NATIONAL REPORT FOR CYPRUS ON ELECTRONIC EVIDENCE AND VIDEOCONFERENCING

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Project DIGI-GUARD 2023

DIGI-GUARD

Questionnaire for national reports

On electronic evidence and videoconferencing

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

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

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

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

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

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

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

Languages of national reports: English.

Deadline: 31 March 2023.

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

1. General aspects regarding electronic evidence

(Note that the following definitions apply:

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

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

(If applicable, cite the definition of electronic evidence.)

There is no specific definition of electronic evidence, but in the Evidence Law (CAP.9) electronic signatures, electronic seals, electronic timestamps, electronic documents of the electronic registered delivery services are categorized as 'documents.'[1] (See 1.2.)

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

(If yes, please provide the definition. If not, please indicate the relevant case law.)

Article 2 of Evidence Law (CAP. 9) states that[2] 'Document" means anything, upon which is recorded or imprinted any information or appearance of any kind…..'. Also, court documents such as sworn statements are considered as documents.[3]

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

(In answer to this question, please explain whether electronic evidence is categorised among traditional means of evidence or if electronic evidence forms a new means of evidence. Please cite relevant provisions (esp. if electronic evidence forms a new means of evidence). If electronic evidence is categorised among traditional means of evidence, please explain the reason for this categorisation and elaborate to which category of traditional evidence electronic evidence is assigned (for example, elaborate when electronic evidence is considered a document and when it is an object of inspection). Should electronic evidence be categorised among traditional means of evidence, please also comment on possible problems regarding an analogous application of traditional evidence rules.)

Article 2 of Evidence Law (CAP. 9) states that[4]

> '"Document" means anything, upon which is recorded or imprinted any information or appearance of any kind" including electronic signatures, electronic seals, electronic timestamps, electronic documents and of the electronic registered delivery services as they are defined in Regulation (EU) No 910/2014…'

Therefore, electronic evidence does not form a new means of evidence, and is incorporated in the traditional means of evidence, namely documents. This was done to offer a streamlined approach to the law, utilizing the existing legal framework for documents, without an extensive overhaul of the legislation. Cyprus, being a mixed legal system, is also dependent on the rule of precedent set by previous cases, and incorporating electronic evidence in the current legislation, the traditional evidence rules already established may be used analogously. Problems with this approach may arise when a particularly old rule has to be applied to electronic evidence, such as presenting the original document in court. However, the aforementioned rule has been subject of elasticity due to the modern technology of creating exact copies in seconds.[5] Thus, any rules that

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[1] Evidence Law (CAP. 9), Article 2
[2] Ibid
[3] T.Iliadis and N.G Santis, Law of Evidence: Procedural and Essential Aspects, (2nd Edition, Hippasus Publishing 2016) p.355
[4] Evidence Law (CAP. 9), Article 2 http://www.cylaw.org/nomoi/enop/non-ind/0_9/full.htm
[5] Ibid Article 12 (3)

may create problems with electronic evidence may be reshaped. It has to be noted that so far there has been no case law from the Supreme Court of Cyprus regarding electronic evidence.

With the introduction of iJustice the system of electronic filing of cases used in Cyprus, which was fully implemented in February 2022.[6] As from that date, new cases shall only be filed electronically, including all the documents.[7] Documents in The Electronic Justice (Electronic Filing) Procedural Regulation of 2021 (1/2021) are given the meaning that it has in Evidence Law (CAP.9).[8] A document that has been filed electronically shall not be filed in any other manner, except if the Court or Registrar requests it, or if provided by the Procedural Regulations.[9] Documents may be filed in its physical form if 'it is considered that its registration electronically is difficult.'[10], or if filing the original document is needed, such as will or bank guarantee.[11] If a document is registered electronically, the 'the original thereof must be kept by the person who registered it electronically and be available for inspection if requested by the Court, the Registrar or another party to the case.'[12] Documents that a party will file as evidence during trial, can be filed through the electronic system at any time before the trial. If a document is submitted as evidence during trial, the Registrar shall file it in the electronic file.[13] However, it is not stated if documents filed through iJustice are considered as electronic evidence. (see 1.7 and 1.8)

1.4. Does the law of your Member State explicitly regulate that evidence or data in electronic form has evidentiary value?
(If yes, please cite the provision regulating the evidentiary value of electronic evidence (e.g., "electronic data shall not be denied legal effect or considered inadmissible as evidence in the proceedings solely on the grounds that they are in electronic form"). Please also explain if there is any presumption regarding the evidentiary value, admissibility, reliability or authenticity of electronic evidence.)

Electronic evidence is categorized as traditional means of evidence, thus it holds the same evidentiary value thereof. (See 1.3)

Electronic Signatures, Electronic seals, Electronic timestamps, electronic documents and of the electronic registered delivery services, as they are defined in Article 3 of Regulation No, 910/2014 that may be in electronic form, or may not meet all requirements for being approved as they are stated in the Regulation, are admissible as evidence in any criminal or civil procedure.[14]

The law also provides the following about the legal effect of Electronic Signatures, Electronic seals, Electronic timestamps, electronic documents and of the electronic registered delivery services:

- An Electronic signature has the same legal effect as a written signature.[15]
- 'An approved electronic seal is considered a presumption of the integrity of the data and the correctness of the origin of the data with which it is associated'.[16]

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[6] Cyprus Bar Association, The electronic registration system (iJustice) will be fully implemented from February 1 2022, accessed 01 March 2022, <https://www.cyprusbarassociation.org/index.php/en/news/18786-ijustice-1-2022>
[7] Ibid
[8] The Electronic Justice (Electronic Filing) Procedural Regulation of 2021 (1/2021), Article 1
[9] Ibid, Article 6(1)
[10] Ibid, Article 6(2)
[11] Ibid, Article 7(1)
[12] Ibid, Article 8
[13] Ibid, Article 28 (1) & (2)
[14] On the Application of Regulation (EU) no. 910/2014, on Electronic Identification and Trust Services for Electronic Transactions in the Internal Market, Law of 2018 (55(I)/2018), Articles 9 -13
[15] Ibid, Article 9
[16] Ibid, Article 10

- 'The approved electronic timestamp is considered to be a presumption of the accuracy of the date and time it reports, as well as the integrity of the data with which the date and time are associated.'[17]

- 'Data sent and received using an approved electronic registered delivery service is considered a presumption of the integrity of the data, the sending by the identified sender and the receipt by the identified recipient of the data and the accuracy of the date and time of sending and receiving the data listed by the authorized electronic registered delivery service.'[18]

Videorecordings, photographs and voice recordings can be accepted as evidence as proof of their content[19] or as real (*πραγματική*) evidence, which is the evidence that stems through the examination of objects. In the case of videorecordings, photographs and voice recordings events are recorded.[20]

1.5. Does the law of your Member State explicitly differentiate between electronic and physical private documents as evidence?
(Please elaborate on whether the law of your Member State regulates electronic documents and if an electronic document has the same legal effect as a physical document. Please emphasise whether there are any provisions differentiating between electronic and physical documents. If applicable, please cite the provisions regulating electronic documents.)

As stated in 1.4, electronic documents are admissible as evidence in any criminal or civil procedure. Furthermore, electronic evidence is encompassed in what is collectively defined as 'documents', without a differentiation between electronic and physical private documents. (See 1.3)

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?
(If yes, please cite the provision regulating public documents in electronic form. Please emphasise whether any provisions differentiate between electronic and physical public documents.)

'Public document' means decree of the Council of Ministers, decree, declarations, regulations, rules, notice or record that was done, published or upkept according to authority of law.[21]

According to Article 7 of the above law, any public document 'should be published in the Official Gazette… and will be judicially noticed".[22] Judicial notice is a rule that enables a court to accept some proven some indisputable and apparent facts.[23] For example that cats are domestic animals[24], or that a months has a certain number of days, and that a specific date was a Sunday.[25] Copy of a public document 'that is contained in printed collection of Laws that were printed and published with official approval or that are contained in a version of the Official Gazette of the Republic or stated to have been printed by the Government Printer, shall be prima facie evidence, in all Courts, and for all purposes absolutely, of the regular preparation or issue and meaning thereof.'[26] In *General Attorney v Charilaou and others*, it was held that the first instance court should have considered as judicial notice a public document that was published in the Official Gazette, without the need for the prosecution to present the public document in court.[27]

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[17] On the Application of Regulation (EU) no. 910/2014, on Electronic Identification and Trust Services for Electronic Transactions in the Internal Market, Law of 2018 (55(I)/2018), Article 11
[18] Ibid, Article 12
[19] *R v Senat* (1968) 52 Cr App R 282
[20] *Limassol District Administrator v Steliou Giorgalla* (2003) 2 ΑΑΔ 298
[21] Law of Interpretation (CAP.1), Article 2
[22] Ibid, Article 7
[23] Iliadis and Santis 2016, supra n.3, p. 253
[24] *Nye v. Niblett* (1918) 1 KB 23
[25] *Hanson v. Shackleton* 4 Dowl. 48
[26] Law of Interpretation (CAP.1), Article 43
[27] *General Attorney v Charilaou and others* (2004) 2 ΑΑΔ 479

Furthermore, according to Article 43 of the Law, copies of public documents that are included in a printed collection of law that are printed or published with official approval, that are included in a version of the Official Gazette of the Republic or stated to have been printed by the Government Printer, shall be prima facie evidence, in all Courts and for all purposes absolutely, of the regular preparation or issue and meaning thereof.[28]

There are no special procedures for the special evidentiary value of electronic public documents. Consequently, the rules that are described in this question might apply analogously.

