

AVIDICUS 3 PROJECT

Assessment of Video-Mediated Interpreting in the Criminal Justice System – Assessing the Implementation

RESEARCH REPORT

The use of Videoconferencing in Proceedings Conducted with the Assistance of an Interpreter

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1 Introduction

AVIDICUS 3 has focused on the use of **videoconferencing in bilingual legal proceedings that involve the assistance of an interpreter**. The rationale was twofold. Firstly, videoconferences (VCs) are frequently used in both national and cross-border proceedings, for example, to link to a defendant in prison or a witness in another country. The current scale of migration and multilingualism in Europe means that such proceedings are often bilingual and require the integration of an interpreter into the VC. Secondly, VCs are used to gain access to remotely located legal interpreters. References to this use of VC are incorporated in Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings and Directive 2012/29/EU on the rights, support and protection of victims of crime.

Given these developments and the important role of videoconferencing in European eJustice, bilingual VCs are likely to become more frequent in legal proceedings across Europe in the coming years. Institutional stakeholders responsible for the implementation of VC facilities in the justice sector should therefore make appropriate provisions for the integration of interpreters in VCs. The findings of the AVIDICUS 1 and 2 projects, which assessed the viability and quality of VC-based interpreting in criminal proceedings and on which AVIDICUS 3 built, suggested that such provisions should include

- a. Measures for identifying and mitigating basic communication and interpreting problems in VCs including awareness-raising and training of legal practitioners and interpreters; specification of appropriate communication procedures; and development of guidelines;
- b. Due regard for technological and design-related factors such as the quality of the VC equipment, room layout, participant distribution and positioning of participants in relation to the equipment; the technological and communicative management of the VC; the mode(s) of interpreting in legal proceedings (simultaneous and consecutive); and the impact of these factors on the efficiency and fairness of justice.

Whilst AVIDICUS 1 and 2 each focused on different aspects of point a), AVIDICUS 3 turned to the design and implementation of bilingual VC solutions. The **main aim** of AVIDICUS3 was to conduct a comprehensive assessment of the current practices in the implementation and use of VC facilities in the justice sector across Europe in order to ascertain whether these practices are suitable for bilingual communication with the assistance of an interpreter.

One of the **main instruments** to achieve this aim was to conduct a series of in-depth interviews with different stakeholder groups, complemented by fieldwork such as site visits of courts, police stations and prisons with videoconferencing facilities and observation of videoconference-based bilingual proceedings. The aim was to elicit different practices, experiences and attitudes, to identify areas of consensus and good practice but also highlight potential problems and discrepancies that need to be addressed. A further part of the project was an observational study and in-depth qualitative analysis of court hearings using VCs to link to a remote party who requires the services of an interpreter. This study focused on different options for the location of the interpreter (in court, with the remote party) and their implications for the communicative dynamics of these hearings.

This report presents the main findings of both parts of the study. Section 2 will first explain the methodological approach to both parts of the study. The subsequent sections give an overview of the situation in the 12 countries covered by this study. Section 15 provides the partnership's assessment of the different practices identified in the interviews and fieldwork. The section also points to potential solutions of the problems identified. Section 16 presents a more detailed description of the methodological approach to, and the findings from, the observational study and qualitative analysis of VC-based court hearings. Section 17 concludes this report.

These outcomes will be of direct relevance to European eJustice. Following AVIDICUS 1 and 2, the AVIDICUS 3 project will constitute a final step in the assessment of VC-based interpreting in legal

proceedings, by focusing attention on in situ implementation and with the aim of making the practice of bilingual videoconferencing in European legal proceedings as user-friendly and efficient as possible, as a step towards ensuring equality of all citizens before the law, irrespective of the need for linguistic and/or technological mediation.

2 Methodological approach

As explained above, the main research activity of this project focused on ascertaining to what extent currently available videoconferencing facilities in the different parts of the justice sector of the European Member states are fit for the purposes of bilingual videoconferencing. One of the main instruments used by the partnership to achieve this aim was to conduct **a series of in-depth interviews** with

- i. Institutional representatives who have responsibility for the procurement, implementation and management of videoconferencing facilities in judicial and law enforcement institutions;
- ii. Different types of individual stakeholders (legal professionals, interpreters and speakers of other languages who have experienced bilingual VCs during their proceedings).

In total, 116 **informants** in 12 countries were interviewed. The countries covered include Belgium, Croatia, England, Finland, France, Hungary, Italy, the Netherlands, Poland, Scotland, Spain and Sweden. The breakdown by stakeholder role is as follows:¹

- 24 Institutional stakeholders (with responsibility for VC facilities)
- 49 Legal professionals (judges, prosecutors, defence lawyers, clerks, police officers, prison staff)
- 11 IT staff (court technicians responsible for the VC equipment)
- 29 Legal interpreters (with experience in video-mediated interpreting)
- 3 speakers of other languages involved in video-mediated bilingual proceedings

Most of the interviews were recorded and transcribed. A very small number of informants refused to be recorded, and during a prison visit, recording was not allowed; in all those cases, notes were made during the interviews by the interviewers and added to the data corpus. The interview material was subjected to a **thematic analysis**. This involved an initial analysis and coding of the material using the analysis software ATLAS.TI in order to facilitate the identification of emerging themes in a systematic way. During this process, the following main themes emerged:

- Uses of Bilingual Videoconferencing (legal settings in which VCs are used)
- Procurement phase
- Equipment and Maintenance
- Participant Distribution in bilingual VCs
- Pre-VC/Post-VC events, i.e. briefing/debriefing
- Mode of Interpreting
- VC Management incl. positioning in relation to equipment, visibility
- Communication Management the bilingual VCs
- Working Arrangements with Interpreters

The interviews were complemented by **field observations** at the institutions visited for interviews. Whilst it was not always possible to observe proceedings live, it was possible to visit court rooms, VC rooms in police stations, prisons and detention centres that are equipped with VC facilities and used for cases of bilingual videoconferencing with an interpreter. This fieldwork greatly facilitated the partnership's understanding of the situation and the documentation of the relevant facilities through photos and diagrams. The observations included site visits to over 20 sites (court rooms, police stations, prison facilities) with videoconferencing facilities, and approximately 10 observations of live proceedings at using these facilities.

The views obtained from the different stakeholder groups through the interviews and the field observations were analysed by the themes identified, compared and contrasted with each other, and triangulated with information from other sources (e.g. policy and strategy reports produced by Ministries of Justice, court administrations and other parts of the justice sector, public information on

¹ Precise job titles or roles are not given in this report to protect the informants' identity.

court websites, relevant conference presentations). The findings from each country (Sections 2-14) and the assessment in Section 15 are presented in relation to these themes.

Another crucial part of the research was an **observational study and qualitative analysis** of the use of videoconferencing with interpreting in the French asylum appeal court. After obtaining permission to film the proceedings, a total of 36 proceedings featuring approximately 300 cases was recorded and analysed in depth to identify the impact of different participant distributions (e.g. the interpreter's geographical location in the video link) on the communicative dynamics and the perceptions of the interpreter's role. The methodological approach to this part of the study will be explained in detail in Section 16, before presenting the findings from the qualitative analysis in the same section.

The AVIDICUS3 project has made a significant contribution to identifying good practice as well as real practical problems of those involved in bilingual videoconferencing including institutional stakeholders responsible for implementing and managing VC solutions; legal practitioners including police officers, prosecutors, judges, defence lawyers, suspected and accused persons, defendants, witnesses and legal interpreters. The work carried out will contribute to ensuring that the complexities of combining videoconference-based and interpreter-mediated communication are better understood by all stakeholders. It will thus make an important contribution to improving the practice of bilingual videoconferencing in the interest of safeguarding the quality and fairness of justice.

3 Belgium

The following report summarises the situation in the Belgian legal system, where videoconferencing is used in national proceedings and cross-border hearings of witnesses, defendants and experts. This report is based on interviews with legal professionals from the judiciary and prosecution services, technical personnel and staff responsible for court modernisation. Further sources of information include the information about videoconferencing available on the European E-Justice portal, the European VC survey 2008, and the information collected in previous AVIDICUS projects.

3.1 Procurement

Belgium is one of those countries in which the use of videoconferencing in the legal system is currently rather restricted. There is currently only one permanent video link, which connects the **Courts of Appeal in Antwerp** and a courtroom in the court of Hasselt. It was set up by the Court of Appeal in response to mobility problems faced by litigants and lawyers from Limburg province. The Court of Appeal states that this use of VC corresponds to regulation EC 1206/2001 and is in line with a recommendation of the CEPEJ (Commission Européenne pour l'Efficacité de la Justice).² This link is used exclusively in **civil cases**, and the hearings do not involve interpreters.

In the **criminal justice** services, videoconferencing pilots were launched in Charleroi and Leuven in 2002 to test links between courts and detainees who had to appear before the pre-trial court from prison (**court-prison video links**). However, the pre-trial judges decided that the system does not comply with the legislation, which covers the use of videoconferencing only for the taking of statements from witnesses.³ In 2015, there was also a new proposal to introduce VC in pre-trial and court hearings (DOC 54-0993). The Flemish Bar Association (OVb) opposed this proposal on 26 March 2015.⁴ However, in December 2015 the Chamber Commission of Justice approved a new proposal that makes it possible to hear suspects via VC in pre-trial hearings in order to save transport costs and reduce security risks.⁵ The system will be launched in 2017. The Flemish Bar Association protested again.⁶

In addition to this, there are on-going projects regarding VC in other areas of criminal justice. In **criminal youth cases**, the social service make contact with youth offenders in prison via video link. This pilot initiative will soon be extended to lawyers allowing them to make contact with their clients in prison by video link as well.

The **Federal Prosecutor's Office** in Brussels was equipped with a videoconference room in April 2013. This initiative was jointly taken by the Ministry of Justice and the federal prosecutor's office. This is currently the only VC room in the prosecution service for whole of Belgium. The room is available for all users from the different courts and police stations from all over Belgium, and for cross-border video links.

² <http://www.rechtbanken-tribunaux.be/nl/rechtbanken-hoven/hof-van-beroep/hof-van-beroep-antwerpen> (see 'inlichtingen' for further information and a manual).

³ Law on taking statements using audiovisual media, 2 August 2002 (http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2002080271&table_name=wet)

⁴ <http://www.ordeexpress.be/UserFiles/ArtikelDocumenten/Standpunt%20OVb%20-%20%20videoconferentie%20in%20strafzaken.pdf>

⁵ <http://www.dekamer.be/kvvcr/showpage.cfm?section=|flwb&language=nl&cfm=flwbn.cfm?lang=N&dossierID=0993&legislat=54>

⁶ <http://www.advocaat.be/UserFiles/NewsItems/10VB-persbericht%20videoconferentie%2010%2012%2015.pdf>

3.2 Equipment and maintenance

The main videoconferencing facilities, which were outlined below, use the technical specifications shown in Table 1 below.

N°	City	Court name	Dedicated telephone	Equipment type and make	Encryption possible Y/N	Multipoint connection possible Y/N	ISDN or IP	Speed (kbps)	Protocols and Standards used	N° of cameras	N° of screens
1	Antwerp	Court of Appeal	+32 3 247 97 11	Tandberg Edge 95	Yes	No	ISDN (or IP soon)	Max 384 kbit/s via ISDN	H.323, H.261, H.263, H.264, G.711, G.728, G.722, G.722.1, AAC-LD	2 HD cameras and 1 overview Camera (intern) 1 Document camera Only 1 HD cam (extern)	3 (intern) 1 (extern)
2	Hasselt	Court of First Instance	+32 11 37 41 54	Tandberg Edge 95	Yes	No	(IP soon)	N/A	H.323, H.261, H.263, H.264, G.711, G.728, G.722, G.722.1, AAC-LD	2 HD cameras and 1 overview Camera (intern) 1 Document camera Only 1 HD cam (extern)	3 (intern) 1 (extern)
3	Brussels	Parquet fédéral – Federal Prosecutor's Office	+32 2 557 77 11	Polycom HDX 8000	Yes	Yes (via codec)	ISDN or IP	2Mbit / connection (max 10Mbit/s) or max 512 kbit/s via ISDN	H.323, H.261, H.263, H.264 (all standards)	1 HD camera and 1 overview Camera (intern/extern) 1 Document camera	2 (intern/extern)

Table 1: Technical specification of VC equipment in Belgium (source: European eJustice portal; https://e-justice.europa.eu/content_information_on_national_facilities-319-be-nl.do?member=1)

The videoconferencing facility at the Federal Prosecutor's office, on which the remainder of this report focuses, uses a Polycom HDX 8000 system, shown in Figure 1 below. The equipment includes one central microphone and two large flat screens next to each other. One is normally used to show the remote site and the other to show the Brussels office (self-view). However, as the system has three cameras, the screen display can vary, and the selection of images sent to the remote site is dynamic. One camera is normally used to capture an overview image of the room in Brussels, the second can be used to capture details of the participants, and the third is used to display documents to the other site. The system uses pre-set positions to switch quickly between cameras/views. The technician, who is always present, decides what is displayed and sent to the remote site.

Judges perceive the equipment to be reliable and to deliver high quality image and sound. They are very satisfied with the facilities. Technical problems capable of interrupting a VC are generally thought to be very unlikely, and informants do not report having experienced any serious communication breakdown that could not be rectified by attempting to establish the communication again. Backup procedures such as phone conference are in place in case of potential connection problems.

Technical issues with sound and image quality were reported from cross-border hearings, depending on the facilities at the other site. One technician explained, *'met de verbinding zijn er soms problemen. Maar ieder keer maken we een test. [...] maar het beeld is soms niet goed. (Sometimes there are problems with the connection. But every time we run a test. [...] but the quality of the picture is sometimes not good'.*). Informants associate different levels of quality with different remote locations, observing in particular that the connection quality is worse when the link is made with 'rural courts' outside of Belgium.

The VC equipment is always operated by the technician (there is only one person who is responsible for the technical part). Other participants (including interpreters) are not allowed to handle the equipment. Apart from being present during the hearings, the technician is also responsible for the maintenance and update of the system. In addition, a guideline on the use of VC equipment available.



Figure 1: Videoconferencing facility at the Federal Prosecutor's office - top: current seating configuration (source: AVIDICUS3)

3.3 Uses

The Belgian justice system is able to use this video link at **cross-border level** for links between courts as well as to establish links between courts and prisons, detention centres and police stations (police custody suites). Videoconferencing in Belgium is possible in international cooperation (piracy, terrorism, customs offices), international humanitarian rights, hearing of witnesses and (forensic) experts. Moreover, the equipment is used for meetings with EuroJust and with the United Nations in the Hague. The equipment can theoretically be used at national level, but—as outlined in section 1 above—this is currently not the case.

In most cases Belgium is the requested party, i.e. is requested to make a connection available in a cross-border situation in order for a foreign court to hear a witness who is in Belgium. In addition, the video link is used for letters rogatory to which Belgium is the requesting authority in order to hear witnesses who are abroad in Belgian proceedings.

In 2010, the cost of approximately 40 letters rogatory and European arrest warrants from the Federal Prosecutor was estimated to amount to more than 320,000 euros. The implementation of the VC suite at the Federal Prosecutor's Office, which was subsidized by the European Union, cost approximately 90,000 Euros.⁷ In 2013, when it was implemented, the video link was only used 6 times. However, since then its use has increased significantly, as shown in Table 2 below.

Year	2013	2014	2015
Number of cases	6	40	52

⁷ http://justitie.belgium.be/nl/nieuws/persberichten/news_pers_2013-11-12

Table 2: use of the videoconferencing facility at the Federal Prosecutor's Office.

The duration of video links varies greatly depending on the exact nature of the witness hearing. One example was given of a hearing involving 4 to 5 witnesses, which took 3 to 4 hours. *(Het was een vraag van een rechtbank van Frankrijk, het was in Parijs he? En de getuigen zijn hier in Brussel, en ze verhoorden 3 of 4 mensen en dat kan 4 of 5 uur duren. Heel lang, heel lang, heel lang. [‘It was on request from France, from Paris. And the witnesses were here in Brussels and they heard 3 or 4 people. It can take 4 or 5 hours. Very long, very long, very long.’])*

Judges/prosecutors are not given any particular rules about when to use VC. They establish the appropriateness of video links on a case-by-case basis.

3.4 Participant distribution

In the case of cross-border hearings with Belgium being the requested authority, i.e. the person to be heard (witness or defendant) in Brussels, the person normally testifies in the presence of a prosecutor or investigating judge and a police officer. As pointed out in section 1 above, a technician is also present during these video links. Similarly, when Belgium is the requesting court, there is usually a local authority managing the video link at the other site (e.g. judge, court clerk, police officer). **When an interpreter is present, s/he is in one of the two locations.** The interpreting service is arranged and paid for by the requesting party.

The Federal Prosecutor's Office has a number of in-house interpreters who can easily be called upon to work in a video link. They can cover most of the languages that were required in the past, including English, German, French, Dutch and Spanish.

One of the issues we discussed with the informants was whether it would be useful to have two interpreters present in such video links. However, the idea was rejected by all legal professionals who contributed to this study, with one informant calling the idea 'crazy'. *(Dat zou een zottekot zijn met twee tolken aan beide kanten. [It would be crazy to work with two interpreters, at each site.]*

Physical separation from the interpreter of all parties in a VC session (**remote interpreting**) never happens within the Belgian system.

3.5 Pre-VC/Post-VC

Briefing and debriefing in relation to video links focus on the technological aspects of the hearings. Before hearings take place, the technician gives some explanation about how the video link works. He provides basic instructions and answers questions. In addition, every participant receives a set of recommendations about how to behave during the hearing. One of the recommendation is, for example, to avoid noise by not clicking with your pen. One of the informants describes the briefing phase as follows:

Oh ja, in het begin we zeggen over het systeem, nu is er een hele uitleg over het systeem voor getuige. Een heel uitleg van, de camera's zijn daar, de micro's zijn daar, dat moest dus geschreven. Dit is nieuw en we begrijpen, dat is een goede manier om te werken. Heel heel modern en ook positief. [Oh, yes, in the beginning we talk about the system, there is a whole explanation about the system for the witness. Explanation about place of the cameras, the microphones, and that's now available in written form. This is something new and we understand that this a good way to work. Very very modern and positive.]

Moreover, the video links at the Federal Prosecutor's office are always followed by a debriefing. According to the informants, the prosecution service is keen to get the opinion of all stakeholders including the witness. The prosecution service is interested in learning from each video link to find out whether there were any problems or issues requiring improvement. The above-mentioned recommendations are continuously refined on the basis of the feedback obtained in the de-briefing sessions. As one of the informants explains,

Ja, altijd we willen weten, was het goed, of waren er problemen? Van de debriefing zou blijken of er een probleem was en wat kunnen we beter maken? En ook voor de magistraat. We vragen dat en soms ook de persoon die daar was. We praten met hen om te weten te komen hoe het verlopen is. [Yes, we want always know what went well, or whether there were some problems. It could come out from the debriefing whether there were some problems and how you could solve them. Even for the magistrate. We pose the question to every present stakeholder. We talk with them in order to know how it went.]

3.6 Mode of interpreting

The chosen mode interpreting in the video links is always consecutive. Although there are no standards or rules concerning the mode of interpreting, legal professionals prefer the consecutive mode, as they want to hear everything what is said. They assume it would be very chaotic to hear two voices at the same time, as is the case in whispered simultaneous interpreting. As one of the informants explains,

Dat is niet mogelijk omdat de man spreekt en samenspreken dat is niet mogelijk. De rechtbank moet horen wat de man zegt en daarna de vertaling. Met kleine stukken. [...] Dit is de beste manier om te werken. [It is not possible that different people speak together at the same time. The court has to hear what has been said and then the translation. In small chunks.[...] This is the best way of working.]

Simultaneous interpreting is therefore not recommended in court. Although one of the informants stressed that the interpreters choose how they work, the choices seem to be confined to variations of the consecutive mode. In the words of this informant:

Nee, geen fluistertolken. Het is de tolk die beslist, hoe hij wil werken. En ook de rechtbank. Maar, het is de tolk die dat beslist. Ze nemen nota, we stoppen en dan ze vertalen. Het is de manier de de de manier waarop ze werken. [No, no whispered interpreting. It is up to the interpreter which way he wants to work. And up to the court. But this is the decision of the interpreter. They take notes, we stop, and then they translate. It is the way how they work.]

3.7 VC management

One dimension of VC management is the positioning of the participants within the room and in relation to the cameras. A related dimension is visibility on the screen.

As was pointed out in section 2 (Equipment) above, the VC room at the Federal Prosecutor's Office The room has an angled table with chairs facing the two video screens and the main camera, as can be seen in Figure 1 above. The one microphone is positioned centrally on the table. An unusual feature is that one of the two equally sized screens is used to display the self-view of the participants in the Brussels room, producing a self-view image that has the same size as the main image (i.e. the image the remote site). Dual-screen videoconferencing systems are more commonly used to display the participants at the remote site and a presentation or in multi-point video links to display participants from more than one site. However, the room is deemed well equipped by the legal stakeholders. Every hearing is recorded audio and video recorded.

If an interpreter is present, s/he sits next to the person for who s/he interprets. Although the interpreter is expected to sit at the table, there is some flexibility with regard to their exact position. The number of attendees depends on the case, but the interpreter is never alone in the room, i.e. there is always a member of the prosecutor's office in the room for observation, and the technician is also always present. After the hearing, a record is made of those present in the VC room during the hearing.

The technician uses the zoom function of the camera quite frequently, and the hearings very often make use of the document reader. Furthermore, the participants use the control picture (the self-view) to check what the remote site can see. The interpreter is shown on during the entire hearing.

3.8 Communication management

There is a standard introduction before starting to ensure that all participants are aware of who is present at each site.

In traditional court hearings, the communication flow during the proceedings is mainly managed by judges in Belgium. The judges perceive the communication management in video links to be very similar to that in traditional hearings. One judge who contributed to the study emphasised that she focuses on the hearing and leaves it to the technician to take care of all technical aspects of the VC.

Ik heb geleerd dat ik me technisch gezien van niets moest aantrekken. Geen knopjes geen volume. Als je je met de technische kant moet bezighouden, dan moet je de tolk de kans geven, om alles te testen en uit te proberen. Ik kan dat ook niet sorry, maar dat gaat niet. Ik ben dan ook van mijn werk en focus afgeleid als ik met knopjes en snuffjes zou bezig moeten zijn. En dat is echt niets voor mij. [I learned not to deal with the technical part. No buttons, no volume. If you have to deal with the technical part, then you have to give the opportunity to the interpreter to test everything. I cannot do that, sorry, but it doesn't work like that. I am also distracted from my work and focus if have to deal with buttons and gadgets. And that's really not for me.]

As the technician is always present during the hearing, the judge thought that the video links work smoothly. Like other informants, this judge thought that the system works sufficiently well for witness hearings, e.g. concerning the impression of eye contact.

The judge also mentioned what she thought to be an advantage of a hearing by video link. She once forgot to take notes but received a recording of the VC on a CD-ROM after the hearing. *(De technische verantwoordelijke van het federal parket. En die zet alles op een cd-rom en die cd-rom geef ik aan de griffie, he? En ik wou van alles noteren, maar ik was het vergeten, ja; maar ja, het was allemaal opgenomen op cd-rom dus dat was ook overbodig dan. [The technician from the Federal Prosecutor's Office. He puts everything on a CD-ROM and I can give this CD-ROM to the clerk. I wanted to take notes, but I forgot to do that, but anyway everything was recorded on a CD-ROM, so it was not necessary.]*

On balance, the informants felt there are no major technical problems in the video links, and that the aspects of concern rather arise from the behaviour of the stakeholders. Another informant, a prosecutor, for example, emphasised one important aspect of working in bilingual hearings, i.e. that working with an interpreter takes a lot of time, especially if the interpreter is not trained and not qualified. *(Ze zijn langer. Dat is het grootste probleem. Heel lang. [...] We hebben geen tijd. [These are longer. That's the biggest issue. Very long. [...] And we have no time.])*. This is related to a wider issue regarding the use of interpreters in the Belgian justice system, i.e. the general working arrangements with interpreters. These will be briefly explained in the final sections.

3.9 Working arrangements with interpreters

In Belgium, there is no national and official register for legal interpreters. Belgian courts recruit only interpreters from their own lists and even outside of these lists, if the need arises. One point to note is that the Belgian courts never use interpreting agencies, because there are no agencies offering interpreting services for legal settings.

The other problem is that legal interpreting is not a protected profession in Belgium and that there is no guarantee that the interpreters are trained. Most of the interpreters are not trained. Everybody can join the courts' lists of legal interpreters or/and translators. The only exception is Antwerp, where all candidates are tested in their language skills and they have to take part in training and screening (language and legal) as a prerequisite for working as a legal interpreter in Antwerp.

4 Croatia

This report reflects the information provided by a varied group of representatives of the judicial system in Croatia including two judges, a certified court interpreter, and the director of IT services for one of the county courts, as well as a representative of the Ministry of Justice. The interviews were carried out by videoconference. This allowed us to actually see how the system in Croatian courts works, both as regards the pre-interview testing of the equipment and connections, and the actual use of the system with various participants. We were able to witness the automatic activation of the different cameras in synch with the specific microphone that was being used at any given point in time, which proved to be an effective way to see and hear the individual who was speaking. The connection was quite successful with good visuals and audio.

The judicial system in Croatia is comprised of the Supreme Court, county courts, municipal courts and misdemeanour and commercial courts. There are also High Misdemeanour and Commercial Courts and the Administrative Court. The Supreme Court is the highest court in the land and is charged with ensuring that the law is applied fairly and equally to all citizens. It has full jurisdiction over any court decision that is made by another court and has the power to void or confirm these decisions, but also the authority to revise them. The State Attorney's Office is also an autonomous and independent body that plays an important role in the judicial system. The Constitutional Court is not actually a judicial authority and does not have full jurisdiction. Its main purpose is to safeguard Constitutional precepts and protect the legal system by resolving constitution challenges to laws and sub-statutory acts. Although it has the authority to abolish laws, it more often submits recommendations for modification to the legislature, which are usually adopted to bring them into compliance with the Constitution.⁸

There are 15 county courts in Croatia. These are courts of second instance for both civil and criminal cases heard in municipal courts, but they also perform investigation procedures and adjudicate in some first instance criminal cases⁹, (for example in criminal cases in which the sentence is more than 10 years). The right to appeal any decision made by a municipal court is guaranteed by the constitution both for individuals and for all legal entities. Five of the 15 county courts have video-conferencing equipment installed in one of their courtrooms. These are the county courts of Zagreb, Split, Osijek, Rijeka, and Vukovar.

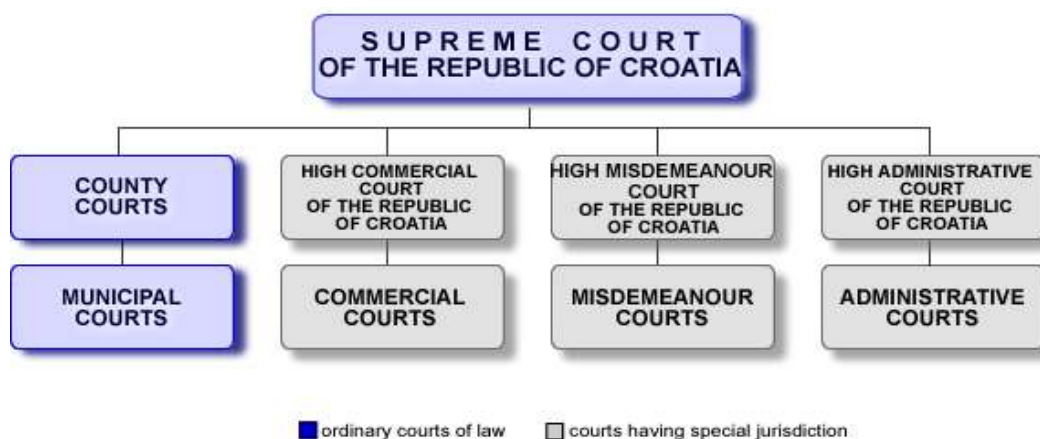


Figure 1: Scheme of the Croatian court system

⁸ Dunja Keuecking and Milivoje Zugic, (2002) "The Croatian Legal System" seen Nov 30, 2015 at <http://www.llrx.com/features/croatia.htm>

⁹ Information taken from the webpage entitled "Supreme Court of the Republic of Croatia" <http://www.vsrh.hr/EasyWeb.asp?pcpid=282>. Seen on November 16, 2015.

As the newest member of the European Union, Croatia was not part of the 2008 European videoconferencing survey, and information on the current situation in Croatia is not as readily available as it is for other EU member states. Thus the contents of this report are based on the information provided in the interviews that were carried out, except where noted.



Figure 2: View of the inside of the Zagreb County Court

4.1 Procurement

Video-conferencing has been used in Croatian courts for approximately ten years. The County Court from which the informants were interviewed has a system comprised of 4 cameras and 8 microphones, and the other four county courts that are equipped for videoconferencing have 2 cameras and 1 microphone. All courts have 1 screen.

The procurement of VC equipment is the responsibility of the Ministry of Justice and is the result of both donations and purchase. The original equipment was a donation from the U.S. government, but procurement is now a matter for the Croatian Ministry of Justice. The design of the videoconferencing system was the result of consultation between judges, technicians and the Ministry of Justice. It was based on an evaluation of the type of cases that would be appropriate for this approach, a market analysis, a review of what was desirable and what was actually achievable, and issues related to implementation. The Ministry of Justice does support IT and videoconferencing as part of the business process in the courts, but funding is limited.

4.2 Equipment and maintenance

The videoconferencing equipment used in all five county courts is SONY PCS1. Encryption and multipoint connections are not possible. The protocols and standards used are H.264, H.239 and H.281 in all cases.¹⁰ The system in the county court from which the informants in this project come allows for connection via ISDN or IP, and these can be switched if necessary. In the other county courts, connection is by ISDN only. The CISCO system has been used successfully a few times for connections with Latin America when other systems have not produced the desired results. Security is a principal concern. According to one interpreter, *“criminal proceedings require protection [...] and any other proceedings, of course”*. The IT Department of the Ministry of Justice manages and maintains the videoconferencing systems and equipment.

¹⁰ See https://e-justice.europa.eu/content_information_on_national_facilities-319-hr-en.do?clang=hr

4.3 Uses

Videoconferencing in Croatia takes place infrequently, only once every month or two, and is used exclusively for cross-border cases, usually when someone living abroad is required to provide testimony in a Croatian court. This may be a Croatian citizen living in another country or a citizen of another country. In the first instance, judges state that it is not clear whether to classify the case as a cross-border case or not, given that in these situations a Croatian citizen is providing testimony in a Croatian court. When a foreign citizen is involved, or in cases in which someone located in Croatia is required to provide testimony to a foreign court, they are clearly considered cross-border. Interpreting is most likely involved in the majority of these cases and the languages most frequently needed are English and German, and occasionally Spanish for connections with Latin America.

While VC connections are usually between courts, they can take place, for example, when a witness is being held in police custody abroad and the location in question has the necessary technical capacity to carry out a VC connection from police headquarters. However, videoconferencing is not used to connect to other venues within Croatia, even though according to the Criminal Procedure Act that came into force in 2011, hearings that are part of criminal cases can be held in prisons or police stations.¹¹ Videoconferencing only originates in the five county courts that are equipped for that purpose.

Judges expressed general satisfaction with the current system being used in their court. The VC equipment allows the type of interaction that they consider necessary, and they voiced no objections to the use of video conferencing or to how the system in their courtroom is set up. They mention technical problems related to the establishment of a good connection with the remote location as the only source of difficulty in using VC. They state that *"in most cases we either establish a good quality connection or don't establish a connection at all."* While problems with voice synching are not common, image freezing does occur at times. Voice and sound are given preference over image, and therefore in some cases, sound quality is better than image quality. In cases in which technical performance is not optimal, it is the judge's responsibility to decide if the connection is of sufficient quality to continue the proceedings or not. As a general rule, if the sound quality is deemed sufficient, the judge normally proceeds, even if the image quality is not optimal. This is due to the complexity of arranging these kinds of connections.

To ensure the best outcome possible, prior to a videoconference hearing, the connection with the remote location is tested. If the test is not of sufficient quality, the judge can suspend the VC hearing. In order to avoid these situations, careful planning of cross-border VC sessions is carried out through the Ministry of Justice. *"Sometimes it's a problem to arrange the right date and time, and sometimes the whole process lasts for months. [...] But usually parties adjust to the situation because such hearings are scheduled 1 or 2 months in advance."* In general, if a connection is established, VC is broadly accepted and favourably viewed. It is considered the best way to proceed when a witness is abroad and cannot or does not want to travel to Croatia and the Court considers the testimony of that person to be important to the case being heard. Videoconferencing is considered an efficient and cost-effective approach to these kinds of situations. *"It saves money and time. VC has many advantages in that way."*

¹¹ European judicial systems: Efficiency and Quality of Justice. CEPEJ Studies N° 20. Edition 2014 (2012 data).

Seen on November 16, 2015 at:

https://books.google.es/books?id=DzOJCQAAQBAJ&pg=PT279&dq=videoconferencing+in+court&hl=en&sa=X&ved=0CDsQ6AEwAWoVChMIq_ams8CVyQIVSjoUCh0l6wbK-v=onepage&q=videoconferencing+in+court&f=false

4.4 Participant distribution

As regards interpretation in cases using videoconferencing, emphasis is put on ensuring that an interpreter is with the person who is giving the testimony, regardless of where that individual is. Most cases involve a non-Croatian speaking witness in a remote location (i.e. the Croatian court is the requesting court); however, there are some cases in which a Croatian citizen is required to give testimony to a foreign court (i.e. the Croatian court is the requested court), although this is not very frequent. There are also cases in which two interpreters are involved, one in the Croatian court and one in the foreign court. In these cases, the interpreter in the Croatian court interprets all questions and everything that originates in that court, and the interpreter who is with the witness in the other country, interprets everything that is said by the witness. *"It is easier to work when there are two interpreters. You can hear better what is going on in your room and can concentrate on your side."*

4.5 Pre-VC/Post-VC

No pre-trial briefing or instructions are given to the interpreter by the judge. One judge stated as a reason that the interpreter is simply expected to *"interpret correctly what is said in the courtroom."* The judge also states that no post-trial or post-hearing debriefing with the interpreter is carried out. However, an interpreter with experience working for the courts in both on-site and video-mediated cases says that, in practice, information can be obtained:

Unfortunately there is no prior notice, but I have found ways to get to the information. My own initiative. I try to reach the judge and try to get the answers to some question. For example, what is the case about? What crime will we talk about? About what circumstances will the witness be interviewed? I try to get as much information as I can get in order to be prepared. [...] I must say the judges are very communicative. I always get the information I'm interested in. Last time I got a copy of the witness statement.

4.6 Mode of interpreting

The mode of interpreting used by the interpreter who participated in this interview was exclusively consecutive. She reported that she did not use simultaneous interpreting. When asked about the differences between face-to-face courtroom interpreting and videoconferencing, she remarked that *"concentration must be at a higher level in VC, you have to concentrate. If someone is – I don't know - - blowing his nose or coughing, you have to ask the witness to repeat his statement. It is more stressful than face-to-face."* Nevertheless, she stated that she did not find working with VC to be difficult and that her experience working in VC cases had been *"positive, absolutely."*

4.7 VC and communication management

In the County Court informants come from, four cameras and eight microphones are placed strategically around the courtroom to provide reasonable access for all parties involved in the proceedings. The cameras are voice sensitive and automatically display the image of the individual whose microphone is open. In cases of overlapping talk or lack of respect for turn-taking, the judge can switch a microphone off, thereby forcing participants to follow protocol. In this case, the camera that is focused on the judge is activated.

The image on the screen at any point in time is stationary. The cameras are not usually manipulated during the proceedings. The zoom feature is not considered necessary as the pre-set frame is of a reasonable size. The one exception is when a document, or some part of a document, must be transmitted. There are no document cameras in the courtroom, and in these instances, the images cannot be transmitted with sufficient definition. Current attempts to solve this problem are focused on switching the signal to a laptop so that scanned documents can be properly transmitted and received.

According to the judges, no special arrangements or specifications are needed to accommodate interpreting when videoconferencing is used. The procedures are exactly the same as in any case. The interpreter can be seated either near the judge or near the witness. One judge explains the rationale for this saying that the interpreter is seated *“near to the person that is expected to speak most of the time. That means that the interpreter is at their disposition, very near.”* When there is a remote interpreter who is with the witness abroad, both the interpreter and the witness are seen on the screen.

In cases in which the Croatian court is the requested court and an interpreter is present, the interpreter sits next to the witness and shares a microphone with that person and both are seen on the screen at all times.

Judges stated that they were satisfied with the incorporation of interpreting services in a videoconference case when necessary and that they had no objections related to interpreting. However, hearings carried out through videoconferencing can last for quite a long time, sometimes up to several hours, and one interpreter suggested that in order to improve interpreting in VC situations, *“if the interview or interrogation lasts several hours, maybe it would be helpful to have a break.”*

4.8 Working arrangements with interpreters

The profession of “authorized court interpreter” is regulated in Croatia by the Act on Courts and the Ordinance on Permanent Court Interpreters. The ordinance stipulates that court interpreters must have a university degree, be proficient in the foreign language (at the CEFR C2 level) and in the language officially recognized and used in judicial institutions in Croatia (including minority languages). Additionally, all candidates must successfully complete an oral exam before a three-member panel appointed by the president of the court on the organisation of the judiciary, state administration, and legal terminology. Finally, candidates must complete a two-month training course approved by the Ministry of Justice.

Permanent court interpreters are appointed by the president of a county court, and in spite of the designation of “permanent”, the appointment is initially for a period of 4 years, after which the interpreter can be reappointed. The president of the county court can also suspend or “disengage” an appointed court interpreter. Permanent court interpreters are authorized to provide services throughout Croatia. This designation refers to the qualification conferred upon the interpreter and not to his or her work status. In fact, interpreters in court work at the “invitation” of the judge and are not considered staff members.

The Ministry of Justice, through the aforementioned Ordinance, prescribes the conditions and the procedure for the appointment of permanent court interpreters and also outlines their rights and duties as well as awards or bonuses to which they are entitled and remuneration for expenses while they are performing their duties. A combined register of translators and interpreters is published on the Ministry of Justice website. According to one interpreter:

Interpreting in videoconferencing is a type of interpretation so maybe it would be useful that the court differs between translators and interpreters because right now we have one register for both. In this register are the names of all court interpreters but you have many court interpreters who don't want to do oral interpretation, who just want to translate written texts, so maybe there should be a separate register or list of court interpreters who do interpretation, and not only translating written texts.

As regards languages of lesser diffusion, a judge can appoint someone if there is no one from that language on the register. That individual is required to take an oath. One judge explains that the interpreter is required to *“interpret in a correct way, according to legislation, everything that is said.”* There is no protocol for evaluating the capabilities of these *ad hoc* interpreters. In the words of one judge, *“judges usually believe what the interpreter says. They do not examine the interpreter. It is the*

usual case that this person was already engaged by the police or by the state attorney, so according to those recommendations judges usually designate that person for interpreting. [...] It is not someone from the street.”

As regards interpreting in hearings in which videoconferencing is used, there are no special requirements for interpreters who are engaged to work these cases, nor is any type of training required or offered. Furthermore, no specific written instructions or protocols related to VC are provided. Just as in all other cases, the judge chooses an interpreter from the register and “invites” the interpreter to work on the case. An experienced interpreter is preferred, and location is also taken into consideration.

5 England

This report summarises the findings from the interviews carried out in England and from desk research analysing a variety of sources regarding the use of videoconferencing technology by judicial and law enforcement institutions in England (e.g. police reports, media reports, publications by the Ministry of Justice, Her Majesty's Court and Tribunal Service and other governmental agencies) and European reports relating to videoconferencing and eJustice. The information was triangulated with data available from the AVIDICUS 1 project, in which a large number of informants (both interpreters and legal professionals) were initially interviewed to find out about their views on bilingual videoconferencing.

5.1 Procurement

In the justice services in England and Wales, video links have been used for a number of purposes since the 1990s. Their use in court is managed by the agency responsible for the administration of the courts of England and Wales, i.e. Her Majesty's Court and Tribunal Service (HMCTS). However, procurement is the responsibility of the Ministry of Justice. As videoconferencing services often link several parts of the justice system, their day-to-day operation requires multi-agency cooperation between HMCTS, the Crown Prosecution Service, the National Probation Service, the Prison Service and the Police. The history of procuring and implementing video links in England and Wales is complex and fragmented, following several legislative changes in a generally complicated court system, leading to a great variety of products and suppliers.

In the **criminal justice** services, provisions permitting the use of **video links between courts and prisons for preliminary hearings of defendants in custody** were first set out in section 57 of the Crime and Disorder Act 1998. This legislation required a court to give reasons for the decision not to use video links (where available), meaning that the use of the video links became the default position. Following two pilots in Magistrates' courts (i.e. lower courts) and Crown courts (higher courts) respectively in 1999-2000, which made several practical recommendations,^{12,13} a contract was let with a private contractor, Martin Dawes Solutions Ltd, for the provision of the videoconferencing service in 2001. The same videoconference service was later also used to facilitate video links for **lawyer-client consultations** (with lawyers being in court or in their own law firm, if compatible video equipment is available in the firm)¹⁴ and for other purposes, especially the preparation of **court reports** (links between probation offices and prison). The 1999 pilot in Magistrates' courts included two cases that involved interpreters, but the findings are inconclusive (see below). The pilot in Crown courts did not involve interpreters. The interpreters interviewed claim to have experience in video-mediated interpreting for the English legal system from the 1990s.

Section 57 of the Crime Disorder Act was amended and extended by the Police and Justice Act 2006, Section 45, to allow the use of **video links between courts and prisons for sentencing** (by consent) and to enable the use of **video links between Magistrates' Courts and police stations for first hearings of persons suspected of a crime** (termed "Virtual Courts"). The implementation of the Virtual Court video links was preceded by a test phase in 2007. In 2009, the Ministry of Justice awarded a contract to Cable & Wireless to provide videoconferencing facilities for the first virtual court pilots in London

¹² Plotnikoff, J. & R. Woolfson (1999). *Preliminary Hearings: Video Links Evaluation of Pilot Projects*. Final Report. lexiconlimited.co.uk/servicespublications/evaluating-legislation/

¹³ Plotnikoff, J. & R. Woolfson (2000). *Evaluation of Video Link Pilot*. Project at Manchester Crown Court. Final Report.

¹⁴ <http://www.justice.gov.uk/courts/prison-video-link>

and Kent.¹⁵ Whilst the first test run in 2007 excluded hearings that require an interpreter,¹⁶ the 2009/10 pilot included such cases and made a number of observations about them (see below).¹⁷

The option to hear **witnesses via video link** became first available in criminal cases through the 1988 Criminal Justice Act, which contained provisions permitting *overseas witnesses in cases of indictment* (such as murder and fraud cases) and *young witnesses in the UK* to give evidence by video link. The Youth Justice and Criminal Evidence Act 1999 extended the provisions to *all vulnerable* witnesses. Section 51 of the Criminal Justice Act 2003, which came fully into force in 2010, extended the use of video links to *all witnesses in the UK* in all criminal cases (also including expert witnesses and police officers).

A more recent use of VC technology in criminal justice is the use of **video links for detention reviews**, i.e. reviews by a police officer of the need for a person's detention in police custody without charge. This use of videoconferencing technology was enabled by a change of the Police and Criminal Evidence Act (PACE) in 2014.¹⁸

In the realm of **civil justice**, the Access to Justice Act 1999 allows video links to be used for civil hearings. This includes the hearings of witnesses in the UK and overseas, case management conferences and other uses (by consent of the parties).

A further area of the justice system in which video links have been used in England and Wales is **immigration and asylum**. Both the First-tier Immigration Tribunal Appeals Chamber and the Upper Tribunal Immigration and Asylum Chamber (UTAC) use **video links to hear appellants**. In contrast to the practice in courts, where the use of video links to prisons became the default position, the guidance on video link hearings issued by UTAC in 2013 states under its general principles that "the ideal form of hearing in UTAC is where the appellant, the supporting witnesses and the advocates are all physically present in the same courtroom as the judge".¹⁹ The use of video links is seen as suitable only under certain circumstances.

However, according to the HMCTS Business Plan 2014-15, there is a declared intention by the authorities to further increase the use of video links both in criminal courts and immigration tribunals.²⁰ Similarly, a recent and widely noted review of the court system in England and Wales proposed "that the utilisation of audio and video hearings, with a view to countrywide implementation, should be made a priority"²¹ in the criminal justice system. This recommendation was made despite concerns by judges, which are acknowledged in the review.

In the 2008 European VC survey English authorities self-reported that "some" Crown and Magistrates' courts had VC equipment to link courts to prisons, and that the Court of Appeal (Criminal Division) and some County Courts were equipped with VC facilities. Moreover, 89 non-courtroom videoconferencing units in other locations (e.g. based at Regional Offices, some courts and Asylum Immigration Tribunal Offices) were also present in the VC equipment network. The HM Court Services

¹⁵ <http://central-government.governmentcomputing.com/news/2009/jul/16/ministry-justice-video-conferencing-criminal-justice-16jul09>

¹⁶ "The virtual court can be used, with the defendant's consent, in all first hearings except those involving multiple defendants, appropriate adults, interpreters, youths or in complex and sensitive cases." *London ICV Newsletter*. Metropolitan Police Authority, July 2007, p. 1, <http://policeauthority.org/metropolitan/downloads/partnerships/icv/newsletter/2007-07.pdf>.

¹⁷ Terry, M, Johnson, S. and P. Thompson (2010). *Virtual Court Pilot Outcome Evaluation*. <https://www.justice.gov.uk/downloads/publications/research-and-analysis/moj-research/virtual-courts.pdf>

¹⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/364707/PaceCodeC2014.pdf, section 15.

¹⁹ <https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Guidance/Presidential+Guidance+note+2013+No+2+-+Video+link+hearings.pdf>

²⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/386415/hmcts-business-plan-2014-15.pdf

²¹ The Rt Hon Sir Brian Leveson, Review of Efficiency in Criminal Proceedings, 2015, p. 17

Annual Report 2009-10 mentions “a further series of upgrades and replacement of video link equipment in the Crown Courts and Magistrates’ courts”.²² As of 2013, 90% of Magistrates’ courts and all Crown Court sites had video links for use between prisons and courts and for hearing vulnerable witnesses.²³

This brief overview shows that the procurement process in England and Wales happened in several stages, as the use of video links in the justice system emerged organically, often in response to strategic plans in a particular area. The equipment used in the various branches of the system therefore differs in terms of standard and provider (see further under “Equipment and Maintenance” below), which is particularly noteworthy in relation to interpreting, as it confronts interpreters with a variety of technical conditions.

Although it is not possible to say with certainty who had input in the choices regarding the acquisition and implementation of VC units, the interpreters interviewed claim that they were never involved in the procurement process at any stage, and that they find it highly unlikely that any of their colleagues would have been consulted on such matters, whether at a personal or representational level. The interpreters interviewed believe that the way VC and court infrastructures were built shows design issues which do not facilitate the work of interpreters. As is the case for other EU member states, interpreters believe that the VC system in England and Wales is modelled around the needs of the court and the people who may need to be heard by a court, but not the needs of interpreters.

The only area of justice where there is more emphasis on the needs of interpreters is the implementation of facilities for **remote interpreting via video link** in the Metropolitan Police Service (MPS) in London. The introduction of remote interpreting, whereby interpreters work from central videoconference hubs, was a crucial project in the MPS Language Programme, set up in 2008 to modernise the linguistic and cultural services in the MPS and to reduce costs. It was estimated that in 2008 the MPS spent 33% of its total interpreting budget on interpreter travel cost (£2m p.a.) and that this could be reduced to 13% through the introduction of remote interpreting.²⁴ The locations of the hubs were chosen in accordance with this. For example, the first interpreting hub was built in Hendon, in the North of London, as 40% of the interpreters on the MPS list live within 40 minutes of Hendon. Apart from that, the programme also had a high strategic significance within the MPS, especially with regard to the Olympic Games in London in 2012. Procurement for the videoconferencing hardware started in 2008/09 and was completed in 2010. The contract for the provision and support of the videoconferencing hardware was awarded to SCC.²⁵ Interpreters had limited input in this process, mainly through a small number of focus groups held for consultation purposes.²⁶ However, shortly after the completion of the first hub, a compulsory training programme was launched for the MPS interpreters²⁷, and later for police officers, to familiarise the different stakeholders with the new method of interpreting (see also section 3 – ‘Uses’ below). The training programme for the interpreters was designed and delivered by the coordinator of the AVIDICUS1 project. By 2011, a total of seven interpreting hubs was implemented all around London. Interpreters who are assigned to an interview are asked to travel either to the police station or to the nearest hub, whichever is closer.

5.2 Equipment and maintenance

According to the VC survey in 2008 England and Wales, the vast majority of VC systems used in criminal justice are fixed installations, whilst civil courts mainly use portable (roll-about) VC units. The

²² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/247757/0113.pdf

²³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/323112/hmcts-annual-report-2013-14.PDF

²⁴ <http://policeauthority.org/metropolitan/committees/equalities/2011/0210/06/index.html>

²⁵ <http://policeauthority.org/metropolitan/committees/equalities/2010/100422/05/index.html>

²⁶ <http://policeauthority.org/metropolitan/committees/equalities/2010/100422/05/index.html>

²⁷ see <http://policeauthority.org/metropolitan/committees/equalities/2011/0210/06/index.html> and Braun *et al.* (2012)

informants who were interviewed in AVIDICUS 3 mostly had experience with fixed VC equipment through working in video links between courts and prisons, police stations or witness rooms, and through remote interpreting at the Metropolitan Police.

The most noteworthy point regarding the **VC installations used in courts, prisons, police stations and witness rooms** in England and Wales for court-prison video links, Virtual Courts and witness hearings is perhaps that **the equipment comes from different suppliers** and that **the set-up and room layout vary considerably in their detail** (i.e. in terms of the number and sizes of video screens and cameras used, where they are fitted, etc.). These variations are a result of mainly two factors. One the one hand, they are caused by the many different and partially parallel strands of implementing VC technology in different parts of the justice system of England and Wales, as outlined in the Procurement section above. On the other hand, VC systems often had to be implemented in existing court, prison and police estates, requiring compromises in the positioning of the equipment. However, the Ministry of Justice has recently started the *Common Platform Programme*, aiming to help digitise courts and achieve a certain level of technical uniformity. According to the Annual Report of HM Court and Tribunal Services 2014-15, the aim of the programme is to allow “court and tribunal users (whether the parties or their legal representatives) [...] to be able to see documents online, use videoconference rather than travelling long distances for a brief meeting, and expect to interact with [the judicial system] in ways and at times which suit them”.²⁸ Figure 1 below shows some typical installations for the Virtual Courts.



Figure 1: Typical VC installations in England's Virtual Courts (top – view of courtrooms; bottom – view of a Virtual Court room in a police station); sources: BBC, The RSA, Police Federation of England and Wales²⁹

The experience with VC installations in courts reported by interpreters is not uniform, which is unsurprising given the many different purposes and phases of implementation of video links in the justice system of England and Wales. The interpreters stated that it would be **difficult to make generalizations regarding the number and position of equipment items such as screens and cameras**. However, during the interviews informants often naturally referred to visual equipment in

²⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/433948/hmcts-annual-report-accounts-2014-15.pdf, p. 5

²⁹ <http://news.bbc.co.uk/1/hi/uk/8177567.stm>, https://www.thersa.org/globalassets/presentations/bob-platt_video-enabled-courts-in-kent.pdf, http://www.polfed.org/documents/SCC_Custody_2015_NPCC_Federation_conference_Virtual_Courts.pdf

the singular, suggesting that their experience is mostly based on video links using a single screen. Furthermore, interpreters report that they are normally equipped with individual **microphones** in courtrooms, although cases of sharing a microphone with another participant in the courtroom (e.g. the defence lawyer) are reported as well. In the courts' video booths for lawyer-client communication, prison VC rooms and the Virtual Court rooms at police stations the microphone is normally shared among all present.

The **interpreter hubs for remote interpreting** at the Metropolitan Police have a more uniform setup. Each hub has a minimum of two interpreting 'booths', i.e. **sound-proof pods for interpreters** to work. Some hubs also have **open desk spaces for the interpreters**. Each interpreter workspace is equipped with one video screen and a microphone. The interpreters are given **headsets** to cut out noise from the environment at the open desk spaces. However, the interpreters generally prefer the pods. The interview rooms in which videoconferencing equipment for remote interpreting is available have one wall-mounted 32" screen and a camera, which are perpendicular to the interview table, i.e. perpendicular to the interviewer and person interviewed. It should be noted that the equipment used for remote interpreting is separate from the equipment for the Virtual Courts installed in some police stations, where the screen and camera are also wall-mounted (see Figure 1 above), but where the accused and others present (lawyer, interpreter) face the screen/camera. As in the case of the Virtual Courts, one difficulty for the Metropolitan Police remote interpreting project was that the screens had to be mounted in existing estates and that interview rooms have a standard size that does not leave much room for accommodating a video screen. Examples from the hubs are shown in Figure 2 below.



Figure 2: Remote interpreting hub at the Metropolitan Police (left and centre – open desk space; right – soundproof pods); source: Metropolitan Police Service³⁰

Despite the current variation in the equipment and its setup, the equipment generally has features such as picture-in-picture (PIP) functionality, and near- and far-end camera control. In the video links between courts, prisons and police stations, **camera control is normally managed by an administrative or legal member of staff**, either by moving the camera manually (in courts with older VC systems), or by using the camera's remote control or pre-sets. There is no evidence that the cameras move automatically between speakers. In the remote interpreting hubs at the Metropolitan Police, each side can control (move, zoom) their own image and that of the remote site. In other words, the interpreters can control not only their own camera but also that at the police station.

With regard to the VC connection, both ISDN and IP-based videoconferencing is used, with a move towards IP-based connections. The equipment is in many cases able to support both types of connection.

According to interpreters, **the audio quality is generally reasonable to good, whereas the video quality can vary a lot**. Both audio and video are perceived to be generally better in some settings than others, which is likely due to differences in the equipment and connection used in different parts of

³⁰ www.eulita.eu/sites/default/files/TRAFUT/Haddon_TRAFUT_AN.pps

the judicial system or between the English court and foreign sites. **In some cases, the audio/video quality is deemed insufficient for the interpreter to carry out their task confidently;** in these settings, experienced interpreters will notify the court of the impossibility to proceed with the interpretation. However, some of them feel that less experienced interpreter colleagues may not yet have developed the confidence to “hold up their hand in a courtroom and say you know ‘I can’t hear’ or ‘please can you repeat’”, and that this is potentially very dangerous for the outcome of a hearing.

Another concern regarding the quality of video links is that interpreters do not feel that the requirement for good audio/video quality and its impact on the work of interpreters is fully understood by judges or those who are in charge of the implementation. For example, several interpreters emphasised that they are afraid that they may not hear properly what is being said at the other end of the video link and that there may be interference, e.g. from overlapping speech. Interpreters are also concerned about the impression that the court may get of witnesses and defendants because of technological issues. One interpreter reported a case in which the image on the VC screen had given to the court the false impression that the person being heard via video link was not interested in the proceedings. The participant had in fact blinked when the camera had stopped transmitting data, resulting in a ‘frozen’ VC image of the remote participant looking asleep.

5.3 Uses

As a result of the long and extensive history of procuring VC equipment—and corresponding adjustments of relevant legislation—the justice system of England and Wales uses VCs for a wide range of purposes, including the following:

Video links to remote participants

Criminal Justice

- Links between courts and remote parties, i.e.:
 - Court – defendant in prison for pre-trial hearings and remote sentencing
 - Court – accused at police station for first hearings (Virtual Court)
- Links between courts and remote witnesses, i.e.:
 - Court – geographically remote witnesses (UK and abroad)
 - Court – vulnerable witnesses
- Lawyer-client communication
 - Lawyer from own office or from court – defendant in prison
- Court reports by probation
 - Probation officer from own office – defendant in prison
- Police detention reviews
 - Reviewing officer – detainee in custody

Civil Justice

- Links between courts and witnesses in the UK and overseas
- Case management conferences
- Other uses by consent of the parties

Immigration and Asylum

- Links between First-tier Immigration Tribunal Appeals Chamber and appellants
- Links between the Upper Tribunal Immigration and Asylum Chamber and appellants

Video links to remote interpreters

- Currently at the Metropolitan Police Service in London
- Being explored/planned in other police forces and HMCTS

According to interpreters, VCs are normally used for relatively simple matters and their maximum duration is normally about 30-45 minutes. **The most frequent types are video links within the UK**, i.e. between courts and prisons and courts and police custody suites. **Cross-border video links are allowed in English courts, although they are not one of the prominent uses of VC equipment.** Mostly, according to the VC survey, cross-border video links happen with other EU member states, although there is no lawful restriction to the establishment of video links with countries outside of the EU, and such links have been established in the past.

HM Courts & Tribunals Service have increased the use of video links with remote participants over time, as stated in their annual reports. The number of court-prison video links, for example, went up from 53,487 hearings in 2013 to 72,201 hearings in 2014.³¹ As outlined in the Procurement section above, the use of VC will be further extended in the future. The view of the judicial authorities is generally that using VCs for the above purposes has helped reduce the time required to process cases, and that it has had a positive impact on the work of the judiciary, cut costs and improved the security of the public by obviating the need to transport prisoners to court in a number of cases.

Whilst the views of the judicial authorities are mostly positive, individual judges have expressed concerns. Furthermore, a study conducted Bail for Immigration Detainees on immigration bail hearings via video link (BID 2008) highlights that **defendants (bail applicants) requiring an interpreter sometimes have difficulty following what happens in the courtroom**, and in some cases experience technological difficulties. The study concluded that while VC hearings may work for some detainees, it would be advisable to consult and inform them of the process and obtain their consent for a video link, allowing them to choose an in-court hearing if preferred. It was also stated that, where an interpreter is used, **judges should ensure that the interpreter is given the time and opportunity to relay everything that is said in the court to the applicant.** Similarly, some of the interpreters participating in the AVIDICUS3 interviews claimed that prisoners often make it manifest to them that VC is not their preferred option for a hearing.

The interpreters' own views on the suitability of VC for legal proceedings vary. Some interpreters have no objection to its use and describe the use of VC equipment as a comfortable experience. Others, however, express strongly negative opinions, showing deep concern especially regarding matters of audibility and visibility which they think are likely to influence the work of interpreters negatively. They point out, for example, that they often have to ask prisoners at the other end of the video link for repetition or that they have to repeat parts of their interpretation for the benefit of the remote prisoner. They especially bemoan the audio quality of some of the links used for the lawyer-client communication between court and prison, saying that the low quality of these links makes it very hard to interpret.

Other concerns voiced by the interpreters revolve around the length of court hearings. One interpreter recalled working (face-to-face) in a two-week trial, "every day like six, seven hours non-stop", adding that this would be "much more difficult" via video link. The same interpreter also highlighted potential cultural issues, saying that in the language communities for which she works "there will be some people I know, for example, they would not mind coming to the court as a witness but I don't think they would like the video link really."

The views among interpreters regarding the feasibility of remote interpreting at the Metropolitan Police are also divided. While some of the interpreters who were interviewed prior to the launch of remote interpreting believed that there would be "a lot of technical hitches at first", and that this method of interpreting would "take an awful lot of getting used to", others were of the view that it would be "useful" to be able to do remote interpreting. Yet others were cautious about the type of communication that would be suitable for remote interpreting. Two interpreters thought it would

³¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/433948/hmcts-annual-report-accounts-2014-15.pdf

work for routine matters, such as presenting the rights to a detained person or explaining the charge, but they were more sceptical about long interviews. There were also concerns about the comprehensibility of foreign names, as a problem especially in witness statements, and about minority-language speakers speaking with strong accents (e.g. African French accents). Another interpreter, however, thought, “anything would work in a video link. Because you can interact, you can see the other people and they can see you.” She added, “it could be used for prisons as well. Then you wouldn’t have to go through all this rigmarole of going through the prison system.” Apart from such practical points, the positive aspects of remote interpreting highlighted by some interpreters were also linked to their own safety. One interpreter, for example, stated this: “I’d like to use [remote interpreting] all the time, because I had recently an incident where uh a detainee managed to enter the room with a small blade on him, and he started in the middle of the interview, and uh this image follows, follows me all the time.” Similarly, the views of the interpreters interviewed for AVIDICUS3 ranged from being enthusiastic about it, mainly because it removes the need for them to be in a custody suite, to being sceptical and critical about whether it will ever work smoothly.

By contrast, one of the interviewed police officers tried to explain the interpreters’ views—and especially some interpreters’ resistance to remote interpreting—in terms of the “**cultural change**” that remote interpreting along with other changes, especially changes to the interpreter booking system in the MPS, brought about for the interpreters. In this officer’s view, the interpreters see these changes “as taking their money away, ‘cos they don’t understand the rationale behind it” whilst from the perspective of the MPS, the changes would simply constitute “a more rational way of using a very expensive resource”. This officer also believed that there would be “a number of interpreters across the country who will be quite obstructive to this” and that this is something that “the criminal justice service—I’m not saying the police, ‘cos there’s more to it than that—are just going to have to get round to and address, really.”

A common view among both interpreters and police officers is that remote interpreting at the MPS requires training for both officers and interpreters, although views about the extent of this training vary. In the words of one officer, there “clearly needs to be some sort of familiarisation prior to the introduction of this equipment, for interpreters and police officers.” One of the interpreters insisted that training for officers is needed in how to handle the communication flow in the video link, while one of the officers said “you have to have a very good communication strategy, a training strategy, and maybe even accreditation that they [the interpreters] can work with audio-visual equipment.”

