



## Introducing Video Conferencing Technology for Criminal Trials in the Algerian Judicial System

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### **Abstract:**

New technology has changed the way individuals and institutions, such as courts, work together. One of the important areas that has changed is the legal system, which includes rules related to crime. Many new laws and agreements aim to improve and accelerate the performance of the justice system. This means using technology to help in the handling of cases before the courts and to ensure that everyone adheres to the basic rules for dealing with crimes. For example, since 2025, Algeria has begun using video and audio tools in courtrooms to facilitate and speed up procedures. These changes were made through a special law and updates to its rules regarding how to handle criminal cases.

**Keywords:** Remote Criminal Trial; Communication Technology; Visual Conversation Technology.

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## Introduction:

The current scientific and technological development has clearly impacted all aspects of contemporary life, including the justice sector. This has led some criminal legislations, including the Algerian legislator, to reconsider established legal principles and to introduce new rules and methods to address emerging issues, with the aim of utilizing this development in the service of criminal justice.

Recently, the Algerian criminal justice system has moved toward establishing new legal rules that keep pace with technological and knowledge-based developments. This has been done by adopting modern technological tools to detect crimes, pursue perpetrators, and prosecute them, Unless the rights of the accused or other individuals concerning the criminal case are infringed.

This was clearly reflected in the use of audio-visual communication technology in the field of remote criminal trials, a technique that has been adopted by many countries around the world, including Algeria.

The Algerian legislator regulated the provisions of remote trials in Law No. 15-03 dated 11 Rabi' al-Thani 1436 corresponding to February 1, 2015, related to the modernization of justice, specifically in Chapter Four under the title "Remote Video Conferencing," which was divided into two sections: the first concerning the conditions of use, and the second concerning the procedures, in addition to Ordinance No. 20-04.

### Research Objectives

This research aims to clarify the legitimacy of conducting trials using video conferencing technology, and the legal and procedural safeguards for its application during the stages of criminal proceedings, in terms of investigation procedures and preliminary inquiry particularly the trial phase after understanding this technology one of the latest innovations in the Code of Criminal Procedure.

It also seeks to highlight the fundamental changes that could occur in the criminal procedural system when information and communication technologies are adapted to suit the nature of judicial work and then introduced into courtrooms and to the parties involved.

Moreover, the research emphasizes that such visual and audio trials can help realize the philosophy and objectives of the law if implemented correctly and under appropriate conditions. In many cases, it is difficult for the accused to attend due to security concerns especially in felony cases as is also the case for witnesses in serious cases. Thus, the idea of this type of visual trial was considered.

**Problematic:**

Based on the above, we ask to what extent the use of audio-visual communication technology respects the principles of a fair trial? After this technology was introduced into the scope of criminal procedures, the matter required study and discussion.

In an attempt to answer this problematic, the descriptive method will be adopted to clarify the idea of using remote communication technology in criminal trials, to explain its legal basis, as well as its areas of application in Algerian law. In addition, the inductive method will be used through the analysis of the most significant interventions by the Algerian legislator in adopting this technology and assessing how its use has been regulated in criminal trials. Accordingly, focus will be placed on the concept of using remote communication technology and its importance in facilitating the functioning of criminal justice, especially in light of the case overload faced by the Algerian criminal judiciary.

To give this topic its due share of study and analysis, It will be divided into two separate parts: the first part will cover the concept of using video communication technology in remote criminal trials, in general, and the second part will cover the application of video communication technology in Algerian legislation.

**Section I: The Use of Video Communication Technology in Criminal Trials**

The adoption of modern communication media in litigation—whether partially, through litigation or court proceedings via electronic means, or entirely, through an electronic court—requires several prerequisites. Foremost among these is the enactment of legislation regulating the use of such technology, which grants it legitimacy. A judge cannot use these means in their work or understand their content unless there is a legal framework that permits it. The Algerian legislator has effectively implemented this by introducing the Law concerning the Modernization of Justice and the more recent Ordinance No. 20-04, which amends the Code of Criminal Procedure. In addition, the availability of the necessary means and infrastructure is essential for the effective implementation of the legislative provisions<sup>1</sup>.

Accordingly, this section will first address the concept of remote criminal trials in the first subsection, followed by the elements necessary for using video communication technology in remote criminal trials in the second subsection.

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<sup>1</sup>- Order No. 20-04, 30 August 2020, amending and supplementing Order No. 66-155 relating to the Code of Criminal Procedure, Official Gazette of the People's Democratic Republic of Algeria, No. 51, 31 August 2020.



