NATIONAL REPORT FOR CROATIA ON ELECTRONIC EVIDENCE AND VIDEOCONFERENCING

Kunda I, Mihelčić G, Kunštek E

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by

Ivana Kunda, Gabrijela Mihelčić and Eduard Kunštek

University of Rijeka, Faculty of Law

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/).

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1. General aspects regarding electronic evidence

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?

The central act regulating the civil procedure in Croatian law, the Civil Procedure Act (*Zakon o parničnom postupku*, hereinafter: ZPP),[1] does not contain a definition of electronic evidence, or evidence as such. Evidence is dealt with in title 18 of the ZPP, under Arts. 219-271. Among these provisions are also the ones regulating documents (Arts. 230-234) as the most commonly used means of evidence which belongs to the co-called category of the "real means of evidence" (*stvarna dokazna sredstva*). It is stated in scholarly writings that these provisions should be applied by analogy to electronic evidence.[2]

However, a definition of the electronic document is provided in the Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (hereinafter: eIDAS):[3] according to Art. 3(35), electronic document means any content stored in electronic form, in particular text or sound, visual or audiovisual recording. Furthermore, in Art. 1a(4) of the Court Rules of Procedure (*Sudski poslovnik*, hereinafter: SP)[4] it is stated that electronic submission (*elektronički podensak*) is any written document by the parties, their legal representatives, and other participants in the proceedings addressed to the court, in the .pdf form and signed by the qualified electronic signature. Furthermore, under Art. 1a(11) of the SP, the electronic attachment (*elektronički prilog*) is any written document (document, table, chart, drawing, or alike) which is enclosed to the electronic submission for the purpose of supplementing, clarifying or proving the content of the submission or the letter. In Art. 1a(14) of the SP the electronic court file (*elektronički spis*) is defined as the collection of all electronic documents and attachments which relate to the same legal matter or the same legal or natural person under the same docket number in the information system implemented in the court.

There is also the Electronic Document Act (*Zakon o elektroničkoj ispravi*, hereinafter: ZEI),[5] which concerned use of electronic documents and ceases to be in force as of 1 May 2023 due to its inconsistency with supranational laws,[6] but also the fact that other laws and regulations cover some of its aspects,[7] such as Office Operations Regulations (*Uredba o uredskom poslovanju Vlade Republike*

[1] NN 53/91, 91/92, 112/99, 88/01, 117/03, 88/05, 2/07, 84/08, 96/08, 123/08, 57/11, 148/11 – consolidated version, 25/13, 89/14, 70/19, 80/22 and 114/22.

[2] Čizmić, Jozo, Boban, Marija, Elektronički dokazi u sudskom postupku i računalna forenzička analiza, Zbornik Pravnog fakulteta Sveučilišta u Rijeci, v. 38, no. 1, 2017, pp. 36. *et seq*.

[3] OJ L 257, 28.8.2014, pp. 73–114.

[4] NN 37/14, 49/14, 8/15, 35/15, 123/15, 45/16, 29/17, 33/17, 34/17, 57/17, 101/18, 119/18, 81/19, 128/19, 39/20, 47/20, 138/20, 147/20, 70/21, 99/21, 145/21 and 23/22.

[5] NN 150 /05 and 128/22.

[6] Namely, Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, OJ L 257, 28.8.2014, pp. 73–114 (hereinafter: elDAS Regulation). On the inconsistency see, e.g., Nikšić, Saša, Pisani oblik ugovora i drugih pravnih poslova, Zbornik Pravnog fakulteta u Zagrebu, vol. 72, nos. 1-2, 2022, p. 315.

[7] See Vlada Republike Hrvatske, Konačni prijedlog zakona o prestanku važenja Zakona o elektroničkoj ispravi od 22. kolovoza 2022., drugo čitanje, P.Z. br. 272, https://www.sabor.hr/hr/konacni-prijedlog-zakona-o-prestanku-vazenja-zakona-o-elektronickoj-ispravi-drugo-citanje-pz-br-272

Hrvatske, hereinafter the UUP).[8] Similar destiny was also intended for the Electronic Signature Act (*Zakonu o elektroničkom potpisu*),[9] which was in force until 7 August 2017, when it was repealed by the eIDAS Implementation Act (*Zakon o provedbi Uredbe (EU) br. 910/2014 Europskog parlamenta i Vijeća od 23. srpnja 2014. o elektroničkoj identifikaciji i uslugama povjerenja za elektroničke transakcije na unutarnjem tržištu i stavljanju izvan snage Direktive 1999/93/EZ*).[10] In its Art. 15 an obligation of the service provides is defined to keep all documentation as a means of evidence in the court proceedings, within no less than ten years from the date of the invalidity of the certificate, under the threat of the penalty for a misdemeanour offence (Art. 19(9), see *infra* Q. 3). Also important is the law related to the "documentation cycle of electronic documents" tackled in the Archive Material and Archives Act (*Zakon o arhivskom gradivu i arhivima*),[11] which provides for the permanent storing of content recorded in digital form and transformation of other material into digital form.[12]

According to Art. 4(4) of the UUP, a document is any electronic, written, copied, drawn, painted, imagery, printed, recorded, magnetic, optical or any other recording of data which by its content or structure make a specific connected unity.

It is also important to mention the Electronic Commerce Act (*Zakon o elektroničkoj trgovini*, hereinafter: ZET),[13] which contains rules on, *inter alia*, contracts in electronic form (excluding areas such as data protection, notarial services and legal representation of parties before courts). In Art. 2(6) of the ZET a definition of a contract in electronic form is provided: contracts concluded by legal or natural persons which are fully or in part concluded, transmitted, received, terminated, cancelled, accede to or displayed by electronic means using electronic optical or similar means, including but not limited to internet transmission. Electronic contracts and other electronic acts are regulated in title III (Arts. 9-15) of the ZET. The main rules in Art. 9 of the ZET is that in the context of the conclusion of a contract an electronic act cannot be devoid its validity and legal force simply because it is made in electronic form. There are certain exemptions to this rule where the paper contract remains the norm.[14]

The Notaries Public Act (*Zakon o javnom bilježništvu*, hereinafter: ZJB),[15] most recently amended in 2022,[16] contains in Arts. 43-52a general provisions on notarial documents, allowing for the notaries to issue electronic notarial documents when the law so allows (Art. 3(3) of the ZJB). New provision in Art. 52a of the ZJB introduced possibility to produce electronic notarial document. Under Art. 52a(1), notarial documents may be produced in electronic form when such form is specially laid down by law for certain tapes of legal acts or transactions. Unless otherwise provided, such document is *mutatis mutandis* governed by the same rules as the paper notarial documents (Art. 52a(5) of the ZJB).

Although documents, including the electronic ones, are nowadays the most commonly used means of evidence in the Croatian court proceedings, sometimes photographs, audio and video recordings are in use as well. The latter categories are not at all mentioned in the ZPP (except when it refers to the audio recordings of the court hearings), but may by analogy be considered evidence. Related to these types of evidence are issues of their inadmissibility, in particular due to their potential illegality. Various legal

[8] NN 75/21.
[9] NN 10/02, 80/08, 30/14 and 62/17.
[10] NN 62/17.
[11] NN 61/18 and 98/19.
[12] Also in force is the Management of the Documentary Material outside Archives Regulations (*Pravilnik o upravljanju dokumentarnim gradivom izvan arhiva*, hereinafter: PUDGIA), NN 105/20, which concerns treatment of material in electronic form, mechanisms (before) handing over the material in electronic form as well as use of electronic signature in these processes.
[13] NN 173/03, 67/08, 130/11, 36/09, 30/14 and 32/19.
[14] See Kunda, Ivana, Elektronička trgovina, u: Mišćenić, Emilia, Europsko privatno pravo: posebni dio, Školska knjiga, Zagreb, 2021, pp. 253-255.
[15] NN 78/93, 29/94, 162/98, 16/07, 75/09, 120/16 and 57/22.
[16] NN 57/22.

instruments regulated use of video surveillance, for public or private purposes, also with respect to the preconditions for lawful use.[17]

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

There is no direct definition of the paper document in Croatian law, but the meaning thereof may be inferred from the provisions dealing with documents and their signing.

It is provided in Art. 292 of the Obligations Act (*Zakon o obneznim odnosima*, hereinafter: ZOO) that when it is necessary to produce a document for the purpose of concluding a contract, that the contract shall be considered conclude when the parties sign it. It is further provided, that the contracting party who is not literate or cannot write, shall make the sign in his or her own hand on the document, which is to be authenticated by the notary. Moreover, it is provided that for the contract to be concluded it is sufficient that both parties sign the same document, or that each party signs the copy of the document intended for the other party. Finally, the written form requirement is satisfied it the parties exchange letters or communicate using other means which enables establishing with certainty the content and parties' identities. These provisions indicate that the traditional understanding of the written document is the document on the paper and handwritten signed.

This understanding is also confirmed in the Authentication of Signature, Handwriting and Transcription Act (*Zakon o ovjeravanju potpisa, rukopisa i prijepisa*),[18] which was in force until 19 July 2022. This Act whish dated back to the 1970s provided for, *inter alia*, the authentication before the court official a handwritten signature affixed on the document, which implies that the document should have been in written or printed on paper.

