



A Right to a Public Hearing in Times of Emergency – Online or Physical?

ACADEMIC ARTICLE

WOJCIECH PIĄTEK 



ABSTRACT

One of the fundamental principles of all court proceedings is the right to a public hearing. In times of emergency, due to health, safety or environmental conditions, this right may be reduced or even temporarily excluded. The aim of the paper is to answer whether possible restrictions of this right are in accordance with the European and national standards of the rule of law. The phenomenon of public hearings will be presented from the perspective of the administrative judiciary, whose obligation is to exercise control over public administration on a basis of legality. This phenomenon offers the potential for dispensing with public hearings to a greater extent than in the case of civil or criminal proceedings. In the paper, the detailed aspects and defects of online hearings will be analyzed. In the final part, the thesis on the significance of physical hearings will be defended. Especially in times that are not defined as emergencies, this type of hearing should prevail over the online version, being more natural and better in terms of providing both courts and parties to the proceedings broad possibilities to communicate.

CORRESPONDING

AUTHOR:

Wojciech Piątek

Adam Mickiewicz University,
Poland

wojciech.piatek@amu.edu.pl

KEYWORDS:

public hearing; online hearing; access to court; court's openness; times of emergency

TO CITE THIS ARTICLE:

Wojciech Piątek, 'A Right to a Public Hearing in Times of Emergency – Online or Physical?' (2023) 14(2) *International Journal for Court Administration* 6. DOI: <https://doi.org/10.36745/ijca.444>

One of the fundamental rules regulating court procedure is the ‘principle of openness’ – the right of the public to access the courts,¹ embracing all forms of court activity, from adjudication to information about the court’s functioning,² contained in a basic form in the right to a public hearing.³ From an internal perspective, it is beneficial for parties to the proceedings, who should have the opportunity to convince a court with their statements in an oral form, delivered in either a physical or online manner. The same reasoning applies with regard to parties being present in court or tribunal hearings so that they can view the proceedings in person and observe their legal representatives making submissions and being questioned by the bench. From an external point of view, it is an element of the idea of open justice, which requires courts a considerable level of transparency and fairness toward citizens. This phenomenon originates from common law and consists above all of the provision of adequate facilities for the attendance of members of the public at court proceedings.⁴ Nowadays the changing nature of publicity in courts is noticed, which leads to an adaptation of open justice to contemporary challenges of the digital world and media.⁵

Moreover, public hearings are significant for an audience who follow court processes for many reasons, including information, trial monitoring, supervision, research and education. The duty to be open to a broad audience is present in all circumstances and perhaps even more so in times of emergency because the courts’ mission as protectors of human rights is crucial for their perseverance. However, it requires new forms of public scrutiny in comparison to traditional physical hearings, understood as the form when all participants are located in a courtroom, being physically present. An alternative form of the same meeting is online hearings, when at least one participant, including parties to the proceedings, witnesses, or expert witnesses are not present in a courtroom but are connected with a court via telephone or video. Though the essence of public openness is still the same, the ways in which it can be exercised within public hearings are gradually being changed.

The aim of this paper is to answer the question of how the right to a public hearing can be guaranteed in times of emergency when peoples’ health or even lives are

1 This paper is a part of project no: UMO-2018/30/E/HS5/00421, financed by the National Science Centre (Poland), devoted to the appealability of administrative courts judgments. The research is aimed at assessing the system of devoted to appealability of administrative courts judgments, including its sources, nature and functions, with the current challenges faced by the judiciaries coming from the right to a fair trial and its components (fairness, publicity and time reasonableness). It has an interdisciplinary (normative, sociological and economic) as well as a comparative (civil and common law systems) nature.

2 U. Saxer, Vom Öffentlichkeitsprinzip zur Justizkommunikation – Rechtstaatliche Determinanten einer verstärkten Öffentlichkeitsarbeit der Gerichte, *Zeitschrift für Schweizerisches Recht* 2006, 1, pp. 462–463, R. Devlin, A. Dodek, Regulating judges: challenges, controversies and choices, in: R. Devlin, A. Dodek (ed.), *Regulating judges. Beyond independence and accountability*, Cheltenham, Edward Elgar Publishing, 2016, pp. 9–11.

3 It is a component of the right to a fair trial in Article 6 para. 1 European Convention on Human Rights (https://www.echr.coe.int/documents/convention_eng.pdf; [accessed 11 December 2022]) and in article 47 Charter of Fundamental Rights of the EU (Journal of Laws 2012/C 326/02).

4 See J. Jaconelli, *Open justice: a critique of the public trial*, Oxford University Press, 2002, pp. 2–4.

5 See J. Johnston, Three phases of courts’ publicity: reconfiguring Bentham’s open justice in the twenty-first century, *International Journal of the Law in Context* 2018, 14, 525–526.

threatened due to the conditions that arise in circumstances like a pandemic or other public health threats, military conflicts, and the need to protect the environment. The basis for the analysis will be the pandemic Covid-19 that forced courts to urgent adoption of communication tools without or with a considerable reduction of personal contact in a courtroom. Experiences from this time of emergency will lead to formulating general conclusions concerning the existence of a right to a public hearing at that time.

The paper will address disputes in the area of public law, exercised in many countries within a separate branch of the judiciary (administrative courts). These courts were created in many European countries as separate branches of the judiciary for greater protection of the individual's rights against the interference of state authorities.⁶ The specificity of their adjudication in disputes between states and individuals in times of emergency seems to be particularly significant. For example, the administrative courts in Poland quashed many administrative acts that imposed monetary fines on citizens with an explanation that there was no statutory basis to issue them. In one of the first judgments, the Voivodship Court in Opole quashed an administrative penalty imposed on a hairdresser for performing his activities during lockdown when citizens were obliged to stay at home and it was forbidden to offer hairdressing services.⁷ This judgment was assessed in legal doctrine as a symbolic breakthrough in the protection of individual rights violated by state authority as an alleged protection of citizens from the pandemic.⁸

A basic challenge in this regard is to develop a new model of public hearings which will fulfill all the guarantees of the rule of law, including the right to participation in public hearings not only for parties to the proceedings but also for the public, that is regarded as an element of promoting the rule of law⁹ and public trust, that is a precondition for proper adjudication and enforcement processes.¹⁰ Times of emergency, like the recent pandemic, make this need more pressing and offer an additional explanation for this change. This transformation raises many detailed questions concerning citizens' acceptance of completely dispensing with physical hearings in times of emergency in favor of online hearings. Under which procedural and organizational conditions should these hearings be prepared? Should court proceedings be postponed during times of emergency, especially if parties to the proceedings apply for an adjournment? What are the other possibilities for ensuring the principle of public openness, especially with the adoption of new technologies?

