

Journal of legal and social studies

Issn: 2507-7333

Eissn: 2676-1742

**Remote Trials in Criminal Matters Between the Imperatives of Modernization
and the Guarantee of the Rights of the Defense**

-A Study in Light of Law No. 25-14-

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Date of send: 03 / 12 / 2025	date of acceptance: 01 / 02 /2026	Date of Publication: 01/03/2026
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Abstract :

The justice system is witnessing remarkable development as a result of the adoption of legal texts that introduce newly established procedures linked to technological advancement. In addition to incorporating the electronic monitoring system into the penal framework, the justice system has been strengthened by an innovative procedure represented by remote trials, also referred to in some legislations as electronic trials. Through this mechanism, the legislator seeks to simplify and facilitate procedures for litigants, within the framework of strengthening the principles of a fair trial.

However, this development may conflict with one of the most fundamental principles of a fair trial, namely the guarantee of the rights of the defense, which is constitutionally enshrined. Therefore, the modernization of the justice system and the simplification of procedures must not undermine this fundamental guarantee, which is affirmed in international conventions and national constitutions. The ultimate objective of criminal procedures is to uncover the truth through the acquittal of the innocent and the conviction of the guilty. Consequently, achieving simplification and facilitation must not come at the expense of revealing the truth and ensuring justice.

Keywords: Remote trial; modernization of the justice system; simplification and facilitation of procedures; rights of the defense.

Introduction:

The world is witnessing a massive revolution in the field of technology, which has positively affected all sectors, prompting them to rely on it in order to achieve a certain level of development by facilitating and simplifying various activities. Among these sectors is the justice system, a direction that has been pursued by modern criminal policy through strengthening it with various legal mechanisms, whether substantive or procedural. In recent years, legal texts have included amendments introducing new penal systems that support the penal framework with the aim of rehabilitating convicted persons, such as the electronic monitoring system, in addition to the introduction of what is known as remote trials. The purpose of remote trials is to achieve a fair trial by simplifying and facilitating procedures and avoiding delays in the trial of defendants, in respect of human rights enshrined in international instruments and constitutions.

Accordingly, it became necessary to adopt procedures that realize this objective. Such procedures have been adopted by various legislations, both Arab and comparative, including the Algerian legislator, who incorporated them into the Code of Criminal Procedure through Law No. 04-20, which was repealed by Law No. 25-14.

This topic is of particular importance due to the novelty of the remote trial procedure, as the Algerian legislator introduced it into the Code of Criminal Procedure only in 2020, before it was repealed by Law No. 25-14, as well as in some other legislations, especially since this procedure is closely linked to technological development. Its importance is also reflected in the fact that, although legislations seek to achieve a degree of acceleration, simplification, and facilitation of procedures in order to ensure a fair trial, this may result in the issue of infringing upon one of the most fundamental principles of a fair trial, namely enabling defendants to exercise their right to defense. This makes the topic worthy of further research and enrichment, addressing the various issues it raises.

In light of the foregoing, the following research problem is raised: **Have legislations succeeded in striking a balance between the principle of accelerating, simplifying, and facilitating procedures through the application of remote trials, and the guarantee of the rights of the defense as one of the most fundamental pillars of a fair trial?**

To study this topic, the inductive method was adopted to examine the various texts governing the provisions of a fair trial, whether in Algerian legislation or in comparative legislations. In addition, the comparative method was employed to shed light on the legislative texts adopted by some countries and to compare them with Algerian legislation.

To answer this research problem, the following elements must be addressed:

First Chapter: The theoretical provisions of remote trials.

Second Chapter: The procedural provisions of remote trials.

First Chapter: The Theoretical Provisions of Remote Trials

Remote trial procedures are among the new measures adopted by various legislations, including the Algerian legislator within the Code of Criminal Procedure pursuant to Law No. 20-04, which has been repealed. These procedures fall within the framework of measures aimed at simplifying procedures. In order to encompass the theoretical framework of this procedure, it is necessary to address its concept and justifications, which will be explained successively in the following two sections.

First Section: The Concept of Remote Trials

To gain an understanding of the concept of remote trials, it is necessary to address, first, their definition, then the specific features of remote trials, followed by the position of legal doctrine on this matter, as will be explained in due course.

First Subsection – Definition of Remote Trials

Remote trials, also referred to as remote litigation, electronic courts, or digital courts, are defined as: “the authority conferred upon the competent judicial court to adjudicate, by electronic means, disputes brought before it through the Internet and by relying on an electronic system and advanced and modern technical mechanisms, with the aim of expediting the adjudication of various cases filed by litigants.”¹

They have also been defined as: “a technical space with a dual existence that allows for the programming of electronic lawsuits and consists of the international communication network in addition to the courthouse building, in such a way that it enables the electronic spatial presence of judicial and administrative units, through which a group of judges undertakes the task of examining cases and adjudicating them pursuant to legislations that authorize them to carry out judicial procedures, while relying on highly advanced technical mechanisms for recording judicial procedures and for preserving and (circulating) case files.”²

Based on the two definitions, remote trials may be defined as a newly established mechanism through which litigants are tried using the Internet and all modern requirements and necessary technologies, whereby the trial is conducted electronically and remotely with the aim of accelerating, simplifying, and facilitating procedures, within the framework of digitizing the justice system and in compliance with all procedures stipulated by law.

