

## REMOTE INTERPRETING IN CRIMINAL PROCEEDINGS

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### Abstract

Court interpreting is a form of community interpreting looking back at a long history. Indeed, the age of modern conference interpreting dates from the launch of simultaneous interpreting at the Nuremberg Trials following World War II. – Interpreting in court proceedings, in particular, in criminal law cases is indispensable for observing the right to a fair trial, enabling the defendant or applicants to understand the proceedings and make claims. Remote interpreting in court proceedings was employed predominantly in combination with remote hearings in the framework of legal aid procedures, however, with the outbreak of the coronavirus pandemic, courts scrambled to continue operations in the uncertain times of lockdown. – This paper examines the fundamental rights backdrop (Article 6 ECHR and Article 47 Charter of Fundamental Rights) and legal basis of court interpreting in Europe (Directive 2010/64/EU) as the legal context of remote court interpreting. It also examines the European (EU and CoE) policy papers and actions supporting remote hearing and remote interpreting in judicial procedures. It then continues with the case study on remote interpreting at the Hungarian criminal judicial system in the era of the Pandemic. Finally, in light of these findings, the following question is tackled: Does the accused have the same opportunity in the proceedings? In essence: does remote hearing and interpreting guarantee a fair trial?

**Keywords:** right to fair hearing, online trial, online hearing, digital courts, EU, Council of Europe, Pandemic

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## 1. Introduction: digital developments in justice administration

### 1.1. The topicality of online hearing or telehearing

Digitalisation has developed significantly in the European Union in the years leading up to the pandemic. This process was radically accelerated during the pandemic. Today, we are witnessing a hybrid reality: while preserving the benefits of digital developments, personal relationships and processes have been reintroduced.

The European Union and the Council of Europe encourages digitalisation in every field. In particular, procedural law is an area where the use of digital tools represents a major step forward in terms of efficiency. One of the most spectacular developments has been the implementation of online hearings in Hungary, which the state started to implement before the outbreak of the COVID-19 pandemic, but the development has been significantly accelerated by the introduction of the lockdowns in 2020.

In parallel, there has been significant irregular border traffic at Hungary's Schengen border since 2014, which has led to a higher incidence of several criminal activities, such as unauthorized border crossing or human trafficking. In these types of crimes, the interpreter who conducts the hearing is essential, however, the number of interpreters was often less than the number of procedures they were supposed to be involved in. It was not clear how the interpreter could be in different parts of the country in one day, when the time for negotiations and hearings could often not be determined in advance.

This study examines the emergence of telehearing in criminal proceedings in Hungary, whether an interpreter was used and whether these procedures complied with procedural principles. Overall, did these procedures ensure the right to a fair trial?

### 1.2. European Union landscape of the digital justice administration

In 2022 the European Commission published the tenth edition of the *2022 EU Justice Scoreboard*, an established annual overview providing comparative data on the efficiency, quality and independence of justice systems in the Member States.<sup>1</sup> This year for the first time the Scoreboard also includes data on the effects of the COVID-19 pandemic on the efficiency of justice systems, which has a great impact on our topic.

Among the key findings of the Scoreboard it states that this year we can observe a room for improvement in the digitalisation of justice systems. Several Member States adopted new measures to ensure the regular functioning of courts, while also guaranteeing the continued and easy access to justice for all. It states that in 2021, a large number of Member States continued their efforts to further improve the effectiveness of their justice systems. In 2021, procedural law continued to be an

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<sup>1</sup> *The EU Justice Scoreboard*. Publications Office of the European Union, Luxembourg, 2022. <https://bit.ly/4bRAma3> (Hereinafter: Scoreboard)

area of particular focus in many Member States, with a significant amount of ongoing or planned legislative activity. A number of Member States were in the process of introducing legislation for the use of information and communication technologies (ICT) in their justice systems. The COVID-19 pandemic has also created new challenges that highlighted the importance of accelerating reforms to digitalise the justice system. In this context, several Member States adopted new measures to ensure the regular functioning of courts, while guaranteeing the continued and easy access to justice for all, in particular through the adaptation of procedural rules.<sup>2</sup> One of these tools is the telehearing, which means the usage of ICT directly in the core of the legal procedure: the hearing.