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

It seems that under Croatian law, the electronic evidence is to be categorised under the existing traditional categories of evidence since no such new category of evidence has been introduced in ZPP. This may be explained by the fact that the electronic evidence is essentially the same as or similar to the traditional one, except that they are in a different form. It is used to prove the same facts and clarify the same circumstances as the non-electronic. Such approach would also be in line with the principle of technological neutrality. Thus, electronic documents are categorised as part of the wider category of documents and taking of evidence consists of reading the electronic document just as the paper document is read. More difficult is the question about the categorisation of some other types of electronic evidence, such as audio and video recordings. It has been submitted that non-written electronic evidence should be categorised as evidence which is subject to special means of taking evidence – observation (*uviđaj*).[19] In addition, some of the issues related to electronic evidence may require expert analysis and opinion (*vještačenje*). The former is done by the direct observation of the court (Art. 227 of the ZPP), and the latter is resorted to when the issues require expert knowledge which the court does not possess (Art. 250 of the ZPP).

Although in Croatian law on civil procedure electronic evidence is not specifically mentioned, relevant provisions to electronic evidence in the ZPP are those which refer to information system for e-Komunikacija and related matters, as recently amended.[20] Thus, in Art. 106(5) it is stated that certain

[17] Such court practice seems to be developed in the context of criminal law in particular. The Supreme Court has admitted as evidence otherwise illegal recordings in three cases, which were justified by vital interests of democracy, combating organised crime which threatened national security and hate speech by teacher in a class.
[18] NN 06/74, 47/90, 72/94 and 80/22.
[19] Lisičar, Hrvoje, Mogućnost i uporabe elektroničke isprave i elektroničkih dokumenata u parničnom postupku, Zbornik Pravnog fakulteta u Zagrebu, vol. 60, no. 3, 2010, p. 1415.
[20] *Zakon o izmjenama i dopunama Zakona o parničnom postupku*, NN 80/22.

categories of persons are obliged to submit documents to the courts in electronic form. Also amended were the rules on service of documents in Art. 133d(5), (6) and (7) of the ZPP and these categories of persons are required to address the court exclusively via e-Komunikacija. The practical way this is achieved is by submitting the file (which may only be a .pdf file of not more than 20 MB) via the information system e-Komunikacija.

Particularly important in this context are also the amended rules on the minutes from the hearing in Art. 123 of the ZPP, according to which the minutes may now be stored electronically in the information system, and amended rules on the audio recording of the court hearing in Art. 126a of the ZPP, according to which the audio recording of the court hearing will be available to the parties in the electronic form at information system. In relation to this, pursuant to Art. 126c of the ZPP, the audio recording of the court hearing and the minutes of the court hearing are one unity and in case they differ in content, relevant is the content in the audio recording. Furthermore, when relying on the audio recording is the parties' duty to specify to which part of the recording they refer. The provisions of Arts. 126a-126c of the ZPP shall apply *mutatis mutandis* also the use of audio-visual devices and technological platforms for communication at distance (Art. 126c(3) of the ZPP).

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

Electronic documents have been accepted in court practice along with the changes in legislation concerning the electronic contracts and alike. Therefore, electronic document is not denied legal effect or considered inadmissible as evidence in the proceedings before Croatian courts solely on the grounds that it is in electronic form. Its admissibility and reliability as evidence will be assessed in accordance with the rules otherwise applicable to documents or other evidence taking account of the fact that such evidence is often not in the primary format or on the primary source.

Regarding public documents as evidence the following may be highlighted. According to Art. 230(1) and (2) of the ZPP, public documents (and other documents which, pursuant to special laws, are treated on equal footing as the public documents) serve to prove truthfulness of what is confirmed or determine in them. Public document is a document which was issued in the prescribed form by the state authority within its competent and or by a legal or natural person in his or her public capacity which is entrusted to him or her under act or regulations based on the act. This should be applied accordingly to electronic evidence.

Art. 64 of the SP concerns electronic court documents. It states that the original is the court decision, settlement, order, confirmation, document and alike, produced in the prescribed form and handwritten signed by the president of the chamber, investigation judge, single judge or other authorised official, unless otherwise provided in law. In principle, the originals are kept in the court file, and the parties are served with the authenticated copies. Only exceptionally is original served on the parties, or the printed version of the original of the electronic court document. Such copy of the original or the printed version of the court document is produced *ex officio* for the service on the parties in the paper form or the electronic (only .pdf) form (Art. 65 of the SP). Electronic copy court document contains the barcode or QR code and is signed by the president of the chamber, judge etc. Printed electronic court document, without additional authentication, has the force of the copy of the court document (Art. 65(4) of the SP). Confirmation of unappealability and enforceability of court decisions is issued in electronic form pursuant to Art. 67 of the SP. They are verified by the judge, issued in electronic form and authenticated by qualifies electronic seal.

In the ZJB, as recently amended, the notaries may issue electronic notarial documents when the law so allows (Art. 3(3) of the ZJB). Unless otherwise provided, the electronic notarial document is *mutatis mutandis* governed by the same rules as the paper notarial documents (Art. 52a(5) of the ZJB). Under assumption that that it is signed by a qualified electronic signature of the parties and the notary public, an electronic notarial document is by its legal effects and legal force equal to the paper notarial document

(Art. 52a(6) of the ZJB). This is achieved also by the new role of the national Notaries Public Chamber to keeps the records of all electronic notarial document (Art. 50a of the ZJB). Printed version of electronic notarial document is display of the external form of the document which contains the barcode or QR code, control number, and internet page where credibility of the document can be verified and original downloaded. Printed electronic notarial document, without additional authentication, has the force of the copy of the notarial document – which on its own has the legal force of the public document, provided it was produced and issued in compliance with the legal requirements (see Art. 3(2) of the ZJB).

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

Private documents may be defined by means of a negative definition – those documents which are not public. Because of the lack of involvement of a public authority in their creation there is no presumption of their truthfulness, hence the evidentiary force of private documents in general is similar to evidence other than public documents.[21]

In general, in Croatian law the electronic and physical evidence is not differentiated as per their legal attributes, quite the contrary, the rules attempt to align them so that electronic document may have the same legal effect, including the evidentiary effect, as the physical one. These two types of documents are differentiated with regard to their technical properties, which is understandable given that technical standards, measures and protocols have to be defined in detail to enable the judicial system to rely on, take account of and operate the electronic documents, including private ones which have not been subject to supervision of any state or public authority. This is important as electronic private documents make an important segment of business operations and civil law transactions on the whole.

Thea above cited Art. 52a(6) in conjunction with Art. 54(6) of the ZJB results in that the notarial document produced in electronic form is by its effects and legal force equal to that in the paper form, hence, the same effect as the notarial deed may be acquired by the private deed which is subsequently solemnised. Likewise, in Art. 9 of the ZET it is stated that, in concluding a contract, an electronic act cannot be devoid its validity and legal force simply because it is made in electronic form.

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, public documents have special evidentiary value as their content is presumed to be true. The same applies to electronic pubic documents.

According to Art. 230 of the ZPP, public document is a document which was issued in the prescribed form by the state authority within its competent and or by a legal or natural person in his or her public capacity which is entrusted to him or her under act or regulations based on the act. Public documents (and other documents which, pursuant to special laws, are treated on equal footing as the public documents) serve to prove truthfulness of what is confirmed or determine in them. Such presumption of truthfulness of the content of the public document is rebuttable. It is permitted to prove that the facts in the public document are not true or that it was irregularly produced. Additionally, the authenticity of the public document may be in question and in a case of suspicion, the court may ask for verification to the authority or body from which it is supposed to originate. Under Article 231 of the ZPP foreign public

[21] County Court in Varaždin, Gž-1248/07-2, 14 January 2008, Domaća i strana sudska praksa, stručni i informativni časopis, vol. V, no. 28, p. 92: Writeen confirmations about payment made on the basis of competsation for damage are private documents which the court assesses and judges together with all other evidence taken.

documents have the same evidentiary value as the domestic ones, provided they are duly authenticated and that the reciprocity exists with the state of the origin.

This should be applied accordingly to electronic evidence. Until recently, Art. 2 of the ZEI provided that electronic document shall have the same legal effect as the paper document, provided the rules on its use therein were complied with.

Art. 64 of the SP concerns court documents. It states that the original is the court decision, settlement, order, confirmation, document and alike, produced in the prescribed form and handwritten signed by the president of the chamber, investigation judge, single judge or other authorised official, unless otherwise provided in law. In principle, the originals are kept in the court file, and the parties are served with the authenticated copies. Only exceptionally is original served on the parties, or the printed version of the original of the electronic court document. Such copy of the original or the printed version of the court document is produced *ex officio* for the service on the parties in the paper form or the electronic (only .pdf) form (Art. 65 of the SP). Electronic copy court document contains the barcode or QR code and is signed by the president of the chamber, judge etc. Printed electronic court document, without additional authentication, has the force of the copy of the court document (Art. 65(4) of the SP). Confirmation of unappealability and enforceability of court decisions is issued in electronic form pursuant to Art. 67 of the SP. They are verified by the judge, issued in electronic form and authenticated by qualifies electronic seal.

Thea above cited Art. 52a(6) of the ZJB states that the notarial document produced in electronic form is by its effects and legal force equal to that in the paper form.

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

It is not uncommon that parties submit in evidence before the Croatian courts the printed e-mails, printed digital photographs, webpage contents and alike. This type of evidence is admissible as per its form and is sometimes taken as such, while in other times it is used as initial information to take further electronic evidence, e.g., for the purpose of obtaining additional information from the website or e-mail operator about relevant facts or for the purpose of examine the content or the technical aspects related to reliability by the appointed court expert. These changes of the nature of evidence from electronic to physical is not directly regulated in law, but the awareness of the technical capabilities today may downgrade the evidentiary value of such evidence (although he same tampering with evidence can be done on the original in the electronic form). In deciding whether certain piece of evidence is reliable, the court will also be guided by the other evidence and parties' statements. Ultimately, the court decision will be based on the assessment of the evidence, each evidence alone and the totality of the evidence on the file.

