

REMOTE JUSTICE IN CORONAVIRUS CRISIS – DO THE MEANS JUSTIFY THE ENDS, OR DO THE ENDS JUSTIFY THE MEANS?*

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ABSTRACT

The coronavirus related crisis affected severely all aspects of life and judiciary is no exception. The world has been confronted with new challenges. New circumstances have created significant impact on the functioning of access to justice. New ways of administrating the legal system were introduced in the last decade, allowing for the use of the means of electronic communication, reducing certain stages of court procedures, opting for solutions for peaceful dispute settlement and promoting out-of-court dispute resolution. However, the coronavirus caused, beyond any doubt, severe delays in court proceedings and even shut down courts in some European Union Member States, Croatia included. Thus, additional efforts were required in order to ensure remote justice to citizens and businesses. More importantly, it called for a swift response, issuing and applying emergency measures, to safeguard the right to access courts and provide for effective administration of justice.

The paper thus seeks to explore the ways in which European Union Member States responded to emerging challenges and the consequences these challenges had on administration of justice. Croatian example will be introduced specifically due to obvious struggles in handling the coronavirus caused difficulties in national judiciary system. Along with the analysis of measures taken, there are several questions, which need to be answered. What was the level of readiness of the Member States' judiciaries for providing justice by means of electronic communications,

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with Croatia in focus? What are the effects of measures taken in Croatian judiciary system? Should it be left to the courts or other competent bodies to take actions on a case-to-case basis in order to provide the necessary protection of procedural rights to parties? In terms of the effect of the emergency measures, do they allow for the same or similar quality of remote justice?

In conclusion, the paper will try to answer the aforementioned questions, deliberate on the efficiency of measures taken in response to the coronavirus crisis, with Croatia in focus and possibilities of future improvements.

Keywords: *access to justice/courts, Covid-19 court proceeding measures, electronic communication, functioning of judiciary, remote justice*

1. INTRODUCTION

The coronavirus-related crisis has undoubtedly affected life within the *new normal*. Today, individuals, families, states and their internal organizational units are adapting to such circumstances. The judiciary is no exception to adapting to life in conditions where *desperate times call for desperate measures*. On the one hand, states must ensure that parties are afforded their constitutionally guaranteed rights of access to justice, continuity of court proceedings and effective legal protection, while taking into account human health and adapting to the challenges, which emerged during the pandemic. The authors conducted an analysis of the measures implemented in the EU Member States, with special emphasis on Croatian system. The available legal literature concerning the issues this paper discusses is poor, dispersed and deals with various aspects of the pandemic. Even with regard to the impact of the pandemic on the justice system, there is no comprehensive overview of the problems faced. In the situation of the ongoing pandemic, this comes as no surprise, since relatively few in-depth scientific analysis and researches have been conducted. However, in order to detect the errors, learn from the examples of measures that have proven effective and prepare for future challenges, it is necessary to discuss the experience of different EU Member States' judicial systems in tackling these issues. An analysis of available sources revealed similar challenges in connection to limited access to court, postponement of hearings and failure to ensure timely execution of procedural actions in many Member States. It also demonstrated the need for a more harmonized approach to the overall problem of ensuring proper functioning of the legal systems during any similar crisis in the EU in the future.

The aim of this paper is to contribute to identifying the most common problems within one Member States' legal system and evaluate the approach to resolving them.

The Croatian example showed the lack of rapid and effective response to extraordinary conditions during the pandemic. Despite the fact that were some well-con-

ceived measures, the pandemic emphasized the existing, and imposed new challenges in Croatian judicial system. Namely, the analysis reveals that the measures taken within the judicial system were not well-balanced. They resulted in disproportionate limitations to the right to court and the right to legal representation. Since amendments to the procedural law framework have been prepared only recently, the final part of the paper will take into account whether the changes to the procedural rules take into account the experience and the lessons learned during the pandemic and encompass measures that would enable courts to administer justice more effectively in case of similar future circumstances.

2. DESPERATE TIMES BREED DESPERATE MEASURES¹

2.1. A general overview of Member States' approaches

With the beginning of the coronavirus crisis during early spring 2020 there was a lockdown of all activities in Member States, including those in the judiciary. This meant that courts and other competent bodies were in need of emergency measures that would define how they would proceed. Parties to the proceedings were in demand for clear rules on how to access court, whether in order to seek information on rescheduling proceedings or in order to attend court hearings. Debtors were uncertain whether the orders on execution against their property would be issued and executed without delay.

An overview of the Member States' approaches shows divergent paths taken in national legal systems in dealing with these issues. According to the Information collected by the European Commission DG Justice² some Member States decided not to introduce measures directed at legal proceedings, in order to preserve the independency of the courts (Sweden, Denmark, Finland, Germany, Lithuania). In such cases the courts were free to assess on a case-to-case basis, what measures should be taken. In addition, the courts were allowed to prioritize urgent cases in which hearings were held, actions were undertaken in written or by means of electronic communication (videoconference). All of these countries emphasized that the courts continued to operate without disruption (according to Sweden, as

¹ A quotation by William Shakespeare (Romeo and Juliet)

² All comparative research regarding the emergency measures introduced in civil proceedings in legal systems of EU Member States presented in the paper is quoted from European Commission DG Justice and Consumers Comparative Table on Covid-19 Impact on Civil Proceedings, available at: [http://www.vss.justice.bg/root/f/upload/27/Comparative-table-Covid-Impact-on-civil-judicial-coop_3_EU_en1.pdf], Accessed 22 February 2022, (Hereinafter: EC Table on Covid-19 Impact). See also Krans, B. *et al.*, Civil Justice and Covid-19, Septentrio Reports, No. 5, 2020, available at: [<https://septentrio.uit.no/index.php/SapReps/issue/view/465>], Accessed 22 February 2022, [<https://doi.org/10.7557/sr.2020.5>]

effective as possible). However, there was a different level of readiness of the courts of Member States to use the means of electronic communication in these cases. Although for the most part, courts continued with their activities, the proceedings slowed down significantly. Non-urgent court hearings where oral hearing is mandatory and/or necessary were adjourned, cancelled or postponed. According to the Member States' judiciary, different categories of cases were considered urgent. Civil cases concerning the court's permission to extend involuntary hospitalization, involuntary treatment, the removal of the child from an unsafe environment or cases provided by the CPC (Lithuania); cases which are by law time-bound or are particularly intrusive (Denmark) and international legal assistance (Finland). The most liberal approach was taken by Germany that relied on the existent measures of the German civil procedure law and enabled the courts and judges to react flexibly to the situation.³