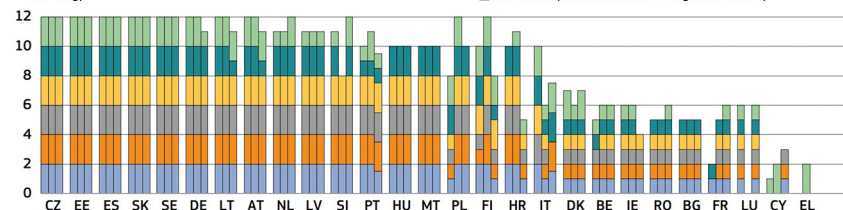
The following figure shows the scores related to the rules of digital tools in proceedings.<sup>3</sup> We can see that half of the EU member states (EU MS) opened their procedural laws to digital tools both in civil, criminal and administrative proceedings. However, admissibility of evidence in digital format is one of the most problematic issues. But still, digital hearing the parties or the defendant or the victim is quite self-evident in EU MS. At the same time, beyond digital-ready procedural rules, courts and prosecution services need to have appropriate tools and infrastructure in place for distance communication and secure remote access to the workplace. Adequate infrastructure and equipment is also needed for secure electronic communication between courts, prosecution services and legal professionals and institutions.

**Figure 42 Procedural rules allowing digital technology in courts in civil/commercial, administrative and criminal cases, 2021 (\*)** (source: European Commission (77))

For each Member State, the three columns represent procedural rules allowing digital technology in courts in the following types of cases (from left to right):

1. civil/commercial cases
2. administrative cases
3. criminal cases.

- Parties/defendants/victims can be heard by distance communication technology
- Experts can be heard by distance communication technology
- Oral part of the procedure can be conducted entirely via distance communication technology
- Witnesses can be heard by distance communication technology
- Language interpretation possible while using distance communication technology
- Admissibility of evidence filed in a digital format only



(\*) For each Member State, the first column presents procedural rules for civil/commercial cases, the second column for administrative cases and the third column for criminal cases. Maximum possible: 12 points. For each criterion, two points were given if the possibility exists in all civil/commercial, administrative and criminal cases, respectively (in criminal cases, the possibility of hearing the parties was split to cover both defendants and victims). The points are divided by two when the possibility does not exist in all cases. For those Member States that do not distinguish between civil/commercial and administrative cases, the same number of points has been given for both areas. **EL**: none for administrative and criminal cases. **LU**: none for administrative cases.

### 1.3. Council of Europe and digital developments in justice administration

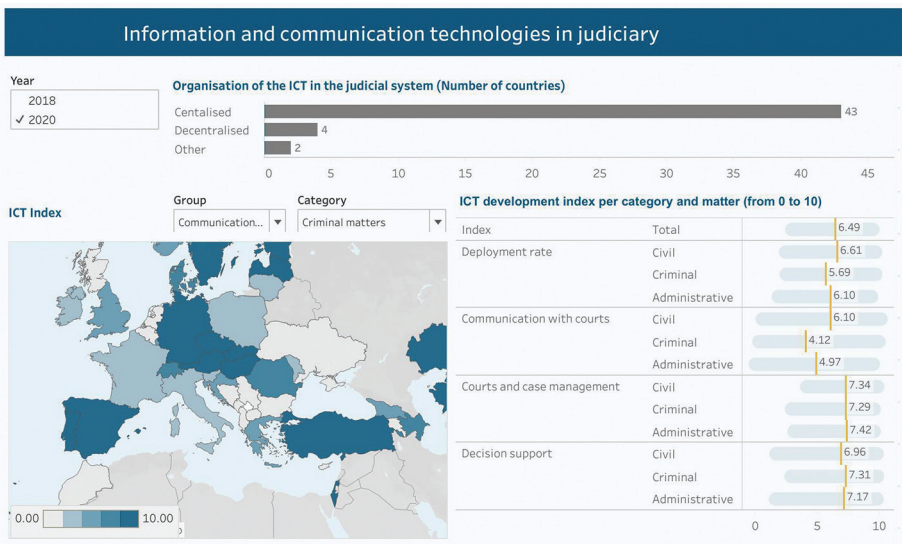
*European Commission for the efficiency of justice (CEPEJ)* is the Council of Europe's advisory body, which aims to be an innovative body for improving the

<sup>2</sup> Scoreboard, 7.

