

CONSEQUENCES OF THE CRISIS IN FAMILY LAW MATTERS AND JURISDICTIONS

On 22 April 2020, more than 180,000 people died from Covid 19 worldwide. In Europe alone, the virus has caused more than 112,000 deaths, nearly 2/3 of the deaths recorded.

We have asked to members of the UIA Family Law Commission working in the most affected countries, France, the United Kingdom, Spain, Italy, Germany and Switzerland, to present a comparative analysis of the consequences of the health crisis on family matters in their jurisdictions and how their law offices are facing these major changes that makes them rethink their practice and the family justice.

The purpose of this study is to help international family law practitioners to assess the consequences of the governmental measures taken in each of their closest jurisdictions and also to learn from good practices born abroad in this dramatic context.

Initiated in Europe, this study will then pass the baton to the American continent, which has itself been hit very hard.

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1. CAN APPLICATIONS IN FAMILY MATTERS BE FILED IN FRONT OF YOUR JURISDICTION DURING THE 'LOCKDOWN' AND HOW? HOW ARE PENDING CASES DEALT WITH?

FRANCE



Muriel Cadiou
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In France, a state of health emergency was ordered for two months from **24 March 2020** (*Loi d'urgence* of 23 March 2020) until **24 May 2020**.

At the time we are writing now, the official end of the "lockdown" in France has been set on the **11 May** but we don't know yet if the all the courts will reopen and how.

During the "lockdown", the courts are officially closed and the only applications that can be submitted in family matters are **international child abduction cases** or **urgent claims to obtain a restraining order in cases of domestic violence**.

For pending cases:

- The hearings that were originally set during the "lockdown period" are usually cancelled and postponed at another date,
- In written proceedings where the representation by a lawyer is mandatory, such as divorce, or in oral proceedings when the two parties have a lawyer, the court can decide that the proceeding will continue only in written that is so say without a hearing, solution that can be refused by the parties,
- Decisions that were supposed to be rendered during the "lockdown" can be postponed. Exceptionally, some decisions related to cases already heard in Court can be rendered and send to the parties by all means.

UNITED KINGDOM



Carolina Marín Pedreño
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Yes. Before “lockdown” applications for divorce, financial remedy and children matters were on the whole lodged at court on paper with the original signed copies. Her Majesty’s Court & Tribunal Service (“HMCTS”) started trialling on-line divorce around three years ago. Initially it only allowed parties to complete the originating application, now it is possible to undertake the whole application to conclusion online provided it is a straight forward divorce with a co-operating Respondent. This option was made available to all legal professionals and lay persons in December 2019.

Lockdown commenced in the UK on 23rd March 2020. Since then the courts have been operating at a reduced capacity. Presently, there are 159 open courts enabling face to face hearings, 117 staffed courts (not open to the public but undertaking judicial work) and 75 suspended courts (correct as at 20.04.20). Family lawyers as a rule are working from home save the exceptional case that must be dealt with face to court in court. This means filing new applications with the court now is being done primarily by email. Lodging papers by post is still possible. Urgent applications are being filed by email and marked “urgent”. In terms of pending cases, around 40% of court work is proceeding. The vast majority is proceeding by way of remote hearings. Senior members of the Family Division have been very proactive in trailing technology that enables remote hearings to take place.

The judiciary are prioritising public children work and some private children work such as child abduction and domestic abuse, together with urgent divorce applications and some urgent Court of Protection applications to include serious medical treatment cases and deprivation of liberty. Other work is being dealt with where possible to include divorce and financial remedy on divorce, probate, adoption orders and Court of Protection work.

In relation to private children law disputes (e.g. disputes between parents regarding their own children) there is an online application service which parties are being encouraged to use. In terms of court hearings, those that are not considered urgent are being adjourned and set down for a directions hearing within 28 days to determine whether to adjourn the matter or proceed via a remote hearing.

Dawson Cornwell have handled a number of remote hearings and two of which have been reported namely VB and TR [2020] EWFC28 (7th April 2020) and PT (a child) re [2020] EWHC834 (FAM) (31st March 2020).

SPAIN



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In Spain, all judicial bodies have been suspended since Royal Decree 463/2020 decreed a State of Alarm on 14 March 2020.

Few could have imagined when the State of Alarm was decreed that we were going to be confined for so long, and that the judicial organs were going to suffer complete paralysis.

In family proceedings, it is only possible to apply for precautionary measures (*medidas cautelares*) under Art. 158 of the Spanish Civil Code if urgent measures are required. The court deadlines remain suspended until further notice, but since 15th April 2020, it has been permissible to file new applications with the court.

The Spanish Judicial Power is working on a ‘*Clash plan*’ in order to reactivate judicial activity when the State of Alarm is suspended.

ITALY



On January 31st, 2020 the Italian Government declared the state of emergency, according to artt. 7, lett. c), e 24, c. 1, of the legislative decree 1/18, as a consequence of the WHO declaration dated Jan. 30th, 2020. A local lockdown was established on Feb. 23rd 2020.

The very first national action was one made by lawyers: on March 4th, 2020, the Organismo Congressuale Forense (one of the national associations of lawyers) declared a total abstention from hearings.

