

Answers to the Questionnaire of the 1st Study Commission IAJ-UIM “The Effects of Remote Work on the Judicial Workplace and the Administration of Justice” (2023)

LITHUANIA

1) Remote work of judges in your country

a. Were judges permitted to work remotely in your country prior to and/or during the COVID-19 pandemic? If yes, please give examples (for example, studying cases at home; discussing cases with colleagues via videoconference applications or the telephone instead of personal meetings; holding hearings online via videoconferencing applications; etc.).

The essential changes, related to COVID-19 pandemic management in 2021, were the amendments to the Code of Criminal Procedure (hereinafter – CCP), adopted by the Seimas of the Republic of Lithuania on 1 June 2021. According to the new article 8², introduced to the CCP, *in exceptional cases, when it is impossible to ensure a pre-trial investigation in a standard way, the procedure during the pre-trial investigation, in presence of certain technical possibilities, can be conducted by using information and electronic communication technologies (video conference), should it be reasonably established that this method would help conduct the pre-trial investigation faster, except for cases, which involve the necessary procedural coercive measures – temporary detention, personal examination, search, retrieval, seizure, or other procedures, which would be impossible using information and electronic communication technology.*

It has also been established with regard to court proceedings that *in exceptional instances, when it is reasonably believed that this would help examine the case faster, will not hinder a thorough and objective examination of all the circumstances of the case and will guarantee the rights of the parties to the proceedings, cases may be examined and the participants, witnesses, experts, translators or other persons, taking part in the court proceedings, with proper technical possibilities available, may take part at court hearings using information and electronic communication technology (video conference).* In this case, it is the judge who assesses whether the conditions for application of the provision exist or not.

Prior to the adoption of these amendments, the CCP has established that the means of remote audio-visual transmission can be used only for certain actions (for example, the detainee’s participation in a court hearing when addressing detention-related issues, questioning a witness, subject to measures of protection against criminal influence in accordance with the procedure established by law, also a witness, who cannot attend in person for other reasons, etc.). Such regulation has not created legal preconditions for conducting a wider range of pre-trial investigation actions remotely or for remote examination of the entire court case.

In civil and administrative cases proceedings, as opposed to criminal proceedings, courts had ample scope to hold court hearings remotely even before COVID-19 pandemic. Paragraph 1 of

Article 175(1) of the Civil Procedure Code of the Republic of Lithuania provides that the participation of the parties and other participants in the proceedings may be ensured by using information and electronic communication technologies (via video conferencing, teleconferencing, etc.). A party wishing to participate in a court hearing using videoconferencing and / or teleconferencing must submit a written request to the court together with his or her identity document. The court decides on such a request by the ruling. If the court decides to organize a remote court hearing or allows a specific participant in the proceedings to participate in it remotely, a court notice with the details for joining the remote court hearing is sent. As most civil cases are electronic, all documents and materials of the case are available on the electronic service portal of Lithuanian courts.

The same regulation is laid down in the administrative proceedings. Paragraph 5 of Article 661 of the Code of Administrative Offences sets out that the participation of the participants in proceedings may be ensured by means of information and electronic communication technologies (via videoconferencing, teleconferencing or otherwise).

In cooperation with the Ministry of Justice of the Republic of Lithuania, the Judicial Council, the Lithuanian Bar Association, and other related institutions, the amendments to the Description of the Procedure for the Use of Video Conferencing Technology in Criminal Cases and the Description of the Procedure for the Use of Video Conferencing and Teleconferencing in Civil and Administrative Cases have been approved by Order of the Minister of Justice of 23 February 2022. These amendments set out how the publicity of the court hearing is ensured when the court hearing takes place using video conferencing and/or teleconferencing technologies.

According to the amended legal regulation, when a public court hearing takes place using video conferencing technologies and it is not possible to allow individuals to watch this court hearing directly in the courtroom or other place of hearing, it can be observed and/or listened to by one of the following remote methods available to the court: by rebroadcasting the sound of the court hearing and, if possible, video into a separate, public courtroom or other room in the court building; by joining a video conference.

