

Etusivu>Oikeudenkäyntimenettelyt>Videonäyttö>Todistajien vastaanottaminen videonäytöllä

Taking evidence by videoconference

Viro

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?

Yes, it is possible for evidence to be taken by videoconferencing. Article 10(4) of Council Regulation (EC) No 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters provides for the right to request the use of videoconferencing.

Videoconferencing may also be used in the taking of evidence under Article 17 of the Regulation; the central body or the competent authority are required to encourage the use of communications technology, such as videoconferences and teleconferences. Estonian courts have the necessary facilities for videoconferencing. Under Section 15(6) of the Code of Civil Procedure (available online [here](#)), the provisions of this Code apply to assistance for taking evidence in Estonia on the basis of requests by courts of the Member States of the European Union in so far as not otherwise provided by the provisions of Council Regulation (EC) 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters. According to Section 15(5) of the Code, unless otherwise provided by law or an international agreement, an Estonian court will provide procedural assistance in the performance of a procedural act at the request of a foreign court if, pursuant to Estonian law, the requested procedural act falls within the jurisdiction of the Estonian court and is not prohibited by law. A procedural act may also be performed pursuant to the law of a foreign state if this is necessary for the conducting of proceedings in the foreign state and the interests of the participants in the proceeding are not thereby prejudiced. Court sessions held in the form of a procedural conference are regulated by Section 350 of the Code. No specific provisions or restrictions apply to performing a videoconference under Regulation 1206/2001, including a procedural conference performed directly by the requesting court of another Member State under Article 17 of the Regulation.

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?

In accordance with Section 350(1) of the Code of Civil Procedure, a participant in a court session in the form of a procedural conference has the opportunity to perform the procedural acts in real time, i.e. he or she may give a statement under oath or a statement not given under oath in a proceeding on petition; according to Section 350(2), a witness or expert may also be heard in the form of a procedural conference.

That is to say, a participant in a proceeding can give a statement under oath or, in a proceeding on petition, a statement not given under oath by way of a procedural conference, and a witness or expert can also be heard by way of a procedural conference.

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

See the reply to the previous question.

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

Under Section 350(1) of the Code of Civil Procedure, a court may organise a session in the form of a procedural conference such that a participant in the proceeding or his or her representative or adviser has the opportunity to be in another place at the time of the court session and perform the procedural acts in real time at that place.

That is to say, a court may organise a procedural conference in such a way that a person does not have to be in a court when examined.

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

Yes, it is permitted to record court sessions. Recording is to be performed according to the procedure provided in Section 52 or Section 42 of the Code of Civil Procedure. The remote hearing technology used in courts enables hearings to be recorded under Section 52 of the Code.

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?

Under Section 32(1) of the Code of Civil Procedure, the language of judicial proceedings and court procedure is Estonian. Pursuant to Section 32(2) of the Code of Civil Procedure, the minutes of court sessions and other procedural acts are prepared in Estonian. A court may also record any testimony or statement given in a court session in a foreign language in the minutes in the language in which it is given in addition to the translation thereof into Estonian if it is necessary for an accurate presentation of the testimony or statement. The Estonian Code of Civil Procedure does not include any specific provisions on the language regime for taking testimony or a statement at the request of a court of another Member State under Council Regulation (EC) No 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, including on the language regime for the taking of evidence under Article 17 of the Regulation.

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

According to Section 34(1) of the Code of Civil Procedure, if a participant in a proceeding is not proficient in Estonian and he or she does not have a representative at the proceeding, the court involves, if possible, an interpreter or translator in the proceeding at the request of such a participant in the proceeding or at the initiative of the court. An interpreter or translator need not be involved if the statements of the participant in the proceeding can be understood by the court and the other participants in the proceeding. If it is unable to immediately involve an interpreter or translator, the court will make a ruling whereby the participant in the proceeding who needs the assistance of an interpreter or translator is required to find an interpreter, translator or representative proficient in Estonian for himself or herself within a time limit set by the court (Article 34(2) of the Code). The Estonian Code of Civil Procedure includes no specific provisions on the location of an interpreter or translator used in the taking of evidence under the Regulation.

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?

According to Section 343(1) of the Code of Civil Procedure, in order to notify the time and place of a court session, the court serves summonses to the participants in the proceeding and other persons to be invited to the court session. According to Section 343(2) of the Code, the interval between the date of serving summonses and the date of the court session must be at least ten days. The interval may also be shorter if the participants in the proceeding agree thereto.

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

The costs applying to the taking of evidence under Regulation 1206/2001 are specified in Article 18 of the Regulation. Under Section 15(4) of the Code of Civil Procedure, the requesting court does not cover the costs of the procedural act. The court that performs the procedural act informs the requesting court

of the costs, and such costs are deemed to be expenses relating to the matter being heard. As costs essential to the proceeding, the costs of taking evidence are to be paid in accordance with Section 148(1) of the Code, which states that unless the court rules otherwise, the costs essential to proceedings are paid in advance, to the extent ordered by the court, by the participant in the proceeding who filed the petition to which the costs are related. If a petition is filed by both parties or if a witness or expert is summoned or an inspection is conducted at the initiative of the court, the costs are shared equally by the parties. As the courts have videoconferencing facilities, no costs should apply to their use.

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?

Article 17(2) of the Regulation applies to informing persons that being examined directly by a requesting court is voluntary.

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

Under Section 347(2)1) of the Code of Civil Procedure, at the beginning of a court session the court ascertains which of the persons summoned are present at the session and their identities. The Code does not provide a specific procedure for identity verification at a court session. The court is required to ascertain the identity of the persons summoned. For that purpose, it checks, for example, a photo identification document of the person summoned. The identity of a person participating through a videoconference can, for instance, be determined on the basis of a copy of a document submitted to a court in advance.

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?

Under Section 269(2) of the Code of Civil Procedure, a participant in a proceeding must take the following oath before giving testimony:

"I, (name), swear by my honour and conscience that I shall disclose the whole truth about the matter without concealing, adding or changing anything." A participant in a proceeding takes the oath orally and signs the text of the oath.

According to Section 36(1) of the Code, a person who is not proficient in Estonian must give the oath in a language in which he or she is proficient; according to Section 36(2), a signature is given on the Estonian text of the oath, which is translated directly to the person before he or she signs it.

The second sentence of Section 262(1) of the Code provides that before giving testimony, the court must explain the obligation of a witness to tell the truth and the contents of Sections 256-259 of the Code to the witness. Under Section 303(5) of the Code, the provisions concerning the hearing of witnesses also apply to the hearing of experts. An expert who is not a forensic expert or an officially certified expert is cautioned, before he or she submits the expert opinion, against knowingly providing an incorrect expert opinion, and the expert confirms this by signing the court minutes or the text of the caution. The signed caution is submitted to the court together with the expert opinion.

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?

According to Section 350(3) of the Code of Civil Procedure, in a court session organised in the form of a procedural conference, the right of every participant in the proceeding to file petitions and applications and to formulate positions on the petitions and applications of other participants in the proceeding must be guaranteed and other conditions of the court session met in a technically secure manner during the real time transmission to the court of image and sound from the participant in the proceeding not present in court premises and vice versa.

Every court has a Centre of Registers and Information Systems employee working as an inhouse IT specialist, who ensures that the videoconferencing facilities are functioning and resolves any technical problems.

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

The required information is shown on the application form. Any additional information required depends on the specific circumstances of each court case.

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