



# Virtual Civil Trials

Australia • Austria • Azerbaijan • Brazil • Canada  
China • England and Wales • Finland • France  
Germany • India • Ireland • Israel • Italy • Japan  
New Zealand • Norway • Portugal • Puerto Rico  
Russian Federation • Singapore • Spain • Turkey  
Ukraine • United Arab Emirates

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# Comparative Summary

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This report by the foreign law research staff of the Law Library of Congress surveys the law of 25 foreign jurisdictions on the availability and functioning of virtual civil hearings and/or trials, including the structure of civil court systems and arrangements made to ensure the continuation of hearings and proceedings during the COVID-19 pandemic.

At the international level, the Court of the International Chamber of Commerce (ICC) has issued a Guidance Note for international arbitration proceedings, with a protocol on virtual hearings in civil disputes.<sup>1</sup> In addition, signatories to the European Convention on Human Rights (ECHR) must comply with article 6 of the ECHR (right to a fair trial)<sup>2</sup> and European Union Member States are subject to EU Regulation No. 1206 of 2001 on Cooperation between the Courts of the Member States in the Taking of Evidence in Civil or Commercial Matters,<sup>3</sup> among other regional agreements.

The report describes foreign court systems that have adopted a range of options and procedural conditions for virtual hearings and/or trials in noncriminal cases in each jurisdiction surveyed. In **Australia, Austria, Azerbaijan, Brazil, Canada, China, Finland, France, Germany, India, Ireland, Israel, Italy, Japan, New Zealand, Norway, Puerto Rico, Portugal, Russia, Singapore, Spain, Turkey, Ukraine, the United Arab Emirates, and the United Kingdom**, the virtual taking of evidence, hearings, and/or trials may be mandated by the judge or by the application of a party to the proceedings. Additionally, in **China, France, New Zealand, and Turkey**, the option of virtual taking of evidence, hearings, and/or trials in civil cases generally requires the consent of all parties.

Furthermore, **Austria, Australia, Azerbaijan, Brazil, Canada, China, Finland, France, India, Israel, Ireland, Italy, New Zealand, Norway, Puerto Rico, Spain, Singapore, Ukraine, the United Arab Emirates, and the United Kingdom** have adopted or are in the process of adopting specialized measures in response to the COVID-19 pandemic to facilitate virtual civil hearings, mediations, and/or trials. For example, in **Australia**, all hearings (other than in truly exceptional circumstances) are currently proceeding using remote access technology. In **Canada**, many courts have modified procedural rules or introduced protocols to deal with urgent matters through teleconference or videoconference. In **China**, the highest court has encouraged courts to fully implement online litigation through designated online litigation platforms. In the **United Kingdom**, the first hearing under the new legislation in response to the COVID-19 pandemic was held via Zoom on March 27, 2020.

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<sup>1</sup> International Court of Arbitration, ICC Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic (Apr. 9, 2020), <https://perma.cc/MMQ4-TLFE>.

<sup>2</sup> European Convention on Human Rights art. 6, Nov. 4, 1950, 213 U.N.T.S. 221, <https://perma.cc/5ZZC-55ZX>.

<sup>3</sup> Council Regulation 1206/2001, 2001 O.J. (L 174) 1, <https://perma.cc/T6Z3-PWH2>.

# Australia

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## I. Civil Court Structure

Australia is a federation made up of six states and two mainland territories with limited self-governance, as well as several offshore territories subject to Commonwealth (federal) law. At the federal level, the civil court structure is made up of the Federal Circuit Court of Australia (FCC), the Family Court of Australia, the Federal Court of Australia (Federal Court), and the High Court of Australia, which hears final appeals from the federal courts and state supreme courts, after first granting leave to appeal.<sup>1</sup> There are also several specialist federal tribunals tasked with determining disputes or reviewing decisions in various areas.<sup>2</sup>

The FCC hears “less complex disputes” in relation to various civil matters, “including family law and child support, administrative law, admiralty law, bankruptcy, copyright, human rights, industrial law, migration, privacy and trade practices.”<sup>3</sup> The Federal Court, which “sits in all capital cities and elsewhere in Australia from time to time,” has broad civil jurisdiction, “covering almost all civil matters arising under Australian federal law.”<sup>4</sup> The Federal Court also hears appeals from the FCC (other than family law matters, which are heard by the Family Court of Australia) and from other courts and tribunals, including state/territory supreme courts in cases related to intellectual property.<sup>5</sup>

At the state/territory level, the civil court systems generally include magistrates or local courts, district or county courts, and supreme courts, as well as various specialist civil and administrative tribunals.<sup>6</sup> The state/territory courts hear civil disputes governed by state/territory laws and can

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<sup>1</sup> See *Courts*, Attorney-General’s Department, <https://perma.cc/DSV7-AFE6>; *Role of the High Court*, High Court of Australia, <https://perma.cc/9G8X-QRCD>; Commonwealth of Australia Constitution Act (Cth) s 71, <https://perma.cc/R2VC-4BHJ>.

<sup>2</sup> See *Courts and Tribunals*, Australian Government, <https://perma.cc/4TA3-KFBJ>.

<sup>3</sup> *Courts*, supra note 1. See also Federal Circuit Court of Australia Act 1999 (Cth) pt 4, <https://perma.cc/TN43-EEXD>; *About the Federal Circuit Court*, Federal Circuit Court of Australia, <https://perma.cc/V4JM-2RQT>.

<sup>4</sup> *The Court’s Jurisdiction*, Federal Court of Australia, <https://perma.cc/Q9EJ-2VAE>. See also Judiciary Act 1903 (Cth) s 39B, <https://perma.cc/Z3J5-N877>; Federal Court of Australia Act 1976 (Cth) pt III, <https://perma.cc/XF9P-JRGT>. For a detailed discussion, see Speech, Justice James Allsop, An Introduction to the Jurisdiction of the Federal Court of Australia (Oct. 1, 2007), <https://perma.cc/ZBJ6-KGG4>.

<sup>5</sup> *The Court’s Jurisdiction*, supra note 4; Federal Court of Australia Act 1976 (Cth) pt III div 2.

<sup>6</sup> See generally *Legal Research Guide: Australia*, Law Library of Congress, <https://perma.cc/D2DZ-XWZ8>. See, e.g., *Role of the New South Wales Courts and Tribunals*, NSW Communities & Justice, <https://perma.cc/LSG3-78QZ>.

also be vested with jurisdiction to hear disputes under federal law. The civil jurisdictions of the state/territory courts are generally divided based on claims amounts.<sup>7</sup>

This report provides information on the rules and procedures regarding the use of videoconferencing in the Federal Court only. Note, however, that the relevant provisions in the legislation governing the FCC are nearly identical to those applicable to the Federal Court.<sup>8</sup>

## II. Videoconferencing in the Federal Court

### A. Authorizing Legislation

#### 1. *Federal Court of Australia Act 1976 (Cth)*

The Federal Court of Australia Act 1976 (Cth) provides authority for the Court or a judge to “direct or allow” testimony to be given, a person to appear, or submissions to be made by video or audio link for the purposes of any proceedings.<sup>9</sup> This power may be exercised on the application of a party to the proceedings or on the judge’s own initiative.<sup>10</sup> The relevant provisions apply whether the person concerned is in or outside Australia, except where the person is in New Zealand,<sup>11</sup> in which case the relevant provisions of the Trans-Tasman Proceedings Act 2010 (Cth) apply (see below).

The Court or judge may only grant a request to use a video link after determining that the courtroom or other place where the Court or judge is sitting and the place at which the remote person is located are both equipped with technology that allows “all eligible persons present” to see and hear persons who are appearing, giving testimony, or making submissions. The Court or judge must also ensure that any other conditions that may be prescribed by the Rules of Court or imposed by the Court or judge in relation to the video link are met. The Rules of Court may prescribe conditions relating to the form of and equipment used to establish the video link, camera layout, standard and speed of transmission, and quality of communications.<sup>12</sup>

The Act also contains requirements regarding the administration of oaths and affirmations to be given by witnesses<sup>13</sup> and procedures for putting documents to a person who appears by video

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<sup>7</sup> See Chapter Summary (Ch. 2 – Legal Institutions), in Christine Miles & Warwick Dowler, *A Guide to Business Law 21st Edition*, Thomson Reuters (2015), <https://perma.cc/ENS6-299Z>.

<sup>8</sup> Federal Circuit Court of Australia Act 1999 (Cth) ss 66-72.

<sup>9</sup> Federal Court of Australia Act 1976 (Cth) ss 47A(1) & 47B(1).

<sup>10</sup> Id. ss 47A(4) & 47B(2).

<sup>11</sup> Id. ss 47A(5) & 47B(3).

<sup>12</sup> Id. s 47C(1) & (2).

<sup>13</sup> Id. ss 47A(2) & (3), 47E.

link.<sup>14</sup> It also provides that the judge may make orders for the payment of expenses connected with the use of video links.<sup>15</sup>

## 2. *Trans-Tasman Proceedings Act 2010 (Cth)*

The *Trans-Tasman Proceedings Act 2010 (Cth)*, enacted pursuant to an agreement signed by Australia and New Zealand in 2008,<sup>16</sup> applies to remote appearances of persons in New Zealand in Australian court proceedings, including by “audiovisual” link.<sup>17</sup> Further provisions on Federal Court processes with respect to such proceedings are contained in the *Federal Court Rules 2011 (Cth)*, including a requirement that “[a] party who wants to apply for an order that evidence be taken, or submissions be made, by audio link or audiovisual link, from New Zealand must file an interlocutory application, in accordance with Form 102.”<sup>18</sup>

### **B. Procedures**

The Chief Justice of the Federal Court has issued a practice note on technology use by the Court, including eLodgment, eTrials, electronic discovery, and videoconferencing.<sup>19</sup> This states that the Court will “approach suggestions from the parties about the use of technology in proceedings with an open mind, having regard to the needs of the parties and the nature of each case,” including “using videoconference facilities to communicate between the parties and the Court from different locations.”<sup>20</sup> In addition, “[t]he Court has videoconference facilities in courtroom(s) in each registry nationally. These videoconference facilities enable the Court and parties to communicate between registries, as well as to other external locations within Australia and overseas.”<sup>21</sup>

A videoconferencing guide available on the Court’s website further explains the Court’s approach and relevant procedures.<sup>22</sup> The guide states that “leave or a direction or order of the Court” must be obtained for appearances or submissions to be made, or testimony given, by video link.<sup>23</sup> Any such proposal “should normally first be discussed with the other party or parties in the proceeding”<sup>24</sup> and the direction or order

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<sup>14</sup> Id. s 47D.

<sup>15</sup> Id. s 47F.

<sup>16</sup> See *Trans-Tasman Proceedings Regime*, Attorney-General’s Department, <https://perma.cc/FU42-B5ZG>.

<sup>17</sup> *Trans-Tasman Proceedings Act 2010 (Cth)* pt 6 div 2, <https://perma.cc/25H9-3NVD>.

<sup>18</sup> *Federal Court Rules 2011 (Cth)* r 34.77(1), <https://perma.cc/63N5-QWGJ>.

<sup>19</sup> Chief Justice Allsop, *Federal Court of Australia, Technology and the Court Practice Note (GPN-TECH)* (Oct. 25, 2016), <https://perma.cc/X5AR-TT6U>.

<sup>20</sup> Id. para. 2.6 & 2.7(b).

<sup>21</sup> Id. para. 4.3.

<sup>22</sup> *Federal Court of Australia, Videoconferencing* (Oct. 25, 2016), <https://perma.cc/4XL9-R2XV>.

<sup>23</sup> Id. para. 1.3.

<sup>24</sup> Id. para. 1.4.

should be sought as early as possible in a manner appropriate to the circumstances of, and given in accordance with the Federal Court Rules (such as by way of a written request, affidavit or submissions in open Court). Adequate information should be available to the Court to enable it to assess whether the proposal is appropriate. The Court may deal with any such application in Chambers or in open court.<sup>25</sup>

The guide includes information on examining a witness who is outside Australia via videoconference, including the need to take into account the relevant legislation in Australia and in the country where the witness is to give his or her evidence.<sup>26</sup> It notes that, in addition to the reciprocal arrangements with New Zealand (see below), the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters “provides a framework that may be used to facilitate the taking of evidence via videoconference in countries that have acceded to that Convention.”<sup>27</sup>

Other information in the guide covers the availability of equipment and facilities; technical specifications; the process for booking a videoconference (including a statement that “[d]emand for access to the Court’s videoconferencing equipment and facilities is high” and therefore arrangements should be made as early as possible<sup>28</sup>); external site requirements; videoconferencing charges, with the expenses to be met by the parties “in the proportions agreed between them or determined by the Court,” other than where the videoconference “is required solely for the convenience of the Court”;<sup>29</sup> and preparing for and attending a videoconference.

### C. Virtual Hearings in Response to COVID-19 Pandemic

In March 2020, the Federal Court issued a Special Measures Information Notice that “sets out arrangements for the continued operation of the Federal Court during the COVID-19 outbreak in Australia.”<sup>30</sup> The Notice states that “[a]ll hearings before the Court (other than in truly exceptional circumstances) are currently proceeding using remote access technology.”<sup>31</sup> Specifically, the Court is using Microsoft Teams and telephone conferencing in order to hear matters<sup>32</sup> and has issued a guide on virtual hearings and Microsoft Teams on its website.<sup>33</sup> It is “also considering streaming and other methods of ensuring the requisite degree of public access to hearings conformable with the open justice and open court principles.”<sup>34</sup>

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<sup>25</sup> Id. para. 1.6.

<sup>26</sup> Id. para. 1.10.

<sup>27</sup> Id. para. 1.11.

<sup>28</sup> Id. para. 3.2.

<sup>29</sup> Id. para. 3.10.

<sup>30</sup> Federal Court of Australia, Special Measures in Response to COVID-19 (SMIN-1) para. 1.1 (updated Mar. 31, 2020), <https://perma.cc/VP23-RMEZ>.

<sup>31</sup> Id. para. 11.1.

<sup>32</sup> Id. para. 11.2.

<sup>33</sup> Id. para. 11.3.

<sup>34</sup> Id. para. 11.4.

The guide on virtual hearings states that the Court is “currently reviewing all upcoming hearings to determine their suitability for a Virtual Hearing”<sup>35</sup> and parties are asked to liaise with the Court in this regard.<sup>36</sup> Parties are also “expected to seek orders to facilitate a Virtual Hearing,” with sample orders provided in an addendum to the guide.<sup>37</sup> The guide provides information on using Microsoft Teams, what participants can expect, what is expected of participants and witnesses, open justice, document management, and available assistance.

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<sup>35</sup> Federal Court of Australia, *National Practitioners/Litigants Guide to Virtual Hearings and Microsoft Teams* para. 2.2 (Apr. 2020), <https://perma.cc/6SJ9-MQHM>.

<sup>36</sup> *Id.* para. 2.3.

<sup>37</sup> *Id.* para. 2.5.

# Austria

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## I. Overview of Civil Trials

For ordinary jurisdiction, meaning jurisdiction in civil and criminal matters, there are four levels of courts in Austria: district courts, regional courts, higher regional courts, and the Supreme Court.<sup>1</sup> Civil trials start either at the district or the regional court, depending on the nature and the value of the claim.<sup>2</sup> Claims up to €15,000 (about US\$16,330) and matters such as family law and landlord-tenant cases are always adjudicated at the district courts as courts of first instance.<sup>3</sup> Regional courts generally hear appeals of district court decisions and have original jurisdiction in matters not reserved to the district courts.<sup>4</sup> Higher regional courts are courts of appeal only.<sup>5</sup> The Supreme Court is the court of last instance and hears appeals of regional and higher regional court decisions on questions of law only.<sup>6</sup>

The rules for civil trials are codified in the Code of Civil Procedure for contentious proceedings and in the Non-Contentious Proceedings Act for noncontentious proceedings.<sup>7</sup> A judge in Austrian civil trials has a more active role than a judge in the US. He or she opens, directs, and closes the proceedings, grants the right to speak, examines the witnesses, and ensures that the matter is comprehensively deliberated.<sup>8</sup> Furthermore, the judge discusses the facts and legal claims with the parties and asks questions.<sup>9</sup>

## II. Requirements for Virtual Taking of Evidence

In general, the parties must litigate in person at the court.<sup>10</sup> However, the Code of Civil Procedure and the Non-Contentious Proceedings Act provide that the taking of evidence may be performed

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<sup>1</sup> Jurisdiktionsnorm [JN], Reichsgesetzblatt [RGBl.] Nr. 111/1895, as amended, § 1, <https://perma.cc/FPJ3-KW8J>.

<sup>2</sup> Id. § 2, para. 1.

<sup>3</sup> Id. § 49.

<sup>4</sup> Id. § 3, para. 1, § 50.

<sup>5</sup> Id. § 4.

<sup>6</sup> Id. § 3, para. 2, § 4; Bundes-Verfassungsgesetz [B-VG], Bundesgesetzblatt [BGBl.] Nr. 1/1930 as promulgated in BGBl. I Nr. 194/1999, as amended, art. 92, para. 1, <https://perma.cc/93CR-JJ7W>.

<sup>7</sup> Zivilprozessordnung [ZPO], RGBl. Nr. 113/1895, as amended, <https://perma.cc/CGZ7-5XND>; Außerstreitgesetz [AußStrG], BGBl. I Nr. 111/2003, as amended, <https://perma.cc/GB3M-PWXL>. Like contentious proceedings, noncontentious proceedings deal with civil law matters. However, the procedure is more flexible and less formal than in contentious proceedings. It is mostly used in family law matters. See *Außerstreitverfahren*, oesterreich.gv.at, <https://perma.cc/PSU6-SXSU>.

<sup>8</sup> ZPO, § 180.

<sup>9</sup> Id. §§ 182, 182a.

<sup>10</sup> B-VG, art. 90; ZPO, § 176; AußStrG, §§ 18, 19.

by videoconferencing.<sup>11</sup> The Non-Contentious Proceedings Act applies the rules codified in the Code of Civil Procedure for the taking of evidence with the necessary changes.<sup>12</sup> The Code of Civil Procedure simply states that “the court may, if technically possible, take evidence by using technical means to transmit words and images, unless taking evidence in person at the court is more appropriate or necessary due to special reasons, taking into account the principle of procedural economy.”<sup>13</sup> There is no limitation with regard to the types of evidence that can be taken by videoconferencing, however, there may be practical limitations, for example, with regard to visual inspection of evidence.<sup>14</sup> There are also no limitations in the law with regard to the location of the videoconference.

### III. Usage in Practice

Since 2011, all courts, public prosecutor’s offices, and prisons in Austria are equipped with at least one videoconferencing system.<sup>15</sup> In 2017, videoconferencing was used in about 4,000 trials, of which 12% were proceedings with foreign courts.<sup>16</sup> Proposals to extend videoconferencing to remote participation of counsel are currently being considered.<sup>17</sup>

Furthermore, on March 22, 2020, the 2nd COVID-19 Act entered into force, which, among other things, amends court procedures for civil trials to deal with the COVID-19 pandemic.<sup>18</sup> The changes will remain in effect until December 31, 2020.<sup>19</sup> The 2nd COVID-19 Act provides that “if an oral hearing is strictly necessary, it may be conducted without the parties being personally [physically] present by using appropriate technical means of communication [videoconferencing].”<sup>20</sup>

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<sup>11</sup> ZPO, § 277; AußStrG, § 35 in conjunction with ZPO, § 277.

<sup>12</sup> AußStrG, § 35.

<sup>13</sup> ZPO, § 277.

<sup>14</sup> Id. §§ 277, § 368.

<sup>15</sup> Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice, *IT Applications in the Austrian Justice System* 35 (Dec. 2018), <https://perma.cc/D8LN-JRJF>.

<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> 2. COVID-19-Gesetz, BGBl. I Nr. 16/2020, <https://perma.cc/CCV2-62Z7>.

<sup>19</sup> Id. art. 21, § 12.

<sup>20</sup> Id. art. 21, § 3.

