



Guidelines for the use of interpreters in courts of law



DOMSTOLSVERKET
SVERIGES DOMSTOLAR

On 15 September 2016 the Government gave Domstolsverket (The Swedish National Courts Administration) the task of promoting more efficient use of interpreters in courts of law. Domstolsverket began this task in the autumn of the same year.

These guidelines have been drawn up as part of a larger package of measures within the framework of the Government's assignment. Other elements include the development of an e-learning programme on interpreters in courts as well as the development and expansion of video technology in the courts to enable simultaneous distance interpretation.

The guidelines have been drawn up in close collaboration with representatives of eleven different courts of law. These representatives have also been members of the steering committee appointed for the completion of the assignment.

The guidelines were completed in November 2017.

Domstolsverket's legal unit is responsible for the administration of the guidelines and for updating their content when necessary.

Contents

Introduction	4
A question of legal certainty.....	4
Shortage of interpreters	4
About the guidelines	4
Legal provisions etc.	6
Procedural provisions	6
The confidentiality required of interpreters.....	6
Kammarkollegiet (the Swedish Legal, Financial and Administrative Services Agency) ..	7
Framework agreement on the supply of interpreting services.....	7
Good interpreting practice	8
Interpreters' fees	8
Interpreters' qualifications	9
No qualifications required.....	9
Different categories of interpreters.....	9
Authorised court interpreters	9
Authorised interpreters.....	9
Trained interpreters.....	9
Other interpreters	10
Consecutive interpretation and simultaneous interpretation	10
Booking an interpreter	11
What kind of interpreter should be booked?	11
How can an interpreter participate?.....	11
Using an interpreting agency or appointing directly.....	12
Booking checklist.....	12
Before a hearing.....	14
Preparatory material	14
Equipment in the courtroom.....	14
Common rooms for interpreters.....	14
During a hearing	15
Circumstances during a hearing.....	15
Checklist for presiding judges.....	15
After the hearing.....	17
Interpreter requisition forms	17
Interpreters' fees	17
Complaints.....	17
Interpreting coordinators.....	19
Acting as host court.....	20
Comments etc.....	21

The aim of these guidelines is to promote efficient and consistent employment of interpreters in Swedish courts of law.

A question of legal certainty

A fundamental aspect of legal certainty is that parties, witnesses or anyone else being heard by a court of law can make themselves understood, and that they themselves understand what is being said. A court is therefore entitled to employ an interpreter for those who do not understand Swedish or those who because of hearing impairments or speech difficulties need interpretation. In some situations the employment of an interpreter is specifically required by law.

Shortage of interpreters

The number of cases and hearings in which interpreters are employed has risen in recent years. The supply of interpreters has not, however, grown at the same rate. One consequence is that in many parts of the country there is a shortage of interpreters, especially qualified interpreters such as authorised court interpreters or authorised interpreters (there is more information on these concepts later in the guidelines). This lack of interpreters has been highlighted in the annual risk analyses made by the courts as a major risk factor, while at the same time it has been pointed out that the shortage entails a concrete risk that hearings cannot be carried out to the planned extent.

About the guidelines

On 15 September 2016 the Government gave Domstolsverket (The Swedish National Courts Administration) the task of promoting more efficient use of interpreters in courts of law. These guidelines have been drawn up as part of a larger package of measures within the framework of the Government's assignment. Other elements include the development of an e-learning programme on interpreters in courts as well as the development and expansion of video technology in the courts to enable simultaneous distance interpretation.

These guidelines are therefore intended to provide support for courts when they employ interpreters. One of the aims of guidelines is that they should assist the courts to work more efficiently when interpreters are employed. Another is that they should help the courts to employ as highly qualified interpreters as possible. This will lead to increased possibilities of maintaining legal certainty in hearings involving interpreters.

The guidelines have been drawn up for application in all of the courts of law in Sweden. One consequence of this is that in some places the guidelines are worded generally. There may, therefore, be reasons for specific courts to draw up their own check-lists or procedures with regard to the specific circumstances that prevail there.

It should be pointed out that the guidelines are only advisory.



Legal provisions etc.

The employment of interpreters by courts of law is governed for instance by stipulations in the Procedural Code, the Administrative Courts Procedure Act and the Public Access to Information and Secrecy Act.

