



# USE OF VCF IN CIVIL PROCEEDINGS

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# Videoconference in legal proceedings

- A videoconference (also known as a videoteleconference)
- is a set of interactive telecommunication technologies which allow two or more locations to interact via two-way video and audio transmissions simultaneously

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- A judgment must be made in every case in which the use of VCF is being considered not only as to whether it will achieve an overall cost saving but as to **whether its use is likely to be beneficial for the efficient, fair and economic disposal of the litigation.**


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- Currently there is already some information available concerning the use of cross-border videoconferencing in criminal or civil and commercial proceedings.
  - It is clear that videoconferencing can be a useful tool in these proceedings.

# Slovenia

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- With the change Civil Procedure Act (CPA) of the Republic of Slovenia, Slovenia provided a proper legal basis for the use of modern Information and Communication Technology (ICT) at the Slovenian courts.

- In civil litigation each party shall state the facts and adduce the evidence, upon which their claims are based, and by means of which they contest the facts stated and evidence adduced by the opposing party (article 212 CPA).
- According to article 114.a CCA we have an opportunity to use videoconference in civil judicial proceedings in Slovenia since 1 October 2008.
- The amendment CPA-D among the most important novelty introduces the possibility of the provision of hearings over video conferencing.

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- According to Slovenian Civil Procedure Act we have several means of proof: hearing of witnesses and/or parties, evidence with experts, view and documentary evidence.

- By consent of the parties, the court shall have the right to permit to the parties and their counsels to be at another place at the time of the hearing and to perform procedural acts there provided an audio and visual transmission has been provided from the site of the hearing to the place, or place, where the party (parties) and their counsels are located, and vice-versa (video conference).
- Under these conditions the court shall also have the right to take evidence by hearing the parties and witnesses and evidence by a court expert.



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- In the event that the court decides that a hearing will be made via a video conferencing system shall issue a decision against which there is no appeal.
  - It is an option and not an obligation for the courts.

# VCF – WHEN and HOW?

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- indirect taking of evidence
- direct taking of evidence
  
- Decision of the Court (parties can propose or the Court can decide itself)

# Terminology

- The other site or sites to and from which transmission is made are usually referred to as '**the remote site**' and in any particular case any such site may be another courtroom.
- **Local site** = requesting court

# Legal basis for cross-border VCF

- Council Regulation (EC) on cooperation between the courts of the Member States in the taking of evidence in civil and commercial matters (No 1206/2001 of 28 May 2001, Article 10(4) and Article 17(4)).
- Regulation (EC) of the European Parliament and of the Council establishing a European Small Claims Procedure (No 861/2007 of 11 July 2007, Articles 8 and 9(1))

# VCF in cross-border proceedings

- Videoconferencing is an efficient tool that has the potential to facilitate and speed up cross-border proceedings and to reduce the costs involved.

- The taking of evidence is the most important use of videoconferencing in cross-border proceedings.
- Videoconferencing has proven especially practical in cases involving the hearing of vulnerable or intimidated witnesses.
- Furthermore, expert hearings (e.g. of forensic and medical experts) conducted via videoconferencing have ensured a more effective use of resources.

# Organisational perspective


- 1. Request for videoconferencing
- In civil matters the request is made using a standard form.
- The forms are available on the websites of the European judicial networks.
- The reply to the request is made using another standard form.


- In civil matters, in case of a request for indirect taking of evidence pursuant to Articles 10-12 of the 2001 Taking of Evidence Regulation the requested competent court has to acknowledge receipt within seven days.
- In case of a request for direct taking of evidence (Article 17) the central body or the competent authority has to inform the requesting court whether the request can be accepted within thirty days.



## 2. Setting up videoconferencing

- In cross-border civil and commercial proceedings, as soon as the requesting court and the requested court agree to a request under Articles 10 to 12 of the 2001 Taking of Evidence Regulation, the requested court liaises with the witness to find a convenient place and date of the hearing.


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- The proceedings, wherever they may take place, form part of a trial to which the public is entitled to have access (unless the court has determined that they should be heard in private).
  - If the local site is to be a studio or conference room, the Court must ensure that it provides sufficient accommodation to enable a reasonable number of members of the public to attend.