However, one informant, who is both an interpreter and a lawyer, expressed reservations concerning the MPS remote interpreting project on the grounds of the effects that it may have on the detained minority-language speakers, saying “I understand they are trying to save money, but some people are going to be affected adversely by uh the remoteness. Some detainees would be finding it difficult, much more difficult. Sometimes it’s difficult enough, you know, feeling lost, not understanding the language, and so on.... Because, don’t forget, they wouldn’t have had any experience with it.” Another interpreter emphasised the potential effect of the interpreter’s remoteness on the detainee’s behaviour and thus the interview as a whole: “If you have a difficult detainee, as soon as the interpreter is there, it makes things easier for the officer. Because the interpreter is not just the interpreter. And I know our role is not to be that, but we are a reassuring presence there. And we can explain the system. And it makes life easier.”

5.4 Participant distribution

The participants’ location in the various video links that are used in England and Wales depends on the setting. As explained earlier, in England, **hearings with remote accused persons and defendants** are frequent due to the use of Virtual Courts and court-prison video links. In the **Virtual Courts**, i.e. links between courts and accused persons in police stations for first hearings, **the interpreter is normally co-located with the accused at the police station**, whilst the accused person’s lawyer is either co-located with the accused in the police station or attends from the court. In **court-prison**

video links (e.g. for remand hearings), **the interpreter is normally in court**, often together with, and seated next to, the defence lawyer, although the lawyer can attend either from court or from prison as in the Virtual Court.

Regarding the location of the lawyer, i.e. in court or co-present with the minority-language speaker, the interpreters interviewed had experienced both configurations. In the configuration whereby the lawyer is located in court, some interpreters feel that they are bearing the brunt of the video link. For example, the interpreter's proximity to the minority-language speaker without a lawyer being co-present often results in the minority speaker asking the interpreter for legal advice. Mainly for this reason, some interpreters have expressed a preference for being in the court for this type of VC. They also describe the prison experience as 'claustrophobic' and add that the video element 'compounds the negative feelings about interpreting in prison'.

In addition, there can also be safety issues for the interpreter. Whilst Virtual Court video links normally take place in the presence of a police guard who monitors the VC room at the police station and mitigates safety risks for anyone co-located with the accused, the situation in court-prison video links is different. The interpreter is normally needed to interpret not only during the court hearing, but also during the lawyer-client consultations before and/or after the court hearing. The confidentiality of these consultations negate the presence of a guard in the prison VC room. An interpreter working from prison would be alone with the prisoner if the lawyer attends at court. This often makes it more practicable for many interpreters to work from court.

However, as pointed out in section 3 above, the BID (2008) study highlights problems with a participant distribution whereby all except the minority-language speaker are in court. Interestingly, whilst many interpreters did express a preference for being in the courtroom rather than in prison or at the police station (mainly for the above-mentioned practical reasons), others said they would prefer to be in a separate room (e.g. a dedicated room in the court building) and interact through the technology with both the court and the accused/defendant. One interpreter called this "the ideal working scenario". This possibility is currently being discussed in relation to the Virtual Courts in England.

However, some of the interviewed interpreters preferred being co-located with the minority-language speaker. One interpreter contended that the ability to provide whispered interpreting for a defendant when being co-located with him/her outweighs other problems, including the absence of the lawyer from the prison. Another interpreter simply felt that it is more difficult to interpret when "you are not with the detainee."

Hearings of remote witnesses have again different configurations. In the case of **vulnerable witnesses** who require language support, **the interpreter is normally co-located with the witness**. Some of the interviewed interpreters had extensive experience with this setting and felt that this is the only viable place for the interpreter in this case in order to provide appropriate language support, but also to ensure that the witness (often a victim in this case) feels comfortable.

The location of the interpreter in relation to **geographically remote witnesses within the UK or abroad** is less clear. The Operational Handbook of the Serious Fraud Office advises that "[i]f a witness needs to give evidence from a remote location in the United Kingdom (other than a court building) or abroad [and] if an interpreter is required, the interpreter should be in the room with the witness, while he or she gives evidence."³² By contrast, the practice direction for family courts on the use of video links with remote witnesses (in the UK and abroad) merely points out that "[i]f a witness at a remote site is to give evidence by an interpreter, consideration should be given as to whether the interpreter should be at the local site or the remote site."³³ The interviewed interpreters stated that

³² <https://www.sfo.gov.uk/publications/guidance-policy-and-protocols/sfo-operational-handbook/>

³³ https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_22a

in their experience of cases with cross-border witness hearings, the interpreter is located with the requesting court, i.e. the court calling the witness to give evidence.

Remote interpreting is currently used only by the Metropolitan Police, although other police forces and HMCTS are exploring this method of interpreting. In the current configuration at the Metropolitan Police, the video links are two-way connections between a police interview room and an interpreting hub. The suspect, interviewing officer(s) and, if present, the defence lawyer are in the same room; the interpreter is in the hub.

5.5 Pre-VC/Post-VC

Interpreters claim that the briefing and debriefing phases are very limited in their work for English courts. Interpreters receive very little information prior to the hearing, and on a very erratic basis. They normally need to be persistent to obtain information about the hearing and the charges. Often they are only informed of the time and location of the session and of the presence of a video link. Interpreters try to obtain information immediately before the beginning of the hearing, but they point out that this is often difficult or impossible, because the court has no time or shows little interest in briefing the interpreter. If attending the VC from the court, interpreters are normally told where to sit prior to the start of the proceedings.

Similarly, interpreters working in police interviews say that there is little briefing and that the interpreters “usually go in cold”. Interestingly, however, the police officers interviewed in connection with the introduction or remote interpreting at the MPS believed that most potential problems with the video link “can be ironed out with a proper briefing between the officer and the interpreter prior to the formal start of the interview”. One officer claimed that “it’s crucial to get the briefing right when they [the interpreters] are doing it remote.” This officer drew attention to place names, surmising that “you cannot assume they know where it is” and that “you would need to be explicit at the briefing.” Another officer argued similarly that “a lot can be achieved by properly informing, briefing the interpreter in terms of exhibits that are going to be shown, specific names, barcodes, numbers, serial numbers, whatever it may be.” He felt it would be important to “inform the interpreters of that prior to the formal interview, so there’s no great surprises”. The same officer also felt that there would need to be “an understanding in terms of the pace of the interview” with remote interpreting.

Discussions about interpreting quality do not normally take place after the VC session. Interpreters hope they have been understood by the person for whom they were interpreting, but they are concerned about the quality of the connection and how this may have an impact on their work. They report never being asked whether the working conditions are right for them to perform their interpreting task effectively. Post-VC interaction between the interpreter and the judicial system is reportedly limited to the exchange of payment documentation. However, the Metropolitan Police has encouraged interpreters to feed back any problems they encounter.

5.6 Mode of interpreting

In the **courts**, interpreters traditionally use consecutive interpreting to render the defendant’s utterances into English, and whispered simultaneous interpreting to render English utterances into the minority speaker’s language. Witness examinations are normally interpreted consecutively. In video links, the situation is different. Especially the interpreters’ ability to interpret simultaneously (whispering) is influenced by a number of factors. First of all, even though whispered interpreting is possible **when the interpreter is co-located with the minority-language speaker**, e.g. in court-prison video links, **interpreters are often asked not to use whispered interpreting during video links and need to resort to consecutive interpreting**. Lawyers and judges feel that the ‘background noise’ created through the simultaneous interpretation makes it difficult for them to concentrate on speaking. Although this perception is not exclusive to interpreting in video links, it seems to be magnified by VC. Other constraints apply **when the interpreter is in court**. As the video links currently

used in English courts do not provide additional sound channels for simultaneous interpretation, **the interpretation is also delivered in consecutive mode** in both language directions.

The inability to use whispered/simultaneous interpreting in video links with remote parties inevitably slows the court proceedings. Some interpreters feel that they are rushed by the court, and some report that they are occasionally asked to provide summary interpreting. Whilst such requests are not exclusive to video-mediated interpreting, the interpreters pointed out that they are more likely to occur and more difficult to reject in video links with remote defendants. **The parties in court seem more inclined to talk to each other without leaving enough time for the interpretation to be delivered to the remote defendant** (see section 8 – ‘Communication Management’ below for further discussion). In view of these difficulties, some interpreters would like to be located in a separate room with equipment that would enable them to deliver simultaneously both ways. However, they acknowledge the current challenges for such an arrangement, notably the current levels of training in simultaneous interpreting among legal interpreters.

In the **remote interpreting setup at the Metropolitan Police Service (MPS)**, consecutive interpreting is used throughout, i.e. the method of interpreting is the same as that traditionally used in police interviews in England. The MPS has no intention to introduce a more complex technical setup to enable simultaneous interpreting.

5.7 VC management

One important aspect of managing the communication via video link concerns the participants’ positioning in relation to the equipment, i.e. the screen(s), camera(s) and microphone(s). The **position of the interpreter** in English courts depends very much on the participant distribution. In video links between courts and remote parties in which the **interpreter is located in court**—i.e. most commonly in court-prison video links (see section 4 – ‘Participant distribution’ above)—the **interpreter’s position in the courtroom is normally decided by the court**. The interpreters are allowed only limited input in this decision, although they can say whether they prefer standing or sitting down, and whether they would like to leave the witness box after being sworn in. Unless they stay in the witness box, interpreters are generally made to occupy a place next to the defence lawyer. However, in some types of hearings, e.g. immigration hearings, courts have tried to move towards a less formal setup in which all participants including the interpreter sit at a round table during the video link. **When co-located with the minority-language speaker** at the remote site, **the interpreter normally sits next to the minority-language speaker**. Video link rooms in prison are normally very small, and the seating arrangement is pre-determined, as chairs may be bolted to the floor for security reasons. Similarly, virtual courtrooms in police stations tend to be small and do not allow much room for manoeuvre with regard to positioning. For example, sitting at an angle to be able to face the minority-language speaker, is often not possible. However, the interpreters generally believe that being seated next to the minority-language speaker at least allows them to create some kind of rapport with them (but see below).

The visibility of the interpreter also varies in accordance with their location. When *located in court*, interpreters do not have access to the image that is sent from the court, e.g. through a picture-in-picture, and are therefore not sure whether the remote party can see them. Their general assumption is that they get some level of visibility given their relative position to other speakers, such as the prosecutor or the defence lawyer.

However, the **equipment is generally operated by personnel in courts, prisons and police stations** and it is not clear how much attention is paid to making the interpreter visible for the remote site. The interpreters interviewed for this study stated that they had never paid attention to the ‘mechanics’ of camera use in the court. **When co-located with the minority-language speaker** at the remote site, the interpreter’s visibility in court depends on the technical set-up and room size/layout. The remote site normally has one camera, which is typically focussed on the minority-language speaker. There is

not always enough room for the interpreter to be completely in shot. However, the participants at the remote site can normally see themselves in a **picture-in-picture**, and interpreters say they use this to check the image that is sent to the court and improve their position if necessary. At the same time, some interpreters find the picture-in-picture distracting while they are interpreting.

When asked about the **importance of their visibility** at the other side, **interpreters had different views**. Whilst most interpreters believe that ‘it’s a basic right of somebody who has an interpreter interpreting for them to be able to see who is doing that’, one interpreter thought that she represents ‘just a voice transmitting from one language to the other’ and does not need to be seen. These views are also reflected in the interpreters’ opinions on their **rapport** with the minority-language speaker. Most interpreters believe that video links affect their ability to establish the level of rapport they need to carry out their task effectively, but the interpreter who perceived herself as being no more than a ‘voice’ did not feel the need to create a rapport with the defendant or witness. She believed her role is limited to transmitting orally communicated information. Some interpreters believe that video links have a negative impact on the rapport between the defendant/witness and the court, as the opinion the court forms on a defendant or witness may be influenced by technical issues such as inappropriate positioning or lighting.

Different issues with positioning arise in **remote interpreting set-up at the Metropolitan Police Service**. Whilst the interpreter working in the hub faces the screen and the camera and can thus be seen frontally in the police interview room (see also section 2 – ‘Equipment’ above), the police officer(s) and the suspect face each other at a small table, and the screen is positioned perpendicular to them. This leads to a situation whereby the officer(s) and the suspect tend to look at the screen rather than at each other. Some interpreters have pointed out that this tendency is beneficial for them as it allows them to see especially the suspect frontally, which can facilitate comprehension. At the same time, most interpreters are aware that this clashes with the police officers’ needs. The view of one interpreter was that “the police officer has got to face the detainee, so [not to see the detainee frontally] is fine... because generally we don’t really look at the detainee. Jus-, you know, it’s like very short eye contact with the detainee, because I think the most important thing is, he is talking to, to the police officer, because that’s what they [the officers] want. They want eye contact, and generally the solicitor and myself, we just look aside.” Only one interpreter was adamant that suspects should look at her when they are speaking and that they should “be given guidance as to which way to face when they’re speaking” in the video link. Apart from that, the interpreters emphasised that they would like to see the suspects’ and officer’s upper body and hands. Whilst this is possible in video links to the police stations, the interpreters were not consulted about the positioning of the equipment or any visibility issues prior to the implementation.

One of the common points that emerged across all settings concerns the interpreter’s control over the equipment. The interpreters would generally like to have control over the volume, but expressed a preference for not using any other control (e.g. camera zoom) while they interpret, because they feel it would distract them from interpreting.

5.8 Communication management

The interpreter informants reported that in court proceedings with video link, the communication is managed by the court clerk, who addresses the remote party, introduces the participants in court to the remote party and provides an overview of the proceedings. Some of the details of the communication management depend on the interpreter’s location.

Interpreters claim that when they are located at the remote site it is difficult for them to make their presence felt, and they often feel that they are ‘forgotten’ by the court. For example, the parties in court may not look at the screen and may not notice the interpreter’s attempts to intervene. The interpreters therefore generally feel that **they need to be more ‘forceful’** than in traditional hearings if they need to draw the court’s attention, for example, to ask for clarification.

As was outlined in section 6 (Mode of Interpreting) above, **similar difficulties arise when the interpreter is located in court**. In this configuration, the parties in court tend to talk to each other and it can be difficult for the interpreter to gain the floor and interpret what is said in court for the benefit of the remote participant. The study conducted by Bail for Immigration Detainees (BID 2008), which reports about video link proceedings with the bail applicant in detention and the interpreter in court (see also section 3 above), similarly highlights the problem that only questions directed at the bail applicants and the applicants' answers tend to be interpreted, whilst applicants are 'ignored' when the parties talk to each other in court.

In addition, the interpreters interviewed for this study also describe situations in which a question by the remote defendant overlaps with a speaker in court and where several parties require their attention simultaneously. Like other communication problems, this situation can arise in traditional and video-mediated proceedings and regardless of the interpreter's location in a video link. However, the interpreters are concerned that less experienced colleagues may have difficulties with intervening appropriately and co-ordinating the communication efficiently when it arises in a video link. In the interpreters' opinion, the management of the communication flow in a VC depends largely on the judge chairing the proceedings and their approach to interpreter-mediated hearings. In the words of one interpreter, 'some of them will try and be supportive and accommodate the interpreters, and some of them just don't treat you with much respect at all'.

Apart from this, the interpreters also highlighted a number of differences between video-mediated and onsite interpreting. Several interpreters emphasised that **familiar turn-taking strategies, especially their strategies to take the floor, do not work well in video links** and need to be substituted. As one interpreter noted, "[in onsite interpreting] I can start working, uh, uh, I can start talking and still listen to the person carrying on speaking. So that saves time. It's quicker. But, in a video, I wouldn't, I wouldn't try. I need to listen very carefully to the whole thing before I plunge in." Another interpreter explained that in onsite interpreting "when the person does a too long phrase, I usually show, I show my hand and I, I stop them" but that this was more difficult in video links as the remote party may not see this signal.

Other interpreters emphasised the importance of the **body language and intonation of the participants**, and claimed that they are easier to pick up in onsite interpreting. In the words of one interpreter, "you can see reactions, and, you know, and if people don't understand, they, it's easier for them to ask". In general, the interpreters feel that these differences make it **more difficult to build a rapport to the remote party in a video link**, which in turn means they feel "less involved" and the situation is perceived by them as "more impersonal" compared to onsite interpreting.

A different problem that seems to occur regardless of the type of video link has to do with **sound quality**, which may have repercussions on the interpreting quality. As one interpreter explains, "**sometimes the sound is not very clear. It, it, it gets lost a little bit**. It gets distant and it comes back, you know. So, it, it's a b-, it's more, uh, strenuous". Another interpreter found that video links "might be a bit tricky when it comes to the names. They say 'My name is...' and there's sometimes **very long foreign names**, and then they mention a lot of other long foreign names, so I suppose the end result would be, um, um, uh, poor quality."

Furthermore, in relation to video links being strenuous, the interpreters generally feel that **video-mediated interpreting is more tiring** than onsite interpreting. One interpreter highlighted the possible consequences: "If you get fatigue, then your concentration is affected. And then your interpretation is affected. Your accuracy is different."

All of the points highlighted here could also be among the reasons why interpreters find it **more difficult to gauge the other participants' communicative behaviour in video links**. One interpreter, for example, reported of a court-prison link in which she was located in court that "the accused, uh, very often had his head down, and I wasn't sure whether he understood what-, everything that was going on. Not once did he stop me. But I told him at the beginning, 'Stop me. Ask me questions. Ask

me to repeat’.” Although as reported in section 4 (Participant Distribution), the interpreters’ views on their most appropriate location (i.e. co-located with the minority speaker or in court) differ for a number of reasons, including practical reasons such as the interpreter’s safety, this interpreter believes that “for the sake of justice, the ideal situation would be for the interpreter to be with the accused, even if the other parties are elsewhere, because I can pick up more things about the accused, whether he’s understanding, whether he’s ill-at-ease, whether... I can pick up more from their body language and so on, which I won’t be able to pick up from the, from the video link, because it’s just, you see a head, and sometimes even the head, you see half the head, because the person is moving.” This view was corroborated by other interpreters who agreed that in terms of communication management, those situations in which they are not co-located with the minority-language speaker, i.e. court-prison video links with the interpreter being located in court as well as remote interpreting for the police, are “more difficult”.

Similarly, one of the police officers, when asked about differences between onsite and remote interpreting, first stated that “it makes no difference”. They then highlighted some **difficulties arising from the interpreter’s remoteness** upon further reflection, saying that “if I’ve got an interpreter sitting down here, maybe I can be a bit quicker. If the interpreter is sitting there, I can show them something. I can show them a bit of paper, I can I can directly speak to them.” Another police officer pointed out that “you don’t get the same dynamic [in remote interpreting] than having the interpreter sitting here”. This officer also pointed out a more fundamental difference, saying that “if your interpreter was at the police station, you can actually get to know them beforehand. You may know them anyway because they’ve been to the police station before. Whereas with remote, you, probably the first time you’ve ever met them is on a camera.”

5.9 Working arrangements with interpreters

In 2011, the recruitment of interpreters for the justice sector in England and Wales was **outsourced** to an interpreting agency, i.e. Applied Language Solutions (ALS; now Capita TI), through a Framework Agreement for translation and interpreting services between the Ministry of Justice and the agency. The agency supplies interpreters for HM Courts and Tribunals Service, parts of the Crown Prosecution Service and HM Prison Service.

As noted by the UK Parliament’s Justice Committee in 2013, ALS immediately faced operational difficulties “including a lack of registered interpreters, resulting in an **inability to deal with the volume of demand**. Where interpreters were available they were frequently without qualifications or under-qualified. There was also a lack of transparent or properly functioning processes for recruitment, vetting and complaints.”³⁴ Essentially, the Framework Agreement entailed a drastic **deterioration of interpreters’ remuneration and working conditions** compared to previous arrangements in the justice sector, leading many qualified legal interpreters to an open boycott of the agreement. The lack of properly functioning quality assurance processes at ALS/Capita TI meant that it was possible for **under-qualified interpreters to ‘fill the gaps’**. HM Courts and Tribunals Service conceded in their 2014-2015 Annual Report that “[c]oncerns had been raised regarding the underperformance of interpreter services provided through a contract with Capita ALS”. The underperformance was so glaring in 2012/2013 that it became the subject of numerous reports and complaints, leading to its investigation by two Parliamentary committees, i.e. the Public Accounts Committee and the Justice Committee. The two committees published their respective reports in 2013, making it clear that the Framework Agreement had serious shortcomings.³⁵ However, the steps taken to rectify the situation

³⁴ <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/645/64504.htm>

³⁵ Public Accounts Committee Report: The Ministry of Justice’s language service contract, 6 December 2012, <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/620/62002.htm>; Justice Committee Report: Interpreting and translation services and the Applied Language Solutions contract, 23 January 2013, <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/645/64502.htm>

have been widely regarded as not much more than ‘window-dressing’ by the professional interpreter associations. At the time of writing, a tendering process is under way to renew the Framework Agreement.

The importance of this development in relation to video-mediated interpreting in the legal system is that the many challenges of video-mediated interpreting, as outlined in this report, entail that video-mediated interpreting requires qualified and experienced interpreters. Given the increasing demand for interpreters to work in video links, the current use of under-qualified interpreters in the legal system—mainly as a result of the inappropriate working conditions that make interpreting assignments in the justice sector unattractive for qualified linguists—is of great concern.

Some other institutions in the justice sector, especially many of the police forces in England and Wales, still book interpreters through other (older) arrangements, but are increasingly looking into agreements like that devised by the MoJ. A notable exception is the Metropolitan Police Service in London. **The MPS have their own list of interpreters and their own certification exam for interpreters wishing to join this list.** As part of their programme to modernise their language service provision (see section 1 above), the MPS have created their own interpreter deployment team to book all interpreters required by the MPS, drawing on the interpreters on their list.³⁶ The deployment team decides whether onsite or remote interpreting is used, mainly based on the type of offence. Video remote interpreting is currently used only for interviews with suspects and the associated lawyer-client consultation. It is deemed suitable only for ‘low impact, high volume’ offences (e.g. shop lifting). Witness statement taking with remote interpreting is planned for the future.

As far as we were able to establish, **the fee for traditional and video-mediated interpreting is the same across all institutions in the justice sector.** There is no consensus among interpreters as to whether video-mediated interpreting would command higher fees. Some believe this would be appropriate due to the increased challenges and stress generated by the video link but others think that being aware of the technological challenges of the setting is part of the interpreter’s job.

Regardless of their views in relation to remuneration, interpreters largely agree that **training in video-mediated interpreting should be provided** for novice and experienced legal interpreters and to the legal stakeholders. The training should aim to familiarise all stakeholders with the use of bilingual, interpreter-mediated video links, the specific challenges arising, the equipment and the visual ecologies of the VC environment.

³⁶ The only exceptions are languages for which there is no interpreter on the MPS list and the initial communication with the detainee, especially the explanation of rights, which is done through a telephone interpreting service.

6 Finland

The following report summarises the situation in Finnish courts, where videoconferencing is used in national proceedings and cross-border hearings of witnesses, defendants and experts. This report is based on interviews with judges, a representative of the Finnish Ministry of Justice, freelance interpreters with expertise in legal interpreting for Finnish courts and additional information provided by an interpreting agency. The data collected by interviewing the informants are interpolated with other sources, such as the information about videoconferencing available on the European E-Justice portal, the European VC survey 2008, and the surveys among legal professionals and legal interpreters regarding videoconference and remote interpreting in legal proceedings carried out in AVIDICUS1.

6.1 Procurement

The procurement of VC equipment for Finnish courts started in 2003-2004, prompted mainly by the **necessity to hear witnesses and defendants from Estonia**. During a pilot, one VC unit was procured by the Finnish Ministry of Justice and implemented in Tallinn, and a Finnish prosecutor was based in Tallinn to oversee the co-operation. The informants believe this experience was very beneficial. All cross-border videoconferencing was subsequently modelled on the experience gained in this pilot. The procurement was completed around 2010. At the time of the interviews (April 2015), **all Finnish courts are equipped with VC**.

The procurement was carried out by the Ministry of Justice, which is responsible for court technology. The Ministry took a consistent approach, which involved equipping all courts with high-quality equipment and to the same set of specifications. The informants from the judiciary are very satisfied with the solution. They believe that the consistent approach facilitates the use of the equipment and removes uncertainty about the technical specifications of remote VC sites, and that the quality and ease of use of the equipment mean that proceedings with video links are *'just a normal procedure'*. Although not common yet, VCs are increasingly used, and informants from the judiciary think they are *'a good way to save money'*.

Whilst the consistent approach to procurement is a useful basis for both monolingual and interpreter-mediated video links, it seems that **legal interpreters, as individuals or as associations, were not consulted in the procurement phase**. At least, the decisions regarding technical specifications of the VC systems are perceived by interpreters to be purely ministerial (*'The ministry of Justice, maybe, decided all that'*).

6.2 Equipment and maintenance

Finnish courts use their own built-in equipment, without resorting to on-demand services. Courts also have portable VC equipment, and there are future plans to assign specific VC rooms for the hearing of witnesses.

The equipment used is Polycom ViewStation EX. The technical standards used are H.320, H.323, H.264, H.239 and MPEG4, AES encryption standard H.235 (used as and when necessary), and SIP. All VCs within Finland are IP-based. The IP Network is a closed network. Cross-border connections are normally established via ISDN, according to the 2008 VC survey. The equipment enables several VC features, such as the possibility to control the picture-in-picture (PIP) and the far-end camera, as well as the establishment of multipoint VC connections.

The equipment normally comprises one screen (or multiple screens, all displaying the same image, for better visibility) in the court and one in the remote site. Courts are equipped with rotating cameras capable of focusing on different speakers in the courtroom; VC equipment in prisons, however, has a fixed camera that delivers a static image of the suspect/defendant to the court, and cannot be moved.

Interpreters in court are assigned their own microphone, while in prison they share a VC flat microphone with the suspect/defendant.



Figure 1: view of the Court of Appeal, with two VC screens and rotating camera.

Judges perceive the **equipment to be reliable and to deliver high quality image and sound**, leading them generally to believe that the VC setting is *'exactly, almost exactly, almost comparable with the situation the person is in the courtroom'*. **Interpreters, by contrast, think that the system often produces a sound delay** which they find potentially disruptive for the interpreter's work and that **the sound quality should be improved**. The video quality is generally perceived as good. When compared to the traditional court setting, therefore, VC equipment does not offer a comparable support in terms of sound quality for interpreters, who would like steps to be taken improve the situation, including the acquisition of peripheral equipment (*'A headset would definitely help. A headset would be a definitive improvement here, I think.'*).

Technical problems capable of interrupting a VC are generally thought to be very unlikely, and **informants do not report having experienced any serious communication breakdown** that could not be fixed by attempting to establish the communication again. Backup procedures such as phone conference are in place in case of potential connection problems. However, informants acknowledge the risk of communication breakdown during the VC and highlight that some of their colleagues are sceptical about the use of VC precisely because of these risks. When VC is not used on a regular basis, the technological aspect is the one that raises more concerns among informants, more so than the presence of an interpreter (*'I think that video conferences are quite exceptional for us, so we are always a little bit nervous that everything is going well - is the technical side sort of functioning, so I think it's, I don't think we have that much concern about the interpreter, it's more the technical things.'*).

Technical issues with sound and image quality are perceived as more likely in cross-border hearings than in national video links. Informants associate different levels of quality to different remote locations, observing in particular that connection quality is worse when the link is made with 'rural courts' outside of Finland. This discrepancy in quality levels can reasonably be attributed to different technical specifications. However, informants have not detected generalizable patterns as far as connection quality is concerned.

The VC equipment is normally managed by a secretary or court clerk during the hearing, but generic IT support is available in-house to set up the connection and for minor IT issues. The courts also have an agreement with a specialist external provider to support them for cross-border VC and for serious technical problems. The service courts receive allows informants to feel confident regarding the ease of use of the equipment, and they are generally satisfied with regard to system support.

Some guidelines on the use of VC equipment are available, but these are mostly limited to the technical aspect of establishing a video link and are not intended for judges, who are not necessarily aware of their existence and content.

6.3 Uses

According to the 2008 VC survey conducted by the Council of the European Union, Finnish courts use **VC at national level** for **links between courts** as well as to establish **links between courts and prisons, detention centres and police stations** (police custody suites). Videoconferencing in Finland is, in principle, allowed in **civil and criminal proceedings**, and many types of participants can be linked to the court via VC, including **witnesses** (because of their distance or vulnerability), **experts, defendants, and interpreters**. However, the hearing of defendants by VC is excluded from the trial stage of criminal proceedings. Interpreters are integrated in these video links. By contrast, the use of video links to gain access to an interpreter (remote interpreting) is currently only done in emergency situations, as discussed in Section 4 of this report.

There is an ongoing discussion about updating the system to allow **experts**—especially doctors—to be linked from locations other than their nearest court, but *‘at the moment in the Finnish system it’s not possible, because security can’t be as high level as it’s needed’*.

The hearing of **defendants** via video link in preliminary hearings can happen **subject to the defendant’s agreement (Court of Appeal)** or as a **routine procedure in the application of coercive measures**. Informants support the view that the Court of Appeal has a larger scope of VC applicability than District Courts.

As mentioned earlier in this report, VC equipment was implemented in Finland partly because of the necessity to link with Estonia. Therefore, **cross-border VC was allowed from the very beginning** of the VC history in Finnish courts. Indeed, as reported in the VC survey, **the Finnish legislation does not distinguish between the use of VC in national and cross-border proceedings**, and Finnish courts have successfully linked with countries like Estonia, Sweden, Denmark, Norway, Luxembourg, the Netherlands, Liechtenstein and Hungary. The 2008 VC survey notes that *‘[t]hese videoconferences have proceeded without problems’*. However, as reported above, interpreters perceive a reduction in the VC quality (especially in terms of sound and video quality) when the remote site is abroad, and in particular when the remote site is not a court in a capital city.

Both according to the VC survey and the informants for this project, **cross-border VC hearings are normally carried out with two interpreters**, one in the remote site and another one in the Finnish Court.

The duration of video links varies greatly depending on the type of proceeding VC is used for. VCs in coercive measures are usually under half an hour, whereas links to witnesses vary depending on the number of questions the court wishes to ask, and can potentially last for several hours. Judges seem to prefer short VCs. They believe that the main purpose of VC is to simplify the logistics and reduce costs of court hearings, and that short hearings justify the use of VC. As one judge put it, *‘in most cases if you need to hear for several hours, or for many days, or for one day, it’s more reasonable that people come here, but when it’s the opposite case, that it’s only few things that you have to know and ask for, it’s more reasonable that there’s a video link.’* Interpreters confirm that hearings of witnesses tend to be longer than court-prison video links but in their experience they have a maximum duration of around one hour.

Judges are not given any particular rule about when to use VC. They **establish the appropriateness of video links on a case-by-case basis**, but report that they *'are now advised to think, really think about it every time'* and encouraged to use the VC equipment whenever possible in order to save resources and improve logistics. However, **while some judges are keen to consider VC**, perceiving it as a good way to save resources, **others prefer traditional hearings** and see video links as something the law reserves to exceptional cases.

Preference for traditional settings is also shared by some interpreters, who believe that direct contact with the person they interpret for makes their work much easier.

6.4 Participant distribution

The distribution of VC participants is strongly linked to the VC scenarios described above.

In the case of **cross-border hearings** the witness (or defendant) is at the remote location, and **there is usually a local authority managing the video link** at the remote site (e.g. judge, court clerk, police officer); **there may be one or two interpreters**. In the case of two interpreters, normally one is in the courtroom and the other is located at the remote site. In the case with one interpreter only, the interpreter is normally in the courtroom and the interpreting service is arranged and paid for by the Finnish court, who has the power to decide on the location of the interpreter. **The principles that lead Finnish courts to take charge logistically and economically of the interpretation services are of practicality** (it would be more difficult to find Finnish speakers in other countries, and local interpreters are already familiar with the local justice system) **and politeness in cooperation**, as in these scenarios Finnish courts are asking legal aid of courts in other countries and therefore feel it is their responsibility to provide the services that are required for the VC hearing. One judge reported that in *'99% of the cases, especially in the cross border cases, [the interpreter is] pretty much always where the court hearing itself takes place. [...] I think that in most cases it's always the court that has the hearing pays for the fees, books the interpreter and takes care of the practical matters, and they just, on the other side just bring the witness to the video room and help from there to get the contact'*.

In the case of **national hearings**, the first scenario to consider is **court-prison video links**. In these, **the location of the interpreter and of the defence lawyer can vary** and it can be subject to negotiations. The same applies to hearings in which the court is linked to a detention centre for asylum seekers or preliminary hearings for police custody. However, **the interpreter is normally in court**. Secondly, as regards the hearing of **remote witnesses** within Finland, the location of the interpreter may also vary, but again **the interpreter is located in court in most cases**.

In all configurations described here, the decision regarding the location of the interpreter is reportedly mostly driven by factors of practicality, economy and cooperation. **The potential impact of the interpreter's location on the interpreting performance or on the proceedings does not seem to be a major driving force**.

However, judges and interpreters have different preferences regarding the interpreter's location in court-prison video links. The judges who contributed to this study prefer the interpreter to be in court (e.g. *'I think it's important to see the person who we are hearing, but it's clearer that the interpreter is here, because we are hearing what he is saying she is saying, so I think it's better if the interpreter is here.'*). By contrast, interpreters have a more nuanced view involving, for example, the length of the VC among the factors influencing this decision (e.g. *'If it was, you know, like a long hearing, I knew in advance that it will be like, one hour, one and a half hour, I'd go to the prison definitely. [...] But in the short, like, 10-15 minute sessions I can go and take the video link, that's no problem.'*). Whilst being in the court allows interpreters to work in more comfortable conditions, direct contact with the person requiring interpreting is seen as beneficial for the overall interpreting performance (*'what's difficult [in VC settings] is that you don't have the direct, like, how do you say, connection with the person you are working with. That's the problem'*).

Moreover, when the interpreter is co-located with the defendant in court-prison video links, the defendant's lawyer is normally in prison as well (*'there is a lawyer. And they even have a printed and glued it on the door that the interpreter is allowed to the videoconferencing room only with the lawyer'*). Interpreters see this practice as appropriate, given that without the presence of the lawyer they feel that they *'can go [to the prison] alone, but then [the prisoner] will start to ask the interpreter all the questions they want to know'*. When the interpreter is in court, the lawyer can still be at the remote site alongside the defendant. In this case, the lawyer will need to be able to speak the defendant's language, as separate interpretation for the confidential dialogues between the lawyer and the defendant is not possible for the interpreter located in the court. Hearings with various parties requiring interpretation, in some cases in more than one language, can also happen. In this case, different arrangements can be made for the various parties involved and their interpreters, depending on individual needs.

Physical separation from the interpreter of all parties in a VC session ('remote interpreting') only seldom happens within the Finnish system, and judges tend to regard it as a 'last resort' in emergency situations, along with telephone interpreting. Although the guidelines for Finnish judges state that in emergencies it is possible to use telephone or video links to access an interpreter, one of the informants said that they did not have *'any experience of that, and I don't think that any of my colleagues has mentioned this kind of thing either'*.

6.5 Pre-VC/Post-VC

Briefing and debriefing phases appear to be very limited in Finnish courts. Before hearings take place, **interpreters are provided with some case files** for their preparation, although not consistently. **District courts** seem to have **no general rule** as to what documents interpreters are entitled to have in preparation of a hearing (*'Sometimes they give [me documents], sometimes they don't, depends on the case, I guess.'*). In some cases, issues of confidentiality seem to prevent some judges from providing interpreters with classified documents. In other cases, judges are not even fully aware of what documents have been handed over to the interpreter. However, the **Court of Appeal has general rules** for sending to interpreters a set of documents before the hearing using secure links (*'we send them the decision of the district court, the appeal and maybe the response to the appeal.'*

Interpreters are normally informed of the use of a video link during the hearing, but judges do not necessarily know whether interpreters receive this information, as the booking of the interpreter is handled by a court secretary. **Opinions about whether the interpreter needs to be informed of a video link beforehand range** from the view that *'it would be polite at least to inform them'* to the view that working in a VC should be part of an interpreter's routine and that the interpreter does not need to be informed of a VC link (*'I think that it's enough for them to be a good interpreter, it doesn't need anything extra in my opinion.'*). The latter view is based on the assumption that there is not *'that much difference between a face-to-face situation than via video link.'*

Pre-hearing conversations between judges and interpreters about the organisation of the proceeding or any other subject **are rare**. Common practice is that *'they say hello and then they start working'*. Communication between judges and interpreters is also rare in the form of post-hearing debriefing. Similarly, there is **no post-hearing discussion with the interpreters**, for example regarding the interpreting quality, although judges believe that given the increasingly common use of court interpreting services it may be appropriate to assess their performance within the scope of a debriefing.

6.6 Mode of interpreting

The chosen interpreting mode appears to depend on several factors including the interpreter's competence, their location with respect to the remote party, the remote party (defendant or witness) and on practicalities such as the level of background noise created by whispered simultaneous interpretation.

Although the minimum standard agreed between the courts and the interpreting agencies supplying the interpreters is consecutive interpreting, judges believe that the ability to interpret simultaneously is the hallmark of a good interpreter; and that when the interpreter is able to interpret simultaneously, the choice of the interpreting mode is partly down to the interpreter's own preferences.

In practice, a distinction can be made between the patterns occurring in hearings of remote defendants and hearings of remote witnesses. In the case of **remote defendants**, **whispered simultaneous interpreting is normally used when the interpreter is co-located with the defendant**, imitating the situation in traditional hearings when the interpreter is normally placed close to the defendant in the courtroom. In traditional hearings, participants occasionally complain about the background noise whispered interpreting tends to create in the courtroom, but interestingly this does not appear to be an issue during video links where the interpreter is co-located with the defendant. The interpreter's voice may be less audible in the courtroom. **When the interpreter is in court to interpret for a remote defendant, the predominant mode is the consecutive.**

In hearings of **remote witnesses**, consecutive interpreting is used and sometimes only a partial interpretation seems to be provided for the witness, because judges believe that not everything that is said in the court needs to be interpreted for the witness. One judge contended that *'the witness does not need to know what I am sort of, for example, speaking with the with the [prosecutor], but the defendant and the parties, they must know everything that is going on in the court, but the witness sort of needs only to understand the question, and what sort of practical matters I am discussing with the prosecutor, for example, it's no concern of the witness, usually.'*

6.7 VC management

One dimension of VC management is the positioning of the participants within the room and in relation to the cameras. A related dimension is visibility on the screen.

In Finnish courts VC participants can be positioned in a variety of ways, both within the VC rooms and with respect to the cameras. **If the interpreter is co-located with the remote party**, they normally **sit beside the person for whom they interpret**, and both face the camera. If a lawyer is present, s/he faces the camera, too. However, the camera at the remote site is normally focussed only on the witness/defendant. This will be discussed further below.

Different issues arise **when the interpreter is located in the courtroom**. In this case, his/her position is decided by the court authority and **can vary**. The judges who served as informants emphasised that **interpreters located in the courtroom are normally granted a position that allows them to see both the bench and the VC screen** but that their position also depends on the availability of a microphone. At the same time, the judges reported that it is common practice for the interpreter either to be seated next to the prosecutor or to occupy the witness place if no witness is present in the courtroom, as shown in Figure 2 below. In those positions, the interpreter can see the VC screen only from the side. Alternatively, the interpreter may be asked to sit next to the lawyer, whose position is not predetermined and who can choose where to sit. The interpreter's comments confirm that there is no standard place for the interpreter in the VC situation. **At times, the interpreter needed to call for the court's attention if the chosen position is not adequate** (*'I was once in a situation in a courtroom where, like, small courtroom with about 40 people, and I was probably the only one who didn't hear what the other person said on the other end. Because the acoustics and the speakers were positioned in such a way that I just simply couldn't hear what the person said.'*)



Figure 2: View of VC screen from the witness place, which is used by the interpreter when there is no witness present

As was pointed out above, **the image that is sent from the remote site to the courtroom** normally **shows only the defendant or witness**, especially in national hearings, regardless of where the interpreter and the lawyer are located. One judge highlighted that in hearings of remote witnesses, the remote site normally uses a zoom function to focus on the witness's face and upper body, which is what judges are interested in seeing. **If the interpreter is present at the remote site, s/he may be shown on screen** if the camera allows for a sufficiently wide angle, but judges do not seem particularly interested in this aspect (*'I was thinking of that issue, should the interpreter be in the picture or not. And I haven't really thought about it. Maybe it doesn't so much... it's hard to say.'*). Some judges could not remember whether they saw the interpreter in the image from the remote site.

In the case of cross-border hearings, the camera may have a wider angle and be set to show the witness, the court official and the interpreter from the remote site as a static image. Some judges seem to prefer this option. However, neither judges nor interpreters believe that showing interpreters on the VC screen is fundamental for the hearing. One judge reported that *'the whole ideology is like that the judges and justices need to see the one who is heard, the whole body and the body language and the face and everything, so I think that's the only thing that is important to be seen, we don't need to see the interpreter, we only need to hear her.'* Similarly, one interpreter who was asked whether s/he should be visible, responded *'This is interesting question. No, I don't need to be seen'*.

If the image from the remote site is not static, an officer needs to be present to manage the equipment at the remote site, as the participants are not normally granted any control over the equipment, and they are not necessarily aware of how the system is operated.

The image the court sends to the remote site can vary. Courtrooms are normally equipped with at least two cameras. The image can be a static, wide-angle image of the courtroom, including all speakers, or it can focus on individual speakers at different times. The VC system offers the possibility of using pre-sets for various speaker positions in the court, as shown in Figure 3 below. Normally a court clerk or a secretary manage the equipment during the hearing and decide which image is sent to the remote site. If the interpreter is present in court, their image *may* be shown to the remote witness/defendant as a picture-in-picture (PIP) within the main frame. Judges are not necessarily aware of the image that is sent to the remote site. Asked about whether the interpreter is visible for the remote site, one judge explained *'what we did last week was that the prosecutor was here and the*

interpreter was in the witness place, but actually I don't know.... I didn't, I don't know how, if the interpreter was in the picture or not.'



Figure 3: Control panel with preset buttons showing an image of the courtroom with a PIP.

The other function of the picture-in-picture, i.e. to see an image of oneself (a near-end image), **is not felt to be necessary by participants**. On the contrary, some consider the picture-in-picture to be disruptive for their concentration. Participants report that they usually check their position in front of the camera at the start of the VC but do not look at their own image thereafter. **Document cameras are also used during VC hearings**. The document image is sent to the remote site by means of a split screen.

While overall they are satisfied with the management of video links, **judges believe that a better thought out screen and camera setup may lead to better VCs**. When asked what other aspects of VCs could be improved, one judge felt it may be useful to *'stop a little bit more before going into the hearing and really think of what kind of picture is sent to the other end. Because sometimes you just rush in and then 'ah video' then it starts and then you rely that everything is OK'*. Interpreters corroborate this view indirectly when they highlight that they are not sure whether a perception of eye contact between the remote witness/defendant and the interpreter in the courtroom is normally achieved.

6.8 Communication management

Contrasting descriptions of the beginning of VC hearings come from different informants: some judges report that the presiding judge makes formal introductions of the people in the courtroom, introducing them one by one with the help of the camera. However, interpreters working in cross-border links claim that they are not introduced to the remote site, and that their role in the VC starts with the examination of the witness. **The discrepancies in these reports may reflect what happens in different types of hearings, but also the idiosyncratic choices of individual judges** regarding the introductions that need to be made. **No reference is made to any procedure being in place for the opening of a video link**, which reinforces the hypothesis that the formalities at the beginning of a VC may vary depending on the parties involved.

The communication flow during the proceedings is mainly managed by judges in Finnish courtrooms. Some judges perceive the communication management in VCs to be very similar to that in traditional

hearings (*'The first time it was quite surprising that it was so the same, there were no problems that I assumed that there that there would be problems in the flow of the words and everything, but no, it's like the same.'*). However, judges agree that interpreter-mediated hearings require an additional effort in communication management and point out that problems are likely to occur when the presence of the interpreter is ignored. For example, when the interpreters are not given enough time to interpret, they need to intervene to remind the presiding judge of their presence or ask other parties to pause for the interpretation. One judge believed that it is easier to remember that an additional effort is required in interpreter-mediated communication when the proceedings take place via VC. However, interpreters pointed out that communication management—including interpreter intervention—is more difficult in a video link than in a traditional setting (*'If a person starts talking and talking and talking and never stops, it's very hard to just interrupt or stop that person. And that was the problem in the beginning, and of course it still is.'*). Furthermore, interpreters emphasised the importance of technological improvements, especially regarding audio quality and reduction of transmission delay, which would facilitate intervention as and when required. Some form of VC training for participants to learn about communication management when working with an interpreter would also be welcome from the point of view of interpreters.

The video link also appears to have an adverse effect on the interpreters' levels of performance-related stress, as they are more concerned about missing important information (*'when it's video link it's a bit more stressful, because you are afraid that you will miss something, or not hear something, or things like that.'*). On a positive note, **judges are aware of the interpreter's need to take occasional breaks**, and try to remember to offer some as part of communication management in the courtroom. Interpreters are encouraged to mention the need for a pause to the presiding judge.

The number of interpreters present can affect the way communication is managed within a hearing. However, in the cases with two interpreters, the respective roles of the two interpreters were not well defined prior to the hearing, and varied from case to case; as reported by one interpreter, much as they would appreciate prior discussing of their roles, the working arrangement of interpreters is *'not agreed, it's like, it just happens, kind of.'*

Regarding the communicative behaviour of remote witnesses/defendants, some judges believe that the presence of a video link has little to no impact on this (*'how they sort of behave, I think that witnesses are always a little bit scared and uncertain when they are not used to come to court, so if it's done by video link or by coming here personally, I think it's pretty much the same.'*). This view is not shared by the interpreters, who believe that the distance between the courtroom and the remote site may affect the authenticity of witness's or defendant's experience and may entail that they do not take their role in the hearing as seriously as they would if they were physically present.

As a final point to note, judges reported that they have a keen interest in hiring experienced interpreters for cross-border hearings to ensure the hearings proceed smoothly. Although mainly motivated by the desire to maintain an image of professionalism of the Finnish courts, this practice suggests that judges believe the interpreter's experience has an impact on communication management in the VC. They report that they strive to hire experienced interpreters for national VC hearings and face-to-face settings as well, but that the impact of problems in the communication flow on such hearings is lower than on cross-border proceedings.

6.9 Working arrangements with interpreters

Interpreters for Finnish courts are recruited either directly or through interpreting agencies. Courts are independent in this matter and they can choose how to organise their interpreting services, the court of Helsinki has reduced the number of interpreting agencies they use over the past few years in order to achieve a level of standardisation. During a recent procurement exercise a list of preferred interpreters was compiled, and the court relies on the contracted agencies calling the interpreters with positive experience first. Also, the court reserves the right not to accept interpreters that are

deemed to be not sufficiently qualified or competent. Judges are happy with this arrangement, which facilitates the procurement of interpreters, as only one party is involved in the process.

Other courts rely on both direct contact with freelance interpreters and recruitment through interpreting agencies. These courts also have lists of interpreters who have demonstrated their professionalism over time. The choice of a freelancer is made by court personnel upon the judge's instructions; such instructions may include the names of specific interpreters who should be called in the first instance as well names of interpreters who should not be called again based on previous negative performance. Parties can suggest interpreters, or bring their own. Interpreting agencies are seen by such courts as fallback options in case no suitable interpreters can be accessed through their own internal lists.

Normally, Finnish courts use one interpreter per hearing per language combination. In some cases, due to the number of participants or the expected length of the proceedings, courts will hire two interpreters in order to respect the breaks required by the interpreters to do their job.

The requirements to work as a court interpreter are not set out clearly throughout the Finnish system. Courts relying on agencies require interpreters to be educated in interpreting at university level or to have achieved equivalent qualifications where university education is not available in their language combination. However, formal education for court interpreters in Finland is a relatively recent phenomenon. Legal interpreter training has recently been set up in colleges, and courts expect the first interpreters who have completed this training to be ready around 2018-19. Specific training for interpreting in VC settings is not available. Courts not relying on agencies do not seem to have any minimum requirements, and interpreters are assessed by judges after having performed in court. As one judge explained, *'so far since there hasn't been any training we have sort of, any interpreter can give us their name and number and say that 'I am available if you need an interpreter,' and when we have experience working with them, we will either keep them in the list or inform the secretary that keeps the list that 'this one is not good so I don't want to use him or her any longer.'* Judges feel that a number of interpreters who are called to court do not have the necessary skills for the task and point out that interpreting quality is sometimes compromised in cases of emergency. In the words of one judge, *'there are cases where we are in a rush and we just need somebody, so in those cases I will accept a less good interpreter, if I really need one badly.'* Professional interpreters highlight the lack of tools for monitoring interpreting quality, which they see as a systemic problem resulting in less work for competent professionals and poorer overall interpreting quality in courts. Interpreters also believe that agencies play a role in perpetuating low standards, because the rates they offer are not high enough to attract high-calibre professionals.

The pay court interpreters receive when working as independent freelancers and through interpreting agencies varies greatly (approx. and 37 Euros per hour respectively). Freelancers believe that the low rates offered by agencies force qualified interpreters to have a second job or to opt out of working through agencies. Judges agree that the pay is generally low. A further point to note is that the rates do not distinguish between traditional settings and VC hearings. This is perceived as fair by interpreters at least as far as short VC hearings are concerned. A difference in pay, their opinion, may be justified for longer video links in light of their difficulty and increased stress levels.

7 France

This report summarises information provided by a varied group of representatives of the judicial system in France, including representatives of the Ministry of justice, court interpreters, lawyers, clerks, and court administrative personnel. The data collected by interviewing the informants has been cross-checked with other sources such as the information about videoconferencing available on the European E-Justice portal, the European VC survey 2008, and direct observations of VC uses in different types of court. Most interviewees had experience with respect to one kind of court use only.

The French court system distinguishes between judicial courts and administrative courts. Each type of court has a pyramidal and hierarchical structure. The judicial branch is divided into civil courts to settle private matters and criminal courts to judge offenders. According to the degree of the offence, the case might be heard in minor courts (such as *Tribunal Correctionnel*) or major courts (such as *Cour d'Assises*). There are also specialised courts such as Labour, Land Estate and Business courts. Contested cases go to appeal courts and finally to the *Cour de cassation*, which is the higher and final jurisdiction in the criminal system. The administrative system is established to handle any disputes between the government and individuals. Contested decisions go to appeal courts as well, but the higher and final court for administrative justice is the *Conseil d'Etat*. In what follows, with respect to administrative justice, we have mostly considered the particular case of asylum law, where VC has started to be used more systematically.

7.1 Procurement

The procurement of VC equipment for French courts started in the late 1990s in response to a specific situation, i.e. the insufficient number of judges in Saint Pierre and Miquelon and the subsequent risk of having the same judge in the initial hearing and in the appeal hearing, contrary to European Law. According to Licoppe & Dumoulin (2015), economic considerations played only a marginal role there. The use of VC for hearings was still controversial at the time, and it was framed in the Saint Pierre and Miquelon case as a local experiment. Around to 2004, the French Ministry of justice started to launch experiments in various courts, both for security reasons (handling high risk offenders in the post 09/11 context) and for managerial ones (cutting the costs involved in getting witnesses and experts to come to testify in faraway courts. It was used, for instance, in the Court of Assizes of Saint-Denis de la Reunion for that precise purpose. In 2007, the French Ministry of Justice was asked to make economies with emblematic measures, and the decision was taken to implement VC in all prisons and courts, this time to avoid getting offenders to come to court under heavy escorts. It was a top-down, technology-oriented process strategy relying on strong incentives and potential sanctions to ensure the use of VC by independent and often reluctant magistrates. In 2009, all courts of First Instance and Courts of appeal had been equipped with video link facilities as well as nearly all penitentiary establishments. In 2010, a circular from the Ministry of Justice decreed a quantitative goal, implying the use of VC for at least 5% of the hearings (*circulaire du ministère de la Justice du 5 février 2009*).

In the context of administrative justice, the French Office for Protection of Refugees and Expatriates (OFPRA) introduced VC in 2006 for an experimental phase and then deployed it progressively. VC was introduced only for specific cases (Art. R. 723-9) when the asylum seeker was unable to travel or in overseas territories. The remote location where the VC interview would take place had to be approved officially by the Office. In 2014, VC represented only about 5% of overall cases, but it was used in 70% of cases involving asylum seekers in overseas territories and 30% of cases involving asylum seekers in an administrative retention centre.³⁷

³⁷ 2014 OFPRA Rapport d'activité 2014, available at https://www.ofpra.gouv.fr/sites/default/files/atoms/files/rapport_dactivite_2014.pdf

The National Court for Asylum introduced VC more recently the use of VC facilities.³⁸ An initial experiment took place in 2014 between the CNDA and the administrative court in French Guyana, involving only a small group of judges and personnel. Relatively quickly after this test, VC was used to deal systematically with asylum seekers arriving in French Guyana. In June 2015, the use of VC was extended to the case of asylum seekers in Mayotte, with a link between the CNDA in Paris and the local administrative court there.

With respect to interpreters, article 706-71 specifies that if the interpreter is unable to travel to a courtroom hearing, interview or confrontation can be done remotely through VC.

7.2 Equipment and maintenance

French courts depending on the authority responsible for them may have different VC equipment. Tandberg systems are largely used, but Sony, Polycom and Aethra systems may also be found. The technical standards used are H.320 ISDN, H.263, H.264. The equipment usually comprises one screen and one rotating camera. A few courts use 2 or 3 screens and some courts are equipped with more screens. Some courts have two cameras as well, but this is rare, and the most common setting is the one we describe below.

Equipment and maintenance in criminal courts

In the case of criminal courts, the ones we observed used one screen and one rotating camera only. The video apparatus was placed on the side of the room as in Figure 1.

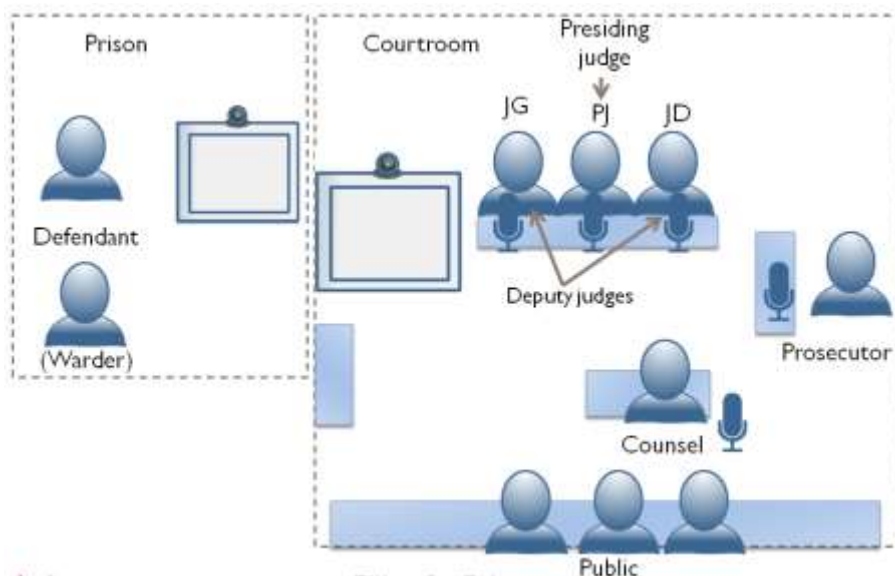


Figure 1 Schema of spatial configuration in Regional Court of Appeal

In the observed courtrooms, the microphones are whether mobile or built in. There is no dedicated position for the interpreter. Their position in the room is organised in situ by the judges. We have observed two different configurations: the interpreter stands up close to the bench to fit on the screen; he/she seats in between the presiding judge and the assessor.

³⁸ Décret n° 2012-460 du 6 avril 2012

Equipment and maintenance at the CNDA (Appeal court for Asylum law)

The CNDA is based in Montreuil near Paris, and its implementation of VC involves up-to-date material for Cisco and large bandwidth networks. The smallest of the seventeen courtrooms in Montreuil has been equipped with videoconference, in order to deal with asylum seekers overseas. The system is IP based. Two large screen displays are oriented to the court and a smaller one for the public.

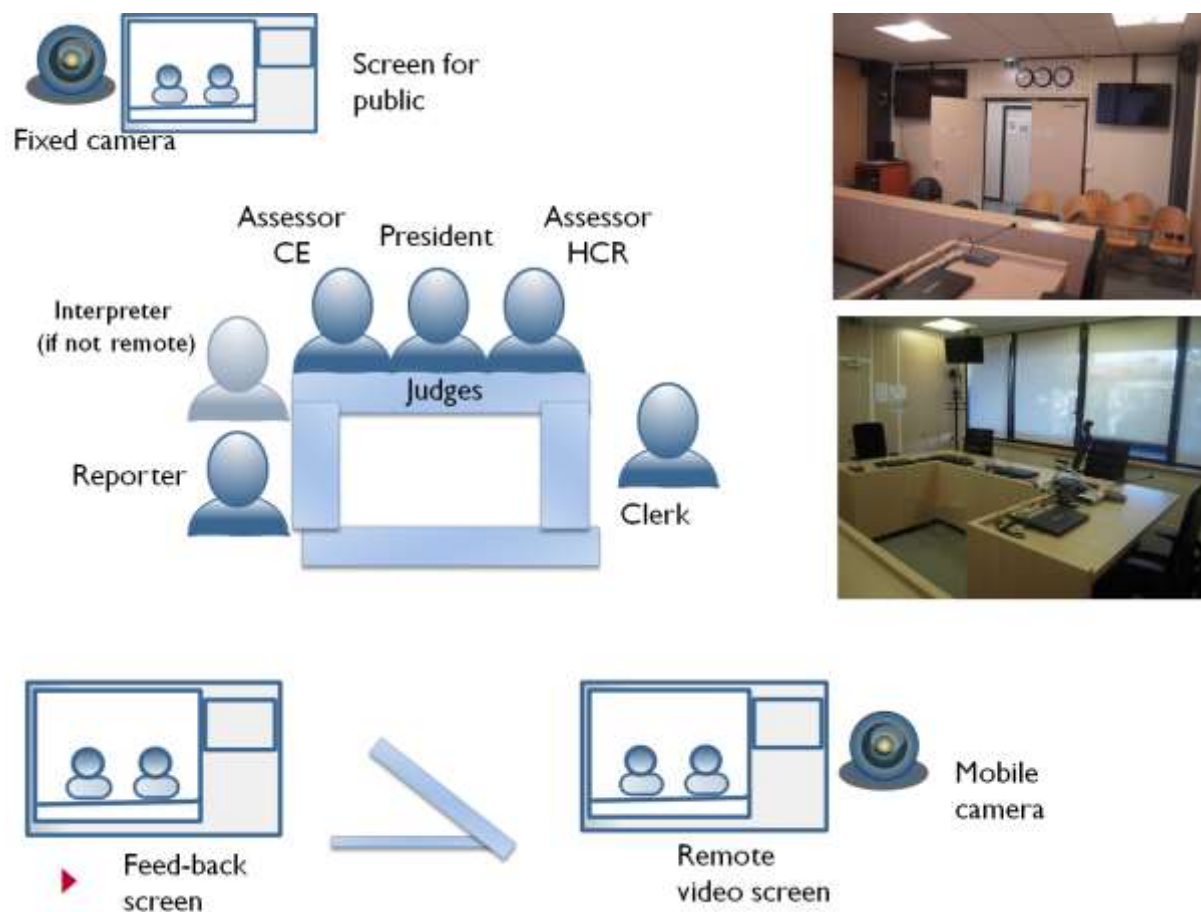


Figure 2 Schema of spatial configuration of videoconference room at the CNDA

The first screen produces an image of the remote site controlled by the remote clerk, and a feedback screen displays the image produced for the remote site. Two cameras are present in the room. The first camera produces a fixed frame of the public and the door in order to account the publicity of the hearing. The second camera is mobile and controlled through a tactile control pad (cf. Figure 3 below). The picture in picture mode is often used.

A mobile phone is dedicated to the videoconference rooms on both sides to enable discrete coordination by text messaging between the clerks on both sites.

The control interface shown in Figure 3 below is used to call the remote location, to choose the video shot for the two cameras and to move the mobile camera using a set of pre-determined positions or motions. The usual display on screen involves a large image of the court taken with the mobile camera and a smaller image of the public taken with the fixed camera, and appearing on the upper right corner of the display.

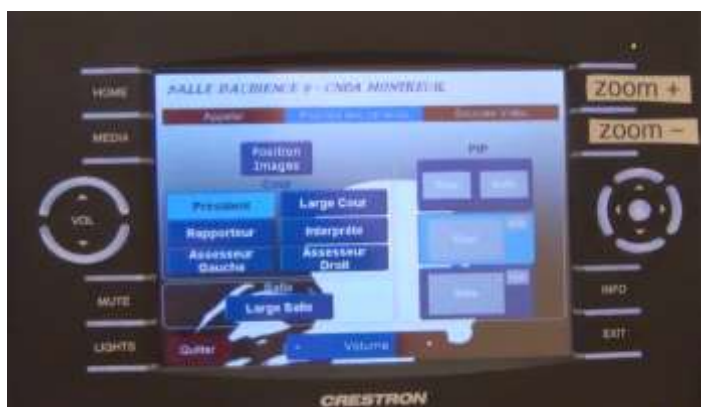


Figure 3 Tactile control pad for a videoconference with position pre-sets

In the remote location, the system is similar with two cameras, a mobile one in between the two screens and a fixed one in the back of the room focused on the public and the door.

