

30 November 2021



CEPEJ-GT-CYBERJUST(2021)11

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

*WORKING GROUP ON CYBERJUSTICE AND ARTIFICIAL INTELLIGENCE
(CEPEJ-GT-CYBERJUST)*

**Selected national good practices on videoconferencing in judicial proceedings
Complement to the CEPEJ Guidelines on videoconferencing in judicial proceedings**

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Contents

Introduction	3
Good practices	3
I. Establishing a legal framework that provides a clear basis for allowing courts to hold remote hearings in judicial proceedings - Fundamental principles A and B and points 1 – 2 of the VC guidelines.....	3
II. On the basis on the legal framework provided by the state, allowing both the court to determine whether holding a remote hearing is reasonable and appropriate - Fundamental practice C and points 2 – 3 of the VC guidelines.....	3
III. Allowing each participant to familiarise themselves with the features of the videoconferencing platform - Fundamental practice C and points 5 and 38 – 39 of the VC guidelines.....	4
IV. Safeguarding the right of a party to effectively participate in the judicial proceedings - fundamental practice D and points 5 – 9 of the VC guidelines.....	4
V. Considering the situation and challenges of persons in vulnerable position - Points 8 of the VC guidelines.....	4
VI. Ensuring proper identification of the participants - Point 10 of the VC guidelines.....	4
VII. The examination of witnesses - Point 14 - 15 of the VC guidelines.....	5
VIII. Preserving the public nature of remote hearing - Points 12 – 13 of the VC guidelines.	5
IX. Providing instructions to present documents - Point 16 of the VC guidelines.....	5
X. Ensuring proper participation of interpreters - Points 19 - 20 of the VC guidelines.....	5
XI. Ensuring the rights of prisoners - Point 22 of the VC guidelines.....	6
XII. Ensuring the proper participation of the defendant - Point 23 of the VC guidelines.	6
XIII. Dealing appropriately with technical incidents - Point 24 of the VC guidelines.....	6
XIV. Ensuring the right for the defendant to talk privately with his lawyer - Point 27 of the VC guidelines.....	6
XV. Allocating adequate public funding - Point 32 of the VC guidelines.....	7
XVI. Providing the participants with clear rules, instructions, and/or tutorials on the use of videoconferencing - Point 35 and 40 of the VC guidelines.	7
XVII. Mitigating the risk that the videoconferencing hardware, software, and connections are vulnerable to improper access - Point 42 of the VC guidelines.	7
XVIII. Providing sufficient training in IT solutions - Point 55 of the VC guidelines.	7

Introduction

This document presents selected examples of national good practices used for the development of procedures on videoconferencing in judicial proceedings and aims to share such good practices to enhance access to justice, enable oversight and accountability over the remote hearings (see point 56 of the VC guidelines). Each selected national good practice includes reference to the relevant point of the CEPEJ Guidelines on videoconferencing in judicial proceedings (VC guidelines).

Good practices

- I. Establishing a legal framework that provides a clear basis for allowing courts to hold remote hearings in judicial proceedings (good practice in Lithuania, Czech Republic, Croatia, and China). See fundamental principles A and B and points 1 – 2 of the VC guidelines.**

The **Lithuanian** Council of the Judiciary incorporated the VC guidelines into national recommendations on videoconferencing in judicial proceedings (see Recommendations on remote judicial hearings approved by the Judicial Council on 27 August 2021 - Rekomendacijos dėl nuotolinių teismo posėdžių patvirtinta Teisėjų Tarybos 2021 m. rugpjūčio 27 d.). Lithuanian recommendations provide a clear basis for allowing courts to hold remote hearings in judicial proceedings and ensure the effective implementation of the right to justice for the participants in the proceedings (source: expert from Supreme Court of Lithuania).

The **Czech's** Criminal Procedure Code allows the use of videoconferencing for any act of criminal proceedings "if it is necessary for the protection of the rights of persons, in particular with regard to their age or state of health, or if security or other compelling" (Para. 52 of Criminal Proceedings Act), such as questioning the accused or a witness. The Czech Constitutional Court also confirmed in the decision no. I. ÚS 2852/14 from 23 February 2015 that the public may attend the proceedings using videoconferencing equipment (source: expert from Masaryk University – Czech Republic).

