

VIRTUAL CIVIL TRIALS: CHALLENGES AND OPPORTUNITIES

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The paper examines the difficulties of conducting virtual civil proceedings in the context of the COVID-19 pandemic, as well as the future of virtual trials after the end of the pandemic. In the current situation, the international dispute resolution community is forced to consider new ways of conducting litigation. Some practitioners have already started using what technology has been offering for many years; others are still discussing the possibility of virtual trials; the third group of people who do not want to go online believe that virtual meetings are not adapted to conduct trials at the proper level. The article reveals the essence of virtual litigation and considers various approaches to it. The advantages and disadvantages of online trials are discussed and predictions are made about the prospects of virtual trials after the end of the pandemic.

Key words: litigation, civil trial, virtual civil trial, virtual dispute resolution, COVID-19, administration of justice, post-pandemic virtual trials, virtual court proceedings, online courts.

Introduction. It is obvious that the world has dramatically changed in the past year, including government lockdowns and gathering restrictions. The question for many in the legal profession was “Where does that leave the administration of justice?” Courts have been required to think both quickly and efficiently to ensure that, where possible, hearings can proceed with the use of virtual hearings. Virtual hearings have been used to conduct hearings remotely in order to minimize the risk of the transmission of COVID-19 and to ensure the health of all parties in attendance is maintained. There is a litany of issues concerning virtual hearings in the administration of justice – from the right to fair hearing, witness tampering, security bridges, and the overall future of virtual hearings in a post-COVID-19 world.

1. Basic facts about virtual trials. Due to the rapid development of new technologies in the modern world, many areas of human life are transferred to the online format. Development of science and technology nowadays makes it possible for the participants of the court trial to hold the meeting online.

Virtual trials are understood as trials that are conducted using communication technology to simultaneously connect participants from two or more locations. This could include communication through telephone or videoconference, or possibly other more futuristic technology such as telepresence [1]. Virtual civil trial is very similar to a Skype conference or a call through another video conferencing service. The representative is at home or in the office and at the appointed time connects to the video call with the court. The structure of an online trial is not much different from a regular trial [2].

2. Balance between benefits and disadvantages of virtual trials. While in-person hearings and mediations will be the norm after the pandemic is in the rear-view mirror, virtual proceedings, including hybrid in-person/videoconference sessions, will be an enduring feature of the administration of justice. Based on the substantial experience gained during the pandemic judges, lawyers and ordinary people named some advantages and disadvantages of virtual civil trial [2].

While many attorneys and neutrals are yearning for the day they can return to in-person hearings, some have discovered that there are some advantages to virtual dispute resolution:

- Practicality;
 - Convenience;
 - Credibility;
 - Health care;
 - Affordability;
 - Environmental friendliness [3].
- Reflecting on the negative aspects of virtual hearings most commonly were listed the following aspects:
- Maintaining control;
 - Protecting the Integrity of Testimony;
 - Judging Witness Demeanor;
 - The ineffectiveness of old methods;
 - Risk of technological failures and disturbances;
 - Confidentiality issues;
 - Translations and Interpreters [3].

3. The influence of the covid-19 pandemic. According to the report by the foreign law research staff of the Law Library of Congress [4], such countries as Austria, Australia, Azerbaijan, Brazil, Canada, China, Finland, France, India, Israel, Ireland, Italy, New Zealand, Norway, Puerto Rico, Spain, Singapore, Ukraine, the United Arab Emirates, and the United Kingdom have adopted or are in the process of adopting specialized measures in response to the COVID-19 pandemic to facilitate virtual civil hearings, mediations, and/or trials. For example, in Australia, all hearings (other than in truly exceptional circumstances) are currently proceeding using remote access technology. In Canada, many courts have modified procedural rules or introduced protocols to deal with urgent matters through teleconference or videoconference. In China, the highest court has encouraged courts to fully implement online litigation through designated online litigation platforms. In the United Kingdom, the first hearing under the new legislation in response to the COVID-19 pandemic was held via Zoom on March 27, 2020 [4].

At the beginning of the pandemic there was a problem: the absence of express provisions addressing remote hearings in most court rules or national legislation. Among the existing ones can be noted Seoul Protocol on Video Conference in International Arbitration. The document was developed long before the outbreak of COVID-19. It was originally intended to settle complex arbitration proceedings in South Korea using advanced technology. However, it provides a useful guide even for those trying to independently manage small-scale arbitration on Zoom, Skype or similar platforms [5].

In response to the outbreak of the COVID-19 pandemic many institutions promptly released guidance to assist arbitration users. The Court of the International Chamber of Commerce (ICC) has issued a Guidance Note for international arbitration proceedings, with a protocol on virtual hearings in civil disputes [6]. Other examples include COVID-19: Information and Guidance in SCC Arbitrations (27 March 2020); ICC Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic (9 April 2020); and HKIAC Guidelines for Virtual Hearings (14 May 2020) [7].

4. The future of virtual trials in a post-pandemic world. There is a certain tendency: judges and lawyers who have already experienced a virtual hearing are more likely to propose such a hearing again. It is a classic development in most technology adoption — as a user gets more comfortable using a platform for a specific purpose, some of the initial unease related to technical hassle or uncertainty typically fades [3].

Virtual hearings cannot fully replicate the nuanced and instantaneous interaction between parties and other participants, which physical hearings can offer. Observing a person's overall demeanor, their surroundings, and the real time reactions of other participants in the room often yields useful information. On the other hand, virtual hearings can reduce expenses, spent time, and environmental damage associated with long-haul air travel, and can also ensure that necessary documents and pleadings are always at the fingertips of arbitrators and counsel [8].

As both physical and virtual formats have pros and cons, parties will have to find the right balance for each case. Many people will revert to the old ways to some degree while adopting the virtual hearing format in a manner that best fits their needs.

CONCLUSION. So far, virtual hearings have been used to conduct remote hearings to minimize the risk of COVID-19 transmission and to ensure the health of all parties present. But it is hard to predict what the world after the pandemic will look like, and it is also impossible to predict whether virtual trials will become a permanent thing or will be completely replaced by regular offline hearings. Given the current environment, one thing is clear: virtu-

al hearings allow for the administration of justice to continue when physical hearings cannot take place.

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