Procedural provisions

Section 6 of Chapter 5 of the Procedural Code (PC) entitles a court to employ an interpreter if a party, witness or someone else to be heard by the court has no command of Swedish. The same provision lays down that the court shall employ an interpreter if a suspect or an injured party in a criminal case has no mastery of Swedish. A corresponding provision can be found in Section 50 of the Administrative Courts Procedure Act (ACPA) which states that if necessary a court shall employ an interpreter.

The provisions relating to those who lack mastery of Swedish also apply to those who need an interpreter because of hearing impairments or speech difficulties.

The provision in the PC makes it clear that if possible the court is to employ an interpreter who is authorised. No corresponding demand is made explicitly in the ACPA. In situations where a court is dependent on an interpreter, however, it is important – irrespective of the type of case – that the court endeavours to ensure that interpretation is of as high a standard as possible.

The confidentiality required of interpreters

All interpreters are subject to the prohibition in the Public Access to Information and Secrecy Act (2009:400), PAISA, against disclosing or benefiting from information acquired by an interpreter in her or his capacity as an employee of a court, see the second paragraph of Section 1 of Chapter 2 of the PAISA. The confidentiality obligation should normally be regarded as applying from when the interpreter has confirmed that she or he has undertaken an assignment.¹

¹ See the decision of the Chancellor of Justice dated 23 October 2013, reg. no. 3535-13-21

Kammarkollegiet (the Swedish Legal, Financial and Administrative Services Agency)

Kammarkollegiet is responsible for the authorisation of interpreters. Regulations on authorisation can be found in the Ordinance on Authorisation of Interpreters and Translators (1985:613) and also in Kammarkollegiet's Regulations for Interpreters.

Kammarkollegiet also maintains a register of authorised and trained interpreters (there is more information on these concepts later in the guidelines). The register available on Kammarkollegiet's website only includes the interpreters who have applied for registration and consented to publication of their details. A complete register is available on application to Kammarkollegiet.

Framework agreement on the supply of interpreting services

Up until 31 October 2017 Swedish courts of law were party to a specific framework agreement on the supply of interpretation and interpreting agency services. This agreement has expired and no new agreement has yet been concluded. This means that the previous rules concerning suborders, agency fees and carrying out assignments no longer apply. The courts are no longer, either, bound by the previous supplier system but may approach any interpreting agency of their choice directly (more information can be found on this subject under the heading "Booking an interpreter").

Purchases of interpreting agency services during a period when there is no agreement constitute direct procurements, which are permitted up to a certain amount. It is therefore important for courts to monitor their costs. Only the agency fees are included in this amount and not, therefore, the total cost of interpretation.

Information about direct procurement can be found on the Intranet – see the following [link](#) or use the search term "What to consider in direct procurements".

Procurements and the management of framework agreements concerning interpreting agency services are the responsibility of Statens inköpscentral (The National Procurement Services) within Kammarkollegiet. More information is available at www.avropa.se.

Good interpreting practice

All authorised interpreters have to comply with the rules laid down in *Good Interpreting Practice (God tolksed)*. These state that an interpreter has to be impartial, observe the regulations about their confidentiality obligations and render all information as correctly as possible. Kammarkollegiet can withdraw authorisation if an interpreter fails to comply with the regulations on good interpreting practice.

More details about the regulations on good interpreting practice can be found in Kammarkollegiet's *Instructions for interpreters (tolkföreskrifter)*.

Interpreters' fees

Fees for interpreting services are laid down in Domstolsverket's regulations on interpreting fees. These fees are published in the annual publication *Legal aid and fees [Rättshjälp och taxor]*, which is available on the Intranet.

Up until 31 December 2017 three levels of fees applied to interpreting assignments.² From 1 January 2018 four levels apply for interpreting fees.³

- Fee level IV: Authorised court interpreters
- Fee level III: Authorised interpreters
- Fee level II: Trained interpreters
- Fee level I: Other interpreters

If you have questions or comments on the contents of *Rättshjälp och taxor*, contact the Legal Unit at Domstolsverket: DOVD-Rattsenheten@dom.se.

² Fee levels up until 31 December 2017 can be found in Section 2 of Domstolsverket's regulations (DVFS 2016:15) on interpreting fees.

³ See Section 2 Domstolsverket's regulations (DVFS 2017:17) on interpreting fees.

Interpreters' qualifications

There are different categories of interpreters and also different kinds of interpreter training programmes

No qualifications required

There are no official demands about the training or expertise required to work as an interpreter. Most interpreters, however, have undergone some form of training.

