

Albania's Institutions response to the questionnaire from the Special Rapporteur on the independence of judges and lawyers "on the impact of the Covid-19 pandemic on the administration of justice and the free and independent exercise of the legal profession"

1. Please describe the measures adopted in your country to guarantee the proper functioning of the justice system during the COVID-19 pandemic.

In compliance with the normative Act no. 9 dated 25.03.2020 , on the 10th of March 2020 High Justice Court approved decision No. 127, which suspended the activity of all courts (general and special jurisdiction), as a response to the emergency situation caused by the COVID-19 pandemic.

Notwithstanding the above provision, the effect of this suspension did not apply to activities and judicial services classified as urgent matters as per above mentioned normative Act. During the curfew the adjudication of urgent cases were assessed as such by the judge on a case-by-case basis. Depending on the progression of Covid-19 epidemic situation, the suspension was extended by decision No. 128, dated 24.03.2020 and decision no. 133, dated 06.04.2020.

HJC with decision no. 135, dated 16.04.2020 established a temporary committee for the drafting, proposing and overseeing the implementation of an action plan in response to the COVID-19 situation. Upon proposal of this temporary committee, HJC approved a regulation on the activity of the High Judicial Council during the COVID -19 pandemic. The purpose of this regulation was to determine appropriate rules and practices to limit the spread of COVID-19 during the activity of the Council.

Furthermore, HJC approved, by decision No. 146, dated 27.04.2020, the guidelines on the necessary measures for the preventing the spread of Covid-19 during the exercise of judicial activities in all courts.

This guideline focusses on:

- Increasing cooperation with the Prosecutor's Office, the Chamber of Advocates, Police Directorates / Commissariats, the Institute of Forensic Medicine, the Probation Service, the Social Service Offices, experts, translators, etc., in order to coordinate between them the planning of court hearings for enabling long-distance communication with the court via e-mail and / or telephone / fax;
- Summoning of witnesses and / or experts in different timeframes, limiting, as far as possible, the call to testify of a large number of witnesses within the same hearing.
- All parties to a hearing should stay at a safety distance from each other, in compliance with restrictive measures.

- Drawing up a calendar regarding the use of courtrooms, changing the working hours / working days, or enabling work and communication via telephone, video or Web

The Normative Act no. 9 clearly stipulates the exemption cases where the effect of suspension are not applied referring to:

- Administrative disputes having as subject matters adjudication on injunctions for which the court ascertains that resolving on these cases after the deadline determined above shall cause an irreparable damage to the involved parties.
- Family cases, subject to trial, care, obligations and respect for the rights of minors, custody and adoption, protective measures against domestic violence, exercise of parental responsibility, care and maintenance obligations, as well as in those civil cases in which, the court considers that their delayed review may cause serious and irreparable damage to the parties;
- Criminal cases related to the validity of the arrest in flagrante or detention, the determination, verification of the conditions and criteria of sentencing the security measures, replacing, revoking, merging or terminating the security measures of "prison arrest" or "house arrest", when arrested person, defendants or their legal representatives require to further proceed with their review, as and in criminal cases related to the imposition of the measure of property insurance "sequester preventive";
- Criminal cases, in which the deadlines for the maximum duration of detention, according to point 6 of article 263 of the Code of Criminal Procedure, end during the curfew period;
- Criminal cases of an urgent nature, due to the need to provide evidence, pursuant to Article 316 of the Code of Criminal Procedure. The urgency is assessed by the judge examining the case;
- Criminal cases against juveniles in conflict with the law, when the measure of arrest or detention has been applied to them, according to Article 15 of the Criminal Code of Juvenile Justice;
- Any other criminal case in which the defendant is in custody or is serving a prison sentence, if the defendant or his legal representative requests the continuation of the trial.

HJC decision making is fully compliant with the above provisions which pay a particular attention in respecting of fundamental human rights. Pursuant to the normative act, HJC, with decisions no. 133 dated 06.04.2020, extended the suspension period, under the same exclusion rules, set in the normative act.

The measures described above were taken in consultation with the court councils and whenever necessary additional measures were discussed and agreed on a case by case basis. Court Councils

(which are responsible for court administration) were the structures in charge of the practical implementation of all safety measures in their respective courts.

Also, the High Prosecutorial Council has adopted Regulation no. 95, dated 23.10.2020, "On taking organizational measures to exercise the activity of state administration institutions during the epidemic situation caused by COVID-19".

This regulation determines the conditions for the organization and development of work in the state administration to guarantee the continuity of work and appropriate conditions for reducing the transmission of COVID-19. During the pandemic period, the High Prosecutorial Council has exercised its activity through the combination of work on the premises of the institution and on-line distance work, according to a schedule approved by the secretary general of the institution.

