



European Network of Councils
for the Judiciary (ENCJ)

Reseau européen des Conseils
de la Justice (RECJ)

Access to fair and impartial courts: guaranteeing access to justice in times of crisis

Minimum Standards

ENCJ Report 2020-2021



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Introduction and Methodology

It is obvious to everyone that in times of crisis, the usual functioning of the judicial system is necessarily challenged and needs to adapt to sudden and radical changes.

During the COVID-19 crisis, many of the courts in Europe faced a (partial) lockdown. Judicial systems in Europe dealt (and are even still dealing) with the health crisis in quite different ways. In the vast majority of the countries, cases were suspended. As an effect of working remotely, the digitalisation of the judiciary took flight in some countries. Besides, temporary emergency laws were issued in order to enable the stakeholders in the justice system to deal with the crisis in the most appropriate way possible. These developments have had a major impact on the rule of law in different countries and on the citizen's access to justice. It appeared therefore crucial to learn lessons from the COVID-19 crisis and to formulate proposals of minimum requirements on the way and means helping preserve and maintain the rights to have access to a judge and to a fair trial in times of crisis.

In this context, the General Assembly of 10 June 2020 decided to dedicate a project to it, which was entitled "Access to fair and impartial courts : guaranteeing access to justice in times of crisis" and integrated into the work plan of the ENCJ 2020-2021. It is coordinated by the Netherlands *Raad voor de Rechtspraak* and the CSM France and chaired by Henk Naves (NL) and Jean-Paul Sudre (FR). The main aim of this project II consisted in studying the rules for guaranteeing access to justice (right to an effective remedy and to a fair trial as laid down in Article 47 of the EU Charter for Fundamental Rights) during a state of emergency, in order to be prepared to face other crisis.

These minimum standards concerned, in particular, respect for the rule of law, guarantees of access to courts, preservation of the security of legal professional and users of the judicial system, processing and follow-up of cases and impact of use of new technologies on the judicial work.

Furthermore, it appeared indispensable to identify the specific role that the Councils for the Judiciary and the courts should play in order to preserve independence of the judiciary, during crisis but also after crisis. The period opened after the state of emergency seemed to be a good opportunity to implement positive changes in that respect.

The project did not forget to focus on the lessons and good practices learned from the COVID-19 crisis that affected and is still affecting all Members and Observers of the ENCJ.

The methodology followed by the project team consisted in preparing a draft fiche and a questionnaire for all the ENCJ members of the project II in the light of the goals previously set. Then, the project team analysed the answers to the questionnaires and summarised them. After debates and exchanges during and following the plenary session involving all the Councils members of the project II, minimum standards, guidelines and good practices were defined in a single document.

The presentation of the minimum standards that reflect a consensus is the subject of this report.

It is intended to be a short and synthetic rapport. For further developments and information on the content of the answers to the questionnaire, you can refer to the detailed report (*see Annex.2*) as well as the questionnaire (*See Annex.1*)

A. Exceptional legislation

- 1. Maintain the independence of the judiciary, the fundamental rights of litigants and the principles of transparency during times of crisis. The rule of law, legal certainty, access to justice, a judge and/or court, equality and proportionality should always be guaranteed.**

The principles of Article 5 - the right to liberty and security of person guaranteed by a judge - and Article 6 - the right to a fair trial - of the European Convention on Human Rights (ECHR) must be guaranteed and protected under any circumstances, and all public authorities must be extra vigilant in times of crisis.

- 2. In case of a state of emergency, a mechanism with a clear field and duration should be established, re-evaluated very regularly. Each measure taken during this state of emergency should be based on legal provisions. Derogatory measures should be circumscribed in time. Re-evaluation of the measures should be regularly installed.**

A crisis requires an immediate and urgent response. However, this response must remain based on the principles of the separation of powers and the rule of law. Emergency measures derogating from ordinary law should be clearly stated, limited in time, respect the principles of legality, legal certainty and proportionality, and their merits must be constantly reassessed.

Judicial authorities as well as representatives of legal professionals should be consulted on emergency regulation (see point F below).

In any case, these emergency measures must be carried out under the fundamental control of the judge and effective access to legal remedies must be maintained and preserved.

On the other hand, in certain adapted cases, a derogatory regime of suspension and extension of time limits makes it possible not to deprive the litigant of the effectiveness of the right of access to justice.

B. Access and functioning of the courts

- 3. Access to justice is a fundamental principle of the rule of law. Therefore maintaining the openness and security of the courts and giving priority to essential services and urgent cases should be maintained.**

A fair balance must be struck between, on the one hand, the need to protect the health and safety of both legal professionals and court users and, on the other, the imperative principle of access to justice. Indeed, if, in certain circumstances, the closure of courts proves necessary, it should take place in a prudent and circumscribed manner, reserved for extreme cases, in order to avoid any unjustified limitation of the fundamental principle of access to justice.

Maintaining access to justice also avoids the accumulation of excessive delays and backlogs that are very difficult to clear up later.

Access to justice should be ensured for all users, but in times of crisis, particular attention must be paid to vulnerable groups who are even more likely to suffer from this situation. Priority should be given to cases that affect them, such as those involving domestic violence, especially against women or children, the elderly or disabled, or serious economic situations. Vulnerabilities arising from the crisis should also be taken into account (see point E.10 below).

4. Guaranteeing effective access to a judge/the court for all litigants in a fair trial within a reasonable period of time. Ensure effective remedies. Maintain physical hearings as much as possible.

The public service of justice must be maintained, in particular by ensuring :

- as a priority, physical access to the judge:

Hearings can be scheduled in a staggered manner or with the provision of several rooms, arranged accordingly (courtrooms, meeting rooms, entrance hall, waiting rooms, etc.); even outside the court: universities or other public buildings, conference rooms in hotels, etc.

It is also possible to replace collegiate hearings by single-judge hearings.

Transfers of cases between courts can also be considered.

- Secondly, access to justice by alternative means:

A reorientation of the procedure away from prosecution at the hearing may be considered, depending on the seriousness of the cases and/or the fact that the person prosecuted pleads guilty or not guilty. It is also an opportunity to rethink a genuine judicial policy of alternative dispute resolution.

Where possible, the procedure can also be adapted: replacing oral hearings by a written process or without the presence of the parties and adapting the processes for taking evidence, giving priority to written and/or electronic means of communication.