On March 8th, the Government followed by approving the law decree n. 11/20. Such decree imposed a general suspension of the judiciary activities until March 23rd. The final date was subsequently postponed to April 15th (art. 83, l.d. 18/20), and later to May 11th (art. 37, l.d. 23/20).

This measure was the first step towards a larger lockdown that took place on March 9th, 2020. This larger lockdown included, for example, regulations that restricted freedom of movement (granted by art. 16 of the Italian Constitution), and that consequentially also prevented carrying out other activities (included freedom of economic activities and right to work).

The suspension by art. 2, l.d. 11/20 and art. 83, l.d. 18/20 has some exceptions, namely in the field of family law matters and protection of vulnerable people:

- 1) some Juvenile Tribunal procedures (e.g., adoption procedures, foreign children without parents procedures, children brought away from their families, and situations of heavy risk for the child; surprisingly the same procedures in front of the Court of Appeal are not explicitly exempted from suspension).
- 2) Alimony and child support procedures (but not their enforcement procedures),
- 3) urgent procedures regarding personal fundamental rights; urgent procedures to protect the elderly and/or the handicapped persons.

Other exempted procedures aim at protecting personal health (e.g., the right to get an abortion for women under the age of 18; mandatory psychiatric treatments), immigration procedures, and other procedures that are defined as "urgent" either by law dispositions or by judges (and only if they involve fundamental rights).

Suspension of terms and procedures does not mean prohibition to file. All kind of procedures could be filed right now, no matter the field, the subject or the jurisdiction. Nevertheless, personal access to the Courts is forbidden. This means that one can only file in front of the ordinary jurisdiction, and only in those offices that are equipped with the digital process. Procedures in front of Justices of Peace, Juvenile Tribunal and Supreme Court cannot be filed, even if they address some of the matters excluded from the suspension (e.g., injunction decrees to recover extraordinary alimony anticipated by one of the parents, lesser than € 5.000,00, to be brought in front of the JoP; parental responsibility matters not involving alimony, to be brought in front of the Juvenile Tribunal).

As for pending cases, terms and hearings of the suspended procedures are postponed by law. But hearings of most non-suspended procedures are postponed as well by judges. As for now, Courts are dealing only with urgent requests, if they fall in one of the above-mentioned matters.

In next future, we expect to engage more in remote hearings which have already taken place through Skype or MS Teams.

Berlin, GERMANY



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Actually, there has never been an official “lockdown” in Justice. From March 16th on the government imposed rules on social distancing. Members of the public were required to reduce their contact with people other than the members of their own household to an absolute minimum.

In public, as far as possible, they had to keep a distance of at least 1.5 metres, preferably two metres, visiting public places was only permitted alone, with one other person who does not live in the same household. or when accompanied by the members of your own household. Travel to work or to provide emergency care, shopping for essentials, doctors’ appointments, attendance of meetings, necessary appointments and examinations, assistance for others or sport and exercise individually outdoors, as well as other necessary activities were still possible.

All enterprises, particularly those open to the public, adhere to the hygiene regulations and implement effective protective measures for staff and visitors. Regulations were issued regarding visiting hours in hospitals, care and rehabilitation centres, nursing homes and special types of similar establishments. Gatherings in clubs and other sporting and leisure facilities, etc., gatherings in churches, mosques, synagogues as well as gatherings of other religious communities were banned. Food retail outlets, weekly markets, collection and delivery services, beverage shops, pharmacies, medical supply stores, drugstores, petrol stations, banks and savings banks, post offices, hairdressers, dry cleaners, launderettes, newsagents, DIY stores, garden centres, pet supply shops as well as wholesalers were not closed.

Nothing was mentioned on behalf of courts.

As the organization of the courts is a competence of each Bundesland (state) the handling is different in every Bundesland and often even different from court to court.

In Berlin, which is a city and Bundesland as well, no decree has been issued, but all hearings in Family matters, that were originally set from March 16th on, were cancelled and postponed at another date, mostly starting by the end of May.

Every delay set by law in a written proceeding has still to be respected. Applications in family matters can continue to be filed by written application, sent to the court by post or by the German secured digital service “beA”, the official register of all attorneys in Germany with an official secure mail account with the Federal Bar Association. (Bundesrechtsanwaltskammer). Applications can be filed digitally at every court in Germany by this service. Response will only be obtained by courts that are already using the system effectively, which are few. Usually the answers is delivered by Fax (if urgent) or by post.

All of the four Family Courts in Berlin continue working, but in a very reduced way. Only urgent matters such as domestic violence, guardianship issues or questions related to statutory limitations are treated. This is mostly due to the fact, that neither judges nor clerks nor lawyers) have been considered “relevant groups”, thus were not open to receive child care for their children.

As from April 27th on they are considered relevant, their children can return in child care at kindergarten or school. Eventually this will lead to a faster service.

As per 27th of April, the Family courts declared to be on “full service” again by the end of May.

New general steps are to be issued from the government on May 6th.

