



ASSOCIATION OF THE COUNCILS OF STATE AND SUPREME ADMINISTRATIVE JURISDICTIONS
OF THE EUROPEAN UNION

ACA-EUROPE

TRANSVERSAL ANALYSIS 2020

CONTRIBUTION TO THE EU JUSTICE SCOREBOARD

THE SUPREME ADMINISTRATIVE COURTS IN TIMES OF COVID-19 – A LESSON LEARNED



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I. INTRODUCTION

1. In its action plan for 2018-2021, ACA-Europe has determined its annual operational activity to be the organisation of a cross-sectional analysis activity by its members, comprising the collection of data, analyses and conclusions in the domain of access to administrative justice. The purpose of the cross-sectional surveys is the collection, analysis, exchange and provision of information, good practices and recommendations.

2. In the past few years, our organisation has familiarised itself with the concept of this analysis. The summary reports of these surveys can be viewed on the website of the Association (www.aca-europe.eu).

3. For 2020, ACA-Europe has chosen the following topic:

The Supreme Administrative Courts in times of COVID-19 – a lesson learned

4. In the agenda of the Board of June 2020, it was explained that “[a]ll the ACA-Europe Members are now facing the COVID-19 pandemic. It is an enormous challenge for all judges and staff of the courts in Europe. We are aware that this pandemic will also affect our professional activity in the future. Unfortunately, some experts say there is a strong possibility that such pandemics may reoccur.

As much as possible, our activity has been adjusted to the current situation. For example, it is not unusual to have online deliberations in order to decide urgent cases, work is carried out via teleworking and/or distance working, etc. There are a number of questions however that have arisen: How can the courts, judges and the courts’ staff organize their work in the times of emergency? These are not just technicalities. What about the right to a public hearing? Can we decide cases only in camera because of a risk of conducting public hearing and spreading the virus by holding a public hearing? How can we communicate using the internet with the risk of activity hackers and not being tapped? How to ensure equal treatment of the parties to the procedure since vulnerable groups, due to age or destitution for example, may have limited access to internet?

These and many other problems have to be addressed in times of emergency such as we are facing now. Many ACA Members have gained their own expertise as to how to cope with the current situation. Best practice sharing is needed now and for the future. The working group may present the analysis and identify the difficulties or problems encountered by judges and it may facilitate exchanging the expertise already gained. Furthermore, there is also a need to share national case law concerning the current COVID-19 crisis and to make it accessible to all our members.”

5. As for the methodology, the decision was made to establish a task force in the organisation, named the “2020 EU Justice Scoreboard”-working group. This group is made up of Mr. Joris Casneuf, Mr. Jacek Chlebny, Mr. Frank Clarke, Mr. Geert Debersaques, Ms. Marloes Franke, Mr. Carsten Günther, Ms. Lenka Krupičková, Ms. Laure Marcus and Ms. Marina Perrelli.

The working group first defined the methodology and prepared the questionnaire, which was approved by the Board of ACA-Europe. After analysing the collected metadata, the present report was written.¹

6. The level of participation in this study was particularly significant: 28 members of the Association, which constitute the supreme administrative courts of each of the Member States of the European Union, participated in this study. Among the Courts having the status of observer or guest, the Supreme Court of Norway participated. We can therefore conclude that the results obtained give a highly accurate overview of the state of play in the member courts of the Association.

¹ - the draft was then adapted to take into account the comments from our members (Belgium, Czech Republic, Greece, Ireland and Slovakia);

- In the tables, the Members are listed in alphabetical order. In the text, they appear in the order in which the replies to the questionnaire were received;

- due to the limitations of the software used, the diagrams in the French-language version of the analysis are partly in French and partly in English.

II. HUMAN RESOURCES

A. Health and safety measures

a. Special legislation targeted at the activities of courts

7. Of the 28 countries surveyed, 16 (57.14%) have adopted special legislation other than procedural law in order to prevent the spread of the COVID-19 virus where the legislation in question directly targeted the activities of the courts. The links that various countries provided to the laws that courts were obliged to implement are detailed in a table in the Appendix.

In the Czech Republic, the Government and the Ministry of Health passed crisis and public health measures concerning movement in public buildings. An Act was passed in Poland on the 2nd of March, 2020, on specific arrangements for preventing and combating COVID-19 and other infectious diseases. The Legislature in Slovenia passed an Act on the provision of measures for judicial, administrative, and other public matters to cope with the spread of COVID-19. Bulgaria adopted a range of measures, beginning with the decision to declare a state of emergency adopted by the 44th National Assembly on the 13th of March, 2020, on the grounds of Art. 84, item 12 of the Constitution of the Republic of Bulgaria and legislation which has then been adopted periodically throughout 2020.

b. Physical access for the general public as of 1 December 2020

8. Of the 28 countries surveyed, courts were physically accessible to the general public in 23 countries (82.14%) as of 1 December 2020. The countries in which member institutions are not accessible to the general public include Norway, Latvia, Lithuania, Ireland and Italy. Of the 28 members surveyed, 6 (21.42%) have closed their institutions for the court staff at some period during the pandemic (Norway, Spain, Cyprus, Slovakia, Germany and Denmark). In Norway, the court has not been completely closed to staff. However, from the 12th of March, 2020, to the 1st of December, 2020, the court limited the number of staff allowed in the court building. In Spain, the courts have operated with a duty court to answer sensitive legal matters such as gender violence while more general issues have been dealt with through the use of online tools. Following a Government announcement of the decision to move the entire country into lockdown, the Supreme Court of Cyprus was partially closed between the 17th of March, 2020, and the 30th of April, 2020.

c. Access for participants in person and/or their representatives

9. Of the 28 countries surveyed, 12 (42.85%) have closed their courts during the pandemic period for participants in person and/or their representatives (Estonia, Norway, Spain, Cyprus, the Slovak Republic, Belgium, Lithuania, Croatia, Germany, Hungary, Denmark and Italy). For example, in Belgium the registry was closed from 16 March 2020 to 5 June 2020. In Norway, the courts were closed other than for employees and judges from 12 March 2020 to 10 August 2020 and from 16 November 2020 to 1 December 2020. In

Germany, the court was closed during the general lockdown from 18 March 2020 to 17 April 2020.

d. Access for the general public at any point during pandemic

10. Of the 28 countries surveyed, 16 (57.14%) were closed at some point during the pandemic to the general public² (France, the Czech Republic, The Netherlands, Norway, Latvia, Cyprus, the Slovak Republic, Belgium, Lithuania, Bulgaria, Croatia, Germany, Hungary, Denmark, Malta and Italy). For example, in France, the Conseil d'État was closed from 17 March 2020 to 13 May 2020. In Cyprus, while every effort was made to keep the Supreme Court open and safe, the court building was partially closed from 16 March 2020 to 30 April 2020 for the general public. Further instructions were given on 18 March 2020 with entry restricted to only those attending court for either case management or trial and advance appointment was required for certain types of court business. In Malta, there was a closure from 16 March 2020 to 5 June 2020.

e. Authorities with competence to close courts

11. The authorities with the competence to close courts during the pandemic varied. In some states, such competence lies with multiple authorities within the same country. For example, in Austria, it is both a decision to be made by the head of the court and a decision of the Parliament. In Poland, it is a decision made by both Parliament and the Government. In the Czech Republic, the head of the court was the sole of the competent authorities who took measures directly concerning the functioning of the court. The Ministry of Justice has issued several recommendations in this regard. In Sweden, a special pandemic medical officer of a region has, by law, the authority to close any workplace to stop a pandemic. In Ireland, the decision to conduct hearings and business remotely was made by the Chief Justice and other members of the Supreme Court in consultation with the Courts Service of Ireland based on public health advice issued by the Government and health authorities.

f. Obligatory health measures for entering court building

12. All respondent countries other than Sweden had, as of 1 December 2020, taken obligatory health measures with regards to the general public and participants entering a court building as outlined in table A1 below. In France, persons entering the buildings of the Conseil d'État must socially distance. Hearings remain open to the public, but priority of access is given to lawyers and parties. In Greece, social distancing of at least 1.5 metres must be adhered to. In Romania, persons are only allowed access to court buildings after having completed a questionnaire on data relevant in the context of prevention and combating COVID-19 and social distancing of 2 metres is mandatory. In Ireland only a limited number of persons are permitted to be present in a courtroom with a social distancing requirement of 2 meters in place.

² "General public" includes every person except the "participants" (judges, court clerks, parties, attorneys/barristers, witnesses, summoned experts, interpreters, ...) involved in proceedings pending before your court.

| Face masks/plexiglass face shields or similar | Disposable gloves | Temperature checking | Hand sanitizer | Other |
|---|-------------------|----------------------|----------------|----------------|
| Austria | Croatia | Bulgaria | Austria | Cyprus |
| Belgium | Malta | Croatia | Belgium | Czech Republic |
| Bulgaria | Poland | Italy | Bulgaria | Denmark |
| Croatia | Slovakia | Latvia | Croatia | France |
| Cyprus | Spain | Lithuania | Cyprus | Germany |
| Czech Republic | | Malta | Czech Republic | Greece |
| Denmark | | Poland | Denmark | Ireland |
| Estonia | | Portugal | Estonia | Malta |
| Finland | | Romania | Finland | Norway |
| France | | Slovakia | France | Romania |
| Germany | | Slovenia | Germany | Slovakia |
| Greece | | | Greece | |
| Hungary | | | Hungary | |
| Ireland | | | Ireland | |
| Italy | | | Italy | |
| Latvia | | | Latvia | |
| Lithuania | | | Lithuania | |
| Luxembourg | | | Luxembourg | |
| Malta | | | Malta | |
| Norway | | | Norway | |
| Poland | | | Poland | |
| Portugal | | | Portugal | |
| Romania | | | Romania | |
| Slovakia | | | Slovakia | |
| Slovenia | | | Slovenia | |
| Spain | | | Spain | |
| The Netherlands | | | | |

Table 1: Obligatory safety measures for individuals entering court buildings.

g. Obligatory measures for staff working in court building

13. All countries surveyed had taken some obligatory health measures with regards to court staff whilst working in the court, as outlined in table A2 below. In Estonia, face masks are recommended when staff are meeting each other outside of their cabinets/rooms during meetings. In Cyprus, measures introduced to help prevent the spread of COVID-19 include: the wearing of face coverings, even outside court buildings; physical distancing of 2 metres; good hygiene; avoiding congregating; avoiding using colleagues' personal computers and stationery; the use of electronic means as much as possible; complying with directions from the judiciary and the Judicial Service; cleaning and disinfecting personal items; avoiding the use of lifts; and informing the Health and Safety Officer of the Supreme Court immediately if one manifests symptoms. In Belgium, measures include regular cleaning, with emphasis on door handles, the building, and the toilets. Staff are asked to disinfect the office regularly. Masks must also be worn when moving around in collective work areas. In Italy, all staff working in the court building are tested for the virus on a voluntary basis. In Greece, the President of the Council of State adopted in October an "action plan" containing the necessary preventive measures against the coronavirus as well as the measures required to deal with any confirmed case of coronavirus detected among the staff (judges and employees) of the Council.

| Face masks/plexiglass face shields or similar | Disposable gloves | Temperature checking | Hand sanitizer | Other |
|---|-------------------|----------------------|----------------|----------------|
| Austria | Belgium | Bulgaria | Austria | Belgium |
| Belgium | Lithuania | Croatia | Belgium | Bulgaria |
| Bulgaria | Malta | Italy | Bulgaria | Cyprus |
| Croatia | Poland | Latvia | Croatia | Czech Republic |
| Cyprus | Romania | Malta | Cyprus | Estonia |
| Czech Republic | Slovakia | Poland | Czech Republic | France |
| Finland | Spain | Portugal | Denmark | Germany |
| France | | Slovakia | Estonia | Greece |
| Germany | | Slovenia | Finland | Italy |
| Greece | | | France | Italy |
| Hungary | | | Germany | Malta |
| Italy | | | Greece | Norway |
| Latvia | | | Hungary | Romania |
| Lithuania | | | Italy | Slovakia |
| Luxembourg | | | Latvia | Sweden |

| | | | | |
|-----------------|--|--|------------|--|
| Malta | | | Lithuania | |
| Poland | | | Luxembourg | |
| Portugal | | | Malta | |
| Romania | | | Norway | |
| Slovakia | | | Poland | |
| Slovenia | | | Portugal | |
| Spain | | | Romania | |
| Sweden | | | Slovakia | |
| The Netherlands | | | Slovenia | |
| | | | Spain | |

Table 2: Specific safety measures which have been taken at courts obligatory for staff working in the court buildings.

h. Livestreaming to limit numbers in court and allow for public hearings

14. Of the 28 countries surveyed, seven (25%) provide live-streaming of hearings to limit the number of people in the court itself. (Estonia, The Netherlands, Norway, Spain, Poland, Ireland and Italy). For example, in The Netherlands, the Administrative Jurisdiction Division of the Council of State provided live-streaming of a hearing of great interest to the general public during the first lockdown and it was then decided to make such provision for selected hearings during normal times. Recordings are available on the Council of State's YouTube channel. In Norway, members of the public may attend the hearings by logging on to the digital platform on which they are carried out.

