

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 Italian Judiciary experienced two main problems as a consequence of legal reforms. Firstly, the enactment of many laws with different content over a short period. The Government passed five urgent decrees to set the judicial activity according to the pandemic evolution. Three of them have been grouped in a single one (decree 17 march n. 18), which has already been approved by Parliament with amendments (law 24 aprile n. 27). Secondly, judges had to learn suddenly to use Teams, the digital system to work remotely, for the first time in their lives

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.

No, they did not. We had a debate between constitutionalists regarding the limitations on freedom of movement set out by emergency laws. Citizens were forbidden from leaving the house without justification. Some argued that these limitations are against the constitutional right of movement (art. 16 Constitution), others said that these restrictions are justified by the need to protect public health. Article 16 of the Italian Constitution states that the freedom of movement may be restricted by a general law due to health or safety reasons.

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 powers of the Heads of Courts and the powers of the Head of Prosecution Offices have apparently increased. They have been delegated by Government to choose the proceedings to be considered and to organize the Court's work according to the local health situation after the lockdown. Actually, they were given a huge responsibility, very difficult to handle, because those tasks involve their liability for the health of judges, clerks, lawyers and customers of the Courts.

No effects on the other bodies.

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.

Emergency laws suspended all proceedings (civil, penal, administrative) from 9 march to 11 may, excepted the urgent ones (almost full lockdown - phase 1). These latter are held mostly remotely. According to the emergency laws, "remotely" means that only the judge and the

registrar sit in the courtroom during the hearing, although the other parties of the proceeding are remotely connected via Teams.

The judicial proceedings (civil, penal, administrative) restarted with strong restrictions, especially aimed at avoid the presence of group of people in the Courts. This is the phase 2, starting from 12 may and ending on 31 july (at the moment). In this phase the Heads of the Courts have been delegated to choose the proceedings to be considered, in addition to the urgent ones, according to the local health situation.

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, “urgent” cases received a different treatment. They cannot be postponed. They must be delt.

The emergency laws listed the cases to be delt. The principal ones are:

JUVENILE COURT: most of proceedings are urgent and must be delt

CRIMINAL PROCEEDINGS:

- Confirmation of arrest
- European Arrest Warrant
- Extradiction proceedings.
- Proceedings against accused person who is deprived of his liberty by a security measure
- Proceedings against person under pre-trial detention on deadline
- Proceedings against person under pre-trial detention not close to expiring, when the defendant or the lawyer call to deal with the case
- Prevention measures’s proceedings

CIVIL PROCEEDINGS:

- Summary trial for protecting human rights
- Urgent proceedings involving persons lacking legal capacity
- confirmation of the expulsion of foreigners
- Protection orders against family abuses
- urgent proceedings involving family economic needs

Finally, judges can deal with proceedings they declare to be urgent when the postponement could be harmful to the parties concerned.

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 emergency laws did not include the proceedings involving a lot a money in the list of urgent cases. But the judge can evaluate the amount of money, balance it with other values at stake and declare that the case is “urgent”. As already mentioned, the judge can deal with proceedings they declare to be urgent because the postponement could be harmful to the parties concerned.

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

Yes, they did. Emergency laws statue that it’s mandatory the judge deal with:

- Proceedings against accused person who is deprived of his liberty by a security measure

- Proceedings against person under pre-trial detention on deadline
- Proceedings against person under pre-trial detention not close to expiring, when the defendant or the lawyer call to deal with the case

This rule applies to both the phases of the emergency : the first phase (almost full lockdown – 9 march- 11 may) and the second phase (from 12 may until 31 july).

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

All the procedural deadlines are suspended during the first phase (from 9 march to 11 may).

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?

The judicial proceedings (civil, penal, administrative) must be delt remotely via Teams. If the parties disagree, the judge has a choice: treating the proceeding in a traditional way or posponing the proceeding issuing a decision aimed at avoid the presence of group of people in the Courts.

Many Courts, Public Prosecutors Offices and bar Associations have concluded agreements allowing the trasmission and the exchange of documents by IT, in electronic form.

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 delegation of the Italian Association of Judges has been heard by the Senate Judiciary Committee on 13 may to give an opinion on the last decree-law n. 28/2020.

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, the High Council gave two written opinions to the Parliament: the first on 26 march, related to the first decree-law n. 18/2020; the second on 14 may related to last decree-law n. 28/2020.

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

The National Bar Association is firmly against proceedings in video-conference, especially the criminal ones. The video-conference would not allow a full defence- the National Bar Association said- because the orality of the trial would be limited by this method. According to this position, the Governement adopted the last decree-law n. 28/2020 which statues:

- **CRIMINAL PROCEEDINGS:** during the phase 2, they can be delt remotely via Teams only with the agreement of the parties,
- **CIVIL PROCEEDINGS:** the judge must stay in the courtroom during the video-conference proceeding, even if the other subjects are connected by remote

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