1.7. Describe the legal effects of changing the form of electronic evidence to physical.
(In answer to this question, please explain whether it is admissible to change electronic evidence (e.g., websites, social networks, or e-mail) to a physical form and, what legal effect such change has. Please also specify, whether electronic evidence is treated as a copy and whether printouts are necessary when submitting particular types of electronic evidence (e.g., websites, social networks or e-mail). If applicable, please cite the provisions relating to changing the form of electronic evidence.)

Electronic evidence is encompassed in what is collectively defined as 'documents'. (See 1.3) Furthermore, '*«*a copy*»* (in relation to a document) means anything on which the said information or representation has been copied by any means, whether directly or indirectly'. That would mean that an email for example, if it is printed, it would mean that the form is changed from electronic to physical.

Under the Electronic Justice (Electronic Filing) Procedural Regulation of 2021, a certified true copy of any document signed by the Registrar can be issued in physical or electronic form.[29] As stated in 1.1, documents for the purposes of regulations encompasses electronic signatures, electronic seals, electronic timestamps, electronic documents and of the electronic registered delivery services as they are defined in Regulation (EU) No 910/2014. Therefore, if a physical copy of electronic evidence is done via the system, it shall be treated as a copy, which implies that changes of electronic evidence to physical outside of the system will be treated as copies too.

In any case, with iJustice, all documents to be presented as evidence are to be filed electronically, unless the exceptions described in 1.3 apply. Thus, the probability of changing a document already in electronic form in physical form via printout of a trial is slim.

1.8. Describe the legal effects of changing the form of physical evidence to electronic.
(In answer to this question, please explain whether it is admissible to change evidence in the physical form to electronic and what legal effect such a change has. If applicable, please cite the provisions relating to changing the form of physical evidence.)

Under Article 21 of Evidence Law (CAP.9), 'the content of a document (whether it still exists or not) can be accepted in any procedure with the presentation of magnifying copy of the said document or the essential part of it, which has been reproduced from depiction with the method of micro photography or microimaging or transfer to a single write electronic disc of an optical representations certifying its originality through any means the Court would approve.'[30]

Also, with the iJustice system, certified true copies of physical documents can be issued in electronic or physical form (see 1.7). Therefore, although not expressly stated in legal provisions, changing the form from physical to electronic seems to mean that the electronic document will be considered as a copy.

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[28] Law of Interpretation (CAP.1), Article 43
[29] The Electronic Justice (Electronic Filing) Procedural Regulation of 2021 (1/2021), Articles 22 and 24
[30] Evidence Law (CAP. 9), Article 21

1.9. Explain the rules and what is considered to be an original and what a copy (the concept of original). *(If applicable, please cite relevant provisions.)*

In Article 2 of Evidence Law (CAP.9), 'copy (in regards with document) means anything upon which the said information or depiction has been copied by any means, either directly or indirectly'. This implies that the definition of original document is as described in 1.3.

1.10. Describe the legal effects of a copy of electronic evidence within the law of your Member State. *(In answer to this question, please explain when electronic evidence is considered a copy. Please also elaborate on the legal effects of a copy of electronic evidence, and, if applicable, cite the relevant provisions. Should the law of your Member State not regulate copies of electronic evidence, please explain how the court perceives a copy of electronic evidence.)*

There is neither legislation nor case law regarding copy of electronic evidence. As established in 1.3, electronic evidence is encompassed in what is collectively considered as 'documents'. Therefore, any copy of electronic evidence should be subject to the same rules as physical evidence.

2. Authenticity, reliability and unlawfully obtained electronic evidence

2.1. Are there any particular procedure, guidelines, mechanism or protocol on how the parties shall obtain electronic evidence in order to preserve their authenticity and reliability before submitting them to the court?
(If applicable, also comment on possible effects regarding the admissibility of electronic evidence if they are not obtained in accordance with such procedures or technical guidelines.)

Not applicable.

2.2. Is there any particular procedure on how the court should identify the source of electronic evidence?
(If any official guidelines, mechanisms or protocols are established within the law of your Member State to identify the source of evidence, by either the expert or the court, please mention those as well (e.g. in the case of evidence derived from cloud computing, blockchain or using AI algorithms).)

Not applicable.

2.3. Does the law of your Member State stipulate different rules or provisions for different types of electronic evidence? (*Please explain whether certain types of electronic evidence are presumed authentic and reliable and others inauthentic and unreliable. If applicable, please cite the provisions regarding (in)authenticity and (un)reliability of electronic evidence.)*

Answer to this question is already provided in 1.4.

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

Not applicable.

2.5. When should the court appoint experts to process electronic evidence?
(Please enumerate cases in which the court may or must appoint an expert when processing electronic evidence.)

There is no specific rule as to when should courts appoint experts to process electronic evidence. Under Article 48 of the Courts of Justice Law of 1960 (14/1960), the court may in any stage of a civil procedure, either after an application by the parties or by its own initiative, call any person residing in the Republic to testify as a witness or as an expert.[31] The parties may appoint their own experts, or they can agree on the appointment of a common expert.[32]

As stated in Andreas *Anastassiades v. The Republic:*

> '…that the duty of the experts is to furnish the Judges with the necessary scientific criteria for testing the accuracy of their conclusions so as to enable the Judges to form their own independent judgment by the application of those criteria to the facts proved in evidence.'[33]

[31] Courts of Justice Law of 1960 (14/1960), Article 48
[32] Iliadis and Santis 2016, supra n.3, p. 579
[33] Andreas Anastassiades v. The Republic (1977) 2 C.L.R. 97

In *Metaquotes Software Ltd V Dababou* the Supreme Court held that the appointment of an independent expert of IT from the first instance court for the discovery of documents of electronic nature was correct. It was held that:

> 'In a constantly changing field of technological progress, a corresponding adjustment in the field of law is also required. The use of computers, their rapid development, the primary role they now play in the entire range of financial transactions and the storage of electronic data require a constant change in discovery procedures and a constant search for new, compatible with existing circumstances, methods of safeguarding the rights of every interested person for effective access to the Court to assert his rights.'[34]

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?
(Please explain the distribution of costs related to potential expert assessments and opinions on the reliability, authenticity and lawful manner of obtaining electronic evidence.)

Under Article 43 of the Courts of Justice Law of 1960 (14/1960) states that costs 'unless otherwise provided under any of any applicable law or secondary legislation, will be governed by discretionary power of the court, which shall have full power to decides by whom and to what extent it will be paid'.[35] The Civil Procedure Rules, as secondary legislation, also gives the court the discretion to award costs as it sees fit.[36] The general rule is that costs follow the result of the trial, meaning that the losing party will pay the costs, including experts that have been called by the court, unless the court exercising its discretionary power decides otherwise.[37] For example, when the winning party with its handling of the case has contributed in the increase in costs.[38]

For the experts, the parties may include the costs of an expert witness in their statement of claim, and the court will decide whether they should be awarded. In this case, the court denied the costs of the experts called by the plaintiff, because no receipt or invoice was presented.[39] As there has not been any case law for who bears the costs if an expert needs to be appointed to assess the reliability, authenticity and (un)lawful manner of obtaining electronic evidence, the rules described above might apply.

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)?
(Please explain whether any special procedures are established within the law of your Member State to challenge the reliability, authenticity or manner of obtaining electronic evidence. If no special procedure exists, explain regular remedies that would apply in such a case. If applicable, cite relevant provisions, case law, guidelines or other sources regulating the procedure to challenge the admissibility of compromised electronic evidence.)

There are no special procedures for the challenge of the reliability, authenticity or manner of obtaining electronic evidence. Consequently, the rules that are described below might be applied analogously. Order 36 Rule 6 of the Civil Procedure Rules reads that 'Any document offered in evidence and not objected to shall be put in and read, or taken as read by consent.'[40] Thus, if a party has doubts about an evidence which is submitted, it should object at that moment.