⁶ See K.P. Sommermann, Entwicklungspfade europäischer Verwaltungsgerichtsbarkeit, in: K.P. Sommermann, B. Schaffarzik (ed.), *Handbuch der Geschichte der Verwaltungsgerichtsbarkeit in Deutschland und in Europa*. Band 2, Springer, Berlin 2018, pp. 1738–1741. In England, the Administrative Court is a part of the Queen's Bench Division of the High Court. Basic information about the functioning of this court is published annually in "the Administrative Court Judicial Review Guide". Pdf version from 2021 is available under the link https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1022369/HMCTS_Administrative_Court_Guide_2021_Final_Web.pdf [accessed 11 December 2022].

⁷ the judgment of the Voivodship Court in Opole from 27 October 2020, no. II SA/Op 219/20, published at the website www.orzeczenia.nsa.gov.pl [accessed on 10 April 2023].

⁸ A. Kokoszkiewicz, *Sprawiedliwy proces administracyjny jako zadanie państwa. Studium teoretycznoprawne*, C.H. Beck, Warszawa 2022, p. 248–255.

⁹ See E. Ryder, Securing open justice, in: B. Hess, A.K. Harvey (eds.), *Open justice. The role of courts in a democratic society*, Nomos, Baden-Baden 2019, pp. 140.

¹⁰ See F. van Dijk, *Perceptions of the independence of judges in Europe. Congruence of society and judiciary*, Palgrave Macmillan 2021, pp. 18.

To answer these questions, the analysis will be divided into three parts, starting from the origins and content of the principle of public openness, through its understanding in the European legal order and in selected legal systems both from common law (England) and civil law (Austria, France, Germany, and Poland). The European and national regulations will offer a broad perspective for detailed experiences connected with the organization of public hearings within administrative judiciaries during the Covid-19 pandemic. Those considerations will lead to a more general observation about the future of public hearings in emergency and post-emergency conditions.

2. DO WE REALLY NEED PUBLIC (PHYSICAL OR ONLINE) HEARINGS?

2.1. THE ORIGINS AND CONTENT OF THE PRINCIPLE OF PUBLIC OPENNESS

For centuries, the principle of public access has been known as an element of the right to a fair trial. In Roman law, from the first forms of proceedings (*legis actio sacramento*), the presence of both parties before a clerk (pretor) was obligatory.¹¹ Within the common law world, court openness is derived from the freedom of expression, the origins of which began within the medieval Roman Catholic doctrines of communication.¹² The contemporary understanding of public openness, as a phenomenon that organizes human activities in a transparent way, has been gradually shaped from the 17th century as a social need in economic relations, which later developed into the public sphere.¹³ Public access means not only transparency but also accessibility to information and its openness.¹⁴ As the European Court of Human Rights (ECtHR) stated, courts serve the interests of the community and “cannot operate in a vacuum”.¹⁵ It is difficult to imagine a court functioning without any forms of public access, including public hearings.¹⁶ The contemporary development of new ways of communication between people, like social media or various forms of blogging, makes the need for court openness more pressing.

The jurisprudence of the ECtHR may be regarded as providing proof of the importance of public openness. Principally, parties to the proceedings have a right to a public hearing, which implies an oral hearing before at least one court instance. In proceedings before a court of first and only instance, the right to a “public hearing” contains an entitlement to an “oral hearing”.¹⁷ It is regarded as a general principle of law that parties can participate actively in court action which is aimed at evaluating

¹¹ See K. Kolańczyk, *Prawo rzymskie*, Państwowe Wydawnictwo Naukowe 1973, pp. 107.

¹² See J.M. Jacob, *Civil justice in the age of human rights*, Ashgate Publishing Company 2007, pp. 47.

¹³ J. Habermas, *Strukturwandel der Öffentlichkeit*, Suhrkamp Verlag 1990, pp. 86.

¹⁴ A. Troßbach, *Öffentlichkeit und Geheimhaltung im Verwaltungsprozess*, Mohr Siebeck 2018, pp. 20.

¹⁵ ECtHR, 26 April 1979, *the Sunday Times v. the United Kingdom*, no 6538/74, § 65.

¹⁶ As Jeremy Bentham said, “publicity is the very soul of justice”. However, expressing enthusiasm for publicity, he noticed, that it could not be absolute. See *Works of Jeremy Bentham*, Vol. 4, Edinburgh: William Tait, 1843, p. 315.

¹⁷ ECtHR, 9 February 2017, *Selmani and Others v. the Former Yugoslav Republic of Macedonia*, no. 67259/14, § 37, ECtHR, 17 March 2017, *Fröbrich v. Germany*, no. 23621/11, § 34.

their rights and obligations¹⁸ and that they are able to present their reasoning before a court especially if a dispute is not limited to matters of law but also extended to factual issues,¹⁹ and scrutinize the adjudication process.²⁰ This right is also regarded as one element underpinning the overall equality of arms between the parties to the proceedings.²¹

However, the right to a public hearing does not remain without exceptions. Situations in which oral hearings can feasibly be dispensed include disputes without credibility issues or contested facts that necessitate a hearing, disputes in which the courts may fairly and reasonably decide the case based on the case files,²² and disputes focused only on legal or technical assessment.²³ In such circumstances, even the demand of a party to the proceedings for an oral hearing is assessed as unjustified as it unduly prolongs the procedure without providing any insight into the case (if a domestic court is in a position to fairly and reasonably decide the case on the basis of the parties' submissions and other written materials, it is justified to dispense with an oral hearing).²⁴ As a concrete example of such cases, social security proceedings, which are highly technical, are assessed as better dealt with in writing than in oral submissions.²⁵ Limitations to public hearings may be introduced in simplified proceedings approved by state legislators in statutes, due to the need to adjudicate selected disputes in a short period of time. One of the reasons which justify these simplifications may be the necessity to inform public opinion about the results of a dispute which is significant for many people and should be known to avoid insecure or false information in the press.²⁶