Access to the judge can also be achieved by using video-conferencing or telephone connections (also for the hearing of witnesses).

The health crisis has very clearly contributed, if not precipitated, to an unprecedented development of remote communication means. It is obvious to everyone that they have made it possible to pursue and carry out judicial activity, at least in priority cases and those that could be managed in this way (written procedures in particular).

However, it should be noted that remote means of communication are not the most accurate solution to any situation. Indeed, beyond the fact that file management by videoconferencing is often described as more stressful, some disputes cannot be dealt with in this way and require a physical appearance before a judge (e.g. hearings relating to urgent cases or those requiring complex methods of taking evidence). The question even arises as to whether all disputes should absolutely be handled by remote

communication means. Is the fundamental principle of access to the courts fully effective in the event of recourse to means of telecommunication? A corollary is the question of the office of the judge and the consent - or not - of the parties to the use of derogatory modalities, with the necessary review by higher courts.

Here, too, a fair balance should be struck between maximum efficiency in handling cases and safeguarding the essential principles of a fair trial.

In any case, fundamental rights and the principles of fair trial must be ensured (rights of defence, adversarial principle, publicity of hearings and/or decision), under the control of the judge and effective remedies.

Because of the deployment of information technologies, the protection of personal data should also be guaranteed.

5. Providing the courts with the necessary financial resources in order to have the right equipment for the crisis period: video-conferencing equipment, electronic filing of documents and electronic service provision, remote access to the network and to the files.

Health crisis increase inequalities and bring about profound social changes. The COVID-19 pandemic is both an indicator of the current level of use of new technologies in the courts and an accelerator that will make judicial systems switch to their massive use, subject to the points of vigilance expressed above.

All judicial professionals (judges and court clerks) and all judicial infrastructures must be equipped with sufficient teleworking or videoconferencing equipment.

However, beyond the provision of equipment, quality access to the jurisdiction's network and/or files should also be ensured, from a distance, for both legal professionals and litigants and their lawyers.

Experience has shown that the justice systems that are most advanced in the organization of remote work and in dematerialized management have been the best prepared to manage this crisis (receipt of files and documents by electronic means, scanning of proceedings, remote hearings, adapted methods of signing decisions and deliberations (see C and E)

The massive deployment of telecommunication means also makes the presence of a competent and available technical support service indispensable.

Therefore, the entire work organization should be rethought. The issue of digital and IT tools cannot be considered without fully integrating human resources management.

6. Ensure up-to-date and precise information for the public on 1° the regulations in force, 2° the practical rules of operation and organization of the court, as well as 3° information on the cases to be judged. Information on the list and contact details of all the services provided by the courts must be accurate and accessible.

Information could be given on the summons or via the official website (central or local) of the courts or the Ministry of Justice, which must be informed in real time, by posting at the entrance to the courts, by the media, by press releases, by law access points located outside the courts; by lawyers or bailiffs.

A telephone or e-mail enquiry service can also be set up.

In the same way, documents should be able to be filled in directly online or downloaded and returned electronically.

C. Open judiciary

- 7. In all circumstances, ensure the rapid and free publications of decisions. Inform the public continuously (online) about the functioning of the judiciary.**

Due to the restricted publicity, the modalities of deliberation have to be adapted: posting in a place of the court accessible to the public, delivery in writing and not delivered orally, publication on the website of the court or access via a digital link.

- 8. Allow access to courts and hearings to as many journalists as possible. Also ensure and allow public access to courts and hearings (adjacent rooms or online) as much as possible.**

Access of the public should be privileged, if necessary by prior registration.

Even if no country has systematic live media coverage of ongoing hearings, devices to record hearings, which can then be viewed on request, or to access hearings via a digital access link, or to broadcast hearings to adjacent rooms can be set up.

Press conferences may also be organized or press releases sent to the media.

D. Trust in the judiciary

- 9. It is the objective of the judiciary to fully ensure and to enhance the trust in the judiciary, both in normal times as in times of crisis. Therefore, it is necessary to agree on a specific communication strategy involving all stakeholders to enhance transparency and information on the functioning of the judicial system in times of crisis.**

E. Processing of cases

- 10. Setting up an action plan involving the courts to determine what cases are urgent and limit as much as possible the cases that needed to be suspended. Fair and objective criteria must be established, for the determination of an urgent case.**

A crisis, and a possible related reduction in the court's capacity, have an undeniable impact on the case handling.

However, it follows from the minimum standards already set out above that it is appropriate to limit as far as possible the nature and number of cases to be suspended in order to limit disruption, delays and therefore stocks and inequalities of citizens before the law.

Besides, it seems important to afford the local actors the possibility to adapt the modalities of the main guidelines taken, if any, by the higher levels.

In all cases, determining urgent cases, and/or cases with priority is a necessary and unavoidable element in the crisis policy.

Authorities involved in defining what cases should be considered as a priority differs from country to country.

In any cases, an action plan, with fair and objective criteria, can help courts setting up guidelines how to handle the determining of those urgent cases.

It can be reasonably assumed that cases related to minors, domestic violence, persons in detention, deportations, hospitalizations without consent are not suitable for suspension.

A case tracking system should be implemented.

11. Setting up an action plan to solve possible backlogs for both criminal and civil cases.

In a crisis situation and a sudden closure of courts, backlogs can occur. In order to reduce the amount of backlogs, or to handle backlogs after the crisis is over, an action plan with best practices and lessons learned, can help to organize courts.

As specific measures, can be cited e.g.:

- (1) increasing the budget for the appointment of judges;
- (2) extending the opening hours of courts;
- (3) continuing hearing cases during vacation / suspension periods
- (4) the reduction of the length of magistrates' holidays;
- (5) reducing the entry training courses for the judiciary;
- (6) reinstating retired judges temporarily;
- (7) looking at the use of non-court building in the future.

12. Ensure that courts have additional (technological) material and human resources whenever they are in need.

In case courts have to switch to online, or hybrid, solutions in order to ensure the continuity of legal processes, the technological material and infrastructure should be ensured. Procedures that had already been digitized or could be digitized were much easier to process, as opposed to "paper" procedures.

In addition, increasing funds for additional material and staff should be allocated (also see minimum standard n° 5 above).

13. Improve the training of judges and other courts' staff in new technologies.

New technologies are an integral part of the court processes. Not only in times of crisis, but also as part of the digitalization era, will courts reach out more to (partial) digital court hearings. Therefore, additional training for judges and court staff is desirable.