Of the 28 countries surveyed, 7 (25%) provided live-streaming of the hearings to limit the number of people in the court itself in order to meet a requirement that members of the public have a right to attend hearings (Estonia, The Netherlands, Norway, Spain, Ireland, Malta and Italy). In Estonia, the Supreme Court held an *en banc* hearing on 4 August 2020 which was widely broadcasted. In Ireland, since 20 April 2020 remote proceedings have been live-streamed to a screen in the Supreme Court courtroom in order to fulfil the constitutional requirement that justice be administered in public. Limited numbers of persons can be present, such as the Registrar, Judicial Assistant or interested journalists. Subject to government restrictions, members of the public may also be present. In Malta, virtual sittings as conducted using Microsoft Teams.

i. Use of videoconferencing or two-way electronic means of communication

15. The institutions in all countries other than Luxembourg, Bulgaria, Croatia and Malta use two-way systems of videoconferencing or a two-way electronic means of communication, such as Zoom or Microsoft Teams. Security is ensured in a variety of ways. For example, in France, Skype, a secure videoconferencing system, was already available and has been developed and perfected by the I.T. services of the Conseil d'État. All data is kept

on servers which are physically present in the premises of the Conseil d'Etat and other videoconferencing systems which do not meet security standards cannot be used. In the Supreme Court of Estonia, the I.T. department found that Microsoft Teams was the most sufficient and secure system for official use. Names of the parties or any other personal data is avoided during discussions about a case.

In the Czech Republic, the Ministry of Justice authorised the use of Skype for Business. In The Netherlands: only videoconferencing software of which the security can be guaranteed is allowed, including Microsoft Teams and Cisco Webex. In Sweden, a special system for videoconferences has been installed by the central court administration that is intended to be more secure than other general systems. In order to ensure remote deliberations, Zoom is used in Greece in combination with a government platform (e-presence) for security reasons. In Lithuania, Zoom is used for oral hearings with no special security features enabled. Participants receive an individual invitation (link) to a particular hearing and the identity of the participants is checked in accordance with the procedural rules. Deliberations take place in a large room in the courthouse in accordance with the required health and safety measures or over a conference call. In Germany, Cisco Webex is considered safe by the Federal Office for Information Security.

In Ireland, remote hearings and deliberations are conducted on Pexip, which requires each participant to have a code to a private virtual meeting room in order to participate. This platform had previously been used by the Courts Service of Ireland to video-link with accused persons on remand from detention facilities and for witnesses located outside of the jurisdiction. A protocol was put in place in April, 2020, providing that parties or observers may be given access codes for a remote court hearing in circumstances where they give an undertaking not to further circulate the access code or to record or broadcast the proceedings. The registrar is responsible for monitoring the list of participants and may remove anyone who does not have a *bona fide* reason for being in the virtual room. In Denmark, the court only uses Microsoft Teams or Skype for Business.

Overall, courts have used innovation and technology to continue operating during the pandemic and to ensure that access to the court is facilitated in so far as possible.

B. General employment policy

a. Reduction in number of court staff

16. For 27 states (96.43%), the pandemic has not led to a reduction in the numbers of staff employed by the courts. In only one state (Spain) has the pandemic had such an effect, with there being a 10% reduction in court staff since the onset of the crisis. In France, the Conseil d'Etat has found that there will be a need to eliminate certain categories of work in the future as a result of the pandemic. The tasks which are likely to be reduced or become redundant are those linked to the filing of paper documents. The remaining 27 states did not find that the pandemic would lead to the elimination of certain categories of work. In all but one state (Lithuania), it was not necessary to hire any new professionals or ancillary staff in response to the pandemic. The supreme administrative court of Lithuania had to increase the hours of employment of its cleaning staff but, aside from that, does not appear to have required more personnel to deal with the impact of the pandemic.

b. Impact on working life of the courts

17. The pandemic has had an impact on the working life of the courts in 27 states. The Bulgarian supreme administrative court was the only court which responded that working life has been unaffected by the health crisis. An increase in remote working was one of the key changes referred to by a majority of states. For some courts, working from home has only been resorted to at certain points during the pandemic. For example, in the supreme administrative court of Portugal, employees worked from home in the months of March, April, November and December. Other courts, such as the Supreme Court of Estonia, noted the increased use of virtual meetings. In the French Conseil d'État, between 15th March 2020 and 10th May 2020, only emergency interim hearings were held, while all other hearings were postponed. In Latvia, open hearings were held only in very important cases.

c. Furlough systems

18. A majority of countries did not have in place a furlough scheme (16 states - 57.41%). The supreme administrative courts in only two countries which did have such a scheme made use of it. Those countries were the Czech Republic and Croatia. In both the Czech Republic and Croatia, the Head of the Court decided to use the furlough scheme. Croatia's court had the highest number of employees affected by the use of the furlough scheme (81-90%). In the Czech Republic the number affected was lower, with only 0-10% of employees relying on the scheme. The employees in the Czech Republic court were only placed on the furlough scheme if it was impossible for them to work remotely, in which case they stayed at home and were entitled to receive full pay.

d. Alternative ways of working

19. In a majority of the states (85.71% - excluding only Spain, Poland, Bulgaria and Romania), the courts engaged in alternative ways of working in response to the pandemic. The main alternative means of working was the switch from in person working to remote working, with 85.71% of states (24) adopting this measure. 64.29% of states adopted flexible working hours, whilst a minority of states resorted to working in shifts and a reduction of working hours (46.43% and 14.29% of states respectively). For example, in Ireland, employees in the Supreme Court were encouraged to work remotely since the beginning of the pandemic and, where necessary for staff to attend an office, attendance was staggered.

e. Working from home and flexible hours in normal times

20. The number of states that replied that working from home and flexible working hours were available during normal times and the number that replied that they were used in response to the pandemic were similar. In 82.14% of states, remote working was available pre-pandemic, and in 57.14% flexible working hours were employed. Yet only a small minority of states utilised shift working in normal times (10.71%) and only one state responded that a reduction in working hours was used in pre-pandemic times.

f. Tasks carried out from home

21. The responses reveal the diverse range of tasks which have been carried out by court employees from home during the pandemic. In France, employees of the Conseil d'Etat have continued to work from home in respect of the whole life cycle of a case, from its registration to its enrolment for a public hearing. Legal research and panel deliberations have continued whilst employees work from home, as well as administrative tasks. Twenty-two states found that there were no activities which could not be carried out from home due to technical impediments. The Belgian Conseil d'État found difficulty in answering the reception phone as well as completing some of the Registry work remotely.

g. Working remotely in 'normal' times

22. The average percentage of employees who could work fully remotely during normal times across all 28 states was 17.75% with 14 countries responding that 0% of their employees could work fully from home. The average number of employees who could work partially remotely during normal times was higher at 42.32%. In the Netherlands and Malta, 100% of employees could work partially from home whilst in Austria and the Czech Republic only 1% of employees were could do so. An average of 33.93% of employees had no ability to work from home before the pandemic.

h. Working under special regulations

23. In 25 states, courts operate under special regulations due to the pandemic. In only Sweden, Spain and Malta is this not the case. Spain, Cyprus and Malta are the only states in which no members work from home, making up only 10.71% of members. With regard to the percentage of remote working hours per week within the courts, the modal value was 41-50% (17.88% of states). With regard to the percentage of staff working remotely, the modal values were 41-50% and 61-70% of employees.

C. Judges

a. Remote working

24. In 85.71% of states, on December 1st 2020, judges were working partially remotely and partially in person at their institution. In 10.71% of states (Ireland, Portugal, and Italy), judges were working exclusively remotely while in just 3.57% or just a single state (Cyprus), judges were working exclusively in person. For 87.88% of states (19 countries) this reflected a change from how judges worked pre-pandemic.

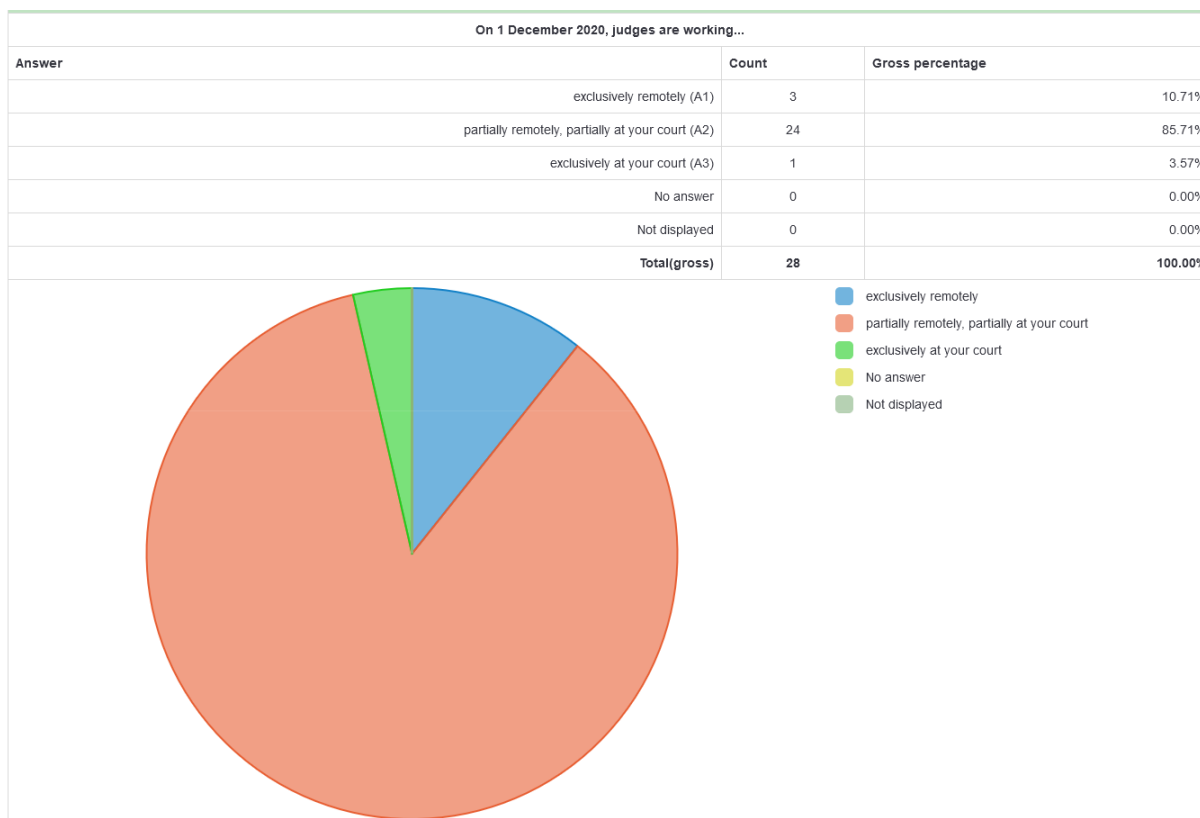


Table 3.

b. Tasks carried out from home

25. In relation to the types of work which judges carry out from home, the most common among the states is deliberation with other judges (89.29% of states). Croatia, Romania and France are the only states in which judges do not carry out deliberations with other judges remotely. Half of the states have been able to deliver judgments with the use of electronic signatures whilst only 42.88% states are able to hold remote hearings. France indicated that its litigation section and Information Service is considering the use of an electronic signature for the delivery of judgments remotely. A number of states, including Cyprus and Germany, indicated that legal research has been able to continue whilst judges work remotely. Italy noted that even prior to the pandemic, judges in its supreme administrative court were able to consult files from home and deliver judgments using an electronic signature.

c. Deliberation

26. Despite 25 states replying that it is possible for deliberation with other judges to take place remotely, in just 22 states is this activity actually being carried out from home. Germany, for example, replied that it is possible for deliberation among judges to continue remotely, but in practice this activity is not actually being completed remotely. 39.29% of states replied that they conduct remote hearings and the same percentage replied that they deliver judgments with electronic signature. In France, examination of a case, the preparation of reports and the drafting of judgments can take place remotely, whilst hearings and deliberations between judges take place in person.

d. Impact on cases allocated to individual judges

27. For a majority of the states (89.29%), the pandemic has not had any impact on the number of allocated cases to an individual judge for deciding. Only in Slovenia, Belgium and Romania has there been such an impact. Romania had the lowest percentage change, amounting to approximately 0-10% change. Belgium experienced a change of 11-20%. Slovenia had the greatest percentage change of 41-50%. 21.43% of states noted an impact on the number of judgments delivered by an individual judge as a result of the pandemic. Croatia and Romania indicated that there was a 0-10% change. France and Belgium noted an 11-20% change and Poland and Slovenia reported a 31-40% change in judgments delivered by one judge during the pandemic.