<sup>3</sup> Scoreboard, 32.

quality and efficiency of the European judicial systems and strengthening the court users’ confidence in such systems. It analyses the functioning of judicial systems and orientate public policies of justice, promotes the quality of the public service of justice, facilitates the implementation of European standards in the field of justice, and supports member states in their reforms on court organisations.<sup>4</sup>

The CEPEJ also measures ICT in the judiciary. Using the member states’ data it clearly shows that by 2020 the European region digitalisation is a general phenomenon in justice administration. Focusing on the communication with courts, civil matters are almost a third more frequent then administrative or criminal matters. Figure below shows the digital availability in criminal proceedings among the Council of Europe’s member states.<sup>5</sup> We see that criminal proceedings prefer the personal interactions to online as the civil and even the administrative procedures are more open to online communication. Later we will see some possible reasons behind this.



The other major body of the Council of Europe dedicated to judiciary is the *Consultative Council of European Judges (CCJE)*, which is an advisory body on issues relating to the independence, impartiality and competence of judges. Every year, the organisation adopts recommendations that cover common European issues related to the functioning and organisation of the court. These opinions have no binding force and are not even soft law. These are important tools of communication and cooperation of European top leadership of the judiciary.

<sup>4</sup> See more on <https://www.coe.int/en/web/cepej/home>

<sup>5</sup> See data on <https://public.tableau.com/app/profile/cepej/viz/ICTEN/Development>

In 2011 the CCJE adopted the opinion titled “*Justice and information technologies (IT)*”.<sup>6</sup> It states that the “use of IT should not, however, diminish the procedural safeguards (or affect the composition of the tribunal) and should in no event deprive the user of his/her rights to an adversarial hearing before a judge, the production of original evidence, to have witnesses or experts heard and to present any material or submission that he/she considers useful.” (Para 28) Moreover, it also clarifies the same place, that the judge must also retain, at all times, the power to order the appearance of the parties, to require the production of documents in their original form and the hearing of witnesses. Security requirements must not be an obstacle to these possibilities.

Relating to our focus, the opinion highlights that “video-conferencing may facilitate hearings in conditions of improved security or the hearing remotely of witnesses or experts. It could, however, have the disadvantage of providing a *less direct* or accurate perception by the judge of the words and reactions of a party, a witness or an expert. Special care should be taken so that video-conferencing and adducing evidence by such means should never impair the guarantees of the defence.” (Para 30)

These all mean that the CCJE supports online communication with courts, even telehearing, but these tools shall not violate procedural rights at any time. The role of IT should remain confined to substituting and simplifying procedural steps leading to an individualised decision of a case on the merits. IT cannot replace the judge’s role in hearing and weighing the factual evidence in the case, determining the law applicable and taking a decision with no restrictions other than those prescribed by law.

Parallel to the judicial advisory body, the *Consultative Council of European Prosecutors* (CCPE) composed of high level prosecutors of all member States has in particular the task to prepare opinions for the Committee of Ministers on issues related to the prosecution service, to promote the implementation of the two main Council of Europe (CoE) recommendation on the role of public prosecution in the criminal justice system<sup>7</sup>, and to collect information about the functioning of prosecution services in Europe.

In 2012, a year after the above mentioned CCJE opinion, the CCPE adopted Opinion Nr. 7 on the management of the means of prosecution services. This document reaffirms that European prosecution services are “encouraged to enable prosecution services to use IT equipment in their daily work, by introducing e-justice tools, electronic case management and data exchange systems with the bodies in charge of the application of law that prosecutors are in contact with when carrying out their tasks. This would enable ensuring a more efficient case management, reducing the length of proceedings and guaranteeing the application of data protection and confidentiality measures.” (Para 43)

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<sup>6</sup> CCJE Opinion No. (2011) 14. of the CCJE.

<sup>7</sup> Recommendation Rec (2000) 19. and Recommendation Rec (2012) 11.

To sum up, European consultative bodies encourage the use of IT tools in criminal proceedings if these tools help fulfilling procedural and human rights.

