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EUROPEAN COMMITTEE ON CRIME PROBLEMS
COMITÉ EUROPÉEN POUR LES PROBLÈMES CRIMINELS
(CDPC)

COMMITTEE OF EXPERTS
ON THE OPERATION OF EUROPEAN CONVENTIONS
ON CO-OPERATION IN CRIMINAL MATTERS

COMITÉ D'EXPERTS
SUR LE FONCTIONNEMENT
DES CONVENTIONS EUROPÉENNES DANS LE DOMAINE PÉNAL
PC-OC

Replies to
Questionnaire on legal and technical aspects of the use of video conferences in mutual legal assistance in criminal matters

Réponses au
Questionnaire sur les aspects juridiques et techniques de l'utilisation de la vidéoconférence dans l'entraide judiciaire en matière pénale

STATES / ETATS

QUESTIONNAIRE (ENGLISH)

Introduction

During its 61st meeting, the PC-OC considered the feasibility and the necessity of collecting technical information from Parties to the Second Additional Protocol to the Convention on mutual assistance in criminal matters concerning the use of hearings by videoconference. The discussion was based on background documents (PC-OC (2011)12 and PC-OC (2011)20 restricted) including a draft questionnaire proposed by Ms Merja Norros (Finland). The exchange of views revealed that the practice of hearings by videoconferences varied from country to country and that its development in cross-border cases was sometimes hampered by existing differences in legal or technical requirements for its use.

The PC-OC therefore decided that it would be useful to collect information from all delegations on the use of videoconferences and the underlying legal and technical requirements and agreed on the questionnaire reflected below. The PC-OC-Mod was asked to examine the information received and to make proposals for follow up to the plenary.

Questionnaire

1. Are there any provisions in your national legislation about hearings by video conference in cross-border cases at
    a. pre-trial stage
    b. trial stage

2. For which type of proceedings (pre-trial, trial) are videoconferences most used?

3. For which types of cases are videoconferences used?

4. Does this videolink have to be secured (encrypted) or are there any other technical requirements? What is a sufficient level of security? Are there any legal norms or administrative instructions (guidelines) on these issues? Please give as much as possible information on technical or security requirements (AES encryption or other).
    a. in pre-trial stage
    b. in trial stage

5. If for some reason it is not possible to create a secure connection, can a decision be made to waive some of the security requirements on a case-by-case basis?
    a. in pre-trial stage
    b. in trial stage

6. If your state has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, is it nevertheless possible to hold a videoconference in international cooperation? If so, under what circumstances would this be possible?

7. Are there any other practical problems in videolink hearings?

QUESTIONNAIRE (FRANÇAIS)

Introduction

Durant sa 61ème réunion, le PC-OC a examiné la faisabilité et la nécessité de recueillir auprès des Parties au Deuxième Protocole additionnel à la Convention européenne d'entraide judiciaire en matière pénale des informations techniques concernant l'utilisation de la vidéoconférence pour des audiences. La discussion était basée sur les documents de travail (PC-OC (2011)12 et PC-OC (2011)20 restreint) proposés par Mme Merja Norros (Finlande). L'échange de vues révélait que la pratique d'audiences par vidéoconférence était inégale selon les pays et que son développement dans des affaires transfrontalières était parfois gêné par l'existence de différentes conditions juridiques ou techniques à son utilisation.

Le PC-OC a conclu qu'il serait utile de recueillir les informations de toutes les délégations sur l'utilisation des vidéoconférences et sur les conditions juridiques ou techniques exigées et a convenu d'envoyer le questionnaire ci-après. Le PC-OC Mod a été chargé d'examiner les informations reçues et de faire des propositions de suivi.

Questionnaire

1. Existe-t-il dans votre législation nationale des dispositions concernant les audiences par vidéoconférences dans des affaires transfrontières :
   a. au stade de l'instruction
   b. au stade du procès

2. Pour quel type de procédure (instruction, procès) les vidéoconférences sont-elles le plus utilisées?

3. Pour quels types d'affaires utilisez-vous les vidéoconférences?

4. Est-ce que le lien vidéo doit être protégé (crypté) ou existe-t-il d'autres exigences techniques ? Quel niveau de sécurité est considéré comme suffisant ? Existe-t-il à ce sujet des normes juridiques ou des instructions administratives (lignes directrices) ? Merci de fournir autant d'informations que possible sur les exigences techniques ou de sécurité (cryptage AES ou autre)
   a. au stade de l'instruction
   b. au stade du procès

5. Si pour quelque raison il s'avère impossible d'assurer une connexion sécurisée, est-il possible de décider au cas par cas de lever l'une ou l'autre exigence de sécurité ?
   a. au stade de l'instruction
   b. au stade du procès

6. Si votre Etat n'a pas ratifié le Deuxième Protocole additionnel à la Convention européenne d'entraide judiciaire en matière pénale, est-il néanmoins possible d'organiser une vidéoconférence dans le cadre d'une coopération internationale? Si tel est le cas, dans quelles circonstances?

7. Existe-t-il d'autres problèmes pratiques liés aux audiences par vidéoconférence ?

SUMMARY OF REPLIES / RÉSUMÉ DES RÉPONSES

	Are there any provisions in your national legislation for cross-border video conferences?	For which type of proceedings are video conferences used?	For which type of cases are video conferences used?	Does the videolink have to be secured	Can security requirements be waived	If CETS No. 182 has not been ratified, is it possible to hold a videoconference in international co-operation?
Albania	Yes	Trial (mostly)	All types, mainly serious crimes	Yes	Yes	Ratified
Armenia	No	Pre-trial, Trial (in practice only trial)	Cross-border cases	No	/	Ratified
Austria	Yes	Pre-trial, Trial	All types	Yes[1]	No information	Yes
Azerbaijan	No	None	None	Does not apply	Does not apply	Yes
Bosnia Herzegovina	No	Trial (in practice)	Testimony in criminal cases	No	Yes	Ratified
Croatia	No[2]	Pre-trial, Trial (mostly in trial)	Usually war crimes and international organised crime	No	No	Ratified
Czech Republic	Yes	Pre-trial, Trial (mostly in trial)	Breaking and entering, robbery, fraud, trafficking in human beings	No	No	Ratified
Denmark	Yes	Pre-trial (mostly), Trial	No specific type	Yes	Yes	Ratified
Estonia	Yes	Trial (mostly)	Fraud, larceny, causing of health damage, physical abuse, narcotic offences etc	Videoconference: No Videolink: Yes	No	Ratified
Finland	Yes	Trial (mostly)	Common in drug cases	Yes	Yes (pre-trial) Yes(trial)	Yes
France	Yes	Pre-trial (mostly)	Mostly serious transborder cases	Yes	Yes	Ratified

[1] Video conferences between Austrian judicial authorities have not to be secured because they take place in a closed network.
[2] International agreements are applied

Georgia	Yes	Trial	All types in principle (especially transnational)	No	Yes	Yes
Germany	No[3]	/	/	/	/	Yes
Greece	No	/	/	/	/	No
Hungary	Yes (for EU member states)	No information	Serious cases and also when the suspect is kept in prison abroad	No	/	Yes
Iceland	Yes (for EU states and Norway)	/	/	/	/	Yes
Ireland	Yes	Trial	Any criminal proceedings	No	/	Ratified
Italy	No[4]	Pre-trial, Trial (mostly trial)	Serious offences (e.g. Mafia involvement, aiding and abetting Mafia activities, kidnapping, drug trafficking, murder, corruption, etc).	Yes	No (for domestic cases) Yes (for cross-border cases)	Yes
Latvia	Yes	Trial (mostly)	Mostly for sexual offences, fraud and corruption	No	/	Ratified
Lithuania	No[5]	Trial (mostly)	Only in criminal cases for examinations of witnesses	No	/	Ratified
Luxembourg	No[6]	Pre-trial, Trial	No information	No	/	Yes
Moldova	Yes	No practice	No practice	No	/	Ratified
Monaco	No	Pre-trial, Trial	Serious criminal cases, eg. money laundering	Yes	Yes	Yes
Montenegro	Yes	Pre-trial, Trial	Serious criminal offences (eg. murder, war crime)	Yes	No	Ratified
Netherlands	Yes	Trial	All types of criminal offence	Yes	Yes	Ratified

[3] German domestic law may be applied *mutatis mutandis.*
[4] Domestic provisions are extended in practice to cross-border cases
[5] Lithuanian domestic legislation applies.
[6] EU legislation applies. National legislation currently under deliberation.

Norway	Yes	Pre-trial, Trial	All types of criminal cases, in principle serious and transboundary criminal cases, such as drug cases, war criminal cases and cases involving trafficking of human beings	No	/	Yes
Portugal	Yes	Mostly trial	All types of cases	Yes	Yes	Ratified
San Marino	No	/	/	/	/	No
Russian Federation	No	Trial	Any types of criminal cases	Yes	Yes	Yes
Serbia	Yes	Mostly trial	Mostly organised crime and war crime cases	Yes	Yes[7]	Ratified
Slovak Republic	Yes	Mostly trial	Cases of serious crimes	Yes	Yes	Ratified
Slovenia	Yes	Pre-trial, trial	/	No	Yes	Yes
Spain / Espagne	Yes	The oral trial phase and for the witnesses and experts that by geographical reasons cannot move to the Court where trial is held	For any type of offence, generally when witnesses and experts cannot move for geographical reasons	Yes	No	Yes
Sweden	Yes	Mostly trial	All types of crime	No	/	Yes
Switzerland	No[8]	No statistical data available	Mostly for domestic use between national prosecution authorities.	/	/	Ratified[9]

[7] On a case by case basis
[8] The Swiss domestic criminal code applies to cross-border video conferences where there are no existing international agreements.
[9] According to the jurisdiction, Switzerland needs to be linked to the requesting state by a treaty or convention expressly mentioning video-conferences for a video-conference to take place.

Turkey / Turquie	Yes	Adjudication phase	All the cases brought before High Criminal Courts and Juvenile High Criminal Courts	Yes	Yes	No[10]
Ukraine	Yes	No information	Any criminal proceedings	Yes	Yes	Ratified
United Kingdom	Yes	Mostly trial	Crimes against the person (assault, theft, robbery etc) where the victim is in the UK	No	Yes	Ratified

[10] By means of the systems which are under preparation and planned to be established in 2012, all the units will be enabled to hold international videoconferences upon request in the near future.

ALBANIA / ALBANIE

1. Are there any provisions in your national legislation about hearings by video conference in cross-border cases?

Answer: Yes, there are specific provisions in the Albanian legislation envisaging the possible use of videoconferences for the questioning of witnesses, defendants, experts or other procedural subjects during the stage of trial:
1. The article 361 of the Criminal Procedure Code "Questioning of witnesses" with the amendments made by Law 9276 dated 16. 09. 2004.
2. Article 20 of the Law No. 10193 dated 3. 12. 2009 "On Jurisdictional Relations with Foreign Authorities in Criminal Matters".
3. Law No. 9110 dated 24. 07. 2003 "On organization and functioning of Courts for Serious Crimes", article 8 "Questioning of witnesses" provides for : "The Court for Serious Crimes and the Appeals Court for Serious Crimes may allow the witness questioning and confrontations and permissible readings be made by applying, jointly or individually.

2. For which type of proceedings (pre-trial, trial) are videoconferences most used?

Answer: The videoconferences are mostly used during the stage of trial. This is because the Albanian procedural system abides by the principle that the evidence acquire their value during the stage of trial and during this stage the evidence is directly taken by the court, which means that only the questioning of witnesses and experts during the stage of trial has a procedural value.

3. For which types of cases are videoconferences used?

Answer: According to the Albanian legislation, the videoconferences may be used for all types of judicial cases but in the Albanian judicial practice, specifically for those related to criminal offences committed in the framework of organized crime, such as criminal organizations, armed gangs, criminal structured groups, trafficking in human beings and trafficking of drugs, guns and narcotics.

According to the Albanian legislation, only the witnesses of cases under the competence of the Court for Serious Crimes have the status of justice collaborators and protected witnessed and this is the most common target of witnesses, who may be questioned via videoconference.

4. Does this videolink have to be secured (encrypted) or are there any other technical requirements? What is a sufficient level of security? Are there any legal norms or administrative instructions (guidelines) on these issues? Please give as much as possible information on technical or security requirements (AES encryption or other).

a. in pre-trial stage
b. in trial stage

Answer: Yes, it should be secured (encrypted) so as not to have interventions by third persons. In case we use ISDN service the link is much more secured because you can generate confidential credentials through the equipment and transmit them only to persons with whom you shall conduct a videolink. In case of trials in the Court for Serious Crimes, where it is used, the judicial panel decides how to proceed with the videolink.

There are no legal norms or administrative instructions. For the video conferencing equipment, it is needed a stabilized network connection without intervention, possibly an ISDN or ADSL dedicated link where there is a static IP.

5. If for some reason it is not possible to create a secure connection, can a decision be made to waive some of the security requirements on a case-by-case basis?

a. in pre-trial stage

b. in trial stage

Answer: In case when a videoconference is used in the Court for Serious Crimes due to the nature of the case, the Chairman of the court session may not consider using high security connections because when it is used for cases abroad (Norway), it is made possible the connection between both judicial panels and a witness is questioned.

6. If your state has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, is it nevertheless possible to hold a videoconference in international cooperation? If so, under what circumstances would this be possible?

Answer: Albania has ratified the Second Additional Protocol of the Council of Europe Convention on Mutual Legal Assistance in Criminal Matters by law no.8883 dated 18.04.2002.

7. Are there any other practical problems in videolink hearings?

Due to preservation of security of protected witnesses, it is practiced the link between the witnesses and defendants by videoconference within Albania or within the facilities of the Court for Serious Crimes (the witness room) using NetMeeting in a PC with webcam. This method is mainly used in the trial of a case where the defendants were accused for participation in an armed band.

As we emphasized above, a stabilized network connection is needed for the video conferencing equipment without interventions, possibly an ISDN or ADS dedicated link, where there is a static IP.

ARMENIA / ARMÉNIE

1. Are there any provisions in your national legislation about hearings by video conference in cross-border cases at

a. pre-trial stage

b. trial stage

There are no provisions in the Armenian legislation prescribing hearings by video conference both in pre-trial and trial stages.

2. For which type of proceedings (pre-trial, trial) are videoconferences most used?

The videoconference can be used in pre-trial and trial stage. But it is important to note that according to the information of the Police of the Republic of Armenia questionings haven't been taken place in pre-trial stage by the Police at all.

3. For which types of cases are videoconferences used?

The videoconference can be used in cross-border cases.

4. Does this videolink have to be secured (encrypted) or are there any other technical requirements? What is a sufficient level of security? Are there any legal norms or administrative instructions (guidelines) on these issues? Please give as much as possible information on technical or security requirements (AES encryption or other).

a. in pre-trial stage

b. in trial stage

Since there are no provisions in the Armenian legislation prescribing videoconference hearings, there are no any requirements of security.

5. If for some reason it is not possible to create a secure connection, can a decision be made to waive some of the security requirements on a case-by-case basis?

a. in pre-trial stage

b. in trial stage

See answers of the 4th question.

6. If your state has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, is it nevertheless possible to hold a videoconference in international cooperation? If so, under what circumstances would this be possible?

Second Additional Protocol of the European Convention on mutual legal assistance has been signed by Armenia no 08/11/2001, ratified no 23/03/2001, and entered into force on 01/04.2011.
As the international treaty, according to the Constitution, is a prevailing part of the national legislation, the provisions of the Convention form a part of national legislation and therefore are subject for execution by law-enforcement bodies of Armenia.

7. Are there any other practical problems in videolink hearings?

Since the national legislation is silent on the videoconference hearings and its procedure, some legal as well as technical problems can arise. E.g. no provision on the presence of the lawyer is prescribed, as well as nothing provides the mechanism of implementation of conventional provisions. The only norm prescribed in national legislation, is the article 209 part 4 of the Criminal Procedure Code that relates just to the minute order of the videotape, photo and recording.

AUSTRIA / AUTRICHE

1. Are there any provisions in your national legislation about hearings by video conference in cross-border cases at a) pre-trial stage b) trial stage?

The Austrian Code of Criminal Procedure 1975 (StPO) provides in Sec. 153 rules concerning the use of videoconferences in pre-trial stage and in Sec. 247a rules concerning the use of videoconferences in trial stage. These provisions refer also to cross-border cases. Video Conferences are designated „technical means for the broadcasting of words and pictures" by Austrian law.

A. Pre-trial stage
Legislative text:
Sec.153 (4): If the residence of a witness or defendant lies outside the district of the competent public prosecutor's office or the competent court, the witness or the defendant may be examined with the help of technical means for the broadcasting of words and pictures at the public prosecutor's office or the court where he/she has his/her residence except if it is necessary due to reasons of efficient proceedings or any other particular reasons to summon the witness or the defendant to the competent public prosecutor's office or the competent court

Remarks:
In principle a defendant or witness residing outside the district of the court or the public prosecutor's office has to be examined by video conference. If there are any particular reasons the court/the public prosecutor can also summon the defendant or the witness to the competent court (e.g. if a hearing by video-conference would involve higher costs). In pre trial stage it is possible to hear also the defendant by video conference; in trial stage only the witness can be examined by video conference.

B. Trial stage
Legislative text:
Sec. 247a. A witness who is unable to appear in court due to his age or infirmity or due to other considerable reasons may be examined with the help of technical means for the broadcasting of words and pictures. The same applies for the case regulated by Sec. 153 (4), if the public prosecutor and the defence counsel agree. A witness who is unable or unwilling to appear in court due his residence abroad may be examined in the same way if the competent foreign authority provides legal assistance.

Remarks:
This provision aims at guaranteeing the principle of immediacy if there are particular and substantial obstacles for a witness to appear before court. Age, illness, frailty or other substantial reasons could form such an obstacle for witnesses residing in Austria. A witness who resides abroad and wishes not to appear before court has to be examined by video conference, irrespective of the reason why he/she declines to appear before court, if the competent foreign authority provides such legal assistance. In contrast to the pre trial stage it is not allowed in the trial stage to hear defendants by video conference. It is only possible to hear such witnesses by video conference who provide the above mentioned substantial reasons not to appear before court or who reside abroad.

2. For which type of proceedings (pre-trial, trial) are videoconferences most used?

As already illustrated it is possible to use videoconferences in pre-trial and in trial stage. There are no detailed statistics available to indicate the use of videoconferences in pre trial or trial stage in criminal proceedings. In 2011 a total amount of 2620 hearings have been held via video conference by Austrian judicial authorities (in civil and criminal cases). In 2018 a total amount of

4.245 hearings have been held via video conference by Austrian judicial authorities (in civil and criminal cases).

3. For which types of cases are videoconferences used?

The use of video conferences is not restricted to specific cases. According to the national law it is possible to use videoconferences for any type of cases.

4. Does this videolink have to be secured (encrypted) or are there any other technical requirements? What is a sufficient level of security? Are there any legal norms or administrative instructions (guidelines) on these issues? Please give as much as possible information on technical or security requirements (AES or other)

a. in pre trial stage
b. in trial stage

There are no differences in technical aspects; the following remarks apply likewise to the pre trial and the trial stage.

The Austrian Justice uses Sony PCS 1 and Polycom EX ViewStation systems; all systems are attached to an internal IP Ethernet network. For access to/from external VCS an ISDN gateway is installed. The telephone number of the gateway is 0043 1 90 257#xxxxxx (the xxxxxx-number will be announced in the concrete case by the Austrian counterpart). A Multipoint Conference Unit (MCU) is available on request. Up to five Austrian courts can be connected simultaneously with the installed MCU.

Video conferences between Austrian judicial authorities have not to be secured because they take place in a closed network. Videolinks to places outside this network are not encrypted and not secured.

Legal norms or guidelines concerning the security of videoconferences do not exist. The requirements of AES 128 and AES 256 would be possible but not yet put to practice.

