



THE BAR  
OF IRELAND

*The Law Library*

**SUBMISSION TO THE  
JOINT COMMITTEE ON JUSTICE  
ON THE TOPIC OF  
COURTS & COURTHOUSES**

**AUGUST 2021**

## 1. Introduction

The Council of The Bar of Ireland is the accredited representative body of the independent referral Bar in Ireland, which consists of members of the Law Library and has a current membership of approximately 2,150 practising barristers. The Bar of Ireland is long established, and its members have acquired a reputation amongst solicitors, clients and members of the public at large as providing representation and advices of the highest professional standards. The principles that barristers are independent, owe an overriding duty to the proper administration of justice and that the interests of their clients are defended fearlessly in accordance with ethical duties are at the heart of the independent referral bar.

## 2. Scope of the Consultation

The Council of The Bar of Ireland ('the Council') welcomes the opportunity to make submissions to the Joint Committee on Justice in relation to the topic of Courts and Courthouses.

The invitation from the Joint Committee on Justice invited the Council to consider the following:

1. Are there sufficient numbers of courthouses/courtrooms throughout the State and are they sufficiently resourced?
2. The need to maintain and modernise courthouses while acknowledging the importance of such buildings from an historical and heritage and economic perspectives;
3. Whether courthouses are currently equipped to provide separate entrances and waiting areas for victims and the accused?
4. Whether courthouses are appropriately equipped with facilities and interview suites particularly for those who may be considered vulnerable or those with visible and invisible disabilities;
5. In view of the Covid-19 pandemic, are courthouses structurally suitable to ensure social distancing and have the facilities to conduct remote participation;
6. Are there sufficient facilities/accommodation in courthouses to allow for engagement between legal advisors and their clients?
7. Are jury rooms adequate to accommodate juries who are providing a valuable service to the State?
8. Noting that justice must be done and must be seen to be done, are there adequate facilities for media coverage, where appropriate?
9. Is there sufficient IT support in courts to provide for the use of technology in courtrooms for children and minors attending court?
10. Are courthouses geographically located in places that are easily accessible for those that need to attend them?

11. Is security adequate in courthouses – is there a case for the presence of a “Court Garda”?

### **3. Issues Arising**

Notwithstanding significant improvements to many courthouses in recent decades, it remains the position that all those who use courthouses and in particular litigants are faced with wholly unsuitable and inconsistent court facilities, where in some instances, even basic needs are not met. A lack of adequate consultation rooms and separate waiting areas in court venues directly impacts on the manner in which proceedings are conducted. The lack of appropriate facilities significantly increases stress and anxiety which can result in volatility and on occasion violence in the course of litigation. A modern and efficient courts infrastructure will undoubtedly improve the experience of court users and the management of litigation.

The Council considers that there are two broad issues to be addressed:

1. The physical infrastructure of courthouses, and
2. The requisite IT upgrades required to facilitate remote hearings and hybrid hearings.

### **4. Physical Infrastructure**

4.1. The Council supports the Courts Service in its endeavours to bring new technology and modern ways of working to the administration of justice so that it operates to the highest standard for everyone, from vulnerable court users, witnesses and litigants to judges and legal professionals. Much work was done to ensure the safety of all court users during the pandemic. While the introduction of remote hearings has greatly assisted stakeholders, there are significant aspects of litigation that are negatively impacted by remote hearings rather than in person hearings, and it is the Council’s view that in person hearings are essential for the majority of cases. It is imperative that the physical infrastructure is not overlooked or neglected due to the reduced number of in person hearings due to the pandemic. It must be considered that not every person involved in litigation owns the technology and/or has access to appropriate facilities and/or has the capability (due to vulnerability or otherwise) to conduct a remote hearing. Access to local courts must be facilitated in a manner which can meet the reasonable needs of all citizens.

4.2. Courthouses are an important addition to towns in Ireland. Many county courthouses require ongoing investment to ensure that they do not fall into disrepair and can continue to provide a valuable and much needed function. It is both desirable and achievable to maintain the historical infrastructure while modernising courtrooms by inputting modern connections which do not interfere with the structural and historical integrity of the building. In the

Council's view there is a need to maintain and modernise courthouses while acknowledging the importance of such buildings from historical and heritage and economic perspectives.