In *Kiriakou v Griva*, the Supreme Court reiterated Order 38 Rule 6, stating that objections regarding to documents must be placed when the document is submitted. Thus, it was not possible to appeal at this stage

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[34] *Metaquotes Software Ltd and Other v Dababou*, Civil Appeal No. E324/2016, 14/11/2018, ECLI:CY:AD:2018:A501
[35] Courts of Justice Law of 1960 (14/1960), Article 43
[36] Civil Procedure Rules, Order 59 Rule 1
[37] *Yiannakis Philippou v Elenas Philippou* (1990) 1 ΑΑΔ 890
[38] *Nitsa Thrasivoulou v Arto Estates Ltd* (1993) 1 ΑΑΔ 12
[39] *Christodoulou v Chr Othonos Homes Ltd*, Case no. 3291/2010, 30/08/2019, ECLI:CY:EDPAF:2019:A41
[40] Civil Procedure Rules, Order 38, Rule 6

the admissibility of the document.[41] Absence of an objection towards the submission of a document does not equal to acceptance of its content as evidence, however.[42] The importance of Order 36 Rule 6 can be seen *Mavrokordatou v Louka*, where the court did not examine the objection when it was raised, deciding at a later stage without justifying its ruling. The Supreme Court ordered a retrial of the case.[43]

Order 36 Rule 4 reads that 'Objections to the reception of evidence shall be made at the time the evidence is offered, and shall be argued and decided at the time.'[44] *Victoros v Christodoulou* stresses the importance of Order 36 Rule 4,, as 'it regulates the procedure for the admission of disputed testimony and stipulates that the matter must be decided at the time the objection is submitted'. The court observed that only admissible evidence can be a subject of cross examination for ascertaining the weight of a testimony. The court concluded that 'Uncertainty as to admissible testimony relating to the matters in dispute leaves an unbridgeable gap in the process and creates a rift in the filing of the evidence'.

2.8. How is the admissibility of compromised or illegally obtained electronic evidence regulated within the law of your Member State?
(Is the court bound by any rules regulating the admissibility of compromised or illegally obtained (electronic) evidence (e.g. explicit rules provided under your national legislation, rules developed through case law, etc.)? If the rules regulating the admissibility of electronic and non-electronic evidence differ, please emphasise and evaluate the distinction.)

There is neither legislation nor case law about the admissibility of compromised or illegally obtained electronic evidence. The general rules for the admissibility of such evidence are explained in 2.12.

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

In civil cases, the burden of proof of the originality of a document rests with the party that submits it and claims its validity.[45] Since no rules or case law exist about which party carries the burden of proving the (in)authenticity or (un)reliability of electronic evidence, it has to be assumed that the general rule as described above applies.

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?
(Please explain if 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.)

The Common Law system is adversarial. As Lord Denning held:

> 'In the system of trial which we have evolved in this country, the judge sits to hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of society at large, as happens, we believe, in some foreign countries.'[46]

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[41] *Kiriakou v Griva* (2002) 1 ΑΑΔ 825
[42] *Hellenic Bank (Funding) Ltd v ET Autospares Enterprises Ltd and Others* (1998) 1 ΑΑΔ 843
[43] *Mavrokordatou v Louka* (1998) 1 ΑΑΔ 286
[44] Civil Procedure Rules, Rule 38 Rule 4
[45] *Cypromix Concetrates Co Ltd v Vitafor N.V* (2001) 1 ΑΑΔ 676
[46] *Jones v National Coal Board* [1957] 2 Q.B. 55, 63

This approach has been adopted in Cyprus, as in *Eleftheriades v Mavrellis* it was held that 'the role of a Judge under the adversarial system of the common Law is that of an impartial arbiter; in the discharge of his adjudicative duties, he must distance himself from the arena of litigation.'[47] It is the parties that are responsible '….for the prosecution or defence of their case depending on their position in the proceedings. The role of the Judge is arbitral, having no responsibility for the prosecution or presentation of the case of either party.' [48]

The court has the discretion to examine a topic on its own accord only when it is a matter of public order[49], for instance bad composition of an administrative body.[50] Therefore, only the parties may to challenge the authenticity and reliability of electronic evidence even if neither party objects the authenticity and reliability of electronic evidence.

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

(In answer to this question, please explain whether judges are expected to assess if evidence was compromised or illegally obtained by themselves, whether an expert may or must be appointed, and whether any other rules and requirements have to be complied with.)

Not applicable, the general rule is that the court cannot turn itself into an expert, such as when comparing signatures to validate that there has been no forging, in the absence of an expert.[51] Thus, as mentioned in 2.5, the court will appoint experts if it deems this necessary.

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

(The question refers to procedural implications, e.g. the exclusion of evidence or considerations when assessing the weight of such evidence.)

Evidence which was obtained by violating basic principles of the Constitution of the Republic of Cyprus is inadmissible. In *Police v Georghiades*, a conversation between the accused and another person was recorded without their knowledge; this evidence was deemed to be inadmissible contravening Articles 15, 17 and 35 of the Constitution, and Article 8 of the European Convention on Human Rights.[52] The inadmissibility of such evidence is absolute without any exceptions.[53] In *Re Kakoulli*, it was held that the secrecy of correspondence includes email, and thus is protected by Article 17 of the Constitution.[54]

Evidence which was obtained in violation of Legal Statutes does not make the evidence inadmissible per se. The court will examine whether the negative effect it has on the defendant is disproportionate to its evidential value. Such an effect would only exist if the admissibility of the evidence would lead to a violation of the right to a fair trial. 'The highest its evidential value is, the hardest it is to classify it as inadmissible. A piece of evidence does not have a negative effect simply because it is incriminating towards the defendant.' [55]

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

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[47] *Eleftheriades v Mavrellis* (1985) 1 CLR 436
[48] *Eleftheriades v Cyprus Hotels Ltd* (1985) 1 CLR 677
[49] *Sigma Radio Ltd v Cyprus Broadcasting Corporation* (2005) 3 ΑΑΔ 130
[50] Insurance Association of Cyprus v Commission for the Protection of Competition (2002) 3 ΑΑΔ 314
[51] *Demetriou and Other v Sidorenko* (2011) 1 ΑΑΔ 1095
[52] *Police v Georghiades* (1983) 2 CLR 33
[53] *Police v Yiallourou* (1992) 2 ΑΑΔ 147
[54] *Re Kakoulli* (2007) 1 ΑΑΔ 1090
[55] *Parris v Republic* (1999) 2 ΑΑΔ 186

(*If yes, are pre-recorded oral statements of witnesses admissible as evidence?)*

Under Article 25 of Evidence Law (CAP.9), 'Any witness in any proceeding may adopt the content of his written testimony or written statement. In such case, said written statement or written statement shall be filed with the Court and shall be deemed to constitute the primary examination of the witness, or part thereof.'[56] This provision does not 'does not set conditions or restrictions regarding the presentation of the testimony or witness statement so that it is considered to be the main examination of the witness….. 'If an issue arises that the statement or part of it contains testimony which should not be admitted, the issue is considered by the court ad hoc as in any other case'.[57] The provision was introduced to speed up the trial of cases.[58] 'This new procedure does not deprive in any way the possibility of presenting objections, particularly on matters related to the registered positions or even objections on matters covered by the law of evidence'.[59]

According to Article 9 of Protection of Witnesses Law 95(I)/01, the court may allow per-recorded statement of a witness that needs help as the primary examination. However, the above law applies only in criminal proceedings.[60]

[56] Evidence Law (CAP. 9), Article 25
[57] *Pierou v Ilia* (2010) 1 ΑΑΔ 843
[58] *Zervou and Others v Emporiki Bank of Greece (Cyprus) Ltd* (2012) 1 ΑΑΔ 1999
[59] Ibid
[60] Protection of Witnesses Law 95(I)/01

3. Duty to disclose electronic evidence

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

(Please explain whether there are any special rules explicitly regulating the disclosure of electronic evidence or if general rules of disclosure apply instead. Should the rules regulating disclosure of particular means of evidence (e.g. documents, physical objects, affidavits) be applied to disclosure of electronic evidence by analogy, please explain which rules are to be used under which circumstances. Include the name of the act and the article(s) containing relevant provisions.)

There is no specific provisions for the disclosure of electronic evidence. The disclosure of documents is regulated by Article 28 of the Civil Procedure Rules. As stated in 1.3 (see above) the term 'document' includes electronic evidence. Thus, the provisions mentioned above might be applied to electronic evidence as well, except when it would be impractical due to the nature of electronic evidence.