5. If for some reason it is not possible to create a secure connection, can a decision be made to waive some of the security requirements on a case-by-case basis?

a. in pre trial stage
b. in trial stage

There are no differences in technical aspects; the following remarks apply likewise to the pre-trial and trial stage. Videoconferencing between Austrian judicial authorities works without any kind of problems. The handling of the system is user-friendly as well as the online booking system because specific skills are not required.

6. If your State has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, is it nevertheless possible to hold a videoconference in international cooperation? If so, under what circumstances would this be possible?

Though Austria has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, it is possible to provide legal assistance by holding a video conference if so requested.

Whereas there is a specific electronic reservation system provided for video conferences held between Austrian judicial authorities, it is necessary in cross-border cases of video conferencing to send a formal request for mutual legal assistance to the Austrian counterpart which has to contain information on all of the following points:

1. The telephone number and e-mail address of the official requesting the video conference.
2. The telephone number and e-mail address of the person responsible for technical matters at the requesting court/ public prosecutor's office.
3. The ISDN number of the video conference equipment at the requesting court/ public prosecutor's .office or of the ISDN/IP number of the MCU/Gateway.
4. Technical details of the video conference equipment to be used at the requesting court/public prosecutor's office (such as the manufacturer of the model and the number of the ISDN channels available).
5. Date and time of the planned video conference (the availability of the equipment, room and support can then be checked and arranged accordingly).
6. Date and time of an operational test, which should take place at least one week ahead of the scheduled video conference.
7. Information if the requesting party provides translation.

Any change of schedule should be communicated immediately to the Austrian counterpart. The Austria support cannot be upheld if 15 minutes after the planned start of the video conference no successful communication with the requesting external partner can be established.

7. Are there any other practical problems in videolink hearings?

We face repeatedly problems due to the fact that a change of schedule for the planned video conference or the operational test is not communicated in time to the Austrian authorities. Sometimes not sufficient information on the technical details of the video conference equipment in the requesting State is provided. Sometimes a video conference cannot be held for lack of interpretation.

AZERBAIJAN / AZERBAÏDJAN
(Not a Party to ETS 182 / n'est pas partie au STE 182)

1. Are there any provisions in your national legislation about hearings by video conference in cross-border cases at

a. pre trial stage
b. trial stage

The Republic of Azerbaijan has not acceded to the Second Additional Protocol to the European Convention on mutual assistance in criminal matters, dated 8 November 2001, or to any other international agreement or treaty because of the legal and technical aspects of the use of hearings by videoconference, and the legislation of the Republic of Azerbaijan does not contain any specific provision regulating the issue.

Meanwhile, according to Article 491.2 of the Code of Criminal Procedure of the Republic of Azerbaijan, the requesting State's legislation can be applied during the execution of a request for legal assistance as long as it does not contradict to the legislation of the Republic of Azerbaijan. The requesting State's legislation can be applied upon the request of that State's relevant authority. Therefore, the legislation of the Republic of Azerbaijan does not exclude the possibility to apply the requesting State's legislation regulating the use of hearings by videoconference during execution of a request for legal assistance.

According to Article 330.5 of the Code of Criminal Procedure, in exceptional circumstances, when the victim's life is in danger, in order to ensure the security of the victim, and to prevent the influence on him/her, on the basis of the victim's or state prosecutor's petition, or on the basis of the court's reasoned decision an opportunity could be provided for the victim to testify through the technical means without the need to actually take part in the hearing.

Besides, according to Article 24.2 of the Law of the Republic of Azerbaijan on The fight against human trafficking, victims of human trafficking can be provided an opportunity to testify via technical means (teleconference, videotape recording etc) in order to ensure the victims' security, to prevent the influence on them by human traffickers, as well as taking into account physical and psychological state of the victims of human trafficking.

Currently a Law has been drafted to explicitly allow for use of videoconferences to arrange participation of the accused person, as well as victim, witness or expert in the domestic court trials. It also allows for sending requests for legal assistance to be implemented by the videoconference.

Once tht Law is adopted by the Parliament the Ministry of Justice plans to launch relebant domestic procedures of accession to the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.

2. For which type of proceedings (pre-trial, trial) are videoconferences most used?

Up to day videoconferences have been used for the preparatory court hearings as a pilot project.

3. For which types of cases are videoconferences used?

As it is used as a pilot project they are used only for criminal cases on non-serious crimes (setting up punishment not exceeding seven years of imprisonment).

4. Does this videolink have to be secured (encrypted) or are there any other technical requirements? What is a sufficient level of security? Are there any legal norms or

administrative instructions (guidelines) on these issues? Please give as much as possible information on technical or security requirements (AES encryption or other).

a. in pre-trial stage
b. in trial stage

Under paragraph 4 of Presidential Decree No. 172, dated 29.12.2004, on ensuring information security in the state bodies of the Republic of Azerbaijan, the Special State Security Service was charged with the task of creating, storing and developing the Internet network segment intended for the state bodies of the Republic of Azerbaijan.

In that Decree the Supreme Court and the courts of appeal of the Republic of Azerbaijan have been proposed that the connection via the Internet network, its usage as well as placing information on that network to be carried out only via the Internet network segment intended for the state bodies that is under Special State Security Service's authority.

Besides, according to the "Development of State Program (Electronic Azerbaijan) on communication and information technology for 2010-2012", approved by the Presidential Order No. 1056, dated 11.08.2010, in order to ensure secure and operative information exchange between the state bodies as well as to ensure the security of the programs that are in use, the development of a single confidential multi-service communication network and the measures to be taken on provisions of state bodies with licensed programs have been assigned to the Special State Security Service, the Ministry of Transport, Communication and Information Technology and other relevant state bodies.

The new administrative building of the Supreme Court of the Republic of Azerbaijan that had been given to use in 2009 has all technical conditions for videoconferences in its conference hall and 9 courtrooms.

In 2014 the President of Azerbaijan signed the Decree on creation of the 'e-court' information system. This new system allows for electronic documentation, audio and video-recording of trials, video conferences, remote questioning of witnesses and even with a voice change ability, for their protection.

At the same time, courthouses for 16 courts were built within the framework of the project "Modernisation of Justice System" that is jointly realized by the Government of Azerbaijan and the World Bank, as well as using the state budget. A great deal of attention has been paid to the application of information and communication technologies, and all these new buildings have systems that enable the use of videoconferences and videolinks. That system makes it possible to establish a videolink in all types of cases and in any stage of the court hearing.

Old courthouses are also being connected to the new e-court system. Today, 60% of all 111 courts in Azerbaijan are connected to e-court system and are able to carry out videoconferences.

In order to ensure the security of connections between the networks the codification methods 3DES, AES-128, AES-256 and above that are supported by the video conference equipment are being used.

5. If for some reason it is not possible to create a secure connection, can a decision be made to waive some of the security requirements on a case-by-case basis?

a. in pre-trial stage
b. in trial stage

In the legislation there are no special requirements and rules on provision of secure connection.

6. If your state has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, is it nevertheless possible to hold a videoconference in international cooperation? If so, under what circumstances would this be possible?

See answer to question 1

7. Are there any other practical problems in videolink hearings?

As it is used as a pilot project no problems arise so far.

At the same time we note that currently steps are being taken in direction of widening the use of videoconferences across the country.

BOSNIA AND HERZEGOVINA / BOSNIE-HERZÉGOVINE

1. Are there any provisions in your national legislation about hearings by video conference in cross-border cases at

a. pre-trial stage

b. trial stage

The Criminal Procedure Code of Bosnia and Herzegovina regulates hearing of a witness using technical means for transmission of image and sound (by using a videoconference link) in Article 86, paragraph 6, in the following way:

"Article 86
Course of the Hearing of a Witness

(6) With regard to age, physical and mental condition, or other justified reasons, the witness may be heard using technical means for transmission of image and sound in such manner as to permit the parties and the defence attorney to ask questions although not in the same room as the witness. An expert person may be assigned for the purpose of such examination."

Moreover, Testimony by using technical means for transmission of image and sound is stipulated as a protective measure for witnesses under threat and vulnerable witnesses in the Law on Protection of Witnesses under Threat and Vulnerable Witnesses of Bosnia and Herzegovina.

"Article 9
Testimony by Using Technical Means for Transmission of Image and Sound

When determining whether there are justified reasons for examining a witness using technical means for transmission of image and sound in such manner as to permit the parties and the defence attorney to ask questions although not in the same room as the witness, the need to provide for the protection of a witness under threat and vulnerable witness shall also be taken into account."

Identical provisions concerning the course of the hearing of witnesses and testimony of protected witnesses using technical means for transmission of image and sound exist at the level of the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District in criminal procedure codes i.e. laws regulating the area of witness protection.

There are no special provisions concerning hearing using technical means for transmission of image and sound in cross-border cases i.e. at the pre trail stage and trial stage. However, although there are no special provisions concerning hearing via video-link in cross-border cases, it is important to point to Article 1 of the Law on Mutual Legal Assistance in Criminal Matters of Bosnia and Herzegovina which indicates that the Law will be applied only in cases unless otherwise provided by an international treaty, which implies that in these cases an international treaty will always be applied, inasmuch as these treaties govern the matter. In this respect, the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters regulated this issue, and, in accordance with the stated provision of the Law, it shall be directly applied in these cases.

Therefore, in the pre-trial stage as well as in trial stage, evidence may be presented (e.g. hearing of a witness) using video-link, which is already done in practice. The limitation in this respect comes only out of lack of appropriate equipment, because only the Court of Bosnia and Herzegovina has this capacity, yet this Court allows utilisation of its equipment in specific important cases and when this court is not really competent to act in specific case.

2. For which type of proceedings (pre-trial, trial) are videoconferences most used?

So far, the videoconference system was utilised strictly in proceedings conducted in the Court of Bosnia and Herzegovina, because this court is the only one that possesses necessary infrastructure. The practice so far demonstrated that the videoconference system was most frequently used in complex criminal cases.

3. For which types of cases are videoconferences used?

Videoconference is most frequently used in criminal cases (usually organised crime cases), in cases of hearing of witnesses from a remote location (abroad), usually due to a reason of a witness being unable to be present in the premises of the Court of Bosnia and Herzegovina, i.e. in cases when a judicial proceedings is taking place in another country, when a witness testifies from the premises of the Court of Bosnia and Herzegovina, via video-link, or in cases when a person's presence cannot be ensured.

4. Does this videolink have to be secured (encrypted) or are there any other technical requirements? What is a sufficient level of security? Are there any legal norms or administrative instructions (guidelines) on these issues? Please give as much as possible information on technical or security requirements (AES encryption or other).

a. in pre-trial stage
b. in trial stage

Currently, there are no standards on technical or safety requirements of video-links.

The Court of Bosnia and Herzegovina uses ISDN technology for making video-link calls to remote locations abroad.

Within IPA 2009 Project of Support to the Bosnia and Herzegovina Judiciary, the High Judicial and Prosecutorial Council of Bosnia and Herzegovina is going to implement a videoconferencing system. This system will be implemented in selected cantonal/district and municipal/basic courts, in order to enable testimony by long distance in the proceedings in front of these courts. The system will use judicial network for data transmission which links all courts and prosecutor's offices in Bosnia and Herzegovina as a communication channel for video-links. This communication channel is encrypted by using standard protocols of VPN technology (AES encryption algorithm).

The videoconference system will also be used as a witness protection measure at cantonal/district courts, where it is not possible to organise separate rooms for protected witnesses. Protected witnesses testifying in front of these courts will be able to testify via video-link, while being at another cantonal/district court.

During pilot implementation of the system, the book of rules will be created and adopted, regulating utilisation of video-links during witness hearing, video materials archiving, as well as technical and safety requirements.

This project is closely related to IPA 2009 Project of improving physical and technical conditions for processing war crime cases in at least 10 cantonal and district courts, wherewith, among other things, necessary audio/video equipment for the conduct of court hearings and application of witness protection measures will be installed.

In this respect, the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, in September 2010, made a decision on adoption of the Standards in application of witness

protection measures. Standards on application of witness protection measures, inter alia, provide general guidelines with regard to basic technical requirements of the courtroom and other court facilities when it comes to application of witness protection measures, i.e. hearing of witnesses using technical means for transmission of image and sound

5. If for some reason it is not possible to create a secure connection, can a decision be made to waive some of the security requirements on a case-by-case basis?

a. in pre-trial stage
b. in trial stage

Laws governing criminal procedure in Bosnia and Herzegovina and witness protection area allow reduction of security requirements when it comes to protection of a witness testifying via video link.

If the video-link conference is used for the hearing of a witness who is physically available to the court, meaning there is a possibility of arrival of a person to the court building, it is possible to change the order of the presentation of evidence in criminal procedure, and schedule a special hearing for the examination of the protected witness.

Moreover, if a person testifying via video link is in the same building (e.g. separate room for accommodation of protected witnesses), it is possible, in specific cases, and if so decided by a judge/panel, to take testimony from a person who will be “protected” behind a physical barrier (e.g. a screen) in the courtroom.

6. Are there any other practical problems in videolink hearings?

Currently, only the Court of Bosnia and Herzegovina possesses necessary infrastructure for the hearing via video link. For this reason, not all requests of other countries for the hearing via video link can be executed, nor all requests of local courts.

The most common problems the Court of Bosnia and Herzegovina faces is incompatibility of devices in remote locations (the Court of Bosnia and Herzegovina uses ISDN technology, while devices in remote locations are IP based).

Through implementation of IPA 2009 Project of Support to the Bosnia and Herzegovina’s Judiciary, as previously stated, videoconferencing system that would use IP technology based devices will be implemented. One of these devices will also be installed in the Court of Bosnia and Herzegovina thereby solving a number of problems related to incompatibility of devices.

CROATIA / CROATIE

1. Are they any provisions in your national legislation about hearings by video conference in cross-border cases at

a. pre-trial stage

b. trial stage

Croatian Criminal Procedure Act regulates examination of witnesses and defendants by video-link in the national proceedings without cross-border element (please find bellow the relevant provisions of the Croatian Criminal Procedure Act, Official gazette no. 152/08, 76/09, 80/11). In the practice these provisions are being applied in the cross border cases *mutatis mutandi*. Please note that Croatian Criminal Procedure Act regulate generally the provision of legal assistance by conducting the hearing of witness or defendant by video-conference, without making deference between hearings conducted in the pre-trial stage and the hearing conducted at the trial stage.

In the cross-border cases the competent courts apply international agreements and domestic law. According to the Article 141 of the Croatian Constitution international agreements concluded and ratified in accordance with the Constitution and made public, and which are in force, are part of the internal legal order of the Republic of Croatia and are above law in terms of legal effects. Subsequently, in concrete case the provisions of the international agreement (for example Article 9 of the Second Additional Protocol to the European Convention on Legal Assistance in Criminal Matters signed on 2001 regarding the MLA request issued by the judicial authority of the State Party of mentioned Protocol) shall have primacy in relation to afore mentioned provisions of the Croatian Criminal Procedure Act.

Please note that in the absence of the applicable international agreement Croatian Court shall provide mutual legal assistance of hearing by video-conference on the basis of the principle of reciprocity in accordance with the provisions of the Act on mutual legal assistance in criminal matters (Official gazette no. 178/04) and afore mentioned provisions of the Croatian Criminal Procedure Act.

2. For which type of proceedings (pre-trial, trial) are videoconferences most used?

In cross-border cases Croatian courts usually use the videoconference for the purpose of examination of witnesses at the main hearing. The videoconference is used in cases where it is not possible for the person to be heard to appear on Croatian territory in person.

In the cases where Croatian court acts upon the MLA request of foreign judicial authorities for the examination of the witnesses who reside on the Croatian territory, most of these requests refer to the examination for the purpose of holding the main hearing before the competent foreign court. These requests are being executed in accordance with the Article 9 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (if the requesting country is party of this Protocol) and applicable provisions of the Croatian Criminal Procedure Act (please find enclosed the excerpt from the Croatian Criminal Procedure Act).

Please note that Republic of Croatia, according to the Article 9 Paragraph 9 of the by means of Second Additional Protocol, has addressed declaration to the Secretary General of the Council of Europe, by which it declared that it will not apply the Article 9 of the Second Additional Protocol to hearings by video conference involving the accused person or the suspect.

3. For which types of cases are videoconferences used?

The videoconference is usually used for the purpose of conducting the criminal proceedings for the criminal offences against values protected by international law like war crimes and

transnational organized crime (criminal offence of abuse of narcotic drugs committed by criminal organization).

4. Does this video link have to be secured (encrypted) or are there any other technical requirements? What is a sufficient level of security? Are there any legal norms or administrative instructions (guidelines) on these issues? Please give as much as possible information on technical or security requirements (AES encryption or other).

a. in pre-trial stage
b. in trial stage

5. If for some reason it is not possible to create a secure connection, can a decision be made to waive some of the security requirements on a case-by-case basis?

a. in pre-trial stage
b. in trial stage

Referring to the previous questions, please note that in Republic of Croatia the video link does not have to be encrypted and there are no any other technical requirements in that sense. The security and technical requirements depend on the appropriate internet provider. There are no special legal norms or guidelines on these issues.

We would like to stress that the courts in the Republic of Croatia dispose with the equipment which enables the maximum technical protection of testimony by full encryption, but this type of testimony have not been used in legal proceedings yet.

Furthermore, in the Republic of Croatia only five courts dispose with the appropriate technical equipment for establishing video-link in cross-border cases.
The videoconference before

- the County Court in Zagreb is established by ISDN line (t-com.hr) 384 kpbs (6x64 kpbs), SONY-model PCS-1),
- the County Court in Vukovar is established by ISDN line 384 kpbs (3x128 kpbs)
- the County Court in Split is established by ISDN 3 lines (56kp x6channels)
- the County Court in Rijeka is established by ISDN 3 lines-384 kbps,
- the County Court in Osijek is established by ISDN 3lines-384 kbps.

In the concrete case the judge can consent on examination of the witness or the expert witness by Skype. This decision will be rendered only in the case where requested country cannot provide examination of the witnesses by ISDN.

6. If your state has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, is it nevertheless possible to hold a videoconference in international cooperation? If so, under what circumstances would this be possible?

On 28thMarch 2007 the Republic of Croatia has ratified the Second Additional Protocol to the European Convention on mutual assistance in criminal matters signed on 2001 (the Protocol is in force for the Republic of Croatia from the 1stJuly 2007).

7. Are there any other practical problems in video link hearings?

There are no practical problems in video link hearings.

Referring to the first question, please find below the relevant provisions of the Criminal Procedure Act of the Republic of Croatia (Official gazette No. 152/08, 76/09, 80/11) regulating legal assistance.

˝Article 192

(1) Except for cases specified in this Act, the court may, by a written order, order that the evidentiary hearing is conducted by means of a closed technical device for remote connection (audio-video conference).
(2) The order shall include the place and time of the audio-video conference and the names and addresses of the persons that are to be questioned. The summons to the witness and the defendant shall be sent pursuant to Article 175 paragraphs 1 and 2 of this Act.
(3) The order may specify that the person who keeps the objects that must be seized pursuant to the Penal Code or which may be used to determine facts in criminal proceedings, to show the objects upon the request of the court during the audio-video conference, and after it, to hand them over to the court pursuant to the provision of Article 261 of this Act.

Article 193

(1) The court that requested the issue of the order may, after determining the data from paragraph 2 of this Article, pose questions directly to the interrogated person. The parties may be present at the audio-video conference and take part in it pursuant to provisions of Article 292 paragraph 3 of this Act. The defendant in pre-trail detention or investigative detention shall be enabled in an appropriate manner to follow up the audio-video conference, to pose questions and make comments.
(2) An expert person operating the devices must be present at the audio-video conference.

Article 194

(1) The authority conducting the proceedings shall make a record on the audio-video conference, indicating the time and place of the action, persons who were present, type and state of technical devices for remote connections and the expert person who operated the device. This record may be made by a court advisor or a court apprentice.
(2) The authority conducting the proceedings may also comply with a special request of an international body regarding the form and the contents of the audio-video conference or with another special request of an international body according to the regulations of a special law or an international contract.