F. Coordination with other state powers and other actors of the judicial system

14. Communication and coordination between other state powers/different branches of government and other juridical actors needs to be ensured.

The judiciary, as a third state power, is independent and should remain independent, in relation to other state powers. The involvement of the other powers in times of crises is noticeable: crisis measures, emergency laws and opening and movement restrictions can be imposed by the legislative and executive power and directly affect the functioning of the judiciary. Imbalances between the different branches should always be avoided, both in times of crisis as in normal times. Maximum collaboration, consultation and coordination between all the state powers therefore is essential. Good communication between all state powers concerned should always be a key element.

15. Promote dialogue with stakeholders such as lawyers in order to implement the action plans, improve the working conditions and develop good practices.

Lawyers, bar associations, bailiffs and other legal professionals are essential stakeholders in the primary process: in their daily work, they are immediately affected by any changes in the judicial system, both on the legal level as on the organizational level. Legal professionals can come up with valuable insights due to the daily practice in the field. Involving those contributions in dialogues or any other mode of communication, can help with developing good practices. An effective primary process can thus be guaranteed.

Stakeholders are perfectly willing to be consulted. Experience has shown that good coordination and anticipation with the lawyers, for example, has enabled smooth exchanges and efficient organization, whereas, conversely, a lack of communication has caused, at the very least, practical difficulties or, much more problematically, difficulties in exercising their clients' rights.

G. Roles of the courts and the Councils for the judiciary

16. Judge's control over derogatory measures and compliance with international standards should be guaranteed.

Derogatory measures can severely affect the lives of civilians. Especially during times of crisis, the impact of certain (temporary) laws, states of emergency or limitations in free movement can be serious. Judges have the knowledge and authority to evaluate those measures and can decide if the measures taken are in compliance with international standards.

Therefore, as explained above (see minimum standard n°10), the courts have also a role to play in the preparation and the implementation of continuation plans.

17. In countries in which a Council for the Judiciary is established, the Council should be consulted on all matters concerning the judicial system in times of crisis as in normal times.

Councils for the Judiciary have often an advisory and/or coordinating role, depending on their constitutional or legal status in the respective country. Some of them have the overview of all matters concerning the judicial system. Therefore, the Councils should have a pivotal role in providing recommendations to courts, both in times of crisis as in normal times, and ensuring the continuity of the functioning of the courts and the judicial system in whole.

18. Build a strategy for future crisis situations in which good collaboration, prompt and efficient measures and a unitary evaluation are integrated. For this purpose, systematically collect and analyse information about court operations during and in the aftermath of a crisis in order to collect lessons learned.

Expect the unexpected. A crisis calls for immediate responses and a flexible attitude. Many analyses have been made in countries within as well as outside the EU where challenges, threats, lessons learned and best practices are collected. Certain developments, e.g. digitization procedures, went in general without much problems, whilst other situations needed more attention. A systematic collection and analysis of information, both during and after the crisis, can help to cluster the relevant information. When another challenging period occurs, information about previous pitfalls and lessons learned will be easy accessible.

ENCJ Minimum standards for guaranteeing access to justice in times of crisis

A. Exceptional legislation

1. Maintain the independence of the judiciary, the fundamental rights of litigants and the principles of transparency during times of crisis. The rule of law, legal certainty, access to justice, a judge and/or court, equality and proportionality should always be guaranteed.
2. In case of a state of emergency, a mechanism with a clear field and duration should be established, re-evaluated very regularly. Each measure taken during this state of emergency should be based on legal provisions. Derogatory measures should be circumscribed in time. Re-evaluation of the measures should be regularly installed.

B. Access and functioning of the courts

3. Access to justice is a fundamental principle of the rule of law. Therefore, maintaining the openness and security of the courts and giving priority to essential services and urgent cases should be maintained.
4. Guaranteeing effective access to a judge/the court for all litigants in a fair trial within a reasonable period of time. Ensure effective remedies. Maintain physical hearings as much as possible.
5. Providing the courts with the necessary financial resources in order to have the right equipment for the crisis period: video-conferencing equipment, electronic filing of documents and electronic service provision, remote access to the network and to the files.
6. Ensure up-to-date and precise information for the public on 1) the regulations in force, 2) the practical rules of operation and organization of the court, as well as 3) information on the cases to be judged. Information on the list and contact details of all the services provided by the courts must be accurate and accessible.

C. Open judiciary

7. In all circumstances, ensure the rapid and free publications of decisions. Inform the public continuously (online) about the functioning of the judiciary.
8. Allow access to courts and hearings to as many journalists as possible. Also ensure and allow public access to courts and hearings (adjacent rooms or online) as much as possible.

D. Trust in the judiciary

9. It is the objective of the judiciary to fully ensure and to enhance the trust in the judiciary, both in normal times as in times of crisis. Therefore, it is necessary to agree on a specific

communication strategy involving all stakeholders to enhance transparency and information on the functioning of the judicial system in times of crisis.

E. Processing of cases

10. Setting up an action plan involving the courts to determine what cases are urgent and limit as much as possible the cases that needed to be suspended. Fair and objective criteria should be established for the determination of an urgent case.
11. Setting up an action plan to solve possible backlogs for both criminal and civil cases.
12. Ensure that courts have additional (technological) material and human resources whenever they are in need.
13. Improve the training of judges and other courts' staff in new technologies.

F. Coordination with other state powers and other actors of the judicial system

14. Communication and coordination between other state powers/different branches of government and other juridical actors needs to be ensured.
15. Promote dialogue with stakeholders such as lawyers in order to implement the action plans, improve the working conditions and develop good practices.

G. Roles of the courts and the Councils for the Judiciary

16. Judge's control over derogatory measures and compliance with international standards should be guaranteed.
17. In countries in which a Council for the Judiciary is established, the Council should be consulted on all matters concerning the judicial system in times of crisis as in normal times.
18. Build a strategy for future crisis situations in which good collaboration, prompt and efficient measures and a unitary evaluation are integrated. For this purpose, systematically collect and analyse information about court operations during and in the aftermath of a crisis in order to collect lessons learned.

Annex 1: questionnaire



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

PROJECT 2 – EFFECTIVE REMEDIES IN TIMES OF EMERGENCY

QUESTIONNAIRE

Country:

Date:

Note : This questionnaire asks after practices that occurred during the COVID-19 pandemic in between the beginning of March until today, unless stated otherwise.

