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Has COVID-19 pandemic transformed civil proceedings in Lithuania?¹

Keywords: *civil procedure, COVID-19, Lithuania, procedural principles, remote court hearings*

1. Introduction

The COVID-19 pandemic has created significant challenges for the different spheres of life all over the world. Most of the countries introduced different kinds of lockdowns, some of them even introduced curfews. Consequently, businesses and activities of persons have been severely affected. Lithuania is no exception, and it has also been experiencing effects of coronavirus pandemic for almost two years already. The first quarantine was introduced² in Lithuania from the 16th of March 2020 till the 16th of June 2020. The second quarantine was introduced from the 7th of November 2020, with much more stricter rules³ from the 16th of December till the 30th of June 2021. From the 1st of July 2021 national emergency status has been introduced⁴ and it has not been revoked as the article has been written.

Understandably this health emergency has also affected the judicial proceedings. Judges, lawyers, and others involved in the justice had to reassess how they operate in a rapidly changing environment, how to organize court proceedings in a safe manner ensuring also that the main procedural principles would be not breached.

¹ This article was written by the University of Silesia in Katowice scholar as part of the implementation of the grant entitled “Impact of the COVID-19 pandemic on the justice system. Case study and suggested solutions” from the NAWA program intervention grants no. BPN/GIN/2021/1/00006/U/00001 (number UN-2105-001).

² Government resolution No. 207, 14.03.2020. It can be found online here: https://lrv.lt/uploads/main/documents/files/Nutarimas%20Nr_%20207%20su%20pakeitimais%2004_30_EN.pdf (accessed on 26 January 2022).

³ Government resolution No. 1226, 4.11.2020. It can be found online here (with all the amendments): <https://e-seimas.lrs.lt/portal/legalActEditions/lt/TAD/a2b5da801f4a11eb9604df942ee8e443?faces-redirect=true> (accessed on 26 January 2022).

⁴ Government resolution No. 506, 28.06.2021. It can be found online here: <https://www.e-tar.lt/portal/legalAct.html?documentId=50a2ef10d8ce11eb9f09e7df20500045> (accessed on 26 January 2022).

The influence of the pandemic to the civil proceedings in Lithuania will be discussed in this article. The main attention will be devoted to the adaptation of courts and their activities in Lithuania in the wake of spreading COVID-19 pandemic to the transformation of understanding of such main civil proceedings principles as orality or publicity. The author will also touch upon the ideas to apply lessons learned during the pandemic in Lithuania in the field of modernizing civil proceedings.

2. Legislative level

Differently from many other countries, the Lithuanian legislator decided that there was no necessity to amend the Code of Civil Procedure⁵ because of the pandemic situation. The same opinion was also expressed by the representatives of courts. Such decision was taken because it was believed that the existing CPC legal norms enabled judges to manage cases during pandemic time in a proper way and provided conditions to hear civil cases remotely. It should be mentioned here that a unified information system of Lithuanian courts called LITEKO was launched in 2004. It is possible in LITEKO to exchange procedural documents electronically; to secure electronic communication between courts; to account stamp duty electronically; to select panels of judges automatically; to process and store digital records, etc. This system is being modernised all the time.

On the 1st of March 2013, Art. 175² of the CPC came into force. It legitimised the use of information and communication technologies (videoconferences, teleconferencing, etc.) during court hearings. For instance, it can be said that in year 2019 more than 3.7 million were signed and uploaded electronically in portal e.teismas.lt⁶. It can also be noticed that in reality the courts in Lithuania mostly heard civil cases physically in courtroom before the pandemic.

CPC legal norms legitimise the use of technologies in questioning witnesses, experts, persons involved in the proceedings and other parties to the proceedings, as well as during site inspections and collection of evidence⁷. The law provides that the procedure and technologies applied have to guarantee the objectivity of evidence collection and presentation as well as enable a reliable identification of the persons involved in the proceedings.

As the coronavirus pandemic had deteriorated and quarantine had been introduced, it was left for the Judicial Council of Lithuania to pass recommendations⁸ how civil pro-

⁵ Civilinio proceso kodeksas [Code of Civil Procedure] (Valstybės žinios 2002, No. 85-4126 as amended), hereinafter referred to as the CPC.

