NATIONAL REPORT FOR FRANCE ON ELECTRONIC EVIDENCE AND VIDEOCONFERENCING

Peloso C

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DIGI-GUARD

Questionnaire for national reports on electronic evidence and videoconferencing

NATIONA REPORT : FRANCE

1. General aspects regarding electronic evidence

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

The law of 13 March 2000 made digital evidence official, however in the French Civil Code we only find a reference to electronic writing and electronic signatures, but the general concept of digital evidence is absent from the texts and case law.

Indeed, we find a reference to electronic writing in Article 1366 (formerly 1316-1 under Act No 2000-230 of 13 March 2000 that become now article 1366 of the Civil Code), which states

"An electronic document has the same evidential value as a paper document, provided that the person from whom it emanates can be duly identified and that it is drawn up and stored in conditions that guarantee its integrity.

The law therefore recognises the same admissibility and the same probative force between paper and electronic documents. This legal equivalence between physical and electronic evidence is nevertheless conditional in the latter case on two cumulative conditions: the **identification of the author and the integrity of the electronic document**, which must be ensured throughout its life cycle, from its creation to its conservation, which conservation in reality implies the complete return of the electronic document to the judge[1].

When adopting Ordinance No. 2016-131 of 10 February 2016 on evidence reform, the legislator set itself the goal of clarifying *'the conditions of admissibility of methods of proof of facts and legal acts'*. To this end, Article 1365 of the Civil Code states that "*writing consists of a series of letters, characters, numbers or any other signs or symbols with an intelligible meaning, regardless of their medium*". In consequence, literal evidence is no longer identified with paper and may result from remote communication (e-mail, diskette, hard disk, USB key).

Article 1367 of the Civil Code (formerly Article 1316-4 of the Civil Code), refers more specifically to electronic signatures: "*When it is electronic, it consists of the use of a reliable identification process guaranteeing its link with the act to which it is attached. The reliability of this process is presumed, until proven otherwise, when the electronic signature is created, the identity of the signatory assured and the integrity of the document guaranteed, under conditions set by decree in the Council of State*."

Decree No. 2017- 1416 of 28 September 2017 on electronic signatures states in Article 1 that a qualified electronic signature is an advanced electronic signature that complies with Article 26 of the aforementioned Regulation (Reg. (EU) No. 910/ 2014 of 23 July 2014 on electronic identification and signatures). 2014 on electronic identification and trust services for electronic transactions in the market] and created using a qualified electronic signature creation device complying with the requirements of Article 29 of that Regulation, which is based on a qualified

[1] Le traitement de La preuve numérique par les magistrats dans les procédures judiciaires civiles et pénales, Revue Justice Actualités, n. 21/2019.

electronic signature certificate complying with the requirements of Article 28 of that Regulation".

Similarly, Article 1174 (former art. 1108-1 of the Civil Code), referring to Articles 1366 and 1367 (former arts. 1316-1 and 1316-4), provides that "where a writing is required for the validity of a juridical act, it may be drawn up and preserved in electronic form " and "...where a statement in the handwriting of the person obliging himself is required, the latter may affix it in electronic form if the conditions for such affixing are such as to guarantee that it can only be done by himself".

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

Article 1365 of the Civil Code provides that evidence in writing consists of "*a series of letters, characters, numbers or any other signs or symbols with an intelligible meaning, regardless of their medium or the way they are transmitted*".

1.1. How is electronic evidence categorized among means of evidence within the law of your Member State?

1.2.

The system in force today is the result of a combination of two radically opposed evidential systems: the principle of legal proof and the principle of free proof. Neither of the two evidentiary systems described above really stands out in French law, the legislator having opted for a system that can be described as mixed.

However, this mixed system must be qualified in the light of the latest reform of the law of evidence by Order no. 2016-131 of 10 February 2016.

This text has, in fact, established the system of free evidence as a principle by inserting into the Civil Code an article 1358 which provides that "except in cases where the law provides otherwise, evidence may be provided by any means."

Thus, according to this provision, evidence is, in principle, free, unless otherwise provided by law. As an exception to this principle, Article 1359 provides that for legal acts involving a sum or value exceeding an amount fixed by decree (EUR 1,500) proof must be in writing. Thus, depending on whether one is dealing with a legal fact or a legal act, the system of proof that applies is likely to differ.

Generally speaking, the theory of evidence has not been disrupted by the development of digital evidence. On the contrary, the multiplication of these new techniques has often led the Court of Cassation to reaffirm the existence of principles that have been anchored in the legal system for many years and to densify their content.

The proliferation of digital evidence has not changed the principle of freedom of evidence, nor even the sovereign discretion of the courts. All these principles remain firmly embedded in the legal system and the new modes of evidence must comply with them, at the risk of being excluded from the file or of being judged as non-proof.

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

Yes, Article 1366 provides that an electronic document has the same evidential value as a paper document, provided that the person from whom it originates can be duly identified and that it is drawn up and stored in conditions that guarantee its integrity.

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

As a private document in French we can refer to the notion of *acte sous seing privé.* A private document is a document drawn up and signed by private persons without the presence of a public officer authorised by law, such as a notary, bailiff or registrar.

Article 1372 of the Civil Code states that "A *private-signature deed, recognised by the party to whom it is opposed or legally held to be recognised with respect to him, is authentic between those who have signed it and with respect to their heirs and successors*".

Act No. 2000-230 of 13 March 2000 adapting the law of evidence to information technology and relating to electronic signatures brought full recognition of computerised writing, going well beyond the framework of electronic commerce, and extending to all legal documents, not only private documents but also authentic instruments, the possibility of being drawn up and kept in electronic form.

In French law, certain legal acts are directly concerned by this development, namely the so-called "*private documents*" (promise of sale, lease, publishing contract, guarantee, etc.).

