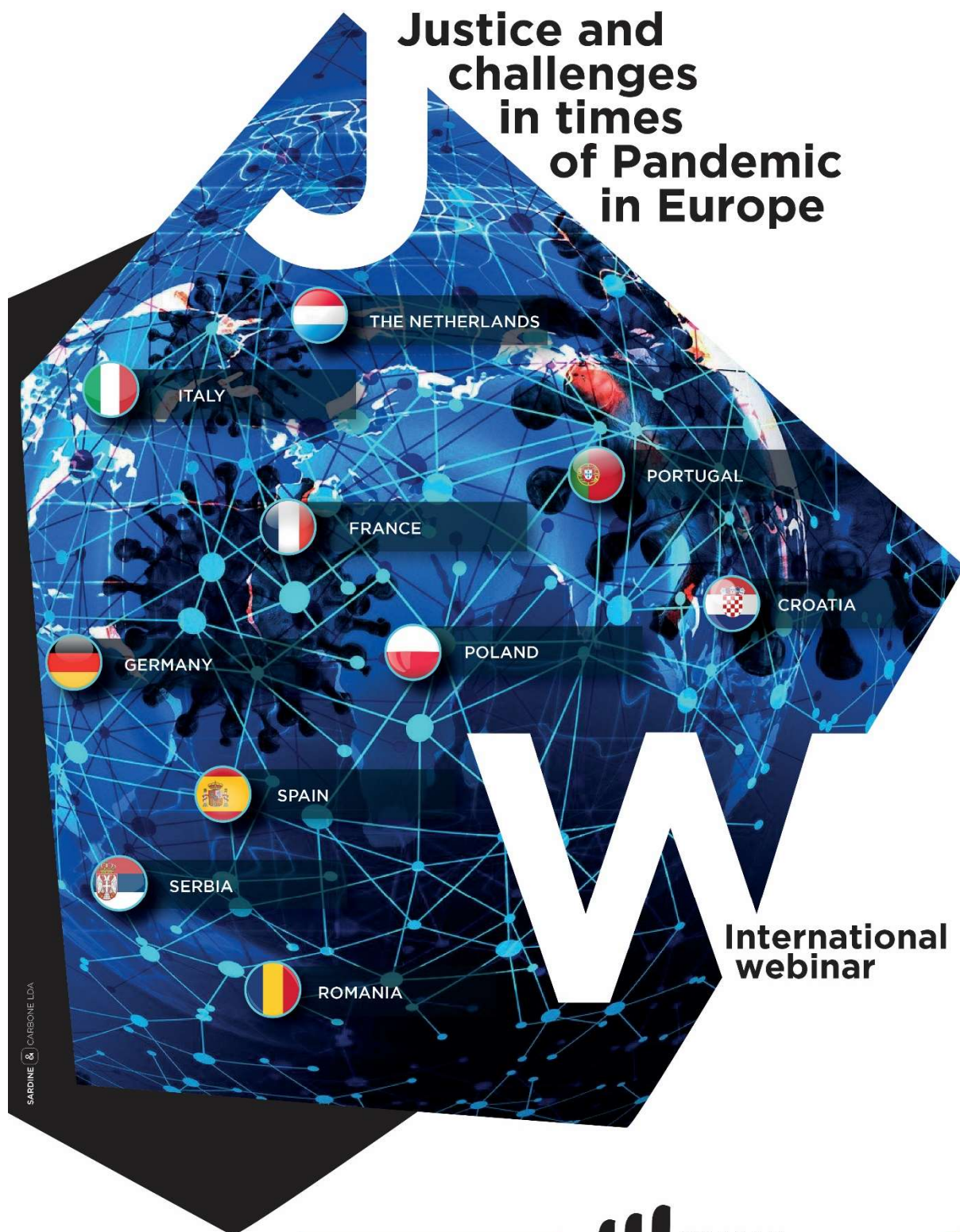


# Justice and challenges in times of Pandemic in Europe



International webinar

SARDINE & CARBONE LDA

MEDEL



Magistrats Européens pour la Démocratie et les Libertés



SMMP

Sindicato dos Magistrados do Ministério Público

**Publisher**

*MEDEL – Magistrats Européens pour la Démocratie et les Libertés*

Greifswalder Strasse 4 (Briefkasten 42)

10405 Berlin

Germany

Date of publishing: 1<sup>st</sup> of June, 2020.

<b>INTRODUCTION .....</b>	<b>3</b>
<b>SPEAKERS .....</b>	<b>5</b>
<b>FOREWORD .....</b>	<b>6</b>
<b>STATEMENT OF MEDEL ON EMERGENCY MEASURES OF COVID 19 PANDEMIC .....</b>	<b>8</b>
<b>CROATIA .....</b>	<b>10</b>
<b>FRANCE .....</b>	<b>15</b>
<b>GERMANY.....</b>	<b>23</b>
<b>ITALY (1).....</b>	<b>25</b>
<b>ITALY (2).....</b>	<b>30</b>
<b>MOLDOVA .....</b>	<b>32</b>
<b>POLAND.....</b>	<b>33</b>
<b>PORTUGAL.....</b>	<b>38</b>
<b>ROMANIA .....</b>	<b>44</b>
<b>SERBIA.....</b>	<b>48</b>
<b>SPAIN (1) .....</b>	<b>51</b>
<b>SPAIN (2) .....</b>	<b>56</b>

## Introduction

In this ebook, *MEDEL – Magistrats Européens pour la Démocratie et les Libertés*, gathers the communications and notes of speakers presented in the webinar “*Justice and Challenges in Times of Pandemic in Europe*”, held on May 6<sup>th</sup>, 2020, and organised by our member association *Sindicato dos Magistrados do Ministério Público (SMMP)*, with the collaboration of MEDEL.

The COVID-19 pandemic suddenly confronted the world with challenges that few months before would have seemed unimaginable. Governments were forced to make hard choices and citizens had to face limitations to their fundamental rights and freedoms that were not seen in many generations.

The measures adopted and the procedures under which they were approved varied from country to country. Either through the adoption of the State of Emergency or any other similar regulation, a common line was the restriction of fundamental rights and freedoms of citizens, in order to prevent the spreading of the virus.

As MEDEL underlined in its statement of April 6<sup>th</sup>, albeit the obvious need of introducing extraordinary measures during the pandemic, these measures should have been proportionate and time limited. In some cases, however, we have witnessed the pandemic being used as an excuse for disproportionate restrictions of fundamental rights.

In no time as in an emergency period is the role of independent courts essential to protect citizens’ fundamental rights and freedoms against any kind of abuse. Citizens are entitled to fundamental rights protection even – and especially – in case of an emergency.

National judicial systems, however, were not immune to these unseen challenges. Suddenly, the activity of courts was reduced to the minimum, and judges, prosecutors, lawyers and court clerks had to adapt to teleworking and new information technologies, sometimes with no previous training and poor infrastructures.

The goal of the webinar and this publication is to give an overview of the situation in different countries – what was done, how did the judiciaries react and what challenges and shortcomings can be identified.

Reading the texts that follow, MEDEL believes that a clear conclusion may be drawn from the different national experiences: the need for international collaboration and coordination.

International institutions such as the United Nations, at a global level, or the Council of Europe and the European Union, at European level, must engage in transnational coordination in the judicial response to emergencies such as the one the world has faced with COVID-19.

We hope that with this compilation we will give a contribution to that debate and influence a wider dialogue that may lead to that international cooperation and coordination.

In the moment of this publication, we wish to deeply thank all the speakers for their valuable contributions and their participation in the debate at the webinar, as well as for the effort in putting their speeches or notes in writing, so we could publish them.

We also must extend a special word of appreciation to our member association SMMP (especially Paulo Lona, the representative of SMMP in MEDEL) for taking the initiative of organising the webinar, and to Simon Chardenoux (representative of *Syndicat de la Magistrature* in MEDEL), for his work in collecting and organising the texts.

***The Bureau of MEDEL***

## **Speakers**

**Croatia** – *Martina Marsic, Judge*

**France** – *Simon Chardenoux, Judge / Nils Monsarrat, Judge*

**Germany** – *Ingo Socha, Judge*

**Italy** – *Mariarosaria Gugliemi, Prosecutor (General Secretary of Magistratura Democratica, Vice President of MEDEL) / Gaetano Ruta, Prosecutor*

**Moldova** – *Aliona Sarbu, Judge / Ana Cucerescu, Judge / Andrei Ojoga, Judge*

**Poland** – *Tomasz Posluszny, Judge*

**Portugal** – *Adão Carvalho, Prosecutor (Secretary General of the Portuguese Association of Prosecutors)*

**Romania** – *Iulia Craiu, Judge (Secretary General of MEDEL)*

**Serbia** – *Lidija Komlen Nikolic, Prosecutor (President of Association of Prosecutors of Serbia)*

**Spain** – *Iria Gonzalez, Prosecutor (Vice-President of Union Progresista de Fiscales, member of the board of MEDEL) / Eduardo Navarro, Prosecutor*

## FOREWORD

*Simon Chardenoux*

All over Europe, emergency measures have been adopted in order to respond to Covid-19 crisis. Except for Germany, everywhere in Europe a State of Emergency was introduced within national legislation, either by a vote by the Parliament, like in Moldova or in Portugal, by a decision from the Government like in Serbia, by a decision of the President with the approval of the Parliament like in Romania or via a delegation from the Parliament to the Government like in France or in Italy. In some countries, like in Spain, such exceptional cases were foreseen by the Constitution. The necessity to stop the spread of the Covid-19 resulted in the adoption of an important number of texts providing for the restriction of free movement of persons, goods, business and even lock down or isolation measures. Each country provides for, at least, administrative sanction in case of violation of stay at home or restricting orders. Some countries like France or Serbia have created new misdemeanour punishable by a prison sentence. Among the measures adopted during the Covid-19 crises, many of them concerned the judiciary and the functioning of courts and tribunals, from the rule of courts to the procedural legislations.

As regards to the judiciary, the same measures are also being taken. We can observe, all over Europe, that courts and tribunals have been closed to the public. Courts and Tribunals have decided to suspend their activities while maintaining essential activities. Of course, the list of essential activities differ from one country to another. In criminal law, cases when detention is at stake is a minimum, reported in all countries. In civil law, the activity was maintained for urgent cases. All non urgent criminal and civil cases have been postponed. Judges, prosecutors and clerks have been encouraged to work from home. Trials and hearing have been organized via video conference and the use of IT technology has been expanded. In many parts of Europe, specific provisions have been adopted to suspend time limits period and to authorize the use of audio and video means of communication within judicial procedures. The post lock-down world is characterized by social distancing measures and health protection measures via masks, gloves and so on.

A more detailed analysis reveal, nonetheless, that the judiciary within Europe was not prepared to close courts and tribunals and shut down the vast majority of the day to day work. In some countries like judges and prosecutors or clerks do not have computers and software allowing

remote work. More generally, the large recourse to new technologies is now forcing the judiciary to discuss, as pointed out by Mariarosaria Guglielmi, some fundamental questions concerning the transformation of our model of justice, based on the interaction between humans, and the place of a court and a tribunal within a society. Indeed, in some countries, like Poland or France, many specific provisions will stay in effect during months or even will become part of the positive law. Are we prepared to have virtual trials or even trials without parties? The need to catch up the delays accumulated may also affect the independence of the judiciary, when for example a power to discharge a judge is given to the president of a tribunal.

The covid-19 crisis national answer stressed the issue of the place of judges and prosecutors within exceptional times. What are essential activities? All issues concerning detention? Yes, of course but what if a national provision allows the possibility to make an automatic renewal of pre-trial detention without having an open debate like in France? Shall we include family law within essential activities? A closer look to the national lists of essential activities show the cultural differences between European countries but point the issue of a possible harmonization within the rule of law perspective.



