NATIONAL REPORT FOR BULGARIA ON ELECTRONIC EVIDENCE AND VIDEOCONFERENCING

Musseva B

Project DIGI-GUARD 2023

DIGI-GUARD

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Digital communication and safeguarding the parties' rights: challenges for European civil procedure – DIGI-GUARD

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Questionnaire for national reports

On electronic evidence and videoconferencing

This questionnaire addresses practical and theoretical aspects regarding the taking of (electronic) evidence and videoconferencing in (cross-border) civil litigation. Each partner should provide substantive answers for their respective Member State (or additional Member State, if specifically stipulated by the coordinator). Certain questions require knowledge on instruments of cross-border enforcement in the EU, particularly Regulation (EU) 2020/1783 ("Recast Taking of Evidence Regulation"). The latter questions address the interplay between national law and the EU regime on cross-border enforcement in civil and commercial matters.

For useful information, especially relating to B IA and cross-border enforcement in the EU, please refer, among other sources, to:

- Regulation (EU) 2020/1783 of the European Parliament and of the Council of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence) (recast) (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020R1783),
- Impact assessment of the Taking of Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018SC0285),
- Other *travaux preparatoires* of the Recast Taking of Evidence Regulation (see e.g. https://www.europeansources.info/record/proposal-for-a-regulation-amending-regulation-ec-no-1206-2001-on-cooperation-between-the-courts-of-the-member-states-in-the-taking-of-evidence-in-civil-or-commercial-matters/)
- Council Guide on videoconferencing in Cross-border proceedings (https://www.consilium.europa.eu/en/documents-publications/publications/guide-videoconferencing-cross-border-proceedings/)
- The Access to Civil Justice portal hosted by the University of Maribor, Faculty of Law together with the results of our previous projects, especially our previous project Dimensions of Evidence in European Civil Procedure (https://www.pf.um.si/en/acj/projects/pr01/).

The structure of each individual report should follow the list of questions enumerated below, to the utmost extent possible. If authors choose to address certain issues elsewhere within the questionnaire, then they are instructed to make cross-references and specify where they have provided an answer for the respective question (e.g. "answer to this question is already provided in 1.6."). Following the structure of the questionnaire will enable and ease comparisons between the various jurisdictions.

The list of questions is not regarded as a conclusive one. It may well be that we did not foresee certain issues that present important aspects in certain jurisdictions. Please address such issues on your own initiative where appropriate. On the other hand, questions that are of no relevance for your legal system can be left aside. If so, indicate expressly the lack of relevance and consider explaining the reason(s).

Please provide representative references to court decisions and literature. Please try to illustrate important issues by providing examples from court practice. If possible, please include empirical and statistical data. **Where the answer would be "no" or "not applicable", because something is not regulated in your national legal order, please specify how you think it should be regulated**.

Please do not repeat the full questions in your text. There is no limitation as to the length of the reports.

Languages of national reports: English.

Deadline: 31 March 2023.

In case of any questions, remarks or suggestions please contact project coordinators, prof. dr. Vesna Rijavec: vesna.rijavec@um.si and prof. dr. Tjaša Ivanc: tjasa.ivanc@um.si ; or to assist. Denis Baghrizabehi: denis.baghrizabehi@um.si.

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1. General asspects regarding electronic evidence

(Note that the following definitions apply:

- *Authentic evidence: the content of evidence was indeed created or drawn by a person or entity declared to be its creator or author; authenticity refers to the genuine source.*
- *Reliable evidence: the content of evidence is true, accurate and non-compromised; reliability refers to the truth and accuracy of content.)*

1.1. Does the law of your Member State provide any definition of electronic evidence?

We have a definition of "electronic document" provided for in the Law on the electronic document and electronic certifying services (LEDECS) – Articles 2 and 3. An electronic document is an electronic document within the meaning of Article 3, point 35 of Regulation (EU) Nr. 910/2014. This document is considered to be "in writing" if it contains an "electronic statement". The electronic statement is a verbal statement represented in digital form by a generally accepted standard for the conversion, reading and presentation of information. The electronic statement may also contain non-verbal information.

This definition excludes other contents that can be in an electronic form. They are not defined in the domestic law but are covered by Regulation (EU) Nr. 910/2014. However, these pieces of information may also be used as electronic evidence.

1.2. Does the law of your Member State define of what is considered as paper document?

No

1.3. How is electronic evidence categorised among means of evidence within the law of your Member State?

The electronic evidence is categorised among traditional means of evidence and is considered as a "document" (see LEDECS). If not a document, it is an (electronic) object (audio, video file)[1].

1.4. Does the law of your Member State explicitly regulate that evidence or data in electronic form has evidentiary value?

The Civil Procedural Code (CDP) does not say it explicitly, but it stems from its system. The electronic documents are referred to along with the written documents and thus should have the same evidentiary effect.

1.5. Does the law of your Member State explicitly differentiate between electronic and physical private documents as evidence?

We have a special law on the electronic documents, but it equates them to the written documents (Article 3(2) LEDECS and point 1.1 above). There is a special provision in CPC on how to present an electronic document in a court proceedings.

> *Art. 184. (1) The electronic document may be presented reproduced on paper as a copy certified by the party. Upon request, the party is obliged to present the document in an electronic form. (2) If the court does not have technical means and specialists to enable the reproduction of the electronic document and the due verification of the electronic signature to be carried out in the courtroom in the presence of the appearing parties, electronic copies of the document shall also*

[1] See Judgment 136/11.04.2011 in civil case Nr. 602/2010, IV Civil Chamber of the Supreme Court of Cassation.

be provided to each of the parties. In this case, the authenticity of the electronic document can be challenged no later than the next court hearing.

