

Taking evidence by videoconferencing - Romania

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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?

Yes. In this case, Law No 189/2003 on international legal assistance in civil and commercial matters is applicable, more specifically Article 25(1) and (3) and Article 35(3).

The Romanian judicial authority referred to may consider using a special procedure, at the request of the requesting judicial authority, provided that it is not contrary to Romanian law. The Romanian court informs the requesting judicial authority of the date and place of the letters rogatory procedure and it may allow the participation of foreign magistrates. Under Article 3(3) of Council Regulation (EC) No 1206/2001 of 28 May 2001, the Ministry of Justice fulfils duties relating to decisions on requests submitted under Article 17 of the same Regulation.

The videoconference should take place in the presence of the judge from the District Court with jurisdiction where the evidence is to be taken, assisted by an interpreter, where necessary. He/she must verify the identity of the person to be examined and must ensure compliance with the fundamental principles of Romanian law.

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?

No. The letters rogatory procedure allows the hearing of witnesses or other persons involved (Article 17 of Law No 189/2003 on international legal assistance in civil and commercial matters).

Nevertheless, under Article 26(2) of Law No 189/2003 on international legal assistance in civil and commercial matters, the letters rogatory procedure may be denied if the person to be examined may not testify due to some interdictions under Romanian law or when the documents to be transmitted or examined may not be circulated.

Furthermore, under Articles 315, 316 and 317 of the New Code of Civil Procedure, the following may not be examined as witnesses: relatives and in-law relatives up to and including the third degree, spouses, former spouses, fiancés or cohabitees, persons who are in hostile relations or have a particular interest with regard to one of the parties, persons declared as lacking legal capacity, and persons convicted for perjury. However, the parties may agree, either expressly or tacitly, that the following may also be examined as witnesses: relatives and in-law relatives up to and including the third degree, spouses, former spouses, fiancés or cohabitees, and persons who are in hostile relations or have a particular interest with regard to one of the parties.

In court cases concerning parentage, divorce and other family relations, the relatives and inlaw relatives up to and including the third degree may also be examined, except for the descendants.

The following persons are exempt from testifying:

1. clerics, doctors, pharmacists, lawyers, notaries public, bailiffs, mediators, midwives and nurses, and any other professional bound by law to confidentiality or professional secrecy on the facts they have become aware of at work or in the exercise of their professional activities, even after they have ceased their activity;
2. judges, prosecutors and public officials, even after they have ceased their duties, regarding secret circumstances they became aware of during their term of office;
3. those who, through their answers, are likely to expose themselves, their relatives or in-law relatives up to and including the third degree, or their spouses, former spouses, fiancés or cohabitees to criminal penalty or to public contempt.

These persons, except for the clerics, may testify however if they are released from confidentiality or professional secrecy by the party interested in keeping that secret, except where the law provides otherwise. Judges, prosecutors and public officials may also testify if the authority or institution with which they work or have worked, as applicable, issues an approval in this respect.

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

No, there are no restrictions. Pursuant to Article 17 of Law No 189/2003 on international legal assistance in civil and commercial matters, the letters rogatory procedure allows for hearing of witnesses or other persons involved, obtaining documents, drawing up expert opinions, and carrying out an investigation or obtaining other necessary documents or information for the settlement of a specific case.

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

No, there are no restrictions. Nevertheless, under Articles 16, 261(1) and 314 of the New Code of Civil Procedure, evidence is obtained by the court trying the case. If, for objective reasons, evidence can only be obtained outside the locality where the court has its seat, evidence may be obtained through the letters rogatory procedure by a court of the same level or even a lower court if there is no court of the same level in that locality. The court entrusted under the letters rogatory procedure takes evidence in the presence of the parties, or even in the absence thereof, if they have been lawfully summoned, and has the same duties as the court of referral, as regards the procedure to be followed. At the same time, the witness who, by reason of illness or other serious hindrance, cannot appear before the court may be heard at his/her location, subject to the parties' summoning procedure.

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

Yes, this is permitted under Article 13 of Law No 304/2004 on judicial organisation, republished.

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?

a) in Romanian.

b) in Romanian, because the Romanian requested court should draw up a hearing report recording the date and place of the hearing, the identity of the person heard, information on oath taking, the technical conditions of the hearing, etc.