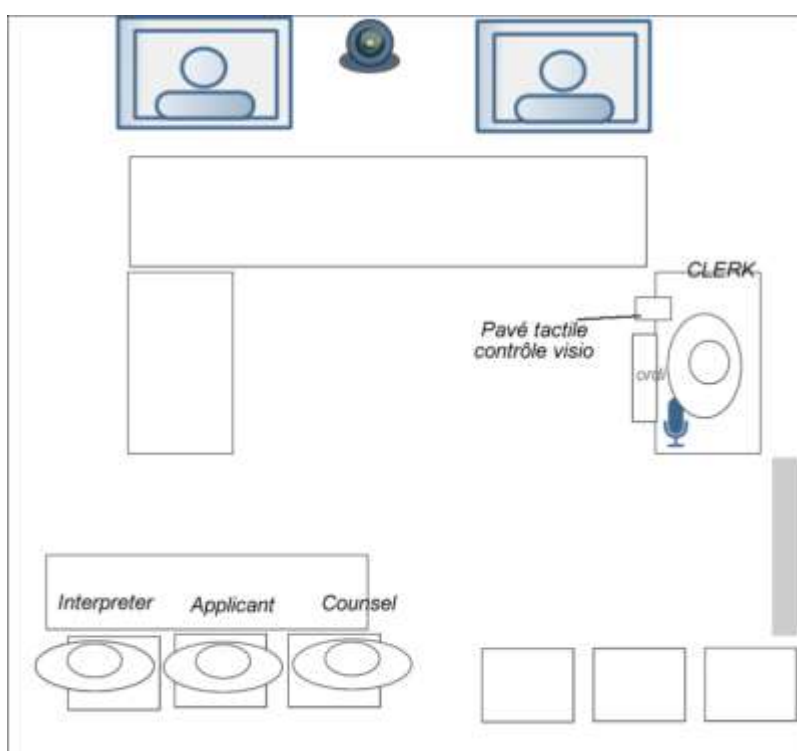


Figure 4 Spatial configuration in Cayenne

In Montreuil, each member has a microphone except the clerk who shares it with an assessor. In the remote court there are two microphones on the bench where the interpreter, the applicant and the counsel are sitting. Most of the time this is not an issue. However, there are some specific configurations that require careful coordination. For instance, when the judges are hearing two asylum seekers at the same time, the applicants and the interpreter have to share the microphone in question-answer sequences.

The court has local IT support within its organisation in case of trouble and a technical support contract with an outside company for the remote sites.

Equipment and maintenance in interviews with the OFPRA officer (Asylum Law)

In this setting, which is not a court setting, the videoconference is used in interviews with an officer at the French Office for the Protection of Refugees and Stateless Persons. The video equipment is

older and similar to that used in criminal courts. Counsels who have worked in all settings (this is particularly the case in overseas courts) have started to complain about the poor quality of the videoconference equipment in criminal courts and at OFPRA, when compared to the upper scale material used in the CNDA.

In face-to-face interviews, the officer uses a computer to typewrite a report of the interview. The asylum seeker sits in front of the officer's desk. The interpreter can sit on the side of the asylum seeker or of the officer. Interpreters explained they preferred to sit on the side of the desk to display publicly their neutrality. The videoconference changes the configuration. The OFPRA guide of procedure³⁹ specifies that the interpreter is on the side of the Officer.

The setting is a small office with one screen, the officer and the interpreter on one side and the asylum seeker alone in a remote site. The interview is not public to preserve the confidentiality of the narratives, and the asylum seeker is either alone or accompanied by her counsel and an interpreter.

7.3 Uses

Videoconferencing can be used in principle in most types of courtroom hearings in which a relevant party to the case is remote and shows she cannot come to the courtroom by using reasonable means. Its use is also pushed from the top levels in the judicial organisation. Regarding criminal justice, a circular from the Ministry of Justice asked very explicitly that a minimum rate of 5% of hearings should be done by videoconference to minimise the cost of extracting the relevant parties from the site in which they are detained.⁴⁰ Though no reliable figures are publicly available for the last three years, actual uses are plausibly in that range, though figures vary considerably from one local jurisdiction to another. Regarding asylum hearings, the OFPRA used VC in approximately 5% of cases, and almost exclusively to treat with asylum demands in overseas territories. At the CNDA, VC is currently being used to treat all cases in French Guyana (from 2014) and Mayotte (from this year), and it is planned to extend its use to other territories in the Caribbean next year. By contrast, VC has been used very rarely for asylum seekers on French soil, although given the current migration crisis the situation may change. For those two specific overseas locations, VC is used in place of travelling courts, which used to visit twice a year (what was called "*missions foraines*"), and which were deemed both inefficient (all cases could not be dealt with in time) and expensive.

7.4 Participant distribution

Those hearings were particularly interesting as a case study for the AVIDICUS 3 project because a large majority of them involved interpreters. In these appeal hearings, VC is used to deal with remote asylum seekers. Her counsel usually sits beside her, but in a few cases, usually complex ones, the counsel could be in Paris and far apart from her client. In the latter case, the court requires that another counsel assist the asylum seeker next to him.

When an interpreter is needed, the preference goes towards finding one in the remote site and having her sit next to the remote asylum seeker. The seating arrangement in the remote site has evolved with respect to the first tries. At the beginning, the interpreter used to sit on a bench, a bit away from the asylum seeker and her counsel. This seating arrangement was abandoned because it required the focus of the camera to be switched continuously between the applicant and the interpreter. The interpreter is now sitting next to the applicant, which makes it possible to show the applicant and the interpreter at the same time.

When it proves impossible to find a professional interpreter in a given language in the remote site, the law provides for the possibility that an interpreter can be found in the location of the court.⁴¹ This

³⁹ https://www.ofpra.gouv.fr/sites/default/files/atoms/files/guide_des_procedures_a_lofpra.pdf

⁴⁰ Circulaire du ministère de la Justice du 5 février 2009

⁴¹ Art 11.206.

may occur because there is no interpreter for the required language, or because the relevant speech community is too small to be sure that the interpreter can work without being influenced by personal ties, or that the interpreter is not threatened (which has happened before). Even if this configuration happens in a minority of cases, interpreters are highly sensitive to this particular audiovisual ecology for two different reasons. First, they consider that it changes their relation with the asylum seeker for whom they interpret: when they are separated from the asylum seeker, they are seated between a deputy judge (or *assesseur*) and the rapporteur who presents the case, and are rather close to them. As an interpreter puts it:

I believe that where they placed me physically made me feel closer to the... Because, usually I am sitting next to the asylum seeker, and it's been like that for 12 years that I am sitting on this side of the fence. The fact that they put me there (away from the asylum speaker appearing through VC) on the first day I felt uncomfortable. [...] I felt closer to the court than to the asylum seeker. It bothered me the first time, the first time I did that it bothered me. And I believe it may be for this reason I wasn't really ok for the... I really did no feel in my place there. Twelve years on this side and suddenly

Or another:

The physical presence plays an important role when on VC, the asylum seeker does not feel any proximity with the interpreter, he doesn't feel it, that's why it's difficult for her to create a framework of confidence and serenity with the interpreter ... it's the role of the interpreting to let the person say to herself well I will be able to speak in my own language. [...] With the VC, when we look at each other there is a distance. We can handle it as professionals but [...] we feel that there is not a climate of trust, because he sees us sitting next to the administration that's where she sees us. For her we are working for this very administration which may be refusing him again something which has already been refused in the first instance. He could view us as 'collaborateurs'.

The next interpreter considers that such a placement affects his relation with the asylum seeker and the possibility to build a proper rapport, from an experience he had with a creole speaker who could do a little French:

Because when he [the remote asylum seeker] starts speaking French again, I clearly feel that he's not serene, that what I was saying might not have been enough it was not enough, even though what I was saying, even though I did my job in the same way I have always done with asylum seekers when they were sitting next to me, who didn't need to get back to what I have said, because they could see me, they trusted me, they knew that I had interpreted faithfully.

All the interviewed interpreters that experienced this spatial configuration would have preferred to change the sitting arrangement, in view of visibility considerations, that is the moral implications of being shot in a particular way:

There is a lack of serenity, when working at a distance, when placing the interpreter among the officials. The position of cameras, if there was a camera that could be positioned on the interpreter. [...]. Being in front of the judges, it would be better. It would be better than being in the middle there. I think it would be better to see us... the position plays a lot. I don't know how it is in other countries.

Asked about what she felt was positive or negative in the VC arrangement, another interpreter clearly stated her preference for sitting next to the asylum seeker:

What I like in the VC, it's when the interpreter is on the side of the asylum seeker, I liked to see the interpreter on his side and to know that she could convey much more.

In the case of the OFPRA interviews, the interpreter usually appears on the same site as the officer. In face-to-face interviews, the asylum seeker seats in front of the officer desk. The interpreters have the choice to sit either besides the officer or besides the asylum seeker. Interpreters explained they tried to seat on the side of the desk to display publicly they neutrality, clearly linking moral considerations to particular spatial arrangements in this context as well. The VC ecology changes the configuration,

with interpreters having to appear on the side of the officer so as to be visible on screen (there is usually only one camera in OFPRA interviews), a situation which makes them appear visually as affiliated with the OFPRA officer, and which they regret.

In the case of criminal or civil courts, the interpreter is also usually in the court. When everybody is co-present, and standing either near the defendant in the box, or near the witness at the bar. Here as well, the VC configuration reverses the link between placement and affiliation through the mediation of the screen shot, for, because of the fact there is usually only one camera with a limited panning range, she is made to sit or stand alongside the judges.

The perceived distance to the interpreter is also seen as affecting the way they might build trust and rapport:

I see a distance between me and the asylum seeker, I feel it, I feel him far away. Emotions, facial expressions, I don't catch them any longer. That is to say, I see him, I seem him far away, I see him on screen, but I try, however when they are talking to me I cannot feel this proximity of the person, when they are sitting nervously just next to me.

However, what is relevant is perceived distance and not absolute distance. A simple desk, when combined with a body orientation away from the asylum seeker, in a co-present interview situation at OFPRA may mean a lot in terms of constraints with respect to trust-building, and appear as a greater chiasmus than a greater spatial configuration in a different spatial setting:

That is to say strangely at the OFPRA there is just a desk separating them, but there is a huge distance and rather more than when the person is at the CNDA. At the CNDA (in a co-present courtroom setting) there is also a physical distance, but the presidents and assessors got are looking at the person.

At the OFPRA, the officer is in charge to produce a full report of the interview. In this co-present setting, the officer:

...doesn't necessarily see [the asylum seeker], that is to say, they are on their computer, they are typewriting at the same time. I can tell you that when they ask questions, they typewrite at the same time.

Conversely, physical proximity and embodied access are conducive to rapport and affiliation. An interpreter waiting in the courtroom and watching her colleague sitting in the remote site with the asylum seeker and appearing through a video link thus describes how she views and experiences this mediated spectacle:

I feel she (the remote interpreter) is closer to the person (the remote asylum seeker with whom she is sitting) than me. Because she turns toward the person and when the person does not understand she really turns, and speaks to him, even adding gestures or whatever. And there the VC, didn't change anything because, she stays close to the person, she sees, she feels. There were some emotions that she restituted, which I hadn't seen. When you are an interpreter, we are required to address the facial expressions of the persons. And with the VC, we lose access to that, because the image is distant, when we see the person she's not really in front of us.

According to her, interpreters are also required to deal with emotions, both theirs and the asylum seeker's, and they do it both through visual and embodied resources. VC kills all embodied rapport, and on the visual plane, unless very close shots are used of the remote participants (which is rarely done because it raises other sorts of concern), this is difficult to do with a video link.

7.5 Pre-VC/Post-VC

Pre-trial briefing and debriefing phases appear to be very limited in French courts. Before hearings take place, interpreters are normally informed of the use of a video link during the hearing, through their agency. In our observations, judges who attend to their first videoconference may ask informally

other participants in the room how it works. Their discussion is often focused on how to manage the microphone.

Pre-hearing conversation between judges and interpreters about the organisation of the proceeding are rare and usually brief. In the case of the CNDA, the clerk is in charge of the management of the interpreter.

One interpreter explained:

When I came here, I could adapt to every situation, I come, this is how it happened. I didn't get any explanation... I just saw how it happened the first time. For me, it was already set up like that, I had to cope with how it was set up.

When they come to the court before the hearings, the interpreters have to check in the interpreter's office. They do not know exactly at what time they will start and finish. Interpreters explain they look at the scheduling of hearings to get an idea. In face-to-face hearings, they usually stay in the interpreter room until a clerk calls them. The use of VC changes the organisation of work, and particularly that of the clerk, in a way that has consequences with respect to the interpreter's wait. At the CNDA the clerks are in charge of managing the VC system. This task makes it more difficult for them to leave the courtroom during the hearing. For this reason, they often ask that the interpreter stay all the time in the courtroom waiting for their turn, rather than in the special office (where they may chat informally with other interpreters).

In general they do not have any feedback from the judges before or after the audience on the way they interpret. Some interpreters feel that small talk with the asylum seekers after the hearing is important in terms of recognition:

At the end of the hearing, people (those for whom they interpret) often come to thank me or whatever and we have a small discussion, like how you feel, do you come from this country, very simple things, but it's very important for them. I don't know, it's a mark of respect towards me, because [asylum seekers] don't pay me, they come to me, me I feel positively valued when I get to talk thus, I did my part, it's normal that they come to me.

Obviously, in VC settings, such informal post-hearing discussions may only occur when the interpreter is in the same location as the asylum seeker. They are precluded if the interpreter is in the courtroom.

7.6 Mode of interpreting

At the CNDA, consecutive mode is used whether the interpreter is in court or within the asylum seeker. According to an official this is more a convention borne out of practice rather than a rule of law : "it's not written anywhere even if we codify things more and more". In co-present hearings there are two distinct phases for the interpreting:

- The initial report of the case is done in a long consecutive mode (with a text allowing for this⁴²), with only the conclusions of the report to be interpreted, not the initial summary. Since these reports are written and read, and the conclusions can expand to a few minutes, this requires the interpreter to take note. Officials are aware that this could be done in a simultaneous mode, but they argue that not all interpreters are competent enough to do such simultaneous interpreting, and that having some doing it simultaneously and some in a long consecutive mode would introduce sources of inequality and even unfairness in the proceedings.
- The question/answer (Q/A) sequences between the judges and the asylum seekers are done in a standard consecutive mode.

With respect to VC, the interpreters we interviewed did not express any sensitivity to the consequences of the use of VC with respect to the mode of interpreting. This does not mean that there

⁴² Décret du 13 août 2013

are no such consequences, but possibly that they are masked behind the fact that the court enforces the same structure of interpreting in video-mediated hearings. However, careful analysis of some of our video recordings shows two effects:

- VC facilitates the use of the simultaneous mode of interpreting, because the interpreter is close enough to the asylum seeker to do ‘chuchotage’, and that this is even more facilitated by the fact that her microphone may be turned off. We observed a case in which a local interpreter, probably less trained in the usual conventions of the ‘court’ ‘naturally’ started to interpret simultaneously the report. She was, however, challenged and rather forcibly asked to take notes and switch to long consecutive, which shows that the judges thus tend to stifle some of the affordances of the VC configuration with respect to interpreting.
- Consecutive interpreting is a collaborative accomplishment that involves the cooperation of participants to regulate the length of their turns-at-talk into interpretable chunks. The resources of the interpreter to regulate the asylum speaker’s speech flow during the Q/A questions differ when they are remote and close to her, or in the court and far from her. In the latter case instructions, guiding gestures and other cues have to be more visible, and their upgrading makes them more public and accountable.

7.7 VC Management

In court of appeal, there is no text specifying who should be responsible for managing the VC system during hearings. The presiding judge is responsible for the way the hearing proceeds (by text of law), but the management of the VC system can be the work of by different participants. In criminal courts we saw VC being managed by presiding judges, deputy judges, clerks, ushers, and even a tech-oriented janitor. In the CNDA, the clerks on both sides are responsible not only for managing the hearings in general, but also for managing the audio-visual aspects of the VC-mediated hearings.

A clerk explained that there were no rules for how to frame the participants visually. Their practices show that they orient towards showing the current speaker, which is a rule of thumb for VC in general. Regarding the interpreters, this means that the clerks will tend to put them on screen when they interpret, but when they don’t, one party or another may request it. However, the precise way the current speakers is shown may vary.

For instance, regarding interpreters, when they are on the remote site and close to the asylum seeker, clerks use a medium shot including both the interpreter and the asylum seeker (and them only) during the report and Q/A sequences. When the counsel argues (this is not interpreted, and so the interpreter is not a speaker in this phase), the camera pans to produce a shot of the counsel and the asylum seeker only.

The interpreters we have interviewed usually agree on their need to see those for whom they interpret:

When you hear a voice and there is no image, and you don’t see who is talking it’s a little bit annoying. Well we tend to seek who ask the question, that’s sure. [...] And I think that when somebody talk, with the video we are looking to see their features, because the image is just there.

It also helps the interpreter to interpret and secure his understanding of who speaks and what has been said:

I if I see the person, it still helps hearing when you see at the same time the person, I think it helps me to hear that I don’t make mistakes. [...] and I think that is should be good as well that the person on the other side, the asylum seeker should see all speakers as well.

If the visibility of the participants facilitates communication for the interpreter, the reciprocity is also true. Interpreters agree that it is a legitimate request:

There are people because they know there are filmed, they request ... to also see their interlocutor, it’s fair.

One interpreter argues that:

It's important because I don't know, (for) a good communication especially on an important topic, the minimum must be to see each other.

Another interpreter relates a case where a counsel requested that his client should see the interpreter:

They zoomed on me because well, it's to create a climate of trust; it requires everybody inside that we see each other like if we were all there.

This interpreter emphasises the idea of mutual visibility to establish rapport and a climate of trust between the asylum seeker and the interpreter:

I think that it's the configuration itself that makes it necessary for us to be visible, it's in order to give a little bit of serenity to the asylum seeker. He cannot be interpreted by someone he cannot see.

This need for mutual visibility is also seen as specifically acute in the setting of the CNDA, where the interpreters define their work as an exchange with other participants, in contrast to conference interpreting where there is no need to be seen:

The connection at the CNDA in fact there are exchanges, so in order to have exchanges, we are required to see the person we are speaking to, simply because otherwise how may the other person trust us, and how can we expect that person to engage and really tell what is expected from her at that moment? [...] it's important to create a climate of trust, there are so many people traumatised that they have difficulty to tell their story even if it will run counter their own interests.

However, interpreters do not always agree with respect to being put on screen when they interpret. Some interpreters explained to us that if they had choice in this matter, they would prefer not to appear on screen, and this for two main reasons: for their own safety and in order to concentrate on interpretation rather than having to monitor and attend to their appearance on screen. Some have argued that they do not need to see the remote site in order to do their work:

When I am there, I interpret, I don't look especially at a particular judge. Considering I am here to ensure the asylum speaker will be heard fairly and that the judges will be understood correctly by the asylum seeker, me I don't pay attention to how such or such person [...] no, it does not bother me. I am here for one purpose, it's interpreting, interpreting the talk. Me I take more to interpret well what has been said, that I have understood well what has been said to transcribe it well [...] without having to focus on the image or whatever. Yes it's important for me to see who is in the court.

A similar issue may be raised in VC-mediated OFPRA interviews, where the officer may ask whether the interpreter would like to be seen or not.

Personally I would choose not to be put, not to appear on screen, if I can see him, it's for my protection.

For another interpreter:

When I had this possibility, I said I will put myself off screen, I can see him and he does not see me. At least, when it's a refusal, a rejection, let not him (the OFPRA officer) put the video on the interpreter and all. It's difficult, we are often subject to aggression.

The next interpreter, however, points out that the risk of this happening is low because the asylum seeker is far away:

They told me that if I wanted I could sit a bit apart (so as not to be visible). That's what the officer told me. Anyway he (the asylum seeker) won't be able to find me. He sees me ... me I did not feel threatened. How to put it, the person is away, I am there, I am doing my job as an interpreter. [...] Maybe it's possible in some countries if there are ethnic issues.

It is interesting to note that this very same interpreter here who does not seem to mind remains nevertheless very sensitive to her visual appearance for she adds, showing a religious necklace to the interviewer, she adds “not this (the necklace) I must hide it, that’s why I wear a scarf”.

The risk of aggression may be higher for remote interpreters belonging to small communities:

Some colleague from the Comoros have got into trouble. They may be recognised. These are close communities, micro-states.

In such circumstances, choosing to have an interpreter in the court, and using VC might be seen as a safety measure, minimising the threats of recognition and aggression.

Some interpreters also invoke another reason for not being on screen. The visibility of the interpreter adds a kind of cognitive load, in which the interpreter has to monitor and control her visual appearances and her displays of emotion:

When we listen, we try to interpret, but at the same time we have to manage emotions, to manage, I won’t say one’s appearance, but yes that’s it. Because, well, if we weren’t, if a tear rolls down our cheek and we are not visible, then it does not matter (laugh), you see what I mean?

7.8 Communication management

Interpreters have to deal with different kinds of audio troubles. For example, an interpreter reports an occasional self-awareness related to delays and echoes:

Sometimes we can hear ourselves when we interpret. It’s unpleasant.

Another kind of audio trouble is related to the adjustment of microphones:

so there are people who are not at ease with speaking in front of a mike, it’s very troublesome these people who are trying to... some shy persons. Or else we have to ask them to repeat every time, this or they speak too low.

Some people are not used speaking in front of a microphone, or they are too absorbed in their stories, and they forget to switch it on or to speak right in front of it. Moreover, even with the relatively high tech VC equipment of the CNDA, and even if the person is speaking in front of her phone, there happen to be micro-breaks in the audio stream, here no more than one or two words are cut and therefore inaudible. Another interpreter explains:

When a judge speaks, and he forgets to switch on his mike, we still see his mouth moving, it’s just almost without consequences. For me these are just small details. And if it occurs, I may ask again for example when a question is asked and I might have missed a word. And you know there are sometimes micro-breaks. Some words are cut out. So yes it happened to me to ask to repeat due to micro-cuts.

Those micro-breaks are particularly troublesome because they are not necessarily perceivable to the other participants who don’t speak the language (and they are too short to notice for them) and it makes it difficult for the interpreter to ask for repetition (she might also look a bit incompetent if she would):

We might appear non-professional or not thorough enough, I don’t know.

Coming back to microphone issues, interpreters feel they have the right to point the trouble and ask for repeats, particularly when microphones are switched off:

But to avoid talking nonsense, it happens to me that I ask (for a repeat) when the president mike is switched off while she is asking a question, I tell him, excuse me Mr or Ms President, I didn’t hear you, the mike is switched off, or would you mind to repeat, please. It may also happen when it has nothing to do with the mike.

But such rights to ask for repair are not abstract, they are to be enacted in the situation. Different interpreters will be more or less assertive in claiming such rights and actually asking for repeats.

And even with assertive interpreters, there is a limit to the number of such repair they can initiate without looking incompetent.

Some breaks are more visible, that is when the whole audio and video connection breaks down, and the system has to be re-started. Such breaks usually take a very short time to repair, about one or two minutes, and they occur between once and five times on a day of a hearing. However, they occur on a completely random basis and may interrupt any participant, including the interpreters themselves:

The only thing that bother me are VC breakdowns [...] when we are already interpreting, and then there happens a VC breakdown, we sometimes lose our train of thought. Then, maybe it's not always a big trouble, but when a person tells a story or answers a question, especially when questions are really important and that explains me something quite lengthily, not just two sentences, but something longer, it is disturbing.

It seems that such audio and video disconnections affect the overall perception of the VC. However, there is some kind of learning curve with respect to the management of such breaks and the achievement of smooth resumptions. A counsel explains:

It's better handled now. When there is a VC breakdown, it's recovered immediately. At the beginning it was more laborious, it didn't work. Now, even with such breakdowns, we resume, I feel it has been better integrated, so it's better managed. [...] Today technical troubles are better managed.

The management of individual microphones adds new things for the interpreter to be concerned about, besides just interpreting. An interpreter who was not used to interpret through VC, explained that concerning a remote participant in one of his first VC hearings:

In fact, every time I forgot to switch on the mike to speak, because I was looking at the person as I was speaking to him. It was the rapporteur who, because I was so used to just raise my head and speak, who reminded me at the beginning that I had to switch on the microphone. But still I also forgot every time to switch it off.

This additional responsibility expands when the interpreter is sitting beside the asylum seeker in the remote site. Then, because the clerk is usually a few meters away, and the microphones are literally at the interpreter's hand, she often takes it upon herself to help the asylum seeker who is unfamiliar with the setting to manage her microphone (and even sometimes, though more rarely, also help the counsels with that), and to switch it on or off:

Often, when we... The asylum seekers tend to look at us, and often they tend not to speak in the mike so sometimes I arrange the microphone for them, and tell them, please speak into the mike, but it can happen as well with the counsels.

Because of their close spatial proximity to asylum seekers in such configurations, interpreters do not only interpret but they display an active involvement in collaborating with other regular participants to maintain a proper participation framework, by exerting some agency over the audiovisual resources at hand, sometimes even substituting for the clerk.

7.9 Working arrangements with interpreters

The work status of interpreters

Interpreters in French criminal court are formally considered as judicial experts, along with medical, forensic or financial experts. However, their status as experts is a fragile and contested one at the ministry of justice. One judge with responsibilities over the management of experts at the French Ministry of Justice told us that unlike for instance forensic linguists, interpreters were not really experts because they did not rely on a corpus of expert knowledge, and did not write written reports as other experts did.

There are list of interpreters recognised by local jurisdictions. However these cover the most common languages, and even for these, not all interpreters are chosen within the lists, and their choice is left at the discretion of the courts. There is no official list of interpreters or certification procedures at the national level. When working in criminal proceedings, either with the police or in courts, interpreters work on a freelance basis and are paid based on hourly rates and compensated for travel time.

With respect to administrative courts, and more particularly for the treatment of asylum cases, the CNDA (who is a national and not local jurisdiction) and the OFPRA introduced a different system. There is no list of individual interpreters. The different languages are divided in 10 different lots, which are attributed to different interpreting agencies according to competitive public calls. The lots are re-adjusted and the call re-opened every four or five years. The interpreters can work indifferently for the CNDA and the OFPRA.

It is required that Interpreters have at least a two-year cursus in upper education, or can provide evidence for five years of experience working as interpreters. Interpreters working for the CNDA can either be salaried by interpreting companies or work as freelance interpreters subcontracted by the same companies, which has consequences with respect to the ways in which their wages are defined. Salaried interpreters have a basic contract with a flat rate number of working hours and a yearly bonus depending on seniority. They also have a bonus if they interpret for more than two cases. Whether full time or subcontracted freelance interpreters, interpreters are often also working as freelance interpreters in other settings, such as police interviews and criminal cases in local courts.

In the case of OFPRA and CNDA, free-lance interpreters are paid by the private interpreting service provider firms that have been granted a given public market.

In terms of working conditions, interpreters there are not allowed to interpret more than 4 hours without a break. This masks some disparities between the work of interpreters at the OFPRA and at the CNDA. An interpreter explained that the work could be more exhausting at the OFPRA because it is only question-answer sequences without pause, requiring the interpreter to focus and work continuously. At the CNDA there are at least unofficial pauses because some segments of the hearing are not interpreted, such as the counsels' arguments: *"we take a break when the counsel argues"*.

There is no impact of VC on the wage structure, and interpreters doing VC are paid the same in such proceedings. However, within the interpreting companies, interpreters working by phone are paid a slightly higher rate.

Working arrangements with interpreters

The organisation of work for interpreters we describe here might be specific to the CNDA and OFPRA, where the demand for interpreters in many different languages is constant and quasi-systematic. The hearings are scheduled two or three months in advance. The central service contacts the interpreting agency to make reservations for available interpreters in the relevant languages. The interpreting agency then gets in touch with their own interpreters or free-lance interpreters they subcontract by mail, and then secure the appointment by phone. Free-lance interpreters may accept or reject the proposition. Interpreters are made aware that they will be interpreting through VC when this is the case.

All interpreters at the CNDA are supposed to take an oath. For those interpreters overseas who will interpret remotely through VC, they are asked to sign a written oath at the beginning of every hearing, which is not required for those interpreters working in Paris and who takes the oath only once.

Interpreters feel that they are better considered in terms of wages, not so much in terms of absolute wages than with respect to being paid without delays, when working for the police or the courts in the criminal system than with asylum law at the CNDA and the OFPRA. One interpreter even told us that she quit interpreting for the criminal courts because of late payment issues even if there may have been some improvement in the last two years. This increased trustworthiness of wage

management is due in part to the quasi-industrialisation of the work process for interpreters in these asylum proceedings. At the CNDA and OFPRA even if they are freelance, they are paid by the brokering company or association who has secured the market for a particular set of languages. The wages of the interpreter is not pre-defined by the CNDA or the OFPRA, it is fixed by the private service provider. This may also lead to some variations for interpreters belonging to different companies or large associations. Regarding the wages themselves, Interpreters feel they have not increased significantly in recent years.

Interpreters undergo a specific training in the interpreting firms before attending asylum hearings and working there, but there is no special preparation or training with respect to interpreting through a VC system.

8 Hungary

This report outlines the situation in the Hungarian courts, where videoconferencing is used only in cross-border hearings of witnesses, defendants and experts at present. This report is based on interviews with a number of judges in Budapest and representatives of the Hungarian Ministry of Justice including a court administrators and a VC technician.

8.1 Procurement

The use of videoconferencing started in 2005-2006 but at that time the equipment was hired. In 2012 and 2014, two mobile kits were purchased, which are used exclusively for cross-border hearings and mostly for witness hearings. The restricted use has its roots in the judges' views of videoconferencing in the legal system. The judges contributing to this study have pointed out that they act in line with 'principle of directness' and that according to this principle, if followed very strictly, the use of VC unacceptable. Seeing a witness on a screen and hearing them via audio channels may not comply with the principle of directness. However, despite these concerns, the judges who were interviewed for this study are satisfied with the VC solution and are convinced that this is the only way to the future.

The procurement was carried out by the Ministry of Justice, which is responsible for court technology, before 2012. However, it was difficult to obtain details about this process. The reason is that there were radical changes in the Ministry in 2012. All staff was made redundant, and new staff was hired. Current staff does not have enough information about the period before 2012.

Furthermore, due to the recent refugee situation in Hungary, the Ministry changed its hitherto cautious approach to VC and drew up an ambitious strategic plan. The National Information and Communication Service (Nemzeti Infokommunikációs Szolgáltató – NISZ) aims to equip all courts with high-quality VC facilities and to set up a range of container cities at the border. The ultimate aim is to create 17 VC sites in 8 cities (including Courts, Office for Immigration and Citizenship, Police Departments, National Office for the Judiciary, Press Centers) and 4 container cities at the border (built of 142 containers). The planned facilities will use high-speed data connections (over 50 routers, and bandwidths of 1.5 Gbps at transit zones and 400 Mbps in other locations); IP telephony (over 200 end points); videoconferencing (over 100 end points) and LAN (over 50 switches and more than 40 km cable). The whole system will support processes and participants in different types of proceedings, as shown in Table 1 below.

PROCESS	PARTICIPANTS	LOCATION
Asylum procedure	Immigrant	transit zone at the border
	Office for immigration and citizenship	transit zone at the border
	Interpreter	somewhere in a regional office
Investigation	Immigrant	police station
	Investigator	police station
	Interpreter	somewhere in a regional office
Legal remedies of the decision	Judge	Court of Law
	Immigrant	transit zone at the border
	Interpreter	somewhere in a regional office
	Office for immigration and citizenship	transit zone at the border
Prosecution	Judge	Court of Law

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	Immigrant and his/her lawyer	Court of Law
	Interpreter	somewhere in a regional office

Table 1: Areas of justice supported by VC in future

The video communication infrastructure is shown in Figure 1 below.

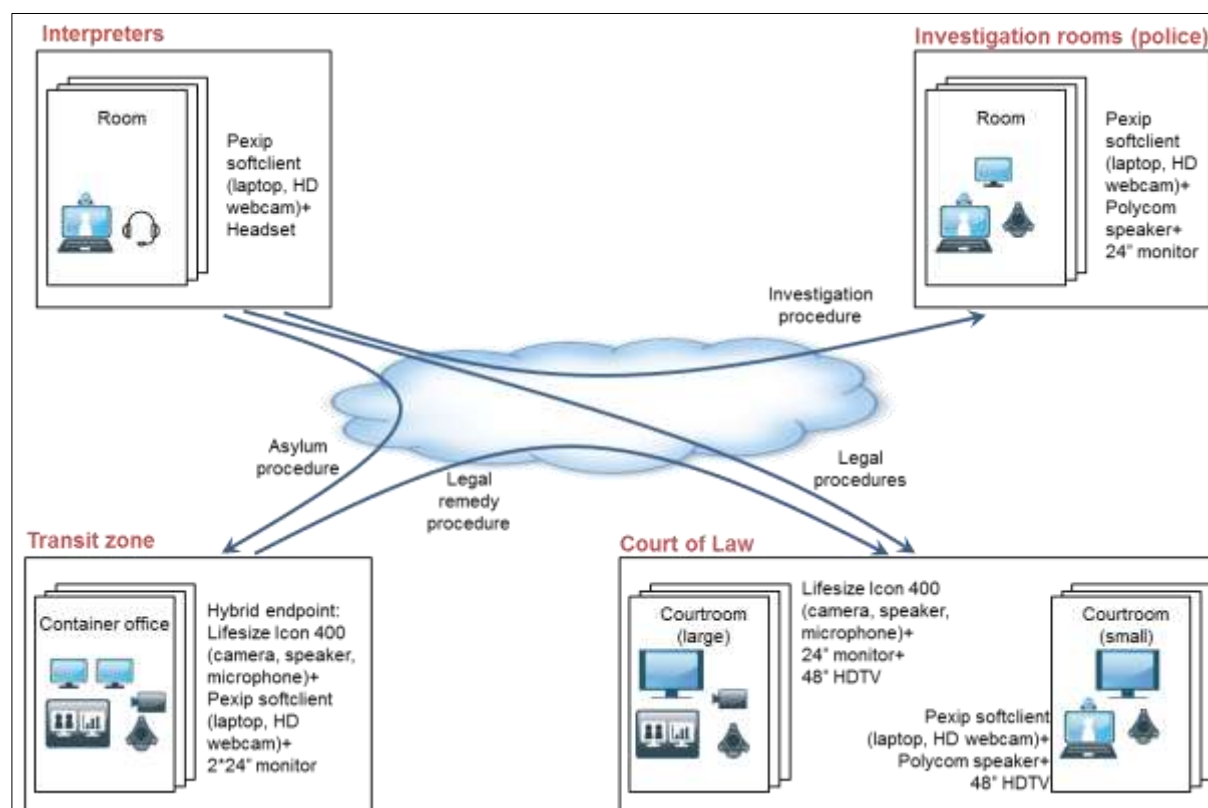


Figure 1: Video communication infrastructure

This will be implemented in the EU subsidy program (KÖFOP) 1.2.1 project entitled 'Electronic solution for developing the work organisation and communication of the public administration among different geographical locations'. The technical scope of the project is to

- build inter-operability among actual videoconferencing systems
- provide a service for witnesses and for court, police and penal being on different locations
- reduce costs of government institutes in Hungary

The period of implementation is 2016 to 2018 and will cover the whole of Hungary. To create VC end points, the implementation process will involve

- 50 pcs at the buildings of the Courts of Law
- 40 pcs in prisons and jails
- 24 pcs at the regional public administration offices (Governmental Office (Kormányhivatal))
- 20 pcs at the regional police organizations
- 13 pcs at the Office of Immigration and Citizenship
- 4 pcs at the ministries that move from Budapest to other cities

There will also be three mobile videoconferencing systems to use anytime for conferences and for different events. Furthermore, the implementation will have 1000 software clients with camera and headset provided for desktop videoconferencing (for personal use) in Criminal and in Civil proceedings in Government procedures as well in internal and external meetings.

8.2 Equipment and Maintenance

At present, the Hungarian courts use two mobile or portable VC systems, as on-demand services. The equipment used is:

- NISZ: Cisco/Tandberg; ~60 locations
- NISZ: MS Lync; ~6.600 users
- NISZ: Pexip; 127 pcs of equipment
- Ministry for internal affairs: Cisco/Tandberg
- National immigration and citizenship office: MS OCS
- Budapest Police HQ : MS Lync
- National office of the judiciary: Tytcom PH and Polycom HD 8000

All VCs in Hungary are IP-based. They do not have ISDN line, but if necessary, ISDN lines can be implemented by the suppliers of the systems. The problem is, however, that ISDN connections are very costly. As this was a new investment, the Ministry opted for the best available solution, which seemed to be IP-based connections.

The VC systems used in court normally have two screens, one showing the remote site and one showing the current speaker (self-view). Furthermore, courts are equipped with rotating cameras capable of focusing on different speakers in the courtroom. There is one highly sensitive microphone, which is shared by all participants.

Judges perceive the equipment to be reliable and are satisfied with the image and sound quality the system provides. However, in longer videoconferences there are reportedly sometimes problems with the synchronisation between video and sound. The technician contributing to this study explained that a system restart would solve this problem but that it had never been necessary. By contrast, one of the judges recalled experiencing delays, which were disturbing, and that the system had to be restarted, sometimes even three to four times, to restore lip synchronisation:

Volt olyan, hogy háromszor kellett megszakítani ahhoz, hogy végig menjen, de ez egy lényeges dolog, abszolút zavar, de nem is engem [...] De a hang igen. Mert ugye azt figyeli, hogy ott jár a szàja, de hang meg nincs és akkor kérdi, vagy fordítva, hogy ki kérdezett, mit kérdezett? [There was a case when we had to interrupt three times in order to accomplish the procedure, but this is important, it's very disturbing and not me, [...] but it's the sound. Because you the see the lips moving, but there is no sound and vice-versa, and then the question who posed the question, what did s/he ask.

The technician pointed out that the quality of the image depends on the quality used by the other site. He also highlighted that the background at the remote site has an impact on the image.

The VC equipment is operated by a technician who is present during every hearing and for the entire duration of the hearing. In addition, the technician tests the equipment before the hearing, makes a test call normally the day before. The technician's presence during the hearing is felt necessary, because judges believe they cannot concentrate on the hearing and operate the equipment at the same time, at least not without training. As the judges currently do not use VC on a daily base, it is likely that they forget how to control the technology and what to do in case of problems (despite training). However, the long-term goal is that judge will take on the task of managing the equipment during the hearings, although this will take some more time.

8.3 Uses

Videoconference are currently used in cross-border cases only, mostly for the hearing of witnesses. Proceedings at national level involving video links will be used from 2016, following the introduction of new legislation that will make this possible. Cross-border hearings of suspects by video link are not frequent, because there are questions over the location of the lawyer. If the suspect is in Hungary, i.e.

Hungary is the requested authority, and the defence lawyer is at the requesting site, the suspect is not obliged to make a statement or to attend the hearing at all, because communication between suspect and lawyer cannot be guaranteed. If both the suspect and the lawyer are in Hungary, then communication between them is possible but the lawyer in this case would not normally know the foreign legal procedure and the exact legal content of the case. A suspect could refuse to make a statement because their rights for defence would be limited.

The duration of video links varies greatly depending on the type and on the requesting site of the proceedings in which the VC is used. If Hungary is the requested site, most hearings tend to take about one hour. However, if Hungary is the requesting site, they can take 4-5 hours because the hearing of a remote witness is embedded in the normal procedure. Here is the judge, the prosecutor, the lawyer and in that case, we speak about a 'normal' hearing of 4-5 hours.

Compared to face-to-face hearings, legal professionals believe that there is no difference in duration. In their experience, the duration of the hearing depends on the number of questions and the complexity of the case. In complex cases of financial fraud, for example, there can be many detailed and complex questions, meaning that the hearings can take a long time. Differences in the legal systems can also influence the duration of cross-border proceedings. One informant relayed a video link between Hungary and the UK in which the UK was the requesting site. At the UK site, almost everyone posed a question, i.e. the judge, the prosecutor and the defence lawyer.

Judges are not given any particular rule about when to use VC. They establish the appropriateness of video links on a case-by-case basis but they are encouraged to use the VC equipment in cross-border hearings with other European countries. The argument from the authorities is that VC can accelerate the criminal procedure, and that it saves time and money.

8.4 Participant distribution

As VC is used only in cross-border cases in Hungary, almost all cases required interpreting services, and one or—less frequently—two interpreters are present. The location of the interpreter depends on the requesting side, because the requesting site provides for the interpreter. The requesting site also pays for the interpreter according to the fee officially defined in the country where the requesting court is located. If there is only interpreter, s/he is normally in the courtroom. Only in the infrequent event of hearing of a suspect, the law says that the interpreter has to sit next to the suspect and interpret for him/her. If there are two interpreters, one is normally in the courtroom and the other is located at the remote site.

Judges prefer having the interpreter in the courtroom but they believe that the interpreter and the (remote) witness see each other. Although they themselves prefer seeing the interpreter to only hearing him/her, some judges feel that mutual visibility of the witness and the interpreter is even more important than the ability of the judge to see the interpreter.

The interpreters normally appear to know where to sit. In any case, they do not receive any instructions but decide by themselves where the best place for them is. The interpreter is expected to have good knowledge of what happens so that s/he can decide on her position based on this. If the interpreter asks where to sit, the judges will help them because judges believe it is in everyone's interest that the interpreter is positioned appropriately and that the hearing goes smoothly.

Physical separation from the interpreter of all parties in a VC session ('remote interpreting') never happens in the Hungarian system.

8.5 Pre-VC/Post-VC

Briefing and debriefing phases appear to be very limited in Hungarian courts. Interpreters do not normally receive any documents prior to a hearing. They are briefed orally about the case before the hearing begins. They are informed that the hearing will involve a video link at the time of booking.

Judges simply *assume* that interpreters receive the necessary information during the booking, during the first contact by the clerk or by the agency. They also believe that there is ‘not that much difference between a face-to-face situation than via video link’. As one judge put it,

nekem az a véleményem, hogyha valaki tud tárgyaloteremben tolmácsolni, akkor teljesen lényegtelen, hogy az személyes-e vagy VC. Teljesen mindegy. Teljesen. [My opinion is, if an interpreter can work in a courtroom then it is not important whether s/he works face-to-face or through VC. It doesn't matter. It really does not.]

Communication between judges and interpreters is also rare after a video link, i.e. in the form of post-hearing debriefing. One of the judges explained that he normally gives his opinion about the quality of interpretation. He recalled once making a compliment to an interpreter, because he was extremely satisfied with the quality of interpretation, and asking the interpreter to interpret his positive remarks to the judge at the other site. However, another judge thought that a debriefing post-VC is redundant. In his view, the interpreter should inform the judge if there was a problem. However, he said he had never come across this. If everything goes smoothly, a debriefing is not required in this judge's opinion.

8.6 Mode of interpreting

The chosen interpreting mode appears to depend on several factors including the interpreter's competence, their location with respect to the remote party, the remote party (defendant or witness) and on practicalities such as the level of background noise created by whispered simultaneous interpretation.

In hearings of remote witnesses, consecutive interpreting is always used. The judges know they have to stop after a couple of sentences and wait for the interpreter. One of the judges reports that he does not like consecutive interpretation, because it is disruptive for the hearing but that he learned to make it work. Although he would prefer simultaneous interpreting, but he realises that it would be a big challenge for the interpreter to interpret simultaneously for a prolonged period without working together with another interpreter. Another judge said that he understands he has to speak in chunks of 2-3 sentences but finds it difficult to listen to someone in chunks. He feels he would not be disturbed by simultaneous interpretation (with equipment) but finds that whispering simultaneous interpretation is distracting, as you hear two people speak at the same time.

8.7 VC management

One dimension of VC management is the positioning of the participants within the room and in relation to the cameras. A related dimension is visibility on the screen. In Hungarian courts, participants always take care to position themselves in relation to the camera as there only is one camera in the courtroom. As in 95% of the video links the witness is in Hungary, i.e. Hungary is the requested court, with the requesting party providing the interpreter, the interpreter at the main court rather than in Hungary. If the interpreter is co-located with the witness in Hungary, the interpreter sits next to the witness, and both face the camera. Furthermore, if Hungary is the requesting court hearing a remote witness, the camera at the remote site is normally focused only on the witness.

If Hungary is the requesting court and the interpreter is located in the courtroom, the interpreter chooses his/her pace, as outlined above, but s/he has some to take technical circumstances in account, as there is only one camera and one microphone. This means that in practice, there are not many choices for the interpreter's position.

The camera always focuses on the person who is speaking the interpreter inclusive. There is always a control picture, because they find it very important to see what the other site sees. One judge explained this as follows:

Ha pl még engem néz, mikor már rég az ügyész kérdez. Akkor azért nem árt, hogyha őt látja. [When they look at me, but the prosecutor begins to ask a question. Then it is better if the interpreter sees the prosecutor.]

Almost every judge and the technician who contributed to this study believe that showing interpreter on the VC screen is fundamental for the hearing. Otherwise the hearing could be done via telephone and they all refuse this option. Only one judge thinks that seeing the interpreter is not crucial. At the same time he emphasizes that the interpreter should say what the best working position for him/her is. The most important in this judge's view is that the interpreter can hear and see everything:

Az a jó, ha ő mondja meg, hogy neki mi a legjobb. Hogy hol szeretne ülni, ki mellett szeretne ülni, kit akar jobban hallani. [...] tehát nyilván ne ő irányítsa, de azért ő határozza meg, azért. [...] Tegyük ide a mikrofont, tegyük oda a hangfalat. Azt hangosítsuk meg, tehát ezt azért ő mondja. [The best is if the interpreter says what is his/her best position. Where s/he wants to sit, who s/he wants to hear at most. [...] so, s/he doesn't have to control, but s/he has to indicate his/her position. Place the micro here, put the box there. That should be louder, all these are types of things s/he has to indicate.]

Another judge, however, said that she is the one who together with the technician decides on the place of the interpreter, taking into account technical constraints. When Hungary is the requested site presenting the witness, and an interpreter is co-present with the witness, the most important point is in her opinion that witness as well as the interpreter are visible. Normally the interpreter stands or sits next to the witness or the suspect. The same judge points out that it was sometimes necessary to move the microphone during the hearing to ensure that everything can be heard at the other site. She believes that this could in fact be resolved prior to the beginning of the hearing.

While overall they are satisfied with the management of video links, judges believe that there are some points for improvement. To be able to work without the presence of a technician is one of the most important issues.

8.8 Communication management

There is a standard introduction prior to the start of a hearing involving a video link. The presiding judge introduces him/herself and the interpreter interprets it. Then the remote site introduces those present in the room. After this introduction, the witness can be heard.

The communication flow during the proceedings is mainly managed by judges in Hungarian courtrooms. The judges perceive the communication management in VCs to be very similar to that in traditional hearings. One of the judges points out that the biggest difference between face-to-face hearings and video links is that simultaneous interpreting is almost impossible during a VC, whilst whispered simultaneous interpreting is normal practice in a face-to-face setting.

The judges emphasize that they cannot care of the technical side of the hearing, as they feel they cannot focus on the case and on the technical operation of the videoconferencing equipment. As there is always a technician present during the hearing, this is not considered a problem. However, one of the judges recommends some training for the legal practitioners on videoconferencing and operating VC equipment in order to tackle the presence of the technician and use the system without him.

Regarding turn taking and overlapping speech, all legal professionals believe that there are no strong differences between a face-to-face setting and a VC setting. The dynamic in both settings is perceived to be very similar although one of the judges mentions that it sometimes happens that the interpreter says to him, 'I am ready, you can continue.'

8.9 Working arrangements with interpreters

In Hungary, there is no national and official register for legal interpreters. Hungarian courts and judges have their own lists from which they recruit interpreters based on their own experience. Sometimes they recruit interpreters through an interpreting agency, but this can be very costly. The fee of the Hungarian interpreters is not fixed. Every interpreter works as a freelancer and sets his or her own fees. One judge finds it humiliating that he has to negotiate with the interpreter about the payment. He asks at the booking what the interpreter charges. If the fee is very high and the quality of the interpreter's performance turns out to be bad, he will not ask this interpreter again. There is no difference in payment for an interpretation face-to-face or in a videoconference setting.

As they have no official national register for legal interpreters in Hungary, there is no guarantee regarding an interpreter's training. Most of the interpreters are not trained. Everybody can get on the list of legal interpreters and/or translators. The profession of legal interpreter is not protected. There are two universities offering interpreter training and an academic degree in interpretation/translation, but the languages offered by these universities do not cover the demand of languages of lesser diffusion.

9 Italy

This report gives an overview of the situation in Italy as ascertained on the basis of extended interviews with professional figures working in the criminal court system. Before presenting the results, it may be useful to outline the structure of the system which is set up as follows: the courts of first instance include the Justice of the Peace (*Giudice di pace*), the ordinary Tribunal (*Tribunale*) and the Court of Assizes (*Corte d'Assise*), each of them dealing with different types of crimes. The courts of second instance are the Court of Appeal (*Corte d'Appello*), for decisions made by the Justice of the Peace and the Tribunal, and the Court of Assizes of Appeal (*Corte d'Assise d'Appello*), for decisions made by the Court of Assizes. The highest appellate Court is the Court of Cassation (*Corte di Cassazione*). The interviews were conducted with magistrates from different sections (Prosecutor's office attached to the Tribunal, Investigating magistrate's office attached to the Tribunal, Court of Appeal) of three courts, staff and freelance interpreters and technical personnel. Further information was collected in short interviews with a Ministry of Justice official and a member of a court's administrative staff, and from a variety of other sources including official documents of the Ministry of Justice.

9.1 Procurement

The milestones of videoconferencing in the Italian judicial system are: Law 356/1992, which authorised the use of audiovisual links for the hearing of people who, formerly part of criminal or terrorist organizations, decide to "repent" and collaborate with the judicial system to help investigations; Law 11/1998 and Law 136/2010, which extended the use of videoconferencing not only to defendants in organised crime trials and to prisoners subject to restrictive measures (in accordance with article 41-bis of the Prison Administration Act) but to all trials irrespective of the crime.

Rooms equipped with videoconference facilities can now be found in all Italian judicial districts. Each room can be connected with rooms located in other courts, prisons and foreign sites. The videoconferencing service is run by the Ministry of Justice which is in charge, either directly or through a contractor, of all stages of the process – from the purchase and installation of the equipment to the technical and operational aspects of videoconference hearings.

Initially the system was ISDN-based, with a setup consisting of a multi-videoconferencing subsystem and an encrypted telephone service. Multi-videoconferencing was run from a Control Room with a Multipoint Control Unit (MCU) located in a high-security site; each room available for videoconference hearings, whether in courts or prisons, was equipped with a VC codec, network connections to the Control Room and audio/video devices. As regards the encrypted telephone service, it was used to guarantee private conversations between prisoners and lawyers. In 2010 the Ministry of Justice launched a major plan to move to IP-based technology and, a couple of years later, the migration from ISDN to IP was completed.

The Ministry of Justice is currently developing a project to radically expand the use of information technology in civil and criminal proceedings. The project envisages the introduction of videoconferencing in civil proceedings for the hearing of parties and witnesses as well as a wider use of videoconferencing in all stages of criminal proceedings⁴³

⁴³ (cf. https://www.giustizia.it/giustizia/it/mg_2_7_5.wp).

9.2 Equipment and maintenance

Figure 1 shows the layout of a VC room in one Italian court.

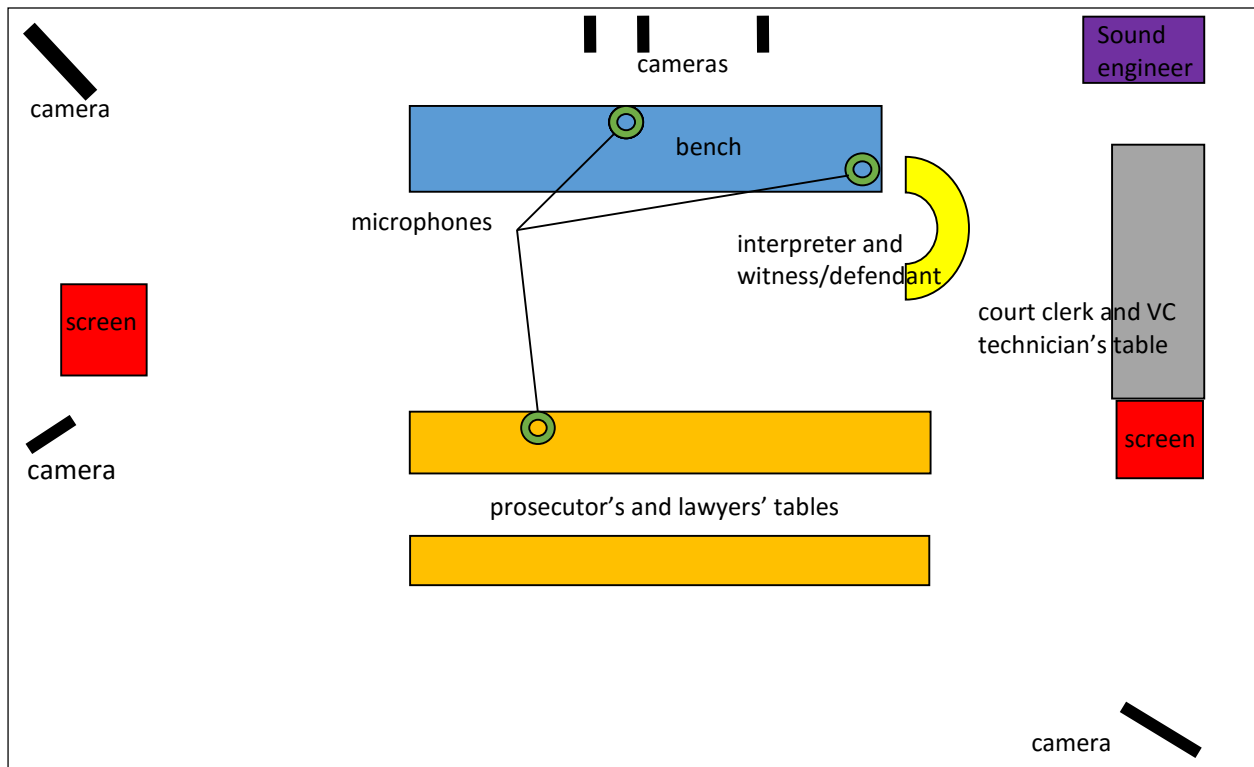


Figure 1 – VC room layout

There are six cameras – three behind the judge, one on each side of the room, and one at the back – and two screens – one, to the right of the judge, showing the room in the remote site, and the other used by the VC technician to operate and manage the VC system. Information about other VC-equipped rooms is generally consistent with the layout shown above, which suggests that there may be a standard layout used, occasionally with minor changes, throughout the country.



Figure 2: VC equipped courtroom



Figure 3: VC equipment and sound recording system

The video connection and the audio system operate separately. The cameras point to the speakers, and whenever somebody speaks during the hearing, the VC technician switches on the relevant camera. The sound is managed by the sound engineer through the audio equipment – it is amplified and the VC system, which is not connected to the microphones, picks up the amplified sound, i.e. the room sound. The same happens in the remote site.

The management of all technical and operational aspects of videoconferencing, including sound management, has been outsourced by the Ministry of Justice to private companies, which are also in charge of equipment maintenance. Sound engineers are also given the task to record and transcribe the hearings.

According to the interviewees, the equipment is not fully satisfactory: *‘l’impianto non è proprio ottimale’* [the equipment is less than optimal]; *‘la strumentazione è molto obsoleta’* [the equipment is really obsolete]. The screens are small (*‘una televisione un po’ più grande, una televisione un po’ grande, ecco non di più, non uno schermo enorme comunque’* [like a TV, a large TV, nothing more, definitely not a large screen]) or very small (*‘sembravano schermi televisivi [19] di misura abbastanza piccola come quelli di una volta’* [the screens looked like TV screens, rather small screens, like old-fashioned TV screens]) and their position is not always ideal (*‘chi si trovava anche leggermente lontano al centro dell’aula non vedeva benissimo i dettagli di questi di quello che appariva negli schermi’* [people even sitting not far away, in the middle of the room, could not see clearly what was shown on the screen]), which may be a problem when documents are shown. The positioning of cameras may also be a problem, in particular when they are mounted high on a wall as is often the case (see VC Management below).

Connection and audio quality is also often found unsatisfactory: connection breakdowns are not unusual (*‘talora si interrompe il collegamento audiovisivo con l’estero’* [sometimes the connection with the foreign site breaks down]; *‘con l’America ci siamo persi per cinque minuti’* [with the States we had a 5-minute connection break]) and there are difficulties caused by sound delay (*‘la voce arriva ritardata’* [the voice is delayed]) and, in general, by sound quality (*‘alle volte ci sono state delle videoconferenze in cui l’audio era talmente pessimo che abbiamo perso talmente tanto tempo a ripetere domande e risposte’* [we had videoconferences where the sound was so bad that we wasted an enormous amount of time repeating questions and answers]; *‘l’audio non era di grande qualità [...] quindi per me è stato molto faticoso cioè ho sentito la fatica aumentare rispetto al normale lavoro proprio per la fatica di capire le parole’* [the sound was not good quality [...] and it was very tiring, I

mean, I was much more tired than usual just because it was so difficult to understand what was being said]). As regards audio quality, an explanation may probably be found in the way in which sound is dealt with in Italian videoconferences (see above).

Irrespective of any technical difficulties, however, the interviewees seem to agree on the fact that videoconferencing actually works (*'tutte e due le esperienze sono state esperienze positive'* [both my experiences have been positive]; *'io mi sono trovata bene non ho avuto difficoltà'* [it was good, I had no difficulties]; *'funzionano nel complesso funzionano'* [by and large videoconferencing works]; *'alla fine vediamo che c'è reciproca soddisfazione'* [people in both sites are satisfied]) and VC hearings are always completed.

9.3 Uses

The use of videoconferencing has become standard practice in national proceedings and has been growing in cross-border proceedings. As regards the former, videoconferencing is mainly used to hear persons who are detained in high-security prisons and/or are subjected to specific restrictive measures (article 41-bis of the Prison Administration Act) and to hear persons who are in the witness protection programme. Multi-point videoconferences are also organised enabling people detained in different prisons to be heard in the same hearing. As regards cross-border proceedings, videoconferencing is used to hear victims, witnesses or defendants: the procedure starts with a letter rogatory with which the Italian judicial authorities ask the foreign judicial authorities to be given the opportunity to hear a victim, a witness or a defendant, or vice versa (i.e. Italian courts act as requesting or requested courts).

The number of cross-border videoconference hearings varies from one judicial district to another, depending on a number of factors including the types of crime that are most frequent in each area (*'noi non è che abbiamo tantissime persone che rientrano in questa ipotesi'* [We do not have many people for whom a videoconference may be used]) or the availability of equipped rooms in the remote site (*'per quanto riguarda l'esame dei testimoni in rogatoria può essere complicato può essere non facile contattare delle autorità giudiziarie che siano in grado di approntare questo sistema'* [as regards the hearing of witnesses abroad it may not be easy to find judicial authorities who are able to put in place what is needed for a videoconference]).

As for length, a videoconference hearing may just last a few minutes or even several hours, depending on the number of persons to be heard and on the type of proceeding.

9.4 Participant distribution

While VC is used for both national and cross-border proceedings, none of the interviewees has any experience of VC with interpreters within Italy. As regards cross-border proceedings, the number and the roles of people attending the hearing in the two sites depend on the type of hearing, on the person to be heard and on what is required in each case by the law in the countries concerned. There may be just one interpreter, in the Italian court, or two interpreters, one in Italy and one in the foreign site. When there are two interpreters, the interpreting work may be done by both or by just one of them – there is no standard procedure and all decisions in this regard are made during the hearing. When only one interpreter is present or working, s/he is required to interpret both from and into the foreign language. Apparently there are no differences depending on whether Italian courts are the requesting or the requested courts.

One of the interviewees mentioned a case in which the person to be heard in the remote site spoke a language for which nobody able to interpret into Italian could be found. Relay interpreting was therefore resorted to: an interpreter in the remote site interpreted from the person's language into English, and the interpreter in the Italian site interpreted from English into Italian.

9.5 Pre-VC / Post-VC

When they are contacted for a hearing by the court administrative staff, interpreters are generally told that they will be working in a videoconference setting. As regards specific information about the case, it all depends on the individual magistrate's attitude. There are magistrates who do not provide any information of any kind because they do not want to influence the interpreter (*'io francamente mi sono posta il problema se era opportuno che le facessi leggere il capo di imputazione perché comunque l'interprete deve limitarsi a tradurre quello che sente non deve metterci del suo e essendo informata di cosa si parla potrebbe inconsapevolmente anche avere la tendenza a farlo'* [I asked myself whether it was advisable to inform the interpreter about the charges against the defendant, because the interpreter must confine herself to translate what she hears, without adding anything, but if she is informed about the case she might unconsciously be inclined to add something]); other magistrates feel it is *'doveroso'* [their duty] to inform the interpreter about the case and about any aspect potentially leading to lexical difficulties. Irrespective of information provided directly by the magistrates, though, interpreters generally have the opportunity to have access to information available in the court offices.

As regards the way in which interpreters are expected to work in a videoconference setting, they are generally invited to pay special attention to their diction/articulation on account of the often unsatisfactory audio quality (*'in genere avvertiamo gli interpreti loro lo sanno di scandire ancora meglio le parole proprio perché in realtà l'audio non è perfetto come in un'udienza in cui hai la persona di fronte'* [we usually tell interpreters that they must articulate words clearly because sound quality is not as good as when you speak to somebody in front of you]).

There is no debriefing of any kind. When the videoconference hearing is over, there are no longer contacts between magistrates and interpreters.