4.3. In order to ascertain whether there are sufficient number of courthouses in a given district or circuit, an analysis of the geographical location of courthouses should be undertaken to ensure that access to courts is facilitated while also ensuring that all available courthouses are utilised. A broad economic and societal perspective would therefore be necessary, rather than solely an organisational one. An evaluation of catchment areas which takes account of the socio-economic profile of an area, including access to transport infrastructure, would be deemed necessary in that regard. The location of courthouses also has a knock-on impact on other key stakeholders, including State Agencies, and thus a 'whole of Government' perspective which provides access to all the necessary services is essential. Feedback from practitioners records that many courthouses are under-utilised. The Council notes that the under-utilisation of Courthouses is often the result of a lack of judges and appropriate staff rather than related to the physical infrastructure of the building. It is the Council's view that courthouses are under resourced both in terms of staff and judges and in the facilities within the courthouses, more detail of which is contained in this submission. It is also the case that courthouses, being public buildings, should be accessible (and particularly consultation rooms within those courthouses) irrespective of whether a court is actually sitting at any given time.

4.4. The Department of Justice and the Courts Service should adopt a policy that, going forward, every courthouse has adequate facilities. There should be access to free drinking water and a vending machine. The courthouse in Tralee and some courts in the Western Circuit currently have no hot water in the bathroom facilities. The provision of a larger number of consultations rooms where clients may engage with their legal practitioners in private is essential. While in general it may be said that there is an insufficient number of consultations rooms, which are necessary for privacy, in some of the more modern courthouses, for example Portlaoise, consultation rooms are being utilised for storage. Consultation rooms should also be available outside of court hours. Many bar rooms are inadequate around the country and are a necessary facility for legal practitioners in county courts. By way of example, the Circuit Liaison Committee reports that many of the bar rooms have an insufficient number of chairs. Practitioners report that more could be done to facilitate access to printing and shredding bins are not always emptied in good time. Lecterns should be provided in every court room.

4.5. Provision of supports and facilities must extend to all users of the court, including those with a disability. All court venues should include wheelchair ramps, induction loop systems, video link facilities for vulnerable users, and appropriate supports for people with intellectual disabilities. The Public Sector Equality and Human Rights Duty contained within section 42 of the Irish Human Rights and Equality Commission Act 2014, requires public bodies to have regard to the need to promote equality, eliminate discrimination and protect the human

rights of staff and service users. At present not all court houses have adequate facilities for those with disabilities, and it is recommended that all courthouses be assessed in this regard and improvements made where required. Similarly, not all courthouses have sufficient IT support to provide for the use of technology in courtrooms for children and minors attending court. It is imperative that there is uniformity of services, equipment and facilities across the country.

4.6. Acoustics generally should be central to any courtroom adaption or re-design to ensure all parties to proceedings can be adequately heard. Investment in screens and technology in courtrooms will, beyond the pandemic, allow for the continuation of hybrid hearings and the use of evidence and other e-documents for all in the courtroom to see clearly. Much work was done to ensure the safety of all court users during the pandemic which is appreciated.

4.7. While there have been adequate facilities for media coverage heretofore in most courthouses, the Council notes that the number of persons allowed in the court has been reduced during as a result of the pandemic and that a review of media facilities is required. The Circuit Liaison Committee report that it is not known whether there are any media facilities in any of the courthouses on the Midland Circuit.

4.8. The lack of adequate facilities generally has given rise to significant safety issues for members of the public, legal practitioners and the judiciary. Most courthouses are currently not equipped to provide separate entrances and waiting areas for victims and the accused, which creates obvious issues for victims. A series of very serious security incidents have occurred in recent years in civil and criminal courts. On one occasion, a litigant produced an imitation firearm and a suspect device and held a member of the judiciary, a legal practitioner and a litigant hostage. A full security review of all court buildings should be undertaken by the Courts Service, and professional advice should be obtained. The Courts Service should comply with that advice and fund suitable arrangements that ensure the security of every courthouse across the country. Subject to such advice the presence of a Court Garda has much to commend it.