Quite opposite to the first approach, the second category of Member States decided to order a general shutdown of some of their courts (Austria), suspend judicial activity, except for urgent cases (Romania, Italy, Cyprus, Greece, Slovenia), postpone all court hearings (Czechia) or close the Courts of Justice and registries (superior, inferior and appellate court) and suspend time limits until the Order for closure of the Courts is lifted (except for urgent cases) (Malta). Again, there is a diversity concerning the types of cases considered urgent. In some Member States, these are urgent interim measures and proceedings dealing with restrictions to personal freedom (such as detention in a psychiatric institution) (Cyprus). In other States payment deadlines, forced psychiatric admission and imminent danger for safety or personal freedom or irretrievable damages (Austria). In some States adoption of children, unaccompanied minors, foster care, compulsory health treatment VTP, provisional enforceability and all matters entailing a risk of serious prejudice to the parties (Italy) and cases determined by a decision of a national body (Romania) were considered urgent. In Slovenia, matters considered urgent are security matters (such as securing evidence, withholding the payment, execution of forbidding of certain actions), civil enforcement regarding child custody and alimony, non-contentious matters regarding detention in psychiatric establishments and claims regarding publishing of correct information. The use of means of electronic communication was encouraged in these Member States as well. In some Member States the means of electronic communications were used in order to enable the courts to proceed in such cases, by way of hearing through videoconference,

³ On 27th March 2020 Gesetz zur Abmilderung der Folgen der COVID-19-Pandemie im Zivil-, Insolvenz- und Strafverfahrensrecht (*eng.*: Act for Mitigating the Consequences of the COVID-10 Pandemic in Civil, Insolvency, and Criminal Law) Bundesgesetzblatt Jahrgang 2020 Teil I Nr. 14, ausgegeben zu Bonn am 27 März 2020

sending documents to the parties by electronic means and transfer of files between courts (Romania) or by way of written procedures and the use of the means of electronic communication (Italy). In one Member State, a telephone and email were used only in order to provide basic information (Czechia). Other Member States in this category enabled physical access to court, at least to a certain extent, where it was deemed necessary (Malta, Czechia, Italy).

The last category of Member States attempted to uphold the activity of the courts and to continue to proceed with handling cases (Belgium, Bulgaria, Croatia, Estonia, France, Hungary, Ireland, Latvia, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia and Spain). However, hearings and actions in non-urgent cases have been postponed and many judges, court officials and staff were ordered the mandatory use of the annual leave. The use of the annual leave was organized in such a manner in order for the court staff to be at disposal once the special circumstances end, so the backlog could be cleared (Croatia).

2.2. Court proceedings - organisational challenges

Organisation of court proceedings during the coronavirus crisis was a challenging task. Efforts were made in order to ensure a balance between introduced emergency measures and maintaining court activities. In civil matters, deadlines in judicial proceedings were in most cases extended, except for the urgent matters. In some Member States, proceedings were conducted only in writing (where possible, and if the parties did not oppose) (Belgium, Croatia, Estonia, Hungary and Ireland). Almost all Member States from the category relied on the means of electronic communication, such as video conferences, email for written correspondence and delivery of documents, telephone and other similar means of remote communication.

Concerning enforcement of judgments, the relevant information shows that fewer Member States notified of the measures employed. Nevertheless, Member States that decided to do so, in most cases applied a similar approach. The limitation periods and time limits for enforcement of judgments were suspended or postponed (Poland, Croatia, Slovenia), enforcement of eviction judgements in tenancy matters has been suspended (residential (Portugal) along with residential and commercial leases (Luxembourg). An exception is provided under Portuguese law according to which the enforcement will not be suspended if it causes irreparable damage or endangers the creditor's livelihood. In Croatia and Slovenia, enforcement of maintenance claims has not been suspended. The same was also provided in Slovenia, in cases of damages for lost maintenance because of the death of the providing person. Public sales and coercive seizures of possession, announced by

public and private enforcement agents in some Members States have been suspended automatically (Bulgaria) and in others a stay of forced auction of movable and immovable property was only possible if the debtor faced economic difficulties due to the pandemic, or in case of eviction the debtor would become homeless (Austria).

One would expect that the transfer of court hearings to video conference was immanent and came naturally, in those national legal systems, where there was an appropriate infrastructure already in place. However, this is not necessarily the case. In certain Member States the pandemic brought a true (trans)formation of the concept of providing justice and introduced a paradigm shift for the 21 century. In these Member States the process of digitalization of the justice systems, which was underway, has accelerated due to the coronavirus crisis. In general, this is positive trend. However, it is inevitable to consider the potential ramifications on the quality of legal protection provided by way of 'remote justice' in this period, due to the lack of necessary knowledge, means and experience with handling cases remotely. The overview of the measures presented in Member States provides for certain general conclusions.⁴ They will be further tested by means of a comparison with the results of an in-depth analysis of the measures implemented in one national legal system.

2.3. Courts vs. other state institutions - pandemic adjustment comparison in Croatia

In order to obtain an insight and understanding of the effectiveness of measures implemented in Croatian judicial system, the authors will compare them to those applied by several Croatian state institutions (FINA, Ministry of Interior, Tax Administration, Social Welfare Center, Croatian Pension Insurance Institute). The Ministry of the Interior and the Police Stations and Departments informed the parties that in-person visits are allowed in cases of emergency and advised them to use the services available on the electronic platform provider (e-Services). The parties were invited to check the working hours in case an in-person visit to the police stations or the public administration offices was necessary.⁵ It was also possible for the parties to arrange an in-person visit by phone or e-mail.⁶ The Tax Administration also encouraged citizens to avoid in-person visits and to submit

⁴ For more on the measures taken in the Member States before the Commercial Courts see Domhan, S., *Online Hearings in Proceedings before International Commercial Courts*, Juridica International, Vol. 30, 2021, pp. 49-58

⁵ Proverite način rada upravnih poslova svoje policijske uprave, available at: [<https://mup.gov.hr/vijesti/proverite-nacin-rada-upravnih-poslova-svoje-policijske-uprave/286653>], Accessed 22 February 2022

⁶ *Ibid.*

their requests through the e-Citizens, eTax, mTax services and the “Write to us” service.⁷ In case of an in-person visit, the website of the Tax Administration listed the working hours of individual branches. The Financial Agency’s (FINA) website also provided instructions to service users concerning their operation during the pandemic.⁸ Users were urged to use as many services as possible through digital services and to limit visits to branches only to exceptional cases and emergencies. The working hours were adjusted and users were invited to check them prior to their visit on the official FINA website.⁹

Social welfare institutions also adapted to pandemic conditions, which was necessary given the vulnerability of users accessing them. The emphasis was on reducing the number of users in the building, arranging meetings at certain time, the use of protective equipment in the premises (masks, disinfectants), but the users were also invited to contact Social Welfare Centers by phone or e-mail.¹⁰ Some Social Welfare Centers, however, allowed only emergency visits.¹¹ The Croatian Pension Insurance Institute also focused on digital services through the e-Citizens system and responding to inquiries by e-mail.¹² In-person visits were avoided, but no restrictions on in-person visits were imposed.¹³ It is evident that none of the presented institutions prevented in-person access of the users and beneficiaries to their service.¹⁴

