

QUESTIONNAIRE

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

submitted by the Austrian Association of 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?

To prevent the further spread of the COVID19 pandemic a lock-down of the entire judiciary was decreed in mid-March from one day to the next. Only emergency services were to be maintained. All other staff (judges, secretaries) should (if possible) work from home, but in any case not come to court. Oral proceedings should only be conducted in urgent cases. To organize these emergency services was a challenge. Urgent matters should still be dealt with. Parties could only come to court after having made an appointment in advance. If possible, matters should be dealt with by telephone.

There were numerous practical difficulties, e.g. obtaining sufficient disinfectants and protective masks.

After about four weeks, it was time to prepare for the slow re-start of the judicial system. The safety regulations (keeping the distance) had to be observed, protective equipment had to be procured. The waiting areas in front of the courtrooms also had to be structured. Many court rooms can no longer be used to the same extent as before because they are too small. This is a problem because there is a considerable backlog of trials. Making up this backlog of work while at the same time reducing the capacity of the court rooms is the greatest challenge at the moment.

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 federal government has taken numerous measures that basically interfere with with fundamental rights and freedoms. The most notable of these are restrictions on movement.

These may be justified in order to protect life and limb. The Constitutional Court will have

to judge whether there have been errors in legislation or unconstitutional and unlawful regulations.

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?

The laws provided for a comprehensive authorisation of the Federal Minister of Justice to issue ordinances (e.g. to extend the interruption of deadlines). The powers of court presidents, however, have not been affected, in particular not extended.

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.

Civil law:

- **All procedural deadlines (for instance: to introduce an appeal, make a statement) were interrupted until 30.4.2020.**
- **Substantive legal deadlines (for instance: limitation period) were suspended until 30.4.2020.**
- **In civil law cases, for example, trials should only be held if there was an urgent need to continue the proceeding which was not prevailed by the protection of interests of the public to prevent the further spread of the COVID 19 pandemic.**
- **The service of documents and summons of the court has been temporarily restricted and should only be carried out in urgent cases.**
- **Tenants of residential property whose economic capacity has been considerably impaired by the COVID 19 crisis and who are therefore in default, in whole or in part, with rent payments that were or will be due in the period from 1 April 2020 to 30 June 2020 got a special protection The rental agreement cannot be terminated or cancelled due to qualified rent arrears from this period (April to June 2020) alone until the end of June 2022. The landlord can only sue for such arrears in court after December 31, 2020. Consumer credit where the borrower defaults on repayment due to the COVID 19 pandemic will be deferred for three months. This means that no legal action is currently being taken. These lawsuits are likely to**

become more frequent after the deadlines have expired.

Criminal law:

- **Trials were to be held only in detention cases or in other urgent matters. The accused could also be questioned during the trial by means of video conference in order to avoid being brought from prison.**
- **The public could be excluded to prevent the spread of the Covid pandemic.**
- **Hearings during the investigative custody could be held by video conference or could be dropped at all.**
- **In the prisons visits were no longer possible.**

Administration law:

Here too, the procedural deadlines were interrupted. Trials should be held only exceptionally; only if it was necessary to maintain an orderly administration.

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?

Yes, as well as in civil law as in criminal law (see also question n° 4):

In the field of criminal law, priority was given to cases concerning arrested defendants.

In the field of civil law, oral proceedings could only be conducted in the event of danger to life, limb, safety, freedom, or in order to prevent serious and irreparable damage to a party.

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

No.

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

Yes. Cases concerning arrested defendants were given priority. Trials took place despite the restrictions imposed by Covid.

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

As mentioned above (see question n°4) all procedural deadlines were interrupted until 1.5.2020. Substantive legal deadlines were suspended until 1.5.2020. The proceedings therefore take longer.

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?

Some courts have been already working with electronic files before COVID 19. During the lock-down most of the judges (and the prosecutors) did mainly home office,

Most courts, however, do not have a sufficient technical equipment. Therefore the possibility introduced by the legislator to conduct oral proceedings increasingly by video conference can currently only be used to a limited extent. There is a particular lack of cameras and external microphones.

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?

The Ministry of Justice has widely involved the Association of Austrian Judges in the legislative process. In particular, we also contributed experience and the perspective of practitioners, which was very important because there was no proper evaluation due to time pressure.

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?

There is no High Council for the Judiciary in Austria. As already mentioned above (see question 10) the Ministry of Justice consulted the Association of Austrian Judges. As far as we know, Austrian lawyers were also partly involved or at least heard.

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

The expansion of video conferencing is viewed critically by some lawyers. Particularly in the field of criminal law the questioning of defendants in the trial by means of video conferencing is widely rejected.

The legality of some of the decreed restrictions is also questioned by some lawyers.