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

(Please address the circumstances under which the party is required to provide electronic evidence (e.g. the evidence was obtained in a particular manner, the evidence refers to both parties, the parties brought up the evidence when testifying, etc.), the type of evidence they are required to provide (if applicable) and procedural requirements (e.g. does the party in need of evidence have to request particular evidence with an explicit motion, does the court have any discretion when ordering disclosure, are there any time limits, etc). If the rules regulating the disclosure of electronic and non-electronic evidence differ, please emphasise and evaluate the distinction.)

No time frame for submitting a request for disclosure of documents is set. However, this request should be filed before the hearing of the case starts 'since it aims, among other things, to inform the party, who requests the disclosure of the documents that his opponent has in his possession, in such a way that they are not accidentally seized during the hearing of the case.'[61] Order 28 Rule 1 states that 'Any party may, without filing any affidavit, apply to the Court or a Judge for an order directing any other party to any cause or matter to make discovery on oath of the documents which are or have been in his possession or power relating to any matter in question therein.'[62] Although the Order does not specify the time that such an application should be made, 'but is usually done after the completion of the proposal documents, because then the disputed issues become clear. It is important for a party to have proper disclosure before proceeding to trial.'[63] Also, Order 28 Rule 4 gives the Court the power to order any party to product a document in their possession that is related to the matter of the case, and the court shall deal with such documents in a manner that is just.[64] There are no provisions in the law about party's duty to disclose electronic evidence, hence the established rules might be applied analogously.

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

(Please elaborate on whether persons not directly involved in proceedings must present or disclose electronic evidence under the same conditions as the parties or whether different rules apply. If the rules regulating the disclosure of electronic and non-electronic evidence differ, please emphasise and evaluate the distinction.)

The duty to disclose evidence by third persons can only be achieved by the court issuing a 'Norwich Pharmacal' order, owing its name to the English Case.[65] The three conditions that have to be met for this order, summarized in *Mitsui & Co Ltd v. Nexen Petroleum UK Ltd:*[66]

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[61] *Stargel Co Ltd v Kevin Edward Lutkin and other*, Case No. 4174/2005, 16/05/2008, ECLI:CY:EDLAR:2008:A39
[62] Civil Procedure Rules, Rule 28 Rule 1
[63] *Andreas Christodoulou Tilliri v Laiki Bank Ltd* (1998) 1 ΑΑΔ 2271
[64] Civil Procedure Rules, Rule 28 Rule 4
[65] *Norwich Pharmacal Co a.o. v. Commissioners and Custom Excise* [1973] 2 All E.R. 943
[66] *Mitsui & Co Ltd v. Nexen Petroleum UK Ltd* [2005] EWHC 625, Paragraph 21

'The three conditions to be satisfied for the court to exercise the power to order *Norwich Pharmacal* relief are:

i. a wrong must have been carried out, or arguably carried out, by an ultimate wrongdoer;
ii. there must be the need for an order to enable action to be brought against the ultimate wrongdoer; and
iii. the person against whom the order is sought must: (a) be mixed up in so as to have facilitated the wrongdoing; and (b) be able or likely to be able to provide the information necessary to enable the ultimate wrongdoer to be sued.'

In Avila, the Supreme Court found that the District Court was correct to find that a Norwich Pharmacal order could be issued not only against the wrongdoer, but also against any person that is proven that he took part or involved in an illegal act, even unintentionally.[67] As this is an interim order, the requirements set forward by the Law[68] and case law[69] must be met. Although there is no provision in the law or case law for third parties to disclose electronic evidence, the rules described can be applied analogously.

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

(Does your national legislation stipulate reservations and exceptions to the duty of disclosure that would apply to (or also to) electronic evidence? On the one hand, the question refers to the right to refuse disclosure, privileges, the protection of secrecy and similar restrictions. On the other hand, it refers to measures imposed to prevent abuse in the form of fishing expeditions (requesting non-specific or broad information and evidence in the hope of gaining compromising materials) or excessive disclosure (providing an unmanageable volume of information in the hopes of confusing the parties or the court and delaying proceedings). If the rules regulating the disclosure of electronic and non-electronic evidence differ, please emphasise and evaluate the distinction.)

In G.*A.P. Navigation LTD v Merzario Marrittima SRL*[70] it was held that:

> 'Disclosure of documents is aimed at obtaining information and producing documents that are relevant to the dispute that has arisen between the parties for the purpose of preparation for the hearing and may be requested by either party. Relevant are documents that contain information that may directly or indirectly help the party seeking disclosure either to advance their case or to harm their opponent's case, but disclosure for the purpose of "fishing" evidence is not permitted.'

When a party files an application to the court for the discovery of documents, the other party may object for any documents it does not wish to disclose.[71] Order 28 Rule 3 states that:

> 'If a party ordered to make discovery of documents fails so to do, he shall not afterwards be at liberty to put in evidence on his behalf in the action any document he failed to discover or to allow to be inspected, unless the Court is satisfied that he had sufficient excuse for so failing, in which case the Court may allow such document to be put in evidence on such terms as it may think fit.'[72]

Thus, any documents that are to be disclosed must be relevant to the case, and fishing of documents is not permitted. A party may fail to discover documents, but only if has sufficient excuse to do so. There is neither case law nor rules exclusively for the limits of discovery of electronic evidence, hence the established rules might be applied analogously.

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[67] *Avila Management Services Ltd and other v Frantisek*
[68] Law Courts of Justice Law of 1960 (14/1960), Article 32
[69] *Odysseos Andreas v A Pieris Estates Ltd and Another* (1982) 1 CLR 557
[70] *G.A.P. Navigation LTD v Merzario Marrittima SRL* (1998) 1 ΑΑΔ 1624
[71] Civil Procedure Rules, Order 28 Rule 2
[72] Ibid, Order 28 Rule 3

3.5. What are the consequences of a violation or non-compliance with the duty to disclose electronic evidence?
(Please explain whether any coercive measures or sanctions may be imposed against a party or a third person who unjustifiably refuses to comply with their duty to disclose (electronic) evidence. Does your national legislation provide for any presumptions or fictions regarding the truth of facts to be proved with undisclosed evidence? If the rules for disclosure of electronic and non-electronic evidence differ, please emphasise and evaluate the distinction.)

As stated in 3.4, if a party is ordered to make discovery of documents, in the case it fails it will not be able to present these documents as evidence, unless the court is satisfied that it had sufficient excuse not to do so.

Order 28 Rule 12 states that '…if he fails to comply with any order for discovery or inspection of documents, he shall be liable to attachment.' If the party that fails in discovery is the plaintiff, he will be liable for the dismissal of his case. If it is the defendant, any defence he has will be struck out, and he will be placed in the same position as if he had no defence. Finally, the party seeking discovery may apply to the court for that order to take effect. There is not case law or rules exclusively for violation or non-compliance with the duty to disclose electronic evidence, hence the established rules might be applied analogously.

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?
(The answer to this question should contain an overview of any case law addressing the duty to disclose electronic evidence (or other evidence, if the same issue could arise concerning electronic evidence) in the context of cross-border proceedings, most notably any cases in which the problems resulted from national differences in the scope of the duty to disclose such evidence (e.g. a broader scope of the duty to disclose evidence in one participating Member State than in the other, privileges or exceptions existing in one Member State but not in the other, etc.). If no such case law exists, please explain any potential problems discussed in legal literature or any problems you expect to arise in practice.)

There has not specific case law about the duty to disclose electronic evidence, and the relevant provisions about disclosure of evidence do not make any explicit reference to electronic evidence. As explained in 1.3, electronic evidence is categorised among traditional means of evidence, thus the same rules apply. In *Avila*, the court issued for the disclosure of evidence from third parties, not excluding the possibility that the information disclosed could help in the filing of a case in the Czech Republic. However, it was held that the court does not issues a Norwich Pharmacal order for foreign banks or persons, as this would require the cooperation of Courts and Registrar to be applied.[73]

One problem that may arise in the disclosure of electronic evidence, is if the requested evidence is of confidential nature. However, as seen in Penderhill, the court will examine whether the information to be disclosed falls in the principle of confidentiality, and will rule whether it falls into this category. [74] It remains to be seen how the Cypriot will apply this in the case of electronic evidence.

[73] *Avila Management Services Ltd and other v Frantisek Stepanek and Others* (2012) 1 ΑΑΔ 1403
[74] *Penderhill Holdings Limited and others v Darya Abramchyk and others*, Civil Appeal No. 319/11, 13/01/civil2014, ECLI:CY:AD:2014:A21,

4. Storage and preservation of electronic evidence

(Storage and preservation of electronic evidence refer to the preservation of electronic evidence in active cases which have not yet been concluded with a final act. For archiving electronic evidence in closed cases, see the next part of the questionnaire.)