⁷ Porezne informacije vezane uz izvanredno stanje izazvano širenjem virusa COVID-19, available at: [https://www.porezna-uprava.hr/Stranice/COVID_19_informacije.aspx], Accessed 22 February 2022

⁸ Fina provodi mjere kontroliranog ulaska klijenata u poslovnice, available at: [https://www.fina.hr/novosti/-/asset_publisher/pXc9EGB2gb7C/content/fina-provodi-mjere-kontroliranog-ulaska-klijenata-u-poslovnice?_com_liferay_asset_publisher_web_portlet_AssetPublisherPortlet_INSTANCE_pXc9EGB2gb7C_assetEntryId=416558], Accessed 22 February 2022

⁹ Novo, privremeno radno vrijeme poslovnica zbog aktualne situacije uzrokovane pojavom koronavirusa, privremeno se prilagođava rad poslovnica, available at: [https://www.fina.hr/novosti/-/asset_publisher/pXc9EGB2gb7C/content/novo-privremeno-radno-vrijeme-pojedinih-poslovnica?_com_liferay_asset_publisher_web_portlet_AssetPublisherPortlet_INSTANCE_pXc9EGB2gb7C_assetEntryId=417508], Accessed 22 February 2022

¹⁰ Obavijest korisnicima o novoj organizaciji rada, rasporedu rada i radnog vremena CZSS Osijek, available at: [<https://czss-osijek.hr/obavijest-korisnicima-o-novoj-organizaciji-rada-rasporedu-rada-i-radnog-vremena-czss-osijek/>] Accessed 22 February 2022, Obavijest u svrhu sprječavanja pojave epidemije oboljenja od COVID-19, available at: [<http://www.czss-dubrovnik.hr/novosti/covid-19/>], Accessed 22 February 2022, Obavijest za korisnike, available at: [<https://www.czss-zadar.hr>], Accessed 22 February 2022, Obavijest, available at: [<https://www.czssvz.hr/download/planovi-i-izvjestaji/obavijestkoronavirus.pdf>], Accessed 22 February 2022

¹¹ Obavijest, available at: [<https://www.czssvz.hr/download/planovi-i-izvjestaji/obavijestkoronavirus.pdf>], Accessed 22 February 2022

¹² Poslovanje HZMO-a za vrijeme epidemije COVID-19, available at: [<https://www.mirovinsko.hr/hr/poslovanje-hzmo-a-za-vrijeme-epidemije-covid-19/1448>], Accessed 22 February 2022

¹³ *Ibid.*

¹⁴ On the e-government system in other European countries see Hodžić, S.; Ravselj, D.; Jurlina Alibegović, D., *E-Government Effectiveness and Efficiency in EU-28 and COVID-19*, Central European public

By the decision of the National Civil Protection Headquarters of the Republic of Croatia (hereinafter: Civil Protection Headquarters) dated 16 November 2021 on a measure of obligatory testing for SARS-CoV-2 virus was introduced. This measure applied to the following groups: a) officials, civil servants and employees, b) civil servants and employees in public services, c) civil servants and employees in local and regional self-government d) employees of companies and institutions founded by the Republic of Croatia, local and regional self-government units or the Republic of Croatia or local and regional self-government units have a majority share in them and d) employees of companies that are majority owned by companies in which the Republic of Croatia or local and regional self-government units have a majority share. In the premises of the mentioned institutions, the EU digital COVID certificate was required upon entrance.

In comparison, parties and lawyers who present a summons to appear before court were allowed to enter court buildings without an EU digital COVID certificate.¹⁵

It is obvious that the presented state institutions used a more diversified approach to their services than courts or other judicial authorities. The measures introduced in the presented institutions encompassed the use of various digitalized systems, recommendations for emergency arrivals only and adjusted working hours. The measures employed in the judicial system, were more restrictive. With the guarantee of access to justice significantly reduced during the pandemic, the question arises, whether it could have been improved, if the courts had resorted to using video conference tools and other technical means of distance communication, in the similar vein to other state institutions?

3. ONE MEMBER STATE'S APPROACH – CROATIA AT FOCUS

3.1. Constitutional framework

The Government of the Republic of Croatia has not declared a state of emergency in accordance with Article 17 Constitution of the Republic of Croatia (hereinafter: the Constitution).¹⁶ According to the Constitution, freedoms and rights can be restricted only by law to protect the freedom and rights of others and the legal order, public morals and health and must be proportionate to the nature

administration review, Vol. 19, No. 1, pp. 159-180

¹⁵ Guidelines for the conduct of courts in a pandemic Covid-19 from 15 November 2021, Su IV-422/2021 available at the website of the Croatian Bar Association: [<https://www.hok-cba.hr/hok/uputa-vrhovnog-suda-rh-i-ministarstva-pravosuda-i-uprave-rh-o-nacinu-provedbe-sigurnosne-mjere-obveznog-testiranja-na-sudovima/>], Accessed 22 February 2022

¹⁶ Constitution of the Republic of Croatia, Official Gazette No. 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14 (Constitution)

of the need for restriction assessed in each case (*arg.* Article 16 Constitution). Furthermore, the Constitution states that in times of war or imminent threat to the independence and unity of the state, and major natural disasters, certain freedoms and rights guaranteed by the Constitution may be limited (*arg.* Article 17 Constitution).¹⁷ In this particular case, therefore, the fundamental question arose as to whether the coronavirus pandemic was the basis for the application of Article 16 or 17 Constitution.¹⁸

The Constitutional Court of the Republic of Croatia (hereinafter: Constitutional Court) has taken the position that it is within the competence of the Croatian Parliament to choose the manner of restricting human rights and fundamental freedoms within its constitutional powers.¹⁹ The state thus decided to activate the Civil Protection System Act and the Infectious Diseases Protection Act and formed a body called the Civil Protection Headquarters (Article 22 of the Civil Protection System Act).²⁰ The Constitutional Court examined the legitimacy of this body in the implementation of measures and activities in pandemic conditions and confirmed the constitutionality and legality of the powers granted to it.²¹ In extraordinary circumstances, state and public law bodies have broader powers than those provided by legal norms, but all these powers must be exercised in the spirit of the law and the Constitution.²²

The European Convention for the Protection of Human Rights and Fundamental Freedoms²³ (hereinafter: the ECHR) also regulates extraordinary circumstances such as wartime or other public threats to the survival of the people, emphasizing

¹⁷ The Croatian Parliament decides on this by a two-thirds majority of all deputies, and if the Croatian Parliament cannot meet, at the proposal of the Government and with the co-signature of the Prime Minister, the President of the Republic (Art. 17 of the Constitution)

¹⁸ Nastić, M., *Odgovor države na bolest Covid-19: na primjerima Hrvatske i Srbije*, Pravni vjesnik, Vol. 36, No. 3-4, 2020, p. 75

¹⁹ *Ibid.*, p. 76

²⁰ Civil Protection System Act (Zakon o sustavu civilne zaštite) Official Gazette No. 82/15, 118/18, 31/20, 20/21; Law on the Protection of the Population from Infectious Diseases (Zakon o zaštiti pučanstva od zaraznih bolesti), Official Gazette No. 79/07, 113/08, 43/09, 130/17, 114/18, 47/20, 134/20, 143/21