Geneva, SWITZERLAND



Jennifer Brockington-Belli

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The Swiss federal government, Conseil fédéral, declared a state of « *extraordinary situation* » on March 16th, 2020. On this same date, the Geneva local government, Conseil d'Etat, declared the canton to be in a « state of necessity » and adopted two decrees implementing the lockdown, which became immediately effective.

Applications in family matters can continue to be filed by written application, sent to the court by registered post. Urgent filings can be made to a central clerk's office; but no acknowledgement of receipt proving date of filing is delivered to the applicant.

As for dealing with pending cases, on March 20th, 2020, effective on March 21st, 2020 the Swiss federal government adopted a decree suspending deadlines in civil proceedings (set by statute, an authority or jurisdiction), extending the usual Easter suspension to have it start immediately and last until April 19th, 2020. The end date was unchanged to what would have happened without COVID-19 or the lockdown. Locally, the civil court in Geneva ruled that deadlines set by a judge and expiring before May 10th, 2020, were extended until May 25th, 2020, save for urgent exceptions and contrary federal and cantonal statutes. Summary procedures applicable for instance to interim measures in divorce do not benefit from this suspension. So statutory deadlines in "*protective measures of the conjugal union*", which is the name for the separation proceedings that take place before the spouses have been separated two years if one of the spouses doesn't consent to divorce, were not suspended. The suspension also didn't apply to proceedings before the Tribunal de protection de l'adulte et de l'enfant that handles cases where the only issue is centred around the child and non-financial (unless the parents have reached an agreement which the judge simply ratifies). To manage this issue, when requested to do so by a party, this court internally decided to extend deadlines and, save for absolutely urgent cases, rulings were not being served – so no deadline to appeal was beginning. No hearings were held between March 16th, 2020, and April 19th, 2020. Urgent or necessary hearings (as determined by the judge conducting the case) resumed being held as from April 20th, 2020. Strict rules are applicable for those: closed proceedings, only in presence of the summoned parties (and their lawyers), experts or witnesses, respecting social distancing rules (2 meters), daily disinfection of the courtrooms, availability of alcohol gel at the entrance of the court buildings and rooms, invitation to the parties to leave the premises promptly after the end of the hearing, plus other measures should a party present symptoms (facemask, etc...). Other than that, a written procedure is to be preferred if possible. The serving of decisions resumed on April 16th, 2020.

On the 16th of April, 2020, another decree was adopted by the Conseil fédéral, effective on April 20th, easing the ability for courts to conduct hearings via video-conference with the parties' agreement unless reasonable grounds prevent it. In case of urgency, those hearings can exceptionally be held by video-conference even without the parties' agreement. The same decree enables the Tribunal de protection de l'enfant et de l'adulte to conduct a hearing by conference-call or video-call, with a single judge rather than multiple judges. All remotely conducted hearings must respect a certain number of rules, including guaranteeing quality of the stream's sound and image, as well as the recording and addition to the file of this record, and data protection.

2. WHAT ARE THE MEANS OF COMMUNICATION WITH COURTS IN FAMILY MATTERS DURING THIS TIME?

FRANCE



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The Ordonnance n°2020-304 of 25 March 2020 allows the court to communicate with the parties to keep them informed by all means. This includes letters, emails, phone calls or via the RPVA (Private Virtual Network for Lawyers). But in practice, contacting family courts is difficult. Basically, family justice in France has come to a standstill. Most courts cannot be reached by email and for written proceedings that are usually carried through the RPVA, no answer is usually received. Video hearings are legally allowed but in fact, are rarely, not to say never, proposed in family matters.

Lawyers are encouraged to only communicate with the courts when absolutely necessary and have no other solution than waiting for information. Most clerks have been asked to stay at home and don't have access to the files anymore. Only a very small number of clerks still comes to the courts on-call for urgent matters and can be reached by phone on specific days for instance in Paris.

On their side, the judges try sometimes to contact the lawyers, either to offer in replacement to a hearing a written proceeding or to announce ... the postponing of the hearing. During the lockdown most of them still continue to work from home but to render the decisions related to cases that have already been heard.

Justice in France is at a standstill, slowed down as much as possible, and the communication measures announced in the law are ineffective.

UNITED KINGDOM



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Communication with the courts is primary through email and, where necessary, telephone calls. Judges are more "hands on" often communicating with parties directly. Issues that currently remain unresolved include how the court shall "seal" orders (making it clear they are final and enforceable). Other issues include "service". Absent consent, technically the court's permission is required to serve other than in accordance with the rules (presently first class post or process server).

SPAIN



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The only way to communicate with the Court is by electronic means using *Lexnet*, a system for the management of remote and electronic notifications from the Courts to the professionals of the justice system (lawyers and attorneys) used in the Spanish Administration of Justice.

However, it has been proven that this system is inoperative, since the Judges, Court officers and Clerks have neither access keys nor systems to be able to connect remotely; something the lawyers did have.