A. Exceptional legislation

1. During the corona crisis, has exceptional legislation been promulgated regarding the Judiciary?
2. If the answer is yes,
 - a) Was your Council consulted when the legislation was drafted?
 - b) What was the content of this legislation regarding the scope, its duration (limited or not), the existence of limits relating to the kind of measures?
 - c) Did it include specific procedural provisions relating to procedural deadlines or enforcement of decisions?
 - d) Were there any effective remedies against excessive emergency measures? If yes, what were they?
 - e) What was the impact of this legislation on the rule of law?
3. What are your wishes about the minimum standards to be expected in field A?

B. Access (from the perspective of court users) and functioning of the courts

1. Access to the courts: What were the measures taken by the courts, judicial authorities or other authorities from the beginning of the crisis affecting the access to justice? Please specify the measures and the roles of the different judicial authorities.
2. How did the measures evolve during the crisis? When and how were measures loosened up and to what extent? In case there were different periods, please indicate what they were. Are there still measures / restrictions affecting the functioning of the courts?

3. Functioning of the courts: which authorities are responsible for implementing these measures? In what form were they defined?
4. Please give details about the organisation of the information on the safety measures given to court users and the most vulnerable groups.
5. Participation of judicial staff in the functioning of the system: Were judges and other employees of the judiciary all working from home? Or partially? What kind of distinction was made? Please specify the criteria and whether there were different approaches? What difficulties were encountered?
6. The use of new technologies in the functioning of courts in times of crisis: As teleworking and remote communication have developed, could you elaborate on what kind of remote communications your judiciary is using?
7. What has been the impact of the increase of remote communications for your judiciary? What lessons can be learned in positive and negative terms?
8. Did the corona pandemic cause financial difficulties for your judiciary? Please explain
9. Does your judiciary have a plan of action in case the situation gets so bad that courts have to be closed altogether? If so, please explain
10. What are your wishes about the minimum standards to be expected in field B?

C. Open judiciary (transparency about the functioning of the judiciary to the general public)

1. In what way are you securing the public access to the judiciary? For example, has it been possible for the general public to attend hearings in any way? Did the measures changed over time?
2. What is the role of the media in relation to the public access of the judiciary? For example, can journalist attend hearings? Did the measures changed over time?
3. Have you gained experience with the live streaming of hearings, and if so, which programme was used and in what type of cases? What are the lessons learned?
4. In general, how did you try to maintain public access and transparency of the judiciary in times of corona? What would be your idea on this regarding future crises?
5. What are your wishes about the minimum standards to be expected in field C?

D. Trust in the judiciary

1. Do you have an indication if the trust by society in the judiciary has been affected by the corona crisis? If so, please elaborate.

E. Processing of cases

1. Did the courts define urgent cases to be handled with priority? If so, how were the priorities defined? Which judicial authorities were involved?
2. Did the courts define what cases to suspend? If so, which cases and how was it decided? Which judicial authorities were involved?
3. How were the hearings that did take place organised? Please give details about the organisation in the courts or the use of new technologies.
4. Monitoring of the performance of the courts: have there been any particular requirements compared to the usual monitoring?

5. Innovative practices: has the crisis helped to identify innovative practices that could be continued in normal times?
6. Measures taken to reduce delays after the crisis: have plans been adopted to reduce delays? If yes, please explain
7. Have new resources been allocated (financial, human resources or other)? Have some resources been taken away (from judiciary and/or council)?
8. Backlogs: Do you have information on how many backlogs the corona crisis has caused? Are discussions about backlogs in your country focused on all case types (civil cases, administrative cases and criminal cases) in equal measure?
9. What are your wishes about the minimum standards to be expected in field E?

F. Coordination with other state powers and other actors of the judicial system

1. How were the legislative and executive powers involved in the process and/or what was their reaction to the measures?
2. Did the corona crisis affect the separation of powers in your country? If so, please describe in what way.
3. How were other stakeholders (in particular lawyers but not only: other legal professionals, investigation services, social services, mediators, experts, etc.) involved in the process and/or what was their reaction to the measures?
4. What are your wishes about the minimum standards to be expected in field F?

G. Roles of the Council, the courts and the Supreme Court

1. If you have a Council for the Judiciary, did it play a role during the crisis? If so, please elaborate.
2. Did the courts play a role during the crisis? If so, please elaborate
3. Did the Supreme court play a specific role in the crisis? If so, please elaborate
4. What specific role should the Council, the courts and the Supreme courts play in a period of crisis as opposed to a period of normal operation of the judicial system?
5. What are your wishes about the minimum standards to be expected in field G?

H. Lessons to be learned and outlook for the future

1. In your country, are there other themes for the judiciary - if not yet mentioned, that are topic of conversation in dealing with the corona crisis?
2. Could you elaborate on lessons learned from the specific measures for the judiciary taken in your country? What are the particular do's and don'ts in a future crisis regarding the topics mentioned above?

Annex 2 : synthesis of the results of the questionnaires

PROJECT 2 – EFFECTIVE REMEDIES IN TIMES OF EMERGENCY

QUESTIONNAIRE

Countries: Hungary; Ireland; Italy (CPGA); Lithuania; Portugal; Romania; Slovenia; France; England and Wales, Norway; Netherlands; Spain; Austria, Bulgaria, Latvia

Date: February 8th 2021

Note : This questionnaire asks after practices that occurred during the COVID-19 pandemic in between the beginning of March until today, unless stated otherwise

A. Exceptional legislation

1. During the corona crisis, has exceptional legislation been promulgated regarding the Judiciary?

SUMMARY: Almost all countries have enacted exceptional legislation.