²¹ Decision of the Constitutional Court of the Republic of Croatia, U-I-1372/2020, U-I-1999/2020, U-I-2075/2020, U-I-2233/2020, U-I-2161/2020, U-I-2234/2020 from 14 September 2020, available at: [<https://sljeme.usud.hr/Usud/Praksaw.nsf/C12570D30061CE54C12585E7002A7E7C/%-24FILE/U-I-1372-2020%20i%20dr.pdf>], Accessed 23 February 2022

²² Ofak, L., *Pravna priroda mjera usmjerenih na suzbijanje pandemije Covid-a 19*, Zbornik radova Pravnog fakulteta u Splitu, Vol. 58, No. 2, 2021, p. 460

²³ Convention for the Protection of Human Rights and Fundamental Freedoms (Konvencija za zaštitu ljudskih prava i temeljnih sloboda), Official Gazette, International agreements No. 18/97, 9/99, 14/02, 13/03, 9/05, 1/06, 2/10

that the restriction must strictly meet the needs of those extraordinary circumstances (*arg.* Article 15 para 1.). The previous case law of the European Court of Human Rights (hereinafter: ECtHR) has determined the criteria for public danger: the danger must be real or immediate, its effects on the whole nation, there is a threat to the continuity of the organized community in the sense that the measures permitted by the ECHR are insufficient.²⁴ Over the past few years, the case law of the ECtHR has been limited to a few decisions that address issues related to the consequences of the coronavirus pandemic.²⁵

3.2. Civil litigation

The coronavirus related crisis affected the work of all levels of Croatian civil courts. However, there was no unified approach to the operation of courts during the period of special circumstances. In the first period (14 March till 1 April 2020) the Ministry of Justice of the Republic of Croatia recommended that the judicial authorities continue to operate. The main hearings and other actions were to be conducted only in urgent proceedings, court staff was to work from home (where appropriate) and communication between court and other participants to the proceedings was to be conducted in writing by means of electronic communication.²⁶ At the same time, the Supreme Court of the Republic of Croatia (hereinafter: SCRC) found that there would be no negative consequence if the parties and other participants do not participate actively in the proceedings. More significantly, SCRC emphasized that the presidents of courts are entitled to organize the operation of the courts autonomously. It was this recommendation that led to implementation of different work organization at civil courts in Croatia.²⁷

Based on the SCRC recommendation, Municipal civil court in Zagreb, as the largest first instance civil court in Croatian judicial system, advised judges and court advisers to assess, if conditions were met for the hearings to be postponed in each case. In addition, courts were obligated to inform the parties and their representatives by regular post, telephone or means of electronic communication of their decision. Communication between court and the parties, lawyers and public notaries was to be conducted via means of electronic communication or

²⁴ Nastić, *op. cit.*, note 18, p. 73

²⁵ Kamber, K.; Kovačić Markić, L., *Administration of justice during the COVID-19 pandemic and the right to a fair trial*, in: Duić, D.; Petrašević, T. (eds.), *EU and Comparative Law Issues and Challenges Series (ECLIC)*, Vol. 5, 2021, p. 1066

²⁶ Ministry of Justice of the Republic of Croatia, Recommendations for conduct, class number: 710-01/20-01/135, reference number: 514-04-02/1-20-01, 13 March 2020

²⁷ Supreme Court of the Republic of Croatia, Su-IV-125/2020-2, 13 March 2020

telephone.²⁸ On 27 April 2020, a new decision was brought and it enabled for the court proceedings, which satisfy certain criteria, to be held after 11 May 2020. The judges are to assess if the proceedings are urgent, have priority or otherwise require to be conducted immediately. Remaining proceedings were postponed until further notice. All other communication continued as previously described.²⁹ The most recent decision, from 1 June 2020 repealed previous decisions and allowed all court activities to proceed normally.³⁰

In a similar vein, Municipal court in Osijek in a decision from 7 May 2020 allowed only urgent proceedings to be conducted and continued all communications, including the delivery of written submissions with parties and participants to the proceedings via means of electronic communication or regular post.³¹ The decision from 28 May 2020 repealed previous decisions and enabled the court to proceed normally.³² In comparison, Municipal court in Rijeka on 28 May 2020 brought a decision to conduct all proceedings normally. At the same time, lawyers, public notaries and legal persons were to deliver all written submissions via an application (called eCommunication). In specific enforcement proceedings, lawyers, parties and public notaries were allowed to approach court and submit their written submissions.³³

It is obvious that the courts had different approach towards organization of their operation during and immediately post-coronavirus related crisis. The communication with the courts in general was especially difficult. The courts applied different criteria for delivery of written submissions and deadlines. In addition, restrictions to the free movement of people, including lawyers were imposed and disabled them to provide services to their parties outside their place of residence. The introduced emergency measures created problems for all legal practitioners, but particularly for the State Attorney's office and the lawyers.³⁴

With the problems already faced in court practice in mind and anticipating other similar problems, Croatian Bar Association presented their Proposal of the Act on emergency measures in court and administrative proceedings due to the CO-

²⁸ Municipal Civil court in Zagreb, 3Su-677/2020, 13 March 2020

²⁹ Municipal Civil court in Zagreb, 3Su-677/2020-9, 27 April 2020

³⁰ Municipal Civil court in Zagreb, 3Su-677/2020-12, 1 June 2020

³¹ Municipal court in Osijek, 2Su- 230/2020-31, 7 May 2020

³² Municipal court in Osijek, 2Su- 230/2020-32, 7 May 2020

³³ Municipal court in Rijeka, 3Su-481/20-199, 7 May 2020

³⁴ The communication from the Croatian Bar Association available at: [<http://www.hok-cba.hr/hr/obavijest-o-poduzetim-radnjama-hok-vezano-uz-covid-19-i-potres-u-zagrebu.>], Accessed 23 February 2022

VID-19 coronavirus epidemic.³⁵ Similar approaches, with more or less successful outcomes, were also advocated in different Member States (Denmark, Italy, Austria, Portugal, France, Slovenia).³⁶

The Proposal of the Act on emergency measures in court and administrative proceedings addressed several procedural aspects, which directly affect civil proceedings. According to the Proposal, time limits in proceedings should cease to run, including the time limit for submitting a constitutional claim (arg. *ex* Article 3). Although proceedings before Constitutional court are not considered as civil proceedings, since the Constitutional court is not a part of Croatian judiciary, Croatian Bar Association included the time limits for submitting a constitutional claim in the Proposal.³⁷ This was to insure that the Proposal is in accordance with the principle of legality and ensures the protection of human rights of all parties to the proceedings, including the proceedings before the Constitutional court.³⁸ The reasoning here seems both justified and convincing. However, the question remains whether special circumstances allow the national legislator to act outside the limits, which the division between judiciary and the Constitutional court imposes. Namely, the Constitutional Act on the Constitutional Court³⁹ contains provisions on procedures before Constitutional court, including the Constitutional claim (arg. *ex* Article 1 Constitutional Act on the Constitutional court). It seems thus more appropriate for the proposal on seizing time limits for initiating Constitutional claim during special circumstances, to be introduced in the Constitutional Act on the Constitutional court, instead of the Act on emergency measures in court and administrative proceedings.

