

RESPONSE OF THE ISRAELI DELEGATION
TO THE FIRST STUDY COMMISSION QUESTIONNAIRE 2023
THE EFFECTS OF REMOTE WORK ON THE JUDICIAL WORKPLACE AND THE
ADMINISTRATION OF JUSTICE
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Question 1 – Remote work of judges in your country:

Question 1a

Every judge in Israel has been supplied with a computer—initially a desktop, later a laptop—that allows them to connect remotely to the court system and work on their cases. Judges are able to access case files electronically, making decisions based on these written documents. The scope of their decision-making capabilities is wide, ranging from approving requests to postpone hearings to proposing settlement agreements. Typically, judges continue their work from home after the workday at the courthouse ends, and also on weekends. In fact, this practice is generally expected of them.

Prior to the COVID-19 outbreak, work-from-home arrangements were possible but limited. A judge could only opt to work remotely a few times per year, and only after receiving approval from the President of the relevant court.

During the COVID-19 pandemic, remote work became a common practice for judges. They were permitted to handle their duties from home rather than commuting to the courthouse. This change allowed them to make decisions and rulings in cases where no in-person hearings were required. Throughout this period, only arrest hearings took place, as evidence hearings or preliminary hearings were put on hold. These hearings were conducted via video conference, with the presiding judge and attorneys present in the virtual courtroom, and defendants participating from their detention facilities. Additionally, departmental judge meetings were held via Zoom, primarily focusing on monitoring the judges' health and personal well-being.

Question 1b

Post the COVID-19 pandemic, the Court Administration in Israel has become more flexible about remote work. A pilot program allowing judges to work from home one day per week, in lieu of being present at the courthouse, is currently underway. Subject to a reporting obligation and assuming there are no system-related obstacles (such as an unusually heavy writing workload), and provided that there are four additional full working days in that week, judges are permitted to work remotely for one day. On this day, the judge can make decisions and rulings remotely, in cases where a hearing isn't required.

Moreover, legislative changes were implemented at the end of the COVID-19 period, enabling courts to continue holding hearings via video conference, as detailed below:

In civil proceedings, the court may approve parties' requests to conduct preliminary hearings via video conference. The general trend is towards conducting all preliminary proceedings this way. Evidence hearings in civil proceedings can also take place via video conference, but only in circumstances where it would be exceptionally difficult for a vital witness to physically attend court, and they consent to providing testimony remotely.

In arrest proceedings, after the initial hearing—which must be conducted in person in the courtroom—represented detainees may request subsequent arrest-related hearings to be held via video conference. Most arrestees prefer this option.

In criminal proceedings that aren't arrest proceedings, evidence can't be heard via video conference. Only in a few exceptional cases, and with the agreement of all parties involved, have expert witnesses or other witnesses been examined remotely.

In criminal proceedings involving sexual assault, violence, and homicide, the court can, on its own accord or upon the request of a party, a minor witness, or their parent, order that a minor witness's testimony be given not in the presence of the accused but in the presence of the accused's attorney. This can be decided before or during the testimony if the court determines that the presence of the accused could harm the minor or compromise their testimony. Such testimonies will be given outside of the courtroom or in any other manner that prevents the witness from seeing the accused.

Question 2 – Effect on judicial work

Question 2a

Remote work carries both positive and negative implications for the judicial process.

The benefits of remote work are largely undisputed. It eliminates the need for judges to commute from home to the courthouse and back—a journey that can sometimes take one to two hours. This increases the judges' work hours outside the courthouse while also enhancing their welfare. For instance, the work-from-home arrangement allows judges who are parents to young children to be with their children at the end of the school day on their designated work-from-home day. This flexibility is typically not feasible on courthouse workdays. Maintaining a healthy family life is essential for the proper functioning of a judge.

However, opinions among judges are split regarding the efficiency of preliminary hearings conducted via video conference. On one hand, this setup offers maximum convenience for the attorneys of the parties involved, enabling them to schedule more hearings per day. This, in turn, allows judges to preside over more cases. On the other hand, these virtual hearings lack the direct interaction between the judge and the parties and their attorneys—an interaction that often plays a critical role in encouraging parties to reach a settlement agreement during the preliminary stages of a trial. The ability to convey the potential outcomes and risks of litigation to the parties is often more effectively achieved during in-person hearings at the courthouse.

Question 2b

Some courthouses experience a shortage of courtrooms and typists. Allowing a certain number of judges to work from home on specific days helps alleviate this issue. On these days, courtrooms are made available for hearings presided over by judges who are physically at the courthouse. Similarly, the availability of typists to record these hearings is increased.

Conversely, due to budget constraints, not all courtrooms are equipped with the necessary technology for conducting hearings via video conference. As such, not all judges present at the courthouse can hold simultaneous video conference hearings.

Another factor to consider with video conferencing is the potential for reduced court respect. One might argue that video conference hearings tend to be less respectful. The reverence with

which the public views the court is a crucial factor in maintaining public trust in the judicial system.