Second Subsection – The Specificity of Remote Trials

The mechanism of remote trials is characterized by a set of features that distinguish it from traditional trials. These features are presented as follows:

First – Reliance on Electronic Documents:

One of the main characteristics of remote trial technology is its reliance on electronic documents and the exclusion of paper documents, as is the case in traditional trials. This reflects the intended objective of applying this mechanism, namely the transition from paper-based files—which have come to fill the offices of the judicial system—to a system based on electronic documents, in order to avoid the enormous volume of files and to eliminate the processes of preserving and storing them, which may result in their loss or damage. This technology allows documents, messages, and reports to be sent electronically via the Internet³.

Accordingly, it can be said that criminal cases in traditional trials do not rely solely on paper documents, but also on physical evidence found at the crime scene, which the criminal judge may request during the investigation or trial.

Likewise, electronic documents are also vulnerable to loss and hacking due to viruses, as well as the hacking of databases. The latter is even more dangerous than paper files, which are usually stored in iron safes under strict security by the judicial institution, making them difficult to steal or damage.

Second – Acceleration of Trial Procedures:

As previously indicated, remote trial technology is conducted via the Internet, which contributes to speeding up trial procedures. This means that the parties to the case are not required to travel to the court. In addition, case documents are sent and received electronically, and lawyers can follow case files remotely, as they are able to access the court's website and review updates related to the case without the need to physically go to the courthouse. This is achieved through accessing the court's website, which operates around the clock in service of litigants and lawyers, and in order to avoid hindering their interests.⁴

Even the payment of case fees, court costs, and fines is carried out electronically. This is a result of the remarkable development witnessed worldwide in methods of withdrawal and deposit and the movement of capital, such as credit cards like Visa Card and MasterCard, which have been used by American companies, as well as various electronic payment methods that have become modern means through which different fees payable to judicial authorities are settled⁵.

Third – Use of the Internet and Modern Technologies:

One of the most important features of remote trial technology is the use of the Internet as a means of communication, which gives this mechanism a particular specificity that distinguishes it from traditional trials. While both share the same subject matter and parties, they differ in terms of the method adopted, which relies on electronic systems through designated tools such as computer devices connected to the Internet⁶, In addition to other requirements, which will be addressed in detail in the following sections.

Third Subsection – The Position of Legal Doctrine on Remote Trials

Legal doctrine has differed regarding the mechanism of remote trials, with opinions divided between supporters and opponents, each having its own reasons and legal grounds, which will be addressed as follows.

First – The Opposing View to the Mechanism of Remote Trials:

A group of jurists have opposed the technique of trying litigants remotely, each with their own justification, which will be explained below.

1 – Infringement of the Requirements of a Fair Trial:

Some jurists believe that trying the accused remotely infringes upon the principles of a fair trial adopted by various legislations, most notably the accused's right to defend himself and the principle of publicity, which will be explained in turn.

a) Infringement of the Rights of the Defense: The law and all international instruments provide that no person may be convicted except within the framework of a fair trial, one of the fundamental principles of which is the guarantee of the right of defense. Constitutional provisions ensure that the accused's right to defend himself is a recognized and guaranteed right in criminal cases⁷. The Algerian legislator has enshrined the right of defense in numerous provisions of the Code of Criminal Procedure, as it obliges investigating judges to inform the accused of his right to choose a lawyer to represent him. The accused is also entitled, as soon as he is detained, to contact his lawyer, and the investigating judge may not prevent him from doing so. Moreover, the accused may not be questioned except in the presence of his lawyer, and the presence of a lawyer at the hearing is mandatory in felony cases⁸.

This group justifies its view that the use of remote trial technology constitutes an infringement of the right of defense on the grounds that the lack of the accused's physical presence during the hearing deprives him of the support of his lawyer. The latter is forced to choose between being present alongside the accused in the correctional institution or attending the court hearing without the physical presence of his client, which results in the impossibility of communication between the accused and his lawyer due to developments that may arise during the pleadings⁹.

Moreover, this situation deprives the lawyer of benefiting from procedural and substantive pleas in the event of his absence from the court¹⁰. In addition, it weakens the lawyer's support of the accused and diminishes the purpose of his presence, which involves boosting the accused's morale and reassuring him so that he can answer the judge's questions with ease, guided by his lawyer's advice.¹¹

Furthermore, there may be violations committed against the accused while he is detained that may prevent him from defending himself without being able to disclose them, which makes the defense conducted through this technique

incomplete and renders the judgment issued in the case tainted with nullity in accordance with the provisions of the Code of Criminal Procedure. In such cases, the accused may be compelled to appoint more than one lawyer, causing material harm to him¹².

b) Violation of the Principle of Public Hearings: The principle of the publicity of hearings is considered one of the most important principles for ensuring a fair trial, and it has been adopted by the constitutional founder, who stated that judicial decisions shall be pronounced in public hearings¹³.