1.6. Does the law of your Member State recognise the special evidentiary value of public documents, and does this also apply to electronic public documents?

Yes, pursuant to Article 179(1) CPC any official document, issued by an official within the scope of him duties in the established form and under the established procedure, shall constitute evidence of the statements made before him, as well as of the actions performed by and before him. As already mentioned in point 1.4. the same shall apply to the electronic documents.

1.7. Describe the legal effects of changing the form of electronic evidence to physical.

It is possible to change the form of electronic evidence to physical without any differences in the legal effect. The electronic document may be submitted in an electronic format or as a copy (Article 184 CPC presented above). Only if the document is challenged, the electronic document will be needed.

1.8. Describe the legal effects of changing the form of physical evidence to electronic.

It is admissible to change document in the physical form to electronic keeping the same legal effect. In this regard there is a provision in CPC regulating the submission of electronic version of paper documents – Article 183(2).

> *Art. 183. (1) Where a document is submitted in a case, it may be presented in a copy certified by the party as well, but in such a case, upon request, the party shall be obliged to produce the original of the document or an officially certified copy thereof. If the party fails to do so, the copy submitted shall be excluded from the evidence in the case.*
> *(2) The certified copy as per Para. 1 may be presented also as an electronic image, certified by the party with a qualified electronic signature.*

1.9. Explain the rules and what is considered to be an original and what a copy (the concept of original).

No express legal rules.

1.10. Describe the legal effects of a copy of electronic evidence within the law of your Member State.

See point 1.5.

2. Authenticity, reliability and unlawfully obtained electronic evidence

2.1. Are there any particular procedure, guidelines, mechanism or protocol on how the parties shall obtain electronic evidence in order to preserve their authenticity and reliability before submitting them to the court?

No

2.2. Is there any particular procedure on how the court should identify the source of electronic evidence?

No. General rules apply, e.g. by an expert.

2.3. Does the law of your Member State stipulate different rules or provisions for different types of electronic evidence?
In Bulgaria we have express rules only concerning the submission of electronic documents. The other electronic evidences are treated as an object and are subject to inspection under Article 204 CPC.

2.4. Does an unfamiliarity with the technical part and a (high) possibility of manipulation of electronic evidence impact its evidentiary value?
No, if there are no oppositions against the electronic evidence.
The electronic document may be contested as regards its technical nature and may have an impact on the court's assessing of the evidentiary value.

2.5. When should the court appoint experts to process electronic evidence?
The court must appoint an expert when an electronic document is presented withing a court proceedings and one of the parties contests its validity (Article 184(2) CPC).

2.6. Who bears the costs if an expert needs to be appointed to assess the reliability, authenticity and (un)lawful manner of obtaining electronic evidence?
The costs are paid by the party that benefits from the electronic document. In case this party wins all the costs, including the expert fee, are to be paid by the losing party (Article 78(1) CPC).

2.7. What options are available to a party claiming that electronic evidence has been compromised, tampered with, manipulated or obtained illegally (e.g. by hacking into an IT system)?
See point 2.4 and 2.5.

2.8. How is the admissibility of compromised or illegally obtained electronic evidence regulated within the law of your Member State?
No special rules.

2.9. Which party carries the burden of proving the (in)authenticity or (un)reliability of electronic evidence?
General rules apply. The burden of proving the inauthenticity of the document falls on the party contesting it. Where a private document that does not bear the signature of the party contesting it is challenged, the burden of proof of authenticity shall fall on the party who has submitted it (Article 193(3) CPC).

2.10. Does the court have the discretion to challenge the authenticity and reliability of electronic evidence even if neither party objects the authenticity and reliability of electronic evidence?
The court cannot "challenge" the authenticity and reliability of the electronic evidence ex officio but in case it is obvious or there are other evidences pointing inauthenticity/unreliability the court may exclude the evidence or disregard it when deciding on the merits.

2.11. How is the manipulation or (un)lawful manner of obtaining electronic evidence assessed by the court in the case of a challenge?
See 2.4 and 2.5.

2.12. What are the consequences if the court finds that evidence was indeed compromised or obtained illegally?
The court may exclude the evidence or consider this compromised nature when assessing its weight when deciding on the merits.

2.13. Does the law of your Member State enable for the parties to submit written statements of witnesses?
No, the witnesses should always appear before the court. Written statements of witnesses are private documents submitted by one of the parties and do not have any additional specific value.

3. Duty to disclose electronic evidence

3.1. How is the duty to disclose electronic evidence regulated within the law of your Member State?
General rules of disclosure apply. Article 190 CPC regulates the obligation of the party to present a document, whereas Article 191 CPC stipulates the obligation of a third person to do so.

3.2. What is the scope of the party's duty to disclose electronic evidence within the law of your Member State?
Pursuant to Article 190 CPC either party may request the court to oblige the other party to submit a document in its possession, explaining why the document is of importance for the dispute.
If this other party fails to submit the document in view of the circumstances of the case, the court may assume as proven the facts, regarding which the party has created obstacles for collecting of the admissible evidence (Article 161 CPC).

3.3 Does the duty to disclose electronic evidence apply to third persons?
Pursuant to Article 191 CPC either party may request from the court, by a written motion, to oblige a person not participating in the dispute to present a document which is in its possession. A copy of the motion shall be sent to the third person, and a time limit for presenting the document shall be set.
The third person who, without grounds, fails to present the requested document, shall be subject to fine(s) and be liable for the damages caused.