It is interesting to note that the ZJB contains provision about printed version of electronic notarial document. This printed version is deemed a display of the external form of the document which contains the barcode or QR code, control number, and internet page where credibility of the document can be verified and original downloaded. Printed electronic notarial document, without additional authentication, has the force of the copy of the notarial document – which on its own has the legal force of the public document, provided it was produced and issued in compliance with the legal requirements (see Art. 3(2) of the ZJB). Likewise, in Art. 64 of the SP it is stated that as a rule the original court decisions and other court documents are kept in the court file, and the parties are served with the authenticated copies. Only exceptionally is original served on the parties, or the printed version of the original electronic court document.

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

Where a party is submitting the documents as attachments to the court file for the purpose of evidence, if that party is one of those who are obliged to use the e-Komunikacija, he or she has to digitalise the documents in question. Therefore, the process of changing the physical document to electronics occurs

as a result of the use of the information system for communication with the court within the court proceedings. Such digitalised versions are copies and the rules on copies apply. In general, a document can be submitted to the court in the original or its copy; if submitted in the original the court may return the document to the party when no longer needed, and if a copy was submitted the court will ask the party to provide the original for the purpose of comparison at the request of the other party (Art. 108 of the ZPP). Thus, if the physical document is submitted in electronic copy to the court, the court will ask, upon the request of the other party, the submitting party to provide the court and the other party with an opportunity to see the original and compare it to the electronic copy.

For the sake of example, in Art. 15(3) and (4) of the UPP it is stated that the documents and attachments received in physical copies are to be digitalised, and when they are not "searchable" the are subject to the optical character recognition. Pursuant to Art. 111b of the SP, documents and attachments originally generated in paper form and service notes/return receipts shall be scanned and stored in the electronic form in the information operated at the court in the course of the respective court proceedings, while the paper copies are to be stored in the special file in the court's reception office. The rules pertaining to management of the paper file apply accordingly to the electronic documents and attachments.

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

It is important to note that when it comes to electronic evidence, the court sometimes does not have the access to such evidence in its primary format or on its primary source. This may cast a shadow of a doubt over the reliability of such evidence, but given that in the digital realm the copies are made with mush ease and speed, the court should view a bigger picture in assessing such "second hand" evidence in the absence of the original.

Individual electronic document signed by electronic signature is considered original and there cannot be its electronic copy to form another original.

Art. 64 of the SP provides that the original court decisions are kept in the court file, and the parties are served with the authenticated copies. Only exceptionally is original served on the parties, or the printed version of the original electronic court document. It has already been stated that the printed electronic court document, without additional authentication, has the force of the copy of the court document (Art. 65(4) of the SP) and that printed electronic notarial document, without additional authentication, has the force of the copy of the notarial document. Although both have the legal force of the public document, provided they were produced and issued in compliance with the legal requirements, in case there is a discrepancy between these printed versions and the original electronic document, the latter will prevail. The same is applicable if there is a difference between the authenticated electronic copy (sent to the parties) and the electronic original (kept in the court file). Thus, the concept and the function of the original is clearly defined. It guarantees legal certainty to all stakeholders by protection from possible (and technically quite easy) alterations in different versions, whether intentional or not.

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

A copy of electronic evidence is usually easy to make and nearly as easy to alter. For this reason, the court will have to carefully assess this evidence alone and together with all other evidence to decide on its reliability. The court will also be at disposal of the other party to act upon his or her request and ask the submitting party to produce the original for verification purposes (Art. 108 of the ZPP).

2. Authenticity, reliability and unlawfully obtained electronic evidence

2.1. Are there any particular procedures, 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?

In a view of a higher risk of the possible alteration, destruction or loss of electronic evidence compared to non-electronic evidence, there should be procedures for the secure seizure and collection of electronic evidence. We are unaware of any specific national measures which would regulate obtaining of electronic evidence for the purpose of the civil procedure, therefore, this issue remains within the realm of the private parties, their counsel and, eventually, court experts.

There are general options for preservation of evidence in title 19 of the ZPP. Art. 272 of the ZPP provides that if there is justifiable threat that it will not be possible to take a particular piece of evidence or that taking of this evidence will be more difficult later, the court may order that this evidence is preserved before or in the course of the civil proceedings.

However, Art. 220a of the ZPP contains rules on unlawful evidence. In principle, court decision cannot be based on the evidence which is obtained in an unlawful manner (*nezakonit dokaz*). However, the court may issue a decree to allow taking of an unlawful evidence and take into account its content if the court is of the opinion that this is necessary to establish a relevant fact of the case. In making this decision the court will take into account the severity of the violation of a right which is caused by taking unlawful evidence and the interest of justice to correctly and fully establish the facts of the case. This decree may not be appealed on its own, but the decision to take this evidence may be challenged along with other decisions in the appeal against the decision on the merits.

On top of the duties in the eIDAS, the eIDAS Implementation Act may also be mentioned in this context as it contains a title in which rights, obligations and responsibilities of the signatories, providers of trust services and holders of electronic identification means. According to Art. 8 of the eIDAS Implementation Act, each signatory has a duty to take all necessary measures of protection from loss and damage he or she may cause to other signatories, providers of trust services and holders of electronic identification means. In Art. 9 it is stated that the signatory has a duty to exercise due care (*pažnja dobrog domaćina*) in using and keeping the means and data for making the electronic signature and protect keep the safe accordingly. According to Art. 11, the holder of the electronic identification means has a duty to take all the necessary measures to keep these means under his or her exclusive control, to prevent theft, loss or unauthorised handing over, and a duty to revoke his or her electronic identification immediately after establishing that it has been lost, stolen or handed over to someone without authorisation. There are also duties on the part of the providers of trust services in Arts. 13 and 14 of the eIDAS Implementation Act.

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

In the process of assessing the evidence, for certain types of evidence the courts may rely on the court appointed experts whenever the establishing of a fact requires expert knowledge which the court does not possess (Art. 250 of the ZPP). Such experts may be instructed by the court to conduct analysis of electronic evidence for various purposes, including to identify the source of such evidence. If the identification of the source is not merely to be derived from the technical analysis of the electronic evidence, but may be derived from other evidence the court may take such evidence, e.g., by reading a document or hearing the witness(es), in parallel to or without engaging the expert.

2.3. Does the law of your Member State stipulate different rules or provisions for different types of electronic evidence?

No different rules are envisaged for different type of electronic evidence, apart from the fact that some may be subject to different means of taking evidence, as stated above with respect to electronic documents and other electronic evidence.

The provisions on assessment of evidence are generally applicable to all types of evidence. Art. 8 of the ZPP states that the court will take as proven the facts which, according to its belief, on the basis of due and careful assessment of every piece of evidence alone and all of them together and on the basis of the results of the entire proceedings. This, of course, entails that any doubts about the authenticity and reliability of the evidence, including electronic evidence, are verified. Furthermore, in Art. 7 of the ZPP it is provided that the parties have a duty to state all the facts on which their claims are based and propose taking of evidence to establish these facts, while the court cannot make a decision on the facts and evidence which the parties did not have the chance to address in the proceedings. This also includes the right of the parties to object to any aspect of the electronic evidence contained on the court file.

These rights are worked out in details in the title on evidence in the ZPP. Thus, Art. 219 of the ZPP defines that each party has a duty to state all the facts and propose taking of evidence on which their claims are based or which serve to challenge the statements and evidence put forward by the opposing party. Additionally, the court has an authority to warn the parties about the importance of an evidence which they have missed to propose to the court. According to Art. 221a of the ZPP, is the court cannot establish a fact with certainty, it will decide on the existence of that fact by applying the rules on the burden of proof.

2.4. Does an unfamiliarity with the technical part and a (high) possibility of manipulation of electronic evidence impact its evidentiary value?

There are no specific rules on whether the technical nature and a high possibility of manipulation of electronic evidence have any impact on the court's assessing of the evidentiary value, hence, such assessment is subject to general procedural rules on establishing the facts and taking of evidence (see *supra* Q. 2.1-2.3 and *infra* Q. 2.9 and 2.10).

2.5. When should the court appoint experts to process electronic evidence?

There are no special provisions when the court may or must appoint an expert when processing electronic evidence, hence, the general provisions on expert witnesses apply. As stated in supra Q. 2.2, in the process of assessing the evidence, the courts may rely on the court appointed experts whenever the establishing or a fact requires expert knowledge which the course does not possess (Art. 250 of the ZPP). Where more complex expertise is necessary the court may, by virtue of Art. 252 of the ZPP, order that the expert analysis is made and the results presented by the institution whose employees possess needed expertise.

The court appointed experts may be instructed by the court to conduct analysis of electronic evidence for various purposes. If the establishing of a relevant fact is not merely to be derived from the technical analysis of the electronic evidence, but may be derived from other evidence the court may take such evidence, e.g., by hearing the witness(es), in parallel to or without engaging the expert.

The work of court appointed experts is regulated in the Permanent Court Experts Regulations (*Pravilnik o stalnim sudskim vještacima*),[22] where the preconditions and procedure for appointing the experts is defined, as well as their rights and duties, including the fee they are entitled to.

[22] NN, br. 38/14, 123/15, 29/16, 61/19 i 21/22, dalje: Pravilnik o vještacima.

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?