The conditions in which public hearings may be excluded are usually the subject of a detailed analysis by the ECtHR. On the one hand, the ECtHR declares that those limitations can find application not only in rare cases (the exceptional character of the circumstances that may justify dispensing with an oral hearing essentially comes down to the nature of the issues to be decided by the competent national court, not to the frequency of such situations²⁷). On the other hand, if the elimination of public hearings is general and a claimant cannot apply to present reasons in a case orally, this was assessed by the ECtHR as incompatible with Article 6 of the European Convention on Human Rights (ECHR). The ECtHR reiterated that a claimant should at least have the opportunity of requesting a public hearing, though the court may refuse this motion and hold the hearing in camera on account of the detailed circumstances.²⁸ It is questionable if the pandemic has been established as a ground for excluding a

18 ECtHR, 1 June 2004, *Valova, Slezak and Slezak v. Slovakia*, no. 44925/98, § 63.

19 ECtHR, 12 November 2002, *Salomonsson v. Sweden*, no. 38978/97, § 39.

20 ECtHR, 12 July 2001, *Malhous v. The Czech Republic*, no. 33071/96, § 55.

21 ECtHR, 6 November 2018, *Ramos Nunes de Carvalho Sa v. Portugal*, no. 55391/13, 57728/13, 7041/13, § 187.

22 ECtHR, 12 November 2002, *Döry v. Sweden*, no. 28394/95, § 37.

23 ECtHR, 19 February 1998, *Jacobsson v. Sweden (no 2)*, no. 8/1997/792/993, § 42, ECtHR, 13 March 2018, *Mirovni Institut v. Slovenia*, no. 32303/13, § 37.

24 ECtHR, 17 March 2017, *Fröbrich v. Germany*, no. 23621/11, § 40–41.

25 ECtHR, 12 April 2006, *Martine v. France*, no. 58675/00, § 41, ECtHR, 8 November 2016, *Põnkä v. Estonia*, no. 64160/11, § 32.

26 ECtHR, 24 October 2017, *Eker v. Turkey*, no. 24016/05, § 30.

27 ECtHR, 8 February 2005, *Miller v. Sweden*, no. 55853/00, § 29, ECtHR, 8 November 2016, *Põnkä v. Estonia*, no. 64160/11, § 32.

28 ECtHR, 12 April 2006, *Martine v. France*, no. 58675/00, § 42.

public hearing. Until now the ECtHR has not decided on such a case. In my opinion, the answer should be negative, because the pandemic itself does not involve any of the above-mentioned reasons characteristic for a concrete dispute which justifies such exclusion. As an external phenomenon, a pandemic can determine the form of the public hearing, but not its necessity.

The significant and detailed elements of public hearings are components of the basic rights of many European countries.²⁹ In England, it is a component of a general principle of common law named *natural justice* or *a duty to act fairly*, limited in exceptional circumstances, when vulnerable adults are involved or national security issues are decided.³⁰ Anyone whose rights are affected by an official decision is entitled to a fair hearing before an unbiased judge.³¹ Since *Ridge v Baldwin*,³² the right to a hearing is no longer limited to judicial functions, being extended into most areas of government. Within the principle of *open justice*, public hearings play a significant role for the whole of society, whose members can observe the adjudication process and follow the courts' decisions. The public has a collective interest in being apprised of whether the litigants were treated fairly and equally. It is significant if the law was applied accurately, judiciously, and impartially to produce a final outcome.³³ In the Polish legal doctrine, the right to a public hearing is regarded as a component of the right to a court, pursuant to Article 45 para. 1 of the Constitution.³⁴ In Austria the right to a public hearing, which should be oral and public, is stipulated for civil and criminal disputes and is also binding for the administrative judiciary. The administrative judiciary in Austria is a real part of the judiciary and is subject to all the principles characteristic of the third state power.³⁵ In Germany, the right to be heard (*Anspruch auf rechtliches Gehör*) is guaranteed for everyone who participates in judicial proceedings (article 103 para. 1 of the Basic Law). This rule is regarded as an instrument for guaranteeing justice in court proceedings. It is important not only to know the parties' statements but also to take them into consideration in the adjudication process.³⁶ However, there is no general guarantee for public hearings. If public hearings are not being held, parties to the proceedings should have other possibilities, mainly in a written form, to present their statements before a court.³⁷ A violation of the right for the public to participate in public hearings, including the media, is regarded as an absolute basis for revision of the issued judgment, which is taken into account *ex officio* in revision

²⁹ See Article 24 para. 2 the Spanish Constitution, article 20 para. 1 Greece's Constitution and Article 96 para. 2 Constitution of the Czech Republic.

³⁰ P. Craig, *Administrative law*, Thomson Reuters, 2021, p. 358.

³¹ J. Alder, *Constitutional and administrative law*, Palgrave Macmillan Law Masters, 2007, p. 406.

³² *Ridge versus Baldwin* (No 1), 1964, AC 40.

³³ S. Rodrick, Achieving the aims of open justice? The relationship between the courts, the media and the public, *Deakin Law Review*, 2014, no 1(19), p. 125.

³⁴ The Constitution of the Republic of Poland from 2nd April 1997, *Journal of Laws* 1997, no 78, item 483 as amended.

³⁵ See K. Pabel, Das Verfahren vor den Verwaltungsgerichten, in: J. Fischer, K. Pabel, N. Raschauer (ed.), *Handbuch der Verwaltungsgerichtsbarkeit*, Jan Sramek Verlag, 2014, p. 8.

³⁶ See P.P. Garmelmann, *Das rechtliche Gehör vor Gericht im europäischen Recht*, Nomos, 2014, p. 44, 58.