## **2. Digital Developments in the Hungarian Justice Administration**

### **2.1. First steps of to digital courts**

The overall purpose of the project is the reduction of bureaucracy. As a result of the planned developments, the clients can deal with their cases faster and cheaper. The administrative burden of the courts will decrease too and this leads to a more efficient work performance.

The Hungarian digitalization reforms dates back to 2008 when the company registration procedures turned exclusively electronic at the first-instance. It was extended to second-instance procedures in 2012. Two years later, in 2014 in certain cases digital communication became mandatory in company registry cases.<sup>8</sup>

Digital communication in civil litigations at regional courts acting as court of first instance has been set out as an option since 2013. As of 1 July 2015, digital communication with courts became available at all courts in the country, including district courts and regional courts both in first-instance and second-instance cases. In 2016 digital communication with the court became mandatory for parties acting via a legal representative, business entities and administrative bodies in civil litigations as well as administrative and labour cases. We note that at this time the Parliament adopted the landmark Act CCXXII of 2015 on the General Rules of Electronic Administration and Trust Services (hereinafter referred to as: E-administration Act), which directly supported the digitalization of state services.

Full-scale electronic administration was introduced regarding court proceedings in 2018. From this year, the National Office of the Judiciary and the courts – as bodies providing for electronic administration – are obliged to allow for the electronic administration of all cases within their scope of responsibilities and authority for the clients. Implementing Section 9 of the E-administration Act, besides civil and (company) registry cases, online communication became available in non-litigious enforcement proceedings, non-litigious civil, economic, public administration and labour proceedings, proceedings for administrative offences, presidential administrative cases, and criminal proceedings. Electronic liaising remains optional for natural persons acting in person in litigious and non-litigious court cases and presidential administrative cases.

### **2.2. Four pillars of the reform before the pandemic**

As we have seen, the decade between 2008 and 2018 has seen a significant evolution in the digital accessibility of courts and the digital support of their operations.

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<sup>8</sup> See more on the Hungarian Judicial Office's site at <https://birosag.hu/en/electronic-procedures>

Subsequent reforms have aimed to improve interoperability and accessibility, while speeding up procedures. The reforms were built around the following four pillars.<sup>9</sup>

1. *Development of the publication and anonymization of judicial decisions.* The state developed an extended search engine of the Collection of Judicial Decisions for the optimization of the browsing of the anonym judicial decisions and of the search process. Moreover, the reform supported the automation of the anonymization of the judicial decisions.
2. *Digitalization of the documentation of the judicial proceedings (E-folder).* This element of the reform guaranteed the digitalization of all documents of the judicial files, the electronic availability of the documentation for the judges, and ensuring online inspection of the files for the clients anywhere, anytime.
3. *Establishing a secure connection and establishing electronic administrative services.* By this reform, specialised judicial bodies could connect to the Central Governmental Service Bus that meant a secure, fast and accessible digital background to the administration of justice. Security and data-preserving was a major issue while the National Office of the Judiciary introduced speech recognition and transcription software in the daily work of the judges. Speech-to-text software at the courts could facilitate compliance with the deadlines relating to the obligation of putting decisions and minutes into writing and would also result in more efficient use of the working time by reducing the time required for transcription.<sup>10</sup>
4. *Via Video project: creating the tool for remote hearing.*<sup>11</sup> For our focus, this element of the reforms is probably the most important. In 2018–2019, starting the development of the telehearing or remote hearing tool, Hungary prepared for the pandemic lockdowns even without knowing it. First, the aim was to improve the timeliness and increase the transparency of proceedings. To achieve this, National Court Office introduced a nationwide telehearing and courtroom audio-video development project, in which the prosecution service was also involved.<sup>12</sup> The connection of courtrooms suitable for remote hearings with international bodies, domestic partner institutions and other courts should be facilitated and realized with technical devices that meet the contemporary requirements.

The tools are suitable for guaranteeing the safety of the persons participating in the procedure, and for reducing the time and costs incurred by the citizens in appearing before the court, thus strengthening the service nature of the courts.

<sup>9</sup> See in detail: <https://birosag.hu/en/digital-court-project-e-folder>

<sup>10</sup> See more at <https://birosag.hu/en/speech-recognition-and-transcription-software>. We note, that LITHME Working Group 2 on Language and Law organized an expert seminar with the participation of judges, prosecutors and stakeholders on the digitalization on legal language, 8th September 2021. <https://ereky.jak.ppke.hu>

<sup>11</sup> <https://birosag.hu/en/video-project>

<sup>12</sup> Parliamentary report of the Prosecutor General, 2019.

