NATIONAL REPORT FOR NORTH MACEDONIA ON ELECTRONIC EVIDENCE AND VIDEOCONFERENCING

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Project DIGI-GUARD 2023

DIGI-GUARD

National Report
North Macedonia

prepared by

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Questionnaire for National Reports

On electronic evidence and videoconferencing

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

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

- Regulation (EU) 2020/1783 of the European Parliament and of the Council of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence) (recast) (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020R1783),
- Impact assessment of the Taking of Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018SC0285),
- Other *travauxpreparatoires*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 thequestionnaire 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.

GENERAL ASPECTS REGARDING ELECTRONIC EVIDENCE

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

The Law on Civil Procedure (hereafter: LCP)[1] does not operate with the precise term 'electronic evidence', however, it entails that documents can be presented as evidence in the proceedings even if they are recorded in electronic form. It is stipulated that '*a document is a written record, picture, image, data or information of any kind stored on paper or recorded in electronic, audio, visual or other form*' (Art. 215-a LCP). Therefore, the legal effect of the electronic documents is equivalent to the other means of evidence prescribed in the LCP.

Moreover, the Law on electronic documents, electronic identification and confidential services (hereafter: LEDEICS)[2] prescribes the electronic document as '*any document stored in electronic form, especially textual or sound, visual or audio-visual records*' (Art. 3(1) point 3 LEDEICS).

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

Regarding the paper documents, the LCP makes a distinction between a document ('*isprava*') and a document ('*dokument*'). Accordingly, a document ('*isprava*') is '*issued in a prescribed form by a state authority or an authority of the state administration within the limits of its competence'* or '*issued in such a form by an organization or other institution when exercising a public authority entrusted to it by law or by a decision of an authority of the municipality established by law (public document)*' (Art. 215). The definition of a document according to LCP is already provided in Question 1.

In this fashion, document ('*isprava*') and document ('*dokument*') can both be considered as paper documents and are stipulated among the means of evidence in the LCP.

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

In Macedonian legal system, the electronic evidence is definitely regarded as means of evidence. In regards to the categorization of the other means, however, it has a hybrid nature, due to the fact that the legislator does not take a purely traditional, nor a purely progressive/modern approach in defining the notion of electronic evidence *i.e.* electronic document. On one hand, the LCP enumerates the electronic document as a sub-category of the term 'document' ('*dokument*') which is listed among the other traditional means of evidence: inspection, document ('*isprava*'), witness, expert and hearing of parties.

On the other hand, the LEDEICS takes a more progressive approach and specifically determines the legal regime of electronic documents by prescribing their means of creation, storage, processing (Arts. 1, 2 LEDEICS) and their legal effect and probative value (Art. 6 LEDEICS). This demonstrates the specific position of electronic documents in the Macedonian legal system, which, however, has not completely freed from the traditional categorisation.

Nonetheless, judicial practice shows that electronic evidence has been successfully incorporated and accepted in the court proceedings. For example, communication via email,[3]electronic messages[4]and video recordings[5]are considered a document in the current system of civil evidence in North Macedonia. According to LEDEICS, '*when the written form of documents or acts is prescribed by law, the electronic document is considered a document or act in written form*' (Art. 6 LEDEICS).

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[1]Official Gazette of RM, No.79/2005, 110/2008, 83/2009, 116/2010 and 124/2015.

[2]Official Gazette of RM, No. 101/2019.

[3]Decision of the Basic Court of Skopje, No. RO-1790/13 of 17.03.2017; Decision of the Supreme Court of the Republic of North Macedonia, No. Rev3. No. 58/2018 of 17.04.2019.

[4]Decision of the Basic Court of Veles, No. PL1-TS26/18 of 01.04.2020; Decision of the Basic Court in VelesMALVPL1-TS-43/19.

[5]ROŽ -331/21;GŽ-201/21.

Therefore, as the definitions provide, any types of documents stored in electronic format[6] have evidentiary value in the Macedonian procedural system. In sum, despite the unclear categorisation of the term, and the fact that electronic documents are not purely independent means of evidence, there is a positive implementation in judicial practice and litigation.

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

Besides defining the term electronic document, the LEDEICS regulates the conditions for its evidentiary and legal power in court proceedings.[7] According to Art. 6, '*The electronic document has the same legal and evidential value as the written form of the document, in accordance with the law. An electronic document cannot be challenged as evidence in administrative or judicial proceedings, just because it was created in electronic form. When the written form of documents or acts is prescribed by law, the electronic document is considered a document or act in written form*.' It can be concluded that the electronic document has equal evidentiary value as the document in written form.

Notwithstanding, the electronic documents have to meet the required conditions in order to achieve the needed probative value. In that regard, the electronic documents, for example, should go through the process of digitalization (Art. 9 LEDEICS) or verification (Art. 10 LEDEICS).

Regarding admissibility, it entails that the electronic documents should not '*be denied legal effect or considered inadmissible ... solely on the grounds that they are in electronic form*.'[8]The electronic documents should not be discriminated nor privileged over other types of evidence, given that their authenticity, reliability and integrity are proven.[9] As it was decided by the European Court of Human Rights: '*While Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts.*'[10] In Macedonian law, similarly to Art. 8 of the Regulation 2020/1783, Art. 6 of LEDEICS and the judgements mentioned in question 3 confirm that electronic documents cannot be disregarded as evidence, given that they are authentic and reliable.

With regards to reliability, the courts should take into consideration all relevant factors which concern 'the source and authenticity of the electronic evidence.'[11] The court should presume the reliability of the electronic data if the identity of the signatory can be validated and the integrity of the data secured, unless there are doubts to the contrary.[12] In that regard, LEDEICS provides conditions for verification of electronic signatures (digital IDs), electronic seals, electronic time stamps (time-stamping, certification of time) and certificates connected to these services, as well as certificates for proving authenticity of web pages, which are provided by 'providers of confidential services', The said law also prescribes the conditions that should be fulfilled by the providers (Art. 24 LEDEICS) and the conditions that should be fulfilled by the schemes for electronic identification (Art. 11 LEDEICS). In all of these cases, the authenticity of the electronic document is the main precondition for confirming its reliability.

According to Macedonian law, the document is authentic if it originates from the publisher and if

[6]See also: Evidence in civil procedure in the Netherlands: Tradition and modernity In: C.H. van Rhee & A. Uzelac (eds.), Evidence in Contemporary Civil Procedure. Fundamental issues in a Comparative Perspective, Cambridge etc.: Intersentia, 2015, 27.

