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Regional online round table

“Videoconference in court proceedings: human rights standards”

18 June 2020

11.00 – 13.00 CET

Background

The Coronavirus disease (COVID-19) pandemic has created extraordinary challenges for the authorities of all Member States of the Council of Europe. They need to respond to this crisis effectively, whilst ensuring that the measures they take do not undermine the Europe’s founding values of human rights, democracy and the rule of law. To support the states in this response to the pandemic, Human Rights National Implementation Division organised in April 2020 a regional online round table for the Western Balkans “The impact of the COVID-19 pandemic on human rights and the rule of law” with discussions on human rights issues arising from limitations imposed to containing the pandemic. The participants - members of judiciary, Government Agents before the European Court of Human Rights, national human rights institutions - expressed an interest in continuing discussions in the online format, recognising it as a viable discussion platform for a peer-to-peer exchange on the new challenges and possible solutions.

One of the suggested topics for the future discussions was the functioning of the judiciary during the pandemic.

The functioning of the judicial systems in many states was affected by the imposed restriction measures. During the confinement period, judiciaries cancelled and postponed numerous cases and proceedings, which might have impact on the various rights enshrined in the European Convention on Human Rights (ECHR), especially related to the fair trial standards set in Article 6, such as length of proceedings, access to justice and other. These issues together with the lack of personnel are the challenges the courts are facing in many countries today.

As a result, many courts suspended or stopped their work. Some, however, continued proceedings using videoconferences as an immediate reaction in order to provide minimum access to justice, especially in the situation where postponement could cause detrimental implications. Still, a special attention should be paid to ensure that the measures introduced do not undermine compliance with the fair trial standards.

The goal of the round table “Videoconference in court proceedings: human rights standards” is to look into different European experiences of organisation of judicial proceedings during the crisis and its aftermath, including through videoconferences and the relevant elements of the fair trial requirements (such as effective communication with lawyer privately during proceeding, access of public to hearings, presentation of evidence during court hearings and other). The related challenges



will be discussed through the prism of the ECHR and applicable case-law of the European Court of Human Rights, with the stakeholders in the Western Balkans to benefit from a comparative overview of European practices and an expanded peer-to-peer dialogue at a regional level.

Participants:

- representatives of Supreme Courts, Constitutional Courts, Ministries of Justice, Government Agents before the European Court of Human Rights, Bar Associations, professional associations of judges and prosecutors, High Judicial / Prosecutorial Councils, prosecutors' offices and Ombudspersons from the Horizontal Facility beneficiaries: Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, Serbia, Turkey and Kosovo*;
- representatives of the Council of Europe Secretariat and Registry of the European Court of Human Rights.

The working language will be **English**. The round table materials (i.e., presentations) will be further translated into the languages of the Action beneficiaries.

*The **objective** of the regional on-line round tables is to provide a platform for a discussion among the stakeholders of the countries of the Western Balkans and neighbourhood on the challenges related to the COVID-19 pandemic, and to look at the issues from the human rights and the rule of law perspectives.*

The action "Initiative for Legal Certainty in the Western Balkans" under the EU/CoE joint programme "Horizontal Facility for the Western Balkans and Turkey – second phase" aims at ensuring the consistency of application of the ECHR by courts and national authorities in the context of measures taken against the pandemic.

* This designation is without prejudice to positions on status and is in line with UNSCR 1244 and the ICJ opinion on the Kosovo Declaration of Independence



Programme

Moderator: Mr Ledi Bianku, judge of the European Court of Human Rights elected in respect of Albania (2008 – 2019)

Opening Mr Mikhail Lobov, Head of Human Rights Policy and Co-operation Department, Directorate General Human Rights and Rule of Law, Council of Europe

1. Overview of some issues arising in relation to using videoconference during court hearings

Mr Vasily Lukashevich, senior lawyer, Registry of the European Court of Human Rights

Q&A session

2. Panel discussions and sharing of experience

Ms Maria Filatova, head of Laboratory of International Justice and Associate Professor at Faculty of Law, Higher School of Economics (Russia)

Mr Jeremy McBride, barrister, Monckton Chambers (UK)

Ms Ivana Krstic, Associate Professor, Faculty of Law, University of Belgrade (Serbia)

Mr Christian Licoppe, professor of Sociology of Information and Communication Technologies, National School of Telecommunications -Paris-Tech (France)

(i) Procedural guarantees

- Remote participation of witnesses and victims and assessment of testimonies
- Evidence presentation during remote hearings, exchange of paper documents
- Public nature of hearings and access of the general public and mass media
- Interpretation

(ii) Communication with lawyer

- How to arrange private communication with lawyer during on-line hearing?
- Can lawyer be muted or switched off the videoconference by a judge?
- How should the judge act in case of bad connection and inability of party to hear / speak?
- Can judge mute a party and what are the applicable procedural regulations?
- Are there any special procedural regulation required and what shall be considered in this regard?



(iii) Videoconference for pre-trial detention decisions

- Can pre-trial detention be decided in a videoconference? What are the specificities of the procedure in such case?