## **STATEMENT OF MEDEL ON EMERGENCY MEASURES OF COVID 19 PANDEMIC**

Last months and weeks turned upside down the world as we know it. Thousands of people already lost their lives as the result of the COVID-19 pandemic, many more are struggling with the disease, we all live in fear for health – our relatives' and ours. Inevitable economic crisis will strike everyone, we will face multitudes of unemployed, many will fall into extreme poverty. We enter this new reality with fear, remembering the not so distant history, especially of the economic crisis in the 30's decade of last century, which became the breeding ground for populism and nationalism resulting in the great tragedy of World War II.

These experiences gave us a lesson of the need for international collaboration and solidarity and of the key role of democracy, separation of powers and human rights.

We are greatly concerned observing restrictions on human rights in almost all European Countries. The greatest threat for democratic order in Europe is posed, in particular, by the recent events in Hungary, where unrestricted powers of ruling by decree were given to the government, without any deadline, without any further parliamentary control. New crimes targeting mainly journalists were defined, violating the citizen's right to the information (contrary to the art. 10 of the European Convention of Human Rights).

We also object the actions of Polish government which, pushing to presidential elections on May 10th, 2020, put at risk the health and life of millions of Polish citizens for the political interest of the ruling party. Simultaneously, new chaotic laws significantly limiting the citizens' rights and freedoms are being introduced.

MEDEL reminds that albeit the obvious need of introducing extraordinary measures during the pandemic, these measures shall be proportionate and time limited. Citizens are entitled to fundamental rights protection even – and especially – in case of an emergency. These rights may only be restricted in the interest of averting a threat and must cease the moment that threat is over. As art. 15 of the European Convention of Human Rights states, in time of emergency threatening life of the nation, the High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

In no time as in an emergency period is the role of independent courts essential to protect citizens' fundamental rights and freedoms against any kind of abuse.

**MEDEL calls on European institutions – especially the Council of Europe and the European Commission – to exercise an even more attentive monitoring of the level of protection of human rights in European Countries.**

**MEDEL also calls the entire European legal community, including human rights organisations, associations of lawyers and magistrates and academics, to serve people suffering from violation of their human rights and to alert on all abuses of authorities who take advantage of the pandemic.**

*April 6th, 2020*

## CROATIA

**Martina Marsic**

Sudden emergence of the COVID-19 pandemics in Croatia found Croatian judiciary and legislation partly off-guard.

The amendments to the System of the Civil Protection Act from 18<sup>th</sup> of March 2020, instituted new definition of “*state of emergency*”. Until then, law foreseen only natural disasters or the state of catastrophe. The Amendments introduced state described as „*special circumstances that could not be foreseen or influenced to, which put in jeopardy life and health of the citizens, property on a larger scale, environment, commercial activity or threaten to damage the economy of a state*“. This descriptive definition was used as a legal ground for decisions taken by *the Civil Protection Headquarters of the Republic of Croatia* which took major role in the fight against pandemics.

### ***Constitutionality of the crisis management***

It was unexpected that the ruling majority decided not to introduce the state of emergency. According to the Article 17 of the Constitution of the Republic of Croatia, in cases of war or any clear and present danger to the independence and unity of the state or in the event of any natural disaster, constitutionally guaranteed freedoms and rights may be restricted, which is a decision that has to be taken by a two-thirds majority vote of all Members of Parliament. On the other hand, in cases where the state of emergency is not introduced, the Constitution prescribes that the freedoms and rights may only be restricted by law (in other words, by a ½ majority vote of Members of Parliament) only in order to protect the freedoms and rights of others, the legal order, public morals and health, but such restrictions must be proportionate to the nature of the need for such restriction in each individual case.

However, this was not the path taken by the Croatian government and the political parties that constitute the executive power. Decisions that limited industrial activity, almost completely prohibited trade (except for pharmacies and grocery stores), introduced restrictions on movement of citizens, were decisions all prescribed by the Civil Protection Headquarters of the Republic of Croatia, a collegial body comprised of minister of internal affairs, director of the Croatian Institute of Public Health, employees of the Ministry of Health, and several experts from the field of

medicine (primarily epidemiology, public health etc.). So the Government was clearly visible as vital part of the Headquarters (two of its ministers - minister of internal affairs and minister of health coordinated activities), but without proclaiming the state of emergency.

Public opinion hailed the decisions of the Headquarters. Although strict, the decisions were explained to the public (press conferences of the Headquarters were held twice daily and broadcasted live) and founded in medical science. Journalists could pose questions at every press conference which were welcomed, and although sometimes unpleasant and critical, were always answered by the members of the Headquarters.

However, from the constitutional standpoint, the decisions taken by the Headquarters were problematic. The Headquarters in the period between the 15<sup>th</sup> March and 25<sup>th</sup> March 2020 issued decisions that *de facto* limited civil rights and fundamental freedoms beside the fact that state of emergency was never declared by the Croatian Parliament. For example, citizens were not allowed to leave place of their residence - a rather clear and severe limitation of human rights. This ban enacted by the Headquarters on the other hand has not even been foreseen by the law at all, not even with the amendments of the System of the Civil Protection Act, adopted on the eve of the pandemics. The legislation also did not anticipate measure of quarantine for areas, but this measure was introduced during the pandemics for smaller areas that were identified as potential outbreak points. Although some constitutional experts and judges invoked the Constitutional Court to give its opinion about the constitutionality of the decisions of the Headquarters taken without clear constitutional or legal ground, the Constitutional Court of the Republic of Croatia decided to observe the events from the background declaring only that *"the Court follows carefully what is being done"*.

By the mid-March Croatia faced thousands of Croats going back home from the Western EU countries after losing their jobs as a result of an abrupt halt of the EU economy and after the frontier closures. In couple of days the borders became clogged with people waiting for the sanitary inspector decision ordering them to go to the preventive self-isolation. As a way of relieving stress accumulating at the borders and in order to speed up the process of entering the country, the border police started issuing citizens only verbal order for a 14-day self-isolation and handing them leaflets on how to behave during this period. Their names were registered in the police database, however as there were no administrative act ordering people to self-isolate, there was no possibility of issuing legally grounded penalties (although the possibility of severe penalties was mentioned many times in the media). Another question was who will control whether the citizens obey the measure of self-isolation as country had few sanitary inspectors so the police,

again without legal basis, took their job conducting random checks, especially in smaller cities. The Government hastily prompted to the Parliament Amendments to the Electronic Communications Act, proposing usage of digital tracking technology so people who have been ordered to self-isolate be monitored during this period via location of their smartphones.

Although expected to be adopted swiftly, at the parliamentary debate of the 25<sup>th</sup> March, the parliamentary opposition highlighted faults of the legislation, describing the law as “*extreme and unnecessary*” so it was finally withdrawn from the parliamentary procedure.

### ***Legislative amendments***

In Croatia there were no amendments of the civil or criminal procedural codes, and no introduction of new crimes or sanctions. However, the State Attorney’s Office of the Republic of Croatia issued instructions for state attorneys to investigate with special care possible crimes of transmission of contagious diseases and crime of false and alarming rumours. Beside numerous amendments to taxation legislation and acts regulating economic life of a country, the pandemics brought suspension of enforcement procedures. At first, the postponement was introduced in a form of non-obligatory recommendation from the Ministry of Justice dated 13<sup>th</sup> of March 2020 (to postpone enforcement procedures for a period of three months), and then at the 17<sup>th</sup> of April the Parliament unanimously adopted the amendments deciding to stop all the enforcement procedures of monetary funds for a period of 3 months, with the exemption of alimonies, remuneration, and damages arising from criminal offence. Then, by the long name law - *Law on intervention measures in enforcement and bankruptcy proceedings during special circumstances* in force from 1<sup>st</sup> of May 2020, all enforcement cases were put to a halt for a three month period with the possibility that the court manages individual cases during the postponement period, if the court determines “*it is necessary*”. The reasons for disregarding general legal suspension and continuing the process has to be elaborated. However, with lifting the blockage for citizens in debt for a period of three months, the lawmaker disregarded this decision could have negative impact on thousands of consumer bankruptcy cases. In order to initiate simple consumer bankruptcy proceedings in Croatia a citizen has to be insolvent (blocked) for a period of 3 years constantly and with debts not exceeding 20.000 HRK (little less than 3.000 EUR). Allowing free future inflows for the next 3 months (which is most unlikely to happen in majority of cases), means that it is questionable whether these consumers can now be considered as eligible to initiate insolvency proceedings, as they lack continuum, i.e. impossibility to pay debts for a period of 3 years.

***Impact of a pandemic on court operations***

Court hearings were almost completely postponed starting from 14<sup>th</sup> of March 2020 and in civil department only urgent hearings were held (cases of preliminary measures, urgent family law cases, cases connected with violence). Trials stopped in criminal justice sector as well. Courts conducted solely cases involving minors or violence. Detentions were in the majority of cases prolonged. In order to keep the prison system safe, the Ministry of Justice recommended the courts to postpone execution of prison sentences for convicts waiting to start their jail time outside detention. Also, the Ministry of Justice recommended the courts to grant temporary discontinuance of a prison sentence in cases where there is a possibility to do so, but courts resented this recommendation and rejected petitions in a greater number of cases.

The decision to limit court hearings to only urgent ones, was the only possible solution. Not just because of the threat of the disease, but also because of the severe limitations on free movement outside the municipality of a citizens residence (for that you had to obtain special permit) and as a result of a public transportation shut down. Right of access to court was therefore gravely limited.

The situation issued a debate among the professionals whether statute of limitations should be prolonged by a special bill, however, this proposal was not accepted by the legislator although during the most critical time of the fight against COVID-19, a strong earthquake hit the capital city Zagreb, leaving many courts with buildings not secure enough to use them (County Court of Zagreb, Commercial Court of Zagreb and even the Supreme Court of the Republic of Croatia). The similar fate befell The State Attorney's Office and many law offices mainly situated at the city centre that was damaged the most.

Access to land registry, requests for apostilles and different certificates were issued almost exclusively after an e-mail request or a written demand delivered by post. Majority of court personnel started working from home, divided in 15-day shifts or in other way. The Supreme Court instructed lower courts to draft judgments, make decisions without parties and prepare cases for a chamber session where applicable. The pandemics speeded up the use of e-communication as a special toll in communication of courts, lawyers and expert witnesses. Although the expected deadline for a full introduction of e-communication in civil cases was 1<sup>st</sup> of September 2020, the Ministry of Justice declared all conditions for using this technology are fulfilled some 15 days ago. The decision was welcomed and showed great results allowing courts and lawyers to go on with their work.

Possibility of not bringing detainees from prison to the court for detention trial but managing the hearing electronically, suddenly became widespread practice. The same happened with rendering judgment hearing. It is expected that there will be a possibility of conducting full e-hearings in civil and criminal matters, however before that the executive power has to draft regulations and resolve problematic issues connected with usage of this tools (security measures, how to diminish possible interventions in witness testimonies etc).

Although I expect that e-hearings will wait for their implementation for some time, the measure of social distancing currently becomes a factor that limits Croatian judiciary the most. The buildings of the courts are not satisfactory. Majority of them was built at the beginning of the 20<sup>th</sup> century and not always as courtrooms. The newest buildings were built at least 40 years ago. Courtrooms are extremely small. They are situated at the basements and at the attics of the court buildings and they are often not larger than a small hotel room. Courts in big cities suffer the most as they are overcrowded with court staff, and there are limited number of courtrooms spacious enough to maintain the social distance during hearings. The presidents of the courts therefore have already been issuing recommendations for the judges asking them to prioritise urgent and old cases, as they will have to make schedule for using courtrooms big enough to host a trial. At some courts this means one judge will have only 6 days per month when he will have courtroom eligible. That off course put in jeopardy effectiveness, right to a trial within a reasonable time and independence of a judiciary, bringing us back to constant challenges judiciary as the weakest branch of government has to fight in order to preserve the rule of law.