Question 2c

One of the primary tools a judge possesses in assessing witness credibility is their direct impression of the witness's demeanour and responses while on the stand. The physical presence of a witness before the judge and the parties involved significantly influences the witness's commitment to providing truthful testimony, subsequently impacting their responses and behaviour. The close physical proximity between the judge and the witness facilitates a comprehensive examination of the witness's demeanour and responses, thereby increasing the likelihood of a more accurate evaluation of the witness's credibility. Conducting hearings via video conference compromises this direct impression of the witness, leading to potential flaws in the judge's assessment of witness credibility.

Additionally, the practice of law inherently involves interaction between the judge and the litigants and their attorneys. This interaction influences the judge's capacity to encourage parties to reach settlement agreements and to conduct hearings more effectively.

Furthermore, the physical presence of the parties in the courtroom, before the judge, carries added value in terms of respect for the court. Respect for the court contributes to a rise in public trust in the system and its rulings.

Nevertheless, allowing judges to work from home yields positive effects on workflow and case clearance rates and it provides judges with more time to draft decisions and verdicts.

Question 3 – Effects on the administration of justice

Question 3a

The advantages of conducting hearings via video conference include:

- a) Video conference-based remote work offers flexibility for advocates when scheduling hearing dates. Advocates can arrange for hearings to be held on the same date in courts that are geographically distant from each other. This allows for scheduling hearings within short time ranges, consequently reducing the duration of proceedings.
- b) Fewer people visit the courtroom, which lowers security and logistical costs.

- c) It saves the cost of transporting detained individuals from the detention facility to the courthouse and back.
- d) It reduces personnel costs at detention facilities.
- e) It increases efficiency and saves judicial time that would otherwise be spent waiting for parties to arrive.
- f) It eliminates the need for construction and maintenance of detention cells within courthouses.
- g) It enhances the public's sense of security by reducing direct contact with detainees.

The disadvantages of conducting hearings via video conference include:

- a) Difficulty in assessing the credibility of witnesses and parties.
- b) Challenge in interpreting the body language of witnesses.
- c) Difficulty in examining evidence displayed on a screen.
- d) Difficulty for detained and accused individuals to hear the proceedings.
- e) Concerns about compromised quality of representation during consultations between the attorney and the client.
- f) Difficulty in commanding respect and dignity.
- g) Difficulty in enforcing disciplinary rules and appropriate court behavior.
- h) The value of respect for the court decreases, as parties are not required to stand upon the court's entrance into the courtroom, nor to ensure that they are dressed appropriately.

Question 3b

As demonstrated above, determining whether remote work has more positive or negative impacts on the functioning of the legal system in Israel is indeed a complex task. Further research is still needed to assess these effects more accurately and to make well-informed decisions about the future of remote work in the judiciary.

Question 3c

Advocates representing clients in civil proceedings often prefer that hearings, particularly preliminary ones, be conducted via video conference, as it saves them both travel time to and from the courthouse and various expenses. However, opinions among judges regarding the benefits of video-conferenced hearings vary.

Arrested individuals also prefer that arrest hearings, and even evidence hearings, be conducted via video conference. This preference is motivated by the desire to avoid long and exhausting trips from the detention facilities where they are held to the courthouses where they are tried. It also circumvents the lengthy waiting times in the courthouse's detention cells from their arrival until the commencement of the hearing. Furthermore, the detention cells in the courthouses are typically less comfortable than those in prisons. Plus, during a video conference hearing, the detained individual can have access to personal items present in their prison cell.

Question 3d

As previously mentioned, conducting hearings via video conference saves advocates travel time and various expenses, and it allows them to participate in more hearings per day. This, in turn, potentially shortens the duration of legal proceedings.

Video-conferenced hearings also cut down the costs associated with transporting detained individuals from prison to the courthouses.

On the flip side, many hearings planned to be held via video conference are ultimately cancelled due to technical difficulties with the system. Additionally, there are challenges with transcribing what is said by the parties' attorneys during these virtual hearings.

Question 4 – Remote work and judicial independence

No. In terms of a judge's decision-making process and independence, the method of hearing—whether via video conference or in a traditional courtroom—has no impact. The integrity of their judicial authority and impartiality remains consistent across both settings.

Question 5 – Limits on remote work for judges

Question 5a

There are indeed restrictions in Israeli law on holding evidence hearings via video conference:

In **civil proceedings**, evidence hearings can only be conducted via video conference if the following conditions are met:

- a. It would be extremely challenging for the witness, whose testimony is sought to be heard via video conference, to come to the courthouse.
- b. The witness has given consent to providing testimony through a video conference.
- c. The testimony of the witness is vital for resolving the disputed issues.
- d. If the witness is abroad, there are no legal impediments to hearing the testimony via video conference, in accordance with the rules applicable in the foreign country.
- e. Technological means exist at the location from which the witness will testify, enabling video conferencing.

In **criminal proceedings**, which are not arrest proceedings, evidence generally cannot be heard via video conference. There are only a few exceptions, and these occur only when there is an agreement between the parties, have experts or witnesses been examined, and only under special circumstances.

Question 5b

The general trend is towards broadening the use of video conferencing, even extending its use to evidence hearings. This signifies a move towards integrating more digital tools into the legal system, aiming to enhance its accessibility and efficiency.