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## Plan for reopening the Courts of Denmark

### 1. Introduction

Following the government's decision of 11 March 2020 to close down the public sector, the Danish Courts established an emergency service to ensure that the most critical functions and cases could continue during the lockdown. The critical functions and cases that have been retained, even when they demand physical presence in the courtroom, are cases bound by deadlines or regarded as being particularly urgent.

In accordance with the recommendations from the government and the Danish Health Authorities. The Danish Court Administration has now decided to reopen the courts. With due consideration for the current recommendations from the Health Authorities, the physical hearings in the courts can be restarted. The reopening must take place with due consideration for the importance of the cases and the capacity of the courts to process them, while the risk of infection must be limited as far as possible. Thus it will be the aim of the reopening to deal with as many cases as possible within the capacity of both the courts and the current guidelines from the Health Authorities. However, the courts are not expected to be able to handle all the cases pending, nor to reach the usual capacity, until the health situation has been normalized.

This plan for reopening includes an overall description of how, and under what circumstances, the reopening of the courts can be practically implemented. In *section 2* is a plan for the cases and procedures covered by the reopening plan. In *section 3* there is a description of how the cases will be prioritised in the courts, and *section 4* addresses the practical issues that need to be considered for the courts to adhere to the guidelines from the Health Authorities. In *section 5* the initiatives needed to secure a flexible and efficient process of the cases are outlined, including cooperation with the prosecution service and the attorneys.

The courts of Greenland and the Faroe Islands are covered by this reopening plan. The plan is not aimed at the Danish Court Administration and the Board of Appeal.

It is expected that the Ministry of Justice will decide that the Board of Juvenile Crime will resume its board meetings at the same time as the courts reopen.

This reopening plan is valid until the Health Authorities' need for this plan no longer exists. The measures and initiatives of the reopening plan will be evaluated continuously.

The reopening plan delineates the common frame and direction of the Courts of Denmark with a view to the uniformity as stated in the strategy of the Courts of Denmark. Each court has to adjust the plan to the local conditions and the actual cases.

## 2. Cases and procedures covered

### 2.1. Cases and procedures that can go ahead with physical presence

When the courts reopen, the process of the physical court hearings can be restarted with due consideration for the process being carried out in accordance with the health regulations. Thus the following cases can be dealt with physical presence in court.

- *Criminal cases*: All types of criminal cases, including preliminary statutory hearings, extension of deadlines, cases involving fines, summary proceedings, trials in cases involving one professional judge and two lay judges, and if possible jury cases etc.
- *Civil cases*: All types of civil cases, i.e. family law cases, litigation between private citizens and authorities, pension companies etc, money claims and contractual relationships etc.
- *Enforcement proceedings and probate cases*: all types of enforcement and probate cases, i.e. cases of enforcement of claims, probate cases concerning an estate, division of property of spouses, insolvency cases and cases of bankruptcy quarantine.
- *Bankruptcy cases*: All bankruptcy cases can be heard.
- *Notarial acts*: All types of notarial acts can be processed, including confirmation of identity and certification of wills and power of attorney for the future, etc.
- *Cases of property registration*: Cases of property registration are on the whole dealt with digitally. The processing of these types of cases has therefore not been seriously affected by the lockdown and will thus also continue to be processed.
- *The Cashier's Office* will be manned again to ensure that invoices are paid and that cases can be registered in the systems for the case administration to be supported.
- *Admission*: The courts can open their courtrooms in normal opening hours. There will also be access to the courts in connection with the court hearings outside normal opening hours.

These physical court hearings must take place with due consideration for court security, in compliance with the health guidelines, and in accordance with the guidelines and recommendations of the Health Authorities. This means that there must be a distance of 2 meters between the people in the courtroom and that there must be a daily cleaning service of the courtrooms just as there will be a limit to the number of people present etc. As the courtrooms are very different, each court will have to make the final decision as to which cases can be heard. The recommendations for a safe and secure procedure as far as health is concerned is described in section 4.