# Azerbaijan

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## I. Overview of Azerbaijani Civil Procedure

In the Azerbaijani civil court system, the courts of first instance (original jurisdiction) are the city and *rayon* (district) courts.<sup>1</sup> Specialized commercial courts act as first instance courts for commercial disputes.<sup>2</sup> Appeals from city/*rayon* courts and commercial courts are made to the regional appeals courts and are heard by the civil and commercial divisions of these courts.<sup>3</sup> The court of last instance is the Supreme Court of Azerbaijan, which acts as a court of cassation (last resort).<sup>4</sup>

Although bound by the evidence brought by the parties, the judge is active in the pretrial and trial stages of a case. The judge examines the evidence, may question the parties, appoint expert witnesses *ex officio*, and take other actions to ensure the resolution of the case in a correct and timely manner.<sup>5</sup>

## II. Digital Case Management and Virtual Trials in Azerbaijani Civil Procedure

### A. The Electronic Court Information System

The court system of Azerbaijan employs a digital case management system called the Electronic Court Information System (ECIS).<sup>6</sup> The ECIS enables electronic management of correspondence between courts and parties to lawsuits, between higher and lower courts, and between courts and governmental bodies. Parties and their legal representatives can upload case documents, monitor the status of their lawsuits, and perform procedural actions.<sup>7</sup> The development and extensive use of the ECIS in court proceedings was mandated by a Presidential Order in February 2014.<sup>8</sup> In

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<sup>1</sup> Civil Procedure Code of the Republic of Azerbaijan (enacted by Law No. 780-IQ, Dec. 28, 1999), art. 34, <https://perma.cc/X2SU-DUAU> (in Azerbaijani).

<sup>2</sup> *Id.* arts. 26, 34.

<sup>3</sup> *Id.* art. 358.

<sup>4</sup> *Id.* art. 404.

<sup>5</sup> *Id.* arts. 14.2, 167, 175, and 184.

<sup>6</sup> Nail Huseynli, M&E Manager, Azerbaijan, Jud. Servs. & Smart Infrastructure Project, Ministry of Just., *Judicial Reform in Improving Service Delivery*, presented at the Europe and Central Asia Regional Governance Conference, Ankara (June 11-12, 2019), <https://perma.cc/67AP-GJTP>.

<sup>7</sup> *Id.*

<sup>8</sup> Presidential Order No. 263 “Concerning the Creation of an ‘Electronic Court’ Information System” (Feb. 13, 2014), <https://perma.cc/463B-DQHU> (in Azerbaijani).

2016, the ECIS was incorporated in the procedure of the Supreme Court of Azerbaijan.<sup>9</sup> In 2018, the ECIS was further integrated with the civil court system by amendments made to the Civil Procedure Code (CPC).<sup>10</sup> Among other things, the amendments introduced procedural rules regarding the use of the ECIS in trial court proceedings and established a simplified “small claims” procedure which enabled low-value cases with no controversy over points of law to be tried in full by use of electronic filing and correspondence over the ECIS.

The new provisions added by the 2018 amendments appear to enable the electronic management of all paperwork involved in a civil trial. According to article 10-1.4 of the CPC, in civil disputes, the sending and receiving of lawsuit petitions, challenges, and other documents and the delivery of court documents to the parties may be carried out via ECIS. In commercial disputes, such use of the ECIS is required.<sup>11</sup> Although a physical court hearing remains the central procedural step in normal civil trials,<sup>12</sup> article 10-1.6 of the CPC provides that the court may decide to allow “a party who is unable to attend the hearing” to remotely participate in a hearing in real time. Article 176.5-1 provides that the means of enabling parties to participate in hearings without being present “shall be provided via [ECIS].”

## **B. ECIS Use with the Small Claims Procedure for a Fully Virtual Trial**

Article 284 of the CPC provides a simplified procedure for civil cases with claims less than two thousand Manats (approx. US\$1180) and commercial cases with claims less than ten thousand Manats (approx. US\$5900). In this small claims procedure, the judge decides the case solely by assessing the submissions of the parties, without holding a hearing or questioning the parties.<sup>13</sup> Thus, a small claims case can be tried electronically in its entirety with all filings and correspondence, including the lodging of the lawsuit petition and the response, the submission of evidence, and the issuing of the decision, being completed via the ECIS.

## **C. Use of ECIS During the Current COVID-19 Crisis**

On March 19, 2020, the Plenum of the Supreme Court issued a decision recommending, among other things, that all civil courts make use of the means provided by the ECIS to conduct the proceedings in civil and commercial disputes, as part of necessary measures taken to counter the risks posed by the COVID-19 contagion.<sup>14</sup>

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<sup>9</sup> “Elektron məhkəmə” informasiya sisteminin tətbiqi [Application of Electronic Court Information System], Supreme Court of the Republic of Azerbaijan (Jan. 23, 2017), <https://perma.cc/7GLQ-E9VB> (in Azerbaijani).

<sup>10</sup> Law No. 1436-VQD (Dec. 28, 2018), <https://perma.cc/ZRL8-HAH7> (in Azerbaijani).

<sup>11</sup> Civil Procedure Code, art. 10-1.3.

<sup>12</sup> Id. arts. 172-215.

<sup>13</sup> Id. art. 284-5.3.

<sup>14</sup> Decision No. 5 of the Plenum of the Supreme Court of the Republic of Azerbaijan (Mar. 19, 2020), <https://perma.cc/5ZM3-LPZV> (in Azerbaijani).

# Brazil

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## I. Civil Courts

According to the Brazilian Constitution, the judicial branch is made up of state and federal courts at the trial and appellate levels. In addition, there are special courts for labor, electoral, and military matters.<sup>1</sup> The Federal Supreme Court (Supremo Tribunal Federal, STF) is the highest court in Brazil and is entrusted with safeguarding the Constitution as well as functioning as a court of review.<sup>2</sup> Civil laws are mainly established in the Civil Code,<sup>3</sup> while court procedures are regulated by the Code of Civil Procedure.<sup>4</sup>

## II. Use of Electronic Environment by the Federal Supreme Court

On March 20, 2020, the internal rules of the STF were amended in response to the COVID-19 pandemic.<sup>5</sup> Article 21-b, which had been added to the rules in 2019 to allow electronic proceedings in specific situations, now determines that all cases within the jurisdiction of the STF may, at the discretion of the rapporteur (*relator*) or the inspection minister with the agreement of the rapporteur, be subjected to judgment on lists of cases in an in-person or electronic environment, subject to the respective competencies of the chambers (*turmas*) or the plenary.<sup>6</sup> The following matters will preferably be adjudicated in an electronic environment:

I - internal grievances, statutory grievances and declaration embargoes;

II - precautionary measures in concentrated control actions;

III - referendum on precautionary measures and provisional injunctions;

IV - other procedural classes, including appeals with recognized general repercussion, whose matter discussed has prevailing jurisprudence within the scope of the STF.<sup>7</sup>

In the event of appropriate oral arguments provided for in the internal rules of the STF, the Attorney General's Office, the Federal Attorney General's Office, the Federal Public Defender's Office, lawyers, and others qualified in the process are allowed to forward their respective

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<sup>1</sup> Constituição Federal, arts. 92-126, <https://perma.cc/CRC5-R3PD>.

<sup>2</sup> Id. art. 102.

<sup>3</sup> Código Civil, Lei No. 10.406, de 10 de Janeiro de 2002, <https://perma.cc/KQ2R-VVB4>.

<sup>4</sup> Código de Processo Civil, Lei No. 13.105, de 16 de Março de 2015, <https://perma.cc/4K6X-YGNE>.

<sup>5</sup> STF mantém realização de sessões presenciais e amplia possibilidades de julgamento por meio virtual, Notícias STF (Mar. 18, 2020), <https://perma.cc/RBG6-CTZS>.

<sup>6</sup> STF, Regimento Interno (Atualizado até a Emenda Regimental 53/2020), art. 21-b, <https://perma.cc/4PL5-5XRV>.

<sup>7</sup> Id. art. 21-b(§ 1).

submissions by electronic means after the publication of the agenda and up to 48 hours before the trial begins in a virtual environment.<sup>8</sup> In the event of exceptional urgency, the president of the STF and the presidents of the chambers “may call an extraordinary virtual session, with deadlines set in the respective notice.”<sup>9</sup>

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<sup>8</sup> Id. art. 21-b(§ 2).

<sup>9</sup> Id. art. 21-b(§ 4).

# Canada

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## I. Canada's Court Structure

Canada's judicial system has four levels of organization, including federal courts which encompass the Supreme Court, the Federal Court, the Federal Court of Appeal, and the Tax Court.<sup>1</sup> Under Canada's Constitution, provincial legislatures have exclusive jurisdiction over "[t]he Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts."<sup>2</sup> At the provincial/territorial level, there are courts of appeal, superior courts, and "territorial (lower) courts."<sup>3</sup> Almost all cases, including civil cases, are initially heard in provincially or territorially established courts.

## II. Current Use of Virtual Civil Trials

Since 1998, the legislation and rules regulating courts and tribunals across Canada have allowed for "the use of electronic technologies within the hearing process."<sup>4</sup> In Ontario, for example, provisions for electronic, telephone, or video conferencing can be found in the court procedure rules of the Court of Appeal and the Superior Court of Justice (civil procedure<sup>5</sup> and family law rules<sup>6</sup>), small claims courts,<sup>7</sup> and administrative tribunals. The Rules of Civil Procedure stipulate as follows:

**1.08** (1) If facilities for a telephone or video conference are available at the court or are provided by a party, all or part of any of the following proceedings or steps in a proceeding may be heard or conducted by telephone or video conference . . . :

1. A motion.
2. An application.
3. A status hearing.
4. At trial, the oral evidence of a witness and the argument.

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<sup>1</sup> *The Judicial Structure*, Department of Justice (last modified Oct. 16, 2017), <https://perma.cc/RZ7H-9U4M>.

<sup>2</sup> Constitution Act, 1867, 30 & 31 Victoria, c. 3 (U.K.), § 92(14), <https://perma.c/YD8E-7SFF>.

<sup>3</sup> Peter K. Doody, *Court System of Canada*, *The Canadian Encyclopedia* (last modified Feb. 28, 2018), <https://perma.cc/8HFN-TLAU>.

<sup>4</sup> Richard Francis, *Universal Design and Videoconferencing at Tribunals: Improving Access from Day One*, Canada Agricultural Review Tribunal (Paper Presented at Council of Canadian Administrative Tribunals Annual Conference, Feb. 24, 2015), <https://perma.cc/37ZH-7QU7>.

<sup>5</sup> R.R.O. 1990, Reg. 194: Rules of Civil Procedure, <https://perma.cc/XLG9-4TY6>.

<sup>6</sup> O. Reg. 114/99: Family Law Rules, <https://perma.cc/6VD7-852B>.

<sup>7</sup> O. Reg. 258/98, Rules of the Small Claims Court, <https://perma.cc/6WW6-CYNL>.

5. A reference.
6. An appeal or a motion for leave to appeal.
7. A proceeding for judicial review.
8. A pre-trial conference or case conference.<sup>8</sup>

If the parties consent and if the presiding judge or officer permits it, one of the parties must make the necessary arrangements.<sup>9</sup> If the parties do not consent, the court may, “on motion or on its own initiative, make an order directing a telephone or video conference on such terms as are just.”<sup>10</sup> The court uses the following factors in determining whether to permit or direct a telephone or video conference:

- (a) the general principle that evidence and argument should be presented orally in open court;
- (b) the importance of the evidence to the determination of the issues in the case;
- (c) the effect of the telephone or video conference on the court’s ability to make findings, including determinations about the credibility of witnesses;
- (d) the importance in the circumstances of the case of observing the demeanour of a witness;
- (e) whether a party, witness or lawyer for a party is unable to attend because of infirmity, illness or any other reason;
- (f) the balance of convenience between the party wishing the telephone or video conference and the party or parties opposing; and
- (g) any other relevant matter.<sup>11</sup>

The Statutory Powers Procedure Act<sup>12</sup> “provides a general framework for the conduct of hearings before Ontario’s administrative tribunals,”<sup>13</sup> including the Landlord and Tenant Board (LTB). The Act stipulates that if the subsidiary rules of a tribunal<sup>14</sup> allow for an “electronic hearing,” meaning “a hearing held by conference telephone or some other form of electronic technology allowing persons to hear one another,”<sup>15</sup> such a hearing may be held unless it is shown “that holding an electronic rather than an oral hearing is likely to cause the party significant prejudice.”<sup>16</sup> The proviso does not apply “if the only purpose of the hearing is to deal with procedural matters.”<sup>17</sup>

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<sup>8</sup> R.R.O. 1990, Reg. 194: Rules of Civil Procedure, Rule 1.08(1) (citations in original omitted).

<sup>9</sup> *Id.*, Rule 1.08(2).

<sup>10</sup> *Id.*, Rule 1.08(3).

<sup>11</sup> *Id.*, Rule 1.08(5).

<sup>12</sup> Statutory Powers Procedure Act, R.S.O. 1990, c. S.22, <https://perma.cc/A8HY-LECL>.

<sup>13</sup> *Legislation and Regulation*, Tribunals Ontario (2015), <https://perma.cc/GR4U-S9DJ>.

<sup>14</sup> Tribunals Ontario Landlord and Tenant Board, Rules of Procedure Amended January 23, 2019, <https://perma.cc/7M28-BKCK>.

<sup>15</sup> Statutory Powers Procedure Act § 1(1).

<sup>16</sup> *Id.* § 5.2(1)-(2).

<sup>17</sup> *Id.* § 5.2(3).

In British Columbia, the Civil Resolution Tribunal (CRT), described as Canada's first online or virtual administrative tribunal,<sup>18</sup> was established as "part of the public justice system," whose "members are independent and neutral, and it is required to apply the law and make enforceable decisions."<sup>19</sup> The CRT is completely online and all its services are available online, "with a high proportion of communication taking place out of office hours and via smartphones."<sup>20</sup> It is regulated<sup>21</sup> by the Civil Resolution Tribunal Act,<sup>22</sup> two regulations<sup>23</sup>, and its rules.<sup>24</sup> It has jurisdiction over "most small claims disputes of \$5,000 and under; Strata property disputes of any amount; Motor vehicle accident and injury claims of up to \$50,000; [and] Societies and cooperative association disputes of any amount."<sup>25</sup>

### III. Adapting to the COVID-19 Crisis

Courts across Canada's provinces remain open for "essential services" during the COVID-19 pandemic shutdown but have suspended non-urgent matters.<sup>26</sup> Many courts have modified procedural rules or introduced protocols to deal with "urgent matters" through teleconference or videoconference.<sup>27</sup> Starting April 6, 2020, the Superior Court of Ontario is expanding its use of videoconferencing for civil matters to hear "limited non-urgent matters in addition to matters which are urgent," and these can include pretrial conferences and consent motions.<sup>28</sup>

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<sup>18</sup> Michael Cross, *Canada Shows Way to Online Claims Future*, Law Society Gazette (Dec. 4, 2018), <https://perma.cc/6YKV-PFF7>.

<sup>19</sup> *Frequently Asked Questions*, Civil Resolution Tribunal (CRT), <https://perma.cc/5RU6-KGXM>.

<sup>20</sup> Cross, *supra* note 18.

<sup>21</sup> *Legislation*, CRT, <https://perma.cc/2XMY-P6D8>.

<sup>22</sup> Civil Resolution Tribunal Act, [SBC 2012] Ch. 25, <https://perma.cc/6C86-Z3HB>.

<sup>23</sup> Accident Claims Regulation, B.C. Reg. 233/2018, <https://perma.cc/RF8Z-LFC7>; Tribunal Small Claims Regulation, B.C. Reg. 232/2018, <https://perma.cc/RNQ5-6YJF>.

<sup>24</sup> Civil Resolution Tribunal Rules (effective Apr. 1, 2019), <https://perma.cc/AN49-H7P5>.

<sup>25</sup> *Frequently Asked Questions*, *supra* note 19.

<sup>26</sup> Adrian Humphreys, *Faced with COVID-19, Courts Hold Virtual Bail Hearings as Detention Decisions Gain Added Complexity*, National Post (Apr. 7, 2020), <https://perma.cc/VEX3-PH95>.

<sup>27</sup> Chantelle Cseh et al., *COVID-19 and the Courts: What You Need to Know*, Davies Ward Philips & Vineberg LLP (Apr. 9, 2020), <https://perma.cc/W6XB-3XAT>.

<sup>28</sup> Christopher Horkins, *COVID-19 Impact: The Courts - Navigating Litigation under Lockdown in Ontario*, Cassels (Apr. 3, 2020), <https://perma.cc/BL5E-TJ8R>.

# China

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## I. Overview of Civil Trials

The Chinese court system is comprised of the Supreme People's Court (SPC, the highest court), local people's courts, and specialized people's courts such as the intellectual property courts.<sup>1</sup> There are three levels of local people's courts: the primary people's courts, the intermediate people's courts, and the higher people's courts.<sup>2</sup>

Civil cases are tried by the people's courts in accordance with the Civil Procedure Law.<sup>3</sup> The Law requires civil trials to be accessible to the general public, with exceptions such as cases where state secrets or personal privacy are involved.<sup>4</sup> Civil trial proceedings are generally divided into two phrases: (1) court investigation, when the parties present facts and evidence; and (2) court debates, when the plaintiff, defendant, third parties, and their representatives make statements and debate the issues.<sup>5</sup>

## II. Online Litigation in Civil Cases

### A. Civil Procedure Law

Under the Civil Procedure Law witnesses must generally give testimony in person at the court. However, upon permission of the court, a witness may testify through videoconferencing<sup>6</sup> if he or she cannot appear due to specified reasons, such as personal health issues, a natural disaster, or other *force majeure*.<sup>7</sup>

According to the SPC's interpretation of the Civil Procedure Law, the parties may request that the trial be conducted in certain ways and the court decides whether to grant their requests. Upon consent by both parties, the trial of a civil case may be conducted through videoconferencing.<sup>8</sup>

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<sup>1</sup> Organic Law of the People's Courts (adopted by the National People's Congress (NPC) on July 1, 1979, revised Oct. 26, 2018) arts. 12 & 15, <https://perma.cc/KL6M-67HZ> (in Chinese).

<sup>2</sup> Id. art. 13.

<sup>3</sup> Civil Procedure Law (adopted by the NPC on Apr. 9, 1991, amended June 27, 2017) arts. 3 & 6, <https://perma.cc/YX8C-M9D9> (in Chinese).

<sup>4</sup> Id. art. 134.

<sup>5</sup> Id. arts. 138 & 141.

<sup>6</sup> 视听传输技术 in Chinese, literally "audio-visual transmission technology."

<sup>7</sup> Civil Procedure Law art. 73.

<sup>8</sup> SPC, Interpretations on the Application of the Civil Procedure Law of the People's Republic of China, Fa Shi [2015] No. 5, (Jan. 30, 2015) art. 259, <https://perma.cc/9KAP-KVB4> (in Chinese).

## B. Pilot Programs

In order to increase the efficiency of civil litigation, the SPC has launched pilot programs for “separating simple civil cases from complicated ones,” under which trials of simple civil cases may be conducted online. Currently, the pilot programs are being carried out in courts at the primary and intermediate levels in twenty large cities, including Beijing and Shanghai, as well as in the country’s three intellectual property courts, the Shanghai Financial Court, and three internet courts.<sup>9</sup>

Under the pilot programs, judges, parties, and other participants may litigate through online litigation platforms.<sup>10</sup> The parties may submit evidentiary and other litigation materials via the internet if they choose to file the lawsuit online.<sup>11</sup> Upon consent of the parties, trials may be conducted through videoconferencing, subject to exceptions, such as the requirement for on-site verification of the identity of persons and originals of documents.<sup>12</sup> If only one party elects online litigation, the court may permit that party to litigate online and the other party in person. A trial may also start online and then go offline, and both the online and offline parts of the trial are considered legally valid.<sup>13</sup>

## C. Internet Courts

In China’s newly-created Hangzhou, Beijing, and Guangzhou internet courts, court proceedings are generally all taking place online. The internet courts are dedicated to hearing disputes arising from online shopping, internet service contracts, online financial loans, ownership and infringement of online copyright, and domain names. The three courts hear only first-instance cases within the jurisdiction of their respective cities.<sup>14</sup>

## III. Recent Application

In response to the recent COVID-19 outbreak in China, the SPC has encouraged courts to “fully implement online litigation” through designated online litigation platforms.<sup>15</sup> On March 6, 2020, for example, a primary court in Suzhou, Jiangsu Province conducted a trial involving a contract dispute through videoconferencing with the judge in the courtroom, the representative of the

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<sup>9</sup> *China Starts Pilot Program to Boost Civil Litigation Efficiency*, China Daily (Jan. 16, 2020), <https://perma.cc/U5GH-HX8Z>.

<sup>10</sup> SPC, *Measures for the Implementation of the Pilot Program of the Reform of Separation between Complicated Cases and Simple Ones in Civil Procedure* (Jan. 15, 2020) art. 21, <https://perma.cc/7X6F-WVVD> (in Chinese).

