

## QUESTIONNAIRE

### **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:

In the first days, after the necessary health measures were adopted to make the courthouses safe in terms of hygiene, the of the judiciary were suspended until 30 April 2020 with the law enacted on 25 March 2020 due to the deterioration of the conditions and again in March, with the decision of the High Council of Judges and Prosecutors, hearings, negotiations and views were postponed first until 30 April, then till 15 June.

- (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?

Considering that approximately 30,000 to 35,000 people enter and leave the Istanbul Central (Çağlayan) Courthouse every day, the interruption of the trial and the suspension of the periods were generally welcomed by the lawyer public opinion. Although it is certain that these measures have an indirect, if not direct, impact on the separation of powers, the independence of the judiciary and the free exercise of the attorneyship profession, our bar association went on uninterruptedly with its appointments of attorneys within the scope of the compulsory defense counsel mechanism to provide legal protection against human rights violations our bar association for those under the age of 18, restricted persons and crimes with a penalty of 5 years or more.

- (b) Has the legality or the constitutionality of these measures been subject to judicial review?

No information has been received by our bar association that the courts have been reviewing the administrative decisions taken within the scope of Covid-19 or the legality and unconstitutionality of the laws passed.

- (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 organizations? If so, to what extent have their contributions been taken into account by the Government?

The measures were adopted within the framework of the legislation in force, as there was no declared state of emergency. Our bar association was not asked to provide an opinion/contribution prior to the adoption of these measures.

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?

Although it is not possible to say that courthouses functioned properly during the Covid-19 pandemic, they have been made functional as much as possible under pandemic conditions.

- (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)?

Although the hearings and time periods were suspended during the period when the effects of the pandemic were the most severe, required health measures were adopted to ensure the health and safety of those who remained on duty in terms of emergency work.

- (c) to enable judges, prosecutors and lawyers to carry out their professional duties in a timely and effective manner?

Various restrictions continued even after the hearings started and suspended periods started to run, for example, some courts still do not accept audience to the hearings even today, in violation of the open trial principle in the constitution. However, health measures have been given priority as we are under pandemic conditions.

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?

To the best of our knowledge, no additional budget has been allocated to the courts to tackle the challenges within this regard. However, in order to reduce the accumulated workload in the enforcement offices, the necessary physical conditions have been created and protected banks have been put to deal with some routine transactions, without entering the enforcement offices, in the front offices established outside of the enforcement offices.

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)?

In criminal proceedings, the use of videoconferencing system, which allows especially suspects / defendants to attend the hearings from prison, has already started before the pandemic and continued to be used intensely during the pandemic. In addition to this, holding hearings in electronic environment in civil cases (primarily in consumer and commercial courts) was made possible a few months ago, and in line with the request of the lawyers, it is possible for a lawyer to attend the hearing using electronic means, if he wishes to do so.

(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...)?

Since holding electronic hearings is a novel practice, there are no measures adopted by the administration within this scope to the best of our knowledge. The monitors supplied by our Bar Association in order for the lawyers to follow the court minutes during the trial have been replaced with the monitors that display the live link of the attorney electronically attending the hearing to the lawyer who is physically present in the courtroom.

(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?

There is no measure adopted in this regard within the knowledge of our Bar Association.

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;

Given the closed environment of prisons, it is unquestionable that there is a serious risk of transmission. As a matter of fact, it has been observed that the rate of infection with Covid-19 is relatively higher among the citizens in prison and the lawyers who visit their clients in the prison. During this period, lawyer consultation rooms in prisons were re-organized considering the social distance (leaving one seat free) and meeting hours were restricted to take place only within the working hours.

- (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?

The "lockdown" and "out-of-city travel ban" measures, which were first introduced for the people aged 65 and above and those under 20, and then expanded to include all citizens after 21:00 on weekdays and on whole weekend, were adopted with the Presidential Decree and circulars, and this is, *per se*, an unlawful interference for the citizens and it comes to mean the transfer of the legislative power to the executive. This *de facto* situation, which cannot be accepted in the context of the "hierarchy of norms" of the constitutional law, is also in violation with the principle of legality. While restrictions on fundamental rights and freedoms guaranteed by the Constitution should only be made by law, failure to fulfill this requirement on the grounds of the urgency of the situation creates the risk of legitimizing practices contrary to the concepts of "the state governed by the rule of law" and "the rule of law".

On the other hand, during the pandemic, law enforcement officers did not cause any difficulties concerning the exemption of lawyers from the lockdown, and with the additional circulars issued, lawyers were exempted from lockdowns and out-of-town travel bans as they carry out public service.

(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?

To the best of our knowledge, there are no measures adopted during the pandemic period to facilitate a ground for the prosecutor's office representing the prosecution and the lawyer representing the defense to practice on an equal basis with particular regard to criminal proceedings.