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- When requests for direct taking of evidence under Article 17 are accepted by the central body or other competent authority of the requested Member State, the requesting court notifies the witness of the date, time, place where the evidence is to be taken and conditions for participation.


# 3. Hearing by videoconferencing


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- The objective is to make the videoconferencing session as close as possible to the usual practice in any court where evidence is taken in open court.
- The procedure for conducting the transmission will be determined by the judge.


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- The Judge is the one who is to control the cameras (in Slovenia).
  - Introduction, seating arrangements, etc ...

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- Differences between ordinary procedure and proceedings involving VCF (ensuring that the witness understands the practical arrangements for the videoconferencing session, and knows who the parties to the videoconferencing are, and their various roles).


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- Time zone differences need to be considered when a witness abroad is to be questioned by videoconferencing.
  - The convenience of the witness, the parties, their representatives and the court must all be taken into account.

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- Those involved in a videoconferencing session need to be aware that, even with the most advanced systems currently available, there are slight delays between the receipt of the picture and that of the accompanying sound.



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- The examination of the witness at the remote site should follow as closely as possible the practice adopted when a witness is in the courtroom.
  - It will in practice be most convenient if everyone remains seated throughout the transmission.


- The Court must ensure that an appropriate person will be present at the local site to supervise the operation of the VCF throughout the transmission in order to deal with any technical problems.
- It is highly recommendable that „the remote site“ also arrange a technical assistant to be similarly present at the remote site for like purposes.

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- During examination, the witness must be able to see the legal representative asking the question and also any other person (whether another legal representative or the judge) making any statements with regard to the witness's evidence.

- For vulnerable and intimidated witnesses videoconferencing can be seen as a means of reducing the stress and discomfort which could be caused by the disruptive journey to a foreign court.
- For giving evidence to any foreign court, a separate witness room could be more practical than the court room.

# Additional documents

- Additional documents are sometimes quite properly introduced during the course of a witness's evidence. To cater for this, the Court should ensure that equipment is available to enable documents to be transmitted between sites during the course of the VCF transmission. Consideration should be given to whether to use a document camera. If it is decided to use one, arrangements for its use will need to be established in advance.
- In many cases, a simpler and sufficient alternative will be to ensure that there are fax transmission and reception facilities at the participating sites.

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- In the long term, videoconferencing could be supplemented with shared document repositories or document servers.
  - These capabilities are increasingly being used for the sharing of information, but within the justice context extra care needs to be taken to ensure that any such repository is secure and only accessible by the authorised parties connected to the case.

- The availability of expert witnesses has been identified as one cause of delays both in civil cases (e.g. medical experts and psychologists in child custody or child care cases) and in criminal cases (e.g. forensic or computer experts).

- When expert witnesses are heard, it is advisable to contact the expert before the hearing, in order to check what kind of technical equipment might be needed during the hearing (e.g. document camera, audio or video equipment, etc.).



# Interpreters

- As regards the use of interpreters, attention should also be paid to whether the interpreter should be at the local site of the requesting court or at the remote site (or in some third location).
- In cross-border videoconferencing consecutive interpretation is most commonly used. The use of simultaneous interpretation is more demanding, because it requires the use of booths for interpreters, use of earphones by the participants and precise control of microphones.

# Technical aspects of videoconferencing

- Equipment for videoconferencing is nowadays very flexible and easy to operate.
- Nevertheless, all equipment components should as far as possible be standardized on the basis of the same classes of equipment and the same configuration.

# Recording and storing of VCF

- In cases in which the VCF is to be used for the taking of evidence, the Court must arrange for recording equipment to be provided by the court which made the VCF direction so that the evidence can be recorded.
- An associate will normally be present to operate the recording equipment when the local site is a courtroom.

- It will often be a valuable safeguard for the Court also to arrange for the provision of recording equipment at the remote site.
- This will provide a useful back-up if there is any reduction in sound quality during the transmission. A direction from the court for the making of such a back-up recording must, however, be obtained first. This is because the proceedings are court proceedings and, save as directed by the court, no other recording of them must be made. The court will direct what is to happen to the back-up recording.

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- Slovenian experience