

CEPEJ: Guidelines on Videoconferencing in Judicial Proceedings

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On 1 July 2021, the European Commission for the Efficiency of Justice (CEPEJ) published [guidelines on videoconferencing in judicial proceedings](#). They were adopted at CEPEJ's plenary meeting on 16 and 17 June 2021. Since the beginning of the health crisis, the courts have had to develop and manage the use of videoconferencing in judicial proceedings. Member States asked the CEPEJ to adopt relevant guidelines, which now set out principles that states and courts should follow to ensure that the use of videoconferencing for remote hearings is in line with the right to a fair trial as enshrined in Art. 6 ECHR.

The guidelines apply to all judicial proceedings and also, *mutatis mutandis*, to prosecution services, with the first part of the document also containing specific provisions for criminal proceedings. The second part contains technical and organisational requirements, while the appendix features a checklist of essential requirements for the use of videoconferencing in judicial practice. As a fundamental principle, the guidelines require that all guarantees of a fair trial under the ECHR should also apply to remote hearings in all judicial proceedings.

As regards judicial proceedings, in general, the guidelines set out the following:

- Decision and review to hold a remote hearing: The states are to establish a legal framework that provides a clear basis allowing courts to hold remote hearings in judicial proceedings. The courts in turn will decide, within the applicable legal framework, whether a certain hearing should be held remotely, with the aim of ensuring the overall fairness of the proceedings. The courts should also safeguard the right of a party to be effectively assisted by a lawyer in all judicial proceedings, including the confidentiality of their communication.
- Right to participate effectively: There should be opportunities to test the audio and video quality prior to/at the start of the hearing and to carry out continuous monitoring of image and sound quality of the video link during the remote hearing. The situation of and challenges for persons in vulnerable positions are to be taken into consideration, and the hearing must be suspended in case of a technical incident.
- Identification and privacy: Identification should not be excessively intrusive or burdensome, and all necessary measures must be taken to eliminate any risk of a violation of the parties' right to privacy.
- Publicity and recording: The public should be allowed to join the remote hearing in real time or, alternatively, the recordings should be uploaded to the court's website.
- Examination of witnesses and experts: The practice adopted when a witness or expert is present in the courtroom should be followed as closely as possible.

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- Evidence: The courts should provide instructions on the procedure for the presentation of documents and other material; the presentation of new evidence at a remote hearing should follow the adversarial principle, and interpreters should have visual contact with the person being translated.

As regards criminal proceedings in particular:

- If domestic legislation does not require the free and informed consent of the defendant, the court's decision on their participation in the remote hearing should serve a legitimate aim, based on such values as the protection of public order, public health, the prevention of offences, and protection of the right to life, liberty, and security of witnesses and victims of crime.
 - The effective participation of the defendant should be provided for by ensuring that the video link enables him/her to see and hear the participants at the remote hearing. Furthermore, the court should react to any technical incidents reported by the defendant. If a defendant continuously conducts himself/herself improperly, the court must inform the defendant of its power to mute him/her and to interrupt or suspend the defendant's video link; if the court decides to mute the defendant, it has to ensure that the defendant's legal representative is still able to exercise the right to legal assistance during the remote hearing and during the proceedings as a whole.
 - The defendant should have effective access to legal representation before and during the remote hearing, and the court must adjourn or suspend the remote hearing in the absence of the defendant's legal representative. The defendant should be able to confer with his/her legal representative and exchange confidential instructions without surveillance and should be able to communicate with his/her legal representative over a secured system. Specific arrangements should also be made to ensure that the interpretation of communication between the defendant and his/her legal representative does not undermine confidentiality.
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