Video and audio recording in the courtroom facilitates accurate, realistic documentation of what happened at the trial. The recording of negotiations with video and audio recordings can on the one hand replace the classic record-keeping work, thus greatly speeding up the adoption of decisions, and on the other hand, it can guarantee accurate documentation of the negotiations, which is available at any time if necessary. As the Parliamentary report underlines “one of the most important advantages of the Via Video system is the reduction of time and costs associated with the appearance of clients in court. Based on the operation of the current system, it can be stated that the telehearing system contributes in the long term to the improvement of the timeliness indicators of the court proceedings and to the increase of the transparency of the proceedings. In addition to all this, the security risks associated with transporting prisoners can be greatly reduced, and the safety of the persons to be protected can be guaranteed.”<sup>13</sup>

In 2022 remote hearing endpoints have been set up at 202 court locations throughout the country.<sup>14</sup> That means not every single courtroom has such equipment, only some designated in every court building. Consequently, if a trial needs to be held (at least partly) online, it should be moved to the designated courtroom. The following figure shows the 72 endpoints that were set up in the first year of the project (2018). Further 112 endpoints were created in 2019, so that every district court, tribunal, sentencing panel and Kúria has at least one courtroom equipped with telecommunication devices, with which all courthouses can be accessed via video conference.<sup>15</sup> Basically these were the instruments the Hungarian justice administration faced the COVID pandemic in 2020.



<sup>13</sup> Parliamentary Report of the National Office of the Judiciary 2019. Para 1.3.

<sup>14</sup> According to the National Office of the Judiciary’s announcement: <https://tinyurl.com/58baf37c>  
See source of the figure on the same page.

<sup>15</sup> Parliamentary Report of the National Office of the Judiciary 2019. Para 1.3.  
<https://www.parlament.hu/irom41/13547/13547.pdf>



### 2.3. Legal environment supporting remote hearing

After the technical conditions, let's look at the legal environment, which should guarantee the legality of the procedure even when the participants interact only by digital means.

Remote hearing is used in civil procedures when interviewing a party or other litigant, interviewing a witness, interviewing an expert, conducting an examination. In criminal procedures remote hearing is used mostly at a procedural act involving a person requiring special treatment, an interrogation of a detained person, a procedural act requiring the presence of a witness or a defendant under personal protection or participating in a Protection Program, an investigative judge's procedure (session held on the subject of maintenance and extension of coercive measures affecting personal freedom), or proceedings by a sentencing judge.

The XC Act of 2017 on the Criminal Procedure (hereinafter referred to as Be.) saves an individual chapter (Chapter 20) on the use of a telecommunication device. It declares that "for those who are obliged or entitled to be present at the procedural act based on this law, their presence can also be ensured by means of a telecommunication device." (Section 120 para 1) As a main rule, use of digital tools is ordered by the court *ex officio* or upon a motion submitted by a person who is obliged or entitled to be present at the procedural act. (Section 121 para 1) However, if the technical conditions for the use of the telecommunication device are met, these tools must be used in the case of a procedural act requiring the presence of the victim requiring special treatment, and in the case of a procedural act requiring the presence of a witness or defendant who is in custody, under personal protection or participating in a Protection Program. (Section 122 para 1)<sup>16</sup> This second condition is the one that I will examine in the research I will present later.

A Section 123 of the Be. declares, only the following persons may be present at the digital audio-video equipped courtroom (the law uses the terminology "isolated location") when using telecommunication device: (a) the person whose presence is ensured via the telecommunications device, (b) the defender or assistant, (c) a member of the investigative authority, the prosecutor (including trainees and juniors), the judge (including trainees and juniors), the court administrator, (d) in the case of a detained person, an employee of the institution implementing the detention authorised to establish the identity of the detained person, (e) in the case of a detained person, the person guarding him, (f) the expert, the consultant and (g) personnel ensuring the operation of the telecommunications device.

