

Taking evidence by videoconferencing - Slovenia

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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?

It is possible for evidence to be taken by videoconference with the participation of a court in the requesting Member State or directly by a court of that Member State. In all civil and commercial matters, Article 114a of the Civil Procedure Act (*Zakon o pravdnem postopku*; hereinafter: ZPP) applies, which provides that a court may, with the consent of the parties, allow parties and their legal representatives to be at different locations during the hearing and conduct procedural activities there, provided that there is voice and image transfer from the place where the hearing is held to the place or places where parties and representatives are located and vice versa (videoconference). Subject to these conditions, a court may decide also to take evidence by examining parties and witnesses, and by taking evidence from experts.

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?

Videoconference can be used to examine parties and witnesses, as well as for taking evidence from an expert. Parties and representatives (for example attorneys-at-law) may conduct all procedural activities by videoconference.

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

Generally, parties and legal representatives may conduct all procedural activities from a remote location. The ZPP restricts the possibility to take evidence by videoconference to exhaustively listed evidence (examining parties and witnesses, taking evidence from an expert). Therefore, it is not possible to use videoconference for taking evidence by inspecting a location or taking evidence by examining documents.

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

Generally, parties and legal representatives may conduct all procedural activities from a remote location. There are no restrictions regarding locations where the other party is outside the court.

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

Article 125a of the ZPP provides the legal basis for voice and image recording of a hearing. In accordance with this provision, a president of the senate may order voice and image recording of a hearing. This means that the president of the senate, before whom proceedings are being conducted, has a discretionary right to decide whether a voice and image recording of the hearing will be made. In accordance with Article 114a, a party does not have a right to demand that the court allow a videoconference. The petition for a videoconference may be also initiated by the court, in which case the consent of the parties is required. A decision by which a court orders a videoconference must be issued in sufficient time before the intended hearing, taking into account the time for technical preparation, and the parties must be informed sufficiently in advance of whether they must appear before the court.

Since 2011, at least one court room at every district court (11 locations) in Slovenia has been supplied with all the necessary equipment for a videoconference and for recording such connections. It is possible to record only voice or image or both at the same time. There are also three mobile videoconference equipment sets available which courts can use at local or other courts. Since a videoconference is set up through a centrally accessible point, every videoconference may be recorded upon a judge's order.

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?

Pursuant to Articles 10 to 12 of the Regulation, examinations may be conducted by a requested court, specifically in the language which is the official language of the court (in Slovenian and the languages of national communities which are in official use by the courts in the areas of these national communities, namely in Italian or Hungarian) and, when necessary, through a translation into the language which a party or other participant in the proceedings understands, when suggested by them, or when the court determines that the party or another participant in the proceedings does not understand Slovenian.

Pursuant to Article 17 of the Regulation, examination is conducted directly by the requesting court. In such a case, examination may be conducted in a foreign language if a suitable translation is provided into the language understood by the party or the other participants 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?

When court interpreters are used this can be arranged by either the requested or the requesting court (depending on the agreement between the courts). Additionally, court interpreters may be at the location of the requested or the requesting court, or at a third location.

In practice, court interpreters are at the location of the person in need of interpretation, namely at the location of the requested court, if the court requesting the examination is examining in its language, pursuant to Article 17 of the Regulation, or at the location of the requesting court if the examination is conducted by the requested court, pursuant to Articles 10 to 12 of the Regulation.

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?

A person who is to be examined must be summoned in person and in writing to appear before the court. The summons states, among other things, the time and place where the person will be examined. Certain witnesses may be examined at their home in cases of old age, illness or serious physical disability. The Civil Procedure Act does not stipulate how much time in advance witnesses must be summoned; however, parties must be given enough time to prepare for the hearing - at least 15 days from the time the summons for the hearing is served. This time limit does not apply when a person is summoned as a witness.

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

In accordance with Article 153 of the ZPP, a party petitioning evidence to be taken deposits money to cover the costs incurred in taking the evidence. If the evidence to be taken is proposed by both parties, the court can decide that both parties are to deposit equal shares of the amount. The costs are reimbursed according to the outcome of the matter.

In the Republic of Slovenia, videoconference is free.

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 ZPP does not set out additional conditions.

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

Before witnesses are examined, they are asked their name and surname, the name of their father, occupation, address, place of birth, age and their relationship to the parties (third paragraph of Article 238 of the ZPP).

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?

The ZPP does not stipulate taking an oath. In accordance with Article 238, a court warns witnesses before the start of examination that they must speak the truth and must not conceal anything, after which they are warned about the consequences of giving a false 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?

The ZPP does not contain such a provision.

In practice, at least one week before a videoconference, the connection is tested to check that it works and that it is of satisfactory quality and to correct any deficiencies. This ensures that the technician who is present during the hearing can operate the videoconference equipment without difficulties, since testing will have been carried out in advance. The courts, either in the actual request or subsequently, exchange contact details of the persons who will be responsible for the technical aspects of the videoconference.

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

The ZPP does not contain such a provision.

In practice, the requesting court sends the requested court, together with the request, a form with all technical information on the videoconference system and the contact details of the expert who will be responsible for the technical aspects of the videoconference. Both courts need information about the videoconference systems, connection type (ISDN, IP), connection speed, address (phone number), language to be used for testing, date and time of testing, any time difference and contact details of the technician responsible for technical matters.

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