

Second Study Commission
Civil Law and Procedure
65th Annual Reunion of the IAJ – Tel Aviv, Israel
Questionnaire 2022
VIRTUAL TRIALS IN CIVIL PROCEEDINGS

Lithuanian answers to the Questionnaire

- 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.**

In Lithuania, the possibility of using video conferencing and teleconferencing in civil proceedings was established in 2014 by Article 175(2) of the Code of Civil Procedure and the Description of the Procedure for the Use of Videoconferencing and Teleconferencing Technologies in Civil and Administrative Cases approved by the Minister of Justice (hereinafter - the Description). In 2013, the LITEKO Public Electronic Services subsystem of the court information system (Lithuanian court electronic services portal) has been put into operation in Lithuania and the LITEKO system has been partially modernized, creating conditions for conducting cases electronically. At the end of 2019, the number of users of the e.teismas.lt portal services reached 68,350 (54,118 in 2018 and 39,500 in 2017). The most active use of the possibility to conduct cases electronically was in civil cases - the number of electronic civil cases in 2019. The number of civil cases handled on paper was 132,041 (201,036 in 2018 and 154,736 in 2017), and the number of civil cases handled on paper was much lower at 42,046.

As the newly enacted provisions of the law required technological preparation of the courts, the first remote court hearings in the Lithuanian courts started to be organized in 2015. At the end of the year, video conferencing equipment was installed in 18 courts in the country. The Council of Judges approved the Description of the Procedure for the Use of Videoconferencing Equipment in Court Proceedings, establishing the conditions and procedure for the use of videoconferencing and the use of videoconferencing equipment in criminal, civil, administrative and administrative offenses, insofar as not inconsistent with European Union and Lithuanian legislation and international agreements. Although the number of remote court hearings in Lithuania in 2015–2019 grew quite rapidly (the number of remote court hearings increased more than tenfold in four years - from 239 remote court hearings in 2015 to 2612 remote court hearings in 2019), the total number of remote court hearings remained small compared to the number of cases heard in courts. Moreover, this possibility was used almost exclusively by administrative courts to communicate with persons in correctional facilities. In 2015–2016, the Vilnius Regional Administrative Court made the most active use of remote videoconferencing equipment and conducted more than 80 percent of all remote court hearings. In civil proceedings prior to the pandemic, videoconferencing and teleconferencing were used only in isolated cases, usually for the examination of parties or witnesses in cases with an international element.

- 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?**

No significant changes in the legal framework were needed to move civil litigation to the electronic space during the pandemic. In principle, the only change in the legal framework in this area during the pandemic was the recast of the Description, which made it clear that the participation of

litigants and the examination of a witness using videoconferencing and / or teleconferencing could be organized not only for and on the initiative of the parties of the case but also on the initiative of the court, after the court has assessed the expediency and possibilities to organize the hearing using videoconferencing and / or teleconferencing technology, as well as the possibilities of the participants in the proceedings to participate in the court hearing using videoconferencing and / or teleconferencing technology. The new version of the Description also clarifies that the participation of the participants in the court hearing may be organized using videoconferencing technology, and in the absence of the use of videoconferencing technology, teleconferencing technology, and the examination of a witness may be organized only using videoconferencing technology.

A good precondition for switching to remote hearings of civil cases became the fact that, as already mentioned, even before the pandemic, most of the civil cases heard in Lithuanian courts were electronic. During the three months of the first quarantine in 2020, more than 86 percent of all civil and administrative cases were submitted through the Lithuanian courts' public electronic services portal e.teismas.lt (at the same time in 2019, electronic cases accounted for 74% of all cases received in courts). However, although the number of electronic civil cases has increased significantly, the number of remote court hearings has not increased significantly during the first quarantine. This was due to several reasons. First, due to the predominance of the written procedure in handling of civil and civil appeals (Articles 321 (1) and 356 (1) of the CCP), the quarantine and related restrictions had a more tangible effect only on the activities of the courts of first instance. Secondly, given the unusual nature of the situation, the restrictions on the quarantine regime were expected to be short-lived and would not have a significant impact on the length of civil proceedings. Thus, although the Council of Judges on 13 March 2020 issued recommendations to the courts that court hearings be held remotely, this option was not used in civil cases, with priority being given to postponing scheduled oral hearings.