The interpreter is traditionally treated as an expert in procedure laws that means the interpreter is authorised to be present during the use of remote hearing. However, the law is silent on the fact that whether the interpreter may connect to the hearing

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<sup>16</sup> According to para (2)–(5) of the same section, several exceptions exist reflecting the procedural action or the subject's personal circumstances.

from a distance or not. The term “isolated location” does not exclude,<sup>17</sup> therefore remote interpreting is not forbidden by the law.

As for the procedural guarantees, the Be. declares that the use of the telecommunication device does not affect the exercise of the rights of questioning, commenting, making motions and other procedural rights of persons participating in criminal proceedings. (Section 124 Para 2) In relation to the right to defence, the accused or the person reasonably suspected of having committed the crime and his or her counsel may be able to consult at least through electronic audio means. (Section 124 para 3)

The hearing must be recorded (Section 125 para 2), except some cases such as the consultation between the accused and the defender, which will be one of the turning points in our research.

#### 2.4. Impact of the COVID-19 pandemic on criminal proceedings

Hungary was hit by the coronavirus epidemic in March 2020. Similar to other European countries, Hungary has also used lockdown as a social protection tool. A special legal order was put in place, which empowered the government to issue a time-bound regulation. By Government Decree 40/2020 (11 March) the Government declared a “state of danger” in the entire territory of Hungary “for the elimination of the consequences of the human epidemic endangering life and property and causing massive disease outbreaks, and for the protection of the health and lives of Hungarian citizens.”

The legal basis was the constitutional rule, the Article 53 of the Fundamental Law that defines the “state of danger” as a special legal order caused by armed conflict, war, humanitarian catastrophe, natural disaster or industrial accident. The government decrees remain in force for fifteen days, but the Parliament can extend the time limit.<sup>18</sup>

By the end of March 2020, the Government adopted a decree on the special rules for legal procedures. The Government Decree 74/2020. (III. 31.) of certain Procedural Instruments during the Pandemic declares that “if a procedural act involving the personal presence of persons participating in criminal proceedings would entail a violation of the rules of epidemiological isolation, surveillance, sealing or control, and the procedural act cannot be postponed, the court, the prosecution and the investigating authority shall ensure the presence of the persons participating in the

<sup>17</sup> See Section 120 para (2) definition for “isolated location”: In the case of using a telecommunications device, the directness and reciprocity of the connection between the location of the procedural act designated or designated by the prosecution or investigative authority and the different location (hereinafter: isolated location)

a) image and sound recording, or  
b) continuous sound recording  
transmission is ensured.

<sup>18</sup> We note that this constitutional framework has been amended after the pandemic in 2022. See text in the national legal registry: <https://njt.hu/jogszabaly/en/2011-4301-02-00>

procedural act by means of telecommunication” (Section 50 para 2). Moreover, the prosecutor was entitled to join the hearing online by stating “if the technical conditions are met, the presence of the prosecutor shall be ensured primarily by means of a telecommunication device during the procedural act.” (Section 50 para 4)

In this new situation, the importance of procedural forms that made it possible to reach a judicial decision without personal involvement, primarily on the basis of the documents, necessarily increased. The rules of procedure, within the framework provided by permanent and temporary regulations – in cooperation with the judiciary at both national and local levels –, had to be elaborated to ensure the fundamental right to life and physical health, without compromising the right to a fair trial.<sup>19</sup> By these rules above, the criminal procedure (as well as the civil and administrative court procedures) were turned online within two weeks after the first lockdown. Using the previously mentioned endpoints, judges, prosecutors, witnesses, defenders and accused persons joined the hearing and all other act online. Moreover, other forms of communication turned online too as the rules also made it possible for the case file to be delivered primarily to the addressee’s electronic mail address or other electronic way.<sup>20</sup>

According to the statistical numbers published in Parliamentary report of both the judiciary and the prosecution service, the use of digital tools in the procedures rose rapidly. In 2018 the number of telehearing was only 294 as the system was set up in the autumn of the year. In 2019 the number increased to 6426 and a year later it was 20569. It seems that these tools fulfilled the expectations.

### **3. Remote Hearing with Translation in the Pandemic – Conclusions of a Survey**

In the months of May and June 2022, I conducted in-depth interviews at the Hungarian prosecution service. My aim was to find out what the prosecutors’ experience was during the period of the coronavirus epidemic of online hearings in cases where an interpreter was used for the procedural act.