CZECH REPUBLIC / REPUBLIQUE TCHEQUE

1. Are there any provisions in your national legislation about hearings by video conference in cross-border cases at

a. pre-trial stage
b. trial stage

Sections 57 and 58 of the Act on International Judicial Cooperation in Criminal Matters regulate hearings by video conference in cross-border cases. These provisions apply both to pre-trial and trial stage.

Section 57
Interview via a Video-conference Device and Telephone upon a Request of the Czech Republic

(1) The judicial authority may request a foreign authority to secure an interview of a suspect, accused, witness or expert via a technical device enabling transmission of picture and sound (hereinafter referred to as the "video-conference device"), if it is not appropriate or possible to interview the person in the Czech Republic.
2) Under the conditions referred to in Sub-section (1) the judicial authority may request a foreign authority to secure interview of a witness or expert via telephone.
(3) Requests made pursuant to Sub-section (1) or (2) must contain, in addition referred to in Section 41 (1), including the basic questions that are to be asked to the interviewed person, also the name of the person conducting the interview in the territory of the Czech republic, also the reason, for which it is not appropriate to interview the person in the Czech Republic and the literal wording of the legal regulations of the Czech Republic, pursuant to which will be proceeded when conducting the interview.
(4) The judicial authority will conduct the interview via a video-conference device or telephone according to the Code of Criminal Procedure; at the same time it will take into account arrangements made the foreign authority in order to prevent breaching of basic principles of the law of the foreign state in question in the course of conducting the interview. If it cannot comply with these arrangements and fails to reach an agreement concerning the manner of conducting the interview, the interview will be terminated.

Section 58
Interview via a Video-conference Device or Telephone upon a Request of a Foreign State

(1) The judicial authority may allow the foreign authority upon its request to interview a suspect, accused, witness or expert via a video-conference device, if it is not appropriate or possible to interview this person in the foreign state.
(2) Under the conditions referred to in Sub-section (1) the judicial authority may allow the foreign authority to interview a witness or expert via a telephone.
(3) If the request of the foreign authority does not contain basic questions to be asked to the interviewed person, or the literal wording of legal provisions of the foreign state, according to which will be proceeded in the course of the interview, the judicial authority will request supplementation thereof.
(4) Summoning the interviewed persons, co-opting an interpreter and procedure of drawing up a protocol of the interview will be governed by the provisions of the Code of Criminal Procedure accordingly. A protocol of the interview will always be drawn up, which will reflect, in addition to the basic requirements pursuant Section 55 of the Code of Criminal Procedure, also technical conditions, under which was the interview conducted.
(6) Before the interview begins, the judicial authority will verify the identity of the interviewed person and will advise him according to the provisions of the Code of Criminal Procedure and this Act. Then it will allow the foreign authority to conduct the interview via the video-conference device or telephone.

(7) The judicial authority will be present during the interview and will mind that the basic principles of criminal proceedings and interests of the Czech Republic referred to in Section were not breached in the course of the interview. In case of their breach the interview will be stopped and measures will be taken in order to make the interview proceed in compliance with these principles, or the interview will be terminated.
(8) The interviewed person may exercise his right to refuse to testify pursuant to the Code of Criminal Procedure, as well as pursuant to the law of the concerned state. If the interviewed person refuses to testify, despise being obliged to do so, measures under the Criminal Code may be applied to him accordingly.
(9) The interviewed person may be provided protection under the conditions and in the manner stipulated by Section 55 (2) of the Code of Criminal Procedure and in the Act on Special Protection of Witnesses and other Persons in Relation to Criminal Proceedings.

2. For which type of proceedings (pre-trial, trial) are videoconferences most used?

Videoconference in the Czech Republic is used both in pre-trial and trial stage but mostly in trial stage.

3. For which types of cases are videoconferences used?

To the knowledge of the Ministry of Justice of the Czech Republic (when the Ministry of Justice of the Czech Republic is aware of videoconferences only with non-member states of the European Union), the videoconference was used mostly in criminal cases concerning crimes Breaking and Entering, Robbery, Rape, Murder, Extortion or Fraud.

4. Does this videolink have to be secured (encrypted) or are there any other technical requirements? What is a sufficient level of security? Are there any legal norms or administrative instructions (guidelines) on these issues? Please give as much as possible information on technical or security requirements (AES encryption or other).

a. in pre-trial stage
b. in trial stage

In principle, Czech judicial authorities mostly use IP connection for the videolink. The Czech Republic considers IP videolink to be of sufficient level of security. Security is ensured by the AES 256bit encryption.

5. If for some reason it is not possible to create a secure connection, can a decision be made to waive some of the security requirements on a case-by-case basis?

a. in pre-trial stage
b. in trial stage

See above.

6. If your state has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, is it nevertheless possible to hold a videoconference in international cooperation? If so, under what circumstances would this be possible?

The Czech Republic has ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.

However, the Czech Republic is able to hold a videoconference even with states that has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. The videoconference in such a case can be hold on the basis of reciprocity.

7. Are there any other practical problems in videolink hearings?

The Czech Republic has no practical problems with videolink hearings. Problem occurs when the videoconference is requested towards a state that is not equipped with a videoconferencing technology yet.

DENMARK / DANEMARK

1. Are there any provisions in your national legislation about hearings by video conference in cross-border cases at

- Pre-trial stage
- Trial Stage

As regards the use of telecommunications, including hearings by video conference, the Danish Administration of Justice Act is applicable at both pretrial and trial stage. Section 190 is particularly used in cross-border situations, which stipulates the following:
”The provisions of this Act apply to witness examinations requested by foreign public authorities. A request for observance of a special form or procedure, including examination conducted from abroad by use of telecommunication equipment, must be complied with, where possible, unless such compliance would clearly be incompatible with Danish law.
(2) Examination conducted from abroad by use of voice telecommunication equipment is subject to the witness's consent to the examination being conducted in that way. Section 178 does not apply.
(3) Section 186 does not apply in the case of examination conducted from abroad by use of telecommunication equipment.”

2. For which type of proceedings (pre-trial, trial) are videoconferences most used?

Video conferences are mostly used in pre-trial proceedings, but increasingly also for witness testimonies during trials.

3. For which types of cases are videoconferences used?

The use of video conferences is not limited to specific types of cases. However, the nationwide introduction of video conferences court proceedings in Denmark was initiated as a way to handle proceedings concerning renewals of remands, as defendants remain in custody in prison while the judge presides in the courtroom. In addition, video conferences are used for witness testimonies in domestic trials in Denmark or from authorities abroad such as embassies.

4. Does this video link have to be secured (encrypted) or are there any other technical requirements? What is a sufficient level of security? Are there any legal norms or administrative instructions (guidelines) on these issues? Please give as much as possible information on technical or security requirements (AES encryption or other).

a. in pre-trial stage
b. in trial stage

In Denmark, there is not distinguished between pre-trial and trial proceedings regarding the use of videolink. The same high level of security is applicable in all contexts. The basic nationwide videolink conferencing system established for the courts, prosecutors and prisons consists of 240 entities that are part of a separate network. AES encryption is always required. SIP and H.323 protocols are supported. Incoming calls are not accepted for courtrooms. Thus, all calls must be initiated by the court, including calls to embassies whether they are Danish or foreign. As regards calls to embassies, these are normally only established by using a secure virtual meeting room, which only the courts are able to create.

5. If for some reason it is not possible to create a secure connection, can a decision be made to waive some of the security requirements on a case by-case basis?

a. in pre-trial stage
b. in trial stage

The option to make a decision to waive some of the security requirements is solely applicable in cases including participants residing abroad. Encryption of the session can never be waived, just as direct incoming calls to the courtroom is not possible.

6. If your state has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, is it nevertheless possible to hold a videoconference in international cooperation? If so, under what circumstances would this be possible?

Not applicable, as Denmark is party to the Second Additional Protocol.
3
7. Are there any other practical problems in videolink hearings?

There may occur a number of practical challenges related to the use of videolink in court hearings in Denmark, which includes the allowed number of concurrent participants (maximum of 5), the number of cameras available in courtroom to display the participants, and issues related to technical maintenance of the videolink system, which, however, are normally remedied within few hours.

ESTONIA / ESTONIE

1. Are there any provisions in your national legislation about hearings by video conference in cross-border cases at

a. pre-trial stage

b. trial stage

In Estonia the hearing by videoconference is regulated in the Code of Criminal Proceedings.

§ 468. Hearing of person staying in foreign state by telephone or video-conference

(1) A person staying in a foreign state may be requested to be heard by telephone or video-conference on the bases provided for in subsection 69 (1) of this Code. The request shall set out the reasons for hearing the person by telephone or video-conference, the name of the person to be heard and his or her status in the proceeding, and the official title and name of the person conducting the hearing.

(2) If hearing by video-conference is requested, the request shall contain the assurance that the suspect or accused to be heard consents to the hearing of him or her by video-conference.

(3) If hearing by telephone is requested, the request shall contain the assurance that the witness or expert to be heard consents to the hearing by telephone.

(4) Hearing of a suspect or accused by telephone is not permitted.

(5) Hearings by telephone or video-conference shall be conducted directly by, and under the direction of, a representative of the competent judicial authority of the requesting state pursuant to the procedural law of such state. Summonses to hearings by telephone or video-conference shall be served pursuant to the procedural law of the requested state. The person to be heard may refuse to give statements also on the basis of the procedural law of the requested state.

(6) The competent judicial authority of a requested state which holds a hearing by telephone or video-conference shall:

1) determine and give notification of the time of the hearing;

2) ensure that the person to be heard be summoned to and appear at the hearing;

3) be responsible for the identification of the person to be heard;

4) be responsible for compliance with laws of the state of the authority;

5) ensure participation of an interpreter if necessary.

(7) A hearing by telephone or video-conference shall be recorded by the competent judicial authority of the requesting state but may additionally be recorded by the competent judicial authority of the requested state.

(8) The minutes of a hearing by video-conference shall be taken by the competent judicial authority of the requested state. The minutes of a hearing by telephone shall be taken by the competent judicial authority of the requesting state.

(9) The minutes of a hearing by telephone or video-conference shall set out:

1) the time and place of the hearing;

2) the form in which the hearing was conducted and the names of the technical devices used;

3) a reference to the request for legal assistance which is the basis for the hearing;

4) the names of the representatives of the competent judicial authorities of the requesting state and requested state participating in the hearing;

5) the status in the proceeding of the person heard and his or her name, personal identification code or, in the absence thereof, date of birth, residence or seat, address and telecommunications numbers or e-mail address;

6) a notation concerning explanation of the rights of the person heard to him or her;

7) assurance from the person heard that he or she has been warned about the liability for refusal to give statements and for giving knowingly false statements, or that he or she has taken an oath concerning the statements if the procedural law prescribes such obligation.

2. For which type of proceedings (pre-trial, trial) are videoconferences most used?

In practice most used in trial stage.

3. For which types of cases are videoconferences used?

Courts using videoconferences for hearing witnesses in cases of fraud, larceny, causing of health damage, physical abuse, narcotic offences etc. Between Estonia and Finland in 2011 conducted 26 videoconferences. 20 requested by Finland and 6 requested by Estonia.

4. Does this videolink have to be secured (encrypted) or are there any other technical requirements? What is a sufficient level of security? Are there any legal norms or administrative instructions (guidelines) on these issues? Please give as much as possible information on technical or security requirements (AES encryption or other).

a. in pre-trial stage
b. in trial stage

AES is required. In video conference we don't have yet technical or security requirements. Video links are secured (encrypted). We have to identify persons (with ID card) who are using the video link, also the link will be sent out from our servers this year after the Switzerland project (at a moment we use Elion server).

5. If for some reason it is not possible to create a secure connection, can a decision be made to waive some of the security requirements on a case-by-case basis?

a. in pre-trial stage
b. in trial stage

If it is not possible to use secure connection, there will be no connection. The judge decides if the process can be made with videoconference system or not (also when the conference system has technical problems).

6. If your state has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, is it nevertheless possible to hold a videoconference in international cooperation? If so, under what circumstances would this be possible?

In respect of Estonia the Protocol entered into force on 01.01.2005.

7. Are there any other practical problems in videolink hearings?

FINLAND / FINLANDE

1. Are there any provisions in your national legislation about hearings by video conference in cross-border cases at

a) Pre-trial stage

The investigator may allow a victim or a witness to give a statement in videoconference provided that it does not inconvenience or compromise the reliability of the investigation. A suspect may be heard via a videolink where the maximum penalty for the offence in question is six months at most.

b) Trial stage

A victim, witness or an expert may be heard via a videolink in criminal proceedings.

A suspect may be heard in this way provided that it would be possible in a domestic context. And domestically it is possible only where, for example, the suspect cannot be present in person owing to illness, the credibility of his/her statement can be assessed to a reliable degree without his/her presence or the person is in need of protection.

2. For which type of proceedings (pre-trial, trial) are videoconferences most used?

Videoconferences are mostly used at trial stage. All Finnish courts are furnished with video equipment. Most often video conferences are set up between Finland and Estonia.

3. For which types of cases are videoconferences most used?

Most commonly in drug cases.

4. Does this video link have to be secured (encrypted) or are there any other technical requirements? What is a sufficient level of security? Are there any legal norms or administrative instructions (guidelines) on these issues? Please give as much as possible information on technical or security requirements (AES encryption of other).

General information

As a rule, the operator providing videoconference services also provides a secured connection for its customers. The present connection may be technically characterized as a “build-in AES encryption method”. Video conferences are encrypted by using AES algorithm from endpoint to endpoint. Specific devices to encrypt video conferences are not required, since most endpoint devices support this feature. Encrypted information is decoded by the endpoints. If a secured link cannot be organised with a particular counterpart, the operator informs the client (police, court) accordingly.

a) at pre-trial stage

The connection at pre-trial stage has to be secured (encrypted).

b) at trial stage

Finland as a requesting state: The connection must be a secured one. However, if setting up a secured connection is not possible with a particular state, the operator informs the court and tries

to find other technical solutions. It is for the judge to decide how to proceed. Different from the pre-trial investigation stage, the trial stage is usually public. However, according to the data protection experts public access to court does not entail the proceedings being freely accessible on the Internet. Finally, the nature and delicacy of the case is a major factor in the decision making.

As a requested state: A request for legal assistance should include technical information on setting up a video link. In principle, the security requirements are the same as above. Sometimes the connection is tested beforehand.

5. If for some reason it is not possible to create a secure connection, can a decision be made to waive some of the security requirements on a case-by-case basis?

a) at pre-trial stage

No, the police authorities do not accept anything but a secure connection during pre-trial investigation.

b) at trial stage

In principle, yes. As said, first the operator proposes a secure connection. If this does not succeed, other technical solutions are explored. Finally, the judge makes a decision on how to proceed depending on the nature of the case.

6. If your state has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, is it nevertheless possible to hold a videoconference in international cooperation? If so, under what circumstances would this be possible?

7. Are there any other practical problems in video link hearings?

FRANCE

1. Existe-t-il dans votre législation nationale des dispositions concernant les audiences par vidéoconférences dans des affaires transfrontières :

a. au stade de l'instruction

b. au stade du procès

En matière d'entraide pénale internationale aux fins de vidéoconférence, le Code de procédure pénale français ne distingue pas entre les dispositions applicables au stade de l'enquête et au stade du procès. L'article 694-5 du Code de procédure pénale dispose en effet, dans son premier alinéa, que « les dispositions de l'article 706-71 sont applicables pour l'exécution simultanée, sur le territoire de la République et à l'étranger, de demandes d'entraide émanant des autorités judiciaires étrangères ou d'actes d'entraide réalisés à la demande des autorités judiciaires françaises ».

Cet article renvoie donc aux normes applicables en droit interne, sauf disposition contraire d'une Convention internationale régulièrement ratifiée par la France.

Les dispositions de l'article 706-71 du Code de procédure pénale introduisent toutefois une spécificité au stade du procès en prévoyant qu'une personne poursuivie détenue ne peut comparaître par vidéoconférence devant la juridiction de jugement qu'avec son accord exprès ainsi que celui du procureur de la République et des autres parties au procès.

2. Pour quel type de procédure (instruction, procès) les vidéoconférences sont-elles le plus utilisées?

Les demandes d'entraide aux fins de vidéoconférence émises ou reçues par la France sont pour l'essentiel fondées sur les dispositions de la directive 2014/41/UE du Parlement européen et du Conseil du 3 avril 2014 concernant la décision d'enquête européenne en matière pénale qui prévoient la transmission directe des demandes entre autorités judiciaires. Le Ministère de la Justice français ne dispose donc pas de données statistiques permettant de répondre de manière suffisamment précise à cette question s'agissant de ces demandes.

En ce qui concerne les demandes d'entraide aux fins de visioconférence entre la France et les Etats non membres de l'Union européenne, celles-ci sont majoritairement formées au stade de l'instruction. Le Ministère de la Justice français ne dispose toutefois pas d'outil statistique permettant de chiffrer précisément cette répartition selon les étapes de la procédure.

3. Pour quels types d'affaires utilisez-vous les vidéoconférences?

A défaut d'outil statistique dédié, le Ministère de la Justice français ne dispose pas de données permettant de répondre précisément à cette question.

La loi française n'impose pas de restriction à l'utilisation de la visioconférence en fonction de la nature des affaires. Il est toutefois possible de relever que, de fait, la visioconférence est utilisée dans les affaires transfrontières les plus graves.

4. Est-ce que le lien vidéo doit être protégé (crypté) ou existe-t-il d'autres exigences techniques ? Quel niveau de sécurité est considéré comme suffisant ? Existe-t-il à ce sujet des normes juridiques ou des instructions administratives (lignes directrices) ? Merci de

fournir autant d'informations que possible sur les exigences techniques ou de sécurité (cryptage AES ou autre)

a. au stade de l'instruction

b. au stade du procès

L'article 706-71 du Code de procédure pénale dispose que les moyens de télécommunication utilisés afin de procéder à l'audition d'une personne à distance doivent garantir la confidentialité de la transmission.

A cette fin, l'article A.38-1 du Code de procédure pénale énonce trois principes applicables à l'utilisation de moyens de télécommunications au cours de la procédure (sans distinguer entre le stade de l'instruction et le stade du procès) :

- en premier lieu, la retransmission doit s'effectuer au moyen d'un système bidirectionnel intégral ;

- en second lieu, la retransmission doit s'effectuer conformément aux normes H320 et H323 et aux normes associées de l'Union internationale des télécommunications ;

- en dernier lieu, lorsqu'il est procédé au chiffrement de la liaison, ce dernier doit s'effectuer avec des moyens matériels autorisés par l'Agence nationale de la sécurité des systèmes d'information (ANSSI).

L'ANSSI a énoncé les principes permettant d'assurer la confidentialité des transmissions, au moyen d'un corpus de règles et de recommandations appelé Référentiel Général de Sécurité (RGS), dont la seconde version, dite « 2.0 », est entrée en vigueur le 1er juillet 2014.

A cet égard, les exigences techniques mises en œuvre par la France, tant au stade de l'instruction qu'au stade du procès, consistent en un cryptage AES 128 de codec à codec vidéoconférence (endpoint to endpoint). Ce système de cryptage est inclus et activé par défaut dans le matériel de vidéoconférence (Cisco-Tandberg) utilisé par les juridictions françaises et autorisé par l'ANSSI.

A l'origine, le RGS recommandait l'utilisation d'un matériel distinct de cryptage (Thales SH 205) qui n'est toutefois plus utilisé dans le cadre des vidéoconférences organisées par les juridictions françaises, notamment en raison de son incompatibilité avec les systèmes utilisés par d'autres Etats.

