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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?

Legislative Decree No 149 of 10 October 2022 introduced into Italian law the possibility, under certain conditions, for hearings to take place via remote audiovisual connections (Article 127-bis of the Code of Civil Procedure). In Italian civil proceedings, a hearing by video conference may be ordered by the judge where only the parties, their lawyers, the public prosecutor and the auxiliary members of the court are to be present. However, if witnesses are to be heard, it is obligatory for them to appear in person before the court. Therefore video conferencing is not permitted for the questioning of witnesses before the Italian courts.

This means that when an Italian court receives a request for the taking of evidence within the meaning of Article 12 et seq. of the Taking of Evidence Regulation, the witness must always appear in person before the court.

Nevertheless, if the Italian court moves to question a witness in execution of a request made within the meaning of Article 12 et seq. of the Regulation, it is possible that the requesting judge will attend the hearing via video conference, even if this is not provided for in the case of domestic civil cases, as these are arrangements which do not infringe the fundamental principles of the Italian legal order, without prejudice to the principle of the free choice of citizens to be heard using such means (no coercion being possible in Italy).

As regards the different case of the taking of evidence by the judicial authority of another Member State, it is possible to resort to video conference as per the provisions of Articles 19 and 20 of the Regulation, since the prohibition on questioning witnesses by video conference does not constitute a rule of procedural public policy.

In this regard, the procedure normally applied is that the witness is questioned by the foreign court by video conference once the request has been granted by the Central Authority set up in the Directorate-General for International Affairs and Judicial Cooperation of the Ministry of Justice.

Once the request has been granted, the foreign court can proceed with questioning the witness using the audiovisual connection system it considers preferable, without any involvement on the part of the Italian judicial authority. In any event, the requesting court must inform the person requested to testify that the taking of evidence is being conducted on a voluntary basis and refrain from using any coercive measures, in accordance with Article 19(2) and (3) of the Regulation.

If the requesting authority or the person called upon to testify expressly so requests, the video conference may take place on the court's premises using equipment made available by the Prison Administration Department (DAP).

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?

Please see answer to question 1. Witnesses cannot be questioned by video conference by an Italian court, although they may be questioned by video conference by a court abroad which has requested the direct taking of evidence.

The parties and technical advisers may also be questioned by videoconference, in accordance with the procedures laid down in Article 127-*bis* of the Code of Civil Procedure and Article 196-*duodecies* of the implementing provisions of the Code of Civil Procedure, including by the Italian courts.

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

There are no restrictions on the type of evidence that may be taken by videoconference.

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

Please see answer to question 1. In particular, given that, as stated above, the use of videoconferencing is permissible only in the case of direct evidence, the choice of specific arrangements is left to the requesting court. There are no restrictions, and the person can also be heard from his or her home; however, the Italian State can provide a room on court premises and equipment of the Prison Administration Department (DAP) where specifically requested.

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

The recording of hearings by video conference is generally not permitted (Article 196-*duodecies* of the implementing provisions of the Code of Civil Procedure). However, if recording is necessary under the law of the State where the trial is taking place, the requesting court may be authorised to record the hearing by means at its disposal. Audio recording of hearings in employment and social security matters is always permitted (Article 422 of the Code of Civil Procedure). In cases where the foreign court takes evidence directly, recording is permitted if permitted by the legal system of the requesting authority.

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?

(a) Italian courts hold hearings in Italian and collect evidence in that language; if an interpreter is needed, that is possible, but the costs are borne by the parties to the case in the requesting State;

(b) The court of the requesting State will use the language provided for in its own legal system, with the involvement of an interpreter if necessary.

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?

See point 6.

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?

(a) In cases covered by Article 12 et seq. of the Regulation, the court organises the hearing, but the lawyer of the party seeking evidence must arrange for the witness to be summoned;

(b) In the cases within the meaning of Article 19 et seq. of the Regulation, the parties must name the person who will be questioned by video conference, indicating the place, date and time to be determined by the court, the method of connection and the platform to be used. In cases where the witness is to be heard using equipment of the Prison Administration Department on court premises, approximately 30 days are needed to organise the connection. The date must be agreed with the office of the Italian Central Authority because it depends on the availability of premises.

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

Italy does not request reimbursement for the costs of providing the video conferencing facilities. These are borne by the Ministry of Justice.

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?

The obligation to provide such information is on the requesting State.

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

If the video conferencing takes place at a judicial office, a court clerk will check the identity of the person.

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 of the requesting State and its law also regulate how oaths are to be taken; the Italian version is not imposed. According to the Italian Constitutional Court, a witness may refuse to swear a religious oath but may not refuse to make a solemn commitment to tell the truth.

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?

If the person is interviewed using equipment provided by the Prison Administration Department, the department which makes the facilities available conducts tests to verify the compatibility of the software and equipment and liaises with the office of the requesting court to check that the connections are working.

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

In general, if the forms have been correctly filled in, there is no need for further information (including form N and any technical details). Otherwise, the offices liaise to solve any problems or obtain further information.

 Last update: 02/10/2024

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