

Provisions on videoconferencing for hearings in civil and criminal proceedings

1. Civil proceedings

In civil proceedings, the use of videoconferencing for hearings is regulated by the Code of Civil Procedure.¹ The possibility to hold a trial or hearing with distance participation is provided for in Section 350 of the Code of Civil Procedure. This section gives the court the right to hold a trial or hearing with distance participation in civil proceedings at all instances and in all civil matters. All courthouses have video conference systems that allow a trial or a hearing to be held with distance participation. A trial or a hearing can also be held with distance participation in cross-border matters.

We hereby provide you with the exact text of the provision.

§ 350. Trial or hearing with distance participation

(1) The court may hold a trial or hearing with distance participation such that it is possible for a party or their representative or adviser to be off-venue during the time of the trial or hearing and perform procedural operations in real time from the off-venue location.

(2) A witness or expert may also be heard by the method mentioned in subsection 1 of this section, and the party who is off-venue may put questions to them.

(3) In a trial or hearing held with distance participation, the right of every party to proceedings to make representations, motions and applications and to formulate its opinion on the representations, motions and applications of other parties must be guaranteed in a technically secure manner, as must any other conditions at the trial or hearing when transmitted in real time, in both image and sound, from the party off-venue to the court and vice versa. With the consent of the principal parties and the witness and, in action-by-petition proceedings, with the sole consent of the witness, the witness may be examined by telephone under the rules for trials or hearings with distance participation.

(4) The minister in charge of the policy sector may enact specific technical requirements for conducting a trial or hearing with distance participation.

2. Criminal proceedings

In criminal proceedings, the regulation of audio-visual distance interviewing or examination of a person is provided by the Code of Criminal Procedure², with the relevant provision set out in Section 69, 468, and 489⁴¹ of the Code.

¹ The Code of Civil Procedure <https://www.riigiteataja.ee/en/eli/510042025001/consolide>

² The Code of Criminal Procedure <https://www.riigiteataja.ee/en/eli/529122025005/consolide>

In addition, it should be noted that a draft legislation on amendments to the Code of Criminal Procedure (560 SE) passed the first reading in the *Riigikogu*, the Estonian Parliament.³ As part of the proposed changes, Section 14-1 would be added to the general part of the Code of Criminal Procedure. This provision would establish a broader framework for conducting court hearings via video link. While the current provisions refer only to conducting interviews via video conference, the proposed amendment would be broader, enabling full participation in court hearings via video, provided that this does not conflict with the public interest and the rights of defence of a suspect and defendant are ensured.

We hereby provide you with the exact text of Sections 69, 468, and 489¹⁴ of the Code of Criminal Procedure, as well as the preliminary draft text of the proposed Section 14¹.

§ 69. Distance interview or distance examination

(1) The proceedings authority may arrange a distance interview or examination of a person if interviewing or examining the person first-hand is complicated or unreasonably burdensome or if the distance interview or examination is necessary for protecting the person's interests.

(2) For the purposes of this Code, distance interview or examination means an interview or examination:

1) by means of a technical solution as a result of which the statement or testimony of the person interviewed or examined is seen and heard directly via live streaming, and questions can be put to the person;

2) by telephone, as a result of which the statement or testimony of the person interviewed or examined is heard directly by live streaming, and questions can be put to the person.

(3) [Repealed – RT I, 06.05.2020, 1 - entry into force 07.05.2020]

(4) A note is recorded in the report of the distance interview or examination regarding the cautioning of the witness against refusing to give a statement or testimony without a statutory basis and against making a knowingly false statement or giving knowingly false testimony.

(5) Where the interviewing or examining of a person who is found in a foreign State requires the assistance of a judicial authority of the foreign State, the provisions of § 489⁴¹ of this Code are followed if the interview or examination takes place under a cooperative arrangement between the Member States of the European Union, whereas the provisions of § 468 of this Code are followed in other situations.

(6) The Minister in charge of the policy sector may enact more specific requirements for arranging distance interviews or distance examination.

§ 468. Distance interviewing or examination of a person present in a foreign State

(1) Distance interviewing or examination of a person present in a foreign State may be requested on the grounds provided by subsection 1 of § 69 of this Code. The request states the reasons for

³ <https://www.riigikogu.ee/tegevus/eelnoud/eelnou/62fde454-6c94-4c0b-a555-e6e663ebba09/kriminaalmenetluse-seadustiku-ja-teiste-seaduste-muutmise-seadus-kohtumenetluse-optimeerimine-ja-kohtulahendite-avalikkus/> (in Estonian)

distance interviewing or examination the person, the name and procedural role of the person to be interviewed or examined, and the position title and name of the person to conduct the interview or examination.

(2) Where audio-visual distance interviewing or examination is requested, the request must contain an affirmation that the suspect or accused to be interviewed or examined agrees to undertake the distance interview or examination.

(3) Where distance interviewing or examination by telephone is requested, the request must contain an affirmation that the witness or expert to be interviewed or examined agrees to such a distance interview or examination.

(4) Distance interviewing or examination of a suspect or accused by telephone is not allowed.

(5) Distance interviewing or examination is presided over and directed by a representative of the competent judicial authority of the requesting State according to the procedural law of that state. The summoning of persons to the distance interview or examination is based on the procedural law of the requested State. The person being interviewed or examined may base a refusal to give a statement or testimony also on the procedural law of the requested State.

(6) The competent judicial authority of the requested State to arrange the distance interview or examination:

- 1) determines and provides notification of the time of such an interview or examination;
- 2) ensures that the person to be interviewed or examined is summoned to and appears for the interview or examination;
- 3) is responsible for verifying the identity of the person interviewed or examined;
- 4) is responsible for observance of the laws of the State it represents;
- 5) where this is needed, ensures the participation of an interpreter.

