

Judges' Association of Serbia's response to the questionnaire of the impact of COVID-19 on the judiciary

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?

The basic problem, which generated all other problems in Serbian judiciary related to the state of emergency, which was introduced by means of legal reforms, is the fact that the Government, with co-sign of the President, adopted a series of regulations which departed from certain rights proclaimed by the Constitution of Serbia, some of which could not be limited even in a state of emergency; these actions resulted in several proposals of assessment of their constitutionality. Furthermore, although a state of emergency cannot suspend or limit independence of the judiciary, representatives of political powers have publicly, by means of public service media, announced the strictest punishments for anyone breaching mandatory isolation, thus putting illicit pressure on the judiciary and abusing court proceedings for political purposes.

Judiciary was also pressurized by means of various suggestions made to public prosecutors, who were invited to propose custody against citizens breaching dispositions of the state of emergency legislation related to health protection, and threats of initiating disciplinary procedures against public prosecutors disobeying these suggestions.

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.

The reforms have indeed affected these principles. A series of regulations adopted during the state of emergency have questioned the existence of rule of law, as they have limited and endangered human rights which shouldn't be affected in a state of emergency. Although the Serbian Constitution prescribes special rules for functioning of the judicial system in a state of emergency, including a possibility of derogating from certain rights explicitly recognized by the Constitution, it also determines a list of human rights that can in no way be derogated from.

One of these rights is the right to a fair trial, which was endangered by means of the Regulation on defendants' participation at main hearings in criminal proceedings taking place during a state of emergency, which legally formalized Ministry of Justice's recommendation on so-called Skype trials. This right, being a complex one, includes the right to a public hearing, which implies the defendant's presence at the main hearing, at the same time enabling all other rights prescribed by the law, such as the defendant's right to an effective defense, the right to inspect the case files, the right to read the indictment and other records, etc.

The Regulation on sanctioning breaches of the Order on limiting and forbidding movement of people on the territory of the Republic of Serbia has breached the *ne bis in idem* principle. This principle is reflected in the right not to be charged more than once on the same grounds,

which is also contained in the Constitution. The Regulation adopted enables both criminal and misdemeanor procedures for a single act.

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?

State of emergency has further undermined the separation of powers, in favor of the executive branch. Several by-laws related to the work of courts were adopted in the process. One of the first ones was the Regulation of organizing employers' work in the state of emergency, which laid down employers' duty to allow their employees to work remotely or from home, if there are possibilities for these types of activities, as well as to provide their employees and visiting parties with protective equipment and disinfectants. This Regulation was followed by the Minister of Justice's Recommendation on performance of courts and public prosecutions during the state of emergency, which was adopted on March 17th 2020, recommending that judges of the Supreme Court of Cassation, Commercial Court of Appeals and other courts of appeals perform their work remotely, except for situation in which sessions of judicial panels have to take place in urgent cases. Judges of commercial, basic, higher and misdemeanor courts were recommended to perform their work on cases in their courts' premises, unless it was possible to perform from home, which had to be determined in decisions of the courts' presidents. At the same time, it was recommended to presidents of courts to adopt their own Instructions on performance of courts, which they did, and published these Instructions on their courts' web-sites. On March 18th, the High Judicial Council adopted its Conclusion, according to which only hearings in urgent procedures will be held while the state of emergency is in force (at the same time defining these procedures in their respective areas), while all other trials and hearings have been postponed. Finally, by means of Regulation on forbidding gatherings in closed spaces in the Republic of Serbia, adopted on March 21st, postponing all trials, even those in custody cases, was practically initiated, with the exception of cases related to undertaking measures intended to prevent the spread of infectious disease (COVID-19). This Regulation forbids gathering of more than 5 persons at the same time in closed space, thus disabling almost every form of trial.

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.

The adopted legal measures have to a certain degree suspended the courts' activities as controllers of constitutionality and legality of the work of state authorities, transforming the entire judicial system into a mechanism of intimidating "disobedient citizens" when it comes to applying measures for coping with the COVID-19 pandemic. Courts' activities and trials have been reduced to the minimum. In courts, only employees and judges on call were present. However, trials in civil matter have taken place in urgent cases, practically related

only to temporary measures and to family law cases. In criminal matter, trials were held for breaching adopted health regulations, criminal offences committed during the state of emergency connected to the state of emergency, juvenile criminal activities, custody cases and cases endangered by a possibility of statute of limitations. It was possible for these trials to take place only under conditions prescribed by the reforms adopted.

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?

High Judicial Council adopted a Conclusion on March 18th, determining that trials should only take place in urgent cases, which were described as “cases that should not be prolonged”. Along with this additional description, cases of this type were enumerated explicitly in both civil and criminal matter.

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

Formally, this was not the case.

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

Different treatment was applied only towards the apprehended persons, who were provided with protective gear (masks and gloves).

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

Several regulations on legal deadlines were adopted during the state of emergency. Following the Regulation on legal deadlines in proceedings before courts, adopted on March 20th, deadlines for filing private criminal charges, civil litigation lawsuits, proposals for initiating extra-judicial proceedings, enforcement and security proceedings, filing constitutional complaints and other ordinary and extraordinary legal remedies, as well as performing other legal acts, shall be suspended while the state of emergency is in force. The Regulation on applying legal deadlines in administrative procedures, adopted on March 24th, stipulates that parties in procedures before state authorities and organizations, authorities and organizations of autonomous provinces and local self-government, establishments, public undertakings, etc. shall not face consequences for omitting within deadlines determined in laws.

Procedural dispositions were affected in criminal procedures and trials conducted via Skype, which was not regulated by the Criminal Procedure Code against defendants in the first degree.

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?

There are technical possibilities for wider application of information technologies.

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?

Judges' Association of Serbia was not consulted by the Government before adoption of by-laws during the state of emergency. However, the Government had regulated deadlines and Skype trials issues only after JAS issued public announcements on these matters.

It does seem that the so-called Crisis Center, who was composed of medical experts, representatives of state's power and other important state services, should have included representatives of the judiciary, which was not the case.

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

This is not familiar to the public.

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

Certain well-known lawyers have taken their own personal stands on the legal reforms. Bar Associations did the same, expressing their opinions that certain solutions endangered the rule of law, which was manifested by means of the specific manner the state of emergency was introduced, as well as by not following specific procedures. The majority of attorneys opposed introduction of trials via Skype in certain criminal proceedings during the state of emergency.