Different categories of interpreters

The interpreters employed by courts can be divided into four categories:

- Authorised court interpreters
- Authorised interpreters
- Trained interpreters
- Other interpreters

Authorised court interpreters

An authorised court interpreter is an authorised interpreter who has been tested by Kammarkollegiet and certified as having the specific expertise required for interpreting in the legal system.

Authorised interpreters

An authorised interpreter has successfully completed Kammarkollegiet's interpreting test and been issued with state authorisation to work as an interpreter.

Trained interpreters

A trained interpreter is an interpreter who lacks authorisation but who has completed a specific training programme and is therefore entitled to inclusion in Kammarkollegiet's register of trained interpreters.⁴ This register also lists interpreters who after validation are recognised as having corresponding knowledge.

⁴ The programmes that entitle inclusion in the register are listed in Kammarkollegiet's regulations on the register of trained interpreters (KAMFS 2015:5 with amendments through KAMFS 2016:6).

Other interpreters

All other individuals who work as interpreters are included in this category. They may lack interpreter training or have some other qualification than the interpreters described above.

Consecutive interpretation and simultaneous interpretation

Consecutive interpretation is interpretation that takes place in stages after a speaker has spoken. Simultaneous interpretation is when the interpreting is provided at the same time as a speaker is speaking.



Booking an interpreter

**A court should employ as highly qualified an interpreter as possible.
A court is free to appoint an interpreter directly or to book an interpreter through an interpreting agency.**

What kind of interpreter should be booked?

A court should firstly employ an authorised court interpreter. The second option should be an authorised interpreter. If it is impossible to employ an authorised interpreter, a trained interpreter should be booked. Other interpreters should be employed as a last resort.

It should, however, be pointed out that it is only possible to acquire authorisation in 40 languages. In other words there are no authorised interpreters for some languages.

For those who need interpretation what is ultimately important is the right to a fair trial. It may therefore be appropriate to inform those responsible for a case that an interpretation assignment has been given to an interpreter who is neither an authorised court interpreter nor an authorised interpreter.

How can an interpreter participate?

As a court must from the outset book as highly qualified an interpreter as possible, a decision has to be made about how the interpreter is to participate. An interpreter can undertake an assignment by attendance in the courtroom, by means of a video link or by telephone.

At the request of the Government, Swedish courtrooms are being equipped with enhanced video conference technology that makes it possible to provide simultaneous interpretation from a distance using video. At the same dedicated *interpreting rooms* are being equipped with the new technology so that they can be used by interpreters to undertake distance interpretation.

Video interpretation is normally considered to provide a fully acceptable alternative to *in situ* interpretation. A court should therefore from the outset employ an authorised court interpreter or an authorised interpreter that can participate via video rather than a less qualified interpreter who can attend the court. Telephone interpreting should be used as a last resort.

Using an interpreting agency or appointing directly

A court can choose to book an interpreter through an interpreting agency or to appoint an interpreter directly.

Booking directly involves the court itself approaching the interpreter it wants to appoint for the assignment. Kammarkollegiet's website has a register of authorised and trained interpreters.

If a court opts to employ an interpreting agency it may currently approach any agency it chooses. As described above, the previous framework agreement for interpreting agency services has ceased to apply. Courts are no longer, therefore, bound by the suborder procedure laid down in the agreement (more information on this can be found in the section "Legal regulations etc.").

Booking checklist

A checklist is provided below with examples of what it can be useful to consider when booking an interpreter.

- Find out about what interpretation is needed and book the interpreter well before the hearing. As the number of interpreters is limited, an interpreter should be contacted at an early stage so that the planning of the case can be adapted to the availability of interpretation.
- If a court opts to employ an interpreting agency, it must specify what interpreting qualifications are required. Irrespective of whether a court employs an interpreting agency or appoints its interpreters directly the following order of priority should apply:
 1. Authorised court interpreters
 2. Authorised interpreters
 3. Trained interpreters
 4. Other interpreters
- Not only the language needs to be specified when booking an interpreter but also the dialect and what country the speaker comes from.

