

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

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 Government of the Republic declared of an emergency situation in the administrative territory of the Republic of Estonia on 12 March 2020. The emergency situation was abolished by the government from 18 May 2020. In Estonia the legal reforms regarding the measures to cope with the COVID-19 had rather insignificant effect on the Judiciary. The court proceedings and hearings continued during whole emergency period. The measures taken, were targeted to avoid spread of pandemic virus among the courts and the participants of the hearings – i.e. minimize the contact during the period of restriction and using digital solutions on filing and hearings instead. Estonia already uses many digital solutions in proceedings for a long period prior to the emergency situation, therefore the measures taken were more technical than legal and based on existing legal ground. Access to the justice was guaranteed during all the restriction period. The main implementations, supporting digital hearings were already introduced before pandemic and the complete digitalization of court files and modernizing the proceedings and its impacts on the Judiciary is still very much under discussion.

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.

On 20 March 2020, the Estonian ambassador to the Council of Europe sent a letter of notification pursuant to Article 15 of the European Convention on Human Rights (ECHR) in which he provided information on the restrictions introduced in Estonia due to the pandemic spread of the coronavirus. The letter also stated that Estonia would immediately inform the Council of Europe of any new restrictions introduced and continue complying with international human rights, including the ECHR. In relation to the emergency situation, Estonia has established restrictions on movement in the state and across its borders, changed the organisation of the provision of education and courts, closed various cultural and other establishments, set restrictions on communication, including with persons in hospitals and detention facilities, and so on.

Estonian Government noted that the COVID-19 pandemic situation corresponds to the emergency specified in Article 15 of the Convention due to the measures implemented. Estonia stated in its notification that it has implemented said measures, which restrict the rights guaranteed with the Convention. Due to the extent of the emergency situation, Estonia has established restrictions that may not comply with the case-law of the European Court of Human Rights that have developed in an ordinary situation, but which must be assessed in the context of an emergency. The submission of the notification does not mean that Estonia will stop guaranteeing the rights set forth in the Convention. Estonia found that based on the case-law of the European Court of Human Rights, a state has to notify the Secretary General of the Council of Europe quickly enough to ensure that the exception will be applicable in future court cases. Notifying the Council of Europe will not change the relevant obligations of Estonia or give the state the right to interfere with the rights of persons without legal grounds. The right of persons to turn to Estonian courts for the protection of their rights, as these courts have the competence, is guaranteed. Relying on Article 15 of the Convention does not release Estonia from responsibility if the measures taken by the state are excessive and

disproportionate. All measures taken in an emergency situation must be justified and proportional. In the emergency situation, Estonia will continue to comply with the laws in force and ensure the protection of the fundamental rights of people.

On 16 May 2020, Estonia has informed the Council of Europe of its conclusion of the emergency situation declared on 12 March, in accordance with the requirements of the ECHR. All measures taken can be subjected to judicial review, including in the ECHR framework, and through the application of Article 15.

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?

As already explained, there was no major legal reforms at the period of emergency. Most of the legislation issued by the Prime Minister during the pandemic in Estonia had temporary nature, and has already been declared void since May 18<sup>th</sup>, 2020. There are still enforced measures, targeting to avoid the spread of the pandemic – mostly further restrictions on the movement and the public meeting and protection of public health. The courts, the Judiciary etc. are not affected.

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.

There were different proposals on adoption of measures for the pandemic period. Not all of the proposals introduced to the Judiciary and public, were adopted due to insufficient timeframe. The measures were adopted on 20 April 2020 and enforced on 7 May 2020 before the end of the restriction period (18 May 2020) and therefore had rather small impact on proceedings and trials.

In civil proceedings, the obligation to hear the person on the placement of persons in closed institution is amended to allow the hearing via digital solution. In the beginning of emergency civil courts were recommended to prefer written proceedings instead of oral hearing if that is possible and in accordance with the legislation. Therefore the number of written proceedings has increased significantly during emergency. Also, the parties have asked for written proceedings more often.

In criminal proceedings, providing proceedings for the written form of testimony; the usage of technical solutions during criminal hearing.

In administrative proceedings there were no amendments, but also, similar to the civil proceedings, the number of the written procedures has increased significantly.

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?

The access to the justice was guaranteed all the time. No specification of „urgency“ or similar legal definition was introduced for Court proceedings.

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

The amount of money or the value at stake in the case play has no special role in the treatment in Estonia. There has been the small claims proceedings for a very long period

already, which provides simplified proceedings for small claims (less than 2000 euros) which remained the same.

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

The main differences in proceedings were merely technical – how to guarantee access to justice and legal aid and avoid the virus. More videoconferences and virtual meeting rooms were used at the period to protect the health of the participants. The legal aid was guaranteed, as is foreseen by the law.

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

There was no significant legal reform concerning legal deadlines or procedural timeframes. The parties have been given extra time, if needed in civil proceedings, when parties have asked it from the court and the pandemic period and right to the health was considered as the if the participant in proceedings had good reason for the delay. The criminal proceedings maintained and followed all regular deadlines for arrest and detention, so there was no change in proceeding deadlines.

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 has been e-filing, digital case management, smart and remote working for a long period in Estonia. It applies to all participants, including Public Prosecution and the Bar Association. Therefore it was possible to overcome the pandemic period by using more technical solutions and technical support on existing legal grounds, for example the virtual meeting rooms were created and used, also if necessary, it was possible to use Skype or similar videoconference software more than usual.

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?

As was mentioned, there has been no specific legal reform during the pandemic. However, there has been long period of drafting digital proceedings for all types of court proceedings in civil, criminal and administrative proceedings and digitalisation of court files. Our association has been asked to give opinions before the adoption of changes in legislation. Perhaps, the timeframe for giving the opinion is narrow and could be improved.

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?

Yes.

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

The Bar Association is also consulted by the Government.