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

An authentic instrument is an instrument that must be signed by a public officer authorized by law (such as a notary, bailiff or registrar) and drawn up according to the formalities required by law. According to Art. 1369 of the Civil Code (Ord. no 2016- 131 of 10 Feb. 2016, Art. 4, in force on 1 Oct. 2016) "*An authentic instrument is one that has been received, with the required solemnities, by a public officer having the competence and capacity to act. Its content may have the same power as a judicial decision.It may be drawn up in electronic form if it is drawn up and kept in accordance with the conditions laid down by decree of the Council of State".*

With Act No. 2000-230 of 13 March 2000 adapting the law of evidence to information technology and relating to electronic signatures, full recognition was given to electronic writing, going well beyond the framework of electronic commerce and extending to all legal documents, not only private documents but also authentic instruments, the possibility of being drawn up and kept in electronic form.

1.7. Describe the legal effects of changing the form of electronic evidence to physical.1.8. Describe the legal effects of changing the form of physical evidence to electronic. (unique answer to question 1.7 and 1.8.)

As mentioned above, Article 1366 introduces a legal equivalence between physical and electronic evidence by stating

"*An electronic document has the same probative value as a paper document, provided that the person from whom it emanates can be duly identified and that it is drawn up and stored in conditions that guarantee its integrity".*

It therefore follows that the law recognises the same admissibility and evidential value of paper and electronic documents. It must therefore be concluded that the legal effects of a change in evidence from physical to electronic (and vice versa) do not change provided, however, that the two cumulative conditions required for electronic evidence are met: the identification of the author and the integrity of the electronic document, which must be ensured throughout its life cycle, from its establishment to its conservation.

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

The copy is clearly distinguished from the original by Article 1334 of the Civil Code, which states that "*copies, when the original document survives, are only evidence of what is contained in the document, the representation of which may always be required*". This text means that the copy has a value if the original survives and if the copy conforms to it. The original can therefore always be demanded by the party to whom a copy is opposed (Civ. 1re, 7 Oct. 1980, D. 1981. 32; Civ. 1re, 6 Oct. 1998, no 96-21.962, CCC 1999. Comm. 5, note L. Leveneur).

The original document is defined as "a *writing drawn up, in one or more copies, in order to record a legal act, signed by the parties to the act (or by their representative) unlike a copy*". Whereas a copy is a "*literal reproduction of an original which, not having been signed by the signatures that would make it a second original, is only authentic when the original no longer exists".*

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

Article 1379 states that "A *reliable copy has the same probative value as the original. Reliability is left to the discretion of the judge*".

Thus, if copies can be produced in court to prove a right, Article 1379 of the Civil Code confirms the equivalence of probative value between the original and the reliable digital copy. This evidential equivalence of the copy stems from the concept that if the original is natively electronic, the copy of this act will be an original since it carries all the elements necessary to verify its validity.

From a legal point of view, however, the notion of original does not disappear. Indeed, "*if the original remains, its presentation may still be required*", as stated in the last paragraph of Article 1379 of the Civil Code, which means that a paper or digital original cannot be voluntarily destroyed during its legal retention period.

The implementing decree provided for by Article 1379 was published on 5 December 2016 (No. 2016-1673 of 5 December 2016), specifying "*the methods of the process allowing the reliability of the copy made to be presumed, i.e. its faithfulness to the original and its incorruptibility".*

(Article 1)

A copy is presumed to be reliable if it is the result of :

either of a reproduction process that leads to an irreversible modification of the medium of the copy ;

or a reproduction process by electronic means that meets the following conditions in particular

- production of information linked to the copy and intended for its identification (context of the copy, date of creation of the copy),

- an electronic footprint ensuring that any subsequent modification of the copy to which it is attached is detectable

- storage under conditions that prevent any alteration of its form or content.

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?

More generally, in legal proceedings governed by the Code of Civil Procedure, while the burden of proof lies with the parties to the proceedings, it is the judge's responsibility to control the method of obtaining such evidence and to verify that the procedures employed are fair.

Fairness in the administration of evidence is based, in civil matters, on Article 9 of the Code of Civil Procedure, according to which "it is incumbent on each party to prove, in accordance with the law, the facts necessary for the success of his claim". In other words, any evidence that is disloyal makes it inadmissible in proceedings governed by the Code of Civil Procedure.

The Court of Cassation uses this principle to control the use of digital evidence. This is the case with images from a surveillance camera, text messages displayed on a mobile phone or the production of telephone voice messages. But the high court is just as careful with regard to the testimony of a third party who relates the content of a telephone conversation. Once again, it is not the nature of the evidence (digital or not) that is at issue in these cases, but the way in which this evidence was gathered (without the person's knowledge or by means of a stratagem) that has a impact of the loyalty of the proof.

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

Article 1367 of the Civil Code provides that when the signature is electronic, it consists of the use of a reliable identification process guaranteeing its link with the document to which it is attached. The reliability of this process is presumed, in the absence of proof to the contrary, when the electronic signature is created, the identity of the signatory is assured and the integrity of the document is guaranteed, in accordance with the conditions laid down by decree of the Council of State.

The ability of technical processes to guarantee the preservation of transmissions made is also a prerequisite for the use of electronic communications (Article 748 - 6 of the Code of Civil Procedure).

As far as judicial officers are concerned, the legislation (Article 26 of the Decree of 29 February 1956, as amended by the Decree of 10 August 2005) requires that original instruments drawn up on an electronic medium must be drawn up by means of a system for processing, archiving and transmitting information approved by the National Chamber of Judicial Officers and guaranteeing the integrity and confidentiality of their content

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

Decree No. 2017- 1416 of 28 September 2017 is on electronic signatures (Art. 1) states that the reliability of an electronic signature process is presumed, until proven otherwise, when that process implements a qualified electronic signature.