4.9. It is not possible to ensure safe social distancing in all courthouses as many courtrooms in circuit towns are small. However, courts staff have done sterling work with notices and tape etc indicating where people should sit and not sit, and the allocation of specific times for hearing has reduced the number of people in courthouses and courtrooms very successfully. Therefore, while structurally many courthouses are not suitable to ensure safe social distancing a change in the running of court lists has in the main been a successful means of addressing this.

## 5. Remote Hearings

5.1 While physical access to courthouses and to hearings is imperative, it is likely that some form of remote hearings will continue in the future and therefore some consideration must be given as to how those that have no access to or can least afford the technology required to participate in a remote hearing can be facilitated.

5.2 All courts should have adequate broadband and Wi-Fi to support remote hearings together with hearing rooms/ pods so that participants with inadequate facilities of their own may use such a room/pod to participate in their hearing. At present not all courthouses have adequate broadband, this is a matter that urgently requires action. There is a lack of facilities in courthouses at present to allow persons with no personal devices and/or physical space to participate in remote hearings, again this is a matter that requires urgent action as it may deny litigants and accused persons their right to effectively participate in proceedings. Those that are accessing a court remotely require the ability to hear and see anyone that may not be in a position to participate remotely and who may be addressing the court. This will require a significant upgrade in technology for many courthouses, which at present do not have such technology. For more detail on the technology required please see the Council submission to the Court services entitled "**Consultation on the Development of the Upcoming Courts Service ICT and Data Strategies**" at Appendix 1.

5.3 There needs to be a more streamlined approach to ensuring e-briefs are before the Court. Many courts are not equipped to hear remote applications/ remote evidence. Investment in screens etc is important as they would be used beyond the pandemic for the presentation of paperless evidence. Again, it is the Council's view that there should be uniformity across the country in respect of the facilities to conduct remote hearings.



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## **SUBMISSION TO THE COURTS SERVICE**

# **Consultation on the Development of the Upcoming Courts Service ICT and Data Strategies**

**28 July 2021**

## Introduction

The Council of the Bar of Ireland (“the Council”) is the accredited representative body of the independent referral Bar in Ireland, which consists of members of the Law Library and has a current membership of approximately 2,150 practising barristers.

The Council has prepared the following brief submission in response to an invitation from the Courts Service. The response follows the format of the questionnaire provided by the Courts Service as part of the consultation.

### 1. Courtroom Technology

#### Courts Service Brief description:

Courtroom Technology is key to enabling the function of the Courts Service offering. Technology has taken a pivotal role in our response to Covid-19 and has allowed not only for proceedings to continue, but with a greater capacity and flexibility – underlining the potential for the use of technology in the courtroom. Enhancing physical courtroom services remains essential to the operation of the Courts Service, improving existing tools and the introduction of new features and functionalities will be a priority in the upcoming ICT and Data Strategies to help support a modern, digital courtroom experience. The primary areas of this theme include:

- Digital Audio Recordings (DAR)
- Virtual appearances within a physical courtroom
- Remote hearings / Video Conferencing
- Digital evidence presentation, including CCTV
- Network connectivity - Wi-Fi
- Devices and systems available at the bench

Q: Are there aspects of Courtroom Technology that could be improved, or areas that you feel we should focus on? Are there digital experiences you would like to see addressed under this theme?

The European Commission for the Efficiency of Justice (CEPEJ) recently adopted guidelines on videoconferencing in judicial proceedings. The guidelines provide a set of key measures that States and Courts should follow to ensure that use of videoconferencing in judicial proceedings does not undermine the right to a fair trial as enshrined in Article 6 of the European Convention on Human Rights (ECHR) and meets the requirements of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

Part II of the guidelines address the technical and organisational requirements for video conferencing in judicial proceedings. Rather than repeating the contents of the CEPEJ guidelines, a copy of the detailed guidelines is appended to this submission (Appendix 1) and may act as a useful checklist to ensure the basic requirements for Courtroom technology.