Trying the accused away from the courtroom constitutes a violation of this principle, since publicity serves as a mechanism of judicial oversight and enhances transparency and integrity in the various decisions issued by the courts. Publicity obliges the judge to exercise diligence, scrutiny, and careful consideration before issuing judgments in order to uphold the rule of law and achieve justice. This applies equally to all members of the court and to the parties to the criminal case, including the public prosecution and witnesses. Moreover, the presence of the public reassures both the accused and society¹⁴.

c) Violation of the Principle of Equality and Equality of Arms:

The judiciary is founded on the principle of equality, which requires the accused to be present at hearings and to claim his rights. Reference is made to Articles 165 and 177 of Presidential Decree No. 20-442. In addition, electronic litigation requires that the litigant possess certain requirements such as an Internet connection, a web browser, and an email account in order to be able to send documents. These requirements are not available to everyone, which constitutes an infringement of the principle of equality¹⁵. especially given the lack of Internet access in some remote areas¹⁶.

Trying the accused without his physical presence before the court, while the public prosecution, the civil party, and the other parties are present and have the opportunity to follow everything that takes place during the hearing and to submit their pleadings, constitutes an infringement of the principle of equality of arms. See in this regard¹⁷:

Accordingly, it can be said that trying the accused without his presence before the court entails a blatant infringement of the rights of the defense, whether in terms of enabling the lawyer to defend with full effectiveness and to advise his client, or in depriving the accused of the right to defend himself, as he is considered a “present absentee,” since he may not be able to keep abreast of all

developments surrounding the course of the trial, particularly in felony cases and serious crimes specifically.

2 – Nullification of the Spirit of the Law:

Some believe that trying the accused without his actual presence nullifies the spirit of the law, as it undermines one of its most fundamental principles, namely infringing upon the judge's freedom to form his personal conviction and relying instead on machines. It also deprives the accused of the human emotions that the judge may experience, such as feelings of compassion, tolerance, and leniency, which may benefit the accused through mitigating circumstances¹⁸.

3 – Undermining the Nature and Principles of the Judicial Institution:

Some consider that remote litigation infringes upon the principle of privacy, as court websites may be subject to hacking and the theft of information containing litigants' secrets. However, this criticism is countered by the possibility of securing these sites against hacking, as in many cases it is difficult to breach them¹⁹.

4 – Infringement of Essential Procedures in the Code of Criminal Procedure:

As previously stated, trying the accused electronically constitutes a violation of the principles of a fair trial enshrined in the Code of Criminal Procedure, such as the principles of publicity, transparency, and confrontation. The absence of the accused from the hearing deprives him of the right to defense²⁰.

This position was affirmed by a decision issued by the French Constitutional Council, which ruled that remote trials are unconstitutional because they deprive the party of actual presence and the right of response²¹.

Second – The Supportive View of the Remote Trial Mechanism:

The proponents of electronic trials have their justifications. Some justify it on the grounds of improving services provided to the public, while others justify it by reducing the burden on judges and accelerating and simplifying procedures. These justifications will be addressed as follows.

1 – Improving Services Provided to Litigants: The proponents of electronic trials argue that this mechanism has many advantages, including avoiding the problem of overcrowding in courts and improving services directed to the public by enabling litigants to consult their cases by accessing websites without the need to travel or bear the burden of transportation, through connecting different courts to a network that supplies information. On the other hand, it eliminates a problem

suffered by courts, namely the accumulation of files, by relying on electronic files and facilitating the retrieval of information²².

2 – Reducing the Burden on Judges: Electronic trials reduce the burden placed on judges, as they spare them the effort exerted in calming the parties to the case and providing explanations regarding the court's requests. In addition, the use of various programs containing laws and jurisprudence saves judges effort and time²³, in addition to the acceleration and simplification of procedures previously discussed.

Second Section – Justifications for Remote Trials

The world is witnessing changes and developments that have affected all levels, ranging from tremendous technological advances to the spread of viruses, etc., which has necessitated the adoption of legislative mechanisms to keep pace with the times. Among these mechanisms is video conferencing, due to the spread of the Coronavirus pandemic and the need to modernize the justice sector, which will be addressed in turn.

First Subsection – The Spread of the Coronavirus:

The most significant incentive that led to the adoption of the technique of trying the accused remotely was the global health crisis that emerged at the beginning of 2020, which resulted in the suspension of activity and work in all fields due to the spread of the Coronavirus pandemic. This led to the suspension of judicial work and the paralysis of the justice system, which necessitated the search for a solution to this problem²⁴.

This situation required states to confront the public health emergency by adopting the mechanism of remote trials and by providing all the necessary technical and functional requirements, including platforms for audiovisual broadcasting of court hearings, as implemented in the United States of America, which introduced Internet platforms and screens that allow the public to follow sessions²⁵.

It should also be noted that this technique was provided for in the United Nations Convention against Transnational Organized Crime concluded in 2000, as Article 18, paragraph 18, included this mechanism. It was also included in the European Convention on Mutual Assistance in Criminal Matters, in the Second Additional Protocol of 2001, specifically in Article 9 thereto²⁶.

