

## **Questionnaire: The impact of the COVID-19 pandemic on the administration of justice and the free and independent exercise of the legal profession**

**1.** The government of Finland announced the limitations for gatherings of people, travelling, closing of public buildings etc. few days after the pandemic was declared by WHO 11<sup>th</sup> March 2020. Soon after that, the courts started to cancel their sessions and only urgent cases such as criminal cases with defendant, who is taken into custody, were handled. Some district courts canceled all other cases until the beginning of June 2020. Some district courts canceled sessions only few weeks in advance and therefore the pause became shorter compared to the other district courts.

National Courts Administration gave instructions for the court practices already in March 2020, but the instructions were only recommendations, not binding rules for the courts. At the courts the decisions of timetables and postponing the sessions were made by the judges responsible of individual cases.

**2.** The measures adopted were based on instructions by National Courts Administration and permanent procedural legislation. In Finland, the emergency legislation did not concern the court activities.

**3. (a)** The courts remained open, but only urgent cases were handled between 15<sup>th</sup> March and 15<sup>th</sup> May 2020. In some courts the pause was even longer. The administrative courts, supreme courts and special courts could continue their activities normally, since the cases usually do not need an oral hearing in those courts.

**(b)** Urgent cases, which were handled despite of emergency situation, were mostly criminal cases in which the defendant was taken into custody. Additionally, pre-trial detention and other coercive measures were processed despite the emergency situation, since there are binding time-limits concerning those cases in procedural legislation.

**(c)** The oral hearings were executed via videoconference, if possible. The problem with these measures was, that in some district courts the hardware for videoconferences and internet-connections are not up-to-date. Increased need for connections also loaded the system and there were regularly interruptions during the court sessions.

**(d)** There have not been clearly observable pandemic-related cases so far in Finland.

**4.** Health and safety measures have been in use from the beginning of COVID-19 pandemic. Appropriate safety clearances have been ensured in the first instance. The cleaning of court premises has been more intense than normally, and the courts have provided masks for parties, witnesses and lawyers. The masks have been used especially since autumn 2020, when the court sessions have been held as usual. The wearing of a mask has been based on the recommendations.

**5 (a)** The court houses are equipped mostly with technical devices for a video conference, but still there are session rooms without any technical equipment for a video conference. Even if there are technological means for a video conference, the use of the equipment has been uncertain and vulnerable. Generally, the connections have been functioning properly when connections have been between two public servers (for example between the court and prosecutor's office). On the contrary, it has been much more difficult to create and maintain a proper connection between the court and private party, for example a lawyer's office. Mostly, it is the duty of the court secretaries to take care of technological means and connections. Secretaries nor judges have not got any systematic training on new procedures. Even technical support has been insufficient.

**(b)** The courts cannot provide any technical support for private parties during the court sessions. Usually, there is no need for the support, since the connections are created mostly between public servers. If the video conference is between the court and a private lawyer's office, the private side has to take care of its own technical support needed.

**(c)** The starting point is and should be, that the fair trial and due process has to be fulfilled even though new technology for communication is used. In criminal cases the use of video conference happens only by permission of the judge who is responsible for the individual case. Using of a video conference requires also permission of the party, who attends the session via video link. The right of interpretation is guaranteed in the law of criminal procedure and in the convention for human rights. COVID-19 pandemic has not changed these basic requirements.

**6.** The National Courts Administration has distributed extra resources to the courts for year 2021. The distribution come as a part of normal budgetary process and therefore it has the same safeguards against corruption as process as a whole. The problem is that the case load of the courts was remarkable even before pandemic and the extra resources for the year 2021 are not sufficient to change the overall situation. The other problem is to find suitable employees for the courts, since the timetable for recruiting is challenging. Sometimes the processes for recruiting new judges are not adequate. Also the amount of non-permanent judges in Finland is significant which is not satisfying, since the judges should act independently. The judges should not be dependent on chief judges, who decide the appointments of temporary judges. If the chief judge is not able to maintain proper procedures for recruiting new judges, there is a risk that budgetary resources are used in arbitrary appointments.

**7.** In general, the courts are not responsible for arranging communications between the lawyer and his/her client. If there is a need for a confidential discussion during the court session, it is normally arranged in the premises of the court "face to face". A video conference can sometimes be used, if the lawyer and his/her client are located in different places, for example the client is in prison during the trial and his lawyer is present at the session.

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On behalf of the Association of judges in Finland,

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