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***EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE
(CEPEJ)***

Guidelines on videoconferencing in judicial proceedings

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GUIDELINES

PURPOSE AND SCOPE

These Guidelines¹ provide a set of key measures that states and courts should follow to ensure that use of videoconferencing in judicial proceedings does not undermine the right to a fair trial as enshrined in Article 6 of the European Convention on Human Rights (ECHR) and meets the requirements of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. The purpose is to provide states with a framework aiming at eliminating any risk of a violation of the parties' rights during remote hearings, in particular their right to be heard and to actively participate in proceedings, and the right of defence. The Guidelines cover all judicial proceedings and can also be applicable *mutatis mutandis* to the public prosecution services.

The document is structured as follows: In the first part, the guidelines address procedural issues concerning all types of judicial proceedings, emphasising the particularities of criminal proceedings. In the second part, the guidelines address the technical and organisational requirements for videoconferencing in judicial proceedings. The appendix contains a checklist of the basic requirements for the implementation of videoconferencing in judicial practice.

DEFINITIONS

For the purposes of these guidelines, the terms below shall be defined as follows:

- i. **videoconferencing** refers to a system that allows two-way and simultaneous communication of image and sound enabling visual, audio and verbal interaction during the remote hearing;
- ii. **remote hearing** refers to a hearing that is held through videoconferencing;
- iii. the term “**court**” refers to the judicial authority that organises remote hearings, in the exercise of its functions.

FUNDAMENTAL PRINCIPLES

- A. All guarantees to a fair trial under ECHR apply to remote hearings in all judicial proceedings. The key elements are the right to effective access to a court, fairness of the proceedings, adversarial character of the process, equality of arms, proper administration of evidence, time to prepare and access to materials, the court's decision in a reasonable time, data security and risk management.
- B. States should establish a legal framework that provides a clear basis for allowing courts to hold remote hearings in judicial proceedings.
- C. It is for the court to decide, within the applicable legal framework, whether a certain hearing should be held remotely, with the aim of ensuring the overall fairness of the proceedings.
- D. The court should safeguard the right of a party to be effectively assisted by a lawyer in all judicial proceedings, including confidentiality of their communication.

¹ The guidelines were elaborated on the basis of a draft prepared by the experts of the CEPEJ: Marek Swierczynski (Poland) and Alexandre Palanco (France).

PART I - PROCEDURAL ISSUES ON VIDEOCONFERENCING IN RESPECT OF THE RIGHT TO A FAIR TRIAL

Guidelines on all judicial proceedings

Decision to hold a remote hearing

- 1) States should ensure that the legal framework provides the courts with sufficient grounds to decide whether a remote hearing can or should be held in a particular case.
- 2) Based on the legal framework provided by the state, the court should determine whether holding a remote hearing is reasonable and appropriate under the specific circumstances of the case and reason its decision.
- 3) The parties should have the opportunity to consult with the court: i) on whether a remote hearing can or should be held in the case, ii) on the specific arrangements for such a remote hearing, iii) to address any security concerns of the parties, and iv) to request the court to hold a hearing in person, stating their reasons.
- 4) The decision should be open to possible review before a competent authority in accordance with national law.

Right to participate effectively

- 5) The court should give the participants the opportunity to test the audio and video quality, either prior, for example through self-testing, or at the start of the hearing allowing each participant to familiarise themselves with the features of the videoconferencing platform.
- 6) During the remote hearing, the court should be able to continuously monitor the quality of the image and sound of the video link in order to minimize technical incidents that may affect the right of the parties to participate effectively in the proceedings.
- 7) The court should ensure that the transmission can be seen and heard by those involved in the proceedings and by members of the public where the proceedings are held in public.
- 8) The court should consider the situation and challenges of persons in vulnerable positions, such as children, migrants, or persons with disabilities in the decision to have a remote hearing and its modalities.
- 9) The court should suspend the hearing in case of a technical incident until it has been corrected, depending on its nature. Such a suspension should be registered in the minutes of the remote hearing.

Identification and privacy

- 10) All participants of the remote hearing should be identified by the court. The measures of identification should be clearly within the applicable legal framework and not excessively intrusive or burdensome.
- 11) The privacy of the remote hearing's participants should be protected and respective risks to their privacy should be mitigated by the court. All necessary measures should be taken in order to eliminate any risk of a violation of the parties right to privacy.

Publicity and recording

- 12) The court should preserve the public nature of remote hearing by creating a comprehensive procedure for public participation. The publicity of the remote hearing can be ensured, for example, by allowing the public to join the remote hearing in real time or uploading the recordings to the court's website.
- 13) No photographing, recording, broadcasting or any other form of dissemination of any part of the remote hearing (including the audio track) may be made unless previously authorised by the court.