When the expert opinion is needed in a particular case, the court appointed experts are paid by the court, from the funds which the court previously or subsequently orders the parties to deposit on the court's account. A special provision on advance payment of the monies from which the expert's fees and expenses are to be paid is contained in Art. 79 of the SP. When one or both parties to the proceedings have to deposit the advance from which the expert fees and expenses related to the evidence in question are to be paid, the court will ask the party or parties to make such a deposit. The decision on deposit also states the consequences of failure to make the requested deposit.

The direct costs of the expert opinion share the destiny of the other costs of the proceedings and will eventually be paid by the party who lost the case to the party who won the case, provided, of course, that the succeeding party has make the advance payment.

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)?

There are no special procedures established within the Croatian law of civil procedure to challenge the reliability, authenticity or manner of obtaining electronic evidence. General provisions apply to these matters as explained above regarding the establishing of facts and taking of evidence (see especially *supra* Q. 1.3, 2.5 and 2.6).

2.8. How is the admissibility of compromised or illegally obtained electronic evidence regulated within the law of your Member State?

The admissibility of compromised or illegally obtained electronic evidence is subject to general provisions in ZPP. Art. 219 of the ZPP requires the parties to present all relevant facts and propose all evidence in favour of their claim and disapproving the other party's claims and statements. The court has a discretion to decide which of the proposed evidence will be taken for the purpose of (disap)proving the relevant facts. The court also decides about whether a certain fact was established in the proceedings or not on the basis of the evidence taken, each piece of evidence individually and all of them together and the overall result of the proceedings in question (see Art. 8 of the ZPP). According to Art. 221a of the ZPP, is the court cannot establish a fact with certainty, it will decide on the existence of that fact by applying the rules on the burden of proof.

2.9. Which party carries the burden of proving the (in)authenticity or (un)reliability of electronic evidence?

Whether the party producing electronic evidence carries the burden of proving such evidence authentic and reliable or whether the party who challenges electronic evidence is charged with proving its inauthenticity and unreliability is subject to the general rules on the burden of proof in a civil case. When it comes to the procedural rules on the burden of proof in the ZPP, in Art. 7 it is stated that the parties have the duty to state all the facts on which their claims are based and propose taking of evidence to establish these facts. This means that if a party is relying on a piece of electronic evidence to prove a certain fact, the burden of proof of its authenticity and reliability in on that party, even if contested by the other party. The contested fact and the evidence to that effect are the burden of this other party.

In addition, one has to be mindful of the provisions of substantive law which may affect the burden of proof. Such provisions are usually intended to protect substantive legal interests of a certain party in the legal relationships, such as various presumptions in the context of liability.

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 question of whether the court can challenge the authenticity and reliability of electronic evidence *ex officio*, e.g., when there is a high possibility that electronic evidence has been manipulated and neither party objected the authenticity and reliability of electronic evidence is again governed by general provisions on evidence in Croatian law of civil procedure. The court has a duty to establish the facts and take the evidence which the parties did not propose provided that the court suspects that parties intend to dispose with the rights which are not at their free disposal (*slobodno raspolaganje pravima*). Those are disposals which run against the mandatory provisions (*ius cogens*) or are contrary to the rules on public morality (Art. 3(3) of the ZPP).

It is important to note that Art. 220a of the ZPP contains rules on unlawful evidence (*nezakonit dokaz*) preventing the court from founding its decision on the evidence which is obtained in an unlawful manner. However, there is an important exception to this rule stating that the court may issue a decree to allow taking of an unlawful evidence and take into account its content if the court is of the opinion that this is necessary to establish a relevant fact of the case. In making this decision the court will take into account the severity of the violation of a right which is caused by taking unlawful evidence and the interest of justice to correctly and fully establish the facts of the case. This decree may not be appealed on its own, but the decision to take this evidence may be challenged along with other decisions in the appeal against the decision on the merits.

Thus, the court will *ex officio* challenge the authenticity and reliability of any unlawful evidence or any other evidence whereby parties attempt to dispose with the rights with which they cannot freely depose because that would be in contravention of the mandatory provisions (*ius cogens*) or contrary to the rules on public morality.

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

Under specific circumstance of the case, the judge may be in the position to assess himself or herself whether the electronic evidence was compromised or illegally obtained, or he or she will have to appoint an expert. This depends on the nature of the fact(s) on which the conclusion rests about the compromised or illegally obtained electronic evidence in question and means of proving that fact. Some facts the court may establish on its own without assistance of an expert, such as if the fact is contained in a human-readable electronic document or the fact which a witness may testify about. If the fact cannot be established, but by technical assessment which the court is not versed in, the appointment of an expert will be necessary. According to Art. 250 of the ZPP, the courts may rely on the court appointed experts whenever the establishing or a fact requires expert knowledge which the course does not possess. Such experts may be instructed by the court to conduct analysis of electronic evidence for various purposes, including to examine whether there was a manipulation with the evidence or whether the evidence is obtained in an unlawful manner.

2.12. What are the consequences if the court finds that evidence was indeed compromised or obtained illegally?

As stated above (supra Q. 2.1.), Art. 220a of the ZPP prevents the court to take its decision on the basis of evidence which is obtained in an unlawful manner (*nezakonit dokaz*). Exceptionally, the court may issue a decree to allow taking of an unlawful evidence and take into account its content if the court is of the opinion that this is necessary to establish a relevant fact of the case. In making the decision, the court will take into account the severity of the violation of a right which is caused by taking unlawful evidence and the interest of justice to correctly and fully establish the facts of the case. The court's decision is issued in the form of a decree, which cannot be appealed on its own, only later on in the appeal against

the decision on the merits. Therefore, if the court decides a specific piece of evidence is unlawful, this evidence will not be basis for the court decision on the merits. On the other hand, if the court decides it is not unlawful evidence, or it is unlawful evidence but is necessary in the proceedings, the decision on the merits will be based on it.

2.13. Does the law of your Member State enable for the parties to submit written statements of witnesses?

The main rule of hearing the witness in Art. 243(1) of the ZPP is that the witness has to respond orally. It the witness does not speak the official language of the proceedings, has or she will be provided a court interpreter (Art. 245(1) of the ZPP). In the witness is deft he will be asked question in writing, and if he or she is mute, the answers will be given in writing (Art. 245(2) of the ZPP). If this is not feasible, a person who may communicate with the witness will be asked to assist the court. No provisions allow for the written statement instead of the hearing if the witness orally, including the pre-recorded oral statements of witnesses. Such written statements cannot replace and do not have the same evidentiary status as the oral witness statements made before the judge. Although written statements by any person may be submitted by the parties in evidence, these statements will normally be taken as less credible than if that same person has stood before the court as the witness and problemed about the same facts and circumstances. If the written statement is authenticated by the notary public, this would increase its authenticity in the eyes of the judge, but would not affect the impression of truthfulness of the facts contained therein, which is usually assessed directly by the judge in the course of the oral hearing of witness.

3. Duty to disclose electronic evidence

3.1. How is the duty to disclose electronic evidence regulated within the law of your Member State?

In Art. 7 of the ZPP it is provided that the parties have a duty to state all the facts on which their claims are based and propose taking of evidence, including electronic ones, to establish these facts. The court cannot make a decision on the facts and evidence which the parties did not have the chance to address in the proceedings. The parties may object to any aspect of the evidence taken by the court and attempt to prove its inadmissibility, unreliability or challenge the conclusions based on the evidence.

Each party relying on some evidence, which is held by that party, has to submit it to the court (with regards to the documents, see Art.232(1) of the ZPP). If the party fails to submit the evidence it relies on, this will affect the establishing of the respective fact (unless proved by other means) and eventually the court's decision.

In case the evidence which one party is proposing is claimed to be held by the other party to the proceedings, the court will ask the other party to submit that document to the court within a set period of time (Art. 233(1) of he ZPP). The other party has the right to refuse submitting this document to the court under following preconditions: if the party may refuse an answer to a question when heard as a witness or if the party may refuse to be heard as a witness in total (Art. 233(3) of the ZPP). He or she cannot refuse to submit the document if he or she herself or himself has relied on that document as evidence for his or her statements, if he or she has a duty under the law to submit it, or if the document is considered common to both parties in a view of the content of the document (Art. 233(2) of the ZPP). If the other party, who cannot refuse to submit the document in question, denies that he or she is in possession of the document, the court may take evidence about that very fact (Art. 233(4) of the ZPP). The court will, taking account of all circumstances, have discretion to assess the conduct of the other

party who fails to submit the document despite being asked to do so, or denies to have it although the court believes that the document is in his or her possession (Art. 233(5) of the ZPP).

The situation is similar if the court asks the third party to submit the document which may be used as evidence in the court proceedings, with an important difference that the court may resort to enforcement of its decision asking the party to submit the document to the court (see *infra* Q. 3.3).

There may be other grounds for either a party to the proceedings or the third party to refuse submitting a document before the court, such as privileges (attorneys, doctors etc.), the protection of business secrets or confidential information, which are regulated under special laws.

All the above rules apply to electronic documents as well.

3.2. What is the scope of the party's duty to disclose electronic evidence within the law of your Member State?

The rules are the same for electronic and non-electronic evidence as stated above (see *supra* Q. 3.1).