According to the Proposal of the Act on emergency measures in court and administrative proceedings, main hearings are to be held only in urgent proceedings, and the judge is entitled to exclude the public from the proceedings in case there is a

³⁵ Proposal of the Act on emergency measures in court and administrative proceedings due to the COVID-19 coronavirus epidemic, available at: [<http://www.hok-cba.hr/hr/obavijest-o-poduzetim-radnjama-hok-vezano-uz-covid-19-i-potres-u-zagrebu>], Accessed 23 February 2022. The proposed measures were to be applied until 1 June 2020, according to its Art. 2 para 1. It was model based on the Slovenian Zakon o začasnih ukrepih v zvezi s sodnimi, upravnimi in drugimi javnopravnimi zadevami za obvladovanje širjenja nalezljiv ebolezni SARS-CoV-2 (COVID-19), Ur. list RS, št. 36/20 in 61/20

³⁶ Croatian Bar Association, 2226/20, 18 March 2020. See Proposal of the Act on emergency measures in court and administrative proceedings due to the COVID-19 coronavirus epidemic, *op. cit.*, note 35

³⁷ Triva, S.; Dika, M., *Građansko parnično procesno pravo*, Narodne novine, Zagreb, sedmo izdanje, 2004, p. 67

³⁸ Proposal of the Act on emergency measures in court and administrative proceedings due to the COVID-19 coronavirus epidemic, explanation of Art. 3 para 2.

³⁹ Constitutional Act on the Constitutional court (Ustavni zakon o Ustavnom sudu), Official Gazette No. 99/99, 29/02, 49/02

threat to security or a health threat (arg. ex Article 4 para 1, 3). Which civil proceedings are considered as urgent should be decided according to laws governing specific subject matter (*lex specialis*) (arg. ex Article 5 para 1). Along with the provisions of the laws governing specific subject matter, the priority of conducting certain civil proceedings stems from Article 122 para 2 Court Rules of Procedure⁴⁰. By way of derogation from Article 5 para 1, the president of the court at the proposition of the judge or the president of the court council, taking all of the circumstances of the case and the measures relating to coronavirus epidemic, may decide that the specific proceedings in question are not urgent (arg. ex Article 5 para 2). Given the nature of proceedings such as maintenance proceedings, labour proceedings and proceedings for issuing provisional measures, which are considered urgent under Article 122 para 2 Court Rules of Procedure, it is questionable, if the president of the court should be allowed to decide against conducting these proceedings due to coronavirus related crisis. Again, there seems to be a collision between the principle of legality and the right to *access to justice* and the solutions intended to protect the health and safety of all participants during the special circumstances.

Communication between court, the parties and other participants is to be conducted via regular post or means of electronic communication (arg. ex Article 4 para 2). The courts would not allow for the submission of any written documents in person (arg. ex Article 4 para 2).

In March 2020, the Ministry of Justice did discuss the possibility to introduce systematic legal solutions concerning civil proceedings during the specific situation, similar to that of the European Court of Human Rights (hereinafter: ECtHR), but obviously the idea was abandoned and the Proposal of the Croatian Bar Association was not accepted.⁴¹ Instead, the courts relied on the decision of the SCRC and introduced solutions, which in most cases differed significantly. In addition, the Ministry of Justice vigorously encouraged the use of means of electronic communications. Legal practitioners faced many problems and obstacles while performing their tasks, especially because some courts insisted in receiving documents via the means of electronic communications. However, this system is in use since recently in Croatian judiciary and it still did not function properly in all parts of the country. The infrastructure is poor and there were difficulties with transfer of large documents via the interoperable information system within the judiciary. In

⁴⁰ Court Rules of Procedure, (Sudski poslovnik), Official Gazette No. 37/2014, 49/2014, 8/2015, 35/2015, 123/2015, 45/2016, 29/2017, 33/2017, 34/2017, 57/2017, 101/2018, 119/2018, 81/2019, 128/2019, 39/2020, 47/2020

⁴¹ Minister Bošnjaković in the “Topic of the Day” of HRT on the impact of the current crisis situation on the work of the judiciary, Ministry of Justice of the Republic of Croatia on 26 March 2020, available at: [<https://pravosudje.gov.hr/print.aspx?id=21728&url=print>], Accessed 26 March 2022

addition, according to current legislation, the use of means of electronic mail is not allowed for submitting a claim and some other types of submissions. Hence, either the party or its representative have to submit such documents in person. Even the SCRC advocated for the amendments to the Judiciary Act⁴² (Law on courts) and introduction of the possibility to submit a claim and initiate court proceedings via electronic mail, but the proposal failed.⁴³ A number of judges, including the president of the SCRC warned of the consequences of the decision not to suspend time limits for actions in court proceedings.⁴⁴ In a situation of a limited possibility to access court, for a number of reasons, due to no suspension of time limits, the parties faced the possibility to lose a right to initiate specific court proceedings or to suffer loss of proceedings already pending before court.

Since the end of 2021 was marked by a significant increase in coronavirus patients, the President of the SCRC issued new guidelines for the organization of the work of courts.⁴⁵ These guidelines were aimed at holding hearings “online” where possible, banning hearings if a distance of more than two meters cannot be ensured, postponing all hearings attended by a large number of people, organizing work from home and even a total ban of entry to the courts (*arg. para 8*). It does not seem that such drastically conceived measures of the SCRC have been applied. Moreover, the guidelines could not be found on the official website of the SCRC on the day this paper was written, but the authors were able to obtain them privately. The guidelines did not consider whether the parties have resources to participate in “online” litigation. Nor did they take into account whether such a rather drastic approach to the organization of court work was justified. The guidelines also do not rely on information on the number of courts, which meet the necessary requirements for holding online hearings and are able to implement the measure of holding hearings “online”. They merely entrusted the implementation of the measures and the final organization of the work to the Presidents of the courts.⁴⁶ However, such an approach did not provide for a uniform organization of work or equal access to justice for all parties.