Members of the Law Library would like to see one common AV technology platform for online hearings, with the following attributes:

- AV platform to have the capability of displaying a user-defined number of participants on the screen at the one time
- AV platform to be customisable so that practitioners can vary the screen layout as appropriate to the type of hearing
- AV platform must have a controller who can manage the technology (using mute, access control, camera control etc) to ensure the orderly progress of the hearing
- AV platform must communicate real-time information to the controller so that the controller knows who is logged on and off at all times, with an obvious alert if someone logged on becomes cut off due to technical or connectivity issues
- The availability of a “chat function” should be explored so that participants can communicate with the controller
- The issue of how to handle documents to be presented at hearings needs a solution, both in terms of handing documents in to court for the judge to peruse and handing documents to a witness (e.g. photographs, maps) for the witness to comment on and so that the witness can indicate areas of interest on the document to all other participants
- System should support the giving of evidence, in person via link or streamed to attendees if being presented in person.
- System should support normal courtroom interactions such as the ability to signal to the judge for an objection, facilitate easy judicial interaction with Counsel etc
- The issue of facilitating legal team interaction and taking of client instruction in a personal and confidential manner needs a solution
- Other evidence, such as CCTV, should also be accommodated on the platform and replay controls made available to attendees.
- If it is intended that courtroom technology will be used in criminal trials, the unique issues arising therein will need to be addressed.

Connectivity to Court must be sufficient in terms of quality and reliability. Improvements to in-court wi-fi systems is required to reach this standard. Perhaps an individual wi-fi network per courtroom or court house might be considered appropriate.

A suitable digital recording facility should be available in each court for use as required. The files produced by this system should be encrypted to prevent unauthorised disclosure.

A digital experience must be brought to List management. A ‘live’ real-time legal diary for current activity in each court, particularly for motions and callovers, is essential to streamline attendances.

## **2. Digital Case Support Systems**

### **Courts Service Brief description:**

As the Courts Service moves further away from manual, paper-based processes, it is critical that the new digital systems that replace them are designed both to be intuitive and able to meet users demands, supporting more modern and efficient ways of working. As the technological capability increases, the integration, interoperability and optimisation of modern solutions into a coherent end-

to-end digitally enabled case management platform is essential. This will reduce the workload and friction between tools and processes in aiding administration of justice and bringing the necessary standardisation and efficiencies. This is an area that the Courts Service aims to develop through its ICT Strategy to help improve the efficiency of the daily tasks carried out across a number of areas, such as:

- E-Filing
- Online case tracking
- Digital document management (access, sharing, annotations)
- Online payments
- Online registries

Q. Are there aspects of Digital Case Support Systems that could be improved, or areas that you feel we should focus on? Are there digital experiences you would like to see addressed under this theme?

An agreed common platform for e-filings should be made available with the ability to lodge documents in advance and visibility offered on a case-by-case basis to all those involved. This should be provided and administered by the Courts Service. This platform should also support collaboration so that editing; annotation and manipulation can be safely performed individually or collaboratively.

Given the importance of the content in this system, a high level of data security is required to ensure its authentication and integrity.

The Bar of Ireland is a subscriber to VizLegal and is aware that online case tracking has already been developed by that provider. It is suggested that the Courts Service should engage with VizLegal in order to establish if that solution which is already in being could be leveraged by the Courts Service.

The progress of each case through the system, and the legal diary for the day, should be published on a Courts Service extranet that is dynamic and provides real-time updates to practitioners.

### 3. Data

#### **Courts Service Brief description:**

Providing accurate data to the right people at the right time is important to both increase levels of transparency, and lower the cost of the administration of justice. Equally, ongoing operations and future planning decisions for the Courts Service, and the wider justice sector, are very dependent on high-quality data. The Courts Service recognises the importance of data as a key enabler. A three-year Data Strategy due for publication in Q4 2021 will support the improved management of data both for use within the Courts Service and other justice sector bodies that interact with us on a daily basis. The primary areas that it will address include:

- promoting improved access to data via digital channels and a reduced reliance on paper;

- encouraging appropriate digital data sharing with authorised bodies to streamline processes and increase data accuracy;
- provision of enhanced data analytics capabilities to support better analysis and decision-making capability.
- enhancing existing data governance structures, including the adoption of a data quality framework to support ongoing measurement and improvement initiatives;
- expanding the range of policies supporting the management of data (e.g. records management);

Overall, the Data Strategy will support the Courts Service in its efforts to increase levels of maturity in the management and use of data across the Courts Service.

