



VICTORIA UNIVERSITY
MELBOURNE AUSTRALIA

Foreword by the Editors

This is the Published version of the following publication

Fabri, M, Kettiger, D, Lienhard, A, Sanders, A and Wallace, Anne (2021)
Foreword by the Editors. *International Journal for Court Administration*, 12 (2).
pp. 1-3. ISSN 2156-7964

The publisher's official version can be found at
<https://iacajournal.org/articles/10.36745/ijca.392>
Note that access to this version may require subscription.

Downloaded from VU Research Repository <https://vuir.vu.edu.au/45877/>



PROFESSIONAL ARTICLE

Foreword by the Editors

Marco Fabri*, Daniel Kettiger†, Andreas Lienhard†, Anne Sanders‡ and Anne Wallace§

The EGPA Conference 2020 in Budapest had been canceled due to COVID-19. Although there was no EGPA Conference, the co-directors of the Permanent Study Group (PSG) XVIII “Justice and Court Administration” did not want to miss a unique opportunity: throughout the world, the COVID-19 pandemic and the responses of different governments to it imposed new challenges on judiciaries. The experiences of the courts and other judicial authorities during the crisis will certainly give rise to “lessons learned” for the judiciary – especially in the field of e-justice and the digital transformation of the judiciary. The co-directors of PSG XVIII thought that one should pluck these fruits as soon as possible. For this reason, the PSG XVIII hosted a virtual one-day conference on the topic “The COVID-19 crisis – Lessons for the Courts” on September 3rd 2020. There were ten presentations framed in three sessions and a final session with reflections by two of the study group directors.¹

Following the conference, all presenters were asked if they wanted to prepare a paper reflecting the content of their presentation for a special issue of the International Journal for Court Administration. Seven presenters sent in their contributions and, following the peer-review process, a selection was made for publication in this issue. A contribution about Switzerland has been added, and two of the study group directors contributed general reflections. The content of this special issue reflects the situation of the judiciary in the coronavirus crisis from its beginnings until September 2020.

Marco Fabri reflects in a general way, if and how, COVID-19 has changed and will change the deployment of Information and Communication Technologies (ICT) in the judiciary. He starts from the idea that COVID-19 has clearly highlighted the opportunities for, and the problems associated with, using ICT in the justice sector, and the priority areas in which investments should be developed. One of his conclusions is that the COVID-19 crisis has shown that there is still a dramatic lack of digital literacy within the judicial environment in several countries that further hampers the exploitation of ICT tools.

In her contribution, *Anne Sanders* discusses court hearings by videoconference. She suggests that video hearings will probably not disappear with the end of the pandemic. Therefore, experiences during the crisis in different countries must be used to find the best legal and technical solutions for the future. The article aims at making a modest contribution

* IRSIG, IT

† University of Bern, CH; Email: daniel.kettiger@kettiger.ch.

‡ University of Bielefeld, DE

§ Sir Zelman Cowen Centre Victoria University, AU

¹ See also the summary reports on the e-conference published in Switzerland: Tania Munz, Bericht über die EGPA-IASIA 2020 e-Conference, *Justice – Justiz – Giustizia* 2020/4; Céline Mavrot, Compte-rendu de la conférence « The COVID-19 crisis – Lessons for the Courts », *LeGes* 31 (2020) 3.

to this endeavor by presenting and discussing approaches and experiences of active and former members of the Consultative Council of European Judges of the Council of Europe (CCJE) from Albania, Andorra, Austria, Belgium, Bosnia and Herzegovina, Croatia, the Czech Republic, Finland, France, Germany, Ireland, Italy, Lithuania, Norway, Poland, Romania, Russia, San Marino, Spain, Sweden and Ukraine.

Costas Popotas (Court of Justice of the EU, Luxembourg) shows how the court implemented an emergency plan for pandemics that was prepared already some years before COVID-19 arose. Within the framework of this emergency plan a stock of protective material had been created. This work ahead of time proved to be very helpful during the pandemic and created an advantage for the court for coping with the coronavirus crisis.

The contribution of *Andreas Lienhard* and *Daniel Kettiger* focusses on Switzerland and shows how Swiss courts dealt with the coronavirus crisis. The Swiss judiciary was not prepared for a pandemic at all. The COVID-19 crisis has shown that there is a lack of digital literacy knowledge within the judiciary. The contribution also deals with the emergency laws imposed by Swiss government.