### 2.2 Cases and procedures that should be carried out at home

To minimize the risk of infection during the reopening the employees of the Courts of Denmark should continue to manage from home the functions that do not demand physical presence in the courtroom. This is completely or partially relevant for the following types of cases:

- Preparation and scheduling of civil cases.
- Preparation of enforcement proceedings.
- Preparation and scheduling of probate cases.
- Preparation and scheduling of criminal cases.

- Cases that can be processed on a written basis by the District Courts, e.g. certain types of notarial cases, certain types of family law cases, certain types of criminal cases, and certain types of probate cases.
- Cases that can be processed on a written basis by the High Courts, e.g. appeal cases, probate or enforcement cases.
- Bankruptcy cases that can be processed on a written basis or via telephone.

The courts can freely use telephone meetings to prepare cases in a number of areas, also when working from home. This is the situation for civil cases, enforcement cases, certain probate cases, and certain family law cases.

After reopening, Video 3 can still be used as much as possible.

Skype and Teams can be used to hold virtual meetings among employees of the courts, and continue to be used for the procedures followed by people working from home.

The individual courts draw up plans on how to deal specifically with the cases mentioned above.

### **2.3 Cases and procedures that demand special attention**

With the present recommendations from the Health Authorities on distancing the Danish Court Administration estimates that there will be a number of cases that cannot be heard without risking infection etc. as the courtrooms lack the necessary size.

This may be the case in particular in major jury cases and cases with many defendants, e.g. gang cases. The Danish Court Administration is right now checking whether it will be possible to find suitable external localities for a limited period where such cases can be heard without health risks during this extraordinary time.

The Danish Patient Safety Authority has stated that it is not impossible, when viewed from a health perspective, to hear cases that are held outside the court buildings, e.g. enforcement proceedings and notarial proceedings outside the courtroom, cases of guardianship and inspections in connection with forced sales etc., but that there may be a need for extra preparation for whatever the court employee may risk coming across. If there are several parties involved, they should coordinate beforehand on how to act at the location, so that the demand for distance can be upheld and so that as few as possible move onto the location.

### **3. How to give priority to cases**

A gradual opening of the courts must follow the common guidelines on priority of cases as well as on types of cases to ensure a uniform treatment of the cases throughout the country. This also goes for added local guidelines for scheduling dates and the use of rooms in the courts for the different categories of cases and the number of participants.

This involves a considerable amount of work that includes judges, other jurists, and the administrative staff of the individual court.

As previously, the actual priority of the areas and types of cases must be given locally by the administration of the individual court, with due consideration for the local conditions and circumstances. It must also be

noted that there may be decisions which are judicial and thus governed by the independence of the court jurists.

### **3.1. Priority and types of cases**

A possible prioritisation of criminal cases and civil cases may look like this:

#### *Category 1. Custody cases and jury cases*

Given individual priority on the basis of the estimate of proportionality.

The small number of jury cases where the defendant is not in custody can be given priority as a category 2 case following an actual assessment.

#### *Category 2. Cases of rape, violence, and weapons*

Cases of rape, violence, and weapons are given priority in accordance with the politically set targets and in the following order:

1. Rape cases (The Criminal Code § 216 and § 225, cf § 216)
2. Cases of violence: Aggravated violence (§§ 245 and 245 a) and grievous bodily harm (§ 246)
3. Cases of offensive firearms: Illegal possession of firearms and explosives under particularly aggravating circumstances in public places (The Criminal Code § 192 a, section 1, no. 1, cf section 3)
4. Cases of violence against people in public service or employment (§ 119, section 1, as far as violence is concerned), violence against witnesses (§ 123 as far as violence is concerned) and simple violence (The Criminal Code § 244, cf § 247, section 1)
5. Cases of weapons: Illegal possession of knives in a public place (The Knife Act § 1)

#### *Category 3. Civil cases of some urgency*

The following cases with oral proceedings have mutual priority in this category:

1. Parental custody cases, domicile, contact order etc.
2. Forced exercise of lien, where this still takes place.
3. Injunction cases

#### *Category 4. General cases involving lay judges and civil cases*

These cases are given priority based on a concrete assessment of:

Criminal cases: The time of the crime, the age of the case as well, the nature of the deed, and the length of the sentence.