ITALY

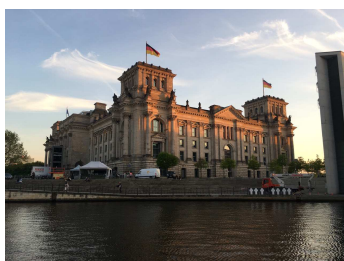


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International Family Law Network



We use ordinary means (such as digital process means) where available. In some cases, mostly where digital process is not available, we address judges via e-mail at the official court address or their working e-mail address, as suggested by our Minister of Justice.

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Applications can be filed digitally at every court in Germany by the beA, the official register of all attorneys. Response will only be obtained by courts that are already using the system effectively, which are few. Usually the answers is delivered by Fax (if urgent) or by post.

There are no remote hearings or video conferences. If considered necessary, there is still a hearing in a court room. Usually, those hearings will take place in the biggest court rooms existing in the building to permit a large distance between the parties.

Clerks are difficult to join, but usually there is a special unit kept for urgent matters. The courts' phone lines are still open daily during restricted hours.

Judged can be reached via telephone, if they are in the court building. This depends on their working habit. Many judges work in their home office and can thus not be reached.

As a consequence, written communication still is the main mean of communication with courts in family matters.

Geneva, SWITZERLAND



Jennifer Brockington-Belli

Etude SPIRA + ASSOCIEES

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Written communication has been the main mean of communication with courts in family matters during this time, although the courts' phone lines are still open daily during restricted hours.

3. WHAT ARE THE CONSEQUENCES OF THE 'LOCKDOWN' ON THE RIGHTS OF THE PARENTS AND IS THERE ANY OFFICIAL GUIDANCE?

FRANCE



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CADIOU & BARBE

In France, decisions setting parental rights **still apply**. According to the official guidance (www.service-public.fr/particuliers/actualites/A13987), the exercise of parental rights has to be respected in the health context. However, parents are invited to limit travels of children and avoid public transportation. Parents are therefore encouraged to find agreements to adapt their organization but when they can't the decision prevails.

Parents have to carry with them their *attestation de déplacement dérogatoire*, a proof of the identity of the child, a copy of the decision and any document proving the situation.

Refusing to apply a court decision is an offence punishable by **one year of imprisonment and a 15.000 € fine** (*délit de non-représentation d'enfant*). However, official guidance states that a refusal is justified in the sanitary context by one of the following reasons :

*“-if the distance between the two parents is significant and requires the child to travel a long distance by public transport;
-if one of the parents or the child shows symptoms;
-if a sick person lives in the home of one of the parents.”*

In international situations, when parents live in different countries, visitation rights are usually not possible because of the closing of the borders. Some exceptions can take place depending on the nationality of the child and each country's politic about authorizing to come back or from another country.

In that case, when the distance between the parents is significant and forbids a geographic displacement, contacts between the child and the parents have to be maintained by all means (phone, video calls).

Many situations cannot be solved only by following the official guidance and no judicial applications can be submitted during the “lockdown” to provide for news conditions. The role of family lawyers is thus more than ever crucial to accompany the parents to find solutions and help them to adjust the implementation of their rights in the best interest of the child.

UNITED KINGDOM



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Yes. Guidance has been provided by our Children and Family Court Advisory and Support Service (CAFCASS) as at 20th March 2020. Guidance says that the child's routine should be maintained unless there are justified medical/self-isolation issues. If any time is missed with the other parent it should be made up as appropriate and in accordance with the child's best interests. As alluded to in Question 1, applications may still be made to the court by parents if there is a dispute as to contact arrangements for the children.

SPAIN



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Article 7.1 e) of Royal Decree 463/2020, establishes that during the State of Alarm individuals are allowed to circulate along the roads of public use for the care and assistance of elderly, minors, dependents, people with disabilities or especially vulnerable people. This provision should be read in connection with Article 7.2 that allows the circulation of private vehicles on the roads of public use for the performance of activities referred to in the previous paragraph.

Since the Royal Decree was passed, there has been a lot of debate about the different interpretations of Child Arrangements Orders during the State of Alarm.

The Spanish Judicial Power agreed that each Board of Judges should determine in each case, what they consider to be most appropriate for the children and that, therefore, all the disputes should be determined in enforcement proceedings, without prejudice to the measures of art 158 CC – *which would otherwise lead to an avalanche of applications against what was established in the Royal decree*. This led to us having over 40 different guidance notes and rulings from the different Boards of Judges, which required the intervention of the Ministry of justice.

By way of example, the Judges of Barcelona were the first to pronounce that in sole custody cases, the children should stay with their main career, and when share custody arrangement were in place, the children shall stay with the parent they were currently with, without prejudice to having having indirect contact with the other parent by Skype, FaceTime, or WhatsApp.

This scenario meant that on the same day the Minister of Justice of Spain, Juan Carlos Campo, made a public a statement making clear those court orders should be strictly complied with on their own terms, unless there are exceptional circumstances of risk such as one of the parents being infected by COVID-19.

The current pandemic should not be a cause to suspend or stop the child arrangements that are in place, save the inter-week periods without overnight stays are suspended, notwithstanding that when the state of alarm ends, those periods that have not been enjoyed during the state of alarm can be recovered.

In summary, contact including overnight contact during the week, alternative weekends regimes and holiday time shall be maintained and followed as directed in the court order.

