

Second Study Commission of the International Association of Judges

Civil Law and Procedure

65th Annual Reunion of the IAJ - Tel Aviv, Israel

Questionnaire 2022 (The Netherlands)

VIRTUAL TRIALS IN CIVIL PROCEEDINGS

The Second Study Commission will focus on how our jurisdictions used, and will use, virtual trials and hearings before, during and after the Pandemic.

SUBMISSIONS FROM The Netherlands

For the Civil Trade, Canton and Supervision (Insolvency & Administration) jurisdiction, first and second instance, the answers to the questions are as follows:

1. Did your jurisdiction offer complete or partial virtual civil trials or hearings before the Pandemic? If yes, please describe what was offered and how often the offer was exercised.

Answer: Before the pandemic, these were not offered on a structural basis. It was limited to an incidental and very limited offer of video justice for subdistrict and supervisory cases on a project basis and with the consent of the parties.

2. Did your jurisdiction offer civil virtual trials or hearings during the Pandemic? If yes, was there a change in how, what and when it was offered? Were protocols published? Also, if yes, when were the virtual trials/hearings offered and what was the uptake?

Answer: Initially, hearings could not be held in civil cases and cases were dealt with in writing where possible. Skype and telephone sessions were only held in very urgent cases. After the courthouses were made corona-proof, physical sessions or hybrid sessions were also held. However, the space to hold physical sessions was very limited due to the corona measures. Temporary Corona legislation has made the possibility of the digital (or hybrid) hearings legally possible. On this very moment there is no legal basis. Protocols ((procedural) regulations) are always drawn up for each phase and published on Rechtspraak.nl. A Temporary General Regulation has been drawn up on the basis of case law and for the specific areas of Civil Law, i.e. for Trade & Canton Cases, Trusteeship, Administration and Mentorship Matters, and Temporary Regulations geared to this. A number of principles contained in the guarantees of Article 6 of the ECHR are still not guaranteed at online hearings, namely the principle of immediacy, fair trial and equality of arms.

3. Presuming that civil virtual trials were offered, was there any improvements made in the technology/software that the government provided? How were documents and exhibits managed?

Answer: Employees are first provided with means to sit digitally or by telephone (ultrabook / home workplace / telephone). Court rooms are equipped with telehearing facilities. First, the software that was immediately available was used and sessions were held via Skype. Later it was adapted and MS Teams and CMS were used for it. Furthermore, improvements have been made to the stability of the

network. It was also possible to hear by telephone (group conversations). The technique however is still not as stable and advanced as should be. The Dutch Association for the Judiciary is therefore reticent towards virtual trials in general, because as to this moment they are not equivalent to physical ones.

4. What does the future hold in your jurisdiction with respect to the continuation of virtual trials? What are the issues and or benefits that have arisen?

Answer: The disadvantages are that during the hearing the judge cannot see under which circumstances the parties to the proceedings participate online. It is then a question of whether these parties to the proceedings can properly follow the hearing (hear and see) because, for example, the equipment and/or the internet connection is of insufficient quality. Or that a party to the proceedings cannot speak freely or the like. Body language is less perceptible to all process participants.

The advantages are that sessions can continue despite lockdowns, but also in case of illness, quarantine / isolation of (one of) parties and do not have to be moved; It also makes it easier for a foreign party to participate, and travel time can be limited. Digital participation also appears to be more accessible and leads to less absenteeism (particularly in insolvency and administration cases). A national pool of judges has been set up for some specialist multiple cases. With online seating, a session can be scheduled in a shorter period of time.

For the future, it will be examined whether the possibility of online hearings as a fully-fledged instrument for the judiciary to perform its important social task can be anchored in existing legislation. The trial judge(s) must then be able to decide whether a case is suitable for online hearing or not. Although virtual settings will be further exploited, the Dutch Association for the Judiciary is – as stated above – reticent. First of all there should be a legal basis for virtual trials. Furthermore technical preconditions should be explored and tested, customer groups should be consulted and training programs for judges and their staff should be organized. Until virtual trials are as “equal” as physical ones, the physical trial should be the guiding principle.

5. Has or is research being done in your jurisdiction to help ameliorate some of the concerns that have arisen with virtual trials?

Answer: As mentioned above under answer 4. The possibility of embedding online hearings as a fully-fledged instrument for the judiciary in existing legislation is underway, but the discussion is far from closed. Research is being conducted within the judiciary into the options available for technically creating a more appropriate digital platform for online hearings. The last few months several studies have been published, concerning virtual trials and the influence on those who depend on the judiciary.¹

6. How did the digitally excluded people in your jurisdictions have access to justice and specifically to virtual trials during the Pandemic?

Answer: In those cases, people could contact their lawyer or municipalities or physically participate in the hearing at the courts. In the prioritization of physical sessions, a link has been sought with the digital options (visual or telephone) on the part of the parties. This is however one of the main

¹ [De verdachte in beeld | Rapport | Rijksoverheid.nl](#)
[De impact van de coronacrisis op de rechtspraak en de positie van kwetsbare rechtszoekenden - Verslagen - ZonMw](#)

concerns; in the Netherlands 2,5 million civilians are digital illiterate. They should never be excluded for having access to the judiciary.