2. If the answer is yes,

a) *Was your Council consulted when the legislation was drafted?*

SUMMARY: More than half of the Councils were consulted, with some even playing a fairly active role, either on all subjects or only partially. One spontaneously sent its observations to Parliament. One country has no Council.

b) *What was the content of this legislation regarding the scope, its duration (limited or not), the existence of limits relating to the kind of measures?*

SUMMARY A. 2 (b) (c): Almost all countries have adopted :

-a derogatory regime of suspension and extension of procedural and prescription periods, both in civil and criminal matters ; two countries do not report any change in time limits in order not to delay the course of justice;

- a distinction between urgent cases (generally relating to minors, domestic violence, persons in detention, deportations, hospitalisations without consent) and non-urgent cases, which are generally postponed or not given priority; some have also made a distinction between ongoing or new cases (see below B.1). For one of the countries which did not introduce a specific provision on procedural time limits, an urgent case was understood from the outset to mean cases where a decision could not be postponed without affecting the legal rights of a suspect or litigant ;

-exceptional procedures for the taking of evidence, favouring written and/or electronic means of communication;

- have made use of videoconferencing or telephone connections (also for the hearing of witnesses); have replaced collegial hearings with single-judge hearings or even replaced oral hearings with a written process or out of the presence of the parties;
- have limited access to the courts only to the parties appearing before them. Because of the restricted publicity, the modalities of deliberation have been adapted: posting in a place of the court accessible to the public, delivery in writing and not delivered orally; publication on the website of the court;
- redirection of proceedings other than by prosecution at the hearing; (depending on the seriousness of the cases and/or the fact that the person prosecuted acknowledges the facts).

Some have also organised transfers of files between courts.

On the other hand, the question of the judge's office and the consent - or not - of the parties to the use of derogatory modalities, in particular videoconferencing, remains varied.

- c) *Did it include specific procedural provisions relating to procedural deadlines or enforcement of decisions?*

SUMMARY: see b)

- d) *Were there any effective remedies against excessive emergency measures? If yes, what were they?*

SUMMARY: The majority of countries indicate that they have not had any particular recourse against excessive emergency measures, except those already existing in ordinary law, but an exhaustive reading of the questionnaires as a whole does not report the denunciation of particular abuses.

- e) *What was the impact of this legislation on the rule of law?*

SUMMARY: Returns are contrasted: for some, this legislation has been a source of delays in the processing of cases, with access to justice and the courts made more difficult; for others, it has enabled a new organisation of judicial work to be put in place. In general, the balance of power and the principles of the rule of law have been maintained and respected.

3. What are your wishes about the minimum standards to be expected in field A?

SUMMARY :

- Consult the Council for the Judiciary on matters concerning the judicial system; but also all judicial authorities and representatives of legal professionals;
- Each measure must be based on a legal provision;
- Frame the state of emergency mechanism (fields/duration, etc.), which must respect the rule of law and comply with the principles of equality, legal certainty and proportionality; to re-evaluate it very regularly in order to determine the need to extend and/or modify it;
- Circumscribe derogatory measures in time;
- Maintain the independence of the judiciary, all the fundamental rights of litigants and the principles of transparency;
- Maintain access to the judge or even the court;
- Ensure the management and handling of emergencies;
- Equipping courts and staff with computer/digital equipment (see also below);

B. Access (from the perspective of court users) and functioning of the courts

1. Access to the courts: What were the measures taken by the courts, judicial authorities or other authorities from the beginning of the crisis affecting the access to justice? Please specify the measures and the roles of the different judicial authorities.

SUMMARY (to be linked to that of A.2. b) c) : Most countries have very severely restricted physical access to their courts. For some, the organisation took time to set up and was gradually refined/adapted.

Generally speaking, only parties directly concerned by a case (usually urgent litigation) are allowed to enter.

Hearings have been scheduled in a staggered manner or with the provision of several rooms, arranged accordingly (rooms for hearings, meetings, the lobby, waiting rooms...); sometimes outside: universities or other public buildings, conference rooms in hotels, etc..

Exceptional formalities have been provided for the signature of decisions: either electronically or, in the case of collective signatures, the signature of the other judges may be replaced by a declaration by the judge confirming the other judges' vote of conformity.

For persons not directly concerned by the judgment of a case, information and details were either delivered remotely, by telephone, e-mail or via the court's website, or, physically but according to a strict protocol of social distancing, health measures, generally with prior appointment.

2. How did the measures evolve during the crisis? When and how were measures loosened up and to what extent? In case there were different periods, please indicate what they were. Are there still measures / restrictions affecting the functioning of the courts?

SUMMARY: It should be noted that the restrictive measures in terms of access to the courts and the handling of priority cases, which were very strict at the beginning, have been gradually eased to allow physical access to the courts again, with public access, but also to resume the management of pending cases.

3. Functioning of the courts: which authorities are responsible for implementing these measures? In what form were they defined ?

SUMMARY: in almost all cases, it is up to the heads of courts, of varying degrees, to implement at local level (ideally, in conjunction with the magistrates of the jurisdiction) the concrete and practical organisational and operational measures enacted at central level.

4. Please give details about the organisation of the information on the safety measures given to court users and the most vulnerable groups.

SUMMARY: Information was given on the summons or via the official website (central or local) of the courts or the Ministry of Justice, which must be informed in real time, by posting at the entrance to the courts, by the media, by press releases, by law access points located outside the courts; by lawyers or bailiffs.

5. Participation of judicial staff in the functioning of the system: Were judges and other employees of the judiciary all working from home? Or partially? What kind of distinction was

made? Please specify the criteria and whether there were different approaches? What difficulties were encountered?

SUMMARY:

- While the use of teleworking has been massive for all the countries, there is a clear difference in the staffing of their respective personnel (some being already well endowed beforehand or having quickly managed to cope with it, unlike others), and even more so between magistrates and clerks;
- In addition to the problems of insufficient equipment, difficulties in connecting or accessing remote access (both for judicial personnel and lawyers or litigants) to the network or to files are often expressed;
- Procedures that had already been digitised or could be digitised were much easier to process, as opposed to "paper" procedures;
- For the management of cases in court, the courts have generally organised a turnover of teams;
- As soon as judicial activity resumes, some countries also report a reduction in judicial leave;
- One country refers to the temporary reinstatement of retired judges and another to the use of trainee registrars to carry out replacement or reinforcement functions;

6. The use of new technologies in the functioning of courts in times of crisis: As teleworking and remote communication have developed, could you elaborate on what kind of remote communications your judiciary is using?

SUMMARY: see point B. 7.

7. What has been the impact of the increase of remote communications for your judiciary? What lessons can be learned in positive and negative terms?

SUMMARY:

The health crisis has very clearly allowed, if not precipitated, an unprecedented development of remote communication means. It is undeniable that they have made it possible to pursue and carry out judicial activity, at least in priority cases and those that could be managed in this way (written procedures in particular).