Civil cases: The age of the case, its nature and importance

#### *Category 5. Criminal cases without lay judges (traffic offences etc)*

These cases are given individual priority based on a concrete assessment of the age of the case, the nature of the deed, and the length of the sentence.

The organisation of the processing of the enforcement and probate cases is best planned by the individual court, and this court will thus be able to give priority to the cases within its jurisdiction. A suggestion is provided here for a prioritisation of cases, as it is the management of the individual court that gives priority to the cases with due consideration for the complexity of the cases and the local situation etc.

With regard to enforcement cases, forced sales must be given priority, if the court finds it defensible with regard to the health situation. As for immediate enforcement proceeding cases, postponement of lease cases is given higher priority than cases of closure. There may be very special cases that are given a higher priority, e.g. custody and preservation of evidence cases. As far as forced sales are concerned, where there may be several participants, consideration should be given in each case as to whether it is defensible to proceed in view of the health situation, and possibly find a larger court room.

As regards administration of the estate of the deceased and insolvency, priority will be very dependent on how the court decides to organise itself and which procedures it chooses to follow in connection with the lockdown. A possible prioritisation may look like this:

*Administration of the estate of the deceased:* 1. Establishment of new cases and registration of demands. 2. Telephone meetings. 3. Release. 4. Estate inventory. 5. Calculation of estate tax.

*Insolvency:* 1. Process of new bankruptcies and other urgent cases, e.g. election of trustee which has not been fixed due to the crisis. 2. Process of other postponed meetings. 3. Process of postponed cases. 4. Establishment of new cases. 5. Debt relief. 6. Compulsory dissolution, and 7. Division of matrimonial property. (Some of these will have higher priority than the compulsory dissolutions).

### **3.2. Priority of already fixed hearings, postponed hearings and new hearings**

As the courts gradually reopen, it will be necessary to decide whether the already scheduled civil hearings and criminal cases can and must be adhered to, or be cancelled to allow time for higher prioritised postponed cases or highly prioritised new cases.

An overview has been drawn up of specially identified major criminal cases involving 5 court days or more which have been cancelled in the lockdown period, and which must now be rescheduled. The overview also lists which defence lawyers have been appointed in which cases, and notes that some attorneys have been appointed in several cases.

With regard to scheduling dates and processing cases until the summer holidays in July 2020, all the courts can provide dates and process all the cases, as it is assumed that it will not be possible to find open dates for the cases listed in the overview. As far as scheduling dates for cases in the period onwards from 1 August 2020 this can be done in cases involving lawyers who are not mentioned in the overview. In cases with clashes of lawyers, as the overview makes clear, the scheduling of dates for the hearings must wait for the major cases listed in the overview to be rescheduled.

It is assumed that the courts coordinate among themselves as much as possible.

#### *Scheduled cases*

In principle, cases (civil as well as criminal) scheduled for oral proceedings *after* the date when the courts move on from the present emergency to a partial reopening, must be heard, unless the hearing cannot take place in a way that follows the health guidelines, (due to the number involved and the courtrooms available). In the same way the full reopening will take as its starting point adherence to the already scheduled hearings. Civil cases and certain criminal cases which are not considered to be urgent (categories 4 and 5) can be cancelled or postponed during the partial reopening as well as on the full reopening to allow for cases from category 1 or high priority cases from category 2 to be scheduled and processed.

#### *Cases postponed due to the COVID-19 lockdown*

Postponed cases are scheduled before non-postponed cases (i.e. cases that have come in but not yet been given a date).

Postponed criminal cases have as their starting point the priority given in the 'list of priority' and must be given a date in accordance with this. The date for a postponed criminal case must consider the availability of a suitable courtroom with the necessary capacity for the people present during the oral procedure.

Postponed civil cases for the High Court must be processed using written material as far as possible.