9.6 Mode of interpreting

Interpreting is always done in the consecutive mode and what the interpreter says in Italian is recorded and transcribed. Whispered interpreting may be used for persons who do not understand Italian with the only goal to keep them informed about what is going on in the hearing (*'parlava sottovoce per spiegare all'imputato cosa stava avvenendo ma avviene normalmente anche al di fuori dei casi di videoconferenza normalmente quando cioè abbiamo un imputato straniero dobbiamo nominare un interprete che in genere sta lì e gli racconta più o meno analiticamente con maggiore o minore analiticità quello che avviene quello che stanno dicendo i testi'* [the interpreter] was whispering to explain to the defendant what was going on, but this happens regularly even when there is no videoconference. When there is a foreign defendant, we also have an interpreter who tells him or her, more or less accurately, what the witnesses are saying]).

9.7 VC and communication management

Cameras in the Italian site are managed by the VC technician and screens in the foreign site always show the speaker. Camera management in the foreign site may be different and screens in the Italian site do not always show the speaker – it may therefore be difficult to understand who is actually speaking (*'era molto difficile capire chi stava intervenendo in quel momento'* [it was very difficult to understand who was speaking]). Further difficulties may be caused by the small size of the screens which may be compounded by poor sound quality resulting from the sound management system (*'io vedevo una persona seduta però la vedevo da lontano quindi non vedevo il volto la bocca cose che potevano essermi d'aiuto soprattutto perché l'acustica era piuttosto problematica quindi vedere il volto abbastanza da vicino sarebbe stato utile'* [I could see somebody sitting, but he was far away, I could not see his mouth and it would have been very useful because sound quality was not good]). As was said before, further difficulties are created by cameras being mounted high on a wall. One of the interviewees reported about one of the participants standing on a chair and holding documents very

close to the camera in an attempt to make sure they could actually be seen by the witnesses in the remote site (*‘un assistente del PM particolarmente alto è salito su una sedia e utilizzando la telecamera che sta immediatamente dietro al giudice ha allungato il braccio mostrando questo primo documento di una lunga serie di documenti e ovviamente il testimone dall'altra parte ha detto io vedo una macchia bianca e quindi tutta la procedura l'udienza si è allungata molto perché [...] io ho dovuto descrivere ogni documento molto dettagliatamente’* [a prosecutor's aide, a tall man, stood on a chair and stretched out his arm to hold the first of a long series of documents in front of the camera placed behind the judge, the witness in the other site said he could only see a white spot, and the hearing lengthened as I had to describe all documents in great detail]). Setting aside occasional recollections of specific episodes, however, the interviewees are rather vague about what is generally seen on the screen, whether there is a picture-in-picture, etc.

The positioning of the participants appears to be the same as for ordinary hearings with no video link. The interpreter's position, though, may change depending on where the microphones are located.

With the exception of the aforementioned technical problems related to video and audio quality, no significant issue is mentioned— a videoconference hearing appears to be very much like any other interpreter-mediated hearing.

9.8 Working arrangements with interpreters

No distinction is made between interpreters who may work in videoconference hearings and interpreters who may not, and the interpreter engagement procedure is the same.

Some courts have staff interpreters who cover a number of languages. In other courts and for languages that are not covered by staff interpreters, there are official lists (*Albi dei periti*) from which magistrates are supposed to select the interpreters they need. Actually every office and every magistrate appear to have their own unofficial lists consisting of interpreters that have proved to be reliable and trustworthy. However, interpreters not included in any list, official or otherwise, may also be engaged, in particular for rare languages or in urgent cases.

There are no differences in remuneration between videoconference interpreting and face-to-face interpreting. In both cases the fees are very low indeed – approximately 15 euros for the first two hours and 8 euros for each subsequent period of two hours, with a 20% increase for urgent cases.

10 The Netherlands

The following report explores videoconferencing with interpreting on the court system in the Netherlands, where videoconferencing is used in national proceedings and cross-border hearings of witnesses, defendants and experts, with a focus on national proceedings. The data collected from interviews are complemented by information from other sources, such as the information about videoconferencing available on the European E-Justice portal, the European VC survey 2008, the surveys among legal professionals and legal interpreters regarding videoconference and remote interpreting in legal proceedings (Braun & Taylor 2012), the final reports from the EU Project Transnational Videoconferencing, visits to courts equipped with videoconferencing technology, and a number of informal talk with stakeholders.

10.1 Procurement

The use of videoconference has a long tradition in the Netherlands, it started under the term of 'Telehoren' (remote hearing). The procurement of VC equipment started in 2000 for cross-border cases. It was implemented in the law in 2007 for use in national cases. The legislation includes criminal justice, with few exceptions, and immigration/asylum hearings, i.e. video links between immigration detention centres and courts. The procurement was largely completed around 2007. However, it is an ongoing process, whereby the installation of new videoconference rooms to replacing older ones is continuous.⁴⁴ Today all Dutch courts are equipped with VC. The network is based on a dedicated connection between the courts and the detention centres where migrants are waiting for their process and final decision on whether they will have the right to stay in the Netherlands or whether they will have to return to their home country.

The procurement was overseen by the Ministry of Security and Justice. Informants from the judiciary is very satisfied with the solution and highlight the ease of use of the system, the efficiency of the equipment and the logistical advantage that the persons to be heard do not have to be transported to the court, which they feel would be disproportionate especially for short hearings.

Whilst the consistent approach to procurement is a useful basis for interpreter-mediated video links, it seems that interpreters were not consulted in the procurement and implementation phase.

10.2 Equipment and maintenance

Dutch courts use their own built-in equipment, without resorting to on-demand services. The technical standards used are H.320, H.323, H.264, H.239 and MPEG4, AES encryption standard H.235 (used as and when necessary), and SIP. All VCs within the Netherlands are IP-based. The IP Network is a closed network. Cross-border connections are always established via ISDN, according to the 2008 VC survey. The equipment enables several VC features, such as the possibility to control the picture-in-picture (PIP) and the far-end camera.

The equipment normally comprises one screen (or multiple screens, all displaying the same image, for better visibility) in the court and one at the remote site. Courts are equipped with rotating cameras capable of focusing on different speakers in the courtroom; VC equipment in prisons, however, has fixed cameras which deliver static images of the suspect/defendant to the court, and cannot be moved. Interpreters in court are assigned their own microphone while in prison they share a VC flat microphone with the suspect/defendant.

Judges perceive the equipment to be reliable and to deliver high quality image and sound comparable with the situation when the person is in the courtroom.

⁴⁴ Van der Ende, M., Rienstra S., Slob A., Uwland A. Ex ante evaluatie van videoconferencing in het strafrecht en vreemdelingenbewaringszaken Analyse van kosten en baten Rotterdam, 2007.

Technical problems capable of interrupting a VC are generally thought to be very unlikely in national proceedings, and the informants had not experienced any serious communication breakdown that could not be resolved by attempting to establish or by restarting the communication again. Technical issues with sound and image quality are perceived as more likely in cross-border hearings than in national video links. Informants associate different levels of quality to different remote locations, observing in particular that the connection quality is worse when the link is made with locations outside the Netherlands. Bad quality of sound and image and breakdowns in transnational and transcontinental video links are reported to be not uncommon.

Comprehensive guidelines on the use of video links in court hearings are available (see Figure 2). They mainly address legal practitioners and technical staff and also make reference to the integration of interpreters in video links.



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The Netherlands

In addition, there is a short guide for speakers of other languages who attend a hearing by video link, which has been produced in several languages (see Figure 3).

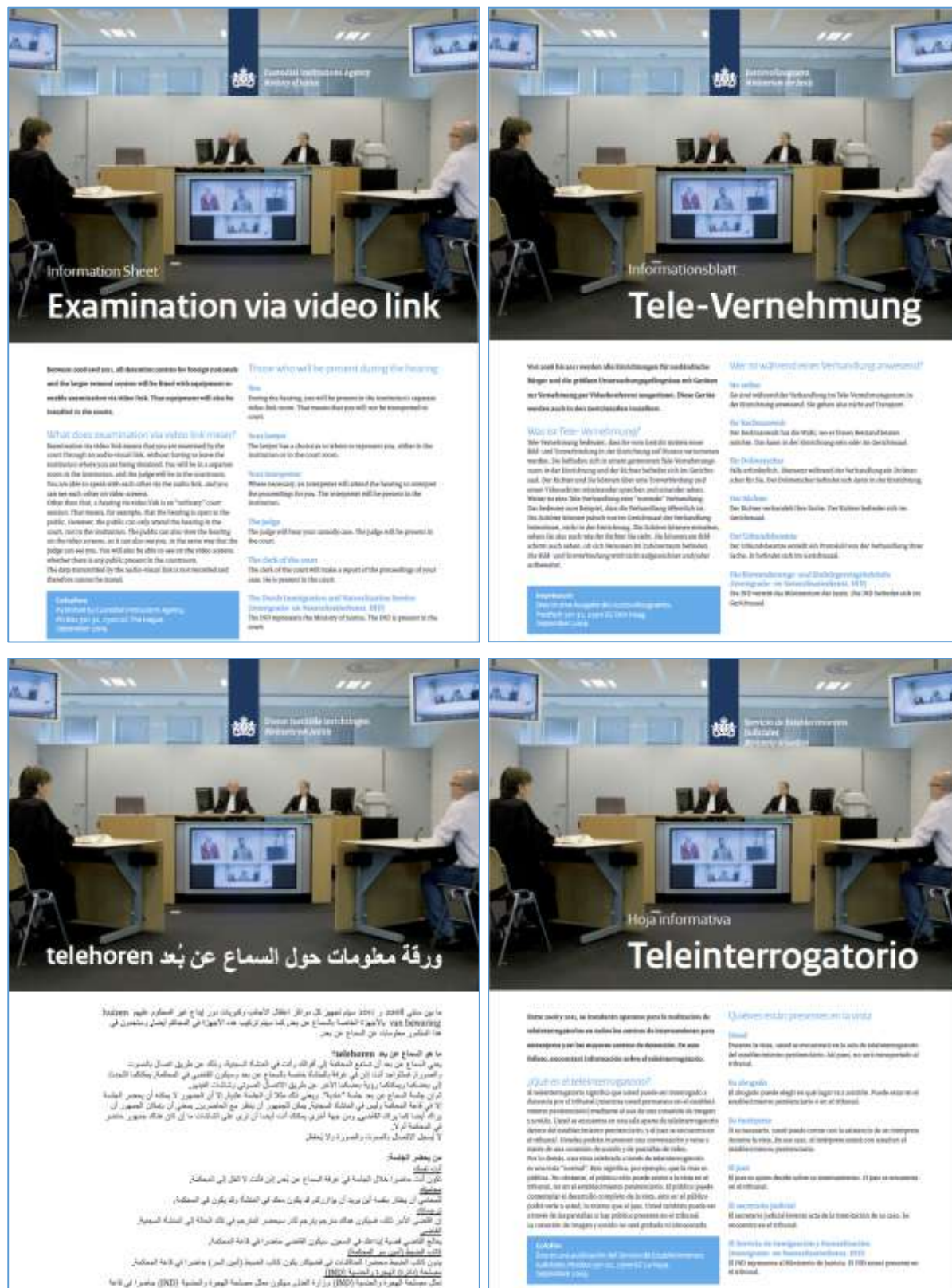


Figure 3: Short guide on VC hearings for speakers of other languages in several languages

10.3 Uses

Videoconferencing in the Netherlands is, in principle, allowed in civil and criminal proceedings, and many types of participants can be linked to the court via VC, including witnesses, experts, defendants, and interpreters. Dutch courts mainly use VC at national level for links between courts and immigration detention centres, courts and prisons, courts and other courts for hearings of remote witnesses (because of their distance or vulnerability), and between police stations for prosecution interviews of suspects. The use in cross-border cases is less frequent.

In every court there is a strict scheme for using VC, as shown in the Flowchart in Figure 4 below).⁴⁵

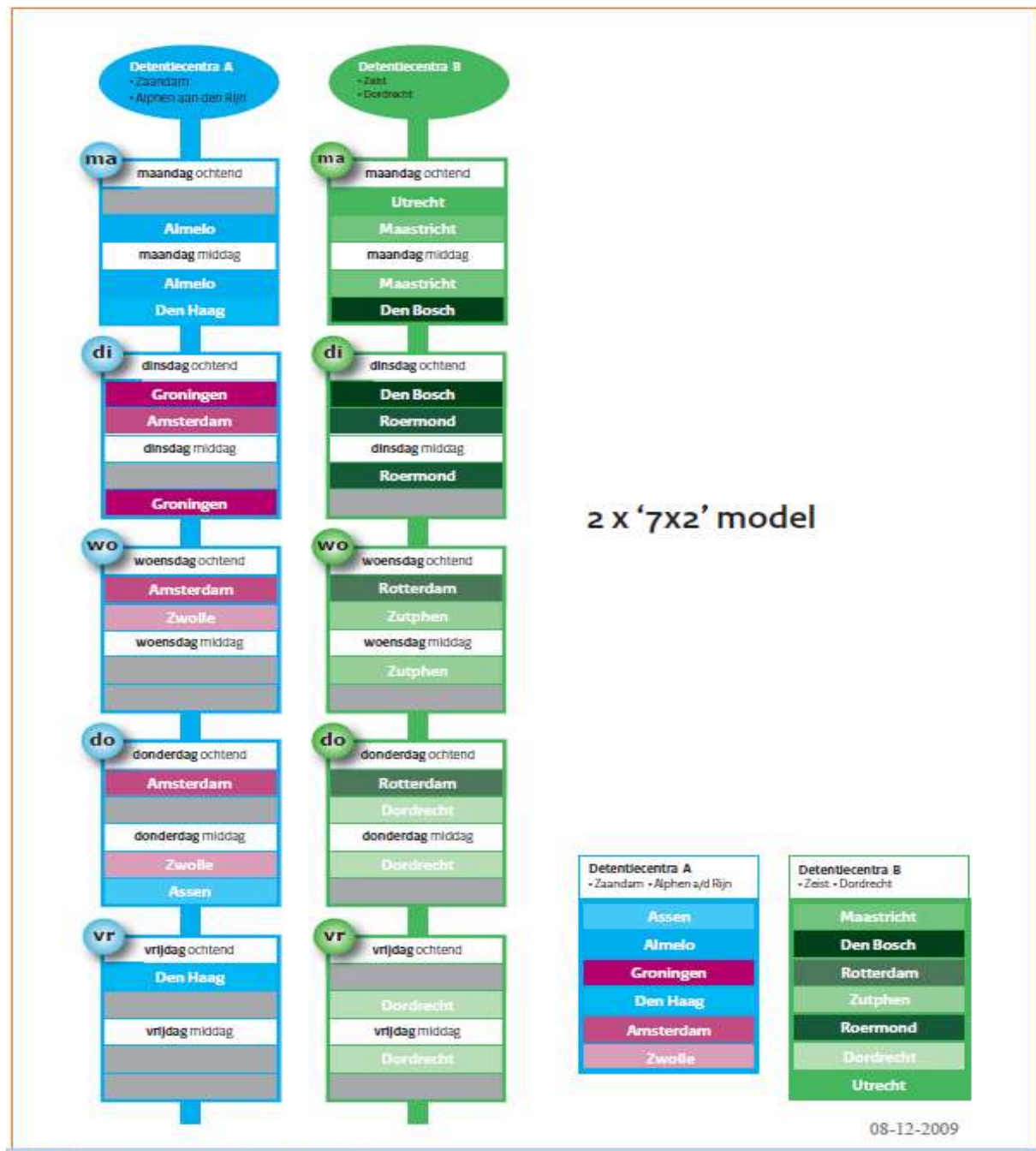


Figure 4: Flowchart of video link proceedings

⁴⁵ Handboek-telehoren-invoering-versie-01januari2010-tmc34-252634-(1).pdf

The use in national hearings is so frequent that many judges use it every week. One judge commented:

Twee keer per week. Woensdag en donderdag zijn er mogelijkheden om een beperkt aantal verhoren te doen met het huis in bewaring. Niet allemaal. Sommigen komen hier anderen verhoren we via Telehoren. Maar het moet zeer nauwkeurig uitgevoerd worden met de tijd in acht genomen. Zeer strakke tijd in de hand houden. [Twice a week. On Wednesday and Thursday there are some possibilities for using VC in a limited number of interviews with the detention centers. But not all of them. Some of them come here and others we hear via VC. But it has to be carried out observing the time very carefully. Time is very tight.]

Video links are never used for an entire proceeding. In immigration hearings, VC is typically used only for short hearings of approximately 10 min. Similarly, video links are also used for the Council Chamber (Raadkamer), and hearings are short in this instance as well (also approximately 10 minutes). Judges have to use video links for these hearings and, although some of the informants stated they prefer face-to-face hearings, they also stated that VC is an acceptable choice. Asked about his personal preference, one judge said:

Uiteindelijk naar f2f. het is altijd prettiger als iemand bij jou in de zaal zit. Direct contact blijft bij mij altijd mijn voorkeur. (Eventually, finally face-to-face. It is always better, when someone is with you in the courtroom. Direct contact will always remain my preference.)

10.4 Participant distribution

In the case of **national hearings**, the first setting to consider is video links between courts and detention centres in immigration hearings. In this setting, the interpreter is normally co-located with the immigrant in the detention centre. Whilst some informants pointed out that the interpreter has a choice between being in court and in the detention centre, another informant believed that the interpreter is in court only if s/he comes to court by mistake. This informant, a judge, experienced the presence of the interpreter in court during the video link as ‘very disturbing’ and stated that he would prefer to have the interpreter at the remote site next to the immigrant. He gave two reasons. One is an emotional reason. The immigrant may find it frightening to be alone, accompanied only by a guard. With the interpreter sits next to him/her, s/he may be more comfortable and has someone s/he can trust at his/her side. The other is a more practical or technical reason. The judge can mute the interpreter when s/he interprets using whispered simultaneous interpreting. When the interpreter is in court, everything has to be rendered using the consecutive mode and takes more time. In the words of this judge:

Want dan moeten we wachten tot hij klaar is, want dan kan hij niet fluistertolken. Dan horen wij alles. [In that case we have to wait until he has finished, because from here he cannot interpret in whispering mode. We hear than everything.]

If a lawyer is present, the lawyer is normally also in the detention centre. This is mainly to ensure that there can be a confidential conversation between the lawyer and the client. However, if the interpreter is in court, the lawyer will need to be able to speak the defendant’s language, as a separate interpretation for the confidential dialogues between the lawyer and the defendant is not possible for the interpreter located in the court. When the lawyer and the interpreter are in the detention centre, confidential communication with the client can be achieved by muting the microphone, but a better option is to move to another room without a guard.

Another setting in which VC is used are links between two police stations, with the prosecutor at one and the suspect at another. The interpreter will in most cases be with the suspect, although s/he can choose the location as in the setting described above. Furthermore, in witness hearings the interpreter is normally co-located with the witness.

Physical separation from the interpreter of all parties in a VC session (‘remote interpreting’) currently does not happen in the Dutch system at the national level. However, a number of pilot schemes are under way to explore further uses of video links, for explore the use of video links for connecting

lawyers from their office to the proceedings. The implementation of such solutions will also have an impact on the interpreters' work.

10.5 Pre-VC/Post-VC

The interpreters are informed of the fact that a video link will be used, but there is no briefing of the interpreter. I.e. no specific briefing in the Dutch courts. However, no information about the case is given, and the interpreters do not receive case files or other documents regarding the case. One informant believed that interpreters do not need to be briefed, because they never ask for a briefing and never cause problems due to not having been briefed.

There is also no official de-briefing. According to the informants, there is no time for it. Only occasionally is there a short evaluation of the interpreter's performance on with other legal colleagues, especially when there were doubts about an interpreter's performance. However, the informants confirmed that there is no systematic quality assurance, e.g. in terms of the accuracy and completeness of the rendition. This is despite the following view by one of the informants:

Maar je kunt het toch niet controleren of er vertaald wordt wat er gezegd werd. Als ik heel eerlijk ben, kan ik me echt niet voorstellen dat tolken inderdaad alle technisch juridische dingen kunnen vertalen. Je zou ook een jurist moeten zijn om het allemaal te kunnen begrijpen. [If I am honest, I cannot imagine that the interpreters can translate effectively all legal terminology. You should be a legal practitioner to understand everything.]

10.6 Mode of interpreting

When the interpreter is co-located with the other-language speaker, s/he works normally renders the utterance made in court into the immigrant's language using whispered simultaneous interpreting. The immigrant's utterances are rendered consecutively into Dutch for the court. Judges prefer this solution, because it is fast and makes the hearing smoother, as there is no waiting time. If the interpreter is present in the courtroom and the immigrant is in the detention centre, simultaneous interpreting impossible, which slows down the proceedings.

Experiences reported from cross-border hearings vary. One informant reported a bad experience in a cross-border case with Italy. He found the performance of the interpreter, who was in Italy, very poor and raised the question of whether this interpreter had had any training. At the same time, the informant knew that legal interpreters in Italy are underpaid. He believes the Dutch system is different in that interpreters in the Netherlands are more qualified, as they have to complete a compulsory training course in order to work in the legal system.

10.7 VC management

One dimension of VC management is the positioning of the participants within the room and in relation to the cameras. A related dimension is visibility on the screen.

The VC rooms in the Netherlands are very well equipped. Everybody has his/her own microphone at both sides; there are several screens and cameras in the VC room. As explained earlier, the interpreter is normally at the remote, seated together with the immigrant as well as the lawyer, if a lawyer is present. A guard is also present. All remote participants normally face the screen and the camera (see Figure 5a), but other seating arrangements have been piloted, e.g. the use of a curved table to enable the participants who are co-located at the remote site to sit in a slight angle, allowing them better to interact with each other as well as with the remote site (see Figure 5b).



Figure 5: VC management in Dutch courtrooms – 5a: Remote site (detention centre) with the immigrant in the middle and the interpreter and lawyer to his left and right; 5b: Curved table in VC room in a detention centre

The participants at the remote site see a static image of the bench in the court room, as shown in Figure 5a. In other words, the camera in court is not zoomed in or out, nor panned around to see other participants. A further screen is available to display documents.

In the court are the judge, the lawyer, the officer of the Immigration and Naturalization Service (IND), and the court clerk. All participants in the courtroom are in the same position as in traditional hearings (see Figure 6).



Figure 6: Courtroom with link to detention centre

The detention centre VC room has several cameras, i.e. one camera pointing at each of the three seating positions, and one overview camera. Hence, four images are sent to the court, as can be seen in Figure 6. The cameras are static, i.e. they do not pan nor zoom. All remote participants can thus be seen continuously by the court participants. However, one of the informants points out that in immigration cases he does not mind if he does not see every single detail.

In spite of this, he believes that showing interpreter on the VC screen is essential. The informant prefers VC to telephone interpreting and points out that seeing the interpreter is very important, because if there is a problem, interpreters can give a signal, and more broadly, seeing each other improves the collaboration in the VC.

The informants do not normally have a self-view. One of the informants said that he would not like to see himself during the VC.

The design principle of the videoconferencing facilities in the Dutch court rooms includes that all courtrooms are equipped to the same standards, with the same equipment, the fact that all cameras are static, i.e. are not panned nor zoomed in and out. The underlying idea is that this makes it easy to operate the equipment and obviates the need for a technician to be present during the video links. The court clerk is the person who operates the system, i.e. starts and ends the VC. In case of technical problems and breakdowns, the clerk restarts the whole system. If a bigger problem occurs, a technical service can be called.

Some issues arise when the interpreter is located in the courtroom but as it happens very seldom. In this case, the interpreter's position, for example, is decided by the court authority.

10.8 Communication management

Given the frequent use of video links in the Dutch system, some procedures have emerged for starting the video links. There is, for example, a standard introduction at the beginning of each VC. One of the informants pointed out that this is helpful because it ensures that the immigrant knows who is present in court.

The communication flow during the proceedings is mainly managed by judges in Dutch courtrooms. Some judges perceive the communication management in VCs to be very similar to that in traditional hearings. However, they emphasise also that it is more comfortable if the stakeholders are all present in the courtroom. One of the judges gave one of the reasons for his feeling that face-to-face communication:

Ja, en dit is HET nadeel van VC want je hebt oogcontact, maar op een andere manier dan met f2f. Je hebt enkel de indruk om oogcontact te hebben [Another disadvantage is the lack of real eye contact. You have only the impression having eye contact, but in reality you don't.]

Regarding the mediation through an interpreter, judges in the Netherlands are used to working with interpreters, which may be the reason why they do not experience working in interpreter-mediated communication as an added effort. The judges did, however, point to some problems with the performance of some interpreters. According to one judge, there are interpreters who do not articulate properly and/or have to be reminded by the judge to speak into the microphone.

10.9 Working arrangements with interpreters

In the Netherlands, there is a national and official register for legal interpreters. Dutch courts recruit only interpreters from this register, either directly or through interpreting agencies. If there are any problems with languages of lesser diffusion, they have the possibility to consult the so-called 'uitwijkljst' (fallback list).

All legal interpreters are trained in the Netherlands. They have to follow a training program especially set-up for them. However, the training does not include training for videoconferencing situations. There is also no interpreter education programme at university level or Bachelor/Master degree at all in the Netherlands.

11 Poland

The following report outlines the situation of the Polish civil courts, where videoconferencing is used in national hearings of mostly forensic experts. This report is based on interviews with one judge in Wroclaw and several representatives of the civil court of Wroclaw.

11.1 Procurement

Videoconferencing has been used in the Polish justice sector for over 10 years, but it was not widely spread until the mid-2000s. At that time, the sector experienced a sharp increase in the number of video-mediated court hearings, from 22 in 2004 to 126 in 2005. By 2007, the number had increased to 431, of which 22 were cross-border cases. 2008 saw 774 video-mediated hearings, including 35 cross-border cases. From 2006 to 2008, 90 courtrooms in 45 regional Polish courts were equipped with VC terminals. 2009 saw district courts begin to be fitted with VC facilities, as well as 21 prisons and detention centres. 11 public prosecutors' offices were furnished with VC equipment in 2007.

A new phase of procurement of VC equipment for the Polish courts started in 2010. It formed part of a more comprehensive court digitisation programme, i.e. the implementation of the e-Protocol. The e-Protocol is, in essence, a system of digital court recoding, but its implementation led to a wide-ranging modernisation of the courts. The e-Protocol procedure currently applies to civil, commercial and misdemeanour (petty offence) procedures. It replaces written records and has the same legal status as its written counterpart. According to current legislation, video-recordings can be taken in regional courts and district courts. In appeal courts only audio recordings can be taken. The aims of the use of the e-Protocol and videoconferencing were:

- To shorten court proceedings
- To reduce written records of hearings or court proceedings
- To improve the accuracy of the minutes
- To improve the transparency of justice
- To reduce the cost of court proceedings

The e-Protocol consists of a multi-channel audio file, images and video files along with 'public' and 'private' annotations. When a videoconference is part of a court hearing, the feed from the videoconference is included as well. The inclusion of videoconferencing in the e-Protocol proved to be challenging, as it necessitated additional components such as echo cancellation. The different feeds of the e-Protocol are illustrated in Figures 1a and 1b below.

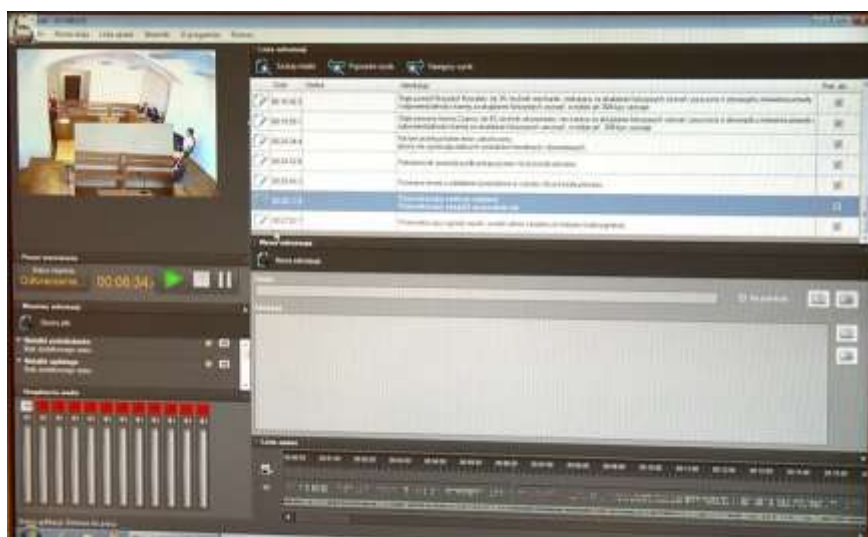


Figure 1a: e-Protocol recording software used in Poland (source: AVIDICUS3)

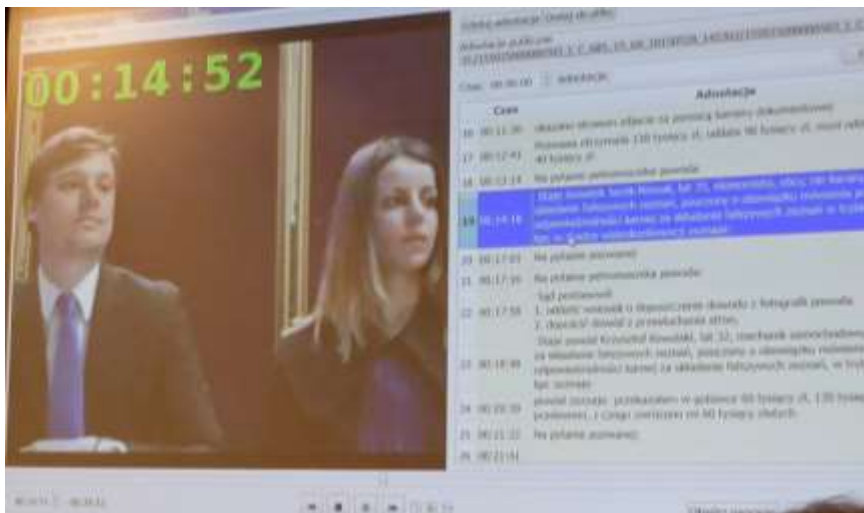


Figure 1b: e-Protocol demonstration including the use of videoconferencing
(source: E-Protocol conference, Warsaw, May 2015)

All legal stakeholders who acted as informants for this study expressed satisfaction with the e-Protocol solution and were convinced that this would be the only viable solution for future-proofing the courts. They also pointed out that they prefer the e-Protocol solution to the use of a Dictaphone or tape recorder and said that they believed in the concept of paperless legal proceedings.

The procurement was carried out by the unit of the Ministry of Justice that is responsible for court technology. At present, the e-Protocol solution has been implemented in 2223 of 4500 courtrooms in 239 courts. 1572 courtrooms are connected to the videoconference infrastructure. Approximately 13000 users have been trained in using the system. The roll-out of the system will continue until the end of 2017. A central record management system is also currently being developed.

11.2 Equipment and maintenance

The Polish court system uses broadband Internet connections for national hearings. Cross-border hearings are based on broadband Internet connections or ISDN. At present, the Polish court network has the capacity handle simultaneously up to 30 videoconferences in Full HD (1080p) resolution or 130 videoconference systems in HD Ready (480p) resolution. In addition to the videoconferencing endpoints within the court network, links can also be set up with external endpoints. The ISDN gateways can simultaneous support up to 40 video connections at 768 Kbps or 300 video connections 128 Kbps or 600 audio connections (see Figures 2 and 3 below).

The default configuration is a point-to-point connection between two court rooms or a court room and another facility. However, the system is also readily equipped for multipoint videoconferences with more than two sites.

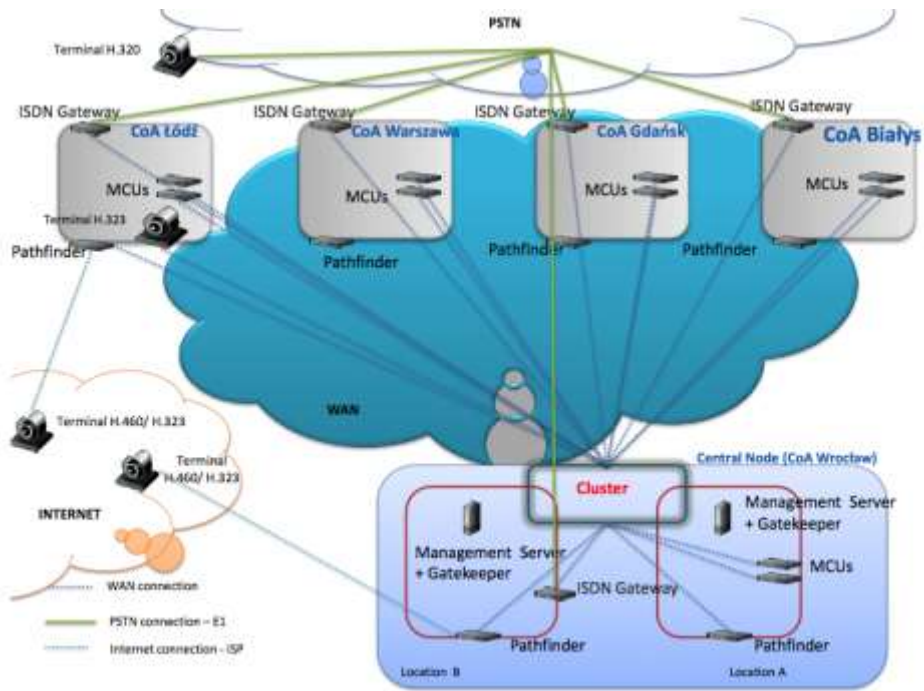


Figure 2: Network infrastructure

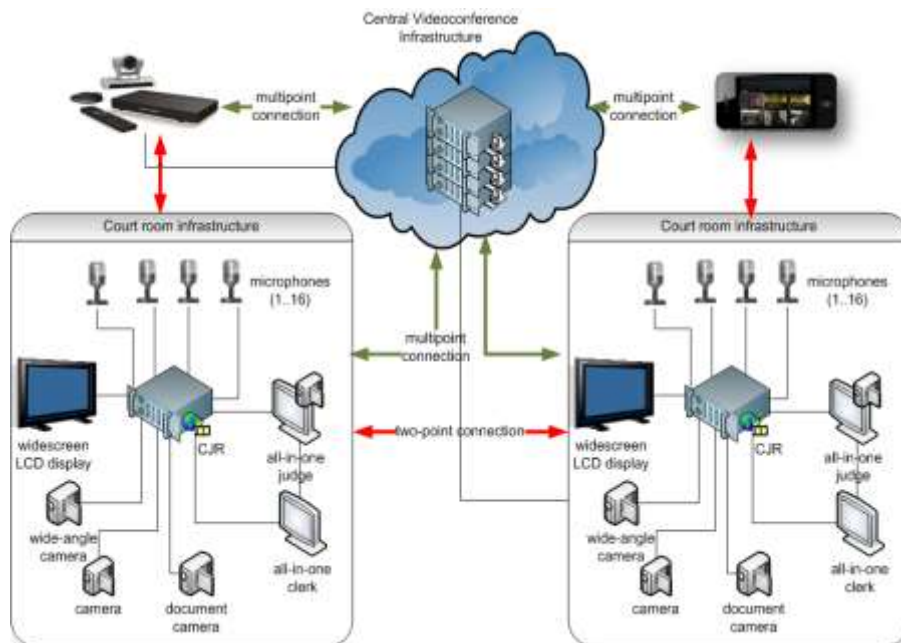


Figure 3: Videoconferencing infrastructure and equipment

In order to use the e-Protocol and the VC facilities, every court has been equipped with a VC courtroom and has a trial recording system, a sound system and a VC system. The way in which this is implemented ensures, for example, that the recordings can be made, stored, managed and accessed consistently, and that a safe electronic signature can be provided.

The equipment implemented in court rooms now typically includes the elements shown in Figure 4 below.

Common courtroom equipment

1. Digital recorder
2. Attached microphones
3. Mobile microphones
4. Widescreen LCD display
5. Wide-angle camera
6. Camera
7. Two computers
8. Document camera
9. Videoterminal
10. Amplifier and speakers

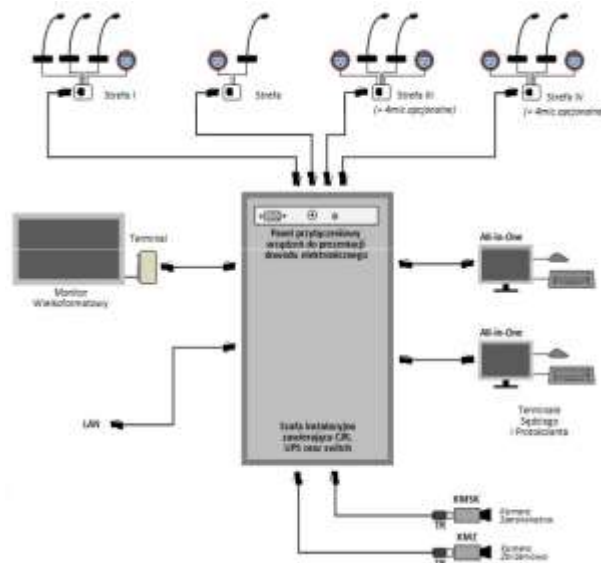


Figure 4: Court equipment

As for the VC facilities, court rooms are normally equipped with one wall-mounted 42 inch screen and a number of smaller 19 inch screens in specific positions, e.g. for the judges at the bench (see Figure 5 below). Courtroom as furthermore are equipped with rotating cameras capable of focusing on different speakers in the courtroom. All participants have individual microphones.



Figure 5: Courtroom videoconferencing layout

The VC equipment is managed and controlled by a technician who is present all the time during every hearing. He also tests the equipment before the hearing, makes a test call (normally the day a VC takes place), and controls the image and the sound during the hearing.

11.3 Uses

Videoconference is used in the Polish civil courts almost exclusively in national cases. Mostly, it is used for the hearing of forensic experts. Informants report that they work only occasionally with an interpreter. In 2014, there were only 6 cases where they needed the assistance of a legal interpreter who came to the court.

VC has been also used to provide training for all stakeholders who take part in videoconference-based court hearings (see Figure 6 below). Interestingly the informants have pointed out that this training is organised as a peer training, i.e. magistrates train magistrates, whilst clerks train other clerks via VC in how to use VC during a legal procedure.



Figure 6: Videoconference-based training for court personnel

Polish informants also mentioned the use of the VC facilities for a number of other purposes, including their use as a 'Service Desk' for remote participants, to offer legal aid service for citizens, to provide remote mediation and to provide interpretation during a videoconference (remote interpreting, but see section 4 below).

11.4 Participant distribution

As was outlined above, the VC facilities are mostly used to hear remote expert witnesses. The distribution and positioning of the participants in such cases is shown in Figure 7 below.

Courtroom organization

1st zone: Jury bench

2nd zone: Reading stand

3rd zone: Plaintiff/Prosecutor

4th zone: Defendant

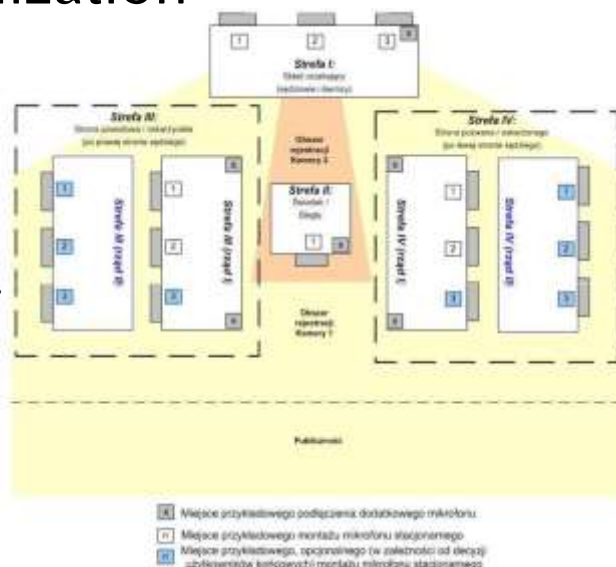


Figure 7: Participant distribution and positioning in the main court room

If an interpreter is needed, s/he is normally in the courtroom, positioned in Zone 2 (see Figure 7 above), standing next to the defendant.

Informants explained that it is theoretically possible that an interpreter works from a remote location, for example a different court in Poland or from a different country, but in Wroclaw this is not currently done.

11.5 Pre-VC/Post-VC

Briefing and debriefing phases for cases with interpreters appear to be very limited in Polish civil courts. In light of the small number of interpreter-mediated videoconferences, (6 in 2014 in the civil court of Wroclaw), the informants pointed out that they do not have much experience with interpreting in video links.

When an interpreter is needed, s/he is normally informed of the use of a video link prior to the hearing. However, the judges who acted as informants for this study seemed to simply assume that the interpreters receive the necessary information during the booking contact by the clerk or by the agency. The informants did not mention the use of a debriefing.

11.6 Mode of interpreting

As mentioned above there have only been few videoconferences with interpreters in the civil court of Wroclaw to date. If an interpreter is needed during a videoconference, s/h is in court and interprets consecutively.

11.7 VC management

When an interpreter is present in court, the informants reported that, as a general rule, s/he normally sits or stands next to the person for whom s/he is interpreting. The place is assigned to the interpreter by the judge, but the interpreter can adjust his/her position.

In relation to VC-based hearings, the legal stakeholders generally seem to be aware of the need to position themselves appropriately in relation to the camera. However, there is no standard place for the interpreter in the VC situation. When an interpreter is present in a VC-based hearing, s/he normally still takes the place next to the defendant, as assigned by the court authority, and faces one of the cameras. The judges and the technician who acted as informants for this study emphasised, however, that due care is taken to grant interpreters a position that allows them to see both the bench and the VC screen. It was also pointed out that the interpreter's position is not restricted by the availability of a microphone, because there is a large number of microphones in every courtroom. However, it was not clear whether the interpreter has his/her own microphone.

With regard to the images and the sound transmitted between the court and the remote site, the default configuration is that the image of the camera in the judge's computer and the sound from the microphone placed in front of him/her is transmitted from the courtroom to the remote site. The court clerk may, however, select a different camera and microphone, e.g. to show to the remote site an overview of the courtroom, especially to make other participants in court visible to the remote participant.

If the remote site is another courtroom in Poland, the video image and sound that are transmitted to the main courtroom are normally taken from the camera that is directed at the speaker stand and the microphone on the speaker stand respectively (see also Figure 7 above). However, this can also be adapted. For example, when the remote witness presents digital images as evidence, these can be transmitted to the courtroom and displayed electronically on a separate screen.

While overall they are satisfied with the management of video links, judges believe that there are some points for improvement. For example, to be able to work without the presence of a technician is one of the most important issues for making VC-based hearings more flexible and efficient.

11.8 Communication management

The communication flow during the proceedings is mainly managed by judges in Polish courtrooms. The judges perceive the communication management in VCs to be very similar to that in traditional hearings. Especially with regard to turn-taking and overlap, the informants felt that there are no stark differences between a face-to-face setting and a VC setting. In their view, the dynamic in both settings is almost the same. One of the informants felt that the system is very user-friendly.

11.9 Working arrangements with interpreters

There is a strong legislative basis for legal translating and interpreting in Poland based on the Act of 25 November 2004 on the Profession of Sworn Translator. This act establishes the procedures for certifying translators and interpreters. Only when a certified translator/interpreter is not available in a given language do courts recruit individuals with recognised language skills but without certification. The Ministry of Justice is responsible for certifying qualified professionals and keeping a register of those who have met the requirements and passed the certification exam. Poland thus has a national register of certified legal translators/interpreters. However, the civil courts in Wroclaw had only very limited experience in working with legal interpreters and were not able to provide information about remuneration, or training or other important questions.

12 Scotland

This report is based on information provided by a group of representatives including senior informants representing three different areas of the Scottish judicial system, i.e. the Scottish Courts and Tribunal service, the Scottish Prison Service (SPS) and the International Cooperation Unit of the Scottish Crown Office, as well as representatives from the EU liaison unit of the government's Criminal Justice Division, additional staff in the SPS, from the Legal Aid Board and the Electronic Service Delivery Unit (ESDU) attached to the Court and Tribunal service. The information was complemented by other sources of information available from the European VC survey 2008, a range of policy documents and a court observation.

The use of videoconferencing for judicial purposes is relatively new in Scotland as compared to other EU member states, including England, and the use of interpreting services during video links is still being at planning and/or pilot stages as the VC network is developing and finding new areas of applicability. Therefore, although the use of interpreters for judicial video links in Scotland is still rather limited, this report outlines the state of the art and the plans made by the authorities to further develop and extend the use of video links to interpreter-mediated situations. Information concerning the working arrangements with interpreters was obtained through staff guidance documents regarding the 2013 Contract Framework for the Provision of Interpreting, Translation and Transcription Services.

12.1 Procurement

In Scotland the first courts were equipped with VC systems in 2003. The primary reason for the beginning of the procurement process was originally the approval of the Vulnerable Witness Act, which established the right of vulnerable witnesses to give evidence to courts without being physically present in the courtroom. An update of this legislation, i.e. the Victims and Witnesses (Scotland) Act 2014, which came into force in September 2015, includes enhanced special measures to support victims and witnesses when giving evidence in Court, with the use of video links being one of them. In addition to this, video links between courts and prisons were first piloted in Scotland in 2003, when a video link was installed between Barlinnie Prison and Glasgow Sheriff Court. The motivation here was to reduce the transfer of prisoners to court, especially for committal hearings, which tend to take only a few minutes.⁴⁶ Court-prison video links have since been expanded and all Scottish prisons are now equipped with a VC room and facilities, although interpreter-mediated VC is currently excluded from the pilot stage (due to the staged approach adopted with a view to minimising the risk of failure).

Furthermore, in recent years, the procurement of VC equipment in the Scottish justice system has also been driven more broadly by the Digital Strategy for Justice in Scotland.⁴⁷ As outlined e.g. in a consultation document on the court structure for the future, published by the Scottish Court Service in 2012,⁴⁸ the wider (digital) strategy for the Scottish court services includes (a) an effort to reduce court business and bring into court only those matters that cannot be resolved by other means (e.g. mediation) and (b) where there is a need for court proceedings, an effort to ensure that "as many of the participants as would be consistent with the interests of justice should be able to appear through a live video link" (Consultation 2012: 16). Regarding the resources available for further court modernisation, however, the report highlights financial bottlenecks, pointing out that "during the years when funding for refurbishment and new building was available, we were able to create a number of modern court facilities" and that "funding of the levels available in the past will not be available in the foreseeable future" (5).

⁴⁶ <http://www.gov.scot/News/Releases/2003/10/4280>, <http://news.bbc.co.uk/1/hi/scotland/3183662.stm>

⁴⁷ <http://www.gov.scot/Resource/0045/00458026.pdf>

⁴⁸ <http://www.scotcourts.gov.uk/consultations/docs/CourtStructures/ShapingScotlandsCourtServices.pdf>

Irrespective of this, a commitment to extending the use of video links in the justice system can be found in all parts of the system. The Scottish Court Service Corporate Plan 2014-17 includes a commitment to “*improving the availability and performance* of video links to help minimise the need for physical attendance at court and to support the widening of access to special measures by vulnerable witnesses”⁴⁹. A commitment to *extend* the use of VC is included in the Strategic Plan of the Crown Office and Procurator Fiscal [i.e. prosecutor] service for 2015-18.⁵⁰ The Scottish Prison Service (SPS) is interested in the expansion of videoconferencing “to remove the need for an accused’s physical presence in the courthouse” (Consultation 2012: 81) and to avoid transfer of prisoners between prisons and court houses. The Association of Directors of Social Work welcomes an increase of videoconferencing in light of demonstrable “positive outcomes in reducing non-attendance of witnesses and accused persons” (Consultation 2012: 83). The Scottish Legal Aid Board furthermore emphasises that VC “will reduce the need for solicitors and others paid through legal aid to travel unless it is absolutely necessary”.⁵¹

The 2012 consultation document concludes that “the use of video conferencing (for example in procedural stages of criminal proceedings or interlocutory or preliminary hearings in a civil case) which may avoid the need for parties to be physically present in a courtroom is in appropriate circumstances acceptable” but that its appropriateness “in a particular case must, subject to any rule of law, be a matter for the presiding judge or sheriff to determine” (98).

Following the 2003 Vulnerable Witness Act, 25 courts across Scotland were initially equipped with VC systems. In line with the further strategic decisions to expand the use of VC in the Scottish Justice system, as outlined above, that number has increased over the years to over 120 systems, and while not all courts are currently equipped with VC facilities, the VC network is still being expanded.

The unit initially in charge of the procurement process in the Court services was the Electronic Service Delivery Unit. The members of the unit drafted the required specifications with the help of colleagues from other areas of the Courts and Tribunals Services dealing with procurement, and after consulting with a number of stakeholders. ESDU asked the Crown Services, the Faculty of Advocates and solicitors for feedback, obtaining information mostly from the first two stakeholder groups, whilst solicitors initially showed little interest in the new technology. Feedback was elicited with the use of a questionnaire regarding what stakeholders would like to see in the courtroom and the problems they could envisage. ESDU integrated comments from various sources in the preparation of their call for tenders, before advertising it in the European Journal.

The contract was eventually awarded to a company from Edinburgh, which supplied and installed the first batch of 25 VC units in various courts across Scotland. As the first phase of procurement had generally positive results, the following major upgrade was again advertised by the same means, and the same company won the second tender. This is perceived positively by the informants, who claim that this turn of events practically translates into a single company managing the whole network and being responsible for the entirety of the support required by the courts. The second batch of equipment is considered by informants as “*much more modern, much more reliable*” than the first batch. Over time, the supervision of procurement was moved from ESDU to the Property Service Unit. Technical informants believe that this change signifies an acceptance “*that VC equipment in courtrooms is vital to the running of cases and as such it should be treated like furniture and lighting, as part of the fabric of the building*”.

⁴⁹ http://www.scotcourts.gov.uk/docs/default-source/corporate-scs-library/scottish-court-services-interactive_corporate-plan_a.pdf?sfvrsn=2

⁵⁰ http://www.crownoffice.gov.uk/images/Documents/Business_Strategy_Plans/Strategic_Plans/COPFS%20Strategic%20Plan%202015-2018%20.pdf

⁵¹ <http://www.slab.org.uk/providers/reforms/other/>

During the first phase of implementation, ESDU received complaints about the reliability of the equipment which, however, they believe were mostly due to stakeholders not being technically prepared to use VC systems. Currently, the use of VC equipment is “*taken for granted*” by all stakeholders involved in the procurement process, and according to ESDU, also people who were initially sceptical about the use of video links have now warmed up to the new technology and use it on a regular basis. According to technical informants, although ESDU is open to potential criticisms, none are normally received, indicating a potentially rather high level of user satisfaction.

In prisons, the Scottish Prison Service (SPS) was entrusted with managing the procurement phase, after the original concept of a national approach whereby the government would procure all the equipment and all the services across justice did not materialize. **SPS is in charge of the procurement** and puts in place the infrastructure in accordance with the Scottish government and the general SPS procurement guidelines, and with the help of its own technicians and engineers for the identification of technical standards. SPS collaborates with the Legal Aid Board in this project. The procurement process also involved two calls for tender, the first for the equipment and the second for the infrastructure. Informants state that the procurement was informed by a principle of quality over economy which would allow SPS to benefit from a reliable service and to look with confidence at implementing further upgrades and designing future expansions.

In terms of implementation, decisions were generally guided by the principle of ‘keeping it simple’ for the stakeholders involved to maximise efficiency. Informants also added that some Legal Aid Board members went to England to explore how video-links are done there, which may have influenced the final approach adopted and decisions taken. A VC engineer was also hired to work on a consultant basis, particularly with a view to implementing the VC system (a solution which was deemed more effective than using the prison’s general IT department according to the informants interviewed).

Although the equipment may be different between courts and prisons, basic technical standards were agreed to ensure compatibility across the judicial network. Interpreters were not directly involved in the design and implementation of VC equipment, but informants claim that the VC system was designed in a way that would make it possible to integrate the presence of interpreters from the very start and that the technology is capable of supporting this.

12.2 Equipment and maintenance

According to technical informants, there are currently **over 40 locations in Scotland which have at least one court room with a full set of VC equipment**. Larger courts normally have more than one VC-equipped courtroom. While not all courts have a separate VC-equipped witness room, the Scottish court authorities have made **agreements with other institutions to use their VC facilities and enable witnesses to give evidence remotely**. According to the informants, such agreements have been signed with libraries, local businesses, and even a football stadium, to grant witnesses in their respective locations access to VC equipment to give evidence compliant with the Vulnerable Witness Act. This is in line with the vision for the Scottish Justice system, as set out in the 2012 consultation document, which states that the system looks “for opportunities to share facilities with other justice sector organisations, and in Livingston we have achieved the arrangement to which we aspire. There the court facility forms part of the civic centre which houses the local authority, police, procurator fiscal, children’s reporter and the West Lothian Community Health Partnership. This arrangement allows those who come into the justice system a single point of access to the other public services they might require” (2012: 5).

Most of the court VC systems are Sony. Courts use a **mix of ISDN and IP technology**, which allows ESDU to connect to any system with an IP address or an ISDN number. Courts also have their own **VC software client** which can be downloaded and installed onto personal devices to establish a connection. While many options are available, informants pointed out that it is up to the court to say

which one is the most appropriate for a specific case. This is corroborated by the vision of using VC given in the 2012 consultation document (see section 1 above).

In the prison service, all **prisons** are equipped with VC facilities, as pointed out in section 1. All prison equipment is **IP-based**, using high-definition standards. At present, prisons are waiting for courts to “*get up to speed*” with the technology in order to be able to establish **court-prison video links** as a routine procedure. In addition, **lawyer-client video links** are currently being piloted in Edinburgh prison. During the pilot, a secure Internet connection provided by BT is used and paid by the Scottish Legal Aid Board, incurring fairly high costs. If the project continues after completion of the pilot, SPS will use their own network and from that moment on no connection costs will be incurred.

As for the installation of the equipment in the actual estates and buildings, the solution in Scottish **court rooms** is one that involves **multiple screens and cameras**. There are normally one or two wide screens on the walls and a number of smaller screens in the witness box, the jury boxes and at the bench. Although the number of screens varies from court to court, technical informants pointed out that even the smallest courts have at least four. Figure 1 and 2 below show typical arrangements in court. **Witness rooms** and **rooms in prison** are equipped with **one screen and one camera**, as shown in Figure 2 and 3 for witness rooms and prisons respectively. In prisons, the rooms are fairly small in size, but can accommodate more than one person. The furniture is either movable or in some prisons bolted to the floor.



Figure 1: Scottish courts with VC facilities (sources: left – BBC, <http://www.bbc.co.uk/news/uk-scotland-19990371>; right – STV News <http://news.stv.tv/politics/289172-more-child-witnesses-to-give-evidence-without-going-to-court/>)



Figure 2: Videoconferencing facilities illustrated for use with vulnerable witnesses (source: Crown Office, <http://www.crownoffice.gov.uk/>; Witnesses in Scotland, <http://www.witnessesinscotland.com/wis/92.html>): views from court and vulnerable witness room (bottom right)



Figure 3: prison VC room (source: BBC, <http://news.bbc.co.uk/1/hi/scotland/3183662.stm>)

The places in court are equipped with individual **microphones**, which are managed by the judges. In cases of court-prison video links, an environmental microphone is used for all court participants. Judges have the ability to exclude the remote participant from the conversation with an OFF button, e.g. a witness from a discussion of procedural matters, which mutes their microphone and suspends them from the video link. Similarly, in relation to court-prison video links, prison staff explained that they might at times mute the microphone of prisoners behaving disrespectfully towards the court with the aim of preventing this from upsetting the court. This behavioural change of prisoners in VC is mostly attributed to the 'distance' created by the technological medium.

External companies are in charge of the installation and maintenance of the VC equipment in courts, and ESDU are in charge of establishing VC connections with participants from all over the world, and according to ESDU informants, the legal practitioners with whom they collaborate are satisfied with the service ESDU provides.

The VC systems in the Scottish courts and prisons **allow multipoint connections**, with a specific view to ensuring flexibility and enabling **third-party interventions in video links including from interpreters**. 128bit encryption is normally applied. The system enables picture-in-picture functionality to provide a self-image. In Edinburgh prison, the Legal Aid Board is developing plans to explore three-point video-links between solicitors, barristers and client including document-sharing and facilities for viewing CCTV footage. Similarly the Board also has plans to develop VC links between lawyers and immigration detention centres (although this falls under the remit of the Home Office).

The **sound and video quality of VC equipment are judged by informants to be on average satisfactory**, although they vary depending on the type of connection established and the remote location. A delay in the audio of about $\frac{1}{4}$ of a second is considered normal throughout the network.

Many courtrooms have undergone continuous technological and apart from being equipped with VC facilities, they can also play DVDs, cassette tapes, audio cassettes, content from PCs, and external software can also be installed *ad hoc* if required for a specific case.

12.3 Uses

VCs in the Scottish judicial services are used for a variety of purposes. Among the main reasons are, according to informants, cost savings, efficient use of resources and welfare of prisoners, witnesses and the public. At the time of interviews, all types of courts could make use of video links apart from the peace court. However, informants were expecting peace courts to start taking evidence with the use of VCs since November 2015.

In **criminal proceedings**, the main purpose of VCs in court is the **hearing of witnesses**, both at **national and cross-border level**. Witnesses can be Scottish nationals or nationals from any other country, lay people and experts. In cross-border cases, before an outgoing or incoming VC can take place, a formal request needs to be examined by the relevant authorities. The decision of whether to grant legal aid for incoming requests (i.e. when a Scottish court is the **requested court**) is normally based on criteria

of proportionality (comparing the cost of the video link with the value of the case and/or the seriousness of the crime) and due criminality (i.e. incoming requests for legal aid are only accepted if the matter subject to investigation is a crime according to the Scottish law).

Outgoing video links for the hearing of witnesses (i.e. a Scottish court is a **requesting court**) are established with a variety of countries, both within and outside of the EU. Normally, when trying to establish a link with a witness abroad, the Scottish authority will either seek the cooperation of the local authorities or at least inform them that the link is taking place. If local authorities are not involved, often the Scottish courts invite British embassies to act as remote locations where the witness can attend to give their evidence. Under specific circumstances, witnesses can also give their evidence from healthcare facilities, if these are equipped with VC systems.

Another use of VC are **court-prison video links**, but as explained earlier, they are **not yet widely applied** as the video connections between courts and prisons are not yet fully implemented. For instance, in Edinburgh prison, VC is currently used only for links to Edinburgh High Court in appeal cases. This is partially because prisons are waiting for courts to be adequately equipped for this purpose (cf. Equipment and Maintenance). However, another reason is that several types of hearings need to be done in person, especially first hearings and any hearing in which the accused is to be served with papers or evidence is being laid against them. Immigration hearings are also normally presence hearings. Therefore, as far as defendants in custody are concerned, video links can only be used for procedural hearings. As pointed out in section 1 (Procurement) above, they are considered especially useful for the short committal hearings; for example, in Edinburgh prison, VC sessions take place three days a month and typically last 30 minutes. However, another point to note is that in order for a hearing to happen via video link, the defendant must agree to it; formal consent by the prisoner is not needed, but if a prisoner is unwilling to appear by video link, the prison would inform the court. Therefore, the applicability of VC in hearings involving defendants in custody is decided on a case-by-case basis.

In addition to the above uses, VC facilities are available for **lawyer-client consultations**, both before a hearing and independently of court proceedings. For the former, **court rooms normally have smaller rooms equipped with VC** for this purpose. For the latter, **a new scheme is currently piloted, allowing lawyers to link to prisons from their office**. Feedback from legal practitioners on this particular use of VC has been very positive, as the video links is said to increase the efficiency of lawyer-client meetings. In Edinburgh prison, VC with lawyers is currently being piloted in close cooperation with the Legal Aid Board, which liaises with lawyers about this. The pilot involves approximately 50 prisoners per month (with the number being capped due to the connection costs), although it peaked at 70-80; after completion of this pilot, the figure could go up to 100 prisoners per month. According to the authorities within SPS, there are approximately 25,000 legal representatives going to prison each year: 60% of such visits could be done via video link, thus saving £1 million.

A further use of VCs is made in the Scottish prison system, as a pilot project is being run with **video links for family visits**. The feedback up to the time of writing has been positive, and SPS have received several enquiries and requests to expand the programme. In addition, the use VCs is **under consideration** for medical purposes in order to **link NHS doctors with prisoners**.

Another pilot project currently in progress concerns **police interviews, in which the solicitor is invited to attend via video link**. The main purpose of this scheme is to reduce the time spent by suspects at police stations (i.e. waiting time) by making sure that legal advice is as readily available as possible, in particular in remote areas of Scotland.

As far as **civil hearings** are concerned, VC facilities are mostly used for **appeals**, and in particular for disabled applicants, in order to spare them the time and the inconvenience of physically attending to court.

For all the uses described above, there are staff guidelines on the use of video links. While the inclusion of **interpreters** in video links is not excluded by legal or technological reasons, interpreters are currently not involved in video links, with the exception of **cross-border video links** with non-English speaking witnesses. Informants believe that the reason for this state of affairs can be ascribed to the use of VCs in the Scottish legal system being still in its infancy. The general feeling of legal practitioners and technicians alike is that the system needs to be thoroughly tested on traditional (monolingual) settings before adding the further complexity represented by linguistic mediation.