However, apart from the material and technical problems mentioned above (B.5), it must be said that not everything can be solved by remote means of communication. Indeed, beyond the fact that file management by videoconferencing is described by some as more stressful, some disputes cannot be dealt with in this way and require a physical appearance before a judge (e.g. hearings relating to urgent cases or those requiring complex methods of taking evidence). The question even arises as to whether all disputes must absolutely be handled by remote communication means. Is the fundamental principle of access to the courts fully effective in the event of recourse to means of telecommunication? A corollary is the question of the office of the judge and the consent of the parties in this matter, with the necessary review by higher courts.

Because of these modes of communication, it was also reported that the management of relations with lawyers is more delicate, both in terms of technical issues (connections, access) but also from the point of view of the rights of the defence, which are more complex to ensure. Relations between judicial staff (between judges or between judges and registrars or other interlocutors) have not always been easy. A reduction in social and personal links is also regretted.

One country has experienced a twofold phenomenon head-on: the fact that remote management of certain disputes was either impossible (for specific criminal trials) or did not prove appropriate (in family matters in particular), which a better progressive organisation has enabled it to manage again via physical hearings, notwithstanding the very significant delays accumulated; at the same time, it

has experimented and will continue to experiment with increased use of telecommunications for the disputes that lend themselves to it.

8. Did the corona pandemic cause financial difficulties for your judiciary? Please explain

SUMMARY: Almost all countries do not report major financial difficulties. If there is a need for a budget to be guaranteed or even increased, the public authorities have provided for it.

9. Does your judiciary have a plan of action in case the situation gets so bad that courts have to be closed altogether? If so, please explain

SUMMARY: Although most countries do not have a definite plan in place in the event of a total closure of the courts, they are all very vigilant about how the situation develops and already have the means to deal with a more severe crisis, the idea being to allow maximum continuity of the justice service and to avoid any complete and total closure.

10. What are your wishes about the minimum standards to be expected in field B?

SUMMARY: Guarantee the continuity of the functioning of justice by:

- maintaining the openness and security of the courts, giving priority to essential services and urgent cases because access to justice is a fundamental principle of the rule of law;
- guaranteeing effective access to the judge for all litigants in a fair trial within a reasonable period of time;
- ensuring effective remedies;
- providing all staff with sufficient equipment and efficient remote access to the network and files;
- equipping the courts with sufficient rooms and video-conferencing equipment ; ensure the secure transmission of confidential or sensitive information ; develop the possibilities of electronic filing of documents and electronic service provision; develop remote access to the file for the parties and their lawyers in order to consult its file, to carry out procedural actions or to receive notifications or convocations;
- processing the digitisation of proceedings;
- ensure, in real time, precise information for the public on the regulations in force, the practical rules of operation and organisation of the court, as well as on the cases to be judged. Information on the list and contact details of all the services provided by the courts must be accurate and accessible.

C. Open judiciary (transparency about the functioning of the judiciary to the general public)

1. In what way are you securing the public access to the judiciary? For example, has it been possible for the general public to attend hearings in any way? Did the measures changed over time?

SUMMARY: At the height of the health crisis, all countries experienced restrictive measures aimed at public access, either by prohibition or restricted access or, in the latter case, subject to compliance with a drastic health protocol and/or prior registration.

Devices for recording hearings, which can then be consulted on request or access via a digital access link to hearings or for retransmitting hearings in adjacent rooms, have been set up.

As a reminder, in view of these restricted modes of publicity, the procedures for stating the deliberations have been adapted: see summary A. 2. b).

2. What is the role of the media in relation to the public access of the judiciary? For example, can journalist attend hearings? Did the measures changed over time?

SUMMARY: All the countries endeavoured to maintain access, sometimes privileged, to journalists. However, these ones were generally subject to the same rules as the general public as regards the maximum number of persons authorised or had to request a prior request. Five countries reported on the possibility of attending hearings remotely, with access to the connection links of the case when they requested it. One country reports that a case of public interest could be followed via the court's Youtube channel. Conferences were also held or press releases were sent to the media.

3. Have you gained experience with the live streaming of hearings, and if so, which programme was used and in what type of cases? What are the lessons learned?

SUMMARY: No country has systematic live media coverage of ongoing hearings, but some do so on a residual basis, especially when the case is of major interest to the general public. Some have expressed the wish to do so or think it is inevitable.

4. In general, how did you try to maintain public access and transparency of the judiciary in times of corona? What would be your idea on this regarding future crises?

SUMMARY: Various means have been used to maintain public access and transparency of the judicial system: in the event of exclusion of the public, possibility for the defendant or his lawyer to record the hearing by his own means; access via a digital audience access link or a remote access platform ; facilitating access for the press; wish to achieve live broadcasting of hearings in the media; press releases; press conferences; replies to journalists; access to anonymised final decisions via an electronic database; special arrangements for disseminating the deliberations already mentioned; information provided by the courts' websites and social networks, in particular with regard to cases likely to be of collective interest.

One country explains that, far from limiting public access and the transparency of the work of the courts, the crisis has led to a deployment of their media presence and exceptional interest in their Facebook profile.

5. What are your wishes about the minimum standards to be expected in field C ?

-SUMMARY:

-Privileged public access and, in the event of manifest impossibility, allow the public to follow hearings in an adjacent room or on the court's website for example (live or deferred if the hearing is recorded);

-allow access to as many journalists as possible;

-to allow the rapid and free publication of decisions;

-inform the public continuously about the functioning of justice (websites, Twitter accounts, etc.).

D. Trust in the judiciary

1. Do you have an indication if the trust by society in the judiciary has been affected by the corona crisis? If so, please elaborate.

SUMMARY: No country mentions any major or lasting attacks on citizens' confidence in their judicial system in connection with the coronavirus crisis.

E. Processing of cases

1. Did the courts define urgent cases to be handled with priority? If so, how were the priorities defined? Which judicial authorities were involved?

SUMMARY: The majority of countries defined urgent cases during the corona pandemic (see **A. 2 (b) (c)**). Not all countries changed their policy towards defining priority cases: some countries already had a policy regarding prioritizing cases or did not have priority cases.

Authorities involved in defining what cases have priority, differs per country. In some countries the law defines, what cases should be handled with priority. In other countries, the judiciary/courts (of appeal) decided the priority cases, whilst in other countries the councils for the judiciary had a coordinating roll.

