

QUESTIONNAIRE

ON THE IMPACT OF COVID-19 ON RULE OF LAW AND JUDICIAL ACTIVITY

ANSWERS: ASSOCIATION OF CROATIAN JUDGES

1. What are the main problems the Judiciary experienced at a general level in your country as a consequence of the legal reforms approved in order to cope with the COVID-19 pandemic?

A: In Croatia there were no major legal reforms in regard to the judiciary in narrow sense as an answer to the COVID-19 pandemics. Of course general measures as social distancing, ban on transport and travel outside of your place of residence, impossibility to enter courts and to conduct hearings in such circumstance effected work of the courts tremendously.

In sense of legal reforms only few laws have been amended proscribing general rules as ban to proceed with certain enforcement cases which could, if proceeded, have a serious effect on citizens in time of economic crisis as well.

2. Did the legal reforms approved in your country in order to cope with the COVID-19 pandemic affect Rule of Law and Human Rights principles? If any, pls. enumerate them.

A: In accordance with article 16. of Croatian Constitution it is possible in times of crisis like natural disasters, pandemia etc. to deliver laws which will have effect on some of human rights. In that respect some of human rights have been effected as freedom of movement, freedom to access the courts and free enterprise

3. As to the judicial organisation of your country, what impact had the legal reforms approved in order to cope with the COVID-19 pandemic? More specifically, what were their effects on the powers of the Minister of Justice, Council for Judiciary, Heads of Courts, Heads of Prosecution Services, Judges, Prosecutors, Court Administrators, Court Managers?

A: As in Croatia major laws regarding the organization of judiciary have not been amended no additional powers were given to none of the officials/bodies listed in the question.

Minister of justice and President of Supreme Court only published recommendations how courts should operate having in mind primarily protection of health and lives of court staff, judges and parties. But as in all parts of the country the situation with pandemia was not the same and not the same in all times courts had freedom to adjust their work to the specific local situation in cooperation with local health authorities.

In procedural rules there is possibility to ask for returning the case in the state before an obstacle which prevented parties to act in accordance to legal or court's time frame . In that sense all procedural parties' rights are prevented.

All communication with the courts is organized through electronic means of communication.

4. As far as Court activity, Court proceedings and trials are concerned, what was the impact of legal measures adopted? Pls. provide relevant information distinguishing between civil, criminal and administrative cases.

A: In general, all first instance cases were postponed for indefinite period of time. Only cases related to pre-trial detention, detention of mentally ill persons, and cases connected with rights of the minors and domestic violence were heard at first instance courts with all measures taken to prevent spread of the virus including video- conferencing.

Second instance courts of general jurisdiction and specialized ones as commercial and administrative, and Supreme Court as well where sessions of panels are conducted without hearings (in camera) where size of the offices allowed it panels were delivering decisions all time during the crisis. Only judges were working at home and some panels were conducted through video conferencing as Microsoft Teams”.

5. Did “urgent” cases receive a different treatment and in this framework was a special legal definition or specification of “urgency” introduced for Court proceedings and trials?

A: Yes. Please refer to answer under 3.

6. Did the amount of money and, more generally, the value at stake in the case play a role in the treatment of it?.

A. No. None. Please refer to answer under 3.

7. As far as criminal cases are concerned, did cases concerning arrested defendants receive a different treatment?

8. What was the impact of such legal reforms on legal deadlines and procedural timeframes?

A: In some countries specific laws have been delivered dealing with the problem of deadlines and procedural timeframes.

For the moment in Croatia such law is not on the table, even some circles from Academia, Bar and judiciary including me in capacity of President of Supreme Court , advocated such approach to make it clear and equal to all before the courts. In other hand there are now existing rules in different laws (i.e. Criminal Procedural Act, Civil Procedural Act, Administrative procedural laws) which can heal problems in particular cases if deadlines or time frames were exceeded.

9. What is the role played in your country by IT, e-filing, smart and remote working in the management of cases as an effect of legal measures approved in order to cope with the COVID-19 pandemic? To what extent these measures are applicable also to the activity of Public Prosecutors?

A: One of the first measures was to keep court staff and judges at home as much as possible so anybody who could was working from home including today. So all means of electronic communication was used. All judges have access to their official mails from home, and could communicate with court and parties as well where necessary.

As it has been mentioned before, major impact of performance of courts was at first instance courts because our legal procedural frame does not allow to have “video- conferencing” hearings at first instance level. Only in criminal cases some evidence can be taken using this tool i.e. taking statement of the victim, juvenile witness, taking statement from defendant in custody or witness abroad. In civil proceedings there is only a general rule which allows courts to conduct “distance hearings” but without specific detailed prescription how such hearings

should be conducted in terms of security, right to public hearing and most importantly how a judge can control happenings outside of the screen.

Second instance court in appellate jurisdiction are using all means which they are provided with including video conferencing and entropic communication.

10. What is the role played by your Association in the drafting of such legal reforms? Was your Association consulted by the Government before adoption of the aforesaid measures?

A: Yes. Ministry of Justice is consulting Association in regard the measures taken and draft laws which they prepare for the Government, but accepting our opinions and suggestions is another story.

11. Did the Government consult the High Council for the Judiciary and/or other judicial institution al instances or representatives before adoption of the aforesaid measures?

A: Same as in regard to the Association.

12. What is the attitude of Bar Associations and Lawyers vis-à-vis such legal reforms?

A: Bar Association is very firmly advocating the need to deliver special law which will regulate work and procedures before the courts in the era of pandemic.

Also there are strong opinions to include video- conferencing hearings before all first instance courts despite above mentioned legal obstacles to start such exercise on general broad scale. The legitimate lawyers' argument is that layers are brought to the end of their economic existence and that for them to survive it is necessary for courts to start working.

In general, at the moment Croatia is easing it's strict measures and courts will follow opening of the society accordingly.

For the Association:

Duro Sessa

Honorary President