Second Subsection – Modernization of the Justice Sector

The judicial field has received attention from various legislations with the aim of modernization and development, which has led to the introduction of technology and modern techniques in the work of courts. In addition to various programs that facilitate the extraction of different documents for citizens—such as criminal record certificates and nationality certificates—and the possibility of accessing court websites to follow developments relating to their cases, as well as sending documents and judicial procedures electronically pursuant to Law No. 15-03 dated 01 February 2015 relating to the modernization of justice²⁷.

This also includes the system of placement under electronic monitoring as an alternative to custodial sentences, pursuant to Law No. 18-01 dated 30 January 2018, supplementing Law No. 05-04 dated 06 February 2005 concerning the organization of prisons and the social reintegration of prisoners. It should be noted that the system of placement under electronic monitoring was introduced as an alternative to custodial sentences pursuant to Law No. 24-06 dated 28 April 2024, to be decided by the criminal judge after it had previously been applied at the stage of enforcement of sentences by the judge responsible for the execution of penalties pursuant to the aforementioned Law No. 18-01. For further discussion²⁸,

This is especially important given that crime has come to be committed using the most advanced technologies, which makes it all the more necessary to rely on technology to combat it²⁹.

Within the framework of modernizing the justice system, Law No. 15-03 introduced the mechanism of remote video conferencing during judicial procedures³⁰. Subsequently, Law No. 20-04 was enacted, introducing this mechanism, which was repealed by the promulgation of Law No. 25-14, the procedures of which will be addressed in detail in the following chapter.

Section Three: Achieving Procedural Speed and Reducing Burdens

The application of this technology results in greater speed in procedures, as the physical distance between the location of the party to be heard and the competent judicial authority often leads to delays in initiating procedures. Long distances have always constituted an obstacle confronting the judiciary, an issue that can be avoided through the use of this technology. It also leads to time savings and brings closer the various judicial authorities. Moreover, criminal proceedings require special human and material resources, particularly when transferring detainees, which places a heavy burden on the State budget. The use of this technology may therefore reduce such burdens³¹.

Chapter Two: Procedural Rules Governing Remote Trials

The implementation of the technique of trying the accused remotely requires technical requirements, given that this mechanism has accompanied the enormous technological development witnessed by the world, in addition to human framing, as well as legislative texts regulating the modalities of its application in compliance with procedural legality. This will be explained in the two following sections.

Section One: Requirements Necessary for the Application of Remote Trials

The operation of the remote trial mechanism requires the availability of technical requirements in addition to human resources, as will be explained below.

Subsection One: Technical Requirements

For the operation of the remote visual communication mechanism, an electronic system consisting of technical equipment must be available, namely:

First: Computers

These are used to store, preserve, and process information and data, as well as to send and receive various information and documents through dedicated software. They must be connected to a network linking different departments, offices, and sectors affiliated with the judicial system, in order to enable the exchange of information and the transmission of documents. They are equipped with specific programs for data processing³²

Second: The Internet Network

It is a global network of networks that enables communication between interconnected computer devices, whether locally, regionally, or internationally, thereby allowing the exchange of information, the sending of documents, and other transactions conducted through it using electronic mail³³.

Third: Electronic Software and Registers

Software refers to a set of electronic instructions and data through which information is processed upon entry, transmitted, and retrieved in case of loss. Information is also exchanged between different courts through specific software. In addition, electronic registers are established at the level of each court,

containing various data relating to each case file brought before the court, from its reference number to all procedures taken in its regard³⁴.

Subsection Two: Human Framing

In addition to the aforementioned technical requirements, human framing is also necessary, consisting of qualified judges, specialized technicians, and lawyers proficient in technology, as will be clarified below.

First: Qualified Judges

Introducing the mechanism of remote trials within the judicial system requires judges who master computer skills, electronic media, and various remote communication tools, enabling the judge to manage hearings and issue judgments through the dedicated electronic account on the court's website available on the Internet. This requires full awareness of technological developments, unlike the traditional judge who does not rely on such technology. Judges carry out all procedures electronically by creating a specific electronic case file, which necessitates training judges in computer use and in handling various electronic media, websites, and suitably equipped offices for this purpose, as previously mentioned³⁵. This category is sometimes referred to as "information judges"³⁶.

Second: Specialized Technicians

For judges to conduct remote trial procedures, specialized IT technicians are required to prepare the parties to the case and their lawyers to carry out the trial procedures through a program that enables the session to be conducted with both audio and video, and to record the trial electronically³⁷. They are also responsible for developing programs to manage remote trials and to facilitate the provision of electronic services to litigants³⁸.

In addition, they handle the registration of cases, the submission of all evidentiary documents, scheduling hearings, setting their dates, and collecting fees electronically³⁹, as well as protecting the system from viruses and intrusions⁴⁰.

In this regard, it should be noted that the Algerian legislator has stipulated the necessity that the means and devices used must guarantee the principles of confidentiality and integrity during the transmission and broadcasting of the communication, and that all procedures carried out using this method must be clear and fully displayed without interruption. Statements and everything that takes place during the hearing must be recorded through an electronic system

ensuring the integrity and preservation of the course of hearings, accompanied by the procedural file⁴¹.

