

4.1. The Legal Framework in Criminal Matters

68. In criminal matters, Article 10 of the Convention on Mutual Legal Assistance in Criminal Matters of 2000 provides the legal framework for cross-border cases. The following rules apply:

a judicial authority of the requested Member State shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of the law of the requested Member State. If the judicial authority of the requested Member State is of the view that during the hearing the fundamental principles of the law of the requested Member State are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with the said principles;

measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the requesting and the requested Member States;

the hearing shall be conducted directly by, or under the direction of, the judicial authority of the requesting Member State in accordance with its own laws;

at the request of the requesting Member State or the person to be heard the requested Member State shall ensure that the person to be heard is assisted by an interpreter, if necessary;

the person to be heard may claim the right not to testify which would accrue to him or her under the law of either the requested or the requesting Member State

69. Article 10 of the 2000 MLA Convention establishes the principle that a request for a videoconference hearing may be submitted by a Member State in respect of a person who is in another Member State. The circumstances in which such a request may be made are that the judicial authorities of the requesting Member State require the person in question to be heard as a witness or expert and that it is not desirable or not possible for him or her to travel to that State for a hearing. 'Not desirable' could for example apply in cases where the witness is very young, very old, or in bad health; 'not possible' could for instance cover cases where the witness would be exposed to serious danger by appearing in the requesting Member State.

70. The requested Member State has to agree to videoconferencing provided that the hearing would not be contrary to the fundamental principles of its law and that it has the technical capacity to carry out the hearing. In that context the reference to 'fundamental principles of law' implies that a request cannot be refused for the sole reason that hearing of witnesses and experts by videoconference is not provided under the law of the requested Member State, or that one or more detailed conditions for a hearing by videoconference would not be met under national law.

Where the relevant technical means are lacking, the requesting Member State may, with the agreement of the requested Member State, provide suitable equipment to enable the hearing to take place. ([Explanatory Report on the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters](#))

71. Requests for a hearing by videoconference shall contain information concerning the authority making the request, the object of and the reason for the request where possible, the identity and the nationality of the person concerned and where necessary the name and address of the person to be served. The request shall also contain the reason why it is not desirable or possible for the witness or expert to attend in person, the name of the judicial authority and the names of the persons who will be conducting the hearing. This information is referred to in the 2000 MLA Convention. The judicial authority of the requested state shall summon the person concerned to appear in accordance with the forms laid down by its law.

72. In the 2000 MLA Convention, Article 10(8) provides that if, in the course of a hearing by videoconference, a person refuses to testify or provides false testimony, the state in which the person being heard is located should be in a position to deal with that person in the same way as if he or she were appearing at a hearing conducted under its own national procedures.

This follows from the fact that the obligation to testify at a videoconference hearing arises, pursuant to this paragraph, under the law of the requested state. The paragraph is in particular intended to guarantee that the witness, in case of non-compliance with an obligation to testify, is subject to consequences of his or her behaviour similar to those applicable in a domestic case where videoconferencing is not used.

73. In paragraph 9 of Article 10, the use of videoconference hearings is extended to accused persons. Each Member State enjoys full discretion as to whether or not it will agree to execute requests for such hearings. A Member State may make a general declaration to the effect that it will not do so. The accused person should consent in each case before the hearing takes place.

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