### **A) The Substance of Remote Criminal Trial:**

Litigation through remote trial technology, in general, is an informational and technical system allowing parties to file lawsuits and evidence in preparation for agreeing to reach a judgment and execute that judgement via electronic communication means. These means are part of an information system allowing judges to communicate with parties without the parties having physical presence and to conduct litigation procedures through such a system. In addition, such system – through the electronic court – provides transparency and speed in collecting information.

As for the specific meaning of remote trial, it refers to the adoption of a communication system that allows the transmission of sound and image of one or several persons at the same time despite being in different locations, in order to enable the person in charge of the trial to participate in the session while it is in progress<sup>2</sup>.

It is a modern mechanism for conducting investigation or trial procedures remotely, and it is used in certain cases for hearing the testimony of witnesses and collaborators with justice, as well as for trying defendants who are inside penal institutions while the court is located far from those institutions<sup>3</sup>.

Thus, it is an exception to the original and general rule in investigation and trial sessions, which typically take place in the same location or area. With the use of this technology, also for regional locations in a single country or other countries to be extended geographical scope of the investigation or trial session. However, from a technical standpoint, this mechanism requires the availability of an audiovisual communication network with a sufficient level of advancement to ensure clear vision and uninterrupted sound.<sup>4</sup>

Given the expansion and development of the use of this technology, we will avoid delving into definitions and characteristics and instead focus on the foundations of using video communication technology for remote criminal trials (Subsection One), followed by an exploration of the justifications for using this technology in criminal trials (Subsection Two).

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<sup>2</sup>-“Video Conference,” Almaany (Arabic-English dictionary)  
<https://www.almaany.com/ar/dict/ar-en/video-conference>

<sup>3</sup>- Abderrahim Amara: “The Use of Remote Videoconferencing in Criminal Investigation and Trial,” Journal of Studies and Research (The Arab Journal of Human and Social Sciences), Issue No. 10, 2018, p. 62.

<sup>4</sup>- Safwan Shadiqat: “Criminal Investigation and Trial via Videoconference Technology,” Dirasat Journal: Shari'a and Law Sciences, Vol. 42, No. 1, 2015, p. 354.



## **1-The Foundational Principles of Implementing Remote Criminal Trials:**

The ways in which communication technology is used in the justice sector began with witnesses and experts for the purpose of protecting them. The Algerian legislator<sup>5</sup> implemented a similar measure under Article 65 bis 27 of the Code of Criminal Procedure, specifically for cases of organized crime, corruption, and terrorism. The matter then developed to the use of these technologies in investigation and trial through domestic and foreign laws.

Therefore, we will address the foundations of using video communication technology for remote criminal trials in comparative legislation first, then we will address the foundations of using video communication technology for remote criminal trials in Algerian legislation second.

### **1.1-Foundations of Using Video Communication Technology for Remote Criminal Trials in Comparative Legislation:**

Video communication technology has been adopted for remote criminal trials by many comparative legislations, which have experienced unique and advanced experiments regarding the use of communication and media technologies within the criminal justice system. Among the most prominent of these countries:

-Canadian Law: The decision to resort to remote criminal trials in Canadian legislation resulted from the vast area covered by Canadian territory, which is subject to Canadian law. This was in accordance with the provisions of Articles 537.j,k, which allowed the conduct of hearings during preliminary investigations using remote communication technology if the accused was in custody. Moreover, Article 650/1-1 and /1-2 permitted the use of this technology at the trial stage. Article 715/23-24 added the possibility of replacing physical presence in the session with digital presence through remote communication<sup>6</sup>.

-The European Union: The ECMA (European Convention on Mutual Legal Assistance in Criminal Matters) provides the basis for remote trials in the EU, approved by the European Council in 2000, under Article 10<sup>7</sup>, which

<sup>5</sup>- Article 65 bis 27, Ordinance No. 66-155 concerning Criminal Procedure.

<sup>6</sup>- Articles 537, 650(1.1) , 715(23–24) of the Canadian Criminal Code, updated 21 April 2020, Department of Justice, available at: <http://lois-laws.justice.gc.ca>. (consulted on 17 January 2021).

<sup>7</sup>- Article 10/1 of the Convention also prohibited the use of this technology to hear a witness's testimony or an expert's report remotely except in cases where it is proven that the travel of the witness or expert to the requesting State to appear before its judicial authorities is inappropriate or impossible. The Additional Protocol to the European Convention also authorized the adoption of these technologies in the domestic legislations of the Union States under its Article Nine. Quoted from: Tabbach Ezzedine, "Appearance before the Criminal Court via Remote Communication Technology: A Comparative Study".



stipulated the necessity of using remote communication technology as a method for criminal investigation during the hearing of witnesses and experts between contracting states. The European Convention specified resorting to the use of remote communication technology in criminal matters when necessary.<sup>8</sup>

The first response to the requirements of this article came from the Italian legislator, who adopted it specifically to confront organized crimes by the Italian Mafia, by equipping all necessary means to activate this technology, based on Article 147 bis of Criminal Procedure of 1998' code<sup>9</sup>.