12.4 Participant distribution

As pointed out above, the use of interpreters in VC settings in Scotland is currently mostly limited to the **hearing of witnesses in cross-border video links**. Whenever there is an outgoing or incoming request for legal aid via video link, **the Scottish judicial system always provides the authority on the Scottish site with an interpreter**. This means an interpreter is present in the court room on the Scottish side either to interpret between the Scottish court (as the requesting court) and a foreign witness in a remote location, or between a Scottish court presenting a witness (as a requested court) and the remote court issuing the request. The purpose of this policy is to make sure that interpretation is available for the Scottish authority if required by the circumstances. If the other side has a similar policy, this results in two interpreters being present, one at each side of the video link. However, according to the Scottish informants, not all countries require an interpreter to be present when offering legal aid, i.e. when presenting a witness to a foreign court, via video link.

If a defendant in prison needs an interpreter, the hearing will not normally be held via video link. Rather, all participants will attend to court. As discussed above (cf. Uses), there are no legal restrictions to the establishment of interpreter-mediated court-prison video links. Technical informants report furthermore that the **current non-use of interpreters in court-prison video links** stems from the desire to minimise the risk of failure. Nevertheless, the demand for interpreters is increasing and calls for the need to integrate interpreters in such video links. When asked to imagine a scenario in which interpreters are involved in court-prison video links, legal practitioners were open to consider the possibility of the interpreter being in court, in prison, but also in a third remote location. The option of using a multi-point video link to integrate the interpreter in a video link was also mentioned out by one of the VC engineers responsible for the implementation of VC in prison. One point that may influence the decision in real life is that in court-prison video links without interpreters, the lawyer is normally located in court.

In setups in which a lawyer and a prisoner have a confidential **lawyer-client conversation** with through a video link, the authorities can see how **a multipoint connection may allow an interpreter to join the conversation** if required, although this is seen as a possibility that **requires testing** in the first place.

Finally, there are no technical or legal restrictions to the use of **remote interpreting**, but technical informants claim that they have never received a request for this, although it would be technically possible.

12.5 Pre-VC/Post-VC

Before hearings take place, interpreters are informed of whether they will be working in a video link and they will be provided with some basic information about the hearing (e.g. the charges). In their guidelines, court staff are asked to pass on to the contractors providing interpreting services all additional information provided by the police in regards to dialect or specific religious/cultural considerations of which the interpreter may need to be aware. Interpreters are not provided with any further information for reasons of impartiality, as the courts feel that knowing more about the case may influence their rendition. Interpreters are required to take an oath before starting their interpretation.

Technical informants report that they have never received positive or negative feedback from interpreters after video links, and that normally interpreters work without complaints even if the video quality is not good, provided the audibility is up to an acceptable standard.

Every interpreter who attends an assignment is expected to complete an Interpreter Attendance Form after the hearing, which is attached to the case files for archiving purposes. Although informants have not commented on procedures for quality assessment, there are procedures in place for formal complaints regarding the quality of interpretation. Court staff who intend to file a complaint need to fill out an exception report where they can outline the reasons why they are unhappy with the services of a language professional.

Regarding other stakeholders involved in the VC, Edinburgh prison has developed a leaflet with some basic information about VC procedures, which is provided to inmates before the start of the video-link.

12.6 Mode of interpreting

The chosen interpreting mode in video links in Scottish courts is **consecutive**. Interpreters listen and deliver content in very small chunks. The reason behind this is twofold. First, the technical informants were of the view that simultaneous interpreting would not be possible because of the sound delay inherent to video links, which would result in a certain amount of background noise and a mismatch between the original delivery and the timing of the interpreted speech, although it needs to be noted that this view is not fully thought through. Second, legal practitioners do not consider simultaneous interpreting to be suited to the purposes of a court hearing, because *“you don’t know exactly what is being said, whether it is being understood, you don’t know if they are at the same pace as you are”*.

Technical informants have also pointed out that **legal practitioners take an active role in determining the interpreting mode** and are given specific instructions regarding the need to chunk their delivery when working with an interpreter in court during their training.

According to the staff guidance produced by the Scottish Courts and Tribunals Service, interpreters may be required to sight translate essential documents during a hearing. If this is the case, the clerk needs to make a note of this specific request in the minutes of the proceeding for future reference. If a video link involved, the need for sight translation may affect the interpreter’s location.

12.7 VC management

VCs in the Scottish system vary in their set up and duration, which mostly depends on the type of hearing the video link is used for and the participants involved. Informants state that courts will take appropriate comfort breaks for long VC hearings in order to allow participants at both sites to rest.

In order to set up a **court-prison video link** in Edinburgh, for instance, the prison guard who manages the VC system normally tests the system with the court in the morning of the days when the VC has been scheduled. The court phones the prison approximately 30 minutes ahead of the start of the VC to let them know. The court also has the responsibility to initiate the link to the prison once everything has been set up. A guard is present in the prison VC room at that time to accept the VC call and to confirm the identity of the prisoner. During the VC itself, only an officer remains in the room with the prisoner, staying off-camera. When two prisoners have a video link on the same day, they are normally brought into the VC area together and wait for their turn. This wait is shorter than the time it takes to transport prisoners to prison. The cut in waiting time for inmates is increasingly used as an argument in favour of the wider implementation of VC system in this setting.

Building on this last point, staff at Edinburgh prison reported that detainees’ perception with regard to VC seems to have changed over time. Prisoners seem to consider VC ‘less disruptive’ to their day than a visit to the court for a number of reasons. Firstly, transport to court is often uncomfortable and may take all day, as other prisoners from different places need to be picked up; secondly, delays may

happen in court; thirdly, when they have to be transported to court, inmates need to empty their cell and may return to a different cell upon their return. However, these perceptions clashed with the results of a satisfaction survey conducted among prisoners, which showed a 50/50 split in opinion, with some prisoners feeling 'short-changed' by VC.

The use of **lawyer-client video links** from prison, which is in a pilot stage, has its own management procedures. Lawyers wishing to participate in the pilot scheme register on the system and have to conduct one test VC with the prison before they can use the system to be connected to their clients in prison. Upon registration, lawyers receive a software client to install on their own computers. In principle, the lawyer can be anywhere for the VC, but lawyers are advised not to use Wifi.

The connection is made by a member of the prison staff on the staff computer outside the VC room. The connection is timed (30 minute slot); a warning appears on screen 5 minutes before time runs out. The lawyer can extend the time, but according to the prison staff not many lawyers make use of this. They seem to use the timed system to complete their consultation in a timely fashion and to cut out 'small talk' with the prisoner.

The Scottish VC setup includes multiple cameras and screens (cf. Equipment and Maintenance). During the design and procurement of the VC equipment, **judges explicitly asked to be put in charge of the camera controls**, and they are **trained to operate the equipment**.

Judges can decide whether the remote participant should see individual speakers or have an overview of the court, but do not normally control zoom functions. Normally, in procedural hearings in which a defendant is not expected to play an active role, **the image that is sent to the remote site is an overview of the court** so as for the prisoner to have a general idea of the development of the proceeding. By contrast, if a remote participant is expected to give evidence—e.g. if the video link is used to hear a vulnerable witness—**the judge has the option to select cameras pointing to individual speakers in court**, either to facilitate interaction between participants or to protect the vulnerable witness from the potentially intimidating view of the full court or of the defendant. During one of our observations, for example, the judge expressed concern about the vulnerable witness seeing 'bodies' behind the defence lawyer, and checked with the lawyer whether this was appropriate.

The image sent from the remote site, on the other hand, is normally **focused on the remote participant**, showing their face and the upper part of their body as the camera at the remote site focuses on the remote participant. Therefore, when an interpreter is co-located with a remote witness, the person being heard will be seen by the court, whilst **the interpreter will normally be off-screen**, and therefore invisible during the hearing. Legal informants have pointed out that there is **no legal requirement for the interpreter to be seen**. However, in the case of sign-language interpreting, interpreters are normally visible on screen, as the court normally wants to have access to the interpretation.

In the case of **cross-border video links**, the view from the remote site varies from court to court. In some courts the interpreter will be invisible, in some courts they will be visible along with the witness, and technical informants have also reported cases in which the interpreter was the only person that could be seen in the video link, to the point that the court started using them as their main point of contact and did not see the remote participant.

The VC equipment allows for **PiP functionality** at both ends; however, after an initial test, the PiP at the remote site is normally removed in order not to distract the witness, especially if they are of young age; on the other end, the PIP is always present for the court to exert direct control over what the remote participant can see at all times.

Judges can also turn on and off the incoming and outgoing audio and video streams for the remote site. This is used when the court does not want the witness to see/hear something that is being dealt with in the court, or the witness has been asked a question which the judge believes it is not appropriate for them to answer.

Although there is no formal rule regarding the **position of the interpreter**, they will normally sit next to the person they are interpreting for if they are co-located with the remote participant, or they will sit in the dock if attending the hearing from the court.

Legal informants have pointed out that some **training** on the use of VC would be welcome for all categories of participants attending a hearing via video link, as it could improve their ability to communicate while using the technology.

12.8 Communication management

In Scotland, the **judges manage the audio and video streams of the VC** and are also in charge of managing communication in the video link. Once the technicians have established the connection, the judges take over and introduce the various participants to each other to officially start the hearing. It is their responsibility to make sure that there are no overlaps in the flow of communication, that the interpreters are allowed time to deliver their rendition and that the remote participants are asked relevant questions and provide relevant answers.

According to technical informants and our own observations, **some judges are very proactive in the management of the communication flow** and in guaranteeing that the interpreters get adequate space to carry out their task. In one of our observations, for example, a judge asked a remote witness to stop swinging in her chair, pointing out that the swinging would be ‘distracting’ for the other participants in the hearing and that it would change the witness’ voice quality and audibility. This indicates a good level of awareness of potential communication issues.

The informants also suggest that during breaks and waiting time interpreters co-located with the party for whom they are interpreting have a chance to have brief side-sequences whose content may not be transparent for the court due to the different language. Whilst this is not seen as entirely professional or respectful of the rules, informants claim that they understand that this is a somehow natural consequence of the presence in a room of two speakers of the same language.

A noteworthy point is that **IT technicians help put a witness under oath** as and when possible, either for video links internal to Scotland or within the British Isles. However, this does not apply to cross-border video links.

The presence of the button that temporarily suspends the remote participant from the hearing helps judges manage the communication flow and make sure that no content inappropriate for the purposes of the hearing is communicated by one party to another. In this context it is particularly noteworthy that, as pointed out earlier, legal informants suggest that a **remote defendant in prison** does not really play an active role in the communication flow, as they are not expected to speak during a hearing. In the view of the informants, they are present in the VC to listen to the proceedings, although *‘they may or may not understand exactly what happens’*. If they wish to take the floor to say something, they need to signal it by raising their hand.

In **cross-border hearings with two interpreters**, normally the workload will not be split between the two. **The interpreter co-located with requesting court (i.e. the court that hears a remote witness) will interpret the whole content**, while the interpreter co-located with the requested court (i.e. authority offering legal aid at the location of the remote witness) will be mostly silent, intervening in cases of necessity or if/when explicitly addressed by the legal authority. Normally, this second interpreter is not considered to be strictly necessary for the purposes of the hearing, but as pointed out in section 3 above, Scottish courts will always employ one in order to guarantee that the court has access to the witness’ language, should the need arise.

The prosecutor and the defence lawyer are also involved in the management of communication, although to a lesser extent than judges; they specifically report trying to maintain a certain degree of contact with the remote speaker, in particular eye contact, in order to improve their focus on the proceedings, as well as helping with the management of the communication flow of interpreter-

mediated links by volunteering chunked content and making appropriate pauses to match the interpreter's speed.

Legal informants have different opinions on how the VC impacts on the communication flow. Whilst some believe that the video link makes little to no difference to their work and the one of interpreters, others believe that the use of VCs prevents them from building the rapport they would normally try to establish with a witness, impeding in particular the cross-examination.

12.9 Working arrangements with interpreters

Since 2013, Scottish courts have a framework agreement for the provision of court interpreting services. Until recently, interpreters were booked by the Crown Service; however, *'the Sheriff Clerk is now responsible for booking interpreters. It used to be the case that the Crown did it, and it made no difference, it's the same people. But there was a change for purely political reasons: it was held that if the Crown were booking them, someone may perceive the interpreter has been biased, because they have been paid by the Crown. We couldn't help but agree that someone may perceive that, so the decision was taken. OK, the courts will appoint them, then'*.

The current framework agreement was signed by the Courts and Tribunals Services with two different providers. The first of the two agencies is the one that is to be contacted in the first instance, and the second provider is to be used as a fall-back option in case the first provider does not have suitable candidates available for a specific case. The courts have agreed with their providers that bookings need to be arranged over the phone or email, with court personnel communicating to the first contractor the details of their request (e.g. date, time, location, language pair, presence of video linked participants) in order to obtain a booking confirmation.

The contractor is required to provide an interpreter who has a Diploma in Public Service Interpreting (or an equivalent combination of relevant qualifications and court experience), has recent experience of consecutive and simultaneous court interpreting, has a valid certificate from Disclosure Scotland (standard or enhanced, depending on the type of case) and is sourced from within a 70 mile radius of the requesting court's location. The hourly rates quoted in the contract include all travel expenses up to the first 70 miles. Where travelling expenses are paid for separately because the interpreter had to travel over 70 miles, travelling time is applicable in addition to the hourly rate if the travel time to and from the assignment exceeds 90 minutes each way. Travelling time is paid at 50% of the hourly rate for the assignment. A minimum 2 hour booking charge is applicable for interpreting services. Details regarding the actual pay interpreters receive are unknown. Interpreters hired by a Scottish court are always paid for by the Scottish Courts and Tribunals Service, even if their services are required to offer legal aid to another country. The service providers are paid monthly by the courts with a system of consolidated invoicing.

Interpreters attending an assignment have to complete an Interpreter Attendance Form, which is used for payment purposes and archived along with the rest of the case files. If their level of interpretation is not deemed satisfactory by the court, procedures are in place to file a formal complaint (cf. Pre-VC/Post-VC).

Legal informants are reportedly happy with the service they receive from their providers, and they think that the requirements set out in the framework contract mean that interpreters are of good standard. Legal informants do not believe that interpreters should be trained specifically for VCs, and feel that so long as they meet the general requirements, they should be able to work on a video link without difficulties.

A further noteworthy development is the compilation of a Skills for Justice report on improving the professionalism of interpreting services in the Scottish criminal justice sector compiled in 2014.⁵² The report was commissioned by the Working Group on Interpreting and Translation (WGIT), whose members are drawn from all parts of criminal justice, to review and evaluate current provision, standards, qualifications/training, criteria and service contracts. One point to note in the report is the commitment of the Scottish criminal justice system to compliance with the requirements of the EU Directive 2010/64. *Furthermore, those who were interviewed for this report stated “that there were differences to be observed in quality of service provision made by ‘more experienced interpreters’ and those who may be operating within the Scottish Criminal Justice system for ‘the first time’. Factors such as understanding procedures, **comprehension of courtroom technology** and legal jargon, levels of confidence displayed and clarity around what is expected of the Interpreter were highlighted as areas where improvement could be made.”* (Skills for Justice 2014: 15). The report also explains that whilst the National Register of Public Service Interpreter (NRPSI) operations UK-wide, many interpreters do not see much value in being listed on the NRPSI as none of the justice sector institutions currently demand that interpreters are listed on a register.

The following needs were identified by the report:

1. To increase the availability of interpreters with rare languages, e.g. Vietnamese;
2. To enhance the knowledge and understanding demonstrated by interpreters of the accepted Police and Court procedures, especially relating to behavioural issues, such as how to interject in proceedings and how to respond to officials when direct interpretation is not possible. It was viewed by service users that there was the potential for issues arising regarding the credibility of evidence;
3. To develop continued professional development (CPD) of interpreters;
4. To develop the knowledge, understanding and skills in relation to interpreter-mediated communication of those working in the Scottish Criminal Justice system who engage with interpreters.

Although there is only one reference to technology in the court room (see above), all of these points are indirectly linked to the use of VC in interpreter-mediated proceedings. Point 1 is particularly relevant in connection with remote interpreting, which may help overcome shortages in interpreter provision, whilst point 2 demonstrates awareness of behavioural or communication issues in interpreter-mediated communication, which will need to be extended to interpreter-mediated communication in video links. Equally important, the basics of video-mediated interpreting are relevant for CPD of interpreters as well as those working with them (point 3 and 4).

⁵² <http://www.crownoffice.gov.uk/media-site/news-from-copfs/629-report-published-on-enhancing-the-provision-of-interpreting-in-the-scottish-criminal-justice-system>;
http://www.slab.org.uk/export/sites/default/common/documents/documents/WGIT_Last_and_final_key_findings_and_report.doc

13 Spain

In Spain, VC technology seems to be widely used within the Criminal Justice System, including the Court System, Law Enforcement agencies and the Prison Service. However, its use varies depending on the specific sector analysed. Providing a comprehensive description of the use of VC and VC interpreting in Spain would be extremely complex, so, for the purposes of this study only the Court System will be analysed in depth. However, in order to provide a degree of contextualization, some general ideas about the use of VC in other legal settings are included.

In law enforcement agencies, VC is mainly used to facilitate remote police depositions in national court proceedings (where interpreting is not required) and for a wide range of professional meetings involving foreign officials. As for the Prison Service, VC has a twofold objective: 1) to provide remote access to inmates who have to appear in court proceedings; 2) to facilitate medical consultations and in some cases, to allow inmates to communicate with close relatives. Guidelines published in 2007 provide information on the location and characteristics of the VC room, but not on the specifications of the VC equipment itself. A recommendation is made for the VC equipment to be permanently kept in a cupboard made of armoured glass, even when in use. The VC room should include separate spaces for prison wardens and inmates as Figure 1 shows.



Figure 1: view of VC suite in Murcia II prison (Ministerio del Interior, 2011)

As regards the Spanish judicial system, the daily management of the Spanish court system is a competence of both the Ministry of Justice (MoJ) and 11 (out of 19) Regional Governments. Therefore, several authorities share responsibility for the provision of both human and material resources, including interpreting services and VC equipment. This report is based on site visits and interviews with legal operators, technicians and interpreters from 4 different regions: 2 of them under the umbrella of the MoJ (the Balearic Islands and the central northern region of Castilla y León) and 2 with devolved powers⁵³ as regards the management of the court system (the Canary Islands and the south-eastern region of Valencia). Additional information was obtained from official sources with the help of AVIDICUS 3 partners. It should be noted that some of the interviews were conducted by means of a video link, under the same conditions that are used in VC court proceedings. This allowed the

⁵³ Devolution refers to the transfer of competencies or powers from one entity to another, generally from a central government to a regional or local administration. In Spain, a decentralized country, some aspects of the court system (staffing policies and infrastructure, mainly) have been transferred asymmetrically to regional governments, with some staying under the umbrella of the central Ministry of Justice, and others being regulated at the next level of government known as "*comunidades autónomas*" or autonomous communities.

researchers to carry out a first-hand appraisal of some of the issues surrounding videoconferencing in courtrooms including quality-related matters, the positioning of equipment, etc.

13.1 Procurement

It is difficult to establish an exact date for the introduction of VC in court proceedings. All interviewees stated that VC equipment has been available for the past decade, although with clear differences depending on the judicial district, but its use has become more extensive in the past 5-6 years. VC was used for the first time in open court in Spain in 2002, in the Provincial Court of Appeals in Alicante, where 22 defendants stood trial for their involvement in a mutiny at the local prison in 1991. All 22 defendants participated by video link from the prison. However, the resulting judgement was quashed in 2005 by the Supreme Court in a decision which stated that the defendants' right to a proper defence had been violated by the use of VC, since the physical separation that resulted from them being in prison and their lawyers being in court prevented them from being able to consult with their lawyers during the trial.

Spanish legislation (Act 18/2011) regulating the use of communication and information technologies in the Court System does not include specific provisions on the use of VC and simply states in its Third Additional Provision that the government shall propose a comprehensive bill on the use of VC in court proceedings. However, to date no such bill has been debated or passed. The most recent reference to VC is found in the Act of Parliament 5/2015 transposing Directive 64/2010/EU. This lack of legal support has not prevented the Spanish authorities from widely deploying VC equipment in the Court System (cf. section 13.2 below). In fact, in March 2015 the public corporation Red.es (Spanish Ministry of Industry), which develops and promotes information and communication technologies in Spain, opened a call for tenders for the provision and deployment of VC equipment for the Administration of Justice. The tender involves the provision of a maximum of 91 new VC systems (compatible with the existing systems) for courts located in different regions under the umbrella of the MoJ.

The Canary Islands is a special case given the fact that in 2013 a protocol establishing guidelines for the rational use of VC in the courts was signed between the Regional Government, the General Council of the Judiciary and the Regional Prosecution Service. In this document there are various references to the combined use of VC and interpreting both in national and cross-border proceedings, with specific provisions on the uses of VC (type of proceedings, persons that can be accessed remotely, etc.). As a result of this protocol, specific solutions have been implemented for video-mediated proceedings that involve interpretation (cf. section 13.2 below).

Apart from this case, the interpreters who were interviewed stated that they were not consulted nor could they say whether issues related to interpreting had been taken into account during the procurement stage of VC equipment.

13.2 Equipment and maintenance

Ministry of Justice

As previously stated, Spanish courts, depending on the region/authority responsible for them, may have different VC equipment. The VC codex equipment used by the courts under the umbrella of the MoJ are, for the most part, IP-based (IP H323) 1500 Kbps Tandberg Edge 75MXP with the following technical standards: H261, H262, H263, H263+, H264, HDS4; G711, G722, G722.1, G728, AAC-LD. They all support encryption and multipoint connection. Equipment includes 1 camera (normally Toshiba), 1 screen (normally conventional Samsung TV screens with loudspeakers) and 1 VC flat microphone per suite. ISDN connection is also available. In fact, according to the instructions that users receive from the MoJ, the connection has to be established dialling a phone number in Madrid, presumably to where all IT equipment and servers are located. That number acts as a switchboard, which requires that the extension identifying each individual VC location be entered. Therefore, although officially VC

is IP-based, most connections are ISDN supported. However, consulted IT staff confirmed that both technologies are available.

The tender documents referred to in section 13.1 above include detailed information on the VC architecture implemented within the MoJ (Figure 2). It is worth mentioning that the tender specifically refers to the integration of new VC systems into the existing video recording system (eFidelius) (Figure 3). In Spain, the official record of both civil and criminal trials is a video recording and, therefore, if VC is used in the hearing, the testimony given by video link must be included in the official record.

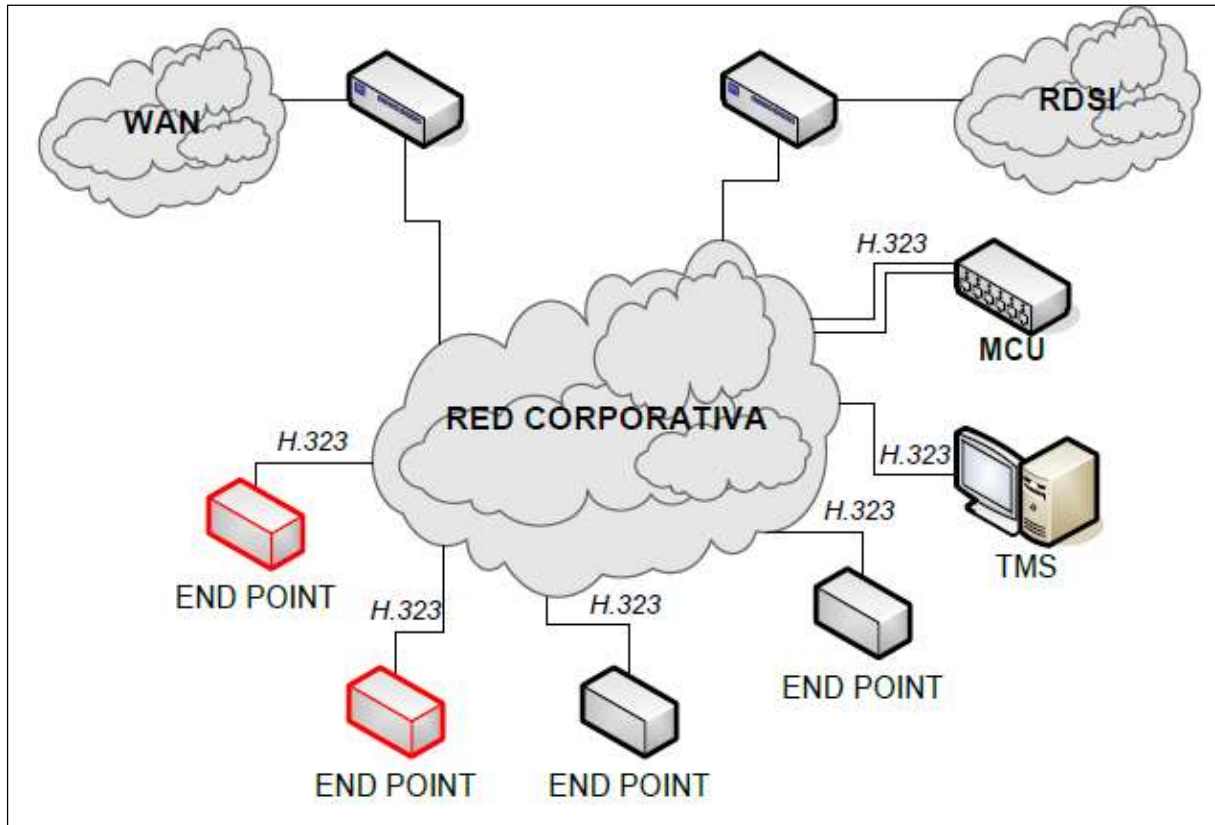


Figure 2: current VC architecture within the Spanish Ministry of Justice (Ministerio de Industria, 2015)

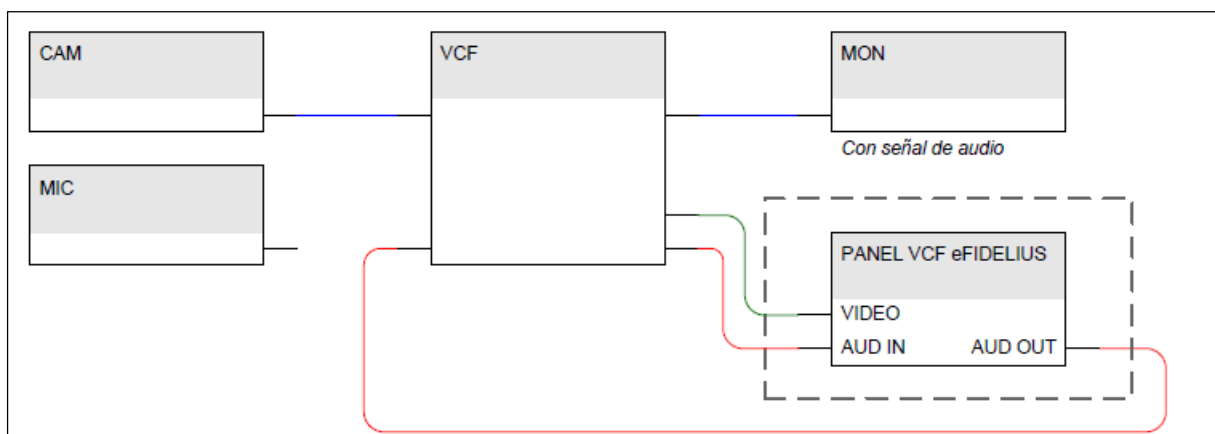


Figure 3: MoJ upgraded VC system and integration with video recording system (Ministerio de Industria, 2015)

Even with the integration of new equipment and designs, the components of the VC system remain the same, i.e. VC codex, 1 camera, 1 TV screen, 1 VC microphone and the supporting rack.

VC equipment, as stated by respondents, is mainly located in courtrooms. Other locations where VC can be found include court libraries, training rooms or other multipurpose rooms.

Canary Islands and Valencian Region

As for the VC equipment of the 2 non-MoJ regions surveyed, the general impression is that in both cases the same “conventional” package, i.e., VC codex, 1 camera, 1 TV screen, 1 flat VC microphone, is used. In the Canary Islands there are 162 VC suites available, most of them Polycom (HDX 7000, HDX 6000 and some ViewStation 512), although Arconte (H.323) and Egson systems are also available in very specific courtrooms. Screens are normally 50” or larger and the number of microphones depends on the size of the venue. All courtrooms are equipped with a VC system, which can also be found in some meeting rooms, protected witnesses rooms and a separate workspace dedicated specifically to remote interpretation.

All equipment supports both IP and ISDN connection. However, until December 2015, IP was only available for incoming calls. From that date a new Border Gateway allows both incoming and outgoing IP calls. ISDN calls are made, for the most part, using an ISDN-Gateway, although approximately 25% of the equipment has its own dedicated line. Court staff is quite used to ISDN communication but they are being encouraged to switch to IP to improve quality and reliability.

The main distinguishing feature of the use of VC in the Canary Islands is that there is a VC room specifically for remote interpreting. Given the number of languages in demand in the archipelago and the challenge of procuring onsite interpreters for some languages on the smaller islands, the use of VC allows courts to gain access to remote interpreters from Las Palmas (the largest city in the Canary Islands). Interpreters are hired using the established procedure (cf. section 13.9), and work from the VC room shown below (Figure 4). Although this image shows both the coordinator of interpreting services and one of the interpreters in a real interpreting situation, only the remote interpreter would be present. The Canaries is the only example of remote interpreting reported by respondents in Spain. Not even in the Balearic Islands is that solution foreseen, despite being technically feasible.



Figure 4: view of the remote interpreting suite in Las Palmas law courts

As for the Valencian Region, by the end of 2013 the so-called *Nueva Oficina Judicial* (New Judicial Office ARCONTE-NOJ) was implemented in all 244 judicial districts in the region. These new “offices” integrated video recording systems and VC systems under one single application. The VC equipment,

configuration and set-up installed in the Alicante Court of Appeals is the standard equipment that can be found elsewhere in Spain. Figure 5 and 6 below provide a general view of the distribution of standard Spanish courtrooms with VC. The most salient difference with the equipment seen in other courtrooms, such as the one in Majorca, is that the VC screen is hanging from a wall, while in other places it is movable and is located on a trolley or similar platform.



Figure 5: overview of a standard courtroom in the Alicante Court of Appeals



Figure 6: overview of the jury courtroom in the Alicante Court of Appeals

There seems to be consensus across the board on the ease of operating the equipment. The MoJ, for instance, has provided training for court personnel, the so-called *agentes judiciales* or *auxilio judicial*, to operate the equipment. Nevertheless, IT staff is also available should more complex problems occur. During a site-visit to the Alicante courthouse, a court clerk told us that VC was as easy as making a conventional phone call and that by “*just pressing the right button [...] the other side appears.*” This view coincides with the opinion expressed by an IT specialist in a different region:

I think that using the equipment is quite easy, although there are some minor issues like the ones I mentioned earlier about using the asterisk or the pound sign. The degree of complication depends upon the VC system, but basically all you have to do is make a phone call.”

One of the judges interviewed concurred that “*using the VC equipment is quite easy, although there are days when things go a little haywire and there are problems. But in general, and this is increasingly the case, we know how to use the equipment and there usually aren’t any problems.*”

Finally, the interpreters, who stated clearly that they were not involved in the actual operation of the equipment other than managing the use of the microphones, admitted that “*in theory, [it’s] very easy. It is like using a cell phone. The remote is easy to understand.*”

All in all, respondents confirm that the equipment and VC quality have improved enormously in recent years and that it is no longer as problematic to establish a connection with foreign courts as it used to be. In fact, in the past there seemed to be more sound and synchronization problems which at times hampered the interpreters’ ability to carry out their duties. As one interpreter explained,

Now the quality is good. Four or five years ago I had a really bad time in one case. It was a homicide and the witness was testifying from Ibiza. It was almost impossible to hear her and it made things really difficult for me. But now things are better.[...] With international connections there are some delays, but in national connections things are more immediate. It is not that there is a delay in the image ... when the person speaks you can hear him/her okay, but I have had times when I was speaking and the person on the other side asked me “please speak more slowly, I don’t understand” and then you start – to – speak – like – this -- so they can understand you.

One of the problems reported is related to faulty connections and VC system compatibility, especially when a national VC connection is set up between two different regions (MoJ courts and Regional Government courts). One judge explained to us that

Sometimes the connections are not very fast and not very good given the configuration in our country ... umm .. it is not the same to connect with Ministry of Justice locations as it is with locations in which competence has been transferred [to the regional government].

Working with different systems when there are incompatibilities and when user IDs, passwords and IPs don’t work were cited as some of the problems that exist.

Interpreters do report that there have been occasions when they have experienced sound and image problems which have posed an extra burden for their interpreting. A lack of lip and sound synchronization is reported as the most persistent challenge. In some cases, the problem is just a matter of a faulty connection, which can be easily resolved by re-establishing the connection. Other times, quality is bad altogether and the interpreter and the rest of the legal operators have to decide how to proceed. One of the interpreters gave us a very clear example of the problems she had encountered:

I have had that experience myself, a VC session lasted two and a half hours when the image froze after the first 5 minutes. We worked only with the audio and it was quite complicated. (...) There were 3 judges who were not seeing the image. Perhaps seeing the image wasn’t so important for them and what I was actually interpreting was more important. In this case, the chief judge was not looking at the screen and I was the one who informed him that “the image has frozen” and he said “we will proceed however you think. If you feel we can continue, we will, and if you don’t, we will suspend the hearing.” I had to make the call. Of course, if the judge tells you that it is up to you

to decide whether or not to suspend a case, especially after all of the effort to get the witness's statement, well, of course I said that we should continue and that we would manage somehow.

For their part, although they acknowledge some differences between face-to-face communication and VC communication (image quality not being 100% clear, sound not exactly the same as in face-to-face), the judges do feel that current arrangements, in terms of sound and image quality, are sufficient to allow them to perform their duties correctly

13.3 Uses

Videoconferencing is used in different court venues in Spain in both national and cross-border hearings in which a party to the case is remote. Videoconferencing is used very frequently for national cases in which interpreters are not required and in national and international cases in which language barriers exist, although these cases are not very frequent. In Majorca (Balearic Islands), for example, VC is used on a daily basis, as confirmed by one of the judges: *"We use it in all types of proceedings, all types of crimes. If the defendant or witness is away, almost every day we use VC."* In Valladolid (central Spain), a judge explains:

In general, we accept almost any type of witness statements by videoconferencing when the distance between his/her residence and where the proceedings are taking place would cause hardship on the witness [...] especially when the witnesses are foreigners, the VC system facilitates the hearing ... and it would be almost impossible to hear the testimony of these individuals if it weren't for VC.

Videoconferencing is used mainly to take testimony in oral hearings from witnesses including medical examiners and other expert witnesses and police officers who have been reassigned to another location between the commission of a crime and the time the trial is held. At times it is even used by state attorneys to participate in cases in other locations. VC is used mostly during the trial stage, and much less frequently in the pre-trial stage.

As regards the participation of interpreters in VC-mediated hearings, the occurrence is still quite low. Records are not kept of the total number of VC sessions, nor of those that require an interpreter. An interpreter in Majorca states that while interpreters do keep a record of their service to the court, they have never included an annotation as to whether or not videoconferencing was used, nor have they ever been asked to do so. The interpreters interviewed all reported that their participation in VC-mediated cases was limited to once or twice every few months.

As for the duration of an interpreted VC session, it depends on the type of proceedings, whether the person being interpreted for is a defendant, witness or victim, and the nature of the offence. Interpreters indicated that an average interrogation within a standard criminal trial usually lasts between 30-60 minutes, but reported interpreting by video link anywhere from 10 minutes to 2.5 hours.

Videoconferencing is reported to have been used only occasionally in cross-border cases, with specific mention of connections with the U.K., Portugal, Romania, Italy, Germany, France, Austria, and Latin America. These cases can entail a remote witness whose testimony is considered pertinent to a case in Spain, or a witness in Spain whose testimony is needed in a foreign jurisdiction. At times interpreters are also asked to assist in arranging a videoconference connection with a foreign court, even if they are not required to provide interpreting services during the hearing.

13.4 Participant distribution

In cases in which videoconferencing is used to receive or provide the testimony of a remote witness, there are two possible scenarios from the point of view of a local court. The first is that the witness is remote and the VC connection is used to bring that witness's testimony to the court (i.e. the local court is the requesting court). The interpreter is in the courtroom with the judge, attorneys and defendant. The second case is when a witness is requested to give testimony to a remote court, either

national or foreign (i.e. the local court is the requested court). If an interpreter is needed, usually the jurisdiction that requests or initiates the VC hearing is responsible for arranging interpreting services, but there are times when a staff interpreter from the requested court is available and is pressed into service. In these cases, the interpreter is present with the witness and a judicial officer. Sometimes an interpreter is present in both locations.

In cases in which an accused party is interviewed or interrogated while in custody, the interpreter is often with investigators or court officials, and not with the defendant. Some attorneys find this practice unacceptable, and feel the interpreter should be with the detainee or defendant whenever he/she is being questioned.

According to the interpreters who were interviewed, they are always with either the witness or in court with the judge and attorneys. The only exception was the case cited above of the Canary Islands where **interpreters can be totally remote** and work from a dedicated VC interpreting location.

13.5 Pre-VC/Post-VC

Pre-trial briefings with interpreters do not seem to be standard practice in Spain. According to a judge, staff interpreters do get some type of briefing, including notification that the case will include a videoconferencing component, but external interpreters do not because *"we don't know who the interpreter will be until the day of the trial"*. In these cases, the interpreter is informed that VC will be used when they arrive at the courthouse. Interpreters are not consulted on whether or not the use of VC is advisable. The judge makes that decision.

The judge in Majorca reports that interpreters may be informed of the use of VC, but it is not required. They usually find out when they report to the office prior to the case. Judges generally do not consult with interpreters before a VC session as to the appropriateness of using VC. Only one interpreter reported being asked if the use of VC was appropriate, but this was in the courtroom when the VC session was about to begin. According to one interpreter, *"there are some negotiations, different circumstances. Sometimes it is just a matter of VC or nothing. I sometimes propose it, but it is up to the judge and the prosecutors."* At times it is the witness who requests the VC connection, especially from outside of Spain so as to avoid having to travel a long distance for what might be a short intervention. A judge contended in this respect that *"you can't expect witnesses to come here to testify for five minutes, and also the cost would be much greater for the judicial system."*

At times, an interpreter is informed of the use of videoconferencing in a cross-border case and in order to ensure that communication will be effective, the interpreter contacts the witness prior to the hearing to assess that person's ability to communicate in Spanish (see below in Communications Management).

As regards post-VC debriefings, they are also the exception and not the rule. At most, there may be some general comments exchanged between court officials and interpreters right after the case, but nothing formal. One judge explains: *"After a VC, we normally have another trial and then another. We don't have time and the interpreters also have a lot of work."* Another judge explains the procedure that applies when interpreters wish to communicate something to the judge, they must approach them between cases or in chambers: *"Only when they [the interpreters] want to tell me something or if something has happened, they take advantage of the recess between cases or they come to my office to speak to me."*

In spite of the time constraints and work volume that judges cite as the main impediment to better pre-and post-session communication, interpreters expressed a desire to share information:

If there was a problem that I was able to see and others that the judge or attorneys saw, it would be useful to share that information. It would be useful for everyone. I think it would be great to have post-VC meetings. Maybe they [the judges or attorneys] don't find my interpreting to be appropriate or they would like me to do it some other way. I don't know -- perhaps I could improve.

13.6 Mode of interpreting

The consecutive mode is the most frequently used, and interpreters take notes when longer utterances are produced. Interpreters did not report great differences between face-to-face and VC sessions as regards their techniques. One reported that VC is more comfortable because the pace is usually slower and calmer: *“Face-to-face is a bit more energetic and aggressive and others control the timing.”* However, communication management in VC cases was affected as interpreters in face-to-face situations sometimes indicate through a subtle gesture that they have reached their memory capacity, and the speaker is interrupted so that the interpretation can be given. This is clearly more difficult to do in a VC-mediated session due to the more limited ability to perceive visual cues on a static screen where image size, angle and clarity are not always optimal.

Simultaneous interpreting (in the form of whispered interpreting) is sometimes used at the interpreter's discretion, but judges and attorneys are often distracted by the additional noise that simultaneous interpreting produces. In some VC cases, depending upon the type of equipment used, the simultaneous interpretation may be transmitted through the VC microphone and may reach other participants as well, making comprehension virtually impossible. Interpreters expressed their capacity and willingness to use simultaneous, especially when boilerplate information is given. However, they emphasize that this would only work with the appropriate equipment and technical specifications. For example, headphones for simultaneous interpreting are not common, which is why interpreters have to produce a whispered or low voice rendition while listening to speech as it is produced in the room or transmitted over a television screen. It is felt that proper equipment would make simultaneous interpreting feasible, at least for certain parts of a hearing.

13.7 VC management

VC Management has to do with the placement of equipment in the spaces where hearings take place, and in the positioning of the participants vis-a-vis the equipment. VC equipment has been used regularly for over a decade and so, in most cases, issues related to visibility have been resolved. However, having clear audio reception and good audio quality seems to be the priority. From a technical point of view, emphasis is put on the appropriate use of microphones and ensuring adequate audio connections. According to a technician *“except for cases in which an interpreter is involved, it is considered important to see the witnesses and their reactions, but most importantly, to hear loud and clear what the witnesses say. That's why I say that not as much importance is given to what can be seen.”*

As regards the positioning of participants in a courtroom when there is VC and an interpreter, the “normal” positioning of the judge, attorneys for the defence, prosecutors and defendants is usually respected. As regards the positioning of interpreters, depending upon the configuration of the courtroom and the characteristics of the VC equipment, they can be seated or standing, and may or may not be next to the defendant. The video recording of a trial or hearing comprises the official record of the case, and so everything that is said must be duly recorded. Thus the positioning and flexibility of movement of the cameras and microphones often determine where interpreters are positioned and if they are required to move around during the hearing.

When videoconferencing equipment is used, there is usually a VC microphone in addition to the standard courtroom microphone. In some courtrooms, the VC microphone is actually hand held and must be passed from participant to participant. Interpreters are sometimes required to manage that microphone, which greatly limits their ability to take notes and adds an element of courtroom management which may detract from their ability to concentrate on the task at hand.

Most courtrooms have only one camera, which is usually mounted either on a wall above the bench, on top of the video screen or on a table or trolley somewhere in the courtroom. The camera can be rotated to focus on different participants and is usually focused on the person who is speaking. The judge may indicate who should be seen on the screen, but it is usually a court official or a technician

who is charged with operating and rotating the camera, in keeping with indications given by the judge. However, in practice, the camera is positioned at the outset to provide a view of the witness and is not rotated at all during the entire hearing.

When an interpreter is involved, they are given instructions about where to sit or stand and where the camera and microphones are located. What is seen on screen may depend on where the interpreter is in relation to the witness. For example, if the witness is remote, it is usually the interpreter who is seen on camera from the courtroom. In fact, as one of the interpreters explained, the interpreter sometimes has to tell the witness who is posing a question since the witness cannot see who is talking: *"Sometimes there are lots of questions very quickly and there isn't time to move the camera around."* In other cases, the interpreter is expected to move the camera, adding an element of technical activity and decision making to an already demanding role in the proceedings. One interpreter explained this: *"The interpreter moves the camera. The interpreter does that. Sometimes the camera isn't moved because the interpreter is working."*

As regards the image of the remote witness, the court usually sees a static image, from one angle, usually from the waist up. The zoom feature is controlled in the location where the witness is giving testimony, so the size of the image is up to the officials or technicians there, although a request can be made by the judge to zoom in or out. Not all participants in court can see the image clearly as in most cases only one screen is available. This means that the judge may see the image directly, but lawyers and prosecutors may be looking sideways or at an angle. The defendant's view is not always clear either. Interpreters expressed the importance of being able to see the witness because *"a person's face indicates a lot of the message, in addition to the tone and volume of the voice. The face is very important for good interpretation."*

Finally, it is possible to have a split screen with a smaller image box in a corner of the larger screen to allow participants to see what is seen on the screen at the remote site. The decision as to whether or not to utilize the split screen function is up to the judge. There are, however, some regulations in Spain as to what cannot be shown on screen. For example, restrictions exist if minors are involved, and showing the faces of jury members is not allowed.

As mentioned earlier, using VC equipment is considered to be relatively easy. While technicians are available for testing and initiation of VC connections or to troubleshoot when necessary, they are not required during VC sessions. Interpreters may be instructed as to what to do if there is a problem, but they are not expected to be able to manage the equipment or resolve technical problems if they arise as other courtroom personnel have been trained to operate VC equipment. Technical problems do occur at times, with voice and image synchronization, image weakness or freezing, and interruptions in connections cited as the most frequent. One issue that was brought up referred to the complications of actually arranging for a VC session, which may be more cumbersome than actually paying for a witness to come to court. A judge pointed out that *"some courts are willing to arrange VC sessions, which involves quite a bit of paperwork. Others are not so willing and would rather pay travel expenses."*

13.8 Communication management

Managing how communication is carried out in a specific situation is important to the eventual success of the interaction. In communicative events in which parties do not share the same language, an interpreter is often charged with making effective communication possible, and communicating by video link adds a level of complication. One of the first issues that must be addressed, therefore, is if the parties involved can indeed understand one another.

This is of particular importance in judicial hearings when one of the parties is remote and testimony must be taken by videoconferencing. When foreign individuals who reside in Spain and have some knowledge of Spanish are involved in judicial proceedings, they are often asked how they would like to proceed. In the words of a judge,

when you are with the witnesses face-to-face things are more dynamic because we begin the hearing and I ask if they understand Spanish or not. Many reside in Spain and they say yes but then they have problems. I tell them to choose whether to respond directly if they have understood, but that if they have any difficulty that they wait for the interpretation to their language.

When the witness is at a remote location, being able to proceed is of utmost importance as rescheduling a VC hearing presents a series of difficulties. As the same judge adds,

We had a witness who was in Italy and knew Spanish more or less and maybe the interpreter would not have been needed, but just in case some expression was used that [the witness] didn't understand, we opted to have an interpreter present so that the hearing wouldn't have to be suspended for some unexpected occurrence.

Knowing if communication is going to be effective between the interpreter and the witness is also important. One option that has been used, according to one judge, is to have the interpreter contact the witness before the VC hearing:

As far as I know, in the three cross-border VC cases in which I was involved, the interpreter got in touch with the witnesses ahead of time to evaluate their knowledge of Spanish, to see how well they understood it.

In cases in which the witness testifies in a language other than Spanish, simply having an interpreter present may not always guarantee a smooth exchange. A judge recalls the following situations:

We have had cases with VC in which an interpreter of English from the MoJ has had to interpret for African speakers of English and there have been enormous problems because, of course, they all speak English but the pronunciation and word choice are not the same.

Contacting the witness ahead of time is not seen to present any special problems as regards the integrity of the hearing because, as the judge states:

The interpreter doesn't have any knowledge of what is going to be tried so there is no way to affect what the witness is going to say. It is simply a way for the interpreter to facilitate their own work.

Finally, in this sense, there is the opposite case, when the attorneys involved speak the language that is being interpreted. The judge from Palma de Majorca mentioned cases of interference by bilingual Spanish-German attorneys when they did not agree with the interpretation given by the interpreter, even on items the judge considered of secondary importance to the case. According to this judge, these intromissions sometimes provoked an unsettling atmosphere in the courtroom.

As regards the effectiveness of face-to-face as compared to VC sessions when an interpreter is involved, the general consensus is that certain aspects of communication are lost in VC-mediated sessions. For example, body language and facial expressions are diminished, and the dynamics of an interrogation can be modified. One of the interpreters commented:

I want to be able to see the witness. A person's face indicates a lot of the message, in addition to the tone and volume of voice. The face is very important for good interpretation. If I don't see their face, I don't know if they understand, and they are more nervous [...] When the witness's face is not visible, information is lost. Questions are repeated for clarification, a little more like interrogating children.

Also, both judges and interpreters mentioned that the pace of the hearing is slower, partly due to the interpreting process which requires everything to be said twice, but also because turn-taking is respected more than in face-to-face cases. One judge also stated that VC sessions are usually longer because additional time is needed to make sure that the witness is understanding what is going on and that everything is working well.

As regards turn-taking, judges state the lack of proximity and immediacy as a problem. For example, in a videoconference-mediated hearing,

the parties take advantage of communication problems with the witness to ask questions that are not going to be allowed but that the witness answers. These answers will not be considered when deciding the case, but they have been given. It is not as easy to stop a witness with VC as it is when the witness is in front of you.

Another result of the use of VC is that when there are technical problems, attorneys sometimes give up and cut their questioning short.

Interpreters furthermore report that overlap is a bigger problem in VC cases and that it is harder to interrupt when an ambiguous or unfamiliar term is used. Additionally, they state that it is a little more complicated to interpret using videoconferencing because there are elements in VC that are not present in face-to-face. For example, the inability to indicate through gesture or body language to the witness when to pause so that the interpreter can interpret. One of the consequences of this is that the fluidity of communication in the case is altered and participants at times become impatient when a witness produces a long piece of discourse and they feel out of the communication loop. There are also issues of additional noise, technical glitches and lack of control of the communication process. Thus, the interpreter has to remain calm and focused. Finally, heightened fatigue was also mentioned as a difficulty related to VC-mediated cases.

13.9 Working arrangements with interpreters

Interpreters working for Spanish law enforcement agencies and courts fall into three main categories:

1) Permanent staff interpreter-translators employed upon successful completion of a competitive exam and interpreters who work under temporary contracts. There are currently around 100 Ministry of Justice court interpreters (both at the national and regional levels) and around 230 Ministry of the Interior interpreters (National Police and Civil Guard, asylum and prison services). Entry qualifications for these staff positions are normally a secondary education diploma, although many staff interpreters have university qualifications (Law, Translation & Interpreting and Modern Languages are among the most frequent).

2) Interpreters working for commercial interpreting agencies which have won a public tender to provide LIT services in a specific court district, region, law enforcement agency, etc. Legal operators have to request LIT services from the designated contractor. Although tender documents may include specific provisions as to the qualifications of interpreters, that is not always the case; in any case, due to lack of proper oversight by governmental authorities, contractors apply their own criteria and procedures to recruit, select, employ, assign and pay interpreters.

3) Direct recruitment of freelance interpreters by the courts is no longer a common practice in most jurisdictions. The only region where the coordination and procurement of interpreting services is undertaken directly by the courts is the Canary Islands. The staff interpreter who is responsible for co-ordinating services recruits, selects and assigns interpreters. Selection is based on qualifications and prior interpreting experience. A personal interview with the co-ordinator is arranged for speakers of languages of lesser diffusion. In some other settings, such as the Prison System, institutional use of ad-hoc/natural interpreters is also found in combination with staff interpreters.

As regards special qualifications for interpreters working in VC-mediated cases, none exist, nor is there any special training offered to them.

Until recently, the Spanish Act on the Judiciary (*Ley Orgánica del Poder Judicial*) regulated the provision of interpreters to the courts. It stipulated that the power to appoint court interpreters fell directly to judges. In spite of that fact, staff interpreters or interpreters assigned by outside contractors have been providing these services. New legislation stipulates that interpreters must be chosen from a professional register of qualified professionals. However, that register has yet to be created and criteria for inclusion on the register are still being debated. Until the register exists, judges will continue to have little power to control interpreting quality in general - not just in VC - and they

will sometimes have to rely on non-professional interpreters. As one judge put it: *"We are in no position to ask, but there have been complaints, for example, about the Russian interpreters. We were quite unhappy with them."*

The status of interpreters does seem to have an impact on the level of trust or working dynamics with interpreters. The judges who were interviewed report clear differences in interpreting performance between staff interpreters and outside interpreters. Both agree that

the quality of interpreting matters a lot. [...] Ministry of Justice interpreters are much better trained and much more professional than interpreters who come from outside. We don't know what training these interpreters have had, if they are up-to-date in their skills, if they have any knowledge of the legal system or not. They are sent by a private enterprise and you have to trust that company to employ people with the requisite abilities, but we have no control or capacity to supervise these people.

For their part, the interpreters interviewed, who are all staff interpreters with between four and twelve years of experience, seem to concur:

The staff interpreters who have worked here all have training and degrees. This, together with the fact that we participate in so many cases give us a degree of visibility, and I know we are held in high esteem as professionals. We are frequently seen in the courtroom and that inspires trust.

Interpreters from the outside are not always assigned regularly to one court and they often lack training, and this, together with a higher incidence of problems during trials in which they participate, has diminished the level of trust court officials have in them. The staff interpreters that were interviewed reported that at times a judge has specifically stated that *"a staff interpreter should come [...] we don't want anyone from outside."*

There seems to be no specific protocol for handling complaints related to the quality of interpreting services, despite the fact that judges and lawyers have expressed dissatisfaction with the performance of some interpreters. At the present time, these complaints must be communicated to the service contractor who is responsible for finding an acceptable remedy for the situation.

Staff interpreters receive a monthly salary that corresponds to the level of qualifications required on entry to the position, plus seniority, and thus, coincides with the salaries other civil servants receive. The compensation court interpreters receive when working as independent freelancers or through interpreting agencies varies greatly. According to the *EULITA Survey on Legal Interpreting and Translation Rates as of September 2014*, fees in Spain vary significantly depending on the region and the type of service provided. Fees in the Canary Islands, where the service is not outsourced, is approximately 36 €/h. Meanwhile, through outsourced intermediaries interpreters are reported to receive, for instance, 13 €/h or 20 € for up to 2 hours in the National Police Service, 30 €/h in the National Criminal Court, or 18 € for 90 minutes of work in the Madrid courts. It must be noted that the actual cost the government pays to the contractor per hour of service is much higher, and while the actual amounts vary according to the tender, Spanish professional associations report that it is up to 2 and 3 times the amount the interpreter receives. The rates do not differ for face-to-face or VC-mediated sessions.

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14 Sweden

This report is a summary of the findings obtained through the analysis of the interviews carried out in Sweden during the AVIDICUS 3 project. It refers to videoconferencing in the Swedish Court System. The Swedish Courts are separate from the police, the prosecution authority, and the prison and probation service. The administrative agency responsible for implementing, maintaining and supporting the videoconference infrastructure and videoconference endpoints in the Swedish Courts System is the Swedish National Courts Administration (SNCA). The informants on whose views this report is based include representatives of the Ministry of Justice, judges, court clerks, a representative of the videoconference support team and freelance interpreters with expertise in legal interpreting and in organising training for legal interpreters. The interview data is integrated with information from the European VC survey for purposes of completeness.

14.1 Procurement

The procurement of VC equipment started in 1994. VC systems were first introduced—and tested with interpreters—in the migration system although it was not until the 2000s that VC use became more frequent in the legal system. **In 2000, the Swedish Parliament passed a Videoconferencing Pilot Scheme Act**, which introduced the possibility for persons to take part in court proceedings by video link on a voluntary basis. This possibility was open to all participants (the parties, their counsel, the prosecutor and witnesses), although there were some limitations on a defendant's participation. The pilot scheme was considered successful, and **permanent rules for the use of VC were integrated in the Code of Judicial Procedure and adopted in 2008.** The Code allows participation by video link of **all participants in civil, criminal and administrative courts.** The scheme is not voluntary. The decision is made by the court based on an assessment of appropriateness (see section 3 below – Uses). As a result of the reform of the trial regulations in Sweden, which removed the need for physical presence in courts and opened the door for a more widespread use of video links in legal contexts, the use of VC gained momentum after 2008.

Some informants pointed out that, because the VC systems were initially implemented and used in contexts where interpreters were required, **interpreters were involved with VCs from the very start.** According to the 2008 European VC Survey, however, the number of cases in which interpreters had used VC equipment until 2008 was limited. **interpreters reportedly had some reservations about the use of VC**, in particular because of the quality of video links, which they believe was not entirely suitable at the time of the first implementation of VC equipment. The use of VC in the 1990s was compared to the use of telephone interpreting in the 1980s, which many interpreters felt was not ideal.

Furthermore, while interpreters were asked from the first instance of implementation to participate in the testing of VC facilities, **the system was not designed with interpretation in mind**; according to technical informants, **the system was primarily modelled around the needs of witnesses** and, in general, of those who may need to be heard by a court. However, it was clear to the informants of the present study that the communication needs of the parties to a hearing are different from those of interpreters. The informants believe that **the tendency to focus mostly on the needs of the main parties has somewhat changed after the 2008 reform**, when interpreter organisations have begun to be asked for their input on VC matters. Interpreters believe that there is **a growing tendency from the court authorities to listen to feedback from interpreters.**

During the first implementation phase, the design of the system in courtrooms (e.g. position of screens, number of microphones) was developed on a trial-and-error basis with input from participants. However, new courtrooms are now built to very similar standards using the same template for implementing VC technology. Informants also pointed out that **the systems are being further updated** (see also section 2 below) and that **a survey will be run to source input from**

stakeholders; the use of interpreting agencies—and interpreting issues more widely—are reportedly part of the prospective debate.

14.2 Equipment and maintenance

Swedish courts use **their own built-in equipment**, which works on the IP protocol. Given the ‘template’-based approach for implementing VC technology and the central role of the court administration in the procurement process, the technical specifications of the VC equipment tend to be consistent across different courts. The standards used in Sweden are H.323, i.e. **IP-based connections**, for communication within the Swedish court system, and mostly H.320, i.e. **ISDN-based connections**, for calls to external authorities and cross-border links. Some external links with Swedish authorities and some cross-border links within Europe work on the IP protocol (see Figure 1). **Multi-point connections** are also possible.

Furthermore, **the system enables the encryption of data** using the AES128 standard, and is set to encrypt automatically whenever possible. Informants report that at the time of writing **all courts have been fitted with the same VC equipment**. The current equipment is, however, in course of being replaced/updated under a **modernisation scheme running until 2018**, which may cause some discrepancies in the national court VC network.

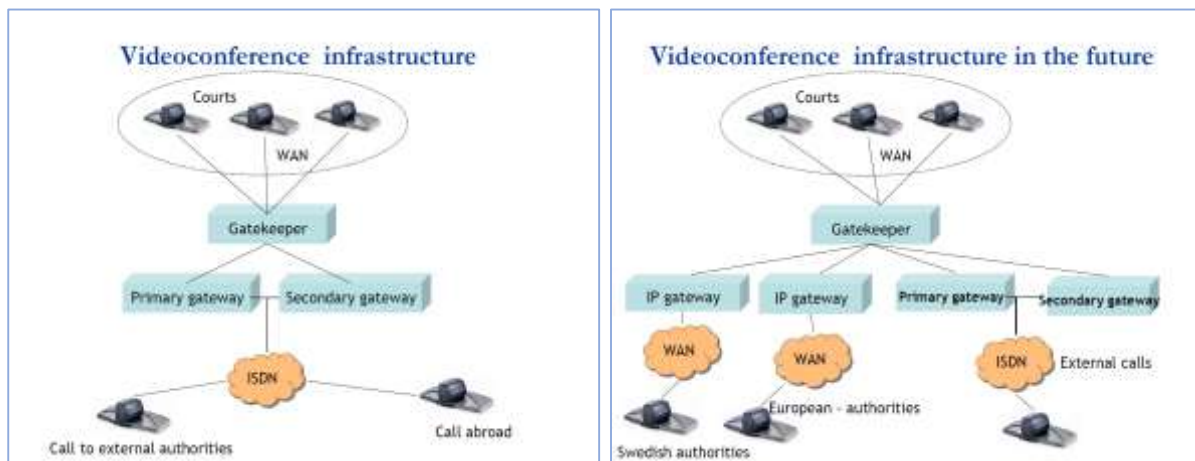


Figure 1: Swedish court VC infrastructure in 2009 and in the future

Generally, courtrooms are equipped one or two **data projectors and projection screens** (or, less commonly, large computer screens) as well as several **computer screens on the bench** to display the images from the remote site (see Figure 2 and 3 below). While informants cannot offer a precise reason for choosing data projectors and projection screens over computer screens, they believe that the former are generally better, and according to one legal practitioner, their use seems to be linked to pre-existing equipment, as *‘most courtrooms are fitted with projectors just to be able to show evidence of different sorts’*. Although computer screens are used less frequently, they are considered a good alternative. Informants emphasised that the most important point regarding screens is **to have multiple display devices** in the courtroom so that, as explained by one legal practitioner, *‘every party can sit in their natural position’* and see the screens.

Furthermore, courtrooms have a microphone in each seating position and two to three **cameras** to capture the audio and images in the court (Figure 2a and 2b). **The system has picture-in-picture (PiP) functionality** to display the near-side image in a small window on the main screen, which can be enabled or disabled according to personal preferences (Figure 2c: PiP off; Figure 3: PiP on). The **cameras normally have a zoom and rotating function**. Camera positions are mostly chosen via pre-sets to move quickly from one speaker to the next (Figure 2d).

Sweden



Figure 2 a) Top left: Court view to bench; camera 1 above the bench; b) Top right: Court view from bench; camera 2 at the rear wall; c) Bottom right: projection screen showing remote site (no PiP); c) Bottom left: control touch panel (image from remote site displayed in the middle; camera pre-set positions in the court room)

A videoconferencing guide for citizens, which is published on the website of the Swedish courts, explains the use of VC for witness hearings as follows:

Alla som befinner sig i rättssalen där förhandlingen äger rum kan se och höra dig via en bildskärm. Du kan på motsvarande sätt se och höra dem. Videoutrustningen fungerar på sådant sätt att du ser den person som för tillfället talar. Du kan däremot inte se alla närvarande samtidigt i bild.

*[All who are in the courtroom where the hearing takes place can see and hear you on a screen. You can similarly see and hear them. The video equipment functions in such a way that you see the person who is currently speaking. However, you cannot see all present simultaneously in the image.]*⁵⁴

An illustration of VC use in witness hearings along with further information can be found in a public information brochure, which is also available on the Swedish court administration website.⁵⁵ The brochure addresses both legal professionals and the public, and includes a number of illustrations of the Swedish court VC system as shown in Figure 3 below.