3.4. Are there any limits to the duty to disclose electronic evidence specified within the law of your Member State?
No special rules. The general rule of CPC (Article 191 CPC) on the matter stipulates that the presenting of documents may be refuses, if:

1. *the content of the document concerns circumstances releted to the private or family life of the party;*
2. *this could lead to disgrace or criminal prosecution against the party, or against its relatives.*

Where these grounds concern parts of the document, the party may be obliged to present a certified extract of the document.

As per Article 159 CPC non relevant requests for admission of evidences as well as untimely requests for the admission of evidences will be rejected. In addition, when a party points to more witnesses to establish the same fact, the court may admit only some of them. The remaining witnesses are admitted if the summoned do not establish the disputed fact.

3.5. What are the consequences of a violation or non-compliance with the duty to disclose electronic evidence?
See point 3.2 and 3.3.

3.6. Have there been any problems before the national courts in your Member State arising from differences in national regulations of the duty to disclose electronic evidence, or are such problems to be expected in the future?
No case law in this area in the context of cross-border proceedings. No discussions in the literature on the matters.

4. Storage and preservation of electronic evidence

4.1. How is the storage and preservation of electronic evidence regulated within the law of your Member State?
The relevant rules are provided for in the Judicial System Act (JSA) and well as in the Ordinance Nr. 5 on the organization and procedure for keeping, storing and accessing electronic files and the method of storing the evidence and evidentiary means in the cases, as well as the internal circulation and storage of other information processed by the court administration, are determined by an ordinance (Ordinance Nr. 5).

4.2. Provide a short overview of requirements, standards, and protocols for properly storing and preserving electronic evidence.

The Supreme Judicial Council created and maintains the so called "Single portal for e-justice". It allowed among others performing procedural actions in electronic form and access to the electronic files and public registers maintained by the judicial authorities.
As per Article 360g JSA statements and acts submitted to judicial authorities on paper, as well as all documents and information on paper, are entered into the information system of judicial authorities by capturing an electronic image in a form and in a way that allows their reproduction. The full and exact compliance of the captured electronic image with the captured original, as well as the entered electronic information, is certified by employees designated by the administrative head of the judicial authority. Authentication is carried out by placing the employee's signature on the paper medium, and the entered electronic images - by signing them with the employee's electronic signature.

Pursuant to Article 360f JSA when a procedural action is taken, which initiates a separate proceeding, an electronic file is created in the information system of the judicial authority. The electronic file is a set of related electronic records in the information system of the judicial authority, which contains all electronic documents and information created or provided by the participants in the proceedings and the judicial authorities in connection with exercised procedural rights or certification statements, all electronic documents and evidence under Art. 360g and other data processed by the judicial authority in connection with the proceedings. The judicial authority ensures the preservation of the evidence for which the physical medium has legal significance, as well as those which, due to their nature, cannot be converted into electronic form in accordance with Art. 360 g. The bodies of judicial power ensure the maintenance and storage of electronic files in a way that does not allow the accidental or illegal destruction of data from them and does not allow illegal access, modification or distribution. For each electronic case, information about the persons and electronic addresses from which the case is accessible, the time of access, as well as the actions performed in the case are stored in the information system of the judicial authorities.

The organization and procedure for keeping, storing and accessing electronic files and the method of storing the evidence and evidentiary means in the cases, as well as the internal circulation and storage of other information processed by the court administration, are determined by the Ordinance Nr. 5.

The data storage of electronic evidence and means of evidence are regulated in Article 57-59 of Ordinance Nr. 5:

> *Art. 57. (1) Electronic evidence and means of evidence are stored in a specialized environment, which is built and maintained by the Supreme Judicial Council. (2) The specialized environment for the storage of electronic evidence and means of evidence shall be built as an independent system environment, separated from the information systems of the judicial authority. (3) Processing of the content of the stored data is not permitted in the Specialized Environment for the storage of electronic evidence and means of evidence, with the exception of the cases of their archiving. (4) The Supreme Judicial Council builds and maintains the Specialized Environment for the storage of electronic evidence and means of evidence after coordination with the Minister of Justice.*
>
> *Art. 58. (1) The storage of the data from the Specialized environment for the storage of electronic evidence and means of evidence and the access to them through the information systems of the bodies of the judicial authority are carried out through a database management system. (2) The database management system under para. 1 must meet minimum security requirements determined by a decision of the plenary session of the Supreme Judicial Council, according to the Common Criteria for Information Technology Security Evaluation, adopted by the International Organization for Standardization (ISO) in an international standard ISO/IEC 15408:2009.*
>
> *Art. 59. (1) Through the Specialized environment for the storage of electronic evidence and means of evidence, an opportunity is provided for handling and storing electronic evidence and means of evidence in a way that ensures at least: 1. protection of electronic evidence and means of evidence against the performance of actions that lead to changes in the data that may affect their authenticity, truthfulness, credibility, admissibility, relevance, evidentiary value or other factual, technical or legal characteristics, in a way preventing their lawful use in the process; 2. technological possibility to preserve the equivalence of the created electronic copies compared to the originals in the cases of creating copies of electronic evidence and electronic means of evidence; 3. technological possibility to establish any subsequent changes to electronic evidence and means of evidence; 4. technological possibility for documenting the actions that led to changes in the electronic data, in the cases in which, as a result of the necessary relevant actions, changes in the data are inevitable; 5. traceability of all actions performed in the handling of electronic evidence and means of evidence; 6. repeatability of all actions performed when handling electronic evidence and means of evidence; 7. reproducibility of all actions performed when handling electronic evidence and means of evidence. (2) The organizational, technological and legal requirements for the handling and storage of electronic evidence and means of evidence in the Specialized environment for the storage of electronic evidence and means of evidence are determined by a decision of the plenary session of the Supreme Judicial Council according to: the Instructions for identification, collection, obtaining and storing electronic evidence (Guidelines for identification, collection, acquisition, and preservation of digital evidence), adopted by the International Organization for Standardization (ISO) in international standard ISO/IEC 27037:2012; The guidelines on incident investigation principles and processes adopted by the International Organization for Standardization (ISO) in international standard ISO/IEC 27043:2015; Recommendations for trustworthiness and reliability, adopted by the International Organization for Standardization (ISO) in international standard ISO/TR 15801:2009, and the minimum requirements for information security management systems, adopted by the International Organization for Standardization (ISO) in international standard ISO/IEC 27001:2013. (3) Outside the Specialized environment for storing electronic evidence and evidence, an up-to-date recovery image is maintained, allowing*

