

Art. 47 of the Charter:

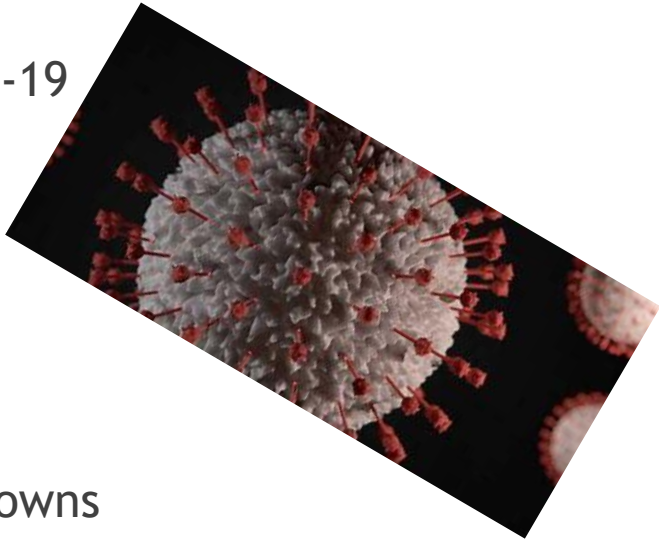
New challenges concerning the exercise of the right to access to justice under the pandemic time

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Access to justice in the pandemic time

▶ COVID-19



▶ Lockdowns



▶ Courts

▶ Restrictions of courts' functions

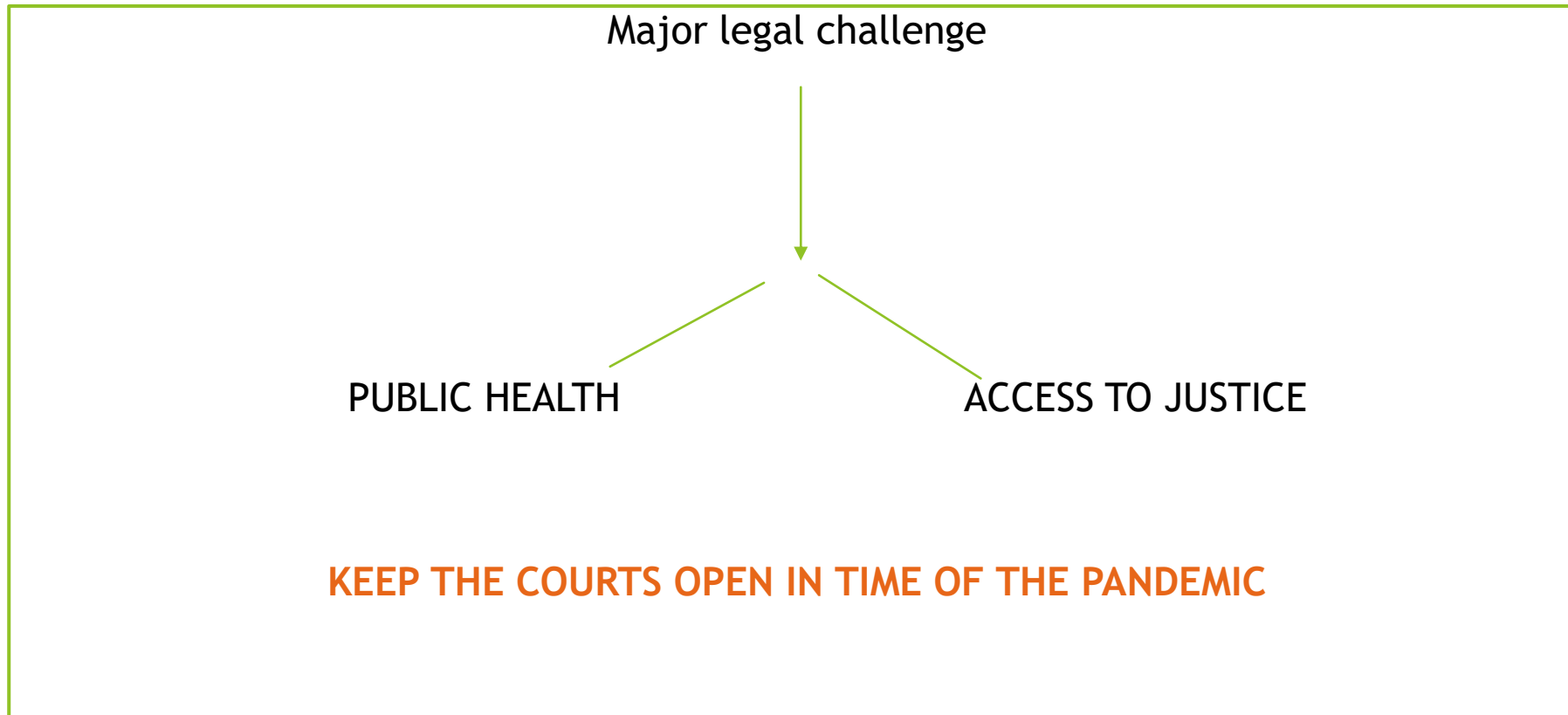
Access to justice in the pandemic time

GREECE

- ❖ Suspension of hearings
- ❖ Suspension of procedural timeline

- ❖ No filing of new cases

Access to justice in the pandemic time



The response

- ▶ The physical distance
 - ▶ No general opening hours
 - ▶ Prior notification by phone or by email
 - ▶ Difficulties due the big number of new filings
 - ▶ Mediation?

