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# Taking evidence by videoconference

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(in civil and commercial  
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 Poland

## 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?

In Poland, evidence may be taken by videoconference, in accordance with Articles 12 to 14 and Articles 19 to 21 of Regulation (EC) No 2020/1783 of the European Parliament and of the Council of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence) (recast). Videoconferencing is governed by the Code of Civil Procedure (hereinafter: 'CCP'), specifically Articles 151(2) and 235(2) CCP, and the Regulation of the Minister for Justice of 11 March 2024 on the types of technical equipment and resources used in court buildings for taking evidence during remote hearings in civil proceedings, the methods for using these types of technical equipment and resources, and the method for storing, reproducing and copying records made during evidence taking (Journal of Laws 2024, item 357), and the Notice of the Minister for Justice of 5 March 2024 regarding technical standards for programming and hardware requirements necessary for participating in remote hearings (Journal of Laws, Ministry of Justice 2024, item 82).

## 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?

Polish law imposes no restrictions of this kind: experts, parties and witnesses may all be examined by videoconference.

The adjudicating court may order that evidence be taken remotely in the context of a remote hearing, unless this is precluded by the nature of the evidence (Article 235(2) of the Code of Civil Procedure).

A Party may object to the hearing of a witness outside the courtroom at a remote hearing, but no later than 7 days after being informed of the intention to take evidence in this way. If an objection is successfully lodged, the court summons the witness to appear in person in the courtroom (Article 263(1) of the Code of Civil Procedure).

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

Polish law does not provide for specific rules on the limits on the type of evidence that can be taken by videoconference, but only requires that the nature of the evidence does not preclude this (Article 235(2) CCP). Indeed, in practice, the taking of certain evidence by videoconferencing (e.g. visual inspection evidence) may

prove impossible or significantly difficult. The final assessment is left to the court.

The presiding judge may order that a public hearing be held using technical facilities enabling it to be held remotely (remote hearing), provided that this is not precluded by the nature of the activities to be carried out at the hearing and that holding a remote hearing ensures full protection of the procedural rights of the parties and the proper conduct of the proceedings. In this case, the judges and the recording clerk are present in the courtroom, and the other persons attending the hearing do not have to be present on the court's premises. The recording of the image and sound of procedural activities taking place in the courtroom is sent to the place where those participants in the hearing who have declared their intention to participate remotely are situated, and from the place where those participants are situated to the building of the court conducting the proceedings (Article 151(2) of the Code of Civil Procedure).

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

If the hearing takes place by videoconferencing, the person interviewed and other parties to the proceedings who are not in the courtroom may be present in the premises of another court or in another place.

A person attending a remote meeting away from the court premises is required to inform the court of the place where they are located and to make every effort to ensure that the conditions in their place of residence are compatible with the dignity of the court and do not prevent them from carrying out the procedural acts in which they participate. If the information is refused or if the conduct of that person raises reasonable doubts as to the proper conduct of the procedural acts in which they participate remotely, the court may summon that person to appear in the courtroom person.

At the request of the presiding judge, a person attending a remote meeting has to provide information on the place where they are present and the persons accompanying them.

In the case of a person deprived of liberty, a representative of the administration of the prison or of the pre-trial detention facility, the person's representative (if any), and an interpreter (if appointed), shall also take part in the proceedings.

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

As a rule, the minutes of a meeting are drawn up using either sound or image and sound recording equipment. In this case, the hearing by videoconference is also recorded ex officio by the court. However, where the minutes of a meeting are drawn up only in writing (e.g. in the absence of appropriate facilities in the court room), the proceedings of the sitting, including those held by videoconference, are not recorded and the proceedings are recorded in the minutes. In this case, however, it is possible for a party to record the course of the meeting using a sound recording device (e.g. a mobile phone with a dictaphone function). The court's consent is not required, the party is only obliged to inform the court of its intention to record the sound.

The recording of the image and sound of procedural activities taking place in the courtroom shall be sent to the place where those participants in the hearing who have declared their intention to participate remotely are situated, and from the place where those participants are situated to the building of the court conducting the proceedings.

#### **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) In the case of an interview under Articles 12-14, the rule is that the interview is conducted in Polish. Polish law does not provide for the possibility of conducting hearings before a Polish court in a language other than

Polish.

(b) In the case of direct taking of evidence under Articles 19-21, the requesting court determines the language in which the hearing is conducted. However, in accordance with Article 19(4) of Regulation 2020/1783, the Polish central body may impose the condition that the hearing take place in Polish or that a translation into Polish be provided. This applies in particular to the situation referred to in Article 19(4)(2) of the Regulation, i.e. where a Polish court is involved in the direct taking of evidence.

