

VIRTUAL TRIALS IN CIVIL PROCEEDINGS

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.

The Civil Procedure Code, as a law of general application regulating the civil procedure before the court, does not stipulate possibilities of virtual trials. The principle of directness, as prescribed in Article 4 of said Code, states that the court will decide on a claim, as a rule, following a spoken, direct and public trial, unless prescribed otherwise by the Law.

As an exception, the Code allows hearings of parties and/or witnesses in a civil procedure. Article 245 of the Civil Procedure Code regulates hearings of witnesses via a conference link, imposing that the court is allowed to adopt decisions, ex officio or following a proposal from one of the parties, on hearing a witness via conference link, and using a device enabling audio or visual recording. This decision cannot be objected by a special motion. The court is always allowed to invite the witness that has given their statement in writing or via conference link to re-affirm their testimony at a trial before the court (Article 245 Paragraph 5 of the Civil Procedure Code).

Article 246 of said Code prescribes that audio or visual recordings of testimonies are deemed as parts of a case file, that audio recordings of testimonies shall be made into a written record, in line with Article 121 of said Code, and that the manner of recording, transfer of recordings, keeping and destroying of records are regulated by means of The Court Rules of Procedure.

Article 277 Paragraph 1 prescribes that parties will be heard, as a rule, directly at trials. However, Paragraph 2 allows for the parties to be heard via conference link, using a device enabling audio or visual recording, in line with Article 245. The court will decide on this issue, if occurred, ex officio or following a proposal from one of the parties, by means of a decision that cannot be objected by a special motion. The parties are entitled to copies of recordings (Paragraph 2).

Manners of transfer of recordings of testimonies of parties or witnesses, as well as manners of keeping and destroying of recordings is regulated by Article 125d of The Court Rules of Procedure; however, it is important to note that Paragraph 3 of said Article prescribes that recordings made by devices enabling audio or visual recordings can only be rendered if the court has technical possibilities for making complete and quality recordings (Article 125d Article 3 of the Court Rules of Procedure). The majority of courts in Serbia currently do not have these possibilities at their disposal.

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?

All provisions regulating hearings of parties and witnesses were in force during the pandemic, meaning that it was theoretically possible for the parties and witnesses to be heard via conference link. This option, however, was not exercised in civil proceedings, as courts' technical capacities were very limited. On the other hand, during the state of emergency in Serbia, the Government adopted a special provision, prescribing that the criminal trials on criminal offences related to the proclaimed pandemic, would be held via Skype platform. In these situations, defendants were located in special, technically equipped custody units, with access to the Internet and transfer of sound and image in real time.

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?

As it was previously stated, the majority of courts in Serbia currently do not possess the appropriate devices and technical possibilities to manage hearings of parties and/or witnesses via conference link.

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?

The principle of directness, implying (among other things) that all parties in a civil proceeding are located directly in one court room, and, that the parties and witnesses are heard directly, at hearings and in the presence of other stakeholders, is one of the fundamental principles of conducting civil proceedings. Parties and witnesses can only be heard by conference link as an exception. In order for virtual trials to become more significant in Serbian jurisdiction, the procedure code (Civil Procedure Code), along with other procedural and material laws, needs to be amended. One of the potential controversies of abandoning the principle of directness in favor of virtual trials that can be noted at this point refers to certain forms of evidence becoming redundant, such as confrontation of parties and witnesses, which also leads to questioning limitations of rights of parties to the procedure.

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

It is not known to us if any public discussions on abandoning the principle of directness, which is the only possible way to drafting an appropriate legal framework for conducting virtual trials, have taken place. When it comes to the current procedural framework, there is room for improving possibilities for conducting certain stages or determination of certain evidence via conference links, mainly by upgrading the applicable provisions and providing for better technical equipment, so that conference links could be introduced to every court in Serbia.

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

Please refer to the answer to question number two.