ITALY



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Rights and duties of parents are neither stressed nor oppressed. This lack of clarity de facto reduces/puts at risk/endangers the rights of children.

Thus far (since the beginning of the lockdown?), we have heard of 11 Court decisions in matters of family law. All these decisions address mainly (if not solely) visiting rights, considering the parent's requests as "urgent". We do not know of any decision specifically addressing the subject of alimony and child support. This is to some extent surprising, considering that law decrees do not consider visiting rights as "non-suspended" while they explicitly do not suspend alimony and child support.

Each decision solves the problem of visiting rights in a different way.

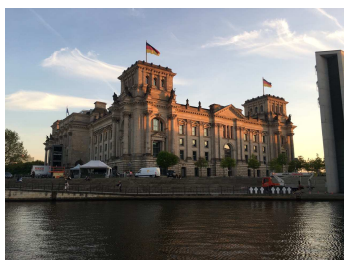
- Some exclude to modify previous decisions;
- others exclude all visits; and still others suggest alternative means of frequentations such as videocalls.

Though 11 decision in 1 month are quite numerous, they are not enough to draw statistics because they address cases that are too different from one another. It seems that Courts have been using a case-to-case approach. They do not always use the appropriate instruments to deal with the problem (e.g.: 5 of them don't even mention the words "best interests of the child"; and in 3 of them there is not even an attempt to balance interests). Nor Courts use similar argumentation patterns. If some draw from the letter of the law decrees and of the Prime Minister decrees, which do not address the problem of visiting rights explicitly, others build upon the Civil Code, the international treaties, and the Human Rights Convention.

At this time, we have not been provided with official guide on family law matters. Governmental guidelines only recognize that visiting children or going to the other parent are legitimate reasons to go out of one's home. But neither the Governments not the Courts have regulated other family law matters.

Lack of official guidance prompted CAMMINO (the association of lawyers we are members of) to publish some "decalogues" in order to propose feasible solutions.

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There is no official guidance. Violations of rulings on visitation rights can be pursued with a fine up to 25.000,00 EUR or imprisonment (if the fine can not be paid) up to sixth months, if the violation is a wilful act and cannot be excused by health issues.

This opens a wide filed for interpretation for parents. As a by constitution granted right, the contact between Children and their parents is a priori considered as in its best interest, even more in stressful situations as actual. Unfortunately there are not few cases, when mostly fathers claim, that they are being denied access to the children using the pretext of the COVID-19. As courts can not execute the visitation rights directly, those questions will be pleaded after the crisis.

When parents live abroad, visitation rights are usually not possible because of the closing of the borders. It is indispensable to clarify with border authorities before if the children can be visited or not. Usually, parents can trespass borders for those reasons.

When the geographic displacement is impossible, contacts between the child and the parents have to be maintained by all means (phone, video calls).

Parents and children are actually under a lot of pressure and the unknown situation leads to a great insecurity. Attorneys have to negotiate with utmost prudence to maintain the stability for children.

Geneva, SWITZERLAND



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Etude SPIRA + ASSOCIÉES

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Initially, there was no official guidance. The Tribunal civil was not processing divorce nor maintenance applications where no interim measures were sought from March 16th, 2020, until April 20th, 2020. Processing of those applications has resumed, according to official guidance on the court's website, "*at a rhythm enabling the respect of hygiene and precaution rules adopted by health and political authorities, specifically social distancing*". The Tribunal de protection de l'adulte et de l'enfant is still not processing requests regarding change in parental authority, custody, visitation (long or short term), nor any visitation difficulties, except for "*urgent and indispensable measures*". This is also valid in case of agreements between the parents. The only applications being processed are those for the immediate suspension of visitation rights, to be sent to the child protective services so they can make an urgent interim order if needed. Affecting of parental rights depended on the situation. For children placed in foster care, visitation was suspended from March 16th until April 20th, 2020. Those visitation rights are slowly resuming (both in case of fostering in an institution or in a family), in a way that is respectful of the government's guidance on health safety and on a case by case basis for the children that are affected. Supervised visitation (whether in an official institution or with supervision conducted by a single supervisor in an open environment) remains suspended as long as the place of supervision or the supervisor's institute is not able to provide its services. No official guidance was initially given regarding children living with both parents or with one them and with unsupervised visitation rights with the other. However, in practice, contact with a judge active at the Tribunal de protection de l'adulte et de l'enfant revealed that, regarding cases of visitation already being handled by their jurisdiction, they had a lot of requests from visiting parents (mostly fathers), being denied access to the children using the pretext of the COVID-19. To handle this, in practice, letters were sent out to the parties to state that, as long as there is no medical certificate certifying the non-visiting parents' health was put at risk by the visitation (if they are classed as vulnerable for instance and likely to be made ill by a child carrying the disease back to them), there is no reason for visitation to be suspended. And were it to be in an unjustified way, this would have consequences further down the line.

4. ARE ALTERNATIVE DISPUTE RESOLUTION METHODS USED DURING THIS TIME AND ARE THEY EFFICIENT TO REPLACE THE SLOWING DOWN OR CLOSING OF YOUR JURISDICTION?