the recovery of the information in it. (4) The information contained in the Specialized Environment for the storage of electronic evidence and means of evidence is stored simultaneously in at least two locations with different geographical locations.

The exchange of electronic documents is regulated in Article 360l and 360m JSA:

> *Art. 360 l. (1) The judicial authorities shall exchange electronic cases and electronic documents with each other automatically and electronically under conditions of interoperability and information security. (2) The bodies of the judiciary are obliged to use uniform standards and rules defined in the regulation under Art. 360e, para. 1, establishing technological and functional parameters that are supported by their information systems to achieve interoperability and information security. (3) The requirements for interoperability and information security, including the requirements for interfaces, exchange standards, formats of transmitted electronic documents and the method of exchange, are determined by the regulation under Art. 360e, para. 1.*
>
> *Art. 360 m. (1) The judicial authorities shall automatically and electronically exchange electronic documents with the persons performing public functions and the organizations providing public services, and with the administrative bodies according to the Law on Electronic Government. (2) The persons, organizations and administrative bodies under para. 1 are obliged to provide internal electronic administrative services to the judicial authorities. (3) The rules regarding interoperability and secure exchange of electronic documents under para. 1 and 2 are determined by the regulation under Art. 360e, para. 1.*

4.3. Is electronic evidence stored in one central location, or is the storage decentralised?
See point 4.2.

4.4. Who is entitled to carry out the activities related to storing and preserving electronic evidence?
See point 4.2.

4.5. Who may access electronic evidence in a particular case and how?
See point 4.2.

4.6. How is the accessibility of stored electronic evidence preserved over time?
See point 4.2.

4.7. How is the transmission of electronic evidence to other courts (e.g. to an appellate court) carried out in order to preserve the integrity of evidence?
See point 4.2.

4.8. What are the rules regarding the conversion of electronic evidence into physical evidence and vice versa?
See point 4.2.

5. Archiving of electronic evidence

5.1. How is the archiving of electronic evidence regulated within the law of your Member State?
See section 4.

5.2. Shortly explain the requirements, standards and protocols for properly archiving electronic evidence.
See section 4.

5.3. Is electronic evidence archived in one central location, or is archiving decentralised?
See section 4.

5.4. Who may carry out the archiving of electronic evidence?
See section 4.

5.5. Must electronic evidence be archived indefinitely, or must it be deleted or destroyed after a certain period? How is the accessibility of archived electronic evidence preserved over time?
See section 4.
As regards the period of storage general rules apply. They are to be found in the Rules for administration in the courts (RAC).

T*he files and other documents entered in the archive are stored: 1. in the appellate, regional, administrative and military courts - 10 years; 2. in the regional courts, registry offices and bailiff offices - 5 years; 3. divorce cases - 10 years; 4. cases for alimony and for modification of alimony - 25 years, and in the case of alimony and modification of alimony for a child - 5 years after the child in whose favor it was awarded reaches the age of 25; 5. cases for adoptions and for establishing origin - 130 years; 6. Prohibition - 25 years; 7. descriptive books and alphabet books - 100 years; 8. the books for open and closed meetings - 25 years; 9. the books for acceptance and rejection of inheritance - 100 years (Article 65 RAC).*

5.6. What are the rules regarding the conversion of electronic evidence into physical evidence and vice versa?
See section 4. The materials with a storage period of more than 5 years may be transferred and stored on magnetic media or microfilms (Article 70 RAC).

6. Training on IT development

6.1. Are the judges, court personnel or other legal practitioners required to undergo any training on technological developments relevant to taking, using and assessing electronic evidence?
There are no official requirements for judges or other professionals to undergo training aimed specifically at improving their skills related to technological aspects of taking evidence.
However, trainings (voluntary or mandatory) are provided usually by the National Institute of Justice.

7. Videoconference

7.1. In general, does the law of your Member State provide for videoconference technology to be used in civil proceedings?

Yes, pursuant to Articles 135a, 136(3), 143(4), 150(3) and (6), 151(4) and (6), 156(1), 156a, 157(2), 176(4) CPC all of them in force since 21.11.2020 with not further amendments so far.