Furthermore, the parties in cases both in the lower courts and the high court are encouraged to hear cases through court-based mediation. Postponed civil cases which have not been finalized after a court-based mediation or based on a written process must be scheduled so that they do not in a serious way prevent the provision of a date for cases given a high priority.

#### *New non-scheduled cases*

Newly forwarded non-scheduled criminal cases have priority before civil cases forwarded but not yet scheduled, (however with the modification following from the situation for category cases 3, 4 and 5).

Civil cases which have come in but not yet been scheduled and which cannot be settled on the basis of written material or a court-based mediation, and which are not covered by category 3, must be given a date so that they do not in any serious way prevent the provision of a date for cases with high priority.

#### *Other conditions*

In the reopening period and until August 2020 the probate courts can limit their opening hours for telephone calls to all weekdays between 9.00 and 12.00.

## **4. Case procedures that are defensible with regard to health regulations**

### **4.1 Recommendations for court procedures in accordance with health regulations**

It is a prerequisite for reopening the courts that the court procedures can be carried out in accordance with the Health Authorities and their recommendations and guidelines on how to avoid infection.

The courts must initiate a number of practical prerequisites to ensure that the court buildings and court rooms can be reopened, and that the case can be heard in compliance with the health regulations. This is what it involves:

- Considerations as to which courtrooms can be used for which type of cases while simultaneously maintaining the recommendations of the authorities with regard to distance, hygiene, and cleaning.
- Access and regulation of admittance for the people involved in the court meeting and other visitors.
- Number of participants present in connection with the processing of the different cases and court hearings.
- Can the court be manned in teams? Can the employees have staggered working hours or can they come to work on different days?.
- Protection of front line staff.

The Danish Court Administration has prepared recommendations and guidelines on how to process the work of the courts in a health-compliant way in cooperation with the Danish Patient Safety Authority and Work Environment in Denmark.

The over-all starting point for the guidelines is that the 2-meter demand for social distance between people and 4 sq. meter per person in a room must be kept, and that physical protection with plexiglass is considered to have a protective effect and can function as an alternative in cases where the demand for distance cannot be fulfilled. In addition, contact points must be minimized and/or be cleaned frequently.

Based on this the considerations that the courts must be making over the reopening can be divided into the following areas:

- Presence in the courtroom
- Hygiene and cleaning
- Access to the courtroom
- Access for the public
- Assessment of the courtrooms

*Considerations regarding the presence of the employees in the courtrooms*

- The court should allow employees to continue to work from home, when they do not have to take part in or support the process in the physical court meetings.
- If possible, judges and other employees can work in different teams without contact with one another e.g. using staggered hours.
- Employees who work in the court must be placed in as many rooms as possible. Give priority to employees sitting alone in an office, or make the employees share a large office where it is possible to have distance between their desks.
- Rooms must be organized so that the required distance can be maintained, and so that infection is minimalized.
- Limit physical meetings as much as possible and continue to assess whether meetings can be held via telephone, or virtually via video, Skype or Teams, also when the participants are present at the work place.
- If there are physical meetings, there must be 2 meters between the participants and 4 sq. meters per person in the room. The meetings must be as short as possible.
- No social arrangements etc. are to be held, and communal meetings must be cancelled or held via Skype, Teams or the like.
- All employees must as far as possible have lunch in their own office. Alternatively they can collect their lunch at staggered hours in the canteen. There must be the possibility to wash or sterilize hands on entry and exit from the canteen. The canteen must be organized so that the distance between the chairs and tables is 2 meters.
- If there is a lunch provided, any possible buffet must be cancelled. An alternative can be to have individually packed sandwiches delivered. Every consideration must be taken to ensure that no queues develop. If the canteen has payment for food, distance markings in front of the cashier must be visible.