[7]Dijana Gorgieva, Emilija Gjorgjioska, Zorica Stoileva, Electronic Evidence in Civil, p. 24.

[8]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), Art. 8.

[9]Council of Europe, Electronic Evidence on Civil and Administrative Proceedings, Guidelines and Explanatory Memorandum, 2019, 16, ¶16.

[10]See García Ruiz v. Spain, No. 30544/96, ¶28; Regulation 2020/1783, supra n. 8, p. 3, ¶13.

[11]CoE Guidelines, supra n.9 p. 9, ¶19.

[12]CoE Guidelines, supra n.9 p. 10, ¶22.

its content has not been modified.[13] In the field of electronic documents, authentication is defined as '*a process that enables the electronic identification of a natural or legal person or that enables the verification of the origin and integrity of data in electronic form*' (Art. 3(7) LEDEICS). In that regard, LEDEICS prescribes the conditions for electronic identification, (Art. 11), electronic signature (Art. 38) and electronic seal (Art. 39). The fulfilment of these conditions is a presumption of proving their authenticity.

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

In the definition for document ('*dokument*') in Art. 215-a, the LCP emphasizes that the document can be either '*stored on paper or recorded in electronic, audio, visual or other form'.* Therefore, both paper and electronic documents are admissible before the court. With regards to the legal effect, LEDEICS prescribes that '*the electronic document has the same legal and evidential value as the written form of the document, in accordance with the law. When the written form of documents or acts is prescribed by law, the electronic document is considered a document or act in written form.'*Hence, LEDEICS explicitly equalizes them as means of evidence, as well as their evidential value. However, in the field of the evidential value of the private document ('*isprava*'), the LCP does not determine the probative value of private documents, which means that the probative value of private documents is evaluated by the court according to the principle of free evaluation of evidence.[14]

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?

In Macedonian legal system, LCP establishes special evidentiary value of public documents by prescribing that the public document itself '*proves the truth of what is confirmed or determined in it*'(Art. 215(1) LCP). However, the legal presumption of the probative value of the public document is rebuttable,[15] as '*it is allowed to prove that the facts are falsely stated in the public document or that the document was drawn up incorrectly*' (Art. 215(3) LCP). Furthermore, LCP provides that if it is prescribed in other special regulations, other documents would have the equal evidentiary value as the public documents (Art. 215(2)).

However, none of the relevant regulations expressly state that the electronic document has the same probative value as a public document. LEDEICS, for example, stipulates that the certificates of validation of a qualified electronic signature, seal, time-stamping, electronic registered delivery or authenticity of web pages issued by a qualified trust service provider have the same legal and evidential value as a public document (Art. 47, 52, 54, 56 LEDEICS). It is undisputable that these certificates are of immense importance for the authenticity, reliability and admissibility of the electronic documents, however, the prescribed evidentiary effect does not refer to the electronic document as a whole.

Therefore, since the law does not explicitly equalize the evidentiary power of the public and electronic documents, it can be concluded that it is determined by the court according to the principle of free evaluation of the evidence.

On the other hand, the LCP states that '*a document ('isprava') issued in a prescribed form by a state authority or an authority of the state administration within the limits of its competence, as well as a document issued in such a form by an organization or other institution when exercising a public authority entrusted to it by law or by a decision of an authority of the municipality based on law (public document), proves the truth of what is confirmed or determined in it.*'(Art. 215(1)). Therefore, by analogy, if an electronic document is issued by these public authorities, the same regime would apply to it.

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[13]A. Janevski, T. Zoroska Kamilovska, Граѓанско процесно право, книга прва, Парнично право, второ изменето и дополнето издание [Civil Procedural Law, Book I, Litigation Law, Second Revised Edition] (Faculty of Law in Skopje, 2011), p. 327.

[14] Janevski, Zoroska Kamilovska, supra n.13, p. 328.

[15] Janevski, Zoroska Kamilovska, supra n.13, p. 329.

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

In Macedonian law, the process of changing the document's form or format to another '*so that the content of the document remains unchanged*' (Art. 3(1) point 42 LEDEICS) is known as conversion. The electronic document can be converted into a document in physical form, but it has to go through verification, which entails that:

1) "*the duplication is carried out under supervision of a natural person or an authorized legal person who created the document and*

2) the document is printed in such a way that the identity of the electronic document with the printed document is confirmed by the signature of a natural person or an authorized person of a legal entity" (Art. 10 LEDEICS).

If these conditions are met cumulatively, then the electronic document reproduced on any printed medium has the same legal and evidentiary value as the original electronic document (Art. 10 LEDEICS). Furthermore, LEDEICS determines that '*when the electronic document is reproduced in paper form, it is considered a copy of the original document*' (Art. 8).

Regarding whether it is admissible to change the electronic evidence to a physical form, Macedonian law provides only a general provision that conversion is, *prima facie*, permissible. Thus, the physical form of the electronic document has to be verified. However, due to its fragility and the fact that it can be easily altered, it remains unknown whether all types of electronic evidence could be converted and admitted as evidence in the court proceedings. In Macedonian judicial practice, electronic messages on messaging applications such as Viber[16] and communication on e-mail[17] have been admitted and regarded as evidence in the spirit of Art. 215-a of LCP. On the other hand, according to the Council of Europe's Guidelines, a screen printout from a web browser, for example, is not regarded as reliable evidence, 'as it is nothing but a copy of the screen display.'[18]

Therefore, the Macedonian legislator left a wide room for interpretation whether all type of electronic evidence can be converted and treated as evidence and whether printouts of such evidence is needed. The main problem probably lies in the fact that the legislator does not specify whether all electronic evidence is regarded as electronic documents or whether there is a distinction between these two terms. Furthermore, it would be more appropriate if the legislator specifies the legitimate sources (carriers or access methods) from which data with probative value could be derived and presented before the court.

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

The process of changing the form of electronic evidence to physical *i.e.,* digitization is defined in LEDEICS as '*the process of converting a document whose form is not electronic into a digitized document*' (Art. 3 point 43). The term 'digitized documents' refers to '*an electronic document that is created by digitizing original written documents*' (Art. 3 point 44). According to the given provisions, it can be concluded that, under Macedonian law, it is admissible to change evidence in the physical form to electronic.