5. Si pour quelque raison il s'avère impossible d'assurer une connexion sécurisée, est-il possible de décider au cas par cas de lever l'une ou l'autre exigence de sécurité ?

a. au stade de l'instruction

b. au stade du procès

S'il n'est pas possible, tant au stade de l'instruction que celui du procès, de lever les exigences liées à l'utilisation d'un système bidirectionnel intégral conforme aux normes H320 ou H323 de l'Union internationale des télécommunications, la juridiction peut, au cas par cas, décider de désactiver le système de chiffrement de la liaison.

Cette possibilité – rarement utilisée dans la pratique – ne dispense toutefois pas la juridiction de veiller au respect de la confidentialité de la transmission, conformément aux exigences légales énoncées par l'article 706-71 du Code de procédure pénale.

6. Si votre Etat n'a pas ratifié le Deuxième Protocole additionnel à la Convention européenne d'entraide judiciaire en matière pénale, est-il néanmoins possible d'organiser une vidéoconférence dans le cadre d'une coopération internationale? Si tel est le cas, dans quelles circonstances?

La France a ratifié le Deuxième Protocole additionnel à la Convention européenne d'entraide judiciaire en matière pénale qui est entré en vigueur à son égard le 1er juin 2012.

7. Existe-t-il d'autres problèmes pratiques liés aux audiences par vidéoconférence ?

GEORGIA / GEORGIE

1. Are there any provisions in your national legislation about hearings by video conference in cross-border cases at

a. pre-trial stage

b. trial stage

After the ratification of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (hereinafter referred to as the Protocol), Georgia has made the relevant amendments to the domestic law to make it in line with the Protocol referred to above. As a result of these amendments, respective provisions related to hearings by video conference in cross-border cases were incorporated into the International Cooperation in Criminal Matters Act (2010). The mentioned amendments fully reflected the corresponding provisions of the Protocol and starting from 2013 hearings by video conference in cross-border cases have become possible both at pre-trial and trial stages.

In addition to this, Georgian law also permits the local authorities to take the statements from persons being abroad through technical means bypassing mutual legal assistance framework. This is the case, when the person to be interviewed/interrogated expresses his/her explicit consent on it and the law the respective foreign state allows the conduct of such interview/interrogation under its domestic law or explicitly declared policies.

2. For which type of proceedings (pre-trial, trial) are videoconferences most used?

Up to the date, video conferences have been mostly used at trial stage.

3. For which types of cases are videoconferences used?

Since there is no limitation in the domestic legislation, Georgia is able to use videoconferences for any types of criminal cases. Up to the present date, videoconferences have been mostly used with regard to the cases of transnational nature.

4. Does this video link have to be secured (encrypted) or are there any other technical requirements? What is a sufficient level of security? Are there any legal norms or administrative instructions (guidelines) on these issues? Please give as much as possible information on technical or security requirements (AES encryption or other).

a. in pre-trial stage

b. in trial stage

There are neither legal norms nor administrative instructions (guidelines) in the domestic legislation establishing some technical requirements for conducting hearings by video conference. Therefore, it is preferable, rather than mandatory for the video link to be secured at the time of conducting hearings. The above indicated rules are applicable both in pre-trial and trial stages.

5. If for some reason it is not possible to create a secure connection, can a decision be made to waive some of the security requirements on a case-by-case basis?

a. in pre-trial stage

b. in trial stage

As mentioned above, it is preferable, rather than mandatory for the video link to be secured (encrypted) at the time of conducting hearings. Therefore, if for some reasons it is not possible to create a secure connection, some of the security requirements may be waived when holding videoconferences. The mentioned rule is applicable both in pre-trial and trial stages.

6. If your state has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, is it nevertheless possible to hold a videoconference in international cooperation? If so, under what circumstances would this be possible?

Georgia has ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.

7. Are there any other practical problems in video link hearings?

Up to the present date, Georgia has never encountered any significant practical problems in video link hearings.

GERMANY / ALLEMAGNE

1. Are there any provisions in your national legislation about hearings by video conference in cross-border cases at

a. pre-trial stage

b. trial stage

Answer to question 1. a):

Failing a specific provision on hearings in cross-border cases, mutual legal assistance can be rendered under the general clause of § 59(1) IRG (German Law on International Cooperation in Criminal Matters). As provided by § 77(1) of that same act, mutual legal assistance follows the same rules that apply in domestic cases, mutatis mutandis. Therefore, hearings by video-conference in cross-border cases are subject to the prerequisites laid down in the German Code of Criminal Procedure for such measures (see §§ 48 et seq., 58a, 168e, 247a, 239 et seq. of Code of Criminal Procedure).

2. For which type of proceedings (pre-trial, trial) are videoconferences most used?

Likewise, § 59(1) IRG does not distinguish assistance in pre-trial proceedings from the trial stage (or post-conviction).

3. For which types of cases are videoconferences used?

4. Does this videolink have to be secured (encrypted) or are there any other technical requirements? What is a sufficient level of security? Are there any legal norms or administrative instructions (guidelines) on these issues? Please give as much as possible information on technical or security requirements (AES encryption or other).

a. in pre-trial stage

b. in trial stage

5. If for some reason it is not possible to create a secure connection, can a decision be made to waive some of the security requirements on a case-by-case basis?

a. in pre-trial stage

b. in trial stage

6. If your state has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, is it nevertheless possible to hold a videoconference in international cooperation? If so, under what circumstances would this be possible?

Germany has signed but not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. Videoconferences are nevertheless possible in international cooperation under the conditions outlined above (cf. question no. 1).

7. Are there any other practical problems in videolink hearings?

GREECE / GRÈCE

1. Are there any provisions in your national legislation about hearings by video conference in cross-border cases at
   a. pre-trial stage
   b. trial stage

ANSWER: NOT IN CRIMINAL CASES.

2. For which type of proceedings (pre-trial, trial) are videoconferences most used?

3. For which types of cases are videoconferences used?

4. Does this videolink have to be secured (encrypted) or are there any other technical requirements? What is a sufficient level of security? Are there any legal norms or administrative instructions (guidelines) on these issues? Please give as much as possible information on technical or security requirements (AES encryption or other).
   a. in pre-trial stage
   b. in trial stage

5. If for some reason it is not possible to create a secure connection, can a decision be made to waive some of the security requirements on a case-by-case basis?
   a. in pre-trial stage
   b. in trial stage

6. If your state has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, is it nevertheless possible to hold a videoconference in international cooperation? If so, under what circumstances would this be possible?

ANSWER: GREECE HAS SIGNED, BUT NOT YET RATIFIED THE SECOND ADDITIONAL PROTOCOL. VIDEOCONFERENCE IS ONLY USED IN CROSS-BORDER CIVIL AND COMMERCIAL CASES [REGULATION (EC) 1206/2001].

7. Are there any other practical problems in videolink hearings?

HUNGARY / HONGRIE

1. Are there any provisions in your national legislation about hearings by video conference in cross-border cases at

a. pre-trial stage

b. trial stage

There are specific provisions in the Hungarian domestic legislation about hearing by video conference which concerns only the co-operation with the Member States of the European Union. Section 53 of the Act No CXXX of 2003 on cooperation in criminal matters with Member States of the European Union contains the specific provisions

(Section 53(1) The execution of a request issued by the judicial authority of a Member State to conduct questioning, or as the case may be, interrogation, of a witness or an expert, or - on the basis of their express written consent - an accused person, by closed circuit audiovisual means (video-conferencing) falls within the exclusive scope of the court.

(2) The court may make a direct request to the judicial authority of a Member State to conduct questioning of a witness by closed circuit audiovisual means (video-conferencing) if it is not possible for the person concerned to be present in the Republic of Hungary.)

Hungary is a Party to the EU Convention of 29 May 2000 on mutual legal assistance in criminal matters between the Member States of the European Union. Section 10 of that Convention has also specific provisions concerning the video-conference.

Regarding the co-operation with third countries there are no specific provisions in the Hungarian domestic legislation about hearing by video conference.

According to Section 61(1) and 61(2) of Act No. XXXVIII of 1996 on mutual legal assistance in criminal matters:

„(1) The Hungarian authorities shall provide procedural assistance, upon request by foreign authorities.

*(2) Such procedural assistance may specifically include investigative activities, searches for evidence, **questioning of suspects and witnesses, hearing of experts**, inspections of sites, searches, frisk searches, seizure, transit through Hungary, forwarding of documents and objects related to criminal proceedings, service of documents, provision of personal and other information in criminal records on Hungarian citizens subject to criminal proceedings in Foreign States and temporary surrender of such."*

Taking into account the above, the questioning of suspects and witnesses may be performed by video-conference on the basis of the Hungarian domestic legislation, if general legal conditions of providing mutual legal assistance are met.

The above mentioned Act shall be applied unless otherwise stipulated by an international treaty which means that the Act can be applied in the absence of having any international treaty. Moreover there is no requirement even for reciprocity.

2. For which type of proceedings (pre-trial, trial) are videoconferences most used?

There is no statistics available on this issue.

3. For which types of cases are videoconferences used?

It depends on the specific circumstances of the criminal case. Video-conference is mostly used in serious cases and also when the suspect is kept in prison abroad.

4. Does this videolink have to be secured (encrypted) or are there any other technical requirements? What is a sufficient level of security? Are there any legal norms or administrative instructions (guidelines) on these issues? Please give as much as possible information on technical or security requirements (AES encryption or other).

a. in pre-trial stage
b. in trial stage

There is neither specific legal norm nor administrative instruction (guideline) on security issue. Hungary uses ISDN-line to create videolink and there has never been security-type problem with providing legal assistance via video-conference.

5. If for some reason it is not possible to create a secure connection, can a decision be made to waive some of the security requirements on a case-by-case basis?

a. in pre-trial stage
b. in trial stage

There was no case where security problem had been raised.

6. If your state has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, is it nevertheless possible to hold a videoconference in international cooperation? If so, under what circumstances would this be possible?

See answer under point 1.

7. Are there any other practical problems in videolink hearings?

No.

ICELAND / ISLANDE

1. Are there any provisions in your national legislation about hearings by video conference in cross-border cases at

a. pre-trial stage

b. trial stage

2. For which type of proceedings (pre-trial, trial) are videoconferences most used?

3. For which types of cases are videoconferences used?

4. Does this videolink have to be secured (encrypted) or are there any other technical requirements? What is a sufficient level of security? Are there any legal norms or administrative instructions (guidelines) on these issues? Please give as much as possible information on technical or security requirements (AES encryption or other).

a. in pre-trial stage

b. in trial stage

5. If for some reason it is not possible to create a secure connection, can a decision be made to waive some of the security requirements on a case-by-case basis?

a. in pre-trial stage

b. in trial stage

6. If your state has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, is it nevertheless possible to hold a videoconference in international cooperation? If so, under what circumstances would this be possible?

Iceland has signed but not yet ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.

However, Article 22(2) of Act No 13/1984 on the Extradition of Criminals and Other Assistance in Criminal Proceedings, implements the 2000 European Union Convention on Mutual Assistance in Criminal Matters, and allows for video-conferences with the Member States of the EU, as well as Norway.

The exact wording of Article 22(2) is:
In the event that a request for assistance is submitted on the basis of the European Convention on Mutual Assistance in Criminal Matters from 29 May 2000 and the protocol thereto from 16 October 2001, the legal proceedings specified by the state submitting the request shall apply provided that such proceedings do not violate Icelandic law. Requests for the questioning of witnesses or experts by telephone or teleconferencing shall be granted as far as possible. Questioning by telephone shall only be permitted if the witness or expert in question so consents.

Furthermore, even though the Second Additional Protocol has not been ratified, the Director of Public Prosecutions in Iceland has executed requests of mutual assistance by using videoconference, e.g. in hearings of witnesses or victims in cases dealing with sexual offences. In general, the Director of Public Prosecutions would try to execute all requests, even though the state in question is not a party to the European Convention on Mutual Assistance in Criminal

Matters from 29 May 2000 and the protocol thereto from 16 October 2001. Iceland refers in this matter to Article 22(1) of Act No 13/1984:

In order to gather evidence for use in criminal proceedings in another state, it may be decided, in response to a request, that the provisions of the Code of Criminal Procedure No 88/2008 shall be applied in the same manner as in comparable proceedings in Iceland.

The Icelandic police, prosecutions and courts uses the Indico-system when interviewing in a criminal case and this system can be used in videoconferencing in international cooperation. There might however be some technical aspects that would need to be addressed before each videoconference, but in general Icelandic authorities should be well equipped to handle requests of this nature.

7. Are there any other practical problems in videolink hearings?

IRELAND / IRLANDE

1. Are there any provisions in your national legislation about hearings by video conference in cross-border cases at

a. pre-trial stage
b. trial stage

Request can only be made where criminal proceedings (trial) have been instituted.

2. For which type of proceedings (pre-trial, trial) are videoconferences most used?

See (1) above.

3. For which types of cases are videoconferences used?

Any criminal proceedings where it is not desirable or possible for the witness to give evidence in the requesting state concerned.

4. Does this videolink have to be secured (encrypted) or are there any other technical requirements? What is a sufficient level of security? Are there any legal norms or administrative instructions (guidelines) on these issues? Please give as much as possible information on technical or security requirements (AES encryption or other).

a. in pre-trial stage
b. in trial stage

Mutual assistance legislation does not prescribe any technical or security requirements.

5. If for some reason it is not possible to create a secure connection, can a decision be made to waive some of the security requirements on a case-by-case basis?

a. in pre-trial stage
b. in trial stage

N/a

6. If your state has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, is it nevertheless possible to hold a videoconference in international cooperation? If so, under what circumstances would this be possible?

Ireland will deal with any request from a designated state for evidence through television link where criminal proceedings (trial) have been instituted and it is not desirable or possible for the witness to give evidence in the requesting state concerned.

7. Are there any other practical problems in videolink hearings?

No particular problems have been encountered.

ITALY / ITALIE

1. Are there any provisions in your national legislation about hearings by video conference in cross-border cases at

a. pre-trial stage

b. trial stage

In Italian legislation there aren't specific provisions about hearings by video conference in cross-border cases, but the Italian procedural code, states at articles 146 bis,147 bis disp. att. cpp, the use of video conference, in domestic cases, during the trial stage.

Videoconferences in the penal process were first introduced into Italian Law in 1992 (decree 306/Law 356). This originally concerned the long distance examination of State witnesses.

Law no. 11 dated 7 January 1998, in force since 21 February 1998, now consolidated in penal procedural code (146 bis, 147, 147 bis disp. att. c.p.p.) has introduced video links in the Court process also when a defendant does not have to appear in person in the Court for trial.

The legislation allows for use of video links in three areas: a. participation in a trial; b. appearances before judge in Chambers; c. examination of State witnesses.

a) The option of video link in a trial (article 146 bis disp. att. Penal Procedure Code) may take place in a prosecution for offences under article 51/3bis Penal Procedure Code e.g. Mafia involvement, aiding and abetting Mafia activities, kidnapping, drug trafficking etc, where:
1. There are serious security or public order concerns
2. The trial is complex and a delay would impede other concurrent trial commitments
3. The prisoner is subject to the special conditions of imprisonment under article 41 bis of the Penitentiary Act. (Article 41bis/2 of the Penitentiary Act provides that the Minister of Justice, also by request of the Minister for Home Affairs, may temporarily suspend, completely or partly, the enforcement of treatment rules and of the institutes provided for by the law relevant to the Penitentiary Act which may be concretely a contrast to the need of order and security, towards people imprisoned for particular crimes (Mafia involvement, drug-trafficking, homicide, aggravated robbery and extortion, kidnapping, importation, buying, possession or cession of huge amounts of drugs, crimes committed for terrorism or for subversion of the constitutional system), where serious reason of order and public security occur.)

b) Appearances before a judge in Chambers may involve hearings before the Court of Freedom, appeal hearings, preliminary hearings, breach proceedings and response to supervision.

c) Examination of State witnesses, who are subject to protection, can occur by video link where:
- the offence falls within article 51/3bis of the Penal Procedure Code and the witness has been granted protection programmes or measures;
- the State witness has undergone a change of identity as a protective measure;
- the offence falls within article 51/3 bis of the Penal Procedure Code and a person accused for a relevant crime has to be examined, being on trial, also separately, for one of the same crimes.

The recent amendment to paragraph 1-bis of art. 146-bis, disp. att. of the Criminal Procedure Code , made by Law n. 211 of 22.12.2011, has extended the possibility to use videoconference on any occasion that a witness who is detained in prison has to be heard.

In addition art. 205 ter, disp. att. of the Criminal Procedure Code provides the use of videoconference for the examination of defendants, detained in prison abroad, that can't be transferred to Italy, on the basis of specific international agreements, or referring to 146-bis, disp. att..

Furthermore Judges, in the practical application, extend these provisions, in cross-border cases.

2. For which type of proceedings (pre-trial, trial) are videoconferences most used?

Mainly for trials, but sometimes (e.g. before before the Court of Freedom) also at pre-trial stage.

3. For which types of cases are videoconferences used?

Serious offences (e.g. Mafia involvement, aiding and abetting Mafia activities, kidnapping, drug trafficking, murder, corruption, etc).

4. Does this videolink have to be secured (encrypted) or are there any other technical requirements? What is a sufficient level of security? Are there any legal norms or administrative instructions (guidelines) on these issues? Please give as much as possible information on technical or security requirements (AES encryption or other).

a. in pre-trial stage
b. in trial stage

The use of a VPN MPLS for the video connection guarantees the maximum encryption of the connection which cannot be intercepted other than by a judicial request. The switch of the LAN, access to the network, the router of the connections are completely distinct from the institutional connections of the Administration and they cannot be accessed from outside, because they are located inside trial court rooms or in prisons. The complete encryption of the audio-video connection means that it is not necessary to encrypt the content of the videoconference, even if the infrastructure is provided if necessary, to work with this encryption AES128.

5. If for some reason it is not possible to create a secure connection, can a decision be made to waive some of the security requirements on a case-by-case basis?

a. in pre-trial stage
b. in trial stage

The general security requirements of the infrastructure can never be lowered. All videoconferences are provided for – at a domestic level – with the maximum security available, the connections are always intrinsically secure because there is no possibility of external access. In cross borders cases, if it's not possible to create a secure connection, a decision can be made to waive some of the security requirements on a case-by-case basis.

6. If your state has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, is it nevertheless possible to hold a videoconference in international cooperation? If so, under what circumstances would this be possible?

Italy has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (nor the 2000 Brussels EU convention on MLA), nevertheless it's possible, to use videoconference on the basis of the European Convention on Mutual Assistance in Criminal Matters done at Strasbourg on 20 April 1959, that provides the use of the domestic legislation of the requested Party in executing a rogatory letter.

In fact, article 3 of the Convention establishes that the requested Party shall execute in the manner provided for by its law any letters rogatory relating to a criminal matter.

7. Are there any other practical problems in videolink hearings?

The possible break down of the connection in the course of the videoconference is immediately resolved by technicians present where the video connection is taking place. Where there are problems with the equipment the connection has to be restored in a maximum of 90 minutes on the basis of the contract.

LATVIA / LETTONIE

1. Are there any provisions in your national legislation about hearings by video conference in cross-border cases at

a. pre-trial stage

b. trial stage

At pre-trial stage and trial stage Article 140 of the Criminal Procedure Law applies.
Section 140. Performance of an Investigative Action by Using Technical Means.

