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New Technologies  
— New Justice

# NEW TECHNOLOGIES = NEW LAW

National regulations

Spain





HELŚIŃSKA FUNDACJA  
PRAW CZŁOWIEKA

**A QUESTIONNAIRE FOR LAWYERS FROM DIFFERENT JURISDICTIONS**

**The Helsinki Foundation for Human Rights and the Clifford Chance Foundation are implementing the project *New technologies = new law. The rules of procedure of our time or a threat to human rights?*** The project aims to identify the main opportunities and threats associated with the increasing impact of new technologies and artificial intelligence on the justice system. This questionnaire is designed to explore the solutions existing in different countries and will provide a foundation for further research within the project.

<b>Country</b>	SPAIN
<b>Date</b>	10 February 2021, complemented 4 March 2021
<b>Submitted by (name of the contact person)</b>	Fernando Irurzun

## PRE-TRIAL PHASE

1.

Is it required to use any alternative forms of dispute resolution in the country where the Office operates before a case is brought to court? Can such alternative forms (e.g. mediation, negotiations) be conducted online?

Use of ADR is mandatory only in some cases:

- When the parties have so agreed in civil contracts.
- Prior to proceedings before a labour court (it is mandatory to attempt conciliation or, where appropriate, mediation).
- In Catalonia: mandatory mediation prior to filing a legal claim in cases of foreclosure of the main residence.

Also note that under Articles 414 and 440 of the Spanish Civil Code, the court is obliged to seek amicable settlement of disputes and to encourage parties to mediate before a hearing takes place (though it is not mandatory for them to do so).

The specific regulation of the ADR system chosen by the parties determines whether or not it can be conducted online, a form of mediation/negotiation that is in wide use in practice, especially in the current circumstances.

## ACCESS TO COURTS AND NEW TECHNOLOGIES

2.

Is it possible to remotely participate in a court hearing in the country where the Office operates? If so, please indicate in what types of cases remote participation is possible, or what requirements entities must meet to be able to do so. Please also indicate which participants in the trial (parties, witnesses, experts, etc.) have the opportunity to participate remotely in a court hearing. Please specify if remote participation is mandatory or optional (at the request of the parties).

There is a general provision allowing for remote participation in court hearings when so agreed by the judge or court, as long as there is simultaneous two-way communication of image and sound and visual, auditory and verbal interaction between two geographically distant persons or groups of persons. In all cases, the parties must be able to be heard and the right of defence must be safeguarded.

Besides this general principle, the regulation differs between criminal and non-criminal proceedings. It also has to be taken into

		<p>account that the legislation has been amended due to the COVID-19 pandemic.</p> <p>Before the COVID-19 pandemic there were more specific limitations on remote participation in court hearings in criminal proceedings:</p> <ul style="list-style-type: none"> <li>- The prosecutor could attend the hearing by videoconference.</li> <li>- Interpreters could also provide their services via videoconference.</li> <li>- The judge could agree to the participation via videoconference of the accused, a witness or an expert, <i>ex officio</i> or upon request. This was established to be only for reasons of public order, utility or safety, as well as in situations where attendance could be burdensome or prejudicial to the person in question.</li> </ul> <p>Due to the COVID-19 pandemic, a new law on procedural and organisational measures to address COVID-19 as it affects Justice Administration was enacted<sup>1</sup>. The new law states that until 21 June 2021 digital attendance will be prioritised in trials, hearings and, in general, all procedural acts, provided that the courts and public prosecutor's offices have the necessary technical means for this.</p> <p>However, there are some exceptions in criminal cases. The physical presence of the accused will be required in the following situations:</p> <ul style="list-style-type: none"> <li>- In case of felony (always).</li> <li>- When provisional custody of the accused is being sought (at request).</li> </ul>
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<sup>1</sup> Spain, Spanish Act 3/2020, of 18 September, on procedural and organisational measures to address COVID-19 as it affects Justice Administration (*Ley 3/2020, de 18 de septiembre, de medidas procesales y organizativas para hacer frente al COVID-19 en el ámbito de la Administración de Justicia*), 18 September 2020.