Regarding the legal effect of this change, the digitized document will have the same legal and evidential value as the original document, if the conditions prescribed by law are met cumulatively (Art. 9). Specifically, the conditions require that:

'*1) the digitization of the document is carried out under the supervision or by:*

- a natural person or an authorized person of a legal entity who created the document that is the subject of digitization or

- persons who are authorized to handle documents containing signatures, manuscripts or minutes, in accordance with the regulations governing archival and office work, or

[16]Decision of the Basic Court of Veles, No. PL1-TS26/18 of 01.04.2020; Decision of the Basic Court in VelesMALVPL1-TS-43/19.

[17]Decision of the Basic Court of Skopje, No. RO-1790/13 of 17.03.2017; Decision of the Supreme Court of the Republic of North Macedonia, No. Rev3. No. 58/2018 of 17.04.2019.

[18]CoE Guidelines, supra n.9 p. 20, ¶27; The Court of Appeal of Lithuania decided that instant copies of computer screen (screenshots) are not trustworthy (27 April 2018, Case No. e2A-226-516/2018).

- persons who are authorized by this or another law to confirm the digitized document and
2) the identity of the digitized document with the original document is confirmed by a qualified electronic seal or a qualified electronic signature of the persons from point 1) of this paragraph or the person to whom the competences based on which the document was adopted have been transferred.' (Art. 9 LEDEICS).

Thus, LEDEICS prescribes that '*when the electronic document is reproduced in paper form, it is considered a copy of the original document*' (Art. 8).

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

According to the general rule, the distinction whether a document is an original or a copy is based on the fact whether the document originates from the issuer or not. On one hand, the original document is the one which originates from the issuer and can be issued in one or several uniform samples.[19]On the other hand, a copy of a document does not originate from the issuer, but is a reproduction of the original document and can be plain or certified.[20]The LCP does not contain provisions which regulate what is original and what a copy of a document.

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

Regarding electronic documents, LEDEICS stipulates that each duplicated sample of the electronic document is considered an original (Art. (1), LEDEICS). An electronic document which is created by digitalization of the source document whose initial form was not electronic is considered a copy of the original document (Art. 8(2) LEDEICS). When the electronic document is reproduced in paper form, it is considered a copy of the original document (Art. 8(3) LEDEICS).

Therefore, the electronic document will be considered a copy if it is digitalized or, *vice versa*, if it is reproduced in paper form. With respect to the legal effects of a copy of electronic documents, the digitized document will have the same legal and evidential value as the original document, if the conditions for digitalization prescribed by law and elaborated in question 8 are met cumulatively (Art. 9, LEDEICS). Furthermore, if the conditions for reproducing electronic documents on any printed medium provided in question 7 are met cumulatively, such document will have the same legal and evidentiary value as the original electronic document (Art. 10, LEDEICS).

AUTHENTICITY, RELIABILITY AND UNLAWFULLY OBTAINED ELECTRONIC EVIDENCE

11. 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?

It is important to emphasize that LCP stipulates that the submissions in the civil proceeding may be submitted 'in writing, or electronically to the reception department of the competent court' (Art. 98(1) LCP). Therefore, if the evidence is submitted in writing, it should go through the process of verification, described in Question 7. Without cumulatively fulfilling the conditions for verification, the electronic document produced on a printed medium will not have the same legal and evidentiary value as the original electronic document, and consequently, will not be admissible before the court (Art. 10 LEDEICS).

On another note, if the evidence is submitted electronically, the party is obliged to previously register his/her personal account on the court web portal by identifying himself/herself with an electronic certificate during the login (Art. 159 Rules of Court).[21] Each person should be identified,

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[19] Janevski, Zoroska Kamilovska, supra n.13,p. 327.
[20] Janevski, Zoroska Kamilovska, supra n.13, p. 327.
[21]Official Gazette of RM, No. 66/2013 and 114/2014.

and given a certificate, according to the provisions and schemes of electronic identification (Art. 11, LEDEICS). In order to preserve the authenticity and reliability, the electronic document should go through a process of authentication which "*enables the electronic identification of a natural or legal person or that enables the verification of the origin and integrity of data in electronic form*" (Art. 3(1) point 7 LEDEICS).

Thus, before storing, the integrity and accuracy of the original document, as well as its attachments is ensured by conforming if an electronic signature or seal and an electronic time stamp are used (Art. 59, LEDEICS). This indicates that the electronic signature, seal and time stamp are the main indicators for ensuring the electronic document's integrity, authenticity and reliability. If these conditions are fulfilled, the electronic document will be "*considered a document or deed in written form*" (Art. 6 LEDEICS) and therefore, admissible before the court.

However, the most detailed information about the format and the technical standards of the electronic documents are prescribed in the Rulebook for the mandatory elements of the electronic documents (hereinafter: Rulebook)[22] enacted by the Ministry of Information Society and Administration. The Rulebook primarily states that each electronic document provided by a public or a private authority should contain header, body and footer (Art. 6). The header must contain '*the logo of a public authority or private legal entity that issued the electronic document*' (Art. 7 Rulebook). The body contains the legally determined elements that refer to the documents in written form (Art. 8 Rulebook) and the footer is consisted of '*the electronic signature or electronic seal and QR-code, i.e. a document verification site, which contains a link where it can be accessed the original electronic document*' (Art. 9(1) Rulebook). Thus, the visual display of the electronic seal of the public authority or private legal entity is composed of four parts:

'*1. logo*

2. visual representation of the timestamp

3. verification location and QR code and

4. circular message from the issuer of the electronic document about the validity of the electronic document' (Art. 9(2) Rulebook).

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

According to North Macedonia's legal system, the court can identify the source of the electronic evidence by primarily identifying the (qualified) electronic certificate as elaborated in Question 11. Thus, electronic certificates could refer to an electronic signature, electronic seal and authenticity of a web page and they confirm the name or the pseudonym of the natural or legal person (Art. 3 LEDEICS). The certification laboratory "*performs compliance assessment of the means for issuing electronic identification, electronic signatures or electronic seals*" (Art. 45 LEDEICS).

Thus, the procedures and guidelines from the Rulebook explained in Question 11 should be applied.

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

The law of North Macedonia does not explicitly stipulate rules for different types of electronic evidence, but if we take into consideration the fact that the legal and evidentiary value of the electronic and written documents is equalized, it can be concluded that the rules for authenticity and reliability from LCP apply to electronic documents as well.