(1) A person directing the proceedings may perform an investigative action by using technical means (teleconference, videoconference) if the interests of criminal proceedings require such use.
(2) During the course of a procedural action using technical means, it shall be ensured that the person directing the proceedings and persons who participate in the procedural action and are located in various premises and buildings can hear each other during a teleconference, and see and hear each other during a videoconference.
(2.1) In the case referred to in Paragraph two of this Section the person directing the proceedings shall authorise or assign the head of the institution located in the second place of the occurrence of the procedural action to authorise a person who will ensure the course of the procedural action at his or her location (hereinafter – authorised person).
(3) In commencing a procedural action, a person directing the proceedings shall notify:
1) regarding the places, date, and time of the occurrence of the procedural action;
2) the position, given name, and surname of the person directing the proceedings;
3) the positions, given name, and surname of the authorised persons who are located in the second place of the occurrence of the procedural action;
4) regarding the content of the procedural action and the performance thereof using technical means.
(4) On the basis of an invitation, persons who participate in a procedural action shall announce the given name, surname, and procedural status thereof.
(5) An authorised person shall examine and certify the identity of a person who participates in a procedural action, but is not located in one room with the person directing the proceedings.
(6) A person directing the proceedings shall inform persons who participate in procedural actions regarding the rights and duties thereof, and in the cases provided for by law shall notify regarding liability for the non-execution of the duties thereof and initiate an investigative action.
(7) An authorised person shall draw up a certification, indicating the place, date, and time of the occurrence of a procedural action, the position, given name, and surname thereof, and the given name, surname, personal identity number, and address of each person present at the place of the occurrence of such procedural action, as well as the announced report, if the Law provides or liability for the non-execution of the duty thereof. Notified persons shall sign regarding such report. The certification shall also indicate interruptions in the course of the procedural action, and the end time of the procedural action. The certification shall be signed by all the persons present at the place of the occurrence of the procedural action, and such certification shall be sent to a person directing the proceedings for attachment to the minutes of the procedural action.
(8) The investigative actions performed using technical means shall be recorded in pre-trial proceedings in accordance with the procedures laid down in Section 143 of this Law, and other procedural actions shall be recorded in accordance with the procedures laid down in Section 142 of this Law. During trial of a case, the procedural actions performed using technical means shall be recorded in the minutes of a court session.
[21 October 2010]

Additionally to Article 140, there is also Article 851 of Criminal Procedure Law of the Republic of Latvia that states:

Section 851. Performance of anInvestigative Action by Using Technical Means

(1) A procedural action may be performed by using technicalmeans upon the request of a foreign state or upon a proposal ofthe institution fulfilling the request and with the consent of aforeign state. A person who has the right to defence may beexamined by using technical means provided that the person agreesto it.
(2) A competent official of the state that submitted a requestshall perform, in accordance with the procedures of such state, aprocedural action using technical means. If necessary, aninterpreter shall participate in the performance of suchprocedural action in Latvia or a foreign state.
(3) A representative of the institution that fulfils a requestshall certify the identity of involved persons and ensure theprogress of a procedural action in Latvia and the conformitythereof to the basic principles of Latvian criminalprocedure.
(4) If, in performing a procedural action, the basicprinciples of Latvian criminal procedure are violated, arepresentative of the institution fulfilling a request shallimmediately take measures in order for such operation to continuein accordance with the referred to principles.
(5) A person who has been summoned to provide testimony hasthe right to not provide testimony also in a case where suchnon-provision of testimony arises from the laws of the state thatsubmitted the request.

[24 May 2012; 30 March 2017]

2. For which type of proceedings (pre-trial, trial) are videoconferences most used?

Videoconferences are mostly used in trial stage. In the pre-trial stage the possibility is not used very often.

3. For which types of cases are videoconferences used?

The specific statistics are not kept. However, videoconferences are mostly use for sexual offences, fraud offences, corruption.

4. Does this videolink have to be secured (encrypted) or are there any other technical requirements? What is a sufficient level of security? Are there any legal norms or administrative instructions (guidelines) on these issues? Please give as much as possible information on technical or security requirements (AES encryption or other).

a. in pre-trial stage
b. in trial stage

The videolink is not secured, but there is administrative instructions(guidlines) how to organise video conferences.

5. If for some reason it is not possible to create a secure connection, can a decision be made to waive some of the security requirements on a case-by-case basis?

a. in pre-trial stage
b. in trial stage

Please see answer to question No 4.

6. If your state has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, is it nevertheless possible to hold a videoconference in international cooperation? If so, under what circumstances would this be possible?

Latvia has ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.

7. Are there any other practical problems in videolink hearings?

The main dificulties in practice are due to technical equipment.

LITHUANIA / LITUANIE

1. Are there any provisions in your national legislation about hearings by videoconference in cross-border cases at

a. pre-trial stage

b. trial stage

The use of video conferencing equipment in the case hearings is regulated by the Code of Criminal Procedure of the Republic of Lithuania. This legal act allows using videoconferences in examinations of witnesses, who are subjects to the protection from criminal influence, and in examinations of witnesses and victims, for whom the anonymity is applicable. The use of video conferencing equipment in cross-border cases is not separately regulated. Also there is no written procedure how such court hearings should be held.

a. Witnesses, who are subjects to the protection from criminal influence, could be examined using video conferencing equipment in pre-trial stage.

b. Witnesses, who are subjects to the protection from criminal influence, also witnesses and victims, for whom the anonymity is applicable, could be examined using video conferencing equipment in trial stage.

On February 2011 the first examination of witnesses in criminal cross-border case was held using video conferencing equipment. The examination was carried at the premises of the National Courts Administration as the courts currently do not have the proper equipment. Until March 2013 it is planned to install the video conferencing equipment in the National Courts Administration, the individual courts and prisons by implementing the project „Creation and Implementation of the System for Video Transmission, Recording and Storage in Courts“, which is carried by Lithuanian-Swiss Cooperation Programme.

2. For which type of proceedings (pre-trial, trial) are videoconferences most used?

Videoconferences are mostly used in trial stage. It must be noted that in pre-trial stage the possibility is not used very often.

3. For which types of cases are videoconferences most used?

Videoconferences are currently used only in criminal cases for examinations of witnesses. There is no possibility to provide statistic data on types of criminal cases were videoconferences are used, because such data are not cumulated.

From March 2013 the Code of Civil Procedure of the Republic of Lithuania and the Law of Administrative Procedure of the Republic of Lithuania ensure the possibility of distant participation using video conferencing equipment in court hearings for parties involved in civil and administrative proceedings.

4. Does this videolink have to be secured (encrypted) or are there any other technical requirements? What is a sufficient level of security? Are there any legal norms or administrative instructions (guidelines) on these issues? Please give as much as possible information on technical or security requirements (AES encryption or other).

a. in pre-trial stage

b. in trial stage

Currently there are no rules, technical requirements or legal norms regulating the safety of connection during videoconferences.

5. If for some reason it is not possible to create a secure connection, can a decision be made to waive some of the security requirements on a case-by-case basis?

a. in pre-trial stage

b. in trial stage

See the 4th answer.

6. If your state has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in international cooperation? If so, under what circumstances would this be possible?

Lithuania has ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.

7. Are there any other practical problems in videolink hearings?

Currently the main difficulties in practice arise because neither the Courts nor Regional Prosecutor's Offices or Prosecutor General's Office have the necessary technical equipment. In such cases the requesting State should provide video equipment to requested State or reimburse the costs of renting the video equipment, therefore the execution of the requests for a hearing by videoconference in cross-border cases could be aggravated.

It should be admitted that currently there are no regulations for procedure of using video conferencing equipment. Besides, the legal acts regulating criminal procedure and the use of video conferencing equipment cover only a narrow sphere (see the first answer). Due to this, the possibility to initiate the amendments of legal acts which will enable to use wider the video conferencing equipment (for example to examine other witnesses, experts, victims, suspects, convicts, etc.) is under consideration.

LUXEMBOURG

1. Existe-t-il dans votre législation nationale des dispositions concernant les audiences par vidéoconférences dans des affaires transfrontières :

a. au stade de l'instruction

b. au stade du procès

La tenue de vidéoconférences est expressément prévue suite à l'approbation par une loi du 27 octobre 2010 de la Convention du 29 mai 2000 relative à l'entraide judiciaire en matière pénale qui prévoit cette mesure en son article 10. Pour un pays ne faisant pas partie de l'Union européenne, les vidéoconférences peuvent néanmoins être organisées sur la base de la réciprocité.

Depuis la loi du 21 décembre 2007 portant, notamment, approbation de la Convention du 25 juin 2002 entre les USA et l'UE en matière d'entraide judiciaire, la vidéoconférence est également reconnue dans les relations entre les US et le Luxembourg.

Au niveau national, un projet de loi n°6381 vient d'être déposé au Parlement afin de conférer une base légale à la tenue de vidéoconférences.

Ces dispositions s'appliquent aussi aux actes de procédure exécutés au Luxembourg par le biais d'une vidéoconférence internationale en application d'un instrument international ou européen en matière d'extradition, de remise de personnes, d'entraide judiciaire pénale ou de coopération policière, pour autant qu'il n'y est pas dérogé par les dispositions de l'instrument sur base duquel l'acte en question est exécuté.

Sont donc visés tous les instruments juridiques internationaux en vigueur au Luxembourg comme par exemple les conventions du Conseil de l'Europe.

2. Pour quel type de procédure (instruction, procès) les vidéoconférences sont-elles le plus utilisées?

Elles sont utilisées dans les deux types de procédure, sans qu'une tendance particulière pour l'un ou l'autre type ne soit vraiment frappant.

3. Pour quels types d'affaires utilisez-vous les vidéoconférences?

L'expérience actuelle du Grand-duché est essentiellement celle du pays requis, beaucoup moins celle d'un pays qui demanderait l'organisation d'une telle mesure. Il n'est pas à exclure que cela changera dans le futur, étant donné que le projet de loi susvisé prévoit l'introduction d'auditions et/ou d'interrogatoires par ce biais dans le droit national, qui, actuellement, ne le prévoit pas expressément.

4. Est-ce que le lien vidéo doit être protégé (crypté) ou existe-t-il d'autres exigences techniques ? Quel niveau de sécurité est considéré comme suffisant ? Existe-t-il à ce sujet des normes juridiques ou des instructions administratives (lignes directrices) ? Merci de fournir autant d'informations que possible sur les exigences techniques ou de sécurité (cryptage AES ou autre)

a. au stade de l'instruction

b. au stade du procès

A défaut de texte national régissant la matière (à ce stade il n'y a pas de règlement d'exécution prévu pour le projet de loi susvisé), il n'y a pas de prescriptions de sécurité ou techniques

spécifiques. Les installations de la Justice (soit fixes, soit mobiles) supportent les principales applications de vidéoconférence actuellement sur le marché et sont régulièrement mises à jour.

La pratique actuelle veut que les services techniques respectifs se contactent avant la vidéoconférence et procèdent à des essais techniques avant de lancer la procédure. Dans ce cadre des problèmes d'ordre purement matériel, notamment de cryptage sont réglés au cas par cas.

5. Si pour quelque raison il s'avère impossible d'assurer une connexion sécurisée, est-il possible de décider au cas par cas de lever l'une ou l'autre exigence de sécurité ?

a. au stade de l'instruction

b. au stade du procès

Voir la réponse précédente, second alinéa

6. Si votre Etat n'a pas ratifié le Deuxième Protocole additionnel à la Convention européenne d'entraide judiciaire en matière pénale, est-il néanmoins possible d'organiser une vidéoconférence dans le cadre d'une coopération internationale? Si tel est le cas, dans quelles circonstances?

Le Luxembourg n'a pas encore ratifié le Deuxième Protocole dont question à la question. Suite à la ratification de la Convention du 29 mai 2000, la vidéoconférence est possible avec l'écrasante majorité des pays requérant le Luxembourg à cette fin. Pour le surplus, la mesure est possible sur une base de réciprocité et recevra une base légale dès que le projet de loi susvisé sera voté.

7. Existe-t-il d'autres problèmes pratiques liés aux audiences par vidéoconférence ?

Essentiellement des problèmes liés à la difficulté rencontrée assez souvent dans les contacts avec les services techniques des pays requérants.

MONACO

1. Existe-t-il dans votre législation nationale des dispositions concernant les audiences par vidéoconférences dans des affaires transfrontières :

a. au stade de l'instruction

b. au stade du procès

L'actuel code de procédure pénale ne contient pas de telles dispositions. Mais il existe un projet de loi qui prévoit d'inclure des dispositions relatives aux auditions par vidéo conférence.

En revanche, une salle d'audience est équipée avec le matériel adéquat pour procéder à de telles auditions. Cette technique d'audition ne peut être utilisée que dans la mesure où les personnes intéressées sont d'accord pour être entendues dans ces conditions.

2. Pour quel type de procédure (instruction, procès) les vidéoconférences sont-elles le plus utilisées?

A ce jour, cette procédure a été plus utilisée dans le cadre de procès. Mais la première audition s'est déroulée dans le cadre d'une information judiciaire (instruction), la personne auditionnée était détenue outre –atlantique.

3. Pour quels types d'affaires utilisez-vous les vidéoconférences?

Jusqu'à ce jour, les auditions par vidéo – conférence ont été organisées dans des affaires pénales pour des infractions d'une certaine gravité notamment dans des affaires de blanchiment.

4. Est-ce que le lien vidéo doit être protégé (crypté) ou existe-t-il d'autres exigences techniques ? Quel niveau de sécurité est considéré comme suffisant ? Existe-t-il à ce sujet des normes juridiques ou des instructions administratives (lignes directrices) ? Merci de fournir autant d'informations que possible sur les exigences techniques ou de sécurité (cryptage AES ou autre)

a. au stade de l'instruction

b. au stade du procès

Dans la mesure du possible le lien vidéo doit être crypté. Néanmoins, après divers essais avec des pays comme l'Angleterre, la Russie, et l'Italie, les autorités monégasques, dans un esprit de coopération, tentent de s'adapter à leurs critères de connexion non cryptée, l'autre mode de connexion n'étant pas possible dans certains cas.

Avec un Etat requérant, l'opération a pu être effectuée avec succès en utilisant une plate-forme de connexion sécurisée d'un prestataire privée ayant pour habitude de travailler avec un Etat tiers.

En effet, le mode de connexion cryptée de l'Etat requérant ne permettait pas une communication directe correcte. L'Etat requérant et Monaco, Etat requis, ont donc chacun de son côté, établi une connexion sécurisée RNIS avec la plate-forme de l'Etat tiers par laquelle ils ont été mis en relation depuis un espace virtuel crypté.

Si le lien crypté est possible, les autorités monégasques communiquent alors par RNIS et non par IP.

La communication par RNIS revient à établir une connexion par numéro de téléphone. Dans ce cas, pour intercepter la communication, il faudrait alors intervenir physiquement sur la ligne.

5. Si pour quelque raison il s'avère impossible d'assurer une connexion sécurisée, est-il possible de décider au cas par cas de lever l'une ou l'autre exigence de sécurité ?

a. au stade de l'instruction

b. au stade du procès

Cf. les réponses à la question 5. Techniquement cela serait possible. Toutefois, c'est au magistrat étranger qui demande l'exécution d'une demande à Monaco et au magistrat en charge de cette exécution à Monaco, de décider de lever des exigences de sécurité selon le stade de la procédure ou l'affaire.

Il semble à première vue, que cela serait moins problématique pour une audition au stade du procès puisque, sauf huis-clos, les audiences (phase de jugement) sont publiques à Monaco. En revanche, au stade de l'instruction, en raison des exigences liées au secret de l'instruction, cette levée de mesures de sécurité pourrait être plus problématique.

6. Si votre Etat n'a pas ratifié le Deuxième Protocole additionnel à la Convention européenne d'entraide judiciaire en matière pénale, est-il néanmoins possible d'organiser une vidéoconférence dans le cadre d'une coopération internationale? Si tel est le cas, dans quelles circonstances?

Monaco n'est pas partie au Deuxième protocole additionnel à la Convention européenne d'entraide judiciaire. En revanche, certaines conventions bilatérales prévoient ce type d'entraide.

Compte tenu de l'intérêt pour ce type de procédure, il a été décidé d'équiper une salle d'audience avec le matériel adéquat et de former des personnes pour l'utilisation du matériel. Il est toutefois nécessaire d'obtenir le consentement des personnes à entendre pour utiliser cette procédure.

Lorsque l'audition a lieu pendant la phase de procès, l'audience est publique.

7. Existe-t-il d'autres problèmes pratiques liés aux audiences par vidéoconférence ?

Au-delà des difficultés techniques liées à des problèmes de compatibilité des systèmes, ont pu être constatées des difficultés de compréhension entre services techniques étrangers lors des essais de connexion. Il est nécessaire dans 90% des cas d'avoir recours à un interprète pour les essais techniques.

MONTENEGRO / MONTÉNÉGRO

1. Are there any provisions in your national legislation about hearings by video conference in cross-border cases at

a. pre-trial stage

b. trial stage

Article 112 paragraph 3 of the Criminal Procedure Code stipulates that witnesses who are in another country may be heard also by means of technical devices for transmission of image or sound.
Article 42 of the Law on International Legal Assistance in Criminal Matters stipulates that one of the forms of international legal assistance is also the hearing by means of video and telephone conference.

2. For which type of proceedings (pre-trial, trial) are videoconferences most used?

In the current court practice video conferences are equally often applied in the phase of preliminary investigation as well as in the phase of hearing i.e. after the raising of the indictment by competent prosecutor, and in all the cases when the court finds it necessary to hear some person as a witness, and if the arrival of that person to the court is impossible or significantly difficult.

3. For which types of cases are videoconferences used?

It has been used until now for needs of criminal proceedings before domestic court, (witnesses in USA and Belgium), as well as according to letter rogatories of foreign judicial bodies, in cases of serious criminal offences (proceedings for criminal offence murder, war crime).

4. Does this videolink have to be secured (encrypted) or are there any other technical requirements? What is a sufficient level of security? Are there any legal norms or administrative instructions (guidelines) on these issues? Please give as much as possible information on technical or security requirements (AES encryption or other).

a. in pre-trial stage

b. in trial stage

Court may give up at any phase of the proceeding from decision with which it was decided to have the hearing by means of video link.
Polycom PVX 8.0.4. and Polycom VSX 3000 desktop with AES encryption are used in Montenegro.

5. If for some reason it is not possible to create a secure connection, can a decision be made to waive some of the security requirements on a case-by-case basis?

a. in pre-trial stage

b. in trial stage

No.

6. If your state has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, is it nevertheless possible to hold a videoconference in international cooperation? If so, under what circumstances would this be possible?

Montenegro ratified Second Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters. With countries which did not ratify the Second Additional Protocol, this type of legal assistance is requested and provided based on the Law on International Legal Assistance in Criminal Matters, under the condition of mutuality.

7. Are there any other practical problems in videolink hearings?

In cases of need, with products which are used in Montenegro for establishment of video conference links it is not possible to initiate a multi-point connection (with more participants), but only point-to-point connection (one on one), while it is possible to be a second participant in the multi-point conference connection initiated by some other party.

NETHERLANDS / PAYS-BAS

1. Are there any provisions in your national legislation about hearings by video conference in cross-border cases at

a. pre-trial stage
b. trial stage

Yes, article 552n of the Dutch Code of Criminal Procedure states that a request for a hearing of a witness or expert witness by videoconference, based on a treaty, will be dealt with by an examining magistrate. No difference is made between pre trial and trial stage.

2. For which type of proceedings (pre-trial, trial) are videoconferences most used?

The Netherlands as requesting state:
Videoconferences are used in cases where the witness resides abroad and the Court demands that the witness is to be heard (trial stage). The Court will refer the case to the examining magistrate and the hearing by videoconference will be done by the latter, not by the (sitting) judge dealing with the case in Court. The so obtained witness statement (written out) can be used in Court at a later stage.

The Netherlands as requested state:
The Netherlands is seldom asked to facilitate the hearing by a foreign judge of a witness living in the Netherlands via videoconference.

3 For which types of cases are videoconferences used?

All types of cases/criminal offences.

4. Does this videolink have to be secured (encrypted) or are there any other technical requirements? What is a sufficient level of security? Are there any legal norms or administrative instructions (guidelines) on these issues? Please give as much as possible information on technical or security requirements (AES encryption or other).

a. in pre-trial stage
b. in trial stage

In principle the line has to be secured (encrypted). The Courts are connected to the national secure network system used by the Courts in the Netherlands. The Court in Haarlem is an exception: that Court uses its own secure line to the outside world (ISDN and SDSL).

No difference is made between pre-trial and trial stage.