FRANCE



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CADIOU & BARBE

In recent years, France has increased the number of alternative methods for settling family disputes. With the lockdown, the time has come for implementing these alternative modes !

Among the best known, family law specialists have been using mediation, but also collaborative law. In the present context, mediation is especially promoted and have been offered by phone or video conference meetings. A special mediation group for urgent family matters has been created by the Paris Bar Association.

Recently France has also given rise to a technique known as *procédure participative* which can be used to privatize the processing of the procedure while it is being carried out (*procédure participative de mise en état*) or to provide a framework for reaching an agreement out of court (*procédure participative*). When using this method, it is possible to define the conditions of exchanging the legal arguments and pieces of evidence, to appoint experts (real estate or company valuations) or to hire a notary when necessary or any third party agreed by the parties. In all cases, the procedure participative make it possible to exchange views out of sight of the court and to make partial or total progress on the outcome of the dispute. The agreement reached can be homologated by the court as well as the remaining dispute decided by the court.

France is also very much involved in the development of arbitration, which offers a wide range of possibilities when the matter is arbitrable, something we still have to work on in family matters to expand the spectrum.

UNITED KINGDOM



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Yes. Mediation may be conducted remotely, including mediation on international cross border cases: child abduction and international contact cases. In respect of international children cases, the majority of the mediation conducted was already done remotely. Historically, parties have been more inclined to agree to remote mediation on the basis that it might help (at least for the first session) to not be in the same room as the other party. Arbitration has only recently been made available for international relocation cases, but it is still too soon to assess whether ADR will increase as a consequence of the Coronavirus pandemic.

ADR is common place in finance cases and uptake is expected to increase given most finance hearings are being adjourned.

SPAIN



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Mediation centers and contact centers are currently closed.

However, we have witnessed that parents are being guided by common sense and trying to find alternative solutions to cope with the lack of response from the courts. This approach has assisted practitioners to agree and settle matters without the assistance of mediators.

It is very positive that under the current situation, parents are developing a sense of awareness in relation to rights of access and contact with the other parent. We are seeing cases where in normal circumstances, matters would have been contested, but the current circumstances have assisted the parties to solve them by way of consent.

ITALY



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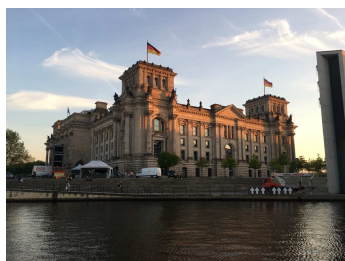
The suspension of terms and activities has been extended also to mediation proceedings. However, this did not have a great impact. Preventive mediation in family matters is not mandatory, and mediation itself is not frequently used.

The “negoziatore assistita” has not been suspended. This is an agreed para-judicial procedure similar to the French “Procédure participative”; it allows spouses to separate, divorce, or to modify previous separation or divorce statements without going to the judge, but only by having an authorization by the public prosecutor (we should note, however, that the negoziatore assistita does not allow non-married parents to manage parental responsibility).

Though they are not suspended, these procedures go on very slowly because colleagues are not used to held meetings remotely, and clients often live still with the Counterpart.

Another issue rises from the fact that the Italian law requires us to be with Clients physically when they sign agreements. This proximity is of course impossible given the current restrictions, albeit we have been working on solutions (see following).

Berlin, GERMANY



Karin S DELERUE

DELERUE.HADAMEK.KRAUSE&TIEMER
Rechtsanwälte

In Germany, there are basically two methods of mediation in family matters: One in private or social institutions. Those would be open to the public, if they were living in the same household.

Usually social institutions don't provide mediation for the moment.

Court mediation is practised in court by a judge with a degree in mediation. Those mediations are postponed for the moment.

Video mediations are suggested by private institutions or private mediators. Depending on the client's decision they can take place.

Laywers have always been able to validate settlements via court. This is an often used option to avoid a hearing “just to sign” the agreement found by the parties. Therefore one of the attorneys submits the agreement to court in asking for formal transmission to the opponent. If the later accepts the proposition (evidently negotiated before), court rules formally closure.

Geneva, SWITZERLAND



Jennifer Brockington-Belli

Etude SPIRA + ASSOCIÉES



Initially, this was not particularly the case. However, in an updated guidance posted to the Tribunal de protection de l'adulte et de l'enfant's website on April 23rd, 2020, it was stated that mediation should be favoured whenever possible. This court has referred to the contact of a number of organizations as well as sworn, registered mediators specialised in family cases, which have better ability able to operate and offer their services remotely (via video-conference and phone consultation).

While direct comment on the actual efficiency of the slowing of the court is not yet, in my opinion, possible given the lack of hindsight and experience, it will undoubtedly present the advantage of bringing in a facilitator in a case where the parents are struggling to communicate satisfactorily between them or with the children, as the case may be. However, when the family situation has already deteriorated so badly that the judge must act as a "referee", so to speak, mediation is sadly not likely to be helpful in my experience, certainly not at first.

