

Conclusions of the First Study Commission
of the International Association of Judges – IAJ – 2021
“ACCESS TO JUSTICE DURING THE COVID-19 PANDEMIC”

I.

The Rule of Law in a Pandemic

1. A pandemic can quickly create a global situation of emergency that requires extraordinary decisions to protect the public health. Such decisions may interfere heavily with people’s rights.
2. The Rule of Law requires the judiciary to fulfil its duties even – and especially – in a state of emergency. No emergency overrides the Rule of Law.
3. The Rule of Law especially requires the judiciary to review governmental decisions that could interfere with people’s rights. Thus, courts must keep working even during a global pandemic.
4. Judges across the globe made extraordinary efforts and sacrifices to find ongoing solutions to uphold the Rule of Law during the pandemic.

II.

Balancing the Protection of Health and a Functioning Judiciary

5. Courts are places in which many people come together. That makes courts potentially hazardous in times of a pandemic.
6. Both those who work within the judiciary, and those who come to court, must be protected appropriately from the dangers of a pandemic while the judiciary performs its functions.
7. This may include, but is not limited to, providing sanitary concepts and products, changing the layout of courtrooms, making larger court rooms available, as well as providing technical solutions to fulfil judicial work without needing to meet others in person where that is possible.
8. Any measures of protection must balance the need to ensure their health and safety with the necessity to keep up the functioning of the judiciary. Individual vulnerabilities must be taken into due consideration and may require individual solutions.
9. Enabling judges and court employees to work at home can both protect them and ensure that the judiciary still fulfils its duties.
10. Not every judicial duty can be fulfilled out from at home in the same way. Where judges and other court staff are required to meet other people in person, court administration must ensure sufficient protection of all persons involved.
11. A pandemic may necessitate to postpone or prioritize certain judicial tasks. Such decisions should be made by judges themselves within their judicial independence in accordance with the law.

III.

Closure of Courthouses

12. Any decision involving the partial or entire closing of courthouses, or the restriction of access to courthouses, must involve decisionmakers of the judiciary. The separation of powers prohibits that such a decision be taken by other state powers alone.
13. Even if courthouses are closed fully or partially to cope with a pandemic, access to justice must be guaranteed at any given time.

IV.

Technical Solutions

14. Technical solutions may help guaranteeing that the judiciary is accessible and able to fulfil its functions even during a pandemic while protecting judges, court staff and court users from the danger of infection. These solutions include, but are not limited to, digital filing, the use of video software to conduct hearings without personal contact, and other technical means of communication. The judiciary must equip all judges with the necessary hardware and software.
15. Technical solutions must not deprive anyone of their rights. Technical solutions also carry the danger of excluding those from justice who are not able to use them properly. The judiciary must be aware of these dangers and address these properly, such as by providing assistance, or by making exemptions where that seems fit.
16. Where legal grounds for such solutions are incomplete, these grounds should be provided as soon as possible in accordance with the legal system of a country.

V.

Judicial Independence

17. Where the judiciary is called upon deciding on the legality of restrictive measures imposed by the governments, it must be ensured that judges decide such matters within their competence independently and without fear of negative consequences due to their judicial decision.
18. The financial costs of the pandemic must not lead to a deterioration of judicial wages. The judiciary upheld the Rule of Law even under most difficult circumstances. Judicial independence guarantees and preserves civil rights even at a state of global emergency. Weakening the economic independence of judges would mean to weaken judicial independence.