Q. Are there any topics, outcomes or concerns relating to data that you think we should focus on as part of the Data Strategy?

In building the data strategy, it is clear from the introduction above that the Courts Service see the sharing, collaboration and reporting of system data as important. The Bar of Ireland has transformed our online services in the last few years and there are many benefits arising from this transformation.

To facilitate this transformation, the following should be considered:

- Security of the data
- Structured backups and retention policies for all data
- Secure access control for users of the system (including SSO and MFA )
- Federated links to authorised Court Services partners
- System to be GDPR compliant

#### 4. Supporting Themes

##### Courts Service Brief description:

The strategies will also include a number of internally-focused supporting themes to support and protect the functioning of the Judiciary and staff. These themes will address:

- Desktop communication and collaboration tools to better equip our IT users for modern hybrid ways of working;
- Cyber security and information management practices to protect the organisation from the increased risk and exposure to cyber-attacks, and;
- ICT governance and organisational structures to allow for new agile ways of working and to build our capacity and capability in order to meet the demands of modernisation.

Q. Are there any topics, outcomes or concerns relating to the above themes that you would like the strategies to address?

This question appears to relate to the internal operations of the Courts Service and therefore this section is deemed not applicable for our response.

## 5. Other

Q. Do you have any other suggestions for either of the upcoming ICT and Data Strategies?

Although there is an emphasis on increased electronic and online activity, print will still form a part of the process. Printing facilities are required in all Courthouse premises and should be made available to practitioners.

The Bar of Ireland is happy to work in collaboration with Court Services IT and we will facilitate any high-level links between existing or envisaged systems. We can provide a single point of integration for any services that require online authentication for our members via our lawlibrary.ie domain.

**APPENDIX 1:**



Strasbourg, 30 June 2021

CEPEJ(2021)4REV4

***EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE  
(CEPEJ)***

**Guidelines on videoconferencing in judicial proceedings**

*Document adopted by the CEPEJ at its 36<sup>th</sup> plenary meeting (16 and 17 June 2021)*

## GUIDELINES

### PURPOSE AND SCOPE

These Guidelines<sup>1</sup> provide a set of key measures that states and courts should follow to ensure that use of videoconferencing in judicial proceedings does not undermine the right to a fair trial as enshrined in Article 6 of the European Convention on Human Rights (ECHR) and meets the requirements of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. The purpose is to provide states with a framework aiming at eliminating any risk of a violation of the parties' rights during remote hearings, in particular their right to be heard and to actively participate in proceedings, and the right of defence. The Guidelines cover all judicial proceedings and can also be applicable *mutatis mutandis* to the public prosecution services.

The document is structured as follows: In the first part, the guidelines address procedural issues concerning all types of judicial proceedings, emphasising the particularities of criminal proceedings. In the second part, the guidelines address the technical and organisational requirements for videoconferencing in judicial proceedings. The appendix contains a checklist of the basic requirements for the implementation of videoconferencing in judicial practice.

### DEFINITIONS

For the purposes of these guidelines, the terms below shall be defined as follows:

- i. **videoconferencing** refers to a system that allows two-way and simultaneous communication of image and sound enabling visual, audio and verbal interaction during the remote hearing;
- ii. **remote hearing** refers to a hearing that is held through videoconferencing;
- iii. the term **“court”** refers to the judicial authority that organises remote hearings, in the exercise of its functions.

