



USE OF ADVANCED ELECTRONIC TOOLS IN THE JUDICIARY

BASIC ASSESSMENT

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This Assessment was prepared by a research team of the Association of Criminal Law and Criminology and the OSCE Mission to Skopje¹

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ACCRONYMS USED

RNM	Republic of North Macedonia
JCRNM	Judicial Council of the Republic of North Macedonia
SCRNM	Supreme Court of the Republic of North Macedonia
AC	Appellate court
BC	Basic court
PPORNM	Public Prosecutor's Office of the Republic of North Macedonia
PPO	Public Prosecutor's Office
AJPP	Academy for Judges and Public Prosecutors
ACCMIS	Automated Court Case Management Information System
ICT	Information and Communication Technology
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
UN	United Nations
CSW	Centre for Social Work
PI	Penitentiary institution
ECI	Educational – correctional institution
SCPC	State Commission for Prevention of Corruption
PRO	Public Revenue Office
MISA	Ministry of Information Society and Administration
NERR	National Electronic Registry of Regulations of the Republic of North Macedonia
LCP	Law on Criminal Procedure
CPL	Civil Procedure Law
LAD	Law on Administrative Disputes

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EXECUTIVE SUMMARY

Digitalization and interoperability are processes that inevitably affect the functioning of the judiciary that cannot remain immune to the benefits of artificial intelligence and the advancement and improvement of the technical and operational performances of ICT tools. The Covid 19 pandemic has only stressed the need to support the judiciary's digitalization process towards achieving a greater efficiency, transparency and access to justice. Considering judiciary's current state of affairs, the digitalization process needs to take place in several forms: from the establishing of a legislative framework, as a basis for undertaking procedural actions, through the introduction of ICT tools to assist the holding of remote trials or the presentation of certain evidence, the timely provision of adequate equipment to courts (such as ICT tools, internet connection and other necessary devices needed for preparation of electronic documents), through the use of digital certificates (signatures) and the definition of digital identity of parties, attorneys and other participants in proceedings, and finally by upgrade of the ACCMIS and the provision of sufficient staff and relevant initial and continuous training for the proper use of the equipment.

Online trials are just one aspect of the digitalisation that encompasses a range of other electronic possibilities, such as e-submission, digital recording of hearings and creation of electronic hearing records, exchange of digital information and evidence, etc., some of which fall within the scope of interoperability. The authentication follows as a process enabling electronic identification of natural or legal persons in terms of confirming the origin and integrity of data received or exchanged in electronic form.

The protection of human rights, in general, with particular emphasis on the many guarantees that make up the right to a public and fair trial within a reasonable time, by respecting the presumption of innocence and protecting the privacy, remains to be the main focus of interest. ICT tools and digital solutions should facilitate the exercise of these fundamental procedural rights and it is precisely this segment that includes the interdisciplinary effort to adapt digital solutions to the necessary preconditions for procedural fairness and respect for the rights of the defence.

International standards and comparative experiences are of particular importance in choosing the model and trajectory along which the digitalization and inclusion of artificial intelligence in the judiciary will take place. Standards have to be properly embedded, present and provided, whereas comparative experiences have to be used to avoid perception of weakness, at the expense of taking advantage of benefits.

The reality is devastating in terms of use of ICT tools by Macedonian courts and the fact that they have no adequate resources. The data presented in this assessment show that courts have neither the required staff nor equipment; they frequently have problems with the speed and consistency of the internet connection, whereas electronic delivery and electronic bulletin boards are not used. However, the assessment shows that courts are willing to take advantage of the interoperability and contribute to the development of legal solutions, the specification of

technical performances that have to be met and to the improvement of personal digital literacy skills as necessary preconditions for holding trials or presenting evidence through digital platforms.

The following general conclusions emerged from the assessment, as well as some specific recommendations:

General conclusions

- It is recommended to develop a strategy for transformation of judicial organs in order to reap the benefits of remote trials, which inevitably leads to a change in the traditional functioning of the judiciary in terms of use of new technologies, increased recourse to alternative dispute resolution and media relations.
- It is especially important that the new approach to the way of functioning of the judiciary, by using modern technology and electronic platforms, ensures that the fundamental rights guaranteed by the ECHR are respected. The guarantees contained in the ECHR have to be adhered to without violating or calling them into question, regardless of the new way of conducting trials through the use of information technology. In this context, the implications with respect to the right to a fair trial and the ability of defendants to exercise their rights fully and effectively, even when they are not physically present in the courtroom, are particularly important. The guarantees of effective legal aid should be *condicio sine qua non* and it is crucial that there be possibilities of private and confidential communication between the defendant and the defence attorney before, during and after the court hearing.
- Courts should adopt criteria to identify cases that are eligible for remote hearings, taking into account the manner of participation of vulnerable groups in trials in terms of access and exercise of their rights.

Specific recommendations

1. Remote trials should be held at the discretion of the court in legally defined cases that would enable a more efficient access to justice and protection of the rights of citizens;
2. The right to a fair trial and protection of privacy must not be violated in the application of new technological solutions aiding the organization and holding of trials;
3. Preparation of parties - one should consider in particular how vulnerable participants (victims, children) and people with disabilities will realize their access to justice;
4. Amendment to the Rules of Procedure and procedural laws in order to regulate the possibility of holding trials remotely;
5. Preparation of procedures for the course of remote trials - scheduling of trials, notification, registering, granting access via electronic signature, signing in with an individualized password, identification of the involved party, etc.;
6. Remote trials must not jeopardize the public monitoring of the trial, hence it is necessary to prescribe procedures for reporting, informing, providing access and monitoring;
7. A detailed assessment of the necessary organizational-material and personal preconditions for remote trials is required (internet connection, ICT equipment, servers, recording and storage of trial recordings, platform to be used, court staff, training);
8. Upgrading and improving the ACCMIS to ensure compatibility and complementarity with the new software solutions related to the digitalization of courts;
9. Provision of equipment and resources in courts necessary for the smooth running of electronic communication, interoperability with other judicial institutions and state bodies, as well as remote trials (procurement of equipment in stages, initially providing the minimum necessary human resources required for implementation, providing support from donors and preparation of a sustainable plan by the state as to how it will provide and maintain the necessary resources and how in the future);
10. Preparation of an analysis of the digitalization's fiscal implications;
11. Provision of requisite funds from the Budget of RNM to sustain the digitalization process;
12. Preparation of an Action/Operational Plan on the digitalization dynamics in courts (implementation phases, pilot courts, courts with extended jurisdiction, courts with basic jurisdiction, higher courts, administrative courts);
13. Improving the electronic communication and establishing E-submission between courts and public prosecutor's offices, CSWs, penitentiary institutions, educational-correctional institutions and other state bodies, institutions and legal entities;
14. Development of procedures concerning the security, confidentiality and protection of electronically shared data;
15. Experience sharing and training on the platforms through which trials would take place, training of court staff on the use and maintenance of equipment, training of judges, public prosecutors and attorneys on the use of the electronic platform in courts.

RATIONALE BEHIND THE ASSESSMENT

The Covid 19 pandemic has had a major impact on the functioning of justice systems globally and has resulted in the closure of courts or their reduced performance, making communication significantly more difficult and thus jeopardizing the access to justice and the effectiveness and transparency of the justice system. Such conditions led to intense consideration of holding trials remotely by making use of electronic communication between parties and courts and between courts and other state bodies, as well as of the functionality and processes of updating websites, ICT tools availability and of whether courts have sufficient numbers of trained staff at their disposal to manage the remote work systems in courts.

However, the "new normalcy" has only accelerated the processes that inevitably await the judicial system in RNM in terms of its digitalization and joining the family of modern European systems. Judicial digitalization, intersectoral connectivity and interoperability of courts with other judicial institutions and state bodies are processes that are aimed at improving the efficiency and transparency of the judicial work, by focusing on fast and quality access to justice.

Considering the comparative experiences during the pandemic, it can be seen that in order to prevent the spread of the virus, all trials, except for urgent, detention related cases and cases related to the treatment of children, as well as criminal acts and misdemeanours in which offenders failed to comply with Covid 19 protocols, were initially postponed by decisions made by highest courts, judicial councils or state governments. Apart from the preclusive deadlines, a common measure that has been applied refers to the extension or suspension of certain procedural deadlines, statutes of limitations or deadlines for starting serving prison sentences. Parties and other citizens have been instructed to exercise their rights by communicating electronically with the court administration.²

States have resorted to various grounds for using video or telephone conferencing to provide remote access to justice and trials have been organized through platforms that allow two-way communication without the physical presence of all or some of the participants in the courtroom. The legislative grounds concerning remote trials and infrastructural ICT conditions can be obviously assessed as a weak link and therefore they should be subject to analysis, consultation of regional experiences and utilization and adaptation of good practices in this field. Security in the digital space of the judiciary, judges and other entities and participants in proceedings (in terms of personal data protection, as well as in terms of offering different access to official court case files, electronic documents and evidence, recordings of trials conducted,

² Effects of the COVID-19 pandemic on the functioning of court systems in different jurisdictions, ODIHR, October 2020, <https://www.osce.org/odihr/469170> <https://cms.law/en/bgr/news-information/effects-of-the-covid-19-pandemic-on-the-functioning-of-court-systems-in-different-jurisdictions>, April 2020; CCBE Survey: Exchange of experiences and best practices between bars, <https://www.ccbe.eu/>; Digital tools in Member States_COVID19, Impact of Covid 19 on the justice systems, https://e-justice.europa.eu/content_impact_of_covid19_on_the_justice_field-37147-en.do; Challenges of the judiciary in state of emergency, Centre for Legal Research and Analysis, June 2020, <https://cpia.mk/predizvici-na-sudstvoto-vo-vonredna-sostojba>

knowledge of proper use of the system and awareness of risks) also imposes as an important focus in the eyes of the expert public.

In its report³, OSCE ODIHR refers to the case tried remotely by BC Kavadarci, through the Microsoft Teams platform, as a good practice, in terms of previous preparations that made it possible for the trial to be held smoothly from a technical point of view. Namely, a positive consideration is given to the fact that the court prepared and shared detailed instructions on how parties were supposed to connect through a video call (so that each party could be posed questions) and how to behave during the video-call hearing. An information technician was constantly present during the trial and was ready to assist in the event of any technical difficulties faced by any of the parties, the defence attorney or participants in the proceedings.⁴

On the one hand, the situation in Macedonian courts during the pandemic, the state of emergency and the quarantine introduced in 2020 and, the inevitable need to modernize the judicial system with the introduction of digitally advanced tools in its daily functioning, on the other, are the main reasons behind this Assessment. **Its purpose is to serve as a basic, i.e., initial document on the basis of which the next steps of this complex process of digitalization of domestic courts can be further planned.**

Given the complexity of the process, international standards and comparative experiences in the region and beyond, this Assessment sheds light on:

- International standards and comparative experiences focusing on the advantages and challenges of using electronic platforms, conducting online or hybrid trials;
- Analysis of the current situation related to the use of ICT tools in courts and the existing resources (human and technical) and general future needs;
- The positive domestic legal framework and the necessary legal amendments that would enable the use of new electronic tools in the work of courts, by protecting the rights of participants in proceedings at the same time;
- Recommendations for future steps with regard to the digitalization.

³ Ibid

⁴ OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic, OSCE/ODIHR 2020, https://www.osce.org/files/f/documents/e/c/457567_0.pdf.

II. INTERNATIONAL STANDARDS AND COMPARATIVE EXPERIENCES

The European Convention on Human Rights and Fundamental Freedoms allows derogation of certain derogable rights under a state of emergency or martial law.

Article 15

DEROGATION IN TIME OF EMERGENCY

1. 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.

2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

Several countries informed the ECtHR about derogation of ECHR rights during the pandemic.⁵ However, it can be seen that none of the reports contained a restriction on public trial within a reasonable time, and in almost all countries trials were postponed and there was no possibility of holding a trial with physical presence.

Article 6

Right to a fair trial

1. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ...

⁵ <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/declarations>

The right to a fair trial and an effective legal remedy are some of the non-derogable rights under the ECHR, i.e., the compliance of actions therewith and the guarantee for such a compliance have to be ensured even in times of crisis, pandemics and similar circumstances. The OSCE ODIHR has previously indicated that when states declare a state of emergency to fight security threats, such declarations have a negative impact on the right to a fair trial.⁶ The increasing use of ICT by courts in a pandemic raises serious challenges as to how the right to a fair trial is respected and how the public has access to hearings, especially in criminal cases.

The right to fair trial (Article 14 of the ICCPR, Article 6 of the ECHR) is at high risk of being jeopardized during a pandemic, as it encompasses principles such as presumption of innocence, right to public trial, the right to defence, equality of arms, the right to legal representation, the right to examination of evidence and witnesses by the opposing party, and the right the party to use an interpreter if needed.⁷ There are some concerns about remote trials with respect to the effectiveness of the defence, knowing that video conferencing deprives parties and the judge of their ability to perceive non-verbal signals during the examination of witnesses and experts, which significantly complicates the process of assessing the credibility of the person giving a statement.

➤ **ECtHR's practice in relation to online trials:**

Yevdokimov and others v. Russia⁸

Application No. 27236/05 and others, Verdict passed on February 16, 2016

Prisoners filed defamation lawsuits while they were still in a penitentiary institution. None of the applicants was allowed to personally attend the hearings during which their lawsuits were examined. The domestic courts declined their opportunity to be present at the hearing, arguing that there was no domestic legal provision regulating how prisoners should be brought from prisons to courts.

The applicants complained that their absence from the court was not in accordance with the legislation and that that was contrary to the principle of due process. According to the Law on Civil Procedure of the Russian Federation, the possibility of participating in a trial via video conference is prescribed.

**Law on Civil Procedure of the Russian Federation
(entered into force with amendments applied in 2013)**

**Article 155.1
Participation in trial via video conference**

"1. If the court has the capability of organizing a video conference, parties and their representatives, as well as witnesses, expert witnesses, specialists and

⁶ Fair Trial Rights during States of Conflict and Emergency: OSCE/ODIHR Expert Meeting Report (2016)

⁷ "OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic", ODIHR, July 2020, Chapter 1

⁸<https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%2227236%2F05%22%5D%2C%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%2C%22CHAMBER%22%5D%7D>

interpreters can participate in the hearing through video conference. The video conference is organized at the initiative of the court or upon a request made by some of the parties.

2. Parties and their representatives ... participate in the hearing through video conference by using video conferencing equipment installed in the competent court at their place of residence, stay or location. As to persons located in remand centres or penitentiary institutions, the equipment installed in such places may be used.

22. According to the ECtHR, Article 6 of the ECHR does not guarantee the **right to a personal presence before the civil court**, but envisages a more general right for the party to present the case effectively before the court and to ensure equality of arms with the opposing party. Article 6 paragraph 1 leaves to the state to freely choose the means to be used in order to guarantee the rights of the party.

43. Regarding the use of a video link or video conferencing equipment, this form of participation in proceedings is, *inter alia*, aimed at reducing delays in the transfer of detainees and thus simplifying and speeding up proceedings. [*Kabwe v. the United Kingdom* (dec.), nos. 29647/08 and 33269/08, 2 February 2010, and *Marcello Viola v. Italy*, no. 45106/04, § 70, ECHR 2006-XI (extracts)]. Having recourse to such technical opportunities for holding a trial is not, as such, incompatible with the notion of a fair and public trial, but by having such a recourse it has to be ensured that the detainee is able to follow the proceedings, see anyone present and hear what is being said, but also, without any technical hindrance, to be seen and heard by the other party, the judge and the witness [*Sakhnovskiy v. Russia* (GC), no. 21272/03, § 98, 2 November 2010, and *Marcello Viola*, cited above, §§ 72-74].

44. Conducting a court hearing outside the courtroom is a time-consuming task. In addition, conducting it at a place such as a detention institution, to which, in principle, the public has no access, carries the risk of undermining the public character of the trial. In such cases, the state is obliged to take appropriate measures to ensure that the public and the media are properly informed about the place of trial and are provided with effective access [*Starokadomskiy v. Russia* (no. 2), no. 27455/06, §§ 55-63, 13 March 2014, and *Riepan v. Austria*, no. 35115/97, § 30, ECHR 2000-XII].

The CEPEJ Declaration emphasizes that the pandemic has created challenges and it encourages thinking towards finding innovative measures that can come into existence in judicial systems. In this context, in many countries significant efforts have been made to adapt to new circumstances and make the best use of existing resources to ensure the functioning of their courts. With regard to this, access to justice is one of the key issues that should not be overlooked and therefore access to justice should be provided through alternative means such as online services or strengthening the access to information through court websites and other communication means (telephone, e-mail, etc.). According to the CEPEJ Declaration, the use of information and communication technology in the functioning of the judiciary is of crucial

importance.⁹ Principle 5 precisely refers to this aspect and points out that having recourse to information technology is the way the judicial system should function in times of health crisis.

In this regard, it is emphasized that digitalization of justice should facilitate the way of undertaking action, providing network services, conducting examinations remotely, conducting video conferencing, etc., but the basic rights and principles of a fair trial have to be always respected, by ensuring appropriate cyber security and personal data protection.

Until a decade ago, video conferencing was considered as an effective tool in the EU with the potential to facilitate and speed up the implementation of cross-border procedures and reduce costs.¹⁰ Video conference examination referred to witnesses, expert witnesses and victims of crime. Depending on the type of proceedings, cross-border video conferencing was practiced in criminal, civil and commercial cases.