³⁷ B. Pieroth, in: H.D. Jarras, B. Pieroth, *Grundgesetz für die Bundesrepublik Deutschland. Kommentar*, C.H. Beck, 2016, p. 1109. For the proceedings before administrative courts, according to § 55 VwGO, the rules from § 169, 171a to 198 the Court Constitution Act (BGBl. 1975 I p. 1077) are binding.

proceedings.³⁸ In France, this right is derived from Articles 6 and 16 of the Declaration of the Rights of Man and of the Citizen from 1789,³⁹ which has constitutional rank. In practice, the principle of public scrutiny is more largely referred to on the basis of Article 6 of the ECHR⁴⁰ and – when it comes to administrative courts – Article L. 6 of the French Code of administrative justice. The French Council of State affirmed that the principle of public scrutiny is applicable in all court-administrative proceedings.⁴¹

In some countries, the possibility of conducting online hearings has been provided before the pandemic.⁴² In 2013 it was introduced into German Law on the organization of the administrative judiciary,⁴³ but in practical terms, it was not applicable, due to the limited technical capacities of courts and the lack of acceptance by parties to the proceedings.⁴⁴ Since 2017 the administrative courts in Austria can examine witnesses with sound and image transmission if physical presence before a court is not convenient due to economic or other important reasons.⁴⁵ There is no doubt that within such an online hearing all guarantees that the parties to the proceedings can participate actively should be maintained.⁴⁶ In the same year (2017), online communication was introduced into English criminal proceedings by the adoption of “live links” which facilitated contact between an arrested person held at a police station and an officer of the police.⁴⁷ The outbreak of the pandemic led to the adoption of many regulations in this area throughout the world. Furthermore, the nature of public hearings has been changed gradually by the adoption of electronic files and signatures. One of the first reactions to the pandemic in the Polish administrative judiciary was to provide all judges with electronic signatures. Thanks to this ability, judges can sign judgments and other documents including official reports and procedural decisions issued during public hearings without leaving their

³⁸ See W.R. Schenke, in: W.R. Schenke (ed.), *Verwaltungsgerichtsordnung. Kommentar*, C.H. Beck, 2020, p. 686.

³⁹ Decision of the Constitutional Council no. 2021-922 QPC from the 25th of June 2021 (<https://www.conseil-constitutionnel.fr/les-decisions/decision-n-2021-922-qpc-du-25-juin-2021-decision-de-renvoi-ce>). [accessed 10 April 2023].

⁴⁰ See A. Cappello, *Autorités administratives indépendantes, Répertoire de droit pénal et de procédure pénale*, October 2016, <https://dalloz.fr> and Hélène Surrel, *La publicité des audiences et l'applicabilité de l'article 6 de la Convention européenne des droits de l'homme aux juridictions financières*, *RFDA*, 1999, pp. 1022–1031.

⁴¹ Decision of the Council of State Sté La Huta, 12 Mai 1961, no. 40674.

⁴² In the Italian Code of Criminal Procedure video-hearings have been allowed since 1992. See Anne Sanders, *Video-hearings in Europe before, during and after the Covid-19 pandemic*, *International Journal for Court Administration* 2021, 2(12), p. 5.

⁴³ Gesetz zur Intensivierung des Einsatzes von Videokonferenztechnik in gerichtlichen und staatsanwaltlichen Verfahren from 25.04.2013 (BGBl. I, S. 935). Article 102a of this Law shapes the possibility of changing the location of the public hearing by parties to the proceedings, their representatives and legal advisors with perseverance of image and sound.

⁴⁴ Ulla Held-Daab, *Videoverhandlung und -vernehmung im Verwaltungsprozess*, *Deutsches Verwaltungsblatt* 2021, no 12, p. 776.

⁴⁵ § 25 para. 6b of the Austrian proceedings before administrative courts (BGBl. 2013 I Nr. 122). Regulations that gave broader possibilities to organize public hearings in an online form were introduced in a statute about special measures due to the pandemic in proceedings before administrative courts, the Federal Administrative Court and the Federal Constitutional Court (BGBl. I Nr 16/2020). See A. Wimmer, *Audiovisuelle Verfahrensführung vor Verwaltungsbehörden und Verwaltungsgerichten*, *Zeitschrift der Verwaltungsgerichtsbarkeit*, 2020, pp. 477–478.

⁴⁶ See M. Köhler, N. Brandtner, Ch. Schmelz, *Kommentar zum Verwaltungsgerichtsverfahrensgesetz*, Lexis Nexis 2021, pp. 557–558.

⁴⁷ Policing and Crime Act 2017, part 4, chapter 3, section 74.

homes. The pandemic has focused attention on these innovations but was not a starting point for their development and incorporation into judicial practice.

2.2. PUBLIC SCRUTINY INSIDE THE ADMINISTRATIVE JUDICIARY

Though it is generally incorrect to disregard the importance of public scrutiny for court disputes, it is reasonable to say that for some of them, a mixture of various principles may be different. For some disputes, as in criminal matters, public hearings have crucial importance. A public hearing within those disputes is regarded as a basic tool for a defendant to present his or her reasons and to ask witnesses questions.⁴⁸ For some others, the reasonable time of court settlement or the protection of the private lives of parties to the proceedings may be assessed as more significant and for that reason reduce the need for public scrutiny. Examples of this are provided by disputes adjudicated by administrative courts which are focused on control over public administration decisions, and are based on evidence submitted by administrative authorities with strongly reduced discovery proceedings. In the proceedings before the Polish administrative courts, only documentary proof which is necessary to resolve substantial doubts and will not extend excessively the proceedings on the case can be evaluated. In such procedural circumstances, a lawsuit is reduced to the statements of the parties, which may be presented in an online or even written form. Then an oral hearing may be assessed by a court as unnecessary because of the lack of relevance. Court adjudication is based on documents submitted by an administrative body.⁴⁹ Nevertheless, even in such procedural conditions, the significance of public hearings should not be entirely neglected. The level of factual and legal complexity in those disputes may create a need for a public hearing with parties to the proceedings, in order to ask them concrete questions and observe their reactions to the reasons presented by the courts and the other participants of the court dispute. Furthermore, international and national standards of court openness do not generally exclude disputes before administrative courts. In many countries where the administrative courts are focused on control over public administration, it is possible to accept broader evidence, including testimony from witnesses and expert witnesses. In the Czech Republic courts can repeat proof that was submitted before administrative bodies.⁵⁰ The same applies in Austria and Germany, where discovery proceedings before administrative courts are not generally limited exclusively to documents.⁵¹ This creates a greater necessity to organize public hearings at least in an online form.

If attention is focused on the functions of public hearings within administrative judiciaries, it is evident that it leads to public supervision over courts that are not subordinated to any control mechanisms performed by legislative and executive powers, thanks to their independence.⁵² This kind of control has an importance on the

⁴⁸ Ch. Grabenwarter, K. Pabel, *Europäische Menschenrechtskonvention*, C.H. Beck, 2016, p. 534, J.M. Baldwin, J.M. Eassey, E.J. Brooke, Court operations during the Covid-19 pandemic, *American Journal of Criminal Justice*, 2020, pp. 747–748.

