

Remote Hearings - Changes After the Amendments to the Civil Procedure Code

Remote Hearings - Changes After the Amendments to the Civil Procedure Code Enforced on 14 March 2024

INTRODUCTION

As a result of the COVID-19 pandemic and the resultant worldwide lockdown, courts around the world have faced the problem of how to hold a proceeding when a traditional, stationary hearing could not be held. That is when remote hearings, i.e., hearings that can take place without participants appearing in court, became much more popular and were introduced to legal systems as an alternative, regular manner of proceeding. In Poland, it was the Law of 2 March 2020, on Special Solutions for Preventing, Countering and Combating COVID-19, Other Infectious Diseases and Crisis Situations Caused by Them (hereinafter: "the COVID-19 Law"), that introduced those provisions into the Polish legal system. This regulation was firstly supposed to be only temporary, but it brought long-lasting changes to Polish law.

In 2023, however, with some significant modifications, the abovementioned provisions were introduced to the Polish Code of Civil Procedure (hereinafter: "CCP") by the Act of 7 July 2023. Thus, a remote hearing is no longer a temporary solution but an alternative, regular manner of proceeding, including remote witness testimony and hearing of the parties. These provisions aim to make proceedings faster and easier for everyone to participate in, considering the global nature of today's society, and so more efficient. Nevertheless, the regulation raises reasonable doubts on the matter of data security and the assessment of the credibility of witnesses. It may lead to violations of the procedural principle of equality of parties, as discussed further in the article.

REMOTE HEARINGS

Until 2023, the rules of CCP did not allow – as a general rule – to hold a hearing remotely. According to Article 151 § 2 – up to the amendment of 7 July 2023 – remote participation in a court hearing was only accepted in very limited circumstances. Under this provision, a person could participate in a court session remotely only from a building of another court or a place of criminal detention, which demanded not only the availability of a courtroom in another court building but also the attendance of a judge from that court and current transmission of the course of action. At the same time, the infrastructure in Poland was not yet ready for this purpose. This provision was mainly used to examine witnesses in the court closest to their residence. Still, even in those cases, it was rarely applied since there were much simpler procedures to examine a witness by another court without the obligation to transmit the proceeding online. Moreover, after November 2019, when the written witness testimony was introduced into the CCP, the previous remote hearing (from another court building) was totally marginalized.

The COVID-19 pandemic and the global lockdown restrictions brought an important change in this regard, which excluded the possibility of stationary hearings. As a result, the COVID-19 Law introduced new institutions in Polish civil procedure, such as the full remote hearings in which one could participate from basically anywhere. Initially, the regulation caused some technical difficulties due to the urgency of its application without proper preparation of the infrastructure and court systems. Still, after some time, it became very effective. Firstly, the provisions of the COVID-19 Law were supposed to be incidental, but recent amendments - with some modifications - have made them permanent in the Polish CCP. [\[TR1\]](#) However, remote hearings still raise some important doubts, although it seems they will become a standard manner of proceeding.

Under the CCP Amendment Act of 7 July 2023, the old Article 151 of the CCP was modified so that holding a hearing remotely is an equal alternative to a stationary hearing and can be ordered by a court

in almost all cases (except for proceedings held behind closed doors – Article 153-154). These amendments became effective on 14 March 2024.

Under the aforementioned law, a remote hearing is permissible if the nature of the actions to be performed at the hearing does not prevent it. It will also guarantee full protection of the parties' procedural rights and the proper course of the proceedings. The court may order a remote hearing *ex officio* and at the request of a person wishing to participate in the proceedings remotely, which should be filed within 7 days of the notification or summons to the hearing.

In fact, the new provisions of the CCP introduced not so much a sole remote hearing but a hybrid hearing since the court and the court reporter are always present in the courtroom, which is open for other participants. This means that the parties, witnesses, and audience can participate in a stationary court hearing even if it is ordered to be held remotely – up to their decision. Informing the participants of the order of a remote hearing, the court is obliged to indicate their intention to appear at the stationary hearing or the obligation to declare their intention to participate remotely. In this case, the deadline for the notification of such an intention is three working days before the scheduled date of the hearing.

The new regulation has also addressed some issues that caused doubts under the COVID-19 law. It solved the problem of audience participation in remote hearings, which was previously unclear. The amended Article 151 § 5 of the CCP – regarding the obligation to declare an intention to participate in a remote hearing – also applies to those wishing to participate in the hearing as members of the audience or persons of trust. Therefore, the right of the audience to attend a remote hearing has been clarified, and it cannot be questioned during the proceeding if the declaration of that intention is filled out correctly.

