

# OPINIONS and ANALYSES

OF THE INSTITUTE DE REPUBLICA

## Legal analysis of international good practices in conducting remote hearings in court proceedings (the Council of Europe perspective)

DR HAB. MAREK ŚWIERCZYŃSKI, PROF. UCZ.  
DR ZBIGNIEW WIĘCKOWSKI



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# **Legal analysis of international good practices in conducting remote hearings in court proceedings (the Council of Europe perspective)**

Marek Świerczyński

Zbigniew Więckowski

## **Summary:**

The Commission of the Council of Europe - European Commission for the Efficiency of Justice (CEPEJ) at its plenary meeting on 16 - 17 June 2021 adopted new guidelines on the conduct of remote hearings in court proceedings. The guidelines include the basic principles that states and courts should follow to ensure that videoconferencing is compatible with the right to a fair trial guaranteed by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. The present analysis contains selected examples of good national practices concerning videoconferencing used in court proceedings.

## **Keywords:**

remote hearing, videoconferencing, hearing at a distance, the Council of Europe

# 1. The subject matter of the legal analysis

The subject matter of the legal analysis is the assessment of good practices concerning the conduct of remote hearings in court proceedings. The matter is divided into specific issues arising from the Council of Europe (CEPEJ) guidelines regarding remote hearings.

The present paper is structured as follows. General remarks (introduction) are included in paragraph 4.1. Conclusions and recommendations in paragraph III conclude the opinion. Individual good practices relating to videoconferencing are presented in paragraphs 4.2. to 4.13. For each issue, the position of the Council of Europe based on the CEPEJ guidelines is presented first, followed by examples from selected national jurisdictions.

The presented good practices serve to improve access to justice in an era of increasing expansion of remote hearings.





## 2. Applied abbreviations, sources of law and European documents

- 2.1. Convention for the Protection of Human Rights and Fundamental Freedoms drawn up in Rome on 4 November 1950 (Journal of Laws 1993 No. 61, item 284, hereinafter: the Convention).
- 2.2. Convention No. 108 of the Council of Europe for the Protection of Individuals with regard to Automatic Processing of Personal Data, drawn up in Strasbourg on 28 January 1981 (Journal of Laws 2003, No. 3, item 25, hereinafter: Convention 108 or in its modernised version as Convention 108+).
- 2.3. Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ. EU L 257 of 28. 8. 2014, pp. 73 - 114, hereinafter: eIDAS Regulation).
- 2.4. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ E.U. L 119, 4. 5. 2016, p. 1-88, hereafter: RODO).
- 2.5. Guidelines on videoconferencing in judicial proceedings (CEPEJ(2021)4REV4), document adopted by the CEPEJ at its 36th plenary meeting (16 and 17 June 2021), available at: <https://rm.coe.int/cepej-2021-4-guidelines-videoconference-en/1680a2c2f4> (hereinafter: CEPEJ guidelines).



### 3. Conclusions and Recommendations

- 3.1. The legal framework allowing courts to conduct remote hearings may be clarified by soft law instruments, such as recommendations or guidelines. National regulations in this area should follow the CEPEJ guidelines prepared by the Council of Europe (example of good practice from Lithuania).
- 3.2. The parties should have the opportunity to consult the court on specific issues relating to the conduct of the remote hearing, to obtain detailed information, to share doubts about the security of the remote connection (example of good practice from the Czech Republic).
- 3.3. The court should enable the participants of the remote hearing to check the audio and video quality before the hearing begins. The court should have the possibility to continuously monitor the quality of the video and audio during the remote hearing. The court should ensure that the transmission is visible and audible to the participants and to the public if the proceedings are public (examples of good practice from the UK and Australia).
- 3.4. Participants in remote hearings should be identified by the court. Means of identification should not be intrusive or burdensome (examples of good practice from Estonia and Austria).
- 3.5. The court should maintain the public nature of the remote hearing by allowing the participation of the public. The public nature of a remote hearing can be ensured, e.g., by providing for the public to participate in the remote hearing in real time or by uploading the recordings on the court's website (examples of good practices from Spain and Poland).
- 3.6. The participation of witnesses and experts at remote hearings should correspond to the practice adopted at traditional hearings (example of good practice from Poland).
- 3.7. The court should provide guidance to participants in the proceedings on the procedure for presenting evidence or other materials at a remote hearing (example of good practice from the United Kingdom).
- 3.8. The organisation of a remote hearing in criminal proceedings should be based on values such as the protection of public order, public health, the prevention of crime as well as the protection of the right to life, liberty and security of witnesses and