⁴⁹ ECtHR, 19 April 2007, *Vilho Eskelinen and others v. Finland*, no. 63235/00, § 73–74.

⁵⁰ See V. Tomoszková, M. Tomoszek, Die Verwaltungsgerichtsbarkeit in Tschechien, *Osteuropa-Recht*, 2015, no. 3, p. 281.

⁵¹ See F. Hufen, *Verwaltungsprozessrecht*, C.H. Beck, 2021, p. 578, K. Pabel, Das Verfahren vor den Verwaltungsgerichten, in: *Handbuch*, p. 407.

⁵² S. Storr, Die österreichische Verwaltungsgerichtsbarkeit im europäischem Kontext, in: *Handbuch*, p. 93.

level of public trust in the courts and judges. If court proceedings are conducted in a fair and transparent way, the level of trust may be higher, which is significant for all judiciaries, especially those who are suffering from a low level of trust.⁵³ It is stressed that online hearings may offer parties more feasible circumstances to participate in a less formal way⁵⁴ and save money. In Germany, according to predictions of the legislator in 2010, the costs of each videoconferencing amounted to between 5000 and 12000 Euro. The positive effects, like accelerations of proceedings, were assessed as a reasonable justification for these costs.⁵⁵ Online hearings may be a solution for those who have serious difficulties getting to a court because of a lack of public transport options.⁵⁶ For disabled people, the opportunity to take part in an online hearing may enable wider access to the court.⁵⁷ However, this reason is convincing for those with a physical disability relating to mobility. It is not convincing for people with sight or hearing disabilities. Public hearings are important from an educational and research point of view, too. They create a possibility not only for better knowledge about court procedures but also for shedding light on moral and social values, the understanding of which is significant for society as a whole. In addition, this openness can help courts in making discretionary decisions: scrutiny can better ensure judicial integrity by providing that judges or tribunal members recognize their obligation to address their own biases.⁵⁸ In my opinion, this function cannot be reduced to these kinds of judgments: it embraces all of them, due to the possibility of direct contact between the court and parties to the proceedings.

3. HOW IS THE PRINCIPLE OF PUBLIC ACCESS ENSURED DURING THE COVID-19 PANDEMIC?

As an emergency situation, the pandemic forced courts to implement extraordinary measures aimed at reducing physical contact with citizens, including parties to the proceedings and even physical contact between judges. The adoption of safety measures aimed at physical distancing is regarded as a basic condition for courts' functioning during the pandemic.⁵⁹ Taking into consideration experiences from various countries, the restrictions applied to the principle of public openness took three basic forms: completely dispensing with physical hearings especially in the first weeks of the

53 See the 2022 EU Justice Scoreboard, Publication Office of the EU 2022, p. 50. In some countries, like Poland, a low level of public trust in the courts gives rise to controversial reforms which result in weakening judicial independence. See W. Sadurski, Poland's constitutional breakdown, Oxford University Press, 2019, p. 96–124.

54 M. Fabri, Will Covid-19 accelerate implementation of ICT in courts?, *International Journal for Court Administration*, 2021, 2(12), p. 8.

55 See Entwurf eines Gesetzes zur Intensivierung des Einsatzes von Videokonferenztechnik in gerichtlichen und staatsanwaltlichen Verfahren, Drucksache 17/1224 from 24.03.2010, <https://dserver.bundestag.de/btd/17/012/1701224.pdf> [accessed 11 December 2022].

56 A. Wimmer, Audiovisuelle Verfahrensführung ..., p. 479.

57 M. Köhler, N. Brandtner, Ch. Schmelz, *Kommentar zum Verwaltungsgerichtsverfahrensgesetz*, Lexis Nexis, 2021, p. 558.

58 K. Pabel, Die mündliche Verhandlung vor dem Verwaltungsgericht, *Zeitschrift der Gerichtsbarkeit*, 2018, No 5, p. 13.

59 See the CEPEJ Declaration entitled "Lessons learnt and challenges faced by the judiciary during and after the Covid-19 pandemic" from 10 June 2020, <https://rm.coe.int/declaration-en/16809ea1e2> [accessed 11 December 2022].

pandemic,⁶⁰ organizing physical hearings with a limited physical presence,⁶¹ or organizing public hearings in an online form, aimed at limiting the number of participants in the court itself.⁶² Gradually, the third form has come to prevail, which is undoubtedly a positive tendency, because it gives a chance for all participants to discuss the contested points of a dispute at the same time, and mostly with live video streams.

The idea of online hearings, especially in emergency circumstances, seems to be the most welcome solution to maintain the principle of public openness outside judicial buildings. Simultaneously it raises many questions about how it should be organized in detail, in order to create wide access to courts for all parties to the proceedings and for an audience. Such details, like the obligation to use cameras during online hearings or for the parties to the proceedings to be present on a screen in the courtroom, are significant guarantees of publicity. Besides that, it is important what conditions should be fulfilled by a place where a party or a witness stays during an online hearing.⁶³ Focusing on parties' perspectives, a basic requirement is to ensure access to online hearings for all participants, including those who do not have sufficient equipment or knowledge of how to participate in such a format.⁶⁴ A reasonable solution will be to offer those parties the possibility to participate in online hearings inside courts or other public institutions close to their domiciles. As administrative courts in many countries are specialized courts and for that reason are located in the capital cities of a country or of some regions, it will be reasonable to shape the possibility of participating in online hearings inside other courts' buildings (civil or criminal) which are usually more numerous than administrative judiciaries or even in the seats of local municipalities. Attendance could also be possible from the offices of the parties' representatives. Another option would be to allow them to participate physically if it is possible, due to health or safety conditions. In this option, some parties will be present in a courtroom and some will be online; this, however, may raise concerns about the equality of arms. This reason was formulated by judges in the Supreme Administrative Court in Warsaw as a justification for dispensing with online hearings when one of the parties to the proceedings stated that he or she was unable to take part in such a hearing. Such concerns are not justified, however, because online hearings substitute physical presence and each form of orality, including physical or online presence or even telephoning, gives a chance to present reasons before courts.

60 E.g. in several Swiss cantons court hearings were suspended until the middle or end of April 2020. See D. Kettinger, A. Lienhard, Swiss courts facing the challenges of Covid-19, *International Journal for Court Administration*, 2021, 2(12), p. 6. Access to court buildings was excluded also in other European countries like Belgium from 16 March 2020 to 5 June 2020 and Norway from 12 March 2020 to 10 August 2020 and from 16 November 2020 to 1 December 2020. See ACA-Europe Transversal Analysis 2020. The Supreme Administrative Courts in times of Covid-19 – a lesson learned, https://www.aca-europe.eu/images/media_kit/aca_surveys/2020/TRANAL2020_EN.pdf [accessed 11 December 2022].

