

One year of e-hearings in Turkey

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IN THE AFTERMATH of the COVID-19 pandemic, virtual hearings have been the hot topic for the litigation community throughout the world. The Turkish litigation community is no exception. Even though the history of virtual hearings in Turkey goes back to before the pandemic, the first virtual hearing in a Turkish civil court was held in September 2020, six months after Turkey's first COVID-19 case and the introduction of COVID-19 restrictions.

Turkish Civil Procedure Law had, in fact, established the legal framework for virtual hearings in 2011. However, the required infrastructure had never been created. Then, in May 2019, the Ministry of Justice issued the third "Judicial Reform Strategy" document. This strategy document aimed to improve the use of information technology systems in the judiciary and subsequently, the introduction of virtual hearings was expected. The COVID-19 pandemic functioned as a catalyst, with Turkey accelerating their implementation.

The Civil Procedure Law was amended in July 2020 to establish the new legal framework for virtual hearings. The previous law required both parties' consent for a virtual hearing, a stipulation that quickly became an obstacle during the pandemic. Under the amended legal framework, upon request of one of the parties, civil courts can allow the requesting party or her or his lawyer to attend the hearing virtually. Moreover, upon request of one of the parties, or on their own motion, civil courts can decide to hear witnesses, court-appointed experts and party-appointed experts virtually. In certain cases, the law allows civil courts to decide on

their own motion to hear virtually those who are concerned with the case. Both parties' consent is no longer required.

The Ministry then introduced the "E-hearing" system and published a guideline on the use of this system. In June 2021, almost one year after the amendment to the law, the Ministry published the regulation on virtual hearings in civil courts.

The "E-Hearing" system allows lawyers to attend their hearings virtually through Turkey's national judiciary information system (known as UYAP). Under the Regulation, lawyers are required to submit their request to the court to attend a hearing virtually two business days before the relevant hearing at the latest. Requests must be accompanied by the reasons for the request to go virtual. According to the practice to date, the courts are inclined to accept lawyers' requests, in particular due to the pandemic.

The pilot E-hearing system was first tested in five civil courts in Ankara starting on September 15, 2020. After the pilot system was proven to be successful, the number of civil courts using the "E-Hearing" system gradually increased. On September 29, 2021, the Ministry announced that the "E-Hearing" system would be available for all civil courts in Istanbul and Ankara. The system is now available in 28 other large cities in Turkey. As of now, more than 25,000 virtual hearings have been held in 915 courts. The Ministry plans to implement this system in all civil courts in Turkey by the end of 2022.

The numbers may look impressive, but in fact, the use of virtual hearings in Turkey is not yet widespread. The number

of civil courts using E-hearings is very limited considering the total number of courts in Turkey (for instance, there are 164 civil courts within a single courthouse in Istanbul). There are numerous reasons for this lack of broad implementation. Firstly, the use of the E-hearing system is limited to civil courts; criminal and administrative courts have not yet started to use this system. In addition, while the legal framework allows civil courts to hear witnesses, court-appointed experts and party-appointed experts virtually, the technical infrastructure does not yet allow courts to do so and only lawyers can attend the hearings virtually for now. Last, but not the least, lawyers, as members of a conservative profession, still tend to attend the hearings physically, considering that the practice of virtual proceedings in Turkey is limited.

All in all, we welcome the introduction of long-awaited virtual hearings in Turkey and expect virtual hearings to increase the efficiency of court proceedings and to decrease costs as lawyers will be able to attend hearings from their offices. They will not be required to travel to other cities to attend hearings and wait in front of the courtroom until the court completes other hearings scheduled for the same day. Turkey is still in the early stages of this transition and, therefore, we will have a more accurate picture once lawyers start using the E-hearing system more often. Once all courts in Turkey start using the system, and other participants in the proceedings - namely, witnesses and experts - are able to attend the hearings virtually, we will have finally established a virtual legal system in Turkey.

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