Third: Lawyers Proficient in Technology

This also requires the presence of lawyers who are proficient in technology, as they must master the use of computers and remote communication means, and be familiar with software and electronic platforms. This necessitates equipping their offices with the required devices so that they can conduct remote trials and perform their duties in the best possible manner⁴².

Section Two – Procedures for Implementing Remote Trials

The Algerian legislator has regulated the procedures for implementing remote trials, or videoconferencing as referred to by the Algerian legislator, in terms of identifying the authorities entitled to apply or request it, as well as defining the limits of its application in terms of justifications and crimes, which will be addressed successively.

Subsection One – Authorities Entitled to Implement or Request It

Legislation has authorized the use of remote trial technology during the investigation stage and the trial stage, and has specified the authorities empowered to implement this technology, as well as clarified the parties entitled to request it, as will be explained below.

First – Investigating Authorities:

The competent judicial investigating authorities may decide to apply remote videoconferencing for the purpose of hearing or interrogating a person, or for conducting confrontations between persons, as well as for notifications that require the drafting of records in accordance with the provisions of the Code of Criminal Procedure, provided that confidentiality is respected within the limits prescribed by law. The investigating authorities here mean investigating judges, indictment chambers, and adjudicating bodies when they decide to conduct a supplementary investigation.⁴³ Here, a distinction is made between two cases:

1. Case of a Non-Detained Accused: The investigating authority addresses a request to the Public Prosecutor (Wakil al-Jumhuriya) of the court within whose jurisdiction the place of residence of the non-detained accused lies, when the accused does not reside within the jurisdiction of the investigating authority and is to be interrogated, heard, confronted with the other parties, or notified. This is for the purpose of summoning him on the specified date, while ensuring the

presence of his lawyer or after legally inviting the lawyer by registered mail at least two days before the date of the investigation, or by any other electronic means, with this being noted in the record. If the accused waives that right, the waiver is recorded in the minutes, and the case file is placed at the disposal of the opposing party's lawyer or the victim twenty-four hours before the hearing⁴⁴.

2. Case of a Detained Accused: If the investigating authorities deem it necessary to hear the detained party and it is not possible to transfer or extract him for reasons related to the proper conduct of justice, the preservation of security and public order, his protection, the protection of public health, natural disasters, or the observance of procedural deadlines, the legislator has authorized, in this case, the use of remote videoconferencing to hear the person concerned, after notifying the director of the penal institution. The lawyer may attend with his client at the place of detention or before the competent investigating authority, where the court clerk drafts a report including the course of the proceedings, which is then sent to the competent judicial authority by the director of the penal institution to be attached to the case file⁴⁵.

After the hearing record is signed by the competent investigating judge and the court clerk, it is sent to the person heard by any means of communication for signature. If this is not possible, this is noted in the record, which must comply with the provisions of Article 183 of the same law, requiring the signature of the investigating authority, the court clerk, and the person heard on all pages of the record, as well as the interpreter. In addition, the person's statements are read back to him; if he does not know how to read, the court clerk reads them out. The record must be free of any insertions. If it contains deletions or corrections, they must be endorsed by the investigating authority and the court clerk, as well as the interpreter if applicable; otherwise, they are deemed null. The same applies if the pages of the record are not properly signed⁴⁶.

If the person is mute or deaf, the questions are written and the answers are given in writing. If the person is unable to write, an interpreter capable of communicating with him is appointed, and all information relating to the interpreter—his name, surname, domicile, and profession—is mentioned in the record, with reference to the interpreter's taking of the oath and his signature⁴⁷.

If the investigating judge orders the placement of the accused heard by remote videoconferencing in provisional detention, he notifies him of this order using the same technique, while informing him of his rights as provided for in Article 201 of the same law, which includes notifying the accused of his right to appeal the order within three days from notification. This is noted in the record,

and the order is sent for enforcement to the Public Prosecutor or to the director of the penal institution with the knowledge of the Public Prosecutor⁴⁸.

Second – Adjudicating Authorities:

The criminal judge may decide to apply remote videoconferencing for the purpose of hearing or interrogating a person, or for conducting confrontations between persons. Adjudicating authorities may take this measure on their own initiative, at the request of the Public Prosecution, or at the request of the parties or their lawyers. The non-detained accused is interrogated at the premises of the court closest to his place of residence, in the presence of the court clerk, where the accused's statements are received after the Public Prosecutor verifies his identity. The court clerk drafts a report recording the course of the operation, signs it, and sends it through the Public Prosecutor to the competent judicial authority to be attached to the procedural file. The same procedures are followed with regard to the other parties, as well as interpreters, witnesses, and experts⁴⁹.

The trial judge decides to use remote videoconferencing after consulting the opinion of the Public Prosecution and informing the other parties thereof. If the Public Prosecution objects to this technique, or if one of the parties, the accused, or their defense raises pleas refusing to comply with this procedure, and the adjudicating authority considers these pleas to be unfounded, it orders the continuation of the trial using this procedure by a decision not subject to appeal. As for the detained accused, the court clerk of the penal institution drafts a report on the conduct of this procedure, signs it, and sends it through the director of the penal institution to the competent judicial authority to be placed in the file. It should be noted that the defense has the right to attend with its client at the place of hearing or before the competent adjudicating authority⁵⁰.