The court hearing the case decides on the use of specific tools during the court hearing, after assessing the circumstances, which are significant for ensuring a safe environment of the court, the protection of personal data, and the requirements for the implementation of the provisions of the relevant legal acts.

A person wishing to observe a public court hearing and/or listen to it shall inform the court hearing the case about this usually at least 3 working days before the day of the court hearing, except in cases where the date of the court hearing is publicly announced with a shorter deadline.

By Resolution No. 13P-162-(7.1.2.) of the Judicial Council of 20 December 2021 the Resolution No. 13P-46-(7.1.2) of the Judicial Council of 25 May 2018 “On Approval of the Description of the Procedure for the Use of Technical Means during the Announcement of a Judgment” was amended by supplementing it with the provisions detailing the rules on publicity in court proceedings; also, regulations related to ensuring the publicity of court proceedings were established: the procedure for submitting and examining a request to a court by a person willing

to observe a public remote court hearing was established, the essential aspects of practical implementation was defined (by supplementing them, inter alia, with more modern solutions), which may be relevant for the uniform organization of the court activities, enabling individuals to observe public hearings at a distance, and for informing the public.

Was technical equipment made available to the judges to enable them to work remotely?

It has been three years now that judges' and other employees' computers are being purposefully changed to laptops with docking stations, thus making it possible to have a working tool at all times. Both those who have laptops and those who use their own computers can connect to the court infrastructure using VPN technology. In order to ensure greater security and comply with legal regulation, courts do not use cloud solutions.

b. What is the status of remote work by judges in your country now? Do many judges still work remotely in your country, and to what extent? (for example, all or just a certain percentage of judges? Only in certain fields of law or for certain types of cases? Only in lower courts or higher courts? etc.)

There is no official statistics showing the extend of remote work of judges after the pandemic. However, remote work of judges is widespread due to *electronic case management system*.

Electronic files and electronic proceedings partially or in full exist in civil, administrative, criminal cases and cases of administrative offences. Judicial Council has approved a list of cases (Resolution No. 13P-145-(7.1.2) of the Judicial Council of 8 November 2013 on Processing of Cases and Information Related to the Court Process Only in Electronic Form), which shall be formed only electronically:

1. Civil cases regarding the issuance of a court order in the district courts, where the statement, on the basis of which the case is initiated, was submitted to the court on the 1st of July, 2013 or later using technologies of information and electronic communication;
2. Civil cases in district courts, where the procedural document, on the basis of which the case is initiated, was submitted to the court on the 1st of January, 2014 or later using technologies of information and electronic communication;
3. Civil cases in regional courts, as in courts of first instance and in administrative courts, as in courts of first instance, where the procedural document, on the basis of which the case is initiated, was submitted to the court on the 1st of July, 2013 or later using technologies of information and electronic communication;
4. Cases of administrative law violations and administrative offences in district courts, where the procedural document, on the basis of which the case is initiated, was submitted to the court on the 1st of July, 2015 or later using technologies of information and electronic communication;
5. Criminal cases in district and regional courts according to the prosecutor's statement regarding the termination of the process by a penal order, where the procedural document, on the basis of which the case is initiated, was submitted to the court on the 1st of January, 2020 or later using technologies of information and electronic communication;

6. All cases in courts of general competence and specialized courts that hear cases in appeal or cassation procedure according to the complaints received in court on the 1st of January, 2014 or later (regarding decisions or rulings adopted in cases that were handled only in electronic form).

All documents in electronic case shall be signed electronically or digitalized.

Regarding cases in Lithuanian courts, it is worth to note that there is a group of process participants (attorneys, attorneys' assistants, bailiffs, bailiffs' assistants, notaries, state and municipal companies, institutions and organizations, etc.), who are obliged to receive court documents only electronically.

Court proceedings via videoconferencing facilities can be held in all Lithuanian courts and in all fields of law.

2) Effect on judicial work

a. Did remote work change judicial work in general for better or worse – or both – in your country? Please give examples.

No official assessment of the influence of remote work on judicial work in general has been carried in Lithuania.

b. Does the remote work of judges have an impact on the judicial workplace in your country? Negative, positive or both? Please give examples.

No official assessment of the influence of remote work on judicial workplace has been carried in Lithuania.

c. From your point of view, what future effects of remote work on the judicial workplace – negative, positive or both – can be expected?