3.3 Does the duty to disclose electronic evidence apply to third persons?

As stated above (*supra* Q. 3.1.), the duty of third parties to submit the document which may be used as evidence in the court proceedings is similar to that of the other party in the proceedings. In case the evidence which one party is proposing is claimed to be held by the third party to the proceedings, the court will ask the third party to submit or present that document before the court within a set period of time. Prior to making this order, the court will summon the third party to make a statement about this document allegedly in his or her possession (Art. 234(2) of the ZPP). According to Art. 234(1) of the ZPP, the third party has the right to refuse submitting this document to the court under following preconditions: if the party may refuse an answer to a question when heard as a witness or if the party may refuse to be heard as a witness in total. He or she cannot refuse to submit the document if he or she herself or himself has relied on that document as evidence for his or her statements, if he or she has a duty under the law to submit it, or if the document is, in a view of the content of the document, considered common to that third parties and the party to the proceedings relying on that document. The court may resort to enforcement of its decision asking the third party to submit the document to the court. The enforcement is carried out under the general rules in the Enforcement Act (*Ovršni zakon*, hereinafter: OZ).[23]

There may be other grounds to refuse submitting a document before the court, such as privileges (attorneys, doctors etc.), the protection of business secrets or confidential information, which are regulated under special laws.

3.4. Are there any limits to the duty to disclose electronic evidence specified within the law of your Member State?

Yes, there are limits as explained above which relate to the documents in possession of the other party or the third party (Arts. 233(3) and 234(1), respectively), or with respect to the hearing of witnesses (Arts. 237 and 238 of the ZPP).

There are also rules regarding privileges (attorneys, doctors etc.), the protection of business secrets or confidential information, which however apply to all evidence and not only electronic evidence.

[23] NN 112/12, 25/13, 93/14, 55/16, 73/17, 131/20 and 114/22.

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

When a party to the proceedings or a third party unjustifiably refuses to comply with their duty to disclose electronic document, the consequences differ. For the party to the proceedings, the court will not order coercive measure, but this conduct will be assessed together will other circumstances in making the decision on the merits. To be precise, the court will, taking account of all circumstances, have discretion to assess the conduct of the other party who fails to submit the document despite being asked to do so, or denies to have it although the court believes that the document is in his or her possession (Art. 233(5) of the ZPP). Conversely, when the third party unjustifiably refuses to produce the electronic document, the court may resort to enforcement of its decision asking the third party to submit the document to the court. The enforcement is carried out under the general rules in the OZ.

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?

We are not aware of specific problems discussed in case law or legal literature.

4. Storage and preservation of electronic evidence in active cases

4.1. How is the storage and preservation of electronic evidence regulated within the law of your Member State?

According to Art. 61(4) of the Work in the eSpis System Regulations (*Pravilnik o radu u sustavu eSpis*, hereinater: PRSeS),[24] electronic evidence is stored as the part of the eFile (*eSpis*) as it is received at the court by means of e-Komunikacija. This is the responsibility of the court clerk (Art. 61(1) of the PRSeS).

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

According to Art. 62 of the PRSeS, receipt of submissions, as well as information on delivery of submissions, is entered into the eSpis system. Data on unsuccessful delivery, including the reason for unsuccessful delivery, are entered into the eSpis system.

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

Electronic evidence, along with other data in eSpis, is currently stored on the central location on the servers which are held by the Ministry of Justice. The plan is that all the data is migrated to servers managed by APIS by the end of 2023. Croatian company Agencija za podršku informacijskim sustavima i informacijskim tehnologijama d.o.o. – APIS IT d.o.o.[25] was founded in 2005 by the agreement between the Government of the Republic of Croatia and the City of Zagreb to provide information technology support and development services to both founders. It is co-owned by the two authorities and one of its services are hosting of the data in one of the two data centres in Croatia (Zagreb and Jastrebarsko) mutually connected by two routes and with guaranteed accessibility to data of 99,98 % on an annual basis.

[24] NN 35/15, 123/15, 45/16, 29/17, 112/17, 119/18, 39/20, 138/20, 147/20, 70/21, 99/21, 145/21, 23/22 and 12/23.
[25] https://www.apis-it.hr/apisit/index.html#/

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

Electronic evidence which is submitted by means of e-Komunikacija is handled by the court clerk to be stored in the eSpis (Art. 61(1) of the PRSeS). With regard to the entity responsible for storing see *supra* Q. 4.3.

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

The electronic evidence which is stored in eFile (*eSpis*) may be accessed by the judge to whom the case is assigned, court administrator taking minutes, and court clerk in the court reception office, as well as the president of that court and the presidents of all courts higher on the hierarchy. When the appeal is submitted, the appeal judge to whom the case is assigned may also access the electronic evidence via eFile.

The electronic evidence may be accessed by the parties and their attorneys or legal representatives via eMatter (*ePredmet*). However, there seems to be an anomaly in the combination of various systems, since the party may access via eGrađani the court decision which is in ePredmet, before it is served on the party or its attorney via eKomunikacija, the attorney being the mandatory recipient of the court decision pursuant to the ZPP when a party has one.

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

All paper documents on the court file are also contained in the eSpis, and are later stored in eArhiv for the period laid down in the law.

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?

There is no such transmission when it comes to the evidence that is contained in the eSpis, because upon appeal, the judge who is assigned with the case receives authorisation to access the case file in the eSpis directly.

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

All court files are kept in electronic form (eSpis) and physical form. When evidence is submitted by electronic means, such as documents, they are printed and integrated in the physical file, and *vice versa*.

5. Archiving of electronic evidence in closed cases

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

Some rules of archiving evidence differ with respect to their nature, electronic or physical. Both are subject to majority of the general rules in the SP (except those which are limited to physical evidence, as the concern the qualities of the room for storage and alike), but the electronic evidence is also subject to special rules in the PRSeS.

Storage of electronic files in the archive is regulated in Art. 112-114 of the PRSeS. After the completion of the proceedings when the decision become unappealable, the order to store the file in the archive is

recorded through the digital archive module eArhiv, and the information about it is generated in the eSpis system. After extracting the attached files, a remark about it is recorded through the digital archive module eArhiv and generated in the eSpis system.

According to Art. 113 of the PRSeS, the extraction of files for special storage is entered into the system like any other extraction from the archive. The archive of the president of the court is kept as a special archive through the eArchive digital archive module in the eSpis system.

Files may be issued from the archive pursuant to Art. 114 of the PRSeS. When a file is issued from the archive, its status is automatically changed from "archived" to "closed" through the eArchiv digital archive module in the eSpis system, and the court clerk changes its status from "closed" to "resolved" if necessary. The file that was issued from the archive is assigned to work with the solver who was in charge of it in the eSpis system before archiving. Exceptionally, if the file cannot be assigned to the solver who was in charge of the file before archiving, the file will be assigned to another solver by applying the appropriate automatic case assignment algorithm.

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

Pursuant to Art. 17 of the PRSeS, the clerk of the court archive is obliged to archive files in a timely and up-to-date manner in the eSpis system or through the digital archive module eArhiv, to monitor the retention periods applicable to those files and to record every action taken with respect to the archived file after archiving.

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

The electronic evidence which is part of the eFile (*eSpis*) is all archived in one central place – the digital archive module eArhiv.

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

The archiving is entrusted to the digital archive module eArchive (*eArhiv*).

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?

According to Art. 111(1) of the PRSeS, the archiving periods prescribed by the provisions of special laws or the provisions of the SP apply to files in the eSpis system. The periods for archiving are commonly set at 30 years (for certain categories less, such as 10 or 5 years) following the appealability of the court decision, while the files in some cases have to be preserved indefinitely due to special reasons and are enumerated in Art. 168 of the SP.

Under Art. 165 of the SP, individual court files in the general archive (except for those mentioned in Article 162 of the SP) are kept in the court until a set deadline, if it is not intended that they be kept permanently or handed over for safekeeping to the competent archive. After the expiration of the prescribed deadline, and with the approval of the competent archive and the higher body of the court administration, the files are separated from the general archive and handed over to the competent archive, or to companies for the collection and processing of paper waste, or they are destroyed. According to Art. 166 of the SP, the procedure for selecting and extracting material for submission to the competent archive or destruction is initiated by the president of the court according to the regulations for the protection, selection and extraction of archival material. Selection and extraction of material is done by a commission appointed by the president of the court. Files that are not submitted to the

competent archive will be submitted to a commercial company for the collection and processing of paper waste. According to Art. 111(2) of the PRSeS, after the destruction of the file in written form, the data on the file will be deleted from the eSpis system, except for the data on the file entered in the electronic register.

5.6. What are the rules regarding the conversion of electronic evidence into physical evidence and vice versa? *(Please describe rules regarding the possibility of conversion from electronic form to physical and from physical form to electronic when archiving evidence.)*

All court files of active cases are kept in both, the electronic form (eSpis) and physical form. There would thus hardly ever arise the need to convert evidence from one from into another. Perhaps such need could occur if the physical file has been lost or destroyed and it has been requested.

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?

According to Judicial Academy Act (*Zakon o Pravosudnoj akademiji*),[26] the junior judges (*sudski savjetnici*) and are all obliged to take lectures at the State School for Judicial Officials. In the Judicial Academy Report for 2022,[27] it is stated that several training sessions were devoted to conducting the court hearings at distance. According to the same Report, the judges and junior judges as well as court administrative personnel at the commercial courts and High Commercial Court, were offered lifelong learning about eFile (*eSpis*) which was attended by 172 participants, while the related course workshop on eFile and digital archive was attended by 358 participants. The workshop on e-Komunikacija was attended by 157 participants, while the one on "Application of the SP and informatic skills and problems which occur when files are entered into the SupraNova system" was attended by 70 participants. The workshop "Electronic communication under the ZPP and hearing at distance" was attended by 100 participants from the judiciary.