7.2. Does the law allow for videoconference technology to be used solely for the taking of evidence or also for conducting other procedural stages of the hearing? Videoconference in your Member State may be used for:
a) Witness testimony: *Yes*
b) Expert witness testimony: *Yes*
c) Inspection of an object (and/or view of a location): *Implicitly allowed*
d) Document (document camera): *Implicitly allowed*
e) Party testimony: *Yes*
f) Other means of evidence (please elaborate)
g) Conducting the hearing in broader/general terms: *Participation of the parties in the hearings, entire court hearings.*

7.2.1. If the law allows for (remote) view of location, how would such a videoconference be practically implemented?
Not expressly allowed. But the judge can be at the location and stream whereas the other parties need to be either with him or in a court room.

7.3. Which applications (software) are used for videoconferencing in civil court proceedings?
No special application.

7.3.1. Are the applications (see Question 7.3.) commercially available?
Yes

7.3.2. Are the applications (see Question 7.3.) interoperable with other applications?
No

7.3.3. Does the application allow a text-based chat function during the videoconference; does it allow screen sharing and sharing of documents?
Standard functions, e.g. Yes, if not limited by the host.

7.4. From the perspective of case management and party autonomy, under which circumstances is the use of videoconferencing technology allowed in your Member State when taking evidence?
Pursuant to Article 156a (1) CPC the use of videoconferencing technology is allowed at the request of a party, and ex officio - when an expert must be heard.

In addition, as per Article 156a (2) CPC interrogation of a witness and explanations of a party by video-conference shall be admissible when these are not able to appear directly before the court in the case and are outside the judicial district of the regional court, whose seat coincides with the seat of the court in the case.
Under Article 156a (3) CPC hearing of an expert by video-conference shall be admissible when, due to official engagement or other objective circumstances, the expert cannot appear before the court in the case and is outside the judicial district of the regional court, whose seat coincides with the seat of the court in the case.

7.5. From the perspective of case management and party autonomy, under which circumstances is the use of videoconferencing technology allowed in your Member State when conducting hearings?

No special rules, e.g. the court is free to decide and to for videoconferencing ex officio or by request of a party.

7.6. If the court orders the use of the technology, may the parties oppose that decision? If so, how do the parties make their opposition clear (e.g. appeal)?

Pursuant to Article 157(2) CPC ss to the admission of collecting evidence by videoconferencing, the court shall rule with a motivated order, in which the necessity of holding a video-conference shall be substantiated. The parties will be able upfront to share their views but in case the court orders videoconferencing its act will not be subject of separate appeal. The matter may be raised before the upper instance in the context of claimed procedural breach.

7.7. Does the law of your Member State provide that courts can, in civil procedure cases, impose coercive measures against a witness or a party to provide testimony?

General rules apply. Pursuant to Article 167 CPC any witness who refuses to testify or to answer concrete questions shall be obliged to either state the reasons for that in writing and certify them prior to the court session at which he will be interrogated, or state them verbally before the court. Any witness who fails to perform his obligation, thus slowing down the process of proof, shall: 1. reimburse the parties for the costs incurred because of its non-performance and 2. lose the right to claim remuneration. In addition, under Article 85 CPC if the witness summoned to court fails to appear without providing valid reasons, the court shall impose a fine on him and shall order his escorting to court for the next hearing. If the witness refuses to give testimony without valid reasons, the court shall impose a fine on him. The fine is between 50-300 BGN for first breach and 120-1200 BGN for further breaches (Artcile 91 CPC).

For the party testimony Article 161 CPC apply (see point 3.2).

7.7.1. Under which circumstances may a witness refuse testimony?

The lawful refusal of testimony is regulated in Article 166 CPC as follows:

(1) No one has the right to refuse to testify, except:

1. the representative of the parties in the same case, and the persons who have been mediators in the same dispute;

2. the relatives in direct line, the brothers, sisters and relatives in law of first degree, the spouse and former spouse, and the person with whom a party is in an actual spousal cohabitation.

(2) Persons who, with their answers, would cause themselves or the persons under para. 1, item 2, direct harm, disgrace or criminal prosecution, cannot refuse to testify, but may refuse to answer a specific question stating the reason for this.

(3) Witnesses in the case may not be representatives of the parties in the same case.

7.7.2 Does the law of your Member State allow for cross-examination?

No. According to Article 171(1) and (2) CPC each witness shall be questioned separately, in the presence of the parties who have appeared. Witnesses who have not yet given testimony shall not attend the questioning of the other witnesses. Witnesses may be questioned once more during the same or another hearing, at their own request, at the request of the party or at the court's request. The use of these rules may provide an examination similar to the cross-examination.

7.8. If videoconference technology is used to conduct hearings, how (if at all) can the court and/or parties terminate the use of videoconference technology and revert to regular (on-site) proceedings?

No special provisions. The court is free to decide on the matter. The parties may share their views and made request.

7.9. Does the law (or best practice) provide, that the court should – before ordering the use of videoconference technology – check (please elaborate):

a) the internet connection availability (and/or speed) of the persons involved in the videoconference - *Yes*;

b) the technical equipment of the persons involved in the videoconference - *Yes*;

c) the technical literacy of the persons involved in the videoconference - *Yes*;

d) the physical capacity of the persons involved in the videoconference (e.g. if they are located in the Member State, their health status (hospitalisation; vocalisation, hearing and seeing)) - *Yes*;

e) other (please specify)?