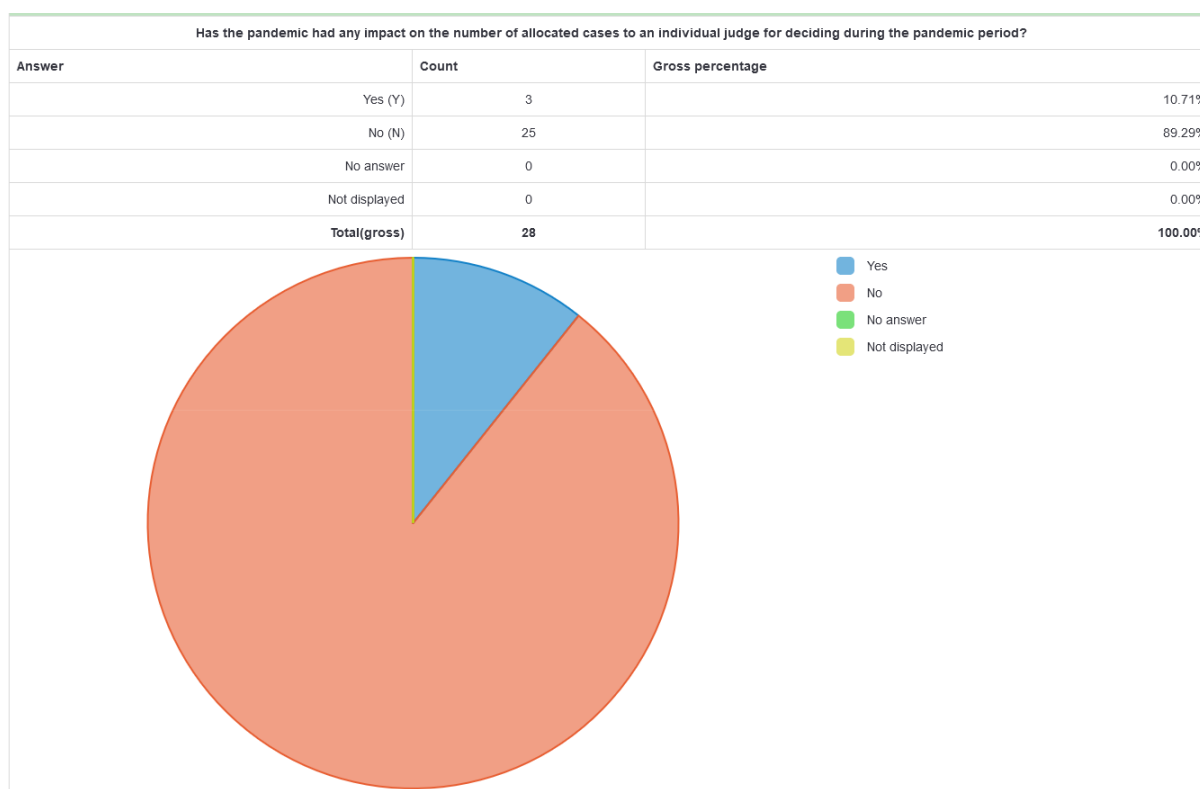


Table 4.

| | 0-10 | 11-20 | 21-30 | 31-40 | 41-50 | 51-60 | 61-70 | 71-80 | 81-90 | 91-100 |
|----|------|-------|-------|-------|-------|-------|-------|-------|-------|--------|
| BE | | ✓ | | | | | | | | |
| RO | ✓ | | | | | | | | | |
| SI | | | | | ✓ | | | | | |

Table 5.

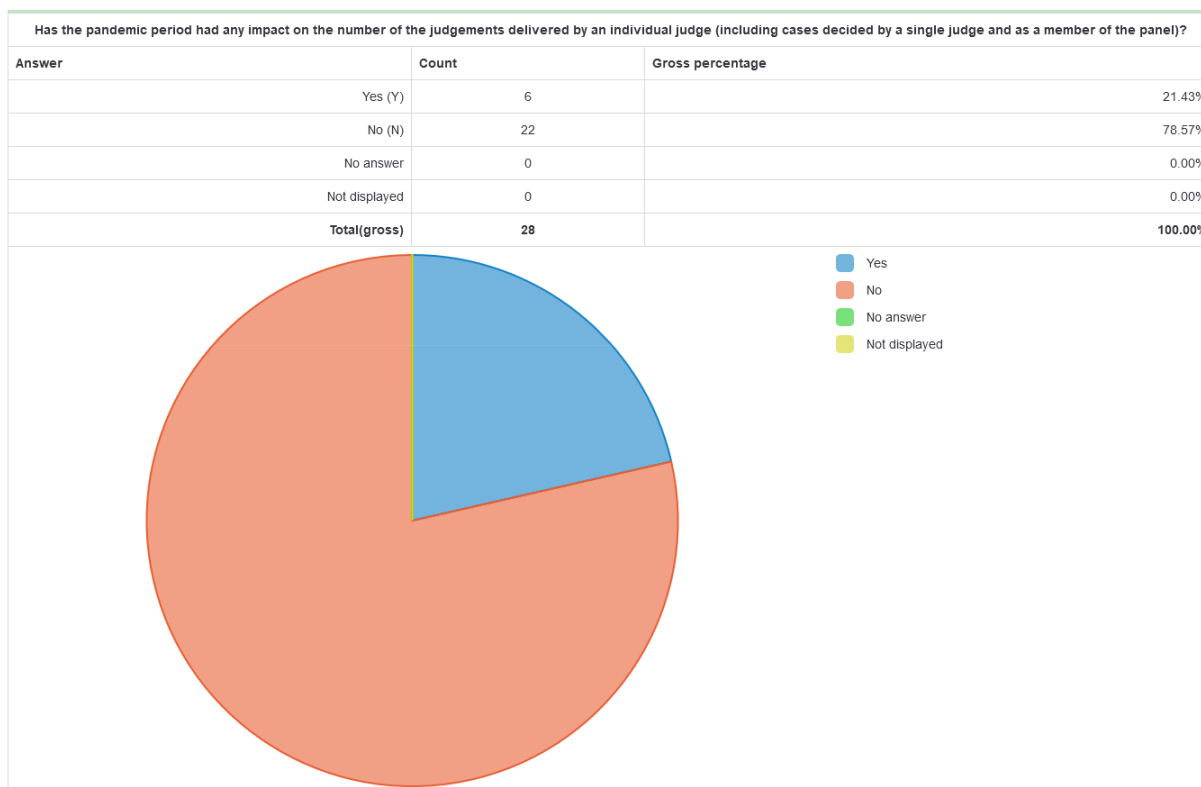


Table 6.

| | 0-10 | 11-20 | 21-30 | 31-40 | 41-50 | 51-60 | 61-70 | 71-80 | 81-90 | 91-100 |
|----|------|-------|-------|-------|-------|-------|-------|-------|-------|--------|
| BE | | ✓ | | | | | | | | |
| FR | | ✓ | | | | | | | | |
| HR | ✓ | | | | | | | | | |
| PL | | | | ✓ | | | | | | |
| RO | ✓ | | | | | | | | | |
| SI | | | | | ✓ | | | | | |

Table 7.

e. Impact on judges' seminars and conferences

28. In 60.71% of states, courts have continued to organise judges' seminars and conferences throughout the pandemic. Of those states still organising such events, only Greece reported that they were being held face to face. The most popular response from states was that these sessions were being held remotely (28.57%). In 17.88% of states, these were held as a mixture of face to face sessions and remote events. Italy noted that training events organised by the Administrative Justice Studies and Training Office were severely reduced throughout 2020 due to the pandemic.

Over half of states (57.14%) are planning on organising seminars, conferences or training in 2021. 35.71% of states responded that they are unable to tell at this time if such events will be organised for 2021. Only two states (Spain and Portugal) responded that no such events

will be organised for the incoming year. Of the 18 states which responded that such training events will be organised for 2021, 28.57% responded that these will be organised as a mixture of remote events and in person seminars. Five countries (17.88%) responded that these will be held remotely. Italy commented that conferences will only be online if the pandemic does not improve. Otherwise they will be held in person.

D. Researchers and Judges' Assistants

a. Remote working

29. As of 1 December, 2020, in only two countries (Greece and Cyprus) were researchers and judges not working remotely. The rest worked a majority of their hours remotely. In terms of working hours, The Netherlands, Sweden, Portugal, Slovakia, Lithuania and Malta worked 91-100% of their hours remotely closely followed by Norway, Belgium, Finland, Italy who worked 81-90% of their hours remotely. Luxembourg (Administrative Court) worked the least amount of hours remotely, working only 11-21% of their total hours in this way.

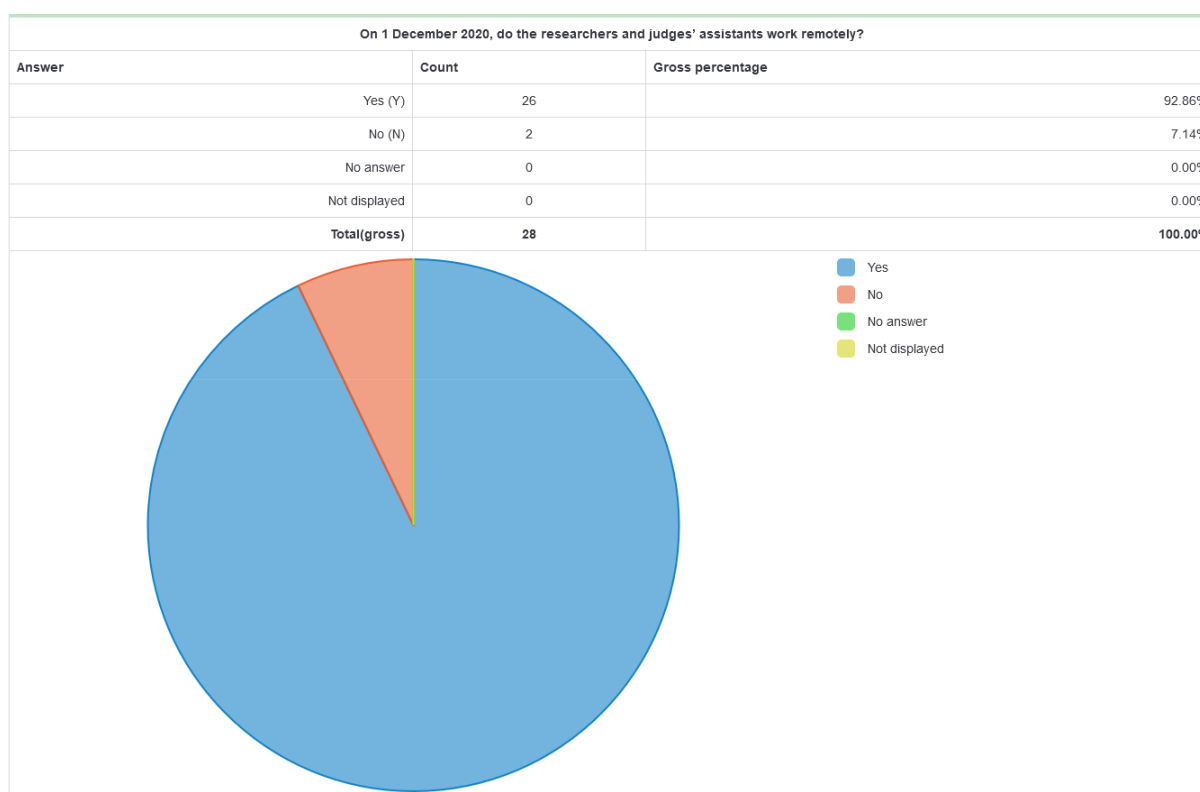


Table 8.

