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Taking evidence by videoconference

Spain

1 Is it possible for evidence to be taken by videoconference either with the participation of a court in the requesting Member State or directly by a court of that Member State? If yes, what are the relevant national procedures or laws that apply?

This can be done in two ways.

Rules and regulations:

- Article 177 of the Law on Civil Procedure (*Ley de Enjuiciamiento Civil (LEC)*) in accordance with Law 29/2015 of 30 April 2015 on international legal cooperation in civil matters;
- Article 229 of the Organic Law on the Judiciary (*Ley Orgánica del Poder Judicial, (LOPJ)*) with regard to videoconferences; Article 229(3) of the Organic Law on the Judiciary allows for statement-taking, questioning, taking of evidence, confrontations of witnesses, examinations, reports, ratification of expert opinions and proceedings to be conducted by videoconference, in the presence of the judge or court, and in the presence or with the involvement of, where appropriate, the parties. It ensures in all cases that it is possible for each party to question and counter the other party's evidence and safeguards the right to defence. These are public proceedings, apart from in exceptional cases.
- Chapter II of Title IV of the Agreement of 15 September 2005 of the Plenary Session of the General Council of the Judiciary (*Pleno del Consejo General del Poder Judicial*) approving Regulation 1/2005 on ancillary aspects of judicial proceedings (Articles 74 to 80).

Cases where Spain requires the cooperation of a foreign authority

In these cases, Law 29/2015 is subsidiary in accordance with the principle of primacy of EU law, which gives priority in this field to the application of European Union rules and the international treaties and agreements to which Spain is a party. In the field of international legal cooperation in civil matters, the Spanish authorities may cooperate with foreign authorities; although reciprocity is not required, the Government may, by Royal Decree, stipulate that the authorities will not cooperate with the authorities of a foreign state if there is a repeated refusal of cooperation or a legal prohibition on the provision of cooperation by the authorities of that State.

Should the Spanish courts be able to establish direct judicial communication:

The laws in force in each State are always respected. Direct judicial communication occurs between national and foreign courts without any intermediary. Such communication does not affect or compromise the independence of the courts involved or the rights to defence of the parties.

The Spanish authorities refuse requests for international legal cooperation in civil matters if:

- a) the object or purpose of the cooperation requested is contrary to public order;
- b) the process giving rise to the request for cooperation falls under the exclusive competence of the Spanish jurisdiction;
- c) the content of the intended act does not correspond to the powers of the requested Spanish court. Where appropriate, the Spanish court may send the request to the competent authority and inform the requesting authority thereof;
- d) the request for international cooperation does not meet the content and minimum requirements required by Law 29/2015 in order to be processed;
- e) the government establishes by royal decree that the Spanish authorities will not cooperate with the authorities of a foreign state that has repeatedly denied requests for cooperation or legally prohibits provision of cooperation by the authorities of that State.

2 Are there any restrictions on the type of person who can be examined by videoconference – for example, is it only witnesses or can others such as experts or parties also be examined in this way?

There are no restrictions regarding the involvement of parties to the proceedings or of any other person giving evidence, whether they are witnesses or experts. Assessment of the suitability of the evidence and of the information supplied to experts is at the court's discretion.

3 What restrictions, if any, are there on the type of evidence that can be obtained by videoconference?

Restrictions, which are always exceptional and must be established by a reasoned judicial decision that takes into account the proportionality of the restriction, affect the protection of fundamental rights or the protection of the best interests of minors.

4 Are there any restrictions on where the person should be examined by videoconference – i.e. does it have to be in a court?

It must take place at the court where the proceedings are held and before which the evidence is taken at a public hearing or, in exceptional cases, a restricted hearing. There is no restriction concerning the location of the person taking part in the proceedings by videoconference. The registrar at the court (*Ltrado de la administración de justicia*) before which the proceedings are conducted must establish, in the court itself, the identity of the persons taking part by videoconference, through the prior submission or direct presentation of documents or through personal knowledge.

5 Is it permitted to record videoconference hearings and, if so, is the facility available?

Yes. Furthermore, they must be recorded.

In accordance with Article 147 of the Law on Civil Procedure, oral proceedings, hearings and appearances must be recorded on a medium suitable for recording and reproducing sound and image. All courts in Spain have audiovisual devices to record trials and hearings. The recordings are archived in DVD format by the court registrar. A copy can be issued to the parties, at their expense.