Under Article 115 of the **Croatian** Civil Procedure Code, the judge can order that the hearing is going to be held remotely, using adequate audiovisual devices, or to conduct certain evidence that way. From October 2020 until the end of August 2021 the Commercial Court in Varaždin has held 148 remote hearings. The court established good practices for inviting and giving the parties and attorneys guidelines for remote hearings, that included technical information on how to use videoconferencing platform, what to do if the problems occur prior or during the hearing, contacts of court personnel in case they need to test the platform or solve some technical problem, how the participants should behave during the remote hearing, how to sign the court record with electronic signature and return it back to the court etc. (source: judge at the Commercial Court in Varaždin - Croatia).

Recently, the **Chinese** Supreme Court, some provincial courts and municipal courts have issued rules on "online proceedings". The Supreme People's Court has issued the Online Litigation Regulations for the People's Court 2021 which stipulates online litigation should follow the five principles, namely fairness and efficiency, legitimate and voluntary principle, protection of rights, principle of safety and reliability. This regulation emphasises the principles of application of technology, strictly adhere to technology neutrality, to ensure that technology is reliable. Chinese courts had already adopted online proceedings in individual cases before 2018. The Supreme People's Court had released the Provisions of the Supreme People's Court on Certain Issues Concerning the Hearing of Cases in Internet Courts. From 1 January 2020 to 31 May 2021, 12.197 million cases were filed online by courts nationwide, with online filing accounting for 28.3% of all cases filed; 6.513 million total online mediation, 6.142,900 successful mediation cases before litigation; 1.288 million online court proceedings 33.833 million electronic service of documents. (source: experts from Wuhan University – China).

- II. On the basis on the legal framework provided by the State, allowing both the court to determine whether holding a remote hearing is reasonable and appropriate under the specific circumstances of the case and the parties to consult with the court on whether a remote hearing can or should be held in the case (good practices in Austria and in Germany). See fundamental practice C and points 2 – 3 of the VC guidelines.**

According to the **Austrian** law, the decision on using videoconference technology in judicial proceedings is to be taken at the court discretion. The judge must examine which measures may be necessary, e.g., considering the health risks posed by COVID-19. If the court does not permit for the remote hearing or to be conducted in person (e.g., due to health concerns), parties may seek a motion to have the case heard by a set deadline

(Fristsetzungsantrag) pursuant to § 91 of the Court Organisation Act (Gerichtsorganisationsgesetz, GOG). (source: judge at the Administrative Court of Vienna - Austria). See further the Federal Act on Accompanying Measures for COVID-19 in the Judicial System, Federal Law Gazette I 2020/30 (Bundesgesetz betreffend Begleitmaßnahmen zu COVID-19 in der Justiz BGBl I 2020/30, [1. COVID-19-JuBG].

In **Germany**, the court decides to hold a remote hearing in civil proceedings either according to an application of one party or *ex officio*. By the determination to hold a remote hearing, the court must apply its dutiful discretion. In practice, a video-hearing cannot be conducted against the parties' will as the parties right to be present in the courtroom in person must be respected. It is also possible to have a hybrid video-hearing with one party present in the courtroom and the other connected remotely. See section 128a of the German Code of Civil Procedure (ZPO), regulating remote hearings (source: expert from German Federal Ministry of Justice and Consumer Protection).

III. Allowing each participant to familiarise themselves with the features of the videoconferencing platform (good practice in Australia). See fundamental practice C and points 5 and 38 – 39 of the VC guidelines.

According to the **Australian** Guide on Videoconferencing in the Federal Court (<https://www.fedcourt.gov.au/going-to-court/videoconferencing-guide>) at a suitable time in advance of the hearing, the party lodging must arrange for a test link to be conducted, to ensure compatibility of equipment and facilities at all proposed sites. A further test link may be required a few hours before the hearing commences. All participants must be at their respective site at least 15 minutes prior to the commencement of the videoconference (see points 3.13 and 3.14 of the Australian Guide).

IV. Safeguarding the right of a party to effectively participate in the judicial proceedings, in particular to be effectively assisted by a lawyer in judicial proceedings (good practice in Italy). See fundamental practice D and points 5 – 9 of the VC guidelines.