Therefore, the electronic documents which are issued by a state authority, an authority of the state administration within the limits of its competence, an organization or other institution when exercising a public authority are regarded as public documents and as such are presumed authentic and reliable.

On the other hand, the authenticity and reliability of the electronic evidence submitted by private natural and legal persons is confirmed by electronic signature or electronic seal which, as explained in Question 12, confirms the name or pseudonym of the person which submitted the evidence.

[22]Official Gazette of RNM, No. 47/2020.

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

According to our knowledge of the case law and to the best of our recollection to some debates, an unfamiliarity with the technical part and a possibility of manipulation of electronic evidence, in general, does not impact its evidentiary value. Of course, the possibility of a different influence in some isolated cases is not excluded.

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

First, it is important to highlight that the power of the court to introduce facts and take evidence not proposed by the parties was abolished with the amendments of the LCP of 2010.[23]An exception of this rule would be the possibility for the court to order a super-expertise.

In that regard, the LCP provides general rules for appointing an expert to process the evidence. There is no distinction between appointing experts to process electronic and non-electronic evidence. Therefore, '*the court will present an expert report as evidence, if the party with the lawsuit or the response to the lawsuit submits the expert report and opinion of the expert'* (Art. 235(1)). It can be seen that the appointment of an expert to process evidence in the civil procedure is left to the disposition of the parties.

However, the LCP further provides that '*when the data of the experts on their finding do not agree substantially, or if the finding of one or more experts is unclear, incomplete or contradicts itself or the examined circumstances, and those deficiencies cannot be removed by re-interviewing the experts, the court may appoint an super expert'*(Art. 246(2)). In order to provide guarantees for fair and objective expertise, the LCP lays down that the court determines super-expertise electronically by using the rule of random selection from the register of experts, in the presence of either the parties or their attorneys (Art. 246 (3)).

Since the fundamental characteristic of expert evidence is that it is opinion evidence based on the specialized knowledge of an expert which is given on scientific and technological matters which are beyond the knowledge and experience of judges, the Law on Expertise (hereinafter: LE)[24] provides a non-exhaustive list of areas in which an expert may be appointed.[25] Taking into consideration the fact that electronic documents may be presented as evidence in any of those areas, it can be concluded that the rules for appointing experts will apply regardless whether the evidence is electronic or not.

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

Due to the fact that an expert report has to be submitted with the lawsuit or the response to the lawsuit, each party is primarily obliged to pay for the costs for appointing its own expert. If the court appoints a super expert further in the proceedings, it '*will determine the amount needed to settle the costs to be paid by both parties in equal parts*' (Art. 147(2)).

The expert has '*the right to a reward for the performed expert opinion or super expert opinion and the right to compensation for the actually necessary expenses*' (Art. 29(1) LE).The amount of the award for the performed expert opinion or super expert opinion is determined according to the amount of the monetary value of the subject of the expert opinion, the complexity of the expert opinion, the time required to collect the data and produce the expert opinion (finding and opinion)

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[23]Nevertheless, it should be stressed that the rules regarding the parties' initiative in fact-finding and evidence-taking were (and still are) notably softened by the rules on active judicial case management in terms of the so-called 'substantive procedural guidance' of a judge. Namely, even though the judge is bound by the factual allegations and evidence proposed by the parties, he has a right and duty to stimulate the parties in order to amend and clarify their factual allegations, and to propose additional means of evidence (e.g. with questions, hints, etc.). If necessary, the judge also needs to openly review his legal viewpoint with the parties. See Art. 283 LCP.

[24]Official Gazette of RM, No. 72/2016, 142/2016, 233/2018 and 14/2020.

[25]See: Art. 8 LE.

(Art. 29(2) LE). The compensation refers to travel expenses and expenses for meals and overnight stays, compensation for lost earnings and expenses for expert testimony (Art. 241(1) LCP).

However, the result of the litigation is of immense importance with respect to who would bear the costs for appointing an expert, since according to the LCP, the party that loses the litigation is obliged to compensate the opposing party and its intervenor for their costs (Art. 148). There are no rules which regulate the situations in which the expert would be appointed to assess the reliability, authenticity and (un)lawful manner of obtaining electronic evidence, but if such a need arises in the case, the general rules for bearing the costs will apply.

17. 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)?

In the Macedonian legal system, there are no special provisions which regulate challenging/are established to regulate the challenging of the reliability, authenticity or manner of obtaining electronic evidence. The LCP does not have explicit rules for the use of illegally obtained evidence, therefore, no rules could be used as analogy for electronic evidence. This question is open for regulation in further amendments.

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

As it was stated in Question 17, since there are no rules which regulate the illegal manner of obtaining evidence, it cannot be elaborated how the court will act in such case. There are no explicit rules provided under the Macedonian legislation and this could be regulated in future regulations.

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

Primarily, the plaintiff should provide the facts on which he bases the lawsuit and the evidence which establishes these facts (Art. 176(1) LCP). On the other side, in the response of the lawsuit, the defendant may state the demands and allegations of the lawsuit and propose evidence to support them (Art. 270(1) LCP). If he contests the claim, '*he is obliged to state the facts on which he bases his allegations and the evidence used to establish those facts*' (Art. 176(2) LCP). The LCP further provides general provision for the burden of proof, stating that '*If the court cannot establish a fact based on the presented evidence (Article 8) with certainty, it will conclude on the existence of the fact by applying the rules on the burden of proof*' (Art. 208).

In the sense of proving authenticity and reliability of the submitted electronic evidence, a party which calls upon such evidence must fulfill the conditions and pass through the procedures explained in Question 11. *A contratio*, the party which contests to such evidence, must prove before the court that the evidence submitted is inauthentic and unreliable.

These rules apply to every type of evidence which can be submitted, and therefore, by analogy, refers to electronic evidence *i.e.,* electronic document as well.

20. 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?

As it was explained in Question 15, the power of the court to take evidence not proposed by the parties is devalued with the amendments of the LCP. However, if it follows from the results of the discussion and the evidence that the parties are going to dispose of claims that they cannot dispose of, but the court cannot base its decision on facts and evidence for which the parties were not given the opportunity to express themselves, '*the court is authorized to determine the facts that the parties did not present and to produce the evidence that the parties did not propose*' (Art. 7(2) LCP). Therefore, even though it is not explicitly regulated, in case of a high possibility that the electronic documents were manipulated and none of the parties objected the authenticity and reliability, the court can reevaluate such evidence.