6 In what language should the hearing be conducted: (a) where requests are made under Articles 10 to 12; and (b) where there is direct taking of evidence under Article 17?

Where a Spanish court is involved, it would appear to be essential for the proceedings and related documents to be in Spanish, although one of the other official languages of certain regions of the country may be accepted (Galician, Catalan, Valencian and Basque) in the event that the persons being questioned by videoconference know and want to use those languages.

In the case of Article 17, there is no objection to using the language of the requesting country since giving evidence is performed on a voluntary basis.

7 If interpreters are required, who is responsible for providing them under both types of hearing and where should they be located?

In civil cases, interpreters may be used both during the proceedings and afterwards in order to document the proceedings; if they are not provided by the party that requires interpretation, they will be provided by the court services, which have been decentralised in the case of some autonomous communities. In other cases, such services are provided by the Ministry of Justice. The cost of providing these services may be attributed to the party that has been ordered to bear the costs, with due regard to cases of entitlement to free legal assistance.

In order to effectively guarantee further questioning and countering of evidence during the proceedings, the interpreter may be located either at the court or with the person who will appear at the hearing by videoconference.

In all cases, the interpreter will be required to take an oath or swear to tell the truth and act with the greatest possible objectivity in the performance of his or her duties.

8 What procedure applies to the arrangements for the hearing and to notify the person to be examined about the time and place? How much time should be allowed when arranging the date of the hearing to enable the person to receive sufficient notification?

The internal procedure for questioning, in the case provided for by Article 10 of the Regulation, is laid down in Articles 301 et seq of the LEC with regard to questioning the parties; in Articles 360 et seq with regard to questioning witnesses; and in Articles 335 et seq with regard to issuing reports and submitting them for examination and cross-examination at public hearings by experts.

9 What costs apply to the use of videoconferencing and how should they be paid?

In principle, videoconferencing is free, but if interested parties wish to obtain a copy of the recording, they must provide the appropriate medium or pay the corresponding cost.

10 What requirements, if any, are there for ensuring that the person examined directly by the requesting court has been informed that the performance shall take place on a voluntary basis?

This is done under the direction of the Spanish court.

11 What procedure exists for verifying the identity of the person to be examined?

See answer to Question 4 above.

The registrar at the court before which the proceedings are conducted must establish, in the court itself, the identity of the persons participating by videoconference, through the prior submission or direct presentation of documents or through personal knowledge.

12 What requirements for taking oaths apply and what information is needed from the requesting court when an oath is required during direct taking of evidence under Article 17?

It is necessary to distinguish between the following cases:

- a) The parties are not required to take an oath or swear during questioning, although in the notification for verification, the party concerned must be informed that in the event of an unexcused failure to appear, the court may consider the facts in which this party was personally involved as having been recognised; establishment of these facts as certain is highly detrimental to the party.
- b) Witnesses: before giving evidence, each witness is required to take an oath or swear to tell the truth, under threat of the penalties established for the crime of perjury in civil cases. The court will inform the witness of these penalties if the witness is unaware of them. Witnesses under the age of criminal responsibility are not required to take an oath or swear to tell the truth.
- c) Experts: when submitting their opinion, experts must declare under oath or swear to tell the truth, and declare that they have acted and, where appropriate, will act as objectively as possible, taking into consideration both the factors that may favour and those likely to be detrimental to either party, and that they are aware of the criminal sanctions that could be incurred if they fail to fulfil their duty as experts. This oath or promise is reiterated during the hearing when the opinion is submitted for the adversarial proceedings between the parties and the court.

13 What arrangements are there for ensuring that there is a contact person at the place of the videoconference with whom the requesting court can liaise and a person who is available on the day of the hearing to operate the videoconferencing facilities and deal with any technical problems?

Arrangements for the audiovisual media are made in advance. The Senior Judge's office (*Secretaría del Decanato*) or the court staff set the date, time and place where the videoconference will take place, ensuring that a sufficient number of staff will be present for it to take place. Tests are usually performed in advance to ensure that connections and equipment are functioning properly.

14 What, if any, additional information is required from the requesting court?

Any information considered appropriate for the taking of evidence to run as properly and as smoothly as possible.

Last update: 26/05/2017

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