

QUESTIONNAIRE

on the impact of COVID-19 on Rule of Law and Judicial Activity

Answers from Hungary

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?

1. After having declared the state of danger on 11 March 2020 the Hungarian Government took the power of legislation by issuing decrees for a period of 15 days. On 15 March 2020 a court break was ordered. The National Judicial Office (OBH) announced that all court sessions should be cancelled. On 30 March the Hungarian Parliament with his 2/3 majority of the governing party extended the mandate for the government to govern by decrees for an indefinite time. Government terminated the court break and enacted at the same time a decree of 95 articles amending in a large extent the procedural laws in civil, criminal and administrative matters. This decree meanwhile was amended by further 20 articles.

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.

2. The new regulations are not always quite clear and permanently supplemented and explained by orders of OBH. In reality court buildings are closed - ordered by OBH or Court Presidents - so that people like clients, advocates, and law councils (latter only in special cases) etc. cannot enter.

All hearings shall be done only in a written way or by video conference. Besides of all technical problems an interrogation of defendants, litigants, witnesses not provided with the necessary equipments is not possible. OBH also has ordered a 7 day long „document quarantine”. Within this time all documents arriving in court are stored in the registry. That produces an unnecessary and inapprehensible delay, at least.

3. As to the judicial organization 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?

3. The new regulations interfere with the work of a proper Judiciary up to a large extent. Explaining and interpreting orders enacted permanently from OBH are aggravating the situation additionally. OBH is playing the leading role. A controlling function by the National Judicial Council as provided by law does not take part (see also the „Fact Finding Mission Report 2019” of EAJ).

A proposal to withdraw the regulation of government has been submitted to Parliament, but Parliament has not yet decided on it. According to the proposal will be terminated the emergency situation 20th June.

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.

4. At the moment there are no regular court proceedings and trials. The regulations banning judges to hold trials and to do everything in writing or by videoconference, even not to announce judgements in public hearings is not in accordance with Art. 6 (1) ECHR. Leading principles like fair trial, public and directness are violated.

It should be mentioned that in Hungary is no way such severe limitations exist like in other countries. People can walk around without limitations, shopping malls, parks, hairdresser's salons etc. are open with some security provisions (distance, face protection). All that could be handled in court houses as well.

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?

5. No

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

6. No special rules provided

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

7. Procedural deadlines has not changed related to the length of custody and detention.

The prescribed procedural rules applies for criminal cases as well. A summoning of an arrested person by prison guard to court does not take part at trial stage. Contacts are only possible via video.

Hearings about pretrial detention are generally held as videoconferences via telecommunication devices but if it is necessary for any reason they can be held at court rooms in the presence of the detained person, the prosecutor and the attorney. (similarly to some urgent civil procedures e.g. in procedures about restraining orders parties can enter to court buildings)

Contrary to the former regulation no approval needed from the detained person for using telecommunication devices for the hearing about ordering pretrial detention.

A problem is that despite detention the investigative authorities (police) often do not operate with regard to emergency situation (Art.5 (3) ECHR.)

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

8. Prolongation of deadlines and procedural timeframes are leading to significant delays sometimes, though the new regulation widen the possibilities to adjudicate minor criminal cases without a trial in a written way which speeds up these cases. After receiving the order parties still have the right to demand trial and the case can be solved in a regular way. Both in the civil and the criminal field the emergency regulation provides several possibilities for the judges to handle a case and choose from different solutions of communicating with the parties in a written way or holding trials and hearings by telecommunication devices (via video system, skype, even by phone) or if there is no possibility to continue the case in these ways without breaching the principal of fair trial, the judge can suspend it (except for the cases of detained persons). The restraint of entering court buildings will terminate at the 2nd of June,

so trials will go in a regular way in a short time. That means the special functioning of courts was only two and a half month long, it mainly oriented to the general restrictions of life. In the last few weeks they changed by degrees and now only limited restrictions remained in the country so the courts are following this path.

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?

9. As already mentioned the technical measures shall play an important role and practically substitute all other contacts. In Hungary a new program called “Digital Justice” started a few years ago, so several technical possibilities which is necessary for remote working had been already available before the pandemic. The usage of these naturally increased during this special period. The technical tools are available for judges and the court administration though sometimes not fit to handle such a large amount of usage. Judges and significant part of court administrators can work from home now thanks to the e-file system and other home office solutions. Parties, attorneys, prosecutors also have digital access to case files (in a controlled way) so there is no need to enter court buildings to get information about a case. Hearings and trials are held as videoconferences with the so called via video system or skype. To initiate a stable, detailed practice more time is needed, but several new digital solutions can survive after the pandemic.

It should be mentioned that the usage of these devices and to manage cases digitally needs a higher level of cooperation from the parties as well. Attorneys and prosecutors adopted quite easily these new court manners but sometimes the lack of digital devices (on the parties side), sometimes the lack of the intent to cooperate causes problems.

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?

10. The Association was not involved in the drafting of the reform and not consulted by Government.

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?

11. The National Judicial Council was not consulted about the legal reforms though there is no legal obligation for the Government to consult law reforms with the National Judicial Council. The National Judicial Council operates permanently and gives written opinions about the measures of OBH which is its main function (controlling) and holds meetings via skype. The representative of the Government took part in the latest meeting among several other stakeholders (the President of the Bar, the President of the Association of Hungarian Judges, etc.)

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

12. No official opinion or reaction was reported up to now. Though according to our experience attorneys are quite cooperative among these special circumstances, they use e-file system and take part actively in written communication.