The trial judge may also resort to this technique when conducting a supplementary investigation provided for in Article 506 of the aforementioned law⁵¹.

It may be noted that the first remote trial conducted in Algeria took place at the Koléa Court on 7 October 2015 in the Wilaya of Tipaza. The session was public and attended by citizens, while a hall was equipped in the penal institution to broadcast the session with sound and image⁵². The defense was present, and a witness located in France was also heard at the Judicial Council of M'sila on 11 July 2016. The use of this technique reached 153 trials, and it spread widely during the outbreak of the Coronavirus, due to the prohibition of transferring and extracting detainees from penal institutions to avoid the spread of the virus⁵³.

Third – The Public Prosecution:

The law has authorized the Public Prosecutor to use remote videoconferencing technology in two cases. See Article 640 of Law No. 25-14:

First case: this concerns the extension of police custody (detention for investigation)⁵⁴ In this case, the Public Prosecutor may apply this technology.

Second case: when the accused is arrested outside the territorial jurisdiction of the investigating or adjudicating authorities that issued the arrest warrant against him. In both cases, this is recorded in the minutes.

The Public Prosecution is also entitled to submit a request to hear a person or to conduct a confrontation between persons during the trial phase⁵⁵.

What is noted is that the legislator did not clarify the procedures followed or the effects resulting from the refusal of a request by the Public Prosecution involving the application of this procedure by the trial judge. Are they the same as in the case where the judicial authority decides to apply this procedure and the Public Prosecution objects thereto, and the trial authority considers such objections to be unfounded and orders the continuation of the trial using this procedure by a decision not subject to appeal, as provided for in Article 647 of the same law?

Fourth – The Parties or Their Legal Representatives:

The parties or their legal representatives have the right to submit a request for the application of the videoconferencing procedure to the competent judicial authority. The latter may decide to accept or reject it after consulting the opinion of the other parties or their defense, as well as the Public Prosecution. The judicial authority may review its decision in either case—rejection or acceptance—if new circumstances arise⁵⁶.

If the accused decides not to comply with the remote trial procedure or decides to fail to appear, the adjudicating authority issues a decision not subject to any appeal to complete the remote trial procedures, and the judgment issued using this technology shall be considered to have been rendered in the presence of the accused⁵⁷.

What can be inferred from the text of Article 648 of Law No. 25-14 is that the legislator did not clarify the time limits between the submission of the request and the rejection or acceptance thereof. It also used the phrase “after submitting the request” when it provided that the judicial authority may review its decision if

new circumstances arise after submitting the request, whereas the review should occur after the issuance of the decision of rejection or acceptance, not after the submission of the request, since submitting the request does not mean that the judicial authority has ruled on it so as to review it.

Subsection Two – Limits of Applying the Mechanism of Remote Trials

Videoconferencing has limits, which may either be linked to a specific justification determined by the legislation, or its application may be general to all crimes or some of them, which will be clarified below.

First – Limits of Applying the Mechanism of Remote Trials in Terms of Justifications:

The Algerian legislator has defined the reasons for resorting to the application of videoconferencing technology.

1. Proper conduct of justice: this is achieved through measures taken to avoid disruption of judicial work, which will be explained in the following point. It should be noted here that, based on my review, I did not find a definition of the principle of the proper conduct of justice, due to the multiplicity of matters related to this principle and its connection to many aspects, such as anti-corruption law⁵⁸.

2. Protection of the accused: recourse may be made to remote trial technology to protect the accused from the possibility of harm by the victim's family or citizens, especially in crimes that affect society and arouse public opinion. For his protection, the judge—whether the investigating judge or the trial judge—decides to apply the videoconferencing procedure⁵⁹.

3. Preserving security or public health or during natural disasters: it may be difficult for the accused to attend at the court premises due to difficulties in movement or due to force majeure threatening security or public health. The Coronavirus crisis is considered an example.⁶⁰

4. Reasons related to respecting the principle of reasonable time limits: trying the accused while expediting procedures is among the principles for achieving a fair trial, according to which he must be tried within a reasonable period of time, as it is necessary not to cause him harm due to the slowness of procedures. This speed is embodied in the adoption of procedures and mechanisms that achieve this, which has been adopted by various legislations⁶¹. This is the principle adopted by the Algerian legislator in Article 1 of the Code of Criminal Procedure⁶².

Second – Limits of Applying the Mechanism of Remote Trials in Terms of Crimes:

By examining the law regulating videoconferencing, it is found that the Algerian legislator did not restrict the application of this technology to a specific type of crime, which means that it may be applied to all crimes, whether felonies, misdemeanors, or contraventions⁶³.

Accordingly, it can be said that not limiting the application of this technology to a specific type of crime was intended to ensure the proper conduct of justice, because remote trials may require recourse thereto in all types of crimes, and the Algerian legislator acted wisely in this regard.

Conclusion:

From the foregoing, it can be said that technological development has had a significant impact on all sectors, which have sought to integrate technology into their management in order to facilitate administrative work and save time and effort. Among these sectors is the justice sector, which in recent years has introduced new technologies with the aim of modernizing the system and addressing the crisis of justice, particularly the problem from which this system suffers due to the large number of cases submitted before it. Among these technologies is videoconferencing.