		<ul style="list-style-type: none"> <li>- When a prison sentence of more than two years is being sought (at request).</li> </ul> <p>In such situations, the accused's attorney can physically attend the hearings as well.</p> <p>This law must be read in light of a special guide on remote court proceedings<sup>2</sup> that has also been implemented in the context of the pandemic. It is of particular relevance that the guide establishes that the decision to hold a physical trial does not exclude the option to carry out certain procedural acts remotely, as had previously been done in the courts' daily practice, provided that the guidelines as to how these specific remote procedural acts should be carried out are observed.</p>
<p><b>3.</b></p>	<p>If you have answered question 2 in the affirmative, please indicate whether the location of a person remotely attending a court hearing is legally regulated. If so, please indicate specific requirements.</p>	<p>The location of a person remotely attending a court hearing is not legally regulated under Spanish law, but the way of proving the person's identity is.</p> <p>The identity of the persons participating via videoconference must be confirmed from the court itself, by means of the prior submission or direct exhibition of documentation or by personal knowledge.</p> <p>Nonetheless, following the outset of the COVID-19 pandemic more specific guidance on the matter was developed, mainly through the approval of the aforementioned guide on remote court proceedings.</p> <p>When a remote court hearing is held, it is considered most appropriate for persons other than the professionals involved in the</p>

<sup>2</sup> Standing Committee of the General Council of the Judiciary, Guide on remote court proceedings (Guía para la celebración de actuaciones judiciales telemáticas), 27 May 2020.

		<p>proceedings – parties, witnesses, experts – to attend from a court office, whether it is the office of the body where the proceedings are held or another closer to the place of residence of the person taking part in the proceedings.</p> <p>In relation to members of the Public Prosecutor's Office, attorneys and court agents, it has been stated that they may intervene from their official offices or professional offices when their physical presence is not required by the judicial authorities.</p>
4.	If you have answered question 2 in the affirmative, please indicate whether the remote participation takes the form of a video conference.	Yes, it does (for more information review question number 2).
5.	If you have answered question 4 in the affirmative, please indicate what video conferencing platform is used. Is it a commonly available platform (such as Skype, Zoom, MS Teams), or is it a platform specifically developed for the courts?	<p>Before the COVID-19 pandemic hit, courts used a platform called ARCONTE (specifically developed for the courts).</p> <p>Now, more commonly available platforms are being used, but they may vary according to each region. In the territories where the Ministry of Justice provides logistics facilities (e.g. Castilla-La Mancha, Castilla y León, Extremadura, Murcia, the Balearic Islands, Ceuta and Melilla), the Cisco Meeting videoconferencing system is used, and recording with eFidelius is mandatory.</p> <p>As for the rest of the autonomous communities (<i>Comunidades Autónomas</i>), the platform is chosen by the relevant justice department. In Catalonia, for instance, thousands of WEBEX licenses have been purchased; in Madrid, Zoom is most widely used.</p>

6.	If it is possible to participate remotely in a court hearing in a form other than a video conference (e.g. via an audio link or a telephone call), please indicate the form(s) available.	Technical devices enabling remote attendance of the trial to be conducted on the basis of simultaneous two-way direct transmission of image and sound (videoconference) must be used.
7.	When remote participation is possible, please indicate if all remote participants can be watched during the entire duration of a court hearing.	It is not required explicitly by law. Usually, all remote participants can be watched throughout a court hearing, and they can also watch and hear the other participants because the platforms that are being used include technologies that allow for this.
8.	When remote participation is possible, please indicate how confidential discussions between the attorneys and the parties can be carried out.	<p>According to the guide on remote court proceedings (drawn up due to the COVID-19 situation), in criminal proceedings, during remote hearings, the accused will have the option to maintain permanent and reserved remote contact with his/her lawyer under exceptional circumstances in which the lawyer and the accused are not in the same room.</p> <p>The guide also includes the concept of "virtual rooms", which are videoconferencing systems that simulate a physical room in a digital environment. They are also known as "low-quality videoconferencing". They lack two-way sound, requiring a moderator to manage the room (e.g. invitations, muting, giving the floor, etc.). Among other features, these virtual rooms guarantee access to private communication channels for each party and the court (for instance, secure chat rooms enabling attorney-client communication)</p>
9.	Please indicate how it is possible to submit documents while remotely attending a court hearing.	If the hearing is to be held remotely, documentary evidence must be submitted in advance to the court by means of a system that ensures that the attorneys may view and download it (note that the number of documents to be submitted can be a determining factor when assessing the appropriateness of holding trials and hearings remotely).