**FRANCE***Simon Chardenoux**Nils Monsarrat****How authorities respond to COVID-19 pandemic (state of emergency was introduced in the country or not)?***

On 14<sup>th</sup> March, the Ministry of Justice issued instructions to all first instance courts and courts of appeal on how to align their operations with the measures taken by the French Government. That same day, Prime Minister announced social distancing measures designed to reduce physical contact between people.

On 15<sup>th</sup> March, the French Ministry of Justice issued a press release announcing that, beginning on 16<sup>th</sup> March, all courts would be implementing continuity-of-operations plans, pursuant to which all courthouses will be closed except for “essential litigations” (“*contentieux essentiels*”) in both civil and criminal matters.

A 15-day lockdown of the population was announced on the following day.

On 23<sup>rd</sup> March, a bill declaring a state of emergency in the face of the COVID-19 crisis was passed (loi n°2020-290 du 23 mars 2020) (herein “23<sup>rd</sup> of March Law”). Under that text, the government can declare a “state of health emergency”. The parliament also authorises the government to take a number of measures even within its own scope of competence.

On March 23<sup>rd</sup>, the government declared the state of emergency (décret n°2020-293). On March 25<sup>th</sup>, the government enacted a vast series of measures (25 different texts were adopted that day). Two more texts were adopted the 15<sup>th</sup> of April.

At the end of the day, the French answer to the COVID-19 was the declaration of a state of emergency followed by the adoption of a complete set of specific and derogative legislation, enacted in the face of the pandemic.

The state of emergency was first declared for a maximum period of 2 months, with a possible renewal under the approval the parliament. The state of emergency has just been renewed the 9<sup>th</sup> of May until the 10<sup>th</sup> of July.

At present, the lockdown is still on hold. It will be lifted gradually starting May 11<sup>th</sup>. The government plans for a different and step-by-step approach. From the 11<sup>th</sup> of May until the 2<sup>nd</sup> of June – reopening of schools and shops – work will resume but teleworking will have to be preferred



and different limitation of freedom will continue to apply– Social distancing will be the rule and meetings up to 10 persons will continue to be forbidden. From the 2<sup>nd</sup> of June, another phase will begin, probably with the possibility to have larger gatherings. The reopening of bars and restaurants etc. might happen during the summer.

***Are some of the competences transferred from Parliament to executive powers? Which? Is it for a limited period of time?***

The 23<sup>rd</sup> of March Law allows the prime minister to impose state of emergency. The bill states that the state of emergency can be declared if there is a health catastrophe, posing a threat, by its nature and its severity, to human health.

This means that this text can be used in another context. We consider that those criteria are too vague, and there are some risks of overuse of these provisions.

Nonetheless, a parliamentary control took place 2 months after the state of emergency was declared. Within the Covid-19 crisis, the parliament has voted for the renewal of the state of emergency.

The 23<sup>rd</sup> of March Law authorises the government to use the parliament powers. In France, the power to enact rules is divided between the government and the parliament. Under that constitutional order, the parliament is competent to enact rules concerning criminal law and criminal sanctions. Our constitution (art. 38) authorizes the parliament to delegate its power to the government, for a limited period of time.

In case of the COVID-19 crisis, the government has exercised widely such a possibility and have enacted – at least for the Ministry of Justice– 25 regulatory texts.

As a consequence, there is no direct constitutional control from our constitutional court (competent to control the law adopted by the parliament, and not the regulatory texts). The only direct constitutional control is left to the Administrative Supreme Court, acting in the form of “référés”. This means that the Court is competent only for grave and definite violation of constitutional rights (some cases have been submitted, but the Administrative Supreme Court rejected all of them).

A constitutional review by our constitutional court can only occur after the vote by the parliament of the renewal of state of emergency (and actually did occur).

During the state of emergency some of the following measures were adopted:

- Lockdown including limitation of freedom of movement of people and vehicle, with a ban for every person composing a household to leave home, unless specific and strict reasons
- Quarantine and isolation when sick or quarantine after a flight back home;
- Restriction to freedom of association and freedom of business (ban on public gatherings, temporary closure of places – in fact only a limited list of business have been authorised to operate – Amazon has received a freezing order to stop all except necessary activities)
- Requisition of private property and price control;
- Amendment of civil and criminal procedures;

The local representative from the State has the power to adopt specific rules for some territories. For example, in overseas territories, curfew measures are in place (from 8pm until 6 am and during the weekend). Access to beaches and to mountains has also been restricted.

As a consequence, during the Covid-19 crises, the French parliament has created a state of health emergency and has transferred its competencies to the executive power, for a 2 months period. At the end of the period, the parliament has renewed its transfer until the 10<sup>th</sup> of July.

This transfer raises the question of the judicial review (constitutional) of the enacted measures.

***Have authorities (and which) in your country adopted amendments to procedural legislations (civil or criminal)? Are these amendments in line with European standards of human rights protection?***

The government has passed 4 texts concerning procedural legislations. One for criminal matters, one for the non-criminal matters, one for administrative proceedings and one for delays and deadlines.

***Criminal matter:***

The Ordinance n°2020-303 adapts the rules applicable to courts' ruling on criminal matters, an adaptation made necessary to face the current health crisis in France.

Main dispositions are the following:

- Suspension of limitation period from the 1<sup>st</sup> day of the lockdown until the end of the state of emergency + 1 month, applicable for the prosecution of the crime and for the execution of the sentence;
- Extension of the time for appeal (normal delay x 2 with a minimal period of 10 days);

- Possibility for the Judge to use IT technologies (electronic or audio), even without the consent of the accused;
- Wide use of behind doors litigation (covering both the hearing and the verdict);
- Possibility to suspend collegiality;
- Legal assistance during custody and during the hearing via IT technologies;
- Automatic extension of delays for pretrial detentions;

The provisions of the Ordinance are immediately applicable until up to one month after the end of the state of health emergency, as provided for in Article 4 of the 23<sup>rd</sup> of March Law.

These derogations from the procedural rules usually applicable in criminal matters were taken primarily for obvious health reasons, in order to reduce physical contacts, but also to ensure the continued operation of the French public Justice System, a public service which, in the context of the minimum service due to all citizens, cannot afford to come to a complete standstill.

As far as criminal matters are concerned, the ordinance challenges at least two main concepts:

- Fair trial and access to justice, as accused persons cannot have a private discussion with their lawyers and victims could have some difficulties for accessing courts (art. 6)
- Art 5, Art 6 and art 13 of the ECHR in case of pretrial detention, as the ordinance creates an “automatic” renewal of detention during the Covid-19 related crises without hearing (the interpretation of the text and the meaning of the word “automatic” are subject to caution).

Please note that the text also contains specific provisions for prisoners and the possibility to release some of them.

***As regards to civil law, two texts concerning procedure have been adopted***

The Ordinance No. 2020-306 of March 25<sup>th</sup>, 2020 on the extension of deadlines expiring during the state of health emergency and on the adaptation of procedures during that same period.

This regulation extends all deadlines and all measures expiring during the state of emergency period + 2 months (for example interim measures in family law, guardianship measures -“*tutelles*”-, child protection order etc.)

All formalities are deemed to be suspended during this period, parties have an extra 2 months' time at the end of the emergency period. The regulation suspends the possibility to raise a motion to dismiss, prescription and others in case the party failed to respect the usual law time. The regulation offers to the concerned party an extra time to accomplish what he wants to do.

The Ordinance No. 2020-304 of March 25<sup>th</sup>, 2020 on the adaptation of the rules applicable to the judicial court's ruling in non-criminal matters and matters related to homeowner association contracts (*contrats de syndic de copropriété*); This ordinance also contains some provisions of concern.

For instance:

- Rulings may, pursuant to a decision of the President of the court, be rendered by single Judge in both first instance and appeal;
- Extensive possibility to use videoconference and conference call, as long as the parties are identifiable;
- Possibility of ruling without hearing in case of « written procedure » or when all parties, represented by lawyers, agree to such a ruling;
- Filter for applications for summary proceedings (possibility to reject when the request sounds irrelevant).

In civil cases, some of the questions raised by the texts are:

- Right to have a decision within a reasonable time period, because courts are closed and civil cases are deemed to be non-essential;
- Fair trial due to the absence of hearing and / or the use of video conference;
- Equality of the parties, as the cases of parties who want to be heard are postponed, whereas cases of parties who do not want a hearing are ruled.

Concerning civil procedure, the possibility of ruling without hearing was not new. Its use and its development is truly a change in civil procedure.

***Have authorities (and which) introduced new crimes/misdemeanours and new sanctions? If yes, how they are introduced (new law, decree of Government, etc.)?***

The state of health emergency bill created a new crime for those who don't respect the stay at home order and go outside for an unauthorized reason. The two first times, perpetrators can be fined (135 euros and 200 euros – approx. 760 000 fines by the end of April). The third time, going out becomes a misdemeanour, punishable by a 6 months imprisonment sentence.

Some administrative sanctions are also applicable (closure etc.).

***How courts and public prosecutors are operating in the state of social distancing?***

All French courts have been closed to public since March 16th, 2020.

A continuity plan based on a model proposed by the Ministry of Justice has been put in place. Even if the plan can differ from one court to another, each plan identifies disputes that are «essential».

Tribunals are judging:

- Criminal cases only when detention is at stake and when the pre-trial detention period is coming close to an end;
- Civil deprivation of liberty - emergencies in civil and family law – sometimes in personal law.

Criminal cases are held in the courthouse. The accused is heard by video conference. Lawyers are in the courthouse. Other hearings are held in video conference.

Some tribunals are judging civil cases without hearing.

All other pending cases have been postponed, sometimes without a date.

Judges and prosecutors are teleworking. Tribunal staff cannot telework due to the lack of computer and software. Judges, prosecutors and staff members have taken 0 to 10 days of vacation during the lockdown.

The courts are reopening on the 11th of May.

***Is there any General Instruction/Guideline from Supreme Court and General Prosecutor?***

There are several instructions, but none of them have been adopted by the supreme court and general prosecutor. The Ministry of Justice adopted them.

Each chief justice has the power to regulate the functioning of the tribunal where he/she operates, under the respect of the independence of the judiciary. In principle, chief justice should have to make a consultation with other Judges.

The Ministry of Justice gave many instructions regarding security, in view of the reopening of the tribunals.

***Do you use IT technologies to enable work of the courts and public prosecutors? Is it novelty in your judicial practice? Are there sufficient guarantees in the legislation for application of IT technologies (use of e-trials/e-hearings)?***

Article 5 of the Ordinance 303 and article 7 of the ordinance 304 provide for the generalized use of videoconferencing, which is normally exceptional and limited to the very specific situations. Those articles also specify that if videoconferencing is technically or materially

impossible, the use of any other means of electronic telecommunication is possible, as long as this is authorized by the Judge or the prosecutor.

Three types of devices may be used:

- Specific devices, installed in courthouses, police stations, and prisons;
- A new software recently installed on computers; however, users experience some technical challenges given to the fact that this tool is fairly new;
- Mobile phones, professional or private. Communications are not encrypted; nevertheless, this tool is easily found and used, so it has been increasingly used by Judges.

At the beginning of the stay at home order, the connexions via VPN were not sturdy enough to offer a full service. The situation is better now. Judicial software for civil law are often old and incompatible with recent operating systems. Judicial software for criminal law are newer.

