

SLOVENIAN BAR ASSOCIATION

THE IMPACT OF COVID-19 ON THE FUNCTIONING OF JUSTICE

Safety measures

Generic safety measures are implemented in our respective (civil, commercial, criminal, administrative) courts and tribunals regarding court hearings and proceedings. Clients and lawyers must take preventive health measures as recommended by the National Institute of Public Health (NIPH). They must follow the instructions of the security service or the police officers at the entrance to the court building. The body temperature of the participants is measured at the entry points in the courts. The safety distance rule of 1,5 meter must be observed. It is mandatory to wear protective masks. People who have been tested positively for the virus and also those showing clear signs of respiratory infection (coughing, sneezing, shortness of breath) are not allowed to enter the courts.

There must be ensured the smooth operation of the courts, the reduction of the number of contacts between clients and employees, and the self-protective behavior of each individual. Lawyers are expected to make an appointment by email or telephone in advance for insight in the file.

In September 2020, the Bar Association of Slovenia drew the attention of lawyers to the observations of lawyers regarding inadequate provision of security measures to prevent coronavirus in courts (especially in courtrooms). There are inconsistent court proceedings in case of ill health of a lawyer with signs of coronavirus infection and consequent inability to appear to court, in the case of a quarantine ordered to a lawyer or in the case of a confirmed infection of a lawyer with coronavirus.

Problem in communication

During the first wave of epidemic (March-June), there was a problem in communication regarding hearings between the Supreme Court and other courts. As a result, the attorneys did not have clear information. In the Decree, issued by the President of the Supreme Court, it was written that all hearings are canceled. Some courts took the Decree as an act by which all hearings were canceled, while other courts took the Decree as the legal basis on which the hearings are canceled, and they individually canceled hearings. It was thus not clear to the attorneys whether they had to receive a cancellation of a hearing from a particular judge or they should follow the Decree of the President of the Supreme Court.

The scope of the courts' operations

During the first wave of epidemic, according to the Decree, issued in March by the President of the Supreme Court of the Republic of Slovenia, only urgent matters were carried out. Criminal cases and certain civil matters were determined as urgent matters and hearings were conducted either in court buildings or by videoconference. In non-urgent civil cases, where hearings have been canceled, the judges and attorneys now endeavors to reduce the backlog of cases due to the epidemic.

Now, in second wave, courts conduct hearings and other procedural acts, take decision, serve court documents in all cases, in accordance with the restrictions.

Increase of workload in the judiciary

There is a severe increase of workload in the judiciary as a consequence of COVID-19 and the confinement during the first wave. With the 1 June, the courts began to function normally, however, there are problems in providing adequate courtrooms, as basic measures to prevent infections must be provided (wearing protective masks, disinfecting hands and courtrooms, maintaining a safe distance between people, which is a meter and a half). Problems are in the criminal and family matters, as hearings are held with a larger number of participants and there are not enough suitable courtrooms.

Videoconferencing

Especially in urgent matters the normal functioning of the courts and the smooth running of proceedings must have been ensured. In the first wave of epidemic it was necessary to establish technical possibilities for the participation at the videoconference. Videoconferencing reduces the risk of infection for participants in the process. The Bar has been very persistent in demanding that urgent matters should be held via videoconference. The courts were already equipped with basic conferencing equipment and software. Options for wider use of videoconferencing is being explored. The video conferencing was recommended where possible, however, it is still up to the individual judge to decide how to hold hearings.

In September 2020, the High Court issued a decision regarding the use of new technical means in proceedings under the Mental Health Act. The decision is that it is permissible and constitutionally compliant in the given circumstances (epidemic of an infectious disease) to conduct a hearing by videoconference or even by audio communication only.

Public health and safety in conflict with personal privacy and individual human rights

During the first wave, there was a conflict between public health and personal privacy and individual human rights. In order to protect the health of participants in the courts, it was initially ordered that only urgent matters are carried out. The Bar's opinion was that it is contrary to the foundations of the constitutional regulation of the Republic of Slovenia, and disproportionately interferes with the Rule of Law. Due to the almost complete courts shutdown, we risk the collapse of the rule of law.

Judicial holidays

Due to epidemic Ministry of Justice has decided to shorten judicial holidays (in summer) which were two weeks instead of one month. Most attorneys disagreed with the change. Despite the unfavorable situation for attorneys and the fear that they could be without income for several months, the results of a survey prepared by the Slovenian Bar Association for its members showed that attorneys mostly believed that there was no need to shorten judicial holidays. Most attorneys had been working during the measures (from 16 March onwards) and that time did not constitute leave which they could take (merely) during the judicial holidays. However, the most important reason for maintaining a judicial holiday was the legal certainty of the parties. Judicial holidays are usually set for the second half of July and the first half of August, because this is the time when the largest number of people are not at their (permanent) address due to annual leave or school holidays. The shortening of judicial leave was therefore primarily to the detriment and not to the benefit of the parties, as the parties had to adjust their leave to this regime or many clients, witnesses and experts was simply not available at that time due to leave. This led to a number of postponements of hearings, which created uncertainty for the parties and rose the question of the effectiveness or reasonableness of this measure.

Remuneration for legal aid

During the first wave of epidemic several attorneys from different parts of the country has pointed out that invoices issued to the state for already provided legal services (free legal aid, ex offo, according to Mental Health Act) were not paid within the 30-day legal deadline. In this regard, the Bar addressed a letter to the Government, Ministry of Justice, Ministry of Finance and Supreme court. The response of the President of the Supreme Court was that, given the current exceptional situation, the presence of court staff (including in the financial and accounting services) was very limited in the courts. Their efforts with the available staff was primarily aimed at ensuring the regular operation of the courts in urgent cases as defined by law. In our opinion, the government's measures did not interfere in any way with the obligation to pay the already incurred

obligations of the state within the legally prescribed deadlines, so there were no reasons to justify delays in these payments. Some attorneys mainly provide legal services for the most vulnerable groups of people, and their remuneration depends on the payments of the state.

Ljubljana, 23 October 2020