<sup>11</sup> *Id.* art. 22.

<sup>12</sup> *Id.* art. 23.

<sup>13</sup> *Id.*

<sup>14</sup> Laney Zhang, *China: Supreme Court Issues Rules on Internet Courts, Allowing for Blockchain Evidence*, Global Legal Monitor (Sept. 21, 2018), <https://perma.cc/2EBW-RCV3>.

<sup>15</sup> SPC Notice on Strengthening Online Litigation Work During the Period of Novel Coronavirus Pneumonia Epidemic Prevention and Control (Feb. 14, 2020), <https://perma.cc/E4LN-6U28> (in Chinese).

plaintiff at home, and the defendant at a highway rest area. This was reportedly the 550th case that particular court had tried online since the outbreak of COVID-19 in China.<sup>16</sup>

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<sup>16</sup> *Survey of "Cloud Court Trials" and "Cloud Case Handling" of Judicial Organs During Pandemic Prevention and Control*, Legal Daily (Mar. 12, 2020), <https://perma.cc/BCK4-P5CW> (in Chinese).

# England and Wales

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## I. Civil Courts in England and Wales

Civil cases tried in England and Wales are predominantly held in the county courts, which are local courts. Substantive and complex cases are heard by the High Court, which has a number of divisions. The High Court Queen's Bench Division hears civil cases that range from contract to tort cases, along with applications for judicial review. The Queen's Bench Division includes the Commercial Court, the Admiralty Courts and the Technology and Construction Court. The Court of Appeal, Civil Division hears appeals from the High Court and, in certain cases, from the county courts or tribunals. The High Court Chancery Division includes the Bankruptcy and Companies Court, Patents Court, Chancery Chambers, and the Intellectual Property and Enterprise Court, which hear a variety of cases relating to business and property, intellectual property claims, trust claims, insolvency claims, and competition claims.<sup>1</sup>

## II. Use of Virtual Proceedings in Civil Courts

Until the recent coronavirus pandemic, civil courts in England and Wales required litigants to appear in person for the majority of cases. The Civil Procedure Rules, which govern the practice of the Civil Courts, permits the use of video conferencing to enable witnesses to provide evidence remotely via video link or other means.<sup>2</sup> A Practice Direction to the Civil Procedure also states that video conferencing may be used for other parts of the court procedure such as interim applications, case management conferences, and pretrial reviews, and that the use of such procedures can save money both in terms of time and costs. The Practice Direction also notes, however, that the "convenience [of technology] should not therefore be allowed to dictate its use."<sup>3</sup>

In order to use video conferencing in any case, an application must be made to the court,<sup>4</sup> which must ensure that any required equipment is available. Any costs incurred as a result of video conferencing must be paid by the party that sought its use.<sup>5</sup> Before video conferencing may be used,

[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 will be likely to be beneficial to the efficient, fair and economic disposal of the litigation. In

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<sup>1</sup> *Civil Justice in England and Wales*, Courts and Tribunals Judiciary, <https://perma.cc/8PXT-MAX3>.

<sup>2</sup> Civil Procedure Rules, Part 32: Evidence, Rule 32.3, <https://perma.cc/XS9P-CMVE>.

<sup>3</sup> Civil Procedure Rules, Practice Direction 32, <https://perma.cc/QZS7-48FG>.

<sup>4</sup> Civil Procedure Rules, Part 23: General Rules About Applications for Court Orders, <https://perma.cc/SH59-DJHP>.

<sup>5</sup> Civil Procedure Rules, Practice Direction 32, Annex 3, ¶¶ 8-9.

particular, it needs to be recognised that the degree of control a court can exercise over a witness at the remote site is or may be more limited than it can exercise over a witness physically before it.<sup>6</sup>

### III. Virtual Hearings in Response to the COVID-19 Pandemic

The majority of civil court buildings in England and Wales are open during the current COVID-19 pandemic.<sup>7</sup> However, the government has expressed concern that

[t]he efficiency and timeliness of court and tribunal hearings will suffer during a covid-19 outbreak. Restrictions on travel will make it difficult for parties to attend court and without action a significant number of hearings and trials are likely to be adjourned.<sup>8</sup>

The Lord Chief Justice stated that “[h]earings requiring the physical presence of parties and their representatives and others should only take place if a remote hearing is not possible and if suitable arrangements can be made to ensure safety.”<sup>9</sup> As a result, while the courts already have “various statutory and inherent powers which enable them to make use of technology,”<sup>10</sup> the government included provisions in the Coronavirus Act 2020 to amend existing legislation<sup>11</sup> to enable the court<sup>12</sup> to move to entirely virtual hearings. Under the amendments, the Lord Chancellor may designate premises as “live streaming premises” and live link proceedings may be conducted via video proceedings if the court has given directions for all individuals taking part in the proceedings to partake through a video link. The Act defines “video live link” as

in relation to a person (P) taking part in proceedings, is a live television link or other arrangement which—  
(a) enables P to see and hear all other persons taking part in the proceedings who are not in the same location as P, and  
(b) enables all other persons taking part in the proceedings who are not in the same location as P to see and hear P.<sup>13</sup>

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<sup>6</sup> Id. ¶ 2.

<sup>7</sup> Judiciary of England and Wales, Civil Justice in England and Wales Protocol Regarding Remote Hearings ¶ 3 (Mar. 26, 2020), <https://perma.cc/Q2YW-TVPU>.

<sup>8</sup> Coronavirus Bill, Explanatory Notes, ¶ 91, <https://perma.cc/6TQC-R4Z4>.

<sup>9</sup> Message from the Lord Chief Justice, Courts and Tribunals Judiciary, Review of Court Arrangements due to COVID-19 (Mar. 23, 2020), <https://perma.cc/36KL-ECKT>.

<sup>10</sup> Id.

<sup>11</sup> Courts Act 2003, c. 39, § 85A, <https://perma.cc/RXP5-UH7F> (as inserted by the Coronavirus Act 2020, c. 7, § 55 & sched. 25); Tribunals, Courts and Enforcement Act 2007, c. 15, §§ 29ZA-29ZD, <https://perma.cc/X6JV-UHK3> (as inserted by the Coronavirus Act 2020, c. 7, § 55 & sched. 25).

<sup>12</sup> This Act applies to the Court of Appeal, High Court, Crown Court, county courts, family courts, and magistrates’ courts. Courts Act 2003, c. 39, § 85D (as inserted by the Coronavirus Act 2020, c. 7, § 55 & sched. 25).

<sup>13</sup> Coronavirus Act 2020, c. 7, § 85D.

Thus, proceedings may only be deemed as having been conducted wholly via video link if all individuals taking part in the case are actually able do so through the live video link.<sup>14</sup>

The Civil Procedure Rules were supplemented by Practice Direction 51Y,<sup>15</sup> which entered into force on March 25, 2020. This Practice Direction clarifies that the court may hold a remote hearing in private if it is not practicable to broadcast it in a court building and if it is necessary for the administration of justice in accordance with Civil Procedure Rule 39.2(3)(g) for the hearing to occur in private,<sup>16</sup> but that such hearings must be recorded where practicable.<sup>17</sup> The Lord Chief Justice further noted in the Protocol that, “in the exceptional circumstances presented by the current pandemic, the impossibility of public access should not normally prevent a remote hearing taking place.”<sup>18</sup>

The Judiciary of England and Wales issued a Protocol Regarding Remote Hearings on March 26, 2020, in response to the coronavirus pandemic and the amendments made by the Coronavirus Act 2020. The Protocol notes that remote hearings should be used “wherever possible”<sup>19</sup> and that the “objective is to undertake as many hearings as possible remotely so as to minimise the risk of transmission of Covid-19.”<sup>20</sup> The Protocol provides that remote hearings may utilize any method available to participants, and includes the examples of conference calls, Skype for Business, court video links, telephone calls, and Zoom.<sup>21</sup> The Civil Procedure Rules pertaining to video or audio hearings during the coronavirus pandemic will expire when the Coronavirus Act 2020 ceases to have effect.<sup>22</sup>

To ensure that any virtual court proceedings comply with the principle of open justice,<sup>23</sup> the amendments also provide that the court may direct the broadcast or recording of any proceedings that it has directed be conducted entirely as video or audio proceedings<sup>24</sup> “in which one or more participants appear before the court using a live video or audio link, or by a wholly video/audio

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<sup>14</sup> Id.

<sup>15</sup> Ministry of Justice, Civil Procedure Rules, Practice Direction 51Y – Video or Audio Hearings During the Coronavirus Pandemic ¶ 4, <https://perma.cc/UX6C-6MBJ>.

<sup>16</sup> Ministry of Justice, Civil Procedure Rules, Miscellaneous Provisions Relating to Hearings: Part 39, <https://perma.cc/EF4Z-4ADE>; Ministry of Justice, Civil Procedure Rules, Practice Direction 51Y.

<sup>17</sup> Ministry of Justice, Civil Procedure Rules, Practice Direction 51Y, *supra* note 15.

<sup>18</sup> Judiciary of England and Wales, *supra* note 7.

<sup>19</sup> Id. ¶ 1.

<sup>20</sup> Id. ¶ 2.

<sup>21</sup> Id. ¶ 13.

<sup>22</sup> Ministry of Justice, Civil Procedure Rules, Practice Direction 51Y, *supra* note 15; Coronavirus Act 2020, c. 7, <https://perma.cc/8NYT-WPUR>.

<sup>23</sup> Ministry of Justice, 118th Practice Direction Update to the Civil Procedure Rules – Coronavirus Pandemic Related: New Practice Direction 51ZA Extension of Time Limits and Clarification of PD51Y (Apr. 2, 2020), <https://perma.cc/3HWQ-JP5T>.

<sup>24</sup> Id.

hearing where there is no physical courtroom and all participants take part in the hearing using telephone or video conferencing facilities.”<sup>25</sup>

To mirror the existing restrictions on photography and recording in the physical courts,<sup>26</sup> the Coronavirus Act makes it an offense to make an unauthorized recording or transmission of any court proceedings being broadcast under the Act, punishable with a fine of up to £1,000 (approximately US\$1,235).<sup>27</sup>

#### **IV. First Virtual Court Hearing**

The first High Court hearing under the new legislation was held via Zoom on March 27, 2020, and broadcast on YouTube.<sup>28</sup> The judge in this instance was reported as waiting for the government to pass the Coronavirus Act 2020 in order to agree to the parties’ proposal to use Zoom to hold the hearing and then provide it digitally for viewing via YouTube.<sup>29</sup>

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<sup>25</sup> Coronavirus Bill, Explanatory Notes, *supra* note 8, ¶ 92.

<sup>26</sup> Contempt of Court Act 1981, c. 49, § 9, <https://perma.cc/G8KJ-8SHV>.

<sup>27</sup> Courts Act 2003, c. 39, § 85B.

<sup>28</sup> Kate Beioley, *High Court Trial Streamed on YouTube for First Time*, Financial Times (London) (Mar. 29, 2020) (by subscription).

<sup>29</sup> *Id.*

# Finland

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## I. Overview of Court System

Finland has a three-tier judicial system with district courts, regional courts of appeal, and one Supreme Court.<sup>1</sup> For administrative cases (i.e., cases brought against the state or its agents) there are also three levels: district administrative courts, administrative courts of appeal, and one Supreme Administrative Court.<sup>2</sup> In addition there are four specialized courts: the Market Court,<sup>3</sup> Labor Court,<sup>4</sup> Insurance Court,<sup>5</sup> and High Court of Impeachment.<sup>6</sup>

## II. Remote-Based Court Participation and Court Proceedings

### A. Constitutional Right to Fair Trial

The right to a fair trial is established in the Finnish Constitution, which specifically states that everyone has a right, "without undue delay[, to] have one's case heard by a court or other agency that is competent in accordance with law and to receive a decision that applies to his or her rights and obligations adjudicated at a court or other impartial justice agency."<sup>7</sup> It does not require that all parts of such trials necessarily take place in person. As a signatory to the European Convention on Human Rights (ECHR) Finland must also comply with article six, which provides the right to a fair trial.<sup>8</sup>

### B. Remote Proceedings in General

Finnish judicial procedure is governed by the Code of Procedure.<sup>9</sup> The Code provides that the main hearing in a court proceeding should typically take place in person.<sup>10</sup> However, Finland

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<sup>1</sup> 3 & 98 §§ Finlands grundlag (FFS 1999/731), <https://perma.cc/7NU3-FS68>; 1 kap. 2 § Domstolslag (FFS 2016/673), <https://perma.cc/RTC3-9TFN>; see also *Domstolarna*, *Domstolarma*, <https://perma.cc/HR8M-BTRJ>.

<sup>2</sup> 3 & 98 §§ Finlands grundlag; see also *Domstolarna*, *Domstolarma*, *supra* note 1.

<sup>3</sup> 98 § Finlands grundlag; Lag om rättegång i marknadsdomstolen (FFS 2013/100), <https://perma.cc/9RUN-93TV>.

<sup>4</sup> 98 § Finlands grundlag; Lag om rättegång i arbetsdomstolen (FFS 1974/646), <https://perma.cc/F49M-59QP>.

<sup>5</sup> 98 § Finlands grundlag; Lag om rättegång i försäkringsdomstolen (FFS 2016/677), <https://perma.cc/3BRP-RZ5F>.

<sup>6</sup> 101 § Finlands grundlag.

<sup>7</sup> 21 § Finlands grundlag (all translations by author).

<sup>8</sup> European Convention on Human Rights art. 6, Nov. 4, 1950, 213 U.N.T.S. 221, <https://perma.cc/NJK7-SDQJ>.

<sup>9</sup> Rättegångsbalk (FFS 1734/4), <https://perma.cc/77KV-U34A>.

<sup>10</sup> *Id.* 12 kap. 6 §.

allows for remote participation in certain aspects of civil trials.<sup>11</sup> For example, witnesses, the opinions of experts, and court translators may be heard via videolink,<sup>12</sup> so long as the parties can ask questions of those participating via videolink.<sup>13</sup> The court may also determine, on its own, that the parties need not be heard, or be present, in person during civil trials.<sup>14</sup> In addition, in certain cross-border cases where the parties are from different European Union countries, Finnish courts must allow the parties to present evidence via videolink.<sup>15</sup>

Most cases heard on appeal before the Finnish Supreme Court are heard using a written procedure, not requiring the parties to participate in person.<sup>16</sup>

### C. Response to COVID-19

On March 20, 2020, the Supreme Court announced that in response to the coronavirus situation, cases would only be heard in person if absolutely necessary, and that the handling of non-urgent cases may be delayed.<sup>17</sup>

In response to the COVID-19 outbreak, the Finnish Court Administration, which is responsible for ensuring that the Finnish courts can adjudicate cases in a satisfactory manner,<sup>18</sup> has recommended that the courts use procedures for remote participation as much as possible, including during main hearings, oral proceedings, preparatory negotiations, witness statements, and mediation.<sup>19</sup> Alternative technologies endorsed by the Court Administration include both videoconferencing tools as well as sound-only technologies, such as telephone.<sup>20</sup> In cases where the proceedings cannot continue without the parties being physically present, the Court Administration has recommended that trials be suspended.<sup>21</sup> For cases that cannot be postponed and that must be held in person, such as criminal cases, the Court Administration has recommended that participants participate from different courtrooms using videolink.<sup>22</sup> The

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<sup>11</sup> E.g., id. 17 kap. 52 § and 12 kap. 6 §; see also *Videokonferens vid rättegångar*, Oiekus.fi (Oct. 16, 2019), <https://perma.cc/4C4V-8KFD>.

<sup>12</sup> 17 kap. 52 § Rättegångsbalken.

<sup>13</sup> Id.

<sup>14</sup> Id. 12 kap. 6 §.

<sup>15</sup> *Taking Evidence by Videoconferencing – Finland*, European E-Justice, <https://perma.cc/XB4X-466Q>.

<sup>16</sup> Id. 30 kap. 21 §; see also Press Release, Högsta domstolen, Högsta domstolen anpassar sin verksamhet till coronavirussituationen (Mar. 20, 2020), <https://perma.cc/X7BB-RM2D>.

<sup>17</sup> Press Release, Högsta domstolen, *supra* note 16.

<sup>18</sup> 19a kap. 2 § Domstolslag.

<sup>19</sup> *Domstolsärenden ska skötas utan att någons hälsa äventyras*, Tuomioistuinirasto (Mar. 19, 2020), <https://perma.cc/F6PE-3HLE>.

<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> Id.

Court Administration has also recommended that all judges perform as much of their work remotely (by telework) as possible.<sup>23</sup>

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<sup>23</sup> Id.

# France

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## I. Civil Courts in France

The French court system is divided into two types of jurisdictions: judicial courts, of which the Cour de cassation is the highest jurisdiction, and administrative courts, of which the Conseil d'Etat is the highest jurisdiction.<sup>1</sup> Judicial courts, in turn, are divided into two categories: civil and penal.<sup>2</sup> The *tribunal judiciaire* is the default court of primary jurisdiction for civil matters, but a number of specialized courts also exist, including the *conseil des prud'hommes* for employment matters, and the *tribunal de commerce* for commercial matters.<sup>3</sup> Litigation involving consumer credit or amounts under 10,000 euros (about US\$10,865) is generally tried in a *tribunal de proximité*.<sup>4</sup>

## II. Use of Virtual Hearings or Trials in Civil Courts

The Code of Judicial Organization allows a presiding judge, with the consent of all parties, to conduct court proceedings in several separate rooms “directly linked by a means of audiovisual telecommunication that guarantees the confidentiality of transmission.”<sup>5</sup> One or several of the rooms may be located outside the court’s territorial jurisdiction.<sup>6</sup> The sound and video feeds may not be recorded, except if the case at trial is of interest for the creation of historical archives.<sup>7</sup>

It appears that the first uses of videoconferencing in French courts occurred in the late nineties, in the French territory of Saint Pierre and Miquelon, two small islands off the coast of Newfoundland, Canada.<sup>8</sup> The use of videoconferencing was first introduced to solve the problem of administering justice in a location that is too remote and too sparsely populated to support a regular court. Intended first as an exception to solve this specific problem, the use of videoconferencing became gradually more accepted in France, and its use slowly spread beyond

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<sup>1</sup> *L'organisation de la Justice en France*, Ministère de la Justice (June 25, 2018), <https://perma.cc/ZK2P-S3HK>.

<sup>2</sup> *Id.*

<sup>3</sup> *Présentation de l'ordre judiciaire*, Ministère de la Justice (June 25, 2018), <https://perma.cc/VT8W-H2MN>. The *tribunal judiciaire* replaces the *tribunal d'instance* and the *tribunal de grande instance*, which existed prior to January 1, 2020.

<sup>4</sup> *Id.*

<sup>5</sup> Code de l'organisation judiciaire, art. L111-12, <https://perma.cc/2KYL-DD3H>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*; Code du patrimoine, art. L221-1, <https://perma.cc/HLA8-H9UD>.

<sup>8</sup> Laurence Dumoulin & Christian Licoppe, *Justice et visioconférence: les audiences à distance, Genèse et institutionnalisation d'une innovation, Rapport final*, Institut des Sciences sociales du Politique 57 (Jan. 2009), <https://perma.cc/SLN5-N2TN>.

Saint Pierre and Miquelon.<sup>9</sup> Nonetheless, the use of videoconferencing and similar technologies by French courts still appears to be relatively uncommon.

The current Covid-19 pandemic, which has prompted the French government to issue a stay-at-home order over its entire territory, may cause an increase in the acceptance and use of virtual hearings by French courts. There have been recent reports of several courts using videoconferencing for hearings that would normally occur in person. While most of the examples we found seem to concern only criminal proceedings,<sup>10</sup> we found at least one district that was considering experimenting with virtual hearings for civil proceedings.<sup>11</sup> The bar association of Lille, in northern France, has called for the use of videoconferencing for court hearings. As of April 1, 2020, virtual hearings were still awaiting approval from the judges of the various courts in the district.<sup>12</sup> Assuming the judges approve, the first experiments will take place at the tribunal de commerce, which deals with commercial cases, before being extended to other courts.<sup>13</sup>

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<sup>9</sup> Laurence Dumoulin & Christian Licoppe, *Les comparutions par visioconférence: la confrontation de deux mondes, Prison et tribunal, Rapport final* 52, Institut des Sciences sociales du Politique (Oct. 2013), <https://perma.cc/6RB7-RYT6>.