How to diminish the number of plaintiffs in the court? - no oral hearings

The response

- ▶ The use of IT technology

E-justice portal

[European e-Justice Portal \(europa.eu\)](http://europa.eu)

Toolbox for the digitalisation of the justice

Financial support for MSs

Support for implementing EU-wide initiatives

TECHNICAL SUPPORT INSTRUMENT

The response

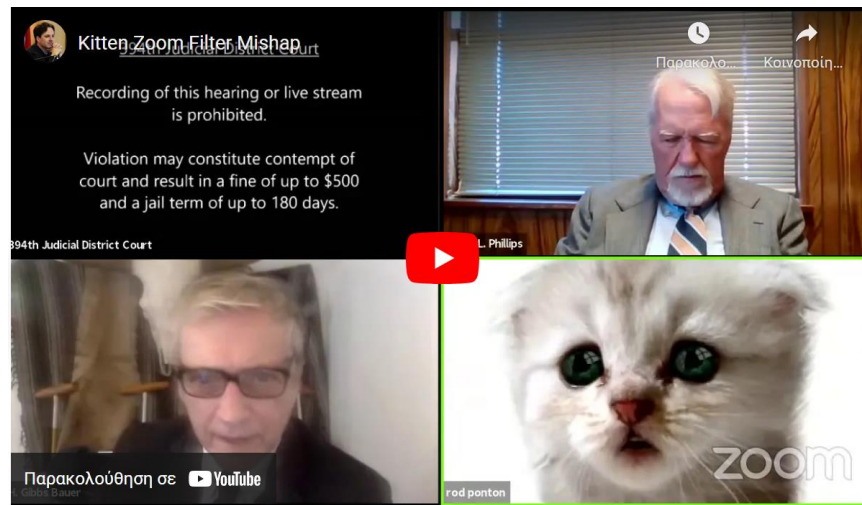
- ▶ E-filings
- ▶ Written procedures
- ▶ Videoconference
 - ▶ Directive 2014/41 about the EIO : (art. 24 , prior consent of the accused)
 - ▶ It is already used in many European Countries

The right of the access to justice in the lights of the response to the pandemic

- ▶ E-justice
- ▶ Secure systems - sensitive data
- ▶ Training of the judiciary and the court staff

The right of the access to justice in the lights of the response to the pandemic

► Videoconference



The right of the access to justice in the lights of the response to the pandemic

- ▶ Art. 47 of the Charter
 - ▶ Art. 6 of ECHR
- ▶ ensure an effective “presence” of the defendant throughout the trial,
 - ▶ the presence of a lawyer,
 - ▶ Interpreting
 - ▶ costs.
- ▶ Conseil d'État N° 449764/3.3.2021
- ▶ Conseil d'État N° 440037/5.3.2021
- ▶ Decision no 2020-872 of the French Constitutional Council
- ▶ Decision no 2020-878/879 of the French Constitutional Council
- ▶ Decision 2018-076 of the Belgian Constitutional Court

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- ▶ Council Directive 2004/80/EC of 24 April 2009
- ▶ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 replacing Council Framework Decision 2001/220/JHA (Art. 7 par. 2 and Art. 17 par. 1 “b”).
- ▶ On 24 June 2020 the Commission adopted its first-ever EU strategy on victims' rights (2020-2025)

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▶ Videoconference is not, as such,
incompatible with the notion of a fair and public hearing

legitimate aim

the arrangements for taking of evidence must be compatible with the
requirements under Art. 6

Marchello Viola v. Italy, no. 45106/04, 5 October 2006, §67 - 71

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- ▶ The right to adversarial hearing

Brandstetter v. Austria, § 67

„physical appearance and presence” of the defendant

Blokhin v. Russia, no. 47152/06, 23 March 2016, §201 and §215, Accardi v. Italy no. 30598/02, January 2005, Schatshaschwily v. Germany, no. 9154/10, 15 December 2015

effectively, timely and subsequently

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- ▶ **IF**: lack of appropriate audiovisual equipment, unstable internet connection, slow transfer and exchange of evidence.
- ▶ **THEN**: The court should provide such procedural safeguards to the parties that would ensure the effective conduct of the proceedings observing the essential principles of fair trial (*Sakhnovskiy v. Russia*, no. 21272/03, 2 November 2010, § 98 and §104, *Golubev v. Russia*, 26260/02, 9 November 2006, *Yevdokimov and Others v. Russia*, § 43
- ▶ *Grigoryevskikh v. Russia*, no. 22/03, 9 April 2009

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- ▶ *Doyle v. Ireland*, no. 51979/17, 23 May 2019, §73 - §75)
- ▶ *Sakhnovskiy v. Russia*, no. 21272/03, 2 November 2010, § 102
- ▶ *Sakhnovskiy v. Russia*, § 104; *Gorbunov and Gorbachev v. Russia*, § 37
- ▶ *Guide on Article 6 of the ECHR (criminal limb)*, Updated on 31 December 2020 [Guide on Article 6 - Right to a fair trial \(criminal limb\) \(coe.int\)](https://www.coe.int/t/e/treaties/strasbourg_conventions/6_2020_en.asp)

The right of the access to justice in the lights of the response to the pandemic

► *Regional online round table Report of the Council of Europe from July 2020*

[Regional online round table “Elections, pandemic and disinformation” - News & Events \(coe.int\)](#)

“the criminal proceeding conducted as whole with the participation of the defendant from the detention centre through videoconference was not generally incompatible with Art. 6 if there was public information provided to the media in advance with announced details for the time and place of the hearing and possibility for their effective access”

(Riepan v. Austria, no. 35115/97, 14 November 2000, § 28-31; Starokadomskiy v. Russia (no. 2), §55-58)

Conclusion

▶ Mithridates

▶ Mithridatism



- ▶ **Thank you very much for your attention!**
 - ▶ **Time for discussion!**