Four countries (Latvia, Slovenia, Germany and Denmark) worked 21-30% of their hours remotely, followed by Estonia with 31-40%. Six countries answered with 41-50% (Czech Republic, Spain, Poland, Croatia, Hungary, Romania (High Court of Cassation and Justice); two with 61-70% (Austria, Bulgaria); and two with 71-80% (Ireland and France).

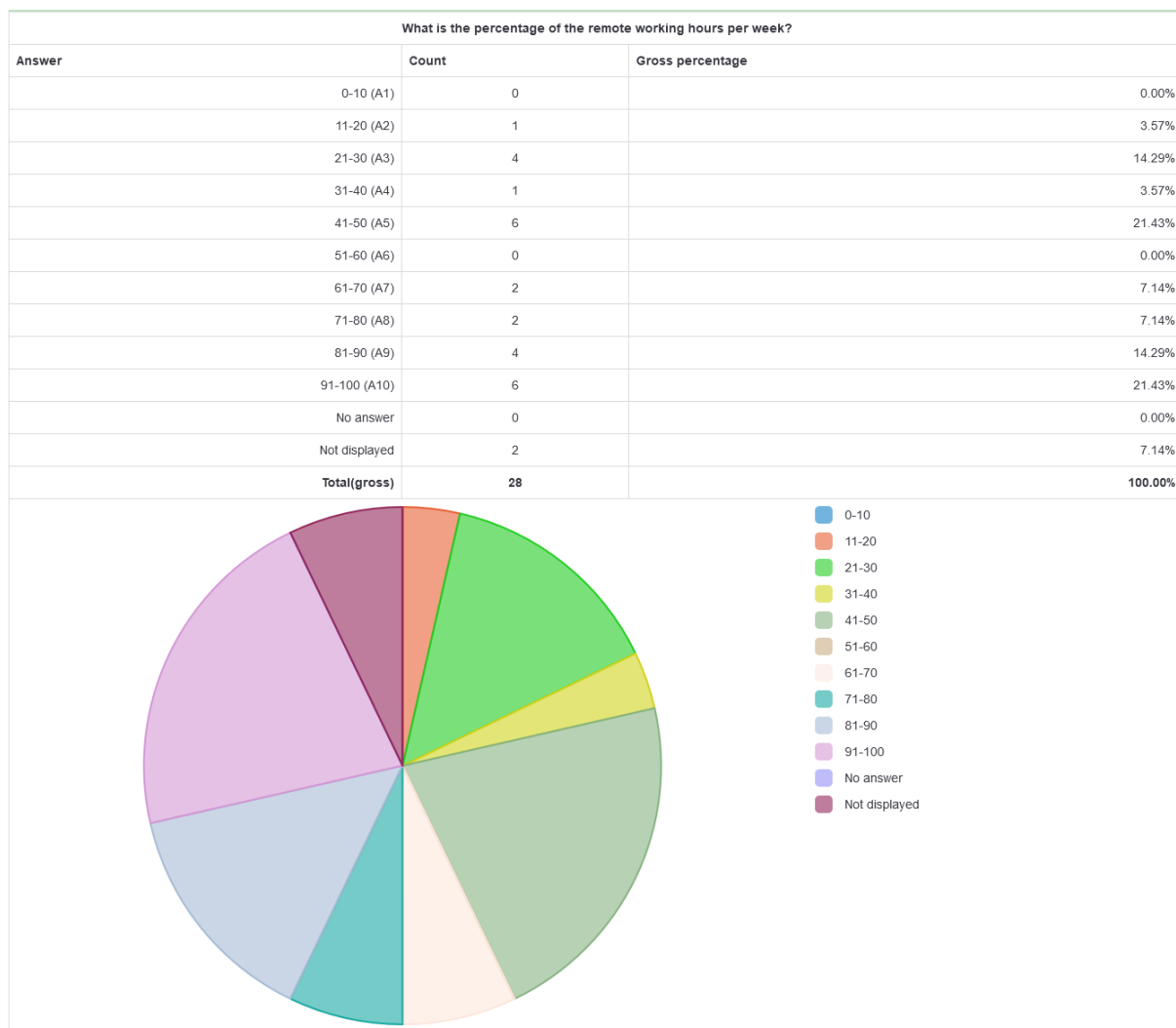


Table 9.

| | 0-10 | 11-20 | 21-30 | 31-40 | 41-50 | 51-60 | 61-70 | 71-80 | 81-90 | 91-100 |
|----|------|-------|-------|-------|-------|-------|-------|-------|-------|--------|
| AT | | | | | | | ✓ | | | |
| BE | | | | | | | | | ✓ | |
| BG | | | | | | | ✓ | | | |
| CY | | | | | | | | | | |
| CZ | | | | | ✓ | | | | | |
| DE | | | ✓ | | | | | | | |
| DE | | | ✓ | | | | | | | |
| EE | | | | ✓ | | | | | | |
| ES | | | | | ✓ | | | | | |
| FI | | | | | | | | | ✓ | |
| FR | | | | | | | | ✓ | | |
| GR | | | | | | | | | | |
| HR | | | | | | ✓ | | | | |
| HU | | | | | ✓ | | | | | |
| IE | | | | | | | | ✓ | | |

| | | | | | | | | | | |
|----|--|---|---|--|--|---|--|--|---|---|
| IT | | | | | | | | | ✓ | |
| LT | | | | | | | | | | ✓ |
| LU | | ✓ | | | | | | | | |
| LV | | | ✓ | | | | | | | |
| MT | | | | | | | | | | ✓ |
| NL | | | | | | | | | | ✓ |
| NO | | | | | | | | | ✓ | |
| PL | | | | | | ✓ | | | | |
| PT | | | | | | | | | | ✓ |
| RO | | | | | | ✓ | | | | |
| SE | | | | | | | | | | ✓ |
| SK | | | | | | | | | | ✓ |
| SI | | | ✓ | | | | | | | |

Table 10.

b. Supervision of remote working

30. Only the judge to whom an individual assistant or researcher works, supervises the work of the assistant or researcher in France, Spain, Portugal, Croatia, Germany, Malta and Italy. Twelve countries (Hungary, Bulgaria, Lithuania, Belgium, Slovakia, Luxembourg, Poland, Latvia, Sweden, Denmark, The Netherlands and Austria) use a mixed system whereby any court officer or judge who has entrusted the work to a researcher or assistant supervises the efficiency of the remote work.

Seven countries used another system of supervision. Estonia uses a mixed system. The first aspect is similar to the above whereby any court officer or judge who has entrusted the work supervises it. However, assistants at the Supreme Court level, known as advisers, are not assigned to individual judges and work with all judges to some extent. Their direct supervisor is the Chairman of the Chamber. In the Czech Republic, judges supervise the remote work of their assistants but some other researchers are supervised by the Head of the Department of Research and Documentation Service and the Vice-President of the Court. Similar circumstances pertain in Slovenia, Romania and Ireland with judges supervising the remote work of their assistants and a third party undertaking the general management and supervisory role.

c. Seminars, conferences and training

31. Thirteen countries cancelled seminars, conferences and/or training for researchers/assistants due to the pandemic (Austria, Estonia, Czech Republic, Sweden, Norway, Poland, Cyprus, Slovenia). Twelve countries did not cancel any such events (France, The Netherlands, Latvia, Spain, Luxembourg, Slovakia, Belgium, Lithuania, Bulgaria and Ireland). Greece, Portugal, Croatia, Germany answered 'not applicable' to this question.

In respect of organising seminars, conferences and training for researchers or assistants in 2021, Poland, Greece, Slovakia, Bulgaria, Croatia, Romania and Malta (seven countries) answered that they are unable to tell at this time.

Germany, Luxembourg and the Netherlands were the only countries to answer 'no' to this question with the remaining twelve countries plan to organise such events for researchers and assistants in 2021.

When asked how such events were going to be organised in 2021, whether face-to-face or online, only one country (Italy) noted that it has not been decided yet because it will depend on the evolution of the pandemic. Denmark, Belgium, Estonia, France and Austria will organise such events on both a face to face and a remote basis, while Norway, Latvia, Spain, Cyprus, Slovenia, Lithuania and Hungary selected 'online/remote' only. In Ireland, all training planned for judicial assistants so far for 2021 will be held remotely and that the situation as to whether in person training will take place later in the year will depend on how public health restrictions develop as the year progresses. However, it is hoped that blended training will be used in the future, allowing judicial assistants from all over the country to participate easily.

E. Technical service at your court

a. IT infrastructure and employment

32. In response to the question of whether the IT infrastructure as it existed before the pandemic was sufficient to deal effectively and fully with the problems arising out of the pandemic outbreak, 19 of the 28 (67.85%) countries stated that it was. Regarding the estimated percentage of growth, if any, in employment of the IT specialists as a result of the pandemic, 24 of the 28 countries answered that there has been a growth of 0-10%. Latvia estimated an increase of 21-30%, while Norway and Greece experienced a 31-40% increase. Spain indicated an increase of 91-100% in such staff. Seven of the 28 (25%) courts that responded foresee a need for more IT staff in the short term as a result of the pandemic.

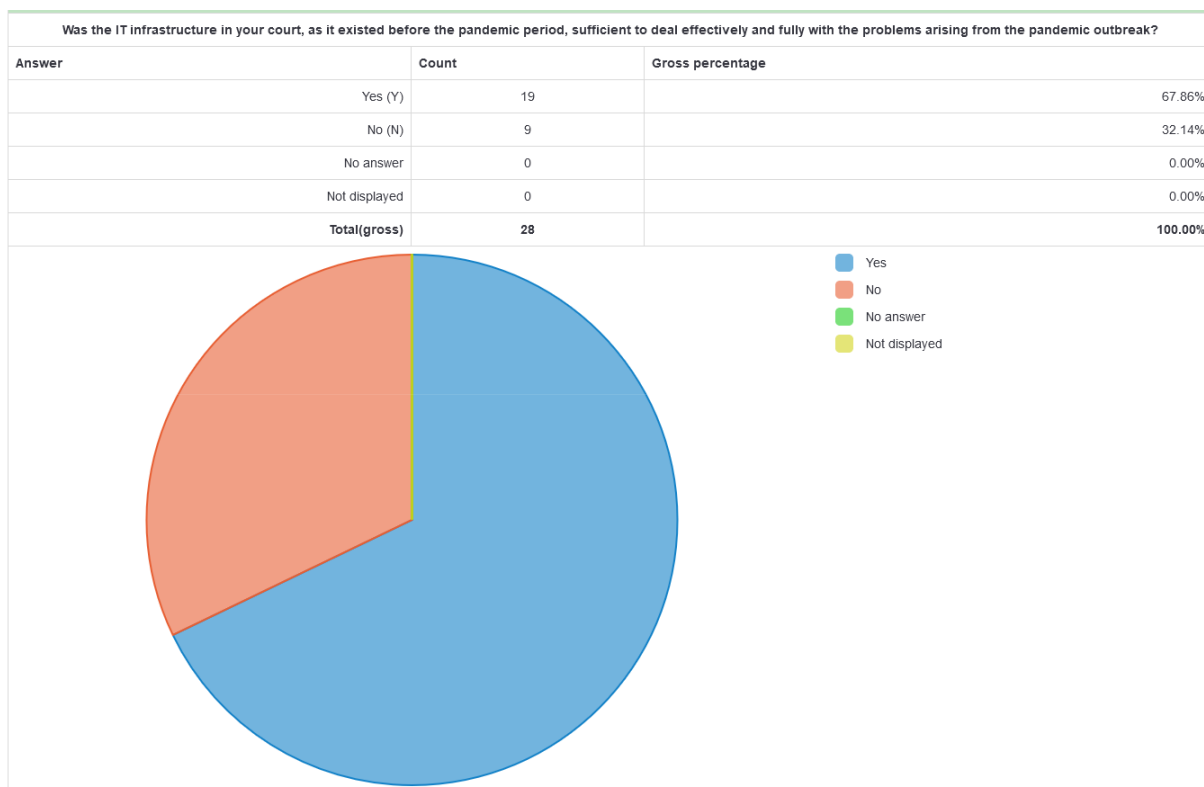


Table 11. (In Table 13, the members who answered "yes" to the question of whether the IT infrastructure in their court, as it existed before the pandemic period, was sufficient to deal effectively and fully with the problems arising from the pandemic outbreak, are marked in green. Members who answered "no" are indicated in red.)