Both the Directive 2014/41/EU of the European Parliament and the Directive of the Council as of April 3, 2014, in connection with the European Investigation Order in criminal matters¹¹, prescribe a possibility of taking a statement from a suspect through video conference. Namely, the body issuing the European Investigation Order may issue it for the purpose of examining a suspect or defendant through video conference or another audio-visual transmission, if the person concerned does not object thereto and if that is not contrary to the fundamental rights in the country where the European Investigation Order should be enforced. The state of emergency, i.e., the conditions of a pandemic must not lead to the impossibility of fulfilling an explicit obligation resulting into a failure to bring arrested or detained persons before a judge or another competent body in a timely manner (Article 9 (3) of the ICCPR and Article 5 (3) of the ECHR).

Increased use of electronic evidence by courts in civil and administrative proceedings may help to overcome some of the constraints imposed by the Covid-19 crisis.¹² Under conditions of having an increasing volume of virtual transactions between traders and individuals, as well as between businesses arising from safe distancing rules and lock-in situations, courts may have to deal with a larger volume of electronic evidence to resolve disputes. In this context we can mention the Guidelines of the Committee of Ministers to Member States on Electronic Evidence in Civil and Administrative Proceedings as of 2019¹³, according to which, "electronic evidence" is any evidence obtained from data contained in or produced by any device whose operation depends on a software program or data stored or transferred over a computer system or network. They contain instructions in relation to the oral evidence taken remotely, the use of electronic evidence, the process of collecting, seizing and transferring evidence, the relevance,

⁹ "CEPEJ Declaration. Lessons learnt and challenges faced by the judiciary during and after the COVID-19 pandemic", CEPEJ, Ad hoc virtual CEPEJ plenary meeting, Strasbourg, 10 June 2020, <https://rm.coe.int/declaration-en/16809ea1e2>.

¹⁰ Videoconferencing as a part of European E-Justice the essentials of videoconferencing in cross-border court proceedings, European Communities, 2009.

¹¹ Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters, *OJ L 130*, 1.5.2014, p. 1–36.

¹² <https://www.coe.int/en/web/cdcj/covid-19#E-justice>

¹³ Guidelines of the Committee of Ministers to member States on electronic evidence in civil and administrative proceedings (Adopted by the Committee of Ministers on 30 January 2019 at the 1335th meeting of the Ministers' Deputies), <https://rm.coe.int/guidelines-on-electronic-evidence-and-explanatory-memorandum/1680968ab5>.

confidentiality, storage and preservation and archiving of electronic evidence, as well as in relation to awareness raising, examination, training and education.

Finding solutions with respect to the functioning of courts in a pandemic depends on the decisions made by judicial organs and bodies, the highest courts in states, the Ministries of Justice, etc., and the position of the CCJE is worthy of a mention in this context. Namely, Opinion No. 19 (2016) on the role of court presidents states that one of the roles of court presidents is to ensure the effective functioning of the court, and thus the provision of a better service to society. In this context, court presidents are responsible for managing the work of the court, including the management of court staff, material resources and infrastructure. It is extremely important that they have the necessary powers and resources to perform this task effectively.

There are rare examples of national legislation recognizing the possibility of holding remote trials through telecommunications technology platforms before the onset of the pandemic. Such is the case, for example, with the Law on Courts of Lithuania, the Law on Civil Procedure of Croatia, and the Law on Civil Procedure of the Russian Federation. On the other hand, there are various solutions in other countries regarding the decision on holding remote trials. In France, a special Decree gives judges the discretion to decide whether to use IC technology to conduct trials (electronic or audio) without requesting consent from the defendant. In Austria, in civil cases, remote trials can only be held with the consent of parties, and in criminal cases the judge has the discretion to decide to remotely examine any detained defendant, if he considers that the risk of transmission of the Covid 19 virus will be avoided in that way.

The fact that states are undertaking extraordinary measures to maintain the functionality of criminal justice should be welcomed because in this way they prevent long delays in criminal proceedings and ensure that urgent matters, such as detention related hearings, are not delayed. The pandemic has led to significant restrictions on the right to a public hearing affecting the transparency and ability of trial observers and the media to monitor the process.¹⁴

In most countries, due to lack of legal solutions and in conditions in which the judiciary is under pressure with respect to how it functions during a pandemic, ICT is used in courts on the basis of decisions, decrees and recommendations of judicial councils, high judicial councils, decisions by the highest courts in the country or decisions by ministers of justice.

Different levels of skills, material opportunities and ability of participants to use ICT, as well as different quality of communication platforms and quality of internet connection can be observed in those places where remote trials took place, which appear to be the reasons for restriction of the rights of parties disabling them to effectively participate in hearings and effectively pursue their interests. The specific needs of persons with disabilities who should have equal access to full participation in hearings are pointed out.

As a result of measures undertaken at the beginning of the pandemic courts have been facing many backlogs, whereat legal solutions and recommendations, enabling them to hold trials remotely, are being again considered as a solution for time and cost-effective management of their work.

¹⁴ Such cases, for example, have been observed in Georgia, Kazakhstan and Armenia, "OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic", OSCE ODIHR, July 2020

Given the prolonged pandemic, the need for holding trials remotely remains, including trials by using a video link or telephone link, and although remote trials were initially introduced as a temporary measure, it is possible that they will become a permanent solution in exceptional situations.¹⁵

Video conferencing and remote hearings are trial models that have been used in most countries. Comparatively, different platforms have been used by courts (Skype, Zoom, Microsoft Teams, Cisco's Webex, Polycom Real presence, Cloud Video Platform, BlueJeans, PEXIP, TrueConf), some of which used even on a trial basis. Countries where video conferencing has been used in civil and criminal proceedings are, inter alia, Austria, Croatia, France (where trials have also been held by telephone), Hungary, Ireland, Kazakhstan (where ZOOM and the TrueConf applications have been used), Portugal, Serbia, Slovenia, Sweden and the United Kingdom. Experiences vary depending on the existence of a legislative basis or relevant regulations adopted at the time of the pandemic. However, video conference hearings or other ICT solutions require appropriate technical solutions so that they can be established with respect to all parties involved, i.e., judges, attorneys, prosecutors, parties, witnesses, interpreters (where applicable), with a sufficiently secure and continuous audio and video connection. Parties should be provided with technical support in order to ensure their effective participation and if the connection is lost, then the hearing should be stopped.¹⁶

It is undisputed that courts should have proper premises at their disposal in order to provide the defence, in other words the defence attorney and the defendant with a confidential video conference connection or telephone link between themselves without undue time-related pressure. Defendants should be given access to secure premises before, during and after hearings where they can confidentially communicate with their defence attorneys.¹⁷

Examination of witnesses through video conference is not a novelty and it exists in almost all criminal procedure laws, being a result of the influence of international documents from the international cooperation on criminal matters and witness protection. Such a hearing does not fall within the scope of what is meant by a remote trial, but can be included under the so-called "hybrid" trial, given the fact that only some of the participants in the proceedings are not present in the courtroom, but participate in the trial by using an appropriate ICT platform.

Statistics on the use of ICT in judiciaries in European countries show a significant increase in their use in various types of cases.¹⁸

¹⁵ Safeguarding the right to a fair trial during the coronavirus pandemic: remote criminal justice proceedings, <https://www.fairtrials.org/>.

¹⁶ The Functioning of Courts in the COVID-19 Pandemic, October 2020, OSCE ODIHR, <https://www.osce.org/files/f/documents/5/5/469170.pdf>.

¹⁷ Safeguarding the right to a fair trial during the coronavirus pandemic: remote criminal justice proceedings, <https://www.fairtrials.org/>.

¹⁸ For example, in Sweden, United Kingdom, "OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic", ODIHR, July 2020.

1. BOSNIA AND HERZEGOVINA¹⁹

In accordance with the Recommendations of the High Judicial and Prosecutorial Council and the Decision of the Supreme Chamber of BiH on the organization of work in courts and prosecutor's offices in BiH²⁰, the Cantonal Court made two decisions:

- Decision on the organization of work during the outbreak of the epidemiological situation in the country caused by Covid 19²¹; and
- Decision on the organization of work for the purpose of protecting personal and public health and preventing the spread of the new Coronavirus (Covid 19).²²

Courts worked with reduced capacity on the principle of on-duty judges acting only on emergency cases, as well as with reduced administrative and technical staff. Other judges and court staff were sent to work from home. Direct communication between court staff was minimized, all communication was done mainly by telephone and e-mail, and cases were submitted to judges electronically, by having in mind the security of the delivery of documents.

In the first period after the pandemic, until April 2020, the first measure undertaken was the ex-officio postponement of all non-urgent court hearings, without requiring the parties to appear in court. All scheduled hearings were postponed, except for cases that were urgent by law and cases that were close to expiration of the statute of limitations. Judges who were on duty had the discretion to decide to proceed if they considered the case or circumstances as urgent. Only the following cases were acted upon:

- Civil procedure: proceedings concerning interim measures (for ordering, extending or terminating certain measures),
- Criminal procedure: (cases related to a custody order or custody request; cases in which the court had to act due to the risk of expiration of the statute of limitations of the crime; cases against children; and cases against human health),
- Misdemeanour procedure: (cases of non-compliance with orders imposed by competent authorities during the Covid 19 pandemic)

The preclusive deadlines (for appealing, responding to an appeal, filing a lawsuit and so on) prescribed by the procedural laws were not suspended. In proceedings in which the court's acting was completed before the outbreak of the pandemic, there were delays in preparing and submitting decisions to parties and other participants in the proceedings. Parties were able to submit documents to the court by registered mail or by fax. Due to the limited access to the court building, the notice regarding the submission of documents to the court was published on

¹⁹ Effects of the COVID-19 pandemic on the functioning of court systems in different jurisdictions, <https://cms.law/en/bgr/news-information/effects-of-the-covid-19-pandemic-on-the-functioning-of-court-systems-in-different-jurisdictions>, April 2020; Katica Jozak-Madgar, President of the cantonal court in Novi Trebnik, <https://www.coe.int/en/web/cepej/compilation-comments>

²⁰ Decision No. 08-02-2-1020-2 / 2020 as of March 22, 2020.

²¹ Decision No. 06 0 Su 013 930 20 Su as of March 17, 2020.

²² Decision No. 06 0 Su 013 930 20 Su as of March 23, 2020.

the website and displayed at the entrance of the court in order to inform the general public about the new working regime of the court and the options for the citizens.

It was necessary for those courts acting in second and third instance to organize and facilitate the work from home, whereas meetings of judicial councils needed to be organized on an ad hoc basis, according to a decision made by the president of the court.

It was incumbent on court presidents to assess the risks posed to human health and to make ad hoc decisions that could have been even more restrictive, i.e., it was explicitly stated that the prescribed measures should be considered as minimum restrictive measures.

An Initiative to amend the Law on Criminal Procedure was adopted in BiH in order to enable online trials.²³ Its adoption was intended to indicate the need for creating a legal basis for introduction of audio-video recordings through a video conference link (online examinations and implementation of actions and procedures) in all procedural situations in which the LCP provisions envisage the presence of participants in proceedings. Such trials were supposed to be "an exception that would apply only to certain procedural situations and only during the pandemic."

According to the conclusion of the High Judicial and Prosecutorial Council of BiH, a legal basis for implementation of the Initiative can be the general LCP provisions on audio or audio-visual means of recording evidence (for example, testimony of a defendant) and the provisions on taking minutes during the main hearing. The initiative was aimed at creating a legal basis for conducting certain activities or applying procedures that would not be conditioned from the direct physical presence of parties in the premises of the prosecution or the court, where the decision on using audio-video online conferencing would be made by the president of the council or the judge who schedules the hearing.

A Law on Temporary Measures in the work of the judiciary and other organs during a natural or other disaster on the territory of Bosnia and Herzegovina has also been proposed and the very law is now in an adoption phase.²⁴ It regulates the deadlines in the criminal procedure, the manner of work of judicial bodies in terms of reasons for not holding hearings, except in urgent cases, the manner of imposing the detention measure, it deals with the risks of expiration of the statute of limitations of crimes, it prescribes a procedure for all criminal acts committed during a natural or another catastrophe and in connection with the state of a natural or another catastrophe, regulates the restriction and exclusion of the public from the hearing, imposes mandatory coronavirus testing during detention and establishes time limits with respect to the temporary detention and extradition.

Digitalisation has been assessed as an effective way to reduce the number of unresolved utility cases in BiH as their manual processing overburdened the courts, which directly affects the efficiency and quality of work.²⁵

²³ Initiative to amend the Law on Criminal Procedure in order to enable "online" trials, Hajrija Sijerchich-Cholich, PhD, Prof; Criminal Proceedings and Pandemic, University of Sarajevo - Faculty of Law, Series "Pandemic and Law", Essays, Reviews and Comments, no. 10/2020, Sarajevo, May 18, 2020

²⁴ Law on Temporary Measures in the work of judicial and other bodies of Bosnia and Herzegovina during a state of natural or another disaster on the territory of Bosnia and Herzegovina, proposed in May 2020; it was not adopted with an emergency procedure in September, so it is expected to be adopted with a regular legislative procedure, more on: <https://www.slobodnaevropa.org/a/30814703.html>.

²⁵ Digitalization leading to a reduction of unresolved cases, 27.10.2020, <https://vstv.pravosudje.ba/>

For these reasons, the High Judicial and Prosecutorial Council of BiH, with support provided by the Government of Norway, developed a special information system for electronic filing and automatic processing of low value cases (SOKOP-Mal) which is used by 35 out of 59 first instance courts in BiH and by 23 external users.

Digitalisation of courts has proven to be the most effective measure for fast and efficient resolution of low value court cases, but also an important component for achieving a higher level of transparency and efficiency in general.

In **Republika Srpska**²⁶, court summonses, decisions, etc., were not issued and all deadlines for filing a submission, regular and extraordinary remedies were suspended during the state of emergency, except for the following types of cases:

- labour disputes related to discrimination or abuse with regard to the job position;
- procedures regarding the status of business companies;
- company registration;
- interim measures and prohibitions; and
- procedures for making court decisions in relation to bank accounts.

Trials were conducted without public. The statutes of limitations in civil law were suspended during the state of emergency.

With regard to examinations and proceedings conducted through video conference connection, they were allowed only in cases in which witnesses were unable to attend the trial. In such cases, the trial was held in one court building and the witness was in another court building.

2. CROATIA²⁷

By decision of the Minister of Justice, recommendations on the prevention of transmission and suppression of the coronavirus epidemic were issued (and then complemented)²⁸ and courts were supposed to adhere thereto. According to these recommendations:

²⁶ Effects of the COVID-19 pandemic on the functioning of court systems in different jurisdictions, <https://cms.law/en/bgr/news-information/effects-of-the-covid-19-pandemic-on-the-functioning-of-court-systems-in-different-jurisdictions>, April 2020; CCBE Survey: Exchange of experiences and best practices between bars, <https://www.ccbe.eu/>.

²⁷ CCBE Survey: Exchange of experiences and best practices between bars, <https://www.ccbe.eu/>; Digital tools in Member States_COVID19, https://e-justice.europa.eu/content_impact_of_covid19_on_the_justice_field-37147-en.do; Effects of the COVID-19 pandemic on the functioning of court systems in different jurisdictions, <https://cms.law/en/bgr/news-information/effects-of-the-covid-19-pandemic-on-the-functioning-of-court-systems-in-different-jurisdictions>, April 2020; Igor Jukich, Senior Expert Advisor, Ministry of Justice, Republic of Croatia, <https://www.coe.int/en/web/cepej/compilation-comments>

²⁸ The first recommendations were given on March 13, 2020, and were amended on March 17, 2020.

- judicial authorities were supposed to continue to work and apply all urgent procedures and actions with appropriate safety controls;
- hearings and other non-urgent activities were postponed for 14 days;
- work from home was allowed, if that was possible;
- communication with parties and other participants in proceedings was supposed to take place electronically;
- enforcement proceedings were postponed, especially the enforcement of confiscation of real estate for eviction and vacated real estate.

In Croatia, no state of emergency was declared and there was no unified decision regarding the work of courts. Each court decided and announced the decisions on the working hours, the conduct of trials and the like. On the basis of their own measures that they adopted themselves, courts postponed hearings with the exception of urgent cases. Some courts (in Zaprešić, Jastrebar and the Commercial Court in Zagreb) were completely closed.

The President of the Supreme Court made a recommendation to presidents of the high and district courts aimed at minimizing the physical contact whenever possible. In the process of resolving their cases, he also referred judges and courts to the use of available technical means of remote communication (e-mail, video link, etc.), if deemed possible.

Electronic communication was used in all commercial, municipal and district courts, as well as in the High Commercial Court. The technical preconditions for the e-communication service were provided by the Ministry of Justice. Communication with parties and all other participants in court proceedings, as a rule, was performed electronically. In cases in which it was necessary to have a meeting or personally examine the party, activities were conducted in compliance with all precautionary measures imposed by health authorities. All attorneys, citizens and other users of e-Communication had the opportunity to see the content of all documents, if the content was available to the case management system. Attorneys, notaries, experts and legal entities were able to file submissions and send attachments to the court, obtain court documents, perform inspection remotely over court cases and so on.

E-Case (E-Predmet) provides citizens with information on the course and dynamics of resolving cases in regular proceedings, but not an insight into the content of court documents. In addition to electronic submissions, parties were able to file submissions by mail or directly at the court entrance. Due to the fact that parties had such opportunities, the preclusive deadlines were not stopped.

The President of the Supreme Court issued a recommendation to all courts that the absence of parties in proceedings due to the pandemic should not adversely affect their procedural rights. Citizens were advised to check the status of their cases online on the court's website and contact the court if the trial had not been postponed. Courts functioned only in urgent proceedings, as follows:

- in proceedings in which the rights of minors were to be protected,
- in proceedings containing elements of violence,
- in guardianship-related proceedings.

Enforcement and insolvency proceedings were not postponed on national level, but there were certain local governments that made decisions to postpone enforcement proceedings (such as in Osijek). The Croatian Association of Banks made decision that banks would not initiate enforcement in the event of unpaid three instalments or annuities within three months as of April 2020.