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

(Please list legal acts or other documents establishing rules for the proper storage and preservation of electronic evidence (e.g. including guidelines, protocols and instructions) and shortly indicate their content or purpose. If the relevant solutions have developed in practice, explain these as well.)

Not applicable.

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

(Please provide a summary of requirements, standards and protocols established to preserve and secure the reliability, authenticity, confidentiality and quality of evidence. If there are any special rules regulating the storage of metadata, please describe them.)

Not applicable.

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

(Please explain the "physical" location of servers or media where electronic evidence is stored, e.g. each court might be responsible for storing electronic evidence to be used before that very court on their own premises/on their own servers; or some central agency, department or organisation might be authorised to store electronic evidence for all (or several) courts, etc.)

All the information uploaded in iJustice shall be stored in a Server of the Cyprus Telecommunications Authority, without any further information given.[75]

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

(Please explain any potential requirements or limitations on who may carry out activities related to storing and preserving electronic evidence, e.g. private vs. public entities, certification or qualification requirements, etc.)

Not applicable.

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

(Please explain who has access to electronic evidence, which conditions must be met, and which procedure must be followed.)

Access to the electronic folder is reserved for Judges, Judicial Officers, lawyers and any other person adhering to the conditions of access to the system.[76]

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

(Which measures are taken to guarantee the accessibility of stored electronic evidence in line with the evolution of technology? E.g. when old storage media (VHS, floppy disks, etc.) are no longer used or new, more secure types of storage media become available.)

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[75] *iJustice*, Storage of Document, accessed 01 March 2023 <https://www.cyprusbarassociation.org/index.php/en/for-lawyers/ijustice/faqs1/2021-02-02-20-24-51>

[76] The Electronic Justice (Electronic Filing) Procedural Regulation of 2021 (1/2021), Article 4

Not applicable.

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?
(Please explain whether there are any special procedures to be followed by another court to access the stored electronic evidence and/or protocols for transmitting such evidence intended to preserve the integrity of the evidence and to prevent any manipulation.)

Not applicable.

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

Not applicable, there are not any special rules. For the conversion of electronic evidence into physical evidence and vice versa, see 1.7 and 1.8.

5. Archiving of electronic evidence

(Archiving of electronic evidence only refers to the preservation of electronic evidence in closed cases that have already concluded with a final act. Please include all information regarding the storing and preserving of electronic evidence in active cases in the preceding part of the questionnaire.)

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

(Please list legal acts or other documents establishing rules for the proper archiving of electronic evidence (e.g. including guidelines, protocols, instructions) and shortly indicate their content or purpose. If relevant solutions have developed in practice, explain these as well. If the rules regulating the archiving of electronic and non-electronic evidence differ, please emphasise and evaluate the distinction.)

The archiving of judicial archiving is regulated by the State Record Law of 1991 (208/1991).[77] There is no specific regulation for the archiving of electronic evidence.

Under Article 2 of the Law, "public record" has the meaning given to it in the Annex to this Law and includes not only documents but also records that transmit information by any other means Public record entails judicial archives and archives of a judicial body.[78]

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

(Please provide a summary of requirements, standards and protocols established to preserve and secure the reliability, authenticity, confidentiality and quality of electronic evidence. If there are any special rules regulating the archiving of metadata, please describe them.)

Not applicable.

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

(Please explain the "physical" location of archives, e.g. each court might be responsible for archiving electronic evidence collected before that very court on their own premises/on their own servers; or some central agency, department or organisation might be authorised to archive electronic evidence for all (or several) courts, etc.)

Under Article 7, the place of archiving of records is the State Record. The Minister of Justice may consent for the archiving to take place elsewhere, provided it has the necessary requirements for archiving and maintenance of records and review by the public, and if the authority that is responsible for that place consents.[79] There are no provisions about the location of archival of electronic evidence.

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

(Please explain any potential requirements or limitations on who may carry out the archiving, e.g. private vs. public entities, certification or qualification requirements, etc.)

The public records located in the State Archives are kept by the Superintendent while the records located in a place of safekeeping designated under this Law are kept by the officer designated by the Minister.[80] There are no provisions about who may carry the archiving of electronic evidence.

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?

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[77] State Record Law of 1991 (208/1991)
[78] Ibid, Article 2 of Annex
[79] Ibid, Article 7(1)
[80] Ibid, Article 7(4)

(As electronic evidence is generally kept in an archive for an extended period of time, which measures are taken to guarantee its accessibility in line with the evolution of technology? E.g. when old storage media (VHS, floppy disks, etc.) are no longer used or new, more secure types of storage media become available.)

Public records that are duplicated, or there is a special reason not to be archived permanently, the Superintendent may with the consent of the Minister to authorize the destruction of the archives, or their availability for another cause.[81] There are no provisions about the deletion or destruction of electronic evidence after a certain period.

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.)*

Not applicable.

[81] Ibid, Article 9

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?

(Please explain whether there are any official requirements for judges or other professionals to undergo training aimed specifically at improving their skills related to technological aspects of taking evidence, and if any such trainings (voluntary or mandatory) are provided by ministries, state agencies or other entities.)

The Department of Edification of the Supreme Court is responsible for the edification of Judges. However, there are no official requirements for Judges to undergo training on technological developments.[82] To this date, there have not been any training on technological developments relevant to taking, using and assessing electronic evidence.[83]

The Cyprus Bar Association has introduced mandatory Continual Professional Development courses,[84] but there is no official requirement on specific training on technological developments relevant to taking, using and assessing electronic evidence.

[82] Ministry of Justice and Public Order, *Creation of a Training Department at the Supreme Court*, accessed 01 March 2023 <http://www.mjpo.gov.cy/mjpo/mjpo.nsf/All/2B81B03ED6172894C2258551002FE3E6?OpenDocument>
[83] Supreme Court, *Creation of School for Judges*, accessed 01 March 2023 <http://www.supremecourt.gov.cy/Judicial/SC.nsf/DMLtraining_gr/DMLtraining_gr?opendocument>
[84] Law of Advocates (CAP 2) (as amended to date) (Rules based on Article 24(1) B and IB of Law of Advocates Law (CAP 2) <http://www.cylaw.org/KDP/data/2017_1_386.pdf>

7. Videoconference

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

(If you answered in the affirmative, please list the legal grounds (e.g. "Art. 100 of the Civil Code"). Please indicate when the legal grounds entered into force (e.g. 01.02.2010) and specify any amendments to the legal grounds. If an online (official or unofficial) English translation of the relevant provisions exists, please provide the URL (link). If there are "soft-law" instruments (e.g. guidelines) that supplement rules on conducting the videoconference, then please specify them.)

According to Article 36A(1) of Evidence Law (CAP.9), in any criminal or civil proceeding the court may, if it determines this is to the benefit of Justice, to allow a witness that is currently outside the Republic to give testimony through videoconferencing. Videoconferencing is defined as 'the use of technology of broadcasting image and sound or other arrangement with which the witness, despite the fact he is absent from the Courtroom, he is able to see and listen to persons present in the courtroom and conversely persons present in the courtroom can see and listen to the witness. Article 36A (3) states that the Court may impose any terms it deems necessary for taking witness through videoconferencing, and who are not contrary to commitments undertaken by the Republic of Cyprus in bilateral or international conventions pertaining to the matter. [85] The amendment to the law was introduced via Amendment 122(I)/2010 to CAP 9.[86]

It has to be noted that the Supreme Court of Cyprus has yet to produce case law on the above provision, and the sole case law that exists is from first instance courts.[87]

7.2. Does the law allow for videoconference technology to be used solely for the taking of evidence or also for conducting other procedural stages of the hearing? Videoconference in your Member State may be used for:

a) Witness testimony
b) Expert witness testimony
c) Inspection of an object (and/or view of a location)
d) Document (document camera)
e) Party testimony
f) Other means of evidence (please elaborate)
g) Conducting the hearing in broader/general terms (please elaborate)

(Specify whether videoconference technology can be used only for the taking of evidence by highlighting the categories of evidence. Please note that some Member States may not use the same categorisation of evidence or contain all above categories (e.g. party testimony). In such cases, please approximate your answer and provide additional explanation if needed. If the technology can be used in other stages of the procedure, please specify the scope of the technology's use.)

As mentioned in 7.1, videoconferencing applies only to witness testimony. However, through the limited case law available, it can be extracted whether courts would allow for this in other part of the hearing.