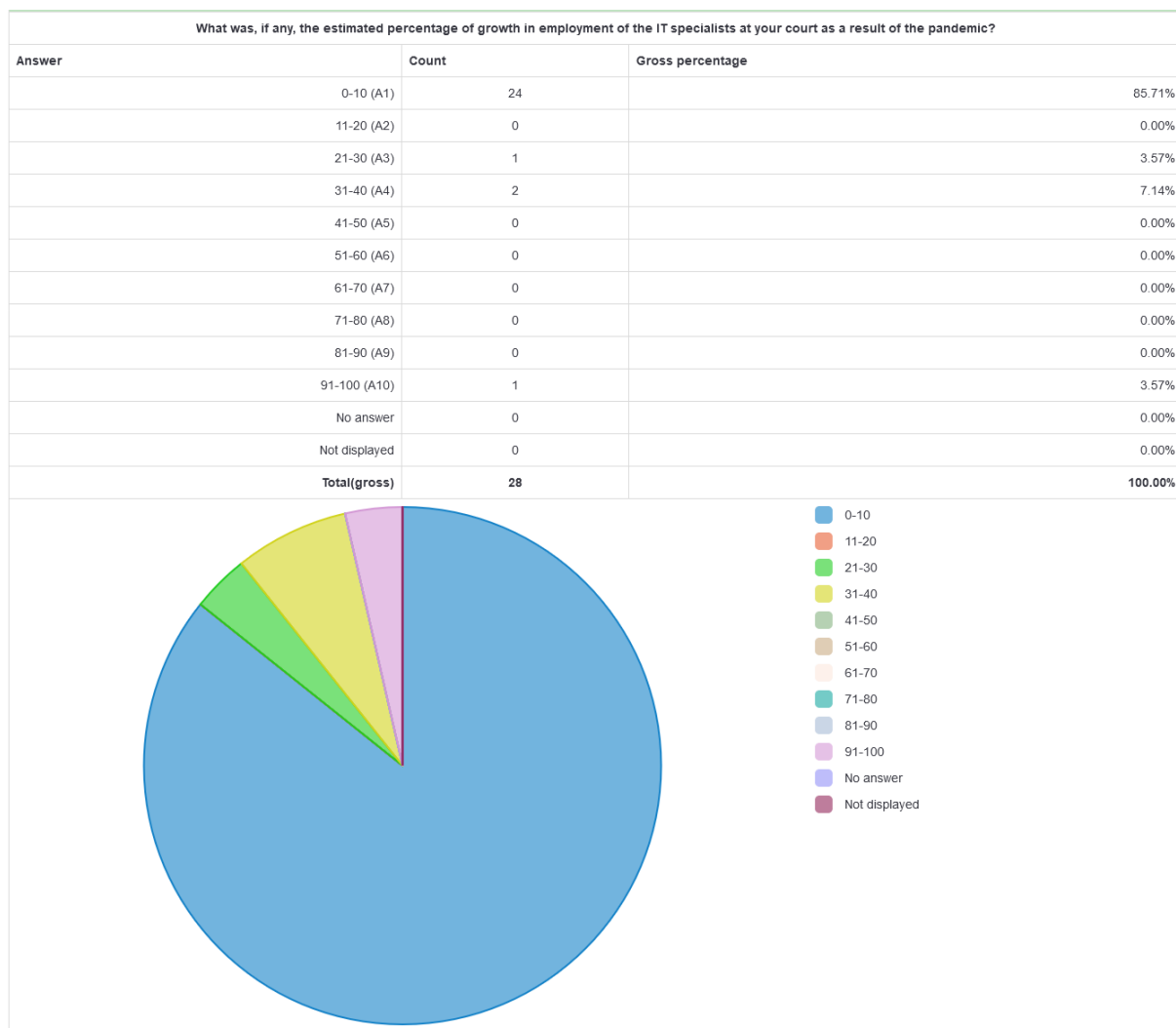


Table 12.

| | 0-10 | 11-20 | 21-30 | 31-40 | 41-50 | 51-60 | 61-70 | 71-80 | 81-90 | 91-100 |
|----|------|-------|-------|-------|-------|-------|-------|-------|-------|--------|
| AT | ✓ | | | | | | | | | |
| BE | ✓ | | | | | | | | | |
| BG | ✓ | | | | | | | | | |
| CY | ✓ | | | | | | | | | |
| CZ | ✓ | | | | | | | | | |
| DE | ✓ | | | | | | | | | |
| DE | ✓ | | | | | | | | | |
| EE | ✓ | | | | | | | | | |
| ES | | | | | | | | | | ✓ |
| FI | ✓ | | | | | | | | | |
| FR | | | | | | | | | | |
| GR | | | | ✓ | | | | | | |
| HR | ✓ | | | | | | | | | |
| HU | ✓ | | | | | | | | | |
| IE | ✓ | | | | | | | | | |

| | | | | | | | | | | |
|----|---|--|---|---|--|--|--|--|--|--|
| IT | ✓ | | | | | | | | | |
| LT | ✓ | | | | | | | | | |
| LU | ✓ | | | | | | | | | |
| LV | | | ✓ | | | | | | | |
| MT | ✓ | | | | | | | | | |
| NL | ✓ | | | | | | | | | |
| NO | | | | ✓ | | | | | | |
| PL | ✓ | | | | | | | | | |
| PT | ✓ | | | | | | | | | |
| RO | ✓ | | | | | | | | | |
| SE | ✓ | | | | | | | | | |
| SK | ✓ | | | | | | | | | |
| SI | ✓ | | | | | | | | | |

Table 13. (The members who answered "yes" to the question in table 11 of whether the IT infrastructure in their court, as it existed before the pandemic period, was sufficient to deal effectively and fully with the problems arising from the pandemic outbreak, are marked in green. Members who answered "no" are indicated in red.)

b. Cleaning staff

33. With regard to the percentage of growth in employment of cleaning staff as a result of the pandemic, a majority of courts, consisting of 22 of the 28 respondent courts, indicated that there was a 0-10% in the employment of cleaning staff. France and Lithuania experienced a growth of 11-20%, in comparison with 21-30% in both Finland and Ireland and 51-60% in Norway and Spain. No courts with the exception of those in France and Denmark foresee a need for more cleaning staff in the short term.

III. INSTITUTIONAL CAPACITY

A. Office Space

a. Office space for judges

34. Most countries (24 in total) noted no changes was needed in the office space. Only three countries (Bulgaria, Romania Croatia) noted a need for more office space, with three countries unable to tell at this time (France, Greece and Portugal).

b. Office space for researchers and administrative staff

35. Ireland noted that less space was needed in the office for researchers and administrative staff with such staff being encouraged to work from home where possible. Ireland was joined by Lithuania in this regard. On the other hand, 6 countries, Norway, Slovenia, Bulgaria, Croatia, Hungary and Romania, noted that more office space was needed for researchers and administrative staff. Many countries indicated that no change was needed in office space (Austria, Estonia, Czech Republic, The Netherlands, Latvia, Spain,

Poland, Luxembourg, Cyprus, Portugal, Belgium). The remaining 3 countries were unable to tell at this time whether more or less space was needed (Greece, Sweden and France).

c. Reorganisation of office space

36. Bulgaria and Italy were the only countries who needed to reorganise the office space for judges. The former implemented measures to ensure social distancing between judges working in an office and between them and employees in case they communicate with each other, while the latter put plexiglass barriers in place. Greece and Romania answered that they were 'unable to tell at this time' whether they needed to reorganise office space for judges and all remaining countries answered 'no' to this question.

On the question of whether the pandemic has resulted in the need to reorganise office space for researchers and administrative staff, 9 countries answered 'yes' and gave details of the arrangements which were put in place. Austria reorganised tables and room occupancy. Italy ensured 2 meter distancing between desks and shifts to reduce the presence of staff. Similarly, Latvia indicated that such staff work remotely and in shifts with flexible working hours. Slovenia noted that there was only a need to reorganise office space where two researchers shared an office. Lithuania employed plexiglass partitions in offices which were occupied by one or more person. They also provided individual phones for each researcher or assistant in order to prevent the spread of the virus through the use of a single telephone used by several employees in the same offices.

Hungary placed limits on the number of persons in the office at the same time and when several persons share a room, each must wear a mask at all times. Further, the researchers and administrative staff attend the office according to a pre-agreed schedule which avoids the presence of too many persons in the room at the same time. Bulgaria and Belgium also implemented measures to ensure social distancing between staff. Belgium has also limited on-site presence by rotating staff between on-site and remote locations. Ireland introduced a 'hot desk' system while encouraging staff to work remotely. If a judicial assistant or researcher needs to be on site, they may pre-book a desk for the duration of time which they need to be on site.

d. Deficiency of office space caused by social distancing rule

37. Five countries required extra office space for judges as a result of social distancing requirements. Romania required the most space with 91-100% required. France and Slovakia estimated between 41-50% more space was required; Bulgaria noted slightly lower with 31-40% extra occupancy required, followed by Greece noted an estimate of 21-30%.

Twenty-one countries answered no to the question of whether social distancing rules has caused a deficiency of office space for researchers. Among the countries who answered yes, Romania noted that social distancing caused a deficiency in office space for researchers and administrative staff of 91-100% with Belgium noting the lowest deficiency of 0-10%.

e. Reduction in office space in the short term

38. Three countries (Italy, Greece and Austria) answered that they were unable to tell at this time whether the remote work and adopted new forms of work will result in the reduction of office space for judges required in the short term. All remaining countries answered 'no' to this question. As to whether remote work and new forms of work will result in the reduction of office space for researchers, Belgium was the only country which answered 'yes' to this question. Five countries were unable to tell at this time (Austria, Sweden, Poland, Greece and Italy). All remaining countries answered no.

B. Courtrooms

39. Most of the members (75%) have rearranged their courtrooms as a result of the pandemic. The most common measure adopted by respondents (19 countries) has been the provision of extra space between chairs followed by separation of audience from the judges by plastic/glass barriers (14 countries). Other examples of measures include the signposting of entries and exits from courtrooms and designation of hand sanitisation stations inside and outside each courtroom and the making of personal protective equipment available to judges, staff and court users on request in Ireland.

A vast majority of members (85%) have not needed to acquire extra courtroom space.

C. Conference Space

a. Increase and reorganisation of conference space

40. Of the 28 respondents, 18 have not required any change in the amount of conference space needed as a result of the pandemic. More space has been required by 8 members while 2 members answered that they were not able to tell at this time.

42.86% of the members have needed to reorganise their conference space as a result of the pandemic while 46.43% have not needed to. The remaining members cannot tell at this time if they need to.