⁴² Judiciary Act; Law on courts (*Zakon o sudovima*), *Official Gazette* No. 28/13, 33/15, 82/15, 82/16, 67/18, 126/19

⁴³ Raić Knežević, A., *Zbog korone i potresa ljudi ne mogu do odvjetnika ni sudova, a rokovi teku; hoće li procesi propadati?* Available at: [www.telegram.hr/politika-kriminal/zbog-korone-i-potresa-ljudi-ne-mogu-do-odvjetnika-ni-sudova-a-rokovi-teku-hoce-li-procesi-propadati/], Accessed 23 February 2022

⁴⁴ *Ibid.*

⁴⁵ Guidelines for the conduct of courts in a Covid-19 pandemic from 12 January 2022, Su IV-422/2021-14

⁴⁶ Court Rules of Procedure (*Sudski poslovnik*), *Official Gazette* No. 37/2014, 49/2014, 8/2015, 35/2015, 123/2015, 45/2016, 29/2017, 33/2017, 34/2017, 57/2017, 101/2018, 119/2018, 81/2019, 128/2019, 39/2020, 47/2020

3.3. The impact of the measures on practitioners and parties - Is the right of access the court threatened?

Since extraordinary measures implemented during the pandemic relied largely on the use of technologies and provided for remote justice, it seems noteworthy to examine whether such administration of justice can be considered as a restriction of the right to access the court. In this context, consideration should be given to whether measures taken by the Contracting States to the ECHR in exceptional circumstances, such as the use of technologies that enable hearings to be held online, could be considered a justified restriction of the right of access to court according to Article 15 of the ECHR.⁴⁷ The basic principles of civil procedure prescribed by the Article 4 of the Croatian Civil Procedure Act (hereinafter: CPA) as well as the provision of Article 6 of the ECHR in the spirit of the exercise of the right to a fair trial should be considered.⁴⁸

The case law of the ECtHR does not require an oral hearing or presence of a party as a necessary requirement for exercising the right to a fair trial, especially in civil cases.⁴⁹ Although it is a procedural standard in national civil litigation, the pandemic required reconsidering its significance and scope. The ECHR (Article 6/1) and the Constitution of the Republic of Croatia (Article 29) prescribe the right to a fair trial, which requires that the parties have at their disposal an effective legal remedy.⁵⁰ The right of access to court is not absolute and may be limited under certain conditions (Article 16 of the Croatian Constitution and Article 6/1 of the ECHR).⁵¹ However, the restriction of rights must be legitimate and proportional

⁴⁷ Art. 15 of the ECHR prescribes that in time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law

⁴⁸ Civil Procedure Act (Zakon o parničnom postupku), Official Gazette No. 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 96/08, 123/08, 57/11, 25/13, 89/14, 70/19. Art. 4 of the Croatian CPA prescribes oral, direct and public hearings. Article 6/1 of the ECHR prescribes that In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. See also: Lovrić, M., *Pravo na pristup sudu kao esencija vladavine prava*, Financije i pravo, Vol. 7, No. 1, 2019, pp. 37-38

⁴⁹ See also Kamber, Kovačić Markić, *op. cit.*, note 25, pp. 1049-1078

⁵⁰ Guide to Article 6 of the European Convention on Human Rights, Right to a Fair Trial (civil aspect), available at: [https://www.echr.coe.int/Documents/Guide_Art_6_HRV.pdf], Accessed 7 April 2022

⁵¹ Lovrić, *op. cit.*, note 48, p. 42.; Šarin, D., *Pretpostavke za pristup sudu - pravna stajališta i praksa Europskog suda za ljudska prava*, Pravni vjesnik, Vol. 32, No. 1, 2016, p. 268 ; Guide to Article 6 of the

to the reason for the restriction (Article 15 ECHR; Articles 16 and 17 Constitution of the Republic of Croatia).⁵²

The introduced measures, which limited the right to access to court for parties, also influenced the ability of lawyers to provide services. In comparison to 2019, there has been a significant decline of the number of hearings before courts (ie Municipal court in Osijek), even up to 80%.⁵³ The analysis of the information collected in oral interviews with lawyers confirms this conclusion. The Croatian Bar Association undertook certain actions in order to mitigate the effects of the pandemic on legal services, but without significant success.⁵⁴

At the time this paper was written, the pandemic seemed to be approaching the end. Nevertheless, the effect of the emergency measures implemented since 2020 in Croatian judicial system is still obvious. This is in large part due to the one-track approach of the introduced measures, which focused entirely on preventing physical contact by slowing down and postponing court proceedings. Although there was a legitimate interest in employing such measures, the shortcomings of the chosen approach seems to be overlooked. Namely, not only were the parties and their lawyers denied or severely limited in the right to access the court during the pandemic, but due to the backlogs created before Croatian courts, obstacles in providing justice will remain long after the pandemic ends.⁵⁵

European Convention on Human Rights, Right to a Fair Trial (civil aspect) available at: [https://www.echr.coe.int/Documents/Guide_Art_6_HRV.pdf], Accessed 7 April 2022

⁵² Šarin, *op. cit.*, note 51, p. 100

⁵³ Letter from the Osijek Bar Association to the President of the Municipal Court in Osijek from 18 January 2021.; newspaper article from *lider.hr*: *Trgovачki sudovi-koronavirus zaustavlja 80 posto postupaka* available at: [<https://lider.media/korona-i-biznis/trgovacki-sudovi-koronavirus-zaustavlja-80-posto-postupaka-130802>], Accessed 23 February 2022

⁵⁴ Decision of the Croatian Bar Association from 23 March 2020, available at: [<https://www.hok-cba.hr/ostalo/obavijest-o-poduzetim-radnjama-hok-vezano-uz-covid-19-i-potres-u-zagrebu/>], Accessed 23 February 2022

⁵⁵ The ways in which some of the courts organized their work and the measures taken were determined by the following decisions: Municipal court in Zadar, decision number Su-494/2020 from 15 October 2020 and 03 November 2020; Municipal court in Osijek, decision number Su-230/2020 from 10 December 2020 and 03 November 2020; Municipal court in Dubrovnik, decision number Su-440/2020 from 15 November 2020; Municipal court in Rijeka, decision number Su-272-2021 from 04 November 2020, 15 March 2021, 15 November 2021 and 03 December 2021; Municipal court in Slavonski Brod, decision number Su-232/2020 from 03 November 2020 and 31 May 2021; Municipal court in Vinkovci, decision number Su-163/2020 from 03 November 2020 and Su-539/2021 from 16 November 2021; Municipal court in Pula, decision number Su-185/2020 from 04 November 2020; Municipal Civil court in Zagreb, decision number Su-677/2020 from 15 November 2020; instructions from Commercial court in Split available on website: [https://sudovi.hr/sites/default/files/priopcenja/2020-11/Odluka_3.pdf] and [<https://sudovi.hr/hr/tsst/priopcenja/obavijest-covid-19>], Accessed, 25 February 2022; Commercial court in Split, decision number Su-442/2021 from 15 No-

A lack of a functional system that enables the parties to access court during extraordinary circumstances such as the pandemic (remote hearings, using technological equipment, etc.) seems to cause more denial or severe limitation of the right to a fair trial than the use of technologies which enable parties to access court remotely. In this sense, the issues highlighted above should not be disregarded in the course of future amendments to the Croatian legislative framework.