With regard to the criminal procedure, courts continued to act only in urgent cases:

- in relation to the detention measure and
- in cases in which there was a risk of expiration of the statute of limitations of the crime

Article 115 of the Law on the Civil Procedure (valid as of 01.09.2019)²⁹ envisages a legal possibility of holding trials and undertaking actions through video conference; this article prescribes that the court can decide to hold the hearing remotely by using appropriate audio-visual devices, or to have parties present individual pieces of evidence in this way.

The Law on the Criminal Procedure also contains provisions on actions that can be undertaken remotely by using appropriate audio-visual devices. Defendants and persons examined were physically present, as well as their attorneys, but detention hearings were held via a video link if the party did not object to that.

It is worth noting the proactivity of the Croatian Bar Association, which at the very beginning of the pandemic (March 18, 2020) submitted a Draft Law on Intervention Measures in the field of Judicial and Administrative Proceedings due to the Covid 19 Pandemic to the Ministry of Justice.³⁰ Although it was not adopted, the proposed law envisaged the possibility for defendants to participate in criminal proceedings through audio-video devices.

3. SERBIA³¹

A state of emergency was declared in the Republic of Serbia in March 2020.³² Shortly afterwards, the Ministry of Justice issued Recommendations regarding the work of courts and the public prosecutor's office during the state of emergency.³³ The recommendations were

²⁹ <https://www.zakon.hr/z/134/Zakon-o-parni%C4%8Dnom-postupku>.

³⁰ Draft Bill on Intervention Measures in the Field of Judicial and Administrative Proceedings due to the COVID-19 Coronavirus Epidemic,

http://www.hok-cba.hr/sites/default/files/nact_prijedloga_zakona_o_interventnim_mjerama_na_podrucju_sudskih_i_upravnih_postupaka_covid_19.pdf

³¹ Effects of the COVID-19 pandemic on the functioning of court systems in different jurisdictions, <https://cms.law/en/bgr/news-information/effects-of-the-covid-19-pandemic-on-the-functioning-of-court-systems-in-different-jurisdictions>, April 2020; The Functioning of Courts in the COVID-19 Pandemic, October 2020, OSCE ODIHR, <https://www.osce.org/files/f/ documents/ 5/5/469170.pdf>; Ivana Ninčich, Ministry of Justice, Consultant, Sector for European Integration and International Projects, Serbia, <https://www.coe.int/en/web/cepej/ compilation-comments>.

³² <http://www.pravno-informacioni-sistem.rs/fp/ covid19>.

³³ <https://www.mpravde.gov.rs/vest/29159/preporuke-za-rad-sudova-i-javnih-tuzilastava-za-vreme-vanrednog-stanja.php> ; <https://www.mpravde.gov.rs/sekcija/29166/konkretna-uputstva-za-rad-pojedinačnih-pravosudnih-organa->

followed by specific decisions made by the High Judicial Council on reorganizing the work of courts.³⁴ The decisions of the High Judicial Council were binding on all courts and contained many details. Courts were ordered to postpone hearings until the termination of the state of emergency. Given that court hearings were postponed, there was no need for parties or their representatives to appear in court. However, there was a recommendation that parties should contact the court in writing and in time before the trial, or by fax or by telephone, in order to check whether they should appear at the scheduled hearing.

In cases in which certain courts held hearings, they were advised to accept the request for postponing a trial if the party or his representative was a person over 60 years of age, suffered from chronic illness or had a child under the age of 12. In addition to the request for postponement, a written consent of postponement given by the party had to be submitted (if the submitted request was prepared by the representative).

Those courts, in which conditions existed, continued to work in sessions without the presence of the public and continued to make decisions.

Parties were encouraged to file their submissions either by mail, fax, telegram or e-mail (where applicable) as working hours and the operation of court clerks were subject to special working conditions.

As of March 15, 2020, all deadlines for filing constitutional appeals, civil, administrative and private criminal lawsuits were suspended, as well as the deadlines for initiation of non-litigation and enforcement proceedings, and the deadlines for filing appeals or applying for extraordinary legal remedies in criminal, misdemeanour and commercial cases. After the end of the state of emergency, the administrative procedure deadlines for acting before a competent body were extended for 30 days with respect to tax procedures, customs procedures and various types of inspection procedures.

Courts continued to act in the following cases:

- civil procedure: interim measures (with respect to imposing, extending or terminating measures); urgent procedures (for example, insolvency, tenure disputes, etc.); protection measures in cases of domestic violence; prohibitions on distribution of the press and distribution of information by the media; detention in neuropsychiatric health institutions; enforcement in family relations - related matters.
- criminal procedure: cases when the detention measure was ordered or requested; specific crimes (illegal trade, non-compliance with health regulations during an epidemic, transmission of infectious diseases); procedures initiated against juvenile perpetrators; cases in which juveniles were the injured party in crimes against sexual freedom; hearings in cases of domestic violence; cases in which there was a risk of expiration of the statute of limitations; crimes committed during and in connection with a state of emergency.

kao-i-javnih-beleznika-i-javnih-izvrsitelja-a-na-osnovu-preporuka-ministarstva-pravde-za-rad-za-vreme-vanrednog-stanja.php.

³⁴ <https://vss.sud.rs/sites/default/files/datoteki/dodatoci/%D0%97%D0%B0%D0%BA%D1%99%D1%83%D1%87%D0%B0%D0%BA.pdf>.

- misdemeanour procedure: proceedings conducted against juvenile perpetrators; cases in which minors were the injured party; domestic violence proceedings; initiating proceedings related to the public order and peace; misdemeanours where the risk of expiration of the statute of limitations was inevitable; when a higher number of requests for misdemeanour procedure were submitted for misdemeanours related to the state of emergency.
- enforcement procedure: claims in connection with legal obligations within the area of providing support to the family; compensation for damage suffered due to ill health; inability to work; disability or death of the debtor; collection of money from a company account.

The Serbian Bar Association expressed its opposition to online proceedings against certain individuals who allegedly violated the self-isolation measures in hearings that took place online by using platforms such as Skype. According to the Bar Association, such a way of conducting proceedings was not envisaged by law and represented a drastic violation of the right to a fair trial.

As a response to the letter of the Bar Association, the Government adopted the Decree on the participation of the defendant in the main hearing during criminal proceedings held during state of emergency.³⁵

In Serbia, between March 27 and April 1, 2020, those courts, which had computers with cameras and microphones and a Skype platform installed, used this platform for trials held against those accused of violating Covid 19-related regulations.³⁶ Initially such trials were held according to written instructions sent by the Ministry of Justice. On 1st of April, a Decree was signed by the President and the Prime Minister approving remote hearings, and on 9th of April, the High Judicial Council issued a conclusion stating that the Decree was applicable only to trials conducted against persons accused of violating Covid 19 regulations. The decree refers only to:

- cases when the defendant is in custody, and not when he is free; the motive for adoption of such a Decree is to protect detention institutions from the spread of the virus due to appearance of detainees at trials; and to
- first instance trials.

The conduct of trials in such cases should be organized by using technical means enabling sound-image transmission, if deemed possible, by taking into account the technical conditions of the institution. The president of the trial chamber or the individual judge had the authority to decide on such a participation of the defendant in the trial depending on the court's assessment whether the presence of the defendant carries the risk of spreading Covid 19.

³⁵ www.paragraf.rs/propisi/uredba-o-nacinu-ucesci-ucenog-u-krivicnom-postupku-vanredno-stanje.html; Vladimir Hrle, Preserving procedural safeguards during the COVID-19 crisis – a Serbian perspective, Fair Trials, 29 April 2020.

³⁶ <https://www.mpravde.gov.rs/sr/vesti/29671/saslusanja-za-lica-koja-su-preksila-meru-samoizolacije-putem-video-linka.php>.

During trials conducted through video link, according to some attorneys³⁷, the main shortcoming was related to the cross-examination because the defence could neither effectively perform such an action via Skype video conference, nor talk to the defendant. Such conduct of trials has raised concerns about the fairness of proceedings as the adversarial nature of the trial presupposes the active participation of the defendant, especially in the context of performing an effective cross-examination and assessment of the credibility of witnesses.

4. SLOVENIA³⁸

Slovenia is among the countries where no state of emergency has been declared and where only measures have been put in place to fight Covid 19. It was acted there according to the Law on Courts and the Law on Temporary Measures in relation to judicial, administrative and other public cases so that the spread of infectious diseases SARS-COV-19 (Covid-19) could be controlled.

While measures to fight Covid 19 were in force, access to court buildings was not permitted, except for urgent matters. The judge had the discretion to decide to exclude the public from ongoing proceedings to prevent the spread of the disease.

Courts faced challenges regarding the exchange of paper documents received by parties and other organs and bodies, the process of maintaining distance between individuals and other Covid-19 precautionary measures in major hearings (including transport of perpetrators) and the process of dealing with requests related to security measures (for example, child custody). Courts used communication and document exchange channels that enabled judges to work from home (remote access to the desktop, secure sharing of large files, etc.). Submissions were filed by mail or through the court's website (*e-justice*) where that was possible. In their communication, parties could use the published e-mail addresses and telephone numbers to communicate with the court. The deadlines for filing submissions were also postponed for as long as the measures to combat Covid 19 were in force. Trials could be conducted via video conferencing if there were spatial and technical conditions.

"Urgent matters" are defined in Article 83 of the Law on Courts (amended in July 2020) and they include:

- Investigations and verdicts concerning criminal cases in which the defendant has been deprived of liberty or the freedom of the defendant has been restricted, and in criminal cases in relation to foreigners who are not residents of the Republic of Slovenia,

³⁷ Vladimir Hrle, Preserving procedural safeguards during the COVID-19 crisis – a Serbian perspective, Fair Trials, 29 April 2020.

³⁸ http://www.sodisce.si/sodni_postopki/objave/2020041013584651/; CCBE Survey: Exchange of experiences and best practices between bars, <https://www.ccbe.eu/>; Digital tools in Member States_COVID19, https://e-justice.europa.eu/content_impact_of_covid19_on_the_justice_field-37147-en.do; The Functioning of Courts in the COVID-19 Pandemic, October 2020, OSCE ODIHR, <https://www.osce.org/files/f/ documents/ 5/5/469170.pdf>; Effects of the COVID-19 pandemic on the functioning of court systems in different jurisdictions, <https://cms.law/en/bgr/news-information/effects-of-the-covid-19-pandemic-on-the-functioning-of-court-systems-in-different-jurisdictions>, April 2020; Gregor Stroin, Advisor to the President, Supreme Court of the Republic of Slovenia, <https://www.coe.int/en/web/cepej/ compilation-comments>

- non-litigation matters related to placement of persons in psychiatric wards or health organizations,
- non-litigation matters, according to the law, regulating the prevention of domestic violence,
- enforcement matters related to procedures for protection of the interests of children,
- issuing interim decision,
- inventory of the testator's estate,
- insolvency and liquidation procedures.

In case of natural and other serious disasters, epidemics or similar emergencies, these urgent cases can be tried during the summer break from July 15 to August 15, on the basis of a Decree of the President of the Supreme Court.

The current procedures for initiating the enforcement of the prison sentence are suspended, and new procedures should not be initiated. At the same time, it is envisaged that convicts should be released on parole 6 months before the end of their prison sentence. In the part concerning misdemeanours, the court acted only in cases against children, in the following matters: detention; foreigners and confiscation of perishable goods.

The Bar Association submitted a proposal that was not adopted; the proposal referred to amendments, inter alia, in connection with trials of detainees and criminal proceedings that were considered as urgent and which should be conducted via video conferencing because such a way of conducting proceedings was assessed as safe in terms of the risk of spreading the infection. They suggested that those cases in which a certain measure was imposed to secure the presence (detention or house arrest) of the defendant should be considered as urgent criminal cases. The Bar Association pointed out that it was necessary to determine the technical possibilities for participation of the state public prosecutor and the defence attorney through video conferencing.

5. BEST EU PRACTICES: LITHUANIA³⁹

In 2017, a reform in the judiciary was implemented, which included reducing the number of courts by more than a half and it also introduced the possibility of electronic trials and submission of electronic evidence, allowing for a more dynamic justice and positively affecting the quality of court decisions; it is assessed that by having such an approach the conditions of stakeholders in the court have been improved.

The success of the reform can be reflected through the following parameters:

- the number of electronic trials has increased significantly (reaching a number close to 150 thousand per year);

³⁹ Supreme Court of Lithuania, <https://www.lat.lt/en/news/the-courts-have-presented-their-operational-results-the-court-reform-accelerated-case-hearing-in-courts/831>; Jelena Vasilionokienė <https://www.coe.int/en/web/cepej/compilation-comments>.

- Lithuania ranks fourth in Europe in the use of electronic evidence;
- nearly half of all administrative cases are electronic;
- only 1.71% of court decisions out of 227 thousand cases reviewed in courts have been modified or revoked by higher courts;
- the number of criminal cases with expired statute of limitations has been decreased by 22%;
- in the period between 2017 and 2019, the number of criminal cases lasting for more than a year decreased by more than twice, and the number of administrative cases by 30 times;
- In 2018, in relation to the trial within a reasonable time, the ECtHR did not find any violation of Article 6 in cases initiated against the Republic of Lithuania.

The amendments to the Law on Courts of Lithuania as of 2014 include provisions on electronic cases and the use of information technology for electronic communications in courts as determined by the Minister of Justice. In order to realize this, it was necessary to create appropriate technical conditions in courts as well as appropriate technical preconditions for participants in proceedings. The characteristics of **electronic court cases** are as follows:

- all communication between parties is realized in electronic form;
- documents are sent in a digital form and in the same way the court receives information;
- participants in proceedings have right to:
 - be acquainted with the electronic case,
 - receive copies of documents that exist in that electronic case,
 - be acquainted with cases on which the court has already made a decision,
 - submit any kind of procedural document and submit information related to the court process to the court in electronic form.

Procedural documents submitted through electronic communication technologies should be **signed**, for which the following possibilities are used:

- secure electronic signature;
- verification of personal identity by other means, for example, by using an electronic banking system;
- by registering in the information system of the court.

In such cases, it is incumbent on the court to inform participants in proceedings about procedural actions or decisions by using electronic communication technologies. Appropriate technical conditions are created in the court for confirmation of receipt/delivery of procedural court documents, enforcement-related documents and other documents related to the court proceedings, as well as their copies, by using a secure electronic signature created with a secure device for creating signatures, on the basis of qualified certificates. Procedural court documents and copies thereof have the same legal effect as procedural documents certified by handwritten signatures.

Digitization of documents - Digital copies of written procedural documents, issued and received during the court process, except for documents, which, in accordance with the conditions envisaged by law, cannot be digitized, as well as electronic procedural documents that have already been created or submitted, should be kept in the electronic mailbox. Written procedural documents have to be digitized, and their digital copies will be transferred to the electronic case no later than three working days as of the day of their receipt by the court. The time of digitization of the document and the person who has digitized it have to be stated on the digital copy. The digital copy has to be certified with a secure electronic signature of the person who has digitized the document. In cases when a written document cannot be digitized, the court makes a reasoned decision to keep documents only in written (paper) form and indicates it in the electronic procedure.

The Law on Courts regulates that the process of recording the course of the trial and the outcome of court cases shall be performed in accordance with the provisions of the procedural laws in relation to the following aspects:

- whether minutes will be taken of the court hearing or the hearing will be recorded;
- the content of the text in the minutes and how it is structured;
- the proceedings can be audio-recorded;
- with regard to recording and examining evidence, the court may audio or video record, photograph or use any other technical equipment;
- whether it is possible for parties in proceedings to audio-record the court hearing.

Other persons are not allowed to photograph, audio/video record or use other technologies during court hearings. The person who has violated the prohibition on the usage of technical equipment during a court hearing shall be held liable in accordance with the law. At the end of the trial, the court will make a decision whose content and procedure for adoption (of the very decision) are determined in procedural laws.

Electronic trials in the criminal area are not common. Namely, in January 2020, with a decision of the Judicial Council, a system for creating **electronic criminal case files** (E-Criminal Case File) was introduced. At the beginning, the system initially comprised only lighter cases that were dealt with by district and regional courts in which the public prosecutor's office filed:

- indictment with a proposal on issuing penal order or
- proposal that the case be dealt with in an expedited procedure

The implementation of this decision is under the jurisdiction of the Lithuanian Judicial Information System (LITEKO).⁴⁰

Regarding the pandemic, after the declaration of full preparedness of the civil protection in the country, the Judicial Council of the Republic of Lithuania referred to Resolution No. 716 of 24th of July 2013 on the General Description of Electronic Information Security, published by the Government of the Republic of Lithuania, as a basis for actions undertaken by judges, assistant judges and other employees working remotely.

⁴⁰ <https://rm.coe.int/most-recent-developments-in-judiciary-en-final-2019-in-lithuania/168094fd75>.

In this context the following recommendations were made:

- cancellation of all scheduled trials with oral procedure during the quarantine, of which the parties should be notified immediately;
- during oral hearings, all precautions should be taken to prevent the spread of Covid-19, for example, a courtroom for hearings in urgent cases, with regular airing and disinfection, should be provided;
- with respect to the process of acting by individual judges and trial chambers, without the presence of the public, it was necessary to determine the order, schedule and procedure concerning the way they are organized and make decisions, in order to ensure maximum social distance between those present.

As an exception, oral hearings were allowed to be organized only in urgent cases:

- In cases connected with deprivation of liberty and
- In cases in which a child needed to be removed from an unsafe environment.