Remote criminal trials were at first considered as a feature of the Spanish Code of Criminal Procedure (despite its particular constitution), which requires respect for the principle of physical presence. However, it witnessed two forms of utilizing technology. The first consists of recording the criminal trial with audiovisual devices as a substitute for the written file, allowing the parties to obtain a copy with the possibility of using it in subsequent stages of the trial. As for virtual presence, it was approved for minor victims and rape cases, in addition to the possibility of hearing witnesses and experts as well as communicating with the prosecution, according to Article 306 of the Spanish Code of Criminal Procedure, 574 (Spain), 96. We note however, that the provisions to the effect that communication technology should be used in criminal proceedings, provide no position concerning the accused under prosecution<sup>10</sup>.

The German procedural legislation also adopted the idea of using communication technology to conduct remote criminal trials, under Article 247, which granted the judge the possibility of hearing witnesses and parties—whether victims or accused. However, the German judiciary did not welcome this idea, citing the proper conduct of justice.

The judiciary in Belgium also constituted an obstacle to the experimental Belgian laws aimed at implementing communication and media technologies in the criminal field. The Court of Appeal ruled the hearing of a detainee via remote communication unlawful, based on the non-recognition of such a procedure by the laws regulating pre-trial detention, which only recognize the presence of the accused or their lawyer. This position remained unchanged in the judiciary since the year 2000 until the outbreak of the Coronavirus

<sup>8</sup> - Egyptian Journal of Legal and Economic Studies, Issue 15, July 2020, Egypt, p. 76.

<sup>9</sup> - Adel Yahya : Remote Criminal Investigation and Trial, Dar Al-Nahda Al-Arabiya, Cairo, 2001, p. 17.

<sup>10</sup> - Baral Imma : Videoconferencing and Basic Principles of the Process : Publicity and Immediacy in Spain, Institute of Advanced Studies on Justice, September 2014, p. 6.



pandemic, which revived—or at least reignited—the idea of remote criminal trials from its state of stagnation in Belgian legislation<sup>11</sup>.

English law welcomed the idea of using communication technology in criminal trials in matters related to hearing witnesses and victims in cases involving minors and sexual offenses since 1988. This later developed to allow hearing the accused in terrorism-related crimes. Moreover, what is referred to as the virtual criminal court was established in 2010 as a project by the Ministry of Justice.

The use of communication technology finds its basis in several legal provisions of the French procedural legislation, the most prominent of which is Law 706-71 of the year 2001, which included a single article providing for the use of media and communication means in criminal procedures concerning the hearing of individuals during investigation and verification, and in the use of an interpreter.

Then in 2002, it expanded the possibility of hearing individuals without bringing them before the Public Prosecutor. In 2004, it granted the possibility of hearing witnesses, civil parties, and experts remotely in criminal trials. Then in 2007, it allowed for the adjudication of matters related to pre-trial detention using remote hearing technology. The use of this technology was extended in 2009 to preparatory interrogation for trial, and in 2011, to include the phase of penal execution, and it was applied in misdemeanors. In 2014, it was used in procedures for the reconsideration of convictions, and in 2016, Article 706-71 was amended to allow for the use of communication means for virtual appearance before the Public Prosecutor or the Judge of Freedoms and Detention, and before the Courts of Appeal in cases related to organized crimes and terrorism and its financing. In 2019, Article 707-71-01 added in order to generalize the application of communications means in the field of criminal justice French Court of Cassation (French legislative authority, In its different phases of using communication technology within the criminal justice domain).

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### **1.2-The Key Foundations of Using Video Conferencing Technology for Remote Criminal Trials in Algerian Law:**

The use of video conferencing technology for criminal trials finds its basis in two main sources within the Algerian legislative system. The first is related to the Justice Modernization Law of 2015, and the second is Law 20-04

<sup>11</sup> - Anaïs Danet : Presence in Procedural Law, PhD Dissertation, University of Bordeaux, France, 2016, p. 36.

<sup>12</sup> - French Penal Procedure Code, with amendments up to 28 April 2020, available at : <https://codes.droit.org/CodV3/procedure-penale.pdf>.



amending the Code of Criminal Procedure, in several articles contained in both laws, as we will present below:

### **1.2.1-The Basis for Using Video Conferencing Technology for Remote Criminal Trials in the Justice Modernization Law:**

Law 15/03 on the modernization of justice, issued in 2015, marked a turning point for the use of video conferencing in Algerian judicial proceedings. Aiming to modernize the justice sector, the law introduced procedures and specifically allowed for video conferencing in trials. This development facilitated Algeria's (with reservations) broader ratification of the United Nations Convention against Transnational Organized Crime (2000), which supported such technology for international cooperation in combating crime<sup>13</sup>.

