



New Era in Trials: Procedures and Principles to Attend Hearings Through Audio and Video Transmission Are Regulated

The "Regulation on the Conduct of Trials by Audio and Video Transmission in Civil Procedures" ["Regulation"] was published in the Official Gazette dated 30 June 2021 numbered 31527 and entered into force on the same date. The Regulation sets out the procedures of e-hearings, which have become more important due to the Covid-19 pandemic. According to Regulation, e-hearings will have the same legal consequences with the physical hearings.

1. Standards of the E-hearing System and Interruption of Transmission

The Regulation requires that the image and the sound should be transmitted simultaneously and securely during the e-hearing and the video should be of a quality sufficient to reflect the facial expressions, body movements, attitudes, and behaviors of the speaker, while audio transfer should be able to convey the participant's emotions and be of a quality sufficient to clearly understand the speaker. It will also be possible to submit information, documents, or evidence through UYAP [e-justice system] during the e-hearing.

The e-hearing will need to be reopened in case the audio and video transmission cannot be provided simultaneously during the e-hearing, or if any interruptions occur that makes it difficult to understand the statements of the speaker. However, if the disruption continues, the e-hearing will have to be terminated by stating the reasons for termination, and this issue should be written in the minutes of hearing. In such a case, the case will not be dropped provided that the party or the attorney was not at fault.

2. E-hearings Can Be Held upon the Parties' Request of or on the Initiative of the Court

E-hearing will in principle be held at the request of one of the parties. Upon request, the court may decide that the requesting party, their attorney, the witness, or the expert can attend the hearing and take procedural actions via the e-hearing system. However, statements regarding waiver, acceptance or settlement must be physically declared in the presence of the court at a hearing to be scheduled by the court.

Request for e-hearing should be submitted at least 2 [two] business days before the hearing date together with its justification. Only the attorneys who filed a request can attend the e-hearing in cases followed by multiple attorneys. Following the request, the judge renders a decision at least 1 [one] business day before the hearing date, and the decision hereby cannot be appealed.

The judge rejects the request in case the e-hearing request has not been made on time or if there are any legal, de facto, or technical obstacles that makes it difficult to hold an e-hearing. In addition, the judge is authorized to reject the request by giving reasons if s/he believes that the request is intended to abuse the right or to retard the hearing. On the other hand, it is also possible for the court to ex officio decide to hear the witness or expert through the e-hearing system.

3. Places Suitable for E-hearing

The Regulation sets forth a wide range of places to attend the e-hearing. Accordingly, the attorneys can attend the e-hearing from their offices, from places designated by the bar association or allocated in courthouses, or any place far from any influence and appropriate to observe the facial expressions, body movements, attitudes and behaviors of the speaker. In addition, the party requesting an e-hearing or the party that will take an oath or be interrogated via the e-hearing system, as well as witnesses, experts, and other interested parties, will be able to attend from places allocated for this purpose in courthouses or penal institutions where they are located.

On the other hand, the party who is decided to attend the hearing via the e-hearing system due to illness, elderliness or disability will be able to attend the hearing directly from their residence or institution. The same opportunity is available for witnesses, experts, or other relevant persons who are decided to be heard through this process.

4. Identification in E-Hearings

In general, electronic signature or mobile signature will be taken as the basis for identification. The identification process will be carried out by the court. Accordingly, the identity of the party's attorney will be verified by using secure electronic signature or mobile signature, UYAP records and similar methods, and the identity of the party participating in the e-hearing from other places where his/her attorney is allowed to attend will be verified by the court by examining the UYAP records or using similar methods.

Witnesses, experts and other interested parties attending the e-hearing from their residence or institutions due to illness, old age or disability will be identified by using secure electronic signature or mobile signature.

5. Recording and Storage

Any kind of media recording is prohibited during the e-hearing. However, the court is authorized to record the trial by notifying the reason if it deems necessary. However, disclosure of these records without the consent of the court and the persons concerned is strictly prohibited. In this respect, persons who violate the prohibition on recording may be sentenced to imprisonment up to 6 months pursuant to Article 286 of the Turkish Criminal Code No. 5237.

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