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

the law provides no elements on this aspect

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

, the collection of digital evidence essentially can involves the use of Article 145 of the Code of Civil Procedure. This article is an exception to the adversarial principle because it allows a judge to order observations at the home of a third party or at the head office of a company, without obtaining the prior authorisation of the person concerned or bringing the decision to his attention. In concrete terms, the bailiff enters the premises by surprise, regardless of the person's consent, in order to establish a situation.

This article then makes it possible to obtain, on request or in summary proceedings, the appointment of a bailiff, who very often collaborates with a judicial computer expert, in order to search for computer evidence and avoid any loss.

It is not subject to a condition of urgency or to an obligation to proceed with a summons within a predefined period, on pain of losing the benefits. It is therefore an extremely useful preliminary and tactical tool in proceedings where the requesting party needs not only evidence but also to demonstrate its determination.

A bailiff's report on the Internet is drawn up with or without judicial authorisation. Although the date and place of the report are authentic, the purely material findings contained therein are only authentic until proven otherwise. Prior to these findings and in order for them to be effective, the bailiff is required to describe precisely the equipment he is using, the access point to the network, as well as the route he has adopted. Thus, although the AFNOR NF Z 67-147 standard of 11 September 2010 concerning the "*operating procedure for the report of an internet report carried out by the judicial officer"*, which is voluntary, is only a collection of non-mandatory good practices, the judge must be able to :

- define the hardware used, the operating system that may affect the viewing of the web page,

- know the IP address of the computer used, which identifies a piece of equipment on the Internet network and makes it possible to check, by means of the connection log of the server being interrogated, the pages actually consulted,

- ensure that a direct connection between the computer and the site visited has been established and that there is no proxy server and that the DNS protocol does not involve any domain name substitution, that the browser's cache memory has been emptied beforehand and that all temporary files stored on the computer as well as cookies and browsing history have been deleted, These formalities make it possible to verify the reality of the connection between the computer and the site and that the page visited is indeed the one accessible online at the time of printing and not a previously visited page kept in cache memory and potentially non-existent at that moment,

- to determine with certainty the date of consultation and printing and the authenticity of the page

2.6. Who bears the costs if an expert need to be appointed to assess the reliability, authenticity and (un)lawful manner of obtaining electronic evidence?

The remuneration of experts is included in the cost of the trial.

In a civil case, this cost can be charged to one of the parties, usually the one who lost the case. This cost may be covered by legal aid if the losing party qualifies for it.

The costs of expertise are likely to become very important as the reconstruction and testing environment will become critical.

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)?

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

According to article 9 of the code of civil procedure, in civil proceedings the burden of proof lies with the party the facts which are the subject of it and are necessary for the success of his claim, it is thus understood of both the procedure used and its result.

In matters of legal facts in respect of which the proof is free the judge's sovereign control will, as soon as a dispute about a relevant fact is raised, focus on one and then the admissibility of the evidence (lawfulness and fairness) and, on the other hand, its probative value, its ability to convince the judge in the dispute.

The digital nature of evidence blurs this distinction by shifting the assessment of the strength of the process used, an assessment of the probative value of the evidence, which is dictated by the complexity and of its environment.

Thus, it is accepted in jurisprudence that screen captures and printouts alone have, in the event of a dispute, no probative force, as there is nothing to determine with certainty their in the event of a dispute, have no evidential value, as there is nothing to determine with certainty the their conditions of establishment, their date and the absence of alteration of their content. The same applies to pages that can no longer be consulted and whose past image is archived by uncertified third parties such as those on the site accessible under the domain name archives.org[2]

[2] In this sense: CA Paris, 27 Apr. 2006, no. 05/13673; TGI Paris, 9 March 2012, no. 10/05343: "*the archive.org site does not, however, have sufficient does not have sufficient evidential value insofar as the date of the documents,*

The multiplication of digital evidence in French law has not, however, changed the application of fundamental principles in the administration of evidence in civil matters, such as the principle of adversarial proceedings or the rights of the defense or the sovereign discretion of the courts.

All these principles remain firmly embedded in the legal system and new modes of evidence must comply with them. This general trend towards continuity of legal rules and stability of the legal basis for evidence does not prevent parties from challenging electronic evidence.

The parties may therefore challenge the validity of the evidence produced in the debate in accordance with the procedures laid down in Articles 285 et seq. of the Code of Civil Procedure.

More specifically, certain provisions of the Code provide for specific hypotheses relating to electronic signatures, such as Article 287 of the Code of Civil Procedure: Article 287 provides that

"If *one of the parties denies the writing attributed to him or declares that he does not recognize the writing attributed to its author, the judge shall verify the contested writing unless he can rule without taking it into account. If the contested writing relates only to certain aspects of the claim, a decision may be taken on the others*".

If the denial or refusal to recognise relates to an electronic writing or signature, the court shall check whether the conditions laid down by Articles 1366 and 1367 of the Civil Code for the validity of the electronic writing or signature are met.

Consequently, the presumption of reliability does not exist for handwritten signatures, which are particularly fragile with regard to the procedure for challenging handwriting, since, according to established case law, the judge must order a verification of handwriting. On the contrary, if the parties contest the recognition of an electronic writing or signature, the judge will be obliged to verify that the requirements of identification of the author and guarantee of the integrity of its content were met, in accordance with Articles 1366 and 1367 .

However, according to other decisions of the Court of Cassation, an e-mail could constitute proof of a fact without having to verify compliance with the requirements of the Civil Code on electronic writing. In this case, a company disputing that it had received a formal notice complained that the Paris Court of Appeal had relied on a copy of the e-mail, without checking whether it was a faithful and durable reproduction of the original and whether its author had been identified. The Court of Cassation held that the provisions of Article 1316-1 (now 1366) of the Civil Code "are not applicable to electronic mail produced as proof of a fact, the existence of which may be established by any means of proof, which are assessed in a sovereign manner by the court of first instance"[3].

In the context of **electronic signature**, a distinction involves that qualify electronic signature and the n on qualified one.