*Considerations with regard to hygiene and cleaning*

- Hygiene and cleaning must be given high priority both in the inner and outer zones.
- Make sure to provide clear information that all who either work or attend meetings in the court follow the general advice from the Danish Health Authorities on how to limit the spread of infection and protect risk groups. This means among other things:

- That people infected or with symptoms (even mild symptoms) must follow the day-to-day recommendations from the Danish Health Authorities to self-isolate.
  - That there is the possibility to wash or sterilize the hands on entry to the court.
  - That employees or visitors to the court wash or sterilize their hands on entry or exit of the court.
- An agreement with the regular cleaning firm must be made to ensure that cleaning and disinfection of the so-called contact points (door handles, railings, electric switches, microphones, buttons on vending machines, fridges, water coolers, payment machines, etc) are carried out several times a day.
  - Special attention must be given to the regular cleaning of toilets, including washing all surfaces and disinfecting all contact points. In all toilets and in kitchens where it is possible to wash hands, visible posters of how to wash hands must be hung up. Soap must be available. After washing of hands only paper towels are to be used to dry them. No ordinary hand towels are to be found here.
  - Tables, chairs, and other contact points in the canteen are to be cleaned at least twice a day.
  - Cleaning the contact points in the courtrooms must take place in between the court hearings, if there is more than one hearing a day in the same courtroom. Likewise, contact points that may have been touched (table, armrest, microphone, lamp, etc) must also to be cleaned, if people change places in the course of the hearing. The number of contact points must be minimized e.g. by moving the chair away from the witness box, see below.
  - Disinfection spirit must be available at the entry to the building and at the entry to the courtroom, so that the users can disinfect their hands before and after visiting to the courtroom.
  - If it is inevitable that several people share the same keyboard or telephone etc, there must be cleaning between each work change.
  - Employees must have access to the means to clean their keyboard etc when at work.
  - According to the Danish Patient Security Authority it is not crucial as to whether the rooms are aired and ventilated, as long as the demand for distance is kept.

#### *Considerations concerning court accessibility*

The physical building structures in the court buildings are very different. Consider the check list below as possible for the special needs of the courts:

- Consider how the users of the court (prosecution, attorneys, specialists, parties, defendant and witnesses etc) and visitors enter and leave the courtroom. If the physical conditions allow it, the court may consider to organize one-way traffic, so that one door is used for entry and another for exit. The same can be considered with regard to stairs. In this way the risk of crowding is reduced.
- In places where there is a risk of queues (in Reception and Security Control) there must be visible signs of distance-marking with tape on the floor in the same way as in the supermarkets.
- The court should consider whether it makes sense to use plexiglass to protect employees and users – as in the Reception – especially where the recommended distance of 2 meters cannot be kept. (For further information see below, under ‘Courtrooms’).

#### *Considerations with regard to access for visitors*

- Users (professional as well as parties, witnesses, defendant, etc) who are sitting in courtrooms must be informed about the demands for good hygiene, including potential illness and symptoms of illness that might indicate COVID-19, as well as expectations of suitable behaviour, especially with regard



to keeping distance while inside and outside the courtrooms, including corridors, waiting rooms, etc. It is advised to hang up the posters from the Danish Health Authorities.

- The judge can at any time limit the number of spectators in the courtroom. Order no. 445 of 19 April, 2020 concerning order against assembly does not apply to the courts.
- Visitors must sit a minimum of 2 meters apart.
- As a rule journalists take precedence over others who have no direct link to the case in question, based on a brief assessment.

#### *Considerations regarding the courtrooms*

In the assessment of whether it is defensible with regard to health to hear a court case, a number of issues become essential, including the size of the court and the way it has been designed. The points below are to be regarded as a guide, and the design of the courtrooms must be assessed on an individual basis considering the given design:

- Consider whether the design of the courtroom is suitable to keep people distant from one another. Most courtrooms can provide 2 meters' distance between the judge, the witness box, the plaintiff/prosecutor and the defendant/defence attorney. The challenge is the close distance between the groups mentioned above, i.e. the judges among themselves, the defendant and his/her attorney etc. Consider reorganising the seating, e.g. moving the seat to a possible clerk of the court, so that there is more distance between the judges.
- Physical protection with plexiglass is seen to have a protective function in cases where the 2-meter distance cannot be ensured. It is therefore worth considering whether it makes sense in the individual courtroom to establish plexiglass protection. If plexiglass is used, it must be the smooth type and must be washable, according to the directives of the Danish Serum Institute. The Danish Serum Institute has not issued further guidelines for the use of plexiglass, e.g. minimum limits for distance and the like, and no further guidelines from the Danish Serum Institute are expected on this. The actual assessment of the use and place of the plexiglass protection must take place locally.
- If possible move the chair away from the witness box so that the table cannot be used. Instead use a chair without armrests to limit the number of contact points. Considered removing the table in the bailiff's court.
- Extra chairs for spectators should be removed. Alternatively there must clear markings as to which chairs or benches can be used and which cannot. This goes for both courtrooms, corridors, waiting areas, etc.
- Everywhere the number of contact points must be limited. Make sure that the courtrooms are kept tidy. No biros, pencils, etc. should be left around, as they may have been used by others and have not been cleaned. Instead the court should buy a lot of disposable biros for users, so that the shared use of biros is avoided as far as possible.
- No files, loose paper, information material, etc. should be left lying around or be taken from the boxes on the walls.
- Avoid jugs of water being shared by several people.
- The court must consider carefully how a jury case can be heard while observing the rules of health compliance, especially considering the distance limits.
- Enforcement proceedings (execution), forced sales, and major meetings of creditors are important for the business world and can for a period be processed in a courtroom instead of a meeting room.

- Consideration must be given as to how many bidders be allowed at a forced sale. Thus the court must consider whether a forced sale is justified.
- In processing criminal cases with lay judges consideration must be given as to whether to let the deliberation take place in a bigger meeting room, in the judge's office or even in an empty court room if that is possible and acceptable.

#### *Consideration with regard to the front staff*

The front staff, including the staff carrying out the security procedures and who in their work have close contact with the users must pay special attention to the information from the Danish Health Authorities, to the police, and to other front staff outside the health sector.

The same is true of employees who are involved in enforcement proceedings externally etc. as well as bailiffs. The Danish Patient Security Authority has stated that it is not impossible to carry out external enforcement proceedings etc. but that there may be need for special preparation for what the employee risks coming across. If several parties are involved, they should coordinate beforehand how to behave on location so that the demand for distance is maintained, and as few people as possible move into the location.

#### **4.2. Special consideration regarding people infected and with symptoms of COVID-19**

All employees and users must at all times follow the guidelines and recommendations from the Danish Health Authorities with regard to good hygiene and sensible behaviour, and they must keep themselves updated via [www.coronasmitte.dk](http://www.coronasmitte.dk) and [www.ssi.dk](http://www.ssi.dk) for the latest recommendations.

#### *Employees*

Employees who are infected or have symptoms that might indicate COVID-19 must not come to work. Read more about the symptoms [here](#). This is also the case even with mild symptoms.

If an employees notices symptoms of COVID-19 while at work, he or she must go home as soon as possible. The workplace must be sanitized and if possible disinfected.

If an employees is found to be infected with the COVID-19, the court must be informed so that it can inform those people with whom the infected person has been in contact at work. The definition of 'close contact' as defined by the Danish Health Authority can be read [here](#).

The court must ensure that an employee who has been infected with COVID-19 only returns to work when the person in question no longer has any symptoms of the disease. The court must furthermore ensure that an employee who has tested positive for COVID-19 but no longer has any symptoms only returns to work when allowed to do so according to the guidelines of the Danish Health Authorities. The guidelines from the Danish Health Authorities can be read [here](#).

If the employee is not free of the infection, but does not feel sick either, then the person in question must discuss with their superior or the local staff administration the possibility of working from home. The same is relevant for employees who have to stay at home due to mild symptoms that might indicate COVID-19, but who do not otherwise feel too sick to work from home.

All these comments for employees are also relevant for lay judges, jurors, specialist judges etc, who have been summoned to take part in a court hearing.

#### *Users*

According to the recommendations from the Danish Health Authorities, persons infected or carrying symptoms (even mild symptoms) must stay at home (self-isolate) until 48 hours after they no longer have any symptoms. Any person who has tested positive for COVID-19, but has no symptoms, must follow the guidelines of the Danish Health Authorities and stay at home (self-isolate).