<sup>10</sup> For example, *Coronavirus: la justice au ralenti pendant le confinement au tribunal de Chambéry*, France 3 Auvergne Rhône-Alpes (Apr. 8, 2020), <https://perma.cc/HN5E-DBWB>.

<sup>11</sup> Sophie Morlans et al., *Coronavirus: des audiences pourraient se tenir par visioconférence au tribunal de Lille*, France Bleue (Apr. 1, 2020), <https://perma.cc/XK7K-G3WM>.

<sup>12</sup> Id.

<sup>13</sup> Id.

# Germany

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## I. Overview of Civil Trials

In Germany, ordinary jurisdiction, meaning jurisdiction in civil and criminal matters, is exercised by state and federal courts (local district courts, regional courts, higher regional courts, and the Federal Court of Justice).<sup>1</sup> Civil cases start at the local or regional court, which generally depends on the value of the claim.<sup>2</sup> They can be appealed to the regional or higher regional court, respectively.<sup>3</sup> The highest court is the Federal Court of Justice, which deals with appeals on questions of law only.<sup>4</sup> Due to the mixture of state and federal courts and the differences in state budgets, the technical equipment to perform virtual trials may not be available in every court.

The judge in German civil trials has a more active role than a judge in the US. He or she opens the proceedings and directs their course, examines the witnesses, grants the right to speak, and closes the proceedings when he or she thinks that the matter has been comprehensively deliberated.<sup>5</sup> Furthermore, the judge discusses the circumstances and facts with the parties and asks questions.<sup>6</sup>

## II. Requirements for Virtual Trials/Taking of Evidence

In general, the parties must litigate in person at the court.<sup>7</sup> However, section 128a of the German Code of Civil Procedure provides that the trial and taking of evidence may be performed by videoconferencing in certain cases.<sup>8</sup> Furthermore, translators may participate in trials by videoconferencing.<sup>9</sup> Sound and video must both be used; hearings by phone only are not permitted.<sup>10</sup>

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<sup>1</sup> Gerichtsverfassungsgesetz [GVG], May 9, 1975, Bundesgesetzblatt [BGBl.] I at 1077, as amended, § 12, <https://perma.cc/C34R-J8QY> (original), <https://perma.cc/9CDT-A3WA> (English translation, updated through July 8, 2019).

<sup>2</sup> Id. §§ 23, 23a, 71.

<sup>3</sup> Id. § 72, 119.

<sup>4</sup> Id. § 133.

<sup>5</sup> Zivilprozessordnung [ZPO], Dec. 5, 2005, BGBl. I at 3202; 2006 BGBl. I at 431; 2007 BGBl. I at 1781, as amended, § 136, <https://perma.cc/F24M-2D2L> (original), <https://perma.cc/HT5P-X2FN> (English translation, updated through Oct. 10, 2013).

<sup>6</sup> Id. § 139.

<sup>7</sup> Id. § 128, para. 1.

<sup>8</sup> Id. § 128a.

<sup>9</sup> GVG, § 185, para. 1a.

<sup>10</sup> ZPO, § 128a, paras. 1, 2, “images and sound.”

The parties, their legal representatives, or their attorneys-in-fact may submit a request to the court that the trial be conducted or the evidence be taken by videoconference.<sup>11</sup> The court has discretion to grant the request. As an alternative, the court may order videoconferencing *ex officio*, which does not require the consent of the parties.<sup>12</sup> The videoconference is not recorded.<sup>13</sup>

The order of the court allowing videoconferencing must determine the location from which the parties will participate or where the evidence will be taken. The text of the law does not restrict these locations (“another location”), which can be a courtroom in the city where one of the parties resides, a law firm, company, or public videoconference room, among others.<sup>14</sup> However, the location must be within the territory of Germany.<sup>15</sup> Cross-border videoconferencing is only allowed for judicial assistance in cases under the European Small Claims Procedure Regulation.<sup>16</sup> The trial or the taking of evidence will be simultaneously livestreamed to the courtroom and to the other location.<sup>17</sup>

The taking of evidence by videoconferencing is limited to questioning witnesses, experts, and parties. Other types of evidence, such as the presentation of documentary evidence or visual inspection, are not explicitly mentioned.<sup>18</sup>

### III. Usage in Practice

Almost all courts in the German states have installed the technical equipment to perform virtual trials. In some states, every court has its own equipment, whereas others have mobile systems that can be used by several courts. The software used also varies; the Higher Regional Court of Hannover, for example, uses Skype for Business.<sup>19</sup> However, there is no legal right to have a virtual trial, meaning parties cannot force the courts to get the necessary technical equipment.

In the courts that are equipped to perform virtual trials, the usage varies from state to state. Whereas the Higher Regional Court of Dresden reported that they have not performed a virtual trial yet, the higher regional courts in Düsseldorf and Berlin stated that they frequently use

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<sup>11</sup> Id. § 128a, paras. 1, 2.

<sup>12</sup> Id.

<sup>13</sup> Id. § 128a, para. 3.

<sup>14</sup> Hendrik Schultzky, *Videokonferenzen im Zivilprozess*, 56 Neue Juristische Wochenschrift [NJW] 313, 314 (2003).

<sup>15</sup> Id.

<sup>16</sup> Id. § 1100, para. 1, § 1101, para. 2; Consolidated Version of European Small Claims Procedure Regulation, 2007 O.J. (L 199) 1, art. 8, <https://perma.cc/42MQ-45GB>.

<sup>17</sup> ZPO, § 128a, paras. 1, 2.

<sup>18</sup> Id. § 128a, para. 2.

<sup>19</sup> Annelie Kaufmann, *Richter, Anwalt und Zeuge beim Skype-Chat*, LTO (Jan. 2, 2020), <https://perma.cc/7CKY-J4PV>.

videoconferencing. In general, virtual trials are used when the proceedings are expected to be short and do not require comprehensive deliberations.<sup>20</sup>

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<sup>20</sup> Id.

# India

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## I. Structure of Judiciary

The Supreme Court of India is the highest and final appellate court of the country and is presided over by the Chief Justice of India. This is followed by twenty-four high courts where “[e]ach state has one High Court, although some High Courts have jurisdiction over multiple states and Union Territories.”<sup>1</sup>

The states are further divided into districts, which have their own district courts each controlled and managed by a district judge (when presiding over civil matters) or session judge (when presiding over criminal matters) under the supervision and direction of a high court. Except for a few states, “the original jurisdiction for both civil and criminal cases vests with the District Court. The judicial system also consists of tribunals and commissions which are established under, and to deal with, specific statutes.”<sup>2</sup>

## II. Virtual Courts and Teleconferencing

In July and August 2019 a Delhi district court launched a virtual courts web portal with the support of the E-Committee of the Supreme Court of India so that “residents can make online payment of e-challan [an electronic form of a traffic ticket] issued to them” and “will no longer have to visit the courts to deposit the fine.”<sup>3</sup> The portal allows “stakeholders an easy and affordable vehicle of adjudication”<sup>4</sup> and aims at eliminating the “presence of litigant or lawyer in the court and adjudication of the case online.”<sup>5</sup> It currently focuses on traffic violations but “will soon be widened to include cases under the Negotiable Instruments Act and claims related to motor accidents,” according to one report.<sup>6</sup>

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<sup>1</sup> Ashish Bhan & Mohit Rohatgi, *Legal Systems in India: Overview*, Thomson Reuters Practical Law (Jan. 1, 2020), [https://uk.practicallaw.thomsonreuters.com/w-017-5278?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/w-017-5278?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1) (by subscription)

<sup>2</sup> Id.

<sup>3</sup> *Virtual Court for Online Payment of Traffic Challan Launched [Read Order]*, Law Street Journal (July 29, 2019), <https://perma.cc/YQQ3-WVNJ>.

<sup>4</sup> Rajbir Deswal, Op-ed., *Virtual Courts: Digital Justice*, India Legal Live (Aug. 4, 2019), <https://perma.cc/S2EE-J4J8>.

<sup>5</sup> *About Virtual Court*, Virtual Courts, <https://perma.cc/M7HD-G98R>.

<sup>6</sup> Deswal, *supra* note 4.

Virtual courts have been introduced as part of Phase II of the eCourts Project<sup>7</sup> for the information and communications technology (ICT) enablement of India's judiciary.<sup>8</sup> The entire court is

managed through a computer although initially, a judge will be put in charge of the Virtual Court so that there is no hitch or any glitch that is encountered. Gradually, the court will be managed by the computer and simple compoundable cases such as traffic challans, cases under local and special laws, adjournments and so on can be taken care of by the computer.<sup>9</sup>

Through this process, "it will not be necessary for lawyers and litigants to attend the court premises thereby reducing footfalls and; through the Virtual Court the time of the judges [is] also saved and can be utilised for some other important activity."<sup>10</sup>

According to one report,

[t]he endeavour is being touted as "giving power back to the people". The challaning procedure of ensuring discipline on roads, ends up making a violator, or an acc-used, accountable and responsible to deposit a fee, or fine, through a new electronic process put in place through the Internet. It could well be a road map to having virtual courts in the country.

...

The Delhi court found that most traffic violators, and accused persons, are either auto-rickshaw or taxi drivers who travel long distances to reach courts and then wait endlessly for the proceedings.<sup>11</sup>

Similar virtual court have been established in Faridabad, Haryana.<sup>12</sup>

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<sup>7</sup> eCourts India, *Innovations: Phase II of the eCourts Project* 47 (2019), <https://perma.cc/A8ME-6WMX>.

<sup>8</sup> *E-Courts Project*, National Informatics Centre (NIC), <https://perma.cc/X4P7-6F9V>. The eCourts Integrated Mission Mode Project "is one of the national eGovernance projects being implemented in High Courts and district/subordinate Courts of the Country. The project has been conceptualized on the basis of the 'National Policy and Action Plan for Implementation of Information and Communication Technology in the Indian Judiciary-2005' by the eCommittee of the Supreme Court of India. The project is being implemented by National Informatics Centre."

<sup>9</sup> eCourts India, *supra* note 7, at 47.

<sup>10</sup> *Id.*

<sup>11</sup> Rajbir Deswal, *supra* note 4.

<sup>12</sup> Manvir Saini, *First Virtual Court Launched in Faridabad*, *Times of India* (Aug. 17, 2019), <https://perma.cc/T4KX-DHMP>.

A number of high courts appear to have issued guidelines on video or teleconferencing. In June 2016,<sup>13</sup> the High Court of Delhi issued the Guidelines for the Conduct of Court Proceedings between Courts and Remote Sites,<sup>14</sup> which, according to one lawyer,

provide the Courts with the capacity to receive evidence and submissions from witnesses or persons involved in Court proceedings in circumstances where it would be expensive, inconvenient or otherwise not desirable for a person to attend the proceedings in person. An over-riding factor is that the use of video-conferencing in any particular case must be consistent with furthering the interests of justice and should cause minimal disadvantage to the parties. However, it is for the Court to decide whether evidence should be recorded by video-conferencing.

...

The guidelines describe that the facility of video conferencing may be used by suo moto action of the Court, or by application on behalf of a party to the case, and may be used in civil and criminal cases where the person to be examined is located intrastate, interstate or overseas. The guidelines applicable to a Court will mutatis mutandis apply to a Local Commissioner appointed by the Court to record evidence.<sup>15</sup>

With regard to civil cases, the Guidelines state that, “as a general rule, the party making the request for recording evidence by video conference shall bear the expenses,”<sup>16</sup> and “[the] party requesting for recording [sic] statement of the person to be examined by video conferencing shall confirm to the Court the location of the person, his willingness to be examined by video conferencing, place and facility of such video conferencing.”<sup>17</sup>

### III. Adapting to the COVID-19 Crisis

On April 6, 2019, the Supreme Court of India issued a set of guidelines for the functioning of high courts and district courts with the use of teleconferencing technology during the COVID-19 pandemic.<sup>18</sup> On April 5 the *Times of India* reported that the Supreme Court’s e-committee chairman Justice D.Y. Chandrachud “held extensive deliberations with chief justices and judges heading e-committees of 23 high courts on Friday afternoon and resolved that ‘e-filing will be

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<sup>13</sup> Lucy Rana & Priya Adhlakha, S.S. Rana & Co. Advocates, *India: Delhi High Court Formalizes Guidelines Related to the Conduct of Court Proceedings through Video-Conferencing*, Mondaq (July 26, 2017), <https://perma.cc/W9WL-QECY>.

<sup>14</sup> Delhi High Court, *Guidelines for the Conduct of Court Proceedings between Courts and Remote Sites* (2016), <https://perma.cc/UTS6-3W4Z>.

<sup>15</sup> Rana & Adhlakha, *supra* note 13.

<sup>16</sup> Guidelines for the Conduct of Court Proceedings between Courts and Remote Sites ¶ 5.2.

<sup>17</sup> *Id.* ¶ 6.2.

<sup>18</sup> Supreme Court of India, *Suo Motu Writ (Civil) No. 5/2020, In Re: Guidelines for Court Functioning through Video Conferencing during COVID-19 Pandemic* (Apr. 6, 2020), <https://perma.cc/M3BP-9EXE>.

enabled in all courts including trial courts across the country for hearing urgent case through video-conferencing.’ ”<sup>19</sup>

A number of high courts have issued new or updated directions on videoconferencing<sup>20</sup>, and some courts have started public hearings of cases through videoconferencing. Since the COVID-19 outbreak, the Bombay High Court has reportedly conducted hearings through the Zoom public meeting app.<sup>21</sup>

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<sup>19</sup> Dhananjay Mahapatra, *Virtual Courts to Hear Urgent Cases During Lockdown*, Times of India (Apr. 5, 2020), <https://perma.cc/4235-7FW4>.

<sup>20</sup> For the Delhi High Court see Advisory to Delhi District Courts, No. 27/RG/DHC/2020, <https://perma.cc/C26W-5QPY>. The Advisory states as follows:“(6) In civil matters, wherever possible, service of Local Commissioner be availed of for the purposes of recording of evidence, after obtaining the consent of both the parties. (7) The facility of video conferencing be put to optimum use for the purposes of recording of evidence [sic]. Id. ¶¶ 6 & 7.

<sup>21</sup> *Bombay High Court Conducts First Public Hearing through Video Conferencing, Litigants and Lawyers Laud Move*, Hindustan Times (Apr. 9, 2020), <https://perma.cc/UD5M-H6RA>.

# Ireland

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## I. Civil Courts in Ireland

Ireland has a number of civil courts, with the amount of damages or compensation claimed determining the court in which the case must be heard. The civil divisions of the district courts handle cases at the local level involving damages or compensation of less than €15,000 (approximately US\$16,200).<sup>1</sup> The civil jurisdiction of the circuit court requires it to consider more serious civil cases, including those involving contracts, torts where the damages or compensation claimed is less than €75,000 (approximately US\$81,500), probate, equity, family and eviction cases involving sums of up to €3 million (approximately US\$3.2 million), and any cases involving mental health issues.<sup>2</sup>

The High Court hears cases involving damages over €75,000 (approximately US\$81,500) and those involving questions about the validity of law. It also hears appeals from the circuit court and reviews the decisions of lower courts and certain tribunals.<sup>3</sup> The Commercial Court handles, among other issues, disputes between businesses and arbitrations involving claims of up to €1 million (approximately US\$3.2 million), intellectual property claims, and appeals and applications for judicial review.<sup>4</sup> The Court of Appeal hears appeals from the High Court<sup>5</sup> and may rule on any question of law from the circuit court. The Supreme Court is the court of final appeal and hears appeals from the Court of Appeal on matters of general public importance or if the interests of justice make it necessary for the Supreme Court to hear the appeal.<sup>6</sup>

## II. Use of Virtual Proceedings in the Civil Courts

The High Court of Ireland permits evidence to be taken through videoconferencing in accordance with the procedures established in Practice Direction HC45.<sup>7</sup> When applying to the court for permission to hear evidence via a videoconferencing link, the lawyer submitting the application must

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<sup>1</sup> *District Court*, Citizens Information, <https://perma.cc/GDV9-4SSD>.

<sup>2</sup> *Circuit Court*, Citizens Information, <https://perma.cc/MF5T-N88J>.

<sup>3</sup> *High Court*, Citizens Information, <https://perma.cc/8G2V-YDAW>.

<sup>4</sup> Rules of the Superior Courts, Commercial Proceedings SI 2/2004, Order 63A, <https://perma.cc/C2KP-RWSN>.

<sup>5</sup> Court of Appeal Act 2014, No. 18/2014, <https://perma.cc/F65P-W6JZ>.

<sup>6</sup> Constitution of Ireland art. 34(5), <http://www.irishstatutebook.ie/eli/cons/en/html>.

<sup>7</sup> Practice Directions, High Court, HC45 – Use of Video Conferencing Link for Taking Evidence in Civil Cases, <https://perma.cc/W8R8-T6MC>.

Undertake to the court to participate fully in all required test-calls to the remote location

To provide the registrar with the necessary technical information in relation to the remote location and the case in which the application is being made [using the form provided in the Practice Direction] . . .

To ensure that the appropriate sacred text for taking the oath prior to giving evidence is available to the witness in the remote location

To ensure that the witness in the remote location is provided with any documents (including pleadings) to which he / she may be referred while giving evidence.<sup>8</sup>

This Rule provides only that evidence may be taken remotely. There currently do not appear to be any Rules that enable courts to conduct cases entirely online via remote links.

### **III. Usage of Virtual Court Hearings as a Result of the COVID-19 Pandemic**

Since the outbreak of the COVID-19 pandemic, the courts of Ireland have reduced the number of cases being heard and established criteria to prioritize cases. They have also put procedures in place to ensure “a significant amount of court administration is being facilitated electronically to avoid the requirement to attend court offices.”<sup>9</sup>

The Chief Justice and the Presidents of the Court Jurisdictions made a statement on March 31, 2020, where they announced that a significant amount of work has been done to create the “infrastructure necessary to facilitate remote court hearings which nonetheless comply with the constitutional obligation that justice be administered in public.”<sup>10</sup> The various court jurisdictions are in the process of testing a system of remote hearings that, if successful, will enable the courts to move to virtual courtrooms using this infrastructure when the new legal term starts on April 20, 2020.<sup>11</sup> The government has stated that “[t]hese hearings will be conducted fairly, safely and in full compliance with the law and all government guidance and regulations,”<sup>12</sup> but it has yet to specify the measures that it will take to achieve this.

The ability of the courts to hear large numbers of cases remotely will depend on infrastructure provided by the Courts Service (the agency responsible for court administration), and the Chief Justice of the Courts has noted that the president of each court is responsible for determining how

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<sup>8</sup> Id.

<sup>9</sup> Statement of the Chief Justice and the Presidents of Each Court Jurisdiction, Courts Service (Mar. 31, 2020), <https://perma.cc/SH7Y-5D5Y>.

<sup>10</sup> Id.

<sup>11</sup> Daily Briefing on the Government’s Response to COVID-19, Department of the Taoiseach (Apr. 10, 2020), <https://perma.cc/4NG2-6EV5>.

<sup>12</sup> Id.

remote hearings will operate in their court.<sup>13</sup> The presidents are also responsible for issuing Practice Directions and guidance on how cases will operate remotely.<sup>14</sup>

#### **IV. Examples**

In 2019, evidence was given in a civil case involving an insurance claim using video link. The arrangements were made based on childcare issues presented by the defendant, and the case was heard successfully.<sup>15</sup>

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<sup>13</sup> Stephen McDermott, *Courts to Increase Number of Video Sittings to Overcome Covid-19 Restrictions*, *thejournal.ie* (Apr. 9, 2020), <https://perma.cc/H63L-RXS3>.

<sup>14</sup> *Id.*

<sup>15</sup> *Claim Quashed as Video Link Used in Mullingar Court*, *Law Society Gazette Ireland* (July 24, 2019), <https://perma.cc/RT6E-SJCY>.