victims of crime. The video link provided should enable the accused to see and hear participants in the remote trial, including the judge, witnesses and experts. Participants should be able to see and hear the accused. Before the commencement of the trial, the court should inform the accused how he or she should report technical obstructions. The accused should have free access to his or her defence counsel before and during the remote hearing, including the right to confidential contact before the hearing begins (examples of good practice from the UK).

- 3.9. Appropriate financial resources must be allocated to ensure that videoconferencing is properly and effectively organised so that remote hearings emulate traditional hearings as closely as possible, including by ensuring that all participants in the hearing have the opportunity to communicate fully. The conduct of remote hearings should be based on the principles of fairness, efficiency, promptness, cooperation, security and legality of processing personal data (examples of good practice from Ireland and Moldova).
- 3.10. The court should provide participants with accessible instructions or tutorials on videoconferencing and conducting the hearing remotely. It is advisable to prepare information material not only in text form but also in the form of short videos (examples of good practice from Australia).
- 3.11. Adequate measures should be taken in advance to mitigate the risk of a breach of security of the court infrastructure, in particular a potential cyber-attack on videoconferencing hardware and software. Courts should develop procedures to cover emergency situations such as sudden technical failures, power cuts or data breaches (example of good practice from Finland).
- 3.12. Videoconferencing hardware and software should fulfil minimum technical standards in order to facilitate interoperability of applied solutions and reduce delays in video and audio transmission. Judges, parties, court staff and other participants should have access to IT support during remote hearings in order to avoid delays and technical difficulties when using the videoconferencing system (example of good practice from the UK).

## 4. Legal analysis

### 4.1. General remarks (introduction)

- 4.1.1. The development of information technology in the administration of justice, including the use of the latest IT tools such as artificial intelligence systems, is an integral part of the court reform being carried out in the Council of Europe Member States in view of the impediments to access to courts resulting from the Sars-Cov-2 pandemic. The main challenges relate to the technical aspects of conducting remote hearings, including the security of using existing videoconferencing platforms.
- 4.1.2. At its plenary meeting on 16-17 June 2021, the Committee of the Council of Europe CEPEJ (European Commission for the Efficiency of Justice) adopted new guidelines concerning the conduct of remote hearings in judicial proceedings. The developed guidelines respond to the needs of Member States. They contain basic principles which States and courts should follow in order to ensure that remote hearings are compatible with the right to a fair trial as guaranteed by Article 6 of the Convention and Convention 108+. The guidelines are the first document at international level that comprehensively solves the legal issues related to the organisation of remote hearings.
- 4.1.3. The CEPEJ guidelines are not “hard law” and do not impose specific solutions on Member States. It is entirely up to Member States to decide to what extent, and whether, they make use of the guidance provided in the guidelines.
- 4.1.4. The guidelines define videoconferencing as a system allowing two-way simultaneous video and audio transmission for audio and verbal interaction during a remote hearing.
- 4.1.5. In the light of the guidelines, the fair trial guarantees of the Convention apply to remote hearings in any type of court proceedings. The key elements are:
  - 1. the right to effective access to a court,
  - 2. the adversarial nature of the trial,

3. equality of the parties,
  4. proper administration of evidence,
  5. time for preparation and access to materials,
  6. decision-making within a reasonable time,
  7. data security, and
  8. risk management.
- 4.1.6. According to the Council of Europe, Member States should provide training to judges, court staff and legal practitioners concerning court information technology solutions and related international human rights standards. States should encourage courts to share best practice in remote hearings. Training should be continuous and mandatory for legal professionals. It is also necessary to complement the curriculum of legal studies with elements related to the use of technological solutions in courts.

