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CEZA ADALET SİSTEMİNİN GÜÇLENDİRİLMESİ VE AVRUPA İNSAN HAKLARI SÖZLEŞMESİ İHLALLERİNİN ÖNLENMESİ İÇİN YARGI MENSUPLARININ KAPASİTESİNİN ARTIRILMASI ORTAK PROJESİ
STRENGTHENING THE CRIMINAL JUSTICE SYSTEM AND THE CAPACITY OF JUSTICE PROFESSIONALS ON PREVENTION OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS VIOLATIONS IN TURKEY

Online Court Hearings: Russian Experience

Round Table 14 December 2020

Maria Filatova



Part I. Online hearings: general context

- Pre-Covid proceedings:
 - *use of videoconference*: for remote participation in offline hearings (parties, witnesses, experts); 0.5 % of cases only;
 - Difference between general courts (civil, criminal, administrative proceedings) and commercial courts
 - *e-justice system* in commercial courts (e-filing documents; electronic case-files; publication of judicial acts on website arbitr.ru) ;
 - electronic claims in general courts (non-criminal cases) and Constitutional Court of Russia (optional)
- *No totally virtual proceedings before lockdown*

Part I. Online hearings: general context

- *Lockdown 2020*: Courts never fully stopped activities; cases divided into 3 groups:
 - *urgent cases* (remand hearings, other urgent matters in criminal proceedings, some misdemeanour cases, protection of minors)- offline hearings with standard precautions; when possible- use of videoconference (no technical basis for online hearings in general courts)
 - *Non-urgent cases*: proceedings stayed or postponed
 - *Judge's discretion*: to deal with cases not listed as «urgent»
- Lockdown as a trigger for *online proceedings development*

Part I. Online hearings: general context

- *Post-Covid reality*: virtual reality kept and developing
- *Commercial courts: «Hybrid» proceedings*: offline hearing in court with parties/lawyers online
- *December 2020*: 98 of 113 commercial courts connected to online hearings system
- From 2021 - *«Justice Online»* (mega project of judicial system); extension of online technologies use

Criminal Proceedings



Part I. Participation of witnesses and victims online

- Videoconference: 20 years of use, BUT: in 0.5% of cases
- Witnesses and victims examination difficulties (excessive length of criminal investigation)
- Online examination as a remedy
- Not implemented yet; a law draft on online examination submitted (online connection between 2 investigators/ courts)
- Witnesses: how to prevent to show up early?

• Procedural Guarantees: Evidence Examination

- *Witness examination*: Identification (through videoconference point in another court - Identification possible; if fully online- no solution yet; biometric authentication (face & voice) as a proposal)
- *Documents examination*: uploaded to the system before the hearing; ideally - joint access of court and parties/lawyers; now - only possibility of sharing screen
- *Criminal proceedings*: difficulties with evidence presentation
- How to examine original documents (if needed) or exhibits? - *no solution yet*
- NB: normally evidence should be disclosed before the hearing on the merits; no strict sanctions- non compliance of the parties

• Communication with lawyer in online hearing

- *Criminal Proceedings* (remand hearings etc.): generally personal attendance of the accused needed; videoconference possible from remand center / another court
- *St- Petersburg*: experiment with online accused-lawyer communication in remand centres (December 2020)
- *Civil / Commercial Proceedings*: lawyer may act alone but be connected to client
- Motion for a break if urgent matter

• Technical Issues

- *Use of special online platform* = lower risks;
- *Check-list* before hearing;
- Ideally - *moot session before hearing* (not used in Russian courts, but recommended, in particular, by ICC for online arbitration)
- If the problem persists - postpone

Legal Regulation

- Supreme Court's Ruling issued soon after the lockdown was introduced (29 March 2020)
- October 2020: *Law Draft on Online Proceedings* introduced by Government
- Not only technical matters but procedural guarantees (how to see other parties' evidence, interaction with the court, evidence examination, postponement of hearings, etc.)

Part II. Public nature of hearings and access of the general public and mass media

- *Restricted access to court hearings (only parties and lawyers)*
- *Online broadcast possible in high-profile cases*
- BUT: video recording and online broadcast on *judge's discretion*

Russian actor Efremov's appeal hearing

