



MINISTÉRIO PÚBLICO FEDERAL
GABINETE DO PROCURADOR-GERAL DA REPÚBLICA
SECRETARIA DE COOPERAÇÃO INTERNACIONAL

Ofício nº 2/2021/REL/SCI/PGR

Brasília, 15 de janeiro de 2021.

A Sua Excelência o Senhor

Diego García-Sayán

Relator Especial sobre a Independência dos Magistrados e Advogados

Alto Comissariado das Nações Unidas para os Direitos Humanos

Assunto: Resposta ao questionário do Relator da ONU sobre independência de magistrados e advogados

Senhor Relator Especial,

1. Cumprimentando-o, apresento as contribuições do Ministério Público Federal ao questionário sobre independência dos magistrados e advogados, durante o atual período de isolamento social provocado pela pandemia de Covid-19 e seus efeitos na administração dos sistemas de justiça.
2. Ressalte-se que parte das perguntas recebidas por esta Instituição não puderam ser respondidas, por estarem relacionadas à exclusiva atuação do Poder Judiciário e dos advogados do setor privado.


Atenciosamente,

assinado digitalmente

ANAMARA OSORIO SILVA

Procuradora Regional da República

Secretária de Cooperação Internacional Adjunta

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QUESTIONNAIRE

Brazilian Federal Persecution Service (MPF) answers

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 that have been adopted in your country/region to guarantee the proper functioning of the justice system during the COVID-19 pandemic:
 - (a) To what extent, if at all, have these measures had an adverse impact on the separation of powers, the independence of the judiciary and the free exercise of the legal profession or had the effect of limiting access to justice for victims of human rights violations?
 - (b) Has the legality or the constitutionality of these measures been subject to judicial review?
 - (c) Have these measures adopted on the basis of emergency legislation? Have the judiciary and the legal profession been consulted prior to their adoption through their representative organisations? If so, to what extent have their contributions been taken into account by the Government?

The Office of the Brazilian Prosecutor-General has established an “Integrated Bureau for Monitoring of the Epidemic (GIAC-Covid19)” in order to strategically coordinate Brazilian Public Persecution Services’ measures at federal and local (municipal) levels, as stated in <http://www.conexao.mp.br/covid19/>. Created by Ordinance PGR/MPU No. 59, of March 16, 2020, this particular office aims not only to amplify MPF’s interinstitutional and intersectoral collaborations, but also to enhance its communication with the Executive branch, mostly the Ministry of Health, as well as with the Legislative and the Judiciary Powers, the Public Defender's Office, the Brazilian Bar Association (OAB), science, technology and innovation private sectors and the civil society, an intertwined national effort to control and prevent the epidemic in Brazil.

As of March 19th, Prosecutors and staff from all units of the Federal Persecution Service are working remotely, based on a normative act available at <http://www.mpf.mp.br/pgr/documentos/PortariaPGRMPU762020.pdf.pdf>. It is worth noting that, for MPF, this modality of employment is possible (and, in terms, more effective) due to the fact that nearly all services, processes and procedures are already digitalized, nurturing online platforms with data enough to grant secure possibility of accessing restricted institutional systems from distance. For example, the “Radar System” (which provides access to a set of databases, including those obtained through agreements with Public Administration entities, used by the Federal Persecution Service to investigate and obtain specific information about suspicious individuals and legal entities, such as in asset tracking and recovering), can now be electronically accessed by every Institution’s civil servant, by means of the password-protected MPF portal.

2. Do you consider that the measures adopted in your country/region to ensure access to courts and tribunals during the COVID-19 pandemic have been sufficient:
 - (a) to ensure the proper functioning of the justice system?
 - (b) to protect the health and safety of all the actors in the justice system (e.g. judges, prosecutors, lawyers, court officials, law enforcement officials)?
 - (c) to enable judges, prosecutors and lawyers to carry out their professional duties in a timely and effective manner?

Multiple impacts deriving from the temporary suspension of on-going investigations are still taking place. It is not possible, at this point, to foresee all the risks or validate evidence enough to define the effectiveness of the strategies adopted. Nevertheless, all measures that can be taken by the Brazilian Federal Prosecution Service are being duly implemented, according to the national laws and the State's Federal Constitution. The Brazilian Judiciary remains in operation and Courts keep on remotely, realizing hearings by videoconference and implementing an "on-call regime", with the rotation of authorities' staff, always presently in a minimum number, and only for urgent demands. So far, there has not been legislative changes to criminal rules due to Covid19 crisis, neither in relation to prescription periods. In dealing with international cooperation, MPF execution of requests, which do not appeal for actions in person, remain fully operable, even from distance. It should be highlighted that the exchange of information and documents among networks' contact points, by all available electronic means (including Zoom, Teams, Webex platforms, as well as MPF's own system for audio and videoconferences), has facilitated virtual meetings, such as seminars and workshops, which considerably increased the number of nations' attendings to these events. Truth must be said, personal encounters are profoundly more expensive than their homonymous online summits.