As regards to the use of IT devices for hearing, it is not new in criminal cases. The quality of sound is not satisfactory. In civil law, the use of new software is a real breakthrough.

#### ***Are some trials postponed?***

Yes. All non-urgent criminal cases and all non-urgent civil, family and personal law cases have been postponed.

#### ***How status of limitation is affected by COVID-19 and limited work of the courts?***

The main issue is how it will affect the courthouse from the 11<sup>th</sup> of May, when the courthouse will reopen. The idea is to limit the number of persons who will go to the courthouse at the same time: space out the summons, if necessary, rule with no publicity. It is recommended to wear a mask.

#### ***What is happening with detentions?***

Articles 15 to 20 of the Ordinance authorize the extension of the maximum time limits for pre-trial detention and house arrest. There has been a major struggle about the meaning of article 16 of the ordinance. The government considers that it allows an automatic extension of the time limit without any control from the Judge. We oppose this interpretation, based on article 5 of the ECHR. There is no ruling of the supreme court on this issue yet.

Measures to free prisoners have been taken, together by the prosecutors and the judges. The number of prisoners has decreased (from 72,000 approx. to 61,000 approx.).

**How access to lawyer is applied in the practice with measures of social distancing?**

During the first weeks of the crisis, some difficulties were experienced in some regions, because there was no designation of on call lawyers by the bar council.

Now, lawyers have access to courts and tribunals.

**Extra:** French courts and tribunals are placed in a challenging situation, as the pandemic came after a 3 months hard strike from lawyers. In many tribunals, trials have been postponed since the beginning of the year 2020.

Sources:

loi du 23 mars 2020:

<https://beta.legifrance.gouv.fr/jorf/id/JORFTEXT000041746313>

Ordonnances:

<https://beta.legifrance.gouv.fr/jorf/id/JORFTEXT000041755529> (criminal)

<https://beta.legifrance.gouv.fr/jorf/id/JORFTEXT000041755577> (non-criminal matters)

<https://beta.legifrance.gouv.fr/jorf/id/JORFTEXT000041755644> (time lapsing)

Press release from the Ministry for Justice

[http://www.justice.gouv.fr/art\\_pix/DP\\_presentation\\_des\\_25\\_premieres\\_ordonnances\\_25\\_03\\_2020.pdf](http://www.justice.gouv.fr/art_pix/DP_presentation_des_25_premieres_ordonnances_25_03_2020.pdf)

Constitutional court:

<https://www.conseil-constitutionnel.fr/decision/2020/2020800DC.htm> (resources available also in English and Spanish).

**GERMANY***Ingo Socha*

The German judiciary's situation during the Covid19 pandemic has been incoherent. We have seen differences not only in German states ("Bundesländer") but also among different court districts in the same state. During the weeks following the complete lockdown in mid-March 2020, some courts went straight into emergency mode only providing the most basic access to jurisdiction, especially for persons in danger or in jail. By the end of March most courts opened to some extent and tried to provide a broadened access.

The scope of this opening was and still is depending on available personnel, buildings, or technical means. In some parts of Germany mobile devices able to connect to court systems through VPN tunnels or like systems are available. In other court districts there are not even enough computers for all judges and prosecutors to work with at home. Obviously, the ability to provide access to the courts strongly depends on these technical means. In addition, all court rooms needed to be adapted to the new hygiene standards. Some courts have rented rooms elsewhere, others used gyms for larger sessions or even set up tents to ensure distances between participants and to reduce the risk of infection.

Access to protective clothing and disinfectant has been an issue from the start but the situation has improved, and basic protective gear is mostly available now.

In general, there has been a respectful cooperation between the courts' administration by the executive and the judiciary. Only in some districts we have seen rigorous administrative orders to the judges on how to deal with the situation. Unlike other European countries the judiciary in Germany does not have a completely independent organization. The court administration is part of the executive branch of the respective state government. The "Neue Richtervereinigung (NRV)" has been criticizing this ever since NRV was founded. The current crisis highlights the need for a truly independent judiciary. Judges in Germany are wary about the possibility that the executive branch could "switch off" the judiciary. The separation of powers forbids any measure that impedes the judiciary or makes legal proceedings altogether impossible.

The NRV strongly opposes any emergency legislation on legal procedures. In times of crisis it is especially important to ensure fair trials. Any procedural rights must not be abridged or impeded in any way. Any form of procedural law "light" is deemed unconstitutional. We will not



accept any interference as to what kind of cases to try and in which order to do so. These questions pertain to the core of judiciary work and must not be regulated by emergency legislation or executive order in any way.

On the other hand, the crisis, however dire, gives us a chance to improve technical means provided in the courts and our ability to use them wisely within legal proceedings. At all times, it must be clear, that new means of communications -- such as video conferences -- are additional tools within the courts' toolboxes. Their use must not be mandatory. Issues of data protection and fair trial must be addressed beforehand. In no way does the current crisis allow us to use such technology in a haphazard way without proper preparation. It is especially important to prevent participants of a video conference from secretly recording the hearing without notice and without permission of the court. Moreover, as it is a fundamental principle of procedure, hearings conducted by video conference still need to be accessible for the public. The courts must ensure that the general public can follow the proceedings on screens in court buildings.

The NRV has always strived for a modern justice system, which is open to innovative technical developments. However, carefully considered and well-grounded legal standards must be maintained. One of these standards is the right to speak to a judge in person.

## ITALY (1)

*Mariarosaria Gugliemi*

**1. Our Constitution does not foresee a “state of emergency”. Art. 78 only regulates the state of war, declared by both Chambers of Parliament, according to which government is given “the necessary powers”.**

The government had therefore to find an alternative legal basis. The opinions in legal circles about the consistency with the Constitution of the solutions chosen are mixed.

As a first step, the government declared a statutory *state of emergency* according to art. 24 of the Civil Protection Code (“*Resolution on the state of emergency of national importance*”). According to this law, *civil protection* orders can be adopted “*in derogation to any current provision, within the limits and with the methods indicated in the resolution on the state of emergency and in compliance with the general principles of the legal system and the European Union rules*”. It is not sure that these orders can go beyond the simple coordination of rescue operations, and indeed in a second step the government issued several “*decree laws*”, i.e. government acts with the force of law that according to the Constitution can be promulgated in case of “*necessity and urgency*” and must be validated by the Parliament within 60 days.

Some sections of these “*decree*” laws contained immediately applicable provisions, while others gave to the government the power to issue secondary legislation (decrees of the presidency of the council of ministers - DPCM). On such a basis the government issued several DPCMs that introduced the lockdown with all the related restrictions.

**2. No formal transfer of competence to the executive took place.** The government, with the promulgation of the *decree laws*, used a legislative power it already has according to the Constitution in situations of urgency (not emergency). The legal issue is rather whether some components of the lockdown that affected rights and freedoms should have been included directly in the *decree laws* and not in the further secondary legislation (the DPCMs) later introduced, and whether certain limitations of freedoms can at all be introduced by law.

**3. In a situation that we can in general define quite chaotic for the number and the diversified legal structure of the provisions introduced to deal with the emergency** (law decrees, orders of different Ministers and Presidents of Regions, decrees of the Prime Minister, orders of the Civil Protection department), the key parts for the justice system are contained in four decree-laws (n.11, 18, 23, 28), containing specific provisions on civil and criminal justice. A “new framework” for the activity of the judiciary was established, distinguishing two different temporal phases.

The emergency provisions established:

from 9 March to 11 May: the automatic rescheduling of all (civil and criminal) hearings ( except for urgent matters, such as - in the civil sector- cases regarding alimony or maintenance obligations and all proceedings connected to the protection of fundamental rights; juvenile criminal justice hearings and habeas corpus hearings in case of arrest by Police for the criminal sections);

-from 11 of May till 31 of July

The Court Presidents, after consulting the Health Authorities and the representatives of the legal professions, can adopt measures and guidelines with regard to the scheduling and the carrying out of the proceedings.

The criminal defendant or his/her lawyer can ask that in certain cases the trial takes place in any case. This applies mostly when the defendant is detained.

**4. The decree-laws, and the secondary legislation promulgated on their basis, contain an elaborate sanctions system.**

In order to ensure the effectiveness of the lockdown, the first versions of the decrees provided for the application of a criminal sanction, establishing that the violation of the basic lockdown rules violated article 650 of the criminal code, punishing the breach of orders of the public authority. After a while, it became clear that this would have implied a load of several tens of thousands of files in the prosecution offices all over Italy, with a likely collapse of the system. In the last decrees, the criminal sanction was thus left only for especially serious violations, like breach of the quarantine by those who are found Covid-19 positive, while ordinary lockdown violations bring only an administrative fine. In principle it is also possible to apply also the preexisting provisions in the criminal code punishing the spreading of diseases.

### **5. The impact on the use of new technologies.**

The emergency situation highlights well-known weaknesses in how jurisdictions actually work, including an objective delay that exists in many areas with regard to the adoption of new technologies.

We have huge differences between the different components of the machinery of justice: in the civil sector the digital dimension is indeed quite advanced, and judges were accordingly able to reorganize their work at distance; in criminal courts and in some specific offices the situation makes very difficult the switch imposed by the emergency. This is the case for instance of the Court of Cassation.

The evidence of the potential of new technologies, is forcing the judiciary to discuss some “fundamental questions”, concerning the implications of these new opportunities for the transformation of our model of Justice, for the culture of judges and prosecutors, for the place of jurisdiction in society.

The technology we had on place made possible short-term *compromise* solutions. We avoided this way unacceptable suspensions of jurisdiction and provided a basic protection to individual rights.

Let's see an example. Italian criminal procedure admits the use of videoconference in very few cases, basically that of remote participation in a trial - as witnesses or defendants - of persons detained in organized crime cases.

In the emergency suddenly we are called to implement at distance a very delicate procedure in terms of safeguard of rights and freedoms. We have indeed to implement at distance the hearing to which anyone is entitled once arrested by the Police in the act of committing an offence. In this transitional regime the arrested will appear on a screen before the judge, using a video connection from the police offices, or from the prison.

This is a solution introduced by the emergency legislation, and has been endorsed by lawyers as the only possible way to guarantee the compliance with our Constitution which requires validation by a judge, within mandatory terms, of any arrest made by the Police.

But this remains a compromise. The Italian approach to *habeas corpus* requires that the arrested person is presented before his judge. You can see that we have a technology that makes possible for the judge – in a very complex context like the pandemic - to decide whether the arrest is legitimate by hearing the arrested person. But this same technology can potentially affect guarantees, which require personal interaction between the judge and the arrested person. In this

case, let's keep in mind, the interaction at distance is with someone still sitting in the office of those who arrested him.

The discussion within the judiciary now mostly turns around what to save from the emergency experience. The emergency is for sure an opportunity to structurally innovate the working methods after investing in technologies. But how does this transformation impact on the values underlying procedural rules and on the culture of the judiciary, particularly in the younger generation of judges and prosecutors?

If we lose a specific physical space for the trial, and we have only a screen, does this change the social function and the overall legitimacy of Justice?

Our criminal procedure is inspired by the adversary model and by the principles of orality and immediacy. To what extent technological innovations towards the virtual dimension of justice can be used without altering these principles? Principles that are not empty slogans but have the function to ensure the quality of the evidence. Evidence that is formed in the adversary dialogue between the parties.

These are not only theoretical issues. The government proposed to amend the emergency law to introduce the use of remote procedures also beyond the habeas corpus proceedings. Following the reaction of the lawyers the text has been modified, and the solution for the emergency period is to make at distance the procedural acts, related to the gathering of evidence and the final discussion, when there is the consent of the parties.

