

International Association of Judges (IAJ/UIM)

2nd Study Commission – 2022

Topic: 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.

Already since 2002, the Code of Civil Procedure in section 128a (Zivilprozessordnung (ZPO)) have been providing for the conduct of court proceedings via video conferences. Other rules of procedure contain comparable provisions, with the exception of criminal cases. Whether a case is conducted *in situ* or via video conference is decided by the judge within her or his judicial independence upon application by parties or *ex officio*. This decision cannot be appealed. There is no legal requirement to attend via video link. It is only possible to allow attendance via video link to individual or all case participants. Because court proceedings are and remain public even when conducted via video conference, judges must be present in the courtroom even during a virtual hearing, so the public has the option to take part in the oral proceedings at all times.

The option of video conferences was only very rarely utilised prior to the pandemic, which is in part due to the low acceptance of the courts of this format and insufficient equipment. More often than court proceedings via video conference, witness questioning via video link was used, generally for efficiency reasons. The pandemic has accelerated developments dramatically. For example, the Koblenz judicial district responded to an enquiry by the German Association of Judges that in 2019 47 cases were tried online, rising to 242 in 2020 and to 811 in 2021.

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?

Online proceedings were offered during the pandemic in line with pre-existing legal provisions but the technical infrastructure for the procedures was expanded massively. The conduct of a video conference is not linked to the subject matter of the case. The transmission is not recorded or streamed online. At court, a stationary video conference setup is used. Participation can occur using a common web browser and a webcam. The parties are provided with an electronic link via email, that they use to access the online conference room provided by the court.

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

Documents can be displayed on screen with a document camera. Because a nationwide introduction of electronic files has not yet taken place, digital communication between courts and court users is not yet a general standard at German courts.

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

Because the technical preconditions are now universally present and many colleagues have gained experience with online proceedings, it can be assumed that this format will gain further acceptance. Not having to travel can remove large burdens from the parties to a case. Particularly in mass proceedings that are less subject to “negotiation” in the courtroom but rather are based on the exchange of written motions, this format will become more prevalent. In this segment a small number of legal firms represent a multitude of clients across the entire German federal territory. The interest in optimising the effort of attendance will increase pressure on the courts to lean toward online conduct of proceedings. On the side of the courts advantages can arise from making it easier to arrange appointments with external counsel or experts because long journeys are eliminated. Risk of contagion in pandemic scenarios is reduced. The video format has limitations with regard to forming personal impressions of parties and witnesses, which are only partially transmitted in video format. Civil cases before a mediator, where the personal contact between the parties is a precondition for resolution, are also deemed to be less amenable to video format.

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

Academic research is taking place at universities.

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

There is no discrimination of parties by the digital format because parties can participate online on an individual basis. Every party has the right to attend in person.