# Israel

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## I. Civil Court Structure

The Israeli judicial system is generally comprised of three levels of courts: the Supreme Court, the district courts, and the magistrates' courts. These courts have jurisdiction in both criminal and civil cases. With regard to civil trials, magistrates' courts have jurisdiction over matters up to 2,500,000 NIS (approx. US\$700,000) and over the use and possession of real property.<sup>1</sup> The district courts are authorized to adjudicate any matter not within the sole jurisdiction of another court and to entertain appeals of magistrates' court decisions.<sup>2</sup> The Supreme Court serves as a court of appeals over decisions of the district courts and has original jurisdiction as a High Court of Justice in matters in which it deems it necessary to provide relief in the interest of justice that are not under the jurisdiction of another court or tribunal.<sup>3</sup>

In addition to the general courts, the judiciary also has special tribunals with limited jurisdiction, such as the religious, labor, and administrative tribunals. While the Supreme Court does not sit as a court of appeals over decisions of these tribunals, it has intervened in a number of cases as a High Court of Justice where allegations were made against the validity of decisions based on alleged errors and where it was necessary based on considerations of justice.<sup>4</sup>

## II. Remote Hearings and Videoconferencing

Civil trials are usually required to be held in the presence of the parties.<sup>5</sup> The presiding court may, however, approve the admission of evidence, including witness testimony, via videoconferencing in response to a request of one of the litigants submitted at least three days in advance of the hearing. Such evidence must be submitted in a format determined by the Judicial Authority and published on its website.<sup>6</sup>

Under new rules of civil procedure adopted prior to the COVID-19 pandemic, the use of videoconferencing or any other technological means in lieu of physical presence in the courtroom

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<sup>1</sup> Courts [Consolidated Version] Law, 5744-1985, § 51(2), Sefer HaHukim [SH] [Book of Laws, official gazette] 5744 No. 1123 p. 198, as amended.

<sup>2</sup> Id. § 40.

<sup>3</sup> Basic Law: The Judiciary § 15, <https://perma.cc/9KAB-P9FC>.

<sup>4</sup> See, e.g., HC 221 Kanfi v. National Labor Court, 41(1) Piske Din (Supreme Court Decisions) 469, available at the Nevo Legal Database (Nevo) by subscription, <https://perma.cc/XNK3-VSAT>; see also HC 2222/99 Gabai v. Great Rabbinical Court, Nevo, <https://perma.cc/J3FS-J2DJ>; HC 4602/13 Anonymous v. Haifa Rabbinical Court, Nevo, <https://perma.cc/LCA6-D6VJ> (all in Hebrew).

<sup>5</sup> Civil Procedure Regulations, 5744-1984, Reg. 157, Kovetz Hatakanot [KT] [Subsidiary Legislation] 5744 No. 4685 p. 2220, as amended.

<sup>6</sup> Id. Reg. 173A.

may be permitted by the courts beginning September 5, 2020.<sup>7</sup> In response to the challenges associated with COVID-19, a limited pilot program has been implemented effective April 6, 2020, to allow videoconferencing in civil hearings.<sup>8</sup> Both measures are described in more detail below.

#### **A. Grounds for Remote Trials Effective September 5, 2020**

According to new rules of civil procedure that will take effect on September 5, 2020, courts will be authorized to determine, during the pretrial phase, the procedures to be used in the adjudication of lawsuits in order to simplify, expedite, and improve the efficiency of trials. In response to a party's request or on its own initiative the court could, for example, order the testimony of a trial witness to be transmitted in a videoconference format.<sup>9</sup>

A party wishing to present evidence via electronic or digital media will need to notify the court of his or her intention to do so no later than three days before the date of the hearing. The format for presenting the evidence will be determined by the court's administrator or by the court's president.<sup>10</sup>

The court will be able to allow the hearing of witnesses by means of videoconferencing within or outside the State of Israel, under instructions to be given, if it is satisfied that the following conditions have been met:

- (1) The arrival of the witness to the court in which the suit for which he was required to testify would make it very difficult for him, and he gave his consent to give evidence in this way;
- (2) The witness's testimony is essential to the questions in dispute;
- (3) There is no impediment in the foreign state to hearing the testimony in this way within its jurisdiction.<sup>11</sup>

Under the new regulations, for testimony by videoconferencing to be admitted, the place where the witness gives his or her testimony and the court in which the suit is heard will need to include, among other things,

- (1) a device that allows a witness to see and hear during his testimony what is going on in the courtroom where the suit for which he was required to testify is heard, if the court found it necessary in the circumstances;
- (2) a camera that allows a close-up view of documents;

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<sup>7</sup> Civil Procedure Regulations, 5779-2018, Reg. 61(c), KT 5779 No. 8085, p. 422, <https://perma.cc/RYL8-MWF3> (in Hebrew).

<sup>8</sup> Press Release, Judicial Authority Announcement 4700-1039-2020-180111, Due to the Special State of Emergency, the Judiciary Will Begin Piloting Videoconferencing in Civil Proceedings in Rishon Lezion Magistrate's Court (Apr. 2, 2020), <https://perma.cc/Q22W-U3NK> (in Hebrew).

<sup>9</sup> Civil Procedure Regulations, 5779-2018, Reg. 63(7).

<sup>10</sup> Id. Reg. 71.

<sup>11</sup> Id. Reg. 72(a) (all translations by author). Note that pronouns used in Israeli law generally apply to both genders.

- (3) a central viewing screen in the courtroom as well as a personal viewing screen for the judge.

. . . The court administrator may order technical requirements regarding the means required to hear the testimony in videoconferencing.<sup>12</sup>

## **B. Videoconferencing in Civil Hearings in Response to the COVID-19 Pandemic**

### *1. Pilot Program Effective April 6, 2020*

On April 2, 2020, the Israel Judicial Authority announced the implementation of a pilot program using videoconferencing in civil hearings due to the special state of emergency created by the spread of COVID-19. The pilot is being overseen by Supreme Court President Justice Esther Hayut and Court Administrator Dr. Yigal Marzel, and is headed by Haifa District Court President Judge Ron Shapiro in collaboration with relevant departments in the Judicial Authority.<sup>13</sup> The use of videoconferencing has also been approved for criminal trial hearings during this state of emergency.<sup>14</sup>

Starting the week of April 6, 2020, the use of videoconferencing was authorized, with the consent of the parties, in civil proceedings held in five courtrooms in the magistrates' courts of the City of Rishon Lezion. Videoconferencing may be used in hearings involving urgent matters, including temporary civil remedies, and in proceedings for approval of family dispute agreements, if the parties have agreed to videoconferencing and are represented by counsel. Pretrial civil proceedings may similarly be permitted via videoconferencing.<sup>15</sup>

As part of the preparations for the pilot implementation, secretarial staff, technical support staff, and service representatives at the judiciary's information center have been trained. Parties' representatives are being asked to check whether their clients are interested in being physically present or participating in hearings via videoconferencing.<sup>16</sup>

### *2. Remote Hearings in Immigration Cases*

On March 24, 2020, the head of the administrative courts under the Entry into Israel Law, 5712-1952,<sup>17</sup> issued an announcement authorizing the use of technological means for the transmission of sound, and visual images to the extent possible, in real time. The authorization is limited to urgent immigration cases requiring consideration by the courts of appeal and custody review

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<sup>12</sup> Id. Reg. 72(b)-(c).

<sup>13</sup> Press Release, *supra* note 8.

<sup>14</sup> Emergency Regulations (Novel Coronavirus) (Holding Hearings in Criminal Proceedings by Technological Means) 5780-2020, KT 5780 No. 8412 p. 862, <https://perma.cc/3UU8-TAL9> (in Hebrew).

<sup>15</sup> Press Release, *supra* note 8.

<sup>16</sup> Id.

<sup>17</sup> Entry into Israel Law, 5712-1952, SH 5712 No. 11, p. 354, as amended.

courts. In such cases the use of a phone, Zoom, or Teams technologies may be permitted.<sup>18</sup> The announcement was issued in accordance with the Emergency Regulations (Court Hearing under the Law of Entry into Israel due to the Spread of the Coronavirus), 5780- 2020.<sup>19</sup>

### III. Examples of Recently Tried Virtual Cases

Except for the pilot program that commenced on April 6, no trials have been identified as fully utilizing videoconferencing technology. However, a search on the Nevo Legal Database identified numerous cases where evidence, including witness testimony, collected by way of videoconferencing has been admitted.<sup>20</sup>

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<sup>18</sup> Announcement on Remote Hearings by Technological Means Enabling Transmission of Sound and Picture, Court of Appeals under the Entry Into Israel Law, 5712-1952, <https://perma.cc/5MN8-PKBX> (in Hebrew).

<sup>19</sup> Emergency Regulations (Court Hearing under the Law of Entry into Israel Due to the Spread of the Coronavirus), 5780-2020, Government Decision 4903 issued Mar., 19, 2020, <https://perma.cc/F4UL-APEV> (in Hebrew).

<sup>20</sup> See, e.g., CA 5265-12-15 Albasol v. Hakim (Haifa District Court, July 23, 2019), Nevo, <https://perma.cc/NS3N-THRE>.

# Italy

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## I. Use of Virtual Hearings or Trials in Civil Courts

The Italian Civil Procedure Code (CPC),<sup>1</sup> which regulates civil procedure in Italy in general, does not contain specific provisions on the taking of evidence by videoconferencing. However, based on certain provisions of the CPC and on applicable European Union (EU) legislation, videoconferencing is increasingly in use in Italy.

The CPC provides that in civil cases the examining judge must establish “the time, place and method of taking the evidence.”<sup>2</sup> The CPC also states that the examining judge may order the use of film or other technology, or in cases where the verification of a fact is necessary, that photography or videography be used for recording that fact.<sup>3</sup>

On the other hand, EU Regulation No. 1206 of 2001,<sup>4</sup> which applies to Italy, specifically includes videoconferencing within the methods of taking evidence that civil judges may use.<sup>5</sup>

Other procedural Italian legislation, i.e., the Italian Code of Criminal Procedure, explicitly allows for hearings through videoconferences or other audiovisual transmissions.<sup>6</sup>

## II. Requirements for Virtual Trials/Taking of Evidence

If a hearing takes place in a civil case through a videoconference, the provisions of the Civil Procedure Code on preserving the record of the proceedings apply.<sup>7</sup>

Concerning the language of the hearing, the CPC provides that “throughout the trial, the use of the Italian language is mandatory.”<sup>8</sup> The CPC also provides for the appointment of an interpreter

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<sup>1</sup> Codice di procedura civile [C.p.c.], updated to Jan. 30, 2020, <https://perma.cc/L6S2-DLXE>.

<sup>2</sup> C.p.c. art. 202 § 1.

<sup>3</sup> C.p.c. art. 261.

<sup>4</sup> Council Regulation 1206/2001 on Cooperation Between the Courts of the Member States in the Taking of Evidence in Civil or Commercial Matters, art. 10(4), 2001 O.J. (L 174) 5 (EC), <https://perma.cc/UP6L-CJD6>.

<sup>5</sup> Gaetano Walter, *Professione Giustizia, Videconferenza e Teleconferenza* (Sept. 25, 2019), <https://perma.cc/F3FY-G2VE>.

<sup>6</sup> Codice di procedura penale [C.p.p.] arts. 205-ter, paras. 4-5, <https://perma.cc/2EFD-3BTG>, & 729-quater, <https://perma.cc/YXL8-4Z8J>.

<sup>7</sup> C.p.c. arts. 126-130.

<sup>8</sup> C.p.c. art. 122.

when a person who does not speak Italian is to be questioned.<sup>9</sup> Furthermore, the CPC establishes the rules governing the questioning of witnesses,<sup>10</sup> including the taking of oaths.<sup>11</sup>

### III. Proposed Amendment Allowing Use of Videoconferencing in Mediation

On April 8, 2020, the Italian Senate Budget Commission approved a legislative amendment allowing for videoconferencing in certain mediation procedures.<sup>12</sup> The reform would amend Decree-Law No. 18 of March 17, 2020,<sup>13</sup> to suspend certain mediation deadlines and establish videoconferencing as the method to continue pending mediation proceedings during the period March 9 through June 30, 2020.<sup>14</sup>

The amendment would also provide that, in mediation procedures conducted via videoconferences, lawyers may digitally sign the minutes and the respective conciliation agreement and attest that their clients have digitally signed such documents.<sup>15</sup>

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<sup>9</sup> C.p.c. art. 122(2).

<sup>10</sup> C.p.c. arts. 244-257 bis.

<sup>11</sup> C.p.c. art. 251.

<sup>12</sup> *Approvato nel Cura Italia l'Emendamento che Disciplina lo Svolgimento delle Procedure di Mediazione in Videoconferenza*, MondoADR (Apr. 8, 2020), <https://perma.cc/8TXY-UNBF>.

<sup>13</sup> Decreto-Legge 17 marzo 2020, n.18 Misure di Potenziamento del Servizio Sanitario Nazionale e di Sostegno Economico per Famiglie, Lavoratori e Imprese Connesse all'Emergenza Epidemiologica da COVID-19 [D.L. n.18], art. 83 § 20, Gazzetta Ufficiale Mar. 17, 2020, n.70, <https://perma.cc/EX7F-C3NK>.

<sup>14</sup> C.p.c. note 11, adding § 20-bis to D.L. n.18, art. 83.

<sup>15</sup> Id.

# Japan

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## I. Court System

There are five types of courts in Japan: the Supreme Court, high courts, district courts, family courts, and summary courts. Japan utilizes a three-tiered judicial system. A summary, family, or district court is the court of first instance (original jurisdiction), depending on the nature of the matter.<sup>1</sup> The summary courts handle civil cases involving claims that do not exceed 1.4 million yen (about US\$13,000), as well as criminal cases involving minor offenses.<sup>2</sup> Family courts handle cases concerning personal status, adjudications and conciliations regarding family affairs, and juvenile protection matters.<sup>3</sup> District courts handle the first instance of most types of civil, criminal, and administrative cases, as well as appeals of judgments by summary courts.<sup>4</sup> High courts generally handle appeals of judgments in the first instance and final appeals of second instance judgments in civil cases rendered by district courts.<sup>5</sup> The Supreme Court handles final appeals and appeals of rulings specially provided for in codes of procedure.<sup>6</sup>

## II. Policy to Promote Use of Information Technology in Courts

Procedure in Japan's civil litigation is governed by the Code of Civil Procedure of 1996,<sup>7</sup> which introduced teleconferencing for pretrial proceedings and the examination of witnesses via video communications.<sup>8</sup> To further promote speedy and efficient court procedures by utilizing information technology (IT), the Cabinet established the Study Group on IT Conversion in Court Procedures in 2017.<sup>9</sup> The Group released a report in March 2018 that recommended expansion of the use of virtual conferencing in court procedure.<sup>10</sup> In June 2018, the Cabinet adopted the Future

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<sup>1</sup> Japanese Judicial System, Japan Federation of Bar Associations, <https://perma.cc/XAR9-ZCB9>.

<sup>2</sup> 裁判所法 [Court Act], Act No. 59 of 1947, amended by Act No. 44 of 2019 (Reiwa), art. 33, <https://perma.cc/2R45-QFP7> (unofficial translation as amended by Act No. 67 of 2017).

<sup>3</sup> Id. art. 31-3.

<sup>4</sup> Id. art. 24.

<sup>5</sup> Id. art. 16.

<sup>6</sup> Id. art. 7.

<sup>7</sup> 民事訴訟法 [Code of Civil Procedure], Act No. 109 of 1996, amended by Act No. 45 of 2017, <https://perma.cc/C8R3-XFKG> (unofficial translation as amended by Act No. 36 of 2011).

<sup>8</sup> Study Group on IT Conversion in Court Procedures, 裁判手続等のIT化に向けた取りまとめ [Report on IT Conversion in Court Procedures] 2 (Mar. 30, 2018), <https://perma.cc/5YWQ-XGAN>.

<sup>9</sup> Cabinet Secretariat, 裁判手続等のIT化検討会の開催について [Regarding Opening of Study Group on IT Conversion in Court Procedures] (Oct. 30, 2017), <https://perma.cc/HYT3-MG22>.

<sup>10</sup> Study Group on IT Conversion in Court Procedures, *supra* note 8.

Investment Strategy 2018 that stated that, while respecting the autonomy of the judicial branch, it expects the judiciary to expand the use of IT for its procedures.<sup>11</sup>

### III. Civil Proceedings by Remote Access

#### A. Pretrial Proceedings

If a party resides in a distant location or the court finds it to be appropriate for any other reason, the court may conduct pretrial proceedings by teleconference—provided that one of the parties physically appears in court.<sup>12</sup> A pretrial proceeding is held when the court finds that it is necessary in order to arrange issues and evidence before oral arguments.<sup>13</sup>

In accordance with the Cabinet's expectation, in June 2019, the judiciary decided to start introducing virtual conferences by using Microsoft Teams, a unified communication and collaboration platform,<sup>14</sup> for pretrial proceedings in nine locations across Japan starting in February 2020 and another five locations beginning in May 2020.<sup>15</sup> The first nine courts are using Microsoft Team as planned.<sup>16</sup>

#### B. Examination of Witnesses

A courts may examine a witness who resides in a distant location through videoconferencing. The court also may examine a witness through videoconferencing if the court finds that the peace of mind of the witness would be seriously hurt if the witness made a statement at the place where the presiding judge and the party are present to interrogate the witness, depending on the nature of the case, the age or mental and physical condition of the witness, the relationship between the witness and the party or the party's legal representative, and other circumstances.<sup>17</sup> In these cases, the witness must come to another court or another room in the same court where court clerks prepare the transmission.<sup>18</sup>

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<sup>11</sup> Cabinet, 未来投資戦略 2018 [*Future Investment Strategy 2018*] 55 (June 15, 2018), <https://perma.cc/CVJ8-5PVP>.

<sup>12</sup> Code of Civil Procedure arts. 170, para. 3; 176, para. 3.

<sup>13</sup> Id. art. 168.

<sup>14</sup> *Expediting Japan's Civil Court Proceedings with Adoption of Microsoft Teams*, Microsoft Asia News Center (Jan. 29, 2020), <https://perma.cc/2QEZ-3Z6A>.

<sup>15</sup> ウェブ会議等の IT ツールを活用した争点整理の新しい運用の開始について [*Regarding Initiation of Utilizing Web-Conference and Other IT Tools to Organize Issues of Cases in New Method*], Courts in Japan (June 2019), <https://perma.cc/UVR6-CAZH>.

<sup>16</sup> ウェブ会議等の IT ツールを活用した争点整理の運用の開始について [*Regarding Initiation of Utilizing Web-Conference and Other IT Tools to Organize Issues of Cases*], Courts in Japan (Feb. 3, 2020), <https://perma.cc/6Z98-EVTH>.

<sup>17</sup> Code of Civil Procedure art. 204.

<sup>18</sup> 民事訴訟におけるビデオリンク方式による尋問について [*Regarding Interrogation via Video-Linking in Civil Cases*], Courts in Japan, <https://perma.cc/F4JT-FGHT>.

In small claims cases, where the court finds it to be appropriate, it may examine a witness through a teleconference.<sup>19</sup> A small claim means a claim in which the subject matter of the litigation is worth not more than 600,000 yen (about US\$5,540) and the claimant seeks a money judgment.<sup>20</sup>

### C. Statements by Technical Advisers and Experts

Both technical advisers and experts have expert knowledge, and their knowledge is utilized in court proceedings. A technical adviser is appointed by a court in order to clarify a matter related to the litigation or to create a framework for the smooth progress of the proceedings.<sup>21</sup> An expert provides expert knowledge in the examination of evidence and is selected by a court upon a request from a party.<sup>22</sup> If a technical adviser or an expert resides in a distant location or the court finds it appropriate for any other reason, the court may have the technical adviser or expert participate in a proceeding, or the expert state an opinion, through videoconferencing.<sup>23</sup>

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<sup>19</sup> Code of Civil Procedure art. 372, para. 3.

<sup>20</sup> Id. art. 368, para. 1.

<sup>21</sup> Id. art. 92-2. See also ご存じですか？ 民事裁判でのテレビ会議・電話会議 [Do You Know About Use of Video- and Teleconference in Civil Cases?], Courts in Japan, <https://perma.cc/PG7T-U3WP>.

<sup>22</sup> Hiroshi Shimizu, 職権鑑定に関する一考察 [Consideration of Ex Officio Expert Opinion], 58(3) Toyo Hogaku 69, 77 (Mar. 2015), <https://perma.cc/4FML-WUEG>.

<sup>23</sup> Code of Civil Procedure arts. 92-3, 215-3. See also Courts in Japan, supra note 21.