- The court should decide whether to appoint two interpreters who will work together for a case. This may be determined from case to case but should be considered in particular if a case is expected to last for more than half a day.
- For cases that last for several days the same interpreters should, if possible, be booked for all the days. This may not, however, mean that the court employs less qualified interpreters than would otherwise have been the case.
- If the interpreter is to work via a video link, this should be taken into account when calculating how much time will be needed. The equipment may, for instance, need to be checked in advance.
- If the interpreter is to work via a video link, the court must also make sure that there is video room/interpreter room free at the court in which the interpreter will be working.
- When there is little time before a hearing, it may be appropriate to appoint an interpreter directly to guarantee as highly qualified an interpreter as possible.
- When a booking is made, a booking reference should be supplied.
- If the court books an interpreter who is not an authorised court interpreter or an authorised interpreter, those responsible for the case should be informed.
- In connection with its booking the court should request information on whether the interpreter is certified as self-employed. This information is needed when the court later has to determine the fee to be paid to the interpreter.
- When a booking has been made it should be registered in Vera or noted in the diary. At the same time a note for follow-up should be made. When confirmation has been received from the agency, this should be checked against the booking so that the interpreter's qualifications, language (including dialect) and form of participation match what has been ordered.

Before a hearing⁵

As far as possible courts should comply with requests from interpreters for access to material for preparation. The court must ensure that the room is supplied with the technical equipment needed by the interpreter for completion of the assignment.

Preparatory material

In some situations an interpreter may need advance access to documents in the case to prepare for the assignment. These can, for instance, include a summons, the ruling of a lower court or an appeal. The court should, as far as possible, comply with a request from an interpreter for advance access to relevant documents in the case.⁶ Note that an interpreter who undertakes an assignment in a court of law is subject to the regulations in the Public Access to Information and Secrecy Act concerning confidentiality (see the section on the obligation for interpreters to maintain confidentiality above).

If there are documents that may need to be read aloud during the hearing, these should also be made available for the interpreter.

Equipment in the courtroom

Before a hearing the court must ensure that the technical equipment in the courtroom functions and that the interpreter's microphone and headset has been suitably placed.

If the interpreter is to participate via a video link, it is a good idea to have instructions for the video equipment available in the courtroom. There should also be contact details for the individuals responsible for technological equipment at the court as well as at the court in which the interpreter will be working.

Common rooms for interpreters

Not infrequently lawyers or parties want to make use of the services of interpreters outside the court room. This can make it difficult for the interpreters to relax or prepare for a future assignment. It is therefore an advantage if a court can provide a special room for interpreters that they can use during breaks in a hearing or between two hearings.

⁵ Hearing is used here to include other forms of meeting in a court of law.

⁶ See the decision of the Chancellor of Justice dated 23 October 2013, reg. no. 3535-13-21.

During a hearing⁷

It is the responsibility of the presiding judge to ensure that an interpreter can carry out an assignment in a legally certain manner.

Circumstances during a hearing

Interpretation that maintains a high standard is an important requirement if court procedure is to be legally certain. One important factor in this context is that the interpreter has the competence required to carry out the assignment. This is dealt with above.

Another important factor is, however, that an interpreter is provided during the hearing with the possibility of carrying out the assignment well. This requires the court's understanding of the assignment given to the interpreter and also that the presiding judge pays attention to the circumstances in which the interpreter is working.

Checklist for presiding judges

A bullet list of points is provided below with examples of points to which a presiding judge should pay particular attention when it comes to creating good circumstances for the interpreter to carry out an assignment.

- The presiding judge should decide in consultation with the interpreter where she or he should be placed in the courtroom.
- The presiding judge should in particular bear in mind that certain positions can involve the risk that the interpreter's safety is jeopardised. For instance an interpreter should never be placed in a listening room with somebody who could pose a security risk for the interpreter.
- The presiding judge should give the interpreter the opportunity to introduce herself and explain her role to those who require interpretation. The interpreter should also be enabled to describe how the interpretation will be organised.
- If simultaneous interpretation is provided, the presiding judge can make it easier for the interpreter by urging those participating not to speak too quickly. During consecutive interpretation the presiding judge can help the interpreter by making sure that speakers make regular pauses so that the

⁷ Hearing is used here to include other forms of meeting in a court of law.

interpreter has time to interpret. The presiding judge should also intervene when people start talking at the same time and encourage the interpreter to say if there are shortcomings that make it difficult to interpret.