2. Did the courts define what cases to suspend? If so, which cases and how was it decided? Which judicial authorities were involved?

SUMMARY: The suspension of cases is and was in many countries equal to the policy regarding defining priority cases. Cf. E.1.

3. How were the hearings that did take place organised? Please give details about the organisation in the courts or the use of new technologies.

SUMMARY: Almost all countries indicated using video conferences / digital hearings / remote tools where possible during the corona crisis (see SUMMARIES B.5 et B.7.). In urgent cases, in person and physical meetings were organised with all the necessary precaution measures: maintaining distance between people in court rooms, disinfection of desks, wearing mouth masks, ventilation (see **SUMMARY B.1. to be linked to that of A.2. b) c)**). A single country added that they had fewer hearings than during pre-corona times.

4. Monitoring of the performance of the courts: have there been any particular requirements compared to the usual monitoring?

SUMMARY: Half of the countries had a monitoring body installed, had an evaluation or a permanent review regarding the courts performances or shared best practices among courts during times of crises. The other half did not have any (extra) monitoring during the corona pandemic.

5. Innovative practices: has the crisis helped to identify innovative practices that could be continued in normal times?

SUMMARY: Almost all countries pointed out that there were already digitalization innovations on the table, but due to the corona crisis online activities accelerated, e.g. remote meetings, secured e-mail, online hearings.

6. Measures taken to reduce delays after the crisis: have plans been adopted to reduce delays? If yes, please explain

SUMMARY: Countries took different measures to reduce delays after the corona crisis. Some countries had extensive plans, whilst other countries had a couple of specific measures to deal with possible delays.

Countries also came up with specific measures to reduce delays, e.g.:

- (1) the reduction of the length of magistrates' holidays;
- (2) continuing hearing cases during vacation / suspension periods
- (3) reducing the entry training courses for the judiciary;
- (4) increasing the budget for the appointment of judges;
- (5) reinstating retired judges temporarily;
- (6) extending the opening hours of courts;
- (7) looking at the use of non-court building in the future.

A minority of countries did not expect significant backlogs from the first wave.

7. Have new resources been allocated (financial, human resources or other)? Have some resources been taken away (from judiciary and/or council)

SUMMARY: The majority of countries had new resources allocated. More than half of the countries received increased funds for technology implementation; some countries also had a (temporary) increase in personnel. In only few countries, no new resources were allocated.

8. Backlogs: Do you have information on how many backlogs the corona crisis has caused? Are discussions about backlogs in your country focused on all case types (civil cases, administrative cases and criminal cases) in equal measure?

SUMMARY: The information regarding backlogs is fragmented.

Half of the countries replied that there was no exact information on backlogs, that this information will only be available at the end of 2020 or the beginning of 2021. As mentioned earlier few countries did not experience backlogs.

Countries that did experience backlogs came up with different numbers. Some countries experienced a major decrease (more than 30%) of judicial body activity, other countries only had a small increase (around 10%) of cases compared to earlier in 2020.

Most affected cases by backlogs are criminal cases.

9. What are your wishes about the minimum standards to be expected in field E?

SUMMARY:

-Determine but limit as far as possible the nature of the cases to be suspended in order to limit disruption, delays and therefore stocks as much as possible;

-Setting up an action plan (adopted by the Council for the Judiciary) to solve backlogs should be binding for the Ministry of Justice;

-Create new courts;

-Consult the Council for the Judiciary in case of legal amendments to procedural rules;

-Each judicial system should create a structure to establish case management methodologies, including related standards for (average) case duration for specific categories of cases/jurisdictions.

These structures should be led by judges and allow for discussion with stakeholders such as lawyers;

- Making an inventory of good practices in courts so this can be generalised;
- Timely provide up-to-date online information by all courts regarding any change in the organisation, also concerning adjourned cases;
- Treat all litigants and citizens on the territory equally;
- Give the courts additional material and human resources so that delays in the processing of cases caused by the health crisis can be reduced;
- Improve the training of judges in new technologies.

F. Coordination with other state powers and other actors of the judicial system

1. How were the legislative and executive powers involved in the process and/or what was their reaction to the measures?

SUMMARY: In three countries all state powers were involved from which in one country, there was maximum collaboration and coordination with other administrations and institutions.

Consultation with the Ministry of Justice was common in three countries, also concerning the implementation of business continuity plans for the courts. One country pointed out there was coordination between the President of the Supreme Court and the Ministry regarding the adoption of decrees.

In one country, the courts handled the processes themselves, whilst in another country only the powers other than the judiciary are able to provide for exceptional trial rules. One country stated that other powers were only involved to a limited extent.

2. Did the corona crisis affect the separation of powers in your country? If so, please describe in what way.

SUMMARY: Almost no countries considered that the crisis had an effect upon the separation of powers. Some countries pointed out some concerns about government restrictions, risks or examples of conflict, but did not explicitly mention that the separation of powers was affected.

3. How were other stakeholders (in particular lawyers but not only: other legal professionals, investigation services, social services, mediators, experts, etc.) involved in the process and/or what was their reaction to the measures?

SUMMARY: The overall image is very fragmented. The role of other legal stakeholders differs in each country. Most countries indicated that there was a consulting role of legal professional. Some countries pointed out that consultation was mainly on draft laws, whilst in another country different actors (from Public Prosecution to Bar Associations and bailiffs) were involved in the decision making process. In another country, only (chief) representatives had a consulting role or even had a seat in the Council for the Judiciary, which made the direct raising of concerns easy. In a single country, no joint involvement of entities was organised.

Three countries specifically highlighted the adequately response to the crisis measures among legal practitioners in their country. In addition, (practical) problems occurred in the countries among legal practitioners regarding the corona measures taken. Examples given are (1) mandatory presence of lawyers in court and therefore not being able to be in different courts at the same day, or the other way around by (2) not being allowed to enter courts as a lawyer due to entrance restrictions. Also

mentioned is (3) a short response period and organization of time frames when it comes to hearings and (4) delays in the court processes.