		In addition, for documentary evidence, it is advisable to allow the parties' attorneys to exhibit the documents prior to the decision of the judge or court so that they can only download the documents onto their devices once the decision to admit the documents has been reached.
<b>10.</b>	Is it possible to submit pleadings electronically in the country where the Office operates? If so, please indicate in what types of cases pleadings can be submitted electronically.	<p>Yes, electronic submission is mandatory in almost all Spanish court proceedings.</p> <p>Under Spanish Act 18/2011, regulating the use of information and communication technologies in Justice Administration, judicial offices with registry functions are provided with the appropriate electronic means for the reception and registration of pleadings and documents.</p> <p>On the one hand, this law establishes an obligation for legal professionals to use the digital or electronic systems existing at the Judiciary when submitting pleadings or other documents.</p> <p>On the other hand, persons who are not legally obliged to be represented before the courts by a court agent may choose at any time whether to or not act before the Judiciary using electronic means, unless they are required to do so by electronic means. If they choose to interact electronically, the "electronic judicial headquarters" will provide the interested parties with the relevant standard forms available for submission.</p>
<b>11.</b>	If you have answered question 10 in the affirmative, please indicate how the pleadings are submitted (e.g. by e-mail or via a special platform), what additional formal requirements are imposed on the pleadings and how the	All pleadings are submitted through special platforms called "electronic access points". These are electronic judicial offices managed by the administrations responsible for justice matters.

	<p>identity of the person submitting a pleading is verified to prevent impersonation of a party to the proceedings.</p>	<p>The most commonly used electronic access point is LexNET. This portal allows for the filing of pleadings and documents, the transfer of copies and the sending of notices and notifications. Through encryption, the filing of pleadings and documents is safeguarded, along with the receipt of notices and notifications, their dates of issue, availability and access to their content.</p> <p>There is also a repository with simultaneous copy to the Court agent of the other parties.</p> <p>This is the platform to be used by judicial and prosecutorial bodies and legal practitioners (lawyers, court agents) to submit their pleadings electronically.</p> <p>In order to guarantee identification and authenticity in electronic correspondence with the Judiciary, specifically through the above-mentioned electronic judicial offices, users must have an electronic signature. This guarantees the identification of signatories and the authenticity and integrity of electronic documents and secures communications. The LexNET system is considered a certified electronic delivery system pursuant to Article 43 of Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014.</p>
<p><b>12.</b></p>	<p>Please indicate if the parties (or their attorneys) have remote access to the case files in the country where the Office operates? If so, please indicate the type of remote access.</p>	<p>No. The case files are only accessible to the court. The clerk electronically sends all the court decisions to the parties, including procedural decisions.</p> <p>In some cases, the court provides remote access to documents or evidence filed in cases. However, the Court uses a different</p>