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which it is not excluded that it can be can be modified by a simple technical manipulation, is therefore not certain". It seems that any change in the case law depends on the It seems that any change in the case law depends on the plaintiff providing the elements supplied by the publisher revealing the the exact functioning of the site to enable the judge to assess the reliability of the procedures used.

[3] Civ. 2e, 27 nov. 2014, no 13-27.797 , NP, CCE 2015, comm. 28, obs. É.-A. Caprioli; aussi om. 4 oct. 2005, no 04-15.195 , NP, JCP E 2006. 1895, comm. M. Vivant; RD banc. fin. 2006, comm. 119, note É.-A. Caprioli; CCE 2006, no 48, note L. Grynbaum.

For qualified electronic signature exist a presumption of reliability.

In consequence, the presumption of reliability of the electronic signature, like any presumption shifts the subject matter of the evidence but does not eliminate it. The person who invokes a qualified electronic signature is therefore not exempted from all proof. The person who disputes the reliability of the qualified electronic signature used against him must prove the contrary. He cannot therefore simply deny or refuse to recognise the electronic signature concerned.

The establishment of a presumption of reliability in favour of the qualified electronic signature does not mean that the unqualified electronic signature (simple or advanced depending on its level of security) is devoid of probative value. It is admissible as evidence under Article 1367 of the Civil Code, but if it is not qualified, it can be used as evidence. but, if it is not qualified, it will be up to the person who relies on it to establish its probative by demonstrating, in accordance with the aforementioned Article 1367, that it results from *"the use of a reliable identification process guaranteeing its link with the act to which it is attached the act to which it relates'*, i.e. to show that it is attributable to the person designated as the as the author and that it is attached to the document concerned. The electronic signature cannot therefore be considered inadmissible or devoid of probative value simply because it is value simply because it is not qualified.

The judge will have to study the technical elements the technical elements produced in support of its reliability and determine whether they are sufficient to establish the latter.

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

Article 9 of the Code of Civil Procedure provides *that "it is incumbent on each party to prove, in accordance with the law, the facts necessary for the success of its claim".* The burden of proof thus lies with the parties according to the allegations that each party makes. It is therefore up to the author of an allegation to gather the evidence intended to establish it. This rule is, here as elsewhere, an illustration of the adversarial nature of civil procedure in French law.

Furthermore, in the field of electronic signatures, there is a rule of presumption of validity of evidence in the case of a secure electronic signature presumed to be reliable (Decree No. 2017-1416 of 28 September 2017, Article 1) indicates that an electronic signature is presumed to be reliable in law until proof to the contrary is shown. The burden of proof of the unreliability of the process used lies with the person who challenges the legal value of the signature (and more generally the act signed).

In the case of a simple electronic signature, the burden of proof of the reliability of the process used to sign the document in question lies with the party relying on the electronic signature.

Therefore, once the parties produce evidence, it is up to the judge to examine it. The judge may not grant a particular claim without analysing, even in summary form, the evidence produced on which he bases his decision. In this respect, the judge has a sovereign power of appreciation and in fact is practically discretionary in the sense that if he or she considers the evidence produced in support of an allegation to be convincing, it is sufficient for him or her to say so without having to explain the matter. The judge must therefore take a stand on the relevant allegations; he or she is not required to explain the reasons for his or her personal conviction.

This is, moreover, what article 1353 of the Civil Code implicitly indicates by 'abandoning' the assessment of imperfect evidence 'to the light and prudence of the judge'.

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?

No,this possibility does not seem to exist.

However, on the basis of Article 10 of the Code of Civil Procedure, if a party submits electronic evidence to prove the existence of a legal fact, the court may consider it necessary to order additional measures to clarify questions of fact, in accordance with Article 10 of the Code of Civil Procedure.

In general, the probative value of electronic evidence can be considered to be at the discretion of the judge, who will usually decide on the basis of his or her own personal conviction.

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

The assessment of the illegality of the evidence has been made in different circumstances, case law has been hesitant in relation to the evaluation of electronic evidence.

With regard to e-mail evidence, it has ruled out the use of the electronic handwriting verification procedure if there is nothing to call into question the authenticity and origin of the document[4]

In a case where one of the parties claimed to oppose an email to the other, the Court of Cassation ruled in a judgment of 30 September 2010 that the electronic message does not constitute an electronic writing within the meaning of articles 1316-1 and 1316-4 (now art. 1366 and 1367) of the Civil Code if the party to whom it is attributed denies its commitment[5]

In the event of a dispute, it is up to the judge to check whether the conditions set out in articles 1316-1 and 1316-4 (now art. 1366 and 1367) of the Civil Code relating to the validity of the electronic writing or signature are met. Electronic writing therefore does not benefit from a presumption of regularity and validity: in the event of a dispute, the burden of proof lies with the person alleging the electronic mail. Only electronic signatures created using highly secure processes could create a simple presumption of reliability in favour of the person who puts forward an e-mail as evidence.

Also with regard to evidence by screen capture of a website, its evaluation is postponed, on a case-by-case basis, as there is no way to be sure of the technical reliability of a screen capture. In the absence of a description of the procedure followed to take the screenshots, the latter "carried out without the intervention of a bailiff or a sworn third party, do not present a sufficient guarantee of the authenticity of the contents that appear on them".

[4] Civ. 1re, 27 June 2006, no. 05-15.676, RLDI 2006/20, no. 607, note T. Piette-Coudol; CCE 2006, no 10, comm. 149, note E. Caprioli.

[5] Civ. 1re, 30 Sept. 2010, no. 09-68.555, Bull. civ. I, no. 178; D. 2010. 2362; AJDI 2011. 73, obs. F. de la Vaissière; RLDI 2010/65, no 2151 note L. Grynbaum; RTD civ. 2010. 785 note B. Fagès; RLDC 2011/80, no 4152, obs. O. Cachard).