5. If for some reason it is not possible to create a secure connection, can a decision be made to waive some of the security requirements on a case-by-case basis?

a. in pre-trial stage
b. in trial stage

The examining judge decides to waive security requirements (encryption) or not. When it is impossible to secure the connection and encrypt the information, and the examining magistrate thinks it safe to downgrade the level of security, a non-secure connection can be used. This is a case by case decision. The decision to downgrade the level of security is regulated by a special procedure.

No difference is made between pre-trial and trial stage.

6. If your state has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, is it nevertheless possible to hold a videoconference in international cooperation? If so, under what circumstances would this be possible?

The Netherlands has ratified the Second Additional Protocol.

7. Are there any other practical problems in videolink hearings?

No, we find that hearing by videoconference (of a good quality) is possible in more and more States. This contributes to an efficient and cost-effective way of hearing witnesses abroad.

NORWAY / NORVÈGE

1. Are there any provisions in your national legislation about hearings by video conference in cross-border cases at

a. pre-trial stage

b. trial stage

The Norwegian Criminal Procedure Act 22 May 1981 No 25 Section 109a regulates court hearings of witnesses by videoconference in Norwegian criminal cases. Section 109a does not distinguish between videoconferences at pre-trial and trial stage. There is no equivalent regulation of hearings by videoconference conducted by the Police during the criminal investigation. In practise, the Police make use of videoconferences during the investigation.

It follows from Section 109a that for hearing of witnesses who do not have an obligation to appear personally before the Norwegian court to give testimony, such as witnesses residing abroad, the court can as a main rule decide on hearing by videoconference unless circumstances makes such a hearing questionable.

2. For which type of proceedings (pre-trial, trial) are videoconferences most used?

Videoconferences are used both during pre-trial and trial proceedings. We do not have statistic available.

3. For which types of cases are videoconferences used?

Videoconference can in principle be used in all types of criminal cases. In practise, it is mostly used in serious and transboundary criminal cases, such as drug cases, war criminal cases and cases involving trafficking of human beings.

4. Does this videolink have to be secured (encrypted) or are there any other technical requirements? What is a sufficient level of security? Are there any legal norms or administrative instructions (guidelines) on these issues? Please give as much as possible information on technical or security requirements (AES encryption or other).

a. in pre-trial stage

b. in trial stage

There are no direct requirements in Norwegian law or administrative instructions regulating technical requirements for videolink (including necessary level of security).

Both Norwegian courts and the National Criminal Investigation Service (KRIPOS) have videoconference equipment from Tandberg with AES encryption.

5. If for some reason it is not possible to create a secure connection, can a decision be made to waive some of the security requirements on a case-by-case basis?

a. in pre-trial stage

b. in trial stage

6. If your state has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, is it nevertheless possible to hold a videoconference in international cooperation? If so, under what circumstances would this be possible?

Norway has not yet ratified the Second Additional Protocol to the European Convention on MLA. It is nevertheless possible for Norwegian authorities to hold a videoconference in international cooperation, and this has been done on several occasions.

There is no direct regulation in Norwegian law concerning foreign requests for hearing by videoconference of persons residing in Norway. The Norwegian Courts of Justice Act 13 August 1915 No. 5 Section 46 states in general terms that if a particular formality or procedure is expressly requested, this request must be complied with to the extent possible, unless prohibited by Norwegian law. A request for hearing by videoconference is deemed as a request for a particular procedure.

7. Are there any other practical problems in videolink hearings?

- Lack of technical compatibility between different videoconferencing systems makes it difficult/impossible to carry out videoconference. The solution has in practise been that investigators/prosecutors have travelled to the country in question and brought their own videoconference equipment.
- A stabile connection via GPRS/3G satellite phone, alternatively internet connection through cable, is necessary in order to carry out a videoconference. Thus the following may in practice cause problems; poor or no phone coverage on the cell phone network or low capacity on the land line (the requirement is minimum double ISDN). With internet connection; low transmission capacity or low cable capacity.
- Time difference and opening hours of the courts.

POLAND/POLOGNE

1. Are there any provisions in your national legislation about hearings by video conference in cross-border cases at

- Pre-trial stage

- Trial Stage

As regards the hearings by video conference, the Polish Code of Criminal Procedure is applicable at both pretrial and trial stage. Article 177 §1a can be used both in national and cross-border situations, which stipulates the following:

" Questioning of a witness may take place with the use of technical devices enabling this procedural action to be conducted remotely on the basis of a simultaneous direct transmission of image and sound. In proceedings before court, in a procedural action in the place of stay of the witness, a court clerk, judge assistant, or an official employed at the court in whose region the witness stays, shall participate."

Pursuant to the Article 377 §4 of the Code of Criminal Procedure, the above provision can also be used in relation to the accused persons:

"§ 4. If the accused deprived of liberty has not yet given their explanations before the court, either Article 396 § 2 may be applied or reading of the explanations submitted earlier by the accused may be deemed sufficient. The accused may be questioned with the use of the means referred to in Article 177 § 1a."

The above provisions can be used in cross-border cases on the basis of the Article 588 of the Code of Criminal Procedure, which stipulates the following:

" § 1. Courts and public prosecutors shall provide legal assistance when requested by the courts and the public prosecutors of foreign states.

§ 2. A court and a public prosecutor shall refuse to provide legal assistance and convey their refusal to the appropriate bodies of a given foreign state if the requested action is in conflict with the legal order of the Republic of Poland or would constitute an infringement of its sovereignty.

§ 3. A court and a public prosecutor may refuse to provide legal assistance if:

1) the performance of the requested action lies beyond the scope of activity of the court or the public prosecutor under the Polish law,

2) the foreign state in which the request for legal assistance has originated does not guarantee reciprocity in such matters,

3) the request concerns an act which is not a criminal offence under the Polish law.

§ 4. The Polish law shall be applied to the procedural actions performed pursuant to a request from a foreign court or public prosecutor. However, if these bodies require special proceedings or some special form of assistance, their wishes shall be honored, unless this is in conflict with the principles of the legal order of the Republic of Poland."

2. For which type of proceedings (pre-trial, trial) are videoconferences most used?

Video conferences are increasingly used both in pre-trial proceedings and at the trial stage in order to obtain witness testimonies. Video conference is used less often with regards to the accused persons.

3. For which types of cases are videoconferences used?

The use of video conferences is not limited to any specific types of criminal cases.

4. Does this video link have to be secured (encrypted) or are there any other technical requirements? What is a sufficient level of security? Are there any legal norms or administrative instructions (guidelines) on these issues? Please give as much as possible information on technical or security requirements (AES encryption or other).

a. in pre-trial stage

b. in trial stage

There are neither legal norms nor administrative instructions (guidelines) in the domestic legislation establishing some technical requirements for conducting hearings by video conference. Therefore, it is preferable, rather than mandatory for the video link to be secured at the time of conducting hearings. The above indicated rules are applicable both in pre-trial and trial stages.

5. If for some reason it is not possible to create a secure connection, can a decision be made to waive some of the security requirements on a case by-case basis?

a. in pre-trial stage
b. in trial stage

As mentioned above, it is preferable, rather than mandatory for the video link to be secured (encrypted) at the time of conducting hearings. Therefore, if for some reasons it is not possible to create a secure connection, some of the security requirements may be waived when holding videoconferences. The mentioned rule is applicable both in pre-trial and trial stages.

6. If your state has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, is it nevertheless possible to hold a videoconference in international cooperation? If so, under what circumstances would this be possible?

Not applicable, as Poland is a party to the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.

7. Are there any other practical problems in videolink hearings?

There may occur a number of practical challenges related to the use of videolink in court hearings in Poland, which includes the issues related to establishing the connection or technical maintenance of the videolink system, which, however, are normally solved within a few hours.

PORTUGAL

1. Are there any provisions in your national legislation about hearings by video conference in cross-border cases at

a. pre-trial stage
b. trial stage

The Portuguese Law on international cooperation in criminal matters expressly previews the legal possibility to request and admit hearings by video conference. In fact article 145 nº3 states that where the circumstances of the case so require, subject to an agreement between Portugal and a foreign State or an international judicial entity, any hearings as mentioned in sub-paragraph d) of paragraph 2 above (suspects, defendants, witnesses or experts) may take place by using telecommunication means in real time, in accordance with Portuguese criminal procedure law and without prejudice to the provisions of paragraph 10 ahead. The law does not introduce a distinction between pre-trial and trial stage so one can only conclude that it is admissible in both stages. Practice shows differently as it will be mentioned afterwards.

2. For which type of proceedings (pre-trial, trial) are videoconferences most used?

Hearings by video conference, when Portugal is a requesting State are definitely most used in the trial stage.

However the hearing of defendants has been excluded. In fact most Portuguese Judges consider that there are no legal grounds to start a trial in the absence of the defendant (except if he or she

so requests to); hearing a defendant by video conference has been considered as a judgement in the absence of the defendant and therefore it is not admissible.

On the other hand hearing of witnesses in the trial stage is very frequently requested by video conference. In the pre-trial stage it is not common to request to hear a witness by video conference. Traditional cooperation is usually the option followed.

3. For which types of cases are videoconferences used?

Video conference has been used for all types of cases, many times for petty crimes. So it must be concluded that, since all Portuguese Courts have technical conditions to make video conferences and are used to do very frequently so, at national level, they tend to replicate this behaviour abroad and don't reserve this form of cooperation for serious crimes.

4. Does this videolink have to be secured (encrypted) or are there any other technical requirements? What is a sufficient level of security? Are there any legal norms or administrative instructions (guidelines) on these issues? Please give as much as possible information on technical or security requirements (AES encryption or other).

a. in pre-trial stage
b. in trial stage

The answers provided are valid for both pre-trial and trial stage.

Portugal uses encryption of the system (AETHRA) that is predefined. A sufficient level of security is the one that the system will detect (connection), and therefore will not warn the Court about the inexistence of security in the connection. There are no legal restrictions but Court Officials are administratively instructed to keep the encryption of the system, through internal guide lines.

As requesting State the result is the following: in case the requested authority does not have encryption the Portuguese Court is informed, by means of a message that appears on the screen, that the connection is not secure. In those cases the Court can decide to stop the hearing for security reasons. However the practice shows that Courts usually proceed even if security levels are not reached.

As requested State sometimes, when Portugal cannot provide for the adequate encryption (Portugal does not use AES encryption, for instance), the execution of the request reveals not to be technically possible.

The conclusion can be that there have been no major problems as requesting State and some security difficulties as requested State.

5. If for some reason it is not possible to create a secure connection, can a decision be made to waive some of the security requirements on a case-by-case basis?

a. in pre-trial stage
b. in trial stage

Yes, it is possible and in fact this is what happens when the Court that is warned by a message that appears on the screen decides to proceed with the hearing even if security levels are not respected.

6. If your state has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, is it nevertheless possible to hold a

videoconference in international cooperation? If so, under what circumstances would this be possible?

As already stated the possibility of video conferencing in international cooperation is expressly established in an internal Law (http://www.gddc.pt/legislacao-lingua-estrangeira/english/lei144-99rev.html). Therefore, even without a legal instrument, it is possible to get assistance by means of a video conference, based on the national Law on international cooperation.

Before the entry into force of the Agreement on MLA between the EU and the USA it was frequent to request or to provide for video conferences between Portuguese and American authorities, for instance.

7. Are there any other practical problems in videolink hearings?

According with the experience of the Central authority video conferencing is a form of cooperation that definitely needs direct contacts between judicial authorities, especially for the practical arrangements involved. Therefore the lack of this conscience, as well as language difficulties at the level of local Courts revealed to be major obstacles to this form of cooperation. Also some lack of information on the national procedure (trials adjourned, files closed or hearings that are delayed) between requesting and requested authorities have been noticed. Finally, there is a clear difference of approach between authorities/systems that tend to reserve this form of cooperation only for serious crimes and others, like the Portuguese, where it is used for all types of crimes, very minor included.

REPUBLIC OF MOLDOVA / REPUBLIQUE DE MOLDOVA

1. Are there any provisions in your national legislation about hearings by video conference in cross-border cases at

a. pre-trial stage

b. trial stage

Law no. 371 on International Legal Assistance in Criminal Matters, (Article 28), contains provisions about hearings by video conference in a general meaning, that can be used at pre-trial and trial stage.

Article 28. Hearings by teleconference (Law no. 371 on International Legal Assistance in Criminal Matters)

(1) If a person is in the Republic of Moldova should be heard as witness or expert by the prosecution or the courts of another state, or by an international court and is not desirable or possible for that person to appear in person in its territory, the alien may request that the hearing take place by teleconference, according to this law.

(2) The request referred to in para. (1) may be accepted by the Republic of Moldova as provided in the Code of Criminal Procedure on how special hearing of the witness and his protection, the arrangement provided the technical means to allow a hearing by teleconference.

(3) The request for hearing by teleconference must specify, in addition to the information provided in the Code of Criminal Procedure in art.537 par. (1), why is not desirable or possible for the witness or expert to attend the hearing and the name of the court or prosecuting body, the persons who will attend the hearing.

(4) A witness or expert shall be summoned according to the procedure provided in Code of Criminal Procedure.

(5) Hearing by teleconference shall follow the following rules: a) hearing in the presence of a competent judge, assisted, where appropriate, an interpreter judge heard and verify the identity of the person is required to ensure that fundamental principles of national criminal procedural law. If it finds violations of these principles, the judge shall immediately take steps to ensure the conduct of the hearing pursuant to the legislation; b) the competent central authorities of Moldova and those of the applicant agree, as appropriate, measures to protect the witness or expert; c) the hearing is made directly by the competent authority of the applicant or under their direction, in accordance with national legislation; d) the witness or expert is entitled to be assisted, where necessary, an interpreter, according to Moldovan legislation; e) a person called as a witness or expert may claim the right not to testify, given the Moldovan legislation or state law required.

(6) Without prejudice to any measures agreed for witness protection, witness statements or the expert, heard under this Article shall be recorded by technical means video and recorded in the minutes, signed in accordance with the Code of Criminal Procedure. The report is transmitted to the competent authority of the requesting State through central government and diplomatic channels.

(7) The provisions of this Article may apply to the testimony of defendants accused or if the person consents and if there is agreement in this respect between Moldova and the applicant State.

2. For which type of proceedings (pre-trial, trial) are videoconferences most used?

We didn't have such practice.

3. For which types of cases are videoconferences used?

We didn't have such practice.

4. Does this videolink have to be secured (encrypted) or are there any other technical requirements? What is a sufficient level of security? Are there any legal norms or administrative instructions (guidelines) on these issues? Please give as much as possible information on technical or security requirements (AES encryption or other).

a. in pre-trial stage
b. in trial stage

In Republic of Moldova are no any legal norms or administrative instructions on technical requirements for videoconferences.Our competent authorities on cyber security recommend using the SRTP protocol and a minimum AES-256 encryption for video and audio sessions.

5. If for some reason it is not possible to create a secure connection, can a decision be made to waive some of the security requirements on a case-by-case basis?

a. in pre-trial stage
b. in trial stage

6. If your state has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, is it nevertheless possible to hold a videoconference in international cooperation? If so, under what circumstances would this be possible?

7. Are there any other practical problems in videolink hearings?
We didn't meet any practical problems yet.

RUSSIAN FEDERATION / FEDERATION DE RUSSIE

1. Does your national legislation have any provisions on conduction of judicial sittings on cross-border cases with the use of video conferences?

A. at the pre-trial stage

Answer:
No, not yet.

B. at the stage of judicial examination

Answer:

It is possible to use videoconference systems in the Russian legal procedure. In compliance with Article 240, paragraph 4 and Article 278-1 of Chapter 35 “General conditions of judicial proceedings” of the Code of Criminal Procedure of the Russian Federation, a witness and a victim may be questioned by a court with the use of videoconferencing.

Moreover, video conferences may be used during the examination of complaints (applications) by a court, as well as in the course of examination of criminal cases by courts during the appeal and cassation hearings (Articles 125, 278-1, 376, 389.12, 389.13, 399 and 407, 376 of the Code of Criminal Procedure of the Russian Federation).

2. For what types of procedures (investigation, judicial trial) video conferences are primary used?

Answer:

At the stage of pre-trial proceedings the Russian law enforcement bodies did not send to the competent authorities of foreign states requests for legal assistance in criminal cases, which contain pleas on conduction of procedural activities with the use of video conferences, since the Russian criminal procedure legislation does not provide for it.

3. For what type of cases do you use video conferences?

Answer:

At the stage of pre-trial proceedings the Russian law enforcement bodies do not use video conferences, except for the cases when the requests for legal assistance received from the competent foreign authorities are executed. Article 240 of the Code of Criminal Procedure of the Russian Federation allows using video conferences on the stage of judicial examination of any type of criminal cases.

4. Is it necessary to protect video conference (encoding) or there exist other technical requirements? What level of protection do you consider to be sufficient? Are there legal norms or administrative instructions (general conditions) in this sphere? We express our gratitude for providing full information on technical requirements or protection (AES encoding or other).

A. at the pre-trial stage

Answer:

In compliance with Article 161 of the Code of Criminal Procedure of the Russian Federation, the data of the preliminary investigation may be revealed only with the permission of a public

prosecutor or an inquirer and only in that volume in which they recognize this as admissible, if such disclosure does not contradict the interests of preliminary investigation and is not connected with the violation of the rights and lawful interests of the participants of the criminal legal procedure.

Thereupon, secure channels of communication and certified equipment should be used during the execution of a request for legal assistance with the use of video conference.

B. at the stage of judicial examination

Answer:

In compliance with Article 241 (openness), of the Code of Criminal Procedure of the Russian Federation judicial proceedings on criminal cases in all courts shall be open, with the exception of cases pointed out in this Article.

The conduction of judicial proceedings in camera is admissible on the ground of a court ruling or resolution, if:

1) judicial proceedings on a criminal case in court may lead to disclosure of the state or of other kind of a secret, protected by the federal law;

2) criminal cases under examination concern the crimes, perpetrated by persons who have not reached 16 years of age;

3) examination of criminal cases on the offences of sexual intergrity and sexual freedom of a person and on other crimes which may lead to the disclosure of information on intimate aspects of life of the participants of the criminal court proceedings or of information humiliating their honor and dignity;

4) this is called for by the interests of guaranteeing security for the participants of judicial proceedings, for their close relatives, relatives or friends.

It is considered that secure channels of communication and certified equipment should also be used in the course of execution of a request for legal assistance with the use of video conference at the stage of judicial proceedings in camera.

5. If, due to any reason, it is impossible to guarantee the security, may a decision be taken on abandoning any safety requirements depending on a concrete case?

A. at the pre-trail stage

Answer:

With account of provisions of Article 161 of the Code of Criminal Procedure of the Russian Federation, in each specific case this issue should be settled by bodies investigating a criminal case.

B. at the stage of judicial examination

Answer:

Due to Article 241 of the Code of Criminal Procedure of the Russian Federation this issue should be settled by a court.

6. If your country has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, is it still possible to organize video conference in the frames of international co-operation? If the answer is yes, then under what circumstances it is possible?

Answer:

The use of video conference during the conduction of procedural activities in the frames of execution of international investigative requests and with the aim of protection of witnesses in criminal cases is provided for by a number of international treaties, to which Russia is a party, including the United Nations Convention against Transnational Organized Crime (2000), the United Nations Convention against Corruption (2003).

Articles 164, 166, 189 and 241 of the Code of Criminal Procedure of the Russian Federation provide for the possibility to conduct video recording of procedural activities, which, under Article 457 of the Code of Criminal Procedure of the Russian Federation, may be used by a court, a public prosecutor and an investigator in the course of execution of foreign requests for conduction of video conferences.

7. Are there any other problems connected with the conduction of judicial sittings with the use of video conference?

Answer:

The number of requests for legal assistance containing pleas on conduction of procedural activities with the use of video conferences, received by the Russian Federation, is quite insignificant. Thus, there is no possibility to elaborate on other problems.