## 4.2. Good practices concerning the legal basis for remote hearings

### [Council of Europe position]

- 4.2.1. The Council of Europe is of the opinion that Member States should establish a precise legal framework to enable courts to conduct trials remotely. The choice of the form of the hearing should be left to the court. The court should determine, on the basis of the applicable conditions, whether it is reasonable and appropriate to hold a remote hearing in the specific circumstances of the case. The decision of the court must be justified. At the same time, the court should safeguard the parties' right to information. The parties should have the opportunity to consult the court on the issue of holding a remote hearing, to obtain detailed information, to share their doubts on possible concerns regarding the security of the remote connection. A party should be able to request the court to hold a hearing in a traditional way. The request should be justified. The decision of the court to choose the form of the hearing should be appealable to the competent authority in accordance with national law.

### [examples of good practice] [Lithuania]

- 4.2.2. The Lithuanian Judicial Council has incorporated the CEPEJ guidelines into its national recommendations on videoconferencing in court proceedings<sup>1</sup>. The Lith-

<sup>1</sup> <https://www.teismai.lt/lt/pateiktos-rekomendacijos-teismams-ir-teismo-proceso-dalyviams-del-nuotolin-iu-teismo-posedziu/9171> (accessed 1.12.2021).

uanian recommendations set out precisely the rules to ensure that courts conduct remote hearings in a safe and lawful manner.

### **[Czech Republic]**

- 4.2.3. The Czech Code of Criminal Procedure allows the use of videoconferencing for any action in criminal proceedings: “if it is necessary for the protection of the rights of persons, in particular due to their age or health, or if security or other considerations justify it” (§ 52 of the Criminal Procedure Act), e.g., when questioning the accused or a witness. The Constitutional Court of the Czech Republic confirmed in its ruling no. I. ÚS 2852/14 of 23. 2. 2015 that the public may participate in proceedings by means of videoconferencing equipment.

### **[Croatia]**

- 4.2.4. According to Article 115 of the Croatian Code of Civil Procedure, the judge may order that the hearing be held remotely, using appropriate audio-visual equipment, or that certain evidence be taken in this manner. In the absence of specific rules, the court established its own good practices for inviting as well as providing the parties and attorneys with guidelines for remote hearings, which included technical information on how to use the videoconferencing platform, what to do in case of problems before or during the hearing, contacts for court staff in case the platform needs to be tested or a technical problem needs to be solved, how participants should behave during the remote hearing, or the possibility of signing the court minutes with an electronic signature<sup>2</sup>.

## **4.3. Good practices concerning effective participation in court proceedings**

### **[Council of Europe position]**

- 4.3.1. According to the Council of Europe, the court should provide participants with the opportunity to check the audio and video quality before the real remote hearing begins. This is important in the case of persons who are not proficient in the use of new technology tools in their daily routine.
- 4.3.2. The court should be able to continuously monitor the video and audio quality during the video connection. Potential technical interference may affect the right of the

<sup>2</sup> <https://sudovi.hr/en> (accessed 01.12.2021).

parties to participate effectively in the hearing. In practice, a duty may be imposed on the administrative service of the court. The service of hearings may be provided by an online hearing centre (office) established in each court. In the event of technical disturbances, the court should suspend the hearing until they are resolved, depending on their nature. Such suspension should be recorded in the minutes of the remote hearing.

- 4.3.3. The court should ensure that the transmission is visible and audible to those participating and to the public if the hearing is held in public.
- 4.3.4. The Council of Europe draws particular attention to the requirement for the court to take into account the situation and challenges faced by persons in need of assistance, i.e., children, immigrants or persons with disabilities.