Thus, the court is obliged to '*prevent any abuse of the rights belonging to the parties in the procedure*' (Art. 10(1)) meaning that the LCP authorizes the court to actively take actions in any case when there is a possibility that the party or both of the parties abuse their rights in the procedure. Such situation would exist, for example, if one of the party or both of the parties do not object the authenticity and reliability of the presented evidence, even though they are aware that the electronic evidence which is presented is unauthentic or unreliable.

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

As it was explained in Question 17 and 18, it is important to state that there are no specific provisions which regulate the situations of managing illegally obtained evidence. Therefore, it could be assumed that the evidence would be assessed according to the court's free evaluation. Nonetheless, taking into consideration the fact that the judge cannot provide his own expert opinion in every field and since an expert is a person who has professional knowledge (or who is qualified) to give expert evidence on a particular matter, it is expected that the judge would rather use an expert opinion, than to resolve the question by himself. It should be noted that, as stated in Question 15, the expert could only be appointed by the party which objects because according to the LCP, the court cannot appoint an expert *ex officio*.

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

As a result of the absence of rules which regulate the regime of illegally obtained evidence, there are no provisions which expressly regulate the consequences if the court finds that the evidence was obtained in such manner. However, it can be concluded that while assessing the weight of such evidence, if the courts finds that it is obtained illegally, it will be excluded from the procedure.[26]

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

According to the LCP, '*the witness and the expert sign their statement when they are heard before a requested judge or before the president of the council, i.e., the individual judge*' (Art. 119(4)). Namely, the LCP provides that a requested judge may produce evidence if the party cannot come in person due to irremovable obstacles or if his coming would cause disproportionate costs (Art. 251).Therefore, if the conditions from the cited provision are fulfilled, the witness should sign her/his statement (Art. 119(4)) and the requested judge should send the written or the tonal record to the court (Art. 290(2) LCP).

There is another specific situation in which the statement of the witness is submitted in written form and that is if the witness is deaf. In that regard, '*the court will warn the court translator, i.e., the interpreter, of the duty to faithfully convey the questions that are asked to the witness and the statements that the witness will make*' (Art. 230(3)).

It can be concluded that written statements and pre-recorded statements of the witnesses can be submitted and regarded as admissible before the Macedonian courts and in accordance with LCP.

DUTY TO DISCLOSE ELECTRONIC EVIDENCE

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

In Macedonian legal system, there are no special rules which explicitly regulate the disclosure of electronic evidence. Instead, the general rules of disclosure apply by analogy. According to LCP, "*the party is obliged to submit the document ("исправата") or document ("документот") it refers*

[26] Janevski, Zoroska Kamilovska, supra n.13, p. 324.

to as proof of its allegations" (Art. 217(1) LCP). However, if the document is located in a state authority or an authority of the state administration or with a legal or natural person exercising public powers, and the party itself cannot secure that the document will be handed over or shown, the court, upon the proposal of the party, will obtain this document.[27] Further, if a party refers to a document and states that it is located with the other party, the court may summon this party to deliver the said document.[28] These rules will apply in any case of disclosure of (electronic) documents as evidence.

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

According to the general rules for submitting electronic documents prescribed in the Rulebook, '*the electronic document that is submitted should be submitted as a printable document in PDF format*' which meets the required standards (Art. 4(1)) and '*electronic documents issued by legal entities should contain at least an electronic stamp and an electronic time stamp*' (Art. 4(2)). In any case, all the other rules provided in Question 11 should be applied.

Regarding the scope of the party's duty to disclose the evidence, the time limit for presenting facts and evidence is set by a mandatory stage - the parties may assert new facts and evidence at the preparatory hearing at latest. At the latest stages of the proceeding, the parties are allowed to present new facts and evidence only with a proper excuse for the belated submission.[29] This time limit also relates to the duty to present documents.

However, the amendments of 2015 failed to place the new mechanism of document production in the possession of the opponent or third person in a preparatory stage of the proceedings. Pursuant to Article 272 (3) of the MLCP, in the letter of invitation for the preparatory hearing, the parties will be ordered to bring to this hearing all the documents ('*ispravi*', but not '*dokumenti*') that serve themselves as evidence, as well as all items that need to be examined in court. If it is necessary for the preparatory hearing to obtain the records, documents ('*ispravi*', but not '*dokumenti*'), or items that are in possession of the court or other state authority, body of state administration, local self-government unit, natural person or legal entity entrusted with the public authorizations, and which the party itself has failed to obtain, the court shall order that all records, documents, or items to be obtained, if the parties proposed so.[30] These provisions do not cover the possibility to obtain a document ('*isprava*'or '*dokument*') in the possession of the opponent or third person. Consequently, it seems that so far this possibility has been constrained only as a part of the evidence-taking stage of litigation, which means only after the commencement of the main hearing.

In regards to the discretion of the court when ordering disclosure, by exception, the court has authorization "*to determine the facts that the parties did not present and to present the evidence that the parties did not propose, if it follows from the results of the hearing and the evidence that the parties are going to dispose of claims that they cannot dispose of, but it cannot base its decision on facts and evidence for which the parties have not been given the opportunity to declare themselves*" (Art. 7(2) LCP).

26. Does the duty to disclose electronic evidence apply to third persons?

The Macedonian LCP provides that a court can order a third party to present a document, including electronic documents as evidence. According to said law, "*if the document ('ispravata') or document ('dokumentot') are in a possession of the other party or a third person, and the party itself cannot make them be handed over or shown, the court may order the other party or third person*

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[27] Art. 217(3) LCP; Alen Nikocevik, Ivan Debarliev, Litigation & Dispute Resolution 2020, point 7.3.

[28] Art. 217(4) LCP; Alen Nikocevik, Ivan Debarliev, Litigation & Dispute Resolution 2020, supra n. 27, point 7.3.

[29] LCP of 2005, Arts. 272 and 284 as amended in 2010.