In a judgment of 18 January 2013, the Paris Court of Appeal rejected a screen capture on the grounds that 'whereas the court rejected his claim in this respect by stating that it was impossible to give a certain date to this document, that nothing made it possible to ensure the conditions of technical reliability of the capture of this page and that, consequently, it could not suffice to provide proof of unlawful infringement, the appellant resumes his argument by neglecting to respond to the reasons which led the court to rule as it did'.

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

The evidence is dismissed.

2.13. Does the law of your Member State enable for the parties to submit written statements of witnesses? (If yes, are pre-recorded oral statements of witnesses admissible as evidence?)

Yes, Chapter IV: Declarations by third parties. (Articles 199 to 231)

Article 199 provides that *where testimonial evidence is admissible, the judge may receive from third parties statements likely to enlighten him on the disputed facts of which they have personal knowledge. These statements shall be made by attestation or collected by means of an enquiry, depending on whether they are written or oral.*

3. Duty to disclose electronic evidence

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

Parties to civil litigation in France have no duty imposed on them to disclose any evidence or particular documents to the opposing party. In fact, the system is entirely voluntary and the parties are free to disclose or withhold whatever documents, evidence or information they wish, including electronic proofs. Each party must substantiate its claims and satisfy its burden of proof.

During the course of the proceedings, if a party wishes to force another party to produce certain evidence, it may request the court to order production of such evidence provided it can demonstrate that the evidence is relevant to the case. This gives rise to a discussion between the parties that is separate from the merits. If a party refuses to comply with a court order for the production of evidence, the court is entitled to draw any conclusion it deems appropriate based on the circumstance

Despite the above, the French Code of Civil Procedure allows for pre-action disclosure when there is a legitimate reason to preserve or to establish the evidence on which the resolution of the dispute depends (pursuant to Article 145 of the French Code of Civil Procedure). The collection of evidence in such circumstances will most likely be done via an ex parte court order appointing a bailiff to preserve or establish such evidence.

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

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

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

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

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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?

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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?

With the Act of 13 March 2000, the condition of intelligibility of electronic evidence was required in a general way by the former Article 1316 of the Civil Code.

This text provided: "*Literal evidence or evidence in writing results from a sequence of letters, characters, numbers or any other signs or symbols with an intelligible meaning, regardless of their medium and the way they are transmitted".* In other words, it does not matter what form the information takes, the main thing is that it is rendered in a way that is intelligible to humans and not by machines.

Now provided for by Article 1367, paragraph 2: *'When it is electronic, it consists of the use of a reliable identification process which guarantees its link with the act to which it relates. The reliability of this process is presumed, until proof to the contrary, when the electronic signature is created, the identity of the signatory is assured and the integrity of the document is guaranteed, under conditions laid down by decree in the Council of State".*

Electronic archiving must comply with the retention periods prescribed by law depending on the nature of the document in question and the limitation periods. For example, electronic authentic instruments must be kept for an unlimited period.

The only certainty is that electronic archiving must guarantee the intelligibility of the document stored, its identification and its integrity, regardless of the duration and the way it is stored.

The parties rarely provide computer evidence, which they do in material form (printing out e-mails, connection data) and very rarely in the form of a computer medium (a USB key), but this makes it difficult to use. A bailiff's report or an expert opinion can remedy this difficulty. The

courts do not archive civil evidence, as the files are returned to the parties (we are still at the stage where everything is materialized in civil matters).

Form the point of the view of the parties there is a technical standard AFNOR Z 42-013, published in July 1999 and revised in December 2001. The NF Z 42-013 standard specifies the means to be implemented to ensure the preservation and integrity of documents during their archiving, storage and retrieval, i.e. to restore the original information at all points.

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

While French law is concerned with the preservation of electronic documents, it does not deal with the forms and methods of archiving. This choice is an expression of respect for the principle of "technological neutrality", but moreover, in view of the speed of technological developments, it would have risked being rapidly obsolete.

The law therefore limits itself to setting out requirements with direct consequences for the preservation of electronic documents.

Pursuant to Article 1366 of the Civil Code, the person who issued the document must be duly identified. This characteristic refers to the notion of imputability of the act, i.e. the identification of the author of the act and his or her relationship with him or her. The text requires literal evidence in electronic form to guarantee the integrity of the document throughout its life cycle, i.e. from its establishment to its conservation. In order to constitute evidence, electronic writings must therefore be preserved with integrity; this means that electronic preservation must guarantee that the archived document is the translation of the author's unaltered will and that the truth of which the document is the bearer must be able to be established at any time.

The identification and integrity of the electronic document are therefore the two cumulative characteristics required by the law.

Also, the provisions of Article 1316-4 paragraph 2 of the Civil Code relating to electronic signatures state: "*When it is electronic, it (the signature) consists of the use of a reliable identification process guaranteeing its link with the act to which it is attached. The reliability of this process is presumed, until proven otherwise, when the electronic signature is created, the identity of the signatory is assured and the integrity of the document is guaranteed, under conditions laid down by decree in the Council of State".*

When the document is signed electronically in accordance with the provisions of the decree of 30 March 2001, its storage must preserve the essential functions of the document: identification and integrity, i.e. it must cover both the signed document itself and the elements enabling its verification (electronic certificate and certificate revocation list). Also, without going into the details of the technology used, the law links the proof of private documents to the reliability of the electronic signature process used. In this sense, the "solidity" and durability of the link between the electronic signature and the message is a fundamental aspect. It should be noted that the formalism of electronic authentic instruments, which is to be laid down by decree, will also have to take account of the specific nature of the signature of public officers, which "confers authenticity on the instrument". The retention of each document will vary according to the applicable texts.

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

The courts in France do not archive civil evidence, as the files are returned to the parties (we are still at the stage where everything is materialized in civil matters).

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

See answer 4.3.

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

See answer 4.3.

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

See answer 4.3.

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

See answer 4.3.