		<p>electronic platform rather than direct access to court files for this purpose.</p> <p>Nevertheless, a restricted-access electronic service is made available to the parties where, after identification and authentication, they can at least consult the information on the status of the proceedings, unless the applicable rules provide for restrictions on such information.</p> <p>Furthermore, there is also a legal provision that states that the transfer of the case file will be replaced by the provision of the electronic court file, as all those who have it in accordance with the provisions of the procedural rules have the right to obtain an electronic copy of it (this provision does not apply to the parties).</p>
<b>ARTIFICIAL INTELLIGENCE AND COURTS</b>		
<p><b>13.</b></p>	<p>Do the courts in the country where the Office operates use any tools that incorporate Artificial Intelligence? If so, please indicate whether such tools are used exclusively for back-office purposes or (also) in external contacts (e.g. chatbots)?</p>	<p>The Council of the Judiciary and the Ministry of Economic Affairs and Digital Transformation have signed an agreement to develop an AI tool for better knowledge and use of case law.</p> <p>Such agreement was signed in October 2017 but due to budget restrictions and to the change in Government it has seen little development. It expires in October 2021 and there is no information about its renewal.</p> <p>Also, an AI tool called "Language Technologies" is already in development and use. This type of AI allows for, among other things, the automatic exploitation of a large amount of textual and oral information through the use of several technologies, such as</p>

		natural language processing, machine translation and conversational systems.
<b>14.</b>	Does the justice system in the country where the Office operates use Artificial Intelligence tools to identify groups of individuals who are more likely to commit a given type of crime (e.g. tax offences)?	<p>No. There are certain AI tools for profiling criminal risks in geographical areas but not for individuals or groups. These AI tools have not been made public or official yet. Here are a couple of examples:</p> <ul style="list-style-type: none"> <li>- A programme called Eurocop, a project of the University of Castellón, which is designed to draw up a risk forecast map for specific places in a city at specific times.</li> <li>- Predictive Police Patrolling (P3-DSS), which uses an algorithm to assign police units to a patrol area based on a risk level drawn from the history of criminal acts committed in that area.</li> </ul>
<b>15.</b>	Please indicate if in the country where the Office operates the parties have general access to tools facilitating the submission of a pleading in simple cases (e.g. by completing an online form available on the court's website)?	This option is established by law (Act 18/2011, regulating the use of information and communication technologies in the Judiciary) but has not been developed yet.
<b>16.</b>	Has the justice system in the country where the Office operates automated a certain range of its functions (e.g. certain administrative activities)? If so, please indicate what technologies are used for automation purposes?	<p>No. Only for searching for and exchanging information.</p> <p>The law states that the Judiciary will apply IT, technological, organisational and security measures to ensure an adequate level of technical, semantic-legal and organisational interoperability between all systems and applications that the Judiciary uses.</p> <p>Today, the application of IT already enables the efficient exchange of information between the different judicial bodies and also with</p>

		<p>other administrations. Furthermore, the integration and interoperability of the different procedural management systems and their interoperability with information systems related to the functioning of the Judiciary is being implemented.</p> <p>There is also a technology solution called "Digital Justice", which allows information to be electronically processed and involves the interconnection of five systems, in which security is assured.</p>
<b>ONLINE COURTS</b>		
<b>17.</b>	<p>Are there any court proceedings in the country where the Office operates that are entirely conducted online? If so, please indicate which types of proceedings are conducted online (e.g. small claims cases, family cases, etc.) and specify if the online mode of such proceedings is mandatory or optional (at the request of the parties).</p>	<p>There are no court proceedings carried out entirely online, although, as we have seen in previous questions, there are some actions that can be carried out remotely (e.g. submission of pleadings or cross-examination when the party/witness/examiner cannot physically attend).</p> <p>However, with the new COVID-19 measures adopted, it is possible to conduct trials almost entirely online. Note that this is only an option, not standard practice.</p>
<b>18.</b>	<p>Are there any online courts (courts accessible only via the Internet, whose proceedings are conducted exclusively and entirely online) in the country where the Office operates? If so, please indicate the scope of jurisdiction of such courts.</p>	No.
<b>19.</b>	<p>If you have answered question 17 or 18 in the affirmative, please indicate if appellate proceedings are also conducted online.</p>	When appellate proceedings do not include hearings, all the proceedings are conducted via writs submitted by electronic means.

