COVID-19: Use of video and telephone conferences in civil proceedings

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Key takeaways

- **In proceedings involving the physical presence of the parties, it is mandatory to comply with the FOPH's hygiene recommendations.**
- **Hearings can be held by video or telephone conference if the parties agree and no important reasons exist to restrict the use.**
- **If the physical presence of the parties or the use of video or telephone conference is not reasonable or possible, the court may conduct the proceedings in writing only.**
- **When using video or telephone conferences, data protection rules must be taken into account.**

By means of the Ordinance on Measures in Judiciary and in Procedural Law of 16 April 2020 (COVID-19 Ordinance on Judiciary and Procedural Law), the Federal Council has decided that in derogation of the Civil Procedure Code, hearings in civil law proceedings may be held by video conference and in family law proceedings by video or telephone conference. With the exception of media professionals, the public may be excluded from participation in video conferences. If it is impossible or unreasonable to conduct the proceedings by video or telephone conference, courts may waive oral proceedings and conduct the proceedings in writing only. Data protection rules must always be complied with.

The Federal Council has refrained from taking special measures in the area of administrative and criminal procedural law. In administrative procedural law, video conferences are already possible with certain restrictions. In criminal proceedings, the public prosecutor's office or courts may conduct interrogations by video conference. However, it is not possible to conduct entire criminal proceedings via video conference.

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Hygiene measures in physical hearings

After the court holidays in Switzerland ended on 20 April 2020, various courts resumed or will soon resume court proceedings. For example, the High Court, the District Courts and the "Friedensrichterämter" in the canton of Zurich will resume hearings as of 27 April 2020. The courts must ensure that the Federal Office of Public Health's recommendations regarding hygiene and social distancing are observed in physical hearings. The number of people attending a hearing will be limited to the extent possible.

Use of video and telephone conferences in civil procedures

In accordance with the COVID-19 Ordinance on Judiciary and Procedural Law, hearings may exceptionally be conducted by video conference. For a hearing to be held by video conference, it is necessary for there to be either agreement of the parties concerned or important reasons for using video such as particular urgency. With the exception of accredited media professionals, the public may be excluded from participation in video conferences.

If a physical hearing or a hearing by video or telephone conference is not possible, or is unreasonable, the court may in individual cases decide to waive hearings and to conduct the proceeding in writing only.

Hearings in marriage protection and divorce proceedings can be held by video or telephone conference. However, video and telephone conferences are not allowed if children attend the hearing for questioning because of the risk that children could be influenced or otherwise endangered.

Basic principles for the use of video or telephone conferences

When using video or telephone conferences, it must be ensured that sound and pictures are transmitted simultaneously to all parties involved. The general rules of recording hearings also apply in video or telephone conferences. In particular, it has to be technically possible to record and store testimonies of witnesses or experts.

The rules of data protection and data security apply to video and telephone conferences. The transmission of image and sound must be encrypted end-to-end. The servers used must be located in Switzerland or the European Union, which is likely to considerably limit the choice of possible providers. Unauthorised data transfer to third parties must be prevented. Within the framework of these principles, the courts are in principle free to choose the appropriate infrastructure; however, it is recommended that they take into account the specifications and recommendations of the data protection officers.

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No legal or tax advice

This legal update provides a high-level overview and does not claim to be comprehensive. It does not represent legal or tax advice. If you have any questions relating to this legal update or would like to have advice concerning your particular circumstances, please get in touch with your contact at Pestalozzi Attorneys at Law Ltd. or one of the contact persons mentioned in

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