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

As mentioned in question 1.7 and 1.8 the French Civil Code states the equivalence between electronic and physical evidence

5. Archiving of electronic evidence

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

See answer in question 4.2

5.2. Shortly explain the requirements, standards and protocols for properly archiving electronic evidence rules regulating the archiving of metadata, please describe them.)

See answers at questions 4.2. and 4.3..

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

See answers at questions 4.3 and 4.6..

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

See answer 4.3.

5.5. Must electronic evidence be archived indefinitely, or must it be deleted or destroyed after a certain period? How is the accessibility of archived electronic evidence preserved over time?

See 4.3.

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

As mentioned in question 1.7 and 1.8 the French Civil Code states the equivalence between electronic and physical evidence.

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?

The ENM (Ecole nationale de la magistrature) provides continuous training ("formation continue") for judges. In the catalogue of training courses offered there are also courses on electronic evidence, cybercriminality, electronic contracts etc.., (for example https://www.enm.justice.fr/sites/default/files/catalogues/2023/Catalogue_FC_2023_WEB.pdf here the list of courses offered for 2023).

7. Videoconference

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

The use of videoconferencing (or telehearing) has been permitted since 15 May 2022 by Article L. 111-12-1 of the Code de l'organisation judiuciaire (Judicial Organisation Code), resulting from Law no. 2021-1729 of 22 December 2021 for confidence in the judicial institution, and Article R. 111-7-1 of the same code, created by Decree No. 2022-79 of 27 January 2022 implementing Article L. 111-12-1 of the COJ, itself supplemented by the Order of 13 May 2022 specifying the technical terms and conditions of audiovisual telecommunication means for the holding of a videoconference or videoconference in non-criminal matters.

Article L111-12 of the Code of Judicial Organisation, which states that hearings before the judicial courts may be held by audiovisual telecommunication means, in other words, by videoconference.

"*Hearings before the judicial courts, without prejudice to the specific provisions of the Code of Criminal Procedure and the Code on the Entry and Residence of Foreigners and the Right of Asylum, may, by decision of the president of the court, ex officio or at the request of a party, and with the consent of all the parties, be held in several courtrooms linked directly by an audiovisual means of telecommunication guaranteeing the confidentiality of the transmission".*

This article applies to both civil and criminal courts, but not to administrative courts.

Article 25 lays down several conditions for the use of videoconferencing in civil cases.

First of all, such use is subject to the decision of the president of the court, ex officio or at the request of a party, and with the consent of all the parties. A single party or the judge cannot therefore decide unilaterally to use videoconferencing: everyone must agree.

If this is the case, the hearing may then take place in several rooms, which may be inside or outside the jurisdiction of the court. The audiovisual means of telecommunication used must then guarantee the confidentiality of the transmission.

Moreover, Article 25 of the law specifies that for the holding of debates in public session, each of the courtrooms must be open to the public, and that for the holding of debates in the council

chamber, it must be done without the presence of the public. Lastly, filming and sound recordings may not be recorded or fixed.

Secondly, Decree No. 2022-79 of 27 January 2022 implementing Article L. 111-12-1 of the Judicial Organisation Code creates an Article

R. 111-7-1. This provides that when a person expressly requests to be heard by an audiovisual means of communication pursuant to Article L. 111-12-1, the president of the court panel shall authorise him or her to do so if he or she considers that the remote hearing is compatible with the nature of the proceedings and respect for the adversarial principle. This decision constitutes a measure of judicial administration.

The question of the use of videoconferencing in civil proceedings arose during the period of the COVID epidemic, as it had previously been mainly in the criminal field.

In particular, Law No. 2020-290 of 23 March 2020 on the emergency response to the Covid epidemic-19 authorised the Government to adopt by ordinance 'the rules relating to the territorial jurisdiction and the judgment panels of the administrative and judicial courts, as well as the rules relating to procedural and judgment deadlines, the publicity of hearings and their holding, the use of videoconferencing before these courts and the methods of referring cases to the court and organising the adversarial process before the courts'. The sole purpose of these derogatory rules must be to limit the spread of the Covid-19 epidemic among the persons involved in the conduct of proceedings. In other words, the law authorises the Government to take any civil procedural measure designed to enable judges, lawyers, court clerks and other court staff to work in a confined situation or, at the very least, to hold hearings in conditions that ensure compliance with the rules of social distancing.

Therefore, Article 7 of Order No. 2020-304 adapting the rules applicable to the courts of the judicial order ruling on non-criminal matters and to condominium management contracts allows the judge, president of the trial panel or judge in charge of liberties and detention, to decide that the hearing will take place by "an audiovisual telecommunication means that makes it possible to ascertain the identity of the parties and guarantees the quality of the transmission and the confidentiality of the exchanges between the parties and their lawyers". This decision cannot be appealed, as the legislator no doubt considers that it is only a measure of judicial administration[6].

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

[6] Amrani-Mekki S., La procédure civile réécrite sous contraintes sanitaires , Gazette du Palais, n. 16/2020, page 63.

f) Other means of evidence (please elaborate)

g) Conducting the hearing in broader/general terms (please elaborate)

There is no precision in the law, it is simply stated that "*hearings before the judicial courts may take place by videoconference*" but in the practice video conferencing is used to hold hearings in oral proceedings, for example for detainees, but not for the purpose of taking evidence.

It is more a question of gathering the demands and means of a party who cannot come to the hearing. It is very rare to provide for the hearing of witnesses in civil cases, but in this case, video could be used.

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

Firstly, it can be either the president of the court deciding the videoconference.

This decision is taken either ex officio with the consent of all the parties (Article L111-2 COJ) or at the request of "a party, a witness, an expert or any other person summoned" who "expressly requests" to be heard remotely (COJ, Art. L. 111-12-1) by providing "legitimate reasons" (COJ, Art. L. 111- 12-1 and R. 111-7-1). In addition, the judges, clerks or prosecutors must always be physically present in the courtroom of the court.