⁵⁴ our translation; <http://www.domstol.se/Till-dig-som-ar/Vittne/Videokonferens/>

⁵⁵ <http://np.netpublicator.com/netpublication/n88951365>



Figure 2: Illustration from information brochure about the use of videoconferencing in Swedish courts (source: <http://np.netpublicator.com/netpublication/n88951365>)

Interpreters have individual microphones that are connected to a room audio system capable of supporting up to two languages. **Their audio output can be relayed to the room loudspeakers** for consecutive interpreting or **to earpieces** to enable simultaneous interpreting (see also Section 6 – Modes of interpreting). **Portable interpreting equipment is used to complement the built-in audio system** when more than two languages are required by the proceeding; the portable equipment can support up to 10 different languages. Informants report a **general increase in proceedings requiring interpretation in multiple languages**, which increasingly requires *ad hoc* solutions involving the use of portable equipment.

The system enables audio recording, which is generally used for witness statements and cameras external to the VC system can be used for video recording of proceedings. At present, **it is not possible to record any simultaneous interpretation**, as the system was not built to support this functionality. IT informants do not believe that this function will be enabled in the foreseeable future, as this would require a complete makeover of the system architecture, which would be a long and difficult procedure given the complexity of the system.

The system is generally deemed quite stable, and informants report that they have very rarely had to stop a VC because of technical faults. According to IT informants, problems occur more frequently in court-prison, court-probation service and court-prosecutor video links than in court-to-court video links, mostly due to technical issues at the remote site. Such problems seem difficult to handle, as the other agencies do not seem to have the same level of technical support as the court agency. **Technical support for courts is normally available in-house**, and courts can rely on this support to resolve any technical issues arising during video links. Details of technical support in other courts can be found on the court intranet, and legal practitioners can get in contact with support from other courts directly in case of problems at the far end of the video link. The VC itself, however, is not managed by the technical support staff. Rather, **video links are normally handled by court clerks**, who control microphones and cameras ‘as required’.

While the video quality is normally perceived to be good, **the audio quality is variable**, and judges claim that in some cases they need to make adjustments to the proceedings to take into account a lower audio quality than average. In the opinion of judges, **VCs still cannot compare to the presence of participants in the courtroom**. Interpreters corroborate the view on the variability of audio quality, claiming that the VC technology is in some cases not good enough to ensure smooth proceedings. **Interpreters have also pointed out that they would like to see changes to the audio equipment available** and the system design that supports it to improve their ability to deliver consecutively/simultaneously through different channels. This will be further elaborated in Section 6 – Modes of interpreting.

VC equipment is also present in other agencies linking to the courts in Sweden, such as probation services, prisons, institutional care services. Moreover, **Swedish embassies abroad** are capable of linking with Swedish courts via VC. In addition, **courts can also establish video links with individuals using VC applications**; however, such users are not allowed to call into courts because of security issues, and they need to be called by the court.

In some parts of the Swedish legal system (prisons and probation service in particular) the VC systems had to be fitted within vandal protection cupboards in order to avoid damage from defendants. In the courts, this is considered largely unnecessary, and this measure has only been applied to the special rooms hosting defendants before a hearing.

14.3 Uses

The reform of the court regulations taking effect in 2008 allowed courts to use VCs for a variety of purposes. In the 2008 VC Survey, Sweden reported regarding the type of participants allowed to join a hearing remotely that *‘all those who participate should be allowed to take part in all kinds of proceedings by video link on condition that this is not inappropriate’*. This principle was confirmed in the present study by legal and technical informants, suggesting that VC regulations have not undergone major changes since 2008. Although these regulations potentially lead to many configurations of VC use, there are differences in frequency.

At national level, VC is mostly used for hearings of witnesses and defendants. One common use is to take oral evidence from witnesses at main hearings. This includes witnesses in a different geographical location and vulnerable witnesses. The Swedish court website for witnesses emphasises that the decision about how a witness testimony is heard lies with the court, although it also states an alternative option:

There is the possibility to testify by videoconference. The court decides the cases in which this can happen. If you want to attend a court session by videoconference, you will be based in another court or authority and use the court’s or the authority’s equipment.⁵⁶

If for some reason you prefer to come to the court, you must notify the court.⁵⁷

Video links with defendants can take place at any stage from pre-trial hearings through to sentencing; the decision lies with the judge. However, such video links are mostly used in pre-trial hearings, although there have been notable cases in which VCs were deployed during the trial in order to avoid the use of far more expensive or logistically complex solutions.

The duration of these video links is acknowledged by judges to average between 20 and 30 minutes, although **there is no time limit for video links**.

Furthermore, video links are frequently used in **immigration courts**. This has to do with the distribution and accommodation of asylum seekers. Whilst 30% of asylum seekers in Sweden are in refugee camps the North of Sweden, the asylum courts are located in Stockholm, Malmo, Gothenburg

⁵⁶ our translation; <http://www.domstol.se/Till-dig-som-ar/Vittne/>

⁵⁷ our translation; <http://www.domstol.se/Till-dig-som-ar/Vittne/Videokonferens/>

(all in the South), and only one more recently opened immigration court is in Luleå in the Northeast. It is deemed costly and impracticable for asylum seekers to travel to the courts in the South of the country. For example, in addition to not being able to cover travel costs, asylum seekers would have difficulty finding their way to the Migration Board or Migration court. Video links are used both in **first hearings** and in **immigration bail hearings**. Both normally include interpreters. Further details of participant distribution will be discussed below. The first hearings can be long, e.g. 2-3 hours.

The Swedish district courts also have experience of **cross-border VCs** with others member states, such as Bulgaria, UK and Estonia, for the **hearing of witnesses**, albeit rather less frequently. In the 2008 VC survey, Sweden reported *'only good experience from the use of [cross-border] videoconferences'*, claiming that no particular problems were faced when connecting with other countries.

As pointed out above, **the decision of whether to use a VC generally lies with the judge, in all types of proceedings**. General principles for this decision include the importance of a party appearing in person and the cost or other inconvenience of appearing in person, or concern about appearing in person in front of the court (e.g. because of safety issues). Among the factors driving the decision to hear a **defendant** in court or via VC are issues such as travel costs, seriousness of the crime and the general behaviour of the defendant. Regarding **witnesses**, issues of vulnerability and distance from the court are among the most common reasons behind the use VCs in court hearings. **In making decisions of appropriateness judges are advised to exercise caution** to ensure that their decision to have a participant appear by VC does not jeopardize the purpose of the hearing. The results of an internal questionnaire distributed to Swedish courts point out that at least one court is particularly aware of the potential impact of the use of VC on the credibility of participants, based on relevant literature.

In addition to these uses, **VC systems can also be used by lawyers to communicate with their clients** (e.g. defendant who are being held in prison). Whether this type of use is permissible is also at the judge's discretion. Furthermore, **judges can use video links to attend preparatory meetings** where the case material is presented and/or to communicate with other judges. Finally, **prosecutors can attend hearings remotely as well**, although their VC equipment does not always work well enough to ensure a smooth VC session and it is considered by technical informants to be one of the primary causes for stopping VCs and asking participants to attend the court instead.

Remote interpreting: In addition to the above, some judges report that **interpreters are also occasionally linked to court hearings via VC**, and remote interpreting by video link is considered a better option than remote interpreting by telephone, but there were different views about the frequency of the two options. According to some judges, remote interpreting by telephone is now mostly required when the chosen interpreter is located where no VC equipment is available. Other judges are indecisive about which of the two methods of remote interpreting is more common, and yet other legal informants claim that if the interpreter is the only remote party, interpretation is more likely to happen via telephone. Details of an internal survey indicate that whilst remote interpreting via VC is not common, some courts use it slightly more often than others.

14.4 Participant distribution

Given the variety of possible VC scenarios and the several types of participants who are allowed to intervene in a proceeding via video link in Swedish courts, **the distribution of participants is highly context-dependent**.

Witnesses who are invited to attend a hearing by VC normally make use of the VC equipment of their nearest court if they are resident in Sweden. Witnesses who live abroad can be in the nearest court or in either the Swedish embassy, or they be allowed to join the video link using their own computer, so long as their equipment and connection meet the technical and safety requirements for the video link to be established (see also Section 2 – Equipment above).

Defendants attending by VC are mostly located in prison. The position of the defence lawyer in the remote hearing of defendants was not widely discussed in the interviews, but tangential remarks from legal informants suggest that the defence lawyer is mostly co-located with the remote defendant.

When the defendant or witness is remote and an interpreter is needed, **the interpreter** is normally either co-located with the witness/defendant at the remote site or present in the court to carry out **videoconference interpreting**. Regarding preferences, evidence from the interviews is mixed: while some legal informants said they have not come across cases where the interpreter is not present in the court, others claim that for the hearing of remote witnesses the interpreter is located at the remote site in 90% of the cases. **In long proceedings, Swedish courts use two interpreters**, which are normally distributed in the two VC sites.

In immigration courts, the participant distribution depends on the type of hearing. **In first hearings, the interpreter is co-located with the lawyer and the interpreter** (e.g. in the North of Sweden) if possible. The interpreter is called and paid for 30 minutes before the hearing starts in order to talk to the asylum seeker (for language check). One of the judges said that *'this is the best solution'*. **In immigration bail hearings, however, all participants except for the asylum seeker are normally in court.** Two of the judges said that they do not have a strong preference for the interpreter's location but it would be the best for the asylum seeker if the interpreter were co-located with him/her. For one judge, *'the main thing is that they [the interpreters] tell them [the asylum seekers] what we want to say.'*

The judges interviewed for the present study claim to have **no personal experience of remote interpreting by video link**, although, as pointed out above (Section 3 – Uses), they acknowledge it as a potential solution for situations where no interpreter is available to attend the hearing by other means, for example because interpretation is required in a rare language. Technical informants also believe remote interpreting is a possibility. However, although remote interpreting is not prohibited by the VC regulations in Sweden, judges state that prefer to have the interpreter in the courtroom for reasons of practicality.

14.5 Pre-VC/Post-VC

The interaction between the interpreter and the other participants before the beginning of a VC-based proceeding is rather limited in Swedish courts. **Interpreters are normally provided with case files for their preparation**, and this provision is felt by judges to be beneficial, although in some instances legal practitioners feel this is unnecessary. Interpreters confirm this state of affairs, adding that **one of the reasons why they are not always sent the case files is the perception that they may not be able to maintain the professional confidentiality required**. However, there is a decision from the justice counsellor outlining the right of interpreters to be provided with all documentation required for their task.

Interpreters are also not necessarily informed of whether there will be a video link in the session before they come to court. The only topic on which interpreters and legal practitioners reportedly liaise prior to the hearing is the choice of interpreting mode, although this aspect of briefing is not mentioned by interpreters when asked about interaction with the court prior to the hearing. This may suggest that interpreters and judges *may* liaise on this topic, but that this is not an established practice. Another aspect mentioned only by judges is the presence of quality controls on interpreters prior to hearings, although no details on this topic were provided.

Interpreters point out that their interaction with the participants for whom they are interpreting prior to the hearing is normally limited to the introductions, a brief explanation of the role of the interpreter and in some instances a brief language check. Legal practitioners state that they always make sure the interpreter gets enough time to carry out a language check and to ask the witness/defendant some questions. However, interpreters claim that their interaction with the people for whom they are interpreting is severely limited by the courts for reasons of impartiality of the interpreter, and that for

this reason they often need to adjust to their client's command of the language and style during the session itself. In cases in which they have not had a chance to talk to the participant requiring interpretation beforehand, interpreters still feel they can go about their job, but they report feeling like they are in a telephone interpreting session rather than a VC.

The debriefing phase is also nearly absent. Interpreters report that this is limited to the exchange of the payment documentation. Legal practitioners confirm that issues of suitability of the video link to a particular case are not brought up with interpreters, before or after the VC.

14.6 Mode of interpreting

The choice of interpreting mode is influenced mainly by the interpreter's competence and their location with respect to the attendee for whom they are interpreting. As discussed in the previous section, the interpreting mode may also be subject to discussion between judges and interpreters, and can be agreed beforehand.

The audio technology implemented in Swedish courts allows interpreters to interpret simultaneously for a co-located participant (See Section 2 above – Equipment and Maintenance); but only consecutive interpreting is possible for a participant at a remote site. However, judges are not necessarily aware of the technological affordances of the VC setup in the court, and are not sure whether this allows interpreters to deliver the rendition simultaneously for remote participants. Interpreters have made official requests for the technology to be updated with the **introduction of new VC equipment including an extra sound channel that can be used for simultaneous delivery of the interpretation to remote participants.**

On condition that the quality of the technology is sufficient for simultaneous interpreting, **interpreters would also consider remote interpreting via video link as an option for legal interpreting** and as a valid alternative to travelling for their work.

Judges stated that **the choice of interpreting mode is often dictated by the interpreter's linguistic abilities**, which in a number of cases are not as advanced as to allow for simultaneous interpreting; this results in longer hearings, in particular if a message needs to be relayed in more than one language. **This view is contradicted by interpreters**, who maintain that their training includes skills for simultaneous delivery and that *'the good interpreters learn how to interpret simultaneously'*. However, judges seem to be open to a practical approach to the issue of interpreting mode, claiming that they make the necessary adjustments to accommodate different interpreting speeds/modes as dictated by the circumstances, and that this often means that they have to speak in short turns and allow time for consecutive interpretation to happen.

14.7 VC management

People taking part in a video link can be positioned in a variety of ways in Swedish courts; the common denominator for positioning of those present in the local courtroom is the clear visibility of one VC screen.

If the interpreter is located in courtroom, s/he interpreter will occupy the place in the court normally assigned to the party for whom they are interpreting. **If the interpreter is co-located with the remote witness/defendant**, s/he will normally sit side by side with the witness/defendant. However, in some cases interpreters may prefer to sit at an angle, because they claim that the seating arrangement in a row makes the relationship with the witness/defendant feel unfriendly. The configuration whereby the remote site is a prison and the interpreter is co-located with the prisoner is not considered dangerous for the interpreter, as **an officer from the detention centre is always present during video links and interpreters are not left alone with defendants**. If the remote site is a prison, a certain distance is also normally kept between the defendant and the authorities present if possible, for the

comfort of the defendant, but in general, the seating arrangement at the remote site is approached pragmatically and with the aim of maximising visibility.

The image that is sent from the remote site to the courtroom and the position of participants at the remote site is determined mainly by the size of the room (which is often very constrained) and the camera range. If it is not possible for the camera to display all participants at the same time, speakers are asked to move in front of the camera when they start their turn. **If the interpreter is present at the remote site, the seats will also normally be arranged so that the interpreter is visible.** However, **if both the witness/defendant and interpreter cannot be shown in the same shot**, the judges say that will choose to focus on the person who is being heard **and only hear the interpreter's voice**. This is confirmed by court clerks, who explain that they are in charge of the camera work and that they can control the settings at the remote site. They select the view they believe is optimal for all participants and may change it in the course of the hearing. Notably, however, they may decide not to focus the camera to the interpreter while the interpreter is speaking in order to avoid switching between the party to be heard and the interpreter at every turn, but this can vary from case to case.

The image the court sends to the remote site is also normally selected by the court clerk with input from the judge. Clerks believe that in spite of their efforts to move cameras and select 'optimal' images, VCs do not allow for the same level of contact between the judge and the party to be heard as a traditional hearing, especially when an interpreter is required. For example, defendants often tend to *'look around when the judge speaks because they don't understand him, they don't get eye contact and the judge finds that, too'*.

14.8 Communication management

At the beginning of the hearing, the presiding judge introduces the other judges and the parties present in the court to the remote participant(s). While the presiding judge normally does not have a prevalent role in the rest of the hearing, their duty is to maintain order and manage the communicational flow.

The feedback obtained from interpreters on the judges' ability to manage the hearing to include the work of interpreters is positive. Informants report that their needs are generally well understood and catered for by legal practitioners in courts owing to the training judges undergo. Overlap between participants in the VC is not common, and interpreters do not feel that it is an issue, but at the same time, they believe that improvements in the technology would help to achieve a better management of the VC interaction. This view is supported by court clerks, who believe that participants in VCs often do not feel as free to intervene as if they were present in person, presumably because of their lack of familiarity with the technology, and that this impacts negatively on the management of VC communication.

Furthermore, interpreters claim that, due to the lack of the extra sound channel required to deliver simultaneous interpreting for the remote participant (see section 6 above – Mode of interpreting), hiring an interpreter for the remote location would improve the working conditions of court interpreters and speed up VC-based hearings which require the use of interpreting services.

14.9 Working arrangements with interpreters

Court interpreters are recruited either directly or through interpreting agencies, and are normally booked by court administrators. Although there are agreements in place between courts and agencies, courts reserve the right to ask trusted interpreters to provide legal interpretation directly without intermediaries. Furthermore, courts are entitled to refuse to work with interpreters whose skills were in the past deemed unsatisfactory. Whilst formal complaints against interpreters are rare, judges find that it is not uncommon for them to be unsatisfied with the quality of interpretation. Given the extensive training and testing interpreters need to undergo and the minimum standards required in order to obtain court interpreting qualifications, which are rather high in comparison with other

member states, the feedback obtained from judges on the quality of interpretation may be somewhat surprising. However, interpreters believe that the use of agencies results in work being more often assigned to less qualified interpreters, due to their lower fee rate. Indeed, in Sweden a decree has set different interpreting fees chargeable according to the interpreter's level of specialisation, and interpreters believe that this may skew the choice of interpreting agencies towards interpreters with lower qualifications.

VCs are seen by legal practitioners as a good way to strive to engage with more highly qualified interpreters, as they remove difficulties connected with the interpreters' location, meaning that it is possible to use professional interpreters who would not be able to attend a hearing in person due to their physical distance from the court.

Fees and minimum rates vary depending on whether the interpreter needs to work outside of office hours or on weekends/bank holidays, and **interpreters declared that they are generally happy with their fees**. There is no difference in payment for interpreting services depending on the location of the interpreter, the presence of a video link or the use of telephone interpreting. Often, interpreters are not informed of whether the hearing during which they need to interpret will involve a video link, unless they are asked to attend the hearing from the remote site. In this case, the use of a video link is implied in the description of the hearing they will be attending. Although interpreters do not believe that this lack of information necessarily affects their performance, they would appreciate being informed of the use of VCs in order to look at ways to engage better with their task.

Moreover, as was pointed out in the previous section, **interpreters feel that the use of two interpreters would be helpful in VC-based proceedings**, i.e. one interpreter being in court and the other co-located with the remote witness or defendant. This would enable more simultaneous interpreting and speed up the proceedings. At present, the use of two interpreters is established practice only for hearings that are expected to carry on for over 3 hours. Interpreters are very happy with this arrangement, which they believe works to the benefit of all parties by allowing interpreters to support each other in their task and deliver higher quality interpretation.

While both legal practitioners and interpreters have mentioned the presence of quality control for interpretation, it is not clear how this is carried out. Technical informants have confirmed that it is not a requirement of the Swedish court system that the interpretation would be recorded for quality controls. Interpreters believe that the very presence of an interpreter in court is an indicator that they have undergone training and passed some form of testing (*'They have to be good to be there'*), which, however, partially contradicts the judges' level of satisfaction with the quality of interpreting services. Interpreters who work directly with courts without using agencies take the fact of being offered further interpreting opportunities as an indirect measure of the judges' level of satisfaction with their work and, therefore, of the perceived quality of their interpretation.

15 Summary and assessment of findings

This chapter summarises, systematises and assesses the findings from the individual countries and institutions included in this study. It addresses the main question of this study, i.e. to what extent videoconferencing facilities that have been or are currently being implemented in the justice systems of the European Member States accommodate bilingual communication with the assistance of an interpreter. The assessment focuses on the use of videoconferencing in national and cross-border proceedings, and covers different uses of videoconferencing in the legal system, including its use to link remote participants (e.g. witnesses, defendants in prison) to a court and to access remotely located interpreters. The chapter reports on each aspect that was investigated through the interviews and fieldwork, starting with the procurement processes relating to VC facilities (15.1) and the VC equipment that is currently used (15.2), before considering in more detail the uses of videoconferencing in different countries and different parts of the justice sector (15.3) and the configurations of participant distribution (15.4). Further sections focus on the management of the virtual space, e.g. the participants' visibility and their positioning in relation to the VC equipment (15.5); different methods (modes) of interpreting in videoconference situations (15.6); and the management of the communication and interaction between the participants in bilingual videoconferences in legal settings (15.7).

15.1 Procurement

This section gives a brief overview of how VC equipment has been procured in the countries and institutions included in this study, and how the legislative basis has evolved. The aim is to contextualise the use of videoconferencing and to assess the implications of past and current procurement patterns for bilingual, interpreter-mediated videoconferencing.

Changes over time

The data gathered in this study shows that the countries and institutions included in the sample are at different stages of the procurement process, and that they have adopted different approaches, which suggests that the procurement of videoconferencing equipment in the justice sector has changed over time. Going back to the 1990s in some countries, procurement started in small, high-pressure areas such as immigration and asylum (**SWEDEN**) and prison services (**ENGLAND**), and was mainly linked to economic reasons (e.g. the cost and logistics involved in transporting detained persons to courts and tribunals) and security considerations (e.g. risks involved in transporting detained persons). In the first decade of the 21st century, the implementation of VC equipment gained considerable momentum. One driving force was the European eJustice initiative, implemented through the European eJustice Action plans 2008-13 and 2014-18, in which the use of videoconferencing has been an important priority. The European aims tied in with many European Member States' own plans for court modernisation and digitisation, leading to comprehensive procurement exercises, which were top-down, centralised initiatives overseen by Ministries of Justice or their agencies (e.g. the court administrations), often spanning different justice sectors. These initiatives had the dual aim of reducing costs and improving access to justice, but there is currently a shift in the public rhetoric surrounding the implementation of VC facilities from saving money to facilitating access to court, especially for those testifying as witnesses (**SWEDEN**). Other important motivations for procuring VC facilities are the protection of vulnerable witnesses (**SCOTLAND**) and the cost-effective provision of legal aid following budget cuts in several European countries (**SCOTLAND**, **NETHERLANDS**).

Apart from these general observations, the countries included in our study can generally be divided into two groups regarding the time and manner they implemented videoconferencing facilities in their respective justice systems, i.e. in early and late adopters.

Early and late adopters

Worldwide, the **'early adopters'** were mostly Anglosaxon countries (Braun & Taylor 2012b). In **ENGLAND**, for example, video links have been used in the justice sector since the 1990s, with procurement taking place in several stages in response to plans or pressures in a particular area. Early procurement efforts were aimed at implementing video links between courts and prisons. Later, the use of VC was extended to witness testimony before video links between courts and police station were introduced for first hearings in 2007 and video remote interpreting was launched at the Metropolitan Police in London in 2011. This led to a certain amount of fragmentation. Some London police stations, for example, have two types of VC systems, i.e. one for links between courts and police stations for first hearings and one for remote interpreting. Another early adopter country is **FRANCE**, where the use of video links in court was authorised in 1998 covering a wide range of applications in the criminal justice system, e.g. remand extension hearings, witness examinations and the use of VC for remote interpreting. However, VC use remained low until the late 2000s. The French Office for Protection of Refugees and Expatriates (OFPRA) introduced video links in 2006 for specific cases, i.e. when the asylum seeker was unable to travel or in overseas territories. The National Court for Asylum introduced VC in 2014. The **fragmentation** in the procurement process of 'early adopter' countries means that the VC equipment used in different parts of the justice system differs in terms of type, quality standard and provider, which is particularly noteworthy in relation to interpreting, as it confronts legal interpreters with a variety of technical conditions.

'Late adopters' in Europe typically began to consider videoconferencing in the legal sector in the 2000s and implemented VC equipment on a larger scale towards the end of the 2000s, when broadband internet and internet-based VC technology was widely available, or are currently in the process of implementation. In these countries, procurement processes are centrally managed by the Ministry of Justice or one of its agencies (normally the court administration) and involve equipping all or most courts to the same set of specifications. Moreover, the implementation of VC equipment is more likely to be co-ordinated between different parts of the justice sector than in the 'early adopter' group. Examples of 'late adopters' include **SCOTLAND**, where procurement efforts have been partially driven by recent changes in the legislation regarding vulnerable witnesses, as will be outlined below; **SWEDEN**, where the centralised approach applied to both procurement and amendments to the legislation, as also described below; the **NETHERLANDS** and **FINLAND**. In **CROATIA**, **HUNGARY** and **POLAND**, the implementation is very recent and the use of VC restricted, but plans are in place for expansion. The relatively **consistent approach** within each of the 'late adopter' countries facilitates the use of the equipment and removes uncertainty about the technical specifications, which is useful from the point of view of legal stakeholders and interpreters alike.

Legislation, piloting and consultation

Whilst there is European legislation regulating or enabling some uses of VC, there is also a growing body of national legislation governing VC use in different areas of the national justice systems. The evolution of this legislation differs from one country to another. In **SCOTLAND**, for example, the new **legislation** relating to vulnerable witnesses seems to have been a major driving force for implementation of VC facilities, making Scotland an example of how a change in legislation has triggered the introduction of videoconferencing. However, the opposite case can also be observed. A common pattern is the organisation of a VC pilot and the subsequent drafting and adoption of legislation to endorse the use of video links. In some of the countries included in this study, this has happened in stages relating to different parts of the justice system. In **SWEDEN**, a more centralised approach was taken. In 2000, the Swedish Parliament passed a Videoconferencing Pilot Scheme Act, which introduced the possibility for persons to take part in court proceedings by video link on a voluntary basis. This possibility was open to all participants (the parties, their counsel, the prosecutor and witnesses), although there were some limitations on a defendant's participation. The pilot scheme was considered successful, and permanent rules for the use of VC were adopted in 2008. The Code

allows participation by video link of all participants in civil, criminal and administrative courts. The scheme is not voluntary anymore. A specific situation has arisen in **SPAIN** where a current absence of legal backup for VC use in the Spanish justice sector has not prevented the Spanish authorities from widely deploying VC equipment in the Court System.

One point to note with regard to legislation in the context of bilingual videoconferencing is that the European Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings, which endorses the use of communication technologies such as videoconferencing as a means to gain access to qualified legal interpreters, seems to have played only a marginal role in the process of implementing VC facilities the justice systems of European member states.

Another observation concerns the VC **pilots** which often precede the introduction of new legislation and the wider implementation of VC facilities. The available information, especially information elicited from pilot evaluation reports, suggests that such pilots often lack rigour, i.e. when reports claim that the pilot phase has been successful, it is not necessarily clear how this has been established. Furthermore, the pilots rarely include bilingual videoconferences. In England, for example, an early pilot on VC use to link courts and prisons, only included two video links with interpreters and stated that the evidence was inconclusive. The later Virtual Court pilot to link courts and police stations included hearings with interpreters in the second phase, but the 2010 Evaluation Report⁵⁸ had little to say about interpreter-mediated video links.

More generally, **consultation** in relation to the implementation of VC facilities seems to be confined to consultation within the justice sector. The views of interpreters are not normally taken into account. A positive exception was identified at the Canary Islands in **SPAIN**. A protocol outlining guidelines for the appropriate use of VC in the courts was signed between the Islands' Regional Government, the General Council of the Judiciary and the Regional Prosecution Service in 2013. The protocol covers the combined use of VC and interpreting both in national and cross-border proceedings. As a result of this protocol, specific solutions have been implemented for video-mediated proceedings that involve interpretation. In **ENGLAND**, at the Metropolitan Police in London, interpreters were not consulted during procurement, but cooperation with the University of Surrey, the then leader of AVIDICUS1, resulted in training of the interpreters working for the Metropolitan Police and raised awareness for potential challenges.

Implementation and maintenance

The implementation of VC equipment in large organisations is a complex matter, which in itself was not the focus of this study. Here we highlight some further issues that are relevant in the context of bilingual videoconferencing. The implementation and maintenance of the VC facilities is normally put out for tender, based on specifications provided the Ministry of Justice or its agencies, i.e. **external contractors** are in charge of supplying and installing the equipment and of its maintenance. In relation to proceedings involving interpreters, one of the questions arising is to what extent the requirements of bilingual videoconferencing are covered in the tenders. The exclusion of interpreters from VC pilots and consultation processes, as outlined above, suggests that issues of bilingual, interpreter-mediated communication do not receive much attention in the tender. A related question is whether the contractors have sufficient knowledge about the specific requirements for bilingual videoconferencing. The (limited) insights that were elicited in this study in this respect suggest that this is not necessarily the case.

In some countries/institutions, **local IT support** is available within the organisation. The local support teams are in charge of setting up and testing the video links prior to their use and resolving every-day operational issues. Countries with a low volume of mainly cross-border videoconferences generally reported that onsite technical staff is also present during the video links and assists with operating the

⁵⁸ <https://www.gov.uk/government/publications/virtual-courts-pilot-outcome-evaluation-report>

equipment, especially the cameras (see also Section 1.5 VC Management). Where local technical support teams are available, they seem to play a vital role in providing basic inductions for judges and clerks who have limited or no experience with VC. Local IT teams may also be pivotal in relation to bilingual videoconferencing, as they could be given basic training in the specific features and requirements of bilingual, interpreter-mediated video links and could disseminate this knowledge locally. This may be more conducive to ensuring successful communication than relying exclusively on external technical support.

Widening access

In line with the increasing demand for remote witness testimony, a further recent trend is the **widening of access to VC facilities** by sharing facilities that exist in non-Justice institutions. Some countries report that witnesses in rural areas, for example, can testify by using VC facilities in libraries and other public institutions in their vicinity rather than having to travel to the next court. Whilst this is good practice in terms of improving access to justice in remote areas, the integration of interpreters in such video links can be problematic due to variations in the quality of the equipment and the connection. Given the sound quality problems that interpreters have reported (see Section 15.2 Equipment), prior testing of such video links with an interpreter will be very important.

Summary

As pointed out above, the fragmentation that can be observed in ‘early adopter’ countries produces inconsistency and a range of different working conditions, which is not conducive to generating high-quality interpretation. The ‘late adopter’ countries have generally achieved more consistency in terms of the technical specifications, which provides a more conducive environment for video-mediated communication and interpreting, obviating the need to get used to a range of different types of VC systems. However, as will be argued in this chapter, even the more centralised approaches that can be observed in later adopter countries still do not sufficiently address the complexities and specific requirements of bilingual videoconferencing. The general lack of consideration for interpreting is most surprising in those countries where immigration was one of the first justice sector areas in which videoconferencing was introduced.

Another point to note is that despite the centralised and coordinated approaches within several Member States, there is **no consistency across countries**, which may have a negative impact on the quality of communication—and potentially the quality of justice—in **cross-border hearings**. This is of concern, as these are video links which very likely require the assistance of an interpreter. There is therefore an urgent need for standardisation of VC facilities across Europe. First concrete steps in this direction have been taken by the Informal Working Group (IWG) on Cross-border Videoconferencing in its 2015 report,⁵⁹ which synthesises organisational, technical and legal aspects of cross-border videoconferencing and aims to improve the overall functioning of e-Justice systems in Member States and at a European level by identifying the practical problems, best practices and solutions for these problems. The report suggests a number of practical solutions and raises awareness of issues pertaining to bilingual communication and interpreting in cross-border videoconference settings, which have been incorporated into the European Council Recommendations ‘Promoting the use of and sharing of best practices on cross-border videoconferencing in the area of justice in the Member States and at EU level’ (2015/C 250/01).⁶⁰

At **national level**, however, awareness for the requirements of interpreting in videoconferences is generally low. As was pointed out above, with few exceptions the interpreters who were interviewed for this study reported that they were not consulted nor could they say whether issues related to interpreting had been taken into account during the procurement stage of VC equipment.

⁵⁹ Available at https://e-justice.europa.eu/content_videoconferencing-69-en.do

⁶⁰ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2015:250:FULL&from=EN>

The wide-spread exclusion of the interpreters from the procurement process is one of the many facets of a more general phenomenon, i.e. that of denying the legal interpreters the expert status they would deserve. Given that legal interpreters are bilingual and bicultural communication experts and that many videoconferencing situations involve bilingual communication, requiring the assistance of an interpreter, it is of great concern that the interpreters' opinions generally do not seem to be considered relevant in the procurement process. As the next section will show, the implications of excluding the interpreters from the planning and procurement become obvious in relation to the equipment.

15.2 Equipment

This section gives an overview of different aspects of the equipment that is used in the countries and institutions included in this study. It covers the different types of VC systems, connections and hardware currently in use, and evaluates the sound and image quality and the technical set-up in light of the requirements for interpreting.

VC systems, connection and hardware

The VC systems used in the legal sector are exclusively **dedicated, hardware-based systems** (as opposed to desktop VC systems or cloud-based solutions such as Skype). Aiming to comply with the technical standards set out for videoconferencing on the European eJustice portal,⁶¹ all of the institutions surveyed have implemented videoconferencing facilities based on H.323, the **encoding and transmission** standard for videoconferences using the Internet Protocol (IP) developed by the International Communications Union (ITU). This standard provides better video and audio quality than videoconferences based on the older H.320 standard, which uses the Integrated Services Digital Network (ISDN), i.e. digital telephone lines, and which became available in the 1990s. The use of IP-based videoconferencing is a positive development from the point of view of bilingual videoconferencing because internet-based VC systems can normally provide better support for video-mediated interpreting than older ISDN-based systems, although—as will be discussed below—there are still important caveats from the point of view of interpreting, especially in terms of sound quality. Moreover, although there is a noticeable tendency towards using and/or migrating to IP-based videoconferencing, ISDN connections are still quite widely used, especially in cross-border video links. This poses challenges for interpreting due to the inferior sound and image quality supplied by ISDN connections. A new trend is that remote witnesses are given access to court using software clients supplied by the courts but running on the witness's computer. This could lead to inferior transmission quality depending on the available bandwidth.

The differences in the transmission standards currently used in legal videoconferencing are partially a reflection of the differences in the procurement processes outlined in Section 15.1 above. The same applies to the **VC hardware and peripheral equipment** used. Fragmentation in the procurement process has led to **variation in technical standards and subsequently variation of audio/video quality** in some countries. Although the interviews and field studies revealed only few cases of dramatically obsolete equipment (e.g. old cathode ray tube monitors rather than flat screens), defence lawyers in **FRANCE**, for example, who have worked in different settings complain about the poor quality of the videoconference equipment in some of the courts (criminal courts and OFPRA, where VC was introduced earlier) compared to the National Immigration courts, where VC is a more recent addition. The interviews with interpreters highlight that the prevailing use of older equipment and ISDN connections has a negative impact especially on the sound and image quality and on communication management. For example, overlapping speech can be a problem (see Section 15.7 Communication management for further details).

⁶¹ https://e-justice.europa.eu/content_manual-71--maximize-en.do?idSubpage=18

Sound and image quality

More generally, interpreters across the different countries surveyed in this study emphasise that they feel their specific requirements for good audio/video quality and the impact of poor sound quality on their work is not fully understood by judges. This is one particularly clear example where the complexity of interpreter-mediated communication seems to be underestimated by legal stakeholders. The specific problem is that whilst the **sound quality** of contemporary (IP-based) VC technology may be sufficient for monolingual communication, this is not necessarily the case for interpreter-mediated communication. One important reason for this is that, although the sound frequency bandwidth available in VC systems has improved over time through the use of better audio codecs, the problems with sound quality encountered by the interpreters also have other sources.

First, different types of **microphones** will produce different sound quality and not all microphones are useful in the context of interpreting. In **SCOTLAND**, for example, an omni-directional microphone is used for all court participants in a court-prison video link (SC_011015_IT 297). However, omni-directional microphones can create sound reverberation (see also Causo 2012). This may lead to insufficient sound quality and comprehension problems not only for the prisoner but also for the interpreter, if s/he interprets from prison. Second, interpreters from **FRANCE** and **ENGLAND**, for example, report instances of **micro-breaks in the sound transmission** which can lead to the loss of a word or syllable. Whilst this is not normally noticeable to participants who do not speak the language, it can disrupt the interpreter's comprehension of what is being said. A third persistently reported challenge is the **lack of lip and sound synchronisation (SPAIN)**. Again, this will be less noticeable or less disturbing for someone who listens to a remote party in their mother tongue and not with the aim of interpreting what they hear. However, interpreters need to process what they hear at a much deeper level in order to identify the communicative message accurately and completely, and relay it in another language. This requires more concentration and cognitive effort than normal listening, and any disturbance such as muffled or tinny sound, breaking up of the sound or lack of lip and sound synchronisation will affect an interpreters' ability to concentrate and listen.

Although interpreters generally prioritise the sound over the image, the **image** fulfils an important function in communication. Insufficient image quality can therefore have similar consequences to those of insufficient sound quality. Interpreters report cases where the image of a remote party on the video screen in court freezes and judges decide to continue the hearing or leave it to the interpreter to decide whether or not to continue. This puts an interpreter under pressure, especially, as reported in one case, when the interpreter knows that it was difficult to get a remote witness to testify at all. Clearer protocols and guidelines are required here, taking into account the communication needs of everyone involved in the hearing, including the interpreter.

In addition, some interpreters are concerned about the impression that a court may form of a remote witness or defendant when technological issues such as low image quality or image freeze interfere with the perception of the witness/defendant. This is compounded by the participants' perception that technical problems with sound and image quality are more likely to occur in cross-border hearings than in national video links. There is thus a particular risk that cross-border proceedings, in which communication across linguistic and cultural boundaries and different legal systems already add layers of complexity, are adversely affected by (low-quality) videoconferencing.

Technical set-up

Apart from the quality of the connection and the equipment, the fieldwork also revealed a number of points with the technical set-up, i.e. the number and positioning of screens, cameras, microphones and loudspeakers. The technical set-up is crucial as it provides the framework for the positioning and interaction of participants (see Section 15.4 Participant distribution and 1.5 VC management). Van Rotterdam & van Hoogen (2012) contend that, as a general principle, VC equipment in court should be installed in such a way that the court participants can adopt the position that they would adopt in

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a traditional court setting. Our fieldwork suggests that this principle is not consistently adhered to. In particular, it does not seem to apply to the interpreter.

The fact that the rooms in which VC equipment is used in the legal system (courtrooms, police interview rooms etc.) vary in size accounts for some of the differences in the way the equipment is implemented. Informants from a police and prison settings pointed out, for example, that the small size of police interview rooms and prison VC rooms restricts the options for mounting equipment. Furthermore, unless new facilities are built, one difficulty is often that VC equipment has to be installed in existing facilities which were not designed for the use of technology and leave little space for it. However, when it comes courtrooms, there also seem to be different approaches to the technical set-up. Some institutions have opted for implementing a large number of smaller screens, whilst others use fewer but larger screens and yet others a combination of large and small screens, as illustrated in Figure 1 below.



Figure 1: Videoconference courtrooms in Europe

Probably as a result of both building constraints and a lack of rigorous design principles, the technical set-ups encountered in this study have a range of shortcomings. One is that screens are sometimes mounted high on the wall as the only available space, making it strenuous for the participants including the interpreter to look at the screen for a prolonged period and/or leading to the video

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images being ignored. If participants have to look up at a screen to access the images, this may also have the effect of distorting the image that the camera captures of them. Furthermore, informants pointed out that there are not always enough screens or that screens are not visible from every position. In the courtroom shown in Figure 2 below, the interpreters appointed to interpret in hearings of remote witnesses are reportedly asked to sit in the place that would be taken by the witnesses if they were in court. However, this does not give the interpreters a good view of the screen.



Figure 2: View of VC screen from the witness place, which is used by the interpreter when the witness is heard via VC

Similar problems can occur when the loudspeakers are in the wrong place for the interpreter. One interpreter reported a situation where the loudspeakers were positioned in such a way that he could not hear what was being said. Section 1.5 (VC management) will more specifically examine the spatial organization of the participants at each site, i.e. their positioning in relation to the VC equipment and to each other. The section will also address details about how participants are made visible on the screen, whether they have a self-view available and other pertinent issues.

A positive aspect is that in several countries, the places in courtrooms are equipped with individual **microphones** and the VC system has **pre-sets**—as shown in Figure 3 below—which allow a judge or clerk to move the camera swiftly between speakers.

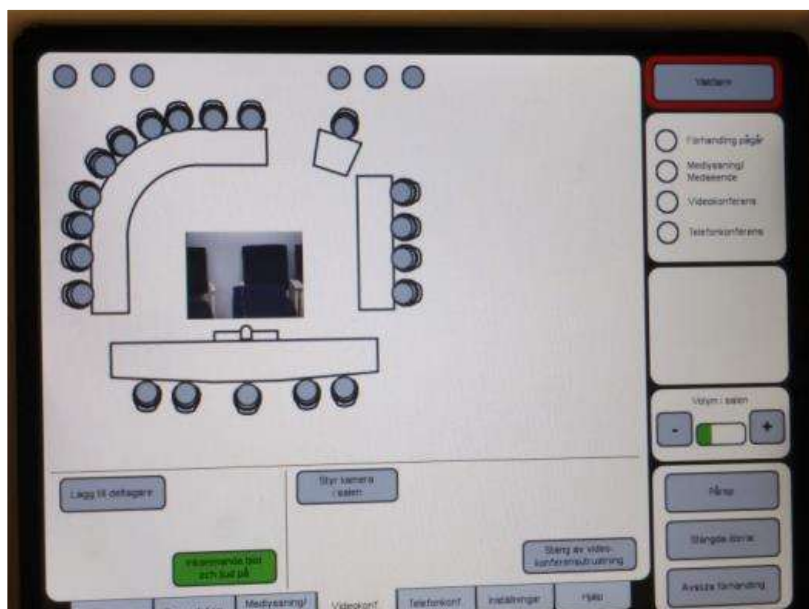


Figure 3: CV control panel with pre-sets for a courtroom

However, problems arise in video links between a court and a remote party in which the interpreter is in court. In this configuration, there seems to be no generally agreed place for the interpreter. The interpreter is often asked to sit in the place where the defendant or witness (who is in a remote

location) would sit but there is no fixed rule, and the interpreter may end up sitting or standing in a place not covered by a camera pre-set. This means that the interpreter may either not be shown to the remote party or shown with a delay (time for the camera to be moved manually), which means that the remote party may lose information or may be distracted.

Summary

There is considerable variation from one country to another, and sometimes within a country, with regard to the technical set-up, creating several challenges for bilingual videoconferencing. One of the most important issues from an interpreting point of view is sound and image quality. The prevailing variation in technical standards leads to variation of audio/video quality, which is challenging for interpreters. The sound quality is also affected by a range of other points (e.g. the type and quality of microphones). More generally, the interpreters' specific requirements for sound and image quality are not sufficiently taken into account. A similar point needs to be made with regard to the positioning of the equipment and the place of the interpreter in relation to it. There is general uncertainty about the most appropriate place for the interpreter.

In summary, as the examples in this section have illustrated, there is little provision in the technical set-up for interpreting in its current requirements. Equally important, there is also little evidence of planning for cases requiring multiple interpreters, cases with more than one remote participant and an interpreter and other more complex situations. Thus **the general tendency of expanding VC use, which is likely to lead to a diversification of applications and configurations, does not sufficiently embrace interpreter-mediated videoconferencing.**

15.3 Uses

The previous sections have looked at the implementation of the VC systems, hinting at different uses made in different types of proceedings. This section will explore in more detail the uses which are made of videoconferencing in the countries and institutions covered in this study, including the national and cross-border uses, types and stages of legal proceedings.

Of the 12 jurisdictions surveyed in this study, all use videoconferencing for cross-border proceedings, and 10 for national proceedings, as shown in Table 1 below. However, Hungary, which is one of the countries currently using VC only for cross-border proceedings, plans for implementing its use at national level 2016-2018. Cross-border videoconferencing is mostly confined to the hearing of remote witnesses; the use of videoconferencing at national level is more diverse.

Country	National level	Cross-border
Belgium	+	+
Croatia	-	+
England	+	+
Finland	+	+
France	+	+
Hungary	-	+
Italy	+	+
Netherlands	+	+
Poland	+	+
Scotland	+	+
Spain	+	+
Sweden	+	+

Table 1: uses of videoconferencing by country

National proceedings

In ***national proceedings***, a wide range of **uses of VC that potentially require the integration of an interpreter** have been identified, spanning all parts of the justice system (criminal, civil and administrative justice, i.e. asylum and immigration). Table 2 below gives an overview of the main uses.

Criminal Justice
<ul style="list-style-type: none"> • Links between courts and remote parties, i.e.: <ul style="list-style-type: none"> ○ Court/Prosecutor – accused at police station for first hearings ○ Court – defendant in prison for pre-trial hearings and remote sentencing • Links between courts and witnesses, i.e.: <ul style="list-style-type: none"> ○ Court – geographically remote witnesses ○ Court – vulnerable witnesses • Lawyer-client communication <ul style="list-style-type: none"> ○ Lawyer from own office or from court – defendant in prison • Court reports by probation <ul style="list-style-type: none"> ○ Probation officer from own office – defendant in prison • Police detention reviews <ul style="list-style-type: none"> ○ Reviewing officer – detainee in custody
Civil Justice
<ul style="list-style-type: none"> • Links between courts and witnesses in the UK and overseas • Lawyer-client communication • Case management conferences • Other uses by consent of the parties (e.g. remote lawyers)
Immigration and Asylum
<ul style="list-style-type: none"> • Links between Immigration courts and immigration applicants in detention • Lawyer-client communication

Table 2: Uses of videoconferencing in different parts of the justice sector

There is variation with regard to the **stages of the proceedings** in which videoconferencing is used. In most countries, it is more frequent at pre-trial stage, but in **SPAIN**, for example, VC is used mostly during the trial stage, and much less frequently in the pre-trial stage. On the other hand, the reasons that were cited for the use of video links are similar across all countries and include practical, economic factors, i.e. reducing travel, saving time and cost efficiency, but also security, especially in relation to prisoner transport, and protection of vulnerable witnesses. Some informants emphasised the importance of mutual assistance between courts and the necessity to bridge long distances, e.g. for remote witness testimony. When interpreting services are required, one interpreter is normally appointed and located at one of the two sites engaged in the video link. The location varies between countries and types of proceedings, and will be examined in more detail in Section 1.5 (VC Management). The uses are normally governed by legislation, but within the legislative framework it is mostly up to the judge to establish whether a video link is appropriate on a case-by-case basis.

By contrast, **video links to gain access to an interpreter** are currently infrequent in Europe. The only systematic application of ‘remote interpreting’ via video link that was identified in this study is at the Metropolitan Police in London, where several interpreting hubs were built from which interpreters working at videoconferencing terminals are linked to police stations around London to interpret in police interviews.

The duration of video links at national level varies greatly depending on the type of proceeding VC is used for. Video links between courts and prisons tend to be of short duration, whilst VC-based witness hearings vary and can potentially last for several hours. With regard to immigration proceedings,

different durations were reported, e.g. in the **NETHERLANDS**, most VCs in immigration proceeding are as short as 10 minutes, whilst the immigration proceedings observed in **FRANCE** were often of a much longer duration. Judges generally have a preference for short VCs. They believe that the main purpose of VC is to simplify the logistics and expenses of attending court hearings and that short hearings justify the use of VC, as the cost of having of a witness travel to court could be disproportionate. But an anticipated longer hearing would make it reasonable to have people in court. In relation to bilingual proceedings, it is not clear whether there is sufficient awareness among the legal stakeholders that interpreter-mediated VCs will be longer and even more complex, making it questionable whether VC is the best solution for witness hearings that are anticipated to be long.

Interpreters working in court-prison video links in **ENGLAND** were furthermore of the view that the prisoners themselves may well prefer a traditional court setting, stating that prisoners often make it manifest to the interpreter that VC is not their preferred option for a hearing. However, other sources, e.g. in **SCOTLAND**, highlight benefits of video links for prisoners, pointing out that prisoner transport is not only prone with security risks and cost-intensive but also lengthy and uncomfortable for prisoners, and that it disrupts their routines in prison.

In general, the interpreters' opinions on the suitability of VC for legal proceedings vary; some interpreters have no specific objection to its use, and describe the use of video link equipment as a comfortable experience; others express strongly negative opinions, showing deep concern especially regarding matters of audibility and visibility which they think are likely to influence the work of interpreters negatively.

Cross-border proceedings

In **cross-border proceedings**, the use of video links is more restricted. Although they are used in criminal and civil proceedings, they are primarily employed for witness testimony. Generally, cross-border video links are still infrequent, although increasing. Belgium, for examples, conducted only four cross-border videoconferences in 2013, but this figure increased tenfold to 40 in 2014, and further to 52 in 2015. Hungary counted 17 cross-border links in 2012, 62 in 2013 and 77 in 2014.

Cross-border videoconferencing has a legislative basis in the Second Additional Protocol of the 1959 Convention and the 2000 Convention.⁶² The legislation distinguishes between interpreting support for the judicial authority of the requested Member State, who is normally present during the proceedings (at least in criminal cases), and interpreting support for the person to be heard. A distinction therefore needs to be made between the following situations:

- A. The person to be heard speaks the language of the requesting authority. For example, a Dutch court requests to hear a Dutch citizen who lives in Germany. In relation to this situation, the protocol states that the judicial authority of the requested Member State (Germany) shall *"where necessary assisted by an interpreter"*. As the Dutch court would communicate with the Dutch witness in Dutch, an interpreter would be required to interpret from Dutch into German for the benefit of the German judge.
- B. The person to be heard speaks the language of the requested authority. For example, a Dutch court requests to hear a German citizen who lives in Germany. In relation to this, the protocol states that *"at the request of the requesting Member State of the person to be heard the requested Member State shall ensure that the person to be heard is assisted by an interpreter, if necessary"*. An interpreter would be required to interpret between Dutch and German for the benefit of all parties involved.

Other, more complex situations arise when the person to be heard speaks a third language (e.g. if a Dutch court hears a person who resides in Germany but does not speak sufficient German nor Dutch).

⁶² Art. 10(5)(d) 2000 Convention

However, the informants in our study only referred to configurations A and B above. Questions of participant distribution will be discussed in Section 15.4 (Participant Distribution) but it should be noted here that according to several informants, configuration B is mostly carried out with **two interpreters**, i.e. one in each country. According to the informants, this is because of the relatively low frequency of these links and because they often take a long time to prepare, given the procedures that have to be observed when requesting another Member State's assistance in hearing a witness. Several informants reported that each side would appoint an interpreter to show good will, provide support and make a good impression.

The **duration of video links in cross-border proceedings** was reported to be extremely variable, depending on the case and on whether there are technical issues. There were also several reported communication problems including problems with the introduction of the parties, procedural problems due to the different legal systems and cultural traditions (e.g. when it comes to swearing in a witness) and the quality of the interpretation. As also reported in Section 15.2 above, some stakeholders perceive a reduction in the VC quality (especially in terms of sound and video quality) when the remote site is abroad, and in particular when the remote site is not a court in a capital city.

One further important point to note is that cross-border video links sometimes require the assistance of an interpreter in the preparatory phase, i.e. for requesting the connection, exchanging information, helping with the testing of equipment or any other aspect that requires communication between the two legal systems prior to the hearing. At times interpreters are also asked to assist in arranging a VC connection with a foreign court, even if they are not required to provide interpreting services during the hearing. This was corroborated by the findings of the Informal Working Group (IWG) on Cross-border Videoconferencing in its 2015 report.⁶³ These two points suggest that interpreters should be involved more widely into the processes of planning and implementing of videoconferencing facilities and processes to support authorities and other technical parties involved in decision-making.

Uses explained

A very positive development is the development and publication of VC guides for those testifying as witnesses, but also leaflets that can be found e.g. in prisons and explain the video links for defendants. A VC guide for citizens on the website of the court administration in **SWEDEN** explains the situation as follows:

All who are in the courtroom where the hearing takes place can see and hear you on a screen. You can similarly see and hear them. The video equipment functions in such a way that you see the person who is currently speaking. However, you cannot see all present simultaneously in the image.⁶⁴

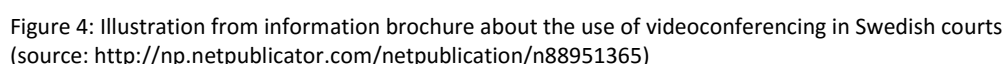
Similarly, in a PDF booklet available for download, VC participants including judges are advised on basic principles of VC etiquette, e.g. to speak clearly into the microphone and in a normal tone, to avoid rustling of papers, to look to the right camera and to remember "that the remote party can see you even when you are not talking."⁶⁵ This is also illustrated, as shown in Figure 4 below.

Whilst these guidelines are available only in Swedish, similar material has been produced e.g. in **FINLAND** and in the **NETHERLANDS**, where they have also been translated into other languages. However, none of the nationally produced guidelines that were identified in this study seem to refer to bilingual videoconferences that involve interpreters. Although basic guidelines are available from AVIDICUS 1 on the eJustice portal, these address institutional stakeholders. The quick guides produced in AVIDICUS 2 for authorities, legal professionals, interpreters and minority-language speakers (available on www.videoconference-interpreting.net) will require further dissemination, but it will

⁶³ Available at https://e-justice.europa.eu/content_videoconferencing-69-en.do

⁶⁴ our translation from Swedish; <http://www.domstol.se/Till-dig-som-ar/Vittne/Videokonferens/>

⁶⁵ our translation from Swedish; <http://np.netpublicator.com/netpublication/n88951365>



In summary, the strong focus on the use of videoconferencing for the hearing of remote parties – as opposed to linking to remote interpreters – makes it clear interpreting is not the primary purpose for implementing VC technologies and may explain why the requirements of interpreters in relation to video links have been little appreciated to date. The remarks in the previous sections show that **the integration of interpreters in video links which were set up primarily to hear remote parties has often been an afterthought.**

15.4 Participant distribution

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Distribution patterns

In each configuration, the by far most common option is currently the use of two-way video links. In the **video links used to access a remote interpreter**, the participants are normally together at one site, e.g. in the police interviews that are interpreted from a distance by interpreters at the Metropolitan Police in London. In **video links with a remote minority-language speaker** (witness, accused, defendant, asylum seeker) in which the presence of an interpreter is required, the interpreter is normally located at one of the sites. The other currently used option is to work with two interpreters, one at each site, although this is normally confined to cross-border proceedings (see above and Section 15.4 Participant Distribution).

In **national proceedings**, few of the surveyed institutions have clear-cut rules for the location of the interpreter in the different types of video links, but the following tendencies can be identified. In **first hearings**, the interpreter is frequently co-located with the minority-language speaker. This applies to immigration hearings in a range of countries as well as criminal cases in England (known in England as ‘virtual courts’).⁶⁶ In **remand or bail hearings**, i.e. links between courts and prisons or detention centres (in criminal and immigration proceedings), the pattern is varied, although there is a tendency for the interpreter to be in court. It also needs to be noted that the location of the interpreter in video links between courts and prisons or police stations depends to some extent on the location of the lawyer representing the minority-language speaker (see below).

In **lawyer-client conferences** with the client being placed in a video link room in police custody or prison and the lawyer normally being attending from a specific video link room in court, the interpreter tends to be co-located with the lawyer. The reason lies in the confidentiality of the lawyer-client conversation, which entails that there will be no guard in the custody suite or prison. The co-presence of interpreter and the lawyer avoids a situation where the interpreter would be alone in a room with the prisoner.

In **hearings of remote witnesses**, the interpreter is normally in the requesting court, i.e. the court that wishes to hear the witness, as it is the requesting court that appoints the interpreter, although in cross-border witness hearings, there is often one interpreter at each side. Finally, in **hearings of vulnerable witnesses** by video link, the interpreter tends to be co-located with the witness to provide emotional support and optimise the rapport between witness and interpreter.

In **cross-border hearings**, which are confined to witness hearings, there are often two interpreters, one at each side, as pointed out in section 3 above. If there is only one interpreter and the witness does not speak the language of the court (e.g. a Dutch court hearing a German witness in Germany), the interpreter is, according to our informants, most likely to be located at the main site (the requesting court rather than with the witness (at the requested court), although according to the 2000 Convention it is the responsibility of the requested court to ensure that an interpreter is available. If the witness speaks the language of the court but resides in another country, an interpreter is required in the requested court to interpret from the witness’s language into the language of the requested court for the benefit of the judge present at the requested site.

In addition to charting the patterns emerging in the participant distribution, we also tried to identify the different stakeholders’ perceptions about the most appropriate. The results are reported below.

Perceptions by the legal stakeholders

The legal stakeholders’ perceptions of the most appropriate location broadly fall into three groups. One group believes that the interpreter should be co-present with the judicial authority in court. This has partially practical reasons such as the court’s responsibility for booking the interpreter, but there

⁶⁶ First hearings by video link are currently more common outside Europe, especially in the U.S., where they are known as video arraignments.

is also a sense on the part of some judges that it is easier to detect and resolve an interpreting problem when the interpreter is in court. The other group believes that the interpreter should be co-located with the minority-language speaker as this enables the interpreter to provide some emotional support for the minority-language speaker. However, there was also a third group who was not particularly interested in the interpreter's location and/or had never reflected on it but believed that it would not make a difference for the proceedings. On the whole, the fieldwork suggests that the legal stakeholders' awareness of the impact that the interpreter's location has on the communication/interaction is at present generally rather low.

Interpreter perceptions

The interpreters surveyed for this study generally feel that it is useful for them to be co-located with the minority-language speaker. They believe that this is the best way of ensuring comprehension of the minority-language speaker as it allows them to see facial expressions and perceive other aspects of the minority speaker's non-verbal behaviour which might be crucial for comprehension and contextualisation of their utterance. The interpreters point out that it is easier to build a rapport and clarify potential misunderstandings when being co-located with the minority-language speaker and also to provide some emotional support (often merely by the presence of a person understanding and speaking the minority speaker's language). These impressions are corroborated by the findings of an earlier study in an immigration setting (Ellis 2004). However, a number of points were raised as disadvantages of **being co-located with the minority-language speaker** rather than being in court. A frequent complaint by the interpreters is that they are 'forgotten' by the court, i.e. perception that interpreters are not given enough time to interpret and need to make their presence felt more forcefully when not in court (see also section 15.7 Communication Management). Working in prison is also characterised as a "claustrophobic" experience by some interpreters. Furthermore, the interpreters feel they often acquire additional tasks when they are co-located with a defendant in prison, especially when the defence lawyer attends from court. The interpreters therefore highlighted the impact of the lawyer's location on their own location.

Regardless of the problems with being co-located with the minority-language speaker, when considering the alternative, i.e. **being located in court**, there is a perception among interpreters that this generally reduces their rapport with the remote minority-language speaker and that it could be seen as undermining the interpreter's neutrality, i.e. the interpreter could be perceived as a 'collaborator' of the court. (Interestingly, this argument was not considered for the opposite case.) Some interpreters felt that, when being located in court, they would prefer to be placed in a separate room, working from their own VC station, partly because of impartiality perceptions and partly for practical reasons. Given that courtrooms are noisy in some countries, the interpreters believe that having their own room would reduce distractions. Some pointed out that it would also enable them deliver the interpretation simultaneously, but this is a complex issue, which will be discussed further in Section 15.6 (Mode of Interpreting) below.

Only one of the interpreters in our sample cited purely practical reasons for her choice of location, i.e. the travel distance. The interpreter pointed out that travel time is not remunerated and that she therefore chooses her location in accordance with the travel distance from her home.

Perception of minority-language speakers

The reservations voiced by some interpreters about being located in the courtroom during video links are also echoed by feedback from minority-language speakers in this study (**FRANCE**). This feedback suggests a preference for having both the lawyer and the interpreter co-located at their site. This is corroborated by studies from immigration and criminal justice settings, which make it clear that a participant distribution whereby all participants except the minority-language speaker are in court creates a strong imbalance, leading to isolation of the minority-language speaker, who may have difficulty following everything that is said in court (BID 2008, Ellis 2004, Fowler 2013).

Three-way video link as a solution?

Given that neither of the currently common participant distributions is entirely satisfactory, a question that arose during the fieldwork was whether a three-way video link, with the interpreter being in a separate location, could resolve the problems outlined above and would be more appropriate for bilingual, interpreter-mediated video links in the legal system.

A three-way video link may also resolve problems arising with the spatial organisation of the VC participants, i.e. their positioning in relation to the equipment and in relation to each other, which has also been found to be problematic in interpreter-mediated video links (see Section 1.5 VC Management).

At first sight, a three-way video link in which the interpreter has his/her own location may lead to a more equal distribution of opportunities to contribute to the communication for all participants including the interpreter. However, an early study on interpreting in this setting revealed that this comes with its own challenges (Braun 2004, 2007). The interpreters in this study felt that being removed from both parties increased the co-ordination effort required on their part, pushing them into a moderator role, whilst also making the coordination more difficult because of the remoteness. However, the participating interpreters, who were trained in all modes of interpreting, felt that the three-way video link worked more smoothly when additional sound channels were implemented to enable simultaneous interpretation than it did in an ordinary three-way video link using consecutive interpreting. Although such a solution needs to be explored further from the point of view of technological implementation and communicative dynamics, the various options will be discussed briefly in Section 15.6 (Mode of Interpreting).

Two interpreters as a solution?

As reported above, many bilingual cross-border video links, have two interpreters. According to the accounts given by informants who worked in such situations, there is, however, no standard procedure for working with two interpreters, and all decisions in this regard are made ad-hoc during the hearing. In other words, the respective roles of the two interpreters are not normally defined prior to the hearing, making this less useful than it could be. Interpreters generally feel that it would be helpful to work in pairs in video links to share the task, especially in longer hearings to avoid fatigue. One interpreter could be co-located with the minority-language speaker could render (simultaneously, by whispering) what is said in court into the minority language, while the interpreter present in court could render the utterances by the remote minority-language speaker's utterances. In the words of one interpreter, *"it is easier to work when there are two interpreters. You can hear better what is going on in your room and can concentrate on your side."*

Some interpreters in our sample have also argued that the consistent provision of simultaneous interpretation for the minority-language speaker, which would echo the practice followed in traditional court hearings, could speed up the proceedings (see also Section 15.7 Mode of interpreting).