 **LET'S SUMMARIZE:**

ASSERTION	MYTH	TRUTH
ONLINE TRIAL IS "TRIAL IN ABSENCE", BECAUSE THE DEFENDANT IS NOT PRESENT IN THE COURTROOM	X	<ul style="list-style-type: none"> ○ ABSENCE FROM A COURT DOES NOT MEAN A TRIAL IN ABSENTIA BECAUSE THE DEFENDANT IS INVOLVED DIRECTLY THROUGH THE INTERNET PLATFORM, THEY PARTICIPATE IN THE TRIAL AND EXERCISE THEIR RIGHTS ○ THIS MUST NOT BE CONFUSED WITH THE TRIAL IN ABSENTIA, WHICH IS CONDUCTED WHEN THE DEFENDANT IS INACCESSIBLE AND WHEN THERE IS A PROPOSAL MADE BY THE PUBLIC PROSECUTOR. ○ THE FACT THAT THE TRIAL HAS BEEN HELD ONLINE IS NOT A BASIS FOR REQUESTING RETRIAL BECAUSE OF A TRIAL IN ABSENTIA.
BY DEFINITION, ONLINE TRIAL MEANS EXCLUDING THE PUBLIC WHICH HAS NO MEANS TO OBSERVE THE TRIAL	X	THE PUBLIC MAY BE INCLUDED IF THE SHARE VIDEO LINK IS POSTED ON THE WEBSITE OF THE COURT, AND IN SUCH A SITUATION ANY PARTY MAY NOMINATE PERSONS WHO WOULD FOLLOW THE TRIAL ONLINE; THE COURT CAN ALSO PUBLISH AN E-MAIL ADDRESS ON ITS WEB SITE THROUGH WHICH INTERESTED PARTIES CAN APPLY IN ORDER TO BE INVOLVED IN THE TRIAL AS A PUBLIC.
WHEN HOLDING HEARINGS REMOTELY (VIDEO-CONFERENCING), THE TRANSPARENCY IS VIOLATED IF:		

<ul style="list-style-type: none"> ○ THE COURT FAILS TO PROVIDE THE PUBLIC AND OTHER OBSERVERS WITH AN EFFECTIVE APPROACH IN ORDER FOR THEM TO BE ABLE TO FOLLOW THE COURSE OF SUCH HEARINGS. ○ THE COURT FAILS TO PUBLISH THE SCHEDULE OF TRIALS AND LINKS ON ITS WEB SITE THROUGH WHICH ONE CAN JOIN THE ICT PLATFORM. ○ THERE ARE PROBLEMS RELATED TO THE CONNECTION - OBTAINING ACCESS PERMISSION (DIGITALIZED SIGNATURE, INDIVIDUALIZED PASSWORD). ○ THERE ARE PROBLEMS RELATED TO FOLLOWING THE TRIAL PROCESS BECAUSE OF TECHNICAL INTERNET CONNECTION PROBLEMS 		X
<p>TO REALIZE THE RIGHTS OF THE DEFENCE, THE DIGITAL PLATFORM THAT ALLOWS TWO-WAY COMMUNICATION WITHOUT PHYSICAL PRESENCE IN THE COURTROOM HAS TO HAVE TECHNICAL CAPABILITIES TO PROVIDE A "DISCREET COMMUNICATION" BETWEEN THE DEFENDANT AND THEIR DEFENCE ATTORNEY DURING THE ONLINE TRIAL BY DISABLING ANY OTHER PERSON TO HAVE INSIGHT INTO THEIR COMMUNICATION (BREAK-OUT ROOMS), I.E., SUCH COMMUNICATION HAS TO REMAIN PRIVATE AND UNKNOWN TO OTHERS.</p>		X
<p>DIGITALIZATION SHOULD MAKE IT POSSIBLE FOR ALL TRIALS TO BE CONDUCTED ONLINE EVEN WHEN THE PANDEMICS WILL END.</p>	X	<p>ONLINE TRIALS SHOULD BE LEGALLY REGULATED AS AN EXCEPTION TO THE RULE THAT THE TRIAL ALWAYS NEEDS TO TAKE PLACE IN THE COURT. THE CONDITIONS ACCORDING TO WHICH IT IS ALLOWED TO HOLD AN ONLINE TRIAL SHOULD BE PRESCRIBED BY LAW.</p>
<p>UNDER ONLINE TRIAL WE MEAN COURTROOMS THAT ARE LOCKED UP AND EVERYONE JOINING THE ONLINE TRIAL FROM HOME</p>	X	<p>ONLINE TRIAL DOES NOT MEAN THAT THE JUDGE OR THE TRIAL CHAMBER MEMBERS ARE NOT PRESENT IN THE COURTROOM WHERE PARTIES AND OTHER PARTICIPANTS ARE INVOLVED IN PROCEEDINGS REMOTELY.</p>
<p>THE TERM ONLINE HYBRID TRIALS MEANS TRIALS WHERE ONE PART OR ONLY SOME OF THE PARTIES OR PARTICIPANTS IN THE PROCEEDINGS HAVE JOINED THE TRIAL THROUGH AN ONLINE PLATFORM AND ARE NOT PHYSICALLY PRESENT IN THE</p>		X

<p>COURTROOM.</p> <p>SUCH AN OPPORTUNITY WOULD BE USEFUL, ESPECIALLY WITH REGARD TO PERSONS LOCATED IN PENITENTIARY INSTITUTIONS WHO IT MIGHT BE DIFFICULT TO BRING TO THE COURT, LEADING TO POSTPONEMENT OF PROCEEDINGS.</p>		
<p>THERE ARE NO EXAMPLES OF LIVESTREAMED COURT SESSIONS BECAUSE IN THAT WAY ALL RIGHTS OF THE DEFENDANT AND OTHER PARTICIPANTS IN THE PROCEEDINGS ARE VIOLATED.</p>	<p>X</p>	<p>SOME LEGISLATIONS MAKE IT POSSIBLE TO HOLD TRIALS THAT ARE LIVESTREAMED THROUGH YOUTUBE (USA, BULGARIA, UNITED KINGDOM)</p>
<p>REMOTE TRIALS CANNOT FULLY GUARANTEE THE PRINCIPLE OF FAIR TRIAL</p>	<p>X</p>	<p>THE PRINCIPLES OF A FAIR TRIAL CAN BE REALIZED EVEN IN THE PROCESS OF HOLDING TRIALS REMOTELY BY PROVIDING CONDITIONS IN WHICH THERE IS A STABLE INTERNET CONNECTION AND APPROPRIATE TECHNICAL CONDITIONS, THE PARTY, THE DEFENCE ATTORNEY AND OTHER PARTICIPANTS AND INTERESTED PARTIES ARE INVOLVED IN THE PROCESS ALL THE TIME, THE DEFENCE HAVE ENOUGH TIME AND OPPORTUNITIES TO DEFEND THEMSELVES, THERE IS A PRIVATE COMMUNICATION ENABLED BETWEEN THE DEFENDANT AND THE DEFENCE ATTORNEY, EVIDENCE IS PRESENTED AND CONTESTED ELECTRONICALLY, AN INTERPRETER IS PRESENT, IF NEEDED, AND PUBLIC PARTICIPATION IS MADE POSSIBLE.</p>
<p>IF THE ONLINE TRIAL HAS NOT BEEN PROPERLY REGULATED AND CONDUCTED, IT MAY HAVE A NEGATIVE IMPACT ON THE PRINCIPLES OF IMMEDIACY, CONTRADICTION, PUBLICITY AND FAIRNESS.</p>		<p>X</p>
<p>VIDEO LINK</p> <p>VS.</p> <p>VIDEO CONFERENCING THROUGH INTERNET</p>		<p>INSTALLED IN COURTS AND DETENTION DEPARTMENTS OF INSTITUTIONS, WHICH MEANS THAT ONE SHOULD BE PHYSICALLY PRESENT IN THE COURTROOM OR BE IN CUSTODY SO THAT IT CAN BE USED.</p> <p>VS.</p> <p>INTERNET VIDEO CONFERENCING TECHNOLOGY CAN BE USED FROM ANY DEVICE OR LOCATION, IRRESPECTIVE OF WHETHER THAT IS FROM HOME OR OFFICE</p>
<p>E-SUBMISSION AND ELECTRONIC COMMUNICATION ARE SYNONYMS.</p>		<p>THEY HAVE AN ENTIRELY DIFFERENT CONTENT AND OFFER DIFFERENT OPPORTUNITIES:</p> <ul style="list-style-type: none"> ○ E-SUBMISSION ASSUMES THE EXISTENCE OF A REGISTERED ELECTRONIC MAILBOX THROUGH WHICH ELECTRONIC DOCUMENTS ARE SUBMITTED

	X	<p>AND THE VERY PROCESS IS CONSIDERED TO BE REGULATED WITHIN CONDITIONS DETERMINED BY LAW.</p> <ul style="list-style-type: none"> ○ ELECTRONIC COMMUNICATION REPRESENTS A WAY OF SHARING INFORMATION, DOCUMENTS AND SENDING REQUESTS THROUGH E-MAIL ADDRESSES. IT IS NOT USED FOR FILING SUBMISSIONS.
<p>DIGITALIZATION AND ONLINE TRIALS ARE SYNONYMS</p>	X	<p>ONLINE TRIALS ARE ONLY ONE PART OF THE OPPORTUNITIES OFFERED BY DIGITALIZATION PROCESSES.</p> <p>DIGITALIZATION MEANS TECHNICAL OPPORTUNITIES FOR E-SUBMISSION, USE OF ELECTRONIC DOCUMENTS, SIGNATURES, MINUTES IN ELECTRONIC FORM AND SIMILAR.</p>

III. USE OF ICT TOOLS AND EXISTENCE OF ADEQUATE RESOURCES IN COURTS IN RNM

PRESENT STATE OF AFFAIRS

The actualization of the issue of a more frequent electronic communication between the court and participants in court proceedings and the possibilities of holding online trials by using a special electronic platform, as well as the inevitable need for interoperability of courts with other judicial institutions and state bodies were the starting point for conducting a survey in order to obtain updated data and information about the current use of ICT tools in the everyday work of courts, as well as about infrastructural, staff-related and technical conditions available to courts in RNM and basic data on their future needs.

The project team prepared a structured Questionnaire (see Annex 1) with a total of 13 questions, which was submitted to all courts in the country; court presidents were asked to fill in the questionnaire, in cooperation with their IT specialists, especially in regard to questions related to existing ICT equipment, internet connection, necessary equipment, etc. The questions were basically focused on three aspects:

1. Equipment available to the court and the internet connection,
2. Court related human resources, and
3. Conditions for conducting online and/or hybrid trials.

The structure of questions was of a combined type, so the Questionnaire contained:

- questions with multiple answers offered,
- questions that needed to be complemented,
- most questions allowed answers with comments and/or suggestions, and
- the last question was an open-end one, i.e it was left to courts to present proposals that they considered as important with respect to matters that were not contained in the Questionnaire.

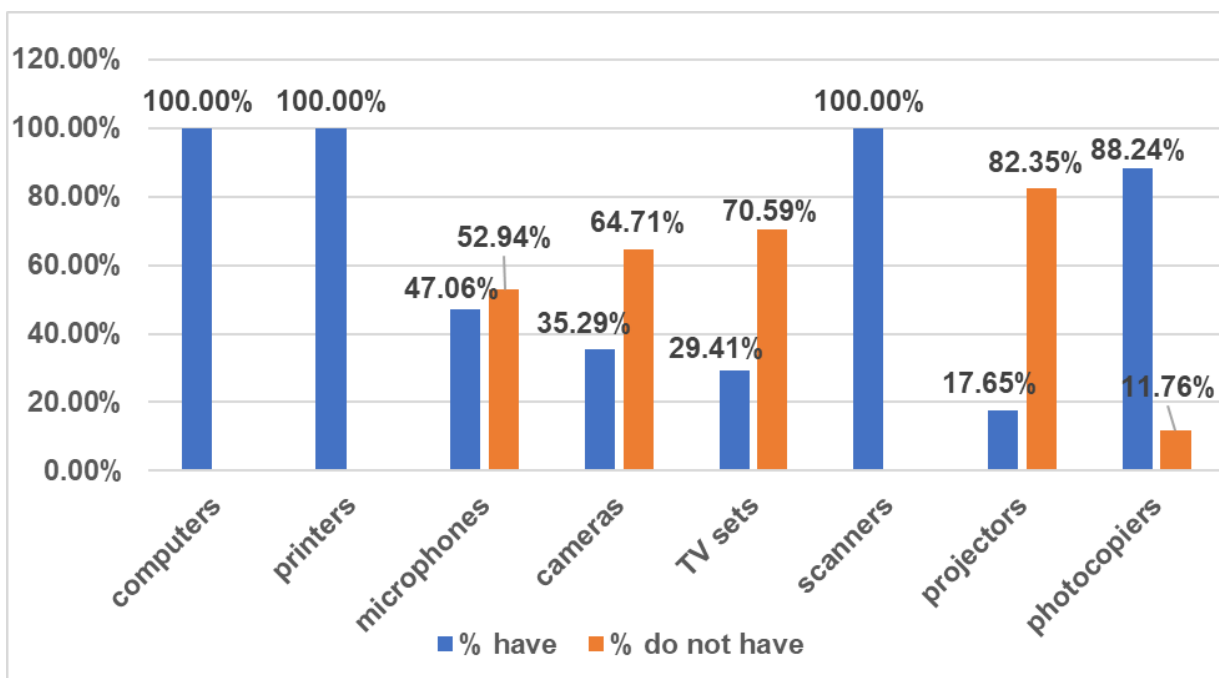
All courts responded and submitted their answers within the recommended deadlines. So, the project team analysed a total of 34 answered Questionnaires, as follows:

- 27 submitted by basic courts,
- 4 submitted by appellate courts,
- and per one by the Supreme Court of RNM, the Administrative Court and the Higher Administrative Court.

1. EQUIPMENT IN THE COURT AND INTERNET CONNECTION

Question: What information equipment does your court have in order to enable a two-way electronic communication and interoperability with other bodies?

The answers shown in Graph 1 lead to the conclusion that there are computers, printers and scanners in all courts. It is a different matter whether their quantity is sufficient for the needs of each court - answers represented in Graph no.2 as shown below. In 88% of courts there are photocopiers, but there is lack of projectors, TVs, cameras and microphones.



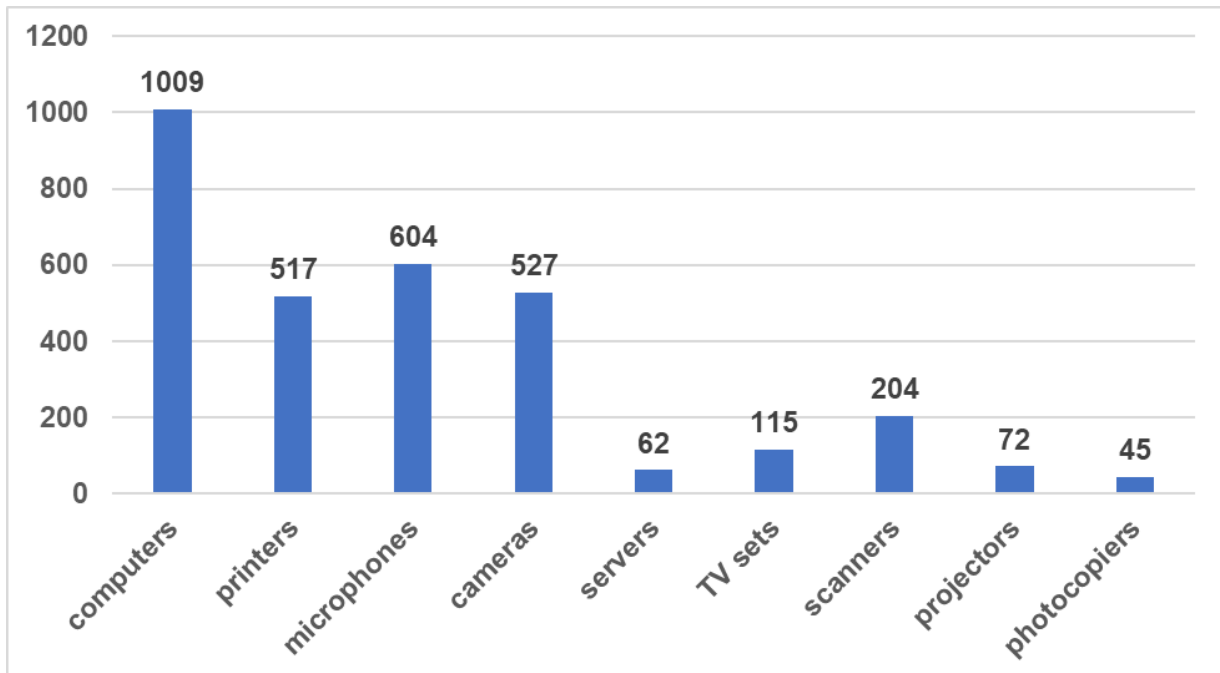
Graph 1

In relation to other equipment available to courts we can conclude that courts have at their disposal servers (physical and virtual), routers, switches, data storage devices, network connection equipment and uninterruptible power supply devices. In addition, eight courts indicated that they had audio recording equipped courtrooms used in civil cases, and two courts indicated that they had screens displaying information about scheduled cases, i.e hearings in the current day and other information and notifications that could be of benefit to parties, in other words TVs - monitors installed in court halls serving as ACCMIS bulletin boards.

Equipment such as video surveillance systems and electronic card entry/exit registration systems is equipment put at the disposal of courts but not directly related to electronic communication and online trials.

Question: What kind and quantity of computer / IT equipment do you need?