Note that nothing is said about:- the time at which the application may be presented: probably as soon as the introductory document is issued, then at any time during the proceedings (at orientation hearings before the court of first instance in ordinary written procedure, during hearings before the court of first instance, during oral debates before the courts, etc.);

- the form of the application. In written procedure, the application will be sent by the lawyers via the RPVA, for the trade union defender by a registered letter, for the avocat aux Conseils by electronic means. In traditional oral proceedings, a long-standing body of case law should make it possible to classify the request for remote presentation as an autonomous procedural act, and therefore likely to be formalised in writing. In modern oral proceedings, writings have an autonomous value in themselves, which settles the question (CPC, Art. 446-1).

Then, according to the article "*The president directs the debates from the courtroom where the other members of the court, the public prosecutor and the court clerk are also present, if necessary. He shall check, during the hearing, that the conditions in which the person is connected are compatible with respect for the dignity and serenity of the proceedings. These conditions are presumed to be met when the person connects from the professional premises of a lawyer on national territory or abroad".*

Therefore, it is the president of the court that has the power to authorize the video hearing (COJ, art. L. 111-12-1, R. 111-7-1 and L. 111-12, R. 111-7). The decision is a measure of judicial administration (COJ, art. R. 111-7-1, para. 2), so that it is not subject to appeal (except for a possible appeal for excess of power: V. Cass. 2e civ., 9 Jan. 2020, n° 18-19.301, P. - Cass. 2)

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

None, the civil procedure management software is old and does not allow the transmission of computer evidence, only PDF / word processing documents.

According to some reports the video conferencing the device proposed by the Ministry would have been Skype (according to the Ministry, the deployment of Skype on all laptops, 42,000 installed, has made it possible to make up for the lack of video conferencing equipment (individual, meeting rooms and courtrooms)[7]. Zoom, Teams and other systems have been frequently used during recent periods of restricted freedom of movement, including by the courts by in particular in criminal matters.

The commercial courts used TIXEO, a French program that offers secure videoconferencing, qualified by the Agence nationale de la sécurité des systèmes d'information (ANSSI), and which the Paris commercial court has used successfully. The proposal is therefore to give preference to the use of French secure videoconferencing service providers.

In general, the technical conditions relate to the security and confidentiality of exchanges are provided in Decree No. 2022-79 of 27 January 2022 implementing Article L. 111-12-1 of the Code of Judicial Organisation states which states that the technical characteristics of the audiovisual telecommunication means used must "*enable the identity of the persons taking part to be verified. They must also ensure the quality of the transmission and, when the hearing is not public, the confidentiality of the exchanges".*

They are specified by order of the Minister of Justice. The order of 13 May 2022 specifying the technical modalities of audiovisual telecommunication means for holding a videotaped hearing or a videotaped hearing in non-criminal matters states that

Article 1 "*For the application of Article L. 111-12-1 of the Code of Judicial Organisation, audiovisual communication is implemented by means of a videoconference solution chosen from among those made available by the Ministry of Justice".*

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

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

I don't think there are any particular prohibitions/restriction on using the available devices, e.g. if the courtroom is not equipped or the intended device does not work at the time of the hearing.

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

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

The president of the court decides on the use of video-conferencing. This decision is taken either ex officio with the consent of all the parties (Article L111-2 COJ) or at the request of "a party, a witness, an expert or any other person summoned" who "expressly requests" to be heard remotely (COJ, Art. L. 111-12-1) by providing "legitimate reasons".

[7] *Améliorer le fonctionnement de la justice – point d'étape du plan de transformation numérique du ministère de la justice,* Cour de comptes, communication de janvier 2022, p.51.

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)?

Article L111-2 of the COJ states that the choice to use videoconferencing is made by the president of the court, ex officio, with the consent of all the parties.

It follows that the judge may decide ex officio to use videoconferencing, but only with the agreement of the parties. The article nevertheless safeguards the specific provisions of the Public Health Code. This may therefore suggest that in the presence of public health imperatives, the judge may decide that the hearing should be held by video conference.

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?

The French Code of Civil Procedure provides that witnesses are designated by the parties who make their request to the judge in charge of the case (Article 223 Code of Civil Procedure).

However, the judge is free to refuse certain testimony if he or she considers that it will not contribute to the case.

Witnesses can also be directly appointed by the judge (Article 224 Code of Civil Procedure)

The general obligation to testify stems from the obligation of every citizen to assist the justice system in order to establish the truth. The obligation for the witness to appear, take an oath and give evidence only concerns cases where his presence has been requested by the judicial authority.

Witnesses receive their summons at least: eight days in advance in a civil trial.

The witness can be forced to appear by the police. They may also be held for the time necessary for their hearing, which may not exceed four hours. In practice, these measures are rarely used.

Witnesses are required to take an oath and swear to tell the truth.

Compensation may be paid to the witness to reimburse expenses incurred (e.g. travel or accommodation). The application for compensation must be filed with the court clerk at the hearing.

7.7.1. Under which circumstances may a witness refuse testimony?

The following are exempt from testifying

-a witness who has a legitimate reason (e.g. illness), at the discretion of the judge

-diplomatic and consular agents

-persons bound by professional secrecy (lawyers, doctors, ministers of religion) who have had knowledge of facts in the exercise of their profession;

-the President of the Republic.

-In addition, the International Covenant on Civil and Political Rights, adopted by the United Nations General Assembly and ratified by France, provides that any person accused of a criminal offence may not be compelled to testify against himself (Article 14).

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

Yes, the adversarial principle is also called the principle of contradiction. The Code of Civil Procedure, in Articles 14 to 17, refers to the principle of contradiction

Article 14 CPC No party may be judged without having been heard or called.

Article 15 CPC The parties must inform each other in good time of the factual grounds on which they base their claims, the evidence they produce and the legal grounds they invoke, so that each party is in a position to organise its defence.

Article 16 CPC The judge shall, in all circumstances, observe and observe himself the principle of contradiction.