# New Zealand

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## I. Civil Court System

New Zealand's civil court system is made up of the

- Disputes Tribunal, which can hear civil claims for amounts less than NZ\$30,000 (about US\$18,000);
- District Court, which can hear civil claims for amounts less than NZ\$350,000 (about US\$209,600); and
- High Court, which hears civil claims that are complex or for amounts over NZ\$350,000.<sup>1</sup>

In addition, there are various other specialist tribunals in New Zealand, including, for example, those that deal with tenancy disputes, motor vehicle dealer disputes, and copyright disputes.<sup>2</sup>

Appeals from High Court decisions are made to the Court of Appeal. The Supreme Court, the final appellate court, must grant leave to appeal in order to hear a case.<sup>3</sup>

## II. Remote Hearings and Videoconferencing

### A. Authorizing Legislation

The Courts (Remote Participation) Act 2010 “allows video conferencing to be used for administrative appearances” and “allows evidence to be given by video conferencing if the judge or registrar agrees and the parties consent.”<sup>4</sup> The Act sets out the following criteria that the registrar or judicial officer must consider in determining whether or not to allow the use of audiovisual links (AVL) for the appearance of any participant in a proceeding:

- (a) the nature of the proceeding;
- (b) the availability and quality of the technology that is to be used;
- (c) the potential impact of the use of the technology on the effective maintenance of the rights of other parties to the proceeding, including—
  - (i) the ability to assess the credibility of witnesses and the reliability of evidence presented to the court; and

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<sup>1</sup> See *Claims You Can Take to Civil Court*, Ministry of Justice, <https://perma.cc/VK2Q-VAE5>. See also Disputes Tribunal Act 1988 pt 2, <https://perma.cc/8VE7-55LH>; District Court Act 2016 pt 4, <https://perma.cc/4UM4-H3CT>; Senior Courts Act 2016 ss 12-18, <https://perma.cc/H68U-VPY7>.

<sup>2</sup> See *Tribunals*, Ministry of Justice, <https://perma.cc/G3DZ-22HP>.

<sup>3</sup> *Structure of the Court System*, Court of New Zealand, <https://perma.cc/W4FC-C4JT>.

<sup>4</sup> *Representing Yourself in a Civil Case in the High Court – What to Expect in the Courtroom: Video Conferences*, Ministry of Justice, <https://perma.cc/93GG-SNAV>.

- (ii) the level of contact with other participants:
- (d) any other relevant matters.<sup>5</sup>

In civil proceedings, a judicial officer or registrar may make a determination allowing the use of AVL for the appearance of a participant either on his or her own motion or following the application of any participant in the proceeding. Such a determination must take into account the above criteria and “whether or not the parties consent to the use of AVL for the appearance of the participant.”<sup>6</sup>

In addition, under section 103 of the Evidence Act 2006, judges may, “either on the application of a party or on the Judge’s own initiative, direct that a witness is to give evidence in chief and be cross-examined in the ordinary way or in an alternative way as provided in section 105.”<sup>7</sup> Such a direction may be made on various grounds, including the nature of the proceeding and the absence or likely absence of the witness from New Zealand.<sup>8</sup> The alternative ways include a witness giving evidence “from an appropriate place outside the courtroom, either in New Zealand or elsewhere,” and “any appropriate practical and technical means may be used to enable the Judge, the jury (if any), and any lawyers to see and hear the witness giving evidence, in accordance with any regulations.”<sup>9</sup>

The Evidence Act 2006 also specifically provides for New Zealand courts to direct, on the application of a party, that the giving of evidence, examination of a person giving evidence, and making of submissions may be “done by remote appearance medium from Australia.”<sup>10</sup> In such cases, the courtroom or other place where the court is sitting in New Zealand, and the place in Australia where the evidence is to be given or submissions or examination made, must be equipped with facilities that enable persons present in both locations to see and/or hear the evidence, etc.<sup>11</sup> These provisions are pursuant to an agreement signed between Australia and New Zealand in 2008 aimed at streamlining “the processes for managing and resolving civil and criminal proceedings, where elements of the proceedings span both countries.”<sup>12</sup> Additional provisions on remote appearances from persons in Australia are contained in the Trans-Tasman Proceedings Act 2010,<sup>13</sup> the District Court Rules 2014,<sup>14</sup> and the High Court Rules 2016.<sup>15</sup>

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<sup>5</sup> Courts (Remote Participation) Act 2010 s 5, <https://perma.cc/2HU3-SU7H>.

<sup>6</sup> Id. s 7.

<sup>7</sup> Evidence Act 2006 s 103(1), <https://perma.cc/JHP6-QB8J>.

<sup>8</sup> Id. s 103(3).

<sup>9</sup> Id. s 105(1)(a)(ii) & (b).

<sup>10</sup> Id. s 168(1).

<sup>11</sup> Id. ss 170 & 171.

<sup>12</sup> *Trans-Tasman Proceedings Regime*, Attorney-General’s Department (Australia), <https://perma.cc/FU42-B5ZG>. See also *Civil: Disputes with Someone in Australia*, Ministry of Justice, <https://perma.cc/N2AF-PF58>.

<sup>13</sup> Trans-Tasman Proceedings Act 2010 pt 2 subpt 4, <https://perma.cc/HFK8-AMCW>.

<sup>14</sup> District Court Rules 2014 r 9.57, <https://perma.cc/6CQX-NVRT>.

<sup>15</sup> High Court Rules 2016 r 9.67, <https://perma.cc/9H58-RD6A>.

The High Court Rules also contain general provisions on conducting hearings by video link with respect to certain matters set out in the Senior Courts Act 2016.<sup>16</sup>

## B. Procedures

The Ministry of Justice states that “[m]ost Courts and Tribunals have video conferencing facilities.”<sup>17</sup> Parties can apply either in person or in writing to use such facilities.<sup>18</sup> There are several relevant guidance documents and protocols in place, including a technological failure protocol produced by the Chief District Court Judge.<sup>19</sup>

Guidance on using videoconferencing in civil proceedings is included in the Ministry’s information for self-represented litigants in the High Court. This states, for example, that proceedings conducted by videoconference must use normal protocols and procedures, and provides information on who pays for the videoconference, who should book the equipment, filing submissions, the type of clothing to be worn, the swearing of oaths or making affirmations, the use of interpreters, the judicial directions that may be given at the start of the hearing, and what might happen in the event of technical failure or where a person appearing by videoconference acts inappropriately.<sup>20</sup>

## C. Usage in Practice

Searches of case databases returned various reported District Court and High Court decisions that referred to hearings being conducted or persons appearing via audiovisual link in civil proceedings.<sup>21</sup> A number of decisions simply noted in the case headnote that the hearing had been conducted on a particular date “via AVL” or “by AVL,” or that one of the parties or their representative had appeared via AVL.

On April 1, 2020, the Chief District Court Judge provided information on District Court sittings during the period that the country is in “lockdown” status due to the COVID-19 pandemic. This included principles for selecting priority proceedings and stated that, in all such proceedings, “participation by counsel will be conducted remotely to the extent that is possible. All counsel

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<sup>16</sup> Id. rr 10.24-26; Senior Courts Act 2016 s 20.

<sup>17</sup> *Lawyers & Service Providers: Audio-Visual Facilities in Courts*, Ministry of Justice, <https://perma.cc/A3EN-3P5D>.

<sup>18</sup> Id.

<sup>19</sup> Chief District Court Judge Jan-Marie Doogue, *Technological Failure Protocol* (May 2018), <https://perma.cc/D3HX-NZU2>.

<sup>20</sup> *Representing Yourself in a Civil Case in the High Court – What to Expect in the Courtroom: Video Conferences*, supra note 4.

<sup>21</sup> See, e.g., *Forrest v Chief Executive of the Department of Corrections* [2014] NZHC 2492, <https://perma.cc/RC94-AFWY>; *Krzanic v Sullivan* [2015] NZHC 2974, <https://perma.cc/N47L-3NR4>; *Armstrong v Keenan* [2018] NZHC 1196, <https://perma.cc/29L3-AKXG>; *C & E Limmer Holdings Limited v Elliott* [2019] NZDC 25149, <https://perma.cc/HMZ8-SPZZ>; *Auckland Budget Campervan Limited v Steckler* [2017] NZDC 21832, <https://perma.cc/MC4W-M6TL>.

are permitted to appear by AVL or telephone.”<sup>22</sup> Similarly, the High Court established a COVID-19 protocol that includes the following statement:

At present the hearings are generally being conducted by telephone link without requiring counsel or the parties to attend court. The Judge is in the courtroom. The Registrar starts the conference call or AVL connection and the parties will then either generally appear by telephone or AVL. On some occasions, however, counsel will appear in person. The hearing is recorded by National Transcription Service.<sup>23</sup>

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<sup>22</sup> Press Release, Chief District Court Judge Heemi Taumaunu, Update: District Court Sittings During the Alert Level 4 Period 1 (Apr. 1, 2020), <https://perma.cc/GC8R-DYW4>.

<sup>23</sup> *High Court: COVID-19 Protocol – Update as at 2 April 2020*, Courts of New Zealand, <https://perma.cc/46Z9-N6RG>.

# Norway

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## I. Overview of Norwegian Court System

Norway has a three-tier court system that hears both criminal and civil cases, with local district courts (Tingrett),<sup>1</sup> regional appeals courts (Lagmannsrett),<sup>2</sup> and one Supreme Court (Høyesterett).<sup>3</sup>

## II. Remote Court Participation and Proceedings

### A. Constitutional Right to Fair and Timely Trial

The right to a fair trial is established in the Norwegian Constitution, which specifically states that everyone has the right to “have one’s case decided by an independent and unbiased court within a reasonable time.”<sup>4</sup> As a signatory to the European Convention on Human Rights, Norway must also guarantee the right to fair trial as required by article six of the Convention.<sup>5</sup> Norway has stated in the context of the COVID-19 pandemic that providing remote access to courts is a way to ensure that parties receive their constitutional right to a fair and impartial trial within a reasonable time period.<sup>6</sup>

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<sup>1</sup> 1 § Lov om domstolene (domstolloven) (LOV-1915-08-13-5), <https://perma.cc/KQC2-7VPP>.

<sup>2</sup> Id.

<sup>3</sup> Id.; § 88 Grunnloven (LOV-1814-05-17), <https://perma.cc/CG95-HGZW>.

<sup>4</sup> § 95 Grunnloven.

<sup>5</sup> European Convention on Human Rights art. 6, Nov. 4, 1950, 213 U.N.T.S. 221, <https://perma.cc/NJK7-SDQJ>.

<sup>6</sup> Statsråd Monica Mæland, Kongelig Resolusjon 20/1391, Midlertidig forskrift om forenklinger og tiltak innenfor justissektoren for å avhjelpe konsekvenser av utbrudd av Covid-19, <https://perma.cc/P9RF-N7YD>, at 2.

## B. Remote Proceedings in General

In Norway, civil disputes are governed by the Civil Disputes Act.<sup>7</sup> Norway allows for remote participation in all stages of civil cases, from the preparatory stages<sup>8</sup> to the taking of witness and expert statements<sup>9</sup> and oral hearings,<sup>10</sup> as specified by law or when both parties agree.<sup>11</sup>

When first introduced as a pilot the Court Administration of Norway found that remote proceedings had several judicial benefits in addition to cost reduction, including the following:

- Better treatment of underage witnesses
- Better access for participants that are sick or have to travel far to reach the courts
- More flexible scheduling of the case
- Better evaluation of the case than if only a telephone meeting had been possible<sup>12</sup>

## C. Response to COVID-19 Pandemic

As a response to the outbreak of COVID-19, the Supreme Court has moved to use remote proceedings in all of its civil cases<sup>13</sup> and in most of its criminal cases.<sup>14</sup> As of March 13, 2020, and until April 26, 2020, no oral arguments will be conducted in person and the Supreme Court is closed to parties and counsel.<sup>15</sup> These measures may be extended.<sup>16</sup>

On March 27, 2020, the Norwegian government issued a regulation that limited the right to in-person hearings and increased the instances where courts may decide cases using remote

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<sup>7</sup> Lov om mekling og rettergang i sivile tvister (Tvisteloven) (LOV 2005-06-17-90), <https://perma.cc/XQY5-9534>. Additional rules on the use of video conferences in civil courts may be issued by government agencies (the Justice Department) in accordance with section 143 of the Court Act. Domstollovene (LOV 1915-08-13-5), <https://perma.cc/W9RP-TQZX>. Criminal case are governed by the Norwegian Criminal Procedures Act, Straffeprosessloven (LOV 1981-05-22-25), <https://perma.cc/9VZQ-K523>, which also allows for remote videoconferences in an enumerated number of cases, but is not covered in this report.

<sup>8</sup> §§ 9-3 & 9-5(3) Tvisteloven.

<sup>9</sup> Id. § 10-6 (unless the nature of the witness statement requires that it be conducted in person).

<sup>10</sup> Id. § 10-3(2).

<sup>11</sup> Id. § 13-1(3)b.

<sup>12</sup> Domstoladministrasjonen, *Videokonferanseprosjektet i justissektoren: Evalueringsrapport 1* (Nov. 2007), <https://perma.cc/N5BT-AASB> (translation by author). For a history of remote proceedings see Erlan Mortensen, *Oversikt over bruk av fjernavhør og fjernmøte i norsk rett* (Master's Thesis, Tromsø Universitet Faculty of Law, 2007-2008), <https://perma.cc/T6QK-28L2>.

<sup>13</sup> Norges Høyesterett, Uttalelse fra justitiarius om behandlingen av saker i Høyesterett under koronavirusutbruddet (Mar. 17, 2020), <https://perma.cc/56XM-B5PC>.

<sup>14</sup> Norges Høyesterett, Uttalelse fra justitiarius om behandlingen av saker i Høyesterett under koronavirusutbruddet (Mar. 24, 2020), <https://perma.cc/2LGM-62NF>.

<sup>15</sup> Norges Høyesterett (Mar. 17, 2020), *supra* note 9; Norges Høyesterett, Uttalelse fra justitiarius om behandlingen av saker i Høyesterett under koronavirusutbruddet (Apr. 8, 2020), <https://perma.cc/2DWX-UDCJ>.

<sup>16</sup> Id.

proceedings.<sup>17</sup> The regulation was adopted with the specific purpose of reducing the spread of COVID-19 within the Norwegian courts.<sup>18</sup> The regulation gives the courts the power to *ex officio* determine that proceedings will be conducted remotely where necessary.<sup>19</sup> Moreover, cases on appeal may also be decided without in-person representation (i.e., even without a virtual meeting), provided that the parties are afforded an opportunity to comment on the case in writing.<sup>20</sup>

In adopting the regulation, the Norwegian Department of Justice noted that the regulation is necessary to ensure that parties continue to receive their constitutional right to a fair and impartial trial within a reasonable time period, despite the coronavirus outbreak.<sup>21</sup>

#### D. Remote Proceedings in Practice

It is unclear how frequently remote proceedings are normally used in Norway, even though recent communications from the courts indicate that the use of such proceedings will increase in response to COVID-19.<sup>22</sup> In 2017, the use of such proceedings appears to have been limited because of technological challenges.<sup>23</sup>

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<sup>17</sup> Midlertidig forskrift om forenklinger og tiltak innenfor justissektoren for å avhjelpe konsekvenser av utbrudd av Covid-19 (FOR 2020-03-27-459), <https://perma.cc/RRK2-N8VS>; see also Elin Hofverberg, *Norway: New Regulation Adopted Reducing Right to In-Person Court Hearings, Increasing Web-Based Participation*, Global Legal Monitor (Apr. 9, 2010), <https://perma.cc/259N-CWVH>.

<sup>18</sup> Kongelig Resolusjon 20/1391, *supra* note 8.

<sup>19</sup> § 2 FOR 2020-03-27.

<sup>20</sup> *Id.* § 4.

<sup>21</sup> Kongelig Resolusjon 20/1391, *supra* note 6, at 2.

<sup>22</sup> See Norges Hoysterett, *supra* notes 9–11.

<sup>23</sup> Halvard Haukeland Fredriksen & Magne Strandberg, *Is E-justice Reform of Norwegian Civil Procedure Finally Happening?*, 3 Oslo L.J. 2 (2016), <https://perma.cc/96MG-BLUQ>.

# Portugal

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## I. Civil Courts

Article 209 of the Portuguese Constitution determines that, in addition to the Constitutional Court, there also exists the Supreme Tribunal of Justice and courts of law of first instance and of second instance; the Supreme Administrative Court and other administrative and fiscal courts; the Court of Auditors; maritime courts; arbitration courts; and justices of the peace.<sup>1</sup>

The civil court system has the following structure: trial courts (Tribunal de Comarca), which are subordinate to the appellate courts (Tribunal da Relação), which are subordinate to the Supreme Tribunal of Justice (Supremo Tribunal de Justiça).<sup>2</sup>

## II. Evidence Requirements

The judge in a civil trial may, in any phase of the process, “determine the personal appearance of the parties to provide evidence, information, or clarification on facts that are relevant to the decision of the case.”<sup>3</sup> Evidence must, as a rule, be given in the final hearing, unless it is urgent or the witness is unable to appear in court.<sup>4</sup> The Civil Procedure Code states that the rules for the giving of evidence by videoconference, which are contained in article 502, apply to parties who reside outside the district or, in the case of the autonomous regions, outside the island concerned.<sup>5</sup> This provision also applies to preliminary hearings.<sup>6</sup>

## III. Use of Videoconferencing

According to article 502, witnesses residing outside the municipality where the court is located are presented by the parties, under the terms of article 507(2), where they have made a declaration to this effect on offering to be witnesses, or “are heard through technological equipment that allows communication, visually and audibly,, in real time” (i.e., via videoconferencing equipment), from the court in the area in which they reside.<sup>7</sup> The court hearing the case sets the

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<sup>1</sup> Constituição da República Portuguesa (VII Revisão Constitucional [2005]), art. 209, <https://perma.cc/ZG8W-5TK7>.

<sup>2</sup> Lei No. 62/2013, de 26 de Agosto, art. 29, <https://perma.cc/F4NL-E9WH>.

<sup>3</sup> Código de Processo Civil, Lei No. 41/2013, de 26 de Junho, art. 452(1), <https://perma.cc/2J3J-5QKY>.

<sup>4</sup> Id. art. 456(1).

<sup>5</sup> Id. art. 456(2).

<sup>6</sup> Id. art. 456(3).

<sup>7</sup> Id. art. 502(1). Art. 507(2) determines that the witnesses are presented by the parties, unless the party that indicated them requests their notification for appearance or inquiry by videoconference.

date of the hearing after consulting the court where the witness is to give evidence and must summon the witness to appear.<sup>8</sup>

On the date of the inquiry, the witnesses must identify themselves before the officer of the court where the testimony is given, but from that moment onwards the questioning is carried out by the judge of the case and the parties' representatives, via videoconference, in real time, without the need for intervention by the judge of the of the court where the evidence is given.<sup>9</sup> Without prejudice to the provisions of international or European instruments, the Code provides that witnesses residing abroad are examined by videoconference, in real time, whenever the necessary technological means are available at the place where they reside.<sup>10</sup>

Under article 520 of the Code, where it is impossible or extremely difficult for the person who must give evidence to appear in court in good time, the judge may determine, with the agreement of the parties, that any clarification needed in order to make a proper decision on the case be given "by telephone or other means of direct communication" between the court and the witness, as long as the nature of the facts to be investigated or clarified are compatible with the procedure.<sup>11</sup>

Article 520 requires that the court must ensure, through the means available to it, that the evidence is given truthfully and freely, in particular by determining that the witness is accompanied by a court official during the giving of evidence and that the content of the evidence and the circumstances in which it was given are placed on record.<sup>12</sup> The provisions of article 513, related to oaths and preliminary questioning by the judge, and the first part of paragraph 4 of article 519, which provides that the judge may order evidence to be given again before him in person, apply to cases falling under article 520.<sup>13</sup>

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<sup>8</sup> Id. art. 502(2).

<sup>9</sup> Id. art. 502(3).

<sup>10</sup> Id. art. 502(4).

<sup>11</sup> Id. art. 520(1).

<sup>12</sup> Id. art. 520(2).

<sup>13</sup> Id. art. 520(3).

# Puerto Rico

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## I. Summary of Civil Procedure

The Commonwealth of Puerto Rico's courts of first instance<sup>1</sup> have jurisdiction over civil cases, including family law, inheritance, constitutional law, administrative law, corporate law, mortgage law, and contracts.<sup>2</sup> Cases start when a complaint is filed and service of process is completed.<sup>3</sup> Rules of discovery provide that the parties must disclose all relevant documents that support their claims and defenses.<sup>4</sup> The Puerto Rico Rules of Civil Procedure provide for written discovery, production of documents, taking depositions of parties, and issuing subpoenas to third parties or witnesses to compel production of documents or testimony.<sup>5</sup> Evidence is admissible if it is reliable and relevant.<sup>6</sup>

Hearings are normally open to the public, except in proceedings involving certain family law matters, including divorce, custody, child support, adoptions, and cases involving minors.<sup>7</sup> Courts of appeal review judgments of the courts of first instance.<sup>8</sup> The Supreme Court of Puerto Rico is the court of last resort and its rulings establish precedent.<sup>9</sup>

## II. Grounds for Remote Hearings

Remote hearings may take place at the parties' request to process a variety of matters in civil cases, including the following:

- Orientation of pro se litigants
- Mediation procedures
- Alimony cases

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<sup>1</sup> Puerto Rico's federal district court is an Article III court subject to US federal law and procedure, and federal appellate jurisdiction is exercised by the US Court of Appeals for the First Circuit. This report focuses on remote hearings in Commonwealth courts only.