4. What are your wishes about the minimum standards to be expected in field F?

SUMMARY :

- Communication and coordination between the different branches of government and all other actors in the judicial system;
- Preservation of the prerogatives of each power (legislative, executive, judicial) and therefore a limitation in time of the exorbitant powers entrusted to one of them;
- Maintenance of the service of justice and access to the judge (Prioritize access to justice of critical and essential court services) and control by the judge (Uphold effective remedies in order to assure the rule of law in case of the abuse of powers);
- Respect the same safeguards during a pandemic/crisis situation as during normal times. The judiciary decides on the continuation of hearings and cases; -consultation or even closer cooperation with the other actors of the justice system on the modalities or rules of operation/organisation to be adapted or adopted; Institutionalize the court's dialogue with lawyers, bailiffs and legal professionals in order to improve working conditions;

G. Roles of the Council, the courts and the Supreme Court

1. If you have a Council for the Judiciary, did it play a role during the crisis? If so, please elaborate.

SUMMARY: Almost all countries pointed out that there was a role for their Council, but it differs per country what the exact role is. In four countries, the Council played a coordinating role from which one country indicated that its Council took a very proactive role in guaranteeing the functioning of essential services.

In three countries, the Council mainly executed its advisory role, provided recommendations towards the courts and ensured the continuity of the functioning of the courts. In some countries, the Council also initiated legislative amendments regarding the organisation of oral hearings or carried out its full tasks of appointing judges and prosecutors, also during the crisis.

Two countries pointed out that the Council has not been directly involved in the main planning for response and recovery or that the involvement of the Council during the pandemic overall was limited.

One country does not have a Council for the Judiciary.

+ see SUMMARY A.2.

2. Did the courts play a role during the crisis? If so, please elaborate

SUMMARY: In most of the countries, the courts had a role, but the specifics of this role differ. Where in some countries courts undertook concrete organizational measures by e.g. drawing and implementing business continuity plans, courts in other countries contributed as a consulting body or as part of a representation in working groups.

Only in few countries, the courts did not have a special role.

3. Did the Supreme court play a specific role in the crisis? If so, please elaborate

SUMMARY: In the majority of countries, there was no specific role for the Supreme Court. Only few examples were given on actions of the Supreme Court, e.g. sharing of best practices with other courts or organising the distribution of protective gears (masks, hand sanitizers) to the courts.

4. What specific role should the Council, the courts and the Supreme courts play in a period of crisis as opposed to a period of normal operation of the judicial system?

SUMMARY: All countries underlined the importance of good coordination and sharing good practices from judicial bodies, but did not always divided tasks per judicial body.

The general image is that the Councils for the Judiciary have a role of setting general guidelines and recommendations to approach crisis situations and measures to be taken. The Councils should also guarantee the functioning of courts and essential services in state of alarm. Taking into account all the safety measures and ensuring the protection of health of judges is mentioned as well as a Council task during periods of crisis. In addition, delivering practical solutions and proving necessary resources (e.g. financial, technical, personnel) and taking care of administrative matters to ensure the courts to function well are tasks the Councils could take on.

Regarding courts and their presidents, countries point out that they should make sure all necessary safety measures are taken in order for courts to be open and accessible and to function well, also in times of crisis.

Supreme Courts should share best practices. Also a legal role by monitoring the proportionality and derogatory legislative measures to ensure respect for fundamental rights and freedoms and also being involved in legislation should be a task of Supreme Courts during times of crisis.

5. What are your wishes about the minimum standards to be expected in field G?

SUMMARY: all the countries wish to give a privileged place to the Councils and, therefore, are campaigning for:

- build a strategy for future crisis situations in which good collaboration, prompt and efficient measures and a unitary evaluation are integrated;
- respect the principle of subsidiarity so the functioning of the justice system is guaranteed;
- strengthen the role of the Council for the Judiciary and the coordination of all judicial authorities with the Council.
- essential consultation between the various decision-makers, at central and local level, in order to assess the situation in real time and be able to take appropriate measures;
- appropriate communication by decision-makers in order to provide the public and the public with rapid, clear and precise information;
- in all cases, that all judicial authorities contribute to guaranteeing minimum standards but also guarantee the judge's control over the proportionality of derogatory legislative measures and compliance with international standards.

H. Lessons to be learned and outlook for the future

1. In your country, are there other themes for the judiciary - if not yet mentioned, that are topic of conversation in dealing with the corona crisis?

SUMMARY: the majority of countries do not raise any new issues under debate, related to the judicial system and the Covid crisis. Only one country mentions the possibility of maintaining, in ordinary times, exceptional measures, such as [such as the massive/systematic use of] remote video or telephone hearings.

2. Could you elaborate on lessons learned from the specific measures for the judiciary taken in your country? What are the particular do's and don'ts in a future crisis regarding the topics mentioned above?

SUMMARY:

-Setting up an evaluation, sharing best practices, that may result in a strategy that will be applicable to any future crisis situation;

-Ensuring good coordination of all the powers concerned;

-Prevent the exceptional measures that are taken from leading to a total stoppage in the functioning of the courts;

-Preventing taking exceptional measures that totally halt the functioning of the courts;

-Maintain physical hearings as far as possible to allow the litigant to "meet" his judge; need to maintain a link between the judge and the litigant but also between the judicial actors themselves;

-Not only focusing on backlogs concerning criminal cases, but also regarding civil cases;

-Guarantee, in all cases, the right of access to the judge and the principles of a fair trial, whether a telecommunications system is used, single-judge hearings instead of collegial hearings or exclusively written procedures (rights of defence, adversarial principle, public hearings and/or the decision handed down);

-Ensure, in real time, precise information for the public on the regulations in force, the practical rules of operation and organisation of the court, as well as on the cases to be judged;

- Guarantee sanitary conditions to protect judicial personnel;

-The development and implementation of remote working practices was key to keep cases going during the pandemic;

- Increasing material and human resources to increase and improve the IT tools of the judicial system, the digitisation of procedures ; ensuring, where possible and desirable, the continued processing of cases via certain remote telecommunication methods, a source of efficiency and cost reduction; develop the possibilities of electronic filing of documents and electronic service provision; develop remote access to the file for the parties and their lawyers;

-There is a need for a better developed digital infrastructure in order to prevent telecommunication systems to dysfunction when they are needed (for e.g. hearings);

- To institutionalise a dialogue between the courts and the various partners of the justice system (lawyers, but also bailiffs and other professionals) in order to establish shared good practices; consultation and coordination;

- To develop a culture of amicable conflict resolution among lawyers and litigants;

-The importance of personal contact in the judicial dimension should always be underlined, and not be neglected. Remote hearings are a useful tool, but not always the answer to every problem.