### FUNDAMENTAL PRINCIPLES

- A. All guarantees to a fair trial under ECHR apply to remote hearings in all judicial proceedings. The key elements are the right to effective access to a court, fairness of the proceedings, adversarial character of the process, equality of arms, proper administration of evidence, time to prepare and access to materials, the court's decision in a reasonable time, data security and risk management.
- B. States should establish a legal framework that provides a clear basis for allowing courts to hold remote hearings in judicial proceedings.
- C. It is for the court to 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.
- D. The court should safeguard the right of a party to be effectively assisted by a lawyer in all judicial proceedings, including confidentiality of their communication.

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<sup>1</sup> The guidelines were elaborated on the basis of a draft prepared by the experts of the CEPEJ: Marek Swierczynski (Poland) and Alexandre Palanco (France).

## **PART I - PROCEDURAL ISSUES ON VIDEOCONFERENCING IN RESPECT OF THE RIGHT TO A FAIR TRIAL**

### **Guidelines on all judicial proceedings**

#### *Decision to hold a remote hearing*

- 1) States should ensure that the legal framework provides the courts with sufficient grounds to decide whether a remote hearing can or should be held in a particular case.
- 2) Based on the legal framework provided by the state, the court should determine whether holding a remote hearing is reasonable and appropriate under the specific circumstances of the case and reason its decision.
- 3) The parties should have the opportunity to consult with the court: i) on whether a remote hearing can or should be held in the case, ii) on the specific arrangements for such a remote hearing, iii) to address any security concerns of the parties, and iv) to request the court to hold a hearing in person, stating their reasons.
- 4) The decision should be open to possible review before a competent authority in accordance with national law.

#### *Right to participate effectively*

- 5) The court should give the participants the opportunity to test the audio and video quality, either prior, for example through self-testing, or at the start of the hearing allowing each participant to familiarise themselves with the features of the videoconferencing platform.
- 6) During the remote hearing, the court should be able to continuously monitor the quality of the image and sound of the video link in order to minimize technical incidents that may affect the right of the parties to participate effectively in the proceedings.
- 7) The court should ensure that the transmission can be seen and heard by those involved in the proceedings and by members of the public where the proceedings are held in public.
- 8) The court should consider the situation and challenges of persons in vulnerable positions, such as children, migrants, or persons with disabilities in the decision to have a remote hearing and its modalities.
- 9) The court should suspend the hearing in case of a technical incident until it has been corrected, depending on its nature. Such a suspension should be registered in the minutes of the remote hearing.

#### *Identification and privacy*

- 10) All participants of the remote hearing should be identified by the court. The measures of identification should be clearly within the applicable legal framework and not excessively intrusive or burdensome.
- 11) The privacy of the remote hearing's participants should be protected and respective risks to their privacy should be mitigated by the court. All necessary measures should be taken in order to eliminate any risk of a violation of the parties right to privacy.

### *Publicity and recording*

- 12) The court should preserve the public nature of remote hearing by creating a comprehensive procedure for public participation. The publicity of the remote hearing can be ensured, for example, by allowing the public to join the remote hearing in real time or uploading the recordings to the court's website.
- 13) No photographing, recording, broadcasting or any other form of dissemination of any part of the remote hearing (including the audio track) may be made unless previously authorised by the court.

### *Witnesses and experts*

- 14) As far as a national legal system permits, the examination of the witnesses and experts during the remote hearing should follow as closely as possible the practice adopted when a witness or expert is present in the courtroom.
- 15) The respective arrangements should be given special consideration in order to ensure the integrity of remote hearings and avoid pressure or influence on the witnesses or experts during such hearings.

### *Evidence*

- 16) The court should provide instructions on the procedure the participants need to follow to present documents or any other materials during the remote hearing.
- 17) Practical arrangements should be made to ensure that all participants can see and/or hear the material presented during the remote hearing.
- 18) The presentation of new allegations, arguments and/or evidence during a remote hearing should follow the adversarial principle and the court should ensure the right to counter-evidence.

### *Interpreters*

- 19) When an interpreter is needed during the remote hearing, the presence of the interpreter alongside the participant who does not speak the language of the court should be preferred.
- 20) At any time during the hearing, the interpreter should have appropriate visual contact with the person whose speech is being interpreted.