Now, it is clear that the emergency can in general boost the digital revolution in the justice sector.

Within the judiciary we have different cultural approaches. There is certainly a widespread awareness that a change is needed to have a more performant justice, that can rely on the help of technology to increase its effectiveness. Many think that this is an important opportunity, that must only be well managed, directing technology towards a more efficient organization in line with the values of jurisdiction.

Not everyone is, however, on the same page. Other colleagues stress the risk of a simplistic push to accept new working methods that can lead to a permanent revision of the whole approach to the administration of justice. They think that one must isolate those innovations that can certainly increase the efficiency of the whole process (such as the use of digital documents, telematic communications and notifications and so on) but keep them separate from what affects the specific balance of values that must instead be ensured in the key phases, such as the hearings in both criminal and civil cases.

The request that today comes from a part of the judiciary, in addition to the lawyers, is to still safeguard, when the emergency is over, the principle that the trial must take place in dedicated courtrooms. A space where the knowledge of facts by the judge comes from interpersonal relations.

There is a concern, even not shared by whole judiciary, that the current changes can hide a further step towards the bureaucratization of jurisdiction, opening the way to the use of artificial intelligence or algorithms in the decision, with the marginalization of the judge and of his role in the safeguard of constitutional guarantees.

### **6. Prisons.**

In the Covid-19 economic and social crisis, justice has a fundamental role for the stability of the democratic community. But this role is not an easy one. Just think about the permanent tensions linked to the strong populist trends.

One area in which since the beginning of the pandemic it has been especially difficult to play this role is the health emergency in prisons.

The situation of prisons in Italy has been repeatedly denounced by the ECtHR. It reached its peak with riots and a heavy death toll among inmates when the government announced the suspension of visits of relatives and lawyers and of some forms of detention where the inmates had the permit to come in and out of prison.

The measures adopted by the government (facilitating home detention for inmates with less than 18 months to serve) had a very limited impact in reducing the prison population. In this situation, the specialized judges that in Italy are in charge of the decisions concerning the condition of inmates, are called to strike a balance between security and health. These are difficult decisions, especially on persons detained for organized crime. These judges have been heavily attacked and are currently facing a harsh media campaign run by political actors.

To close, we can say that also in Italy **the real challenge for the judiciary will be to continue to be the expression of a resilient democracy. A democracy that is able to restore rights and freedoms, acting as safeguard of the system of guarantees that make these rights and freedoms effective.**

## ITALY (2)

**Gaetano Ruta**

I'm very glad to participate in this meeting. This is the first time for me in a meeting promoted by MEDEL. I am a member of *Magistratura Democratica*, I know the history of MEDEL and I am well aware of the importance that this association has for judges and for the development and protection of rights in Europe.

The coronavirus outbreak has led to exceptional measures in Italy. The buildings of Tribunals and Courts have been closed to prevent the spread of the virus. Due to this closure, no hearings can be held in these buildings, that are usually open to the public. Only exceptionally hearings can be held, for example in cases of suspects in custody.

There are some relevant changes in the Italian criminal procedure.

Two points have a special place among these exceptional measures.

The first one is the suspension of procedural terms.

According to the law named "Cura Italia" and other subsequent changes and additions, all the procedural terms are suspended from March 9 until May 11. After the 11<sup>th</sup> of May and until July 31 the authority of each Tribunal and Court in every District will decide if the activity can be carried out. It depends on the security of the buildings, it is essential to maintain the safety of all in the courts, in line with public health advice.

I work in Milan, one of the most affected city in Italy and probably in Europe.

A lot of judges and court employees have been affected by covid-19. Three employees have died.

According to this regulation, the procedural terms were suspended. The preliminary investigation has a time limit of six months (one year for more serious crimes) and within this time the Prosecutor has to request committal to trial or the request to discontinue the case (the length of preliminary investigation shall be until two years, if the Public Prosecutor has requested the extension of the time limit). As a result of this change, the length of the preliminary investigation is six months plus the time period of the suspension of the procedural terms.

The same rule applies to time limits of precautionary detention. For this period there is the suspension for the duration of precautionary detention, with an exception in case of the maximum duration of precautionary detention.

The rule also applies to the suspension of the prescription of the crime (prescription is the time limit within the crime has to be prosecuted, otherwise the offence is extinguished).

The second exceptional measure is the trial in videoconference.

Due to the closure of Courthouses, physical hearings cannot be held.

Before the outbreak, hearing of witnesses by videoconference was possible in some cases (ex. witness lives abroad or has health problems).

With the emergency legislation, the government introduced the availability of video and audio for trials, allowing the public and legal professionals to participate in court and tribunal proceedings remotely. A video conference is not possible in all instances, but only when the accused is under precautionary detention in prison. It is also possible during the preliminary investigation for the activity of the public prosecutor. In all other cases, it is necessary the agreement of the accused and of his lawyer.

The platform is made available by the Ministry of Justice.

The problem of data protection has arisen. It is desirable that in the future we'll find a common solution in Europe. A European platform, established and managed by a company of European Union, could be the best solution to improve the use of technologies and save the protection of judicial data.

It is important to underline that all these legal provisions are valid only in this emergency, that means until July 31. It is foreseeable that some of these changes will be maintained also in the future, but it is unclear now which of them.



## MOLDOVA

*Aliona Sarbu*

*Ana Cucerescu*

*Andrei Ojoga*

Even in an emergency situation the rule of law must prevail. It is a fundamental principle of the rule of law that state action must be in accordance with the law. The “law” in this context includes not only acts of Parliament but also, for example, emergency decrees of the executive, provided that they have a constitutional basis.

In the Republic of Moldova, we have a Law nr. 212-XV din 24.06.2004 in the case of an emergency, a siege and a war, as well we have Decision of Parliament No. 55 from 17-03-2020 on declaring a state of emergency in the period 17 March – 15 May 2020.

For the executive, they adopted emergency decrees, starting from 18.03.2020 specifically crafted for dealing with the current crisis, which go beyond the already existing legal rules.

Our authorities created an institution the Commission on Extraordinary situations which adopted amendments to procedural legislations (civil and criminal). From our point of view, as judges these amendments are in line with European standards of human rights protection.

As well, our authorities, introduced new article nr.76.1 Contravention Code, nr.215 Penal Code and new sanctions. These laws were introduced by the Law.

The courts and public prosecutors are operating in the state of social distancing in accordance of Guide, Rules on combating coronavirus disease (COVID-19) pandemic.

There no any General Instruction/Guideline from Supreme Court and General Prosecutor!

We use IT technologies to enable work of the courts and public prosecutors only with person from detentions.

Most of trials are postponed. It is mandatory to be examined just cases with arrested persons, domestic violence.

Because of insufficient condition on workplace, it is difficult to apply in the practice the measures of social distancing.

**POLAND*****Tomasz Posluszny***

First of all I would like to thank MEDEL and the Association of Portuguese Prosecutors SMMP and especially to honourable Paulo Lona for inviting me to be a speaker during the webinar.

As a member of the Polish Judges Association IUSTITIA and I would especially like also to thank MEDEL for continuous support that we are having during our struggle for protection of the rule of law in Poland

Let me also express my best wishes to all distinguished colleagues judges – both those who are giving all such interesting presentation today and especially those, who are patient enough to listen to lots of information given this evening.

Due to a long list of speakers my presentation will be very brief and will concentrate on functioning of the courts in Poland at the moment.

***How authorities respond to COVID-19 pandemic (state of emergency was introduced in the country or not)?***

Surprisingly State of emergency, provided in the Constitution of the Republic of Poland was not introduced.

By the **decision of the Minister of public health on March 13, 2020** introduced the State of the epidemic threat.

Amended by the **decision of the Minister of public health – March 20, 2020 state of epidemic introduced.**

However, this decision wasn't connected with the introduction of any special regulations concerning court proceedings. In practice, it caused a lot of chaos.

All the vital decisions were left to the Presidents of the courts.

Most courts formally remained active but, in reality, got frozen, although all open hearings and trials were cancelled (postponed) and proceedings were held where possible in closed session. Although courts stopped working all the deadlines in court proceedings were continued.

***End of March – Parliament issued a new law called Anti-Crisis Shield.***

The situation changed on March 31, 2020 when finally, specific pandemic arrangements for the judiciary were introduced (in the Act called 'Anti-crisis Shield'). However, these regulations have been limited to interruption of all the time limits in court cases, which were pending on 31 March, until the state of the epidemic ceased. All civil and criminal proceedings also all the terms and deadlines on pending cases were suspended. Public hearings in all court cases have been frozen, except the urgent cases (e. g. criminal matters relating to detention, family matters – custody, etc.).

The president of the court of appeal or the president of the Supreme Court were entitled to designate a competent court instead of a court which could not act due to the pandemic.

Happened in reality in one of the courts in region. The head of the clerks got ill on Covid-19 and immediately whole court was closed. Judges and clerks were quarantined. All the cases were send to another court to deal with.

As the matter of fact all those changes are considered insufficient. This is due to the fact that the Polish civil and criminal codes do not provide possibility to handle the cases and conduct the trials using IT or electronic tools or only in a non-public sessions. In addition, the suspension of deadlines in all cases has made life very difficult for citizens, for example in non-contentious cases (successions, land register cases), as it makes it impossible to finish these cases. In these cases, on the one hand the courts may render a final verdict, which cannot come into power as the time limits for appeals do not start running.

The Ministry of Justice has prepared in recent days proposals that are supposed to come into power on May 15 for amendments aimed at: the suspension of deadlines will not apply to certain cases and that the courts will be able to conduct their hearings more often by videoconferencing and will also be able to hear them in non-public session. It will not be necessary for the party or witness to be present in another court, but it will be sufficient for them to be present at home (via Skype, Google Meet, etc.). The same draft provides for the possibility of adjudicating in civil cases in single-member panels (also in appellate proceedings) and allows cases to be designated for judges out of order.

However, the proposed amendments raise doubts as to whether they do not interfere too much with the transparency of the proceedings and the parties' right of access to the file (there are no electronic court records in Poland).

Civil and Criminal procedures are not prepared for switching into IT mode or to be transferred from paper to digital immediately several million court proceedings and files.

Since May 15 **New regulation called Shield 3.0**

- no suspension of cases and deadlines
- still no trials but cases held on so called not public hearings

New regulations provide wide range of use the electronic equipment to communicate via internet through for example Skype, Watsapp or zoom.

In my opinion it is great to hear that. But in reality, we do not have such possibilities. Our courtrooms are not equipped with such facilities at all.

Now everything is in hands of Ministry of Justice and Presidents of the courts to give us tools to handle the trials but also to do it in a way to reduce all possible threat to health of clerks, judges, lawyers, parties and witnesses.

There is also a fear that many of these changes will become permanent practice, so that after the state of the epidemic ceases. This is all the more justified because some of the proposed amendments explicitly stipulate that they are also to apply one year after the end of the epidemic.

**One regulation judges especially fear – new regulation will allow the president of the Court to transfer a judge from one Department to another without his/her agreement not only during Covid–19 pandemic but also during one year after that.**

#### ***How the Pandemic state changes the daily life in Poland?***

Many public and private institutions are temporarily closed: restaurants, hotels, museums, galleries, beauty parlours, hairdressers, shopping malls, schools even forests. Most of the society stayed at home. Police are stopping people gathering in groups and giving them expensive tickets. Also, the borders are closed, public gatherings, meetings are limited.

The restrictions started to be loosen since last Monday at May 4.

Some shops are open, but still people must wear face masks and gloves.