61 E.g. in France and Ireland only a limited number of participants were permitted to be present in a courtroom with a social distancing. See ACA-Europe Transversal Analysis 2020. The Supreme Administrative Courts in times of Covid-19 – a lesson learned, https://www.aca-europe.eu/images/media_kit/aca_surveys/2020/TRANAL2020_EN.pdf [accessed 11 December 2022].

62 Oral hearings were present in Estonia, the Netherlands, Norway, Spain, Poland, Ireland and Italy. See ACA-Europe Transversal Analysis 2020. The Supreme Administrative Courts in times of Covid-19 – a lesson learned, https://www.aca-europe.eu/images/media_kit/aca_surveys/2020/TRANAL2020_EN.pdf [accessed 11 December 2022].

63 Ulla Held-Daab, Videoverhandlung ..., pp. 778–779.

64 Detailed regulations how to create real access to online hearings are present in the Guidelines on videoconferencing in judicial proceedings adopted by the CEPEJ on 16 and 17 June 2021, pp. 5–9, 35–41.

Nevertheless, from the perspective of opening justice to individuals, it is much better to organize a hearing in a hybrid form than to dispense with public access completely, or to wait for better conditions at an unspecified point in the future, when all parties to the proceedings will be able to take part in a physical hearing. Moreover, a hybrid form offers a choice for parties to the proceedings, who can freely decide whether to participate in public hearings personally or online.

Separate concerns are connected with such fundamental rights of the parties as the right to privacy, trade secrets, and safety.⁶⁵ In procedural regulations, exceptions to the participation of a broader audience in physical proceedings are regulated. These exceptions are usually connected with a threat involving endangering morals, state security, public order, or protection of the private life of parties to the proceedings.⁶⁶ These should remain binding for online hearings. The protection of those rights should be even broader, especially when access to online hearings is possible for everyone. In those cases, a decision after a detailed, proportional assessment of all the reasons pro and contra concerning wide access to online hearings should be made. If it is assessed as reasonable by the court, the names of the parties or witnesses should be anonymized. Another option is to dispense with broadcasting hearings if it is permissible to organize them with a delay.⁶⁷ The most drastic solution would be to exclude the public audience from online hearings.

From the perspective of the audience, it is debatable how the public can be informed about online hearings and whether those who want to participate should be registered. This question seems to be obvious to some extent because information about disputes and their contents can be presented on internet websites and inside court buildings. In some jurisdictions, court authorities inform the media about disputes which seem to contain matters of law that have a public interest element and for that reason, are important to the public. In Germany, this tradition came from the initiative of the Imperial Court of Justice and is continued by the Federal Supreme Court.⁶⁸ In my opinion, all the participants of an online hearing should be known to the court, because it will give judges awareness of the identity of the public present, for example, when the audience behavior is inappropriate for courtrooms. A process of identification should be clear within the applicable legal framework and not excessively intrusive or burdensome.⁶⁹ Prior registration for attendance in an online hearing seems to be a reasonable solution. From an individual's perspective, contact details can be beneficial in the event of technical difficulties. The court service can assist an individual in setting up or restoring the connection. The transmission of private data would be not

⁶⁵ According to the Guidelines of the Committee of Ministers of the Council of Europe on online dispute resolution mechanisms in civil and administrative court proceedings from 16 June 2021, the court must ensure that personal data is processed with the highest privacy protection. See guideline No 33, with general comments.

⁶⁶ See article 96 of the Polish Law on proceedings before administrative courts or § 25 Nb 1 of the Austrian proceedings before administrative courts.

⁶⁷ For more detailed considerations devoted to this subject, see C. Chainais, *Open justice and the principle of public access to hearings in the age of information technology: theoretical perspectives and comparative law*, in: *Open justice...*, pp. 84–85.

⁶⁸ See B. Hess, *Justiz und Kommunikation – zur veränderten Wahrnehmung der Ziviljustiz in Staat und Gesellschaft*, in: Ch. Althammer, Ch. Schärfl (ed.), *Dogmatik als Fundament für Forschung und Lehre. Festschrift für Herbert Roth zum 70. Geburtstag*, Mohr Siebeck, 2021, p. 366–367.

⁶⁹ See the Guidelines on videoconferencing in judicial proceedings adopted by the CEPEJ on 16 and 17 June 2021, No 10.

unfavorable for individuals because the courts, like all public institutions, are obliged to follow legal regulations on private data.⁷⁰ It is questionable whether the private data of participants, including their names and image, should be known to the whole audience. At least the court panel should have a broad view of the participant's data. Information about the private data of the audience is not necessary for the parties, because it does not have any impact on the course of the proceedings. In general, members of the audience should be visible to the court panel, parties to the proceedings, and to each other. Although this solution may contribute to a better understanding of the course of proceedings, it can also be reduced to just the court's view.

Focusing on parties' needs, the impact of online hearings on courts' perspectives and judicial independence should not be omitted. New forms of public scrutiny may affect the internal sphere of judicial independence and efforts should be made to ensure this value is not weakened. According to a survey conducted in 2012 among criminal judges and prosecutors in Germany, the media have an impact on the severity of the penalties adjudicated in criminal proceedings.⁷¹ Online hearings create the possibility of a non-limited audience attending, which would mean that, without any registration, the audience would be totally anonymous for a court. In such situations, a trial takes place before a new court, named "the Court of Public Opinion".⁷² Though the consciousness of being observed may increase a judge's accountability, from the court's perspective a lack of even simple registration is not feasible. It is not the same as physical hearings, where a judge can observe the audience, and it is limited to the capacity of the courtroom. In other words, in a courtroom people are not entirely anonymous. They should behave in a way that will not disturb the conduct of proceedings. A court may impose obligations and fines on them in order to organize public hearings in a proper way. Without any information about the audience, these mechanisms for maintaining order may be ineffective.