[30] The requested authorities or persons are obliged to submit the document in accordance to the court's order no later than 15 days. Otherwise, the court shall impose a fine to the responsible person or the official person of the requested authority in the amount of 2,500 to 5,000 Euros. The party seeking the document itself bears the cost of obtaining it. See Art 272 (7) and (8) of the LCP. Of course, the prevailing party can always attempt to recover any expenses incurred in disclosure by requesting them as costs at the conclusion of the case.

to submit the documents ('ispravite') or documents ('dokumentite') that are in their possession and to which the party itself have made reference" (Art. 217(4) LCP).

Namely, a third person may be ordered to submit a document only in the following cases: 1) when the party itself referred to that document in as proof of her allegations, 2) when such an obligation is imposed on him by substantive law, or 2) when the document is, due to its content, mutual for the third person and the party adducing it as evidence. Before making a decision obliging a third party to submit the document, the court shall invite the third person to declare. Unlike with regard to the parties of the proceedings, the LCP does not provide for any grounds for refusal with regard to third persons. When the third person waives its duty to submit a document that is in its possession, the court shall decide whether the third person is required to submit the document. Contrary to the order directed to the opponent, the order for production of document directed to a third person is directly enforceable (Art. 219(5) LCP).

Overall, the amendments of the LCP in 2015 introduced several new provisions which regulate: 1) the manner in which the parties can exercise their right to obtain documents in possession of the opponent or third person that they deem relevant and to which they have made reference in their pleadings (document production requests); 2) the court's handling upon such requests of the parties; and 3) the issue of protection against possible misuse and limitations to the right to access to documents (Arts. 217-a, 217-b, 217-v and 217-g, LCP). However, it should be noted that these provisions apply only to a document ('*dokument*'), but not to a document ('*isprava*').

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

The rules in regard to the privileges of witnesses (to refuse to testify or refuse to answer a certain question) have been respectively applied to the right of the opponent to refuse the disclosure of documents. Namely, LCP states that "*regarding the right of the party to refuse the submission of other documents, the provisions of articles 222 and 223 of this law shall be applied*" (Art. 218(3) LCP).

Since the electronic evidence is regarded as "document" in sense of LCP, these provisions apply to electronic documents as well. The LCP stipulates that, by exception, the party or the third person may not submit the document if "*contains a trade secret or other confidential commercial or financial information; is protected by right of industrial property: patent, industrial design, trademark, designation of origin and geographical indication; is protected by certain professional authorizations or business secrets according to the Law on Advocacy, the Law on Notaries and the Law on Health Care; contains a state secret; there is a reasonable probability that it is lost or destroyed; access is restricted or prohibited by law; and accessing it could violate the privacy of the party or another natural person*" (Art. 217-g LCP).

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.

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

The Macedonian national legislation provides that if a party makes reference to a document and claims that it is in the opponents' possession, the court shall invite (order) the opponent to submit the document and set a time limit (Art. 218(1) LCP). If the opponent who is invited (ordered) to submit the document denied that the document is in his possession, the court may, for the purpose of determining this allegation, produce evidence (Art. 218(4) LCP).

Unlike with regard to the parties of the proceedings, the LCP does not provide for any grounds for refusal with regard to third persons. When the third person waives its duty to submit a document that is in its possession, the court shall decide whether the third person is required to submit the document. Contrary to the order directed to the opponent, the order for production of document directed to a third person is directly enforceable (Art. 219(5), LCP).

29. 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?

As in other civil law jurisdictions, the Macedonian judges were for a long time reluctant to assist with the extraction of documents in a possession of the opponent or third person, among others because of the application of the principle: *onus probandi incumbit allegandi*. Although it was expected, the amendments of the LCP of 2015 did not change the behavior of the participants in civil proceedings, including the parties who are now vested with the broader power to seek for disclosure of documents. Obviously, it needs much more than ordinary legal reform. It presupposes a shift in culture towards viewing disclosure as a core procedural tool in the evidence-taking process. Even if it is recognized as such by the parties and their lawyers, it seems that there is a lack of basic knowledge and capability in practicing the right to access the relevant information and document in the possession of the opponent or third party. Therefore, as is to be expected, such a prominent change to the litigation procedure requires background work, preparation and training for both parties (and more precisely their lawyers) and judges. Nonetheless, there is some scarce judicial practice in which demonstrates that the courts slowly start implementing the amendments in judicial proceedings.[31]

STORAGE AND PRESERVATION OF ELECTRONIC EVIDENCE

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

Firstly, the LCP regulates the general manner of storage of written submissions and review of documents, by stating that, *inter alia*, submissions can be "*submitted electronically to the reception department of the competent court*" (Art. 98(1), LCP). Further, the Rules of Court regulates the obligations of the court clerk upon the received submissions and the filing of the case and specifies the creation of an electronic file of a case (Art. 165 Rules of Court). The official Judicial Portal of the Republic of North Macedonia[32] provides Terms of use of the electronic delivery system of court documents which clarifies the functioning of the system for electronic delivery of court documents.[33] Lastly, the LEDEICS regulates the storage of the evidence and cases in overall if they are submitted electronically to the court.

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

LEDEICS contains provisions for electronic storage of documents which entails storing documents in electronic form, for which the storage time is precisely determined, corresponds to the storage time of documents in printed form and is confirmed by an electronic time stamp (Art. 3(1) point 45 LEDEICS). The preparation of the documents for electronic storage may refer to:

"*1) documents that were originally created in an electronic form suitable for electronic storage;*
2) conversion of an electronic document into a different format suitable for electronic storage;

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[31] For example: Decision of the Appellate Court in Skopje, No. GŽ-1581/18 of 13.04.2018; Decision of the Appellate Court in Štip, No.ROŽ-537/18 of 26.10.2018; Decision of the Appellate Court in Štip, No. GŽ-536/18 of 09.11.2018.

[32] Judicial Portal of RNM, <http://sud.mk/wps/portal/central/sud/!ut/p/z1/hZDRCoJAEEW_KGZKXe1xwVyxRAnXdF5CQkrILUT7_oyeVsudt4Fz7lwGCAogVb2aa9U3D1Xdx70kdmbCttHb4yHBwEMeRyzO0Lbw6MBJB0Qq3RHwMcy20Ua4DGjZz4GALkPX1aqHsu-Geho5dz6R-Gc4Tn0vZGvkO9_JEyksHlimSl9_4YDRJ1NF0jN-VNSBVtDhMjEPFvZrqQssElvb5No_Zk!/dz/d5/L2dJQSEvUUt3QS80TmxFL1o2XzZHNDQwOEswTEdQVTcwQU1EMEhUOUoyRzc2/>, visited 04.03.2023.