<sup>2</sup> *Tribunal de Primera Instancia*, Rama Judicial de Puerto Rico, <https://perma.cc/XG53-HFML>.

<sup>3</sup> Néstor M. Méndez-Gómez et al., Chambers and Partners, *Litigation 2019: Puerto Rico* § 3.4., (2d ed., last updated Dec. 5, 2019), <https://perma.cc/G3FW-6DYW>.

<sup>4</sup> *Id.* § 5.3.

<sup>5</sup> *Id.* § 5.1.

<sup>6</sup> *Id.* § 7.4.

<sup>7</sup> *Id.* § 7.6.

<sup>8</sup> *Tribunal de Apelaciones*, Rama Judicial de Puerto Rico, <https://perma.cc/7XRG-KNVC>.

<sup>9</sup> *Tribunal Supremo*, Rama Judicial de Puerto Rico, <https://perma.cc/SCA3-DZ8Z>.

- Cases concerning family matters and minors
- Nonevidentiary matters
- Evidentiary matters with the judge's approval and the parties' consent<sup>10</sup>

Courts have discretionary authority to order an in-person hearing if a remote proceeding is not suitable for processing the issue in question.<sup>11</sup> Courts also have the authority to order a remote hearing without the consent of all the parties in instances in which an in-person hearing is deemed to be onerous, undesirable, or inconvenient, and a remote hearing represents a suitable alternative in view of the specifics of the case.<sup>12</sup>

Remote proceedings are recorded for purposes of integrating the official file of the case.<sup>13</sup> Records of proceedings are used to process appeals.<sup>14</sup>

### III. Virtual Proceedings in Response to COVID-19

In view of the emergency situation caused by COVID-19, Puerto Rico's judicial branch has ordered the suspension of regular operations until May 3, 2020,<sup>15</sup> but some urgent cases may be heard remotely, including urgent matters that may arise from family and minor relationships, such as requests for removal of minors from the family due to abuse.<sup>16</sup>

Citizens who wish to request such an option must submit a pertinent request via email, attaching the forms available on the website of Puerto Rico's judicial branch.<sup>17</sup> Assistance is available over the phone to help citizens submit their requests correctly.<sup>18</sup> After submission of a petition, court personnel contact the petitioners through videoconference in order to process the request.<sup>19</sup>

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<sup>10</sup> Guías Generales para el Uso del Sistema de Videoconferencia en los Tribunales del Estado Libre Asociado de Puerto Rico §§ V, VI (Mar. 13, 2020), <https://perma.cc/82ZC-TGBF>.

<sup>11</sup> Id. § VI-A(4).

<sup>12</sup> Id. § V-12.

<sup>13</sup> Id. § VI(C)(I-1) & (J-2).

<sup>14</sup> Ley Núm. 201-2003 de la Judicatura del Estado Libre Asociado de Puerto Rico, según enmendada, art. 5.006, Aug. 22, 2003, as amended through 2018, <https://perma.cc/Z3SR-VRRCR>.

<sup>15</sup> *Plan de emergencia COVID-19*, Rama Judicial de Puerto Rico, <https://perma.cc/X75D-T3JZ>.

<sup>16</sup> Press Release, La Rama Judicial de Puerto Rico, Rama Judicial establece sistema nuevo para solicitar órdenes de protección y otros asuntos civiles urgentes a distancia (Apr. 13, 2020), <https://perma.cc/Y2NC-BRY7>.

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Id.

# Russian Federation

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## I. Civil Court System

While small claims and some minor civil issues can be resolved by justices of the peace, most civil litigation is tried in the courts of general jurisdiction. Federal district courts located in every territorial district of the country serve as courts of first instance (original jurisdiction) for all cases, unless another jurisdiction has been established by law. Appeals of district court decisions go to regional courts, with the jurisdiction of each regional court extending over the constituent component of the Russian Federation in which it is located. Cases where military personnel or organizations are involved are resolved by military courts, and disputes between legal entities or legal entities and the state are resolved by a separate system of regional and circuit arbitration courts. The Supreme Court, through its civil, military, and arbitration chambers, serves as the highest court of cassation (appeal) and legal oversight. In courts of first instance, civil cases are resolved by an individual judge, and in higher courts, by a panel of three judges.<sup>1</sup> Trial procedures in all three court systems are similar and are based on provisions of the Code of Civil Procedure.<sup>2</sup>

## II. Requirements for Virtual Trials and Videoconferencing

Article 155.1 was added to the Code of Civil Procedure in 2013.<sup>3</sup> It regulates how videoconferencing can be used in trials. It states that if there is the technical ability, persons participating in a trial as well as their representatives, experts, specialists, and interpreters can participate in court hearings through videoconferencing according to their request or the court's initiative. The court must rule in each individual case when deciding on one's remote participation in hearings. A videoconferencing connection is provided to all parties and participants in the trial for free. Videoconferencing can be requested in all trials conducted in the courts of first instance, appellate and cassation hearings, cases resolved in the course of judicial oversight or review of cases due to new or newly discovered circumstances.<sup>4</sup>

To ensure virtual participation of persons in a civil trial, videoconferencing facilities available in the courts at the place of their residence or presence should be used. A court that provides videoconferencing equipment for remote testimony is required to verify the identity of those who

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<sup>1</sup> Federal Constitutional Law of the Russian Federation No. 1 on Judiciary in the Russian Federation of December 31, 1996, Rossiiskaia Gazeta [Ros. Gaz., Official Gazette] No. 3, Jan. 7, 1997, (in Russian), <https://perma.cc/T5E8-96UE>.

<sup>2</sup> Maksim Chertkov, *Use of Videoconferencing in Courts as the Right of Access to Justice*, Zakon.ru (Apr. 23, 2015), <https://perma.cc/F8B2-VQ65> (in Russian).

<sup>3</sup> Federal Law No. 66 of April 26, 2013, on Amending the Civil Procedure Code of the Russian Federation, Ros. Gaz. No. 94, Apr. 30, 2013, <https://perma.cc/6PUL-ZEHZ> (in Russian).

<sup>4</sup> Id.

appear in the trial and collect signed forms from the people participating in the hearings confirming that they were informed about their procedural rights and obligations. This is done by an assigned judge at the court from which videoconferencing is conducted. These signed documents should be forwarded to the court where the hearing has been conducted within one day, to be added to the trial records. All other procedural activities and the general oversight of the trial is conducted by the court where the presiding judge is trying the case.<sup>5</sup>

Individuals participating in a trial via videoconferencing can give explanations related to the case, object to statements by other persons, and submit petitions. Obviously, they may experience difficulties with submitting and reviewing evidence, and they cannot submit a written petition or request immediately during the court hearings.<sup>6</sup>

All practical details about the organization of remote participation in trials are prescribed in the Rules on Conducting Videoconferencing in Civil Trials issued by the Court Administration Department of the Russian Supreme Court.<sup>7</sup> The Rules require that each court establish and make public the schedule for using videoconferencing equipment,<sup>8</sup> and they also establish standards for equipment, cybersecurity, and quality of connection. For example, it is established that backup batteries should provide communication for no less than 15 minutes.<sup>9</sup> Among other requirements, the Rules state that cameras should be placed in a way that allows a virtual participant in the trial to see those who speak and ask questions.<sup>10</sup>

Following the Code, the Rules do not require the preservation of, or providing public access to, the records of the videoconference. The only legal requirement is that the claimant's position, expressed in the course of the videoconference, should be reflected in the trial records.<sup>11</sup>

There is no prohibition on videoconferencing with a party or a person participating in a trial if that person is located in a foreign country. However, it can be done through the issuance of a formal request to a foreign court, which can be done through the Russian Ministry of Justice and the other country's responsible authority as designated by a mutual legal assistance treaty.<sup>12</sup>

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<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Supreme Court of the Russian Federation, Court Admin. Dep't, Order No. 401 of December 28, 2015, on Approval of the Rules for Organization and Use of Videoconferencing in Federal Courts of General Jurisdiction, <https://perma.cc/M3E6-S74D> (in Russian).

<sup>8</sup> Id. ¶ 3.1.

<sup>9</sup> Id. ¶ 2.4.

<sup>10</sup> Id. ¶ 6.1.

<sup>11</sup> Id. ¶ 6.7.

<sup>12</sup> Chertkov, *supra* note 2.

### III. Usage in Practice

Videoconferencing equipment in Russian courts is installed in line with the Federal Target Program Development of the Russian Judiciary for the years 2013 to 2020.<sup>13</sup> The program defines the opportunity to participate in trials via videoconferencing as one of the ways to guarantee everyone the constitutional right of access to justice. It requires that, by 2020, all arbitration courts and 95 percent of other federal courts will have technology allowing them to conduct remote trials. Reportedly, by the end of 2018, videoconferencing equipment was available in all regional courts and 65 percent of district and military courts.<sup>14</sup>

Lawyers report that poor connectivity remains a serious problem, with constant network disconnections disrupting full access to the trial for a person who participates in hearings remotely. The law does not regulate situations where a person who participates in a trial remotely loses the connection and therefore has no information about what is going on in the courtroom.<sup>15</sup>

Reportedly, judges do not like to grant requests for videoconferencing, often claiming technical inability to establish a connection or that the existing equipment is being used for another trial. Presently, there is no way to check whether this explanation is true or not, and decisions on allowing virtual participation in a trial are final and cannot be appealed. In 2015, one of the regional courts ruled in a precedential decision that participation in a trial via videoconferencing is a right given to a party, not an imperative obligation of a court, and granting a request for a remote trial should always depend on the specifics of the case before the court. In another case, an appellate court refused to grant a person participation in a trial remotely, stating that the person did not explain the reasons for his absence and that, instead of participation in the trial through videoconferencing, he had other ways to participate, for example, by sending his representative to the court or submitting written statements.<sup>16</sup>

In March 2020, when Russian courts rushed to resolve cases before they were closed down under the Covid-19-related quarantine, media reported that a judge of a district court in the Ural region conducted a hearing using the WhatsApp messenger, with the respondent connected via this app.<sup>17</sup>

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<sup>13</sup> Government Regulation No. 1406 of December 27, 2012, on Approving the Federal Target Program “Development of Judiciary in Russia in 2013-2020,” *Sobranie Zakonodatelstva Rossiiskoi Federatsii*, Ros. Gaz. No. 1, Item 13, Jan. 3, 2013, <https://perma.cc/U4A4-5Z5Q> (in Russian).

<sup>14</sup> Alina Mikhailova, *Videoconferencing in Courts: How It Works and What Problems It Creates*, *Pravo.ru* (Apr. 11, 2018), <https://perma.cc/YL35-ZZ4R> (in Russian).

<sup>15</sup> *Id.*

<sup>16</sup> Chertkov, *supra* note 2.

<sup>17</sup> *For the First Time in Russia, a Court near Ekaterinburg Resolved a Case via WhatsApp Call*, *Tass.ru*, (Apr. 1, 2020), <https://perma.cc/3E58-2L6Z> (in Russian).

# Singapore

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## I. Overview of Civil Trials

In general, the judicial system of Singapore is made up of the Supreme Court, the state courts, and the family justice courts. The Supreme Court consists of the High Court and the Court of Appeal. The state courts comprise the district courts, the magistrate courts, the coroner's courts, and the small claims tribunals.<sup>1</sup>

Civil cases may start in the magistrate courts, the district courts, or the High Court, depending on the amount of the claim. Decisions of a district judge or magistrate may be appealed to the High Court. Appeals from the High Court are heard by the Court of Appeal.<sup>2</sup>

## II. Remote Hearings in Civil Cases

On March 26, 2020, Singapore's Chief Justice directed the courts to enhance the use of electronic means of communication to conduct hearings, as part of the "precautionary measures that we have put in place to ensure the continuity of court operations and services, while safeguarding the health and safety of practitioners, court users and our officers" during the COVID-19 outbreak. In the next few weeks, selected hearings in the Supreme Court, state courts, and family justice courts will be conducted by video conferencing or telephone conferencing.<sup>3</sup> On March 27, each of the three courts issued registrars' circulars to provide details on the use of videoconferencing and telephone conferencing for the different types of hearings.<sup>4</sup>

In the Supreme Court, videoconference hearings had already been piloted for selected matters before the Court of Appeal and the High Court. Such hearings will be increased to include trials in the High Court. Judges from different teams hear Court of Appeal matters from different courtrooms, with some judges joining through videoconferencing.<sup>5</sup>

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<sup>1</sup> *Singapore Judicial System*, Supreme Court of Singapore (last updated June 7, 2019), <https://perma.cc/Z2SX-UFCL>.

<sup>2</sup> *Id.*

<sup>3</sup> Message from Chief Justice Sundaresh Menon, *The Singapore Judiciary's Response to COVID-19* (Mar. 26, 2020), <https://perma.cc/WA7T-DBHN>.

<sup>4</sup> In the Supreme Court of the Republic of Singapore Registrar's Circular No. 3 of 2020 (Mar. 27, 2020) (Supreme Court Circular), <https://perma.cc/K5CE-9YW4>; In the State Courts of the Republic of Singapore Registrar's Circular No. 5 of 2020 (Mar. 27, 2020) (State Courts Circular), <https://perma.cc/HLH6-A8U4>; In the Family Justice Courts of the Republic of Singapore Registrar's Circular No. 1 of 2020 (Mar. 27, 2020) (Family Justice Courts Circular), <https://perma.cc/4W62-FXWJ>.

<sup>5</sup> Message from Chief Justice, *supra* note 3.

In the state courts, videoconferencing is available for civil trials and other hearings involving the examination of witnesses, where all of the parties consent. All case management hearings and related pretrial applications in civil cases will be conducted via videoconferencing or email.<sup>6</sup>

In the family justice courts, remote hearings for case conferences and pretrial conferences for parties represented by counsel have been piloted. As of March 30, 2020, all hearings in chambers are being conducted by videoconference using Zoom or by way of written submissions for counsel.<sup>7</sup>

On April 5, 2020, the Chief Justice further directed that the Supreme Court, state courts, and family justice courts to hear only essential and urgent matters for four weeks, from April 7 to May 4. Registrars' circulars have been issued by each of the three courts to identify the matters that may be considered to be essential and urgent. These matters will be heard, as far as possible, by electronic means of communication without requiring physical attendance before the court.<sup>8</sup>

### III. Use of Videoconferencing

The three courts have issued guidance on the use of videoconferencing and telephone conferencing to attend hearings. The unauthorized audio or visual recording of hearings is strictly prohibited. Where hearings are conducted by videoconferencing, all court rules and practices on dress and etiquette continue to apply. However, it will not be necessary to stand and/or bow to the court at the start or end of the hearing or to stand when addressing the court, when otherwise required to do so for physical attendance.<sup>9</sup>

Presently, hearings by videoconferencing or telephone conferencing are generally being conducted on the Zoom platform.<sup>10</sup>

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<sup>6</sup> State Courts Circular, *supra* note 4.

<sup>7</sup> Message from Chief Justice, *supra* note 3.

<sup>8</sup> Media Release, Supreme Court, State Courts and Family Justice Courts to Hear Only Essential and Urgent Matters from 7 April to 4 May 2020 (Apr. 5, 2020), <https://perma.cc/8WE5-RVQ4>.

<sup>9</sup> Supreme Court Circular, State Courts Circular, & Family Justice Courts Circular, *supra* note 4.

<sup>10</sup> Message from Chief Justice, *supra* note 3; Supreme Court of Singapore, *Guide on the Use of Video Conferencing and Telephone Conferencing & Video Conferencing for Hearings Before the Duty Registrar* (Mar. 27, 2020), <https://perma.cc/6DWB-C75N>; State Courts of Singapore, *Guide: Video-Conferencing with the Courts Using Zoom*, <https://perma.cc/UDS6-9VPZ>.

# Spain

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## I. Overview of Civil Proceedings

Civil proceedings in Spain involve a combination of written and oral stages.<sup>1</sup> The initial complaint and its response are in writing, while the remaining parts of the proceedings are mostly oral, beginning with the pretrial hearing of the parties, followed by the discovery and trial stages.<sup>2</sup> The civil proceeding concludes with a written judgment.<sup>3</sup> The adoption of new technologies in civil proceedings has allowed for the electronic filing of written documents and the ability to conduct oral proceedings remotely.<sup>4</sup>

## II. Legal Framework for Virtual Hearings

Although no full-scale virtual civil trials are being conducted, Spain has adopted a number of measures to allow for the electronic filing of documents in judicial proceedings under Law 18/2011 on the Regulation of the Use of Information Technology and Communication in the Administration of Justice.<sup>5</sup> It also regulates the use of information technology by citizens and professionals in their interactions with the Administration of Justice and other public authorities and entities,<sup>6</sup> providing that information technology used in the administration of justice must comply with legal standards, ensuring access, authenticity, confidentiality, integrity, availability, traceability, preservation, and the interoperability of data.<sup>7</sup>

Additionally, the Organic Law on the Judiciary provides that statements, questioning, witness testimony, cross examination, investigations, reports, ratification of expert testimony, and hearings must be carried out before a judge or court with the presence or intervention, where appropriate, of the parties and in a public hearing, except as provided by law.<sup>8</sup> These proceedings may be carried out through videoconference or any similar system that allows bi-directional and simultaneous communication through image and sound as well as visual, audio, and verbal interaction between two remotely located people or groups. Remote proceedings must ensure

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<sup>1</sup> Fernando Gascón Inchausti, *Oralidad o Escritura como Factores de Eficiencia del Proceso Civil en España* 4 (Colloquium Paper, Int'l Assoc. Procedural Law, Nov. 6-8, 2008), <https://perma.cc/JZ72-3H53>.

<sup>2</sup> Id. at 5.

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> Ley 18/2011 Reguladora del Uso de las Tecnologías de la Información y la Comunicación en la Administración de Justicia art. 1.2, Boletín Oficial del Estado [B.O.E.], July 6, 2011, <https://perma.cc/G86C-8BT2>.

<sup>6</sup> Id.

<sup>7</sup> Id. art. 2.

<sup>8</sup> Ley 6/1985 Orgánica del Poder Judicial art. 229.2., B.O.E., July 3, 1985, <https://perma.cc/Y3ZW-SYY8>.

that the parties may contradict each other and safeguard the right of the defense, when so agreed by the judge or court.<sup>9</sup> In these cases, the *letrado de la administración de justicia*, the court's legal counsel in charge of the management of court proceedings, who has agreed to carry out the remote hearing, will verify the identity of the people participating by videoconference through prior verification, direct exhibition of identity documents, or any other suitable procedural means.<sup>10</sup>

The courts are required to use any technical, electronic, computer, or other telematic means made available to them to carry out their functions, taking into consideration regulations on the protection of personal data.<sup>11</sup> Instructions issued by the General Council of the Judicial Power or the State Attorney General's Office for judges, magistrates, and prosecutors on the use of new technologies are mandatory.<sup>12</sup>

Documents issued through any electronic means are only valid and effective as an original document if they meet procedural law requirements.<sup>13</sup> Oral proceedings and hearings recorded and documented on digital media may not be transcribed, except in cases expressly provided for by law.<sup>14</sup> Proceedings carried out through electronic support must guarantee the confidentiality, privacy, and security of the personal data that they contain in the terms established by law.<sup>15</sup>

Computer systems used in the Administration of Justice must be compatible with each other to facilitate their communication and integration, in the terms determined by the State Technical Committee of the Administration of Electronic Justice.<sup>16</sup> The Technical Committee of the Electronic Administration of Justice is in charge of the functional validation of software programs and applications.<sup>17</sup>

### III. Response to COVID-19

Under the current COVID-19 emergency, the Consejo General del Poder Judicial has issued instructions on how to carry out judicial functions during the emergency.<sup>18</sup> The instructions

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<sup>9</sup> Id. art. 229.3.

<sup>10</sup> Id. art. 229, last para.

<sup>11</sup> Id. art. 230.1.

<sup>12</sup> Id.

<sup>13</sup> Id. art. 230.2.

<sup>14</sup> Id. art. 230.3.

<sup>15</sup> Id. art. 230.4.