## **Guidelines specifically for criminal proceedings**

### *Legitimate aim*

- 21) If legislation does not require the free and informed consent of the defendant, the court's decision for his or her participation in the remote hearing should serve a legitimate aim.
- 22) The legitimate aim of remote hearing in criminal proceedings should be based on such values as the protection of public order, public health, the prevention of offences, and the protection of the right to life, liberty, and security of witnesses and victims of crimes.

Compliance with the right to a trial within a reasonable time can be considered by the court in particular at stages in the proceedings subsequent to the first instance.

#### *Effective participation of the defendant*

- 23) The video link provided should enable the defendant to see and hear the participants of the remote hearing, including the other parties, judges, witnesses and experts. The participants should be able to see and hear the defendant.
- 24) The court should react to technical incidents reported by the defendant. Prior to the remote hearing, the defendant should be informed of the procedure for reporting technical incidents to the presiding judge (e.g. through designation of a responsible official agent near the defendant or an alert button on the video link interface).
- 25) In case of the defendant's continuous improper conduct, the court should inform the defendant of its power to mute, interrupt or suspend the defendant's video link, before actually making this decision.
- 26) In case the defendant was muted, the court should ensure that the legal representative of the defendant is still able to exercise the right to legal assistance during the remote hearing and the proceedings as a whole.

#### *Legal representation*

- 27) The defendant should have effective access to legal representation before and during the remote hearing, including the right to communicate with their lawyer confidentially before the beginning of the hearing.
- 28) The court should adjourn or suspend the remote hearing in the absence of the defendant's legal representative. In such circumstances, the court should take all necessary measures to ensure the right to legal representation of the defendant, including possible appointment of an *ex officio* defence counsel.
- 29) The defendant should be able to confer with their legal representative and exchange confidential instructions without surveillance. The presence of other persons sharing the same room as the defendant during such exchanges should be excluded.
- 30) The defendant should be able to communicate with their legal representative over a secured system. The defendant should be assured of the confidentiality of such communications. The use of a secured line, different from the video link provided for the remote hearing, should be privileged.
- 31) Specific arrangements should be taken to ensure that the interpretation of communication between the defendant and their legal representative does not undermine its confidentiality.

## **PART II - ORGANISATIONAL AND TECHNICAL ISSUES OF VIDEOCONFERENCING**

### *Key requirements*

- 32) States are encouraged to allocate adequate public funding and resources to enable effective videoconferencing in judicial proceedings.
- 33) States should ensure as much as possible a true-to-life hearing experience including full communication and interaction of all the parties to the procedure with the person to be heard.
- 34) Conduct of the remote hearing should be based on the principles of fairness, efficiency, expedience of proceedings, co-operation, security and legality of personal data processing.

### *Instructions for the participants*

- 35) The court should provide the participants with clear rules, instructions, and/or tutorials on the use of videoconferencing and conduct of the remote hearing. It is recommended to prepare information materials not only in text format, but also as short videos. Made-to-measure tutorials or training sessions on the use of the platform should be considered. The participants should be reminded that they appear before the court and should therefore behave suitably in compliance with applicable laws, good practices, and court etiquette, which should be adapted in any case to remote hearings.
- 36) Sufficient notice about technical requirements, including the date, time (considering different time zones), place and the conditions of the remote hearing should be given in advance by the court to the participants.
- 37) The court should request participants to secure a reliable video connection of sufficient quality and ensure adequate visibility and lighting in order to be able to participate effectively in the remote hearing.
- 38) If possible and required, the court should schedule a test videoconferencing session prior to the remote hearing to allow guidance to be given on how the remote hearing will be conducted, the technology to be used, and any other relevant issues.
- 39) The court and participants should join the videoconferencing session in good time before the remote hearing is due in order to resolve any technical issues.
- 40) All participants should be informed by the court of possible technical and other difficulties that could be experienced by others and reminded to avoid over-speaking and mute their microphones when they are not speaking.
- 41) Depending on national law, the participants can attend a hearing by videoconference from courtrooms, detention facilities, law firms, or other safe places. The hearing's setting, including equipment, should guarantee the integrity of statements of every participant, in particular the vulnerable ones.