⁶ *Brief report on activities of courts in Lithuania in 2019*. It can be found online here: <https://www.teismai.lt/en/the-courts-have-presented-their-operational-results-the-number-of-electronic-cases-is-consistently-growing/7509> (accessed on 26 January 2022).

⁷ A. Brazdeikis at al., *Ways of Implementation of the Right to Civil Proceedings within a Reasonable Time*, Vilnius 2016, p. 184.

⁸ Recommendations (as amended) can be found online here: <https://www.teismai.lt/lt/naujienos/teismu-sistemas-naujienos/del-teismu-darbo-organizavimo-karantino-laikotarpiu/7444> (accessed on 26 January 2022).

ceedings and other courts proceedings should be organized during such quarantine or emergency status related to COVID-19 pandemic. The Judicial Council is an executive body of the autonomy of courts ensuring the independence of courts and judges, which consists of 17 judges. It should be noted that these recommendations were not really binding. They just served the purpose of helping courts to manage cases properly. In practice courts took these recommendations into account seriously. Also, it can be mentioned that on the 28th of December 2020 the Ministry of Health issued recommendations⁹ for court proceedings as the spread of the coronavirus continued and the situation deteriorated significantly in Lithuania.

According to the CPC and recommendations the civil cases during quarantine and in the emergency situations can be heard in such forms:

- 1) the written procedure if all parties to the dispute agree or other criteria set in the CPC are met (for instance, most civil cases in uncontentious proceedings, appeal-instance civil cases);
- 2) oral remote court hearings via online platforms;
- 3) oral hearings in a courtroom; or
- 4) hybrid forms as the judge and some participants of the proceedings appear in a courtroom and other participate take part in the hearing remotely.

During quarantines if it was not possible to hear civil case remotely and oral hearings in a courtroom could not be held, the hearing of a civil case had to be adjourned. In the recommendations issued during the second quarantine period, it was advised to organize oral face-to-face hearings only in exceptional cases, where it was not possible to adjourn a hearing or to organize it remotely and it was necessary to protect the main civil rights of the parties. Unfortunately, no exact list of exceptional cases was presented, and the courts had their discretion to decide on that question.

In my opinion such exceptional civil cases could be, for instance, cases, concerning the removal of a child from an unsafe environment, or other family-matters cases, concerning the rights of a child. But, no court practice can be found on this question. This shows that perhaps no significant issues arose out of that question in real civil proceedings. In urgent cases oral hearings had to be organized in the manner and time prescribed during quarantines, taking all precautionary measures relating to the prevention of the spread of COVID-19, while maintaining a maximum distance (minimum 2 meters) between the participants in the courtroom. During the first quarantine period many hearings of civil cases were adjourned and the situation changed quite significantly during the second quarantine period as judges and participants in the proceedings had gained some experience in using online platforms and decided to continue hearing cases in remote manner.

For remote oral hearings no special platform has been created in Lithuania. The courts have started using different well-known platforms. Zoom platform is most frequently

⁹ These recommendations can be found online here: <https://www.teismai.lt/lt/naujienos/teismu-sistemas-naujienos/sam-atnaujino-rekomendacijas-teismu-darbo-organizavimui-karantino-metu/8316> (accessed on 26 January 2022).

used, but MS Teams platform is also reported to be in use. At the beginning of the first quarantine courts had no licences for platforms, so it took some time to buy them and to start using them in different court proceedings all over Lithuania.

It can be also stressed that there were no attempts to limit or suspend limitation periods during the pandemic. The courts decide to make procedural limits more flexible during quarantines in only some cases. Amendments have only been enacted for insolvency proceedings. Special law was passed in April of 2020 for the insolvency proceedings for legal entities¹⁰. This law can be applied only to the legal entities that have experienced financial difficulties and have become insolvent because of the COVID-19 crisis. The law has suspended the calculation of the 15-day term and the obligation for the head of the company to apply to the court for insolvency proceedings during the quarantine period and for 3 months from the revocation of the quarantine. In Lithuania creditors acquire the right to apply to a court to initiate insolvency proceedings against a debtor if they have previously given the debtor a deadline of at least 15 days to fulfil obligations, to agree on arrangement or decide on out-of-court bankruptcy proceedings. The new law has suspended the 15-day deadline during the quarantine. Also, some deadlines in restructuring proceedings have been suspended.