#### **[examples of good practice] [United Kingdom]**

- 4.3.5. The guidelines on videoconferencing in asylum cases applicable in the UK indicate that in the event of technical incidents, such as low image quality or problems with audio transmission, the following steps should be taken:
  - 1) the judge shall immediately suspend the hearing in order to restore good picture or sound quality;
  - 2) if correction is impossible, the case shall be referred for another hearing;
  - 3) if a proper connection can be restored within a reasonable time, the judge should first determine the cause of the failure and ensure that the participants are able to participate effectively in the proceedings. All technical incidents should be recorded in the minutes of the hearing<sup>3</sup>.

#### **[Australia]**

- 4.3.6. The Australian guide concerning the conduct of videoconferencing during court proceedings indicates that participants should pay attention to the case of deterioration of video and audio quality and inform the court immediately if the interference affects their ability of participating properly in the proceedings<sup>4</sup>.

#### **[United Kingdom]**

- 4.3.7. According to a document issued by the Courts and Tribunal Judiciary: *Equal Treatment Bench Book*<sup>5</sup> on, inter alia, good practice in remote hearings, judges should consider

<sup>3</sup> <https://www.gov.uk/guidance/hmcts-telephone-and-video-hearings-during-coronavirus-outbreak> (accessed 02.12.2021).

<sup>4</sup> <https://www.fedcourt.gov.au/going-to-court/videoconferencing-guide> (accessed 02.12.2021).

<sup>5</sup> <https://www.judiciary.uk/announcements/equal-treatment-bench-book-new-edition/> (accessed 02.12.2021).



whether the content of either the evidence or the questions to be presented or asked are suitable to be heard by children. The document also points to specific difficulties for people with sensory impairments. The UK guidelines recommend that the judge should allow more time for breaks and not extend the hours of the hearing, as this can be particularly problematic for those who do not speak English fluently and those with various mental or physical impairments.

### **[Austria]**

- 4.3.8. Under Austrian law, the decision to use videoconferencing technology in court proceedings is always a matter for the court. If the court does not allow a remote or in-person hearing (e.g., due to health reasons), the parties may apply for the case to be heard within the specified time limit <sup>6</sup>.

### **[Germany]**

- 4.3.9. In Germany, either on the request of one of the parties or *ex officio*, the court decides to hold a remote hearing. In practice, a remote hearing is not conducted against the will of the parties<sup>7</sup>.

## **4.4. Good practices regarding identification and privacy protection**

### **[Council of Europe position]**

- 4.4.1. According to the Council of Europe, participants in remote hearings should be identified by the court. Identification measures should fall within the existing legal framework. They should not be intrusive or burdensome. For instance, the practice of showing proof of identity to the camera is inappropriate. The quality of the connection may hinder the assessment of the document submitted. Security considerations (possibility of unauthorised access to the data from the ID document) are also an obstacle. The court should take all necessary measures to eliminate the risk of violating the parties' right to privacy. More reliable means of verifying identity should be the use of already available verification methods, such as trusted profile or identity verification using electronic banking.

<sup>6</sup> See Article 91 of the Gerichtsorganisationsgesetz, GOG and the federal law on COVID-19 accompanying measures in the judicial system, Federal Law Journal I 2020/30 (Bundesgesetz betreffend Begleitmaßnahmen zu COVID-19 in der Justiz BGBl I 2020/30, [1. COVID-19-JuBG].

<sup>7</sup> See § 128a of the German Code of Civil Procedure (ZPO).

### **[examples of good practice]** **[Estonia]**

- 4.4.2. Estonia is an unquestionable leader in the use of modern technologies in public administration in Europe. The security of the system is based on a virtual identity card assigned to each citizen, by means of which they authorise all actions while dealing with official matters via the Internet, including remote court proceedings<sup>8</sup>.

### **[Austria]**

- 4.4.3. Austrian citizens can use the mobile application “Citizen Card” (Bürgerkarte) to send applications to the courts remotely<sup>9</sup>. This option has been extended for foreigners using eIDAS-compliant identification methods.