Of the 12 countries that have reorganised their conference spaces, the most common measure carried out is reorganising the chairs as to ensure social distancing (Austria, France, Estonia, Poland, Latvia and Slovenia). Other measures used include converting rooms used for another purpose into conference rooms. Both the Netherlands and Germany have implemented this measure. In Germany due to the pandemic, only the largest court room is in use for public hearings. Therefore, the other court rooms could be converted into conference rooms used for reunions of the court administration as well as for deliberations.

b. Deficiency of conference space caused by social distancing rule

41. A vast majority of members (85.71%) did not find that the social distancing rule caused a deficiency of the conference space available. Of the remaining four countries that stated that the rule had caused a deficiency, Croatia estimated that it required an extra 21-30% of conference space, Norway and Bulgaria estimated that they required an extra 41-

50% of conference space and Slovenia estimated that it required an extra 51-60% of conference space.

Most of the members (82.14%) stated that the remote work and adopted new forms of work at their court would not result in the reduction of conference space required in the short term (in 2021).

IV. Court procedure

A. Modification of national procedural law to facilitate judicial functions

42. Of the 28 countries surveyed, 18 (64%) have modified their national procedural law in order to facilitate judicial functions of the courts during the pandemic period (Austria, France, Estonia, Czech Republic, The Netherlands, Norway, Spain, Greece, Luxembourg, Cyprus, Portugal, Slovakia, Belgium, Bulgaria, Hungary, Ireland, Malta and Italy).

The special procedures in 13 countries were based on new legislation Austria, France, Czech Republic, The Netherlands, Spain, Greece, Luxembourg, Portugal, Slovak Republic, Bulgaria, Hungary, Italy and Belgium). In two the procedures were based on practices (Norway and Malta) and three based their special procedures on other methods (Estonia, Cyprus, Ireland). In Belgium, a special and temporary procedure for dealing with cases exclusively in writing (and thus without a hearing) was introduced by Royal Decree of Special Powers no. 12 of 21 April 2020 'concerning the extension of the time limits for proceedings before the Council of State and the written procedure'. The agreement of the parties was required to proceed in this way.

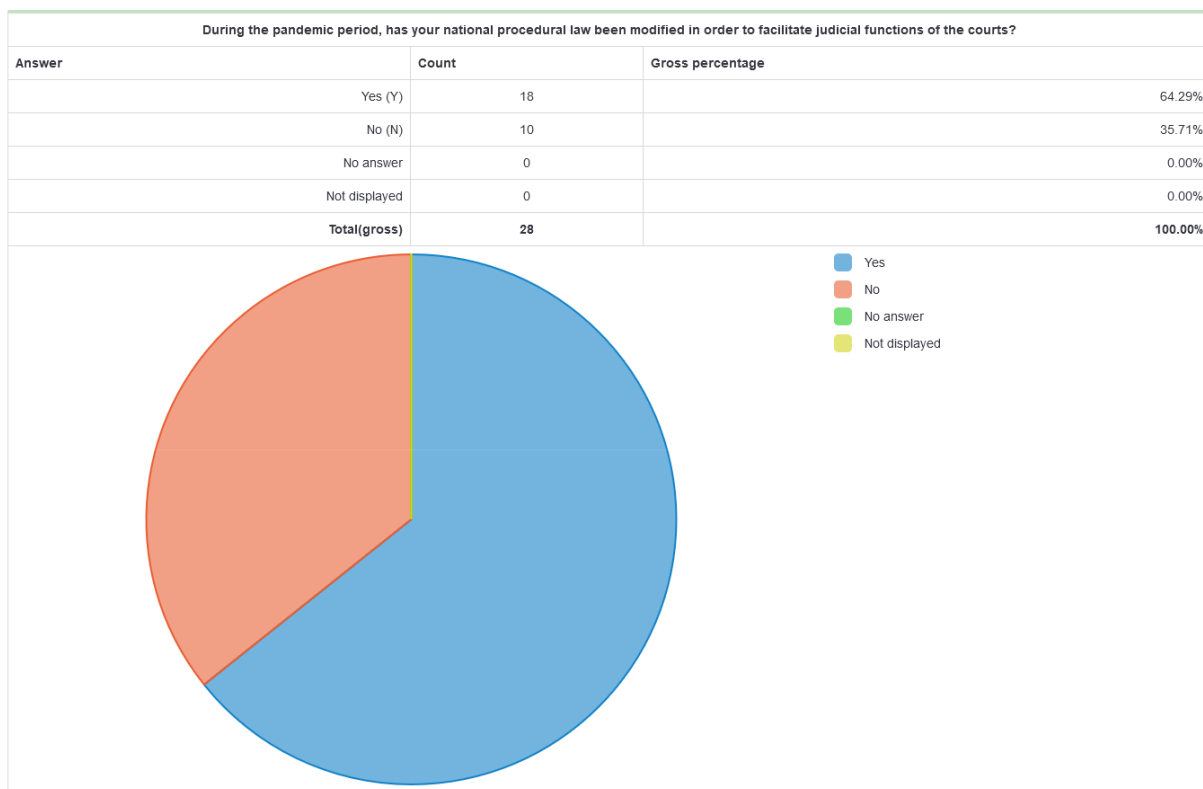


Table 14.

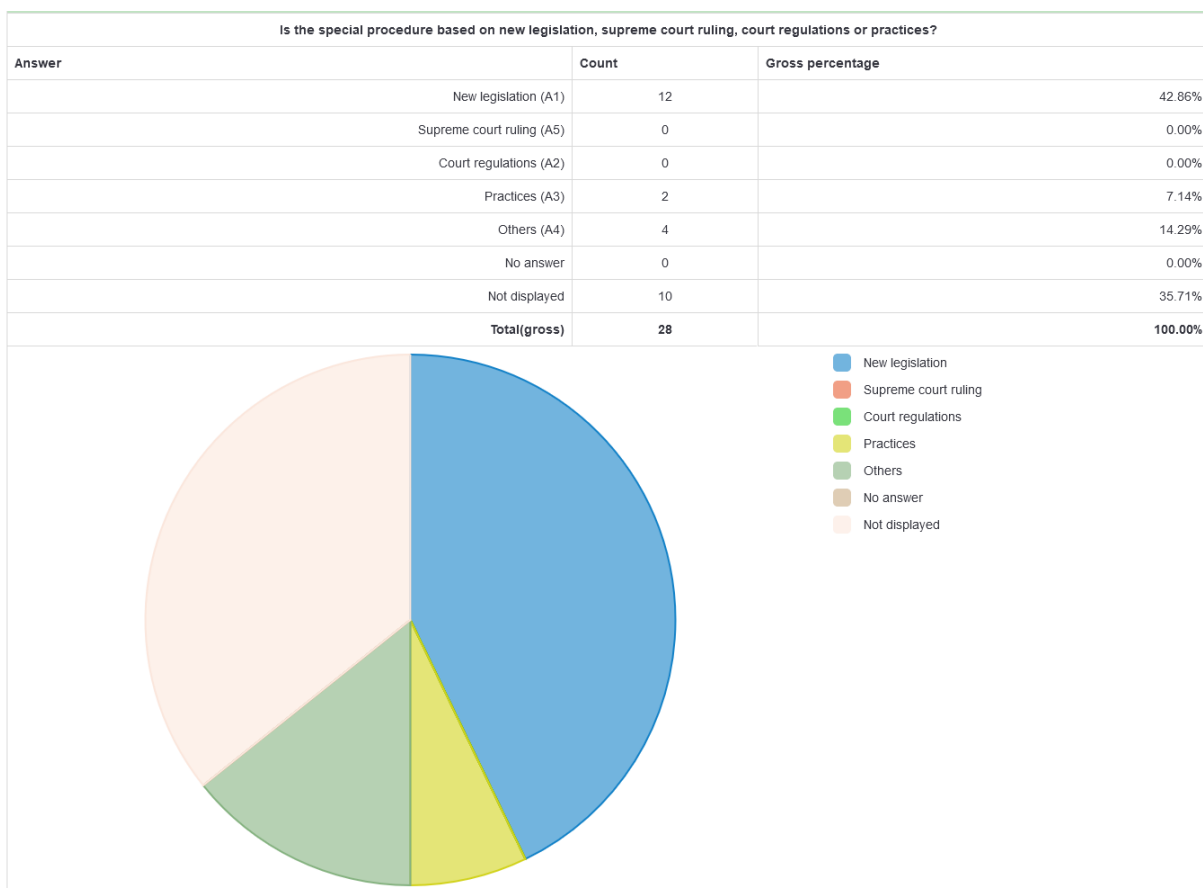


Table 15.

For example, in Estonia, the Council for Administration of Court adopted “Recommendations of the Council for Administration of Court for organising the administration of justice during emergency situation”, which also applied to administrative courts. These recommendations helped to ensure that any changes in the organisation of work during the emergency situation were simultaneous and uniform.

In Cyprus, changes have been made through amendments to Procedural Rules, the issuing of Practice Directions (Practice Direction 132 of 26 June 2020), and the issuing of Supreme Court Notices and Directions due to common use of written proceedings in administrative cases.

In Ireland, on 16 April 2020, the Chief Justice issued Practice Direction SC21 Conduct of Proceedings in the Supreme Court (COVID-19) which applies during the continuance of any special measures or guidance adopted by the government. This was supplemented by Guidance for Participants of remote Hearings. The legislature enacted the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 in August 2020 that provides that a court may direct that certain proceedings be conducted remotely and for certain applications and documents to be dealt with remotely.

B. Nature of the amendments to ordinary procedure

43. The amendments to ordinary procedure concerned:

- special matters such as public procurement, welfare, regional or municipal ordinance, safety, and health in 4 countries (France, Spain, Cyprus and Italy) (14.29%);
- special part of the procedure (e.g. urgent measures) in 7 countries (France, Greece, Cyprus, Portugal, Hungary, Malta, Italy) (25.00%);
- mandatory time-frames for deciding cases in 3 countries (France, Cyprus and Portugal) (10.71%);
- procedural deadlines in 12 countries (Austria, France, Czech Republic, The Netherlands, Greece, Luxembourg, Cyprus, Portugal, Slovakia, Belgium, Hungary and Italy) (42.86%);
- the deadline for appeal in 4 countries (Austria, Czech Republic, Greece and Luxembourg) (14.29%);
- time limits for execution of court decisions in 3 countries (Austria, Czech Republic and Slovakia) (10.71%);
- other parts of the procedure in 12 countries (France, Estonia, Czech Republic, The Netherlands, Norway, Greece, Cyprus, Slovakia, Bulgaria, Hungary, Ireland, Italy) (42.86%).

