

# More modern court proceedings



REGERINGSKANSLIET

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FACT SHEET

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On 1 November 2008 the “More modern court proceedings” reform enters into force. The reform brings major changes in the procedural rules governing legal proceedings, particularly in district courts and courts of appeal. The purpose is to bring about a necessary modernisation of legal proceedings, partly by making better use of modern technology. The reform also makes the rules more flexible, allowing more latitude to adapt the way in which cases and other matters are processed so as to meet the requirements of the individual case. Furthermore, the parties are given more responsibility for moving the case forward towards a decision. Finally, the reform introduces special measures for proceedings in the court of appeal so as to clarify the different roles of the various courts in the system.

## Better use of modern technology

### Examinations will be documented by video

Previously, audio recordings have been made when people were examined in court. Now, in general, all examinations in the district court will also be recorded on video. If the case goes to appeal, the general rule will be that the video recording from the district court proceedings will be used in the court of appeal. The recorded images are subject to secrecy regulations so as to protect the individuals who are examined. The parties in the case have a right to see the images. This can be done by the parties visiting the court premises and watching the recording there.

### Why are examinations to be documented by video?

Replaying an examination from the district court proceedings in the court of appeal will normally give a more accurate impression of the witness's observations since a new examination in the court of appeal may take place long after the events in question. A video recording enables the court of appeal to study both sounds and images, which gives it a better basis on which to assess the probative value of the account given by a witness or some other person examined. Consequently, video recordings will be the main means of presenting oral evidence in the court of appeal.

This clarifies the important principle that the main examination of a case is to be made in the district court, since to a greater extent than previously the court of appeal will base its review on the same material used by the district court in reaching its decision. As the court of appeal will not need to re-examine witnesses to the extent that it did in the past, fewer people will have to come to the court to enable a hearing to be conducted. Another advantage is that crime victims and witnesses often will not need to attend court more than once to give their account of the matter. This will put less of a strain on the people who are to be heard and may also reduce the costs of legal proceedings.

### Participation in court proceedings via videoconference

General rules on videoconferences are being introduced for application in all courts. Parties, witnesses and others who are to participate in a court session will be able to participate at a distance by videoconference unless this is inappropriate. However, the general rule remains that those who are to participate are to attend the court. The option of using videoconferences will also be available to the administrative courts. This technology can also be used when there is not enough room in the courtroom for parties and others who are to participate. In such circumstances, the court will prepare an adjacent room so that they can follow the session by videolink. The court may also arrange an adjacent room for spectators.

### When can a videoconference be used?

A videoconference may be appropriate in several situations. For example, if a witness lives a long way from the court a videoconference may be justified in certain cases because of the expense of attending in person. If there is a threat picture against a person or the court premises, a videoconference may justifiably be used on security grounds, on account of the risk of an attempt to free a prisoner, for instance. Participation via videoconference may also be arranged if the person to be heard feels a palpable fear of coming to the premises where the hearing is to be held. It is up to the court to determine, on a case-by-case basis, whether it is appropriate to use a videoconference.

## More flexible rules and more responsibility for the parties

### Measures for greater ease of processing

The rules on sessions during the preparatory stages of a case as well as on notice to attend court and penalties for failing to attend are being made more consistent. A single form of session can be used for all matters that may arise during an oral hearing in a general court. Stiffer penalties are prescribed for parties whose evidence is to be heard in civil cases and who fail to appear. Further, the court will be able to refuse evidence (such as an examination of a witness) if it cannot be taken despite reasonable efforts and the decision should not be delayed any longer. To make proceedings more efficient, instead of presenting all documents orally during a main hearing the parties will more generally have the option of referring to these documents. In civil cases, it will also sometimes be permissible to rely on written testimony. The option of holding preparatory sessions in criminal cases will be more widely available so as to facilitate better planning of major cases and prepare the way for a more efficient main hearing. Evidence may be taken outside a main hearing, for example at a preparatory hearing, if it can be assumed that the case will be decided without a main hearing.

### District court proceedings tightened up

Civil cases can sometimes take a long time to process. To shorten district court processing times, the requirement to draw up time plans in civil cases is being made stricter. In these, the court and the parties together will draw up a plan for the processing of the case. The parties and the court will then be jointly responsible for continuously checking that the time plan can be adhered to. Further, the court is placed under a stricter obligation to draw up summaries of the parties' positions so as to prepare the case more quickly for a main hearing. These instruments set timeframes, bring about more efficient and rapid processing and prevent delays.

### Requirement for a main hearing in criminal cases relaxed

A possibility is being introduced of deciding certain criminal cases before the district court on the basis of the documents in the case, i.e. without a main hearing. There will be no need to hold a main hearing if there is no reason to sentence a person to any sanction other than fines and a hearing is neither requested by one of the parties nor is needed with regard to the investigation of the case.

## Special measures for appeals court proceedings

### The role of the court of appeal and need for reform

The main examination of a case is to take place in the district court, in other words, the emphasis in the administration of justice is to lie on the court of first instance. The principal task of the court of appeal should be to check that district court decisions that are appealed are correct and, if necessary, rectify any errors. To achieve this, more appropriate appeals court procedures are being created.

### Further development of the system of leave to appeal

The system of leave to appeal is being extended to cover all district court judgments and decisions in civil cases and court matters that are appealed to the court of appeal. This means that the court of appeal will first take a position on whether a case is to be reviewed in its entirety. Leave to appeal will be granted if the court of appeal considers that there is reason to doubt the correctness of the district court's judgment. This change puts the focus on the supervisory function of the court of appeal. The system of leave to appeal makes it possible to shorten average processing times and reduce costs for those involved. To guarantee ambitious standards of legal certainty, the grounds for leave to appeal are being improved through various changes: new or adjusted grounds for leave to appeal, a possibility of granting leave to appeal in part and a possibility of holding a meeting with the parties before assessing whether to grant leave to appeal. The court of appeal is also being given better opportunities to study evidence when deciding on leave to appeal to the court of appeal, for example, by the use of video recordings.

### Change in taking of evidence in the court of appeal

As a general rule, the court of appeal is to refrain from summoning people who have been heard in a case for a new examination when the evidence has been recorded on video in the district court. Instead the video recording from the district court is to be replayed in the court of appeal. However, if further questions need to be asked the court of appeal may summon the person to an additional examination. The new examination will then be seen as supplementing the examination in the district court. The purpose of this is for the court of appeal to base its review to a greater extent on the same material that formed the basis of the district court's decision.



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**Ministry of Justice**

SE-10333 Stockholm, Sweden  
Phone switchboard +46 8 405 10 00

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