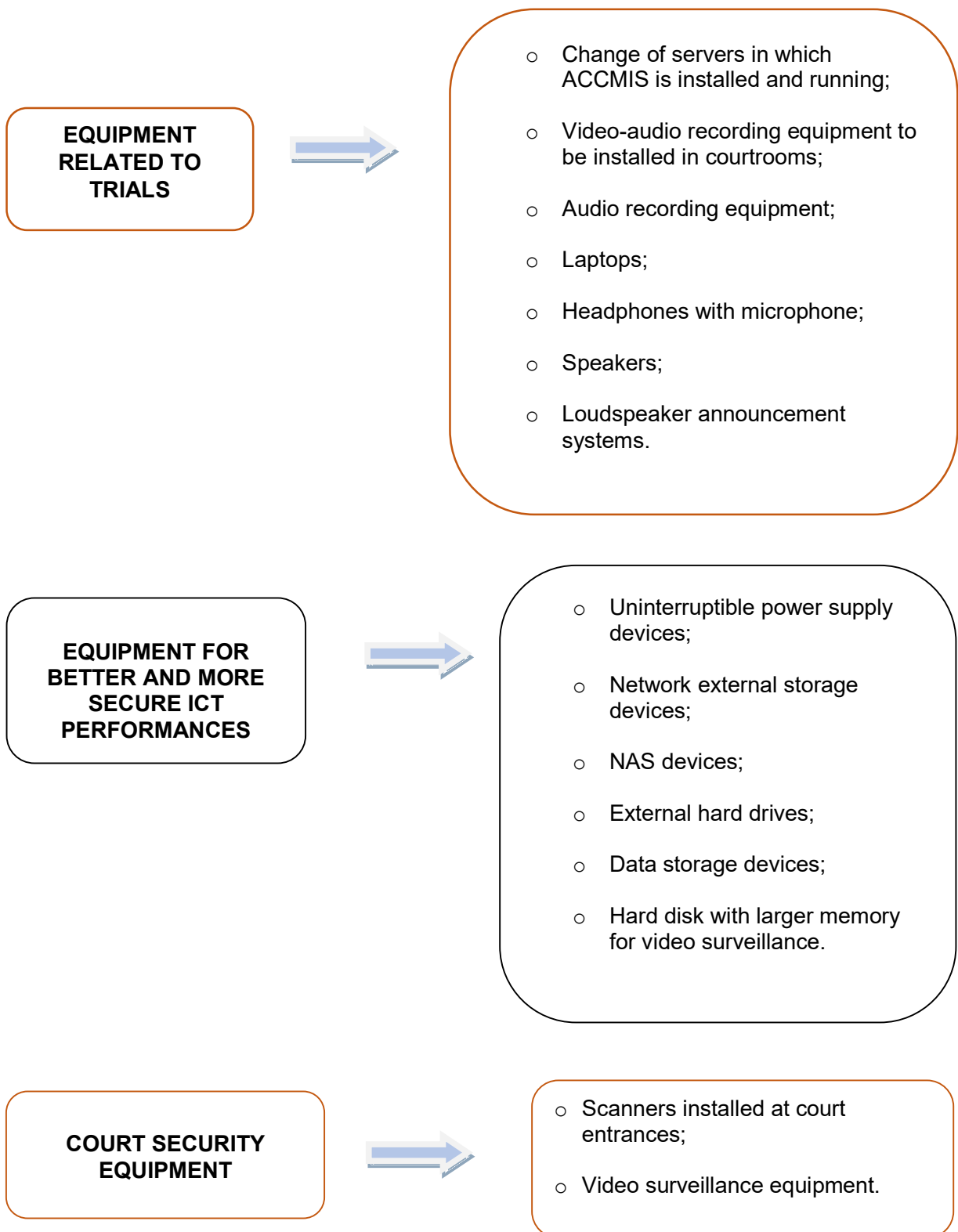
Asked what kind and quantity of additional ICT equipment they consider they need to be provided with in order to enable electronic communication and online trials, the courts indicated that they were in great need of hardware. The summarized data are listed in Graph 2:



Graph 2

Comparing the results presented in Graphs 1 and 2, it is more than clear that courts are mostly lacking in computers and to some extent printers, despite the fact that all courts (100%) answered that they had this kind of equipment. In order to be able to talk about regular use of electronic communication and provide quality and effective online and/or hybrid trial, the condition, performance, compatibility and usability of existing computers, printers and scanners in the court have to be examined. This aspect is not the subject of this assessment, but it is important for further planning of the technical resources of courts.

As to other equipment they need, apart from the equipment shown in Graph 2, courts pointed out several kinds of ICT devices and equipment which are grouped for the needs of this assessment according to their purpose, i.e., equipment related to trials, equipment needed for a better and more secure computer performance, and court security equipment as well. The equipment data are presented in graph 3 below:



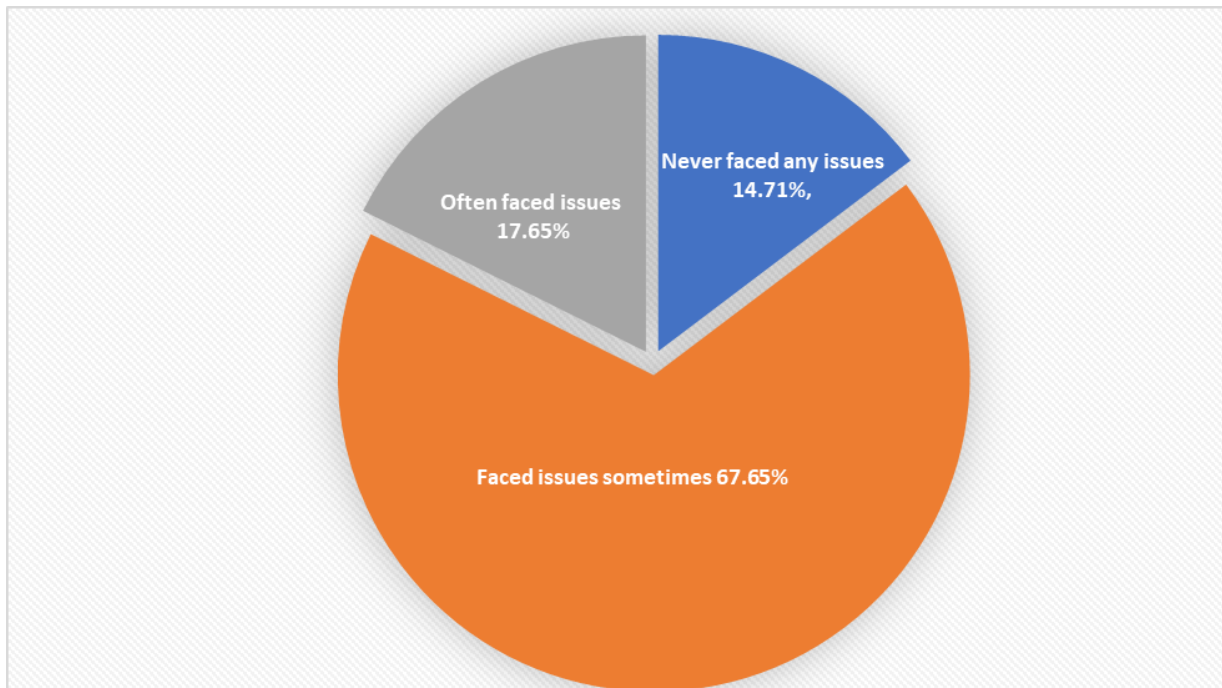
Graph 3

Question: Is there a stable internet connection in your court and are there any internet connection problems?

The internet connection is a basic prerequisite for any form of electronic communication or holding trials remotely. For these reasons courts were asked to provide information related to the stability of their internet connection.

The fact that barely 15% of courts never had issues with their internet connection is really worrying. Nearly 2/3 of courts or 68% sometimes had a problem with the internet connection, and 18% often had a problem with the internet (see Graph 4 below).

In a judicial system in which 86% of courts have frequent or sporadic internet problems, the smooth conduct of online and/or hybrid trials and the regular electronic communication are seriously brought into question.



Graph 4

Explaining the problems regarding the internet connection, the courts in their answers pointed out the following conditions:

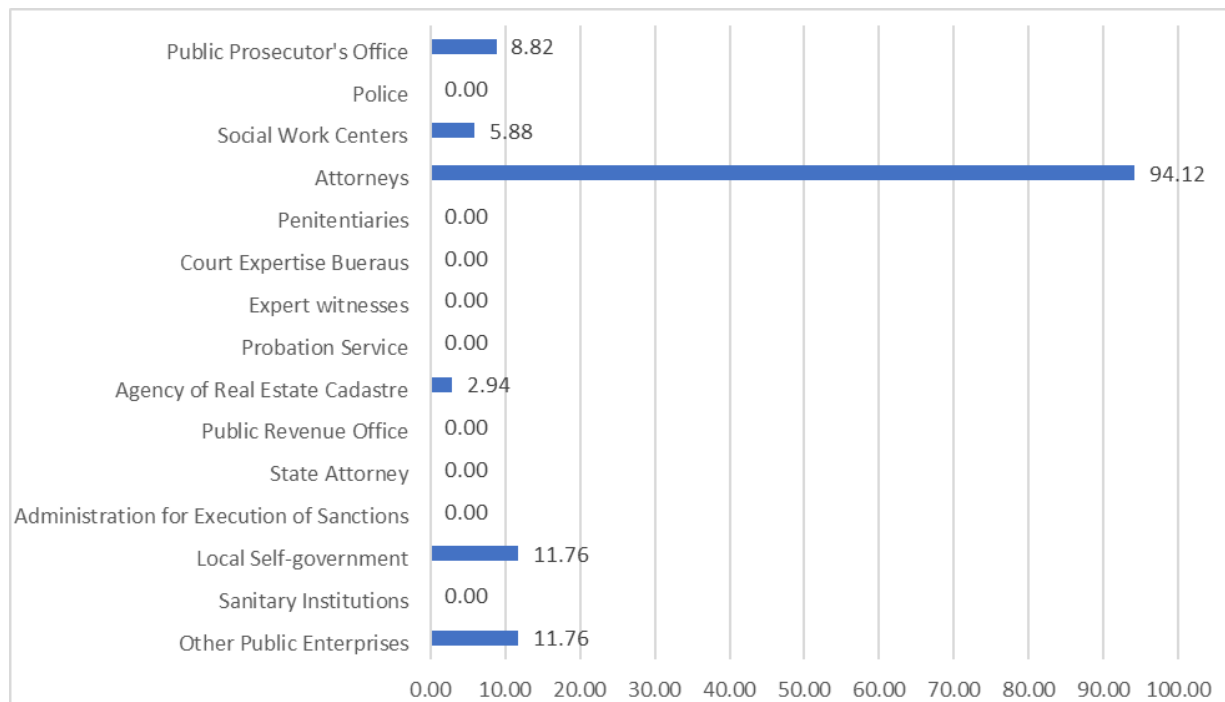
- internet speed problems, which in some courts make it impossible to connect to the ACCMIS;
- there is often a reduced internet flow due to the dilapidated network installation in the court;
- there are often short connection interruptions, which are partly due to a power supply problem or problems occurring in the network of the local service provider;
- in some courts there is no internet connection during the working day or during several days, which is not always a problem with the court equipment, for example there may be no internet in the whole municipality;

- in some courts the internet connection is stable, but it is overloaded during the working hours and when trying to use electronic online communication platforms there is not enough capacity to maintain a stable connection.

Question: What type of internet (capacity /speed in GB / MB) does your court need to have?

Most courts indicated that they had an optical connection of 40 Mbit/s. Some basic courts with basic jurisdiction have a speed of 20 Mbit/s and consider it as sufficient, given their jurisdiction and needs. However, **90% of courts answered that it was necessary to have symmetrical bandwidth with a speed of between 60 and 100 Mbit/s.**

Question: Are the following bodies / institutions registered for E-submission in your court?



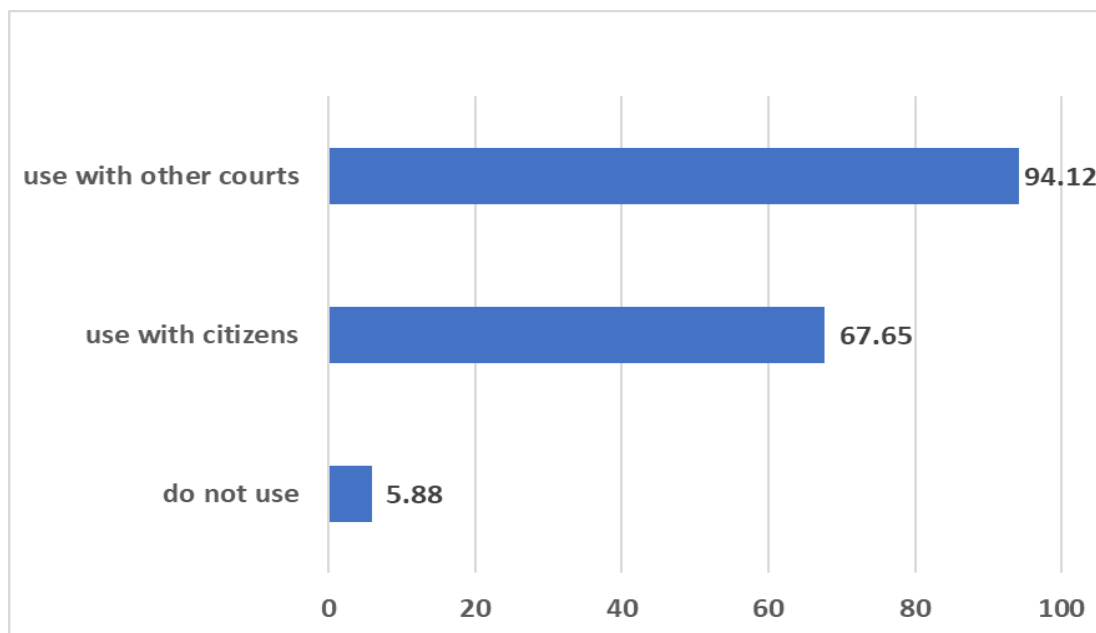
Graph 5

The answers presented in Graph 5 above indicate **the lack of conditions for E-Submission**, given the small number of bodies that are registered, with the exception of attorneys. The registration on the E-submission platform is characteristic only of basic courts, the Administrative Court and the SCRNM for trials within a reasonable time, since appeal courts, the Higher Administrative Court and the SCRNM do not submit case related documents in other kinds of cases. Even although in some courts only one part of the attorneys are registered on E-submission, the percentage, being 94% of them, shows that they are the most numerous, which can be expected to some extent given certain mandatory provisions in some procedural laws. Other bodies with which courts have E-submission connection are: notaries, enforcement agents, mediators, public utility companies, EVN, general hospitals, but still in a minimum percentage. In the Basic Court Kavadarci, in addition to attorneys, the social work centre and the local self-government, all major companies and private companies in the municipality are registered on E-submission.

The presented data showing the registration of the Public Prosecutor's Office on E-submission should be interpreted only as an opportunity for courts to communicate with it via e-mail, and not as a real registration of the Public Prosecutor's Office on the E-submission system, because there is no official data of such a registration.

Question: Does your court communicate electronically (sending or receiving data electronically and exchanging electronic data)?

From the answers received, it is evident that electronic communication in terms of e-mail communication has been established and used by almost all courts. By electronic communication in the given answers we mean e-mail communication, and not E-submission. Only those who are registered on E-submission can use the electronic submission service. A small percentage (6%) of courts do not use electronic means of communication at all.



Graph 6

Courts communicate electronically with:

- SCRNM
- JCRNM,
- Judicial Budget Council,
- AJPP
- Ministry of Justice,
- Mol
- MISA
- PRO
- SCPC
- health institutions and
- the probation service

E-mail communication is realized with many organs: PPORNM, the Central Registry, the Ombudsman, the State Attorney's Office, Penitentiary Institutions, the Official Gazette of RNM, court translators, the Bureau of Judicial Expertise, non-governmental organizations, professional associations and so on.

E-mail communication is also used when it is acted on data exchange requests in accordance with the Law on Free Access to Public Information (Official Gazette No.101/2019).

Question: Do you consider that it is necessary to establish horizontal and vertical communication between courts through the ACCMIS?

The purpose of this question was to assess the possibility for courts to communicate with each other through the ACCMIS. Many times judges pointed out the lack of such a connection as a handicap, preventing them, in particular, to consult decisions made on the same basis in other courts, which could otherwise lead to a better harmonization of the case law.

From the received answers, it appears that all courts, except for the Basic Court Krushevo, consider that it is necessary to upgrade the ACCMIS system in the part that would enable vertical communication with courts of higher instances (appellate courts, SCRNM; the Higher Administrative Court), but also that there should be connectivity between courts of the same instance (basic courts, regardless of the fact whether the court has a basic or extended first instance jurisdiction).

2. HUMAN RESOURCES

Question: Does the court have qualified staff to work with IT equipment?