### **[Russia]**

- 4.4.4. The Supreme Court of the Russian Federation uses a multi-point video conferencing solution *Vinteo*<sup>10</sup>. On the appointed day of the court session, participants in the proceedings access the court system and authorise themselves on the Public Services Portal.

## **4.5. Good practices concerning openness and recording of hearings**

### **[Council of Europe position]**

- 4.5.1. According to the Council of Europe, the court should maintain the public nature of the remote hearing by creating a comprehensive procedure enabling the participation of the public. The openness of a remote hearing can be ensured e.g., by allowing the public to participate in the remote hearing in real time or by posting the recordings on the court’s website. No part of the trial should be photographed, recorded, broadcast or otherwise disseminated without the prior consent of the court. It is worth considering collecting declarations from the participants in the proceedings, including the audience, on the necessity to comply with these prohibitions.

<sup>8</sup> <https://e-estonia.com/solutions/e-identity/id-card/> (accessed 03.12.2021).

<sup>9</sup> <https://www.buergerkarte.at/> (accessed 03.12.2021).

<sup>10</sup> <https://www.vinteo.com/en/news-en/357-vinteo-video-conferencing-manufacturer-provided-conducting-the-first-online-meetings-of-supreme-court-of-the-russian-federation-via-video-conferencing> (accessed 03.12.2021).

**[examples of good practice]**  
**[Spain]**

4.5.2. The Spanish Consejo General del Poder Judicial<sup>11</sup> (CGPJ) has published recommendations on public access to remote hearings. For remote hearings, the court is required to announce the date and subject matter of the hearing. The public is provided with an access key. In case of special interest, the court may record the hearings within the limits of data protection legislation. All courts in Spain are equipped with audio-visual equipment for recording and digital archiving of hearings.

**[Poland]**

4.5.3. The District Court for Łódź - Śródmieście has issued orders allowing public participation in hearings remotely via the Internet<sup>12</sup>. In accordance with the procedure set out in the document, electronic admission cards issued upon request allow the public to participate in the trial. The electronic admission card is accompanied by information that recording of images and sound is prohibited and that the public is obliged to maintain solemnity, calm and order in the proceedings.

## **4.6. Good practice regarding participation of witnesses and experts in court proceedings**

**[Council of Europe position]**

4.6.1. The Council of Europe assumes that the participation of witnesses and experts in remote hearings should correspond as closely as possible to the practice adopted in traditional hearings. Particular attention has been paid to the need to ensure the fairness of remote hearings and to take measures to avoid undue influence on witnesses or experts during such hearings.

**[examples of good practice]**  
**[Poland]**

4.6.2. The Court of Appeal in Wrocław, a Polish leader in changes to the use of new technologies in proceedings, uses a “lobby” function during witness hearings. The court is working on modifying the platform in order to transform the standard “lobby”

<sup>11</sup> <https://www.poderjudicial.es/cgpj/> (accessed 04.12.2021).

<sup>12</sup> Order No. 52/2020 of the President of the District Court for Łódź - Śródmieście in Łódź of 28 May 2020, <https://lodz.sr.gov.pl/zarzadzenie-nr-522020-prezesa-sadu-rejonowego-dla-lodzisrodmiescia-w-lodzi-z-dnia-28-maja-2020-roku,new,mg,338,340.html,6465> (accessed 04.12.2021).

function into a full “waiting room” functionality, adapting it to the court’s requirements and enabling personalisation of links for participants and efficient communication also outside the videoconference rooms, e.g., to inform about possible delays in the proceedings<sup>13</sup>.

## 4.7. Good practices concerning taking of evidence during a remote hearing

### [Council of Europe position]

- 4.7.1. According to the Council of Europe, the court should provide guidance to participants in the proceedings on the procedure for the presentation of evidence or other material during remote hearings. All participants should have the opportunity to familiarise with the materials presented during the remote hearing. The presentation of new claims, arguments or evidence during a remote hearing should respect the principle of adversarial proceedings.