#### ***How the pandemia influenced my Court?***

**- March (no specific regulations about functioning the courts –**

In my Court the president around March 15 decided to cancel all the trials (except urgent ones) until March 31. Next decision were to call off All the April trials, and next the trials in May until May 15.

At the very beginning the courts were not prepared for pandemic. I remember that I had a pre-trial arrest in late March. At that time, I just bought a pack of rubber gloves myself and ordered the policemen and defendants to wear them.

Then they bought us a gloves and masks to wear when necessary. But, of course the number of mask or gloves is limited to 1 a day.

***Presidents of the courts decisions***

- Presidents and directors of the courts decided to stop sending all the mail. No mail leaving courts.

- judges and clerks and administrative staff work from home or being sent to the holidays

***What about access to the court houses?***

- All people in Poland are obliged to wear masks and rubber gloves outside. If they want to enter court buildings, they can do it. There are sanitizers at the entry at the security check. But whenever I am in my court – which happens once a week, I never met anybody except clerks.

The secretaries of the departments are open – one secretary/clerk in one room.

No need to do any special marks at the corridors or courtrooms so far, because there no public hearings and trials at all.

The special machines were bought by the court administrators to disinfect the files. – working with ULTRASOUND.

**Problems, which in my opinion would make our work difficult now and after May 15:**

- Health security restrictions prevented citizens from access to the courts.

- How to proceed trials?

- How to do, how to handle daily judicial work during the corona health?

No answers so far

***Polish problems –***

- **no electronic files** – with all restrictions it is not possible to work at home (risk of having paper files with virus on them)

- **very few courtrooms or no courtrooms equipped with IT devices helping to hold video conferences or video/audio hearings**

— **no regulations allowing parties to contact Court via e-mail.** Paper Only

- **so far, all trials postponed until May 15** – urgent cases only without parties, end of May probably in reality

- **most clerks and secretaries sent Home** (rotation of secretaries – Only 1 per room) Or using free days

- many cases/hearings to be held

- no public hearings or trials still much work to be done – problem – no information can be delivered by the post office

**Planning the trials** – files waiting for the post offices start to work again

**Different situation depending on the court Departments**

**Criminal cases** held mostly on trials – judges are postponing the dates of trials and preparing to the trials

Exceptions – urgent cases – seizing goods, person, pre-trial arrest hearing witness – victim of crimes – sexual and domestic violence

**Civil cases** – similar urgent cases – family law – e.g. custody

**Courts of appeal** - reducing adjudicating in panels – single judge wherever possible in appellate cases during pandemic

- except the most severe crimes or most complicated – 3 judges in panel

- civil cases 1 judge in all appellate cases

**At the moment we are working with files at our offices or at home and issue decisions whenever it is possible to do without hearings.**

We will see what a future brings. Hope to meet you all in a better times face to face.

Thank you very much.

## PORTUGAL

*Adão Carvalho*

The first two cases of coronavirus in Portugal were known on March 2, 2020. At that date, no protective measures had yet been adopted in the courts.

On March 4, the Health authority presented the first contingency plan for the Courts, which essentially consisted of an isolation room for anyone who would show symptoms.

At that date, most courts did not have face masks, hand sanitizers, protective glasses, disinfectants or any other means of protection for magistrates and staff.

The courts of Felgueiras and Lousada were the first to close due to an infectious outbreak in the area.

On March 13, the first government diploma was published, which only provided for the justification of absence for procedural subjects who present a certificate issued by the health authority and the suspension of procedural deadlines only in courts whose closure had been determined.

The Portuguese Assembly of the Republic approved Law No. 1-A/2020, dated March 19, established various temporary and exceptional measures in response to the pandemic, affecting the area of the Portuguese Courts and Justice Authorities, determined the suspension of procedural deadlines until the cessation of the exceptional situation of prevention, containment, mitigation and treatment of the epidemic infection from the SARS-CoV-2 virus and the COVID-19 disease.

In general, suspended the practice of any procedural acts and procedures, except when:

Proceedings and procedures seeking to safeguard rights, freedoms and guarantees impaired or threatened to be impaired by any unconstitutional or illegal measures;

The urgent service provided for in Article 53(1) of Decree-Law no. 49/2014 of 27 March;

The proceedings, procedures, acts and steps that prove to be necessary to avoid irreparable harm, in particular those relating to minors at risk or to educational guardianship proceedings of an urgent nature, or to trials of imprisoned defendants;

And, in this case, only if they did not involve the presence of a higher number of people than allowed by health authorities.

Prescription and limitation periods for all types of proceedings and procedures shall also be suspended.

From 9 March 2020 hearings in civil, criminal or administrative proceedings pending in all courts were postponed.

Courts are only open for minimum services and Judges, prosecutors and court officials were, in general, sent home, continuing to work from home and make judgments and proceedings in priority cases via conference call or video call.

***Difficulties:***

- Court officials did not have access to the system from home;
- Many did not have a computer at home;
- criminal cases were not scanned in many prosecutors' offices.

On April 2, 2020, the Portuguese Assembly of the Republic approved Law No. 4-A/2020, dated April 6, which made the first amendment to Law No. 1-A/2020, dated March 19. The latter established various temporary and exceptional measures in response to the pandemic caused by the SARS-CoV-2 coronavirus and COVID-19 infection, affecting the area of the Portuguese Courts and Justice Authorities. From the outset, in terms of deadlines, court proceedings and entry into force, various shortcomings, inaccuracies and doubts over interpretation associated with the application of such a relevant instrument became apparent.

**A. Non-urgent proceedings**

The suspension of all procedural periods has been determined.

Notwithstanding the exceptions referred to below, this suspension regime applies to all periods for all procedural and processing actions to be carried out within the scope of any proceedings or procedures being heard by the courts of law, tax or administrative courts, the Constitutional Court, the Court of Auditors, arbitral tribunals, the public prosecution service, justices of the peace, alternative dispute resolution bodies and tax enforcement bodies.

The suspension also applies to any actions to be carried out in enforcement proceedings, especially in respect of any sales, creditors' arrangements, the judicial handover of real estate and pledges and the preparatory acts thereof, with the exception of those that might cause serious harm to the subsistence of the executing creditor, or the non-performance of which might cause irreparable damage, with the latter depending on a prior court decision.

Also suspended are any eviction orders, special eviction proceedings and procedures for the handover of leased properties, when the tenant, due to a final decision to be taken, may be



placed in a vulnerable position due to a lack of main housing or for any other compelling social reason.

However, this suspension does not prevent:

The performance of non-urgent procedures and acts, with or without the presence of the parties, when all of them state they are in a position to ensure such procedures and acts can be carried out through online platforms enabling their performance through electronic means or suitable remote means of communication, such as telephone conference calls, videoconferencing or any other equivalent;

A final decision from being handed down in proceedings in relation to which the court and other entities understand that no further procedures are needed.

#### B. Urgent proceedings

Any urgent proceedings will still be processed, without any suspension or interruption of any periods, acts or procedures, with the following observations:

In those procedures requiring the physical presence of the parties, their representatives or other procedural participants, any processing or procedural actions can be carried out through suitable remote means of communication, such as telephone conference calls, videoconferencing or any other equivalent

When it is not possible to carry out those procedures requiring the physical presence of the parties, their representatives or other procedural participants in the terms of the previous point, and the life, physical integrity, mental health, freedom or immediate livelihood of the participating parties depend on them, the procedure may be carried out in person provided it does not involve the presence of a number of people higher than that established by the recommendations of the health authorities and in accordance with the guidelines established by the competent senior bodies

Should it not be possible, or appropriate, to ensure the performance of any actions or procedures in the terms of the previous points, these proceedings will also be subject to the suspension regime mentioned above in relation to non-urgent proceedings.

The following are also considered urgent, for these purposes:

Any procedures and proceedings for the defence of any rights, freedoms or guarantees harmed or threatened by any unconstitutional or unlawful measures, as described in article 6 of Law No. 44/86, dated September 30;

The urgent service established under article 53.1 of Decree-Law No. 49/2014, dated March 27;

Any processes, proceedings, actions or procedures seen as necessary in order to avoid any irreparable damage, in particular any proceedings related to minors at risk or educational protection proceedings of an urgent nature, and those procedures and trials involving arrested defendants.

On April 6, the possibility of making urgent or non-urgent judgments and investigations by means of remote communication - virtual trials - was established.

### ***The virtual Trials***

The main obstacles that determined the reduced use of virtual judgments:

- They require the agreement of judges, prosecutors and lawyers, and many times the parties have no interest in their realization.
- Difficulties in establishing connections for all stakeholders.
- affects the principles of orality and immediacy in judgment.
- Difficulties in presenting evidence to witnesses.
- Truth of the evidence if the witnesses are not present at the Court.

### ***Outlook for the future***

The Ministry of Justice foresees a gradual return to normal court activity later this month.

This will imply the adoption of measures for a long period of time until a vaccine is discovered to prevent Covid-19 infection.

The return to normality depends on a whole set of measures not yet taken:

- Restrict public access inside Justice Palaces.
- adaptation of the trial rooms to the need to guarantee the separation between judges, prosecutors, lawyers, parties, defendants and witnesses.
- Use of glass or acrylic separators in contact with users of justice.
- Personal protective equipment for judges, prosecutors, court officials, such as face masks, hand sanitizers, protective glasses, gloves.
- Disinfection of the judgment rooms after each use.
- No concentration of people in the common spaces of the courts.
- Control people in the access of courts and delivery of protective material such as face masks, gloves.
- Hand sanitizers (available almost everywhere).
- Spaces for witnesses to await trials with adequate distance from each other.

- Protection for detainees in Court or heard by video conference direct from the prison establishment.

- Need to protect people at especially high risk, like people over the age of 65 or with certain underlying medical conditions:

Judges, prosecutors and staff in these conditions shall continue to work from home.

Witnesses and defendants under these conditions shall be heard by video call.

### ***Declaration of state of emergency on March 18***

To conclude some considerations on the need for a declaration of a state of emergency in Portugal

The Constitution of one thousand nine hundred and seventy-six establishes that the restrictions to the right to freedom, which translate into measures of total or partial deprivation of it, can only be those provided in the constitution, and the common law cannot create others - principle of the constitutional typicality of measures that deprive (or restrict) freedom, the need for treatment of patients infected with infectious diseases is not included in the Constitution as an autonomous basis for depriving the right to freedom.

Declaring a state of emergency was not an option, it was a necessity.

In spite of the fact that the citizens, in general, comply with the determinations of the health authorities regarding hospitalization in a health unit for treatment or even prophylactic isolation, it is certain that without the declaration of the state of emergency any of these impositions of health authorities would remain within the scope of the duty of social responsibility of those targeted and without being able to be coercively imposed on citizens who decide not to comply with them.

In the exercise of his constitutional and legal powers (Constitution and Organic Law regulating the States of Siege and of Emergency), the President of the Republic, after consulting the Government and obtaining authorisation from the Assembly of the Republic, declared a State of Emergency by means of Decree no. 14-A/2020, of 18 March, on the basis of a public calamity situation.

This decision entered into force immediately and is applicable throughout the national territory for a period of 15 days.

Under the terms of the Presidential Decree, the following fundamental rights were partially suspended: a) Right of movement and settlement in any part of the national territory; b) Property and private economic initiative; c) Workers' rights; d) International movement; e)

Rights of assembly and demonstration; f) Freedom of worship, in its collective dimension; and g) Right of resistance.

The implementation of the declaration of State of Emergency is the responsibility of the Government, and compliance with the principle of proportionality is essential in this context. In essence, the measures that may be approved by the Government must be limited, particularly as regards their extent, their duration and the means used, to what is strictly appropriate and necessary for the prompt restoration of constitutional normality.