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

The requesting court is responsible for providing interpreters in accordance with Article 27 of Law No 189/2003 on international legal assistance in civil and commercial matters. The Romanian requested court may facilitate, where applicable, access to an interpreter from Romania, by providing a list of interpreters for 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? How much time should be allowed when arranging the date of the hearing to enable the person to receive sufficient notification?

At least one month and not more than three months.

In this case, Law No 189/2003 on international legal assistance in civil and commercial matters is applicable, more specifically Article 25(3). The Romanian court informs the requesting judicial authority of the date and place of the letters rogatory procedure. In accordance with Article 261(4) of the New Code of Civil Procedure, the court entrusted under the letters rogatory procedure takes evidence in the presence of the parties, or even in the absence thereof, if they have been lawfully summoned, and has the same duties as the court of referral, as regards the procedure to be followed.

However, given that there are two procedures in relations with foreign bodies (the communication procedure in the course of taking evidence), we consider that the time limit should be, in practice, at least one month and not more than 3 months subject to the existing provisions on:

- the fulfilment of the request for service provided for in Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000, more specifically it should include at least the one-month period required for the actual fulfilment of the request for service by mail with acknowledgement of receipt;
- the obligations of the requesting court to fulfil the requests of the requested court concerning the provision of additional information or the payment of the advance/deposit, etc., as indicated in Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.

The reasons would be those related to the time allocated for any translations of correspondence with the requesting court or the witness and the time allocated for mailing abroad, the high workload and not least the videoconferencing schedule.

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

The costs cannot be estimated because they vary depending on time and country. They should be settled by bank transfer to the account of the court of appeal, as the secondary authorising body, or to the account of the district court, as the third authorising body. The expenses incurred with the video connection, with making the connection available in the requesting State, the remuneration of interpreters and the allowances paid to witnesses and experts, as well as the expenses incurred with travelling to the requested State are reimbursed by the foreign requesting court to the Romanian requested court.

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 person who is to be examined should be summoned also in accordance with the provisions of the Romanian New Code of Civil Procedure. This person should be informed that the hearing will take place on a voluntary basis in the summons issued by the Romanian requested court, through the decision approving the taking of evidence by the requesting court or in any other document.

Under Article 261(4) of the New Code of Civil Procedure, the court entrusted under the letters rogatory procedure takes evidence in the presence of the parties, or even in the absence thereof, if they have been lawfully summoned, and has the same duties as the court of referral, as regards the procedure to be followed.

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

In accordance with Article 318 of the New Code of Civil Procedure, before taking a statement, the President asks the witness to state his/her surname, first name, profession, domicile and age, whether he/she is a relative or an in-law relative of one of the parties and to what degree, and whether he/she is in the service of one of the parties. Then, the President draws the witness's attention to the duty to take an oath and the significance of the oath.

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 Articles 319 and 320 of the Romanian New Code of Civil Procedure, before being heard, the witness takes the following oath: "I swear that I shall tell the truth and that I shall not conceal anything from what I know. So help me God!"

The witness takes the oath while keeping his/her hand on the cross or the Bible. As regards the divinity invoked in the wording of the oath, it is changed according to the witness's religious faith. The above-mentioned provisions are not applicable to the witness whose religion is other than the Christian religion.

The witness who does not belong to any faith takes the following oath: "I swear on my honour and conscience that I shall tell the truth and that I shall not conceal anything from what I know."

Witnesses who do not take an oath, for reasons of conscience or faith, utter the following words before the court: "I undertake to tell the truth and not to conceal anything from what I know."

Literate mute and deaf-mute persons take the oath by transcribing the text of the oath and by signing it, hearing impaired persons utter the oath, and illiterate persons take the oath using signs with the assistance of an interpreter.

After the witness has taken the oath, the President draws his/her attention to the fact that, if he/she does not tell the truth, he/she commits the offence of perjury.

All of these are noted in the written statement.

Children who have not reached the age of 14 and do not have the capacity to make decisions at the time of the hearing, may be heard without an oath and without being prohibited to do so, but the court draws their attention to the fact that they should tell the truth, and takes into account their special position when judging their deposition.

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?

Contact persons may be IT specialists from courts of appeal, the clerk of the court or the judge. About 144 out of the 244 courts have videoconferencing facilities. Each of those 144 courts has 2 videoconferencing facilities.

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

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