Witnesses and experts

- 14) As far as a national legal system permits, the examination of the witnesses and experts during the remote hearing should follow as closely as possible the practice adopted when a witness or expert is present in the courtroom.
- 15) The respective arrangements should be given special consideration in order to ensure the integrity of remote hearings and avoid pressure or influence on the witnesses or experts during such hearings.

Evidence

- 16) The court should provide instructions on the procedure the participants need to follow to present documents or any other materials during the remote hearing.
- 17) Practical arrangements should be made to ensure that all participants can see and/or hear the material presented during the remote hearing.
- 18) The presentation of new allegations, arguments and/or evidence during a remote hearing should follow the adversarial principle and the court should ensure the right to counter-evidence.

Interpreters

- 19) When an interpreter is needed during the remote hearing, the presence of the interpreter alongside the participant who does not speak the language of the court should be preferred.
- 20) At any time during the hearing, the interpreter should have appropriate visual contact with the person whose speech is being interpreted.

Guidelines specifically for criminal proceedings

Legitimate aim

- 21) If legislation does not require the free and informed consent of the defendant, the court's decision for his or her participation in the remote hearing should serve a legitimate aim.
- 22) The legitimate aim of remote hearing in criminal proceedings should be based on such values as the protection of public order, public health, the prevention of offences, and the protection of the right to life, liberty, and security of witnesses and victims of crimes. Compliance with the right to a trial within a reasonable time can be considered by the court in particular at stages in the proceedings subsequent to the first instance.

Effective participation of the defendant

- 23) The video link provided should enable the defendant to see and hear the participants of the remote hearing, including the other parties, judges, witnesses and experts. The participants should be able to see and hear the defendant.
- 24) The court should react to technical incidents reported by the defendant. Prior to the remote hearing, the defendant should be informed of the procedure for reporting technical incidents to the presiding judge (e.g. through designation of a responsible official agent near the defendant or an alert button on the video link interface).
- 25) In case of the defendant's continuous improper conduct, the court should inform the defendant of its power to mute, interrupt or suspend the defendant's video link, before actually making this decision.
- 26) In case the defendant was muted, the court should ensure that the legal representative of the defendant is still able to exercise the right to legal assistance during the remote hearing and the proceedings as a whole.

Legal representation

- 27) The defendant should have effective access to legal representation before and during the remote hearing, including the right to communicate with their lawyer confidentially before the beginning of the hearing.
- 28) The court should adjourn or suspend the remote hearing in the absence of the defendant's legal representative. In such circumstances, the court should take all necessary measures to ensure the right to legal representation of the defendant, including possible appointment of an *ex officio* defence counsel.
- 29) The defendant should be able to confer with their legal representative and exchange confidential instructions without surveillance. The presence of other persons sharing the same room as the defendant during such exchanges should be excluded.
- 30) The defendant should be able to communicate with their legal representative over a secured system. The defendant should be assured of the confidentiality of such communications. The use of a secured line, different from the video link provided for the remote hearing, should be privileged.
- 31) Specific arrangements should be taken to ensure that the interpretation of communication between the defendant and their legal representative does not undermine its confidentiality.

PART II - ORGANISATIONAL AND TECHNICAL ISSUES OF VIDEOCONFERENCING

Key requirements

- 32) States are encouraged to allocate adequate public funding and resources to enable effective videoconferencing in judicial proceedings.
- 33) States should ensure as much as possible a true-to-life hearing experience including full communication and interaction of all the parties to the procedure with the person to be heard.
- 34) Conduct of the remote hearing should be based on the principles of fairness, efficiency, expedience of proceedings, co-operation, security and legality of personal data processing.

Instructions for the participants

- 35) The court should provide the participants with clear rules, instructions, and/or tutorials on the use of videoconferencing and conduct of the remote hearing. It is recommended to prepare information materials not only in text format, but also as short videos. Made-to-measure tutorials or training sessions on the use of the platform should be considered. The participants should be reminded that they appear before the court and should therefore behave suitably in compliance with applicable laws, good practices, and court etiquette, which should be adapted in any case to remote hearings.
- 36) Sufficient notice about technical requirements, including the date, time (considering different time zones), place and the conditions of the remote hearing should be given in advance by the court to the participants.
- 37) The court should request participants to secure a reliable video connection of sufficient quality and ensure adequate visibility and lighting in order to be able to participate effectively in the remote hearing.
- 38) If possible and required, the court should schedule a test videoconferencing session prior to the remote hearing to allow guidance to be given on how the remote hearing will be conducted, the technology to be used, and any other relevant issues.
- 39) The court and participants should join the videoconferencing session in good time before the remote hearing is due in order to resolve any technical issues.
- 40) All participants should be informed by the court of possible technical and other difficulties that could be experienced by others and reminded to avoid over-speaking and mute their microphones when they are not speaking.
- 41) Depending on national law, the participants can attend a hearing by videoconference from courtrooms, detention facilities, law firms, or other safe places. The hearing's setting, including equipment, should guarantee the integrity of statements of every participant, in particular the vulnerable ones.