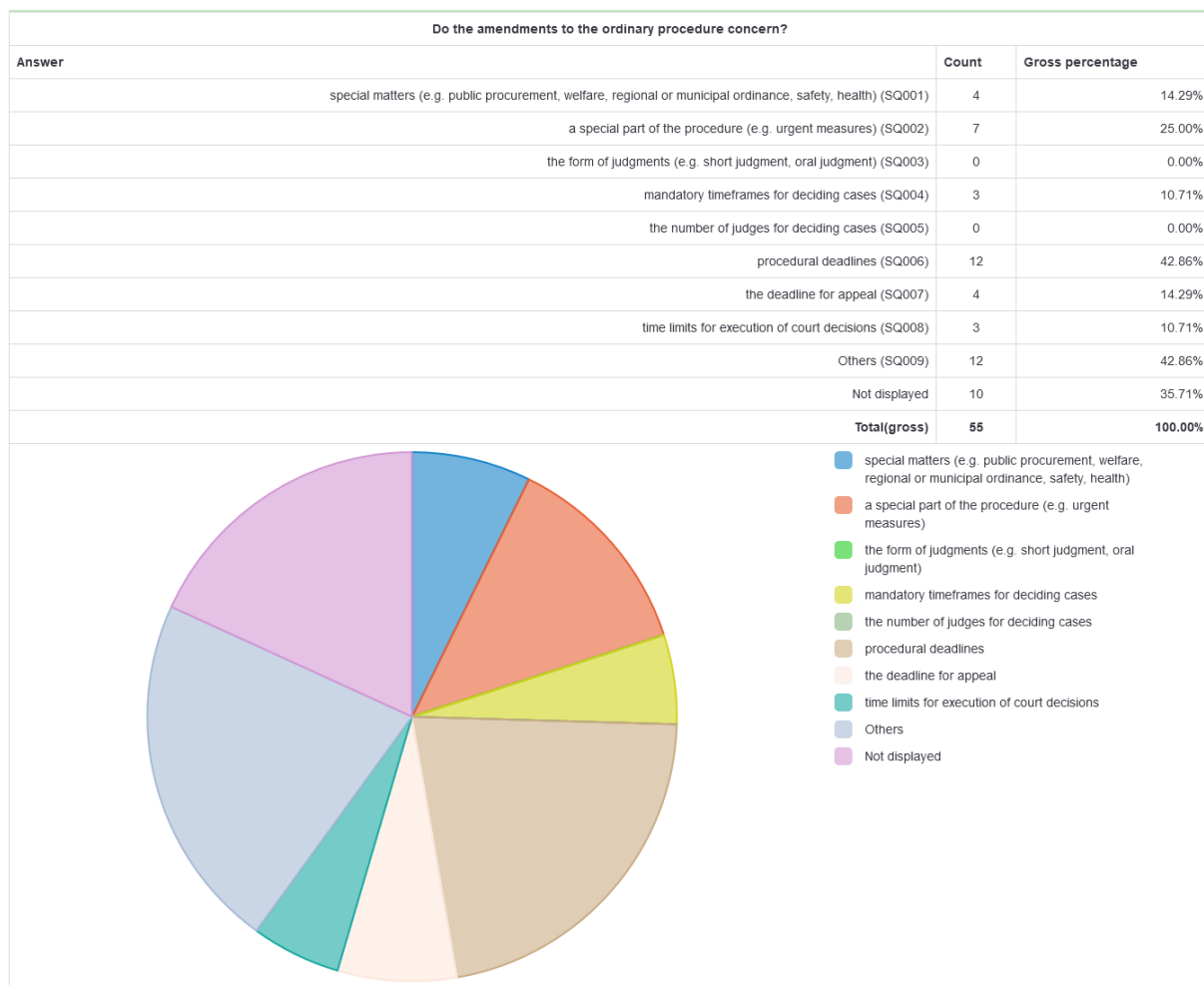


Table 16.

In the latter case, the amendments to the ordinary procedure generally concerned the organization of oral hearings, e.g. the possibility to hold hearings remotely, to exclude or restrict the public or to decide a case without an oral hearing.

In France, Ordinances No. 2020-305 (25 March 2020) and No. 2020-405 (8 April 2020) adapted the applicable rules before the Conseil d'État and the administrative jurisdiction during the first period of health emergency until 10 July 2020. These ordinances effected many changes to ordinary procedure and dispensed with several formalities to allow for the facilitating of hearings. For instance, interim measures could be ordered by the judges without an oral hearing and judgments on the removal of foreigners in administrative detention were no longer pronounced at the hearing.

In Norway, the form of court proceedings, as in whether to use remote oral hearings or have fully written proceedings, may be decided by the court. In Hungary, several important amendments to ordinary procedure have been made and the court determines cases without holding a public hearing (see: 74/2020 (III.31.) Government Decree).

In Italy, the decree of 8 March 2020 n. 11/2020 adopted measures to cope with the health emergency in the justice sector, including the postponement of hearings and only allowing proceedings that were declared to be urgent. On 17 March 2020, the government adopted a

second decree (n. 18/2020) which further postponed hearings and continued the emergency measures.

In Ireland, Practice Direction SC21 issued by the Chief Justice provided for the possibility of case management hearings to take place remotely. This Practice Direction has been supplemented by Guidance for Participants at Remote Hearings. The Chief Justice noted that, with one exception, all appeals to the Supreme Court since mid-March 2020 had been conducted remotely.

In Estonia, according to the Recommendations of the Council for Administration of court, litigation was, in so far as possible, handled in writing through the information system of courts and by means of a digital court file application.

On the other hand, no country has modified the form of judgments nor the number of judges for deciding cases to cope with the pandemic situation.

C. Continuance of special procedure as of 1 December 2020

44. Of the 18 countries that provided responses to the question of whether special procedures continue as at 1 December 2020, 9 (50%) continue to apply the special procedures (Czech Republic, The Netherlands, Greece, Luxembourg, Cyprus, Portugal, Belgium, Bulgaria and Ireland), 3 no longer apply them (Spain, Slovak Republic and Malta) and 6 (33.3%) continue to apply only some changes (Austria, France, Estonia, Norway, Hungary and Italy).

Of the 18 countries that provided answers to the question of whether it is foreseen that some of the procedural amendments adopted to deal with the emergency shall remain operating permanently, 10 (55.5%) foresee this being the case (Austria, Spain, Greece, Cyprus, Portugal, Slovak Republic, Belgium, Hungary and Ireland). For example, in Austria, the Austrian Supreme Administrative Court Act was amended and the regulations which were adopted during the pandemic continue to apply. In Greece, it is envisaged that the relevant law will remain in force. In Portugal, the use of communications that allow for social distancing will most likely remain operational. In Belgium, as the temporary procedure (see above, point 42) for dealing with certain cases without a hearing has proved its worth, it was decided to make it permanent. This change was made most recently by the adoption of a Royal Decree of 26 April 2021. In Bulgaria, videoconferencing between the parties and the court will continue as a permanent practice. In Ireland, the primary legislation providing for remote hearings and related matters (the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020) will remain in force. The guidance issued by the Chief Justice and the Courts Service will continue to develop based on the public health guidance at any given time. It may be that some measures introduced in order to streamline proceedings at the onset of the pandemic, such as the issuing of a 'statement of case' prior to a hearing, will continue.

D. Electronic drafting and signing of judgments from home

45. Of the 28 countries surveyed, 15 (53%) gave a positive response to the question of whether they dispose of electronic files which allow judges to draft and sign judgments from home. Countries in which courts do so include Estonia, The Netherlands, Norway, Latvia, Spain, Poland, Portugal, Slovenia, Belgium, Lithuania, Germany, Hungary, Romania, Finland and Italy.

As to the question of whether the procedural rights allow online access to file applications and briefs and monitor the progress of their cases, 20 countries (71, 4%) provided a positive response.

Therefore, the pandemic period brought about a wide range of procedural changes across the countries surveyed. Whilst not all countries foresee the changes being permanent, it is perhaps probably likely that the business of courts across Europe will incorporate far more technological solutions going forward, even after the pandemic.

V. RIGHT TO A PUBLIC HEARING

46. During the pandemic, facilitating public hearings has been an important aspect of the business of many courts. A public hearing usually requires the presence of the parties, their attorneys/barristers and the judges at a minimum. The presence of other people may be necessary as well, such as court clerks, witnesses, experts, interpreters. Last but not least, in many jurisdictions it is obligatory that the general public be admitted to hearings.

It is therefore important to assess, as a first step, whether public hearings under normal, non-pandemic circumstances are obligatory and under what conditions they may be waived or avoided. It is also important to ascertain how courts cope with conducting such hearings in a situation where travelling and meetings are prohibited or at least discouraged. The survey also focuses on possible differences which may exist between first instance cases/courts and those of last instance.

Responses to the survey shows that more than 60% of the supreme administrative courts also have jurisdiction in (at least some) first instance cases. Irrespective of new legislation adopted during the pandemic the supreme jurisdictions which are also competent in first instance cases conduct obligatory public hearings in about 40% of these jurisdictions and parties have a right to a public hearing in about 70% of these jurisdictions. Only in about 40% of these jurisdictions is the question of whether a public hearing will be conducted left to the discretion of the court. At the same time, just over half of these jurisdictions allow the parties to waive the right to a public hearing which leaves room for discretion in a pandemic situation.

Irrespective of the competence to hear first instance cases, supreme administrative courts are required to conduct a public hearing in about 32% of these jurisdictions and parties have a right to a public hearing in about 64% of these jurisdictions. In approximately 54% of these jurisdictions the question of whether a public hearing should be conducted is left to the discretion of the court. The right to wave a public hearing exists in exactly 50% of jurisdictions.

In order to deal with the circumstances of the pandemic, approximately 29% of the jurisdictions that responded provide for a modification of the right to a public hearing. 25% do so in other extraordinary circumstances. Among the modifications are exceptions for the sake of national security, public order or public safety. In Slovakia, in health (or other) emergency situation, the public hearing may be replaced by the provision of an audio recording to those interested.

In addition, in about 17% (in total numbers: 5) of jurisdictions special legislation has been adopted modifying the regime concerning the right to a public hearing to facilitate judicial functions. In particular, such modifications involve the possibility of holding remote hearings which may include audio and visual transmissions to exclude the public from hearings, or to provide the parties with the option to waive the right to a public hearing. The challenges which the pandemic is causing to the conduct of public hearings and the responses of the national jurisdictions are demonstrated by an indication in the responses to the survey that in about 40% of jurisdictions the physical presence of the participants is required by law. Yet, adaptations during the pandemic have reduced this number to 32%. The following table demonstrates that, for the remaining 60%/68%, it is possible for individual participants to a public hearing to be physically absent, but remotely present in the court room during regular times and during the pandemic. The numbers represent the percentage of jurisdictions which allow the remote presence of relevant group of participants.

| Possible remote presence of | During regular times | During the pandemic |
|-----------------------------|----------------------|---------------------|
| Judges | 18 | 32 |
| Court clerks | 18 | 29 |
| Parties | 35 | 54 |
| Attorneys/barristers | 40 | 60 |
| Witnesses | 40 | 50 |
| Summoned experts | 40 | 50 |
| Interpreters | 35 | 46 |
| General Public | 21 | 32 |

Table 17.

The differences in the two columns show that several EU member states have adapted their rules during the pandemic in order to facilitate the conduct of remote public hearings. Two possible means were used: an extension of remote participation and a waiver of in person participation of certain groups. In Hungary, for example, hearings can be held during the pandemic without the participation of the general public and in Belgium participants who do not necessarily have to be present during the hearing are invited not to appear. Yet, the central column underlines that several jurisdictions had already provided for remote participation to some degree even before the pandemic. In this context Estonia, for example, pointed out that this practice (only) has been extended to judges during the pandemic. It is suggested that, in those member courts where remote participation had been possible before, its use will have increased during the pandemic.

The survey also endeavoured to ascertain whether, in contrast to the possibility of remote participation, any of the aforementioned participants had a right to physical participation even during the pandemic. The percentage is displayed in the following table:

| Have a right to be physically present: | |
|--|----|
| Judges | 71 |
| Court clerks | 64 |
| Parties | 75 |
| Attorneys/barristers | 71 |
| Witnesses | 54 |
| Summoned experts | 54 |
| Interpreters | 54 |
| General public | 50 |

Table 18.

This result, which statistically gives more than half of the participants to litigation in Europe a right to be present in public hearings, shows that the conduct of remote hearings does not only depend on the relevant provisions enabling remote hearing. It also depends upon the willingness of the parties to refrain from participation. On the other hand, the numbers also show the importance which is still given to fundamental legal principles such as the conduct of public hearings during a pandemic.

In so far as cases may be decided *in camera* - be it on foot of an obligation or on consent, 25% of jurisdictions have adopted a special procedure for this during the pandemic, mostly in accordance with a legal basis.

VI. COMMUNICATION

47. The topic of communication is divided into two sub-topics, namely, external and internal communication during the pandemic. External communication means the exchange of information from the institution itself to the outside, while internal communication means the exchange of information within the institution itself.

A. External communication during the pandemic

48. A prevailing majority of the Member States (19 out of 28) limited in some way access to its premises for the general public and the participants involved in proceedings as a result of the pandemic. Only 9 Member States (Bulgaria, Finland, Germany, Greece, Luxembourg, Norway, Poland, Slovenia and Spain) did not limit access to its premises and therefore such

Member States did not answer the questions regarding external communication during the pandemic.³

a. Alternate working arrangements

49. All 19 Member States that limited in some way access to its premises implemented alternative working arrangements in the context of COVID-19 and published these working arrangements on, for example, their websites and buildings.