<sup>16</sup> Id. art. 230.6.

<sup>17</sup> Id. 230, last para.

<sup>18</sup> Poder Judicial de España, Protocolo- Instrucciones del Consejo General del Poder Judicial Relativas a la Prestación del Servicio Público Judicial ante la Situación Generada por el Covid-19 (Mar. 11, 2020), <https://perma.cc/5J4C-2BYG>.

authorize the use of videoconferencing to minimize personal interactions by the court's staff and the public.<sup>19</sup>

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<sup>19</sup> Id. § 2.3.

# Turkey

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## I. Overview of Turkish Civil Procedure

In Turkey, the court system is divided into three branches that include the civil, criminal, and administrative courts. Civil courts include the civil courts of peace, which are limited-jurisdiction courts that can hear only certain types of disputes; the courts of assizes, which are the courts of first instance that have general civil jurisdiction; the regional courts of justice, which are the second instance courts with appellate jurisdiction; and the Court of Cassation, which is the supreme court of appeals for civil cases and the court of last instance for civil (and criminal) cases. Specialized courts of first instance are established for disputes concerning commercial law, intellectual property law, consumer law, family law, labor law, land registries, and enforcement.

Turkish judges have relatively more responsibilities than US judges in the conduct of a civil trial. The judge directs the proceedings and maintains order.<sup>1</sup> Significantly, the judge also has the “duty to elucidate the case,” for which the judge, if he or she considers it necessary, can ask questions, request explanations, or require more evidence from the parties regarding matters that the judge finds are factually or legally unclear.<sup>2</sup> Nevertheless, civil trials are in principle driven by the parties and not the judge; the judge cannot *ex officio* collect evidence or consider facts that are not brought by the parties, unless specifically authorized by law.<sup>3</sup>

## II. Use of Remote and Digital Systems in Civil Procedure

The Turkish court system has been widely employing an e-justice system called the National Judiciary Informatics System (Ulusal Yargı Ağı Bilişim Sistemi, UYAP) since 2006. The utilization of UYAP has since become ubiquitous in Turkish courts with virtually all paperwork and clerical procedures being managed digitally via the system.<sup>4</sup>

In 2011, a videoconferencing system called the Audio Visual Information Technology System (Ses ve Görüntü Bilişim Sistemi, SEGBİS) that further enabled court proceedings to be carried out remotely was integrated into UYAP, but its use is limited to criminal proceedings only,<sup>5</sup> for the taking of the testimony of witnesses and suspects that reside outside of the geographical

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<sup>1</sup> Civil Procedure Code (Law No. 6100, published Feb. 4, 2011, Official Gazette No. 27836), art. 32, <https://perma.cc/2REG-RVJG> (in Turkish).

<sup>2</sup> *Id.*, art. 31.

<sup>3</sup> *Id.*, art. 25.

<sup>4</sup> *General Information*, e-justice.gov.tr, <https://perma.cc/FYR8-7UP5>.

<sup>5</sup> Circular No. 150, Ministry of Justice Department of Information Technologies (Dec. 14, 2011), <https://perma.cc/RBJ5-G6C7> (in Turkish).

jurisdiction of the court or are otherwise unable to come to hearings, or who are held in pretrial detention.<sup>6</sup>

### A. Videoconferencing Systems in Civil Trials

Although the use of a videoconferencing system such as SEGBİS has not yet been implemented in civil trials, the minimum legal basis needed to conduct virtual hearings in civil trials appears to have been in place since at least 2011 when a new Civil Procedure Code was passed, as discussed more fully below. Current efforts also appear to be underway to introduce videoconferencing to civil trials in practice. The Ministry of Justice's *Judicial Reform Strategy* paper published in 2019 includes widening the implementation of SEGBİS in civil trials as an objective to streamline and increase the efficiency of civil procedure rules.<sup>7</sup> The Ministry's strategic plan for 2019-2023 also incorporates this objective and forecasts that the implementation will pick up speed beginning in 2021.<sup>8</sup>

### B. Legal Basis for the Use of Videoconferencing in Civil Trials

Article 149 of the 2011 Civil Procedure Code provides that the court may permit parties and their attorneys to participate in a hearing and take procedural actions via "transmission of sound and images together" while located at "another place," provided that all parties consent to the practice. The court may also allow witnesses, expert witnesses, or parties located at "another place" to give testimony by use of such systems, again conditional on the consent of the parties. Article 149 does not limit the choice of systems to SEGBİS, which is significant because SEGBİS equipment is only available in courthouses, penitentiaries, and similar premises that are part of the justice system. Thus, the law appears to be open to the possibility that parties may participate in trials using other audiovisual recording equipment located elsewhere, such as their homes or offices, or perhaps use mobile devices. One limiting factor is that procedure provided in the applicable Regulation requires the creation of minutes for each virtual hearing conducted, wherein the identities of those participating remotely and those present in the location of recording are recorded, and these minutes must be electronically or physically signed and uploaded in UYAP.<sup>9</sup> Thus, the place of recording must have amenities that would enable the preparation of this document.<sup>10</sup>

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<sup>6</sup> Regulation on the Use of the Audio Visual Information Technology System in Criminal Procedure (published Sept. 20, 2011, Official Gazette No. 28060), <https://perma.cc/8P7Z-LYUX> (in Turkish).

<sup>7</sup> Ministry of Justice of the Republic of Turkey, *Judicial Reform Strategy* 84 (May 2019), <https://perma.cc/JF4Q-M4AA>.

<sup>8</sup> Ministry of Justice of the Republic of Turkey, *Stratejik Plan 2019-2023* at 73 (2019), <https://perma.cc/DMA9-4X36> (in Turkish).

<sup>9</sup> Regulation on the Conduct of Administrative and Clerical Services of Regional Courts of Justice, Civil and Criminal Courts of First Instance, and Prosecutors' Offices, Official Gazette No. 29437, Aug. 6, 2015, <https://perma.cc/6MDM-7274> (in Turkish).

<sup>10</sup> Seda Gayretli Aydın, *Medenî Yargılama Hukukunda Ses ve Görüntü Nakli Yoluyla Duruşmaya Katılma*, 19 DEU Hukuk Fakültesi Dergisi 2116 (Special Issue 2017).

The procedural rules do not give the court authority to conduct hearings via audiovisual equipment *ex officio*, but the court has the discretion to refuse to conduct such a hearing even if all parties consent to it.<sup>11</sup> Two exceptions exist for the requirement of mutual consent: the judge may decide *ex officio* to use an audiovisual system to question, or administer an oath to, a party to the dispute who resides outside of the geographical jurisdiction of the court, and this is admissible evidence under Turkish civil procedure.<sup>12</sup>

Nevertheless, the fact that the general use of videoconferencing systems to conduct court proceedings is conditioned on the consent of the parties has been criticized as being impracticable, given that in many adversarial trials there exists a certain degree of enmity between parties, which would make them unlikely to agree to a procedure that might benefit the other party more than themselves.<sup>13</sup>

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<sup>11</sup> *Id.* at 2114; Regulation on the Conduct of Administrative and Clerical Services art. 218(1).

<sup>12</sup> Civil Procedure Code arts. 172 & 236.

<sup>13</sup> Gayretli Aydin, *supra* note 10, at 2113.

# Ukraine

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## I. Civil Court System

Ukraine has two separate court systems for trying civil and commercial cases. Civil cases, which include disputes concerning civil, family, land, labor, and real estate matters, are tried in regular courts of general jurisdiction. These courts compose a hierarchical system of judicial institutions, with the lowest level courts in each territorial district, an interdistrict circuit, and regional courts. Depending on the issue in question and the territorial jurisdiction, each of these courts may serve as a court of first instance.<sup>1</sup> Civil cases can be brought by individuals, businesses, and the state.<sup>2</sup> Each higher court serves as an appeals court for lower level courts, and the Supreme Court is the cassation instance (court of final appeal), which reviews the legality of lower courts' rulings and appeal decisions.<sup>3</sup>

Commercial disputes between legal entities are resolved by the three-tier system of commercial courts, which includes commercial courts in each region, interregional courts, and the Cassation Commercial Court at Ukraine's Supreme Court, the country's highest judicial authority for settling commercial disputes.<sup>4</sup>

Depending on the type of case as prescribed by legislation, cases are heard by an individual judge or by a panel of three judges.<sup>5</sup> Requirements for remote participation of the parties or persons through video tools are similar for both civil and commercial courts.

## II. Requirements for Virtual Trials and Videoconferencing

According to article 212 of the Civil Procedure Code of Ukraine, the court by its own initiative, in response to a request submitted by one of the parties involved in the trial or another trial participant, may decide whether to allow hearings through videoconferencing. If videoconferencing is allowed, the parties or persons involved should address the court through video connection tools from a courtroom at their location.

The petition to allow video participation in a trial remotely should be submitted to the judge no later than five days before the hearing. A copy of the petition is simultaneously sent to all other parties and trial participants. The petition should name the court where a videoconference will

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<sup>1</sup> Law of Ukraine on the Judicial System and Status of Courts, art. 17, Vidomosti Verkhovnoi Rady (VVR, Official Gazette) 2016, No. 31, Item 545, <https://perma.cc/HYR2-B23K> (in Ukrainian).

<sup>2</sup> Civil Procedure Code of Ukraine, art. 12, VVR 2004, No. 40-42, Item 492, <https://perma.cc/K7WD-AGMD> (in Ukrainian).

<sup>3</sup> Law of Ukraine on the Judicial System and Status of Courts, art. 36.

<sup>4</sup> *Id.* art. 21.2.

<sup>5</sup> *Id.* art. 15.

be held, the date and time of the hearings, information on the persons who will participate in court hearings remotely and their procedural status, and the reasons why the case cannot be heard in another location. The judge's decision whether or not to allow remote participation in a trial is final and cannot be appealed.<sup>6</sup>

The Code allows virtual participation in a trial by the parties, their representatives, witnesses, experts, and interpreters.<sup>7</sup>

A copy of the judge's ruling accepting one's participation in a trial through videoconferencing should be sent to the court where the videoconference will be held and to the person participating in hearings remotely. This notification can be sent by a courier, fax or email. The Code states that equipment and technology used for videoconferencing must ensure the required quality of sound and image. These quality standards were developed by the Ukrainian national system of court information. All participants in the hearings must have the opportunity to see and listen to the trial, ask questions and receive answers, use their procedural rights and perform procedural obligations as established by the Civil Procedure Code.<sup>8</sup>

Videoconferencing is not allowed if a presiding judge has decided to conduct closed hearings.<sup>9</sup> Usually, when all participants are physically present in the courtroom, a trial judge decides in each individual case whether to make video recording of the trial publicly accessible, however, if all the parties and other persons participate in the hearings through a videoconference, then the entire trial recording should be placed in the Ukrainian national system of court information, which makes all these recordings publicly available through the internet.<sup>10</sup>

Ukrainian scholars note that the introduction of videoconferencing in civil trials increased the efficiency of courts and simplified the access of individuals to justice because they received the right to choose in which format to participate in court hearings. They note that this novelty resulted in faster resolution of cases and a decrease in the number of hearings conducted during a trial.<sup>11</sup>

### III. Usage in Practice

A petitioner need not provide justification for the request for video participation in a trial. Petitioners are free to choose any court in the country from which they would prefer to have a remote video connection with the trial courtroom. Each petition is good for one court hearing

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<sup>6</sup> Civil Procedure Code of Ukraine, art. 212(1).

<sup>7</sup> Id. art. 212(7).

<sup>8</sup> Id. art. 212(3); Law of Ukraine on the Judicial System and Status of Courts, art. 15.10.

<sup>9</sup> Civil Procedure Code of Ukraine, art. 7(11).

<sup>10</sup> Id. art. 7(5).

<sup>11</sup> Elena Bernaz-Lukavetskaya, *Use of Videoconferencing in Civil Trials in Ukraine and in Other Countries*, Yaizakon.com.ua, <https://perma.cc/PMG5-N4QZ> (in Russian).

only, and a new petition should be submitted every time that a party or a person wants to participate in a court hearing via videoconference.<sup>12</sup>

If all the participants in a trial participate through videoconferencing, the entire video recording of the trial should be made available for access through the internet.<sup>13</sup>

In a case where one of the parties participates in a trial remotely, the exchange of documents among the courts, the participants, and the parties is conducted through the Ukrainian national system of court information. These documents should be submitted in electronic format.<sup>14</sup>

Preparations for a remote trial will be made by the trial secretary.<sup>15</sup> However, under newly passed amendments, the court at which testimony is conducted is responsible for providing working equipment and verification of the individuals who appeared for the trial virtually.<sup>16</sup>

The Code allows questions of one's legal capacity to be resolved remotely through videoconferencing. If needed, one's participation can be conducted from a hospital or psychiatric ward.<sup>17</sup>

In response to the ongoing COVID-19 pandemic, on March 30, 2020, the Civil Procedure Code was amended to allow simplified access to videoconferencing and lower the technical standards for equipment and electronic signature requirements.<sup>18</sup> The requirement of participating in a trial virtually from another courtroom was removed, and virtual testimony can be held in any space that would be considered appropriate by a judge.<sup>19</sup>

If, because of technical problems, someone who requested virtual participation in a trial cannot participate in a hearing through videoconferencing, the Code allows the hearing to be conducted without the participation of that person, unless the person's participation in the trial is required by law.<sup>20</sup>

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<sup>12</sup> Code of Civil Procedure, art. 212(1).

<sup>13</sup> Id. art. 7(5).

<sup>14</sup> Id. art. 14(4).

<sup>15</sup> Id. art. 67.

<sup>16</sup> Id. art. 212(13).

<sup>17</sup> Id. art. 299.

<sup>18</sup> Id. art. 212(4).

<sup>19</sup> Id. art. (212(6).

<sup>20</sup> Id. art. 223(3).

# United Arab Emirates

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## I. Overview of the Court System

### A. Federal Court System

The federal court system of the United Arab Emirates (UAE or Union) includes the Supreme Court of the Union (Constitutional Court) and the federal courts of the first instance.<sup>1</sup> The Supreme Court is located in Abu Dhabi, the capital.<sup>2</sup> The federal first instance courts are located in Abu Dhabi and other capitals of the Emirates.<sup>3</sup>

The federal civil courts have jurisdiction over the following matters: (1) civil, commercial, and administrative disputes between the Union and individuals regardless of whether the Union is the plaintiff or the defendant;<sup>4</sup> (2) crimes committed within the boundaries of the capital of the Union;<sup>5</sup> and (3) personal status, civil, and commercial disputes between individuals in the capital of the Union.<sup>6</sup>

The federal civil courts of appeal have jurisdiction to hear appeals of verdicts issued by the federal first instance courts.<sup>7</sup> The Federal Court of Cassation of the Union has the power to hear appeals of final decisions issued by the federal civil courts of appeal.<sup>8</sup>

### B. Local Court Systems

Each Emirate has its own local court system that has jurisdiction over all matters outside the competence of the federal courts.<sup>9</sup> To illustrate, the local court system of the Emirate of Dubai (one of nine emirates of the union) consists of the First Instance Court, the Court of Appeal, and the Court of Cassation.<sup>10</sup> Similarly, the Emirate of Ras Al-Khaimah has its own local court system,

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<sup>1</sup> U.A.E. Const. of 1971, arts. 25 & 95, as amended 2009, <https://perma.cc/NG8U-MPHV> (in Arabic).

<sup>2</sup> Id. art. 100.

<sup>3</sup> Id. art. 102.

<sup>4</sup> Id. art. 102(1).

<sup>5</sup> Id. art. 102(2).

<sup>6</sup> Id. art. 102(3).

<sup>7</sup> Federal Law No. 11 of 1992 on the Code of Civil Procedures, art. 27, *Al-Jaridah Al-Rasmiyah*, vol. 235, 8 Mar. 1992, <https://perma.cc/EL7L-587A> (in Arabic).

<sup>8</sup> Id. art. 177.

<sup>9</sup> U.A.E. Const. of 1971, art. 104.

<sup>10</sup> *An Overview of the Court System*, Courts of Dubai, Government of Dubai, <https://perma.cc/T2NU-7ZCJ>.

which consists of the First Instance Court, the Court of Appeal, and the Court of Cassation.<sup>11</sup> However, federal courts may replace local courts upon the request of the government of each emirate. Accordingly, federal courts have jurisdiction over all matters assigned to local courts in the emirates.<sup>12</sup> The governments of the emirates of Sharjah, Ajman Fujairah, and Umm Al Quwain have chosen to have the federal courts replace their local court systems altogether; there is no local court system in those emirates.<sup>13</sup>

## II. Legislation

Civil e-trials and the use of remote communication technology in civil procedures in the UAE is governed by the Decree promulgating Federal Law No. 10 of 2017, which amended Law No. 11 of 1992 on the Code of Civil Procedures.<sup>14</sup>

Law No. 10 of 2017 defines the use of remote communication technology in civil procedures as the use of visual and audible methods of communication between two or more parties remotely. Such remote communication technology may be used for the exchange of documents (including the registration of a lawsuit), issuing legal notices, conducting trials, and executing the court's verdicts.<sup>15</sup> The collection of fees, registrations, announcements, submission of documents, appearance, litigation, hearing of witnesses, questioning of parties, deliberation, issuance of verdicts, filing of appeals, and execution of court decisions must be deemed binding when those procedures take place partially or fully via remote communication technology.<sup>16</sup>

The Law authorizes the chief justice of the court, the presiding circuit judge, and the competent judge to allow remote civil proceedings at every stage of the process in order to accommodate the parties.<sup>17</sup> Furthermore, the Law grants each of the disputing parties the right to request in-person court attendance during any stage of the trial proceedings when the trial is being conducted remotely. The court will review the party's request after notifying the other parties.<sup>18</sup>

Remote trial proceedings are registered, recorded, and classified as confidential. The competent court is the only court that may authorize publication, circulation, revision, and replication of the

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<sup>11</sup> Court Structure, Courts Department, Government of Ras Al-Khaimah, <https://perma.cc/HC4B-NNE9>.

<sup>12</sup> U.A.E. Const. of 1971, art. 105.

<sup>13</sup> About U.A.E, U.A.E Government, the Federal Judiciary, <https://perma.cc/9FHL-D843>.

<sup>14</sup> Decree promulgating Federal Law No. 10 of 2017, amending Law No. 11 of 1992 on the Code of Civil Procedures, *Al-Jaridah Al-Rasmiyah*, vol. 622, 18 Sept. 2017, <https://perma.cc/4F32-M2UM> (in Arabic). See also Mohamed Al Marzouqi, *Introducing Smart e-Trials into the UAE Judicial System*, Al Tamimi & Co. (Nov. 2017), <https://perma.cc/BJ23-K23M>.

<sup>15</sup> Decree promulgating Federal Law No. 10 of 2017, art. 332.

<sup>16</sup> *Id.* art. 334.

<sup>17</sup> *Id.* art. 335.

<sup>18</sup> *Id.* art. 337.

trial transcript.<sup>19</sup> The parties' electronic signatures and electronic documents have similar official effect as written signatures and paper documents.<sup>20</sup>

Finally, the civil court must accept the filing of photocopied documents via remote communication technology. There is no need for the parties to submit original documents unless the court requires them to do so. The court has the power to impose a fine of between 1,000 AED and 10,000 AED (approx. US\$272 and \$2,722) on a party who claims without adequate justification that the photocopied documents submitted in the case are not accurate.<sup>21</sup>

### III. Implementation

The Minister of Justice has reportedly declared that the use of e-trials in civil proceedings is a part of the UAE Vision 2021 National Agenda. He stated that by 2021 there will be 100% smart trials with no courtrooms.<sup>22</sup>

The e-trials initiative is already being applied in some civil courts of the UAE. In March 2020, to curb the spread of COVID-19, the Abu Dhabi Judicial Department announced that the Commercial Court held its first session using remote videoconferencing technology. The Commercial Court examined four cases with the remote presence of all parties.<sup>23</sup>

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<sup>19</sup> Id. art. 338.

<sup>20</sup> Id. art. 342.

<sup>21</sup> Id. art. 343.

<sup>22</sup> Sherouk Zakaria, *E-trials, Video-Conferencing: UAE Courts Take Smart Leap into Future*, Khaleej Times (Oct. 14, 2017), <https://perma.cc/3EBW-2AFK>.

<sup>23</sup> Esraa Ismail & Mohd Amir, *ADJD Announces First Remote Litigation Hearings Using Video-Conferencing Technology*, Emirates News Agency (Mar. 3, 2020), <https://perma.cc/4J9R-A2EL>.