

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

(Kazakhstan)

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?

In March 2020, Kazakhstan's courts began operating under the state of Emergency declared by the Law Decree. Courts, like all organizations, have switched to remote work.

There were challenges associated with remote work of court that had to be complied (generally speaking, full transition to online review of cases, receiving and processing files).

- the need to ensure stable digital communication in court sessions taking into consideration possible increasing traffic load on technical infrastructure;
- the need to purchase additional equipment (servers), which was done;
- the need to inform public about exclusively remote services;
- it was necessary to develop legal position of courts in criminal, civil/commercial and administrative cases (on issues of the act of force majeure, consideration of new case categories regarding violation of the quarantine regime, human rights in criminal proceedings).

Definitely, the transition to remote work of courts has formed issues in case management in terms of the quality of case preparation, preliminary and main hearings.

The judiciary expects possible increase in the number of civil and commercial disputes related to default of payments and the state of emergency

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.

In order to support population and businesses when restrictions on Commerce and ordinary types of social activity have taken place, the government has issued resolutions on the provision of benefits:

- For pandemic period the VAT was reduced, excise duty was also cancelled for businesses in the field of socially important goods;
- exemptions from property tax in tourism, hotel business, public catering were introduced for 2020;
- payment deferrals were provided for all taxes and mandatory payments to the Treasury until 1/06/2020;
- tax inspections were on hold for businesses, security measures for collecting taxes and customs duties have been suspended.

The Financial market regulatory Agency has approved a procedure for suspending debt payments and interest for individuals and small and medium-sized businesses affected by the state of emergency.

These benefits affected large families, disabled people, retired people, single-parent families who lost their jobs and earnings. This deferral is also available for small and medium-sized businesses whose operations have been suspended during the quarantine period or whose financial situation has deteriorated.

The government and local authorities have found funds to Finance the employment Roadmap, pay benefits, support agriculture and national production, finance housing construction.

Steps have been taken to stabilize the currency and trade markets, banks increased interest rate on saving accounts for population.

Of particular importance is the reform to boost the development of digital technologies for public access to public services, the transition of school and higher education to distance learning.

The government has provided measures for investment stability, stock market development, support for public procurement, further development of alternative English jurisdiction, and support to arbitration access.

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?

It is difficult to say that the legal reform directly related to COVID-19 pandemic has had a direct impact on the powers of the justice authorities. To be precise, the legal reforms initiated before COVID-19 pandemic to reduce the judicial burden and change the civil and administrative process formed better conditions for courts to consider cases during the COVID-19 period.

Thus, before the beginning of COVID-19 pandemic, notaries were given the authority to issue enforcement documents on debt collection under obligations:

- from notary agreements;
- from written deals with the recognition of debt;
- from claims of the leasing object;
- sale of collateral in a pawn shop;
- debt collection for condominiums and public utilities (electricity, gas, heat, water, and others);
- for collecting rent payments and wages.

From the jurisdiction of courts to the competence of prosecutors, the authority to authorize several procedural actions of bailiffs has been transferred:

- seizure of the debtor's money and property in banks;
- seizure of real estate from the debtor or other persons;
- withdrawal of legal documents.

Since the beginning of this year, due to law changes, 63 types of offenses (with a penalty) have been transferred from the jurisdiction of the court to the competence of state control 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.

Before the beginning of the pandemic, the judiciary actively developed IT in court services. Mobile applications were developed for electronic claims, appeals, digital case management programs, electronic criminal cases, and full audio-video recording of processes. In the context of the pandemic and for security reasons, courts more or less completely switched to remote access to work.

The Supreme Court issued clarifications on issues of judicial practice:

1) in civil cases - regarding force majeure, release from obligations liability, pre-trial settlement of disputes, modification and termination of contracts, Statute of limitations and procedural deadlines;

2) in criminal cases- about calculating the terms of detention in suspended cases; adjusting the calculation of fines;

3) in cases of administrative violations – referring to new categories of cases of quarantine violation; the legal consequences of ending the state of emergency and quarantine.

Local courts received explanations based on the practice of punishments for violations of quarantine and human rights, and possible replacement of preventive measure (criminal arrest) with house arrest.

National courts and judicial administrations carried out massive information work to explain to the population the necessity to switch to judicial services with digital access.

In addition to technical measures, the courts have made extensive efforts in information work. Courts actively providing explanation regarding through mass media and social networks about:

-requirements of the state of emergency and quarantine;

-how courts work in the state of emergency;

-advantages and opportunities of electronic court proceedings;

-instructions for working with IT services;

-statutory regulations regarding the extension and restoration of procedural terms, including the limitation period and the appeal period.

In total, more than 2 thousand articles were published in print media and about 300 speeches were reported on TV.

The courts held 50 online conferences and produced 10 thematic videos. More than 5,000 posts and infographic materials were shared by judges and court press secretaries in social networks.