Given the importance of remote trial technology in preserving the proper functioning of the judicial system when health circumstances so require, as occurred during the period of the spread of the Coronavirus, as well as for security reasons or in cases of disasters, and in light of the requirements of the proper conduct of justice and the acceleration of procedures, it cannot be denied that this technology has benefits in adjudicating cases within reasonable time limits and avoiding procedural delays. However, its application must remain an exception, to be used only when justifications requiring it are present, since achieving a fair trial is not only based on adjudication within a reasonable time but also on respecting and guaranteeing the rights of defense.

The application of this technology may, to some extent, affect the rights of the defense, starting with the possibility of technical malfunctions during the trial or interruption of transmission due to weak internet connectivity, in addition to the physical distance between the lawyer and the accused, and the potential failure to provide the accused or his lawyer with sufficient time to prepare and present the defense on behalf of the client, among other issues. This may result in the loss of the accused's rights and ultimately lead to the issuance of an unjust judgment,

especially in felony cases and complex matters. On the other hand, the physical presence of the accused face to face with the judge may enable the judge to exercise his discretionary power and grant judicial mitigating circumstances.

Accordingly, we propose the following recommendations:

- Adopting the application of remote trials strictly as an exception and only for necessities related to the proper conduct of justice, and when the justifications referred to are present, without relying on it in all cases.
- Selecting judges who are proficient in technology, providing them with training and retraining in this technique, as well as training technical staff in this field and acquiring the necessary equipment to avoid technical failures, with specialization in developing a protective system that prevents any breach of information.
- Establishing all the necessary technical and human arrangements to enable the accused and his lawyer to fully exercise the rights of defense, and taking into account any request submitted by the accused or his lawyer that involves any infringement of the right to defense when applying this technique, by incorporating legal provisions that expressly provide for this.

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5. Law No. 17-07 dated 27 March 2017 amending and supplementing the Code of Criminal Procedure.
6. Law No. 18-01 dated 30 January 2018 supplementing Law No. 05-04 dated 6 February 2005 containing the law on the organization of prisons and the social reintegration of detainees.⁷
7. Executive Decree No. 20-69 dated 21 March 2020 relating to measures for the prevention of the spread of the Coronavirus (COVID-19) pandemic and combating it.
8. Executive Decree No. 20-70 dated 24 March 2020 defining the supplementary measures for the prevention of the spread of the Coronavirus (COVID-19) pandemic and combating it, as amended and supplemented by Executive Decree No. 20-127 dated 20 May 2020.
9. Executive Decree No. 20-72 dated 28 March 2020 concerning the extension of the partial home confinement measure to certain provinces, as amended and supplemented by Executive Decree No. 20-92 dated 5 April 2020.
10. Executive Decree No. 20-86 dated 2 April 2020 concerning the extension of provisions related to measures for the prevention of the spread of the Coronavirus (COVID-19) pandemic and combating it.

11. Executive Decree No. 20-121 dated 14 May 2020 concerning the extension of the partial home confinement measure to certain provinces.
12. Law No. 20-04 dated 30 August 2020 amending and supplementing Ordinance No. 66-155 dated 8 June 1966 containing the Code of Criminal Procedure.
13. Presidential Decree No. 20-442 dated 30 December 2020 relating to the promulgation of the constitutional amendment.

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2. Amal Kadri ,The Electronic Court as a Mechanism for Establishing and Developing Judicial Service Facilities in Algeria, Annals of the University of Guelma for Social and Human Sciences, Vol. 17, Issue 1, June 2023.
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5. Hayat Aouamria and Bouchra Aouamria, Substantive and Procedural Provisions of the Remote Trial System in Light of Law 15-03, Algerian Journal of Law and Political Sciences, Vol. 7, Issue 2, 2022.
6. Islam Abdel Moneim Al-Sayyad, Electronic Litigation through Electronic Means – A Comparative Study, Legal Journal (a specialized journal in legal studies and research).
7. Kawsar Othmaniya, Remote Criminal Trial and the Challenge of Guaranteeing Fair Trial Guarantees under Ordinance 20-04, Journal of Law and Political Sciences, University of Khenchela, Vol. 9, Issue 2, 2022.
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11. Nacira Louni, Electronic Litigation in Algeria, Al-Basaer Journal for Legal and Economic Studies, Special Issue, 2021.
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Footnotes

