



PRACTICAL GUIDELINES FOR REMOTE JUDGING

April 2021

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FOREWORD

The CEELI Institute has trained and supported judges in Central and Eastern Europe since 2000. These *Practical Guidelines for Remote Judging* were developed as part of the Institute's support for its long-running Central and East European Judicial Exchange Network. That Network, ongoing since 2012, is comprised of some of the best and brightest rising judges from eighteen countries across the region who gather regularly to share best practices on issues of judicial independence, integrity, accountability, and court management.

In the face of the COVID-19 pandemic, judiciaries across the region and world were forced to rapidly adjust their daily operations. Many courts were forced to move quickly into the digital sphere. In response to this, the CEELI Institute has sought to find ways to support judiciaries as they manage their pandemic response and their adjustment to use of new virtual platforms. We also want to use this opportunity to provide lasting guidance on remote judging practices, which will remain relevant even after the pandemic. The increased emphasis on technology and remote judging has heightened the need for long-term specific judicial training in these areas. Promoting uses of technology that enhance the justice system and enable more efficient, timely and accessible justice for all is a key responsibility of any modern judiciary.

With this mandate, the CEELI Institute has created these guidelines following discussions with practicing judges during our training course *Best Practices for Remote Judging* (a certificate course) held online from Autumn 2020 through Spring 2021. These Guidelines are the product of judicial innovation and adaption. The goals of this document are to summarize the current realities, provide realistic solutions, and provide a framework for remote judging post-pandemic. It has become apparent that remote judging will now be an integral part of the modern judiciary. Judges and practitioners will need to continue to adapt as these processes continue to evolve.

This document is relevant to individual judges, and also to those responsible for setting national standards for judicial conduct including members of judicial councils, court presidents, officials from judicial associations, and any other members of the judiciary who are responsible for regulating judges' use of digital platforms (including social media).

This guide reflects lessons learned during the initial stages of the pandemic. It was in large part produced by the judges participating in our *Remote Judging* course, and reflects their experiences and practices over the past year. The guide is intended to serve members of the judiciary and others as a guide in aspects of remote judging. We plan to expand on this guidance, and in June 2021, the Institute will publish an extended edition of *Practical Guidelines for Remote Judging*.

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I. ENSURING THE AUTHORITY OF THE COURT DURING REMOTE HEARINGS

Good Practices:

General points

1. The judge has the responsibility to manage the court, ensure compliance with court rules and appropriate decorum. This requires vigilance and patience during the proceedings.
2. International and national standards for fair trials, including the Bangalore Principles, should be used as the benchmark against which to uphold the authority and conduct of the court.
3. An increased number of IT specialists should be provided to the court to better facilitate online and remote hearings. Wherever possible, remote judicial hearings should be conducted with the assistance of the judicial clerk, and the clerk should manage the admission of the parties into the virtual courtroom prior to the judge's entry to the virtual courtroom.
4. The judge will need to obtain a good knowledge and understanding of the technology being used for the remote hearing, in order to make the necessary preparations in advance of the hearing, and to conduct the hearing smoothly. While IT support is desirable it simply may not always be available to judges.
5. Judges and court staff should be trained on the various technologies needed to hold remote hearings.
6. Judges and court staff should be trained on specialized court etiquette, as suitably adapted for remote hearings.
7. Manuals to guide the courts on how to conduct remote hearings should be provided to judges and court personnel by the competent judicial authorities.
8. Guidelines for participants should be developed, and should be provided to parties with the notice of hearing. Such Guidelines should also be made available on the court website.
9. Where judges are unable to be physically present in court, provisions should be made to provide them with the necessary technology and equipment at home or at other remote location.

10. Adjustments for individual disabilities should be made as necessary to accommodate individual judges. Such accommodations should also be made, as necessary, for individual judges using equipment from home or other remote location.
11. All responsible authorities, including court administrators, ministries of justice, and judicial academies must take such steps as necessary to prepare both attorneys and the larger public for the remote operation of the courts.