By contrast, one of the legal professionals interviewed stated that it would be 'crazy' who work with two interpreters. This highlights not only the different perceptions but also the different experiences that influence stakeholders' thinking about video links. Whilst there is no question of working with two interpreters in a short bail hearing, it should be considered for witness hearings that carry on for a longer period.

Summary

In summary, fieldwork has revealed that in settings with remote parties and witnesses, current practice and preferences regarding the location of the interpreter are clearly mixed. A range of arguments are put forward by different stakeholders, which contribute to the fuzziness of the overall picture emerging from the interviews. Some tendencies can be identified, but there is very little in

terms of protocols, guidelines or attempts to standardise patterns of participant distribution. Another noteworthy point is that decisions about the interpreter's location in video links are mostly driven by practical considerations (e.g. interpreter availability, responsibility for booking the interpreter). Whilst there is indeed a number of valid practical considerations and/or constraints that have an impact on the interpreter's location, as outlined above, the main point emerging here is that **the impact of the interpreter's location on the interpreting performance and thus on the quality of the communication and ultimately on the fairness and efficiency of justice does not seem to be a major driving force.**

This also applies to remote interpreting, i.e. the configuration whereby the interpreter is separated from the main participants. Although this is still rare in Europe, in countries or institutions where remote interpreting is considered, the views on it are generally overly optimistic. Another line of thinking is that VC technology is not necessary and that remote interpreting can be done by telephone. This will be discussed further in relation to the visibility of the interpreter in Section 1.5 (VC Management).

Two other points emerging from the study in relation to participant distribution are also important in the context of bilingual proceedings with an interpreter. First, some of the institutional stakeholders have plans to create greater flexibility regarding the participant distribution, especially by enabling prosecutors and defence lawyers to participate in court proceedings by video link. This creates a further layer of complexity in bilingual proceedings with an interpreter, which, as far as we were able to establish, has rarely been considered by those institutions. Second, proceedings involving more than one language pair are on the rise, but an effective combination of videoconferencing and provision of interpreting services for more than one language pair is not in sight in any of the institutions we surveyed.

15.5 VC management

VC management has several dimensions. It starts with the preparation of the VC and when an interpreter is involved, e.g. the briefing that the interpreter is given prior to the VC, and also extends to the phase after the end of a VC, i.e. a de-briefing phase. In the main, however, it covers the management of the technology-related aspects of videoconferencing, especially how the equipment is operated and by whom, how the participants (including the interpreter) position themselves at each site in relation to the VC equipment and to each other, and how they are made visible on screen to the participants at the other site(s).

Pre-VC/Post-VC

All stakeholders were asked about whether an interpreter who is booked to work in a video link is informed that his/her appointment includes a video link. According to the interpreters interviewed for this study, this is normally the case for both police and court settings. The interpreter deployment team at the Metropolitan Police in London also stated that the interpreters who are booked for remote interpreting are informed of this at the time of booking. In court settings, by contrast, not all judges were sure whether interpreters receive this information, as the booking of the interpreter is mostly handled by court administrators. Some judges think that they do not need to get involved in this or check with the court administrator what the interpreter is told.

Furthermore, we also asked the various stakeholders whether, in their view, the interpreter *needs to be* informed of a video link beforehand. Opinions on this are divided in each group, ranging from the view that it would be polite to inform the interpreter to the view that working in a VC should be part of an interpreter's routine and that the interpreter does not need to be informed of a VC link.

With regard to briefing the interpreter about the basic facts of a hearing, the emerging picture is rather uniform, albeit concerning. As a general rule, only few judges and police officers appear to understand the importance of briefing the interpreter, i.e. supplying the interpreter with the basic facts about the

case and there is a marked absence of any protocol for briefing a remotely located interpreter (see also Section 15.7 Communication Management). Interpreters thus work in video links with only a minimum of prior information, which is not conducive to overcoming some of the challenges in video links. Prior knowledge of the basic facts (including e.g. names) plays a crucial role in the interpreter's effort to form an accurate and complete understanding of what is being said. This is particularly important in video links where problems with the sound quality (see Section 15.2 Equipment) can make comprehension more difficult than in face-to-face interpreting and where the interaction with the VC technology forms an additional layer of complexity requiring an increased level of concentration on the part of the interpreter.

Operation of equipment during proceedings

In terms of operating the equipment during the VC session, three different patterns emerge. The court system in the **NETHERLANDS** uses a VC system with multiple screens, split screens and multiple cameras mounted in courtrooms and at remote sites (see Figure 5 below). The cameras are static, obviating the need for operating the equipment e.g. to switch, move or zoom cameras, during the VC. Given the high volume of VCs conducted in the Netherlands, it is felt that this is the simplest solution. The VC connection to the remote site is made by the court clerk. As all courts and remote sites use the same equipment, it is felt that there is no need for the continued presence of a technician. In case of technical problems and breakdowns, the VC system is restarted. If the problems persist, a technical helpline is available.



Figure 5: VC system in the Netherlands – 5a: in court; 5b: at the remote site (detention centre)

A more common model is the use of a small number of cameras (one or two) with pre-set positions and zoom functions (see also Section 15.2 Equipment) in court and one camera at the remote site. There may be one or multiple screens in court and one at the remote site. In this model, the camera work is normally managed by the court clerk. During the field work, it was often pointed out that the clerks select the images *'as required'*, but it was not clear how much knowledge the clerks had about interpreter-mediated communication and its requirement for participant/interpreter visibility.

A third pattern is that a technician is present during the VC. This is the practice currently adopted by countries with a low volume of VC. In **HUNGARY**, for example, judges felt that it would be difficult to operate the equipment while concentrating on the hearing. The long-term goal is, however, that judges receive training and take over the control of the equipment during the hearings. In **SCOTLAND** judges explicitly asked to be put in charge of the camera controls, and they are trained to operate the equipment.

All three models raise questions about the positioning of the participants and the interpreter, which is the next point.

Positioning of participants

In Section 1.5 (Participant Distribution), the discussion focused on the geographical location of the participants in VCs in legal settings. This section explores how the participants who are co-located at the same site position themselves in relation to the VC equipment and to each other and how the stakeholders perceive their own practice. As was pointed out in the discussion of the technical set-up in Section 15.2 (Equipment), the positioning of the co-located participants is conditioned by a number of practical constraints such as the number and position of cameras, the camera angle, the number and position of available microphones, the size and layout of the VC room. In prisons and some police stations, in particular, rooms are normally very small, and chairs may be bolted to the floor, imposing further restrictions on positioning and seating order. The interviews with the various legal stakeholders and with some interpreters suggest that there is uncertainty about the most appropriate position for the interpreter.

When the interpreter is co-located with the remote party, they normally sit next to the person for whom they interpret, and both face the camera. If a lawyer is present, s/he faces the camera, too (see Figure 5b above). This seating arrangements means that the triangle position which is characteristic of interpreter-mediated interaction is lost. Instead, the participants form a row in front of the screen and camera giving the impression that they ‘watch TV’ together. In court, this may lead to a perception that they all ‘speak with one voice’ and undermine the seriousness of the event. It also creates problems with sight lines and with the interaction among participants at the same site, who have difficulty monitoring all participants, i.e. simultaneously looking at each other and at the screen.

Comments from legal stakeholders were mostly confined to highlighting the small size of VC rooms in prisons and police stations, meaning that there is often not much room to manoeuvre, although one judge believed that the interpreter (at the remote site) should advise what the best position for her/him is. Strikingly, several judges were not able to remember whether they could see the interpreter, when the interpreter was at the remote site. The interpreters confirmed that they mostly sit next to the other-language speaker (in a line) when they are at the remote site but did not question or challenges this. In relation to working in a prison VC room, they emphasised that they prefer to sit close by the door for security reasons. On the whole, the analysis of the current seating arrangements suggests that current VC solutions were not designed with bilingual, interpreter-mediated communication in mind.

Because of their close spatial proximity to the minority-language speaker at the remote site, interpreters also take on additional tasks such as arranging the microphone for the minority-language speaker, which is not ideal as it gives the impression that the interpreter collaborates with the minority-language speaker.

The seating arrangements are also closely linked to the video **image that is sent from the remote site to the courtroom**, which is determined mainly by the size of the room, the participants’ distance from the camera and camera angle (see also Section 15.2 Equipment). It was often pointed out that it can be difficult to display all participants at the same time, and a number of *ad hoc* solutions were cited to improve the situation. These include rearranging the seats (where they are bolted to the floor), asking speakers to move into shot when they start their turn and displaying the only minority-language speaker, with the interpreter only being heard. A further reported solution is that the clerk in court moves the camera at the remote site from one speaker to the next. Some clerks explained that they select the view they believe is optimal and that they may decide not to focus the camera to the interpreter while the interpreter is speaking to avoid frequent switching between the party to be heard and the interpreter. In asylum hearings in **FRANCE**, the seating arrangement at the remote site as even adjusted to avoid frequent camera switches. Initially the interpreter was seated slightly away from the minority-language speaker but this arrangement was abandoned because it required frequent camera switches between the minority speaker and the interpreter. The interpreter now sits right next to the minority speaker, enabling the camera to capture them together. This is an example

in which good practice has been abandoned due to technological constraints. It may be possible to avoid such developments through a more appropriate system design, i.e. a design that starts from the requirements of interpreter-mediated communication.

Different issues arise **when the interpreter is located in the courtroom**. In this case, his/her position is mostly decided on an *ad hoc* basis by the court authority and can vary. Judges reported that in traditional hearings it is common practice for the interpreter to be seated next to the prosecutor or defence lawyer (if s/he attends in court), or to occupy the witness place/box if no witness is present in the courtroom. In the VC-based asylum hearings in **FRANCE**, two configurations were observed: the interpreter either stands up close to the bench in order to be captured by the camera and be visible at the remote site, or s/he sits between the presiding judge and the assessor. Similarly, informants in **HUNGARY** emphasized that courts participants always position themselves '*with respect for the camera*'. Interpreters in **ENGLAND** report that they are generally made to take the place next to the defence solicitor but that they are allowed some limited input into where they are positioned and whether they prefer standing or sitting down. The interpreters' comments from different countries confirm that **there is no standard solution for positioning the interpreter in the court room when there is a video link and that they have only limited input in the decision about their position.**

Judges and technicians emphasised that interpreters are normally allocated a position that allows them to see both the bench and the VC screen, and that there is flexibility for the interpreter, but are some discrepancies between these statements and the actual position of the interpreter in the courtroom shown in Figure 2 above (Section 15.2 Equipment), which led to poor visibility of the video screen. On the one hand, the interpreters' position is governed by technological restrictions (camera position, availability of microphone), which as pointed out earlier mainly result from the fact that the VC solutions are not designed with bilingual proceedings and interpreting in mind. Within these restrictions, it is the judge's assessment that decides on the interpreter's location, i.e. the interpreters are denied the status of a communication expert who would be able to choose and indeed advise on the most appropriate position.

Different approaches have also been adopted to selecting **the image the court sends to the remote site**. Clerks in **SWEDEN** report that this is normally their task with input from the judge. Clerks believe that in spite of their efforts to move cameras between speakers to select 'optimal' images, VCs do not allow for the same level of rapport between the judge and the party to be heard as a traditional hearing, in particular when an interpreter is required. When the legal stakeholders and the interpreter speak in quick succession, the clerks are not always able to follow with the camera, meaning the interpreter may not always be visible at the remote site. **SPAIN** In Spanish courts, by contrast, where video links are mostly used to hear remote witnesses, is usually the interpreter who is seen on the video screen at the remote site. In fact, the interpreter is sometimes expected to either move the camera or, failing that, to inform the remote witness of who is posing a question. According to the interpreters, this interferes with their task of interpreting. Given that witness examinations are often highly interactive question-answer sequences, the interpreters feel that they do not have the time or capacity to move the camera in addition to interpreting. Another striking outcome is that some of the legal stakeholders were not able to explain what exactly the remote side can see, especially whether or not they can see the interpreter, when the interpreter is in court.

Interpreters in **ENGLAND** reported that the immigration authorities have moved to a less formal set-up in which all participants including the interpreter in court sit at a half-round table during the video link enabling the camera to capture all participants and creating a more useful communication radius than is the case in settings where the interpreter sits in a line with the judge or lawyer.

When the interpreter is separate from all participants, i.e. in situations of remote interpreting, there are again other points to consider. At the Metropolitan Police in London, where remote interpreting is used regularly, the screen and camera is mounted to the wall in the interview rooms and is positioned perpendicular to the police officer(s) and the suspect. This leads to a situation whereby the

officer(s) and the suspect tend to look at the screen rather than at each other. Some interpreters have pointed out that this tendency is beneficial for them as it allows them to see especially the suspect frontally, which can facilitate comprehension. At the same time, most interpreters are aware that this clashes with the needs of the police officers who will want to see the suspect's face. Only one interpreter was adamant that suspects should look at her (i.e. into the camera) when they are speaking and that they *"should be given guidance as to which way to face when they're speaking"* in the video link. Apart from that, the interpreters emphasised that they would like to see the suspects' and officer's upper body and hands. Whilst this is possible in video links to the police stations, the interpreters were not consulted about the positioning of the equipment or any visibility issues prior to the implementation.

Self-view

Another contentious issue is the question of whether participants need to be able to see their own image, i.e. the image that is sent to the remote site, during the VC. The VC systems that were covered in this study normally offer the possibility seeing a self-view image (normally as a small picture-in-picture) according to personal preferences as well as the option to disable this image, according to personal preference. However, the views on whether this is needed differ both within and across the different informant groups. One group that commented on this were the judges. In **FINLAND**, for example, most judges dismissed the importance of seeing themselves during the VC. They feel that they can check their position in front of the camera before the start of the video link and do not need to look at their own image during the VC. By contrast, judges from **HUNGARY** and **BELGIUM** claimed that the self-view is useful as it enables participants to see what the other side sees.

A case in point is **ENGLAND** where both views in relation to this point coexist in relation to remote prisoners and witnesses. In England, they can normally see themselves, and interpreters who worked in such video links believe that this is as helpful for the remote participants as it is distracting. At the same time, a picture-in-picture is not always provided in court in these video links, which means that interpreters do not know what pictures are sent to remote site and whether or not they are visible at the remote site when they are interpreting (see also below).

Regarding the interpreters' perceptions about having access to their self-image, the same discordant arguments were presented, thus making it difficult to obtain a clear picture of their preferences in this respect. When present, (e.g. **NETHERLANDS**) interpreters have rejected the usefulness of a self-view in some cases, claiming that they do not want to see themselves in it. In other cases however, the lack of a self-view generates some discomfort among interpreters. This is the case of **ENGLAND**, for instance, when interpreters are located in courts without access to a self-image. The interpreters' general assumption is that they get some level of visibility at the remote site given their relative position to other speakers, such as the prosecutor or the defence lawyer. However, the uncertainty over whether they can be seen or not is likely to add layers of anxiety, doubt and unnecessary cognitive load to the interpreters' task.

In general, there seems to be insufficient awareness of the importance of a self-view in the unfolding communication. Being aware of what the remote site can see is crucial in video-mediated communication, where the physical separation of the participants modifies one of the main tenets of face-to-face communication, i.e. their immediate grasp of what the other party can see. It would therefore appear that the self-image is a useful monitoring tool, although only systematic testing of whether, when and how the self-image is used by VC participants will finally resolve this question.

Visibility of the interpreter

Another complex key issue emerging from the interviews is related to the visibility of interpreters in the different settings and configurations, i.e. the question of whether and/or how an interpreter should be (made) visible on screen. As is the case with other themes, responses to this question vary greatly both in terms of actual *practice* and participants' *views and preferences*.

In terms of actual *practice*, there is a noticeable tendency to make the interpreter. One extreme case is that of **SPAIN** (see also Section 1.5 VC Management), where interpreters located in court become so visible that they are the only participant seen on screen, and consequently have to inform remote participants about who is saying what in court and are often asked to move the camera. These additional tasks, which fall outside the interpreter's remit, can have a clear impact on interpreter's performance as they add to their cognitive load. In the case of the interpreter being co-located with a defendant/witness at a remote site, observations carried out in **FRANCE** reveal that an effort is often made to fit the interpreter into the shot, for instance by using a dynamic camera shifting from the asylum seeker to the interpreter. Generally, the observations and information ascertained with regard to actual practice raise questions about who should operate the camera in bilingual proceedings when a dynamic camera is used and how the camera could best be operated to support the interactional dynamics and to integrate the interpreter. If a static camera is used, the question arising is how the interpreter can be included in the image.

In terms of informants' *views and preferences*, much of the discussion with the **legal practitioners** revolved around the configuration whereby the interpreter is co-located with the remote minority-language speaker. Legal practitioners from several countries (e.g. **HUNGARY**, **NETHERLANDS** and **BELGIUM**) believe that showing interpreters on the VC screen is crucial for the hearing, because the interpreters can, for instance, signal if there is a problem and generally 'work together' with the legal practitioners to handle the interaction. They also point out that not showing the interpreter in the video link would amount to telephone interpreting, which they strongly reject. This clashes with the view expressed by some judges in other countries that it is sufficient to hear the voice of the interpreter if the interpreter cannot be shown on screen. Yet other judges said that when the minority-language speaker and the interpreter cannot be shown on screen together (due to camera angle or room layout or other constraints), they would focus on the person being heard and only listen to the interpreter's voice. In other countries the judges interviewed could not always remember whether or not they saw the interpreter during their most recent video links. This reveals how marginal this issue is to some legal practitioners. As a result, the solutions that are currently implemented are shaped by technology-driven decisions rather than being informed by awareness of interpreter-mediated communication.

Interpreters also had diverging opinions. In **ENGLAND**, for example, some claimed that being able to see the interpreter is a 'basic right' of someone who is relying on an interpreter to communicate, while others think that they themselves represent '*just a voice transmitting from one language to the other*', and that their invisibility should therefore not be an issue for the remote participant. This reveals not only little awareness of their own role, but also of the importance of non-verbal cues in communication, especially when consecutive or whispered interpreting is used (i.e. the modes of interpreting most frequently used in a video link – see also Section 15.6 Modes of Interpreting below).

The interpreters' views on their own visibility are also reflected in their opinions on the rapport between the interpreter and the other-language participant. Mutual visibility was considered by some interpreters (e.g. **FRANCE**) as a way of contributing to the development of a mutual trust, and to give some serenity and reassurance to the minority-language speaker in an environment (VC) that reduces the interpreter's ability to establish an appropriate level of rapport with the remote participants due to technological constraints. Other interpreters, however, did not express the same need to create a rapport, as they believe their role is limited to transmitting orally communicated information (which links back to the low self-awareness view expressed in relation to communicative dynamics).

Among the arguments against the interpreter being visible (particularly in asylum and immigration settings) there was also the protection of the interpreter, which is particularly important in smaller language communities and has an impact on decision-making related to the interpreter's location (i.e. whether in court or in a separate space). In relation to asylum cases, some interpreters also invoke another reason for not being on screen. If visible, the interpreter has to monitor and control her visual appearances and her displays of emotion, which can be difficult in emotionally challenging situations.

As one interpreter put it, *“when we listen, we try to interpret, but at the same time we have to manage emotions... if a tear rolls down our cheek and we are not visible, then it does not matter.”*

Summary

One overall observation is that many judicial and law enforcement institutions do not use VC on a regular basis (yet) and that the instances in which it *is* used create some nervousness among all stakeholder groups. One judge, for example, commented that *‘video conferences are quite exceptional for us, so we are always a little bit nervous that everything is going well.’* Interestingly, the same judge had stated at earlier point in their interview that VC is *‘a normal procedure’* and that there is no difference between hearing a party in the courtroom or by video link. Such inconsistencies suggest that the implications of VC communication are not fully understood or acknowledged.

In terms of **how the VCs are managed**, the study has revealed several points. First, in the absence of clear guidelines about who manages the equipment during the VC and what is shown on screen, additional tasks—such as managing the microphone for the remote participants or informing remote participants of who is speaking in court—are implicitly or explicitly bestowed upon the interpreter. This points to a lack of understanding of the interpreter’s role boundaries and a lack of appreciation for the complexity of interpreting on the part of those in charge. It is in sharp contrast with the very vocal opposition of many judges to getting involved in the technical/operational management of the VC. Judges make it clear that they would not be able to focus on their job if they had to manage the equipment as an additional task. The same applies to interpreters.

Regarding the **positioning of the interpreter** during a VC, the uncertainty is most obvious when the interpreter is in court, i.e. when the physical separation of a witness or defendant from court entails that traditional practice of the interpreter sitting or standing next to the defendant or witness needs to be adjusted. The main point to note in this respect, however, is not so much that there is no standard solution for the positioning of the interpreter in this case, but that the interpreters themselves have only limited input in the decision about their position. **The interpreter as the expert for communication should be involved in the set-up phase prior to the VC** and be given the opportunity to discuss his/her positioning (and other procedural/logistical aspects) of the VC prior to commencing the hearing.

The other key point in relation to VC management is the **visibility of the interpreter**. In this respect, the opinions are divided not only between legal stakeholders and interpreters but also within each group. The **pro-visibility** group put forward two main arguments in favour of interpreters being visible: firstly, a **interactional** argument, which can be summed up as the need to see the interpreter to support the handling of the interaction (e.g. turn-taking dynamics); secondly, an **ethical** argument, which promotes visibility as being conducive towards creating mutual trust and building a rapport between the parties. The second group put forward three main arguments **against visibility**. The first is **role-related** and has to do with some interpreter’s self-perception as conduits of meaning. This perception is shared by some legal practitioners, who seem to largely disregard the question of interpreter visibility and/or to leave its resolution to technological conditions. Secondly, a **security** argument was put forward by some interpreters belonging to small language communities for whom visibility goes hand-in-hand with the possibility of being recognised and, potentially, threatened by other members of the same community. In line with this, not being visible is a matter of self-protection. Lastly, there is an **emotion-related** argument, where some interpreters have argued that not being visible can contribute to shielding themselves emotionally from delicate and potentially distressful scenarios (such as asylum hearings or hearings of vulnerable witnesses). Although the last two views against visibility did not emerge as particularly forceful from the interviews, they need to be taken into account. If they were to be taken up, they could potentially lead to one-sided visibility where the interpreter can see but is not seen, which would, however, not be ideal for the other parties.

All of these points need to be considered further to find effective solutions. Mutual visibility seems useful from a communication point of view, as it has the potential to create certainty and trust, and to make mutual monitoring possible; from a technological perspective, it also entails that all participants (including the interpreter) should have access to a self-view to monitor whether/how they are seen on the other side and adjust themselves accordingly. However, arguments for invisibility require attention as well. They could be resolved by moving the interpreter out of shot or by using extra sound channels to implement simultaneous interpreting (which does not require visibility to the same extent as consecutive interpreting).

Moving the interpreter off-screen may appear to be a simple solution but it would go against the normal expectation that speakers are visible in a videoconference (Licoppe & Dumoulin 2010). The implementation of simultaneous interpreting would require a three-way-video link. This solution would mitigate the problems of telephone interpreting, because the interpreter would be able to see the other participants, but it comes with its own problems and complexities, which are discussed further in Section 15.6 (Mode of Interpreting) below.

15.6 Mode of interpreting

In legal proceedings, the mode (or method) of interpreting traditionally varies according to what is being interpreted. In court, the utterances of the minority-language speaker are normally rendered into the official language of the court sequentially, i.e. by way of consecutive interpreting, so that all of the court can hear the rendition. Longer statements by the judge and others speaking the court's official language are rendered into the minority speaker's language simultaneously by way of whispered interpreting (also known as 'chuchotage'). In witness examinations and investigative interviews two-way consecutive interpreting is normally used. In addition, it may be necessary in any legal setting to interpret short written documents (sight translation). When the interpreter works via video link, some of this changes.

Current situation

One judge in **HUNGARY** felt that the interpreting mode was one of the biggest differences between traditional hearings and video links, as (whispered) simultaneous interpreting is almost impossible in a VC whilst being normal during face-to-face hearings. According to our observations and to the information collected from the informants, consecutive interpreting is indeed more frequent in video links and is used for all of the situations outlined above. The advantage is that this mode allows more easily than whispered/simultaneous interpreting for clarifications and interventions that may be necessary to ensure that the interpretation is accurate. However, whispered interpreting is possible in VCs when the interpreter is co-located with the person who requires the interpretation. In the discussion about the most appropriate location for the interpreter, this was mentioned repeatedly.

Whilst whispered interpreting is possible, a limited number of tests with this mode in the AVIDICUS projects suggests that whispered interpreting in a videoconference setting has its own dynamics. For example, the sound of whispering or speaking with a low voice is amplified when it is fed back through the microphone to the other side. Participants feel that this is disruptive. One alternative is to mute the microphone at the site where the whispered interpretation is delivered, but the silence that is then perceived at the other sides can be unnatural and lead to confusion. One judge in the **NETHERLANDS** reported that he regularly mutes the microphone at the remote site from his VC station when the interpreter does whispered interpreting. This may eliminate disruption through overlapping speech between participants in court and the interpreter, but it may deprive the interpreter of the opportunity to intervene quickly, e.g. for clarification. A better solution would be discuss the participants' expectations and preferences prior to the VC. If it is decided that muting the microphone while doing whispered interpreting is a good option, then it would be best to leave the interpreters in charge of muting their own microphones. Trained interpreters will be able to handle this (in contrast to the new technical tasks arising in VC such as operating a camera).

In the interviews, the technologically induced difficulties surrounding the use of whispered interpreting in video links were sometimes conflated by the judges' general attitude towards consecutive vs. simultaneous interpreting, which is divided. In **HUNGARY**, for example, one judge said that he understands the need to speak in short chunks in video links, whilst another judge reported that he generally finds consecutive interpreting is very disturbing, although he also acknowledged that it would be very challenging for an interpreter to work in simultaneous mode for a long period of time.

Similar considerations about simultaneous interpreting over extended periods of time were put forward by interpreters in **SWEDEN**, who felt in response to this that **the use of two interpreters would be helpful in VC-based proceedings**, i.e. one interpreter being in court and the other co-located with the remote witness or defendant. This would enable more simultaneous interpreting and speed up the proceedings. Their views may be shaped by the fact that the use of two interpreters in court is already common practice in Sweden for hearings which are expected to carry on for over 3 hours. Interpreters are very happy with this arrangement, which they believe works to the benefit of all parties by allowing interpreters to support each other in their task and deliver higher quality interpretation.

In **BELGIUM**, by contrast, the chosen interpreting mode is always consecutive. Legal professionals prefer this mode because they want to hear everything that is said and they believe it is chaotic to hear two voices at the same time. The attitude emerging in **FRANCE** was that VC facilitates the use of the whispered/simultaneous mode when the interpreter is co-located with the minority-language speaker, especially when the interpreter's microphone can be muted, but that not all interpreters are able to do simultaneous interpreting and that the use of different modes by different interpreters would introduce inequality and unfairness in the proceedings. A similar situation with regard to legal interpreters' ability to work in simultaneous mode arises in other countries. It raises question for training in legal interpreting. Although this is a wider issue, it is particularly important in relation to video-mediated interpreting, as the use of videoconference technology opens up the possibility to support simultaneous interpreting. This needs to be considered carefully. It will be discussed briefly in the next section.

Another point was made about the sight translation of written documents. It was pointed out that the need to translate written documents spontaneously may affect the interpreter's location unless document cameras are available in the video link.

Further options

While video links between a court and a remote minority-language speaker, where the interpreter is located at one of the sites, which was considered in the previous section, impose restrictions on the use of simultaneous interpreting, other configurations would make simultaneous interpreting a more viable option from a technical point of view. One of these is remote interpreting, i.e. the configuration whereby the interpreter is separate from the participants, who are together at one site. The other is the configuration whereby the court and the minority-language speaker are separate, and the interpreter is in a third location, i.e. a three-way video link (see section 15.4, Participant distribution). In these configurations, additional sound channels can enable either simultaneous interpreting in both directions or a combination of simultaneous and consecutive interpreting.

Simultaneous interpreting in both directions was piloted by Braun (2004, 2007) in a **three-way video link** with distributed primary participants and an interpreter in a third site. Although there were a number of practical problems, many of these were related to insufficient sound quality due to the use of an ISDN-based VC system. The study, which specifically investigated the interpreters' adaptation potential, shows that the options for adapting to listening comprehension problems induced by poor sound quality are limited. The higher concentration often led to cognitive overload and a reduction of the output quality, and to fatigue. By contrast, adaptation to the interaction was more successful, but despite the interpreters' perception of being pushed into a moderator role, their ability to manage

the communication was limited by the simultaneous mode of interpreting (Braun 2004, 2007). This point would need to be borne in mind in relation to legal communication, which is, to a large extent, dialogic, requiring coordination of the interaction on the part of the interpreter.

If the use of three-way video links with simultaneous interpreter were to be considered for bilingual VC situations in legal settings, several points need to be borne in mind. First, the technological basis would have to be enhanced to satisfy the requirements of the simultaneous mode of interpreting. Second, the simultaneous mode, which is normally used in monologic settings (i.e. interpreting speeches, into one language direction) would have to be adjusted to legal communication, which is mostly dialogic (i.e. speakers take turns and interpreters work in both language directions). One important point would be that the interpreters would still need to be seen so that the other parties know when they have completed their turn (e.g. a police officer waiting for an answer from suspect). Third, simultaneous interpreting is normally done in pairs, so that the interpreters can alternate. Hence, two interpreters would be required, at least for longer sessions. Fourth, simultaneous interpreting requires training of both interpreters, to acquire this specific competence, and legal practitioners, to raise awareness of the specifics of this mode of interpreting.

Another solution is **a combination of simultaneous interpreting (into the language of the minority-language speaker and consecutive interpreting (into the court's official language))**. This solution is used by the circuit courts in Florida in a setting where the primary participants are all in court and the interpreter is in a remote site, i.e. a **two-way video link**. The system also enables the interpreter to switch to simultaneous in both directions in order to interpret confidential conversations between a defendant and his/her lawyer during the proceedings. However, no evaluation of the system is currently available.

15.7 Communication management

Geographical distance as the overarching condition of videoconferences affects all aspects of video-mediated communication, including the participant distribution, the options for briefing the interpreter before the communicative event and giving feedback after the event, as well as the dynamics of the communication and its management during the VC.

Briefing

In terms of briefing, as was pointed out in Section 1.5 (VC Management), despite the tendency to inform interpreters that they will work in a video link, not much detail is provided. The general absence of protocol for briefing remotely located interpreters, which was noticeable in all countries included in this study, was compounded by the general reluctance on the part of many legal professionals to brief the interpreter, due to a prevailing misconception that briefing the interpreter would hamper his/her impartiality and/or would lead to breaches of confidentiality. The fact that qualified legal interpreters abide by a code of conduct which includes confidentiality as a key requirement seems to be either unknown or not trusted by legal professionals. By contrast, interpreters working in the European Court of Justice or in International Criminal Tribunals point out that they regularly receive all relevant documents in advance of the proceedings to ensure they can do their preparation work. This is one of the many discrepancies between the working conditions of interpreters in European and International courts and interpreters working in national courts. Given the prevailing negative perceptions about briefing the interpreter along with the absence of clear rules for the interpreter's location in video links between courts and remote parties (see section 4 Participant distribution), it is not surprising that protocols for briefing the interpreter when s/he works from the remote site have yet to be developed.

A slightly different situation arises at the Metropolitan Police, which uses remote interpreting for police interviews. Although officers' awareness of the importance of briefing the interpreter traditionally varies, the use of the video links may be an opportunity to provide a briefing in a more

systematic manner if it becomes part and parcel of the protocol for conducting video links with remote interpreters. However, the interpreter's remoteness also runs the risk of a perception that the interpreter can be switched on and off on demand and is available at the push of a button, cutting out all preparatory steps. Similarly, interpreters are keen to receive feedback from their clients and feel that this is less well possible in the video link as they get 'cut off' at the end of the VC.

Another approach is taken by interpreters in **SPAIN**, who report that they have contacted witness to be heard in cross-border hearings in order to find out which linguistic variety of a language they speak and to prevent comprehension problems. Interestingly, contacting the witness ahead of time is not seen to present any special problems as regards the integrity of the hearing.

Beginning of the VC

The point made above about the absence of protocols also extends to the beginning of proceedings involving a video link. Only one country reported to have a standard procedure for introductions at the beginning of the video link, in this case with remote witnesses (cross-border). According to this protocol, the presiding judge in the requesting court first introduces him/herself and the interpreter relays this. Then the remote site, i.e. the requesting court, introduces all those present at the remote site. After this introduction the witness can be heard. There was, however, no mention of interpreter-related points, e.g. how the interpreter is introduced and whether s/he is given time to speak to the remote witness (e.g. to carry out a language check). Observations from other countries show that the beginning of video links is sometimes unprofessional, because participants did not take the time to make and test seating arrangements in front of the camera. In some court-prison video links, for example, the court clerk introduced each of the main participants in court to the prisoner by pointing a camera manually at each of them in succession. This introduces an inappropriate element of informality which may affect the prisoner's perception of the hearing, especially when cultural differences come into play, e.g. when the prisoner is from a background where court proceedings are highly formalized.

During the VC

Communication management is closely linked to the characteristics of the communicative event in question, especially to its purpose and basic structure, i.e. whether the event mostly consists of a monologue or a dialogue, with the latter requiring continuous coordination between the participants about who is speaking, taking over the floor, reaching agreement (or agreeing to disagree) and closure, changing the topic and other aspects of communication. Each communicative event also comes with a set of rules and expectations about how it proceeds. All of this is particularly noticeable in, and relevant for, legal communication, which is mostly dialogic (police and immigration interviews, witness testimony) and often highly formalised, especially in the court setting. The question arising in relation to the combined occurrence of a video link and a bilingual setting is to what extent the communication management is affected by the technological mediation. The analysis of the interviews conducted in AVIDICUS3 suggest that communication management is one of the areas where there were strong discrepancies between the different groups of informants, especially judges and interpreters. Judges generally feel that there are no big differences between a face-to-face setting and a VC setting in terms of communicative dynamics, whilst interpreters highlighted a wide range of communication problems that they regularly encounter in video links.

One concern raised by interpreters is linked to the quality of the videoconference and transmission, and has to do with **audio/video quality which is deemed insufficient for the interpreter to carry out their task confidently**. Experienced interpreters have pointed out that they will notify the court of the impossibility to proceed with the interpretation in this situation but some of them feel that less experienced interpreters may not yet have developed the confidence to do so and/or fear that intervening is perceived as unprofessional, and that this could jeopardise the outcome of the hearing.

This is an example of how the technological environment affects the communication management strategies that interpreters select (or otherwise). Although non-intervention on the part of interpreter can be observed in traditional proceedings, the problem is compounded in video links due to a dilemma for the interpreter especially when working from the remote site. Interpreters are generally aware that their **verbal interventions from the remote site are perceived as being disruptive** in the court room, but at the same time, verbal interventions are **necessary in video links to gain the court's attention because visual signs such as the interpreter raising their hand may go unnoticed**.

As was pointed out in Section 15.4 (Participant distribution), interpreters working from the remote site often feel that they are 'forgotten' by the court and that they have to be more forceful than when they are in court. This is problematic because it can increase the interpreter's visibility and draws attention to the technological environment, interrupting the flow of the proceedings and reducing the feeling of co-presence.

One explanation for the disruptive feel of verbal interventions in video links lies in the slight transmission delay due to signal latency in most video links. The delay means that short interventions from the remote site, such as requests for repetition or clarification, designed to fit in a small pause by the speaker, may cause **overlapping speech between the interpreter and the speaker in the court room**. Moreover, speech from the remote site is amplified by the loudspeakers, making it next to impossible to speak with a low voice to minimise disruption.

Similar problems arise from the occurrence of **overlapping speech between the participants in court** (e.g. a defence lawyer and judge) and **between a participant in court and a remote participant**. In those cases, interpreters find the flow of the proceedings difficult to follow, especially when they are located at the remote site. Given the problems with intervening outlined above, they also find such situations difficult to resolve. A typical scenario is that overlapping speech is followed by a pause before two participants in different locations, in an attempt to resolve the 'deadlock' situation, begin to repeat their previous utterance simultaneously, causing further overlap (see also Braun, 2007). This problem may be exacerbated in legal communication. When participants speak fast and/or are agitated, or when they are not used to working with, and pausing for, an interpreter, overlapping speech is likely to occur.

Apart from these points, interpreters have also pointed out that the management of the communication very much **depends on the individual judge** chairing the proceeding and their approach to interpreter-mediated hearings. Some judges are very proactive in the management of the communication flow and in guaranteeing that the interpreters get adequate time to carry out their task. In one of our observations, for example, a judge asked a remote witness to stop swinging in her chair pointing out that the swinging would change her distance to the microphone and thus an impact on audibility.

Other judges, however, use the technology to temporarily suspend remote participants and/or interpreters from being heard. As reported earlier, one judge explained that he often mutes the remote site when the interpreter does whispered interpreting, but whilst this may prevent disruption from the interpreter's voice being heard in court, it also makes it more difficult for the interpreter to intervene (as highlighted in Section 15.6 Mode of Interpreting). Furthermore, it was reported from the court-prison setting that the VC technology is used to mute the prisoner in order to prevent potentially inappropriate remarks (swearing) from the prisoner to be heard in court. This practice is rooted in an underlying perception that the prisoner is there only to listen to what the court has to say, which is debatable.

15.8 Conclusions

The main outcomes of the interviews with institutional representatives and individual stakeholders and the observations of bilingual proceedings are as follows:

1. Current videoconferencing facilities implemented in the justice sector have undergone little or no adjustment to account for the *current* requirements of bilingual proceedings with an interpreter (i.e. mostly two-point videoconferences with one interpreter);
2. There is little evidence of provisions being made for more complex set-ups that are likely to play a role in the *future* (e.g. multi-point videoconferences, settings with more than one language pair/interpreter; simultaneous interpreting);
3. Interpreters generally feel that their *specific* requirements for delivering a good-quality interpretation (e.g. audio and video quality) are not always fully understood and taken into account in videoconference situations;
4. The complexity of combining interpreting and videoconferencing is generally underestimated by institutional stakeholders and legal practitioners.

There is thus a risk that the general tendency of expanding the use of videoconferencing in the justice sector, which is likely to lead to more diverse applications and configurations of videoconferencing, does not sufficiently embrace bilingual, interpreter-mediated videoconferencing. This is of particular concern in light of current levels of migration and multilingualism in Europe.

Adding to this picture is the general inconsistency of the interview responses in relation to several key issues for bilingual videoconferencing. Strong discrepancies in the stakeholders' views are noticeable in their perceptions of the most appropriate location for the interpreter both geographically (i.e. in relation to the location(s) of the main participants) and in relation to the technical equipment. Other points of contention include the visibility of the interpreter on screen and the mode of interpreting. This section of the Research Report has highlighted the discrepancies between stakeholders' views in relation to these points in detail, but it is worth reiterating that they emerge not only across different groups of informants (e.g. interpreters and legal practitioners), but also within the same group.

A further noticeable trend in the responses is that interpreters are neither fully acknowledged as experts in matters of communication, nor do the interpreters themselves appear to demand this acknowledgement very forcefully in videoconference settings. The denial of expert status is particularly apparent from the fact that interpreters or interpreter associations are not systematically involved in decision-making and implementation processes pertaining to videoconferencing facilities, nor in setting up individual video links, and that their input into decisions about where they sit or stand during the video link and how they deliver the interpretation is limited. At the same time, not all interpreters feel confident in filling this expert role in videoconferencing settings.

The inconsistency in the informants' responses and the issues arising with the interpreter's expert status are indicative of the currently low level of awareness of the specific affordances, complexities, challenges and constraints of bilingual videoconferencing. There is therefore an urgent need for more collaboration among different stakeholders in order to establish a common *knowledge base* and a *modus operandi* to ensure that the basic requirements for successful bilingual communication in legal settings are understood and met in the most efficient and consistent way possible, while accounting for the specificities of each setting.

The overall conclusions of this report (see Section 17) will elaborate on these points and outline the implications of these findings along with the findings from the second part of this research, i.e. the observational study and qualitative analysis of authentic videoconference-based, interpreter-mediated asylum hearings in the French national asylum appeal court, which will be reported in the next section.

16 Qualitative Analysis of bilingual videoconferencing

16.1 Introduction

This research is based on intensive fieldwork in one French administrative court, the national asylum appeal court (CNDA), which deals with all appeal asylum cases in France. We conducted a video-ethnography of multilingual courtroom proceedings in this court for one year. A research agreement with the court allowed us to record the hearings in instances in which video links were used, subject to the consent of all individual participants. Video recordings were supplemented by our direct observations of both VC hearings and co-present hearings with interpreters.

This specific court was chosen for two main reasons. First, dealing on a daily basis with asylum seekers, this court has a regular and intensive use of interpreters, so that hearings there are massively multilingual as opposed to criminal courts where the presence of interpreters is occasional. Second, the appeal asylum court has introduced progressively the use of videoconference (VC) to deal with asylum seekers in overseas territories, rather than setting temporary courts there: French Guyana (Spring 2014), Mayotte (June 2015), Martinique (January 2016). When we started the observation in autumn 2014, the VC link was used two half days a week with French Guyana, and since June 2015 one day a week for applicants in Mayotte. Such a systematic use of VC for all applicants in overseas territories is quite unique in the French justice system. In criminal appeal courts for example, VC facilities are used irregularly, depending on local magistrates, and quite rarely with an interpreter involved. It is more common to extract the defendant and get him to court in such cases. The CNDA therefore offered an almost unique opportunity for the AVIDICUS 3 project, allowing researchers to observe, record and analyse in a systematic way actual courtroom instances where an interpreter is involved in a remote hearing.

After a presentation of the setting and the methodology used, we will first discuss questions surrounding the placement and the visibility of interpreters in video-mediated courtrooms. We show how a distinctive grammar of visual practices is used on a moment-by-moment basis to produce some visual order in the VC-mediated multilingual hearing. We show how participants orient to some basic principles of video-mediated communication and adapt them to that kind of setting. We discuss in particular more specifically the question of the (in)visibility of the interpreter and show that courtroom personem operate according to two maxims regarding the visibility of the interpreter in VC-mediated hearings.

- When the interpreter is involved in the courtroom interaction and can be deemed a speaker or a direct recipient of the courtroom talk, then she should be visible.
- When the interpreter is made visible, she should be shown together with the co-present party she is interpreting for, at least whenever it is possible.

So when the interpreter is in the same site as the asylum seeker (in our case the remote site), the interpreter is shown on screen within him/her, i.e. with the foreign language speaker. When the interpreter sits in the courtroom and away from the second language speaker, it may not always be possible (according to where she sits) to figure her. In the same shot as the particular legal professional she is interpreting for at the moment. Then we may see the person responsible for the camera having to move it from one to the other. We will also show that judges seem to differ regarding their opinions on these matters. However, once the hearing is under way, and things are managed on a moment-by-moment basis, participants fall back on these everyday principles of video-mediated communication (VMC), making the visibility of the interpreter when speaking/listening an expected feature of such VMC hearings.

Next we argue that interpreters in VC settings have to attend other concerns besides the multilingual talk and some of them being specific to such settings. They are not just interpreting; they are involved in the local management of the flow of activity, and especially talk for the hearing, i.e. what we might

call the ‘interactional engineering’ work through which a proper hearing may be recognizably accomplished. So for example, when the interpreter is on the side of the court (where one and only one microphone has to be switched on at a given time), she has to become skilled in the delicate coordination work required to switch microphones on and off in line with the immediate requirements of turn-taking. On the other hand, when interpreters are located close to the asylum seeker, we show how they tend to help them with the management of microphones because of their physical proximity even if they are not expected to do so.

In a multilingual hearing, the management of turn-taking is intertwined with the constraints introduced by the consecutive interpreting of successive turns, particularly question and answers both questions and answers (Q/A) during interrogation. We will discuss how the production of long answers by the asylum seekers may strain the organization of consecutively interpreted Q/A sequences, leading in particular to a potential concern for the interpreter: either letting the speaker go on with her turn, with the risk of losing some information in the interpretation, or signaling her to stop in order to keep the talk into manageable chunks, but with the risk that the speaker might lose the floor to her questioner at the end of the interpreted response. Interpreters use a whole range of different resources to regulate turn taking and cue the asylum seeker: from small embodied gestures to explicit and interruptive verbal instructions, but in a way which as we will show, also depends on their position (close to the previous speaker or ‘far away’). For instance, if far away, interpreters have to rely on more interruptive practices to signal the second language speaker. Sometimes a judge may also interrupt the asylum seeker to prompt an interpretation. We show that when the interpreter is close to the asylum seeker, the latter has more chances to take back the floor after the interpreter has translated her response. However, when the interpreter is remote and the interpreter or a judge interrupts the asylum seeker (and this even when she is told she will get the floor back), it is often the case that the judge takes back the floor to ask a new question.

16.2 Fieldwork and Setting

A research agreement with the CNDA, allowed us to video record with the agreement of the participants involved in the hearings. We recorded hearings from the court using three cameras displayed in the courtroom (cf. Figure 1).



Figure 1 Camera recording setting

The distributed position of the cameras in the room enhanced the quality of the sound recording. Two cameras were focused on the two video screens displaying both how the court is made visible to the remote site and the screen displaying the remote site (cf. Figure 2).

Qualitative Analysis

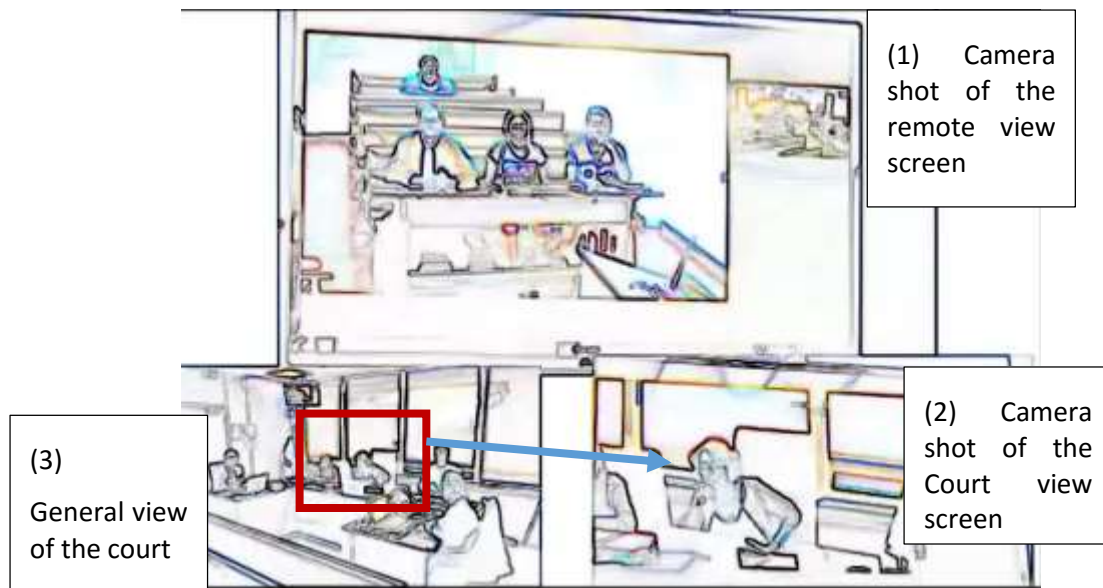


Figure 2 Synchronized view of the three cameras

We recorded around 36 hearings and around 300 cases. We were able to observe and analyse in a systematic way instances in which an interpreter is present in the hearing, which was almost always the case.

These recordings, supplemented by extensive fieldwork (participant observations, interviews), provided us with the opportunity to compare two main configurations regarding the interpreter's position.

In the first configuration, the interpreter is located in the remote site within the asylum seeker (cf. Figure 3). The interpreter is seated close to the asylum seeker. This configuration is the main expected configuration for VC.

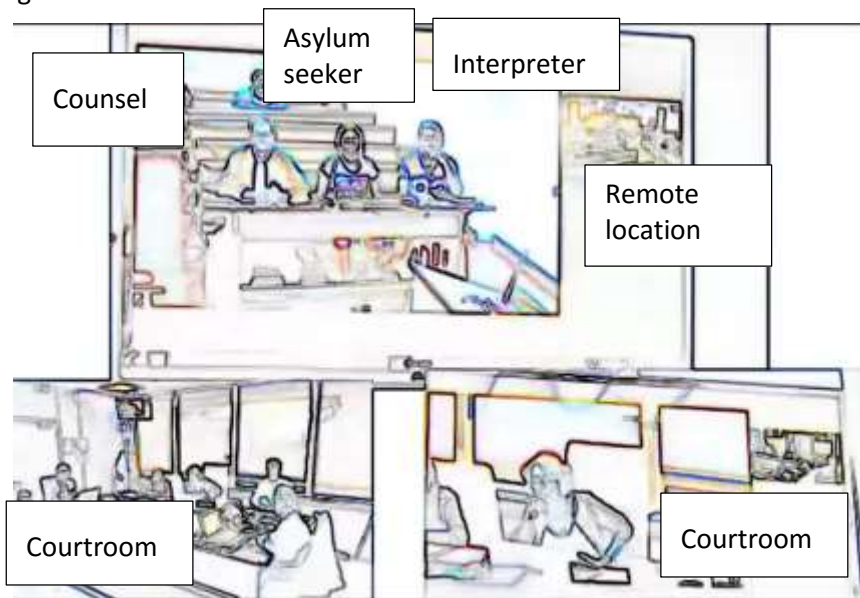


Figure 3 Spatial configuration with the interpreter close to the asylum seeker and remote from the court

However for different reasons (security, no interpreter available on the remote site), it happens that the interpreter is located in the courtroom (cf. Figure 4).

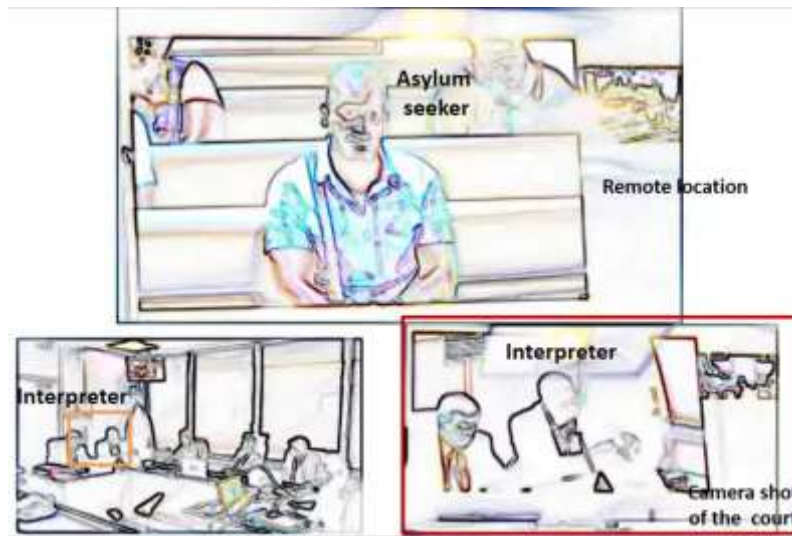


Figure 4 Interpreter located in the courtroom, remotely from the asylum seeker

We made transcriptions based on the conventions of Conversation Analysis with the help of different native speakers for the parts others than French.

16.3 Managing the (in)visibility of the interpreter

In this specific setting as in many courts, all participants on the courtroom side cannot be visible at the same time otherwise, everyone will appear too small. The person in charge of VC is responsible for producing an appropriate visual framework of the court, that is determining who should be visible at a given juncture, and thus displaying visually her understanding of the relevant participation framework at that moment. Though the clerk holds the remote control, such audio-visual 'direction' is also a collaborative work as far as all participants continuously attend to the screen and assess the relevance of what is shown on the screen with respect to the ongoing courtroom talk on a moment-by-moment basis. This is a joint concern made visible through the camera work of the clerk, but also when various participants notice a trouble regarding what they see at a given time and request a "repair". They make sense of what they see as accountable with respect to the unremittingly achieved visual order of the VC-mediated hearing.

Expected visibility of relevant participants

A first example will show the work of the clerk to produce an appropriate image of the court. We will see how participants are sensitive to the framing of video related to the moment-by-moment unfolding of the activity. The sequence occurs at the beginning of a hearing. A few minutes before the excerpt the VC link was launched. After connection, a large view of the court is displayed on screen (cf. Figure 5). Such a large initial view of the court is common at the beginning of a hearing. It enables the court to have an overview of the remote site, including the public.



Figure 5 Initial view of the court

As the remote site appears on screen, the president starts to greet (line 01). Generally, at the beginning of a hearing day, initial greetings are responded by the remote clerk (or the interpreter) as far as present applicants and counsels are seated on the public side. In this example, a counsel, his client and the interpreter are already seated on the bench, ready for their case, before even being called by the clerk⁶⁷.

The counsel answer to this first salutation in a very low voice probably speaking far from the microphone. The counsel and her client are on screen but it's quite difficult to determine who is speaking because of the large shot (cf. Figure 5). The president reinitiates a salutation with an identification of both the previous speaker and his client, ratifying their participation. The counsel and his client are at this point made relevant to the current action and participation framework.

In this environment the president produces an assessment of the visual framework (l. 6): "I don't see anybody". This comment is heard as a request to repair an inappropriate framing. Participants are not only expected to appear on screen, but they should be visible in a specific way. This example highlights one of the generic principles at work in VC link. Current speaker should be visible on screen as big as possible with at least his full face visible.

Extract 1 Part 1

PR: presiding judge; CO: counsel; RCL: remote clerk.

01. PR **bien bonjour**
well hello
02. (1.2)
03. CO °°**bonjour madame la présidente**°°
hello Madam the president
04. (0.6)
05. PR **bonjour maitre bonjour madame (0.7) °°bonjour**°°
hello maitre hello madam hello
06. (0.4) **on voit je vois pas je vois personne**
we see I don't see anybody
07. (3)
08. RCL **excusez-moi madame la président est-ce que nous**
Excuse me madam the president can we
09. **pouvons faire une interruption parce que la**
make an interruption because
10. **caméra ne zoome plus**
the camera do not zoom anymore
11. PR **c'est ce que je remarque d'accord y'a pas de**
That's what I'm noticing ok there is no
12. **problème**
problem

The remote clerk justifies her camera shot explaining a technical trouble within the camera zoom feature. She asks permission to relaunch the system (l.8-10).

A few minutes later, a new connection is launched (Extract 2). On the court side, the initial default view of the court is a medium shot of the associate judge next to the clerk (cf. images l.4 in Extract 2). However, as the VC link is restarted, the deputy judge is not relevant for the ongoing activity. A conversation is engaged between the remote clerk and the invisible president. The deputy judge on screen points to the clerk the VC screen displaying his own image (l.4). The clerk consecutively initiates (l.5-7) a camera motion focusing on the current speaker. The production of video shot is a joined concern for all participants.

⁶⁷ Even if the order of cases is not determined in advance, there is a tacit order to give priority to applicants with counsel to start (and cases without counsel and applicant last). This explains why the counsel is already probably seated with the permission of the remote clerk.

Extract 2 Part 1

PR: presiding judge; CO: counsel; RCL: remote clerk; AJ: associate judge; CL: clerk on the side of the court.

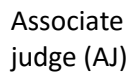
PR: presiding judge; CO: counsel; RCL: remote clerk; AJ: associate judge; CL: clerk on the side of the court.

01. RCL vous nous voyez mieux là/ [je]
 you see us better now I

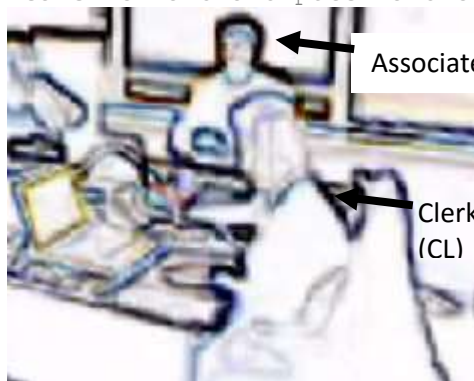
02. PR [ou::]ui
yes

03. RCL [en fait j'ai toujours] un problème de caméra mais bon
 in fact I still have a camera issue but well

```
04. AJ      [ (                ) ]
           %AJ      %points feedback screen
```



```
05. PR      mais c'est mieux
            but it's better
*CL        *leans forward and puts hand on control panel
```



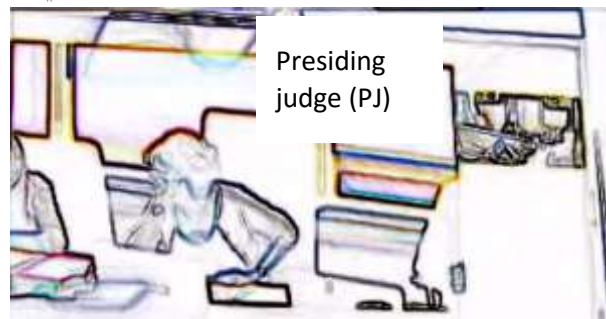
06. RCL on fera avec je pense
we'll make do I think

07. PR oui (0.9) #ah pardon \$(0.3)# heu oui je vous remercie c'est
Yes ah sorry uh yes thank you it's already

```

Spr                                     $switch on mike
#cam                                # <<<                                #

```



08. mieux déjà (0.6) merci (0.9) ça ira/
better thank you is it ok

So relevant participants are expected to appear on screen as big as possible with at least his full face visible. This generic maxim has implications for the interpreter: if he is deemed to be a “speaker” or a “recipient” when interpreting, then he should be visible.

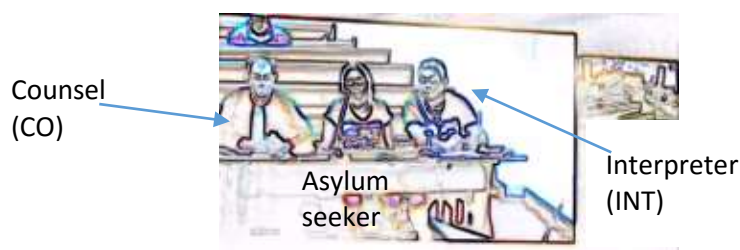
Qualitative Analysis

In the example, the counsel, his client and the interpreter are sitting together on the same bench. The VC link was relaunched in order to be able to zoom in. We will show that the clerk is involved not only in showing big enough the three participants, but she is sensitive to the moment to moment participative framework.

The remote clerk starts to zoom in focusing on the three participants. The president produces a positive evaluation of the camera shot (I.12), projecting a transition toward the start of the hearing. The clerk continues to zoom in (I.12-13) and moves the camera excluding the counsel from the image. As the president produces a new salutation (I.14) addressed to the asylum seeker and to her counsel, who is not shown on screen anymore.

We can notice that the clerk reintroduces the counsel on screen (l.15-16) (cf. Figure 6).

Figure 6 video shot of the remote location from Extract 2 line 16



Extract 2 Part 2

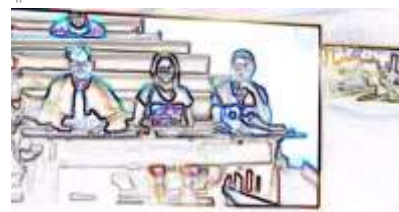
08. mieux déjà (0.6) merci (0.9) ça ira/
 better thank you is it ok
09. (0.3)
10. AJ #mmm mm #
11. (0.5) #
 Rcam #Zoom in #



12. PR ah beh là voilà c'est très #bien (0.3) ah# (0.4)
ah er here well it's very good ah
Rcam # >> #



```
13.      .hh (0.4) .hh voilà (0.8) #bien bonjour# (0.5)
           here it is      well  hello
Rcam      # zoom in      #
```



14. #bonjour madame# (0.3) bonjour maitre (0.2)

Qualitative Analysis

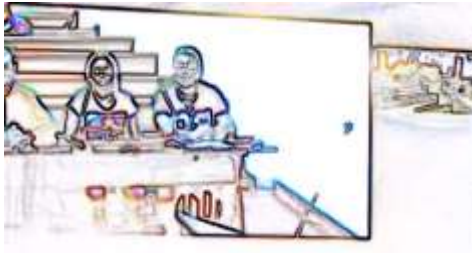
hello madam # hello maitre #



15. **bonjour #mon[sieur l'interprète]#**
hello mister the interpreter

16. AS **[bonjour]**
hello

#Rcam # <<< #



17. (1)
18. PR **[monsieur le rapporteur]**
Mister the rapporteur
19. CO **[bonjour madame le président]**
Hello Madam the president
20. **#(1.2)#**



21. PR **monsieur le rapporteur vous avez la parole**
Mister ther rapporteur you have the floor

22. (0.6)

23. RAP **merci #madame la présiden:::te:::# maitre bonjour#**
Thank you madam the president maitre hello

#Rcam # down # up #



24. **madame bonjour #monsieur l'interprète bonjour#**
madam hello mister the interpreter hello
#Rcam # zoom in #



25. (1.5)
 26. ((bruit de téléphone, Salutation de INT inaudible))
 27. (0.6)
 28. dans sa demande initiale
in her initial application

After this sequence of salutations, the president gives the floor to the rapporteur (l.18-21). The clerk produces her initial shot focused on the asylum seeker and the interpreter, excluding the counsel. In doing so, the counsel is treated as a non-participant at this stage of the hearing. On the other hand, the interpreter is made visible with the co-present party she is expected to interpret for, treating her as a relevant participant.

The production of a visual order in court involves that participants are expected to be visible on screen. This visibility is organized on a moment-by-moment basis and has to be managed on this basis.