Pursuant to Article 143(4) CPC When holding a hearing by videoconference, the court shall monitor:

1. for the observance of the technical requirements for performance of procedural actions in electronic form and the ways of their performance provided for in Chapter Eighteen "a" of the Judiciary System Act;

2. the used communication connection to allow the simultaneous transmission and reception of image and sound;

3. the procedural actions to be perceived by all participants in the meeting, located at different places;

4. the making of a recording of the video-conference.

7.10. Does the law (or best practice) offer special safeguards for vulnerable persons?

Yes, according to Article 102c(1) CPC the courts shall provide the opportunity for the persons to perform procedural actions in electronic form in an accessible manner or in a convenient dialogue regime, including for persons with disabilities.

7.11. Does the law of your Member State provide:

a) The location of the persons engaged in the videoconference (i.e. where the videoconference must or may be conducted) and the use of virtual filters and backgrounds?

In Bulgaria the law allows only for court2court videoconference.

If a party has to participate at a court hearing via vvideoconference, it shall be present in a room specially equipped for videoconferences in a regional court, a place of imprisonment or a detention centre (Article 135a (2) CPC).

As per Article 156a

(4) CPC the court shall determine the date and time of the hearing, in which videoconference will be used, after checking the possibility of holding it with the nearest regional court at the place of residence of the party, the witness or the expert, respectively in the place of imprisonment or detention, where the person is.

(5) The witnesses, the parties and the experts, whose statements will be heard by videoconference, shall be summoned for the date and time of the court hearing, indicating to them the court in which they should appear, respectively the place of imprisonment or detention, where video-conferencing will be used.

aa) How does the law sanction a person who does not conduct the videoconference at the designated location?

Court2court videoconference

ab) Are there any rules for the inspection of the location where the person heard is situated and the privacy it offers?
N/A
ac) Suppose a person lives in a one-room apartment with family or a room rented with friends, and cannot find another suitable location. Does the law allow the presence of family members, roommates etc. in such cases? If yes, do these persons have to identify themselves?
N/A

b) the time when the videoconference may be conducted?
During the Bulgarian working time of the court – 9:00-17:00.

c) the apparel and conduct of the persons taking part in the videoconference?
N/A

d) the identification of the persons taking part in the videoconference?
In a court2court setting a court officials check the identity (Article 156a (6) CPC).

7.12. Can (or must) a videoconference be recorded?
Yes, pursuant to Article 150(6) CPC for the performed video-conference, after notifying the participants in it, a video recording shall be made on electronic media. The video shall be attached to the file of the case.

7.12.1. Does the recording of a videoconference contain video feedback from all cameras in the court or only the camera in focus?
Depends on the software applications.

7.12.2. Which persons are shown on video during the videoconference?
The persons that have a camera pointed at them and can be seen on the screen; e.g. judge, party, advocate, expert witness, interpreter, court staff, witness, public.

7.12.3. How (which medium and format) and where is the footage of the videoconference stored and later archived?
It has to be stored in the electronic file of the case (see 4.2.).

7.12.4. Does the footage of the videoconference enter the record of the case?
See 4.2.
7.12.5. Who has access to view the footage after it has been recorded?
See 4.2.
7.12.6. Presume that the proceedings have concluded at the first instance and an appeal or other recourse has been submitted by the party. May the second instance court access and view the recording of the videoconference?
See 4.2.

7.12.7. If the court orders *ex post* transcription of the hearing, does the court reporter write the Minutes of the case by transcribing the footage of the videoconference or is there a separate audio log for transcription?
There is a separate audio log if it was technically possible to record the hearing. In this case the minutes is drawn by using the audio file (Article 150(4) CPC).
If no audio log is done, the minutes are made live during the court2court videoconferencing.

7.13. Concerning court interpreters – does the law (or best practice) provide for successive or simultaneous interpretation during the videoconference?
Yes
7.13.1. Where is the interpreter located during the videoconference?
In the court room, unless the specific circumstances so require their presence with the person, whose hearing they attend (Article 156a (7) CPC).

7.14. Immediacy, equality of arms and case management

7.14.1. How does the law of your Member State generally sanction an infringement of the principle of immediacy?
The main principle is that if the original is not presented the documents is eexcluded from the despite, e.g. is disregarded.
The specific rule of Article 183(1) CPC stipulates that where a document is presented in a case, it may be presented in a copy certified by the party as well, but in such a case, upon request, the party shall be obliged to produce the original of the document or an officially certified copy thereof. If the party fails to do so, the copy submitted shall be excluded from the evidence in the case.

7.14.2. Does the law of your Member State specify any special aspects regarding the principle of immediacy when using videoconferencing technology?
The principle presented in 7.14.1. applies.

7.14.3. Have your courts dealt with cases alleging an infringement of the principle of immediacy or the impartiality of judges in videoconference proceedings?
No, as to my knowledge.

7.14.4. How do parties (and their advocates) express objections or pose questions during a videoconference?
In a court2court videoconferencing they are present in the court room and may act in accordance with the general procedural rules, including to object and pose questions.

7.14.5. How does an inspection of an object take place during a videoconference?
During a court2court videoconferencing they should be presented in the court rooms.

7.14.6. Can documents only be presented by means of a document camera or also through the use of file/screen sharing in the videoconference application?

Both options should be possible in a court2court videoconferencing.

7.14.7. During the videoconference, does the application (software) highlight only the person actively speaking or are all participants visible at all times (and at the same size)?
It is up to the software used.

7.14.8. Suppose that the connection becomes unstable, and the quality of the audio and/or video feed drops. One of the parties considers that the quality does not allow for correct testimony. Consider also that the video feed breaks down before or in the middle of the videoconference and only the audio feed is available. What options do the court and parties have in regards to the continuation of the videoconference? Can a continuation in such circumstances constitute grounds for appeal?