This indicates that there are courses organised for different court employees and officials regarding the ICT-related topics, but this is certainly not enough as not all persons belonging to a specific category in the judiciary or state attorney's office attend the training (it is on the voluntary basis and each person chooses for oneself what to attend) and the topics do not specifically address the EU cross-border procedural legislation. Hence, the training within this project which the Faculty of Law in Rijeka organised in February 2023 about taking of evidence and service of documents, with special attention to cross-border and digital dimensions, was well attended and very welcome by judges and attorneys.[28]

7. Videoconference

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

Yes, videoconferencing may be used in the civil proceedings.

[26] NN 52/19.

[27] Pravosudna akademija, Godišnje izvješće o radu Pravosudne akademije u 2022., veljača 2023., https://www.pak.hr/wp-content/uploads/2023/03/Godisnje-izvjesce-2022.pdf

[28] See the seminar programme at https://www.bib.irb.hr/1268310/download/1268310.PRAVRI-Dostavadokazi-program.pdf

Most important use of the videoconferencing in the civil proceedings is related to the taking of evidence by obtaining the witness testimony, the party testimony or the court hearings in total. The rule in Art. 115 of the ZPP is that the court hearings are held in the court building. However, the court may decide that the hearing is held on distance, using the videoconferencing device and technology platform for communication at distance. The court decree on holding a hearing at distance may be rendered only after the court has received the parties' statements about the intended hearing, and it cannot be appealed. The manner in which this is conducted is defined by the Holding the Hearings at Distance Regulations (*Pravilnik o održavanju ročišta na daljinu*, hereinafter: PORD).[29]

Article 115 of the ZPP also provides that the same decision about using the videoconferencing means can be made for the purpose of taking of individual evidence, including witness testimony.

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?

The broad language of Art. 115 of the ZPP suggests that videoconferencing can be used for the hearing in total and for taking individual evidence. There is no specification or exclusion with regards to the types of evidence or means of taking the evidence, hence, the literary interpretation seems to include all of them, however, the practicality of such use could be questioned in certain cases.

In principle, videoconference in Croatian civil proceedings may be used for:

a) Witness testimony (*saslušanje svjedoka*)
b) Expert witness testimony (*vještačenje*)
c) Inspection of an object (and/or view of a location) (*uviđaj*)
d) Document (document camera) (*isprava*)
e) Party testimony (*saslušanje stranke*)
f) Conducting the hearing in broader/general terms.

7.2.1. If the law allows for (remote) view of location, how would such a videoconference be practically implemented?

By the letter of the ZPP, it seems that this would be allowed. However, it is not explained how that should be conducted. The provision in Art. 11 of the PORD states that, in addition to hearing the witness and the expert witness, the court may take other evidence at the hearing at distance if the nature of the evidence allows that, on which the parties will have the opportunity to have a say prior to or at the hearing. Therefore, it seems that the court could event take the evidence by inspecting the object at distance provided that the purpose of such inspection could be fulfilled at distance. This will be the assessment which the court has to make on the evidence-to-evidence basis.

The questions about the concrete activities of the court officer who carries the technical equipment and the instructions which the judge may have for him or her are not regulated, but are left to the judge's discretion, just as some other questions related to practical management of the hearing.

7.3. Which applications (software) are used for videoconferencing in civil court proceedings?

The first ever online hearing in Croatia was held in the Municipal Court in Pazin on 2 April 2020, soon after the lockdown for the reasons of the COVID-19 pandemic was ordered. The platform used then was AnyMeeting. Soon after the courts started using other platforms such as Cisco Webex and more widely

[29] NN 154/2022.

JitsiMeet[30] platform.[31] The courts decided on their own which platform to use for the purpose of videoconference, on the basis of the functions and restrictions of the individual platform.

The PORD states that in the summons the court will state which technology platform for communication at distance will be used (Art. 6(2)), which means that the platform may change. It does not however mean that the judges decide freely. It would seem reasonable that the platform is uniformly imposed on all courts in Croatia in a view of the need to protect various interests of the parties and public interests in the integrity of the proceedings, but we do not have the information on the current platform(s) in use.

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

Yes, all the platforms in used in different courts were commercially available and were not specifically modified for use for the court proceedings in Croatia.

7.3.2. Are the applications (see Question 7.3.) interoperable with other applications?

As is usually the case with different videoconference service providers, application used by the said platforms are not interoperable with other applications.

7.3.3. Does the application allow a text-based chat function during the videoconference; does it allow screen sharing and sharing of documents?

As is usually the case with similar platforms, the platforms in use by the Croatian courts do offer all these functions, but it would seem reasonable that some of them are excluded, at least for some of the participants. However, we are not aware of any actual details.

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?

As stated above (see *supra* Q. 7.1), the court does not need the parties motion and may *ex officio* order use of the videoconferencing for taking of individual evidence or holding the court hearing. However, it may not do so before consulting the parties thereon. However, the parties' consent is not a prerequisite for the court to order the videoconferencing. Likewise, the consent of the witness or court appointed expert are irrelevant as they are obliged to follow the court's decision on this matter. In practice though, different practical reasons might affect the court's decision not to order hearing by means of videoconference, such as the lack of sufficient technical knowledge of the witness or the court appointed expert or likelihood that they will be influenced by someone while being heard by the court.

However, recent change of the internet access service provider for the Croatian courts had a chilling effect on the court's resorting to videoconferencing because of the internet connection with lower bandwidth. This is the poof that some procurements cannot be based only on the low price, but have to be optimum for the purpose.

[30] See https://meet.jit.si

[31] See, e.g. Notification on holding the hearings at distance by the Commercial Court in Varaždin, Office of the Court President, docket no. 3 Su-402/2020-4, 27 October 2020, https://sudovi.hr/sites/default/files/priopcenja/2020-10/OBAVIJEST-odr%C5%BEavanje%20ro%C4%8Di%C5%A1ta%20na%20daljinu%20na%20Trgova%C4%8Dkom%20sudu%20u%20Vara%C5%BEdinu.pdf This platform was also used in the Commerical Court in Rijeka and the Commerical Court in Pazin as well as many other courts, while the courts in Zagreb were using MSTeams.

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?

The answer is the same as for the taking of evidence, given that the applicable provisions are the same as well (see *supra* Q. 7.4).

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)?

If the court issues a decree ordering that the videoconference technology is used for holding the court hearing or for taking of individual evidence, the parties have no right to appeal that decree (Art. 115() of the ZPP). They may challenge this decision later on in the appeal against the decision on the merits, on the one of the grounds for appeal (grounds for appeal are enumerated in Art. 353 of the ZPP).

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?

According to Art. 248 of the ZPP, if a witness who has been duly summoned does not appear at the hearing and fails to justify his or her absence, or leaves the place where he or she is to be heard without court permission or a justifiable reason, the court can order him or her to be forcibly brought before the court and pay for the costs of bringing him or her there, and may fine him or her by 60-1.320 euros. Also, if the witness appears and, after being warned of the consequences, refuses to testify or answer a particular question, and the court is of the opinion that the reasons for the refusal are unjustified, he or she can be fined by 60-1.320 euros. If, after that, he or she still refuses to testify, he or she can be imprisoned. Imprisonment lasts until the witness agrees to testify or until his or her hearing becomes unnecessary, but no longer than one month.

In particular with respect to the hearing of witness by means of a videoconference, the PORD provides that witnesses have a duty to remain besides the electronic device until the court informs them that they are no longer needed (Art. 10).

As for the parties, Art. 269 of the ZPP explicitly states that no coercive measures can be applied on a party who has not appeared according to the court's summons for hearing, nor can a party be forced to testify.

7.7.1. Under which circumstances may a witness refuse testimony?

According to Art. 237 of the ZPP, a witness may refuse to testify: 1) about what the party has entrusted to him or her as his or her representative; 2) about what the party or other person confessed to the witness acting as a religious confessor; 3) about the facts that the witness learned as an attorney at law, doctor, or in the performance of some other profession or other activity, if there is an obligation to keep as a secret what was learned in the performance of that profession or activity.

Also, according to Art. 238 of the ZPP, a witness can withhold an answer to certain questions if there are important reasons for doing so, and especially if his or her answer to those questions would expose himself or herself or his or her blood relatives in any degree to severe embarrassment, significant property damage or criminal prosecution, and in the collateral line up to the third degree inclusive, of his or her spouse or in-laws up to the second degree inclusive (even when the marriage has ended), and of his or her guardian or ward, adoptive parent or adoptee.

The same rules apply for testimony via videoconference.

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

Cross-examination is not allowed in Croatian civil proceedings. The witnesses are heard individually and without the presence of witnesses who will be heard later. The witness is obliged to give answers orally. First of all, he or she will be warned that he or she is obliged to tell the truth and that he or she must not keep anything for himself or herself. Then, he or she will be warned about the consequences of giving a false statement (Art. 243 of the ZPP). After the general questions, the witness is asked to state everything he or she knows about the facts regarding which he or she needs to testify, and after that he or she can be asked questions for the purpose of verification, supplementing or clarifying his or her testimony. Suggestive questions and alike are not allowed. The witness will always be asked how he or she learned what he or she is testifying about. Witnesses may be confronted if their testimonies are not in agreement on important facts. The confronted witnesses will be heard about each circumstance on which they disagree individually (Art. 244 of the ZPP).

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?

There is not explicit rule on this in ZPP, but given that the court may order hearing to be held or evidence to be taken by means of videoconference (see *supra* Q. 7.1 *et seq.*), it may also decide to the opposite and revert the situation back to the main rule of holding the hearing or taking of evidence at the court building or elsewhere if necessary.

