

2.5. The Hearing

33. In most countries, the judge will be present at the site of the requesting authority before the video-link has been established and will not normally leave the site before the video link has been disconnected. They have a key role in conducting the hearing.

34. In criminal matters, the hearing is conducted directly by, or under the direction of the judicial authority of the requesting Member State in accordance with its own laws (2000 MLA Convention).

35. In civil matters, Article 12 of the 2001 Taking of Evidence Regulation states that representatives of the requesting court, including members of the judicial personnel, have the right to be present when the requested court takes evidence if this is compatible with the law of the requesting Member State.

Under Article 17 of the 2001 Taking of Evidence Regulation (requests for direct taking of evidence), the taking of evidence is performed by a judge or perhaps another person designated in accordance with the law of the requesting Member State.

36. In civil or criminal matters, the judge or the court clerk will usually handle the equipment. The examination of the witness at the remote site would follow as closely as possible the practice adopted when a witness is in the courtroom.

37. The persons concerned should be able to consult with one another without third parties overhearing. There may be cases where a party wishes to consult with his/her lawyer (whether or not via an interpreter) without the judge or another party overhearing. It is therefore necessary that mutual consultation is made possible without third parties overhearing. Usually the microphones may be turned off in the witness rooms, but in the court rooms they could only be turned off by the court clerk or the judge.

38. If the party and his or her lawyer are not present at the same site, they should be able to conduct private talks using for example secure phone line, mobile phone or, if possible, separate videoconferencing equipment. Any equipment is recommended to be set up in such a way that it is clearly separated from other parties to the court proceedings.

39. A procedure that stipulates how parties can interrupt each other and object to a question should be explained in advance. In some situations it might if possible be considered to supply the parties with an overview picture displaying all the professional parties as this can make it easier to handle unforeseen interruptions.

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