

Views of the Council for Administration of Courts regarding ensuring the administration of justice amid the ongoing pandemic

Approved in a written meeting of the Council for Administration of Courts between 2 and 5 February 2021.

1. The administration of justice must continue in line with the established procedure also in the situation where the pandemic continues.

In deciding over the details of holding and conducting a court hearing, the panel hearing the case is, under the Constitution of the Republic of Estonia, independent and makes procedural decisions solely based on laws, hearing at the request of the parties to the proceedings their views on how to protect the health of the persons involved in the hearing amid the ongoing pandemic.

Where possible, preference should be given to written proceedings and video hearings over hearings held in the courtroom. However, it is not correct to cancel or postpone hearings that require the physical presence of the persons and are necessary for the correct resolution of the case or other procedural operations because the end of the pandemic cannot be foreseen and the courts are required to solve legal disputes brought before them within a reasonable time. Respect for persons' fundamental rights, including the right to defence in criminal cases must be ensured.

Adherence to the health protection rules at court hearings must be ensured as well. Among other things, hearings should be held in large ventilated courtrooms, the persons in the courtroom should be dispersed, they should wear masks, there should be glass barriers in the courtrooms and, where possible, hearings that last for a day should be avoided and sufficient breaks should be made.

The court has the right to remove persons from the courtroom where the courtroom is too crowded, ensuring that the hearing can be followed from another courtroom. The court also has the right not to allow a person having symptoms of a disease to access the courtroom and to remove a person with clear symptoms of a disease from the courtroom. Where the court suspects that a person may be sick, the court may, before continuing the proceedings, demand that the person prove that their coronavirus test is negative or that they have been vaccinated.

2. In court cases that involve an exceptionally high number of parties and last for a long time (above all, in regular proceedings of criminal cases), there is risk that in spite of all the existing precautionary measures the proceedings may be postponed or suspended for an unspecified time due to someone's sickness and even result in an unreasonable prolongation of the proceedings. Additional measures should be taken to reduce the risks:

- hearings with numerous parties should, where necessary, be held outside the courthouse or the rooms in the courthouses should be reconstructed in such a manner that it would be possible to carry out labour-intensive hearings more flexibly in them (e.g. connecting the courtrooms using movable partition walls), finding the funds required for it;
- the development of the digital capacity of the courts should be supported, providing, among other things, courtrooms with a sufficient supply of video conferencing equipment required for holding online hearings;

- in the Code of Criminal Procedure, the provisions regulating online and hybrid hearings should be clarified, thereby quickly proceeding with the draft act aimed at simplifying the criminal procedure and making it more efficient;
- as soon as possible vaccinate the judges that hear voluminous criminal cases by way of the regular procedure and have long-term exposure to parties to the proceedings as well as the hearing clerks and interpreters as well as frequent professional participants in such proceedings (prosecutors and attorneys).