



MAGNUSSON

ACCESS TO JUSTICE IN THE NORDICS, BALTICS AND RUSSIA

Like all other parts of public life, the administration of justice and access to legal remedies and dispute resolution have been severely disrupted by the COVID-19 pandemic. The capacities of legal systems even in the most developed countries have been affected, with courts in some places slowing their ability to process cases or even shutting down.

In this newsletter Magnusson will provide you with an overview of the possibilities to gain access to the courts in each jurisdiction in the Nordics, Baltics and Russia.

TABLE OF CONTENTS

[Denmark](#) Page 3

[Sweden](#) Page 5

[Finland](#) Page 7

[Latvia](#) Page 9

[Russia](#) Page 11

[Estonia](#) Page 13

[Lithuania](#) Page 15

ACCESS TO JUSTICE IN DENMARK

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Due to the general lock of most parts of Danish society on 12 March 2020, the Courts of Denmark announced that the courts in Denmark, temporarily and for a period of two weeks, would only be open for emergency matters.

Initially the Courts of Denmark announced that only matters of great urgency would be heard, such as preliminary hearings in criminal proceedings, criminal proceedings where the suspect already was in custody, motions regarding deadline extensions, certain enforcement proceedings, land registration matters and bankruptcy proceedings of particular urgency. However, it was left up to the individual courts to assess, if any given matter qualifies as a matter of great urgency.

On 1 April 2020, the Courts of Denmark announced, that emergency matters would now also include notarial service for corporate and industrial customers and as of 8 April 2020 certain custody proceedings were also included as emergency cases.

Therefore, any case, which had reached a stage, where physical presence in court was required, was postponed

unless it was possible to convince the local court that the matter was of great urgency and/or the case fell into the category of emergency matters as described above.

This of course created delay in most pending cases and cases were being piled up at the courts. The situation became so dire that on 14 April 2020 the Chairman of the Danish Bar and Law Society made a public appeal to the Danish Government to strongly consider taking measures to reopen the courts as soon as possible and to reestablish the public's access to justice.

On 27 April 2020 the courts reopened again with an estimated 25 per cent reduced capacity in order to comply with the guidelines issued by the Danish Health Authority. Even though the Danish courts are now again open for business, the Danish court system will probably be slowed down for a considerable period of time due to the pile up and delay already created.



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Given that the Swedish Government's strategy is to keep large parts of the society open, the Swedish courts are still open and operating as usual as far as possible. However, the COVID-19 pandemic is causing disruptions in the Swedish courts, with the public concern about the spread of the virus and the recommendations from the Swedish Public Health Authority leading to an increase in cancelled and postponed hearings.

Normally about 20 percent of hearings per week in the Swedish courts are cancelled, but in recent months between 24 to 34 percent of hearings have been cancelled. The effect has been most evident in the district courts, where criminal and civil cases are heard, but an increase has also been evident in the courts of appeal where during some weeks cancelled hearings have doubled in comparison to the two previous years. The cancellation of hearings is a direct result of the fact that judges, legal counsels and parties are not able to attend hearings. The fact that more than 30 percent of Swedish lay judges are 70 years old or older, and therefore considered a part of a risk group as identified by the Swedish Public Health Authority, has also led to an increased number of cancelled hearings.

The absence of judges and other critical court employees has led to Swedish courts mainly hearing urgent cases. Each court therefore has to make an assessment of which urgent cases to prioritize. As a result the district courts have prioritized detention hearings, criminal proceedings where the defendant is either detained or a minor, and bankruptcy hearings, while postponing other hearings in for example civil cases. However, the Swedish courts are finding ways to deal with the situation at hand. For example, the use of videoconferencing, although not new in the Swedish courts, has substantially increased during the pandemic, with an increase of 155 percent in the week ending 24 April 2020 in comparison to the same week last year.

Despite the crisis the pandemic has caused, the courts have also decided more cases during the first quarter of the year than ever before since 2000. However, the cancelled and postponed hearings will naturally create a backlog of legal cases in the courts. There have been concerns raised regarding the public's access to justice and what effect postponed hearings will have on criminal hearings, specifically regarding the hearing of evidence.