<b>PROCEDURAL GUARANTEES AND NEW TECHNOLOGIES</b>		
<b>20.</b>	If you have answered question 17 or 18 in the affirmative, please indicate whether the country where the Office operates has implemented any mechanisms aimed to grant legally required levels of the access to court to digitally excluded persons. Please indicate specified mechanisms (e.g. possibility of conducting the proceedings, otherwise held online, in traditional form due to justified request of the party).	<p>The law requires public administrations to ensure the effectiveness of the right of all citizens to interact electronically with the Judiciary regardless of their personal circumstances, means or knowledge (e.g. equal electronic access to all services).</p> <p>However, no specific measures have been developed.</p>
<b>21.</b>	If you have answered question 17 or 18 in the affirmative, please indicate how the principle of open proceedings is ensured.	<p>The best way to ensure this principle is through public attendance in the courtroom or in a separate unit where they can watch the proceedings over a closed circuit, taking the necessary measures to avoid secret recordings. Due to COVID-19, seating capacity can be limited in accordance with health measures.</p> <p>If it is not possible for the public to attend the premises of the body holding the proceedings or another judicial location from which they can follow the proceedings, a "virtual notice board" is placed at the corresponding electronic site, indicating the date and time of the hearing, the type of proceedings and the number of the proceedings. In such cases, the software used for the remote session must allow access by third parties by means of a password or invitation, which will be provided once the person concerned has been authorised, physically or virtually, before the court.</p> <p>In the case of publicly relevant trials, the judicial bodies can authorise the full transmission of the court proceedings.</p>

<p><b>22.</b></p>	<p>If you have answered question 17 or 18 in the affirmative, please indicate how is the sensitive data from those proceedings being archived.</p>	<p>Sensitive data is archived in the court's database, which has limited and controlled access.</p>
<p><b>23.</b></p>	<p>Has the Court of the highest instance in the country where the Office operates produced any rulings on the standards of procedural fairness of the online proceedings?</p>	<p>In 2005 the Spanish Supreme Court issued a ruling on this matter, with the following noteworthy points:</p> <ul style="list-style-type: none"> <li>- The Court noticed that the basic principles of proceedings may be different depending on whether the courts are hearing a witness or an expert opinion (which only require the undertaking of accuracy and reliability of the information received by the judge and the right for the other party to be heard), as opposed to those cases in which a court is hearing the defendants themselves (especially in hearings), since they need to speak, defend themselves and be in constant contact with their attorneys.</li> <li>- Since the integrity of proceedings cannot be assured when conducted online, the decision to hold a trial with the presence of the accused by videoconference requires the utmost attention to be given to proportionality criteria, weighing in the potential sacrifice of the standards of procedural fairness against the causes that make such a measure advisable.</li> <li>- All the above led the Court to the inevitable conclusion that only reasons of absolute impossibility of physical attendance by the accused would justify the use of online means, especially where the presence of the accused him/herself is involved.</li> </ul>

		<ul style="list-style-type: none"> <li>- All in all, the court does not accept a broad interpretation of the option to conduct trials by videoconference. The cases in which to use such means must be tightly restricted.</li> </ul> <p>However, this case law may have shifted due to the development of new technology and the COVID-19 pandemic.</p>
24.	Are there any legal regulations in the country where the Office operates in place concerning the participation of persons deprived of liberty in online proceedings? In particular, are there any legal requirements concerning the surroundings and the conditions of the participation of the accused in online proceedings in order to avoid indirect infringements on the presumption of innocence rule?	<p>There is no specific regulation for this scenario.</p> <p>However, there are provisions in the Spanish Criminal Procedure Act for situations in which the personal circumstances of the accused make their remote participation advisable, which are as follows:</p> <ul style="list-style-type: none"> <li>- reasons of utility, security or public order.</li> <li>- any other circumstances that are particularly burdensome or prejudicial to the accused.</li> </ul> <p>In such an event, the judge may order <i>ex officio</i> or at the request of a party that the accused appear by videoconference or any other such system that allows for two-way communication.</p>
25.	Is there any particular category of cases in the country where the Office operates that requires parties to be physically present in the courtroom during the proceedings (e.g. pre-trial detention proceedings), despite basic admissibility of the online proceedings and online participation of the parties in those proceedings?	<p>Yes, in criminal proceedings.</p> <p>As a general rule, the accused and his/her defence attorney are required to be present at the trial's hearing.</p> <p>Moreover, as seen in question 2, the new law and guidance concerning special solutions for preventing and fighting COVID-</p>