For technical and verbal reasons, the possibility to reduce the size of the audience should be assessed as justified. During online hearings, such technical conditions as a constant and clear flow of audio and video have crucial importance. If the quality of an electronic system is threatened, every solution aimed at reducing such difficulties, including limiting the number of participants, should be taken into consideration.⁷³ In courtrooms, this reduction is dictated by their capacities. Though electronic possibilities make it possible to provide wider access to public hearings, they can negatively affect the quality of transmission. Even if specific parts of disputes remain inaccessible to the public, a large audience may affect the internal sphere of judicial independence, especially if it is not defined in any way by a court. On the one hand, judges are public officers and should be accustomed to working in the presence of the public. On the other hand, the lack of a physical audience may lead to uncertainty

⁷⁰ According to guideline 11 on videoconferencing in judicial proceedings adopted by the CEPEJ, all necessary measures should be taken in order to eliminate any risk of a violation of the parties' right to privacy.

⁷¹ See Lars Rademacher, Alexander Schmitt-Geiger (ed.), *Litigation-PR: Zum systematischen Stand der strategischen Rechtskommunikation*, Springer, 2012, p. 234.

⁷² See C. Chainais, Open justice and the principle of public access to hearings in the age of information technology: theoretical perspectives and comparative law, in: B. Hess, A.K. Harvey (eds.), *Open justice. The role of courts in a democratic society*, Nomos, Baden-Baden 2019, p. 73.

⁷³ See the guideline 22 of the Committee of Ministers of the Council of Europe on online dispute resolution mechanisms in civil and administrative court proceedings from 16 June 2021.

and even fear before false accusations on social media⁷⁴ or, more generally, in the whole public sphere, including personal contact. Those reasons should not prevail over the principle of public scrutiny but they should be taken into consideration in discussions about broader access to public hearings, including new technologies that can facilitate them.

4. ARE PHYSICAL HEARINGS STILL NECESSARY?

A positive approach to online hearings raises questions about the rationality of maintaining physical hearings in the court's practice. In my opinion, completely dispensing with this form of hearing will not be justified in times when there is no serious threat to human life or health.

Firstly, physical hearings give a broader perspective for observing the parties' behavior. A lack of personal contact between judges, witnesses, and parties can lead to a false evaluation of parties' credibility. For that reason, it is proposed that the main witnesses should be interrogated in physical attendance before a court.⁷⁵ Though using cameras facilitates contact between all participants, nonverbal reactions are not entirely visible. A significant part of human communication has a nonverbal nature.⁷⁶ In addition, attendance at online hearings may impact trial perception and the gravity of the case.⁷⁷ For all the participants of a court dispute, personal contact and interactions may have crucial importance for their behavior and orientation in the course of the proceedings.

Secondly, from the organizational point of view, online hearings might not be less burdensome and time-consuming than physical hearings. They are convenient for parties to the proceedings who can avoid traveling to courts, thereby saving time and money. Nevertheless, not all parties have the ability to use electronic devices to contact the court and not all possess computers, iPhones, iPads, etc., or the money for Wi-Fi, broadband, or the internet generally. For judges, the benefits are less visible, because electronic difficulties can disrupt trials or make them more time-consuming. Even if there are no such obstacles, online hearings do not last for shorter time periods than their physical counterpart. From the experience of the Polish Supreme Administrative Court, while public hearings in physical form are scheduled every twenty minutes, online hearings are scheduled every one hour.⁷⁸ Therefore, it is obvious that fewer hearings can be organized during one session. Online hearings cannot be regarded as a measure for accelerating courts' adjudication.

Thirdly, besides economic savings connected with it not being necessary to travel to courts, online hearings may be much more expensive for both courts and individuals,

⁷⁴ This danger was observed among German judges. See Anne Sanders, Video-hearings in Europe before, during and after the Covid-19 pandemic, *International Journal for Court Administration* 2020, 2, p. 15.

⁷⁵ Rolf P. Schenke, § 102a VwGO in: Wolf-Rüdiger Schenke (ed.), *Verwaltungsgerichtsordnung. Kommentar*, C.H. Beck, 2020, p. 1301.

⁷⁶ A. Wimmer, Audiovisuelle Verfahrensführung vor Verwaltungsbehörden und Verwaltungsgerichten, *Zeitschrift der Verwaltungsgerichtsbarkeit*, 2020, p. 479, M.A. Hjort, Orality and digital hearings, *International Journal of Procedural Law*, 2022, no. 1, p. 37–38.

⁷⁷ M. Fabri, Will Covid-19 accelerate implementation of ICT in courts?, *International Journal for Court Administration*, 2021, 2, p. 5.

⁷⁸ The author works in the office of the President of the Polish Supreme Administrative Court and this information is known to him due to his professional experience in the court.

because of the obligation to buy modern equipment⁷⁹ and the necessity of its service by qualified IT engineers. For some individuals, even an acquisition of less modern equipment and its connection to the internet for financial reasons is not affordable. In addition, for some litigants, the adoption of electronic devices may be too complicated and for that reason, they can be entirely excluded from this form of communication.⁸⁰ For that reason, courts should make it possible to take part in public hearings inside court buildings. This obligation can be broadened to all public institutions, especially those that are located close to the living areas of parties to the proceedings.

However, it should be stressed that the above-mentioned limitations to online hearings may not be decisive in the future. Undoubtedly, new technologies will be developed and at some time, will facilitate broader possibilities for virtual communication and interaction between the participants of court disputes, even in a three-dimensional format. The timeframes of online hearings will be rationalized. Financial austerity cannot be allowed to restrict the development of the judiciary because, over time, the courts would be technically incapable of resolving disputes. The same goes for the human resources element since the number of employees in the judiciary depends on economic factors, not on the lack of qualified workers in society. Nevertheless, in many jurisdictions, an immediate switch to online hearings in all disputes will undoubtedly lead to a limitation of access to justice, as many citizens do not have access to electronic means of communicating with the public authorities or devices with high-quality video or voice transmission. It is noticeable that among the Visegrad Countries, the highest level of citizens who use electronic data boxes is in Hungary (over 40%) and the lowest level in Slovakia (less than 5%).⁸¹ In Poland, there is still a significant number of people who do not have access to electronic means of communication. It depends on age and domicile in big cities or villages, but still, even in the young generation, it amounts to approx. 10%.⁸²

A rational approach to online hearings raises questions about alternative methods to ensure public scrutiny inside court proceedings. A noteworthy solution during a pandemic would be to organize physical hearings in spacious halls, where a broad audience can participate while maintaining social distance.⁸³ For economic reasons linked with the huge costs of renting those halls, this possibility cannot be applied regularly. Other options are connected with reducing the number of participants in

79 As. B. Hess has informed that the Provincial Court (Landesgericht) in Cologne had only one room where online hearings could be broadcasted. See B. Hess, *Justiz und Kommunikation – zur veränderten Wahrnehmung der Ziviljustiz in Staat und Gesellschaft*, in: Ch. Althammer, Ch. Schärfl (ed.), *Dogmatik als Fundament für Forschung und Lehre. Festschrift für Herbert Roth zum 70. Geburtstag*, Mohr Siebeck, 2021, p. 364.

