

TYPICAL CONTENTS OF ONLINE COURT HEARING ORGANIZATION

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On December 15, 2021, the Supreme People's Court, the Supreme People's Procuracy, together with the Ministry of Public Security, the Ministry of National Defense, and the Ministry of Justice promulgated Inter-Circular 05/2021/TTLT-TANDTC-VKSNDTC-BCA-BQP-BTP providing details and guidelines for the implementation of online court hearing organization. This Circular takes effect from February 1, 2022 with some typical contents as follows:

Firstly, cases eligible for holding online court hearings: Before deciding to bring a case to trial, the judge assigned to preside over the court hearing will consider whether the case is eligible to be held online, and at the same time assess the actual situation of technical and physical facilities of the hearing points to decide the form of organizing the court hearing. Specifically, for criminal, civil, and administrative cases with simple facts and nature as well as clear documents and evidence, the relevant trial will be organized online for first-instance and appellate procedures, except for the following cases:

- i. Criminal, civil, administrative cases relating to the state secrets;
- ii. Criminal cases regarding the crime that violates the national security as stipulated in Chapter XIII of the Criminal Code 2015 amended and supplemented in 2017;
- iii. Criminal cases regarding the crime of undermining the peace, against humanity, and committing war crimes as stipulated in Chapter XXVI of the Criminal Code 2015 amended and supplemented in 2017.

Secondly, requirements when organizing an online court hearing: An online court hearing is held on the basis of connecting a central hearing point and no more than 3 remote hearing points, in which:

- location selected by the Court in accordance with Circular 01/2017/TT-TANDTC dated July 28, 2017 of the Chief Justice of the Supreme People's Court providing for the courtroom. Compulsory participants at the central hearing point include the Adjudication Panel, the Court Clerk, and the Procurator assigned to handle the case. At the same time, the litigant, the victim; the persons protecting legitimate rights and interests of the parties; defense counsels, and other participants shall attend the trial at the central hearing point if they choose to attend or as the Court summons.
- The remote hearing point is the space to hold the trial as organized or accepted by the Court. For criminal, civil, or administrative cases for which the remote hearing point is arranged at the place selected by the litigants or the State legal aid center and accepted by Court, the participants include litigants, the persons protecting the litigants' legitimate rights and interests. The persons protecting legitimate rights and interests of the victim/litigants are entitled to discuss with the victim/litigants once it is agreed by the presiding judge of the court hearing.
- All hearing points must ensure (i) the safety and security of information and data, (ii) space, images to be fully and clearly displayed on the projection screen without interruption, and (iii) several other technical requirements for the courtroom such as online system installation and equipment for the online hearing. The sound and image of the online court hearing must be recorded in the form of electronic data.
- Participants in the online hearing must always keep the camera open and the microphone turned on, only speak out when required; they must not take pictures, record audio/video, record video with sound, distribute documents or account log-in information of the online hearing system, live stream the court hearing on cyberspace and must comply with several other

requirements as prescribed in Article 11 of this Circular.

Thirdly, the order and procedures of an online court hearing: The procedures of an online court hearing are similar to those of a regular trial, simultaneously, the Court must implement some specific requirements such as:

- Check the identity of the participants through online comparison of identification documents or through the national population database system; check the presence of the summoned persons (for the hearing of criminal cases at remote hearing points).
- Announce that the legal order and procedures, rights, and interests of the accused, victims, and litigants at the online hearings are implemented in accordance with the procedural laws.
- Receive documents and evidence in the form of electronic data in case the litigants at remote hearing points provide additional documents and evidence. For civil and administrative cases, the handover of evidence and documents shall comply with Article 96 of the Civil Procedure Code 2015, Article 83 of the Law on Administrative Procedures 2015.



Fourthly, handling of situations occurring at an online court hearing: Before or during the online court hearing, if the online system is interrupted due to a connection error, power failure, or any other problem that makes the hearing unable to resume, the Adjudication Panel shall decide to temporarily suspend the hearing. Court officials or officers and soldiers of detention agency shall notify the decision on temporary suspension of the trial to participants at the remote hearing points. By the date of resumption of the court hearing, if the hearing is still unable to be held, the court shall issue a decision to postpone the hearing. The Court will consider and decide to reopen the court hearing in the online form or in the normal form as prescribed by law.

COMMENTS AND RECOMMENDATIONS

The online court hearing organization reflects flexible adaptation of the judicial work during the complicated Covid-19 pandemic situation in Viet Nam. The People's Courts in some localities (such as Ho Chi Minh City) have held online public hearings in compliance with legal provisions without facing many technical quality difficulties. In the future, online court hearings may be held frequently to ensure the attendance of organizations/individuals at the hearings and the constant and timely adjudication. Therefore, enterprises that are undergoing or intend to participate in court proceedings should update and study the provisions of this Circular to ensure the compliance with legal requirements of online court hearings.