Professional users who have been infected or have symptoms (even mild symptoms) suggesting COVID-19 must not appear in court and must be given guidelines on this.

Other users, including parties, defendant, and witnesses who have been infected or have symptoms (even mild symptoms) that might suggest COVID-19 must also follow the above recommendations from the Danish Health Authorities. If the court is contacted by a user who informs them that he/she has been infected or has symptoms suggesting COVID-19, as with any other illness, it will be the court's decision whether it is a valid excuse.

If the court later hears that a user has been found infected with COVID-19, those employees who have had some contact with the person in question must be informed. The definition of 'close contact' as provided by the Danish Health Authorities can be read [here](#).

On the Homepage of the court and by visible posters at the court's entrance and exit, there must be information on what to do with regard to illness and symptoms suggesting COVID -19. The general posters from the Danish Health Authorities regarding good hygiene etc. as well as the poster specially aimed at the courts must be used.

#### **4.3 Special considerations for people in risk groups**

The courts must be extra attentive to persons who are especially at risk of catching COVID-19. These include: those over 65, people with chronic diseases or reduced immune defence systems, and pregnant women. According to the Danish Health Authorities a person in the risk group 'must be aware of good hand hygiene, avoid shaking hands, secure safe distance, and focus on cleaning'.

In the case of an employee, he/she does not have to be moved to another place of work or work from home. The management must enter into dialogue with the individual and make a concrete and individual assessment, where the emphasis is on whether it is appropriate for the person in question to continue to fulfil his/her usual function. The assessment must include which possibilities there are for moving to work conditions that have no physical contact with others, and must also include an appraisal of the security and risk that the employee has in the normal work and function situation. Any limited possibilities to move the employee elsewhere must be solved locally. When in doubt the employee should contact his/her own doctor.

The above guidelines are also relevant for lay judges, jurors, specialist judges, etc. summoned for a court hearing.

## 5. Flexible case procedures

A reopening of the courts will happen gradually and on the assumption of a flexible approach by both employees of the Danish Courts and the users of these courts.

It will be of importance that all actors create a mutual understanding. Especially from the prosecution and among the circle of defence attorneys considerable flexibility must be shown to make it possible to deal with particularly urgent criminal cases in connection with a gradual reopening of the courts.

The Danish Court Administration recommends – after discussion with the Association of Danish Judges, Association of District Judges, the HK section for the Courts of Denmark and the Union of Civil Servants in the Courts – that the courts work in a flexible way to ensure an efficient and smooth process of cases in the period of reopening. The Danish Court Administration requests directly that the points listed below are followed:

- The courts should to an even greater degree focus on the possibility of seeking decisions through court-based mediation or settlement mediation, or even the possibility of deciding a case on a written basis.
- The calendars are already filled with a considerable number of scheduled court hearings right up to 2021. The days and times when there is no scheduled meetings should be used in the best possible way. Hearings can be scheduled from 8.30. Minor court hearings and telephone meetings, etc. can be scheduled early in the day, if cases are scheduled for later in the day, or even plan and use the possible free periods between major trials or put them into groups and deal with them one by one. It is important that the court days are full as far as possible. Of course there must still be time to prepare, to write down the judgment, etc. for the individual employee.
- Postponement of trials must be avoided as far as possible. Witnesses who fail to appear and whose testimony in the trial turns out to be conclusive should be waived where possible, just as the prosecution as far as possible must ensure that the cases are processed in an economically defensible way, see below.
- Trials must be processed as far as possible without postponement – even if the time plan is broken.
- In the reopening period courts can also sit on Saturdays as an alternative to a weekday. The schedules for individual cases are a judicial decision and the times of schedules etc. happen after a discussion between the president and the judges in each official court. The judges and the rest of the staff will have the same number of court days/working days, but this will create flexibility with regard to scheduling and processing some cases sooner, in agreement with the defence attorneys, It will also spread the cases more while at the same time ensuring compliance with health regulations and without too many people being at work at the same time.
- The Danish Court Administration suggests that Constitution Day (June 5) can be used for scheduled hearings so that the available capacity can be used, and so that the Danish Courts can contribute to making the judicial system function as efficiently as possible in this special situation. According to the usual agreement on working hours as well as by custom, Constitution Day is a national holiday for

the Danish Courts, and as it is not possible to give notice of a cancellation of agreements or custom, it is the view of the Danish Courts that the employees of the courts will not be asked to work on Constitution Day.