5. HAVE YOU OBSERVED CHANGES IN YOUR RELATIONSHIP WITH CLIENTS AND WHAT TOOLS CAN BE USED?

FRANCE



Muriel Cadiou
Bérangère Diot



CADIOU & BARBE

Apart from questions relating to the organization of visitation rights, we are observing a growing demand for advice on how to resolve family conflicts in a different way.

As most hearings or judicial deadlines are postponed at an unknown date, those who have not yet started the procedure are afraid of getting lost in it and those who have already been in it for a long time are afraid of getting stuck in it for longer.

We also see parties whose financial interests are changing dramatically, which means that they want to stop agreements that were in the process of being finalized.

We also anticipate a lot of requests for revisions of child or spousal support contributions due to the loss of jobs and income of the parties.

At the other end of the spectrum, there are also clients who are a little affected by the future economic crisis and who no longer believe they have the psychological strength to continue the fight and are ready, at last, to lay down their arms. In a way, the health crisis situation has overcome their resistance to the agreement.

Generally speaking, and apart from crisis management situations (exercise of visitation rights, funeral disputes), the situation makes it possible to observe a wait-and-see attitude. Telephone calls and e-mails from clients are becoming rarer and we feel that they are petrified.

UNITED KINGDOM



Carolina Marín Pedreño
Lisette Dupré



We have observed that they expect you to be available outside of office hours and communication, which was before limited to telephone calls and email exchanges, are now conducted by video link. This could also be related to the need that people have to socialise and the additional spare time many clients have in the current circumstances.

We are using Zoom to communicate with colleagues and clients, nationally and internationally, but whenever possible continue with communication by telephone and email.

SPAIN



Carolina Marín Pedreño
Isidro Niñerola Torres



Our daily practice involves working with international clients who live outside of the jurisdiction. We are continuously involved in cross-border litigation, where sometimes video-link arrangements are required for the purposes of hearing attendance and evidence. In conclusion, we were already adapted to work on a remote-distance basis and have not noted any changes in our relationships with clients.

ITALY



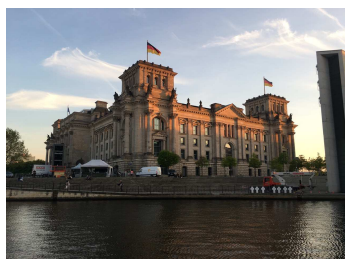
AGF Avv. Giulia Pacchini Avv. Davide Piazzoni
IFLN
International Family Law Network

No we did not. It has to be said that we already worked a lot with “remote systems”. Clients are asking more and more for immediate response, and the idea that they can contact their lawyer directly though Skype, MS Teams, or similar tools, without even moving from their house, is appealing to them. Conversations are followed by document sharing via e-mail.

One thing that has changed is the certification of the signature under the judiciary proxy. As mentioned above, in Italy it is mandatory for Clients to sign documents in front of lawyers, who in turn certify that the signature is “true” and “real.” Because of the “social distance” orders, our National Bar has allowed us to watch the client sign a copy through a video-conference, have the copy scanned and certify the scanned copy.

We are not using virtual data rooms or dedicated folders in servers, because of privacy issues.

Berlin, GERMANY



Karin S DELERUE

DELERUE.HADAMEK.KRAUSE&TIEMER
Rechtsanwälte

In our office, we cancelled face to face meetings since March 10th. Our clients have been glad to receive phone meetings instead.

On behalf of client’s needs, some cases urge to get closed and others change completely due to the unavailability of a courts decision in short time.

As weddings are limited to a number of 20 participants those are postponed as well – as their negotiations for prenups. We realized, that the need to provide financial support in health matters is a more important topic in prenups.

Finally, changes on financial situations lead to questions on behalf of maintenance payments.

Geneva, SWITZERLAND



Jennifer Brockington-Belli

Etude SPIRA + ASSOCIÉES

SPIRA
+ASSOCIÉES

Of course, face to face meetings have drastically decreased. The relationship with clients has been mostly handled by conference-call using WhatsApp voice calls or Skype. Obviously, the biggest issue remains new clients, where both the lawyer and the client would prefer a face-to-face meeting – the use of a Zoom or Skype video-call can be very helpful in such a case. Clients are understandably frustrated with the freezing of all non-urgent procedures and how difficult it is to access a judge during this crisis. Other than that, one of the interesting changes which can be observed is the increased need for a “creative” approach to resolving issues to be favoured where fast recourse to a judge is just not an option (such as direct contact between parties, resuming some level of collaboration with the opposing party where this had broken down if possible, etc...). Thus sometimes making the client take a more active role in problem solving within his or her own case, rather than simply instructing the lawyer.

Other than this, looking at the Chinese experience, a rise in the number of divorces, issues regarding child custody and visitation, as well as maintenance disputes (following job loss, for instance) is probably to be anticipated.

6. WHAT DO YOU THINK THE CONSEQUENCES OF THIS CRISIS WILL BE ON THE PRACTICE OF FAMILY LAW LAWYERS?

FRANCE



**Muriel Cadiou
Bérangère Diot**



CADIOU & BARBE

The coming crisis is not the first we have seen. I am thinking in particular of the one that followed September 11, 2001.