He may not include in his decision the pleas, explanations and documents put forward or produced by the parties unless they have been able to discuss them in adversarial proceedings.

It may not base its decision on the legal grounds which it has raised of its own motion without first inviting the parties to submit their observations.

Article 17 Where the law permits or necessity requires that a measure be ordered without the knowledge of a party, that party shall have an appropriate remedy against the decision which adversely affects him.

In the context of videoconferencing, the adversarial process must also be guaranteed.

Thus, **Article R 111-7 of the Code of Judicial Organisation** states that "*When a person expressly requests to be heard by an audiovisual means of communication pursuant to Article L. 111-12-1, the president of the court panel shall authorise him or her to do so if he or she considers that his or her hearing from a distance is compatible with the nature of the debates and respect for the adversarial principle*".

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?

Nothing is said about this in the texts

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)?

There is no preliminary test, as video justice only works between sites of the Ministry of Justice (between jurisdictions and with prisons in particular).

There is no videoconferencing with lawyers' offices, for example.

The system is now operational and there is no need for a trial run. A report on the videoconferencing operations and the proper functioning of the system is insert in the dossier of the affaire.

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

No particular practice is indicated.

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?

No particular indications. according to the texts

The person may be anywhere he or she wishes and Article L111-12-1 COJ states that one or more of these courtrooms may be outside the jurisdiction of the court seized.

However, Article L111-12-1 COJ states that the conditions of connection that ensure respect for the dignity and serenity of the proceedings "are presumed to be met when the person connects from the professional premises of a lawyer on national territory or abroad".

There are therefore no specific indications or rules; videoconferences can take place between a courtroom and a private place, in particular a lawyer's professional premises, but the judge is required to check that the connection conditions ensure respect for the dignity and serenity of the proceedings.

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

Nothing is specified about this specific hypothesis.

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

Nothing is specified about this specific hypothesis.

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?

Nothing is specified about this specific hypothesis.

b) the time when the videoconference may be conducted?

Nothing is specified about this specific hypothesis.

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

Nothing is specified about this specific hypothesis.

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

Article R111-7-1 COJ states that the technical characteristics of the audiovisual means of telecommunication used in application of Article L. 111-12-1 must make it possible to ascertain the identity of the persons taking part.

The identity of any person appearing on the screens must be stated and transcribed in the minutes.

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

The Visio conference cannot be recorded, the registry takes a note of the hearing with the statements of the parties, which becomes an act of proceedings.

In this sense Article L111-12 COJ provided that *No recording or fixation may be made of the photographs or sound recordings, except in the case provided for in Articles L. 221-1 et seq. of the Heritage Code.*

The only exception is that provided for by Article L221-1 of the Heritage Code

Public hearings before the administrative or judicial courts may be the subject of an audiovisual or sound recording under the conditions provided for in this title when this recording is of interest for the constitution of historical archives of justice. Subject to the provisions of Article L. 221-4, the recording shall be integral.

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

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

The camera focuses on the president and the clerk who alone play a role in the hearing to be followed and on all persons involved (lawyer, plaintiff/defendant) who must declare their identity to the clerk.

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

It would appear from article L111-12 COJ no recording or fixation is allowed

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

Article L111-12 COJ also provides that "no capture of images" may take place unless the recording is of interest for the constitution of a historical archive of justice as provided for in Article L122-1 Code du patrimoine.

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

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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?

Nothing is provided for in this sense by the French legislator and since video conference hearings cannot be recorded, it can be inferred that it is not possible

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?

The *procés verbal* is drafted during the videoconference hearing and become an act of the procedure.

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

Yes, the translation is simultaneous if there is the need of a translator.

7.13.1. Where is the interpreter located during the videoconference?

He stands with the court.

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?

Being the principle of orality declared also in the principle of principle or 'immediacy' which makes the physical contact between the parties and the judge a guarantee of good justice its violation can entail the unfairness of the trial.

The impact of the use of videoconferencing on this principle was also highlighted by a report of the National Consultative Commission on Human Rights[8].

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

No

7.14.3. Have your courts dealt with cases alleging an infringement of the principle of immediacy or the impartiality of judges in videoconference proceedings?

No

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

As they would in normal procedure following the rules of debates,

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

Nothing is specified about this specific hypothesis.

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?

Nothing is specified about this specific hypothesis, but nothing seems to prohibit it.

[8] 10.04.15 Avis LOPPSI (cncdh.fr) § 15.

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)?

As mentioned, the types of software used by France for video conferencing make it appear that the person who is speaking is displayed and others participants will be minimized.

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?

Article R111-7-1 COJ stated that the system must ensure the quality of transmission.

In this case, the judge, if the conditions are not present, will have to ensure that the connection is properly re-established.

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?

If one of the parties does not enjoy the conditions of connection provided for by law, it must make this known to the judge who is obliged to ensure certain technical conditions following the article of Civil procedural Code and the article of the COJ.

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?

Nothing is specified about this specific hypothesis, but nothing seems to prohibit it.

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)?

Article L111-12-1 COJ states that the person may connect from the professional premises of a lawyer on national territory or abroad and in this specific case the connection conditions are presumed to be compatible with respect for the dignity and serenity of proceedings

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

Nothing is specified about this specific hypothesis

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

Debates and pleadings do not fall within the scope of electronic communication within the meaning of Articles 748-1 et seq.

If a hearing can take place using videoconferencing, which undeniably constitutes a use of digital technology, this videoconferencing does not, however, come under the legal regime of electronic communication in civil procedure. It is subject to a special regime, provided for in Article L. 111-12 of the Code of Judicial Organisation.

In addition to respecting the principle of the publicity of debates, this exclusion of the hearing from the scope of electronic communication is fully justified by the interactivity of the hearings, which in the state of its development the electronic communication regime does not allow to ensure, unlike videoconferencing.

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)

Documentary acquisition may be inappropriate.

it does not seem necessary to implement the N-form