In March 2020, the **Italian** High Court for the Judiciary issued recommendations to judicial offices concerning trials during the pandemic. Based on a provision of the law, which extended the possibility to hold hearings by videoconference (Decree-Law no. 18/2020), it gave guidelines on how to carry out videoconferencing, the identification of the parties, the participation of parties and lawyers in compliance with the right of defence, how to take minutes, the production of documents (by means of remote submitting, screen sharing or uploading to the file section of the virtual courtroom), the deed to adopt in case of malfunctioning. Courts have concluded Memorandum of Understanding with public prosecutors' offices and BAR associations to hold remote hearings with detained or arrested persons (source: judge at the Tribunal of Pisa - Italy).

V. Considering 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 (good practice in UK). See points 8 of the VC guidelines.

According to the document describing good practices in the remote hearings (prepared by Judicial College ETBB committee) judges should consider whether the content of evidence/questions would be appropriate for children to hear. This is of particular importance where there is no other adult to care for the children during lockdown. The document also points out specific difficulties for those with sensory impairments. Additionally, the **UK** guidelines advise that the judge should allow more time for breaks and not to extend hours to get hearings completed, as this may be particularly problematic for those speaking English as a second language and people with a range of mental or physical impairments (source: <https://www.judiciary.uk/wp-content/uploads/2020/03/Good-Practice-for-Remote-Hearings-May-2020-1.pdf>).

VI. Ensuring proper identification of the participants of the remote hearing (good practices in Estonia, Austria and Russian Federation). See point 10 of the VC guidelines.

The security of the system in **Estonia** is based on a virtual identity card assigned to each citizen, by means of which he or she authorizes all activities when dealing with official matters via the Internet, including remote court proceedings (source: <https://e-justice.europa.eu/sitenewsshow.do?plang=en&newsId=233>).

Austrian citizens can use a mobile app "Citizen Card" (Bürgerkarte) to send their applications to the courts on-line. This option was extended for foreigners using identification methods compliant with eIDAS (EU regulation on electronic identification and trust services in relation to electronic transactions). (source: judge at the Administrative Court of Vienna - Austria).

The Supreme Court of the **Russian Federation** uses a multipoint web conferencing solution, Vinteo. On the appointed date of the court session, participants of proceedings access the court's videoconferencing system and authorise themselves at the Public Services Portal (source: <http://vsrf.ru/en/files/28870>).

VII. The examination of witnesses (good practices in Poland). See point 14 - 15 of the VC guidelines.

The “lobby” function is used in the Court of Appeal in Wrocław (**Poland**) during the examination of the witnesses. The court is working on modification of the platform in order to transform the standard “lobby” function into a full “waiting room” functionality adapting it to the needs of the courts and allowing for personalised links for participants and efficient communication also outside the videoconferencing rooms, e.g., to inform about the possible delay of the proceedings. The Court of Appeal in Wrocław organised 31,778 videoconferences from 1st January 2021 to 15th October 2021 on the AVAYA SCOPIA platform. An average of 700-1100 videoconferences per day are organised using JITSI platform (for the period September 2020 to June 2021 the total number was 58,996). (source: experts from the Court of Appeal in Wrocław – Poland). See further instructions for conducting a videoconference meeting for court employees prepared by the Centre for Competence and Informatisation of the Judiciary in the Court of Appeal in Wrocław (Instrukcja przeprowadzania posiedzenia w drodze wideokonferencji dla pracowników sądów przygotowaną przez Centrum Kompetencji i Informatyzacji Sądownictwa w Sądzie Apelacyjnym we Wrocławiu (source: <https://www.wroclaw.sa.gov.pl/pl/dokumenty/wideokonferencje>).

VIII. Preserving the public nature of remote hearing by creating a comprehensive procedure for public participation (good practices in Spain and Poland). See points 12 – 13 of the VC guidelines.

The “Consejo General del Poder Judicial” (CGPJ) published recommendations on the public access to remote hearings. In case of remote hearings, the date and subject of the hearing is to be announced by the court. The public are provided an access key. In case of special interest, the court may record the hearings within the limits of data protection laws. All courts in **Spain** are equipped with audiovisual devices to record hearings and examinations, which are then digitally archived (source: <https://www.iacajournal.org/articles/10.36745/ijca.379>).

Polish court in Łódź issued ordinance allowing for public participation in remote hearings via the Internet (e.g., ordinance No. 52/2020 of the President of the District Court for Łódź - Śródmieście in Łódź dated 28 May 2020). Electronic admission cards are being issued that allow the public to participate in a remote hearing. Along with the electronic admission card, a brief information is sent on the prohibition of image and sound recording and the obligation of the public to maintain solemnity, peace, or order of court activities (source: <https://lodz.sr.gov.pl/posiedzenia-online,m,mg,346>).