It will inevitably weaken our clients just as much as it will weaken our law firms.

On the other hand, there is probably a lesson to be learned here, and that is our independence from the court system. The present situation amplifies the phenomenon of privatization of family justice. Developing private processes such as alternative dispute resolutions methods to gain autonomy from courts is the idea.

It means changing the mindset of our clients that the lawyer is not only a litigator but also a negotiator and facilitator of agreement. It means also that we need to be trained to techniques such as non-violent communication or reasoned negotiation to compensate sustainably for the presence of the judge.

This crisis has also given us the means to review our modes of communication that take place now daily by video call meetings. This means may extend beyond the end of the lockdown when clients are geographically remote. However, we do think that video meetings can only occasionally replace the presence of the parties in exceptional circumstances. Our matter is sensitive and in our opinion only physical meetings can offer a good communication and a multisensory movement favorable to the rapprochement of ideas and positions.

UNITED KINGDOM



**Carolina Marín Pedreño
Lisette Dupré**



We anticipate that the use of remote hearings will continue and increase. This should be welcomed in types of hearings which are more administrative in nature, possibly assisting the Court in listing cases quicker, however we should be cautious and not to use it to replace hearings in person. The direct communication outside court between the respective legal teams is crucial in the majority of cases to reduce the number of issues that the court need to be asked to resolved. Further, in cross examination of witnesses, the face to face element of this analysis and the prompt responses when in the court room are very important and must continue to be available in person when at all possible. One of the advantages of remote hearings is the easiness with which parties who live abroad will be able to participate in the hearing. This was something which previously involved too much unnecessary administrative work.

Overall we have jumped from paper light to almost paperless in Court, forced by the current circumstances. This per se is an improvement to the right to justice, not delayed justice.

SPAIN



Carolina Marín Pedreño
Isidro Niñerola Torres



In our opinion the consequences will lay more on the judicial system rather than on the practitioners.

Our experience with our Spanish colleagues since the state of alarm was decreed on 14 February 2020, is that they have been able to adapt well to working remotely and keep providing legal services to their clients. However, the courts have not adapted to the circumstances to hear applications on a remote basis.

The courtrooms are fully equipped with computers and video-recording platforms. We have always been told of the need to speed up justice and the computer media that are benchmarks. We cannot therefore understand while much of Spain continues to work and connect remotely, the Courts are in a state of permanent stand-by when in other EU countries and around the globe, trials are being carried out by Videoconference, Zoom, Microsoft Teams etc.

The Judiciary in Spain has a challenge of adapting the Courts in order to hear proceedings remotely.

ITALY



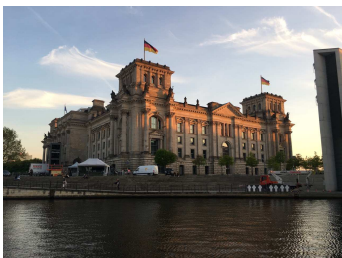
AGF Avv. Giulia Facchini Avv. Davide Piazzoni
IFLN
International Family Law Network

We believe that forced coexistence has exacerbated problems among couples. Those who were near to a crisis are likely to formalize their separation after the lockdown is over. At the same time, the economic crisis will make it particularly difficult for lower income couples to approach lawyers and go to Courts. Given that many lawyers are also in financial distress, there are risks of having professionals offering services for low rates which would both lower technical performances and decrease average values of legal assistance.

We are expecting also many procedures to obtain alimony and child support reduction, because many entrepreneurs or professionals will lose their job or will have reduced incomes.

As we do our best to assist our clients as promptly and efficiently as possible, we hope that they will continue to ask our services after this delicate time of “suspension” is over. Certainly, showing clients that we are at work as usual (by communicating through our websites, blogs, or social networks) make us more active and cooperative across the field.

Berlin, GERMANY



Karin S DELERUE

DELERUE.HADAMEK.KRAUSE&TIEMER
Rechtsanwälte

We are working in shifts to avoid to many people in the office. Communication between colleagues is easier and simplified, as most of the lawyers work from home offices. Usually everyone tries to find a way to continue work. Actually, that changed the effectiveness of working habits. Digital or remote working happens and is no longer considered as unusual. This might have a great impact on the future practise of lawyers.

Personally, I have the impression, that clients value the efforts we make to continue services. We certainly got closer.

Working more paperless will not be the first conclusion in family matters, but working digitally will certainly be, as will be more phone meetings with clients.

Hopefully Germany will make a step to get audio or video hearings in courts, and I seriously hope, that the digital communication between courts and attorney will improve.

Geneva, SWITZERLAND



Jennifer Brockington-Belli

Etude SPIRA + ASSOCIÉES

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Hopefully, family law lawyers will remember the experience of approaching issues in a more collaborative way where possible as a positive step and favour this in the future. I also think and hope this COVID-19 crisis will emphasize the importance for not only the courts but also law firms of having an efficiently functioning IT structure, which enables urgent hearings to take place by video-call for family courts and lawyers, given the ever-increasing international movements of families and children.