80 See the report of the Polish Central Statistical Office about the informatization of the Polish society <https://stat.gov.pl/obszary-tematyczne/nauka-i-technika-spoleczenstwo-informacyjne/spoleczenstwo-informacyjne/spoleczenstwo-informacyjne-w-polsce-w-2022-roku,1,16.html> [accessed 11 May 2023].

81 See M. Horvat, W. Piątek, L. Potěšil, K. Rozsnay, *Public administration's adaptation to Covid-19 pandemic – Czech, Hungarian, Polish and Slovak experience*, *Central European Public Administration Review*, 2021, no. 1, p. 140.

82 See T. Śmiałowski, *Demograficzne i terytorialne uwarunkowania zróżnicowania wykluczenia cyfrowego*, *The Polish Statistician*, 2020, no. 1, p. 38, DOI: <https://doi.org/10.5604/01.3001.0013.9027>.

83 The German Federal Administrative Court decided to organize public hearings in the congress centre in Leipzig for a case concerning the building of a tunnel under the Baltic Sea between Germany and Denmark. See A. Zimmermann, *Fehmarnbelt tunnel put to the test in front of the Leipzig Federal Administrative Court*, <https://www.lvz.de/Leipzig/Lokales/Fehmarnbelt-Tunnel-vor-Leipziger-BVG-auf-dem-Prufestand> [accessed 11 December 2022].

physical hearings. Such proceedings can only be organized in selected courtrooms or only for parties to the proceedings, and not for the public. Another option would be the adoption of simpler technical forms, like telephoning, which would be more accessible for individuals. This form of contact with parties and witnesses may be applied in the English courts. The decision to hold a proceeding by telephone is made by a judge.⁸⁴ However, those forms seem to be unfeasible for individuals in countries with low levels of trust in courts.⁸⁵ Simultaneously it is important to offer broader access to justice in other forms of public scrutiny, such as the parties' access to court files in digital form, deliveries of documents and information for parties to the proceedings, or general information about concrete disputes for an audience. A noteworthy solution is practiced in Norway, where parties to the proceedings prepare short descriptions of their disputes which are published to a broad audience before the public hearing.⁸⁶ For the public, it can be beneficial if they can record public hearings not only in real time but also if they have access to past recordings.⁸⁷ They can be acknowledged in proceedings in which they are unable to participate. In addition, rehearing and deep analysis of past hearings can be justified for educational reasons.

Nevertheless, the adoption of new technologies may be treated as an option, but not as a complete substitution for public hearings in traditional form. It is convenient for proceedings where questions of law are disputed and parties to the proceedings are represented by professionals.⁸⁸ These conditions are fulfilled in disputes before administrative courts in which an adjudication process is based on verification of the law and the facts established by administrative bodies. These kinds of disputes, concerning the status of public servants or administrative penalties, are typical for administrative judiciaries in many countries. However, online hearings are not assessed as useful in contested cases with witnesses and parties who treat their cases emotionally.⁸⁹ For those disputes, physical hearings should remain as a rule, because the court can better observe the behaviour of witnesses and of the parties, assessing their credibility. It is conceivable that the development of new technologies will in the future facilitate the organization of online hearings in such disputes, but not substitute them entirely.

5. CONCLUSIONS

Public hearings before courts can feasibly be organized in a remote form. However, this does not mean that completely dispensing with physical hearings at all instance levels would be compatible with European and national standards of the rule of law. Even in disputes focused on control over public administration a need for a physical hearing may arise to guarantee access to a court. It is especially important for

⁸⁴ See <https://www.gov.uk/guidance/what-to-expect-when-joining-a-telephone-or-video-hearing> [accessed 11 December 2022].

⁸⁵ According to the EU Justice Scoreboard, Poland, Slovakia and Hungary have the lowest levels of perceived independence of judiciaries among the general public. See EU Justice Scoreboard, Publication Office of the EU 2022, p. 40.

⁸⁶ See M.S. Hagendal, IT in the Norwegian courts, in: ed. Aernout H.J. Schmidt, IT support of the judiciary, Hague 2004, p. 95.

⁸⁷ This possibility is offered by the UK Supreme Court on the website <https://www.supremecourt.uk/decided-cases/2020.html> [accessed 11 December 2022].

⁸⁸ Ulla Held-Daab, Videoverhandlung ..., p. 780.

⁸⁹ As an example, disputes from family law are pointed out. See Anne Sanders, Video-hearings in Europe before, during and after the Covid-19 pandemic, *International Journal for Court Administration* 2020, 2, p. 19.

countries with low levels of trust in the judiciary that parties to the proceedings are given a choice between participating in a physical or online hearing.

New technologies can make court adjudication more effective, and for that reason could be developed after the Covid-19 pandemic, but they should not be treated as the only solution for all the difficulties connected with the preservation of public scrutiny inside courts. Such improvements as electronic access to case files or information about the course of dispute for the broader audience are elements of open justice, too.

It is necessary to search for new forms of public scrutiny inside courts that will develop contemporary online and hybrid hearings and propose other solutions for making courts more open to the public. New phenomena connected with emergency situations, on the one hand, and technical development on the other, creates challenges for court transparency, which is a basic point for ensuring the courts meet citizens' needs and creating public trust in the adjudication processes.

COMPETING INTERESTS

The author has no competing interests to declare.

AUTHOR AFFILIATIONS

Wojciech Piątek  orcid.org/0000-0002-3494-1912
 Adam Mickiewicz University, Poland

TO CITE THIS ARTICLE:

Wojciech Piątek, 'A Right to a Public Hearing in Times of Emergency – Online or Physical?' (2023) 14(2) *International Journal for Court Administration* 6. DOI: <https://doi.org/10.36745/ijca.444>

Published: 06 September 2023

COPYRIGHT:

© 2023 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.