### [examples of good practice] [United Kingdom]

- 4.7.2. In accordance with the *Civil Justice in England and Wales Protocol Regarding Remote Hearings*, parties should, if necessary, prepare an electronic collation of documents for each remote hearing. Each electronic compilation should be indexed and provided to the court and subsequently to the parties sufficiently in advance of the remote hearing. Electronic files should only contain documents that are necessary for the remote hearing. Large electronic files may be difficult to transmit and unwieldy to use<sup>14</sup>.

<sup>13</sup> <https://www.wroclaw.sa.gov.pl/pl/dokumenty/wideokonferencje> (accessed 03.12.2021).

<sup>14</sup> [https://www.judiciary.uk/coronavirus-covid-19-advice-and-guidance/remote-hearings-protocol-civil\\_-generallyapplicableversion-f-amend-26\\_03\\_20-1-2/](https://www.judiciary.uk/coronavirus-covid-19-advice-and-guidance/remote-hearings-protocol-civil_-generallyapplicableversion-f-amend-26_03_20-1-2/) (accessed 03.12.2021).

## 4.8. Good practices concerning the participation of interpreters in remote hearings

### [Council of Europe position]

- 4.8.1. According to the Council of Europe, when the participation of an interpreter is required during a remote hearing, the presence of an interpreter is preferable alongside a participant who does not speak the language of the seat of the court. The interpreter should have appropriate eye contact with the person whose speech is being interpreted. If the guidelines are revised in the future, simultaneous interpretation using artificial intelligence algorithms with simultaneous transcription of the participant's testimony should be considered.

### [examples of good practice] [United Kingdom]

- 4.8.2. According to the *Equal Treatment Bench Book*, special efforts should be made to ensure that the role of interpreters during a videoconferencing session is not marginalised. The document identifies the most common problems that hinder interpretation. The document provides general guidelines for communicating with people who use English as a second language.

## 4.9. Good practices concerning remote hearings in criminal proceedings

### [Council of Europe position]

- 4.9.1. According to the Council of Europe, unless the law requires the free and informed consent of the accused person, the court's decision to participate in a remote trial should serve a legitimate purpose. The legitimate aim of organising a remote hearing in criminal proceedings should be based on values such as the protection of public order, public health, the prevention of crime and the protection of the right to life, liberty and security of witnesses and victims of crime.
- 4.9.2. The Council of Europe requires that the video link provided should enable the accused to see and hear participants in the remote hearing, including the judge, witnesses and experts. Before the start of the hearing, the court should inform the accused how he or she should report technical disturbances. In case of inappropriate behaviour by the accused, the court should inform the accused of the possibility to mute, interrupt or

suspend the video link. If even one of these actions is to be taken, prior notice must be provided. Where the accused has been muted, the court should ensure that the accused's defence counsel has full access to the videoconferencing system. However, depriving the accused of the opportunity to speak should be the last resort. A penalty for misconduct may always be imposed on the accused.

- 4.9.3. The accused should have free access to his or her defence counsel before and during the remote hearing, including the right to confidential contact before the hearing begins. The court should adjourn or suspend the remote trial in the absence of the accused's defence counsel. The court should take all necessary measures to ensure the right to legal representation of the accused, including, if appropriate, the appointment of a public defender.
- 4.9.4. The accused should be able to communicate with his or her defence counsel and exchange confidential instructions unsupervised through a secure IT system. The confidentiality of these communications should be ensured.

#### **[examples of good practice] [United Kingdom]**

- 4.9.5. The UK guidance published by *HM Courts and Tribunal Service* provides details of procedures that allow an attorney to consult with a client while the client is in police custody, in a court cell or in prison. The court may suspend the hearing for a period of time while the attorney communicates with the client in private. The court decides how long such a suspension should last. The other participants should be moved to a waiting room. The attorney may also inform the court that he or she needs more time or can finish earlier than expected - by using the chat function or by calling the number provided by the videoconference host<sup>15</sup>.

### **4.10. Good practices regarding technical and organisational requirements**

#### **[Council of Europe position]**

- 4.10.1. The Council of Europe draws particular attention to the need to use appropriate hardware and software to ensure the effectiveness of videoconferencing. Member States are encouraged to allocate adequate resources to ensure that videoconferencing is organised appropriately and effectively.