Regarding the pandemic situation courts could apply more flexibly some norms of the CPC. Not all judges have decided to manage civil cases in such a way. For instance, there have been civil cases where courts have decided that there has been no ground to adjourn the paying of court fees if the plaintiffs are legal entities which cannot operate during the quarantine. The Court of Appeal of Lithuania decided¹¹ in February of 2021 that it was possible to postpone the payment of court fees for participants of civil proceedings if legal entities received financial support from the Government. Otherwise the right to access to justice could be breached. Overall, it can be said that in most civil cases material law questions in the times of pandemic are raised but procedural ones are not.

3. Transformation of orality and publicity principles

Even if already before the COVID-19 pandemic it had been possible to apply technologies in civil proceedings, this option had not been often used for civil cases till the pandemic outbreak. The usage of distance communication technologies had been limited only to some cross-border civil cases. The start of world pandemic and the introduction of the first quarantine was the first big incentive to apply modern technologies in different civil proceedings. That really transformed the principle of orality in Lithuanian civil procedure as judges, lawyers and other participants to civil proceedings began to understand that orality can mean not only face-to-face proceedings in a courtroom but also

¹⁰ Lietuvos Respublikos juridinių asmenų nemokumo įstatymo taikymui įstatymas [Law on the Impact of the Effects of the New Coronavirus (COVID-19) on the Application of the Lithuanian Law on the Insolvency of Legal Entities] (TAR No. 8725, 24.04.2020).

¹¹ Ruling of the Court of Appeal of Lithuania, Case No. e2-92-943/2021, 11.02.2021.

oral proceedings via computers. Moreover, such technologies may contribute to the safeguarding all procedural guarantees if a judge is able to manage a case in an effective way.

Still, it has been acknowledged by some legal practitioners that one of the most problematic issues for the courts during the remote civil hearings is to hear properly testimonies of the witnesses. There are no exact rules or recommendations, or already case law on that matter in Lithuania. It is quite often not clear for the judges or the opposing party to the dispute if a witness is not influenced or helped to answer questions in any way, or if his or her identity has been established correctly and with absolute certainty¹².

After the revocation of the second quarantine the necessity for remote court hearings has still persisted. Therefore the Judicial Council has adopted recommendations for remote court proceedings¹³. The purpose of these recommendations is to provide useful, practical advice to courts and participants to judicial proceedings on how to participate in remote court hearings. It should be stressed that recommendations do not mention COVID-19 pandemic, so it means that they can be applied not only during some pandemic periods and not only in civil cases, where parties to the dispute cannot participate in civil proceedings because of health safety reasons. These recommendations reflect in many ways guidelines published by the European Commission for the Efficiency of Justice (CEPEJ) on videoconferencing in judicial proceedings¹⁴.

It is stated in the recommendations that remote court hearings can take place in two ways: 1) completely remote court hearings in which the judge and all other participants to court proceedings participate using video technologies; 2) hybrid court hearings, where the judge and some of the participants of proceedings are present physically in the courtroom and other members of the panel (with the exception of the presiding judge) and participants attend the hearing using videoconferencing technology. A court hearing is not considered to be a hybrid one if only the examination of a witness or expert is conducted using videoconferencing technology.

The organization of a remote court hearing must be based on the principles of fairness, efficiency, cooperation and data security. A remote court hearing can be organized if all the necessary procedural guarantees and each participant's right to a fair proceeding can be assured. Still the recommendations do not state that remote court hearings can take

¹² R. Merkevičius, *Lietuvos baudžiamojo proceso diagnozė: COVID-19 pasitikome turėdami prastą savijautą, minorines emocijas ir nuslopintą imunitetą, o kokie išliksime po jo?*, „TeisėPro“ 25 November 2020, <http://www.teise.pro/index.php/2020/11/25/r-merkevicius-lietuvos-baudziamojo-proceso-diagnoze-covid-19-pasitikome-turedami-prasta-savijauta-minorines-emocijas-ir-nuslopinta-imuniteta-o-kokie-isliksime-po-jo/> (accessed on 26 January 2022).

¹³ *Teisėjų Tarybos rekomendacijos dėl nuotolinių teismo posėdžių* [Recommendations regarding remote court hearings], 27.08.2021, it can be found online here: <https://www.teismai.lt/lt/pateiktos-rekomendacijos-teismams-ir-teismo-proceso-dalyviams-del-nuotoliniu-teismo-posedziu/9171> (accessed on 26 January 2022).