Preparation for the hearing

12. The judge and court staff should be confident in their ability to use the IT platform and equipment needed for the remote hearing.
13. Good preparation is essential. Ideally court staff, rather than the judge, should ensure proper preparation in advance of any remote hearing. This should include the following actions by court staff:
 - a. Informing participants in advance of how the hearing will be conducted by the court, including provision to the parties of written instructions and guidelines.
 - b. Confirming that participants have the necessary technical capacities to join the hearing.
 - c. Providing parties with necessary login information.
 - d. Sending any relevant forms in advance via email.
 - e. Offering to test connections with participants in advance of the hearing, including a test call on the day of the hearing.
 - f. If the judge is connecting from the courtroom, consider the positioning of the camera so as to capture appropriately the layout of the court and any participants also present in the courtroom.
 - g. Requesting that all participants call in/log on a short time before the hearing is due to start, and confirming their arrival.

At the start of the hearing

14. At the start of the hearing the judge should:

- a. Set out what the various processes will be (e.g. instruction of appropriate camera settings, muting options, and other capabilities). The judge should introduce who is in court, and who is accessing remotely. The judge should advise parties on how and when to speak or raise questions).
 - b. Explain how technical difficulties will be handled.
 - c. Assure the parties that all legal requirements are met and that the remote hearing will be full and fair.
 - d. When appropriate, and in line with the rules for that court, explain that the hearing will be digitally recorded but that the participants may not make their own recordings.
 - e. Explain the consequences for disrupting proceedings.
 - f. Allow participants the opportunity to ask questions about these matters.
15. The judge should consider postponing the hearing if the participants do not have the necessary technology in place to ensure their full participation.

During the hearing

16. Wearing appropriate dress whether physically present in court or not can help to maintain the authority of the court. The judge should ensure that other participants similarly respect these rules, even if they are calling from their homes or other locations.
17. The judge should ensure that participants comply with the usual rules of court etiquette and decorum, including:
- a. How to address the judge and one another.
 - b. The processes for asking to speak and how to deal with interruptions (and the use of the 'mute' function).
 - c. The rules regarding the format and sequence of the particular hearing.
 - d. Consequences for disruptive participants.
18. Time should be maintained, recognizing that a remote hearing may take longer and require additional comfort breaks. Breaks should be frequent (e.g. for five to fifteen minutes every hour) to avoid visual impairment and pain. Participants should be permitted to move during the break periods (leave the room or building).

19. If it is possible, the logo or crest of the court should be visible on the screen.
20. If feasible, the judge should appear on the screen in such a way as to ensure central authority, or to have a 'virtual bench'.
21. The judge should monitor the participants throughout the proceeding, to ensure they are participating fully (e.g. checking if the screen has frozen, etc.) and react quickly and appropriately. The judge may need to repeat what has just occurred if a participant was unable to follow the proceedings.
22. The judge should draw upon other staff, including clerks and IT specialists (if available) to ensure the smooth running of the remote hearing.

At the end of the hearing

23. The judge should check that all parties have been able to follow the proceedings.
24. The judge should give the judgment, if appropriate, or if not, inform the parties when they might receive it.

II. AVOIDING AND MANAGING UNDUE INFLUENCE IN THE REMOTE QUESTIONING OF WITNESSES

Good Practices:

1. The judge must remain vigilant, active and sensitive to the needs and challenges of witnesses giving testimony remotely. In particular, the judge must be alert to any vulnerability issues arising out of a party's age, mental capacity or health, whether physical or mental.
2. As part of the right to a fair trial and the principle of equality of arms, witnesses must not be subject to undue influence or interference.
3. Undue interference can be avoided by:
 - a. Permitting the witness to give testimony from a location that is officially registered, such as a courthouse, other appropriate state agency, from the offices of lawyers for the relevant parties, or mediators' offices.
 - b. Providing rooms in the courthouse for witnesses to give their testimony. The room should have a computer that has the necessary IT to enable their participation in the hearing. Persons who can offer professional support for vulnerable witnesses could be present in the room at the time.