The parties may request another hearing if the quality of the connection causes problems. In any case a protocol of the hearing is made based on the audio record (Article 150(3) CPC). If the videoconference is not possible anymore the court hearing will close, if further procedure has to take place via videoconferencing (the witness is not fully heard). If not (for example the witness is heard via videoconference) and the parties may continue the proceedings in court room where the case is heard. If a procedural request is not respected due to technical issues this may constitute a ground for appeal.

7.14.9. If one party enjoys a better audio-visual experience due to better technical equipment and/or internet connection than the other, and the court allows the continuation of the proceedings, can the other party allege a breach of equality of arms?
In a court2court videoconferencing the court provides the equipment and/or internet connection and this should be rather impossible.

7.14.10. During the videoconference, the court suspects that a person being heard is receiving outside help/suggestions or is under duress. Can the court order the person to turn the camera and show the apartment or share their screen? Can the court request the person to shut down other technological devices in their vicinity during the videoconference? Can the court request that other persons be removed from the location of the videoconference?

In a court2court videoconferencing the hearing is supervised. In all cases the judge can order additional checks and provide instructions.

7.15. Does the law (or best practice) provide any special rules for the participation of the party's advocate (e.g. together with the party at the same location, or in separate locations)?
In a court2court videoconferencing the general rules apply.

7.16. Are there any special rules pertaining to the distribution of costs in case of videoconferencing?
No special rules.

7.17. How does the law guarantee the publicity of videoconference hearings?
In a court2court videoconferencing general rules apply.
The publicity is excluded as stipulated in Article 136(1) CPC as follows:

> *The court may, of its own motion or at the request of one of the parties, either order that hearing the case or only certain actions be done in closed session, where:*
> *1. the public interest demands it;*
> *2. the protection of the privacy of the parties, of the family or of the persons under custody requires it;*
> *3. the case concerns trade, industrial, invention or fiscal secret, the public announcement of which would harm defendable interests;*
> *4. other reasonable grounds appear.*

Pursuant to Article 136(3) in the described situations the case shall not be heard by videoconference, except with the consent of the party.

7.18. The Recast Regulation (EU) 2020/1783 on the taking of evidence in civil or commercial matters provides in Article 20 the primacy of direct taking of evidence through videoconference if the court considers the use of such technology to be "appropriate" in the specific circumstances of the case. What do you consider would fall in the category of "inappropriate"? In addition, should form N in Annex I of said Regulation be supplemented in your opinion (explain how and why)?

No practice on this provision so far in Bulgaria, but I assume that the Bulgarian court will recourse to the Bulgarian CPC. Most probably it will consider the provision on the exclusion of publicity (Article 136 CPC, see point 7.17) and will check if the witness is not able to appear directly before the court (as it is a condition set out in Article 156a (2) CPC).

No suggestions as regards amendments in from N.

Instructions for contributors

1. References

As a rule, specific references should be avoided in the main text and, preferably, should be placed in the footnotes. Footnote numbers are placed after the final punctuation mark when referring to the sentence and directly after a word when referring to that word only. We humbly invite our authors to examine carefully our sample references which are preceded by [-]. These sample references put the theory of our authors' guidelines into practice and we believe that they may serve to further clarify the preferred style of reference.

1.1. Reference to judicial decisions

When citing national judicial authorities, the national style of reference should be respected. References to decisions of European courts should present the following form:

[Court] [Date], [Case number], [Party 1] [v] [Party 2], [ECLI] (NB: the "v" is not italicised)

- ECJ 9 April 1989, Case C-34/89, Smith v EC Commission, ECLI:EU:C:1990:353.
- ECtHR 4 May 2000, Case No. 51 891/9, Naletilic v Croatia.

1.2. Reference to legislation and treaties

When first referring to legislation or treaties, please include the article to which reference is made as well as the (unabbreviated) official name of the document containing that article. The name of a piece of legislation in a language other than English, French or German should be followed by an italicised English translation between brackets. In combination with an article number, the abbreviations TEU, TFEU, ECHR and UN Charter may always be used instead of the full title of the document to which the abbreviation refers. If the title of a piece of legislation constitutes a noun phrase, it may, after proper introduction, be abbreviated by omission of its complement. Thus:

- Art. 2 Protocol on Environmental Protection to the Antarctic Treaty (henceforth: the Protocol).
- Art. 267 TFEU.

- Art. 5 Uitleveringswet [Extradition Act].

1.3. Reference to literature

1.3.1 First reference

Any first reference to a book should present the following form: [Initial(s) and surname(s) of the author(s)], [Title] [(Publisher Year)] [Page(s) referred to]

- J.E.S. Fawcett, The Law of Nations (Penguin Press 1968) p. 11.

If a book is written by two co-authors, the surname and initials of both authors are given. If a book has been written by three or more co-authors, 'et al.' will follow the name of the first author and the other authors will be omitted. Book titles in a language other than English, French or German are to be followed by an italicised English translation between brackets. Thus:

- L. Erades and W.L. Gould, The Relation Between International Law and Municipal Law in the Netherlands and the United States (Sijthoff 1961) p. 10 – 13.
- D. Chalmers et al., European Union Law: cases and materials (Cambridge University Press 2010) p. 171.
- F.B. Verwayen, Recht en rechtvaardigheid in Japan [Law and Justice in Japan] (Amsterdam University Press 2004) p. 11.