The application for videoconferencing in Attor*ney General of the Republic v Andrea Drakou and others* related to expert witness testimony. The majority ruling in Drakou stated that the claim of the respondents of the inability of the witnesses to touch and examine proof presented to them is not exclusive to videoconferencing, and would not be a reason to dismiss an application for videoconferencing, implying that inspection of an

[85] Evidence Law (CAP.9), Article 36A
[86] Act Amending the Evidence Law 122(I)/2010, accessed 05 march 2023 <http://www.cylaw.org/nomoi/arith/2011_1_170.pdf>
[87] Iliadis and Santis 2016, supra n.3, p. 109

object would be allowed, even it would not be physically.[88] In the minority opinion of *Drakou*, it was held that the application should be disallowed, as the court was not satisfied that there was the necessary technical equipment, such as for the sending and receiving of documents (as evidence) or the viewing of documents via a specialized video camera.[89] Thus, it is implied that witnesses may inspect documents, or send documents as evidence to the court.

7.2.1. If the law allows for (remote) view of location, how would such a videoconference be practically implemented?
(E.g. does the court appoint a court officer to operate the audiovisual equipment on site? For example, suppose there is a dispute between parties regarding the border/boundary between their immovable properties and the court needs to view the alleged border/boundary. Does a court officer carry the technical equipment to the site and follow instructions from the court, regarding the viewing angles etc.)

In civil cases, it is possible for an on-site inspection of any movable or immovable property which would be constitutive to correct judgment of the case. This can be done via the court's own motion, or via an application from one of the parties.[90] However, this does not extend to an inspection through videoconferencing, as the law specifies that videoconferencing is reserved exclusively for witnesses to testify. (see 7.1)

7.3. Which applications (software) are used for videoconferencing in civil court proceedings?
(Please investigate whether the courts use multiple applications.)

Not applicable.

7.3.1. Are the applications (see Question 7.3.) commercially available?
(If so, specify whether they are specially modified for use in court proceedings.)

Not applicable.

7.3.2. Are the applications (see Question 7.3.) interoperable with other applications?
(e.g. can a subject, using application X, join a videoconference, which is conducted via application Y)

Not applicable.

7.3.3. Does the application allow a text-based chat function during the videoconference; does it allow screen sharing and sharing of documents?
(whether and to what extent the court can restrict these functions (e.g., the parties can talk at any time, but only share their screen if permitted by the court.)

Not applicable.

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?
(E.g. may the court order the use of the technology on its own motion (ex officio); with or without consulting the parties; only with the consent of (both) parties; only with the consent of the person providing testimony; at the request of (both) parties; only in exceptional circumstances etc.)

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[88] *Attorney General of the Republic v Andrea Drakou and others* (majority opinion), Case No. 24627/08, 05/04/2011 ECLI:CY:KDLEF:2011:4
[89] *Attorney General of the Republic v Andrea Drakou and others* (minority opinion), case No. 24627/08, 05/04/2011 ECLI:CY:KDLEF:2011:3
[90] Courts of Justice Law of 1960 (14/1960), Article 56

If a party wishes for a witness to appear in court through videoconferencing, an application must be made to the court. In *Sotiri Giorgalla v Antoni Giouseli*, an application for a testimony to be received via videoconferencing was rejected. It was held that the mere fact that a witness resides abroad and is working does not warrant approval of such an application, as this is not in line with the spirit of Article 36A.[91] In *Republic v Andreou*,[92] an application for videoconferencing was allowed because the covid-19 pandemic would cause unnecessary inconvenience to the witnesses due to the measures in place at the time. In *Andrea Tapakoudi v General Attorney of the Republic* the plaintiff was not allowed to testify through videoconferencing, as he did not mention his profession, his work hours or any specific difficulty to be absent from his home country for a few days to testify in court. The court found his claims for the health problem encountered by his wife and his work as vague.[93] Thus, the mere fact that the witness resides abroad is not enough to satisfy the conditions for a videoconference under Article 36A.

In, Attor*ney General of the Republic v Andrea Drakou and others (majority ruling)*,[94] in order to decide whether the application would be to the benefit of Justice, "examined among others the willingness of the prospective witnesses to give their testimony through videoconferencing, their opinion regarding the matter, the category, nature and significance to the contentious issues, the necessity of their physical presence during the trial and whether the presentation of the testimony in the manner requested would, possibly, tend to prevent the respondents from challenging it effectively either because of the way it was presented or because of practical difficulties that may arise as a result of that"(of the videoconferencing.) Also, the court adhered to the ruling of *Rowland and Another v. Bock and Another*[95], that in relation to applications for videoconferencing, discretion of the court should not be bound to strict requirements. In *Hoppi v Panagi,* it was held that the benefit of justice 'is characterized, generally, as a term complex and multidimensional, intertwined with the whole of legal principles and the specific facts of each case'.[96] Furthermore, if the application was successful, the court stated that 'the respondents would be given the opportunity to cross examine the witnesses, and call the court to reflect upon the credibility and magnitude of the testimony, including any loss they perceive has been dealt to their rights as a result of the videoconferencing, and the events that succeeded it'. If the application is upheld, the respondents will have the opportunity to see and rebut via cross examination the prospective witnesses on whichever topic they wish, and proving a negative effect on them due to the procedure undertaken, they may suggest that their right to a fair trial has been violated. The claim of the respondents of the inability of the witnesses to touch and examine proof presented to them is not exclusive to videoconferencing, and would not be a reason to dismiss an application for videoconferencing. The court taking into consideration that the witnesses were not willing to physically be present at court, having been satisfied that the technological equipment for the videoconferencing exists, and that rejecting the application would be to the detriment of public interest, approved the application for a videoconferencing. [97]

The minority ruling in *Drakou* held that 'hearing of a witness via videoconferencing demands, due to its nature, special, clear and specific legal foundation. This does not exist'. The court was not satisfied that there was the necessary technical equipment for the sending and receiving of documents (as evidence), both at the district

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[91] *Sotiri Giorgalla v Antoni Giouseli*, Case No. 12412/02, 31/05/2011, ECLI:CY:EDLEF:2011:A219
[92] *Republic v Andreou*, Case No. 5391/19, 07/10/2020, ECLI:CY:KDPAF:2020:2
[93] *Andrea Tapakoudi v General Attorney of the Republic*, Case No.9019/2007, 22/12/2015 ECLI:CY:EDLEF:2015:A585
[94] *Attorney General of the Republic v Andrea Drakou and others* (majority opinion), Case No. 24627/08, 05/04/2011, ECLI:CY:KDLEF:2011:4
[95] *Rowland and Another v. Bock and Another* (2002) 4 All E.R. 370
[96] *Hoppi v Panagi* (1993) 1 ΑΑΔ 140
[97] *Attorney General of the Republic v Andrea Drakou and others* (majority opinion), Case No. 24627/08, 05/04/2011, ECLI:CY:KDLEF:2011:4

court, and at the place that the witness will be giving his testimony from.[98] In A*nnas Marki v Spyrou Ioannou*[99], the court agreed with the minority opinion in *Drakou*, stating that the lack of rules makes the manner practical matters will be configured unknown. These include the place where the testimony will be given, the persons who will be responsible for receiving it, and the time difference of eight hours with New York, where the witness was situated.

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?
(E.g. whether the court may order the use of the technology on its own motion (ex officio); with or without consulting the parties; only with the consent of (both) parties; at the request of (both) parties; only in exceptional circumstances etc.)

The answer to this question is referred in 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)?

Either party may put forward an application for a witness to appear in court through videoconferencing. The other party may object to the decision, and the court will decide whether the application shall be successful through an interim judgment. (See 7.1)

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?
(Explain also if the rules differ for videoconference testimony.)

Under Article 48 of the Courts of Justice Law of 1960 (14/1960), the court may in any stage of a civil procedure, either after an application by the parties or by its own initiative, summon any person residing in the Republic to testify as a witness or as an expert.[100]

If the person that is summoned does not appear, and does not give satisfactory explanation thereof, the court may issue a compulsorily warrant obligating him to appear. Also, he may be ordered to pay the costs resulting from the issuance of the compulsorily warrant to appear or due to his refusal to comply with the summons. Also, he may be subject to imprisonment not exceeding two months, a fine, or both.[101] Also, the law provides for certain persons as compulsory witnesses, such a debtor by judgment of the court is a compulsory witness[102] or arbitrators for what took place during the hearing of the arbitration.[103] There is no legislation or case law on coercive measures against a witness or a party to provide testimony. Given that videoconferencing is only available to witnesses residing abroad (see 7.1), it would make the procedure of the Courts of Justice law on issuing a compulsorily warrant impractical to implement.