IX. Providing instructions on the procedure the participants need to follow to present documents or any other materials during the remote hearing (good practice in England and Wales). See point 16 of the VC guidelines.

According to the Civil Justice in **England and Wales** Protocol Regarding Remote Hearings, dated 26 March 2020 the parties should, if necessary, prepare an electronic bundle of documents and an electronic bundle of authorities for each remote hearing. Each electronic bundle should be indexed and paginated and should be provided to the judge's clerk, court official or to the judge (if no official is available), and to all other representatives and parties well in advance of the hearing. Electronic bundles should contain only documents and authorities that are essential to the remote hearing as large electronic files can be slow to transmit and unwieldy to use (see points 24 – 26 of the England and Wales Protocol). (source: https://www.judiciary.uk/wp-content/uploads/2020/03/Remote-hearings.Protocol.Civil_GenerallyApplicableVersion.f-amend-26_03_20-1.pdf).

X. Ensuring proper participation of interpreters in the remote hearings (good practice in UK). See points 19 - 20 of the VC guidelines.

The document describing good practices in the remote hearings (prepared by Judicial College ETBB committee) underlines that effort needs to be made to keep interpreters involved, used as needed, and confident to express difficulties during the videoconferencing session to mitigate the dangers of their being marginalised. The document also addresses the problem of lacking visual cues that make interpretation harder. Additionally, Chapter 8 paragraphs 62-113 of the ETBB give general guidance on communicating with those who do not speak English as a second language (source: <https://www.judiciary.uk/wp-content/uploads/2020/03/Good-Practice-for-Remote-Hearings-May-2020-1.pdf>).

XI. Ensuring maintenance of the rights of prisoners and reduction of trial times by modernizing courtrooms and prison infrastructure (good practice in the Republic of Moldova). See point 22 of the VC guidelines.

In 2018, videoconferencing equipment was installed in all 20 **Moldovan** courts and in all penitentiaries, because of a feasibility study on the implementation of the videoconferencing system, which revealed that the National Penitentiary Administration spends approx. 1.4 million MDL (70,000 €) annually on transporting inmates to court hearings and trials. 250 court and penitentiary personnel were trained on how to use the videoconferencing equipment. The use of the videoconferencing system enabled the delivery of justice during the pandemic phase and ensured that people held in detention were not denied their rights. The use of remote participation by inmates also provided significant cost savings and reduced hearing delays and postponements of the proceedings.

XII. Ensuring the proper participation of the defendant and his right to be seen/heard in the courtroom and to see/heard the courtroom (good practice in France). See point 23 of the VC guidelines.

In the **French** “Vade mecum on video-audiences before the National Court of Asylum”, general principles are explained to ensure the proper participation of the applicant in the remote hearings. Among others, the following general principles can be applied during criminal hearings: 1) the speaker's face (the judge, defendant, interpreter, or lawyer) must be visible on the screen; 2) the framing must exclude the risk of distortions that make the applicant's face invisible; 3) both the lawyer and the applicant may make observations at any time relating to the framing and request modifications.

XIII. Dealing appropriately with technical incidents during the hearing (good practice in France and Australia). See Point 24 of the VC guidelines.

In the **French** “Vade mecum on video-audiences before the National Court of Asylum”, a detailed procedure is to be applied in case of technical incidents such as poor image quality or problems with the sound transmission. In case of criminal hearings, the following steps should be taken: 1) the judge suspends immediately the hearing in order to restore good quality of image and/or sound; 2) if the repair is not possible, the case is referred to a subsequent hearing; 3) If a proper connection can be re-established within a reasonable time, the judge should first ascertain what exactly happened and ensure that that participants can effectively take part in the proceedings. All such incidents should be recorded in the minutes of the hearing.

The **Australian** Guide on Videoconferencing in the Federal Court (<https://www.fedcourt.gov.au/going-to-court/videoconferencing-guide>) reminds that participants should remain alert to any deterioration in picture and sound quality and inform the judicial officer immediately if this is impacting on their ability to participate fully. Additionally, participants are asked to try to reduce their body movements as much as possible. It is explained by the fact that the quality of the picture received is affected by movement of the person or object before the camera (see points 3.20 and 3.21 of the Australian Guide).

