

Will COVID-19 skyrocket remote hearings?

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Introduction

Background

Law 7251

Comment

Introduction

Law 7251 on the Amendment of the Civil Procedure Code and Certain Laws entered into force upon publication in the *Official Gazette* (31199) on 28 July 2020. 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. Although the concept is not new to Turkish law, the expansion of its scope is significant given the ascending number of COVID-19 cases in Turkey.

Background

The possibility to conduct remote hearings through video and audio transmission was introduced to Turkish law by the Penal Procedure Code 5271, which entered into force on 1 June 2005. Later, the CPC, which entered into force on 1 October 2011, set out the legal framework for the use of remote hearings in civil trials.

Before Law 7251, the CPC stipulated that the courts could allow parties and their attorneys to attend hearings and carry out judicial proceedings remotely through video and audio transmission, provided that the parties had consent to do so. The courts could also permit witnesses, experts, private experts and parties to be heard outside the courtroom during the hearing via remote link, provided that the same condition was satisfied.

Law 7251

Law 7251 has removed the consent requirement and enables the courts to allow:

- parties and their attorneys to attend hearings and carry out judicial proceedings remotely; and
- witnesses, experts and private experts to be heard outside the courtroom via video and audio transmission upon the request of either party.

Further, the courts may *ex officio* decide whether the relevant individuals can be heard through simultaneous audio and video transmission when the case or the proceedings concern non-disposable rights.

Pursuant to the same article of Law 7251, the courts may now decide to hold hearings elsewhere within the provincial borders due to factual obstacles or for security purposes. In such cases, the courts will obtain the assenting opinion of the Justice Commission of the relevant regional court of justice.

As Law 7251 suggests that the procedure and principles regarding the implementation of remote hearings through video and audio transmission will be set out by secondary legislation, such legislation is expected to provide further insight and detail on the matter. However, the announcement published on the official website of the Ministry of Justice briefly sheds light on the conduct of remote hearings:

- Attorneys must file their requests for a remote hearing through the National Judiciary Informatics System at least 24 hours prior to the relevant hearing.
- Attorneys must connect to the hearing through videoconference and the hearing will begin once the court activates the system.
- Attorneys' ID information must be verified by electronic signature on the system designed by the Ministry of Justice and the judge will confirm such information and photos through the National Judiciary Informatics System.

This practice commenced in certain courts as of 15 September 2020. It has been reported that attorneys attending remote hearings wear court robes and make their statements upon ID verification, as is the case in

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physical hearings.

Comment

Although remote hearings are not new to Turkish law, allowing more space for such practice is significant given the extraordinary circumstances arising from COVID-19. As legal practitioners need to pay extra attention to social distancing and hygiene rules due to crowded courtrooms and the interactive nature of the job, remote hearings will likely come as relief for those concerned about potential health-related risks. However, this practice is available only in certain courts and more widespread use may create capacity problems for the existing judiciary infrastructure. Nonetheless, Law 7251 is expected to facilitate the trial process in the long term.

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