

Taking evidence by videoconferencing - Czech Republic

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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?

Following an amendment to Act No 99/1963, the Code of Civil Procedure, as amended, in effect since September 2017, the use of videoconferencing equipment in civil proceedings is governed directly by the Act. Section 102a of the Code of Civil Procedure expressly stipulates that a court may perform tasks using videoconferencing equipment at the request of a party or when it is deemed useful. Videoconferencing may be used in particular for enabling the presence of a party or an interpreter at a hearing or for examining a witness, expert or party.

The matter is further governed under Section 10a of Instruction of the Ministry of Justice No 505/2001 issuing internal and clerical rules for district, regional and high courts.

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?

The act expressly provides for the examination of witnesses, experts and parties. However, it does not in any way restrict the category of persons in advance; it is possible to link other persons to a hearing by videoconference, for example interpreters. Videoconferencing is restricted by its usefulness, or at the request of a party.

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

There are no general restrictions in the text of the law. However, a restriction may ensue from the specific circumstances of a case (technical feasibility etc.).

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 presiding judge (a judge sitting alone) performs tasks by videoconference, the summons must also state the place and time of the videoconference. Therefore, the use of any suitable premises for the task, for instance places where experts or witnesses are located (e.g. hospitals, laboratories), is not precluded.

However, it is important for court employees entrusted with performing such tasks by the presiding judge (a judge sitting alone) to verify the identity of the person whom the task concerns. It is envisaged that a person is usually examined at court, in prison or at healthcare facilities.

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

The Act stipulates that an audio-visual recording be taken whenever a task is performed by videoconference. If a report is drawn up alongside a recording, the person whom the task concerns does not have to sign the report.

6 In what language should the hearing be conducted: (a) where requests are made under Articles 10 to 12; and (b) where there is direct taking of evidence under Article 17?

If the witness does not speak the language of the proceedings, he or she has the right to an interpreter under Article 37(4) of Constitutional Act No 2/1993 (the Charter of Fundamental Rights and Freedoms). According to Section 18(2) of the Code of Civil Procedure, the court must appoint an interpreter for any party whose first language is not Czech, whenever the need arises in the proceedings.

7 If interpreters are required, who is responsible for providing them under both types of hearing and where should they be located?

According to Section 18(1) and (2) of the Code of Civil Procedure, the court is required to provide the parties with equal opportunities to exercise their rights and is required to appoint an interpreter for any party whose first language is not Czech, whenever the need arises in the proceedings.

It can be arranged for an interpreter to be present via videoconferencing equipment. It is therefore not required for the interpreter to be physically present in the same location as the person being examined.

8 What procedure applies to the arrangements for the hearing and to notify the person to be examined about the time and place? How much time should be allowed when arranging the date of the hearing to enable the person to receive sufficient notification?

The court must summon a person in accordance with Section 51 of the Code of Civil Procedure. Except where this act or special legislation concerning summoning requires further particulars, the summons must contain the following information: the name of the case to which the person is summoned, the purpose, location and starting time of the court proceedings, the reason for the summons, the role in which the person is being summoned in the proceedings, the obligations of the person summoned and, if necessary, the expected duration of the proceedings. When videoconferencing equipment is used at a hearing, the person summoned is notified about when and where they should present themselves.

The summons may be served on paper or by electronic means and, in urgent cases, by telephone or fax.

If the witness or expert is to be examined by videoconference and the person to be examined is required to present themselves in a district under the jurisdiction of a different court, that court will be responsible for the summons; the requesting court will ask the other court to carry out this task. According to Section 115(2) of the Code of Civil Procedure, the summons must be served upon parties in a manner that allows them sufficient time to prepare; generally this is at least 10 days before the date of the hearing, unless a preparatory hearing has been held.

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

The use of videoconferencing entails data transfer costs. These costs should be covered by the requesting court which initiated the videoconference.

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?

According to Section 126(1) of the Code of Civil Procedure, any natural person who is not a party to the proceedings is required to attend court when summoned and to give a witness statement. The witness may refuse to testify only in cases where such testimony would give rise to the risk of criminal prosecution of the witness or their relatives. Witnesses are always informed before the hearing of the significance of their testimony, of their rights and obligations and of the criminal consequences of a false testimony.

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

At the start of the hearing the court is required under Section 126(2) of the Code of Civil Procedure to verify the identity of the witness. This is generally done by requiring the presentation of an identity card or passport.

Where an examination is conducted using videoconferencing equipment, a court employee entrusted with performing this task by the presiding judge (a judge sitting alone) must verify the identity of the person to be examined using the videoconferencing equipment. With the consent of the presiding judge (a judge sitting alone), the person verifying identity at the premises where the person being examined is located may also be an employee of the court or prison or detention institution holding sectioned persons, provided that this person has been entrusted with that task.

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 Article 17?

Under Section 104(1) of Act No 91/2012 on private international law, witnesses, experts and parties may – if so requested by an authority in another country – be heard under oath. For witnesses and parties to proceedings, the oath reads: ‘I swear on my honour that I will answer every question asked by the court fully and truthfully and that I will withhold nothing.’ For an expert, the oath reads: ‘I swear on my honour that the opinion I will give will be according to the best of my knowledge and belief.’ If there is a subsequent oath, the wording of the oath will be modified accordingly.

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?

Specific arrangements are agreed upon during preparations for the videoconference and are based on the needs of the requesting and requested courts.

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

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