<sup>15</sup> HM Courts and Tribunal Service, <https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service> (accessed 03.12.2021).

- 4.10.2. According to the Council of Europe, remote hearings should as far as possibly provide a real hearing experience, including full communication between all parties. The conduct of remote hearings should be based on the principles of fairness, efficiency, promptness, cooperation, security and lawfulness of the processing of personal data.

### **[examples of good practice] [Ireland]**

- 4.10.3. Shortly before the outbreak of the COVID-19 pandemic in Europe, the Irish authorities announced that *the Courts Service of Ireland* (the agency responsible for the administration of the courts) was preparing to implement a court digitisation strategy to which the government would contribute €100,000,000<sup>16</sup>. This process was supposed to take 10 years; however, the pandemic has greatly accelerated the implementation of the investment. In Ireland, current procedures provide electronic assistance to a large part of the court administration, thus avoiding the need to appear in the court building<sup>17</sup>.

### **[Moldova]**

- 4.10.4. In Moldova, videoconferencing equipment was installed in all courts and prisons in 2018. The 250 employees of courts and prisons were trained in its operation. The creation of an efficient videoconferencing system enabled the efficient organisation of justice during the pandemic and ensured that people in detention were not deprived of their rights. The remote system also resulted in significant savings and reduced delays in the conduct of hearings<sup>18</sup>.

## **4.11. Good practice regarding instructions to participants**

### **[Council of Europe position]**

- 4.11.1. The Council of Europe is of the view that the court should provide participants with accessible instructions or tutorials on the use of videoconferencing and the conduct of the remote hearing. This is justified by the uneven level of familiarity of citizens with the use of new technologies. It is recommended to prepare information material not only in text form, but also in the form of short videos. In addition to the

<sup>16</sup> <https://www.irishtimes.com/news/crime-and-law/100-million-digital-first-plan-for-courts-could-allow-online-guilty-pleas-1.4143251> (accessed 04.12.2021).

<sup>17</sup> <https://www.courts.ie/> (accessed 04.12.2021).

<sup>18</sup> <https://www.developmentpi.com/news/videoconferencing-keeps-moldovan-courts-operational-amid-covid-crisis> (accessed 04.12.2021).

tutorial, each court should have an IT helpdesk to assist in case of failures regarding videoconferencing.

- 4.11.2. Participants should be reminded that they are appearing before a court and therefore they should behave appropriately, in accordance with applicable law, good practice and court etiquette, which should in any case be adapted to remote hearings. Furthermore, the remote format of the hearing absolutely does not imply a suspension of the applicable procedures.
- 4.11.3. The court should inform participants in advance of the technical requirements, including the date, time (taking into account different time zones), venue and conditions of the remote hearing. The court should ask participants to ensure a reliable video connection of sufficient quality and to provide adequate visibility and lighting to participate effectively in the remote hearing. In this situation, should the participant not have the technical capacity, the court may refer the participant to the relevant technology support centre.
- 4.11.4. Where possible, the court should schedule a trial videoconferencing session prior to the remote hearing to allow for guidance on how the remote hearing should be conducted, the technology to be used and any other issues. Conducting a trial session reduces the risk of technical issues. Another method of dealing with possible technical issues is to join the videoconferencing session in advance.
- 4.11.5. The court should inform all participants of possible technical problems and other difficulties which may arise during the videoconference.
- 4.11.6. Participants may take part in the hearing by videoconference from various locations suitable for this purpose, including court rooms, detention centres, law firms. The arrangement of the hearing, should guarantee the integrity of the speech of each participant, especially vulnerable persons (children, seniors, persons with disabilities).

