

IARMJ European Chapter Conference 2022 –
Brdo/Slovenia

SESSION 8: 'Remote Video Hearings in Asylum Disputes'

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Types of Oral Hearings in Asylum Matters

- **face to face hearings** (judge(s)/tribunal member(s), parties, witnesses, representatives, and interpreter attend the court/tribunal *in person*)
- **hybrid hearings** (at least one of the hearing participants does not attend the court/tribunal and uses remote technology, but others attend the court/tribunal)
- **remote hearings** (all participants do not attend the court/tribunal and use remote audio/video technology)

Remote hearings at the International Protection Appeals Tribunal (Ireland)

s.31(2) Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020
⇒ *remote hearings by designated body **not if** the designated body, of its own volition, or following the making of representations by a person concerned, is of the opinion that the application of the subsection to the hearing would be **unfair** to the person, or would otherwise be **contrary to the interests of justice**.*

Determination of Suitability for Remote Hearing

- **Privacy / administration of justice in public (Art. 6 ECHR)**
- **WiFi connection / suitable hardware**
- **Particular needs / vulnerabilities**
 - Mental health problems
 - Learning difficulties
 - Need for interpreters
 - Appellants without legal representation



UK Civil Justice Council:

“Some of the proposed changes, such as video hearings, are likely to provide significant assistance to some vulnerable witnesses. However, for others they may have the opposite effect.

*As a result, very careful consideration must be given before their implementation. The extent to which the introduction of digital systems and other new processes positively or negatively affect vulnerable people with the civil justice system will provide a barometer of their success (as opposed to the levels of any savings achieved) in providing **greater access to justice** through making “justice less confusing, easier to navigate and better at responding to the needs of the public”, and “every user to feel they have been treated swiftly, fairly and with respect”.*

Irish Bank Resolution Corporation Ltd. v Browne

[2021] IEHC 83

“[...] for instance, Judge, the great thing about the Court is everybody can see what is happening. I won't know what's happening in the room in which Mr. Browne may be remote from me if I am asking him questions. And you won't know what is happening. For all we know somebody may be holding up a prompt sheet. So, sorry, that may seem an outstanding statement but it is simply the reality that the parties to the action cannot know what's happening elsewhere.”

“There are practical ways of dealing with this perceived problem, and I do not consider this a real reason to come to the view that I cannot assess the evidence of the two central witnesses (as they are represented to me) if they give their evidence remotely. I believe that, from my own experience and what I understand to be the experience of other judges, I can assess the evidence of all the witnesses due to testify in this action, notwithstanding that this evidence is given remotely.”

Irish Bank Resolution Corporation Ltd. v Browne (contd.)

“Counsel can consult fully with his team in preparation for the examination of witnesses or the making of submissions; this may be done by video link, by phone call or by the provision of a memorandum, but that form of support is no less effective than a meeting. Indeed, it may be preferable. In terms of the examination of a witness, I am aware that (even in pre pandemic times) it was not unusual for solicitors to set up a WhatsApp group for the legal team in order to allow messages, prompts and advice to be communicated to counsel in real time while the court was sitting and while the witness was being examined. (...).”

*“... **the examination of a witness is essentially a solitary pursuit**; it is not a team sport. For each session, counsel will have prepared at least enough lines of examination (by which I in all cases include cross examination) to last the two hours. It may well be that there is an important prompt that needs to be given to counsel, but as I have described this can be done in a remote hearing.”*

Director of Public Prosecutions v O’Driscoll [2022] IECA 4

*“... the courts in this jurisdiction – across all divisions and in cases of every kind – have for a variety of reasons had frequent recourse to the use of evidence via video link. That experience suggests that **in many situations witnesses can give evidence in chief and be cross-examined via television or video link without impairing the fairness of a trial or affecting in any way the efficacy of a cross examination.**”*

“... the evidence that his ability to respond to questions in a court environment would be impaired more than justified the judge in exercising her discretion to enable him give his evidence by video link.”

Jallow v Norway (Application no. 36516/19)

“(…) while the Court accepts the applicant’s assertion that his lack of physical presence had to some degree entailed that [the other parent] was a priori in an easier situation than him owing to her being physically present, the Court does not find that the technical solution employed placed him at any **“substantial disadvantage”** as required by the Court’s case-law for there to be a violation of **Article 6** (…) in a case such as the present one, or that he did not have a reasonable opportunity to present his case. (…).”

See also: mutatis mutandis:

- *Dijkhuizen v. the Netherlands*, no. 61591/16, § 53, 8 June 2021;
- *Bivolaru v. Romania* (no. 2), no. 66580/12, § 138, 2 October 2018);
- *Ichetovkina and Others v. Russia*, nos. 12584/05 and 5 others, § 37, 4 July 2017;
- *Yevdokimov and Others v. Russia*, nos. 27236/05 and 10 others, §§ 41-43, 16 February 2016; and
- *Marcello Viola v. Italy*, no. 45106/04, §§ 67 and 73-74, ECHR 2006-XI (extracts)).