The Swedish Minister of Justice has declared that the Swedish courts have so far been able to handle the situation effectively by taking care of urgent legal cases, but has also stressed that the situation could deteriorate and will have repercussions for the future. Due to the backlog of legal cases, the Swedish Minister of Justice has also declared that additional government initiatives and funding need to be provided for in the future in order to handle the increased number of pending legal cases. Even so, the backlog will likely cause long-term effects on processing times in the Swedish courts.



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On the 12th and 16th of March 2020 significant restrictive measures were ordered in Finland with the aim to slow down the spread of coronavirus. No explicit orders were given to or regarding the courts, but several restrictive measures are such in effect that require the courts to adjust and alter their operations accordingly. Particularly, the public gathering restriction to 10 people and the recommendation to work from home have affected and continue to affect the functioning of the courts system.

Courts have remained open subject to new guidelines for protecting customers and staff given by the Finnish National Courts Administration. In respect of main hearings, oral proceedings, preparatory hearings and mediation, courts have been advised to use teleconferencing whenever possible. It is up to the judge in each case to identify the individuals who absolutely have to attend court in person and those individuals who can join in via a video link or by telephone.

Hearings in cases that require the parties to attend court in person and that cannot be dealt with by means of tele-conferencing can, as a rule, be cancelled or postponed. However, urgent hearings relating to coercive measures and criminal cases in which the defendant is being held in custody are to go ahead as normal. Instructions on how courts should prioritise cases were also included in the National Courts Administration's guidance that was given to the courts.

Courts have also been advised to make arrangements to enforce the rules on social distancing inside courthouses. While a court hearing does not constitute a “public gathering” within the meaning of the restriction, the limitation of 10 people in a gathering is in principal followed in the courts. Therefore, the courts have been instructed that any hearings with more than 10 attendees should, where possible, be split between multiple courtrooms and linked together by means of video and voice technology.

It is, however, notable that the guidelines given by the National Courts Administration are not binding on the courts or the judges, and ultimately it is at their discretion whether and how a hearing is arranged if it is arranged during the time of coronavirus restrictions. This means that differing approaches may have been adopted depending on the court and the judge. It has been reported, that due to postponed or cancelled proceedings significant delays and backlogs are to be expected in the casehandling of the courts.

In our cases the preliminary hearings have quite often been held in schedule by using Skype, but the courts have had a low threshold to cancel and postpone the hearings to a later date. Therefore, in our experience the court proceedings at the moment are not going forward in a very timely manner. Also the Finnish Bar Association has on the 2nd of April in its guidelines regarding the court proceedings during the coronavirus pandemic appealed that the courts and prosecutors shall in co-operation with the attorney profession find ways to enhance the access to justice.

The Finnish society will start re-open from the middle of May, and new guidelines to the administration of justice can be expected.



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On the 12th of March, 2020 significant restrictive measures were ordered in Latvia with the aim to slow down the spread of coronavirus (COVID-19).

The Chief Justice of the Supreme Court of Latvia announced that the courts in Latvia shall postpone all oral court hearings till the end of emergency situation in Latvia, i.e. June 3, 2020, with exception regards to emergency matters (cases related to the deprivation of liberty, limitation of persons legal capacity, etc.). Therefore, urgent hearings relating to previously mentioned matters are to go ahead as normal.

However, notable that the guidelines given by the Chief Justice of the Supreme Court of Latvia are not binding on the courts or the judges, and ultimately it is at their discretion whether and how a hearing is arranged if it is arranged during the time of coronavirus restrictions. This means that different approaches may have been adapted depending on the court and the judge.

Additionally, the Chief Justice of the Supreme Court of Latvia stated that all court hearings, if possible, shall be held in a written process. However, the Emergency law stated that in civil cases and administrative offence cases all court hearings shall be held in a written procedure.

Regards document submission in courts, especially in court, which is dealing with administrative cases, all communication shall be submitted electronically via e-mails.

Courts have also been advised to make arrangements to enforce the rules on social distancing inside courthouses, to minimize the risk to become infected by COVID-19. Each person, who attends the courthouses shall fill in a questionnaire confirming that he/she has not travelled and has not been in contact with COVID-19 patients.