Despite the restrictive measures, the High Prosecutorial Council has continued to exercise legal powers related to the status of prosecutors, to ensure the proper functioning of the prosecution system by adopting various acts such as regulations, temporary appointment of prosecutors, approval of reports in the framework of the transitional re-evaluation of prosecutors, disciplinary proceedings, approval of out-of-office activities, announcement of vacancies in the prosecutions of general jurisdiction, etc.

2. Were these measures adopted on the basis of emergency legislation? If so, was the judiciary consulted prior to their adoption, or has the legality or the constitutionality of these measures been subject to judicial review?

As mentioned above, the decision-making of the HJC was based on a normative act – emergency legislation. The judiciary was consulted prior to its adoption.

3. Please indicate the measures that have been adopted in your country to ensure access to justice during the COVID-19 pandemic.

HJC and courts have done their best to ensure access to justice during the COVID-19 pandemic, without excluding any particular category. The guidelines issued on 27 April, aim at facilitating the access to justice, at the extent possible, during the pandemic restrictions. The rules provided in this instruction do not infringe but are part of and are intended to guarantee a regular and legal process during the duration of the epidemic.

The guidelines, among other, ensure:

1. Measures for the organization of administrative services in the court through alternative communication measures, to enable the provision of services by the court by avoiding, as far as it is possible, gathering of people in court premises or their physical contact with court employees and with each other and respecting the hygienic-sanitary and social distancing measures.

2. Administrative and public services to be organized by on-line programming, ensuring prior communication, in order to avoid bringing together employees and / or citizens.
3. Measures to ensure electronic communication with the court administration for sending requests for information and / or documentation (certificates, court decisions, copies of acts, etc.) by publishing in the notice corner and the court website the information and necessary instructions for the realization of this communication.
4. Measures, for the drafting, publication and distribution (through the possibility of downloading from the website of the court and / or placement in appropriate places at the entrance / outside the court) of the forms for submitting requests, as well as sending the answer and / or acts requested by the court electronically to the applicants, except when the document is required in its physical form and must be sent via postal service.
5. In case of impossibility to use electronic communication, the judicial administration should make available to applicants forms, which must be completed and sent to the court in which the applicants are informed to declare the contact number and / or the e-mail address through which they will be contacted by the judicial administration when their claim is handled. For requests to receive acts or other paper documents, the applicant should be notified (by e-mail or telephone) of the date and time at which they can receive the service.

4. Please describe the health and safety measures adopted in the court system to ensure the protection of all actors in the justice system during the COVID-19 pandemic.

With regard to measures taken by HJC, please refer above.

In addition, the General Prosecutor adopted the necessary bylaws, in accordance with the acts adopted by the health authorities depending on the pandemic situation, specifically:

- General Instruction no. 2, dated 10.03.2020 "On administrative measures for the work progress in prosecution offices with general jurisdiction in order to prevent the spread of COVID-19";
- General Instruction no.3, dated 19.03.2020 "On some procedural measures in the prosecution offices with general jurisdiction in order to prevent the spread of COVID-19";
- General Instruction no. 4, dated 24.03.2020 "On administrative measures for the work progress in prosecution offices with general jurisdiction in order to prevent the spread of COVID-19 infection";
- General Instruction no.5, dated 08.05.2020 "On administrative measures for the work progress in prosecution offices with general jurisdiction in order to prevent the spread of COVID-19 infection".

5. Please provide information on the technological means used to ensure the functioning of the court system during the COVID-19 pandemic.

The HJC, by decision no 145, dated 27.07.2020 approved the use of Microsoft Teams software to ensure the safest possible audio-visual interconnection and the participation of detainees / convicts and their legal representatives in all court hearings during the duration of the COVID-19 pandemic. The same decision tasked IT specialists in the courts and those of the High Judicial Council to coordinate the work for the installation of this program in the courtrooms, as well as for the provision of technical assistance during the court hearings.

For disadvantaged groups or individuals who could not benefit from the use of audio-visual means, as previously described, in case of urgent cases which could not be postponed, the maximum safety measures were adopted, as per guidelines issued on 27 April 2020.

6. Additional budgetary resources

The HJC, in line with the normative act no. 28, dated 02.7.2020, decided to review the budget of the judicial system with the decision No. 253, dated 09.07.2020. Consequently funds were re-allocated in order to enable the judiciary to cope with necessary measures for safeguarding the health and safety of judicial staff and all other actors.

Meanwhile, the General Prosecution Office has covered the expenses with the budget determined for the year 2020.

7. Measures adopted to enable lawyers to carry out their activities during the COVID-19 pandemic.

The measures adopted by the HJC, as the governing body of the judiciary, at a macro level, were applicable to all parties, lawyers included as actors in the court proceedings. Additionally, the Chamber of advocates, as an independent body responsible for adoption of specific measures in relation to lawyers and their safety during Covid-19 pandemic, has been the main interlocutor in taking care that the measures taken did not hinder the judicial activity of lawyers.