John Sorabji demonstrates how the coronavirus crisis fostered the deployment of IT in the English and Welsh courts. His contribution starts with the introduction of a new procedural code in 1999, outlines the management of what is now Her Majesty's Courts and Tribunals Service (HMCTS) which administers England and Wales' courts and the unified tribunals, and the HMCTS reform program starting in 2016, and then examines the impact of the pandemic.

According to the contribution of *João Paulo Dias, Paula Casaleiro, Teresa Maneca Lima and Conceição Gomes*, the coronavirus outbreak shows the critical importance of work health and safety measures and working conditions in all sectors of activity, including the judicial system. The COVID-19 crisis put pressure on the Portuguese judicial system to implement new procedures and practices in a very short time, which exposed some previous identified fragilities of the judiciary organization and management of the judicial system. The main objective of this article is to analyse the response to the coronavirus crisis concerning the working conditions in the Portuguese judicial system.

Guy Lurie focuses on the administration of courts in Israel during the Coronavirus Pandemic, and particularly on the emergency powers utilized by the Minister of Justice. The article points out that more attention must be given to the confluence of two issues: emergency powers and court administration. While the literature on emergency powers has discussed at length the challenges inherent in maintaining the rule of law under extreme conditions, the literature on court administration has not shown as clear an awareness of the issue, even though it has extensively discussed the tensions intrinsic to executive control over court administration. This article points out that we must carefully structure emergency powers over the administration of courts, taking care to maintain the realization of the principles of judicial independence and judicial accountability.

In their contribution, *Anne Wallace and Kathy Laster* present a case-study of the swift digital response to COVID-19 restrictions by the courts in the state of Victoria, Australia's second-largest jurisdiction. They analyze the extent to which the management of this crisis (Step 1 in John Kotter's model of innovation) can serve as the catalyst for digital innovation in these courts. They contend that the history of innovation in Australia is of quick, pragmatic fixes which do not translate into systematic change. For example, although Australian courts are often credited with being pioneers in court technology, recourse to apparent 'virtual courts' before and during COVID is probably not truly innovative.

The aim of the contribution of *Renato Máximo Sátiro, Jessica Vitorino Martins and Marcos de Moraes Sousa* is to analyse the institutional response of the judiciary in Brazil to the

pandemic. To that end, the main regulations that have underpinned the conduct, positioning and action of the judiciary since the beginning of the crisis in Brazil, which occurred in March 2020, were collected and analyzed. Data show a fast and comprehensive reaction in the various fields in which justice operates, revealing a concern with health, social, administrative issues, among other aspects.

Jyoti Rattan and Vijay Rattan give an insight to the effect of coronavirus crisis on the Indian judiciary. In India, the COVID-19 crisis had come at a time when focus was already on accelerating the setting up of E-courts and digitization of justice and court administration. The journey of e-Governance initiatives in Justice and Court Administration started mainly in the mid-1990s and, later, the setting up of E-courts was a crucial part of the National e-Governance Plan (NeGP) launched way back in 2006. However, it appears that the sudden advent of COVID-19 pandemic is proving to be a game changer in bringing about a rapid acceleration in the move from E-courts to E-judiciary, in particular, the use of virtual hearings. However, there are a number of challenges for court administration that have been highlighted by the crisis, including increasing numbers of pending cases and a lack of access to technology among the sections of the population.

This special issue of IJCA draws a diverse picture of how selected judiciaries have tackled the coronavirus crisis in a variety of countries. This picture is necessarily incomplete, unsystematic and in some parts still anecdotic. It is type of a snapshot, made in the Northern autumn 2020, which may also be useful to revisit later when the overall outcomes of the pandemic are clearer. Nevertheless, it reveals some common weaknesses in the organization of judiciaries that suggests lessons to be learnt. As the COVID-19 crisis continues, it will be important to continue monitoring the changes undertaken by the judiciaries to face the new challenges brought by Covid.

Publishing this special issue required a great effort and a lot of work. We would like to thank the editors of IJCA for accepting this special issue for publication and for their flexibility regarding the time of publication. Many thanks to Tania Munz of the Center for Public Management of the University of Bern, who assisted in organizing the webinar on September 3rd 2020 and with all administrative matters concerning this special issue.

How to cite this article: Marco Fabri, Daniel Kettiger, Andreas Lienhard, Anne Sanders and Anne Wallace, 'Foreword by the Editors' (2021) 12(2) International Journal for Court Administration 1. DOI: <https://doi.org/10.36745/ijca.392>

Published: 06 May 2021

Copyright: © 2021 The Author(s). This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC-BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited. See <http://creativecommons.org/licenses/by/4.0/>.



International Journal for Court Administration is a peer-reviewed open access journal published by International Association for Court Administration.

OPEN ACCESS