- If documents are going to be read out aloud during the hearing, these should be made available for the interpreter.
- It is the presiding judge's task to decide on breaks and not the interpreter's responsibility to point out when they are needed. As a general rule, an interpreter should not interpret for longer than one hour at a time. And it should be borne in mind that simultaneous interpretation makes particular demands on an interpreter's concentration.
- If the services of the interpreter are requested by a prosecutor, lawyer or anyone else during breaks in the hearing, they should notify the court so that the interpreter is also given a chance to relax. The presiding judge should make this clear at the hearing.
- When interpreting takes place via a video link and an interpreter is working at a host court, the presiding judge must, if necessary, be able to contact the staff of the host court. Contact details for the appropriate members of the host court's staff (security staff, those responsible for technical equipment, etc.) should therefore be readily available in the courtroom.



After the hearing⁸

When orders are placed, the interpreter requisition form provides the basis for the invoice to be submitted to the court on completion of an assignment. The invoice therefore has to be checked against the requisition form. If an interpreter or an interpreting agency has failed to complete the assignment, the invoice has to be queried.

Interpreter requisition forms

If the services of an interpreting agency are employed, an interpreter requisition form has to be filled in in the courtroom. The details on the interpreter requisition form provide the basis for the invoice that will then be submitted to the court. In order to avoid unnecessary additional work later on, it is important therefore for the details on the form to be checked before it is signed. When an interpreter has been employed for distance interpretation, the agency can instead submit the interpreter requisition form after completion of the assignment.

Courts should have standardised routines for dealing with interpreter requisition forms and invoices.

Interpreters' fees

The fees paid to interpreters for their assignments are laid down in Domstolsverket's regulations on interpreter fees (more details can be found above). These fees are published in the annual publication *Legal aid and fees [Rättshjälp och taxor]*, which is available on the Intranet.

Before deciding on the fee to be paid, the court must know whether the interpreter is registered as self-employed. If this information is lacking, the court should therefore check this with the interpreter in connection with the assignment.

Complaints

If an interpreter or an interpreting agency fails to complete an assignment acceptably, a complaint should be made.

⁸ Hearing is used here to include other forms of meeting in a court of law.

When a court has employed the services of an interpreting agency, complaints should be made to the agency.

If an interpreter has been appointed directly, the complaint should be made to the interpreter.

As Kammarkollegiet is the supervisory authority for authorised interpreters, it should also be notified of an authorised interpreter's failure to complete an assignment acceptably.

A court may need to lodge a complaint for a number of reasons. For example there may have been shortcomings in the way an interpreting agency has carried out its task, an interpreter may have arrived late, or the interpretation may not have been of an acceptable standard.

The Intranet page dealing with interpretation also provides a template for complaints.

Courts should have routines for dealing with complaints. Complaints are important for Kammarkollegiet in its supervision of interpreters and to ensure that interpreting services maintain a high standard.



Interpreting coordinators

An interpreting coordinator at a court can deal with contacts with interpreters and interpreting agencies and also take overall responsibility for monitoring and developing the way in which the court uses interpreters.

A court should consider assigning the task of coordinating the way in which it uses interpreters to one member of its staff. An interpreting coordinator of this kind may, for instance, have the following tasks:

- Acting as the court's contact person in links with interpreting agencies.
- Acting as contact persons for interpreters for questions concerning their assignments.
- Acting as contact person in relation to other courts and facilitating dialogue between courts when video links are used (in booking video rooms/ interpreter rooms for instance).
- Making sure that complaints are filed.
- Taking responsibility for ensuring that the court has explicit routines for the way it uses interpreters and that they are complied with.
- Playing an active role in the work of improving the way in which interpreters are used (for instance arranging regular dialogues with interpreters, interpreting agencies and other courts).

Acting as host court

When courts assist each other with video interpretation it is important that communication between the courts functions well. Host courts are responsible for the way in which interpreters are treated.

The use of video conference technology in connection with hearings in Swedish courts of law has expanded significantly in recent years and is expected to grow even more in the future. This means that greater demands are being made of the courts that act as *host courts*. A host court is one that receives an interpreter, one of the parties or a witness who is going to participate via video in a hearing at some other court.