And last, but not least, the court, which is dealing with administrative cases, offer to the parties to hold a court hearing via conference call in Zoom.

Any related news can be expected after June 3, 2020.



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In March and April 2020 in view of necessity of decisive measures aimed at prevention of spread of COVID-19 several acts on different levels were adopted significantly limiting work of courts and allowing merely urgent court actions and processing of incoming correspondence, whereby all work should be ensured by a minimally required number of judges and court employees.

In accordance with the Court Department of the RF Supreme Court letter dated May 7, 2020 it was recommended to recommence work of courts in full starting from May 12, 2020 subject to mandatory observance of certain safety measures, including ensuring of a social distance and personal safety means.

This letter had a recommendation character, whereby work of specific courts should have been continued with consideration to actual regional situation and subject to mandatory observance of federal instructions and recommendations, as well as regional acts.

In view of this starting from May 12, 2020 Russian courts, both arbitration courts and courts of general jurisdiction, started to recommence their work to the extent allowed by sanitary and epidemic situation. For instance, the Moscow Arbitration Court continued its work almost in full starting from May 18, 2020.

COVID-19 restrictive measures gave a new impulse to improvement of electronic court document flow and development of videoconference options. The main recommendation is still to restrain from visiting courts and aim at provision of required documents and representation of a position in an electronic form and, if available, by means of a videoconference.

Obviously, certain visiting rules were introduced, starting from limited time of allowed presence in courts and ending with social distance and personal safety measures requirements.

As it could be expected, almost a two months pause in normal work lead to an increased load on courts, delays in proceedings and preparation of courts acts.

However, as it looks at the end of May, the situation is slowly normalizing, whereby usual level of access to justice is expected to return within the next months and electronic measures of communication with courts will become more widespread and used.



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On the 12th of March 2020, the Estonian Government declared an emergency situation due to COVID-19 pandemic. Nevertheless, the courts remained operating and continued their work following the safety requirements given by the Health Board. These requirements provided that the spread of the virus must be prevented among judges, court clerks, parties to proceedings and other persons involved in the administration of justice.

Therefore, the courts conducted throughout the emergency situation most of the civil and administrative cases in written proceedings. Court hearings, when necessary, were held via video conference platforms. Only in criminal proceedings, all scheduled hearings were postponed until the emergency situation ended.

Since the emergency situation in Estonia ended on the 17th of May 2020, the courts reopened and continued their work following new safety requirements given by the Health Board. It is supervised that people with any symptoms of the disease do not attend court hearings, courtrooms are cleaned and ventilated regularly, and all participants must hold a distance of 2 meters from each other. If the 2-meter requirement cannot be followed, then all participants must be separated by plexiglass partitions, wear masks, visors or respirators.

In conclusion, the work of the court system was not particularly disturbed during the emergency situation and their workload has not increased significantly. This is largely due to the video hearings and other technological solutions introduced by the courts, which have proved to be very effective and reliable.



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On the 16th of March 2020, the Judicial Council of the Republic of Lithuania issued recommendations on the organization of court work, during the quarantine period.

Initially, the Courts of Lithuania announced that all hearings in oral procedure except in cases of statutory urgency (for example, issues related to arrest, removal of a child from an unsafe environment), shall be canceled and postpone until the end of quarantine. Courts have also been advised to restrict access to court facilities and stop direct service to persons.

According to recommendations, the courts proposed that cases be adjudicated by written procedure, or postponed. Also, the courts offered to the parties to hold a court hearing by telephone or video conferencing (Zoom, Skype for business, Microsoft Teams) where practicable.

On the 27th April 2020, the Judicial Council issued the new recommendations, and the courts started reopened again.

Courts have made arrangements to enforce the rules on 2 m social distancing and mask-wearing inside courthouses. It is still recommended, if possible, to hear cases in written proceedings and to submit applications and other documents to the court by e-mail, via the Electronic Services Portal e.teismas.lt, as well as by post.



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In consequence of COVID-19, Magnusson has formed a Cross-Border Response Team with specialists across the Nordic and Baltic countries, who are available to assist as soon as possible, to ensure that the financial consequences of COVID-19 are reduced as much as possible.

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COVID-19 RESPONSE TEAM

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