### *Security*

- 42) Practical arrangements should be made in advance to mitigate the risk that the videoconferencing hardware, software and connections are vulnerable to improper access, such as hacking or other illicit access.

- 43) Contingency plans should be in place in order to effectively deal with issues such as sudden technical failures, disconnections, power outages (alternative communication channels and technical support), or data security breaches.
- 44) Cloud computing services used during remote hearings, and potential data storage, should comply with data protection laws.
- 45) The court's autonomy should be strengthened and not restricted by the use of technology, in particular by the use of artificial intelligence tools and services.
- 46) Use of artificial intelligence tools, such as sound or video e-filters, should be under the control of the court.
- 47) If there is a technical failure that cannot be fixed, then the remote hearing should be adjourned or suspended.

#### *Technical standards*

- 48) The videoconferencing hardware and software should meet minimum industry standards to facilitate interoperability, regardless of the type of videoconferencing used, and to reduce delays in video and audio data transmission.
- 49) States should consider making videoconferencing rules technology-neutral and not impose, or discriminate in favour of, a particular type of videoconferencing technology.
- 50) The videoconferencing hardware and software should provide video and audio of sufficient quality to hold continuous and adequate audio-visual connectivity, enabling parties to follow the proceedings and effectively participate in them.
- 51) All participants to the remote hearing, in particular the judge, should be able to see and hear both the speaker asking questions or making statements when heard, and the reaction of the other participants.
- 52) The videoconferencing system provided by the court should be free of charge for all participants, easily accessible and user friendly, operate on standard hardware, and ensure data protection.
- 53) States should keep technical standards related to videoconferencing under review.

#### *Technical assistance*

- 54) The judges, parties, court staff, and other participants should be able to access IT support during remote hearings in order to avoid delays and technical difficulties while using a videoconferencing system.

#### *Training and good practices*

- 55) States should provide judges, court staff, and legal practitioners with sufficient training in IT solutions and related international standards of human rights protection.
- 56) States should encourage the courts to share best videoconferencing practices in order to reduce costs and increase efficiency.

## Appendix

### Checklist for conducting videoconferences in judicial practice

- Security: the desired level of security derived from the type of procedure
  - authorisation
    - only desired (invited) participants attending
  - authenticity
    - ensuring the identity of the participant
  - privacy (keeping the conference private)
    - encryption
  - private or public infrastructure
    - public infrastructure (cloud, hosting)
    - solution hosted on-site
    - private infrastructure
  - user management
    - authentication of participants
- Recording
  - voice
  - voice & video
  - multi-channel voice
- Accessibility
  - equipment
  - software
  - versatility (ease of use)
- Quality
  - resolution
  - bandwidth
  - sensitivity
  - equipment
    - screens
    - camera resolution
    - microphone quality
    - number of tracks (microphones and cameras)

- Licence type:
  - proprietary or open source
- Videoconferencing equipment
  - professional (permanently installed in courtrooms)
  - professional (mobile)
  - semi-professional (meeting rooms with screens and cameras)
  - consumer electronics (webcams with speakers, headsets with microphone)
  - mobile devices (tablets, mobile phones)
- Visibility
  - courtroom: screens, speakers enable all parties to follow the proceedings
  - witness or expert
- Standards
  - open vs.
  - proprietary
- Interoperability
  - standard protocols (ITU standard)
  - IP-to-IP
- Sharing documents
  - document camera (documents in physical form)
  - screen sharing (any digital content)
- Camera operation
  - static (fixed) camera
  - manuel tilt/turn/zoom/focus
  - automatic (voice controlled)
  - remote operation
- Witness protection
  - separate witness rooms (possible off-site)
  - voice distortion
  - picture blur/distortion/deactivation
- Private sessions
  - parties consulting with their lawyers
- Interpretation
  - interpreters off-site
  - simultaneous interpretation

- Use of AI
  - automatic subtitling
  - speaker identification
  - speech to text
  - filters
- Planning a videoconference
  - using a booking system for videoconferencing (calendar) – a courtroom can be booked depending on its technical equipment
  - technician – test beforehand, establish the videoconference, stand-by