

ECBA: Principles on the Use of Video-Conferencing in Criminal Cases

News

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In September 2020, the European Criminal Bar Association (ECBA) issued a statement setting out [principles on the use of video-conferencing in criminal cases in a post-COVID-19 world](#). The ECBA observed that, faced with the challenges of the COVID-19 pandemic, judicial authorities in Europe and elsewhere have made intensified use of remote technologies, in particular video-conferencing, as a replacement for the physical presence of the suspect/accused, witnesses, experts, defence and prosecution lawyers, court clerks, and even judges. There are two sides to the medal. On the one hand, remote technologies may reduce delays in the criminal process and further the defendant's right to be heard. On the other hand, they entail risks to the right to a fair trial, in particular the right to be present with all its repercussions.

European criminal lawyers fear that remote presence via video will turn from an exceptional tool to a regular one in the post-COVID era. Therefore, they developed several principles that should be considered quintessential for ensuring the right to defence in such situations. The paper first distinguishes between the use of remote hearings in cross-border and domestic cases and, second, the use of remote technology during the pre-trial stage (to conduct interviews of the suspects/accused) and the trial stage (to run hearings). The ECBA makes concrete proposals for actions that should be undertaken by the EU and Council of Europe institutions and the Member States. In cross-border cases, the ECBA considers hearings by means of video-links highly useful in that, if conducted appropriately, they can serve as a much better alternative to temporary transfers and surrenders. In this context, it calls on, *inter alia*, to:

- Explicitly establish the right of the accused to participate by video-link, at least in cases in which this is the most proportionate solution;
- Develop appropriate and compatible legal standards for remote participation;
- Promote the development of appropriate and compatible technical infrastructures and solutions (which allow for true-to-life remote participation and the exercising of procedural rights in this context);
- Consider issues relating to transparency and privacy in the use of remote technology in criminal trials.

In domestic cases, the ECBA clearly advocates establishing the right of the accused to be physically present at his/her trial and prohibiting mandatory participation of an accused in his/her trial by video-links.

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