

2nd Study Commission – IAJ-UIM Meeting 2022 - Israel

1. Did your jurisdiction offer complete or partial virtual civil trials or hearings before the Pandemic? If yes, please describe what was offered and how often the offer was exercised.

No. All civil trials and hearings were conducted in-person within court buildings.

Nonetheless, there was provision for permission to be given for a witness or an expert to give evidence via video link when they lived far away from the court centre. This possibility was often exercised.

Furthermore, there was provision for using telephone or any other means of direct communication in case of impossibility or serious difficulty in the timely appearance of the witness, provided that the nature of the facts to be investigated were compatible with the conduct of this diligence.

2. Did your jurisdiction offer civil virtual trials or hearings during the Pandemic? If yes, was there a change in how, what and when it was offered? Were protocols published? Also, if yes, when were the virtual trials/hearings offered and what was the uptake?

Yes. In March 2020, at the point at which 'lockdown' restrictions were first imposed, emergency legislation was passed stating that only urgent acts in which fundamental rights were at stake (such as acts concerning children at risk) should be carried out in-person. Apart from that, all trials and hearings should be conducted through electronic means, provided that it was technically feasible.

A second phase came, coinciding with the removal of the strictest public health measures and other legal provisions were adopted that stated that although

civil trials should preferably be held in person, if it was not possible, they should be conducted by electronic means (namely teleconferencing, video-call or other equivalent). However, provision of statements by defendants, witnesses or parties must always occur in court, unless the parties agree to the contrary. Many civil trials were conducted via WebEx, becoming hybrid trials a popular choice.

As far as other civil hearings are concerned, the default option became virtual hearings.

A provision was adopted – and it is still into force – that states that litigants, lawyers or witnesses who were proven to be over 70 years of age, immunocompromised or have a chronic disease were not required to go to a court: the respective inquiry must be carried out through appropriate distance communication means, namely teleconference, video call or other equivalent.

An exceptional and transitional procedural regime is currently in force according to which the default position remains in-person civil trials and other hearings which entail taking evidence from witnesses. Procedural hearings continue to be conducted remotely with the option to seek an in-person hearing on cause shown.

Protocols were published in the form of guidance notes addressed to judges issued by the High Judicial Council.

The uptake of virtual civil trials and hearings has not been high during the first lockdown, when many civil hearings were discharged mostly because lawyers did not have the electronic means to conduct them remotely. After the summer of 2020, when it became clear that the public health measures were going to remain for a longer period, there was an increase of hybrid trials.

3. Presuming that civil virtual trials were offered, was there any improvements made in the technology/software that the government provided? How were documents and exhibits managed?

Not significantly. The use of WebEx platform became widespread in court services and screens were installed in courtrooms so that documents could be displayed. Nevertheless, in most courtrooms, judges still do not have access to laptops or tablets with internet connection in order to facilitate remote hearings. No changes have been made to the platform WebEx itself.

Prior to the pandemic, documents and productions were already required to be submitted in advance by the parties in electronic format.

4. What does the future hold in your jurisdiction with respect to the continuation of virtual trials? What are the issues and or benefits that have arisen?

Even in the pre-pandemic period it was common for witnesses living far from the court centre to be heard through electronic means and all pleadings and documents should be filed electronically. This means that the situation has not changed significantly in this regard.

The pandemic scenario accentuated the overuse of remote work by judges who, in many cases, only go to courts a few days a week. There is a concern that this reality can lead to a loss of the *gravitas* of the court, can damage communication between judges and clerks and can compromise the quality of judicial work and the delivery of civil Justice.

5. Has or is research being done in your jurisdiction to help ameliorate some of the concerns that have arisen with virtual trials?

There is no notice that future civil procedure rules will state that some aspects of remote hearings should be retained in the longer term.

Furthermore, since the system is already largely electronic and portal rather than paper based, no changes are anticipated in this regard.

6. How did the digitally excluded people in your jurisdictions have access to justice and specifically to virtual trials during the Pandemic?

Even in the earliest phase of the pandemic, digital exclusion of parties or witnesses was cause for a remote hearing not to take place, leading to the postponement of many trials and hearings.