XIV. Ensuring the right for the defendant to talk privately with his lawyer before and during a remote hearing (good practice in the UK and Michigan). See point 27 of the VC guidelines.

The guidance published by HM Courts and Tribunal Service details the different procedures allowing a lawyer to consult with his client while he is in police custody, in a court cell or in prison. During the hearing and if necessary, the court can suspend the hearing while the lawyer communicate with the client in private. The court decides how long such suspension lasts and should transfer other participants to the lobby. The lawyer can also inform the court that he or she needs more time or can finish earlier than expected – using the Cloud Video Platform chat function or by calling the number provided by the court video host.

In **Michigan (U.S.)**, courts may allow an attorney to meet with their client in a “breakout rooms”. The judge can set a predetermined amount of time and after lapse of time bring them back into to the remote hearing. If the judge does not want to put a time constraint on the “breakout room”, a time warning can be added to the breakout room.

XV. Allocating adequate public funding and resources to enable effective videoconferencing in judicial proceedings (good practice in Ireland). See point 32 of the VC guidelines.

Shortly before the European outbreak of the COVID-19 pandemic, **Irish** authorities announced that the Court Service (the agency responsible for the administration of the judiciary) is preparing to implement a strategy for the digitisation of courts, for which the government would allocate €100,000,000. The process was supposed to last 10 years, but the pandemic substantially accelerated the course of events. Ireland has now procedures thanks to which a large part of the judicial administration gets electronic assistance to avoid the requirement to appear in the court building. The judicial service introduces the necessary infrastructure to facilitate distance interviews while fulfilling the constitutional obligation to administer justice to the public by allowing journalists access to court hearings (source: expert from the Courts Service of Ireland).

XVI. Providing the participants with clear rules, instructions, and/or tutorials on the use of videoconferencing and conduct of the remote hearing (good practices in Australia). See point 35 and 40 of the VC guidelines.

Supreme Court of Victoria prepared detailed website guidelines for the practitioners on the use of videoconferencing and conduct of the remote hearing. Information materials are not only provided in text format, but also as recordings. Made-to-measure tutorials are included. The participants are given useful recommendations how to behave suitably in compliance with applicable laws, good practices, and court etiquette. See <https://www.supremecourt.vic.gov.au/news/accessing-virtual-hearings>). Among others the website “Top 10 tips for participating in virtual hearings”, reminds participants that they should always mute the microphone when not addressing the court, to turn the volume of device down in the first instance audio when the feedback occurs and minimise competing noises in the background, such as typing or coughing near a microphone or shuffling of papers.

XVII. Mitigating the risk that the videoconferencing hardware, software, and connections are vulnerable to improper access, such as hacking or other illicit access (good practice in Finland). See point 42 of the VC guidelines.

Finnish Guide for the courts on the use of remote access in court dated 15th April 2020 (Opas tuomioistuimille etäyhteyksien käyttöön oikeudenkäynnissä, 15th April 2020) points out that attention must be paid to the security of the selected remote access platform. When making a choice between different remote access methods (video/telephone etc.), the court should decide on the suitability of the chosen solution for the specific case. The assessment of the risks of associated with the chosen remote access method is required (see point 3.6. of the Finnish Guide).

The following example is provided in the **Finnish** Guide: A criminal case concerns breach of a trade secret involving confidential information relating to the activities of a company. The judge is considering the use of Skype for a court session, whose functional characteristics are considered by the judge and the parties as suitable for the trial. Nevertheless, further consideration is needed whether there is a risk that, for example, the Skype link will be disclosed to third parties or that such other person could participate in the Skype meeting which may compromise the confidential information.

XVIII. Providing judges, court staff, and legal practitioners with sufficient training in IT solutions (good practice in U.S.). See point 55 of the VC guidelines.

The U.S. agencies are requested to provide training for adjudicators on conducting virtual hearings and to provide adjudicators with adequate technical and administrative support (see recommendation 2021-4: “Virtual Hearings in Agency Adjudication”, issued by Admin. Conf. of the U.S., 86 Fed. Reg. 36083 dated July 8, 2021, available at <https://www.acus.gov/recommendation/virtual-hearings-agency-adjudication>). Agencies are requested to provide general training sessions or pre-hearing conferences at which staff can explain expectations, technological requirements, and procedural rules for virtual hearings to parties and representatives (see points 10 – 12 of the recommendation 2021-4).