

[Home](#) > ... > [Court Procedures](#) > [Videoconferencing](#) > [Taking Evidence By Videoconference](#) > Croatia

Taking evidence by videoconference



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(in civil and commercial
matters)

1 Is it possible for evidence to be taken by videoconference either with the participation of a court in the requesting Member State or directly by a court of that Member State? If yes, what are the relevant national procedures or laws that apply?

The Civil Procedure Act (*Zakon o parničnom postupku*) (*Narodne Novine* (NN; Official Gazette of the Republic of Croatia) Nos 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 123/08, 57/11, 148/11, 25/13, 89/14, 70/19, 80/22 and 155/23; hereinafter: the ZPP) lays down the method by which evidence is taken remotely in civil cases. Pursuant to Article 115(3) ZPP, the court may order that specific evidence be taken remotely by using appropriate audiovisual devices and a technological platform for remote communication. Article 115(5) ZPP specifies that the court will decide on the remote taking of a particular piece of evidence after obtaining observations on the matter from the parties and other participants who are to attend a hearing which will be held remotely.

The Rules on Remote Hearings (*Pravilnik o održavanju ročišta na daljinu*) (NN No 154/22; hereinafter: the Rules) lay down the arrangements for remote hearings and the taking of particular pieces of evidence using appropriate audiovisual devices and technological platforms for remote communication. However, evidence may be taken by videoconference with court participation only once the minister responsible for judicial affairs adopts a decision, in accordance with Article 17(3) of the Act amending the Civil Procedure Act (*Zakon o izmjenama i dopunama Zakona o parničnom postupku*) (NN No 80/22) determining that the technical requirements for the voice recording of a hearing have been met by the individual courts concerned.

2 Are there any restrictions on the type of person who can be examined by videoconference – for example, is it only witnesses or can others such as experts or parties also be examined in this way?

Pursuant to Article 5(1) of the Rules, the term ‘remote hearing’ (*ročište na daljinu*) means a hearing held with the participants in the proceedings using an audiovisual device and a technological platform for remote communication. Pursuant to Article 5(6), the term ‘participants in the proceedings’ (*sudionici postupka*) means the court, parties, interveners, lawyers, legal representatives, witnesses, experts and other persons involved in the proceedings.

3 What restrictions, if any, are there on the type of evidence that can be obtained by videoconference?

Pursuant to Article 12 of the Rules, the court may, as well as questioning witnesses and experts, take other evidence at a remote hearing if the nature of the evidence so permits, in which case the parties will be given the opportunity to submit their observations before or during the hearing.

4 Are there any restrictions on where the person should be examined by videoconference – i.e. does it have to be in a court?

Article 7(1) of the Rules provides that participants in the proceedings are to communicate with the court from a room equipped with a technological platform for remote communication from which they can communicate smoothly with the other participants in the proceedings. Article 7(2) provides that a participant in the proceedings who, after being summoned to appear at the hearing, is unable to attend the hearing remotely may attend the hearing in the court building, in which case they must inform the court before the hearing takes place.

5 Is it permitted to record videoconference hearings and, if so, is the facility available?

Pursuant to Article 17(3) of the Act amending the Civil Procedure Act (NN No 80/22), the minister responsible for judicial affairs will adopt a decision determining whether the technical requirements for the voice recording of a hearing have been met by the individual courts concerned.

6 In what language should the hearing be conducted: (a) where requests are made under Articles 12 to 14 of the Taking of Evidence Regulation; and (b) where there is direct taking of evidence under Articles 19 to 21 of the Taking of Evidence Regulation?

Parties and other participants in the proceedings have the right to use their own language when participating in hearings and taking other procedural action orally before the court. If the proceedings are not conducted in the language of the party or other participants in the proceedings, interpreting into their language of what is presented at the hearing and of the documents used at the hearing for presenting the evidence will be provided.

7 If interpreters are required, who is responsible for providing them and where should they be located (a) where requests are made under Articles 12 to 14 of the Taking of Evidence Regulation; and (b) where there is direct taking of evidence under Articles 19 to 21 of the Taking of Evidence Regulation?

Parties and other participants in the proceedings will be informed of their right to follow the oral proceedings before the court in their own language with the assistance of an interpreter. They may waive their right to interpretation by declaring that they know the language in which the proceedings are being conducted. A note of the fact that they have been informed of their right and the declarations provided by the parties and other participants will be made in the record. Interpreting is done by interpreters. Interpreting costs are borne by the party or participant concerned.

8 What procedure applies to the arrangements for the hearing and to notify the person to be examined about the time and place (a) where requests are made under Articles 12 to 14 of the Taking of Evidence Regulation; and (b) where there is direct taking of evidence under Articles 19 to 21 of the Taking of Evidence Regulation? For both options, how much time should be allowed when arranging the date of the hearing to enable

the person to receive sufficient notification?

Pursuant to Article 114(2) ZPP, the court will summon to the hearing in good time both the parties and any other persons whose presence is deemed necessary. The summons will be served to the party with the submission giving rise to the hearing, and the summons will indicate the place, room and time of the hearing. If no submission is served with the summons, the summons will specify the parties, the subject matter of the dispute and the action to be taken at the hearing (Article 114(2) ZPP).