Spatial configurations and visibility of the interpreter

We will discuss in the following how the issue of the visibility of the interpreter arises in two different spatial configurations: whether the interpreter is on the side of the court or on the side of the asylum seeker.

When the interpreter is on the same location with the asylum seeker, a general practice is to display the interpreter with the co-present party she is interpreting for. In this configuration the interpreter can be made visible continuously without any camera motion when relevant (cf. Figure 7).



Figure 7 Typical camera shot when the interpreter is on the remote site with the asylum seeker

In some cases, the interpreter is present, but not fully participating. It is the case when an asylum seeker asks for an interpreter but choose to speak in French. The judges generally ask the interpreter to stay just in case. In such setting, the remote clerk might focus on the asylum seeker and to exclude the interpreter like in Figure 8



Figure 8 Hearing with a French-speaking asylum seeker assisted by an interpreter

When the interpreter is on the side of the court, his placement is a practical issue. The usual placement of the interpreter in face-to-face hearing does not allow him to be visible on screen. A specific placement has been designed between the rapporteur and an associate judge in order to be possibly shown on screen (cf. Figure 9). However, this configuration raises two issues. First, showing different participants at the same time produces some affiliation to the current activity. In this perspective, showing the interpreter “on the side” of the court might be a concern. Second, the interpreter cannot always be shown within the co-present participant he is interpreting for. In Figure 9, we can notice that, for example, one of the two deputy judges is too distant to be shown with the interpreter on the other side of the room. This spatial arrangement leads to different options:

- a continuous work of the clerk to show alone the current speaker;
- the production of a large shot including both the interpreter and the questioning judge;
- not showing the interpreter at all;
- a mix of the previous options.

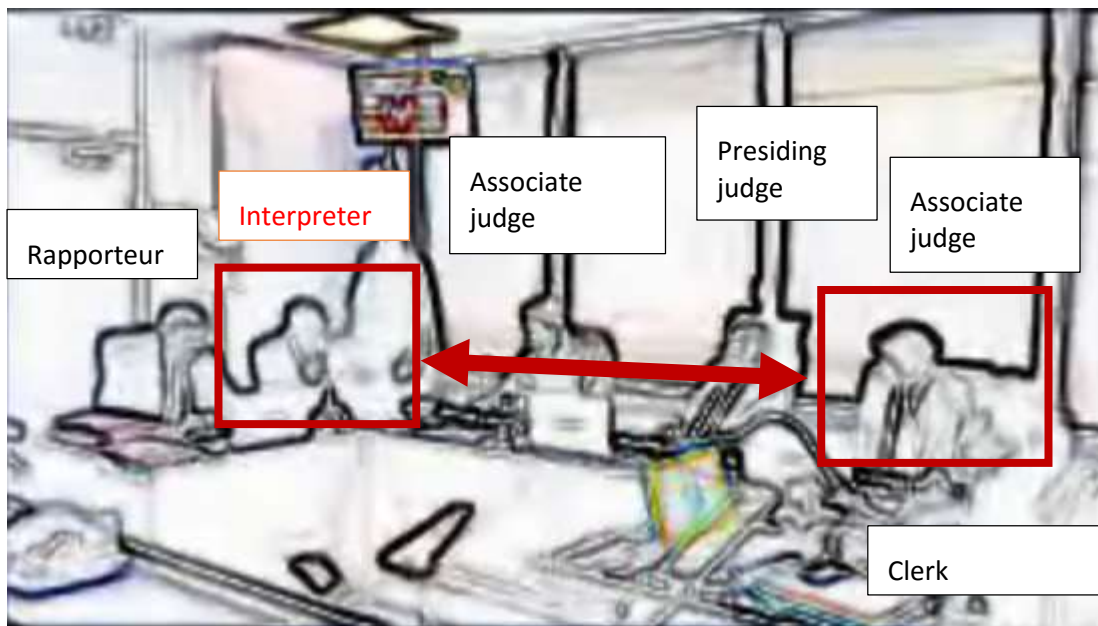


Figure 9 Position of the interpreter in court

Contradictory views on the visibility of the interpreter when located in court

The spatial arrangement leads to different options, and judges display different views concerning the visibility of the interpreter when they are placed on the side of the court. We will show two situations in which the presiding judges explicitly topicalize the management of the visibility of the interpreter. A first presiding judge insists that the interpreter should be not only visible on screen, but that he should be shown alone in order to make public his independency from the court. Another presiding judge sustains that showing the interpreter is not a concern, and showing him once is enough.

In the first case (Extract 3), the presiding judge was discussing the placement of the interpreter in the court in between the rapporteur and the associate judge before the hearing starts. In this extract, she is addressing the associate judge prompting her to move a bit when the interpreter will speak in order not to appear on screen with him. The president explicitly explains how the interpreter should appear on screen during the hearing: “when he [the interpreter] speaks [...] he absolutely needs to be in full screen uh exclusively him” (l.1-5). This statement shows first that the interpreter is considered as a full participant and should be made visible. However according to this president, the interpreter has to be shown in a specific way: separate from the court.

Extract 3 Visibility of the interpreter as Independent from the court

01. PR **ce que je vous demanderais c'est quand il va parler**
what I would ask you is when he speaks
02. AD **on le verra**
if we see him
03. PR **non non simplement (0.3)**
no no just
04. **de bouger un tout petit peu parce que (0.3)**
to move a little bit because (0.3)
05. **il faut absolument qu'il soit plein champ (0.7)**
he absolutely needs to be in full screen (0.7)
06. **heu exclusivement lui pour bien montrer que (0.4)**
uh:: exclusively him in order to make clear that (0.4)
07. **il est totalement indépendant de la formation de:: jugement**
he's completely independent from the judgement's formation
08. **(0.8)**
09. **de même lorsqu'on aura un gros plan sur l'avocat (0.5)**
likewise when we have a close shot on the counsel (0.5)
10. **pour le requérant c'est rassurant y'a son avocat**
for the asylum seeker it's reassuring to see his counsel
11. **(0.2) il est tout seul il est dans un espace dédié**
(0.2) he's alone he's in a dedicated space

This point confirms that the persons on screen are seen as relevant in some way toward the ongoing activity. Showing the interpreter with a member of the court could be interpreted as a form of affiliation of the interpreter within the court. This form of affiliation is seen as inappropriate by the presiding judge.


However, the visibility of the interpreter is not expected by all the presidents. In another hearing, the clerk complains, between two cases, that her remote colleague continuously requests through texting to display the current speaker fully on screen, especially the interpreter. At this point the president explains his views on the management of the camera during the hearing (Extract 4).

Extract 4 Showing once the interpreter in the hearing is enough

PR: presiding judge; CL: clerk; AJ associate judge

01. PR **[non non à mon avis] (0.4) heu**
No no in my opinion uh
02. CL **[heu ça bloque]**
Er it does not work

Qualitative Analysis

03. PR à mon avis (.) vous laissez ça comme ça
In my opinion you let that as it is here
- 
04. (0.5) le rapporteur (0.3) vous allez la prendre
 The rapporteur you will film her
05. et après heu:: la rapporteure (0.4)
 and then er the rapporteur
06. heu::: on va essayer::: (0.5) heu ah oui
 er we will try er oh yes
07. y'a l'interprète y'a l'interprète qui
 there is the interpreter there is the interpreter that
08. va poser problème
 will be an issue
09. (0.4)
10. CL non parce que elle elle veut que à chaque fois
 No because she she wants that each time
11. que l'interprète interprète (0.6) que ça soit
 the interpreter interprets that the camera is
12. sur l'interprète heu:: quand c'est le
 on the interpreter er when this is the
13. Président
 President judge
14. AJ ben c'est normal aussi
 This is all normal
15. (1.9)
16. PR oui heu non (0.2)
 Yes er no
17. AJ non c'est pas possible
 No it's impossible
18. PR non non heu
 No no uh
19. CL [ou faire large cour]
 Or to make a wide shot of the court
20. PR [heu je vous donnerez] vous avez l'interprète (0.2) une fois
 Er I you will give you have the interpreter once
21. (.) et après vous restez à nous et il traduit (0.4) d'accord/
 And then you stay on us and he interprets ok/
22. (1.4)
23. la première fois qu'il voit que qu'il existe
 the first time that he sees that he exists
24. (1.2)
25. il parle et après c'est l'autre
 he speaks and then it's on us
26. qu'en pensez-vous/ madame heu
 what do you thing madam er
27. (0.2)
28. moi ça me va bien non mais sinon on va pas (0.5)
 me I'm okay with that no otherwise we won't
29. sinon on va pas s'en sortir d'accord/
 otherwise we won't be able to manage ok/

The president produces a scenario for the management of the camera during the hearing. The camera will be focused firstly on the rapporteur. At this point, the presiding judge realizes that in the next sequence of activity, the question and answer sequence, the interpreter “will be an issue” (1.7). The

clerk explains the request of her colleague: showing alone consecutively all the speakers that is to say the questioning judges and the interpreter.

The presiding judge disagrees with this continuous work of the clerk and proposes a solution: the interpreter may be seen once to show that he exists. The presiding judge view on the visibility of the interpreter is very different from the previous one. He does not see the visibility of the interpreter as something required and necessary.

The two extracts display different positions concerning the visibility of the interpreter displaying different concerns. On one side, there is a practical concern on the constraining work of managing the camera continuously. On the other side, a concern on how the interpreter is shown might affect the perception of his independency toward the court.

Both views have been made before the hearing starts or between two cases. Once the hearing is under way, we will show that everyday principles of video-mediated communication make the visibility of the interpreter when speaking/listening an expected feature of the hearing.

Managing visibility on a Moment-By-Moment basis

We will analyse two sequences extracted from the two hearings where the presiding judges expressed their view. We will show that whatever are the judge's theoretical discourses on the visibility of the interpreter, the management of the camera is co-produced locally by the clerk and the participants. This means that the everyday principles of videocommunication are more relevant for the management of the camera in practice. First, we'll argue that participants in the courtroom has the right to request the current speaker to be shown on screen independently from the presiding judge view on the visibility of the interpreter. Second, showing the relevant participants is a continuous and difficult task for the clerk as the length of turns are not defined in advance.

Participants continuously make sense of what is shown on screen related to the ongoing activity. What is shown can be contested, negotiated in some way. In this regard, Extract 5 demonstrates that seeing the interpreter as a speaker is a legitimate right for the participant whatever are the interpreter preference for his own visibility. The extract comes from the same hearing where the presiding judge expressed his indifference toward not showing the interpreter on screen. At the beginning of the extract, the rapporteur has just finished reading his report. The camera is still focused on the rapporteur (l.1) and the shoulder of the interpreter is visible on the side of the screen.

Extract 5 Part 1

01. PR **merci monsieur le rapporteur (.) je vais laisser**
Thank you Sir the rapporteur I will let



02. **le traducteur (.) l'interprète traduire**
the interpreter translate

03. (0.4) [() **monsieur**]
Sir

04. INT **[merci madame la présidente]**
thank you Madam the president

05. (2)

06. INT **ń ná kée kòri tànan té**
mon homme est-ce qu'il n'y a pas de mal (malheur)
Mon ami (Monsieur), comment allez-vous ?
Mister, how are you

07. REQ **tànan té**

Qualitative Analysis

- il n'y a aucun mal (malheur)
Je me porte bien (ça va).
I am well
08. INT **súu mókoolu sáayin í má' à lónj fí'í yá ondestene à yá ménj fó**
 les gens de la famille maintenant je ne sais pas si tu as
 compris ce qu'il a dit
*Et les membres de votre famille ? Maintenant, j'aurais
 souhaité savoir si vous avez saisi ce qu'il a exprimé
 and the members of your family? now I would like to know if
 you understood what has been said here*
09. **jánj**
 ici
ici.
10. REQ **ìyoo ŋ gà dòo ondestene jée ró**
 oui j'ai compris quelque chose dans cela
Oui, j'en ai compris une partie.
 Yes I understood part of it
11. INT **oké sáayin kúwolu ménnu kéeta**
 ok maintenant les choses qui ont été faites
D'accord. Maintenant, les choses qui se sont déroulées,
 Now things that occurred
12. REQ **hun**
 oui
Oui.
 Yes

The presiding judge gives the floor to the interpret (l.1-2) who starts to interpret consecutively the report (l.4-14). However, the camera remains focused on the rapporteur while the interpreter speaks. Even though his arm is visible on the right corner of the screen (cf. image l.1), the interpreter is not fully on screen. At one point, the counsel partly out of screen as well, interrupts the interpreter with "excuse-me" (l.15):

Extract 5 Part 2 15.05.04_cnda_cas06

13. INT **í yá' à lónj kàbirin à tàmbita ofra lá í yí'í ŋininka kúu kúu**
 tu sais depuis qu'il est passé à l'ofra ils t'ont questionné
 chose chose
*vous savez, depuis que vous êtes passé à l'OFRA, ils vous ont
 interrogé*
 you know since you went at the OFPRA they asked you questions
14. **jámaa lé lá**
 c'est sur beaucoup
sur beaucoup de choses.
 on a lot of topics
15. CO **excusez-moi (0.6) est-ce**
 Excuse me could
16. **(1.8)**
17. **est-ce qu'on pourrait voir monsieur l'interprète**
 could we see mister the interpreter
18. **s'il vous plait °qu'on le voit°**
 please so we can see him
19. **(1.1) (0.6) # (4.1) # (0.4) # (0.5)**

Rcam # >>> # blurred image #- zoom in->



Rapporteur



Interpreter
(blurred
image)

20. RAP **elle souhaiterait que monsieur l'interprète**

Qualitative Analysis

She would like that mister the interpreter

```
21.      soit:: soit visible#
        to be      be visible
        -----zoom in----- #
```



22. (1.3)
23. PR c'est bon là
It's ok now

After a long silence, the counsel formulates a request. Her formulation displays that she does not have the deontic right to produce a direct request. However, her question is heard as a legitimate request as far as nobody in the court contests it. The clerk changes the orientation of the camera (l.19) producing a blurred image of the interpreter (l.19) and then zoom in to produce an appropriate image of the interpreter (l.21). During this ongoing activity, the rapporteur orients to us in the public and relays the request of the counsel. This relaying talk shows firstly that the request is seen as appropriate and secondly that the management of the VC system is not clear to all participants. The rapporteur assimilates the researcher as VC experts who could have been able to resolve a technical issue.

The new video shot is followed by an evaluation by the president (l.23) and the counsel (l.25). However, the president insists on having a confirmation of the resolution of the trouble with the counsel. What seems interesting is that the president addresses her turn to the counsel and not the asylum seeker who is directly concerned by the participation framework within the interpreter. After the president gives back the floor to the interpreter, he starts his turn by a visibility check. This visibility check is ambiguous: it can be heard as an interpretation of the previous turns of the president or as a visibility check framing the asylum seeker as the relevant participant of the visibility issue.

Extract 5 Part 3

24. (0.2)
25. CO c'est bon
It's okay
26. (0.2)
27. PR vous lui demandez si (0.4)
Ask her if
28. ?? ()
29. PR voyez-vous madame maitre voyez-vous monsieur
Do you see Madam Maitre do you see Mister
30. l'interprète
the interpreter
31. (2.4)
32. PR maitre voyez-vous monsieur [l'interprète]
Maitre do you see mister the interpreter
33. CO [je vous remercie]
I thank you
34. (0.3)
35. PR oui/
Yes/
36. (0.4)
37. CO oui je vous remercie madame la présidente
Yes I thank you madam the president
38. PR allez-y
go ahead
39. (0.8)

40. INT **í páa bé ní nà**
ton œil est sur moi
Me voyez-vous ?
Do you see me/
41. REQ **ń páa bí'í là iyoo**
mon œil est sur toi oui
Oui, je vous vois.
Yes I see you
42. INT **oh oh kúwo ménnu kéta oh bírin í tàmbita OFRA là () wóo lé**
oh oh les choses qui sont faites oh depuis que tu es passé à
l'OFRA () c'est
Oh, les choses qui se sont déroulées, oh, depuis votre passage
à l'OFRA, en
43. **kàraŋo tén tí**
la lecture ainsi
voici donc la lecture.
44. REQ **àwa**
oui
D'accord.

This example shows that whatever are the prescriptions concerning the visibility of the interpreter by the court, the VC link makes the current speaker as a relevant participant to be shown on screen and participants have a right to request his visibility.

Managing the visibility of relevant participants requires a continuous work of the clerk difficult to succeed. The next sequence (Extract 6) is extracted from the same hearing where the presiding judge required to show the interpreter alone when relevant. The continuous change of speaker (cf. l.03) leads to frequent and unpredictable change of video shot. This makes the work of the clerk more difficult. When the interpreter takes the floor (l.10), the camera is on late. The clerk uses the wrong pre-set (l.11) and displays the rapporteur in full (image l.11) and the interpreter on the corner. The rapporteur is not relevant during the question/answer phase. The clerk tries in a series of movement to focus only on the interpreter (l.12-13). The asylum seeker answer is quite brief and the president rapidly takes back the floor (l.24-26) constraining the clerk to focus on the president after this long work to shoot the interpreter alone. The interpreter interprets the president question (l.27-28) off screen. When the asylum seeker speaks, the clerk tries to zoom out showing nearly the whole court, and then focus on a shoot including both the interpreter and the presiding judge (image l.30).

Extract 6 07.15_cas01_fr_(00-44-40_00-45-01)

01. INT **il ne s'est pas marié heu:: (1) officiellement**
He's not married uh officially



02. (1.3)
03. PR **monsieur si on avait un point de repère**
Mister if we had a point of reference
04. **#vous avez# vécu une période extrêmement difficile**
you lived an extremely difficult period
#camC # >>> #

Qualitative Analysis



Presiding judge

05. **puisque'en deux mille ((XX)) vous avez été agressé sévèrement**
because in two thousand ((XX)) you were severely attacked
06. **(0.5) vous êtes (0.6) vous êtes ehu vous avez**
You are you are uh you were
07. **vécu en concubinage avant l'agression**
living together before the attack
08. **ou après l'agression**
or after the attack
09. **(2.4)**
- 10.INT **kuúko mu buzima bwaawe (0.3) nyine**
parce que dans vie tienne donc
dans votre vie
because in your life
11. **wasóbaanuye ko wagiye uhúura #n'íngoórane# (0.4)**
vous avez expliqué que vous avez rencontré des problèmes
vous avez dit que vous avez rencontré des problèmes
you have told that you had faced troubles

<<<<



interpreter

rapporteur

12. **#uh :: #** **#(0.7) #**
#camc # > # # > #



interpreter

13. **#záaba izó guhóohooterwa/# (0.5) #**
qu'ils soient ceux être agressé
comme des agressions
like agressions

camc # zoom in

#zoom in#



interpreter

14. **ubwo wavúze yúukó murí bibiri na ((xxx))**
tu as dit que dans deux et
vous avez dit qu'en deux mille
you have said that in two thousand ((xx))
15. **wahóohotewe wahóohotewe (1.1)**

Qualitative Analysis

- tu as été agressé tu as été agressé
vous avez été agressé
you were attacked
16. **wáratáangiye kubáana n'umugoré**
avais-tu commencé vivree avec femme
viviez-vous déjà avec votre femme femme
were you already living with your wife
17. **cyáangwá sé nyuma y'áahó mutaangiye kubáana**
ou alors après cela vous avez commencé à vivre ensemble
ou c'est après
or was it afterward that you started living together
18. (1.5)
19. REQ **nahóohotewe ntarabáa -báana n'úmu goré**
j'ai été agressé en étant pas encore avec femme
je n'étais pas encore en ménage
I was attacked before living together
20. (1.6)
21. INT **il a été agressé (0.4)**
he was attacked
22. **après qu'il se soit installé enfin qu'il se soit**
after he was settled well he was living in
23. **mis en concubinage (0.7) avec sa sa femme**
concubinage (0.7) with with his wife
24. PR **donc est-ce que la formation de jugement comprend**
so does the judgment understand well
25. **bien #il était en concubinage# et après il a été**
he was living in concubinage and then he was
>>>>
-
- #
26. **agressé on est bien d'accord/**
attacked we agree with that
27. INT **ubwo nyine wataangiye kubáana n'úu-(-) mugoré waawé/ (.)nyuma/(.)**
ainsi donc tu as commencé à vivre avec femme tienne après
ainsi donc vous avez commencé à vivre en ménage après
so you started living with your wife after
28. **aba árihó uhohóoterwa\ ni byó/**
c'est là que vous avez été agressé c'est vrai
c'est à ce moment que vous avez été agressé
you were attacked at this time
29. # (0.9)
30. REQ **oui# ni byó**
oui c'est vrai
oui c'est vrai
yes it's true
- camc #zoom out #



31. # (1.3) #

Camc #zoom in #



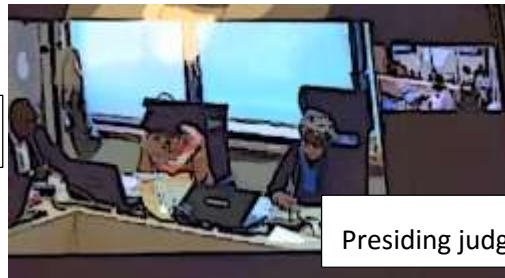
32. INT c'est exact

yes (0.5) it's true

33. (0.8) # (0.5) #1.4)

Camc #zoom out#

interpreter



Presiding judge

34. PR monsieur est-ce qu'on pourrait revenir heu

Sir can we go back uh

In this extract, the clerk tries to follow the current speaker on screen. The interpreter is shown alone according to the presiding judge instruction at the beginning of the hearing. This specific shot on the interpreter required several actions (zooming, moving the camera...) and takes time to be accomplished (although a framing pre-set on the interpreter exists). Instead of this continuous management of the camera, the clerk chooses to display both the interpreter and the presiding judge she is interpreting for. In doing so, she does not follow the presiding judge instruction at the beginning of the hearing, but she follows a mundane principle in visiocommunication to display relevant participants on screen.

The last two examples highlight a gap between the divergent expectations of the judges concerning the visibility of the interpreter, and the moment-by-moment management of the camera. Whatever are the theoretical expectations, members orient to some basic principles of video-mediated communication. That is to say that relevant participants are expected to be visible on screen. Whatever are the views of the presiding judge, the interpreter can be deemed as a relevant participant when listening/speaking, and can be expected to be seen.

16.4 The interpreter's embodied involvement in the local « interactional engineering »

As a participant in a VC link, the interpreter is not only involved in the work of “just” interpreting but he has an orientation towards collaborating to facilitate the flow of talk. We argue that in a VC link environment, the interpreter is required to have a sense of the specificities of the technical setting in order to accomplish his work, especially the smooth running of microphones. He's expected to adjust his talk at the right distance of the microphone, not too close, not too far. In some settings the microphone is always open. In others, opening and closing the microphone has to be managed and

coordinated with other participants. The interpreter's embodied involvement is different according to the physical location of the interpreter. In any case, the interpreter is involved in this local "interactional engineering". We will show how those routine activities managing the microphone is intertwined with the activity of interpreting. We will argue that the interpreter can be involved in this interactional engineering not only for himself but for the person he is interpreting for as well.

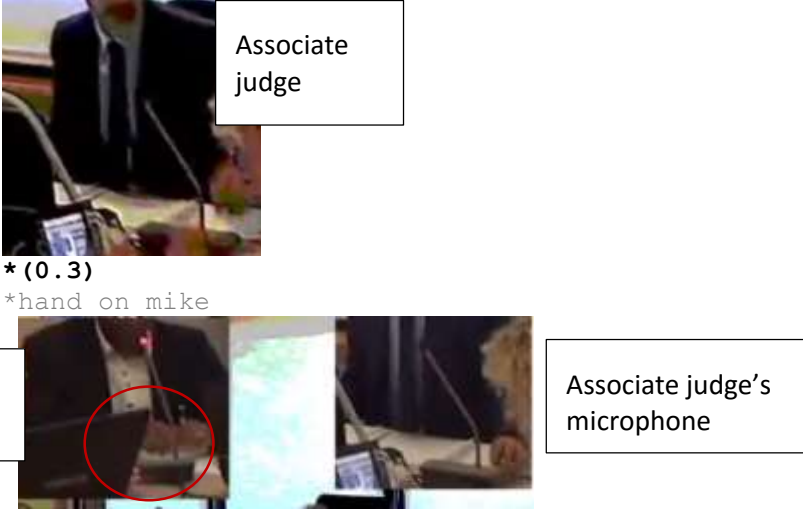
Forced coordination between interpreter and judges

The court is equipped with individual microphones for each participant of the court. Individual microphones can be switched on or off. Within the exception of the president's microphone, only one microphone can be switched on at a time. The specificities of the microphone features have to be discovered in practice and it is not something specific for the interpreter. When the interpreter is abroad from the court, the judges are required to manage switching on and off their microphone, but the coordination of it with other judges is not really an issue. Only one person at the time have the floor on the side of the court, each judge keeping the floor until he has no more questions.

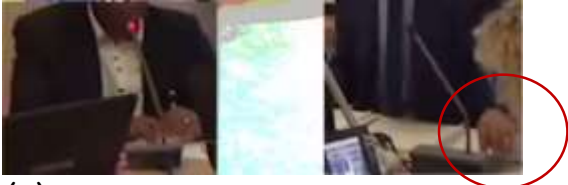
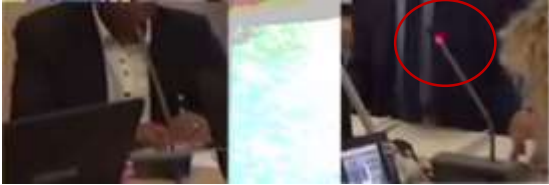



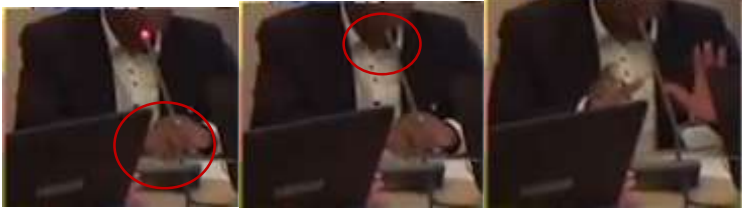
The situation change when an interpreter is on the side of the court. He has to manage the use of his microphone in coordination with other members. Only one microphone can be opened at a time. This means that if a participant switch on his microphone, he will switch off at the same time any opened microphone. On the other way, participants are prompted to switch off their microphones as soon as possible when they are not talking. In this context, the smooth alternation of turns at talks in the courtroom involves a finely timed collaboration in switching microphones on and off.

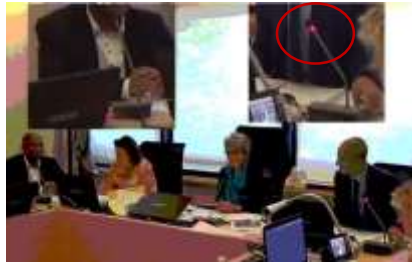
The Extract 7 gives an example of the type of finely timed coordination required in switching on and off the microphone. When a microphone is on, a red light is displayed on it, making public who can possibly have the floor. In this example the interpreter has just finished to interpret the asylum seeker answer (l.01). The judge is expected to take the floor for a new question.

Extract 7

01. INT **afin qu'il ne réclame plus de biens de sa famille**
so that he won't ask any more for his family goods
02. (1.8)
03. \$ (0.3)
\$hcr \$hand on mike
04. * (0.3)
*int *hand on mike
05. \$ (0.2)
\$hcr \$ press button
- 

Qualitative Analysis

06.  **\$ (.)**
\$hcr \$hcr mike switched on
07.  *** (.)**
*int *press button
08.  *** (0.2)**
*int mike switched on
09.  *** (0.6) \$ (0.4)** **\$**
\$hcr \$ turns head t. INT
10.  **(0.3) * (0.2)** *** (0.6)**
*press button *hand gesture
*INT mike switched off
11.  **HCR \$.hhh**
12. **(0.4)** **\$** **(.)**
\$hcr \$ smiles
\$hcr \$ presses button \$mike switched on



13. (1.4)
 14. HCR **alors monsieur est-ce que avant votre condamnation**
 well sir have you before your sentence
 15. **vous avez fait de la détention provisoire**
 have you made temporary custody

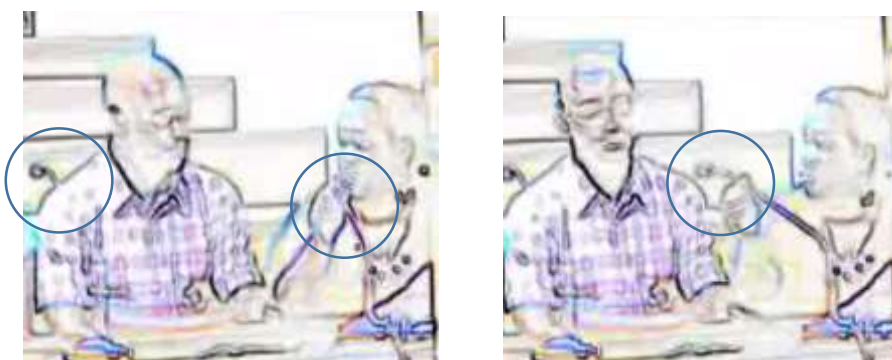
As the interpreter finished his turn, the associate judge prepares his hand on the microphone in order to take the floor (I.3) and ask a new question. At the same moment, the interpreter prepares his hand on the microphone as he finished his turn (I.4). The associate judge switch on his mike by pressing first the button (I.5-6). Fewer than 0.1 second afterwards, the interpreter presses his microphone button as well (I.7) reversing the process: instead of the expected action of switching off his microphone, he switched it on (I.8). As the associate judge notices his microphone is switched off, he gazes toward the interpreter (I.9) who consecutively switches off his microphone (I.10) and produces a two hand gesture displaying that he's not touching anymore the microphone. The associate judge smiles and switch on his microphone before producing a new question to the asylum seeker.

This example shows that as the interpreter is about to interpret or to finish interpreting, he has to attend other concerns besides the multilingual talk. The management of the microphone is a concern for participants and force another kind of coordination between interpreter and judges.

Interpreter's embodied involvement in the collaborative effort to maintain the flow of talk

When the interpreter is on the side of the asylum seeker, the interpreter can also be involved in other activities, like helping the asylum seeker with the management of microphones. The management of the VC is an "official" task of the clerk. We observed that the interpreter is often involved in managing the asylum seeker's microphone. Figure 10 shows an example of this management of the microphone with the asylum seeker.

Figure 10 Taking care of participants: coordinating talk and microphone



a) Interpreter's turn

b) interpreter changes the microphone orientation



c) Interpreter points the mike



d) Asylum seeker leans forward and answers

In this sequence the interpreter translates a judge's question (a). The asylum seeker is bodily oriented toward the interpreter and away from his own microphone. As the asylum seeker answer the question, he looks at the screen but speaks away from his microphone. The interpreter moves her own microphone (b) toward the asylum seeker and points to the microphone (c). The asylum seeker leans forward and continue his answer.

This form of coordination between the interpreter and the asylum seeker is quite frequent when both are seated side by side. This technical management of the microphone is not a task attributed to the interpreter. However, this example shows how the interpreter is concerned with attending to other issues beside interpreting. Even if they are not supposed to manage the system, they have to take into account this within an interactional engineering of the VC link.

This interactional engineering involvement of the interpreter make visible that they are clearly involved in more than just interpreting. The interpreter works as an expert

16.5 Managing extended turns through VC links

In a multilingual hearing, interpreters are not only concerned within interactional engineering of VC. The management of turn-taking is intertwined with the constraints introduced by the consecutive interpreting of successive turns. In this section, we will discuss how interpreters use a range of resources to regulate turn taking with the asylum seeker in two configurations: close to the person she is interpreting for and remotely. We will focus on how the production of long answers may strain the organization of consecutively interpreted question & answer sequences depending on the spatial positioning of the interpreter. We argue that if the interpreter is far away from the asylum seeker, he will use more interruptive practices to signal turn taking. We show that when the interpreter is close to the asylum seeker, the latter has some chance to take back the floor. However, when the interpreter is remote, the judges tend to take the opportunity to take the floor.

In this phase of the hearing, the participants orient toward an institutional organization of talk, in which a judge produces a question, the defendant is requested to answer. At the end of the answer, the judge is expected to get back the floor to produce a new question. In a multilingual hearing, this turn-taking management is intertwined with the consecutive interpreting of both questions and answers. We could present a prototype template of the kind a sequence involved:

- | | |
|-------------------|-----------------------|
| 1. Judge: | Question |
| 2. Interpreter: | Interpreting question |
| 3. Asylum seeker: | Answer |
| 4. Interpreter: | Interpreting answer |
| 5. Judge | New question |

In the asylum court, asylum seekers are prompted to produce precise and personal answers. This can lead to paradoxically extensive turns or the production of extended narratives. Such long turns put the interpreter in a third position dilemma at each recognizable transition point. The interpreter can

let go the asylum seeker to extend his turn and run the risk of “long consecutive interpreting”. This option can be challenged at any point by a member of the court fearing to lose some precision in the interpretation. The other option is to break the progressivity of the sequence.

‘Interpreter-initiated’ regulation of asylum speaker speech flow and “other initiated” regulation

The spatial location of the interpreter introduces some kind of asymmetries in the resources to manage turn taking within a remote participant or a side participant. Those asymmetries are in some way more visible in the question/answer phase of the hearing.

Managing turns can be produced using a range of resources such as embodied posture, gaze and “body glosses”; gestural directives; continuers; overlaps; explicit verbal instructions by the interpreter in his own language; or through an explicit instruction by the presiding judge (or other judges), to be interpreted. The latter resources increase breaks in progressivity.

The farther the interpreter is from the current speaker, the more difficult is to use “light resources” for the speech flow management. So when the interpreter is remote from the court and close to the asylum seeker, he is likely to use a wider range of resources to manage the asylum seeker speech flow.

In the Extract 8, as the asylum seeker extends her turn, the interpreter starts to take notes on a paper (cf. image I.1). Taking notes is a resource for the interpreter to deal with extensive turn without interrupting the progressivity of the asylum seeker turn. However, the interpreter at a transition point initiates a hand gesture (I.4). The interpreter maintains his gesture after the end of the asylum seeker’s turn to secure his floor.

Extract 8 Interpreter close to the asylum seeker

01. AS **Wahabili Wa Mba Nerejeyi Wanipara**
 Ils ont annoncé que si je rentre et qu’ils me capturent
Ils ont déclaré que si je retourne et qu’ils me capturent
 They declared that if I return they will catch me



02. **Nawo (Hena Mndru Yabaki Ndayena wo**
 Avec eux (ceux qui vivent avec eux)
Avec ceux qui vivent avec moi
 those living with me as well
03. **Wutso Renga Ze Tabiya Mbi Zahawo)**
 Qui prennent leurs mauvais comportements
Qui prennent leurs mauvais comportements
 Those who have bad behaviour
04. **Nawo Kwana Wubaki *Duniyani Vani**
 Eux, ils ne resteront pas dans ce monde-ci.
Ils ne seront pas en vie
 They won’t be alive

*int

*starts hand gesture-->



05. (0.5) (1)
 *int -----|
 06. INT **donc heu (0.3) c'est son cousin qui voyait**
 So er it's her cousin that sees
 07. **sa situation qui (0.2) qui est très difficile**
 her situation that that was very difficult

This small gesture enables to manage the flow of the witness minimizing the break in progressivity. When interpreters are close to the asylum seeker, they can use those “light” resources to manage turn-taking and if it does not work, upgrade to other more explicit verbal instructions.



Extract 9 Embodied resources used by interpreters when close to the asylum seeker

When the interpreter is remote from the asylum seeker, it seems that interpreters are required to upgrade more easily the resources they use to manage the flow of the asylum seeker.

In extract 9, the asylum seeker answers a second time to the judge question (l.1-5). The VC link cut while the asylum speaker produced an answer. During the pause, the interpreter is not prompted to interpret into French when the link is not established (displaying the participation framework at work). When the link is established again, the judge asks again the same question. The extract starts at the end of the asylum seeker answer to the judge.

Extract 10 Interpreter remote from the asylum seeker

01. REQ **à mán táa hospitolo kà'à bé kéndeyaalin í kà'à lónj sèeloo kóno**
 il n'est pas allé à l'hôpital il dit être sain tu sais en
 prison
*Il ne s'est pas rendu à l'hôpital car il arguait être bien
 portant. Vous savez, en prison,*
 he has not been to the hospital because he argued to be ok you
 know in prison
 02. **à kí'i láa banta lé à kí'i láa dũguma lé i kà'à báloo líppa**
 c'est dehors il s'est couché c'est par terre il s'est couché
 ils ont battu son corps
*c'est à l'air libre qu'il dormait, c'est à même le sol qu'il
 dormait. Ils l'ont tabassé (molesté).*
 It was outside that he was sleeping, on the ground he was
 sleeping. they beat him up
 03. **sàapin wòo lípparo nín í yà'à lónj à bé à bé sàasaarin àté kà'à**
 maintenant cette bastonnade là tu sais il est il est malade lui
 que
*En fait, de ces exactions-là, vous savez, il est devenu
 souffrant. Lui, il prétendait*
 in fact from those exactions, you know, he suffered. He was
 pretending
 04. **bé kéndeyaalin né fòo lún kílin (0.4) i yà'à jé à fáata**
 il est sain jusqu'à un seul jour ils l'ont vu mort
 toujours être bien portant ; jusqu'au jour où ils le
 découvrirent mort (où ils constatèrent sa mort).

Qualitative Analysis

05. That he was safe until they found him dead
(0.5)
06. INT **oké**
ok
D'accord.
okay
*int looks down
07. REQ **bàri à má'à lá porobule[mo] fó à níyo bé kúyaarin**
mais il n'a pas dit son problème son âme est en peine
Toutefois, il n'a jamais extériorisé ses amertumes. Son âme
était en peine (il était malheureux).
but he hasn't externalized his bitterness, he was unhappy
08. INT **[unh]**
09. (.)
10. INT **unh**
oui
D'accord.
yes
11. (0.9)
12. REQ **[à níyo bé kúyaarin]**
son âme est en peine
Son âme était en peine (il était malheureux).
He was unhappy
13. INT **[quand on l'a amené dans ce] (0.6)&**
When they brought him in this
14. **& dans ce commissariat hold on**
Police station hold on
*hand gesture
15. (1)
16. INT **[quand on a] on est dans ce:: ce commissariat là&**
When we had we are in this this police station
17. REQ **[ok]**
18. INT **&(0.9) heu donc ils l'ont ils l'ont jeté**
uh so they they through him
19. **dans une cellule (0.6)**
in a cell
20. ((50 sec omitted, interpretation in french of the answer))
21. INT **au final du compte on se rendait compte que**
finally we realized that
22. **voilà:: son état de santé il s'est dégradé heu::**
well his health state was deteriorated er
23. **(0.3) évoluait de mal en pis (0.9)**
was getting worse
24. **jusqu'au jour où on est () on l'a trouvé mort**
until we had we found him dead
25. **(3)**



26. PJ **vous avez produit un certificat de décès**
 you have produced a death certificate
 27. **de votre père monsieur/**
 of you father mister/

After a small gap (l.5), the interpreter produces an « okay » which can be both heard as a continuer or a transition toward the interpreter turns. However, the asylum seeker extends his turn (l.7) and the interpreter produces again a continuer (l.10). After a long break (l.11), the interpreter starts his interpretation into French in overlap with the asylum seeker. The interpreter upgrades using a verbal instruction in English « hold on » (l.14). If the resources to take the floor are not fully different from face-to-face interaction, we can notice an upgrade of the resources used by interpreters in order to take and secure their floor when they are remote from the asylum seeker.

Interpreter may vary in the stance with the production of long turns. Other participants, and particularly presiding judges may, then, take it upon themselves to ask the asylum seeker to stop the flow of the talk. This produces a very explicit and salient break in progressivity. The presiding judge initiates an instruction as a form of repair, marking a trouble with the previous talk. In the Extract 11, the asylum seeker explains how he was tortured in detention.

Extract 11 15.06.25_cas01_(01-22-19_01-23-48)

01. **abo bagabo twaári dúfunganywe (0.5)**
 ces hommes que nous étions en étant enfermés
les hommes avec lesquels j'étais emprisonné
 these men with whom I was jailed
 02. **ni bó baágiye báankanda rimwé na rímwe**
 c'est eux qui sont allés en me massant un et un
ce sont eux qui m'ont massé de temps en temps
 they are the ones who massaged me from time to time
 03. **nka- kubéera kó nta myeénda nari náambaye (0.2)**
 comme parce que pas habits que j'étais en portant
comme je ne portais pas d'habits
 because I didn't wear clothes
 04. **baándyaamishaga kurí sima (0.7) hein (0.2)**
 ils me couchaient sur ciment hein
ils me faisaient coucher à même le sol cimenté
 they had me lay me on the ground



05. **ngíra ngo bareebé kó \$nabyimbúuka \$**
 pour que ils voient que je dégonfle euh
pour voir si mes membres pouvaient déenfler
 to see if my limb would become less swollen



06. (1.2) \$(0.5) \$(0.4)
 \$req \$opens hands
 %hcr %turns t. int
 \$pr \$turns t. int

Qualitative Analysis



07. ⌘\$(0.2)
 ⌘int ⌘looks down, hand on mike->
 \$pr \$looks her mike



08. uh::eh:

 ⌘int >-----|

09. \$⌘(0.7) ⌘\$(0.7)
 ⌘int ⌘looks up ⌘opens mike
 \$pr \$looks int
 \$req \$hand on eyes (crying)



10. PR %on on=
 we we
 %hcr %looks down hand on mike button



11. HCR =a%ttendez [monsieur]
 Wait mister
 12. PR [alors dites \$dites] lui&
 so tell tell him
 %hcr %switch on mike (int mike switched off)
 \$pr \$switch on mike
 favr \$



13. PR **qu'on lui redonnera la parole hein mais là**
that we will give him back the floor but now
14. **voilà vous allez traduire une première**
well you will interpret a first
15. **un premier moment merci**
a first moment thank you
16. (0.7)
17. INT **ubwo muroongera kubigaruka hó nyuma ariko**
ainsi vous recommencerez y revenir dessus après mais
vous y reviendrez plus tard mais
well you will come back later but
18. (0.2) **warí uvuze ngo ni ibyúmwéeru bibiri bya mbere/(.)**
tu étais en disant que c'est semaines deux de premiers
vous aviez dit deux semaines
you said that two weeks
19. **ni hó wakúbiswe cyaane/**
c'est moment en étant frappé beaucoup
que vous avez été battu copieusement
that you have been hit a lot
20. (2)
21. **ni hó baágukubitaga nyíne bá- (0.9) bákubaza (0.8)**
c'est moment en étant frappé donc en te demandant
c'est à ce moment là que vous avez été battu sous interrogatoire
that's at this moment that you have been hit while under cross
examination
22. **ibyúmwéeru bibiri byaa mbere**
semaines deux de premier
les deux premières semaines
the first two weeks
23. (4.5)
24. **donc il disait que les surtout les deux premières semaines (0.5)**
so he said that mostly the first two weeks
25. **il a:: (1.6) ils lui avaient enlevé (0.6) sa chemise (0.7)**
he had they took him off (0.6) his shirt
26. **il était il avait les deux:: les mains attachées dans le dos**
he was he had his two hands tied behind his back
27. **(0.8) et:: (0.2) il il a été battu et:: (0.2)**
and he he was beaten and
28. **heu à un certain moment il pensait qu'il allait mourir**
uh at some point he thought he would die
29. (12)

His turn was quite long, and in line 6, the asylum seeker makes a long pause. After a 1.2 second, the associate judge starts to look at the interpreter, and the president does the same. This displays that this long silence is seen as a transition place in which the interpreter might be expected to take the floor in order to interpret. The president starts to prepare to take the floor putting a hand on the microphone (l.7). The interpreter prepares his hand on the microphone. The asylum seeker produces at that moment a continuer "er:" (l.8) making visible an extension of his turn. The interpreter opens his mike and looks at the asylum seeker (l.9). Almost simultaneously, the president and the associate judge prompt to stop the asylum seeker. The president prompts the interpreter to explain that they will give him the floor back after the consecutive interpretation. The interpreter does not exactly explain that he will be given the floor back, but that he will come on this topic later. The intervention of a judge in the management of the flow is quite disruptive.

The resumption of talk when interrupted by the interpreter or a judge

When an interpreter initiates the regulation of speech flow, with the respect that the asylum speaker projected an extended turn, to what extent the asylum seeker gets a chance to elaborate? After the interpretation of a first part of the answer, a dilemma can arise: the asylum seeker provides the expansion turn he projected; or the judge uses the slot to ask a new question. We argue that a participant on the physical side of the interpreter is likely to have more chance to take the floor.

When the interpreter is close by the asylum seeker it seems that the asylum seeker has a significant possibility to elaborate, like in Extract 12 where the interpreter uses a body torque (l.4) to give back the floor to the asylum seeker.

Extract 12 14.11.18_cnda_cas09-(10-08_11-02)

01. INT **mes commentaires ils ont commencé moi je restais**
my comments they started me I stayed
02. **pas tout le temps en place je partais et je**
not all the time in place I kept leaving and
03. **revenais**
coming back

04. (0.4) § (0.6) § (0.2)
§int §turns t. req §



05. REQ **si es por...**
yes it's for...

However, in the previous example (Extract 10 p. 176), in which the interpreter is remote, after the interpretation of the answer, the president takes the floor and ask a new question. The inserted sequence reinforces a sequential opportunity for the judge to speak.




When presiding judges initiate an instruction to stop the asylum seeker flow, they tend to quasi-systematically take the turn to ask a question, even if they explicitly say doing something else.

Extract 13 is another example of an instance when the regulation of the asylum seeker speech flow is “other-initiated”. The asylum seeker produces a long narrative. In line 5, he takes a long pause. The interpreter chooses to let the asylum seeker continue his story. An extension of the story is expected (what happened when he met the warder). But just after the long pause, the presiding judge turns quickly toward the interpreter and then back to the screen (l.7). This could be seen as an orientation toward an expected turn of the interpreter at this long transition place. The presiding judge expectation of speech flow regulation is more explicit when she puts her hand on the microphone button (l.10) and switch it on (l.15) while the asylum seeker continues his story.

Extract 13 07.15_cas01_14_(00-53-29_00-55-10)

01. **ni bwó nafáshe icyéemezo ndageenda**
c'est alors que j'ai pris décision je suis parti
c'est alors que j'ai pris la décision d'aller
02. **njya ku muyobozi (1.2) w'ákagari (1.1)**
je suis allé sur responsable de cellule
je me suis rendu chez le responsable de la cellule
03. **ndageenda ndamúbwi- (0.2) njya yó ndamúbaza nti**
je suis parti je lui ai dit je suis allé là je lui ai dit

Qualitative Analysis

- je lui ai demandé
04. **Aríko (0.3) naakora iki kugira ngo mpaabwé**
 mais je ferais quoi pour que je reçoive
ce que je pouvais faire pour récupérer
05. **iyi mitúungo y'ábabyéeyi báacu**
 ces biens de parents nos
les biens de notre famille
06. (2.1)
07. **§Yeébaana (0.4) §nagéze yó (0.8)**
 dis donc en arrivant là-bas
lorsque je suis arrivé chez lui
 Spr §turns t. int §turns back to screen
08. **anyakiirana urugwiiro**
 il m'a accueilli avec bienveillance
il m'a accueilli avec bienveillance
09. **ampa karibú mu nzu**
 il m'a donné bienvenue dans maison
il m'a laissé entrer dans sa maison
10. **(0.7)§(1.3)**
 Spr § puts hand on microphone
- § 
11. **§ubwo yabwiiraga (0.7)**
 lorsqu'il a dit
et il a dit
 Spr §looks up screen
12. **yegeká hó arafuunga asa n'úweégeka hó**
 il a posé dessus il a fermé il fait comme en fermant dessus
il a fermé la porte
13. **aríko ashyira mó urufuunguzo (0.5)**
 mais il a mis dans la clé
et puis il l'a fermée à clé
14. **ubwó yabwiiraga umugoré wé**
 alors il dit femme sa
alors il dit à sa femme
15. **§nza gutuungurwa ubwó yabwiiraga §umugoré wé**
 je viens être surpris lorsque il a dit femme sa
j'ai été surpris lorsqu'il a demandé à sa femme
 Spr §switch on mike §looks up screen
- §  § 
16. **ngo amúzanire umuhoro**
 que il lui apporte machette
de lui apporter une machette
17. (0.4)
18. **[ngira ngo agiiye] gutéméra ubwaátsi inká**
 j'ai cru qu'il allait couper pour herbe vaches
j'ai cru qu'il allait couper de l'herbe pour les vaches
19. PR [alors]
20. PR est-ce que vous pouvez lui dire qu'on lui

- can you tell him that we will
 21. **redonnera la parole parce que heu**
 give him back the floor because er
 22. (0.3)
 23. **mais sinon on va perdre dans la traduction merci**
 but otherwise we will lose in the translation
 thank you
 24. (0.9)
 25. INT **reka mbáanzé mbabwiire ibyo ng'ibyo**
 laisse que je commence en leur disant cela même
attendez je vais d'abord leur traduire cela
 just wait I will first translate them that
 26. (0.8) **donc en deux mille cinq il a été en couple**
 so in two thousand he was living in couple
 27. (0.5) **ils avaient un enfant (0.3) et (0.4)**
 28. **la situation était difficile**
 29. PR mm
 30. INT **et il a dit je vis (0.3) une situation (0.7)**
 31. **((ommitted interpretation of the interpreter))**
 32. **et puis il a (0.4) il a poussé la porte 0.8)**
he pushed the door
 33. **le responsable a appelé sa femme (0.5)**
the officer-in-charge called his wife
 34. **en lui disant apporte moi une machette (1.6)**
telling her bring me a machete
 35. **le mais enfin monsieur a cru que (0.3)**
the but well Mr thought that
 36. **c'était pour (0.4)**
 37. **peut-être aller du fourage pour ses ses bêtes ou**
maybe to bring fodder for his animals or
 38. **pour faire d'autres choses**
for another purpose
 39. (0.6) **et:: voilà il en était là**
and that's where he stopped
 40. PR **alors (0.5) monsieur tous ces éléments là nous les avons**
well Mr all those elements we already have them in
 41. **dans votre dossier (0.7) moi ce que je voudrais savoir (0.4)**
your case me what I would like to know
 42. **c'est comment ça s'est passé parce qu'à un moment**
is how it happened
 43. **vous nous dites que le chef de cellule vous**
 44. **attaque**

The judge interrupts the asylum seeker (l.19). She prompts the interpreter to explain that the asylum seeker will get back the floor (l.20-21), like in Extract 11 (p.178). The judge justifies her interruption as an interpretation issue: "we will lose in the interpretation" (l.23). She uses the argument that the talk has to be "chunked" into suitable bits for consecutive interpreting.

The interpreter explains to the asylum seeker that he will interpret this first part of the story. This explanation makes implicit that an extension of his turn is expected. The interpreter translates into French the answer and finish his turn (l.48) by a sentence making explicit that an extension of the answer is expected: "that's where he stopped" (l.48). However, the presiding judge takes the floor (l.49) not letting the asylum seeker continue his story.

This example is not a deviant case. Focusing on precise questions and the clarification of vagueness and lack of contextualization, the judge considers the story already known. "Chunking" the talk into suitable bits for consecutive interpreting reinforce the opportunities for the judge to ask questions.

16.6 Conclusions

Our video-ethnographic in a multilingual courtroom made possible to observe and analyse in a systematic way instances of video-mediated courtroom proceedings with varying distributions of participants (an in particular the interpreter in the courtroom or away). We have stressed how the placement and the visibility of the interpreter was a practical issue, usually managed locally in an ad hoc way. Depending on where the interpreter sits, the court personnel have to make different decisions regarding her visibility. We have shown how participants orient to a basic principle of video communication relating on screen visibility to participative status. We have shown that if the interpreter is treated as a speaker (or ratified hearer), this translates in visual terms by an orientation towards making her visible on screen, even taking into account the fact that presiding judges may have different views on the visibility of the interpreter. However, the same relationship between visibility and participation status requires that the camera orientation should be managed on a moment-by-moment basis, as the courtroom interaction unfolds, and participative frames shift.

This is easier when the interpreter is on the side of the second language speaker, for then the interpreter and the asylum seeker for whom she interprets can be shown together on a stable basis. It gets more complicated when the interpreter is in the courtroom for then she cannot be shown on screen with the court personnel she interprets for on a stable basis (the three judges will for instance ask questions in turn). The camera then has to follow shifts in speakership and reciprocity, introducing the need for a particular form of situated camera work for the clerk. When for instance a questioning judge is too far from the interpreter, they cannot be shown together and from the question to its interpretation, the camera will have to be moved from one to the other. Showing the interpreter with other participants also makes relevant some inferences regarding affiliation, and which some judges try to avoid. Showing the interpreter alone is a way to highlight her independence with respect to the court. While the production of a particular visual setting is the work of the clerk, requiring unrecognized video skills and literacy, the visual organization of the VC multilingual courtroom at a given juncture is also a collaborative accomplishment for various video shots are publicly available for scrutiny and comments.

We have then looked at various form of agency and engagement regarding the interpreter, besides 'just' interpreting talk. We have shown how interpreters get, and are expected to get, involved in various forms of "interactional engineering", that is the ceaseless management of the conditions for the production of talk-in-interaction. First we observed their involvement in the management of sound conditions and microphones. We have observed how when they seat remotely and alongside the asylum seeker, they act as sound facilitators adjusting the position of microphones of the latter. By displaying in this way the way they care about the expression of the voice of asylum seekers, they can be argued to build rapport with them. When interpreters are in the courtroom on the other hand, they are to display their skill at coordinating the switching of their microphone in a timely fashion with respect to similar actions by the courtroom professionals. Such attention to, and active involvement in, the soundscape of the VC multilingual courtroom is not recognized as part of the 'official' work of interpreters, though it is expected from them in the situation.

Second, we have shown the importance of the involvement of the interpreter in the organization of turn-taking. This was made particularly visible in the management of long answers by asylum seekers. Judge display their expectations that the interpreter should regulate the flow of the asylum seekers' speech so as to keep it packaged into short and easily interpretable stretches of speech. We have shown the variety of resources used by interpreters and others to attempt to regulate the flow of speech: embodied resources (body torque, gaze, hand gestures), continuers, overlapping talk, explicit verbal instructions, etc. We have also shown how:

Qualitative Analysis

- When interpreters are on the side of the second language speaker, and seated next to him, they are able to use less interruptive resources to manage turn taking.
- When the interpreter is remote, they tend to upgrade the resources they use to regulate answers, and rely on more explicit and interruptive ones.

Finally, we have discussed how issues of control and power could be involved in the management of long turns, in particular with respect to the way according to which after an interruption in her answer, the participants might orient towards giving back the floor to the asylum seeker (thus facilitating the expression of her 'voice') or to the presiding judge for a new question (thus leaning towards the production of courtroom interaction as a fast-paced sequence of question and answers, constraining the voice of asylum speakers and favouring control by the judges). We have shown how the (again unrecognized) conduct of the interpreter played a crucial part in the resolution of this tension, and was affected by her spatial position. With the interpreter in the courtroom, it was more likely that the judge would regain the floor. Through the mediation of turn-taking concerns, the interpreter gets unavoidably entangled in issues of control and power which are sensitive to the presence of VC technology and to the fine details of the organization of the local, fragmented courtroom ecology.

17 Overall conclusions of this study

The central aim of the AVIDICUS3 project was to ascertain to what extent the currently available videoconferencing facilities in the different parts of the justice sector across Europe are fit for the purposes of bilingual videoconferencing. One of the main instruments used by the partnership to achieve this aim was to conduct a series of in-depth interviews with stakeholders who have responsibility for the procurement, implementation and management of videoconferencing facilities in judicial and law enforcement institutions. This was complemented by interviews conducted with different types of individual stakeholders (legal practitioners, legal interpreters and speakers of another language requiring an interpreter in legal settings) in order to elicit their experiences and views, and to highlight areas of consensus and good practice but also potential problems and discrepancies that need to be addressed. Moreover, field work was carried out through visits of videoconferencing facilities in courts, police stations and prisons, and this was complemented by observations of live proceedings using these facilities.

In addition to the stakeholder interviews, observations of proceedings and fieldwork (site visits), a further part of the research conducted in AVIDICUS3 was an observational study and qualitative analysis of authentic videoconference-based, interpreter-mediated asylum hearings in the French national asylum appeal court focussing on two different configurations: the interpreter being located in court and the interpreter being at the remote site, co-located with the asylum seeker.

The main outcomes of the interviews with institutional representatives and individual stakeholders and the observations of bilingual proceedings are as follows:

1. Current videoconferencing facilities implemented in the justice sector have undergone little or no adjustment to account for the **current** requirements of bilingual proceedings with an interpreter (i.e. mostly two-point videoconferences with one interpreter);
2. There is little evidence of provisions being made for more complex set-ups that are likely to play a role in the **future** (e.g. multi-point videoconferences, settings with more than one language pair/interpreter, simultaneous interpreting);
3. Interpreters general feel that their **specific** requirements for delivering a good-quality interpretation (e.g. audio and video quality) are not always fully understood and taken into account in videoconference situations;
4. The complexity of combining interpreting and videoconferencing is generally underestimated by legal professionals and institutional stakeholders responsible for videoconferencing facilities in the justice sector.

There is thus **a risk that the general tendency of expanding the use of videoconferencing in the justice sector**, which is likely to lead to a diversification of applications and configurations of videoconferencing, **does not sufficiently embrace the specific requirements for bilingual, interpreter-mediated video-conferencing**. This is of particular concern in light of current levels of migration and multilingualism in Europe.

In addition to the outcomes of the interview-based study, the qualitative analysis shows the following:

1. The geographical location of the interpreter and the positioning of the interpreter in relation to the other participants is a crucial element in bilingual videoconference-based proceedings and has a major impact on the communicative dynamics (e.g. the question who gains the floor to speak, how speaker turns can be regulated).
2. The interpreter's location (e.g. in the court vs. with the other-language speaker) shapes perceptions of the interpreter's impartiality, and can lead to agency and shifts in the power relations between the participants.
3. The interpreter is often pressed into taking on additional tasks (e.g. arranging technical equipment such as microphones for the other-language speaker).

4. A general lack of clarity of the interpreter's role, status and requirements for delivering a good-quality interpretation leads to uncertainty of how to integrate the interpreter into videoconference-based proceedings (e.g. in terms of their geographical location, their positioning in relation to the other participants and their visibility on screen).

The micro-analysis of individual instances conducted in this study thus further illustrates the layers of complexity that the combination of videoconferencing and interpreter-mediated bilingual communication adds to legal proceedings.

The main implication of the AVIDICUS3 project is that it is essential for all participants to develop a thorough understanding of the different layers of communication involved in bilingual videoconferencing. This is necessary to ensure that the added complexity does not interfere with the goals of the proceedings and that it does not jeopardise the efficiency and fairness of justice.

One of the key questions emerging from the studies conducted in this project is: what practice is a good practice? Whilst a level of standardisation is important, especially with a view to cross-border proceedings, which require EU Member States to co-operate, the variation across different legal systems and local conditions (e.g. in terms of frequency of videoconference and interpreter use) suggests that a one-size-fits-all approach is not applicable to all cases. Collaboration between interpreters, legal practitioners and institutional stakeholders is required to decide, together, what is the most suitable framework for a particular country or institution. At the day-to-day operational level, close cooperation between the legal practitioners and interpreters is required to identify the best approach to each case. Systematic collaborative efforts are still quite infrequent, but they can be promoted through guidance and joint training to raise awareness of each parties' needs. The other Deliverables available from this project, i.e. the *AVIDICUS Handbook on Bilingual Videoconferencing* and the *Videoconference-based Training Module on Bilingual Videoconferencing* are designed to facilitate these tasks. Both Deliverables are accessible through the AVIDICUS project website, www.videoconference-interpreting.net.

Whilst this study clearly shows that the combination of videoconferencing and interpreting poses a great number of challenges, the potential benefits of appropriate solutions for bilingual videoconferencing with an interpreter should not be dismissed. The 'de-materialisation' of legal proceedings through videoconferencing may reduce unnecessary costs and improve access to justice. This report has raised a number of questions in relation to the current practice of bilingual videoconferencing in legal settings, which provide the starting point for developing appropriate solutions. Our main observation is at present, that the complexities of interpreter-mediated communication and bilingual videoconferencing are generally under-estimated by legal stakeholders, and that it is important that legal and institutional stakeholders gain a more comprehensive understanding of the problematic aspects outlined in this report.

Further research in this area needs to capitalise on what is known about video-mediated communication but it will need to focus more specifically on multi-point videoconference settings, the investigation of the different modes of interpreting in videoconferences and the exploration of technological solutions that can accommodate the most effective way of delivering interpreting services in this setting.

The current scale of migration and multilingualism in Europe means that bilingual and multilingual videoconferences are likely to become much more frequent in legal proceedings over the coming years. Bearing this in mind, it becomes clear that videoconferencing solutions for legal communication need to make appropriate provisions for bilingual/multilingual support and interpreting. At present, this is impeded not only by the insufficient understanding the complexities of bilingual (and multilingual) videoconferencing on the part of many (not all) institutional and legal stakeholders, but also by the state of the art of legal interpreting in Europe. The lack of education and training for legal interpreting in Europe prevails. The current trend of outsourcing interpreting services and creating framework contracts with agencies as a way of reducing costs for legal interpreting have led to a

decline in the interpreters' overall working conditions. This has increased the shortage of qualified legal interpreters who are able to cope with the combined challenges of video-mediated communication and interpreting in the legal setting. If justice is to be served, then counter-acting this trend is as important as increasing all stakeholders' awareness of the complexities of bilingual videoconferencing.