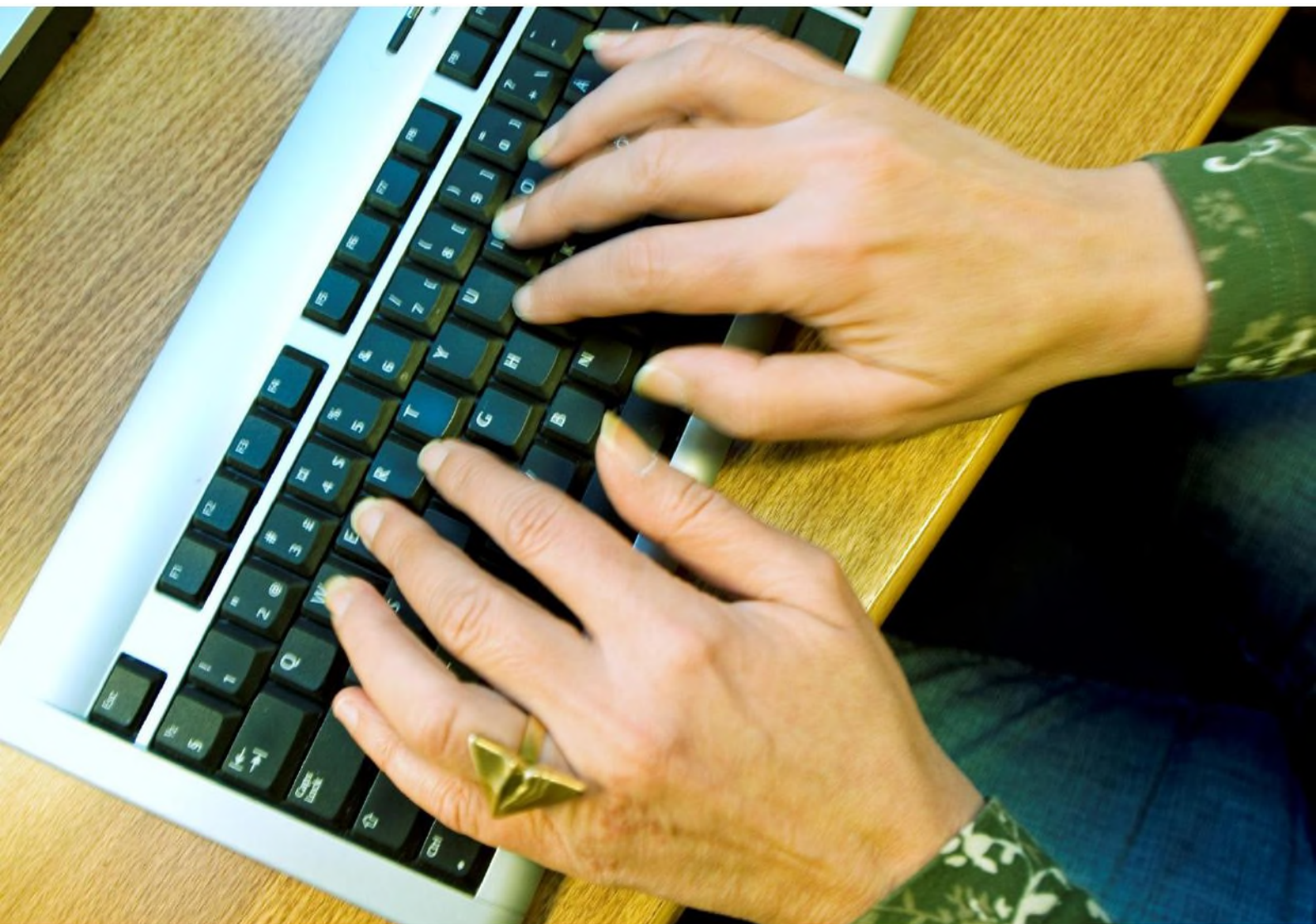
In view of the increasing use of video, all courts should have routines for how they can assist other courts when they function as host courts. These routines should be devised so that they make it easier for the judges at the other court to communicate with the host court without difficulty (for instance through direct contact with those responsible for the host court's technical equipment or its security staff).

One specific issue relates to the fact that a hearing held in another court may take longer than planned. The host court must have made preparations for this possibility. It is very important in this respect that the courts communicate with each other and for the court responsible for the hearing to inform the host court without delay of any changes that may have to be made to the schedule.

Bear in mind that it is the host court that is responsible, on behalf of the other court, for way in which those participating via video are treated. The host court is also required to help with any questions that may arise concerning the video conference equipment.

Comments etc.

If you have any comments or questions about the contents, please contact the Legal Unit at Domstolsverket, tel. 036-15 56 76 or DOVD-Rattsenheten@dom.se.





DOMSTOLSVERKET

SVERIGES DOMSTOLAR

www.domstol.se