(7) A distance interview or examination is recorded by the competent judicial authority of the requesting State, but may additionally be recorded by the competent judicial authority of the requested State.

(8) The report of an audio-visual distance interview or examination is filed by the competent judicial authority of the requested State. The report of a distance interview or examination held by telephone is filed by the competent judicial authority of the requesting State.

(9) The report of a distance interview or examination states:

- 1) the time and place of the distance interview or examination;
- 2) the form of the distance interview or examination and the names of the technical devices used;
- 3) a reference to the request for assistance that served as the ground for the distance interview or examination;
- 4) the names of the representatives of the competent judicial authorities of the requesting State and of the requested State who participated in the distance interview or examination;

- 5) the procedural role of the person interviewed or examined and their name, personal identification number or, if the person does not possess such a number, their date of birth, residence or seat and address as well as their telecommunications number or e-mail address;
- 6) a note concerning the provision of an explanation to the person interviewed or examined concerning their rights;
- 7) an acknowledgement by the person interviewed or examined that they have been cautioned concerning the liability that attaches to refusing to give statements or testimony and to the giving of knowingly false statements, or that they have taken an oath concerning the statements or testimony, should such an obligation be prescribed by procedural law.

§ 489⁴¹. Distance interviewing or distance examination of persons who are in the territory of a foreign State

(1) Where a European Investigation Order is issued for the distance interviewing or examination by means of an audiovisual technical solution – as a witness, an expert, the suspect or accused – of a person who is in the territory of a foreign State, or for the distance interviewing or examination of such a person by telephone as a witness or an expert, the provisions of § 69 of this Code apply without prejudice to special rules provided by this Division.

(2) Audiovisual distance interviewing or examination of a suspect or accused is permitted only subject to their consent. If the suspect or accused does not give their consent for such interviewing or examination, execution of the European Investigation Order mentioned in subsection 1 of this section may be refused.

(3) Specific rules for the distance interviewing or examination of a person and, where this is needed, measures required for their protection are agreed between the competent authorities of the requesting and the requested State. The competent authority of the requested State is required to:

- 1) notify the witness or expert concerned of the time and place of the interview or examination according to its national law;
- 2) having regard to the procedural provisions of the requesting State and providing notification, at a proper time, to the suspect or accused, of the rights they have under the law of the requesting State, summon the suspect or accused to the distance interview or examination;
- 3) ensure identification of the person to be interviewed or examined;
- 4) where this is needed, ensure the participation of an interpreter in the interview or examination;
- 5) ensure that fundamental principles of the law of the requested State are not infringed during the distance interview or examination and, if an infringement is detected, immediately take measures to eliminate it.

(4) The distance interview or examination is conducted by or under the direction of the competent authority of the requesting State, having regard to the procedural provisions of that

state. The interview or examination is also attended by a representative of the competent authority of the requested State.

(5) Before the distance interview or examination, the suspect or accused is notified of the rights they have according to the law of either the requested or the requesting State. Before the interview or examination, the witness or expert is notified of their right, which they have according to the law of either the requested or the requesting State, to refuse to give statements or testimony. If the person who is interviewed or examined is required to give a statement or testimony but refuses to do so or gives a false statement or false testimony, the requested State follows its procedural provisions.

(6) A representative of the competent authority of the requested State records the following particulars in the report of the distance interview or examination:

- 1) the time and place of the interview or examination;
- 2) the procedural role of the person interviewed or examined and their name, personal identification number or, if they do not possess one, their date of birth, residence or seat, address, as well as their telecommunications number or e-mail address;
- 3) the particulars and position of the representative or representatives of the competent authority of the requested State who attended the interview or examination;
- 4) the form of the interview or examination and the technical devices used;
- 5) an acknowledgement by the person interviewed or examined that they were cautioned about the liability that attaches to a refusal to give statements or testimony and to knowingly making a false statement or giving false testimony, or that they took an oath concerning the statements or testimony, if the procedural law prescribes such an obligation.

§ 14¹. Conduct of court hearings via video

(1) The court may hold hearings in all instances, including for the resolution of all matters within the competence of an investigating judge and a judge of enforcement proceedings, via video, provided that this does not conflict with the public interest and the rights of defence of a suspect and defendant are ensured.

(2) For the purposes of this Code, conducting a court hearing via video means a situation in which a judge or a participant in the hearing is not physically present in the courtroom but communicates with other participants in real time using a technical solution enabling two-way transmission of audio and video.

(3) The court may require a procedural participant or other person to participate in a hearing via video link if this would help avoid delays in the court proceedings and the conditions set out in subsection (1) of this section are met.

(4) The court may require a defendant to participate in a hearing via video in general proceedings only if, without such participation, there is a risk that it would not be possible to render a final decision in the criminal case within a reasonable time, the conditions set out in

subsection (1) of this section are met, and the defendant has access to or is provided with the necessary technical solution.

(5) Where the court holds a hearing via video, the courthouse must ensure that procedural participants are able to participate in the hearing and that a reasonable number of members of the public are able to observe the proceedings. A procedural participant detained in a custodial institution may be provided with the necessary technical means to participate in the hearing within that institution.

(6) For the purpose of maintaining order during the hearing, the court may interrupt the transmission of audio or video from the device of a person causing a disturbance or terminate the video connection with such person. Where the court terminates the video connection due to disorderly conduct, that person shall be deemed to have been removed from the courtroom within the meaning of § 267(1)(1) of this Code.