- To utilize the capacity of the courtrooms in the best possible way it may be possible to hold trials across daytime hours as well as in the evenings in the reopening period. This will mean that the judges and the rest of the staff who have to assist in the hearings will either have longer working days or work in shifts.
- Holidays are to be taken in July as far as possible.
- When scheduling criminal cases and also when requesting already scheduled cases in this extraordinary situation, the courts can decide whether in some cases as an exception it is possible to allow an appointed attorney to be replaced by an experienced junior attorney with the purpose of processing as many trials as possible. It goes without saying that this is acceptable to the defendant.
- The courts can continue to comply with the request from the appointed attorneys to pay fees on account on condition that:
  - 1) The trial/preparatory meeting has started and has been postponed due to the COVID-19 situation, and that the continued trial/ further preparatory meeting cannot be expected to be scheduled until later in the year – after the summer of 2020. The accrued fee for the already finished trial/ preparatory meeting and for the appointed defence attorneys including the fee for prison visit, extension of remands, questioning at the police etc. is to be paid on account.
  - 2) A scheduled trial has been cancelled, and the hearing cannot be expected until some time later in the year – after the summer of 2020. Here a fee for appointed attorneys for prison visit, extension of remands, questioning by the police etc. is to be paid on account.
  - 3) The appointed attorney has had expenses for an interpreter, certificates etc. With regard to point 1 and 2 it is recommended that the request be for at least 5000 DKK including VAT.

In the reopening period, including Saturdays, settlement of fees for defence attorneys will follow the recommended tariff of the high court president. In cases where the fee for participation in hearings on a Saturday is increased by 50 per cent, the Danish Court Administration notes that the courts have the possibility to decide that the expenses from the fee increase can be paid out of the national purse, as the convicted defendant should not be burdened with the extra costs in the reopening period.

There is open justice in Denmark. The courts can consider the physical situation in connection with court meetings and can therefore limit the numbers of spectators in agreement with the general rules of the Administration of Justice Act, and taking into consideration the rooms etc. where journalists based on an assessment take precedent over others without direct links to the case in question. Consideration should be given as to whether in cases of general public importance rooms next door with sound-link should be made available for journalists and possibly others.

The Danish Court Administration has initiated a dialogue with both the Prosecution Service and the Danish Bar and Law organisations (The Danish Bar and Law Society, The Association of Danish Law Firms, National Association of Defence Lawyers) with a view to discussing and reaching a common understanding with regard to coordinating and scheduling as well as processing hearings after the reopening.

In this context a number of ideas have been mentioned that might contribute to the judicial system getting back on track as soon as possible, and that the backlog of cases that has grown in connection with the Coronavirus can be brought down and processed in the best and quickest way.

- The prosecution service contributes to an economic and acceptable processing of the criminal cases by among other things cutting the evidence as much as possible.
- The prosecution service gives priority as far as possible to attendance at trials in all cases where the defence attorneys and the court have the possibility of meeting for the trial. And that the scheduling agreements are adjusted if necessary for the time being in agreement with this.
- The courts and the prosecution service coordinate their summer holidays as far as possible so that July is the vacation month, just as the defence attorneys as far as possible follow this holiday plan.
- Defence attorneys and other lawyers show flexibility with regard to scheduling and processing court hearings, and also pay attention to leaving cases to colleagues who can appear at the time suggested by the court for the hearing, if the defence attorney in question does not have the possibility to appear at the given time.

In general the Danish Court Administration requests that a local dialogue between the courts is started between the courts, the prosecution service, and the attorneys with a view to securing a flexible processing of cases.