The PORD, as the applicable by-law, provides special rules in Art. 11 which help the court to manage the hearing via videoconference. Thus, if after scheduling, and before holding the remote hearing, it is determined that the hearing cannot be held at the scheduled time, the court will postpone the hearing and schedule a new remote hearing or schedule the hearing in the court building, depending on the reasons for not holding the earlier hearing. In such a case, the hearing may – instead by videoconference – be held at the scheduled time in the court building instead of remotely if the circumstances of the case allow it. Finally, if technical difficulties arise during the remote hearing, the court will try to resolve them and continue with the hearing. If it is not possible to continue the hearing with all participants in the proceedings, but it is possible to continue with some of them and without preventing any party from being heard, the court will continue with the hearing. Otherwise, the court will postpone the hearing and schedule a new remote hearing or schedule the hearing in the court building, depending on the reasons for not holding the earlier hearing.

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;
b) the technical equipment of the persons involved in the videoconference;
c) the technical literacy of the persons involved in the videoconference;
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));
e) other (please specify)?

The court decides on the holding of a hearing or the taking of individual evidence at distance after receiving the statements of the parties and other participants who need to participate in the hearing that will be held at distance (Art. 115(5) of the ZPP). Art. 6(1) of the PORD states that the court intending to conducting the proceedings by means of a videoconference shall obtain the statement referred to in Art. 115(5) of the ZPP by telephone, electronic means or on another appropriate way. If there is no written evidence of obtaining a statement, the court will make an official note in the case file.

It appears that the court will take into account the above-mentioned circumstances related to internet connection, technical equipment technical literacy and physical capacity in deciding whether to hold the hearing at distance or not. However, there are no explicit rules on that so the court has a discretion to decide on holding a hearing at distance. However, it ought to bear in mind that such decision should not violate any party's right to due process.

The rules do not provide for any test session ahead of the scheduled hearing at distance, however, this does not prevent a particular court to organise such test session for the purpose of efficiency.

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

According to the general provision in Art. 242 of the ZPP, the witnesses who due to their age, illness or severe body malfunctions cannot appear at the court will be heard in their home. It is further stated in Art. 6(3) of the PORD that, in the summons for the hearing at distance, the court will warn the participants in the proceedings that they are obliged to inform the court if due to health reasons (impaired hearing, speech difficulties, blindness or low vision) or other reasons they cannot participate in the hearings held at the distance.

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?

The exact location of each person who will participate at the hearing at distance is not decided in advance by the court decision on the hearing or stated in the summons. Art. 6(2) of the PORD provides that in the summons for a hearing at distance, the court will specify: the type of remote communication technology platform that will be used, a link to connect to the remote communication technology platform or the time and method of subsequent communicating of the link, warnings related to the technological platform for remote communication (if necessary), about which the participants of the procedure should be specially informed, a warning to the parties that they can submit submissions or documents at the hearing in the .pdf format, a phone number or email address through which the participants of the procedure can notify the court that they have technical difficulties due to which they are prevented from participating in the hearing at distance.

However, some provisions allow for certain conclusions to be inferred regarding the location of the judge and court staff as well as the participants summoned to the hearings at distance.

According to Art. 8(1) of the PORD, the participants in the proceedings in which the hearing is held at distance communicate with the court from a room equipped with a technological platform for remote communication from which they can communicate freely with other participants in the proceedings. *Argumentum a contrario*, no communication from a car, train, street or other open public place would be allowed, only from a location which is a room, such as a room in a home, hotel, office or alike (also allowing free communication with other participants).

In Art. 8(2) of the PORD it is stated that the participant in the proceedings who, after being summoned to the hearing at distance, is determined to be unable to attend the hearing at distance, may attend the hearing in the courthouse, and the court must be informed about this before the hearing commences. From this a conclusion may be drawn that the judge is located at the courthouse when the hearing at distance is taking place and any participants may attend the hearing there.

Furthermore, Art. 8(3) of the PORD states that the PORD applies also when the participants in the proceedings attends the hearing in the court building, but at least one participant in the proceedings simultaneously participates in the hearing by means of an audio-visual device.

The virtual filters and backgrounds appear to be undesirable, if not forbidden, since the court has the right to inquire into the situation in the room where any participant in the proceedings is located (see *infra* Q. 7.11 ab).

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

There are no explicit rules on this, but it can be inferred from the other rules that it is necessary that the person is alone in the room (see Art. 9(6) of the PORD and *infra* Q. 7.11. ab-ac).

ab) Are there any rules for the inspection of the location where the person heard is situated and the privacy it offers?

Under Art. 8 of the PORD, a person participating at the hearing at distance may be located in the private premises (home, office or other). Also, in Art. 9, which relates to the method of conducting the hearing at distance, it is stated that the court will ask the participant in the proceedings to declare whether he or she is alone in the room, and will order these persons who are not participants in the proceedings leave that room. The court may request that the participant in the proceedings turns the camera in a specific direction so that is can be verified whether he or she is alone in the room, and may order that the camera be directed towards the door of the room during the hearing for a better view over the situation in the room. The court will warn the participant in the proceedings that the camera must not be turned towards the source of light and may order the participant in the proceedings to stand at certain distance from the audio-visual device in order to prevent the use of illegal aids (devices) during the hearing (Art. 9(6) of the PORD).

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?

As stated above, the court will ask the participant in the proceedings to declare whether he or she is alone in the room, and will order these persons who are not participants in the proceedings leave that room (art. 9(6) of the PORD). From this it may be inferred that presence of any other persons in the room is not permissible during the court hearing at distance.

b) the time when the videoconference may be conducted?

As evident from above, the videoconference ordered by the court entails that at least the judge is physically present at the court building. This means that the time for the videoconference has to be set within the working hours at the court.

The working hours at the courts are regulated in Arts. 38 and 39 of the SP whereby it is stated that the working hours are defined by the president of the court, during five working days a week, starting in between 7:00 and 9:00 hours, each judge working regular 40 hours a week, meaning that the working hours would normally end in between 15:00 and 17:00 hours. By way of exception, the work at a particular court may be organised in the morning and afternoon shifts if the limitation of space or the heaviness of the workload so require. Already commenced hearings will be completed regardless of the expiration of the working hours if recess would cause higher expenses or delays in the proceedings.

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

There are no special rules of traditional apparel or formal conduct of the persons participating at the videoconference other than when present at the court building or court activity on another location. Rules on apparel, if issued, are defined by the president of the respective court and usually only require decent appearance.

d) the identification of the persons taking part in the videoconference?

Art. 8 of the PORD provides rules for determining the identity of the participants in the proceedings. The court will ask the witness whose hearing is planned via the videoconference to submit to the court, before holding the hearing at distance, a copy or scanned identity card, or another document that proves his or her identity, or it will establish the identity of the witness in another way when that is feasible. At the hearing by means of videoconference, the court will ask the other participants in the proceedings to provide the information necessary for their identification, and if necessary, their identity will be determined in accordance with the mentioned rule regarding the witness. The court will determine by which means of communication persons will submit to the court the mentioned data regarding determination of identity.

7.12. Can (or must) a videoconference be recorded?

As stated above (see *supra* Q. 1.3), the provisions of Arts. 126a-126c of the ZPP on audio recording of the court hearings (in the court building) shall apply *mutatis mutandis* also the use of audio-visual devices and technological platforms for communication at distance (Art. 126c(3) of the ZPP). Thus, the videoconference hearings have to be recorded (Art. 126a(1) in conjunction with Art. 126c(3) of the ZPP).

However, the application of this provision has been delayed until the 1 October 2024 for the reason that the courts lack necessary equipment and its personnel need to be trained in using the equipment.

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

Once the obligation of recording starts being implemented, this would depend on the functionalities of the platform and choices of the judge at the particular hearing at distance, provided that the courts will retain discretion in choosing the platform.

7.12.2. Which persons are shown on video during the videoconference?

In Art. 9(1) of the PORD it is stipulated that the hearing at distance and the taking of evidence at distance must be held in such a way that all participants in the proceedings can communicate in real time and be visible to the judge.

Also, according to Art. 9(6) of the PORD, the court may request that the participant in the proceedings turns the camera in a specific direction so that is can be verified whether he or she is alone in the room, and may order that the camera be directed towards the door of the room during the hearing for a better view over the situation in the room. The court will warn the participant in the proceedings that the camera must not be turned towards the source of light and may order the participant in the proceedings to stand at certain distance from the audio-visual device in order to prevent the use of illegal aids (devices) during the hearing.

7.12.3. How (which medium and format) and where is the footage of the videoconference stored and later archived?

According to Art. 123 of the ZPP, the minutes of the hearing may be stored electronically in the information system, while according to Art. 126a in conjunction with Art. 126c(3) of the ZPP, the audio-visual recording of the court hearing at distance will be available to the parties in the electronic form at information system. Pursuant to Art. 126c of the ZPP, the audio-visual recording of the court hearing and the minutes of the court hearing are one unity and in case they differ in content, relevant is the content in the audio-visual recording. Furthermore, when parties are relying on the audio-visual recording it is their duty to specify to which part of the recording they refer.

It remains to be seen in what format and where the recordings will be stored and archived, at the data centre of APIS d.o.o. or otherwise.

7.12.4. Does the footage of the videoconference enter the record of the case?

Just as the audio recording of the hearing in the court building should be a part of the court file (Art. 126b(1) of the ZPP), the audio-visual recording of the hearing at distance by means of a videoconference should be a part of the court file (Art. 126b(1) in conjunction with Art. 126c(3) of the ZPP).