## 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?

In the case of a hearing in accordance with Articles 12 to 14, the interpreter is provided by the Polish court as the requested court. The rules do not specify where the interpreter should be located, except where the person requiring an interpreter is deprived of liberty (see point 4 above).

Where there is direct taking of evidence under Articles 19 to 21 of the Regulation, the requesting court provides the interpreter. The requesting court also decides where the interpreter will be at the time of the hearing. Pursuant to Article 19(4) of Regulation 2020/1783, the Polish central body may impose the condition that the interpreter be located in a specific place.

## 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 the case of an oral hearing in accordance with Articles 12 to 14, the Polish court, as the requested court, notifies the person to be heard of the date and place of the hearing by serving the summons in accordance with Polish law (in particular Articles 131-147 of the Code of Civil Procedure), in practice most often by registered post. Notice should be given no later than 7 days before the scheduled date of the meeting. Exceptionally, this period may be reduced to 3 days (Article 149 of the Code of Civil Procedure). In practice, this means that the date of the hearing must be set approximately one month in advance. The court may also inform the person by other means, as it considers most appropriate (e.g. by telephone or e-mail), if it considers this necessary to speed up the hearing of the case. Under Article 149<sup>1</sup> of the Code of Civil Procedure, the court may summon parties, witnesses, experts or other persons in the manner it deems most appropriate if it considers this necessary to speed up the hearing of the case. The summons thus effected shall have the effects provided for in the Code if it is clear that it was notified to the addressee within the time-limits laid down in Article 149(2). These provisions allow the possibility of a summons to court other than by the methods of service of summons set out in Articles 131-147 CCP. They do not, however, set out these other methods. This means that, apart from the statutory methods of summoning, the court may use all possible means of summoning, such as calling by telephone (including SMS), fax, e-mail and others.

(b) In the case of direct taking of evidence under Articles 19 to 21, the obligation to notify the date and place of the hearing lies with the requesting court, which applies its own law in that regard. In the event that the organisation of the hearing will require cooperation with a Polish court (e.g. to ensure the participation of the court in the hearing or even to provide the premises and facilities necessary for the videoconferencing), the requesting court must take into account the availability of equipment and personnel on the Polish side when setting the date for the hearing. This availability varies considerably and needs to be determined on a case-by-

case basis.

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

In accordance with the rules laid down in Article 22 of Regulation 2020/1783, the Polish courts request reimbursement of the costs specified therein and ask for an advance on the costs of the expert's opinion. Other costs relating to the use of videoconferencing are borne by Poland.

## 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 requesting court is obliged to inform the person to be interviewed that the interview can only take place on a voluntary basis, without recourse to coercive measures. Where a Polish court is involved in the direct taking of evidence, it may require assurance that the interview takes place on a voluntary basis (Article 19(2) and 19(4) of Regulation 2020/1783).

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

The court verifies a person's identity on the basis of a document confirming their identity, or their identity and nationality. Namely: For a Polish national, an identity card or passport; for a foreign national, a passport, travel document or other valid document proving their identity, or their identity and nationality. The hearing of a witness also begins with questions concerning their person and relationship with the parties. The same requirements apply *mutatis mutandis* to persons attending a hearing conducted using technical facilities enabling it to be held by means of distance communication away from the court premises.

## 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?

For interviews under Articles 19 to 21, if the requesting court informs the Polish central body of its intention to take evidence from a witness under oath, the central body may request the text of the oath. If the oath conflicts with basic principles of Polish law, the central body is entitled to refuse to agree to the interview or to request that the text of the oath used in Polish law be employed.

## 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 videoconferencing takes place at the premises of a Polish court, a Polish prison or a Polish pre-trial custody facility, these institutions provide specialised videoconferencing services. The contact details of the person responsible are communicated to the requesting court as part of the technical arrangements preceding the videoconference.

The presiding judge may order that a person deprived of their liberty take part in procedural activities only in the context of a remote meeting. In that case, a representative of the administration of the prison or of the pre-trial

detention facility, a representative (if any), and an interpreter (if appointed), attend the meeting remotely. This provision applies *mutatis mutandis* to persons subject to therapeutic procedures on the basis of separate provisions (Article 151(4) of the Code of Civil Procedure).

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

Generally speaking, no such additional information is required under Polish law. If additional information is nevertheless needed (for example regarding technical arrangements with the Polish court), such information must be written in Polish or accompanied by a translation into Polish. Videoconferences (remote hearings) are permitted, provided that this is not precluded by the nature of the activities to be carried out at the hearing and that holding a remote hearing ensures full protection of the procedural rights of the parties and the proper conduct of the proceedings. In this case, the judges and the recording clerk are present in the courtroom, and the other persons attending the hearing do not have to be present on the court's premises.

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