4. FUTURE OF REMOTE JUSTICE IN CROATIAN CIVIL PROCEDURE

4.1. Current perspective

Is there any room in the existing Croatian procedural regulatory framework to adapt to pandemic or any other potential extraordinary circumstance? The relevant provisions of the CPA provide for remote hearings and the taking of evidence by means of prescribed technologies - audiovisual devices (Article 115 of the CPA). There is no detailed information on the extent to which these technologies have so far been applied in the course of civil proceedings. Given that conducting a remote hearing requires a certain level of technological equipment of the courts on the one hand, and the ability of participants to use such technologies in civil proceedings on the other, a high level of the use of technologies is not to be expected.

A procedural legal mechanism that could have proven useful during the pandemic is a suspension of civil proceedings. However, the existing provision of Article 186 g CPA does not address the issues that have arisen in the course of the pandemic in the satisfactory manner. The suspension would have solved the problems of expiring deadlines for taking certain actions in the course of the proceedings. In comparison, in case of failure to take a certain action related to the legal deadline the administrative courts allowed the parties to rely on the motion to restore a prior status, allowed in the existing regulatory framework (Article 117 of the CPA).⁵⁶ On the other hand, no potentially useful regulatory interventions have been undertaken in the substantive legal framework, such as the regulation of the course of statutes of limitations and statutory default interest (Articles 29 and 237 of the Civil Obligations Act).⁵⁷

vember 2021; Commercial court in Rijeka, decision number Su-78/2020 from 15 November 2020 and 02 April 2021; Commercial court in Osijek, decision number Su-191/2020 from 03 November 2020

⁵⁶ Brlek Vezmar, I., *Uloga Visokog upravnog suda Republike Hrvatske u vrijeme pandemije COVID-19*, Zbornik radova Pravnog fakulteta u Splitu, Vol. 58, No. 2, 2021, p. 480

⁵⁷ *Ibid.*

New Amendments to the CPA are under way.⁵⁸ The planned changes however, do not seem to reflect any notion of the issues which have arisen during the pandemic before Croatian civil courts. There are no proposed changes to the CPA, which find support in a detailed analysis of the effectiveness of the digitalization of court proceedings either. The Draft Amendments to the CPA, in the form available at the time of drafting this paper, do not introduce any legislative solution specifically shaped for emergency situations such as a pandemic. There are minor changes to Article 115 CPA, which allow for the use of audiovisual devices and an alteration of provision of Article 186 CPA which some legal practitioners find problematic.⁵⁹

Although it is illusory to expect the legislative framework to transform and adapt completely to the challenges of the recent or any other future extraordinary situation, it is surprising that the experience of the last two years made almost no impact and inspired no real change. It is also clear that significant changes cannot be expected, if there was no prior analysis of the issues that have arisen or a critical assessment of the limitations of the existing system. Unfortunately, until now, no such efforts or great progress can be seen either.

4.2. What is the future of remote justice in Croatia?

How should remote justice be understood? The goal of 'online' litigation is to transfer proceedings from the physical framework of courtroom to the online space, to enable participation in the proceedings without appearing before court in-person, or simplified - online dispute resolution.⁶⁰ The main goal of such proceedings is to guarantee and enable realization of the right of access to court.⁶¹ However, when considering remote justice in general, it is not enough to take into account only the legal aspects and their effects in the functioning of the judicial system. There is also room for analysis of the sociological, psychological and economic positions of participants in court proceedings, including parties, lawyers and judges. The court, as well as other state and public services, have a pronounced human factor, in terms

⁵⁸ E-savjetovanje, Nacrt Prijedloga Zakona o izmjenama i dopunama Zakona o parničnom postupku, available at: [<https://esavjetovanja.gov.hr/ECon/MainScreen?entityId=3184>], Accessed 22 February 2022

⁵⁹ The Croatian Bar Association participated in the e-consultation and published its remarks on the Draft Amendments to the Civil Procedure Act, which are available on the website of the Croatian Bar Association: [<https://www.hok-cba.hr/hok/savjetovanje-o-nacrtu-prijedloga-zakona-o-izmjenama-i-dopunama-zakona-o-parnicnom-postupku/>], Accessed 22 February 2022

⁶⁰ Toy-Cronin, B.; Irvine, B.; Nichols, D. M.; Cunningham, S. J; Tkacukova, T., *Testing the Promise of Access to Justice through Online Courts*, International Journal of Online Dispute Resolution, No. 1-2, p. 39

⁶¹ *Ibid.* p. 40

of thinking and emotion, which are often neglected.⁶² It is also necessary to analyze the availability of technical means of distance communication in the judicial system.

Legal literature when discussing remote justice argues that working out of court, in a non-traditional manner was commendable, because it helped preventing the spread of disease during the pandemic.⁶³ Although, numerous advantages of introducing technology in the judiciary are highlighted, positive aspects of human contact in court corridors and asserting judicial authority in courtrooms are also detected.⁶⁴ The courtrooms were empty over a period of time, but that does not mean that they are no longer necessary, since the digital world is not pleasant for all participants in court proceedings.⁶⁵ The process of socialization in informal interaction among lawyers, especially less experienced ones, as opposed to practicing law from the kitchen, should also not be neglected.⁶⁶ The human factor in courts and other state and public services is significant. The court is defined not only as a service or place, but also as the embodiment of legal power and the preservation of the rule of law.⁶⁷

On the other hand, researches are beginning to focus more on the conditions that will allow online litigation to become dominant over traditional litigation. A research into the system of Northern Ireland shows among other, that in-person hearings are not necessarily guarantees of the right under Article 6 ECHR.⁶⁸

The advantage of the use of technologies in court proceedings are seen in the possibility of easier access to court for those who may find it difficult to physically access court (the elderly, people living far from court, people with disabilities, etc.), availability of court decisions online and increased transparency due to the availability of legal documents.⁶⁹ On the other hand, the negative aspects of the

⁶² Allsop, J., *Technology and the future of the courts*, University of Queensland Law Journal, Vol. 38, No. 1, 2019, p. 2

⁶³ Hecht, N.; McCormack, B.; Rosenthal, L.; Wood, D.; Levi, D. F., *Coping with COVID: Continuity and Change in the Courts*, Judicature, Vol. 104, No. 2; Pallmeyer, R. R., *Preparing for the next Pandemic: COVID-19's Lessons for Courts*, University of Chicago legal forum, Vol. 2021, 2021, p. 5

⁶⁴ *Ibid.*, Pallmeyer, p. 8 and 13

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*, p. 13

⁶⁷ Allsop, *op. cit.*, note 62, p. 3

⁶⁸ McKeever, G., *Remote Hearings: LIPs and Participation in court Processes*, CJC Rapid Consultation: *The Impact of COVID-19 measures on the civil justice system*, May 2020, available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3604185], Accessed 23 February 2022. However, such considerations refer to court hearings in a legal system different from the Croatian one and in one phase of the procedure (online hearing), so the results can hardly be applied in Croatian conditions.; Toy-Cronin *et al.*, *op. cit.*, note 60, p. 57