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- ² See in this regard: Yacine Bouhantala, Video Conferencing Technology as a Mechanism for Simplifying Criminal Procedure, *Tébessa Journal of Academic Scientific Studies*, Vol. 4, Issue 3, p. 678.
- ³ Islam Abdel Moneim Al-Sayyad, Electronic Litigation through Electronic Means – A Comparative Study, *Legal Journal* (a specialized journal in legal studies and research), pp. 505–506.
- ⁴ Asma Mehdi, Activating the Mechanism of Electronic Litigation in Algeria, *Al-Bassair Journal of Legal and Economic Studies*, Special Issue, December 2021, pp. 340–341.
- ⁵ Islam Abdel Moneim Al-Sayyad, op. cit, p. 510.
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- ⁹ Kouther Othmania, Remote Criminal Trials and the Challenge of Ensuring the Guarantees of a Fair Trial under Order No. 20-04, *Journal of Rights and Political Sciences*, University of Khenchela, Vol. 9, Issue 2, 2022, pp. 1046–1047.
- ¹⁰ Safaa Atani, The Electronic Court: Concept and Application, *Damascus University Journal for Economic and Legal Sciences*, Vol. 28, Issue 1, 2012, p. 183.
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- ¹² Kouther Othmania, op. cit, pp. 1046–1047.
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- ¹⁴ Khalil Fligha, op. cit, pp. 225–230.
- ¹⁵ Islam Abdel Moneim Al-Sayyad, op. cit, p. 532,
- ¹⁶ Khadija Abdel Laoui, The Impact of Applying Remote Trials on the Guarantees of the Accused, *Al-Basair Journal of Legal and Economic Studies*, Special Issue, 2021, p. 207.
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- ¹⁸ Safaa Atani, op. cit, p. 183.
- ¹⁹ Islam Abdel Moneim Al-Sayyad, op. cit, pp. 231–232.
- ²⁰ Rasha Ali El-Din Ahmed, Electronic Courts: Where To?, *Journal of Legal and Economic Research*, Issue 78, 2021, p. 57.
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- ²² Islam Abdel Moneim Al-Sayyad, op. cit, p. 511.

- ²³ Safaa Atani, op. cit, p. 181
- ²⁴ Khalil Fligha, op. cit, p. 219.
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- ²⁹ Yacine Bouhental, Remote Video Conferencing Technology as a Mechanism for Simplifying Criminal Procedure, Tebessa Journal of Scientific and Academic Studies, Vol. 4, Issue 3, 2021, p. 681.
- ³⁰ see Article 14 of Law No. 15-03
- ³¹ Yassine Bouhental, previous reference, pp. 681–682
- ³² Rasha Ali Al-Din Ahmed, op. cit, pp. 39–43
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- ³⁹ see Najat Zaazoua and Leila Ben Qella, The Electronic Court between Concept and Application, Journal of Legal and Economic Research, Vol. 4, No. 2, 2021, p. 101
- ⁴⁰ Rabab Mahmoud Amer, op. cit, p. 406
- ⁴¹ see Article 639 of Law No. 14-25
- ⁴² Nassira Louni, op. cit, p. 8
- ⁴³ See Articles 19, 641, and 506 of Law No. 25-14
- ⁴⁴ See Article 642 of the same law.
- ⁴⁵ See Article 643 of the same law
- ⁴⁶ See Articles 643, 183, 169, 170, and 644 of Law No. 25-14.
- ⁴⁷ See Articles 166 and 167 of Law No. 25-14.
- ⁴⁸ See Articles 201 and 645 of the same law
- ⁴⁹ See Article 646 of the same law
- ⁵⁰ See Articles 640 and 647 of the same law.
- ⁵¹ See Article 506 of the same law.
- ⁵² Amel Kadri, The Electronic Court as a Mechanism for Establishing and Developing Judicial Service Facilities in Algeria, Annals of the University of Guelma for Social and Human Sciences, Vol. 17, No. 1, June 2023, p. 124
- ⁵³ Abdelkader Mahfoudh, Electronic Litigation in Comparative Legislations, Academic Journal of Legal Research, Vol. 12, No. 3, 2021, p. 986; Amel Kadri, same reference, p. 124
- ⁵⁴ By detention for investigation is meant the procedure taken against a person suspected of having committed a felony or a misdemeanor, which results in restricting his liberty by placing him in a police station. It is decided by an officer of the judicial police on his own initiative for a short period determined by law, out of necessity for the course of the investigation, after notifying the Public Prosecutor and providing him with a report stating the reasons for the detention. For further reference on this subject, see: Azzedine Tabbash, Detention for Investigation in Algerian Legislation, Master's thesis in Criminal Law, supervised by Dr. Waamer Djebali, Faculty of Law, Department of Criminal Law, University of Annaba, 2003–2004.
- ⁵⁵ See Article 646 of the same law.
- ⁵⁶ See Article 648 of the same law
- ⁵⁷ See Article 649 of the same law

⁵⁸ See Article 44 of Law No. 06-01 dated 20 February 2006 on the prevention and combating of corruption, and the Penal Code, see Article 136 of Ordinance No. 66-156 dated 8 June 1966 containing the Penal Code, among others.

⁵⁹ See Article 649 of Law No. 25-14.

⁶⁰ See Executive Decree No. 20-72 dated 28 March 2020 containing the extension of the partial home confinement measure to some provinces, as amended and supplemented by Executive Decree No. 20-92 dated 5 April 2020.

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Among the motivations that led legislation to adopt the videoconferencing mechanism is cited by Khalil Faligha, op. cit, p. 219.

⁶¹ Khalil Faligha, op. cit, p. 196

⁶² See Article 1 of Law No. 17-07 dated 27 March 2017 amending and supplementing the Code of Criminal Procedure.

⁶³ See Law No. 25-14.