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Regulation on remote hearings

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Introduction

On 28 July 2020 Law 7251 on the Amendment of the Civil Procedure Code and Certain Laws entered into force, upon its publication in the *Official Gazette* (31199). Article 17 of Law 7251 amended article 149 of the Civil Procedure Code (CPC) 6100 to allow courts to conduct remote hearings through video and audio transmission, either upon the parties' request or ex officio under certain circumstances. The amendment further provided that the principles and procedures of remote hearings through video and audio transmission would be stipulated under a regulation. In line with this provision, on 30 June 2021, the Regulation on Hearings Through Video and Audio Transmission in Civil Proceedings (the Regulation) entered into force, upon its publication in the *Official Gazette* (31527).

Regulation

The purpose of the Regulation is defined as regulating:

- the principles and procedures as regard the attendance of parties and their attorneys to remote hearings through video and audio transmission in civil proceedings; and
- the rules on remotely hearing:
 - witnesses;
 - experts;
 - specialists; and
 - other participants.

In addition to the principles governing civil proceedings under Turkish law, the following principles must be regarded when applying the Regulation:

- ensuring that information is secure;
- protecting personal data;
- ensuring service quality; and
- ensuring national and international standards.

Video and audio transmissions must be transferred safely during remote hearings, and the video must be of sufficient quality to allow the relevant person's facial expressions, body movements, behaviour and attitude to be seen clearly. Similarly, the audio must be of sufficient quality to allow the relevant person's emotions and expressions to be heard clearly. Any information, documents or evidence shall be immediately transferrable through the National Judiciary Informatics System (the UYAP).⁽¹⁾

According to the Regulation, courts can render a decision to allow parties or their attorneys to attend the hearing remotely, upon request. Likewise, courts can decide to hear witnesses, experts or specialists remotely, upon request.

The request should be filed by one of the parties or their attorneys on the UYAP mobile app or portals, specifying their reasoning at least two working days prior to the date of hearing. Courts must render a final decision to accept or reject the request at least one working day prior to the date of hearing. Courts can reject remote hearing requests on the following grounds:

- the failure to file the request in due course;
- the abuse of the right to file a remote hearing request, with the intention of prolonging the trial; and
- the existence of legal, practical or technical obstacles that complicate holding a remote hearing.

The Regulation further provides that the courts will prioritise the remote hearing request of parties, witnesses, experts, specialists or other participants that would possibly have a difficult time attending the trial in person due to illness, elderliness or disability, upon request.

The courts can also ex officio decide to hear:

- witnesses, experts or specialists remotely; and
- the participants in actions and proceedings in which parties cannot dispose their rights freely by way of a remote hearing.

The Regulation also sets out the essential features of remote hearing locations. In this regard, attorneys requesting a remote hearing can attend remote hearings from:

- law offices;
- the area reserved by the Bar Association specifically for the remote hearing;



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- the areas assigned for remote hearings within courthouses;
- any location that is free from potentially impactful and influential factors, which could ensure that the attorneys can:
 - observe the relevant person's facial expressions, body movements, behaviour and attitude;
 - understand the relevant person's emotions; and
 - hear the relevant person's statement clearly.

Before a remote hearing commences, identification of the parties in attendance will be carried and the Regulation sets out the methods for this process, in different scenarios. For instance, the attorneys attending a remote hearing will be identified by way of secure electronic or mobile signature.

The Regulation provides that where the video and audio transfer cannot be transferred simultaneously or there is a connection problem which makes it difficult to understand the statements, the remote hearing will be initiated again. If the problem continues, the remote hearing will be cancelled.

Also, according to the Regulation, taking photos or recording video or audio during remote hearings is prohibited. Those who breach this ban will be subject to criminal penalties. However, the courts may decide to record the session in compulsory cases.

Where statements made during remote hearings concern waiver, acceptance or settlement, courts will adjourn the hearing to a new date and such statements will become valid only upon being:

- repeated in person before the court;
- written down in the hearing minutes; and
- signed by the stating party.

In addition, where a party, its attorney or another attendee is required to give their signature, the court will electronically submit the hearing minutes signed with the secure electronic signature to the courthouse where the remote hearing took place. The court clerks assigned to the area allotted to remote hearing will obtain the attendee's signature on the relevant part of the hearing minutes and electronically send back a copy to the court. The document bearing the original (wet) signature will be submitted to the file through the postal service.

Comment

The Regulation is expected to allow wider use of remote hearings. According to the most recent statistics announced by the ministry of justice in November 2021, the number of courts at which remote hearings are applicable has already increased to 1,400, and a total of 36,567 hearings had occurred remotely. The ministry of justice has provided a [map](#) that shows the courts at which the remote hearing mechanism is available. Further, the digital transformation project conducted by the ministry of justice envisages establishing the remote hearing system in more than 1,800 courtrooms across 2,000 courts within 2021.

It can be argued that the remote hearing procedure has not yet been fully settled. Therefore, attorneys do not feel entirely confident when filing remote hearing requests. For this reason, they request that the court deem them excused from the hearing if the court rejects their remote hearing request. Also, it has been observed that the courts have a tendency to decide on the remote hearing request on the day of the hearing, despite the fact that they are supposed to review the request and grant a final decision at least one day prior to the hearing date. In these circumstances, the courts proceed having deemed the attorneys excused if the hearing is not conducted remotely. However, as the Regulation sets out the principles and procedures for holding remote hearings, it may now provide guidance for the courts, and remote hearings are likely to become widely used.

In the long term, this practice is expected to also facilitate the trial process. It may serve the right to a fair trial by encouraging all parties to attend the trial, including the experts and witnesses, through more accommodating means, and may promote the right to access the courts.

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Endnotes

(1) The UYAP has been developed as an informatics system to ensure the integration of public institutions and external parties through the judicial system by means of providing an internal automation, including all civil and public judiciary units, related and associated institutions, and the provincial and central organisations of the ministry of justice. In this context, the correspondences between the judicial bodies, such as requests for consolidation of the cases or submission of the case to another court due to lack of jurisdiction, are conducted electronically via the UYAP. In addition, the services made to other parties can be followed on the UYAP. The system also allows attorneys to:

- submit lawsuit petitions;
- upload documents;
- follow their present cases; and
- make electronic money transfers of payments regarding the trial.