

Recommendations of the Council for Administration of Courts for organising the administration of justice during emergency situation

Adopted at the session of the Council for Administration of Court on 16 March 2020

The Council for Administration of Courts considers it important that Estonian courts ensure the proper functioning of the administration of justice during emergency situation, while avoiding the spread of the COVID-19 virus to judges, court officers, parties to a proceeding, and other persons engaged in the administration of justice.

Based on subsection 39 (1) and clause 41 (3) 4) of the Courts Act, at its session on 16 March, the Council for Administration of Courts discussed the operation of courts during emergency situation and in order to ensure that any changes in the organisation of work during emergency situation are simultaneous and uniform, it made the following recommendations:

Organisation of the work of judicial authorities

1. Estonian courts will continue to administer justice during emergency situation by reorganising work in order to prevent the spread of the COVID-19 virus to judges, court officers and parties to a proceeding, and other parties involved in the administration of justice.
2. During emergency situation, the chairman of the court and the director of court are responsible for ensuring the continuous compliance with the orders of the person in charge of national emergency situation and the recommendations of the Health Board in courts. Regardless of any provisions of the plan for division of tasks, the chairman of the court has the right to rearrange cases or give orders to carry out procedural acts on the basis of available resources and by virtue of emergency situation.
3. All training sessions, meetings, assignments abroad, and events in the courts are either postponed or carried out by means of technical assistance resources.
4. It is not allowed for a judge and a court officer, who has any symptoms of a viral disease or has been in close contact with a virus carrier, to come to the courthouse but they shall stay at home and immediately inform the chairman of the court or the director of court of their situation.
5. In the courts, telecommuting is implemented in all positions that allow it. The chairman of the court determines the number of court officials required for the resolution of cases on site and the procedure for their substitution. The remuneration of court officers, who engage in telecommuting, is not reduced during emergency situation.
6. The director of court, and the Centre for Registers and Information Systems, and the Ministry of Justice jointly ensure the availability and functioning of technical solutions enabling telecommuting and electronic conduct of procedural acts.
7. The Court office is open on working days from 9.00–13.00 The courthouse is open on working days until 14.00, unless the chairman of the court decides otherwise.
8. All parties to the proceedings and other persons involved in the administration of justice, who are summoned to the court, will be informed that persons with any symptoms of the disease or those who have been in close contact with a virus carrier are prohibited from entering the courthouse. Persons not involved in judicial proceedings or the administration of justice are not allowed to visit the courthouse during emergency situation.

Performance of judicial proceedings

9. Where possible, litigation is handled in writing. Written proceedings will be carried out through the information system of courts and by means of a digital court file application. Upon determining procedural time limits and reviewing the requests for their extension, the courts will take in to account the additional burden, tasks or difficulties for the party to a proceeding due to emergency situation.

10. In cases where a hearing is scheduled, the court will immediately contact the parties to the proceedings and other persons summoned to the hearing as soon as possible and will inform them of the further course of the proceedings.
11. During emergency situation, the hearings that are absolutely necessary for the performance of unforeseen or urgent service duties¹ will be held by technical means of communication. If it is not possible to hold a hearing by technical means of communication, the court will decide on holding a hearing on the basis of the circumstances of each particular case.
12. The chairman of the court will arrange agreements with the authorities, which are situated within the jurisdiction of a court, in which the procedural acts that are absolutely necessary are to be carried out (hospitals, nursing homes, detention centres, prisons, prosecutor's office) in order to find ways of carrying out the procedural act by means, which pose as little risk to human health as possible. Where possible, technical solutions will be used for carrying out procedural acts, to avoid physical contact. Only in exceptional cases, the court will carry out procedural acts outside the courthouse.
13. Except in cases of urgency referred to in clause 11 and where the judge does not determine the written procedure, the court will also conduct the hearing or carry out any other procedural act by technical means of communication. If this is not possible, the judge will decide whether to hold a hearing based on the circumstances of the particular case. In general, the court will postpone the hearing or the conduct of the procedural act, and will execute it as soon as possible after the end of emergency situation. The administrative and district court may postpone hearings and concentrate its work on matters that can be settled by written procedure.
14. The court takes into account that, during emergency situation, bringing imprisoned persons to the courthouse is complicated and can facilitate the spread of the virus in prison or house of detention. Therefore, this is implemented only if that is absolutely necessary. The trial judge or the chairman of the court will inform the head of the detention centre of the need to bring an imprisoned person to a hearing.
15. In case of prosecutors, the judge can expect that they attend the hearing through a video bridge. Where possible, a space will be provided in the courthouse for parties in the proceedings in order to allow them to attend the hearing by videoconference.
16. If a person is summoned to the court during emergency situation, they will be asked to inform the court if they have any symptoms of the disease or they have been in contact with a virus carrier. Any persons who have any symptoms of the disease or who have been in close contact with a virus carrier are prohibited from appearing in the court and they are not allowed into the courthouse.
17. Procedural acts involving direct physical contact are carried out in the court only when it is absolutely necessary. The hearings will be conducted and procedural acts carried out in the largest possible courtroom, where there is sufficient distance between persons. For the transmission of procedural documents, a table is set up in the courtroom and the documents are placed on this table in order to avoid direct contact during physical delivery of documents. After the hearing, the courtroom will be thoroughly cleaned and, if necessary, disinfected.
18. The courts prefer the public e-File and email when choosing the method of service of procedural documents. The courts take into account that the service of procedural documents through the postal service provider and the court security guard may facilitate the spread of the virus, and that such methods are disrupted during emergency situation.

Court's communication with the public and the parties to the proceedings

19. The court's communication with the parties to the proceedings, the public, and its partners is guided by the fact that, even during emergency situation, the court acts in a professional, credible, and independent manner. Communication is organised by means of active cooperation.

¹ See list in Annex

List of unforeseen or urgent service duties referred to in clause 11 of the recommendations of the Council for Administration of Courts adopted on 16 March 2020

- Offence matters

- 1) Granting permissions for surveillance activities (section 126⁴ of the Code of Criminal Procedure);
- 2) Resolving search requests (subsection 91 (2) of the Code of Criminal Procedure);
- 3) Taking into custody or deciding whether to continue it (section 130, clause 262 4), section 275, section 395¹, section 429, section 447 of the Code of Criminal Procedure);
- 4) Imposing custodial detention in misdemeanour procedure (clause 44 (2) 3) of the Code of Misdemeanour Procedure);
- 5) Prematurely releasing a convicted offender from service of punishment due to illness (section 425 of the Code of Criminal Procedure);
- 6) Enforcing imprisonment (section 414 of the Code of Criminal Procedure), its deferral (section 415 of the Code of Criminal Procedure) and waiver (section 416 of the Code of Criminal Procedure);
- 7) Releasing a convicted offender on parole (section 426 of the Code of Criminal Procedure);

- Civil matters

- 8) Applying provisional legal protection in matters of placing a person in a closed institution (subsection 534 (6) of the Code of Civil Procedure);
- 9) Applying provisional legal protection in matters of separating a child from family (section 563² of the Code of Civil Procedure);
- 10) Applying provisional legal protection in establishing guardianship for an adult (section 521 of the Code of Civil Procedure);

- Administrative matters

- 11) Processing of requests from the Police and Border Guard Board for the placement of illegal residents in a detention centre (subsection 23 (11) of the Obligation to Leave and Prohibition on Entry Act; subsection 36² (2) of the Act on Granting International Protection to Aliens);
- 12) Resolving urgent disputes arising from the establishment of an emergency situation.

- Any other urgent procedural act in all types of proceedings if the court considers it urgent.**