A significant majority of Member States (17 out of 19) provided public information about electronic applications that could be used for external communication. It is interesting to note that 12 Member States used additional electronic applications for external communication that were not used before the pandemic, whereas in Austria, Belgium, Croatia, France, Latvia, Malta and Slovakia this was not the case.

As an adapted working arrangement Cyprus, Hungary, Ireland, Latvia, Lithuania and Romania created a special external mailbox outside the institution's premises for submissions made in person. In Estonia, Ireland, Italy, Lithuania, Malta and Romania the participants involved in proceedings could consult the content of their file online.

Nevertheless, none of the 19 Member States accepted documents only by electronic means.

b. Digital public hearings

50. Courts in the Czech Republic, Estonia, Ireland, Italy, Lithuania, Malta, The Netherlands and Romania held digital public hearings to which only participants had access via a videoconferencing platform. In addition, Estonia and The Netherlands launched livestreams for important cases, such as a zoning plan involving a Dutch theme park.

In a significant majority of the Member States the participants could contact the institution before a digital public hearing to find out how it would work. In Estonia and The Netherlands a letter was sent to the people involved regarding the questions that could be asked during the digital public hearing.

To ensure that the digital public hearing would run as smoothly as possible, ground rules were established in Estonia, Ireland, Italy and The Netherlands, such as that cameras had to be switched on and microphones had to be turned off. In Estonia, Ireland, The Netherlands and Malta a participant could be removed from the digital public hearing if he or she disturbed the hearing. Further, in Estonia, Ireland and The Netherlands there was a limit on how many persons could participate in the digital public hearing and in Malta the public could remain anonymous.

The content of the digital public hearing was stored automatically as a regular record of the hearing in the Czech Republic, Lithuania and Malta. However, it was still necessary to transcribe the content of the digital public hearing in two of the previously mentioned Member States.

³ The Council of State of Greece pointed out in this regard that "it should be borne in mind that measures concerning courts must be combined with the general measures in force; for example, during periods of confinement, the general public does not have access to courts without the need for specific provisions for courts."

c. Summary

51. As a result of the pandemic, most of the Member States limited in some way access to their premises for the general public and the participants involved in proceedings. It can be observed that there is a significant variation in alternative working arrangements adopted by Member States in order to limit access to premises.

B. Internal communication during the pandemic

52. Of the 28 responding institutions, 9 stated that, during the pandemic, access to the institution's premises was also limited for judges and other employees who participate in decision-making (namely Belgium, Cyprus, Czech Republic, France, Ireland, Lithuania, the Netherlands, Norway and Slovakia), 19 stated that there was no such restriction of access to the institution's premises (namely Austria, Bulgaria, Croatia, Denmark, Estonia, Finland, Germany, Greece, Hungary, Italy, Latvia, Luxembourg, Malta, Poland, Portugal, Romania, Slovenia, Spain and Sweden). Therefore, only 9 institutions answered the rest of the questions regarding specific aspects of the limitation of access to their premises for the court's personnel.

a. Alternative working arrangements

53. Almost all of the institutions that restricted access to their premises for judges and other employees required the use of specific electronic applications for internal remote communication.⁴ The only exception is the Supreme Administrative Court of Lithuania. Further, only Lithuania did not use some special internal communication tool for security reasons. The rest of the countries with restricted access to the institution's premises for their employees did so.

On the other hand, two thirds (6 out of 9) of the responding institutions with restricted access to their premises prohibited the use of some electronic applications for internal communication for security reasons, namely France, Ireland, Lithuania, the Netherlands, Norway and Slovakia. Only in Belgium, Cyprus and the Czech Republic was there not such a prohibition.

All institutions with restricted access to their premises nonetheless guaranteed to their judges and other employees who were operating on the basis of telework, access to the court's internal information system, mailbox and legal tools (national law, case-law, publications, etc.). In a significant majority of the responding institutions, judges and other employees were also allowed to take home materials from the court's premises necessary for work. The only exception is the Netherlands where the judges and other employees had no such permission.

b. Special regulation for working procedure

⁴ By "specific electronic applications" is meant a two-way electronic means of communication (eg. Zoom, Teams, Skype).

54. None of the responding institutions adopted any special regulation for the sharing of documents between the judges serving in a panel. However, the Czech Republic and The Netherlands confirmed that their institutions adopted special regulations for the deliberation of draft judgments and for the internal communication of draft judgments.

Regarding the signing of documents within the institutions with restricted access for their employees, Norway and Slovakia adopted special regulations for the signing of documents remotely. Only 4 countries out of the 9 with limited access to the institution's premises for judges and other employees stated that the judges used electronic signature for the signing of documents. This is the case in Belgium, Lithuania, Norway and Slovakia.

c. Summary

55. Despite the pandemic, a vast majority of countries (68%) interestingly did not limit in any way the access to the institution's premises for judges and other employees. In circumstances where access for this group of persons was limited, an overwhelming majority of the institutions required the use of specific electronic applications / tools for internal remote communication. Further, all of them ensured that the judges and employees who participate in decision-making had full access to the court's internal information system, mailbox and legal tools (national law, case-law, publications, etc.). Predominantly, such institutions even allowed the taking of materials necessary for working at home from the court's premises. A minority of the institutions also adopted special regulations for deliberation and for the internal communication of draft judgments and signing of documents remotely.

VII. EQUAL TREATMENT

56. Of the 28 responding institutions, 11 stated that during the pandemic they limited in some way access to their premises for persons who are participants (or their representatives) in proceedings (Belgium, the Czech Republic, Estonia, France, Italy, Lithuania, the Netherlands, Norway, Portugal, Slovakia and Slovenia). Seventeen stated that there was no such restriction of access to the institution's premises (Austria, Bulgaria, Croatia, Cyprus, Denmark, Finland, Germany, Greece, Hungary, Latvia, Luxembourg, Malta, Poland, Romania, Spain and Sweden). Therefore, only 11 institutions answered the rest of the questions regarding specific aspects of the limitation of access to their premises for persons who are participants (or their representatives) of the proceedings.

A. Special procedural regulation

57. In only 3 countries (Estonia, Lithuania, Norway) are the judges allowed to vary⁵ missed deadlines for vulnerable groups that do not have access to the internet. The rest of the responding countries reported that judges do not have such a permission (Belgium,

⁵ Restore, revoke, reopen.

France, the Netherlands, Norway, Portugal and Slovenia) or that it is not relevant for them (the Czech Republic, Italy and Slovakia).

B. Digital public hearings

58. In the event that vulnerable groups without access to the internet were involved in a hearing, it was not possible to hold a digital public hearing in Estonia, Lithuania, the Netherlands and Slovenia. It should be mentioned that Lithuania enabled vulnerable groups with no access to the internet to attend the digital public hearing at a governmental building. In addition, Lithuania and Slovenia reported that special arrangements have been made for vulnerable groups who do not have access to the internet. Only Norway and Portugal stated that a digital public hearing could have been held despite the fact that vulnerable groups without access to the internet were involved. However, in both Norway and Portugal vulnerable groups that did not have access to the internet had the opportunity to attend the digital public hearing at a governmental building. Moreover, in Norway legal assistance is mandatory for vulnerable groups with no access to the internet. The same applies in Slovenia. On the other hand, legal assistance is not required in The Netherlands and in Portugal.

None of the responding institutions reported that judges scheduled more time for a digital public hearing when vulnerable groups were involved.

A vast majority of the respondents stated that it was possible to hold a digital public hearing in which only one party accessed the public hearing via a videoconferencing platform (the Czech Republic, Estonia, Lithuania, the Netherlands and Portugal). They also predominantly confirmed that it was possible to postpone the digital public hearing if there was a problem with the internet connection (such a problem was not relevant in case of the Netherlands). Only Slovenia indicated that there was no possibility to hold a digital public hearing in which only one party accessed the public hearing via a videoconferencing platform. For the rest of the countries, such a situation was not relevant.

C. Summary

59. Despite the pandemic, a majority of countries (61%) did not limit in any way access to their premises for persons who are participants (or their representatives) of the proceedings. Comparing the various limitations of access to institutions' premises, slightly more institutions limited in some way access for the judges and courts' staff (68%) than for the participants or their representatives (61%). If vulnerable groups with no access to the internet were involved in a hearing, the countries either wholly restricted the opportunity to hold a digital public hearing, or adopted some special arrangements. In Norway, Lithuania and Portugal participants had an opportunity to attend the digital public hearing at a governmental building. Further, in Norway and Slovenia, legal assistance for such participants is mandatory. A vast majority of respondents also stated that it was possible to hold a digital public hearing in which only one party accessed the public hearing via a videoconferencing platform.

VIII. CASE LAW

60. Of the 28 responding institutions, 13 (Austria, France, the Czech Republic, Norway, Latvia, Greece, Portugal, Belgium, Hungary, Romania, Finland, Malta and Italy) stated that appeals against any COVID-19 measures/regulations were brought before their court. When asked about the number of appeals, the following figures were provided (situation on 1 December 2020):

| Country | Number of appeals |
|----------------|-------------------|
| Austria | 2 |
| Belgium | 94 |
| Czech Republic | 10 |
| Finland | 2 |
| France | 1409 |
| Greece | 15 |
| Hungary | 30 |
| Italy | 100 |
| Latvia | 3 |
| Malta | 2 |
| Norway | 3 |
| Portugal | 1 |
| Romania | 14 |

Table 19.

61. At the beginning of April 2020, ACA-Europe launched an initiative that aimed (and still aims) to group (substantial) national case law concerning the current COVID-19 crisis and make it readily accessible to all members. In order to achieve this, the members were asked to inform the Association of any decisions of their courts on this subject. 23 of the 28 participating institutions said they were familiar with this initiative and 14 said they were contributing. When asked about willingness, it can be concluded that a vast majority of members are at least willing to do so.

The national COVID-19 case law was (and still is) documented in the JuriFast-database of the Association and is as such readily available for the general public (<http://www.aca-europe.eu/index.php/en/jurifast-en>).

Leipzig, 31 May 2021

IX. APPENDIX

Links to national laws targeted at courts in response to COVID-19

| Country | Links |
|------------|---|
| France | https://www.legifrance.gouv.fr/ |
| Latvia | https://likumi.lv/ta/en/en/id/313730-on-the-operation-of-state-authorities-during-the-emergency-situation-related-to-the-spread-of-covid-19 https://likumi.lv/ta/en/en/id/315278-law-on-the-management-of-the-spread-of-covid-19-infection |
| Spain | https://ficheros.mjusticia.gob.es/aviso/BOEA-2020-4705.pdf |
| Luxembourg | http://legilux.public.lu/eli/etat/leg/loi/2020/06/20/a523/jo http://legilux.public.lu/eli/etat/leg/loi/2020/11/25/a932/jo http://legilux.public.lu/eli/etat/leg/rgd/2020/03/18/a165/jo http://legilux.public.lu/eli/etat/leg/rgd/2020/03/25/a185/jo http://legilux.public.lu/eli/etat/leg/rgd/2020/04/01/a227/jo http://legilux.public.lu/eli/etat/leg/rgd/2020/04/24/a326/jo http://legilux.public.lu/eli/etat/leg/rgd/2020/04/29/a340/jo |
| Cyprus | https://www.pio.gov.cy/coronavirus/categories/diat https://www.pio.gov.cy/coronavirus/en/ |
| Portugal | https://dre.pt/home/-/dre/130473088/details/maximized https://dre.pt/pesquisa/-/search/131193439/details/maximized |

| | |
|----------|---|
| | https://dre.pt/web/guest/pesquisa/-/search/130243053/details/normal?l=1 https://dre.pt/home/-/dre/132242516/details/2/maximized https://dre.pt/home/-/dre/131068124/details/maximized https://dre.pt/pesquisa/-/search/147412974/details/maximized |
| Slovakia | https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2020/62/20210101 |
| Belgium | http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2020110101&table_name=loi http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2020102801&table_name=loi http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2020101801&table_name=loi |
| Hungary | https://net.jogtar.hu/jogszabaly?docid=a2000058.tv |
| Malta | http://www.justiceservices.gov.mt/LOM.aspx?pageid=27&mode=chrono&lid=2 |
| Italy | https://www.giustizia-amministrativa.it/web/guest/covid19-disposizioni-normative-e-governative |