SAN MARINO / SAINT MARIN

La République de Saint-Marin, même si elle n'a pas ratifié le Deuxième Protocole à la Convention Européenne d'assistance judiciaire en matière pénale, veut assurer sa collaboration à la recherche que le PC-OC a entrepris au moyen d'un Questionnaire prévu à cet effet sur les aspects juridiques et techniques sur l'utilisation de la vidéoconférence dans l'assistance judiciaire en matière pénale.

En se référant au point 6) de ce Questionnaire – adressé tout particulièrement aux Etats qui n'ont pas ratifié la Convention citée ci-dessus - sur la base des réponses fournies par la Section Pénale du Tribunale Unico de Saint-Marin nous rappelons qu'à ce jour il n'est pas possible de mettre en place des auditions par le moyen de la vidéoconférence . En effet une règlementation spécifique à cet égard n'est pas encore prévue.

En ce moment il ne serait de toutes façons pas possible, par le moyen de la vidéoconférence, d'effectuer un examen de témoins, d'experts ou d'accusés lors d'interrogatoires, vu que nos structures ne sont pas à ce jour équipées des instruments techniques nécessaires.

En toute conscience de l'importance de l'utilisation de telles possibilités, en soutien aussi de la coopération internationale, la République de Saint-Marin exprime la volonté d'affronter les exigences afin de réglementer le secteur en introduisant, dans des délais qui se rendront graduellement réalisables, une normative adéquate à de telles nécessités, qui soit en mesure d'harmoniser les règles de procès équitables avec les exigences de sécurité et de rapidité des procès, en pouvant identifier aussi des conditions opératoires nécessaires au déroulement de vidéoconférences et en prévoyant en même temps les précautions opportunes afin de permettre de façon adéquate la participation effective des parties lors de l'assomption des preuves dans de conditions de sécurité indispensables.

SERBIA / SERBIE

1. Are there any provisions in your national legislation about hearings by video conference in cross-border cases at

a. pre-trial stage

b. trial stage

Yes

In Article 104, 108, 357. and 404. of Criminal Procedure Code of the Republic of Serbia is proscribed hearings by video conference:

Rules on Examining an Especially Vulnerable Witness

Article 104

An especially vulnerable witness may be examined only through the authority conducting the proceedings, who will treat the witness with particular care, endeavoring to avoid possible detrimental consequences of the criminal proceedings to the personality, physical and mental state of the witness. Examination may be conducted with the assistance of a psychologist, social worker or other professional, which will be decided by the authority conducting proceedings.

If the authority conducting proceedings decides to examine an especially vulnerable witness using technical devices for transmitting images and sound, the examination is conducted without the presence of the parties and other participants in the proceedings in the room where the witness is located.

An especially vulnerable witness may also be examined in his dwelling or other premises or in an authorised institution professionally qualified for examining especially vulnerable persons. In such case the authority conducting proceedings may order application of the measures referred to in paragraph 2 of this Article.

An especially vulnerable witness may not be confronted with the defendant, unless the defendant himself requests this and the authority conducting proceedings grants the request, taking into account the level of the witness's vulnerability and rights of defence.

No special appeal is allowed against a ruling referred to in paragraphs 1 to 3 of this Article.

Deciding on Determining Protected Witness Status

Article 108

During the investigation the judge for preliminary proceedings decides on determining protected witness status by issuing a ruling, and after the indictment is confirmed, the panel. The public is excluded from the trial if the decision is taken at that time (Article 363), without the exceptions prescribed by Article 364 paragraph 2 of this Code.

The ruling determining protected witness status contains a pseudonym of the protected witness, the duration of the measure and the manner in which it will be implemented: alteration or erasure from the record of data on the identity of the witness, concealment of the witness's appearance, examination from a separate room with distortion of the witness's voice, examination using technical devices for transferring and altering sound and picture.

The parties and the witness may appeal against the ruling referred to in paragraph 1 of this Article.

An appeal against a ruling of the judge for preliminary proceedings is decided on by the panel (Article 21 paragraph 4), and in other cases the panel (Article 21 paragraph 4) of the immediately higher court. A decision on the appeal is rendered within three days of the date of receiving documentation.

Examining a Witness or Expert Witness Outside of the Trial

Article 357

The president of the panel decides on examining a witness or expert witness whose examination was proposed by the parties but who could not attend the trial due to illness or other justified reasons.

The president of the panel, a judge member of the panel or the judge for the preliminary proceedings in whose territory the witness or expert witness is located will perform the examination directly or by using a video and audio link, and will notify the parties, defence counsel and the injured party about the time, place and manner of examination.

If the defendant is in detention, the president of the panel decides about the need for his presence during the examination of a witness or expert witness.

When the parties, defence counsel and injured party attend the examination of a witness or expert witness, they are entitled to the rights specified in Article 300 paragraph 8 of this Code.

Examining Evidence Away from the Trial

Article 404

If it is learnt at the trial that a witness or expert witness either cannot appear before the court or that there is substantial difficulty to his appearance before the court, the panel may, if it deems his testimony important, order him examined away from the trial by the president of the panel, or a judge member of the panel, directly or through an audio and video link.

If it is necessary to conduct a crime scene investigation or reconstruction away from the trial, the panel will authorise the president of the panel or a judge member of the panel to do so.

The parties, defence counsel, injured party and professional consultant will be notified about the place and time of the performance of the evidentiary actions referred to in paragraphs 1 and 2 of this Article and advised that during their performance they are entitled to the rights referred to in Article 402 of this Code.

Using video conference in cross-border cases is also proscribed in Article 83. and 84. of the Law on Mutual Assistance in Criminal Matters:

Subject of other forms of mutual assistance

Article 83

Other forms of mutual assistance include:

1) conduct of procedural activities such as issuance of summonses and delivery of writs, interrogation of the accused, examination of witnesses and experts, crime scene investigation, search of premises and persons, temporary seizure of objects;

2) implementation of measures such as surveillance and tapping of telephone and other conversations or communication as well as photographing or videotaping of persons, controlled delivery, provision of simulated business services, conclusion of simulated legal business, engagement of under-cover investigators, automatic data processing;

3) exchange of information and delivery of writs and cases related to criminal proceeding pending at the requesting party, delivery of data without the letter rogatory, use of audio and video-conference calls, forming of joint investigative teams;

4) temporary surrender of a person in custody for the purpose of examination by the requesting party's competent body.

Conditions

Article 84

Other forms of mutual legal assistance may be provided if the conditions listed in Article 7 of this law met as well as:
1) if the conditions envisaged by the Criminal Procedure Code are met,
2) if there are no criminal proceedings pending against the same person before national courts for the criminal offence being the subject of the requested mutual assistance.

2. For which type of proceedings (pre-trial, trial) are videoconferences most used?

The videoconferences is most used in trial proceedings.

3. For which types of cases are videoconferences used?

The videoconferences is most used for organised crime and war crime cases.

4. Does this videolink have to be secured (encrypted) or are there any other technical requirements? What is a sufficient level of security? Are there any legal norms or administrative instructions (guidelines) on these issues? Please give as much as possible information on technical or security requirements (AES encryption or other).
a. in pre-trial stage
b. in trial stage

The videolink must to be secured (encrypted) in accordance with Regulation on Special Measures of classified data in the information and telecommunication systems, adopted by the Government of the Republic of Serbia adopted in July 2011. In Article 10. of the Regulation is proscribed using of technical standards SRPS ISO/IEC 27001 and SRPS ISO/IEC 17799.

5. If for some reason it is not possible to create a secure connection, can a decision be made to waive some of the security requirements on a case-by-case basis?
a. in pre-trial stage
b. in trial stage

This situation is not regulated by the present legislation in the Republic of Serbia, but in this case decision can be made on case-by-case basis.

6. If your state has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, is it nevertheless possible to hold a videoconference in international cooperation? If so, under what circumstances would this be possible?

The Republic of Serbia has ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. Using videoconference in international cooperation is possible under the Articles 9. and 10. of the Second Additional Protocol and under the Articles 83. and 84. (mentioned above) and Articles 1, 88, 89, 90. and 91. of the Law on Mutual Assistance in Criminal Matters:

Subject and Application of the Law

Article 1

This Law shall govern mutual assistance in criminal matters (hereinafter: mutual assistance) in cases in which no ratified international treaty exists or certain subject matters are not regulated under it.

Submission of the letter rogatory

Article 88

The Ministry of Justice shall submit a letter rogatory and its opinion on the presence of conditions referred to in Article 7, paragraph 1, sub-paragraphs 4 and 5 of this law to the court in the territory of which activity is to be undertaken.

Decision upon a letter rogatory

Article 89

The court shall reach a decision regarding the provision of other forms of mutual assistance considering the fulfilment of preconditions from Articles 7 and 84 of this law.

Procedural rules

Article 90

As an exception from Article 12 of this law, upon a request of the competent authority of the requesting party, mutual assistance shall be provided in a manner foreseen in the legislature of the requesting party, unless contrary to basic principles of the legal system of the Republic of Serbia.

Presence of a foreign authority

Article 91

Upon request of the competent authority of the requesting party to be informed about the provision of other forms of mutual assistance, the court shall notify the authority about the time and place of the mutual assistance act.

If the court feels that the presence of a representative of the foreign judicial authority at the venue where other forms of mutual assistance are being performed can contribute to better clarification of issues, the court may decide to grant permission for such presence as well as participation in certain procedural activities.

7. Are there any other practical problems in videolink hearings?

No.

SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE

1. Are there any provisions in your national legislation about hearings by video conference in cross-border cases at

a. pre-trial stage

b. trial stage

The Slovak legal order does not differentiate between hearing by videoconferences in trial and pre–trial stage of the criminal proceedings.

In the Slovak legal order is a provision (Article 134 of the Criminal Procedure Code), which regulates the use of videoconferences in hearing of witnesses.

Article 134 of the Criminal Procedure Code:

"(1) A witness who cannot appear for the hearing due to age, illness, physical or mental disorder, or for other serious reasons may be interrogated by means of technical devices designated for the transmission of audio and video.

(2) The provisions of Para. 1 shall also apply if the witness cannot or does not want to appear for the hearing due to their stay abroad, but they are willing to testify to the competent authority of a foreign State, then they must be provided with the necessary legal assistance.

(3) The provisions of Para. 1 shall also apply to the interrogation of a threatened or protected witness who is provided with assistance under a special Act. It shall similarly proceed if such witness is to be interrogated in another matter."

Paragraph 2 of the Article 134 provides for hearing witnesses in cross – border cases, in which is the Slovak Republic in a position of requesting state.

Additionally under Article 121 para. 4 of the Criminal Procedure Code there is possibility of the hearing of accused persons through videoconference, who are awarded a status of protected witness in other case.

There are not any specific provisions regulating the cross – border videoconferences in the hearing of accused persons.

The Slovak Republic has ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, thus the cross – border videoconferences are feasible under conditions set by the Article 9 of the Protocol.

Also, the Slovak Republic has implemented EU Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters so in relations with the EU countries which has also implemented the EIO directive, it could be used as a legal basis as well.

2. For which type of proceedings (pre-trial, trial) are videoconferences most used?

The cross – border videoconferences are mostly used in trial stage of proceedings, but it could be used also in the pre- trial stage.

3. For which types of cases are videoconferences used?

Generally, videoconferences are used in cases of serious crimes.

4. Does this videolink have to be secured (encrypted) or are there any other technical requirements? What is a sufficient level of security? Are there any legal norms or administrative instructions (guidelines) on these issues? Please give as much as possible information on technical or security requirements (AES encryption or other).

a. in pre-trial stage
b. in trial stage

The videolink devices Cisco TelePresence enabling cross – border videoconference has to be secured in both stages of the proceedings. The Slovak Republic uses connection via Internet using protocols H.323 and SIP with the encryption method H.323 and SIP in case point to point connection and standards based encryption H.235 v3 and Advanced Encryption Standard (AES) in other cases. There is no distinction between the pre – trial stage of proceedings and the trial stage in this regard. The security issues in videoconference transmission are not provided for by any legal regulations or administrative instructions. Slovak authorities have not encountered any problems with the encryption of transmission.

5. If for some reason it is not possible to create a secure connection, can a decision be made to waive some of the security requirements on a case-by-case basis?

a. in pre-trial stage
b. in trial stage

On a case-by-case basis it is possible to make a decision upon agreement of both parties to waive some of the security requirements, and even carry out a non – secured videoconference transmission. The other way of solving technical difficulties is to temporary make available our technical means to the other state, so that the videolink can be established, dependent on the agreement of both parties, including costs of such measure.

6. If your state has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, is it nevertheless possible to hold a videoconference in international cooperation? If so, under what circumstances would this be possible?

The Slovak Republic has ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.

7. Are there any other practical problems in videolink hearings?

In the view of practical experiences of Slovak competent authorities with cross – border videoconferences we state some conclusions (recommendations) for the optimal process of the cross-border videoconference:

- it is useful to make a test of call a day before of the actual transmission, to prevent several hours delay,
- it should be clearly agreed in advance which party is going to be a “calling” party (which authority will start the active transmission),
- arrangements for interpreters should be made in advance, it is useful to clearly agree on reimbursement of their remuneration and costs,
- it should be verified in advance, whether a person whose interview is sought, will actually appear.

SLOVENIA / SLOVÉNIE

1. Are there any provisions in your national legislation about hearings by video conference in cross-border cases at

a. pre-trial stage

b. trial stage

In Republic of Slovenia Criminal Procedure Act regulates the hearings by videoconference in cross-border cases in both pre-trial and trial stage.

Article 244a of the Criminal Procedure Act read as follows:

Article 244.a

(1) In accordance with the provision of this Article, an interrogation of the accused or witness may also be performed by the use of modern technical devices for transferring vision and sound (videoconference).

(2) The interrogation of the accused or witness by a videoconference shall be conducted if:

1. it concerns a protected person under the law regulating protection of witnesses and the arrival of the authority to conduct the interrogation would cause serious danger to their live or body, to life or body of persons in related to them under points 1 to 3 of Article 236(1) or persons who were suggested in accordance with the provisions of the law regulating the protection of witnesses;
2. it concerns an anonymous witness and the arrival of the authority to conduct the interrogation would cause serious danger to their life or body, to life or body of persons related to them under points 1 to 3 of Article 236(1) or persons who were suggested in accordance with the provisions of the law regulating protection of witnesses;
3. **the competent authority submitted an adequate request to another state in accordance with the law or an international treaty;** or
4. it is not desirable or possible for the person to come to the authority conducting the interrogation for other legitimate reasons.

3) When the conditions of point 4 in the preceding paragraph are met, the interrogation of an expert may be conducted via a videoconference.

(4) The interrogation via a videoconference shall be conducted by applying the provisions of this Act on interrogating an accused, witness or expert unless a law, binding international treaty or legal act of an international organisation provide otherwise.

(5) A competent official of the authority conducting the interrogation or another person authorised by the authority shall be present next to the accused, witness or expert who is in the territory of the Republic of Slovenia during the interrogation via a videoconference and ensure adequate identification of the person interrogated. During such interrogation, the defence counsel and persons dealing with security may be present.

(6) When the accused, witness or expert is interrogated in the territory of another state via a videoconference for the purposes of national criminal proceedings, the competent authority under point 3 of paragraph (2) of this Act shall ensure that an official of the competent authority of this state shall be present next to the accused, witness or expert who shall ensure an adequate identification of the person interrogated. During such an interrogation the defence counsel may also be present.

(7) The Minister responsible for justice shall issue instructions laying down in detail the conditions according to which technical devices for the transmission of sound and vision (videoconference)

have to comply with, the method of their use, the transcription and broadcasting of recordings, making copies of recordings and their storage.'

2. For which type of proceedings (pre-trial, trial) are videoconferences most used?

The videoconferences are frequently used in both types of proceedings, however the use of videoconferences in pre-trail proceedings take precedence.

The Ministry does not have any statistical data on the application of this measure, hoverer according to the available information this "investigative" measure is used in investigative as well as trial stage of the criminal proceeding.

3. For which types of cases are videoconferences used?

Videoconferences are used in investigative and criminal cases dealing with different criminal offences.

4. Does this videolink have to be secured (encrypted) or are there any other technical requirements? What is a sufficient level of security? Are there any legal norms or administrative instructions (guidelines) on these issues? Please give as much as possible information on technical or security requirements (AES encryption or other).

a. in pre-trial stage
b. in trial stage

Slovenian videoconferencing systems support 128-bit AES encryption, as it is common with most modern videoconferencing solutions on the market. The encryption should be sufficient to prevent wiretapping, spoofing or similar attacks. However, it should be noted that currently we are unable to support encrypted incoming calls due to the firewall policy which blocks all incoming encrypted traffic.

5. If for some reason it is not possible to create a secure connection, can a decision be made to waive some of the security requirements on a case-by-case basis?

a. in pre-trial stage
b. in trial stage

With reference to the previous answer the answer is NO.

6. If your state has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, is it nevertheless possible to hold a videoconference in international cooperation? If so, under what circumstances would this be possible?

Republic of Slovenia has ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. The Protocol entered into force on 1 July, 2013.

7. Are there any other practical problems in videolink hearings?

Our videoconferencing infrastructure supports the use of high-resolution audio-video communication. In cases of lower-quality feeds, the reasons should not lie with the core infrastructure, but rather with quality of the end user's videoconferencing systems and/or the bandwidth of their internet connections. The use of older systems and/or slower connections may

result in lower bitrates and use of older audio/video codecs. The videoconference infrastructure itself is set to treat each participant equally, meaning it tries to provide each participant with the best audio and video quality allowed by their videoconferencing system and the speed of their connection to the central server.

SPAIN / ESPAGNE

1. Are there any provisions in your national legislation about hearings by video conference in cross-border cases at

a. pre-trial stage
b. trial stage

The legal provisions on videoconference matters in the criminal jurisdiction are contained in Art. 229.3 of the Organic Law of the Judiciary and in arts. 325 and 731 bis, both of the Criminal Procedure Act. Both articles allow the use of videoconference to any person who takes part in criminal proceedings, that is to say, the proper accused, prosecuted, witness o experts, but with some conditions, specifically, there must be a full aural and visual communication among those involved and that the identity of such parties be identified by the clerk of the court.
A and B). There is no difference, in any phase of proceedings.

2 For which type of proceedings (pre-trial, trial) are videoconferences most used?

In most cases, the videoconference is used at the oral trial phase and for the witnesses and experts that by geographical reasons cannot move to the Court where trial is held. It is seldom used for an accused since the provisions require that one to be present during the whole trial, which means that the videoconference must be used from the beginning to the end of the trial.

3 For which types of cases are videoconferences used?

For any type of offence. It is used when the parties to the suit, generally witnesses and experts cannot move by geographical reasons as aforementioned.

4. Does this videolink have to be secured (encrypted) or are there any other technical requirements? What is a sufficient level of security? Are there any legal norms or administrative instructions (guidelines) on these issues? Please give as much as possible information on technical or security requirements (AES encryption or other).

a. in pre-trial stage
b. in trial stage

A and B. Currently, all technical regulations on videoconference are the competence of the Autonomous Regions. The Autonomous regions are responsible for the installation of technical means for a right development of videoconferences. This will be carried out by a public contest offering the installation of technical means for video conferencing and other services related to the courts' own technology. As regards safety, the videoconferences are encrypted.

5. If for some reason it is not possible to create a secure connection, can a decision be made to waive some of the security requirements on a case-by-case basis?

a. in pre-trial stage
b. in trial stage

In both cases A and B, it is not possible.

6. If your state has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, is it nevertheless possible to hold a videoconference in international cooperation? If so, under what circumstances would this be possible?

In Spain, even in case no legal convention (or Protocol) could be applied between both countries, the videoconference could take place under the principle of reciprocity basis.

7. Are there any other practical problems in videolink hearings?

The most significant problems to be highlighted are the technical ones. When the connection is not fluid, there are problems with the videoconference, it cannot be properly heard and there is a considerable time lag between questions and answers, what makes cumbersome to practice the videoconferencing.

