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LAW NO. 21,394: MAIN PERMANENT MODIFICATIONS FOR PLEADINGS AND HEARINGS BEFORE COURTS WITH CIVIL JURISDICTION, THE COURTS OF APPEALS AND THE SUPREME COURT

On November 30, 2021, Law No. 21,394 was published, introducing a set of reforms to the justice system to promote efficiency in judicial proceedings and to limit the need for physical presence in Courts. In addition, on December 13, 2021, the Supreme Court issued Act N°271-2021, enacting a decree (auto acordado) to regulate the remote appearance at pleadings and hearings before courts with civil jurisdiction, the Courts of Appeals and the Supreme Court.

The main reforms of the Law include **modifications to the appearance at pleadings and hearings before courts with civil jurisdiction, the Courts of Appeals and the Supreme Court** .

As a result, various provisions of the Organic Code of the Courts, the Code of Civil Procedure and the Electronic Procedure Law have been reformed:

Appearance at hearings before civil courts

The general rule continues to be that hearings must be held in person. However, the law regulates two mechanisms that allow both the parties and the Court to appear remotely at the hearing:

• **Remote appearance upon request of a party:**

• **Party request** : The judge may optionally allow the remote attendance at the request of a party, as long as it does not cause any lack of defense. The request can be made up to two days prior to the hearing, offering effective means of contact.
• **Procedural sanction** : If it is not possible to contact the interested party through the means offered after three attempts, it will be understood that he/she has not appeared at the hearing.
• **Motion due improper operation of the remote connection** : Any party may file a motion if the technological means do not perform

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Carey y Cía. Ltda.
Isidora Goyenechea 2800, 43rd Floor.
Las Condes, Santiago, Chile.
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correctly during the hearing, for reasons out of his control. If the motion is accepted, the court shall set a new day and time for the continuation of the hearing, without losing what was done prior to such malfunction.
• **Exceptions** :

• Depositions of the parties, witness statements and other proceedings that the judge prudently determines, may only be given in the premises of the court.
• The remote appearance at hearings shall be subject to the transitory regime rules that can be consulted here , after 10 days from the publication of the Law and for a period of one year from then, or until the Supreme Court decides its anticipated conclusion in certain jurisdictional territories or jurisdictions.

• **Remote appearance by resolution of the court:**

• **Court order** : Without prejudice to the above regime, the Organic Code of Courts allows the Courts of Appeals, by resolution based on reasons of good service and upon request of the judge, to authorize the courts under its jurisdiction to adopt a system of exceptional operation to conduct hearings remotely by teleconference. To this end, the Supreme Court will regulate, by means of a decree, the criteria that the Courts of Appeal must take into account in order to approve this kind of exceptional operation, which is still under draft and review.
• **Duration** : The regime will last a maximum duration of one year, which may be extended once for the same period without the need for a new request.
• **Procedural burden of the parties** : The court must request that the parties provide an expeditious form of contact, which must be provided at least two days before the hearing. If this is not offered in a timely manner by any of the parties or if it is not possible to contact them through the means offered after three attempts, it will be understood that they have not appeared at the hearing.
• **Procedural exceptions** :

• Witness statements and parties or expert depositions shall be conducted on the premises of the court.
• Any interested party may request, at least two days in advance, that the hearing to be held in person, invoking serious reasons that make it impossible or difficult for him/her to participate remotely in it, or that due to particular circumstances, he/she is in a situation of

defenselessness.
• The remote appearance at hearings shall be subject to the transitory regime rules that can be consulted here , beginning 10 days from the publication of the Law and lasting for a period of one year from then, or until the Supreme Court decides its anticipated conclusion in certain jurisdictional territories or jurisdictions.

Pleadings and hearings before Court of Appeals and the Supreme Court

The general rule continues to be in-person hearings and pleadings . However, the Law regulates two mechanisms that allow both the parties and the court to conduct them remotely:

• **Applicability of remote hearings or pleadings**

• **Request of a party** : Any of the parties may request arguments remotely by videoconference up to two days before the hearing of the case, which shall not affect the right of the opposing party to argue in person.
• **By decision of the Court** : The Courts of Appeals and the Supreme Court may authorize an exceptional system of operation that enables them to hold the hearing of the cases submitted to them remotely by videoconference. The Supreme Court shall regulate by a decree the criteria that the Courts of Appeals must take into account in order to approve this kind of exceptional operation, which is still under draft and review.

• Duration: The regime will last a maximum duration of one year, which may be extended once for the same period without the need for a new further request.
• Exception: Any interested party may request, until 12:00 a.m. of the day before the hearing of the case, that the hearing be held in person, invoking serious reasons that make it impossible or difficult for him/her to participate remotely, or that due to particular circumstances, he/she is in a situation of defenselessness.

• **Transitory and provisory regime** : The remote appearance at hearings shall be subject to the transitory regime rules that can be consulted here , beginning 10 days following the publication of the Law and for a period of one year from then, or until the Supreme Court decides its anticipated conclusion in certain jurisdictional

territories or jurisdictions.

• **Verification of identity** : Attorneys may plead from any place by any technological means compatible with those used by the Judiciary. Additionally, in the case of being in a region other than that of the respective Court, the remote appearance may also take place from a building of a Court of Appeals or any other court with available electronic means and dependencies. In these cases, the verification of the identity of the party appearing remotely must be made immediately before the beginning of the hearing, remotely and before the minister of faith or the official determined by the respective court, by showing his identity card or passport. A record of this situation shall be made.
• **Procedural burden of the parties** : If it is not possible to contact the attorneys who have requested arguments remotely through the means offered after three attempts, it shall be understood that they have not appeared at the hearing. A record of this situation shall be made, as well.
• **Motion due to improper operation of the remote connection** : Any party may file a motion if the technological means do not perform correctly during the hearing, for reasons out of his control. If the motion is accepted, the court shall set a new day and time for the continuation of the hearing.
• **Extraordinary right to suspend the pleading and hearing** : The parties that have already exercised the right to suspend the proceeding by mutual agreement, regulated in Article 64 of the Code of Civil Procedure, may agree to suspend it one additional time per instance, or before the Supreme Court when cassation remedies or remedies of complaint against a final judgment are pending. It will suspend the deadlines as well that were currently active in the procedure, at the moment of filing the suspension motion. This additional right may be exercised for a period of one year from the publication of this law.

Coming into force of the new provisions

The new regulations regarding court appearances and hearings will come into force on **December 10, 2022** , which is the date that the transitional regime regulated in the same law will expire.

However, **the Supreme Court may decide an earlier entry into force of the permanent provisions regarding certain jurisdictions or differentiated jurisdictional territories** . In such cases, temporary

validity of the temporary regime will be reduced in such jurisdictions or jurisdictional territories.

The modifications to the temporary provisions regarding appearances at pleadings and hearings before courts with civil jurisdiction, the Courts of Appeals and the Supreme Court, can be reviewed here.

The modifications introduced by the Law to the **ordinary civil procedure** can be consulted here.

Authors: Aldo Molinari; Mónica Pérez