[33] System for Electronic Delivery and Receipt of Acts in the Courts in R. Macedonia, <https://edostava.sud.mk/Help.aspx>, visited 04.03.2023.

3) digitization of documents originally created in a form that is not electronic, suitable for electronic storage" (Art. 57 LEDEICS).

The preparation for electronic storage has to ensure that all basic elements of the content of the original document are faithfully transferred to the document prepared for electronic storage, taking into account the nature and purpose of the document, that is, to preserve the integrity of the content of the document; ensure that the usability of the original document will be preserved; ensure that all elements of the content of the original document that are important for its authenticity are included; ensure the integrity and accuracy of the original document, as well as its attachments, in such a way that an electronic signature or seal and an electronic time stamp are used; implement accuracy and quality control during the conversion process, in order to eliminate any errors that could be caused by this process; ensure that proper records are kept for the activities undertaken in the preparation of documents for secure electronic storage (Art. 58 LEDEICS). These requirements refer to the qualified electronic storage as well. The law provides that "*metadata may also be included in a document prepared for electronic storage*" (Art. 57 LEDEICS).

In order to enable secure electronic storage in a way which preserves the integrity, authenticity and reliability of the documents which contain an electronic signature or seal in their original form or the documents prepared in accordance with the procedure explained above, they should be prepared using appropriate procedures and technological solutions during their storage (Art. 59 LEDEICS).

On the other hand, the Rules of Court provide that only a party which can identify itself with an electronic certificate can send the submissions to the court through the special web-portal for that purpose (Art. 159). It further provides that "*if the documents received electronically are marked as classified information with an appropriate degree of secrecy or are addressed personally to the president of the court, i.e. the judge, without opening the files they were forwarded electronically to the president of the court, i.e. the judge*" (Art. 159(8)). Otherwise, the submissions will be printed and sent to the appropriate court registry (Art. 159(7)). In regard to the submissions which are sent in front of the court or by regular mail, LEDEICS provides that "*the court clerk designated for admission is responsible for the reliability of the data entered in the admission stamp*" (Art. 155(6)).

The Rules of Court contain provisions for non-electronic submission of the case and states that if the case is submitted by mail or directly to the court, the electronic evidence *i.e.,* documents will be treated like the other attached evidence, that is, the court clerk will approach the formation (Art. 165), recording (Arts. 167-173) and distribution of the case (Arts. 174-177).

Regardless of whether the submissions are sent electronically or not, the Rules of Court further provide that if the court has a technical possibility, the court clerk scans the submissions and places the scanned image in archive file of the corresponding court registry (Art. 164(1)). The authorized court clerk records the submission in the electronic register for that type of case and forms an electronic court case (electronic file) by entering the date of receipt from the stamp and all data (facts) provided for by law (Art. 164(3), Rules of Court). If the submissions are also in electronic form, they are attached to the electronic file (Art. 164 Rules of Court).

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

The main servers of the Automated Information System for Managing Court Cases (ACCMIS) are located in the Supreme Court of North Macedonia.[34] The courts have access to local ACCMIS databases *i.e.* to the registries for the cases brought before them and keep electronic records there. Having in regard that the courts are separated in different sectors, each sector may access the registries for the cases designated to it. For example, the sector for non-contentious cases cannot access the information entered by the sector of litigation cases, and *vice versa*. The same regime applies to courts from different cities.

[34]Strategy for Information- Communication Technology in the Judiciary for 2019-2014 (revised strategy), p.15< https://pravda.gov.mk/resursi/12 >, visited 9 March 2023.

The general assessment is that the '*the state of the servers in the courts is of low capacity*'[35] and each court takes different approach regarding the electronic storage. Namely, the more technologically advanced courts keep electronic evidence of each case and its records, while the courts which do not have the proper conditions for such manner use ACCMIS for sending invitations and decisions.

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

According to the LEDEICS, the services for electronic storage are provided by a confidential service provides which has to take "*appropriate technical and organizational measures through which it ensures the security of electronic storage of documents, in accordance with the provisions of this law*" (Art. 60(1)). The provider may be limited to only storing documents which contain electronic signature and stamp in their original form (Art. 60(2) LEDEICS).

On the other hand, the Rules of Court provide provisions which regulate the storing of both electronic and non-electronic evidence. Namely, during the formation of the case, the court clerk in charge of the inventory created in the automated computer system (ACCMIS) for managing court cases records the submissions based on which the case was formed and indicates the number of the sheets (Art. 169, Rules of Court). It can be concluded that the court clerk and the administratorof ACCMIS are entitled to carry out the activities related to storing and preserving electronic evidence sent electronically. However, since the electronic evidence may appear in the form of an electronic document, which under Macedonian law falls under the regime of 'document', if it is sent by mail or directly in front of the court, it is stored in the court's archive. The designated court clerk is responsible for these activities. Thus, the court clerks from the court registry who act on the cases assigned to the judge, handle the cases carefully, make sure that the files are always arranged, listed and glued (Art. 173 Rules of Court).

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

There are no specific rules about who may access electronic evidence in particular, however, LCP provides that '*the parties have the right to review, transcribe or copy the records of the proceedings in which they participate in the presence of an authorized person in the court*' (Art. 144(1) LCP). Other persons who have a justified interest may be allowed to review or copy certain documents, but this also has to be done in the presence of an authorized person in the court (Art. 144(2) LCP).

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

There is no indication that the courts take specific actions in order to preserve the stored electronic evidence over time. The submitted evidence is stored with the rest of the records of each case in accordance with the provisions for storing and archiving the evidence which do not provide solutions for preserving the accessibility.

36. 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?

Similarly to the previously answered questions, the LCP does not contain any special procedures that need to be followed by the court for the transfer of the electronic evidence to other courts. However, it is provided that "*the president of the council will submit the complaint and the response to the complaint, if submitted, with all the documents/records to the second-instance court within eight days at the latest*" (Art. 349(1), LCP). Since the electronic evidence is part of the records of the case, it will fall under the same regime. Nonetheless, the said law does not describe the procedure for transferring.

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[35] Strategy for Information- Communication Technology in the Judiciary for 2019-2014, supra n. 34, p. 15.