In selecting the subjects, I took into account that the telehearing proceedings I studied required the presence of four main actors: the judge, the prosecutor, the accused and the defence. In special cases, when the accused was foreign and did not speak Hungarian, the interpreter was present as a fifth actor. I have chosen the prosecutor for my interviews because, in cases where it is necessary to hear a detained person, the prosecutor takes the initiative and is in fact a bridge between the other participants in the proceedings.

To conduct the interviews, I have selected four areas of the country where, according to criminal statistics from recent years<sup>21</sup>, there have been a higher number of

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<sup>19</sup> Parliamentary report of the Prosecutor General, 2020  
[https://ugyeszseg.hu/wp-content/uploads/2022/10/ogy\\_beszamolo\\_2020.pdf](https://ugyeszseg.hu/wp-content/uploads/2022/10/ogy_beszamolo_2020.pdf)

<sup>20</sup> Parliamentary report of the President of the National Office of the Judiciary, 2020.  
<https://www.parlament.hu/irom41/17332/17332.pdf>

<sup>21</sup> See prosecution stat.

proceedings involving foreigners – and therefore, as expected, more experience in the use of interpreters in remote hearing. Thus, I contacted the Chief Prosecution Offices of the Capital (Central), Csongrád-Csanád County (South), Hajdú-Bihar County (East) and Győr-Moson-Sopron County (West), as well as two district prosecutors' offices recommended by the heads of these Chief Offices. The prosecutor's offices in the above areas also matched the research in terms of jurisdiction: the Chief Prosecution Office of the Capital (Budapest) has several exclusive jurisdictions in cases where the use of an interpreter may arise (e.g. transmission or extradition), our southern and eastern border is partly a Schengen border where statistics show significant number of illegal border crossings also committed by foreigners. And Hungary's western border is on the route of human smuggling.<sup>22</sup>

I conducted five in-depth interviews where I used the same set of questions:

1. In which type of procedure did you use remote hearings?
2. How often did you participate in remote hearings?
3. How was the venue set up (which actors attended the meeting from where)?
4. How were the participants in the remote hearing identified?
5. Was there any consultation between the detained person and the defence during the hearing and, if so, how was it conducted?
6. Were there any technical difficulties during the procedural steps?
7. Were there any legal difficulties during the procedural steps?
8. What possibilities for improvement do you see and do you see the possibility of using the remote hearings (even with an interpreter) beyond the pandemic era?

In the previous chapters, we have seen that during the coronavirus pandemic (31 March 2020 to 17 June 2020), all procedural acts were digitalised by law.<sup>23</sup> Following the lifting of the first and most severe state of emergency, videoconference-based long-distance connection was maintained in certain proceedings, despite the fact that criminal proceedings have essentially reverted to the on-site form.

The majority of prosecutors participating in the research (except in the capital, due to its exclusive jurisdiction) participated in online hearings in cases where the accused was in custody. They were unanimous in their opinion that remote hearings can still be used with good results, particularly in cases of simple adjudication or intermediate acts, such as the order to use coercive measures, the extension of the period of application of coercive measures or the extension of the investigation period. Despite the fact that digital tools have been used in criminal proceedings much higher since the pandemic than before 2020, my respondents clearly see that procedural acts are again being used primarily in the on-site form. This is in line with the EU's dashboard presented above, which showed that criminal proceedings much prefer in-person presence to online hearings. In particular, my interviewees

<sup>22</sup> See also prosecution stat + parliamentary report.

<sup>23</sup> Decree 282/2020 (17.VI.) of the Government of the Republic of Slovenia on the lifting of the state of emergency declared on 11 March 2020.

highlighted that the body language, facial expressions and metacommunication of the person being heard through online means are much more difficult to discern, and that non-verbal means of communication are less applicable.

For remote listening, typically at least two locations were connected. The defendant was in the penitentiary or in police custody with a prison guard. The judge, the prosecutor and the defence (except at the full-lockdowns) attended the meeting in the courtroom. Procedural acts were also reported by my subjects when the defender was also in the penitentiary. The interpreter was usually present in the courtroom (hybrid remote interpretation). Compared to the previous exceptional case, there were even fewer cases where the interpreter was also present in the courtroom from a penitentiary. In fact, there were only one or two cases in the research where the interpreter was also involved remotely (remote interpretation).