In general - more positive than negative.

3) Effects on the administration of justice

a. What are the pros and cons of remote work on the administration of justice?

Generally, the same as on any employer.

b. Does remote work have a positive or negative impact on the administration of justice in general in your country? Please give examples that include, but are not limited to, the quality of the administration of justice.

No official assessment of the influence of remote work on the administration of justice has been carried in Lithuania.

c. Are you aware of the public's perceptions of remote work by judges? Please give examples of positive or negative perceptions.

When analyzing the experience of remote court hearings during the COVID-19 pandemic, attention was drawn in to the additional stress for litigants that remote hearings can cause, the possible negative impact on the image of judges and the perceived fairness of their behavior, the additional burden on judges hearing cases. The problem of digital literacy, especially among older people, the problem of proper identification of persons, the technical preparation of courts to conduct remote court hearings is still insufficient. At the same time, the benefits of remote hearing of cases were noticed: costs, time are saved, duration of cases is shortened, barriers such as shyness to communicate live, financial inequality are overcome. The benefits of remote court hearings for business were especially emphasized.

It is noteworthy that the position of lawyers in relation to remote court hearings in civil cases in Lithuania was somewhat more optimistic than that of judges - in the opinion of lawyers, many civil cases, especially commercial disputes, can be heard remotely, and in the judges' opinion, remote hearings in civil cases are more suitable for the preparatory stage of court proceedings, organizational issues, for individual steps of the process, to conduct interviews, but the possibilities of examining the case in this way must be evaluated with caution. There were also several extremely skeptical assessments of legal practitioners: it was claimed that there are no real arguments why a remote court session can be more or at least as fair as a live one, and remote hearings (in criminal proceedings, of course) were even called "procedural hooliganism".

d. What are the positive and/or negative effects of holding remote hearings/conferences?

No official assessment of the positive/negative effects of remote hearings has been carried in Lithuania.

4) Remote work and judicial independence

Do you see any positive or negative effects of remote work on judicial independence? If yes, please give examples.

No official assessment of the influence of remote work on judicial independence has been carried in Lithuania.

The experience accumulated during the pandemic testifies that the legal framework, which allows, if necessary, to conduct court hearings in civil cases remotely, is basically sufficient in Lithuania. The current legal regulation, which leaves the right to decide on the remote form of court hearing

to the court hearing the case, should be evaluated positively, because, without limiting such a decision to any categories of civil disputes in advance, it allows the court to individually assess the suitability of such a form of process in a specific case.

Taking into account the principle of procedural independence of the judge, which includes, inter alia, the court's independence in deciding all issues related to the case under consideration, it can be assumed that the right of the judge hearing the case to decide whether a remote process is an appropriate measure in a specific case, and in the future should not be hindered by the legislator's desire to expand information technology use in court proceedings, nor the desire of the persons participating in the case to participate in the court session specifically remotely. In order to make a fair decision in the case, the judge must in all cases retain the power to order that the parties must appear in court in person, demand the production of original documents and hear witnesses, and information technology should not interfere with these powers of judges.

5) Limits on remote work for judges

a. Does your country place any limits on the remote work of judges (for example, limits on remote hearings in criminal cases)? If yes, please give examples.

Lithuanian law doesn't place any specific limits on the remote work of judges in general.

Use of remote hearings in criminal cases is limited to the *exceptional instances, when it is reasonably believed that this would help examine the case faster, will not hinder a thorough and objective examination of all the circumstances of the case and will guarantee the rights of the parties to the proceedings, cases may be examined and the participants, witnesses, experts, translators or other persons, taking part in the court proceedings, with proper technical possibilities available.* In this case, it is the judge who assesses whether the conditions for application of the provision exist or not.

The activity of Lithuanian self-governing institutions of courts in regulating practical aspects related to the organization of remote court hearings in order to achieve compliance of the remote court process with the main principles of the civil process should be evaluated very positively.

b. Are there any proposals to change rules or statutes in your country either to permit more, or to limit, remote work by judges?

No

c. Should there be any changes of rules or statutes in your country either to permit more, or to limit, remote work for judges?

No