Security

- 42) Practical arrangements should be made in advance to mitigate the risk that the videoconferencing hardware, software and connections are vulnerable to improper access, such as hacking or other illicit access.
- 43) Contingency plans should be in place in order to effectively deal with issues such as sudden technical failures, disconnections, power outages (alternative communication channels and technical support), or data security breaches.
- 44) Cloud computing services used during remote hearings, and potential data storage, should comply with data protection laws.
- 45) The court's autonomy should be strengthened and not restricted by the use of technology, in particular by the use of artificial intelligence tools and services.
- 46) Use of artificial intelligence tools, such as sound or video e-filters, should be under the control of the court.
- 47) If there is a technical failure that cannot be fixed, then the remote hearing should be adjourned or suspended.

Technical standards

- 48) The videoconferencing hardware and software should meet minimum industry standards to facilitate interoperability, regardless of the type of videoconferencing used, and to reduce delays in video and audio data transmission.
- 49) States should consider making videoconferencing rules technology-neutral and not impose, or discriminate in favour of, a particular type of videoconferencing technology.
- 50) The videoconferencing hardware and software should provide video and audio of sufficient quality to hold continuous and adequate audio-visual connectivity, enabling parties to follow the proceedings and effectively participate in them.
- 51) All participants to the remote hearing, in particular the judge, should be able to see and hear both the speaker asking questions or making statements when heard, and the reaction of the other participants.
- 52) The videoconferencing system provided by the court should be free of charge for all participants, easily accessible and user friendly, operate on standard hardware, and ensure data protection.
- 53) States should keep technical standards related to videoconferencing under review.

Technical assistance

- 54) The judges, parties, court staff, and other participants should be able to access IT support during remote hearings in order to avoid delays and technical difficulties while using a videoconferencing system.

Training and good practices

- 55) States should provide judges, court staff, and legal practitioners with sufficient training in IT solutions and related international standards of human rights protection.
- 56) States should encourage the courts to share best videoconferencing practices in order to reduce costs and increase efficiency.

Appendix

Checklist for conducting videoconferences in judicial practice

- Security: the desired level of security derived from the type of procedure
 - authorisation
 - only desired (invited) participants attending
 - authenticity
 - ensuring the identity of the participant
 - privacy (keeping the conference private)
 - encryption
 - private or public infrastructure
 - public infrastructure (cloud, hosting)
 - solution hosted on-site
 - private infrastructure
 - user management
 - authentication of participants
- Recording
 - voice
 - voice & video
 - multi-channel voice
- Accessibility
 - equipment
 - software
 - versatility (ease of use)
- Quality
 - resolution
 - bandwidth
 - sensitivity
 - equipment
 - screens
 - camera resolution
 - microphone quality
 - number of tracks (microphones and cameras)

- Licence type:
 - proprietary or open source
- Videoconferencing equipment
 - professional (permanently installed in courtrooms)
 - professional (mobile)
 - semi-professional (meeting rooms with screens and cameras)
 - consumer electronics (webcams with speakers, headsets with microphone)
 - mobile devices (tablets, mobile phones)
- Visibility
 - courtroom: screens, speakers enable all parties to follow the proceedings
 - witness or expert
- Standards
 - open vs.
 - proprietary
- Interoperability
 - standard protocols (ITU standard)
 - IP-to-IP
- Sharing documents
 - document camera (documents in physical form)
 - screen sharing (any digital content)
- Camera operation
 - static (fixed) camera
 - manuel tilt/turn/zoom/focus
 - automatic (voice controlled)
 - remote operation
- Witness protection
 - separate witness rooms (possible off-site)
 - voice distortion
 - picture blur/distortion/deactivation
- Private sessions
 - parties consulting with their lawyers
- Interpretation
 - interpreters off-site
 - simultaneous interpretation
- Use of AI
 - automatic subtitling

- speaker identification
- speech to text
- filters
- Planning a videoconference
 - using a booking system for videoconferencing (calendar) – a courtroom can be booked depending on its technical equipment
 - technician – test beforehand, establish the videoconference, stand-by