7.7.1. Under which circumstances may a witness refuse testimony?
(Explain also if the rules differ for videoconference testimony.)

The answer to this question has been provided in 7.7.

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

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[98] *Attorney General of the Republic v Andrea Drakou and others* (minority opinion), Case No. 24627/08, 05/04/2011, ECLI:CY:KDLEF:2011:3
[99] *Annas Makri v Spyrou Ioannou*, Case. No 5609/12, 18/05/2016, ECLI:CY:EDLEM:2016:A222
[100] Courts of Justice Law of 1960 (14/1960), Article 48
[101] Ibid, Article 49
[102] Civil Procedure Law (CAP.6), Article 83
[103] *Ward v Shell Mex and BP Ltd* (1951) 2 All ER 904

(Explain also if the rules differ for videoconference testimony.)

Cross examination is permitted, and follows primary examination. In *Frederickou Schools Co. Ltd V Acuac Inc*, it was stated that:

> 'Cross-examination of witnesses is an important tool in conducting a trial. From a judicial point of view - and not an ethical one whose goal is basically to ascertain the truth and expose the lie - its primary object is to weaken or nullify the statements of a witness in the primary examination, which supports or helps the case of the opposing party.'[104]

If there is an essential fact that is disputed, the version of the other side should be put forward during cross-examination. This rule is not absolute, but '…..it is important because it not only gives the witness an opportunity to rebut the opposing positions of the other side, but also assists the Court in evaluating the testimony and finding the truth.'[105]

Certain rules have been established when cross examining a witness. Litigants should be given logical freedom to cross examine without unjustified interventions.[106] Cross examination should be brief and concise, and only questions that promote the position of the litigant.[107]

In *Drakou* (majority),the court stated that "the respondents would be given the opportunity to cross examine the witnesses, and call the court to reflect upon the credibility and magnitude of the testimony, including any loss they perceive has been dealt to their rights as a result of the videoconferencing, and the events that succeeded it".[108] Thus, there is nothing to suggest that any rules differ for videoconferencing testimony. On the contrary, the court is sensitive towards the rights of the parties that will cross examine, to ensure a fair trial.

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?
(Please explain the powers of the court and the parties in relation to choosing to conduct regular proceedings after the court has already decided that the hearing will be conducted through videoconference.)

As mentioned in 7.1, videoconferencing is only an option for witnesses that reside abroad. Thus, there is no option for the parties to choose videoconferencing over being physically present at court.

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)?
(In addition, please specify if the court has to conduct a "test" session" before the actual videoconference.)

There is no comprehensive list of what the court should check before ordering the videoconference; the little information that exists comes from case law. In *Drakou (*majority), one of the factors the court took into consideration before approving the application for videoconferencing was the existence of technical

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[104] *Frederickou Schools Co. Ltd V Acuac Inc* (2002) 1 ΑΑΔ 1527
[105] *Vasos Taki v Republic* (2009) 2 ΑΑΔ 599
[106] *Fanos N Epiphaniou Ltd v Melarta and Other* (2002) 1 ΑΑΔ 654
[107] Iliadis and Santis 2016, supra n.3, p. 704
[108] *Attorney General of the Republic v Andrea Drakou and others* (majority opinion), Case No. 24627/08, 05/04/2011, ECLI:CY:KDLEF:2011:4

equipment.[109] However, it did not clarify any specific technical requirements. (See 7.1) In *Andreou*, it was held that should the application for videoconferencing is approved, a procedure would take place before the date of the hearing to ensure that the systems that will be used for videoconferencing are functional.[110]

7.10. Does the law (or best practice) offer special safeguards for vulnerable persons?
(Please explain whether the use of the videoconferencing technology must follow any special rules for vulnerable partakers (e.g. children; persons with illness; persons located in hospitals; whistle-blowers; elder persons).)

The Protection of Witnesses Law 95(I)/01 regards only witnesses in criminal proceedings.[111]

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?
(Member States' laws may allow only for court2court videoconference; other laws may not contain restrictions and the partakers may enter the videoconference from the location of their choice; explain whether, for example, a person may join the videoconference through their mobile device from their domicile or a car etc. Explain whether a person may use filters or change the background/backdrop. If possible, please specify if the rules differ for the two forms of a videoconference, i.e. when taking evidence and when conducting the hearing.)

In *Andreou*, one of the reasons the court approved the application for videoconferencing for witnesses to testify from France was that a system for videoconferencing existed in the district court, which was compatible with the system of videoconferencing installed in the French courts.[112]

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

Not applicable.

ab) Are there any rules for the inspection of the location where the person heard is situated and the privacy it offers?
(If the person is situated at a private location, does the person have to "show" the court whether any other person is present at the location and/or – where (professional/business) secrecy is involved – whether the location offers sufficient privacy. Must the location adhere to any form of decency or décor? If possible, please specify if the rules differ for the two forms of videoconference, i.e. when taking evidence and when conducting the hearing.)

There is no rules pertained to this matter, as it is not clear whether the videoconferencing can only take place via court2court, or at the witness' private space as well. Further information on other persons that can be present during videoconferencing is provided in 7.11(ac).

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?

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[109] Ibid
[110] *Republic v Andreou*, Case No. 5391/19, 07/10/2020, ECLI:CY:KDPAF:2020:2
[111] Iliadis and Santis 2016, supra n.3, p. 655
[112] *Republic v Andreou*, Case No. 5391/19, 07/10/2020, ECLI:CY:KDPAF:2020:2

In *Andreou*, the court rejected the application for the sister of the complainant to be present while giving testimony via videoconferencing, as she was neither underage, nor any document was presented proving that she is a person that is not able on its own to safeguard her rights or handle her matters. Therefore, it is unlikely that the court will allow the presence of other persons without a valid reason. [113]

b) the time when the videoconference may be conducted?
(Member States' laws may provide that videoconferences should not take place before e.g. 06:00 and no later than e.g. 18:00; does the law provide rules for videoconferencing if the persons are located in different time zones? If possible, please specify if the rules differ for the two forms of a videoconference, i.e. when taking evidence and when conducting the hearing.)

There are no rules about the time that a videoconference should take place. In A*nnas Marki v Spyrou Ioannou*[114], the difference time difference of eight hours with New York, where the witness was situated, was referred as a practical difficulty.

c) the apparel and conduct of the persons taking part in the videoconference?
(Member States' laws may compel partakers to dress or conduct themselves in a special manner (e.g. toga outfit; standing in attention of the judge); please explain how these rules or traditions are followed if videoconference technology is used. If possible, please specify if the rules differ for the two forms of videoconference, i.e. when taking evidence and when conducting the hearing.)

Article 44 of the Courts of Justice Law of 1960 (14/1960) lists certain actions that can be considered as contempt towards the court. Contempt of court includes not showing lack of respect orally or through behavior at the procedure.[115] Referring to *Prosecutor v. Stanisic, Simatovic*, the court stated that videoconferencing is considered as an extension of the court to the place that the witness is situated.[116] Therefore, for the duration of the videoconferencing, the person should conduct themselves as if they were physically present in the courtroom.

d) the identification of the persons taking part in the videoconference?
(If the videoconference takes place in a court2court setting, this concern is usually dispelled, since court officials may check the identity; however, checking the identity of a person entering the videoconference from a private location may be troublesome. If possible, please specify if the rules differ for the two forms of videoconference, i.e. when taking evidence and when conducting the hearing.)

It has not been clarified from case law whether videoconferencing should only take place in a court2court setting, or if videoconferencing from private location is possible. In the majority opinion of Drakou it was not clarified from where the videoconferencing should take place. In *Republic v Andreou*, one of the reasons the court approved the application for videoconferencing for witnesses to testify from France was that a system for videoconferencing existed in the district court, which was compatible with the system of videoconferencing installed in the French court.

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

There is no such provision. However, recording of a videoconference that took place in a case that has been appealed to the Supreme Court would be useful for the consideration of the appellate court. (see 7.12.6)

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[113] *Republic v Andreou*, Case No. 5391/19, 07/10/2020, ECLI:CY:KDPAF:2020:2
[114] *Annas Makri v Spyrou Ioannou*, Case. No 5609/12, 18/05/2016, ECLI:CY:EDLEM:2016:A222
[115] Courts of Justice Law of 1960 (14/1960)
[116] *Attorney General of the Republic v Andrea Drakou and others* (minority opinion), Case No. 24627/08, 05/04/2011, ECLI:CY:KDLEF:2011:3

7.12.1. Does the recording of a videoconference contain video feedback from all cameras in the court or only the camera in focus?
(Many software applications pin or highlight only one of the persons during the videoconference and close or minimize other (usually non-active) persons. A recording might thus capture only the actions of one person at a time.)