- c. Utilising the services of notaries to:
 - Enable witnesses to provide their statement in writing.
 - Provide office space and the necessary technical equipment for witnesses to participate in a remote hearing.
 - Verify the identity of the witness and then confirm this before the court prior to testimony being taken by the court.
 - d. When witnesses are giving testimony from a private location, such as their home, they should provide the address to the court.
 - e. Asking the witness to confirm who else is present in the room where they are sitting and from which they are giving testimony.
 - f. Asking the witness to 'show' the judge around the room in which they sit. This could be done a number of times during the hearing.
 - g. Asking the witness to give testimony from a room with only one door and then ensuring the camera is focused on that door during the proceedings. The judge can then call on any person entering the room to leave immediately.
 - h. Asking the witness to sit away from the screen so as to avoid them reading any material from the computer. If there is a concern that the witness has been reading from a prepared script, the judge will ask them questions to ascertain if this is the case.
 - i. Asking witnesses to make a statement at the start of their testimony that they are not being subjected to any undue interference and that there is no one in the room with them.
 - j. Providing a confidential chat facility, mobile phone number or other electronic devices to permit the witness to engage directly with the judge if they have concerns.
 - k. Utilising separate 'rooms' on the platform in which witnesses can wait before the judge permits them to 'enter' the hearing.
4. Particular attention should be made to witnesses from vulnerable categories (e.g. children, persons with medical/health condition or abused/victims) as well as those who need an interpreter. These witnesses should be provided with additional support by professionals (or guardians) when appropriate.

5. Witnesses should be provided with a court-registered interpreter if they do not speak the official language of the court. This should be done at the expense of the court.
6. The judge should explain how witnesses and other participants should attract the attention of the judge during the hearing (e.g. through hand gestures, using the 'chat' function, asking the judge, etc.)
7. The judge should take into account all these issues and the risk of undue interference in assessing the credibility of the witness.

III. MANAGING DISRUPTIVE PARTICIPANTS

Good Practices:

General points

1. International and national fair trial standards should be maintained in managing disruptive participants.
2. In the absence of specific rules for remote hearings, then the same rules with respect to in-person hearings should apply.
3. Judges should be provided with training on the use of the relevant technology, on 'soft skills,' and on managing challenges and stresses associated with remote judging.

In advance of the hearing

4. The judge should be confident using the technology and equipment needed for the remote hearing. But technical difficulties will occur and should be expected. If possible, the judge should have an IT specialist available to help manage technical problems so that the hearing can proceed.
5. Being aware of the level of participant knowledge and experience with remote hearings in advance can avoid challenges during the hearing. Some participants may have little knowledge of either the digital or procedural technicalities of a remote hearing and may not understand how to participate. Providing information in advance of the hearing as well as opportunities to ask questions and to test connections can avoid problems at the time of the hearing itself.
6. The judge should be aware of the circumstances of the participants and their location (including whether they are participating from outside the country). Judges should also consider the context of the case: a domestic violence or sexual abuse case may require particularly sensitive handling.

7. If the hearing is private (e.g. in family cases, domestic violence or sexual abuse cases), the parties should be alone, unless the judge gives permission for someone else to be with them.
8. Judges should ensure that practical information on how to join and participate in a remote hearing is provided to all participants in advance of the hearing.
9. Judges should ensure they are familiar with any rules or procedures applicable to remote hearings in their jurisdiction. If the rules are the same as for in-person hearings, the judge should consider how these rules will be implemented in remote hearings, namely:
 - a. How warnings will be given.
 - b. The use of the ‘mute’ function to stop interruptions or disruptive or inappropriate behaviour (‘mute all’ can avoid potential challenges based on one participant feeling unfairly excluded).
 - c. Exclusion of an individual from a hearing and how this will be achieved with the particular platform.
 - d. Adjournment or postponing hearings.
 - e. The minutes or record of the hearing should note any disruptions and provide a brief outline of what occurred.
10. The judge should consider the time that the remote hearing may take — and that a remote hearing may be longer or that more frequent breaks will be required. Vulnerable witnesses may require additional breaks, but everyone will need more breaks than usual.
11. If necessary, the judge should consider whether, given the challenges that may arise, the hearing should be held only in-person.

During the hearing

12. At the start of the hearing the judge should set out the rules, explaining clearly and in detail how the hearing will be conducted and the consequences of disruption. Parties should be reminded (in those jurisdictions where it is applicable) that it is an offence for a person to make or attempt to make an unauthorized recording or transmission of court proceedings which includes images. Likewise, it may be unlawful to take photographs or videos of a hearing, and such rules continue to apply to remotely conducted hearings. Parties should also be reminded that giving a false statement is a crime.

13. Retaining the authority of the court by managing interruptions as they would be dealt with in an in-person hearing.
14. Depending on the rules for the court, the judge could:
 - a. Warn participants of their behaviour;
 - b. 'Mute' participants;
 - c. Pause or adjourn the hearing;
 - d. Issue a fine or procedural discipline.
15. Monitor the participation and behaviour of participants during the trial to ensure their full engagement.



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