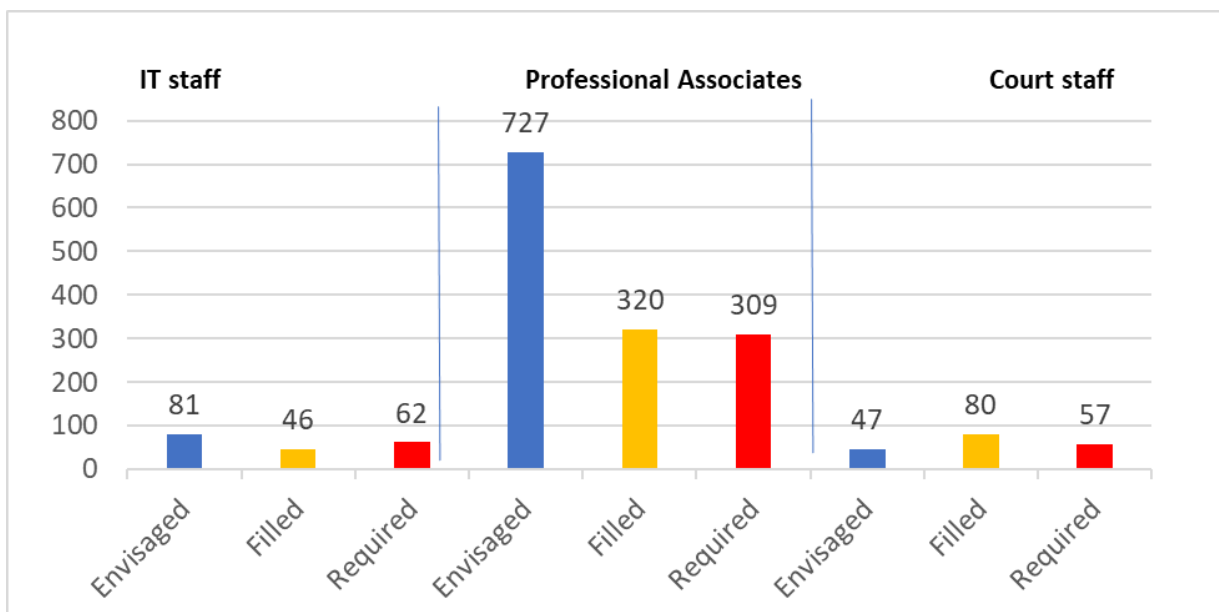
Data on court staff show evident discrepancy between IT specialists/professional associates and court clerks.

Namely, it is more than obvious that the systematizations have not been completed in relation to IT specialists and professional associates. In relation to IT professionals, 43% of the foreseen IT job positions remain vacant, while in the category of professional associates 56% of the positions are vacant. Although the dilemma remains as to how much the job catalogue is based

on indicators that are related to the number of cases in the court and the workload, the fact that there is insufficient staff (that we have just mentioned) should not be neglected.

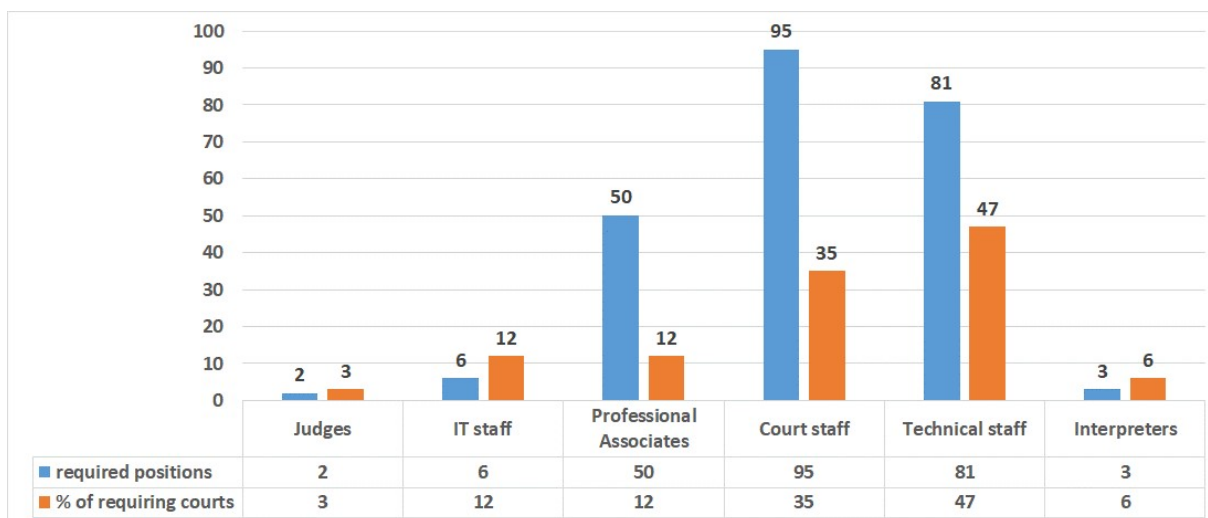
The situation with court clerks is a completely different story and as many as 170% more court clerks have been employed than planned. This circumstance imposes the need for additional analysis of the reasons that led to this situation and how this can affect the overall functioning of courts.

However, having in mind the purpose of this assessment, where the focus should be placed on IT specialists, the small number of IT specialists needed by courts is surprising, i.e., the number of 62 IT specialists in total for all courts is less than the number of IT specialists envisaged with the job classification, which is 81 persons. Obviously, all courts are not sufficiently aware of all the responsibilities that digitalization brings with itself and the staff that should play a key role in providing quality and efficient electronic communication, interoperability between themselves and with other judicial institutions and state bodies, being aimed at realizing remote trials.



Graph 7

When asked what kind of other staff and how many people are needed in courts to implement the digitalization process, courts indicated the need of professional associates, court clerks and support technical staff in highest percentage (see Graph 8 below). Out of a total of 34 courts that responded that they needed other staff, 12% of courts stated that they needed professional assistants, 35% that they needed court clerks and 47% of courts needed support technical staff. The percentages of these three categories of judicial staff should be viewed individually, as some courts stated that they needed staff from all three categories, and other courts from two of them. What is surprising is the fact that despite having employed 170% more court clerks than planned with the job classification (Graph 7), the largest percentage of courts (as many as 47%, Graph 8) reported that they needed this staff.



Graph 8

Some courts (12% of courts) responded that they needed additional IT specialists, probably wanting to emphasize the importance of this kind of staff. In a very small percentage, courts indicated that they needed judges (3% of courts) and translators (6% of courts).

3. CONDITIONS FOR HOLDING ONLINE AND/OR HYBRID TRIALS

The Questionnaire touched upon the preconditions in courts for holding remote trials in two forms:

- online trial - where the trial chamber is in the courtroom and everyone else is involved online during the trial; and
- hybrid trials - where only one of the parties or participants is involved online and the trial takes place in a courtroom.

Question: Does the court have the capacity (trained staff and equipment) to hold online or hybrid trials?

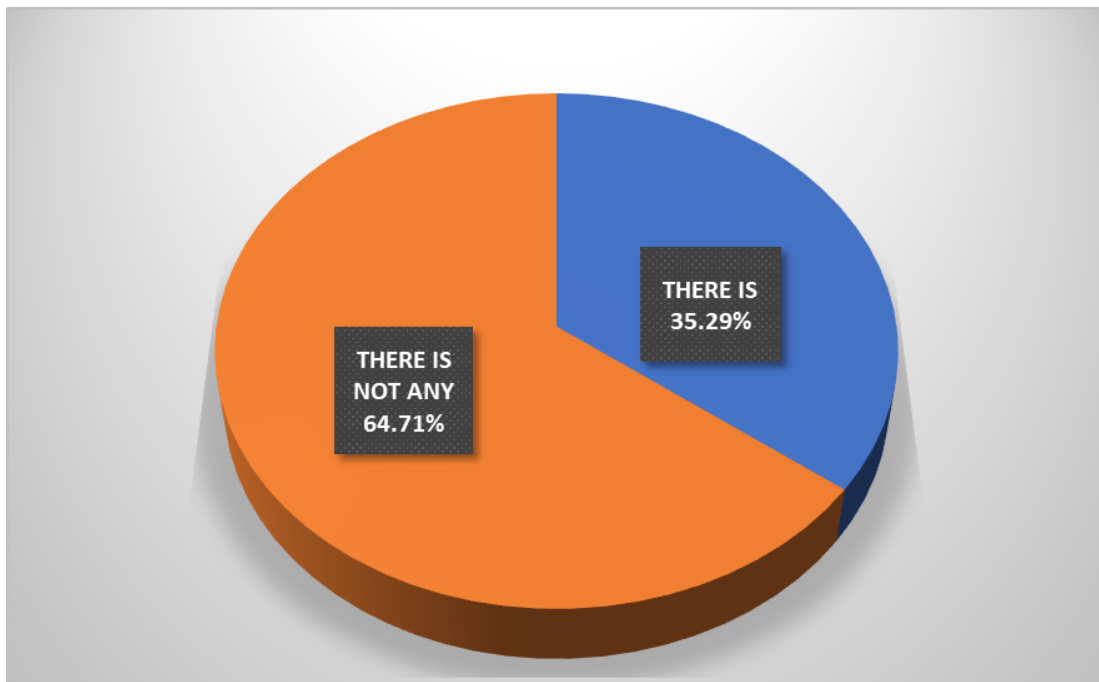
The answers show that only three courts have the conditions to hold remote trials: one court with extended jurisdiction (BC Kavadarci), one court with basic jurisdiction (BC Resen) and one appellate court (AC Bitola). Only these three courts answered that they had conditions and staff to hold online hearings.

In 31 courts or in 91% of courts there is neither staff nor equipment that would enable them to hold some form of a remote trial.

Question: Do you have an electronic bulletin board in the court?

According to the new Law on Management of the Case Flow in Courts (Official Gazette no. 42/2020), which has been applied since the second half of May 2020, courts are legally obliged to have electronic bulletin boards installed. Namely, Article 12 prescribes that there has to be a bulletin board on the website of the court through which the court will publish court notices and notices of notaries and enforcement agents in a way that they can be printed, without the possibility of changing them, coping or processing the text of the published document.

From the obtained answers, presented in Graph 9, it can be concluded that in only 12 courts (35%) there is an electronic bulletin board, while in 22 courts (or close to 65% of courts) the electronic bulletin boards do not work.



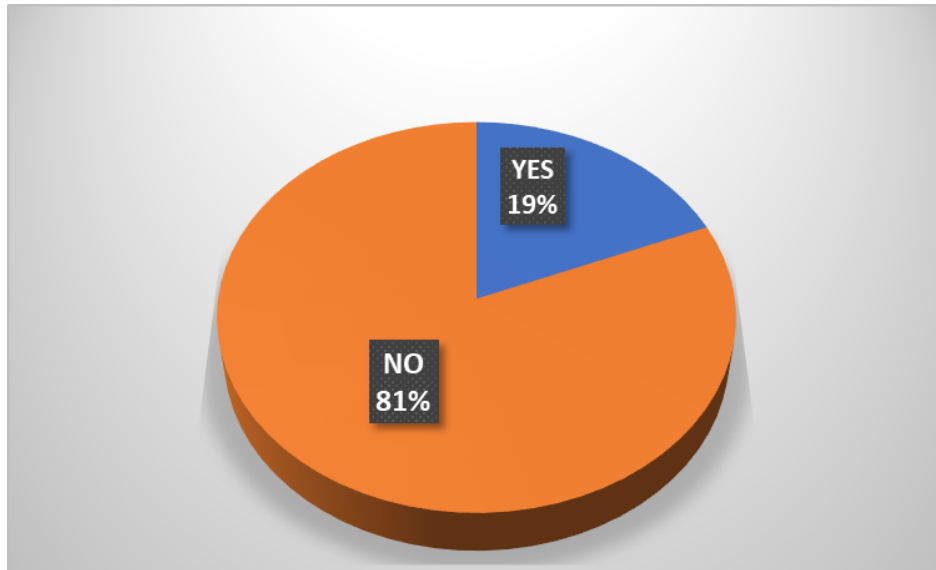
Graph 9

Analysed answers indicate that the non-functioning of the electronic bulletin boards is due to the following:

- there is lack of equipment, and courts lack financial means to provide such equipment;
- in some courts such equipment was provided but it was not technically sound enough to be used;
- existing websites of courts do not have such an option and that installation of certain software should enable it;
- some courts indicated that they had information that the development of the required software solution was in progress and that they expected the Law on Management of the Case Flow to be implemented in this part;
- there are also courts that pointed out that they were not aware that they needed to have an electronic bulletin board.

Question: Does your court issue electronic criminal record certificates?

As an indicator of the courts' preparedness to communicate electronically (communication that should be realized according to a special law), courts were requested to give information in relation to the issuance of electronic criminal record certificates. The project team assessed that this issue deserved attention because it provided citizens with fast and efficient access to the court, enabling them to exercise some of their rights.



Graph 10

From the received answers, it is clear that the number of courts that electronically issue certificates is very small (19%). The project team considers that these answers should be analysed with a reserve because the practice shows that requests for issuance of certificates are electronically prepared, but the delivery or issuance of certificates is done in court premises, where the applicant arrives in order to take the certificate in paper form.

Some of the explanations given in the courts' answers go in favour of this conclusion. From these explanations we can single out the following:

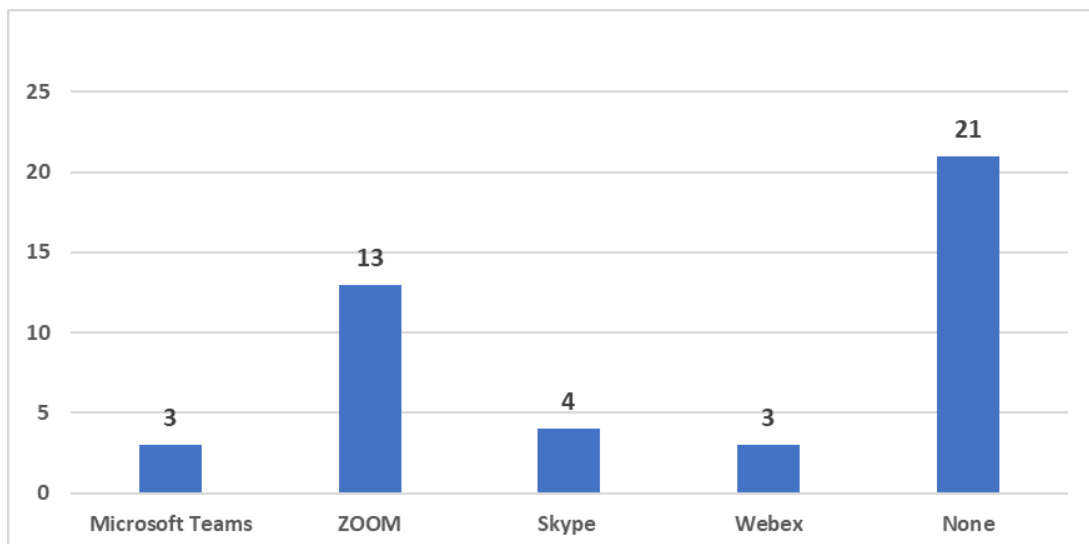
- In some courts applications are received electronically, but the issuance is in paper form because citizens cannot register for E-submission;
- It is necessary that there be a way to issue certificates through the website of the court, by using electronic signature and seal, whereat the method of payment should be solved in a software-related way;

In order to provide citizens with a more effective access to courts, some of the answers contain a useful proposal that deserves to be a subject to analysis and appropriate legislative implementation, namely,

- Certificates should be issued by the court to which the application has been submitted, regardless of the place of residence of the applicant.⁴¹

Question: Do you have an electronic two-way communication platform available in the court?

Within the questions as to whether there are conditions for holding online and/or hybrid trials, the question whether electronic platforms were available to courts was also included. The analysed answers show that in 21 courts (62% of courts) there is no electronic platform at all, but there are courts in which there is more than one platform (for these reasons the total number of answers shown in Graph 11 is 44). The most commonly used platforms in courts are ZOOM and Skype.



Graph 11

Question: Do you think there is a circumstance that is important but not included in the questionnaire?

At the end of the Questionnaire, courts were given the opportunity to point out a circumstance that was not included in the very Questionnaire and which they considered as something that deserved attention and should be reviewed and implemented; according to the given answers, we can single out the following aspects:

- Support is expressed towards activities undertaken in direction of a better digitalization of the judiciary, aimed at achieving better efficiency, transparency and access to justice by citizens.

⁴¹ For comparison, in Republika Srpska in BiH, criminal record certificates are issued by basic courts, regardless of the residence of the natural person, the headquarters of the legal entity or the residence of the foreign applicant (see Article. 49 paragraph.2 of the Rulebook on Internal Court Operations of the Republika Srpska, Official Gazette of the Republika Srpska, No. 9/14 and No. 71/17).

- Judges are willing to contribute to the development of legal solutions regarding the process of holding trials through digital platforms.
- It is necessary to gradually move from paper based environment to electronic communication, E-submission and digitalization.
- The use of digital certificates (signatures) for electronic submission of documents issued by courts should be put into practice.
- All legal entities should be obliged to create their own electronic mailboxes in order to perform a two-way electronic submission of documents.
- In order to hold online trials, one part of the network infrastructure needs to be upgraded so that appropriate equipment can be used.

More training is needed for court staff in order for them to be able to properly use and maintain ICT equipment.

LET'S SUMMARIZE:

- ✓ in 91% of courts there is neither staff nor equipment that would enable them to hold some form of a remote trial;
- ✓ 86% of courts face frequent or sporadic internet connection problems;
- ✓ 90% of courts consider that the current internet speed is insufficient and that it is necessary to provide symmetric internet with a speed between 60 and 100 Mbit /s.
- ✓ 94% of courts communicate with each other via e-mail, and 67% of them communicate with citizens in the same way, through e-mail;
- ✓ 62% of courts do not have, i.e., do not use an electronic platform at all;
- ✓ Although it is mandatory by law, 65% of courts, mostly due to lack of resources and equipment, do not use an electronic bulletin board;
- ✓ 43% of IT specialists positions, envisaged in accordance with the judicial systematization, remain unfilled;
- ✓ 19% of courts issue criminal record certificates electronically;
- ✓ Within the existing conditions and capacities, E-submission does not exist;

- ✓ There is a need for revision of the existing ICT equipment and procurement of new ICT equipment;
- ✓ It is necessary to establish horizontal and vertical communication in the ACCMIS;
- ✓ In general, courts have a positive attitude and support the digitalization process.

IV. POSITIVE LEGAL FRAMEWORK OF RNM AND FUTURE LEGAL AMENDMENTS

1. STATE OF EMERGENCY AND REGULATIONS HAVING THE FORCE OF LAW

The state of emergency declared on 18th of March 2020 was the basis for restriction of certain derogable rights guaranteed to our citizens by the ECHR. Compared to other countries, in our country the state of emergency lasted for quite a long time - three months and a week, and in the meantime it was terminated for one day.