3. Please provide information on the measures adopted in your country/region to manage the backlog caused by the COVID-19 pandemic. Which criteria have been developed and used to identify urgent cases (e.g. cases on the legality of pre-trial detention or domestic violence)? Have additional budgetary resources been allocated to the court system to tackle the challenges posed by the COVID-19 pandemic? If so, do you consider that these additional resources have been used in an effective and transparent way?

The Brazilian Prosecutor-General of the Republic recommended (<http://www.mpf.mp.br/pgr/documentos/RecomendacaoPGR.pdf>) that MPF authorities must adopt every necessary measure so that values resulting from judicial and administrative institutional actions are reverted into pandemic's combating budget, under the constitutional scope of public financial efficiency. Also respecting functional independence, the document presents persecutors' standards to legally request directions about the use of indemnities in health funds. In addition, it defines that amounts obtained in civil and criminal non-persecutorial agreements can be used in strategies to fight Covid19 crisis. The Institution has taken actions to facilitate the performance of persecutors at local levels when dealing with health issues, considering that the Brazilian Persecution Service has a broad mandate, which includes guaranteeing citizens' rights to equal access to public health services and public sanitation, as outlined by the Federal Constitution.

In a similar direction, three of MPF's Coordination Chambers (on criminal matters, on environmental issues and against corruption) have enacted joint guidelines so that persecutorial authorities are able to proper and legitimately destinate financial resources deriving from criminal proceedings and judicial agreements directly to health policies, for special assistance to the most vulnerable groups. More on this subject can be find at <http://www.mpf.mp.br/atuacao-tematica/ccr2/orientacoes/documentos/orientacao-conjunta-no-1-2020-2a-4a-e-5a-ccr-pdf.pdf>.

As a result, prosecutors all over the country are requesting judges that amounts available in lawsuits or even in extrajudicial procedures shall be destined to combat the pandemic. For instance, those values are being directed to hospitals, for the purchase of equipment, supplies and medicines; to housing and health care facilities' developments; and also to philanthropic institutions that protect minorities' rights, such indigenous', prisoners' and others. For further references, please access <http://www.mpf.mp.br/pgr/noticias-pgr/dinheiro-pago-por-colaborador-da-operacao-calvario-sera-destinado-combate-ao-novo-coronavirus> and <http://www.mpf.mp.br/rs/sala-de-imprensa/noticias-rs/hospital-universitario-de-rio-grande-recebera-6-700-testes-sorologicos-para-covid-19-com-recursos-oriundos-de-acoes-civis-publicas-promovidas-pelo-mpf>.

4. Please provide information on the technological means that have been used to ensure the functioning of the court system during the COVID-19 pandemic:

(a) To what extent, if at all, have judicial stakeholders (e.g. judges, court staff, prosecutors) had access to adequate technological means and appropriate training on new procedures (e.g. use of electronic platforms to access documents, electronic case management and videoconferencing options)?

(b) Which safeguards have been put in place to ensure that the use of technological means does not adversely affect fair trial and due process standards (e.g. public hearings, adequate time and facilities to communicate with one's own lawyer, access to interpretation...)?

(c) What measures have been developed to facilitate access to justice for disadvantaged groups and individuals who may not own a computer, not have access to internet, or not be tech-savvy enough to participate in online hearings?

The issues cannot be analyzed by Federal Prosecution Service's regulations or policies, being them typically bound to Judicial Branch activities.

5. With regard to the free and independent exercise of the legal profession, please provide information on:

(a) the obstacles, restrictions or impediments that lawyers faced during the COVID-19 pandemic with regard to access to clients, particularly those under arrest or detention, and in relation to their participation in courtroom activities?

(b) the measures adopted in your country/region to enable lawyers to carry out their professional activities during the COVID-19 pandemic. Do you think that these measures have been sufficient to enable lawyers to exercise their professional activities without any obstacle or improper interference?

(c) With particular regard to criminal proceedings, to what extent have these measures been adequate to enable lawyers to adequately represent their clients on an equal basis with the prosecution?

The issues cannot be analyzed by Federal Prosecution Service's regulations or policies, being them specifically bound to private lawyers in exercise of the profession.