Several technical issues have also been regulated since they have raised reasonable doubts among practitioners on the COVID-19 Law. The fact of whether it is acceptable to participate in a remote hearing from every place and in every condition, disregarding the impact on the hearing (e.g., from the beach), has been discussed. The new Article 151 § 8 of the CCP solves this problem by stipulating some general rules on remote participation in a hearing. According to said provision, a person participating in a remote session who is outside the court building is obliged to inform the court of the place where they are staying and make every effort to ensure that the conditions at their place of stay do not violate the dignity of the court and do not constitute an obstacle in the performance of procedural acts with their participation. If the person refuses to provide the indicated information or if the behaviour of this person raises reasonable doubts about the proper conduct of actions performed remotely, the court may summon this person to appear in person in the courtroom.

To sum up, the remote hearings are a new, standard procedure in the Polish legal system. It is supposed to be an alternative manner of proceeding in (almost) all court cases. The new regulation has modified the first episodic provisions on this matter (the COVID-19 Law) on the matters that raised the most serious doubts and caused the biggest problems in the past. Previous experiences showed that remote hearings could greatly benefit court proceedings. Courts and parties often choose them, so the legislator had to adjust.

THE REMOTE WITNESS AND PARTY EXAMINATION

The remote examination of witnesses and parties has been introduced to the Polish legal system – as an alternative manner of conducting the evidence – by the COVID-19 Law, which, as mentioned above, was supposed to be in force only temporarily. Previously, it was permitted in strictly stipulated conditions (from another court building – Article 151 § 2 of CCP). The latest amendment of the CCP (of 7 July

2023) has transferred the provisions regarding a remote witness and party examination to amended Article 235¹ and 235 § 2 of the CCP. Therefore, it is currently a standard procedure which can be held alternatively to a stationary manner.

According to the amended Article 235² § 2 of the CCP, if the nature of the evidence so permits, the court may order the taking of evidence to be conducted remotely during a remote session. At the same time, Article 235¹ of the CCP stipulates that the evidentiary motion may also indicate whether a party requests that the evidence be taken during a stationary or a remote session. However, the court may also take evidence at a remote session *ex officio*. Hence, the motion in this matter is not required.

A most important novelty - compared to the provisions of the COVID-19 Law – is the right of the party to object to the examination of a witness outside the courtroom in a remote session, which is binding for a court. This right is crucial since, up to now, the court decision on a remote hearing was final, and the parties had no chance to question it until the appeal. The objection shall be filed no later than within 7 days of obtaining information about the intention to conduct evidence in a remote hearing. The court is obliged to summon a witness (also the party or the expert) to appear in person in the courtroom. The provision does not indicate that a party has to justify their objection. Therefore, to object successfully, keeping to the statutory deadline is sufficient. No other conditions are required.

The institution of objection introduction is a highly important novelty since it guarantees that the principle of directness will be respected in court proceedings. It was the main doubt discussed under the COVID-19 law, therefore the legislator decided to solve this matter. The directness principle – as a fundamental principle of civil procedure – stipulates that the evidentiary proceedings should take place before the adjudicating court, which is to guarantee the court all the necessary conditions for a complex evaluation of a witness's testimony and its credibility. Any exceptions from this rule shall be justified by other, equal values. It has been questioned whether the principle is fully respected during a remote witness examination, since the court cannot see all the surroundings around the witness cannot fully watch their body language and facial expressions, which often has a significant impact on the evaluation of the evidence. During remote questioning, the witness may also be assisted by materials that will be invisible to the court or receive information from the outside against proper procedure. The new provisions are supposed to limit the abovementioned problems and provide the parties a right to examine a witness or a party in a stationary manner.

Nevertheless, remote hearings bring new risks that are connected to the more significant development of artificial intelligence (AI) and systems based on it. The problem of an adequate level of security and the ability to prevent violations by witnesses and parties examined will be even more serious, since there are already programs using artificial intelligence that can create almost undetectable illusions. For example, the AI-powered Eye Contact creates the illusion of eye contact or other programs that may overlap a witness's face and voice on somebody else's figure. There is also a risk that witnesses or parties could record hearings or take screenshots without notifying the court, which is a violation of Article 91 § 3 of the CCP but is still undetectable. The programs for remote hearings used in Polish courts (i.e. the Jitsi platform or Microsoft Teams) are not equipped to limit those dangers. In the future, the new software should be applied to secure the rights of the parties, the court, the witnesses and the law itself.

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