Taking evidence by videoconference

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Slovenia

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?

It is possible for evidence to be taken by videoconferencing with the participation of a court in the requested Member State, or directly by the court examining the case, subject to approval by the central body of the requested Member State.

The use of videoconferencing in a main hearing is governed by Article 114a of the Civil Procedure Act (*Zakon o pravdnem postopku*, ZPP). The first paragraph of Article 114a states that the court may, with the consent of the parties, allow parties and their legal representatives to be at different locations during the hearing and to conduct procedural acts there, provided that audiovisual transmission is ensured from the place where the hearing is held to the place or places where the parties and their representatives are located and vice versa (videoconferencing). The second paragraph of Article 114a ZPP states that, subject to the conditions set out in the first paragraph of that article, the court may decide to take evidence by conducting an inspection, looking at documents, examining the parties and witnesses and taking evidence from experts.

Under the current arrangements, a court may therefore only order the use of equipment in judicial proceedings with the consent of the parties. If the parties agree, the court has the discretion to decide whether to conduct a hearing or a procedural act by videoconferencing, in which case it issues a decision (*sklep*), which is not subject to appeal.

The ZPP also applies on a subsidiary basis in other proceedings, such as those under the Non-Litigious Civil Procedure Act (*Zakon o nepravdnem postopku*, ZNP-1), the Labour and Social Courts Act (*Zakon o delovnih in socialnih sodiščih*, ZDSS-1), the Inheritance Act (*Zakon o dedovanju*, ZD) and the Administrative Disputes Act (*Zakon o upravnem sporu*, ZUS-1).

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?

Under the first paragraph of Article 114a ZPP, a hearing or, more specifically, procedural acts involving the parties and their representatives may be conducted by videoconferencing; while the second paragraph states that evidence may be taken in this way, including for examining parties and witnesses and taking evidence from an expert.

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

A court may decide to take evidence by conducting an inspection, looking at documents, examining parties and witnesses, and taking evidence from experts. That decision remains at the judge's discretion: in each specific case, the judge assesses whether such a measure is necessary and proportionate in the light of the specific circumstances, any objections raised by the parties and the reason for carrying out the procedural act by videoconferencing.

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

The law does not specify the place where a person should be examined by videoconferencing. However, the first paragraph of Article 114a ZPP contains the requirement to have the technical capacity for videoconferencing, i.e. for there to be an audiovisual link and transmission between the place where a party is located and the place where the hearing takes place.

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

Since 2011 the district courts (*okrožna sodišča*) in Slovenia, of which there are 11, have had the necessary equipment for videoconferencing and at least one courtroom for recording such links. There are also three mobile sets of videoconferencing equipment that a court, including local courts (*okrajna sodišča*), can use.

Article 125a ZPP lays down the legal basis for audio or audiovisual recording of the main hearing, since the presiding judge may order the audio or audiovisual recording of the entire hearing or a part thereof. They must notify the parties and other participants of their order at the hearing.

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?

In the event of requests under Articles 12 to 14 of Regulation (EU) 2020/1783, the rules of the Slovenian ZPP apply. Article 102 ZPP states that parties and other participants in proceedings may use their own language in hearings and other oral procedural acts before a court.

Parties and other participants must be informed of their right to follow oral proceedings before the court in their own language through an interpreter. They may waive their right to interpreting if they declare that they know the language in which the proceedings are to be conducted. An entry is made in the record stating that they were informed, and their response.

In the case of requests made under Articles 19 to 21, the direct taking of evidence is to be carried out in accordance with the law of the Member State of the requesting court, pursuant to Article 19(8) of Regulation (EU) 2020/1783.

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 event of requests under Articles 12 to 14 of Regulation (EU) 2020/1783, the rules of the Slovenian ZPP apply. Article 102 ZPP states that, if the proceedings are not conducted in the language of a party or other participants in the proceedings, everything that is said at the hearing and the documents used at the hearing for taking evidence are to be translated orally into their language, at their request, or if the court finds that they do not understand Slovenian.

Oral translation is to be provided by interpreters.

If a Slovenian court takes part in a direct hearing by videoconference on the basis of a decision by the central body in accordance with Article 19(6) of Regulation (EU) 2020/1783, it may provide assistance with finding an interpreter, in agreement with the requesting court.

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?

In the event of requests under Articles 12 to 14 of Regulation (EU) 2020/1783, the rules of the Slovenian ZPP apply. The parties and other persons whose presence the court considers essential must be summoned to the hearing in good time. The summons that the court serves on a party is to be accompanied by the submission that led to the scheduling of the hearing, and indicate the place, premises and time of the hearing. If the submission is not sent together with the summons, the summons is to indicate the names of the parties, the subject of the dispute and the act to be undertaken at the hearing (Article 113 ZPP).

If a Slovenian court takes part in a direct hearing by videoconference on the basis of a decision by the central body in accordance with Article 19(6) of Regulation (EU) 2020/1783, it may provide assistance with serving the summons to the hearing by videoconference on the party, in agreement with the requesting court.

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

The costs vary and must be covered (by a deposit or advance) by the requesting court if the requested court so requests. Under the Slovenian ZPP these are litigation costs incurred in or as a result of proceedings, and the party that loses the case must pay the costs incurred by the opposing party (Article 154 ZPP).

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?

Under Article 19(2) of Regulation (EU) 2020/1783, the requesting court must inform the person concerned that the examination is voluntary. If a Slovenian court takes part in a direct hearing by videoconference on the basis of a decision taken by the central body in accordance with Article 19(6) of Regulation (EU) 2020/1783, it may provide assistance in informing the person that the examination is voluntary.

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

examined?

The identity of the person to be examined through an electronic communications network is verified on the basis of the information provided by the person concerned for checking their identity and address, and using the person's official identification document.

When witnesses or parties are examined, the court asks them for their first name and surname and the first name and surname of one or both parents. They are also asked to state their occupation, place of residence, place of birth and age and their relationship to the parties. Witnesses may provide their personal ID number (*enotna matična številka občana*, EMŠO) instead of the first name and surname of one or both parents, their occupation, place of residence, place of birth and age. Witnesses who are officials may give the address and name of the state authority where they work, and the title of their post, instead of stating the first name and surname of one or both parents and their place of residence, if they have been summoned as a witness on account of their work.

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 ZPP does not provide for oaths in court proceedings.

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 a Slovenian court takes part in a direct hearing by videoconferencing on the basis of a decision by the central body in accordance with Article 19(6) of Regulation (EU) 2020/1783, it may, at the request of the requesting court, provide assistance with operating the videoconferencing facilities if the hearing is held at the requested court. Courts have staff whose job it is to ensure the functioning of the equipment needed for hearings conducted through an electronic communications network.

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

Information on the equipment required for setting up a videoconferencing link and the persons responsible for ensuring that the equipment works properly.

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