In the future, when such recording will be produced it would be in addition to the minutes of the hearing. Art. 13 of the PORD stipulates that after the end of the hearing at distance, the court delivers to the parties a record in the .pdf format signed by the judge or president of the chamber using the qualified electronic signature. This corresponds to the current practice related to videoconferencing.

7.12.5. Who has access to view the footage after it has been recorded?

Art. 150 of the ZPP provides that the parties have the right to review and transcribe the files of the case in which they participate, while other persons who have a legitimate interest may be allowed to view and transcribe individual files. While the proceedings are pending, permission to access the recording is to be given by a single judge or the president of the chamber as the case may be, and when the proceedings are over, the president of the court or a judge appointed by him or her. Likewise, an external user of the eSpis system (a notary public, an attorney at law, the Financial Agency or other person under a special law) has the right to limited insight into the data contained in the eSpis system in a file with regard to which he or she makes it probable to have a justified interest (Art. 21(1) of the PRSeS).

However, given that recording of the videoconference is still not being made in Croatia, it is difficult to predict where the files containing the recordings will be stored and who will have access to them (will the access to the recordings be under the same principles as to the other content of the particular file in electronic form).

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?

Because the audio-visual recording of the hearing at distance by means of a videoconference should make a part of the court file (Art. 126b(1) in conjunction with Art. 126c(3) of the ZPP), it should also be available to the appeal court in the same way as any other electronic content of the file. But such recordings are still to be awaited for, as well as the confirmation or disapproval of this prediction.

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?

Art. 13 of the PORD stipulates that after the end of the hearing at distance, the court will deliver to the parties the minutes of the hearing in the .pdf format signed by the judge or president of the chamber using the qualified electronic signature. These minutes are not equivalent to the transcript, but focused only on essential information. Pursuant to Art. 126c(1) in conjunction with Art. 126c(3) of the ZPP, the audio-visual recording of the court hearing and the minutes of the court hearing are one unity and in case they differ in content, relevant is the content in the audio-visual recording.

There will normally be no other minutes written on the basis of the footage of the videoconference.

7.13. Concerning court interpreters – does the law (or best practice) provide for successive or simultaneous interpretation during the videoconference?

Ar. 102 of the ZPP stipulates that the parties and other participants in the proceedings have the right to use their own language when participating in hearings and when taking other procedural acts orally before the court. If the proceedings are not conducted in the language of the party or other participant in the proceedings, he or she will be provided with an oral translation into his or her language of what is stated at the hearing and an oral translation of the documents that are used as evidence at the hearing. The parties and other participants in the proceedings will be instructed about their right to follow the oral proceedings before the court in their own language with the help of an interpreter. They can waive their right to translation if they declare that they know the language in which the proceedings are conducted. In the minutes, it will be recorded that they were instructed about their right to translation and their related statements. The translation is done by interpreters. According to Art. 12 of the PORD, in addition to the hearing of witnesses and experts, the court may take other evidence at a hearing at distance if the nature of the evidence allows it, which the parties will be consulted before the hearing or at the hearing. Art. 4 of the PORD provides that, in applying the PORD, the provisions of the law governing civil procedure and the SP shall be applied in an appropriate manner, unless otherwise specified in the PORD.

According to the knowledge of the authors, translation is always conducted in a successive manner, including during the videoconference. This is also caused by practical reasons, that the permanent court interpreters are not required to be skilled in simultaneous interpretation and that only a few of them would be able to successively translate.

7.13.1. Where is the interpreter located during the videoconference?

There is no explicit rule on where the interpreter is located during the videoconference, but it may be concluded on the basis of the provisions in the PORD that, since each participant in the proceedings has to be alone in the room (see Art. 9(6) of the PORD), the interpreter must be alone as well. Alternatively, he or she could be in the courtroom where the judge is sitting (see Art. (2) of the PORD). Would it be permissible for the interpreter to be in the room with the participant in the proceedings who is in need of translation is difficult to say, but there does not seem to be any obvious reason for the court not to allow that, unless some special circumstances would lead to the contrary.

7.14. Immediacy, equality of arms and case management

The rules of the ZPP ensure the implementation of the principle of immediacy, primarily in Art. 4, according to which the court decides on the claim, as a rule, on the basis of an oral, direct and public hearing. Also, with regard to the equality of the parties, Art. 5 states that the court will give each party the opportunity to express his or her views on the claims and allegations of the opposing party. Holding

hearings at distance under the ZPP and by-laws does not call into question the principle of immediacy or equality of the parties. Moreover, the PORD provides that in its application, the provisions of the law governing civil proceedings are to be applied as well (which in any case is a result of the hierarchy of legal sources in the Croatian legal system in which acts stand above by-laws).

7.14.1. How does the law of your Member State generally sanction an infringement of the principle of immediacy?

Violation of the principle of immediacy is sanctioned as an absolutely critical violation of the provisions of the civil procedure, if a party is not given the opportunity to argue before the court by the court's conduct in violation of the law (Art. 354(2)(6) of the ZPP).

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

No such special aspects are defined in Croatian law, but the ZPP provisions of general scope apply. The PORD also provides that in its application, the provisions of the law governing civil proceedings are to be applied as well.

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?

We are not aware of such cases.

7.14.4. How do parties (and their advocates) express objections or pose questions during a videoconference?

According to Art. 9(4) of the PORD, at the beginning of the hearing, the court informs the participants in the proceedings on the way the hearing will be held, and especially on the way the participants in the proceedings will respond to questions or give a certain statement or testimony.

7.14.5. How does an inspection of an object take place during a videoconference?

As previously stated, such means of taking the evidence (for instance, by inspecting a knife submitted in evidence to the court), would be permissible under the ZPP and Article 12 of the PORD. The latter stipulates that in addition to the examination of witnesses and experts, the court may take other evidence at a hearing at distance if the nature of the evidence allows it, which the parties will be given the opportunity to comment before or at the hearing. If the court eventually decides that inspection of an object by its nature can be carried out by videoconference, it should also be borne in mind that the judge will normally be in physical possession of this object when inspecting it, while the parties will not be physically close to it.

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?

The Ministry of Justice provides the courts with a technology platform for holding videoconferences. Each court decides how it will conduct a videoconference, and whether it will make use of the option to share documents on the platform using the special function of will only view it thought the camera.

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)?

This is not defined in the rules and remains at the disposal of the judge within the functionalities of the particular platform. Platforms often have several options and each of them might serve different purposes relevant in an individual hearing.

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?

Art. 11 of the PORD provides that if technical difficulties arise during the remote hearing, the court will try to resolve them and continue with the hearing. If it is not possible to continue the hearing with all participants in the proceedings, but it is possible to continue with some of them and without preventing any party from being heard, the court will continue with the hearing at distance. Otherwise, the court will postpone the hearing and schedule a new hearing at distance or schedule the hearing in the court building, depending on the reasons for not holding the earlier hearing.

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?

According to the ZPP, a party may appeal the decision on the merits alleging the violation of his or her procedural rights, including the right to be heard, provided that a breach of the ZPP provision occurred. The appeal court will then assess whether there was such breach.

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?

Art. 9 of the PORD prescribes the way in which the court has to hold hearings at distance so that all participants in the proceedings can communicate in real time and be visible to the judge. Before the commencement of the hearing at distance, the court will verify whether the connection has been established with all the participants in the proceedings so that they ca communicate in real time, and whether the court has the possibility of turning on and off the sound and video of the participants in the proceedings whose presence is not necessary at all times (e.g. witnesses). The court will warn the participants in the proceedings to turn off the microphone while not speaking. The court will warn the participants in the proceedings to turn off all other devices in their room that are not necessary for holding the hearing, especially those that generate noise. The court may suggest to the participants in the proceedings to use headphones, if possible, for better sound quality.

Furthermore, the court will ask the participant in the proceedings to declare whether he or she is alone in the room and will order that the persons who are not participants in the proceedings leave the room. The court can request that the participant in the proceedings turns the camera so that it can be verified whether he or she is alone in the room and order that the camera be directed towards the door of the room during the hearing for a better view of the situation in the room. The court will warn the participant of the proceedings that the camera must not be turned towards the source of light and may order the

participant in the proceedings to stand at a certain distance from the audiovisual device in order to prevent the use of illegal aids (device) during the hearing at distance.

During the hearings at distance, the court can make all decisions and implement all measures to maintain order which are envisaged in the ZPP.

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)?

Art. 9 of the PORD lays down the rules on the manner of holding hearings at distance in relation to all participants in the proceedings, which, are the court, parties, interveners, attorneys, legal representatives, witnesses, experts and other persons participating in the proceedings. Thus, the above-described rules apply to attorneys as well. In a nutshell, the main rule is that all participants in the proceedings should be alone in the room.

7.16. Are there any special rules pertaining to the distribution of costs in case of videoconferencing?

There are no special rules; general rules apply.

7.17. How does the law guarantee the publicity of videoconference hearings?

Art. 14 of the PORD states that the publicity of the hearing at distance is achieved by enabling the interested person to have a direct access the courtroom where the judge conducts the hearing at distance, or to another courtroom designated by the judge, which fact will be noted on the record.

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)?

The (in)appropriateness of the use of technology is assessed in a view of the particular circumstances of the case at hand. Inappropriate could be the taking of evidence by means of inspection of the traffic conditions and assessment whether a wall obstructs the view from a particular position, because this can be easily manipulated by the person onsite while because the judge cannot control it directly while sitting in the courtroom (which is required under the PORD).