<p>Top information portals publish messages about certain cases.</p>
<p>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?</p>
<p>As a rule, urgent cases can be cases of arrest of persons, authorization of investigative actions, consideration of complaints about actions to investigate crimes.</p> <p>In all criminal and administrative cases necessary conditions were provided for digital communication between courts, lawyers, police, prosecutors, and prisons.</p> <p>Cases of mentioned category were considered by the courts within the legal time frame with online access to the court, participation in the court sessions via video communication.</p> <p>As far as we know, law enforcement agencies have purchased additional computer equipment to ensure access to judicial services for individuals. According to these case categories, courts grant exceptions for the duration of consideration of cases in the interests of accused persons.</p> <p>As indicated above, for the sake of health, there were explanations to the courts about the possibility of replacing prison arrest with house arrest</p>
<p>6. Did the amount of money and, more generally, the value at stake in the case play a role in the treatment of it?</p>
<p>Unfortunately, this information is not available.</p>
<p>7. As far as criminal cases are concerned, did cases concerning arrested defendants receive a different treatment?</p>
<p>In criminal cases, in order to provide access to justice, the courts suspended proceedings at the request of the parties. If parties insisted on urgent consideration of cases, measures were taken to organize court hearings via video conferencing.</p>
<p>8. What was the impact of such legal reforms on legal deadlines and procedural timeframes?</p>
<p>Due to movement restrictions in the country, the courts faced the inconvenience of preparing and hearing various cases without the physical participation of the parties and their representatives.</p> <p>.At the same time, access to the electronic justice system and electronic civil, criminal and administrative cases eased the tension.</p> <p>The courts have initiated amendments to procedural laws to suspend case proceedings due to the state of emergency.</p> <p>However, complex cases that were located in courts were suspended by the request of the parties in order to allow full and convenient access to the court and materials later on.</p>
<p>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</p>

in order to cope with the COVID-19 pandemic? To what extent these measures are applicable also to the activity of Public Prosecutors?

The process of digitalization of justice that was started earlier and the available public E-services: "Court office", mobile application for e-court session, video conferencing links between courts, police, Prosecutor's office and court users allowed us to move to large-scale remote access to justice.

In total, from March 16 to April 30, 2020, 78 722 applications and materials were submitted to the courts of the Republic, including 71,258 (90.5%) in electronic form.

All courts of the Republic are recommended to consider court cases remotely using videoconferencing (VCS): stationary (with the police, Prosecutor's office, places of detention), and mobile (via smartphone, tablet, PC via Whats App, Skype, etc.).

Court proceedings in a small number of cases where the parties insisted on personal presence in the courtroom were suspended (excluding cases on violations of the state of Emergency and restrictions on personal freedom).

The growth in the number of daily remotely reviewed court cases ranged from 1 thousand (50% of all court sessions) to 4.5 thousand cases in April 2020.

From the total number of court sessions, 12% were held via fixed VCS and mobile VCS: via TrueConf-37%, via WhatsApp and Skype-41%.

The number of additional servers has been significantly increased in order to improve the quality of communication and overcome failures due to load.

Court staff and judges, with the exception of a small staff, were also transferred to remote access with the ability to work with the internal corporate Electronic system "Presidency" with access to all state databases.

Digitalization of court cases is carried out in coordination with all law enforcement agencies, the Prosecutor's office, ministries and departments. Databases and programs of these bodies are integrated with the judicial software.

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?

Our National Association, as an NGO, was not directly involved in the drafting of laws during the pandemic. However, almost all judges in the country are members of the Association. We have branches in all regions at the level of appeal courts. Members of the Association generally discuss the direction of judicial reform at the national Congress of the Association. In everyday work, the Association's branches can be involved in organizing events to support and promote reforms, and provide assistance to judges.

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?

In order to relieve social tension in the conditions of quarantine, the Government has established the State on emergency situation. We can suppose that all Central public bodies established a priority link for information exchange about

the current situation and challenges, preparation for a possible increase in cases due to the consequences of quarantine, improving access to justice, health protection, and prevention of mass bankruptcy.

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

In General, Bar Associations were sympathetic to security measures in court cases. The efforts of the judiciary to provide remote access are positively assessed. Registration and consideration of appeals and claims is always carried out online without failures. Although, in some cases, failures of video conferencing between courts and lawyers occur due to overload which is unfortunate. Besides that, there is an opinion that the credibility of the trial for judges and lawyers, legal advisers needs personal participation in court, which is more convenient as well.

Lawyers opinions were published on social networks criticizing strict legal measures in cases of quarantine violations. The legal community expressed the view that courts and public authorities should respond more flexibly and gently to the first facts of non-compliance to quarantine. The legal community has severe reaction to high fines on quarantine cases as required by the law.