¹⁴ *Guidelines on videoconferencing in judicial proceedings*. Document adopted by the CEPEJ at its 36th plenary meeting (16 and 17 June 2021), CEPEJ (2021)4REV4.

place only with the consent of all participants of court proceedings. It is highly advised for courts to find out the opinion of the court proceedings' participants before deciding to organize remote hearing.

Also the concept of publicity principle has been transformed during the pandemic. Actually, at the beginning of quarantines it was a challenge for the courts to ensure the observance of this principle. Publicity is one of the cornerstones of civil proceedings under which court hearings in most civil cases, contrary to arbitration, should take place in public.

The newest recommendations, in force since August 2021, have stated that the court must ensure that it is possible: 1) to retransmit the sound of the court hearing and (if possible) the video to a separate courtroom or other room in the court building open to the public; or 2) to allow applicants to watch / listen to a remote court hearing by videoconferencing. It is recommended that a person wishing to watch some court proceedings informs the court about it not later than three working days before the date of the court hearing. Unfortunately, there is no statistics on how often persons apply these recommendations in practice. It is recommended that the courts post information on methods of watching public court hearings on their websites. It is hoped that a special platform for watching court hearings publicly will be established in 2022 and made available to all interested persons.

Furthermore, the courts must also ensure the possibility for the lawyers to speak to their clients confidentially during remote court hearings. In the recent recommendations it is said that at the request of the lawyer or the participant of the proceedings, the court may transfer them to a separate virtual room where they can discuss their defence position and other issues confidentially.

According to the recommendations participants to the court proceedings are prohibited from filming, photographing, making audio or video recordings, broadcasting the hearing, and using other technical means at the court hearing without the prior permission of the court. This prohibition also covers the taking of screenshots.

Recently some judges have noted that the level of technological literacy of participants of court proceedings is usually the main factor in deciding whether the remote court hearing can be arranged. Some judges remember cases in which older persons wished to participate remotely but they informed that they did not have computers, did not know videoconferencing programs, etc¹⁵. We believe that in such cases the state or municipal institutions or, for instance, public libraries could help persons by giving them access to technologies and providing some instruction or assistance.

¹⁵ *Teismas nuotoliu: kaip ir kada rengiami nuotoliniai teismo posėdžiai?*, „TeisėPro“ 14 November 2021, <https://www.teise.pro/index.php/2021/11/16/teismas-nuotoliu-kaip-ir-kada-rengiami-nuotoliniai-teismo-posedziai/> (accessed on 26 January 2022).

4. Conclusions

COVID-19 pandemic has not stopped civil proceedings in Lithuanian courts. The courts have transformed their attitude towards remote court hearings quite quickly and it has led to the emergence of the “New Normal”.

Differently from many other countries, it has been decided in Lithuania that the existing Code of Civil Procedure legal norms have already enabled judges to manage cases during the pandemic time and have provided conditions to hear civil cases remotely. Consequently, there has been no necessity to pass any amendments to the Code in question.

The organization of remote court hearings in civil proceedings will be continued regardless of the pandemic situation. It means that COVID-19 situation has transformed the principles of orality and publicity in Lithuanian civil proceedings quite clearly.

Abstrakt

***Czy pandemia COVID-19 zmieniła postępowanie cywilne na Litwie?*¹⁶**

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W artykule omówiono wpływ pandemii na postępowanie cywilne na Litwie. Główna uwaga autorki koncentruje się na dostosowaniu się sądów i ich działalności do pandemii COVID-19, która ogarnęła cały świat. Nacisk położony jest również na transformację rozumienia takich głównych zasad postępowania cywilnego jak ustność i jawność. Autorka omawia akty prawne regulujące postępowanie cywilne na Litwie w czasie pandemii oraz to, czy sądy litewskie są wystarczająco przygotowane do rozpoznawania spraw cywilnych na odległość za pomocą platform wideokonferencyjnych.

Słowa kluczowe: *postępowanie cywilne, COVID-19, Litwa, zasady postępowania, rozprawy sądowe na odległość*

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¹⁶ Artykuł powstał w ramach realizacji przez Uniwersytet Śląski grantu pt. „Impact of the COVID-19 pandemic on the justice system. Case study and suggested solutions” z programu NAWA granty interwencyjne nr BPN/GIN/ 2021/1/00006/U/00001 (numer UN-2105-001).

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