In the event of a remote hearing, the court will, in accordance with Article 6(2) of the Rules, specify in the summons to a remote hearing:

- which technological platform for remote communication will be used;
- the link to access the technological platform for remote communication or information on when and how the link will be sent;
- if necessary, any warnings related to the technological platform for remote communication about which participants in the proceedings should be specifically informed;
- a notice to the parties that submissions or documents can be submitted to the hearing in pdf format;
- the telephone number or email address that participants in the proceedings may use to report to the court that they have technical difficulties preventing them from joining the remote hearing.

9 What costs apply to the use of videoconferencing and how should they be paid?

When deciding on the costs of the proceedings, the court will order the party to reimburse only those costs which were necessary for conducting the proceedings. The costs that are necessary and the amount of those costs is decided by the court, examining carefully all the circumstances, taking account, in particular, of the rules governing the preparatory procedure for the main hearing, which involves written submissions, one preparatory hearing and one main hearing.

When a party requests that evidence be taken, they are obliged by court order to deposit in advance the amount required to cover the costs expected in taking the evidence. If the taking of evidence is proposed by both parties or ordered by the court *ex officio*, the court will request that both parties deposit half the required amount to cover the costs. If the court has ordered that evidence be taken *ex officio*, it may order the amount to be deposited by only one party.

A party losing the case in its entirety must cover the cost incurred by the opposing party and their intervener in the proceedings. The intervener on the side of the party that loses the case must cover the costs incurred by their actions.

If the parties are partially successful in the case, the court first determines the percentage of success of each of them and then subtracts the percentage of success of the less successful party from the percentage of success of the more successful party, after which it establishes the amount of the specific and total costs of the more successful party in the case that were necessary for proper conduct of the procedure and then reimburses that party for the part of such total costs corresponding to the percentage remaining after taking account of the parties' percentages of success in the case. The proportion of success in the case is assessed on the basis of the claims granted, account also being taken of the success in providing evidence to back up the claims.

10 What requirements, if any, are there for ensuring that the person examined directly by the requesting court has been informed that the performance shall take place on a voluntary basis?

Witnesses receive a written summons specifying the name of the person summoned, the time and venue, the case in respect of which they are summoned, and an indication that they are summoned as witnesses. In the summons, the witnesses are made aware of the consequences of an unjustified absence and of their right to the reimbursement of the costs incurred. The judge informs the witnesses that they may refuse to give testimony about matters confided to them by the party in their capacity of the party's representative or confessed to them

as a religious confessor by the party or another person, and about facts which the witness has learnt as an attorney, doctor or in the performance of any other calling or activity, if there is an obligation to keep confidential what has been learnt in the performance of that calling or activity. Furthermore, a witness may refuse to answer individual questions due to compelling reasons, in particular, if by responding to such question, they would expose themselves, or their lineal blood relative up to any degree, or a collateral blood relative up to the third degree, including their spouse, or relatives by marriage to the second degree – even if the marriage has ended – and their guardian or ward, adopted parent or child, to serious disgrace, significant material damage or criminal prosecution. The single judge or the president of the chamber informs the witness that they may refuse to give answers to the questions asked.

11 What procedure exists for verifying the identity of the person to be examined?

The court will ask the witness whose examination has been proposed in the evidentiary proceedings to provide the court, before the remote hearing, with a copy or scan of their identity card or another document proving the identity of the person to be examined, or it will establish the identity of the witness by other means where possible (Article 8(1) of the Rules). At the remote hearing, the court will ask the other participants in the proceedings to provide the information necessary for their identification and, if necessary, it will establish their identity in accordance with the relevant paragraph of this Article (Article 8(2) of the Rules). The court will determine by which means of communication the information referred to in this Article is to be provided to the court (Article 8(3) of the Rules).

12 What requirements for taking oaths apply and what information is needed from the requesting court when an oath is required during direct taking of evidence under Articles 19 to 21 of the Taking of Evidence Regulation?

The court may decide that a witness take an oath on the declarations provided, or that the oath be taken before the witness is heard. The oath is taken orally by saying the following: ‘I swear on my honour that I have answered every question asked by the court truthfully and that I have withheld no information known to me about the matter.’ Mute witnesses who are able to read and write are sworn in by signing the text of the oath, while deaf witnesses take the oath by reading its text. If deaf or mute witnesses cannot read or write, they are sworn in with the help of an interpreter. Where a witness is heard again, they will not retake the oath but will be reminded of the oath already taken. No oath is required from witnesses who, at the time of the hearing, have not reached the age of majority or are incapable of comprehending its meaning.

13 What arrangements are there for ensuring that there is a contact person at the place of the videoconference with whom the requesting court can liaise and a person who is available on the day of the hearing to operate the videoconferencing facilities and deal with any technical problems?

Before scheduling a remote hearing, the court will examine whether the technical and other requirements for the hearing are met (Article 11(1) of the Rules). If, after scheduling the remote hearing but before it takes place, it is established that the hearing cannot take place at the scheduled time, the court will postpone the hearing and schedule a new hearing either remotely or in the court building, depending on the reasons why the earlier hearing did not take place (Article 11(2) of the Rules). In this case, the hearing may take place at the scheduled time in the court building instead of remotely if the circumstances of the case so permit (Article 11(3) of the Rules). If technical difficulties arise during the remote hearing, the court will try to resolve them and continue the hearing. If it is not possible to continue the hearing with all the participants in the proceedings but only some of them, and if this does not impede the discussion for one of the parties, the court will continue the hearing. Otherwise, the court will act in accordance with paragraph 2 of this Article (Article 11(4) of the Rules).

14 What, if any, additional information is required from the requesting court?

The requesting court is not asked for any additional information.

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