Perhaps the most interesting aspect of the procedure for the purposes of this research is the defence consultation. Typically, the defence attorney and the accused communicated by telephone, which the defence lawyer, if he or she was present in court, conducted outside the courtroom (usually on the corridor). However, it is also common for the defence consultation to take place via video conference call. In this case, the judge turns off the video call recording function and the prosecutor and other court staff leave the courtroom for the duration of the consultation. The interpreter is always with the defence in such cases. This solution is not precluded by law and is technically feasible, so there is no doubt that it is correct, even if it may cause difficulties or inconvenience either for the judge or the prosecutor.

Practically all the prosecutors interviewed highlighted the technical difficulty of video conference endpoints being busy and congested. There are only a few endpoints in a court, and they are used by many. This also means that appointments to use these facilities can only be requested well in advance. If a procedural act is delayed for whatever reason, it also delays subsequent procedural acts. If a procedural act is not available for a day due to congestion, it is only possible to re-book a lane for a distant date. The practice during the coronavirus pandemic period was that if the connection broke down and the video call was lost for technical reasons, the procedure was suspended until the connection was re-established. As a further technical observation, the prosecutors interviewed noted that the use of a mask did not cause any disruption to the intelligibility of statements. Likewise, the use of a mask in the video call did not interfere with the interpreter's assistance.

I have seen different ways of identifying participants. The detainee was identified usually by the guard accompanying him, while identification in the courtroom was done in the usual way, with an ID card. There were also locations where a separate digital camera (document reader) was available to transmit all documents to the online meeting. With this device, not only the documents could have been submitted for the hearing, but also the identification cards used for identification could be seen and recorded in good quality.

In terms of legal problems, few obstacles were reported by the interviewed prosecutors. The main issue highlighted was the vulnerability of the principle of immediacy. In the case of remote hearings, the intentions of the person heard and the ability to ascertain them were often made difficult by the limited intelligibility of non-

verbal communication channels. The interviews showed that the accused typically preferred the telehearing because it was easier for them to attend the hearing in most cases (either because of the lack of travel or the strain of the personal relationship with the judge or prosecutor). In fact, the telehearing avoids the need for the accused to travel, which is a significant help in terms of both energy and costs.

#### 4. Conclusions

Both the legal and the technological framework for online hearings and the use of an interpreter during such hearings have evolved considerably during the coronavirus epidemic for unavoidable reasons. Although Hungary was in the process of developing a videoconferencing system when the pandemic close downs occurred, the judiciary had to react very quickly and switch to online access in court proceedings.

During the in-depth interview research conducted, I confirmed that the legal regulations do not specify the technical issues of videoconferencing. This is, of course, understandable, since it is not a question of normative issues but of technological ones. That is why local solutions are given more scope. This decentralisation is closely linked to the fact that the technological toolbox (ICT) is evolving faster than the legal environment can keep up. However, it was a surprising experience for my interviewees that the use of online tools did not speed up procedures radically.

The undoubted advantage of online tools – and this was underlined by the prosecutors in all interviews – is that they greatly reduce procedural costs. The most significant item is the travel of the accused, but in several cases the ability to participate meaningfully in the proceedings remotely via a secure channel has also reduced the costs for the defence and the interpreter. Remote hearings also reduce administrative burdens by giving participants (in particular the defence and the interpreter) greater choice as to where they participate in the procedural act (with the defendant, in court or at a third location, online).

However, it was clear from the research that direct personal communication is limited in remote hearing proceedings. The balance between verbal and non-verbal communication channels was broken. Even though the statements of the accused can be understood through the online channel, the small but important metacommunication signals that contribute to the smoothness of the presentence hearing – often in an unconscious way – are lost.

Overall, the (technological) requirements emphasised by the European Commission and the (legal) requirements emphasised by the consultative bodies of the Council of Europe in relation to the use of digital tools in court proceedings such as remote hearing are in line with the practice in Hungary. The view of the consultative bodies of the Council of Europe has been confirmed by the Hungarian procedural practice in the context of the coronavirus pandemic: the use of online and other electronic means is appropriate and necessary if it supports the legality and timeliness of the proceedings.

*Location of interviews on the map*

