining more and more that judges rush everything, that they don't allow questions to be asked as they used to and that they analyze evidence more lightly.

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

Answer:

Refer to previous answers

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.

Answer:

Yes. A more bureaucratic and hurried judge, distant from the people, is less independent. He/she more easily accepts orders from hierarchical superiors who can interfere in the decision-making process. The lack of interaction between colleagues, which diminishes the perception of common judicial values, will lead the judge to understand less the capital importance of his/her independence, not only in the decision of the case but also in the importance of this factor in the democratic political organization of the powers of the State.

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.

Answer:

Judges do not have a fixed work schedule. According to the Statute, they must work in the court building and reside in the territorial district of the court, unless otherwise authorized by the superior council of the judiciary. Court presidents do not monitor the attendance of judges. This assiduity became a positive factor in classification of judges, with an impact on promotions to higher courts, at the request of the representative association of judges and with opposition from many colleagues. It has not yet been possible to measure the impact of this regulatory change.

In the long term, if the situation does not change, it is possible and desirable that it be necessary to impose, by regulation or by law, the effective presence of judges in the courts, as happens, for example, in Brazil (we do not know whether in all states or only in some),

where the judge has to go to court at least 3 days a week and each court has to have at least half of the judges present at all times.

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

Answer:

There are no proposals in this regard.

The only change that took place, in the regulation of inspections and classification, was proposed by the representative association of judges, as mentioned in the previous answer.

The superior council of the judiciary, whose composition has recently changed, has already publicly stated that the current situation is very worrying

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

Answer:

In the opinion of the board of judges' representative association, the answer is yes. Even if there is opposition from the judges, for reasons of personal interest and comfort, justice matters more.

Proposal for 2024 topic: Please submit your proposals for possible topics to be treated in 2024 together with the answers to this questionnaire.

Answer:

we have noticed two aspects in these annual discussions that should lead us to reflect on how to address such important issues: firstly, there is a lack of continuity in important issues that deserve greater attention; secondly, the approved reports/synthesis are not very "operative", that is, they are not incisive enough for each of the

national associations to be able to use them to bring about changes in their respective judicial bodies.

This year, following the same method, we are going to find out what the national associations think about the subject and get to know a summary of the respective positions, but we may not end up with a more effective proclamation of principles or even, eventually, with a recommendation to the national associations.

Now, as we are not seeing another issue more important than the depersonalization of the judicial function, resulting, on the one hand, from the growing remote work, and, on the other hand, from the inevitable incorporation of artificial intelligence tools in justice, it seems to us that it would be justified to insist on this subject. Therefore, in the next years we could prepare a declaration of principles on this matter, eventually under the form of a recommendation, which later, depending on the reality of each country, could be used to press the legislative and regulatory agenda of the relevant authorities in each country.