SWEDEN / SUÈDE

1. Are there any provisions in your national legislation about hearings by video conference in cross-border cases at

a. pre-trial stage

b. trial stage

Hearing by video conference in cross-border cases is regulated by the Swedish International Legal Assistance in Criminal Matters Act (2000:562). According to the Act, a request for legal assistance with a hearing by a video conference in a trial with a person who is in Sweden shall be executed by the district court that has the technical means required for such a hearing. The hearing with an accused person may only be allowed if the accused person consents. The request shall indicate that the accused person consents to a hearing by video conference. The parties shall be notified of the time and place for the taking of evidence but do not need to be summoned unless he or she shall be heard or otherwise satisfy anything at the taking of evidence. If needed, the court may decide on the assistance of an interpreter. A request for legal assistance with a hearing by video conference during a preliminary investigation is executed by a prosecutor (Chapter 4 section 11, International Legal Assistance in Criminal Matters Act).

Further, according to the Act, a witness or expert, who shall be heard by a video conference in accordance with Section 11, may be accompanied by a suitable person as personal support (supporting person) during the hearing. If the person to be heard so requests or if there is other cause to do so, the district court may appoint a person to assist the person to be heard in accordance with the first paragraph (Chapter 4 section 12, International Legal Assistance in Criminal Matters Act).

In a case or matter at a Swedish court, the court may, provided that a video conference in a trial is allowed according to Swedish law, apply for legal assistance with a hearing at a foreign authority by video conference of a person who is in another state, if the provision of such legal assistance has been agreed in an international agreement that is binding on Sweden or if the foreign state otherwise provides such assistance. The request shall indicate that the person being heard consents to a hearing by video conference. A prosecutor may apply for legal assistance by a foreign authority with a hearing by video conference during the preliminary investigation of a person who is in another state, if the provision of such legal assistance has been agreed under an international agreement with the other state or if the other state otherwise allows it (Chapter 4 section 13, International Legal Assistance in Criminal Matters Act).

2. For which type of proceedings (pre-trial, trial) are videoconferences most used?

Video conferences in Sweden are mostly used for trial proceedings. In this regard, video conferencing is used both for main hearings, as well as for hearings before the court regarding detention.

3. For which types of cases are video conferences used?

There are no formal limitations regarding the type of cases in which videoconference may be used – please see the legal provisions above. There are no statistics available regarding the types of cases in which videoconferences are used.

With regard to videoconference in Swedish national proceedings, video conferencing is used if it can be justified that a party or anyone else attend the court session by use of video conference instead of being personally present. When considering videoconference the court shall especially observe 1. the costs or inconveniences for the person who shall attend the court hearing if he or she has to be personally present, and

2. if someone who shall attend the court hearing feels substantial fear of being personally present.
Presence by video conference may not take place if it is considered unsuitable in respect of the purpose of the presence of the person in question or other circumstances. The person attending the court session by video conference shall be considered personally present at the session (see Chapter 5 section 10, the Swedish Code of Judicial Procedure).

Further, video conferencing is more often used in trials regarding minor crimes than regarding severe crimes.

4. Does this videolink have to be secured (encrypted) or are there any other technical requirements? What is a sufficient level of security? Are there any legal norms or administrative instructions (guidelines) on these issues? Please give as much as possible information on technical or security requirements (AES encryption or other).

a. in pre-trial stage
b. in trial stage

b) There are no requirements regarding encryption at the trial stage regardless of whether video conferencing is used during the detention hearings or during the trial stage. However, the video conferencing equipment of the courts use an automatic encryption system, as a result of which the video conference will be encrypted if the other party uses the same protocol.

5. If for some reason it is not possible to create a secure connection, can a decision be made to waive some of the security requirements on a case-by-case basis?

a. in pre-trial stage
b. in trial stage

b) Since there are no encryption requirements at the trial stage, a decision of waiver is not necessary.

6. If your state has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, is it nevertheless possible to hold a videoconference in international cooperation? If so, under what circumstances would this be possible?

Sweden is currently in the process of implementing the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. However, it is nevertheless possible to conduct a video conference in international cooperation in accordance with the present Swedish legislation in this regard, since Sweden does not make the application of the International Legal Assistance in Criminal Matters Act (2000:562) dependent on a treaty. For further information, please see the response to questions 1-5, above.

7. Are there any other practical problems in videolink hearings?

Video link hearings are mostly executed without any technical or practical problems. One prosecutor has once experienced that the requested country did not have the appropriate equipment. The hearing therefore was delayed. Another prosecutor has mentioned the need for technical possibility to transfer the images of documents via video link, for the purpose of being examined by and commented to by the person being questioned.

The overall opinion is that video conferencing in the trial stage functions well and there is no hesitation in using it when needed and when appropriate. Practical problems hence seldom occur. If problems do arise, they are mainly within the field of administration, e.g. due to misconception on the time scheduled for the video conference. Sometimes practical problems also occur due to poor technical knowledge.

SWITZERLAND / SUISSE

1. Existe-t-il dans votre législation nationale des dispositions concernant les audiences par vidéoconférences dans des affaires transfrontières :

a. au stade de l'instruction

b. au stade du procès

Non, il n'existe pas de base légale nationale qui règle les audiences par vidéoconférences dans des affaires transfrontalières.

Il existe une telle base légale dans le code de procédure pénale suisse du 5 octobre 2007 pour les procédures nationales. Cette disposition sur l'audition par vidéoconférence est générale et s'applique à la phase de la poursuite (instruction) ainsi qu'à celle du jugement. Tant le ministère public que le tribunal peuvent ordonner une audition par vidéoconférence dans une procédure nationale.

Art. 144 CPP Audition par vidéoconférence
1 Le ministère public ou le tribunal compétent peut ordonner une audition par vidéoconférence si la personne à entendre est dans l'impossibilité de comparaître personnellement ou ne peut comparaître qu'au prix de démarches disproportionnées.
2 L'audition est enregistrée sur un support préservant le son et l'image.

2. Pour quel type de procédure (instruction, procès) les vidéoconférences sont-elles le plus utilisées?

La Suisse ne dispose pas de statistique en ce qui concerne l'utilisation des vidéoconférences dans les procédures nationales.

En matière d'entraide, il n'y a pas de statistique ni de tendance marquée car relativement peu de cas d'application. Lorsque la Suisse est requise, à la demande d'un Etat étranger, de procéder à une audition par visioconférence, les vidéoconférences au stade de l'instruction sont plus simples à réaliser. En effet, le droit suisse n'autorise pas l'autorité étrangère à utiliser immédiatement le résultat de la visioconférence : les personnes impliquées doivent d'abord pouvoir recourir devant les tribunaux suisses contre la vidéoconférence et, le cas échéant, obtenir le retrait du moyen de preuve du dossier étranger si l'entraide a été accordée à tort. Afin de garantir ce résultat, l'autorité requérante doit signer des garanties. Ce procédé, qui peut durer de nombreux mois, est difficilement compatible avec les besoins d'immédiateté au stade du procès. Le caractère public du procès constitue une autre difficulté. Les autorités suisses utilisent également la visioconférence pour obtenir l'audition de témoins à l'étranger. Ces mesures permettent aux avocats des parties de contre-interroger les comparants sans devoir se déplacer.

3. Pour quels types d'affaires utilisez-vous les vidéoconférences?

La vidéoconférence est surtout utilisée actuellement pour des usages nationaux (entre autorités suisses de poursuite pénale). En matière d'entraide judiciaire, elle est en principe organisée dans les locaux d'audition du Ministère public de la Confédération (4 sites en Suisse à Berne, Lausanne, Zürich et Lugano) qui sont mis à disposition des autorités de poursuite cantonales, mais d'autres cantons disposent également d'infrastructures adéquates. Fréquence : 2-3 vidéoconférences par année.

En ce qui concerne les types d'affaires, la Suisse ne dispose pas de statistiques à ce sujet ni sur le plan national, ni sur une utilisation transnationale de la vidéoconférence.

4. Est-ce que le lien vidéo doit être protégé (crypté) ou existe-t-il d'autres exigences techniques ? Quel niveau de sécurité est considéré comme suffisant ? Existe-t-il à ce sujet des normes juridiques ou des instructions administratives (lignes directrices) ? Merci de

fournir autant d'informations que possible sur les exigences techniques ou de sécurité (cryptage AES ou autre)

a. au stade de l'instruction

b. au stade du procès

Il n'existe pas de directives particulières à cet effet. Par contre, dans le cadre d'un projet d'harmonisation de la justice pénale suisse, des solutions de vidéoconférence sont proposées aux autorités intéressées. Ces solutions prévoient un cryptage SSL des données, « end to end »[11].

5. Si pour quelque raison il s'avère impossible d'assurer une connexion sécurisée, est-il possible de décider au cas par cas de lever l'une ou l'autre exigence de sécurité ?

a. au stade de l'instruction

b. au stade du procès

Cette hypothèse ne s'est pas réalisée jusqu'à maintenant.

6. Si votre Etat n'a pas ratifié le Deuxième Protocole additionnel à la Convention européenne d'entraide judiciaire en matière pénale, est-il néanmoins possible d'organiser une vidéoconférence dans le cadre d'une coopération internationale? Si tel est le cas, dans quelles circonstances?

La Suisse a ratifié le Deuxième Protocole additionnel à la Convention européenne d'entraide judiciaire en matière pénale. Il sied de relever que selon la jurisprudence, il est nécessaire que la Suisse soit liée à l'Etat requérant par un traité ou convention qui prévoit expressément la vidéoconférence. En l'absence de disposition conventionnelle, la vidéoconférence n'est pas possible.

7. Existe-t-il d'autres problèmes pratiques liés aux audiences par vidéoconférence ?

La Suisse ne rencontre pas réellement de problème technique. Par contre, cet outil est limité dans son usage car le nombre de pays avec lesquels ce type de coopération est possible est restreint (nécessité d'avoir un traité qui prévoit de manière explicite la vidéoconférence comme par exemple le Deuxième Protocole additionnel à la Convention européenne d'entraide judiciaire en matière pénale). De plus, les mécanismes suisses de protection juridique des personnes sont rarement compatibles avec les besoins de la procédure à l'étranger, en particulier lors du procès.

[11] Les données du projet sont accessibles ici: https://www.his-programm.ch/fr/Projets/Video-Konferenz-fr-FR

TURKEY / TURQUIE

1. Are there any provisions in your national legislation about hearings by video conference in cross-border cases at

a. pre-trial stage
b. trial stage

There have been made some arrangements such as taking audiovisual testimonies and recording hearing in articles 52, 58, 180, 196 and 219 of the Criminal Procedure Code (CPC) numbered 5271 and their details have been left to the By-law. In the process of making the said arrangements in the law, there have been imposed, under some circumstances, some obligations as to the recording of the hearing with audiovisual communication system. In some instances, the practice has been left to judges' and prosecutors' discretion.

In article 180/5 titled ''Hearing of witnesses and experts through the way of rogatory'' of the CPC numbered 5271, it has been decreed that the principles and procedures concerning the establishment and the usage of the technical devices of audiovisual recording and video-conference system shall be regulated in the by-law.

There will be provided the hearing of the persons who are at a distance (the accused, witness, the complainant, the intervening party etc.) with this system. Accordingly, the mentioned system will ensure the taking statements of the persons, whose testimony or defence will be taken in person with the instruction by their court, the abolition of the practice of road arrest for the accused, the effective implementation of the principles of ''immediacy-face-to-face'' in this framework, the elimination of grievances underwent particularly in road arrests and making savings from various expenditures. The work of ''By-law On the Usage of Audiovisual Information System in the Criminal Procedure'' entered into force after its publication in the Official Gazette dated 20 September 2011. Moreover, SEGBIS (Audiovisual Information System) circular was issued and it was aimed at spreading video-conferencing in judiciary.

2. For which type of proceedings (pre-trial, trial) are videoconferences most used?

Video and conference systems are used in High Criminal Courts and Juvenile High Criminal Courts during the adjudication phase.

3. For which types of cases are videoconferences used?

Video-conference is used in all the cases brought before High Criminal Courts and Juvenile High Criminal Courts.

4. Does this videolink have to be secured (encrypted) or are there any other technical requirements? What is a sufficient level of security? Are there any legal norms or administrative instructions (guidelines) on these issues? Please give as much as possible information on technical or security requirements (AES encryption or other).

a. in pre-trial stage
b. in trial stage

Links are still used in our internal network and it is not possible for them to have any outside link. The security of the systems is provided via the operating system. The records received are also encrypted with algorithm formed over National Judiciary Informatics System and they are accessible with electronic signature.

5. If for some reason it is not possible to create a secure connection, can a decision be made to waive some of the security requirements on a case-by-case basis?

a. in pre-trial stage

b. in trial stage

Except the software of the National Judiciary Informatics System, video-conferencing through unsafe connection is possible and available for test-purpose.

6. If your state has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, is it nevertheless possible to hold a videoconference in international cooperation? If so, under what circumstances would this be possible?

225 systems established in 133 high criminal courts are still used for videoconference and recording. It is not possible for the systems to make connections outside the Ministry. In the course of time, thanks to the systems provided in line with the requests received from the directorate general for international law and foreign relations in particular, devices are installed in the locations where the relevant conference is to be held and this service is endeavoured to be provided. By means of the systems which are under preparation and planned to be established in 2012, all the units will be enabled to hold international videoconferences upon request.

7. Are there any other practical problems in videolink hearings?

In the connections established in the past 3 months, there has not been achieved connection with a unit not supporting the protocols supported by the tested next-generation devices.

UKRAINE

1. Are there any provisions in your national legislation about hearings by video conference in cross-border cases at

a. pre-trial stage

b. trial stage

Article 85³ of the Criminal Procedure Code of Ukraine provides for the use of telephone conference and video conference in criminal justice, including at the stage of pre-trial investigation and judicial hearing of the criminal case upon the availability of circumstances envisaged by paragraph 1 of Article 85³ of the Criminal Procedure Code (impossibility of investigative action participants to appear before the court, necessity to ensure the security of persons participating on criminal justice or on other substantiated grounds).

2. For which type of proceedings (pre-trial, trial) are videoconferences most used?

The General Prosecution Office of Ukraine and the Ministry of Justice of Ukraine do not keep the record of video conferences application in criminal justice.

3. For which types of cases are videoconferences used?

For any criminal proceedings. The conditions of video conferences use are provided in Article 85³ of the Criminal Procedure Code of Ukraine:

Article 85³. Application of telephone conference and video conference for investigatory actions

In the event of impossibility of participants of investigatory or any other procedural action to appear before the agency of enquiry, investigator, prosecutor or court of justice at place of proceedings or necessity to ensure protection of the persons participating in criminal proceedings or for any other substantial reasons the investigation activity with their participation may be carried out by means of telephone or videoconference.

Telephone conference or videoconference is carried out as commissioned by the agency of enquiry, investigator, prosecutor or court of justice.

Videoconference may be used during interrogation of the witness, expert, suspect, accused and the criminal defendant, confrontment, presentation for recognition, reproduction of the scene and circumstances of the action.

Investigatory actions during the video conference participated by the suspect, accused and criminal defendant shall be taken subject to their written consent only as specified in the investigatory protocol.

Investigatory actions during the video conference participated by the witness or expert are taken in consideration of provisions of Articles 70, 71 and 77 of this Code.

Telephone conference may be applied during interrogation of the witness or expert subject to their written consent.

During the telephone conference or videoconference the audio or video records are taken.

During the telephone conference or videoconference the agency of enquiry, investigator, prosecutor or the court of justice handling the criminal case and authority executing the order shall effect separate protocols supplemented by respective audio and video records.

4. Does this videolink have to be secured (encrypted) or are there any other technical requirements? What is a sufficient level of security? Are there any legal norms or administrative instructions (guidelines) on these issues? Please give as much as possible information on technical or security requirements (AES encryption or other).

a. in pre-trial stage
b. in trial stage

Certainly, videolink must be technically secured in order to meet the requirements of Article 121 of the Criminal Procedure Code of Ukraine on keeping in secret the data of pre-trial investigation, as well as with a view (where exist circumstances) to ensure the security of process participants.
The level of security should be enough to prevent any access of third parties to the procedure and outcome of procedural actions through videoconference.
Presently in the General Prosecution Office of Ukraine and the Ministry of Justice of Ukraine the there are no legal provisions or administrative instructions which would set technical requirement concerning the level of videolink security.

5. If for some reason it is not possible to create a secure connection, can a decision be made to waive some of the security requirements on a case-by-case basis?

a. in pre-trial stage
b. in trial stage

Yes. Provided that the decision on waiving the requirements shall not entail the breach of criminal procedure law provisions, as well as rights and lawful interests of the procedural actions participants.

6. If your state has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, is it nevertheless possible to hold a videoconference in international cooperation? If so, under what circumstances would this be possible?

Ukraine has ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.

7. Are there any other practical problems in videolink hearings?

The core problem when applying video conferences in practice is the unavailability of necessary equipment and technical means of protection in Ukraine.

UNITED KINGDOM / ROYAUME-UNI

1. Are there any provisions in your national legislation about hearings by video conference in cross-border cases at

a. pre-trial stage

b. trial stage

Yes – Crime (International Cooperation) Act 2003 (Sections 29, 30 and Part 1 of Schedule 2). These provisions may be used in all criminal proceedings. However, the UK will not allow video conferencing to be used where the witness in question is the accused person or the suspect and the hearing is, or forms part of, the trial of that person.

2. For which type of proceedings (pre-trial, trial) are videoconferences most used?

Mostly for trial.

3. For which types of cases are videoconferences used?

Crimes against the person (assault, theft, robbery etc) where the victim is in the UK.

4. Does this videolink have to be secured (encrypted) or are there any other technical requirements? What is a sufficient level of security? Are there any legal norms or administrative instructions (guidelines) on these issues? Please give as much as possible information on technical or security requirements (AES encryption or other).

a. in pre-trial stage

b. in trial stage

Our statutes and rules of court are silent on issues of security and encryption. In the UK, the majority of video link facilities are provided by private companies and as a matter of good practice the ISDN link is secure although we cannot vouch for the security of the overseas court. The facility will need to be booked, organised and tested prior to the hearing (hence our requirement that this form of assistance is paid for by the Requesting State). UK Courts have a list of approved companies and will either make their own arrangements in terms of the video link equipment or require UK police to make the arrangements.

5. If for some reason it is not possible to create a secure connection, can a decision be made to waive some of the security requirements on a case-by-case basis?

a. in pre-trial stage

b. in trial stage

Again, there is no law, rules of court or guidance on this issue. If the connection was not secure then this would be brought to the attention of the parties and a decision made on a case-by-case basis whether to proceed.

6. If your state has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, is it nevertheless possible to hold a videoconference in international cooperation? If so, under what circumstances would this be possible?

The UK has ratified the Second Additional Protocol.

The UK has a reservation to the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, to the effect that it will not allow video conferencing to be used where the witness in question is the accused person or the suspect and the hearing is, or forms part of, the trial of that person.

7. Are there any other practical problems in videolink hearings?

The UK requires the requesting State to pay for the equipment used and we cannot arrange this form of assistance without written confirmation of a UK billing address. Due to the practical arrangements, a minimum of eight weeks' notice is required to be given prior to the date of the video conferencing hearing.

UPDATES:

1. Czech Republic by mail of 08/06/2018
2. Denmark by mail of 14/06/2018
3. Slovakia by mail of 15/06/2018
4. Finland by mail of 19/09/2018
5. Moldova by mail of 08/07/2019
6. Latvia by mail of 13/08/2019
7. Azerbaijan by mail of 15/08/19
8. Austria by mail of 28/08/2019
9. Slovenie by mail of 29/08/2019
10. Georgia by mail of 09/09/2019
11. Poland by mail of 30/09/2019
12. Croatia by mail of 12/10/2019
13. Switzerland by mail of 16/10/2019
14. France by mail of 17/10/2019
15. Russian Federation by mail of 23/10/2019