Our country informed the Council of Europe about the state of emergency on 1st of April 2020.⁴² During the state of emergency that was declared due to the Covid 19 pandemic, the rights of citizens from Article 8 and Article 11 of the ECHR, Article 2 of Protocol No. 1 and Article 2 of Protocol No. 4 to the ECHR were restricted.

<p>CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS</p> <p>Rome, November 4, 1950</p>	<p>PROTOCOL No. 1</p> <p>Paris, March 20, 1952</p>
<p>ARTICLE 8 - Right to respect for private and family life</p> <p>1. Everyone has the right to respect for his private and family life, his home and his correspondence.</p> <p>2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.</p>	<p>ARTICLE 2 – Right to education</p> <p>No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.</p>
	<p>PROTOCOL No. 4</p> <p>Strasbourg, September 16, 1963</p> <p>ARTICLE – Freedom of movement</p>

⁴² Derogation contained in a Note verbale from the Permanent Representation of North Macedonia to the Council of Europe, 1 April 2020, https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/declarations?p_auth=EeA6R96f&coeconventions_WAR_coeconventionsportlet_enVigueur=false&coeconventions_WAR_coeconventionsportlet_searchBy=state&coeconventions_WAR_coeconventionsportlet_codePays=TFY&coeconventions_WAR_coeconventionsportlet_codeNature=10.

<p>ARTICLE 11 - Freedom of assembly and association</p> <p>1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.</p> <p>2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article does not prohibit the imposition of legal restrictions on members of the armed forces, police or state administration.</p>	<p>1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.</p> <p>2. Everyone shall be free to leave any country, including his own.</p> <p>3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.</p> <p>4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.</p>
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According to the ECHR, the derogation of basic human rights has to be indispensable, proportionate and time-limited⁴³, whereas the proportionality of restrictions has to be taken into account.⁴⁴ During the state of emergency in our country, a number of regulations with force of law were adopted, some of which referred to issues directly related to the functioning of the judiciary.⁴⁵ Restrictive measures should be justified⁴⁶ and any deviation from this rule is subject to assessment by the ECtHR in applications submitted thereto.⁴⁷

⁴³ Through shaky stairs: Regarding human rights and COVID – 19 in North Macedonia after derogation of some rights from the European Convention on Human Rights, <https://epi.org.mk/wp-content/uploads/2020/04/ECHR-COVID19-MK.pdf>.

⁴⁴ Resolution 2209 (2018), State of emergency: proportionality issues concerning derogations under Article 15 of the European Convention on Human Rights, Parliamentary Assembly, Council of Europe, 24 April 2018; Recommendation 2125 (2018)1 State of emergency: proportionality issues concerning derogations under Article 15 of the European Convention on Human Rights, 24 April 2018, available on: <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=24680&lang=EN>.

⁴⁵ Gordana Lazetich, The Independent Judiciary in a State of Emergency - Challenges and Controversies, Complemented discussion presented during the online academic workshop on: "Legal-Political and Economic Discourse in the time of Covid-19", Collection of the Faculty of Law "Justinian I" available at <http://pf.ukim.edu.mk/zbornici>, Skopje, 29.04.2020; Legal aspects of the state of emergency, co-authored work with Acad. Kambovski et al., Collection of works: Research activities of the Macedonian Academy of Sciences and Arts for dealing with the COVID-19 pandemic, August, 2020, p. 42-67.

⁴⁶ Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis, A toolkit for member states, Council of Europe, Information Documents SG/Inf(2020)11 7 April 2020, <https://rm.coe.int/sq-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1d91>.

⁴⁷ Guide on Article 15 of the European Convention on Human Rights - Derogation in time of emergency, Updated on 31 December 2019, Council of Europe, 2020, https://www.echr.coe.int/Documents/Guide_Art_15_ENG.pdf.

RNM informed the UN about the declared state of emergency, but found itself in the group of countries together with Albania and Serbia that missed to inform the UN about the derogation of the ECHR guarantees and the restrictions placed on the ICCPR guarantees (which mostly overlap).⁴⁸

The first relevant decision that referred to actions undertaken by our courts was the Decision of the Judicial Council of the RNM on actions of courts in conditions of increased danger arising from the Covid 19 virus. The very decision envisaged that courts should undertake necessary precautionary measures, in particular when parties would enter and exit the court, as well as some activities that they were required to perform as set out in the very Decision.⁴⁹

It was incumbent on courts to inform parties, through their websites, to file submissions to the court electronically, if they had technical conditions for that, and to electronically submit certificates and other court acts to parties and competent authorities. The decision of the Judicial Council of RNM includes a recommended list of urgent cases on which courts should act, within their competences, in the first, second or third instance, as follows:

- Criminal cases:
 - cases in which the defendant or some of the defendants are in custody, house arrest or subject to other measures undertaken to ensure their presence during criminal proceedings;
 - cases related to domestic violence;
 - cases in which the defendant does not have a regular or temporary residence in RNM and has committed criminal acts in the country;
- cases at risk of expiration of the statute of limitations;
- criminal cases related to specific crimes (transmission of infectious diseases, failure to act according to health regulations during an epidemic, failure to provide medical assistance, preventing an official from performing official action, attacking an official while performing security duties, organizing resistance);
- misdemeanour cases of urgent nature;
- cases related to application of interim measures;
- cases that are in a decision-making phase;
- cases in which there is a risk of violation of the principle of trial within a reasonable time;
- urgent cases, as determined by law;
- receiving written and other matters related to preclusive deadlines.

⁴⁸ OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic, OSCE/ODIHR 2020, https://www.osce.org/files/f/documents/e/c/457567_0.pdf.

⁴⁹ Decision on acting of courts in RNM in conditions of increased danger from the COVID-19 virus, no.02-606/1, as of March 17, 2020.

The decision also included individual opinions on cases within the jurisdiction of appellate courts, the Supreme Court, the Administrative Court and the Higher Administrative Court.

All courts exercised judicial power, worked and functioned during the state of emergency in all urgent cases; they sanctioned the failure to comply with the movement restriction measures, crimes related to the spread of infectious diseases, as well as crimes such as murder, robbery, traffic in narcotic drugs and other psychotropic substances, domestic violence, etc. In the court, for example, the criminal council regularly held public sessions on the occasion of raised objections to indictments and there were cases when public sessions were not held with respect to some appeals filed against decisions on determining or extending the custody measure because the defence had withdrawn their proposals for holding such sessions. According to the decisions and instructions of the Judicial Council of the RNM, appellate courts, in most cases, did not hold public sessions. During this period, the SCRNM regularly held sessions in criminal proceedings on complaints lodged in the presence of parties, but it has to be emphasized that such cases were few. In relation to its other competences, the SCRNM acted regularly, in closed sessions, without the presence of parties.

By using electronic & technical means through the electronic audio-visual communication platform Microsoft Teams⁵⁰, the first online trials were held in proceedings comprising acts committed against children, which are urgent under the Law on Juvenile Justice, and cases of robbery whose perpetrator was in custody. Such a way of acting was also in the context of the Guidelines and Recommendations of the Committee for Prevention of Torture of the Council of Europe, which recognized the increased danger of spread of Covid-19 in detention facilities.⁵¹

With a Regulation having the force of law, the Government regulated the issues related to **deadlines in court proceedings** during the state of emergency and the actions undertaken by courts and public prosecutor's offices. The regulation referred to deadlines in criminal, litigation and non-litigation proceedings, administrative disputes, enforcement and securing of claims.⁵² The statutes of limitations for enforcement of criminal sanctions ceased to run, and the execution of acts referring convicted persons to serve their prison sentence of up to 3 years was postponed until September 1, 2020, except for cases where there was a danger of expiry of the statute of limitations for enforcement of the sentence.

With this Regulation having the force of law, the Judicial Council of RNM was given the opportunity to make a decision on imposing an obligation on courts to undertake activities by using electronic & technical means that provide two-way communication, without joint physical presence of participants in proceedings.

⁵⁰ Basic Court Kavadarci, <http://www.vsrn.mk/wps/portal/oskavadarci/sud/vesti/>, <http://www.vsrn.mk/wps/portal/oskavadarci/sud/vesti/>.

⁵¹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic, CPT/Inf(2020)13, March 20, 2020, <https://rm.coe.int/16809cfa4b>.

⁵² https://vlada.mk/sites/default/files/dokumenti/Uredbi_Covid19/31_Sednica_30-03-2020/sednica_31_30.03.2020_uredba_so_zakonska_sila_za_rokovite_vo_sudskite_postapki_za_vreme_na_vonredna_sostojba_i_postapuvanje_na_sudovite_i_javnite_obvinitelstva.pdf, No. 44-2568/1, published in the Official Gazette No.84 as of 30.03.2020.

2. SHORT OVERVIEW OF THE DOMESTIC LEGAL FRAMEWORK

2.1. Rules of Procedure of the Court of Justice

The Rules of Procedure of the Court of Justice is a bylaw adopted by the Minister of Justice, upon a prior consent of the General Session of the Supreme Court, being legally based in paragraph 1 of Article 84 of the Law on Courts. The introductory provisions of Article 1 of the Rules of Procedures regulate, inter alia, the manner of operation of courts which ensures lawful, timely and efficient performance of the function, as well as uninterrupted and economical realization of the rights and obligations of parties, within a reasonable time. Article 2 envisages that the provisions of the Rules of Procedure should apply to all courts, except for certain issues regulated by special regulations, as well as that judges and court staff should directly apply the Rules of Procedure within their work scope. Finally, in the introductory provisions, Article 4 explains the meaning of expressions used in the Rules of Procedure, such as follows:

- file - a set of electronic records of same type and same structure (format);
- electronic file - electronic court case with all case data (facts) and acts/documents stored in electronic form;
- electronic record - any input and action undertaken in the automated case management computer system;
- electronic receipt - receipt of a delivered electronic message in the recipient's inbox.

Furthermore, Article 152 of the Rules of Procedure enables electronic receipt of documents and according to Article 159 it is envisaged that any document sent electronically to the court can be received at any time, if the conditions for such a receipt are met, whereas submissions are filed through a special web portal created for that purpose. It is precisely determined that every party who has previously signed up on the court web portal should be provided with such an opportunity and be able to use it, and that they should identify themselves with an electronic certificate when signing in.

The audio recording of court hearings, envisaged in Articles 197 and 198 of the Rules of Procedure, represents another electronic tool which is even part of the procedural laws and used only in the courtroom while the parties are present in person. Related to the topic and in order to have uniform proceedings in all courts, the same act determines the order of undertaking actions in cases, depending on their nature, in an identical manner as defined in the procedural laws (LCP, LLP, LAD).

2.2 Law on the Management of the Case Flow in Courts

The law was adopted in February 2020 and it was followed by a delayed implementation that began in the second half of May 2020.⁵³ This law regulates important issues regarding the **impartiality of the judge** who acts on cases distributed through the ACCMIS. The importance of the law is reflected in the regulation of some matters that prevent delays in the flow of court cases and prevent the creation of backlog of unresolved court cases. The imposed dynamics in

⁵³ Law on the Management of the Case Flow in Courts, Official Gazette No.42/2020.

the activities of the courts improves adherence to legal deadlines for taking procedural actions, as well as for making, preparing and announcing court decisions.

In order to **standardize** the operations within the ACCMIS, the special Working Body for standardization of procedures unifies the terminology, code books, electronic forms, certificates, letters, decisions and other documents, as well as the methodology of data entry and case flow protocols.

The application of this law unifies the approach in the process of **publishing** effective court decisions on the website of the court, aimed at informing the public and achieving greater transparency in the functioning of courts.

A court decision is made public by an authorized court clerk of the first instance court within 7 days from the day the court decision enters into force, or from the day of delivery of the decision by the higher court, and, in higher courts, within 7 days from the day of the verification of the effective court decision.

When publishing, the name and surname of parties are stated, i.e., the name of the legal entity, by anonymizing the following data:

- the address of residence, i.e., residence or headquarters of the party,
- the unique personal identification number of the citizen,
- the unique registration identification number of the legal entity,
- personal data of witnesses and injured parties in proceedings.

In those cases in which the public has been excluded during court proceedings, court decisions are published on the court's website without explanation.

Courts have a **bulletin board on their websites** where court notices and notices of notaries and enforcement agents are published, for which notaries and enforcement agents pay an annual fee in the amount determined by a decision of the Judicial Budget Council. These funds are paid into the court's own revenue account. A software protects the documents published on the website, in the sense that they can only be printed, thus disabling any possibility of changing, copying and editing the text.

2.3 Law on Electronic Documents, Electronic Identification and Confidential Services

The Law on Electronic Documents, Electronic Identification and Confidential Services⁵⁴ was adopted in order to harmonize the domestic legislation with the eIDAS legislation through which the EU Directive is implemented in relation to measures aimed at achieving a high level of security of networks and information systems in the European Union.⁵⁵

This law applies to **administrative and court proceedings** in which subject of regulation is:

⁵⁴ Official Gazette No.101/2019 and 275/2019.

⁵⁵ Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union.

- the use of electronic documents,
- the electronic signature and seal;
- the electronic confidential services.

In the context of conditions for online trials, it is important that this law prescribes conditions under which the means of electronic identification issued to individuals and legal entities are recognized.

The purpose of the law is the security of electronic identification means and the security in the process of providing confidential services.

The table below shows some of the terms contained in the Law which correlate with electronic communication.

Electronic data	Data created in electronic form, suitable for electronic processing and transfer through electronic communication systems.
Electronic transaction	Activity between two or more parties, which is performed electronically.
Electronic document	Content stored in electronic form, in particular text or audio, visual or audio-visual recordings.
Interoperability	The ability of two or more systems or their components to exchange data and facilitate the joint use of data and knowledge.
Authentication	Electronic process enabling electronic identification of natural or legal persons in terms of confirming the origin and integrity of data in electronic form.
Electronic signature	Collection of data, in electronic form that accompanies or is logically related to other data in electronic form, used by the signatory for signing.

2.4 Law on Administrative Disputes

The Law on Administrative Disputes entered into force in the second half of May 2019, but its application was delayed for as late as the the second half of May 2020.⁵⁶ The Law on Administrative Disputes envisages several possibilities of electronic communication and filing submissions.

⁵⁶ Law on Administrative Disputes, Official Gazette No.96/2019.

In the part concerning **electronic communication**, the following deserves attention:

- Electronic filing of a **lawsuit**; it is deemed that such a lawsuit is filed when it is identified by the outgoing email server. Such a lawsuit is certified with an electronic signature in accordance with the law. The court, without any delay, certifies the receipt of the lawsuit through electronic means;
- **Submissions can be filed** in electronic form to the court reception department; with regard to this any submission filed electronically is considered as submitted to the court at the time when it is recorded on the outgoing mail server. The court will immediately issue a confirmation of receipt of the submission. If the court is not able to read the submission in electronic form due to technical problems, it will notify the sender requesting them to file again the same submission in an appropriate format or in another way within a specified period. If the sender fails to act upon the notification within the time period set by the court, the submission will be considered as never filed.

The law contains provisions enabling **electronic delivery**:

- Delivery, as a rule, is performed in accordance with the Law on General Administrative Procedure, whereas delivery by electronic means is performed **only upon request or with explicit consent of the party or another participant in proceedings**. Delivery through electronic means is considered as executed at the moment when the transfer of decision or another court document is recorded on the incoming e-mail server.
- Any decision rendered out of a court hearing can be delivered by the very court to the party in an electronic form and it has legal effect as of the moment it is properly delivered.

Administrative courts have the duty to inform parties about the course of proceedings and make it possible for them to inspect case files; in case of such an inspection, parties can be allowed to access the electronic case electronically.

2.5 Law on Criminal Procedure

The existing Law on Criminal Procedure does not contain a basis for holding a remote trial, i.e., a trial through a two-way communication platform without physical presence. There is a possibility of cross-examination through videoconference and phone conference, but this refers only to a witness and an expert witness, and not to the defendant.⁵⁷

With regard to **electronic communication**, the law contains the following provisions:

- Filing submissions to the court:
 - Private lawsuits, indictments, indictment proposals, proposals, legal remedies and other statements and notifications (submissions) may be **filed electronically**

⁵⁷ Official Gazette No.150/2010, 100/2012, 142/2016 and 198/2018.

to the reception department of the competent authority (the court or the public prosecutor's office);

- Submissions filed by attorneys, state administrative organs, legal entities and persons exercising public authority should also contain **data about the electronic mailbox registered for delivery of documents in accordance with the law.**
- Delivery of documents by the court to other entities:
 - In addition to other ways, documents can be delivered **electronically to the address of the recipient's electronic mailbox** through the information system of the competent authority; when sending e-mail to the e-mail address of the recipient, a notification is also sent from the information system of the competent authority informing the recipient that a written document has been sent for download; the content of the electronic mail has to be downloaded from the e-mail box in no later than eight days from the day of delivery, and if the e-mail is not downloaded from the e-mail box within the specified deadline, then it will be considered that the court has performed a successful delivery;
 - With their **electronic signature**, the recipients of electronic mail prove their identity, inspect their electronic mailbox and electronically sign any submission that they file to the competent authority or confirm the receipt of e-mail.

The legal possibilities of examining a witness or expert witness through telephone or video conference are limited, being only applicable if:

- they are located in the territory of another state or
- one learns during the main hearing that the witness cannot come to the court or that they find it significantly difficult to come to the court;

The only provision that allows the use of a **closed technical device for remote communication (video and audio conference)** refers to the conduct of the evidentiary hearing.

