

# CCBE position regarding the use of videoconferencing in cross-border criminal proceedings

29/11/2014

The Council of Bars and Law Societies of Europe (CCBE) represents the bars and law societies of 32 member countries and 13 further associate and observer countries, and through them more than 1 million European lawyers. In this paper the CCBE responds to the work that has been undertaken by the Informal Working Group (IWG) on Videoconference set up within the Council Working Party on e-Law (e-Justice). The CCBE is very grateful for the fact that it has been invited to attend the meetings of IWG as well as the possibility it has been given to provide feedback to the reports developed within this context.

The CCBE understands that the use of videoconferencing systems provides a number of advantages. However, there are potential risks and drawbacks that must be considered before there is a headlong rush to adopt videoconferencing in cross-border criminal procedures. In particular, its use should not undermine fundamental principles of a fair trial especially with respect to defence rights. The CCBE's main concerns are as follows:

- If there is a trend towards using videoconferencing for cost reasons, this could eventually result in it being the main or only form of access to a suspect held in custody in cross-border cases. The CCBE does not consider this acceptable and stresses that cost savings should never be at the expense of defence rights which in most cases can be better guaranteed in physical hearings. Therefore, the use of videoconferencing should remain the exception to the main hearing of the case on its merits.
- The CCBE considers that the use of videoconferencing must always be subject to the suspected or accused person's consent. Care must be taken that the suspect or accused person is able to seek legal advice prior to consenting to the use of videoconferencing. Also, legal remedies should be readily available to challenge a decision on using videoconferencing.
- Experience shows that in case videoconferencing is used in prison, the suspected or accused person must be assisted by a lawyer in order to ensure that no intimidation takes place off screen.
- Some practitioners may be reluctant to rely on the confidentiality of communication with clients through video conferencing because of interception or surveillance risks. It is very important that, if there is videoconferencing, the necessary safeguards to protect confidentiality can be assured. Any breach of confidentiality, be it by a third party or agency, should be a criminal offence, and such information should not be able to be relied upon in the proceedings. The necessary safeguards across all the Member States which use videoconferencing should therefore be harmonised.
- It is essential that clients have ready access in person to their lawyers to build up the relationship of trust and confidence. This will be more difficult in cross-border cases using videoconferencing, also due to the frequent need for interpreters.
- The accused or suspected person has a right to ask for the personal appearance of a material witness in order to exercise his right under Article 6(3) (d) ECHR. Alternatively, the examination of the witness by the accused person and his/her counsel shall take place face to face in his/her (the witness's) residence where the witness is prevented to appear in person before the court.

- In cross-border criminal cases, particularly where the defendant might not be a native speaker and will be subject to different cultural influences, the judge might not be able to examine so easily the nuances of the defendant's appearance and responses through a video-link. Actually, it is very difficult. Therefore, it is important that the EU develops mandatory minimum standards as to the technical arrangements that should be in place for the use of videoconferencing. Such technical arrangements should ensure as much as possible a true-to-life hearing experience including full communication/interaction of all the parties to the procedure with the examined person.
- In jurisdictions where the principle of immediacy is a cornerstone of the criminal procedural law, this will constitute one of the greatest hindrances for the use of videoconferencing; e.g. in Austria, the Higher Regional Court of Vienna recently issued a verdict which clearly forbids the use of videoconferencing in criminal trials. On the other hand, the use of videoconferencing could be more appropriate where there is no taking of evidence, and there can be a lawyer present at the site where the suspected or accused person is.
- In cases where documents have to be shown to the witness, that should be done via an independent person present with them (court clerk or similar) who can ensure (e.g. from the point of view of the prosecution) that they are looking at the right page and (from the defence point of view) also ensure they are not looking at other documents, especially not to documents that have not been disclosed to the defence.
- The CCBE also encourages the EU to provide for sufficient training opportunities for both competent government authorities as well as legal practitioners in order to become acquainted with the use of videoconferencing technologies for cross-border criminal cases.