Answer to this question is provided in 7.1.

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

In *Drakou*, it was held that the respondents will have the opportunity to see and rebut via cross examination the prospective witnesses.[117] It is not clarified what other persons should be seen on screen.

7.12.3. How (which medium and format) and where is the footage of the videoconference stored and later archived?
(For example, it may be stored on a local machine or at a remote server.)

Not applicable.

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

Not applicable.

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

Not applicable. See 7.12 and 7.12.6.

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?

According to Article 25(3) of the Courts of Justice Law of 1960 (14/1960), the Supreme Court:

> 'shall not be bound by any decision on the real facts of the first instance court and will have authority to reconsider submitted evidence, reach its own conclusions, to hear and receive further manners of evidence, and where the circumstances of the case require it, to hear again any witness already heard under the first instance court'.

Thus, the court may access and view the recording of a videoconference (if a recording exists, see 7.12.4).

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?

Not applicable.

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

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[117] *Attorney General of the Republic v Andrea Drakou and others* (majority opinion), Case No. 24627/08, 05/04/2011, ECLI:CY:KDLEF:2011:4

Any witness is entitled to provide testimony in his own language.[118]

7.13.1. Where is the interpreter located during the videoconference?
(E.g. in the court room; in the room with the person being heard etc.)

According to Article 36A(2) of Evidence Law, an interpreter is defined as person present in the courtroom.

7.14. Immediacy, equality of arms and case management

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

The principle of immediacy in Cyprus is embodied in the 'best evidence rule', under which the best evidence that is required depending on the nature of the case should be presented.[119,120]

'The best evidence which the Plaintiffs could present under the circumstances to prove the date of the deceased's death would in my opinion be some certificate or attestation, which would come from a Public or other authority of the place where she died. Such a document could support the date of her death…'[121]

The proof of content of a document can be achieved through a primary (or original) evidence or secondary (or indirect) evidence. Primary evidence entails presenting the original document, while secondary evidence may be used in relation to any real assets (chattels). Nowadays, the general rule of presenting the original document has weakened. A copy of the original document can be presented provided that its originality is certified.[122]

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

Not applicable.

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?
(If so, please provide the core of the legal question addressed and the resolution, as well as citations.)

In Drakou (majority ruling)[123], the other party claimed that the application of videoconferencing should be rejected, due to the need of the witnesses to have physical interaction with the evidence. As stated in 7.4, the majority ruling stated that they would have the opportunity to cross examine the witnesses, and call the court to come to conclusions. Consequently, any such claim is made before the court delivers its interim judgement.

7.14.4. How do parties (and their advocates) express objections or pose questions during a videoconference?
(This may be especially important when "leading questions" are posed.)

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[118] Iliadis and Santis 2016, supra n.3, p. 87
[119] Iliadis and Santis 2016, supra n.3, p. 490 - 491
[120] *Omychund v Baker* (1744) 26 ER 15
[121] *Stavrou and Others v Ttouloudou and Others (2012*) 1 ΑΑΔ 1239
[122] Iliadis and Santis 2016, supra n.3, p. 354 - 355
[123] *Attorney General of the Republic v Andrea Drakou and others* (majority opinion), Case No. 24627/08, 05/04/2011, ECLI:CY:KDLEF:2011:4

Leading questions are not allowed during the primary examination or re-examination.[124] Order 38 Rule 1 expressly states that it is not allowed to submit to the witnesses questions that suggest the desired answer.[125] The answers should come out of the witness, and not the lawyer. Leading questions may take two forms; one are questions that indicate the answer, and the other are questions that take as granted a disputed fact.[126] Also, leading questions are considered the ones that the answer may be a 'yes or a 'no'.[127] Certain exceptions are allowed to the general rule, such as introductory questions, or when the memory of the witness needs to be refreshed.[128] During cross examination, leading questions are allowed.[129] As stated in *Drakou* (majority), the nature of videoconferencing did not seem to affect the procedure or core neither of primary examination nor of cross examination.[130]

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

(For example, imagine a court has to examine a knife, which was submitted as evidence by a party in physical form to the court.)

The court in *Drakou* (majority opinion) stated that there would be a difficulty in examining objects for the witness giving testimony through videconferencing.[131] In *Andreou*, it was stated that 'We expect, of course, that the technology is of such a quality that it will not deprive us of anything that would be necessary and we would obtain from the witnesses by seeing them on the witness stand.'[132]

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?

Not applicable.

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)?
(Often, the application will minimize or close the video of the person who is not active (speaking) during the videoconference.)

Not applicable.

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?

In *Drakou*, it was held that 'the respondents would be given the opportunity to cross examine the witnesses, and call the court to reflect upon the credibility and magnitude of the testimony, including any loss they perceive has been dealt to their rights as a result of the videoconferencing, and the events that succeeded it'.[133]

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[124] Iliadis and Santis 2016, supra n.3, p. 674
[125] Civil Procedure Rules, Order 38 Rule 1
[126] Iliadis and Santis 2016, supra n.3, p. 675
[127] *Elia v Council of Improvement Xylofagou* (1994) 2 ΑΑΔ 137
[128] Iliadis and Santis 2016, supra n.3, p. 677 - 678
[129] *Parkin v Moon and Another* (1836) 173 E.R. 181
[130] *Attorney General of the Republic v Andrea Drakou and others* (majority opinion), Case No. 24627/08, 05/04/2011, ECLI:CY:KDLEF:2011:4
[131] *Attorney General of the Republic v Andrea Drakou and others* (majority opinion), Case No. 24627/08, 05/04/2011, ECLI:CY:KDLEF:2011:4
[132] Ibid
[133] Ibid

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?

Article 36A of Evidence Law (CAP.9) only allows for witnesses to take part in a proceeding in the form of videoconferencing. The judge, parties, and the interpreter are expected to be physically present at the court.

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?

Answer to this question has been provided in 7.11(ac).

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)?

Not applicable.

7.16. Are there any special rules pertaining to the distribution of costs in case of videoconferencing?
(Generally, a videoconference will have the effect of reducing the costs of the proceedings; nevertheless, does the law provide special rules on who bears the costs if, for example, one party opposes the videoconference but the court decides on it anyway? Are there special rules regarding the bearing of costs incurred for technical equipment? Are there special rules regarding the bearing of costs for interpreters?)

Not applicable. The general rules described in 2.6 apply.

7.17. How does the law guarantee the publicity of videoconference hearings?
(Please also explain legal measures to avoid problems that could arise due to the public nature of the hearing (e.g. too many participants in the video conference).)

The Constitution of the Republic of Cyprus ensures the publicity of trials.[134] An issue may occur when there is a large time difference with the country the witness will testify from. Nevertheless, courts are expected to implement videoconferencing while ensuring the public nature of trials.

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)?

According to the (limited) case law available in Cyprus for the use of videoconferencing, there are certain requirements set by the court. Namely whether the witnesses would be willing to give their testimony during videoconferencing, whether their physical presence at the court is needed, whether the other party's rights would be adversely affected, and whether the technology for taking evidence via videoconferencing for the need of the particular case exists. Thus, 'appropriate' use of the technology rests entirely on the specific circumstances of a case. For example, inappropriate use of videoconferencing would be when the witnesses should absolutely be present in the trial, to see in person and physically examine certain evidence, when the

[134] Constitution of the Republic of Cyprus (as amended) Article 134

court has grounds to believe that the right to a fair trial will be affected, or when the technology for the conducting of a videoconference is not present.

One addition to the from N in Annex I would be the inclusion of a section for the applicants to specify the exact technology that they wish to be used during the videoconferencing, for example if the witness has certain documents in hand that he would wish to submit, the appropriate technology for the persons physically present in the courtroom to be able to see them to exist, and tested before the actual videoconferencing session.

Instructions for contributors

1. References

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

1.1. Reference to judicial decisions

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

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

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

1.2. Reference to legislation and treaties

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

- Art. 2 Protocol on Environmental Protection to the Antarctic Treaty (henceforth: the Protocol).
- Art. 267 TFEU.
- Art. 5 Uitleveringswet [Extradition Act].

1.3. Reference to literature

1.3.1 First reference

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

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

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

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

1.3.2 Subsequent references

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

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

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

1.4. Reference to contributions in edited collections

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

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

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

Subsequent references follow the rules of 1.3.2 supra.

1.5. Reference to an article in a periodical

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

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

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

Subsequent references follow the rules of 1.3.2 supra.

1.6. Reference to an article in a newspaper

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

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

1.7. Reference to the internet

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

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

2. Spelling, style and quotation

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

2.1 General principles of spelling

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

2.2. General principles of style

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

2.3. General principles of quotation

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