

Coronavirus & civil procedure – Digital hearings in international court proceedings

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The coronavirus is slowing down court proceedings and its effects are felt across national borders: witnesses are stuck abroad, travel restrictions are preventing experts from appearing in court and parties to proceedings are ill. The pandemic is reinforcing the demand for digital hearing options both in Germany and abroad, and is directing people's attention beyond national borders. This article ties in with the subject of "[Video hearings in civil proceedings](#)" and provides an overview of the state of digitalization around the world, before discussing cross-border constellations.

Other countries, other customs

In the USA, the possibility of holding an oral hearing by way of video conference was realised back in the 1990s in procedural law. Rule 43 of the Federal Rules of Civil Procedure stipulates that witnesses can be examined by way of video conference "for good cause in compelling circumstances". In the case of "*Diamond Resorts Int'l v. Aaronson*", where the date of a journey could be anticipated, the court did not recognise any compelling reason for a video conference hearing, for example. But pandemics are different: since March 2020, the switching over of the American justice system to video conferencing technology has been going ahead at full speed, while in Singapore attempts are being made to create a largely "virtual" court system.

In the European Union, the use of video conferencing systems both in cross-border and purely domestic court proceedings is being promoted as an integral part of a European e-justice system. In general, the video conferencing systems used in the different member states are compatible, although a clear north-south gap can be seen: while Denmark is leading the field in digitalized civil proceedings, Cyprus brings up the rear. Since 2016, court proceedings in Denmark – from the filing of an action to the main hearing – are handled entirely electronically. Even the commercial register and the land register are maintained completely in a digital manner.

Apart from video conferencing systems, there are other considerable differences between the member states. In a European comparison on the use of digital means of communication with the courts, Germany performs poorly at just under 20%, but is still ahead of Luxembourg, Greece and Cyprus. Other member states achieved results of between 80 and 99%. Furthermore, a number of member states have set up automated email or SMS notification systems to inform the parties on the respective status of the proceedings.

Cross-border matters in the EU

In the European Union, the digital hearing of a witness or expert is based on Council Regulation (EC) No 1206/2001 on cooperation between the courts of the member states in the taking of evidence in civil or commercial matters. The Regulation provides for two options in this regard: either the trial court can ask the competent court of another member state to take evidence (with the requesting court as well as the parties to the proceedings being able to participate in the taking of evidence via video conference) or the trial court can request to directly take evidence itself via video conference in another member state. In the latter scenario, this is only possible if the person providing the evidence agrees to voluntarily cooperate. The regulation regarding a European small claims procedure for amounts of up to EUR 5,000 provides for the same options.

Cross-border matters outside of the EU

Video conferences with courts outside of the European Union can be held on the basis of the Hague Evidence Convention of 1970, which allows evidence to be taken in civil or commercial matters. Although the convention does not explicitly mention video conferencing technologies, it does state that the requesting court can apply to examine a person using a "special method or procedure" as part of the "execution of the letter of request" abroad, with said examination being transmitted to the state of the requesting court. Depending on the procedural law that applies, the technology available and the discretion of the foreign court whose legal assistance is being sought, the trial court may also be able to examine a person via video conference. Conversely, German procedural law allows these kinds of requests from abroad.

Conclusion

International procedural law already provides for various options regarding digital hearings. These depend on the technical capabilities and the rules of procedure of the nations concerned. The coronavirus crisis is prompting many courts to make technical improvements. However: due to the principle of judicial independence, there is no entitlement to digitalized proceedings. We can offer you comprehensive advice in this regard and will help you to get a digital hearing.

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