		<p>19 in justice administration state that the physical presence of the accused will be required in the following situations:</p> <ul style="list-style-type: none"> <li>- In case of felony (always).</li> <li>- When provisional custody of the accused is sought (at request).</li> <li>- When a prison sentence of more than two years is sought (at request).</li> </ul> <p>In these situations, the accused's attorney can physically attend the hearings as well.</p>
26.	Is the AI based software being used during the evidence proceedings in the country where the Office operates?	No.
27.	Has the country where the Office operates implemented any specific legislation concerning the access to assigned counsel (legal aid counsel/public defender) in online proceedings?	There is no specific legislation concerning access to assigned counsel in online proceedings. The general regulation is applied.
28.	Are there any trainings dedicated to technical aspects of the participation in online proceedings being organized for judges, prosecutors and other legal professionals in the country where the Office operates?	The Council of the Judiciary and bar associations provide training to judges, lawyers and other professionals within the justice system.
29.	Are new technologies used to alleviate the stress associated with participating in court proceedings that may potentially be experienced by vulnerable persons (e.g. victims of violent crimes, children) in the country where the Office operates? If so, please indicate how such technologies are used.	The Spanish Criminal Procedure Act provides that the Court may agree that a person can appear by videoconference or another such system that allows two-way communication <i>ex officio</i> or at the request of a party, for reasons of utility, security or public order, as well as in those cases in which the appearance of a person who is to appear in any type of criminal proceedings as a defendant, witness, expert witness or in any other capacity would be burdensome or prejudicial, especially in the case of minors.

30.	Please indicate if any solutions are used in the country where the Office operates to adjust the digital tools for accessing courts to the needs of persons with disabilities, the elderly or those with difficulties in operating a computer. If yes, please specify these solutions.	No.
31.	Please indicate if in the country where the Office operates the parties have general access to guidebooks covering the technical and legal aspects of the participation in online proceedings.	Yes. The guide on remote court proceedings – to which we have referred – adopted by the Council of the Judiciary in 2020.
32.	Has the country where the Office operates implemented any separate legal procedures concerning the proceedings in case of computer or internet malfunction affecting either the parties or the court?	There is no specific procedure for virtual hearings. In relation to repositories for electronic submissions, such as LexNET, there is a protocol for events of interruption of the service, allowing parties to submit a pleading after the original delay.
33.	If you have answered question 32 in the affirmative, please indicate what are the actions taken to limit the possibility of parties deliberately obstructing the court proceedings (e.g. by intentionally disconnecting the Internet) without infringing on the parties rights in the case of genuine technical difficulties.	
<b>ADDITIONAL INFORMATION</b>		
34.	If in the country in which the Office operates, the judiciary uses new technologies in a form that has not yet been included in any of the above questions or answers, please indicate it.	N/A

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**New Technologies — New Justice** is a joint project of the Helsinki Foundation for Human Rights and Clifford Chance.

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In today's world, new technologies are present in virtually all spheres of life – and they are also becoming increasingly important for the modern justice system. The project seeks to examine the actual presence of new technologies in the justice system of Poland and around the world, as well as to identify the main risks associated with modern legal technologies and the most promising solutions to these risks. The advancing digitalisation of the justice system and the digital modernisation of the legal system is an inevitable consequence of the need to ensure that the legal system keeps up with the times. That is why the Helsinki Foundation for Human Rights and Clifford Chance work to identify solutions for improving the justice system to ensure that the rights and freedoms of individuals are not only respected but also exercised more easily.

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