The effectiveness of the measures that may be adopted by the Government during this period is ensured by the security forces and the Armed Forces.

According to the law, the violation of the Decree declaring the State of Emergency, or of any the enforcement measures approved by the Government, constitutes a crime of disobedience, provided for and punished with imprisonment of up to 1 year or with a fine of up to 120 days if a legal provision punishes simple disobedience, or in the absence of such legal provision, subject to the criterion of the authority or official.

Portuguese Legislation COVID-19:

<https://data.dre.pt/eli/dec-lei/10-A/2020/03/13/p/dre>

<https://data.dre.pt/eli/lei/1-A/2020/03/19/p/dre>

<https://data.dre.pt/eli/lei/4-A/2020/04/06/p/dre>

<https://data.dre.pt/eli/decpresrep/14-A/2020/03/18/p/dre>

## ROMANIA

*Iulia Craiu*

### ***Legal framework***

In Romania the emergency state was declared in 16<sup>th</sup> of March 2020 by Presidential Decree no 195, initially for a period of 30 days.

Considering the special nature of the Decree instating the state of emergency, it addresses, with the observance of the rules set forth in Ordinance 1/1999 regarding the regime of the state of siege and the regime of the state of emergency, the restriction of the exercise of certain rights with the legitimate purpose of limiting the massive spread of the coronavirus SARS-CoV-2 and of protecting the life and health of the Romanian citizens

According to the Decree some rights like freedom of movement, respect for private and family life, inviolability of the domicile, liberty of gathering, education, economic freedom, private property, were restricted.

The Decree was notified to the Council of Europe, according to art.15 of European Convention of Human Rights and this raised some debates in the Romanian society. Some people, including some judges, stated that by acting in this way the Romanian authorities decided to suspend the application of ECHR using the pandemic as an excuse. On the other hand, law professors explained that this is the legal procedure and it is not a suspension of the application of the Convention. The professors explained that in this way if a person files a complaint regarding his rights and reaches the European Court of Human Rights, when his case will be examined, the European judges will know the provisions of the Decree and will decide if the limitations were proportional with the scope.

Referring to the *judiciary* the Decree stated that the limitation periods and time-limits after which the right to exercise an action is lost, both in accordance with the substantive and the procedural law, will not start running until the date of expiration of the state of emergency instated pursuant to Decree no. 195/2020. Limitation periods that are already running will be suspended pursuant to the Decree starting from March 16<sup>th</sup>, 2020.

Also, during the state of emergency, the adjudication activity will continue only with respect to the particularly urgent cases established as such by the Management Council of the Supreme Court and by the Management Councils of the Courts of Appeals.

In civil matters, the adjudication of the „non-urgent” cases was suspended by full operation of the law (*ex officio*) throughout the state of emergency period, without being necessary to draft a procedural document by which the suspension to be ordered.

In criminal matter the Decree stated the cases in which the criminal investigation in hearings should be conducted, like preventive measures, witness / victim protection, flagrant crimes, international judicial cooperation, crimes related to the state of emergency.

Considering that, especially in civil matters, the Decree let the boards of the Appeal Courts to decide the „most urgent cases”, different decisions were taken in the 15 Romanian Courts Of Appel so the intervention of the Superior Council was necessary in order to establish a clear list of cases to be heard.

By the Presidential Decree no 240/14.04.2020 the emergency state was prolonged until 14<sup>th</sup> of May 2020. The second decree is similar to the previous one but brings some clarifications in relations to aspects which raised debates.

During the emergency state ten military ordinances were issued by the Minister of Interior, establishing rules related to the freedom of movement (persons were allowed to leave their houses in special conditions and respecting some time frames; some activities were suspended or limited; flights to/from so called „red zones” were suspended).

By Emergency Ordinance no 34/2020 the Romanian Government amended and supplemented Government Emergency Ordinance No 1/1999 on the regime of the state of siege and of the state of emergency and, among other measures raised the fines for breaching the military ordinances and the measures taken during the emergency state.

On the basis of this emergency acts more than 300.000 fines summing approximately 187 million euro were applied.

On the 6<sup>th</sup> of May 2020 the Constitutional Court unanimously decided that Government Emergency Ordinance No 34/2020 amending and supplementing Government Emergency Ordinance No 1/1999 on the regime of the state of siege and of the state of emergency was unconstitutional, as a whole.

The Constitutional Court didn't present the motivated decision, but by a press release explained that „The restriction of the exercise of certain rights is not achieved by presidential decree, the provisions of Article 14 (d) of Government Emergency Ordinance No 1/1999

representing the standard by which the primary legislator empowers the administrative authority (the President of Romania) to order the enforcement of the law, respectively of the provisions of Article 4 of the same regulatory act, which expressly provide for the possibility of restricting the exercise of fundamental rights. In this case, acting within the limits of his legal powers, the President has identified the rights and freedoms that were to be restricted". It was also said that „the legislation on petty offences, like criminal law, was subsidiary in nature, applying only when other legal means are not sufficient to protect certain social values. As such, the regulatory acts with the force of law and the administrative acts of a regulatory nature by which petty offences are established and sanctioned must meet all the requirements related to the quality of the norm: accessibility, clarity, accuracy and predictability. However, the Court finds that the provisions of Article 28 (1), by the phrase *“non-compliance with the provisions of Article 9 shall be considered petty offence”*, classify as petty offences any violation of the general obligation to observe and apply all the measures established by Government Emergency Ordinance No 1/1999, by the related regulatory acts, as well as by the military ordinances or orders, specific to the state of emergency declared, without expressly distinguishing between the acts, actions or omissions that may entail contraventional liability. Implicitly, the establishment of the conducts that represent petty offences is left, arbitrarily, to the free discretion of the law enforcement agent, as the criteria and conditions necessary for ascertaining and sanctioning such petty offences have not been established by the legislator”.

The entire press release can be found <http://www.ccr.ro/press-release-6-may-2020/> point III.B.

### ***Measures taken in courts and prosecutor offices***

In courts the activities were diminished, so only the declared urgent cases were heard. The access in courts was limited, only the lawyers or parties which were summoned were allowed to enter and they were advised to respect the social distance (1,5 – 2 meters) in the court rooms. For the rest of the cases lists of suspended cases was presented at the entrance and on the website of the courts. The necessary procedural paperwork was done mainly via email/fax/phone, when possible.

In the criminal cases the persons in detention weren't brought to court and their cases were heard via on-line conference, through a secured line existing in courts and in the detention centers.

Judges and clerks were advised to work from home and be present in the courts only if necessary.

The facial masks and gloves weren't mandatory, but most of the court staff wear it and also lawyers or other participants to the trials.

For the prosecutor offices, according to an Order issued by the General Prosecutor, no person was allowed to enter without a facial mask, but there was no need to limit the access of persons because nobody can get into a prosecutor office without „an invitation”.

#### ***Intended measures after 14<sup>th</sup> of May 2020***

According to the public statements of the authorities the emergency state will be replaced with the alert state, starting 15 of May 2020. There will still be some limitations of freedom of movement and other rights, but no draft of legal provisions was presented so far. Also, the authorities announced the intention of imposing the obligation of wearing a facial mask in close public spaces, but again no draft/legal provision was presented.

In the judiciary, according to the Presidential Decrees no 195 and no 240 the hearing of non-urgent cases will be resumed ex-officio, and within 10 days from the date of cessation of the state of emergency, the courts will take the appropriate measures to set the hearing dates and summon the parties.

This will lead to an increase of work in courts (the number of suspended cases is huge) and protective measures are mandatory in order to prevent a new increase of covid-19 cases.

Unfortunately, until now, no clear rules were established, and every court takes its own protective measures, according to their financial/space/staff possibilities.

The management board of Bucharest Court of Appeal had a meeting and decided to adopt some measures applicable starting May 15, 2020. Among the intended measures – limiting the number of cases which will be heard in a session, establishing hours for every case, the mandatory use of face masks and gloves for all persons entering the court premises, taking the temperature of every person who will enter the court, the use of carpets with disinfectant.

Other courts adopted similar measures, but a „unifying” decision from the Superior Council and the Ministry of Justice is expected. So far MOJ only sent some recommendation and stated that funds were allocated to courts in order to apply protective measures for staff, lawyers and parties.



## SERBIA

*Lidija Komlen Nikolic*

The first case of Corona virus in Serbia was noted on 6<sup>th</sup> of March. Before first case, officials in Serbia has not considered virus as serious threat to citizens. They even organized press conference, with state officials and medical experts on which they said that this virus is most hilarious in history.

But after first case and situation, where a lot of our citizens were coming from EU countries back to Serbia, the story of the officials changed. There were some estimates that more than 400000 Serbian citizens returned to Serbia from EU countries.

In order to prevent the spread of the infection and the effects caused by the SARS-CoV-2 virus, *the Decision on Declaring a State of Emergency* was adopted on March 15<sup>th</sup> 2020. This decision, as well as many other regulations concerning it, that were adopted, has resulted in the restriction of certain rights of citizens.

Declaring a State of Emergency was obviously accepted method in most countries in Europe.

But in Serbia State of emergency was not declared by Parliament because they used option from our constitution which stipulates when the National Assembly is unable to meet, the decision on declaring a state of emergency shall be taken jointly by the President of the Republic, the President of the National Assembly and the Prime Minister, under the same conditions as the National Assembly, in which case the measures derogating from human rights and minority rights may be prescribed by the Government, by decree, with the co signature of the President of the Republic.

So, basically, some of the competences from parliament were transferred to executive powers. Also, there was no reasoned explanation why parliament can't have session.

On March 10th, 2020, the Government of the Republic of Serbia adopted the Decision on the Declaration of COVID-19 disease caused by SARS-CoV-2 infectious disease. This decision was changed 14 times. It created total legal chaos. Because not complying with some measures from this decision was qualified as criminal offence and prosecutor were obliged to prosecute them in urgent matter.

Serbia is example of hyper production of decrees, regulations and orders from executive powers. Beside Decision on the Declaration of COVID-19 disease another 44 different decrees were adopted by government. That is why after huge public pressure parliament finally did scheduled session, after 50 days. Basically their role was to retroactive confirmed all decision adopted by executive powers.

When you have situation, where Parliament is not in session, there was no constitutional way for adopting amendments to procedural legislation nor civil nor criminal. That is why Ministry of justice sends a letter to court to use skype application for trials.

Some courts accepted that recommendation and they even held trials where people were sentenced for 3 years in jail for not obeying order of self-isolation. It was clear violation of right to free trials. Purpose of this trials was to send message to citizens. Again, after huge public pressure from bar association and other legal expert, government adopted Decree regarding Criminal procedure code which did had only two articles.

After 15 days from declaring State of emergency, government finally adopted Decree on the mode of participation of accused on main trial at criminal procedure held during state of emergency. This decree state that in the criminal proceedings before the first instance court, when the president of the panel, the single judge, finds that securing the presence of the accused in custody at the main trial is difficult due to the danger of spreading infectious diseases, may decide to ensure the participation of the defendant in the main trial through technical means for the transmission of sound and images, if this is possible given the technical conditions. A lot of defence lawyers did not want to accept this possibility stating that it is violation to right to free trial.

We think that these amendments were not in line with European standards. We are waiting for our constitution court to awake because they are playing dead in this situation. Decree will be subject of consideration by Constitution court because some lawyers and organization sent initiatives for constitutional review.

Our Criminal procedure code did not have provisions regarding using technical means for transmission of sound and images. There are some provisions in second instance court.

Most of the courts who had big enough courtrooms to comply with requirements of social distancing didn't use Skype for trials.

Decree on time limits in court proceedings during state emergency was declared and also in cases of administrative procedures.