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

The LEDEICS states that while preparing the documents for secure electronic storing, it is obligatory to, *inter alia*, "*carry out accuracy and quality control during the conversion process, in order to eliminate any errors that could be caused by this process*" (Art. 58(5)). The law does not further provide the rules for conversion while storing the documents, therefore, it can be concluded that the general rules for conversion and digitization described in Question 7 and Question 8 will be applied.

ARCHIVING OF ELECTRONIC EVIDENCE

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

The legal system of North Macedonia regulates the overall archiving of the court's cases which refers to electronic evidence as well. Therefore, the Rules of Court establish the rules for proper archiving and explains the management and preservation of the cases (Art. 370), the conditions that need to be fulfilled before archiving the case (Art. 371), the types of documents which are archived (Art. 372), keeping, giving, destroying or handing over the cases in the State Archives of the Republic of Macedonia (Art. 374) and the overall managing of the finished cases (Arts. 373, 375, 376). In Article 374 of the Rules of Court, it is stated that the "*material created in the courts in paper and electronic form previously deposited in the passive archive*[36]"can be handed to the State Archives in conformity with the Rules of Court and the regulations related to the archiving material. From this provision, it can be concluded that electronic evidence, as well as the evidence in written form, falls under the scope of the regime for archiving documents established in the Rules of Court.

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

Since the LEDEICS provides the rules on electronic storage of the documents (described in Question 30), thus, having in regard that the Rules of Court provide general rules for archiving documents *i.e.* it does not differentiate between electronic and 'non-electronic' evidence, it would mean that the electronic documents will have to be properly prepared for electronic storage and afterwards, they could be archived under the rules explained in Question 37.

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

For the courts which are able and properly equipped to archive the evidence in electronic form, the Rules of Court provide that '*the records created in electronic form are stored in an operational archive (hard drive of the operational personal computer), on a primary archive (reliable media) and on a secondary archive (network resources)* (Art. 197).' However, if the finished cases are archived in physical form, they are placed in the court's archive which is a part of the court's registry and is located in separate chamber (Art. 370, Rules of Court).

Nonetheless, what is similar for electronic and non-electronic archiving is that each court is responsible for archiving the evidence collected from its own cases on its own premises or servers.

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

In the Macedonian legislation, it is only stated that "*the cases placed in the archive are handled by a certain court official from the court registry*" (Art. 373, Rules of Court).

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[36]Art. 4, Rules of Court: passive archive is an archive for the cases for which the court proceeding has been completed, with a final and enforceable decision or in another way.

42. 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?

The Rules of Court make a distinction between cases of lasting value and cases which are not held permanently. In Article 375, it enumerates the cases which are held permanently in the court. With regards to "*the files from the cases in written and electronic form which are not held permanently*", they are removed from the archives after expiration of some terms, as it follows:

"*- 20 (twenty) years for cases from the criminal area for which a sentence of more than three years of imprisonment has been imposed, and 10 (ten) years from the finality of the decision for other criminal cases;*

- 30 (thirty) years from the date of validity of the litigation cases relating to real-legal claims on real estate;

- 30 (thirty) years for the cases of the non-bankruptcy procedure in relation to real estate, probate and tapis-intabulation cases from the validity of the decision.

- 5 (five) years from the day of the implemented, stopped or interrupted execution of the objects of the executive procedure;

- 10 (ten) years for cases from the judicial administration;

- 5 (five) years from the date of delivery of the second instance decision on all second instance cases;

- 10 (ten) years from the day of the end of the procedure on the subject that refer to the administrative-judicial procedure; 8. 10 (ten) years from the day of completion of the procedure in all other cases;

- 10 (ten) years from the day of completion of the procedure in all other cases;

- 5 (five) years from the day the decision in misdemeanor proceedings becomes final;

- 3 (three) years for criminal cases following a private lawsuit for which the proceedings have been stopped, criminal cases for which a fine, conditional sentence or court warning has been imposed, payment orders, litigation and non-litigation cases for which the procedure has been completed with the withdrawal of the lawsuit or for other formal reasons" (Art. 376 (1), Rules of Court).

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

The rules which regulate the conversion of electronic evidence into physical evidence and *vice versa* are explained in Question 7.

TRAINING ON IT DEVELOPMENT

44. 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?

When the ACCMIS was introduced for the first time in 2009, the judges and the court personnel were obliged to go on training on technological development in order to improve their technological skills and to carry out their work without any obstacles. Since then, even though the system went through upgrades and improvements, neither the judges or the court personnel were asked to go on another training.

VIDEOCONFERENCE

The questions stipulated in this part of the Questionnaire cannot be provided due to the fact that videoconferencing is not regulated in the Macedonian civil law system. However, it should be noted that the new LCP will contain provisions which will regulate the relatively new introduced concept of videoconferencing. Considering the situation given at the moment, the question whether the

judicial system is prepared for such news remains open to debate. According to research conducted in 2020, only three courts stated that they have conditions for holding remote trials.[37] Namely, 31 courts or 91% of the courts have neither staff nor equipment to hold remote trial.[38] Nonetheless, due to the rapid technical and technological development, and the accessibility to such equipment, it is feasible for the courts to be properly equipped in a timely manner.

45. 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.)

46. 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.)

46.1. 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.)

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

(Please investigate whether the courts use multiple applications.)

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

(If so, specify whether they are specially modified for use in court proceedings.)

47.2. 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)

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

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[37] The Association for Criminal law and criminology and the OSCE Mission in Skopje, The use of advanced electronic tools in the court, Skopje, 2020, (hereinafter: The use of advanced electronic tools in the court), 46. The courts which have the adequate equipment are located in Kavadarci, Bitola and Resen.

[38] The use of advanced electronic tools in the court, 46.

(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.)

48. 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.)

49. 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.)

50. 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)?

51. 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.)

51.1. Under which circumstances may a witness refuse testimony?

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

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

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

52. 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.)

53. 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.)

54. 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).)

55. 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.)

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

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.)

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?

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.)

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.)

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.)

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

56.1. 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.)

56.2. 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.)

56.3. 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.)

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

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

56.6. 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?

56.7. 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?

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

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

58. Immediacy, equality of arms and case management

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

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

58.3. 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.)

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

58.5. 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.)

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

58.7. 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.)

58.8. 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?

58.9. 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?

58.10. 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?

59. **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)?**

60. **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?)

61. **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).)

62. **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)?**

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.

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.

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].

Reference to literature

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.

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.

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.

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.

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.

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.

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.

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.

General principles of quotation

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