1.3.2 Subsequent references

Any subsequent reference to a book should present the following form (NB: if more than one work by the same author is cited in the same footnote, the name of the author should be followed by the year in which each book was published):

[Surname of the author], [supra] [n.] [Footnote in which first reference is made], [Page(s) referred to] Fawcett, supra n. 16, p. 88.

- Fawcett 1968, supra n. 16, p. 127; Fawcett 1981, supra n. 24, p. 17 – 19.

1.4. Reference to contributions in edited collections

For references to contributions in edited collections please abide by the following form (NB: analogous to the style of reference for books, if a collection is edited by three or more co- editors only the name and initials of the first editor are given, followed by 'et al.'):

[Author's initial(s) and surname(s)], ['Title of contribution'], [in] [Editor's initial(s) and surname(s)] [(ed.) or (eds.)], [Title of the collection] [(Publisher Year)] [Starting page of the article] [at] [Page(s) referred to]

- M. Pollack, 'The Growth and Retreat of Federal Competence in the EU', in R. Howse and K. Nicolaidis (eds.), The Federal Vision (Oxford University Press 2001) p. 40 at p. 46.

Subsequent references follow the rules of 1.3.2 supra.

1.5. Reference to an article in a periodical

References to an article in a periodical should present the following form (NB: titles of well- known journals must be abbreviated according to each journal's preferred style of citation):

[Author's initial(s) and surname(s)], ['Title of article'], [Volume] [Title of periodical] [(Year)] [Starting page of the article] [at] [Page(s) referred to]

- R. Joseph, 'Re-Creating Legal Space for the First Law of Aotearoa-New Zealand', 17 Waikato Law Review (2009) p. 74 at p. 80 – 82.
- S. Hagemann and B. Høyland, 'Bicameral Politics in the European Union', 48 JCMS (2010) p. 811 at p. 822.

Subsequent references follow the rules of 1.3.2 supra.

1.6. Reference to an article in a newspaper

When referring to an article in a newspaper, please abide by the following form (NB: if the title of an article is not written in English, French or German, an italicised English translation should be provided between brackets):

- [Author's initial(s) and surname(s)], ['Title of article'], [Title of newspaper], [Date], [Page(s)]: T. Padoa-Schioppa, 'Il carattere dell' Europa' [The Character of Europe], Corriere della Serra, 22 June 2004, p. 1.

1.7. Reference to the internet

Reference to documents published on the internet should present the following form: [Author's initial(s) and surname(s)], ['Title of document'], [<www.example.com/[...]>], [Date of visit]

- M. Benlolo Carabot, 'Les Roms sont aussi des citoyens européens', <www.lemonde.fr/idees/article/2010/09/09/les-roms-sont-aussi-des-citoyens-europeens_1409065_3232.html>, visited 24 October 2010. (NB: 'http://' is always omitted when citing websites)

2. Spelling, style and quotation

In this section of the authors' guidelines sheet, we would like to set out some general principles of spelling, style and quotation. We would like to emphasise that all principles in this section are governed by another principle – the principle of consistency. Authors might, for instance, disagree as to whether a particular Latin abbreviation is to be considered as 'common' and, as a consequence, as to whether or not that abbreviation should be italicised. However, we do humbly ask our authors to apply the principle of consistency, so that the same expression is either always italicised or never italicised throughout the article.

2.1 General principles of spelling

- Aim for consistency in spelling and use of English throughout the article.
- Only the use of British English is allowed.
- If words such as member states, directives, regulations, etc., are used to refer to a concept in general, such words are to be spelled in lower case. If, however, the word is intended to designate a specific entity which is the manifestation of a general concept, the first letter of the word should be capitalised (NB: this rule does not apply to quotations). Thus:
- [...] the Court's case-law concerning direct effect of directives [...]
- The Court ruled on the applicability of Directive 2004/38. The Directive was to be implemented in the national law of the member states by 29 April 2006.
- There is no requirement that the spouse, in the words of the Court, 'has previously been lawfully resident in another Member State before arriving in the host Member State'.

- Avoid the use of contractions.
- Non-English words should be italicised, except for common Latin abbreviations.

2.2. General principles of style

- Subdivisions with headings are required, but these should not be numbered.
- Use abbreviations in footnotes, but avoid abbreviations in the main text as much as possible.
- If abbreviations in the main text improve its legibility, they may, nevertheless, be used. Acronyms are to be avoided as much as possible. Instead, noun phrases are to be reduced to the noun only (e.g., 'the Court' for 'the European Court of Human Rights'). If this should prove to be problematic, for instance because several courts are mentioned in the text (e.g., the Court of Justice and the European Court of Human Rights), we ask our authors to use adjectives to complement the noun in order to render clear the distinction between the designated objects (e.g., the Luxembourg Court/the European Court and the Strasbourg Court/the Human Rights Court). As much will depend on context, we offer considerable liberty to our authors in their use of abbreviations, insofar as these are not confusing and ameliorate the legibility of the article.
- In English titles, use Title Case; in non-English titles, use the national style.

2.3. General principles of quotation

- Quotations are to be placed between single quotation marks, both in the main text and in the footnotes (thus: 'aaaaa').
- When a quotation forms part of another quotation, it is to be placed between double quotation marks (thus: 'aaaaa "bbbbb" aaaaa').
- Should a contributor wish to insert his own words into a quotation, such words are to be placed between square brackets.
- When a quotation includes italics supplied by the contributor, state: [emphasis added].