#### **[examples of good practice]** **[Australia]**

- 4.11.7. The Supreme Court of Victoria (Australia) has developed detailed guidelines for the use of videoconferencing and remote hearing. Information material is provided not only in text form but also as recordings. Ready-made tutorials are also included. Participants receive useful tips on how to behave in accordance with applicable law, good practice and court etiquette. Worth mentioning is the document “*Top 10 tips for participating in virtual hearings*”, which reminds participants that they should always



mute the microphone when not addressing the court, reduce the volume of the device when feedback occurs and minimise other background noises such as typing<sup>19</sup>.

- 4.11.8. The Federal Court of Australia's guidelines, on the other hand, require the court to arrange for a test connection in appropriate time before the hearing begins in order to ensure that equipment and devices are compatible. A further test link may be required a few hours before the hearing begins. All participants in the hearing must be at their locations at least 15 minutes before the start of the videoconference<sup>20</sup>.

## 4.12. Good practice concerning the security of remote hearings

### [Council of Europe position]

- 4.12.1. According to the Council of Europe, appropriate measures should be taken in advance to reduce the risk of security breaches, in particular cyber-attacks on videoconferencing hardware and software. Courts should develop procedures for emergency situations (sudden technical failures, disconnections, power cuts or breaches of data security).
- 4.12.2. If cloud computing services are used, it should be ensured that the potential storage of data complies with data protection legislation, including the RODO.
- 4.12.3. Judicial autonomy should be strengthened, not limited, by the use of new information technologies, in particular through the use of tools and services based on artificial intelligence. The use of artificial intelligence tools should always fall under the control of the court.
- 4.12.4. In the event of an irreparable technical failure, the remote hearing should be adjourned or suspended.

### [examples of good practice] [Finland]

- 4.12.5. According to the Finnish guidelines for courts on the use of remote access in courts, attention should be paid to the security of the chosen videoconferencing platform. When choosing between different methods of remote access (video/telephone, etc.),

<sup>19</sup> <https://www.supremecourt.vic.gov.au/law-and-practice/virtual-hearings/virtual-hearings-tips-and-tricks-for-practitioners> (accessed 04.12.2021).

<sup>20</sup> <https://www.fedcourt.gov.au/going-to-court/videoconferencing-guide> (accessed 04.12.2021).

the court should decide on the suitability of the chosen solution for the specific case. A risk assessment of the chosen remote access method is required<sup>21</sup>.

### 4.13. Good practice in relation to technical standards

#### [Council of Europe position]

- 4.13.1. According to the Council of Europe, videoconferencing hardware and software should fulfil minimum standards in order to facilitate interoperability, regardless of the type of videoconferencing, and to reduce delays in the transmission of video and audio data. Member States should not favour a particular videoconferencing technology. Videoconferencing hardware and software should provide images and sound of sufficient quality to ensure continuous and adequate audio-visual communication allowing the parties to follow the proceedings and to participate effectively in them. All participants in a hearing conducted remotely, and in particular the judge, should be able to see and hear both the person asking questions or making statements as well as the reaction of the other participants.
- 4.13.2. The videoconferencing system provided by the court should be free of charge for all participants, easily accessible and user-friendly, operate on standard equipment and ensure data protection. States should maintain an ongoing review of the technical standards associated with videoconferencing. Member States should implement technical solutions which are necessary to improve the quality of videoconferencing.
- 4.13.3. According to the CEPEJ guidelines, judges, parties, court staff and other participants should have access to IT support during remote hearings in order to avoid delays and technical difficulties when using the videoconferencing system.

#### [examples of good practice]

##### [United Kingdom]

- 4.13.4. The *Equal Treatment Bench Book* explains the general principles for ensuring adequate participation in remote hearings. The following rules apply, inter alia:
  1. the face of the person speaking (judge, accused or defence counsel) should be visible on the screen;
  2. the framing should exclude the risk of distortions that render the speaker's face invisible;

<sup>21</sup><https://oikeus.fi/tuomioistuimet/en/index/asiointijajulkisuus/kutsuttunaoikeudenkayntiin/participation-inatrialbyremotemeans.html> (accessed 04.12.2021).

3. the participants of the trial may submit to the court their comments on the quality of the image at any time and request possible intervention of the court.

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