⁶⁹ Allsop, *op. cit.*, note 62 p. 12; Legg, M., *The Covid-19 pandemic, the courts and online hearings: maintaining open justice, procedural fairness and impartiality*, Federal Law Review, Vol. 49, No. 2021, p. 7 and 21

use of technologies in the judiciary should be considered. Among such aspects, the way the data is managed online, the costs of introducing modern technologies, neglected interaction among participants, the effect of the inability of parties to interact in the courtroom and the ability of parties to access user software and technology infrastructure should be taken into account.⁷⁰ The work model of the court, as well as the significance of the role and the authority of judges should not be disregarded. In the legal literature, following obstacles are considered significant in the context of implementation of technologies in court proceedings: the type of proceedings, the type of case before the court, the willingness of parties to accept the use of technologies before courts, the availability of data, the flexibility of contractual relations between courts and technologies companies, the issues concerning intellectual property and level of costs for poorer world countries.⁷¹ The issues of the quality of such court proceedings, the level of ensuring the right of access to court, the quality of evidence presented online, the protection of the rights of vulnerable groups, the protection of the court electronic databases remain open issues which are to be further analyzed.⁷² Although some legal authors support digitalization of court proceedings, they also take into account the disadvantages.⁷³ The analysis of the available literature shows that there is no uniform position on the future of remote justice. Different outcomes are conceivable, depending whether legal, social or economic reasons are predominant or a balance acceptable to all is found. From the perspective of Croatian legal system, the future of remote justice does not seem promising. There are suggestions that the idea of online proceedings seem unattainable and difficult to accept for now.⁷⁴

In Croatia, technology is currently used in court proceedings, as stated in the introductory part of the paper, through the e-communication system. However, the research into the traditional model of court operation is still the focus, regardless

⁷⁰ Allsop, *op. cit.*, note 62, p. 9; *Ibid.*, Legg, p. 19 and 20

⁷¹ Allsop, *op. cit.*, note 62, p. 10; Bakaianova, N.; Polianskyi, J.; Svyda, O., *Information technology in the litigation due to the pandemic COVID-19*, Cuestiones Politicas, Vol. 38, No. Especial (2da parte), IEP-DP-Facultad de Ciencias Juridicas y Politicas - LUZ, 2020, p. 496; Golubeva, N.; But, I.; Prokhorov, P., *Access to justice due to the Covid-19 Pandemic*, Revista de Derecho, Vol. 9, No. 11, 2020, p. 60; also see: Legg, *op. cit.*, note 69, p. 24

⁷² Pallmeyer, *op. cit.*, note 63, p. 15; Sourdin, T.; Li, B.; McNamara, D. M., *Court innovations and access to justice in times of crisis*, Health Policy Technology, Vol. 9, No. 4, 2020, p. 13

⁷³ For example: China, Canada, the Great Britain, Australia, the United States of America, Singapour the Netherlands etc.; Allsop, *op. cit.*, note 62, pp. 4-6; Golubeva *et. al.*, *op. cit.*, note 71, p. 60; Legg, *op. cit.*, note 69, pp. 23 -24

⁷⁴ Uzelac, A., *Sudski postupak nakon Korone: Transformacija ili kapitulacija*, Suvremena trgovina, Vol. 45, No. 4, 2020, p. 15, 16 and 19

of the introduced novelties.⁷⁵ The pandemic has left plenty of room to actually start implementing online trials and testing our capabilities, but we do not seem to have taken advantage of it.

The use of technology in Croatian judicial system should be considered as means of improvement of the right of access to court.⁷⁶ Technological solutions should be provided as an alternative to the traditional court proceedings.⁷⁷ The autonomy of will of parties in the application of technology in each proceedings should be of relevance. At the same time, it is necessary to respect the role of judges and the court. In this sense, only if legal experts such as judges and lawyers work together with IT on the development of technology, relevant solutions which offer protection of databases and information could be provided.⁷⁸

5. CONCLUDING REMARKS

The analysis in the paper reveals that, while some countries have managed to implement emergency measures in courts proceedings and provide online hearings in order to ensure the right of access to court in a pandemic, others were less successful. In this sense, it is interesting to note that, while it was less challenging for the countries with a modernized and digitalized judiciary to adapt to new circumstances; it seems that countries with a more traditional orientation could actually benefit more from the pandemic. Namely, the dread of digitalization and the hesitation towards introducing more flexibility in administration of justice were promptly set aside by the pandemic, which required the national systems to act fast and take all measures necessary to ensure access to court for the parties.

However, the adjustment of the Croatian judiciary to emergency measures was not an example of an effective system. In comparison, other Croatian institutions have managed to provide access to their services more efficiently. Although the nature of the services these institutions provide cannot be compared to administration of justice, still, at the organizational level, some good practices they introduced are noteworthy. For one, the uniform approach that was applied in the institutions, but seemed not to have found way to the judicial system. Namely, entrusting each president of the court with the decision on how to precede with organization of work, resulted in different approach, and ultimately, to different possibility of accessing justice for the parties. Moreover, while in other Member States, the ability

⁷⁵ A review of the application of technology before Croatian courts was also presented. Uzelac, *op. cit.*, note 74

⁷⁶ Bakaianova; Polianskyi; Svyda, *op. cit.*, note 71, p. 495

⁷⁷ Bakaianova; Polianskyi; Svyda, *loc. cit.*, note 71

⁷⁸ Bakaianova; Polianskyi; Svyda, *loc. cit.*, note 71

of the courts or other competent bodies to take actions on a case-to-case basis, in order to provide the necessary protection of procedural rights to parties during the pandemic, resulted in almost full functioning of the courts, in Croatia, a similar approach led almost to a complete shutdown. Concerns for the health of both court staff and the parties are the most obvious reason for minimizing activities of Croatian courts. However, numerous other factors, such as the lack of necessary digital infrastructure, which would allow for the remote administration of justice, necessary knowledge and experience as well as protocols in place for extraordinary circumstances, should also be attributed to the reluctance of presidents of courts to allow judges to proceed without limitations.

The research has shown that technology has proven to be a good alternative to providing justice before courts. Unfortunately, during the last two years, Croatia has not done much to implement technology in court proceedings in response to the challenges of the pandemic. The lessons learned seem not to have sparked any ambition for change. The current legislative intervention into CPA does not contribute to the development of remote justice. No steps have been taken in order to improve the usage of technology before courts. No education of judges and court staff on usage of technologies has been planned either. An in-depth research and analysis into the experience of court staff, legal practitioners and parties concerning administration of justice during the pandemic has not been undertaken. Under such circumstances, it should not be expected for remote justice to make any significant progress in Croatia in the near future. Returning to the question in the title of the paper it seems that for Croatian judiciary, the means justify the ends, if the means are understood as traditional methods of administering justice before courts, which the Croatian system persisted to employ, even during the pandemic. The ends in this context are understood as consenting to the final result, which meant failure to provide it efficiently, for the most part. However, without reversing to the ends justify the means approach, the role envisaged for the judiciary in case of similar extraordinary circumstances in the future will not be attainable.

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