Courts and prosecutor offices were not closed but they did not work with citizens and lawyers. There was established minimum work process.

Only first instance prosecutor offices and court who were dealing with cases which were proclaimed as urgent and important. Such as domestic violence cases and Failure to Act Pursuant to Health Regulations During Epidemic, Transmitting Contagious Disease and Causing Panic and Disorder.

After declaring state of emergency state prosecutor issued three general mandatory instructions regarding the organization of work in prosecutor's offices. First it was related to work process. Who will work and how. Some categories of prosecutors and staff were sent to work from home. Those were 60 years and older with chronically diseases and employees with children under 12 years of age. Then there were priorities regarding type of cases which will be prosecuted. Also, for those criminal offences there was obligation to propose detention to investigative judges.

Representative of Ministry of justice even announced these mandatory instructions by State prosecutors. In this statement he even threatened with disciplinary proceeding for prosecutors.

On 6 the May state of emergency was abolished.

That lead to question Roel mention. What now? What is post Corona situation with courts and prosecutor offices.

When it comes to prosecutor offices, the work process will gradually return to state before Corona. But some protective measures are being made. People will have to use masks and gloves. It is obligation for employees and all people who comes to court buildings.

## SPAIN (1)

*Iria Gonzalez*

Relevant links to all the information about COVID-19 and Justice:

The Prosecutor General's Office:

<https://www.fiscal.es/documentaci%C3%B3n-coronavirus>

Ministry of Justice: <https://www.mjusticia.gob.es/cs/Satellite/Portal/es/ciudadanos/servicios-esenciales-justicia>

General Council of the Judiciary:

<http://www.poderjudicial.es/cgpj/es/Servicios/Informacion-COVID-19/Acuerdos-de-la-Comision-Permanente/>

The alarm/alert status **was declared** in Spain on 14/3/2020, ( <https://boe.es/buscar/act.php?id=BOE-A-2020-3692>) prior to that, FGE issued several decrees concerning the telematic empowerment of IT resources among others decisions (<https://www.fiscal.es/documentaci%C3%B3n-coronavirus>).

Ministry of Justice: on **14th March 2020**, (<https://ficheros.mjusticia.gob.es/aviso/2.%20MJU%20SE%20servicios%20esenciales.pdf>):

**Essential services:** minimum complement of personnel different from Judges and Prosecutors was determined. Among the essential services, it mentions:

- Precautionary measures.
- Criminal cases with a person in prison.
- Actions of the Civil Registry.
- Protective measures in matters of violence against women.
- Any action whose delay may cause irreparable damage.
- Suspension of procedural terms and deadlines, with the only necessary exceptions to guarantee the rights recognized to all persons in article 24 of the Constitution (art 6 of European Convention).

20/3: Medical forensics appointed at the service of health authorities

By **Resolution** of **March** **23**,  
 (<https://ficheros.mjusticia.gob.es/aviso/MINISTERIO%20DE%20JUSTICIA%20Resoluci%C3%B3n%20de%20la%20Secretar%C3%ADa%20de%20Estado%20de%20Justicia.pdf>) in agreement with the Autonomous Regions, the Prosecutor General's Office and the General Council of the Judiciary, individual, collective and organizational protection measures were also established. These protection measures include:

- Do not allow access to the judicial headquarters unless justification.
- Limit the number of people who access and of the time.
- Provide the user with a mask (**not yet for all**).
- Establish minimum safety distances of at least 2 meters.
- Provide protection elements in public service posts (**not yet for all**).
- Promotion of telematics and electronic means of work: **problems of digital justice: territorial dispersion and legal certainty of the file.**

By **Resolution** of **March** **30**,  
 (<https://ficheros.mjusticia.gob.es/aviso/Resoluciones/Resoluci%C3%B3n%20del%20ministro%20de%20Justicia%20por%20la%20que%20se%20adapta%20la%20cobertura%20de%20servicios%20esenciales%20de%20la%20Administraci%C3%B3n%20de%20Justicia%20al%20Real%20Decreto.pdf>) the Ministry of Justice, the Autonomous Regions, the General Council of the Judiciary, the Prosecutor General's Office and the General Bar Association adapted the provision of essential services in the administration of Justice to the Decree Law that specially reduces the mobility of the population during the fight against Covid-19. The **Resolution maintains the minimum personnel and essential services identified in the previous resolution, and establishes a basic face-to-face activity completed with another availability regime.**

By **Resolution** of **April** **15**,  
 ([https://ficheros.mjusticia.gob.es/aviso/resolucion\\_servicio\\_publico\\_RD478.pdf](https://ficheros.mjusticia.gob.es/aviso/resolucion_servicio_publico_RD478.pdf))

the Ministry of Justice, in concert with the Autonomous Regions, (with justice competences transfers) the General Council of the Judiciary, the Prosecutor General's Office:

- Normal provision of non-essential services, provided that the material means are allowed: **Officials (+- 10%). Prioritization of dispatch of matters: personal legal assets of victims / especially vulnerable groups.**

- Registration of all submissions filed to judicial and prosecutor's offices in a telematic manner.
- In-person turn-based service, ensuring safety distances aligned with the recommendations of the health authorities: Hygiene and health measures: personal protective equipment in all judicial facilities and hearing rooms: Effective and coordinated provision of hydrogels, gloves and masks in order to protect the health of all professionals in the administration of justice, as well as citizens who go to courts and tribunals: **problem: lack of means everywhere.**

**Government: RDL 16/20:** 28/4 (into force 30/4): "New Normal Plan of MJ"  
(<https://ficheros.mjusticia.gob.es/aviso/BOE-A-2020-4705.pdf>)

- Ability of procedural terms 11 a 31/8.
- Re-Calculation of procedural deadlines and extension of the time limit for appeal.
- Special and summary family procedure:
  - o Claims concerning the restoration of balance in the visitation or shared custody regime.
  - o Review of the children's pensions.
- General obligation for the Ministry of Justice and autonomous communities with competences in this area: to ensure that the systems of procedural management, IT, of the courts and tribunals of all autonomous communities allow telework: and **legal certainty?**
- Use of telematics media, especially videoconferencing: For the holding of procedural acts: validity: alarm status period and 3 months: **trial, declarations and hearings** (will be necessary the **physical presence of the accused in the trials for serious offence**). **Mixed commission in each province (judges/prosecutors/clerks/management) for guidelines:** considering room characteristics: **In some places the 25/5, others 15/6 different scenarios are been considered. Distances and capacity (avoid concentrations): FGE proposes:**
  - o **telematics and streaming.**
  - o Mobile app for subpoenas (exact time).
- Reports of Legal physicians: validity: alarm status period and 3 months: only with existing medical documentation at their disposal (with some exceptions)

- Attention to the public in any judicial or prosecution headquarters shall be carried out by **telephone or by e-mail** (enabled for this purpose): alarm status period and 3 months.
- Judicial bodies associated to COVID-19.
- Morning and afternoon working days for all services and courts: validity: alarm status period and 3 months: **CCAA/Unions/voluntarism problems.**

Other measures: De-escalated plan for after alarm status: General's Prosecutor's office: 60 measures

(<https://www.fiscal.es/documents/20142/399898/03.+Plan+de+desescalada+en+la+administraci%C3%B3n+de+justicia%2C+de+24+de+abril.pdf/b668a8d9-2035-aa19-30f3-ee2e6ee9053e?version=1.0>)

- o Use of information and communication technologies: **videoconferencing empowerment**: even of accused: with criteria: (less than 2 years/no one requests his presence/agreement with MF/interview reserved with lawyers). Digital Justice Boost. Unique procedural management system for the entire national territory.
- o Streamlining criminal investigation phase, avoiding duplication of procedural actions.
- o Promoting agreements with the prosecutor office in order to avoid trials and get less penalty: institutional coordination. Expanding the scope of this type of agreements.
- o Restorative justice and intraprocedural mediation.
- o Development of contingency plan
- o Reinforcements, substitutions and service commissions.
- o Plans for action of accrued matters.
- o Temporary exclusive dedication of certain Criminal Courts for the prosecution of quick trials (small type of crimes with penalties up to 2 years). Creation of "on-call" courts
- o **Assumption by the Tax Agency of all liquid pecuniary enforcement,**
- o Moderation of the prosecution of the Public Prosecutor's Office in property crimes in which there is no worthy public interest for protection.
- o Specific measures in cases of traffic of human beings
- o **Measures relating to detention in ICDs and expulsion from the national territory**: the sanitary conditions of the country of expulsion, with particular attention to humanitarian reasons.

- Repeal of article 324 (obstacle investigation causes of corruption).
- Extension of the penological limit to hold the trial in absentia.
- Staff adaptation.

Also: **we don't have a date for end of suspension of procedural terms!**

**Last decision of General Council of the Judiciary 8/5/20:** Following the publication today in the BOE of Royal Decree 514/2020, of 8 May, extending the alarm status. The Standing Committee extends during the new period of alarm state the effectiveness of the agreements adopted so far in relation to the COVID-19 coronavirus pandemic: maintains the suspension of non-essential legal proceedings until May 24. <http://www.poderjudicial.es/cgpj/es/Poder-Judicial/En-Portada/El-CGPJ-mantiene-la-suspension-de-las-actuaciones-judiciales-no-esenciales-hasta-el-proximo-24-de-mayo>

**Also the Ministry of Justice is elaborating a plan, that right now is being discussed with the Autonomous Regions, the General Council of the Judiciary, and the Prosecutor General's Office and apparently will be approved next week in order to determinate the dates and ways of the reactivation of the Judicial Activity.**

The General Council of the Judiciary has prepared a base document on organizational and procedural measures for the moment after the end of the State of Alarm declared on the coronavirus pandemic (some measures that are disproportionate and could affect fundamental rights).

Organizational: autonomous competencies/chief competencies

Conciliation (Problem: chiefs competences).



## SPAIN (2)

*Eduardo Navarro*

I would like to introduce you in a few minutes the main problems that are raised from a constitutional point of view in Spain.

All of them revolve around the possible limitation of rights during the pandemic.

Our constitution provides for three states of emergency.

We call them, ALARM, EXCEPTION AND SITE.

From the point of view of affecting Fundamental Rights, the State of Alarm is the least aggressive.

According to our legislation the state of alarm is planned for health crises and pandemics and under no circumstances can it suspend fundamental rights although it empowers to impose limits on freedom of movement.

SO, the first problem is, therefore, whether limitations on freedom of movement result in a suspension of the right and therefore are outside the alarm state, resulting in a situation of unconstitutionality.

The Spanish Constitutional Court will have to decide whether the limitations impose constitute a suspension of the right OR this limitations are within the legal framework.

HOW FAR you can limit a right without suspending it?

KEEPING the entire population in their homes is a limitation of the right to freedom of movement OR is a genuine abolition of the right?

The issue has been raised. Let's hope the Constitutional Court will decide in it the coming weeks.

ANOTHER controversial issue in Spain concerns the right of a free press. The government stated that it was investigating FALSE information or that would cause social stress and disaffection to governments institutions.

Many journalists warn of possible limitation of press freedom. On the other hand, there are some press companies are reporting disinformation campaigns through social media.

The main risk is that we admit censorship of information alleging disaffection. But it's true that social media (Facebook, twitter...) is not part of the traditional press.

Some journalists wonder:

- Is it necessary to educate the population in order to build a society of critical citizens? OR Does the government need to control fake news?

In any case, the solutions to the problems that arise will be the case of proportionality judgements of the measures taken.

Our constitution says that any measure will be indispensable to ensure the restoration of normalcy.

In Spain, official sources speak of more than twenty-five thousand deaths. Such a harsh reality can modulate fundamental rights, and as far as.