The proposal for amending the 2018 LCP contains certain provisions regarding electronic evidence and recording the course of the main hearing, which are insufficient to provide a legal framework for online trials and it is necessary to further develop them into a system of norms that will enable the realization of guarantees for fair treatment of parties, even in case the trial is conducted remotely.

In this context we should pay attention to the following proposed provisions:

- Possibility for state organs and organs of the local self-government units to submit to the public prosecutor requested data in **electronic form with an authorized electronic signature**;

- Within the process of presenting material and written evidence, there is a possibility of presenting electronic evidence and recordings in the same form – **electronically** - as they have been delivered to state organs or organs of local self-government units;
- The course of the main hearing is recorded in the form of a recording which represents a visual-audio recording of the hearing conducted, whereas **another computer program can be used to take notes of the course of the hearing**;
- ***The video-conference is recorded and parties receive a copy of the recording***;
- The possibility of examining a witness or expert witness through **videoconference** has been increased, regardless of where they are;
- If ***the defendant is in custody or serving a prison sentence***, then their presence may also be ensured during the session of the second instance court through video conferencing.

It seems inevitable that the LCP provisions need complementing in relation to the possibility of holding online trials, the obligation on parties and other participants in proceedings to register an electronic mailbox, guaranteeing the right to defence and public proceedings, a widespread use of electronic evidence, use of recordings in case of eventual repetition of proceedings, in other words if the proceedings have been recorded then the very proceedings should not start from the beginning, as well as to the composition of judges in the event of changes to it, or to the time for holding the main hearing if it has previously expired, etc.

2.6 Law on Litigation Procedure

The existing Law on Litigation Procedure⁵⁸ does not provide for conduct of trials by using a special platform.

It contains provisions governing **electronic communication**, which should be further developed in order to be in function of future online trials:

- filing submissions to the court electronically (lawsuit, response to a lawsuit, legal remedies and other statements, proposals and announcements) which, among other things, should contain an electronic signature, e-mail address;
- the electronic mailbox is an obligation for attorneys, state organs, i.e., organs of the state administration, local self-government units, legal entities and persons exercising public authority;

⁵⁸ Official Gazette No.79/2005, 110/2008, 83/2009, 116/2010 and 124/2015.

- the party can request electronic delivery from the court, to the electronic mailbox through the e-mail address indicated in the request;
- the delivery of documents to attorneys, state organs, i.e., organs of the state administration, local self-government units, legal entities and persons exercising public authority is done electronically in an electronic mailbox;

The Law on Litigation Procedure also prescribes the electronic delivery process, which starts with the court's information system and ends with the electronic mailbox of the delivery's recipient, at the indicated email address. With regard to this, the **court information system** sends notification to the recipient at their email address simultaneously with the delivery of the document, informing them that the court has sent a written document that they as owner of the email address must download within eight days from the day of the delivery. If the e-mail contents are not downloaded from the electronic mailbox within the specified period, then the delivery will be considered as completed.

The recipient of electronic mail actually has their own electronic identity that is proven with their **electronic signature**, enabling them to have an insight into their electronic mailbox and electronically sign any submission that they file to the court, as well as confirm the receipt of electronic mail.

The Draft Law on Litigation Procedure, published by NERR in September 2020, contains a provision that enables remote trials.⁵⁹

The proposed provision reads:

- (1) The hearing, as a rule, shall be held in the court building and shall be audio recorded.
- (2) The court may decide to hold the hearing outside the court building when it finds that it is necessary or is cost-effective in terms of time or costs of the procedure.
- (3) The court may decide to hold the hearing remotely, by using a closed technical device for remote communication (video and audio conferencing), or to have the parties present individual pieces of evidence in that way.
- (4) The decision made pursuant to paragraphs (2) and (3) of this Article is unappealable.

2.7 Law on Juvenile Justice

The current Law on Juvenile Justice⁶⁰ does not contain provisions enabling trials to be held remotely or through a two-way communication platform.

⁵⁹ <https://ener.gov.mk/>.

⁶⁰ Official Gazette No.148/2013, 152/2019 and 275/2019.

The Work Group working on the text of the Law on Juvenile Justice made an attempt to include the possibility of holding trials remotely, when it is in the best interest of the child or such a way of holding the main hearing to be an exception, in case there are justified reasons for that.

The proposed provision reads:

(1) By exception and *ex officio* or upon a proposal of the public prosecutor or the attorney, and if the other party agrees, when there is risk from delays or when there are legal or actual obstacles, the session of the juvenile chamber, i.e., the main hearing can be held by using electronic-technical means that provide two-way communication without all or part of the participants needing to be present in the courtroom together. The court shall inform participants in proceedings about the day, time and manner of access to the software in order to participate in the session, i.e., the hearing.

(2) No minutes shall be taken with regard to the session or the main hearing held pursuant to paragraph (1) of this Article; the course of the hearing shall be recorded through software, which enables two-way communication, and stored in a digital form, whereas parties, the defence attorney and participants shall receive information about the digital address of the recording that can be accessed with a previously registered electronic mailbox through the juvenile judge, i.e., the president of the chamber.

3. EXPERIENCES FROM THE PRACTICE OF DOMESTIC COURTS

➤ Trials held remotely in the Basic Court Kavadarci

The Basic Court Kavadarci is the only court that during the state of emergency conducted online trials, for the first time in the country, by using electronic-technical means that provided two-way communication, without the physical joint presence of participants in proceedings and through the Microsoft Teams application. The process of holding online trials was aimed at protecting the health and safety of judges, public prosecutors, court officials, defendants and all other participants involved in the functioning of the court and effective exercise of rights by citizens in court proceedings during the state of emergency as well.

Online trials were held in accordance with the above regulation with force of law adopted by the Government and the Decision of the Judicial Council of the RNM; they comprised fifteen criminal cases against adults, children and parole proceedings as well, which means the system is applicable to various types of criminal proceedings with guarantees in place against its abuse. Special mention should be made of the first online trial in a detention case in which the public was included; in this case, the court, respecting the rights of the defendant pursuant to Article 6 of the ECHR and guided by the instructions and recommendations of the Committee for Prevention of Torture and the World Health Organization recognizing the increased danger of spread of Covid 19 in detention wards, made it possible to hold the main hearing without any obstacles and render and announce the first instance verdict. The Basic Court Kavadarci

provided a link to the trial and it was followed by representatives of judicial institutions, the Ministry of Justice, international organizations, embassies and non-governmental organizations monitoring trials.

The online trials were conducted exclusively on a voluntary basis, with the prior consent of the parties. The parties' consent to online trial is entered for the record with which they waive the right to physical presence in the courtroom during proceedings.

The process of holding such trials requires exceptional dedication and rationality of the trying judge and extraordinary preparedness of the IT professional and the team of professional associates involved in providing logistical support and preparing the trial.

The process of preparing the trial involves prior contact with clearly defined roles and actions between the court, the public prosecutor, the defendant, the defence attorney, the injured party and the witness; preparing and introducing them to the manner of using information technology, undertaking activities and conducting online trials; clarification of all legal consequences arising before, during and after the trial; testing the system and its applicability and holding the trial on the scheduled day.

Key issues that arose before holding online trials include:

- designing digital architecture that is necessary for the trial process,
- system security,
- logistical support,
- procedural protection by guaranteeing the rights of the defendant and making it possible for the public to follow the case hearing in the same way by logging in to the system,
- consent of parties to participate in the online trial,
- concentration during the trial,
- upon a consent of the judge, parties in proceedings can be provided with audio-visual recording and authorized access without the possibility for further reproduction, recording and sending of the audio-visual recording; they can only inspect the recording.

It should be emphasized that during online trials, due to the possibilities offered by the virtual space, the public is much more present than compared to regular trial cases. It is also particularly important to provide conditions for conducting fully adversarial proceedings, with direct and cross-examination.

An extremely important aspect in the preparation of an online trial is the communication with parties before the start of the main hearing and the conviction of the court that:

- parties are acquainted with the right to be physically present in the courtroom;
- parties are acquainted with the online trial procedure, they voluntarily approach such a trial and agree that the trial should be held in such a way;
- the defendant is informed that during proceedings they have the right to consult with a legal representative, i.e., a defence attorney;

- the defendant is informed that if they wish to consult a legal representative they have the right to do so by having a confidential conversation by being provided with an additional telephone line by the court;
- the defendant has the right to listen to everything that happens in the courtroom during the trial;
- the defendant is informed that members of family and other persons can participate and attend the online main hearing as a public;
- the defendant is informed that they can communicate with the judge online or by phone through an additional line in order for the judge to clarify the course of the procedure and the online trial to them;
- the defendant has been previously advised by their defence attorney about the waiver of the right to personal and physical presence before the court;
- the defence agrees to waive the right to personal and physical presence before the court and to participate in online trial;

The use of cloud servers (the so-called virtual cloud that is composed of servers located in "data centres" around the world) has proven to be a great solution for storing audio-visual recordings from online trials or for electronic data storage.

LET'S SUMMARIZE

- ✓ The procedural laws contain clear provisions on electronic communication (e-mail and E-submission) with participants in proceedings. Any further additions made to this part would be aimed only at complying with the special laws governing the subject matter of electronic documents, certificates and data security;
- ✓ The procedural laws also contain provisions on video-audio communication used in precisely defined situations as prescribed by law;
- ✓ No procedural law provides for the conduct of online or hybrid trials, so amendments to existing laws are needed that would include basic preconditions for holding trials remotely;
- ✓ Amendments to the Rules of Procedure with elaborated provisions on all technical and administrative procedures as to how courts should prepare the online and/or hybrid trial, manage its course and act after its completion.
- ✓ The Covid 19 pandemic led to emergence and adoption of innovative practices, which at first they had an urgent nature demanding urgent methods of work, communication, reporting and delivery. However, they have shown that in certain situations and court proceedings, when there are certain other exceptional reasons, they can significantly improve the efficiency of proceedings, the access to courts and costs of proceedings.

V. CONCLUSIONS AND RECOMMENDATIONS

General conclusions:

- It is recommended to develop a strategy for transformation of judicial organs in order to reap the benefits of remote trials, which necessarily leads to a change in the traditional functioning of the judiciary in terms of use of new technologies, increased recourse to alternative dispute resolution and media relations.⁶¹
- It is especially important that the new approach to the way of functioning of the judiciary, by using modern technology and electronic platforms, ensures that the fundamental rights guaranteed by the ECHR are respected. The guarantees contained in the ECHR have to be adhered to without violating or calling them into question, regardless of the new way of conducting trials through the use of information technology. In this context, the implications with respect to the right to a fair trial and the ability of defendants to exercise their rights fully and effectively, even when they are not physically present in the courtroom, are particularly important. The guarantees of effective legal aid should be *condicio sine qua non* and it is crucial that there be possibilities of private and confidential communication between the defendant and the defence attorney before, during and after the court hearing.⁶²
- Courts should adopt criteria to identify cases that are eligible for remote hearings, taking into account the manner of participation of vulnerable groups in trials in terms of access and exercise of their rights.⁶³

⁶¹ “CEPEJ Declaration. Lessons learnt and challenges faced by the judiciary during and after the COVID-19 pandemic”, CEPEJ, Ad hoc virtual CEPEJ plenary meeting, Strasbourg, 10 June 2020, <https://rm.coe.int/declaration-en/16809ea1e2>

⁶² Safeguarding the right to a fair trial during the coronavirus pandemic: remote criminal justice proceedings, <https://www.fairtrials.org/>.

⁶³ OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic, OSCE/ODIHR 2020, https://www.osce.org/files/f/documents/e/c/457567_0.pdf.

Specific recommendations:

1. Remote trials should be held at the discretion of the court in legally defined cases to enable more efficient access to justice and protection of citizens' rights;
2. The right to fair trial and the protection of privacy must not be violated in the application of new technological solutions in the process of organizing and holding trials;
3. Preparing parties, - one should especially think about how vulnerable participants (victims, children) and people with disabilities can have a better access to justice;
4. Amendments to the Rules of Procedure of the court and procedural laws in order to regulate the possibility of holding trials remotely;
5. Preparation of procedures concerning the course of remote trials - trial schedule, notification, registration, approval of access through electronic signature, signing in with an individualized password, identification of the involved party, etc.;
6. Remote trials must not jeopardize the public monitoring of the trial, hence it is necessary to prescribe procedures for reporting, informing, providing access and monitoring;
7. A detailed assessment of the necessary organizational-material and personal preconditions for remote trials is required (internet connection, ICT equipment, servers, recording and storage of trial recordings, platform to be used, court staff, training);
8. Upgrading and improving ACCMIS due to its compatibility and complementarity with the new software solutions related to court digitalization.
9. Provision of equipment and resources in courts necessary for the smooth running of electronic communication, interoperability with other judicial institutions and state bodies, as well as remote trials (procurement of equipment in stages, initially providing the minimum necessary human resources required for implementation, providing support from donors and preparation of a sustainable plan by the state as to how it will provide and maintain the necessary resources and how in the future);
10. Preparation of an analysis of the digitalization's fiscal implications;
11. Provision of requisite funds from the Budget of RNM to sustain the digitalization process;
12. Preparation of an Action/Operational Plan on the digitalization dynamics in courts (implementation phases, pilot courts, courts with extended jurisdiction, courts with basic jurisdiction, higher courts, administrative courts);
13. Improving the electronic communication and establishing E-submission between courts and public prosecutor's offices, CSWs, penitentiary institutions, educational-correctional institutions and other state bodies, institutions and legal entities;
14. Development of procedures concerning the security, confidentiality and protection of electronically shared data;
15. Experience sharing and training on the platforms through which trials would take place, training of court staff on the use and maintenance of equipment, training of judges, public prosecutors and attorneys on the use of the electronic platform in courts.

ANNEX 1

QUESTIONNAIRE
FOR THE ASSESSMENT OF EXISTING CONDITIONS FOR ELECTRONIC
COMMUNICATION AND HOLDING *ONLINE* TRIALS IN COURTS

COURT: _____

1. What information equipment does your court have in order to enable a two-way electronic communication and interoperability with other bodies?

computers	TVs
printers	scanners
microphones	projectors
cameras	photocopier

Write down what kind of other equipment the court has:

2. Is there a stable internet connection in your court or are there any internet problems? (tick the appropriate box, add)

We never have internet connection problem

Sometimes we have internet connection problems

We often have internet connection problems

There is no internet in the court

Describe the internet problems that you have had:

3. What type of internet (capacity /speed in GB / MB) does your court need to have? - The IT professional should give the answer -

4. Are the following bodies / institutions registered for E-submission in your court? (tick the appropriate box, add)

- | | |
|---|--|
| <input type="checkbox"/> Public Prosecutor's Office | <input type="checkbox"/> Probation Service |
| <input type="checkbox"/> Police | <input type="checkbox"/> Agency of Real Estate Cadastre |
| <input type="checkbox"/> Social Work Centre | <input type="checkbox"/> Public Revenue Office |
| <input type="checkbox"/> Attorneys | <input type="checkbox"/> State Attorney's Office |
| <input type="checkbox"/> Penitentiary institution | <input type="checkbox"/> Administration for Execution of Sanctions |
| <input type="checkbox"/> Bureau of Judicial Expertise | <input type="checkbox"/> Local self-government |
| <input type="checkbox"/> Certified expert witnesses | <input type="checkbox"/> Health institutions |
| | <input type="checkbox"/> Other public enterprises |

Write down if there are other organs registered on E-submission:

5. Does your court communicate electronically (sending or receiving data electronically and exchanging electronic data)? (tick the appropriate box, add)

with other courts

with citizens

With other state institutions, organs and legal entities

(Write them down)

does not use electronic communication

6. Do you consider that it is necessary to establish horizontal and vertical communication between courts through ACCMIS?

Yes

No

7. Does the court have qualified staff to work with IT equipment?

➤ **IT professionals**

Job positions as per the job catalogue: _____

Filled positions: _____

Required number: _____

➤ **Professional associates**

Job positions as per the job catalogue: _____

Filled positions: _____

Required number: _____

➤ **Court clerks working in departments in which external documents are scanned**

Job positions as per the job catalogue: _____

Filled positions t: _____

Required number: _____

➤ Write down what kind of other staff and number of persons are required

Kind of staff _____	Number of persons _____
Kind of staff _____	Number of persons _____
Kind of staff _____	Number of persons _____
Kind of staff _____	Number of persons _____

8. What kind and quantity of computer / IT equipment do you need?

<input type="checkbox"/> computers - number _____	<input type="checkbox"/> TVs - number _____
<input type="checkbox"/> printers- number _____	<input type="checkbox"/> scanners - number _____
<input type="checkbox"/> microphones -number _____	<input type="checkbox"/> projectors - number _____
<input type="checkbox"/> cameras - number _____	<input type="checkbox"/> photocopiers- number _____
<input type="checkbox"/> servers - number _____	

Point out another kind of equipment / quantities that your court needs:

9. Does the court have the capacity (trained staff and equipment) to conduct *online* (all participants are involved *online*) or hybrid trials (only some participants are involved *online* in the courtroom where the trial is held)?

- the court CAN hold ONLINE trial
- the court CAN hold HYBRID trial

- the court DOES NOT have trained staff for ONLINE trials
- the court DOES NOT have equipment for ONLINE trials
- the court DOES NOT have trained staff for HYBRID trials
- the court DOES NOT have equipment for HYBRID trials

10. Do you have an electronic bulletin board in the court?

Yes

No _____
(Write down the reasons why you do not have such a bulletin board)

11. Does your court issue electronic criminal record certificates?

Yes

No

If no criminal record certificates are issued, what do you think that should be done?

12. Do you have an electronic two-way communication platform available in the court?

Yes

Microsoft Teams

ZOOM

Skype

Webex

Point out another kind of platform _____

No

13. Do you think there is a circumstance that is important but not included in the questionnaire? Please, write it down!

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