Following the government's re-announcement of quarantine in October 2020, the Council of Judges published updated guidelines for courts, which already explicitly referred to the holding of court hearings at a distance, making active use of the legal possibilities to ensure the remote participation of litigants (centralized videoconferencing in the judiciary, videoconferencing the possibility (with the consent of the parties) to extend the use of the written procedure and to postpone court hearings only if it is not possible to hold the hearing remotely, in writing or in a secure physical manner.

In 2020, the number of remote court hearings organized in Lithuanian courts in all categories of cases increased by 48% compared to 2019. In addition, for the first time since the beginning of remote court hearings in Lithuanian courts, the court of general competence - Vilnius City District Court has become the leader in remote court hearings, organizing as many as 805 hearings remotely. The Regional Administrative Court organised 412 remote hearings and Kaunas District Court organised 305. Taking into account that Article 8² of the Code of Criminal Procedure and by-laws establishing the procedure for performing criminal proceedings remotely entered into force only in on 1 June 2021, it can be reasonably assumed that during 2020 the cases dealt with remotely were purely civil and administrative.

On 27 August 2021 the Council of Judges, which summarized the existing legal framework, the case law of the courts (including international courts) adopted recommendations on the organization of remote court hearings. It was envisaged that remote court hearings can only be held if it is ensured that all the necessary procedural guarantees and the right to a fair trial of each person involved in the case is ensured. The need to ensure publicity was emphasised. It was recommended to set a time limit in advance for the parties to submit a written opinion on the possibility of a remote hearing. It was also recommended to provide litigants a right to object to the remote hearing and the right to participate at the court hearing physically (by organizing a mixed court hearing). It has also been clarified that a remote hearing takes place *mutatis mutandis* in accordance with the procedural

rules applicable to oral proceedings, in accordance with the requirements for participation in a court hearing and the general ethical requirements laid down in the procedural law.

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?

Special stationary video conferencing equipment for remote court hearings has been installed in the Supreme Court of Lithuania, the Court of Appeal of Lithuania, the Supreme Administrative Court of Lithuania, all the regional courts and some local courts. All regional courts also store mobile video conferencing equipment, which can be delivered to any local court or other place in the district territory if the participant in the proceedings is unable to attend the court hearing due to important reasons.

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?

In Lithuania, when analyzing the experience of remote court hearings during a pandemic, attention was drawn to the additional stress that can be caused by remote hearing, the potential negative impact on judges' image and the perceived fairness of their conduct, and the additional workload of judges. The problem of digital literacy has been highlighted, especially among the elderly. The technical readiness of courts to conduct remote court hearings is still insufficient. At the same time, the benefits of remote litigation have been noted: cost savings, time, reduced case duration, etc. The benefits of remote court hearings for business have been particularly emphasized. The position of lawyers with regard to remote court hearings in civil cases in Lithuania was slightly more optimistic than that of judges - in the opinion of lawyers, many civil cases, especially commercial disputes, could be heard remotely. Meanwhile judges consider that remote hearings in civil cases are more appropriate for the preparatory stage of court proceedings, for individual procedural steps, but the possibility of handling the entire case remotely was assessed with caution.

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

In some part. Researchers of Mykolas Romeris University complete complex study on evaluation of Covid-19 pandemic related state measures, including measures, directed towards distant court sessions (see <https://www.mruni.eu/en/news/researchers-of-mykolas-romeris-university-complete-complex-study-on-evaluation-of-covid-19-pandemic-related-state-measures/>).

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

No specific data on that