The Algerian legislator addressed the provisions of remote trials in Law 15-03 dated 11 Rabi' al-Thani 1436, corresponding to 01 February 2015<sup>14</sup>, related to the modernization of justice, specifically in Chapter Four under the title Video Conferencing, which is divided into two sections: the first concerning the conditions of use, and the second concerning the procedures.

Pursuant to Article 14, Paragraph 1 of Law 15-03 pertaining to the modernization of justice, it is stated that: "If the distance requires it or if the proper functioning of justice demands it, interrogation and hearing of the parties may be conducted via video conferencing, while respecting the rights provided for in the Code of Criminal Procedure".

Paragraph 2 of Article 14 of the Modernization Law stresses the need for confidentiality and integrity during transmission, while Paragraph 3 of the same

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<sup>13</sup>- This video conferencing technique was initially used in the judiciary for holding meetings and training seminars for justice sector employees. It was then used for the first time in legal proceedings, with the first remote trial conducted using this technology on September 30, 2015, at the Court of Khemis El Khechna in Tipaza Province. The trial took place in a public session with the defense team present, and it was open to the public. Another room equipped with audio-visual equipment was set up in the Khemis El Khechna correctional facility, where the trial was conducted live with both sound and image displayed on a large screen in the middle of the room, with additional screens to provide a closer view for all attendees. The courtroom at the Khemis El Khechna Court was clearly visible with the presence of the presiding judge, while the defendant "Z-J" in the first case, who was held in the Khemis El Khechna prison, appeared on screen. The judge confirmed the defendant's identity using a biometric fingerprint scanner and obtained his consent to proceed with the trial using this technology, and the trial proceeded as usual. It is noteworthy that two other individuals were tried at the same correctional facility on the same day, using this technology for a remote trial session at the Khemis El Khechna Court, with the hope of expanding its use to other courts once it was legally approved by the Algerian legislator through Law 15/03, dated 11 Rabi' al-Thani 1436, corresponding to February 1, 2015, related to the modernization of justice, published in the Official Gazette of the Algerian Republic, issue 06, on February 10, 2010

<sup>14</sup>- Law No. 15-03, 11 Rabi' al-Thani 1436 / 1 February 2015, concerning the modernization of justice, Official Gazette of the Algerian Republic, No. 06, 10 February 2015.



article requires statements to be recorded on a secure medium and added to the case file.

### **1.2.2-The Basis for Using Video Conferencing Technology for Remote Criminal Trials in Law 20-04 on the Code of Criminal Procedure:**

Article 441 bis 2 states that: "The investigative authorities may use video conferencing in the interrogation or hearing of a person, in conducting confrontations between persons, and in notifications for which the Code of Criminal Procedure mandates the creation of official records, and this procedure must follow the guidelines in Article 11 of the same law. The investigative authorities, within the meaning of this section, refer to the investigating judge, the indictment chamber, and the trial authority." The ordinance also states that if the non-detained individual to be heard, questioned, informed, or confronted lives within the jurisdiction of a different court, to summon the person for the hearing on the set date, the appropriate investigative body must submit a request to the Public Prosecutor of the court nearest their residence.

Another article proposes that if extracting or transferring the accused or detained person is impossible due to any reason mentioned in Article 441 bis, the investigative authority can hold a hearing within the penal facility via video conference after notifying the director, with the presence of the penal institution's judicial clerk.

The defense is entitled to be alongside their client at the hearing location and/or prior to the appropriate investigative authority.

Article 441 bis 5 states that the individual who participated remotely must sign a copy of the record that is sent to them through any communication method, after being directly signed by the appropriate judicial authority's judge and clerk. If the individual declines or cannot sign, this must be recorded on the copy of the document.

In the event that the investigating judge decides upon the placement of the accused, who was heard through video conferencing, in pre-trial detention, the judge must inform them of this order verbally through the same technology and provide information regarding their rights.

According to Article 441 bis 7, trial authorities have the option to use video conferencing for questioning individuals, conducting hearings, or facilitating confrontations, whether they decide to do so themselves or if the Public Prosecution, a party involved, or their legal counsel asks for it.



## **2-Justifications for Using Video Conferencing Technology in Remote Criminal Trials:**

The justifications on which various legislations and jurisprudential trends supporting the idea of remote trials via information and communication technology are based have varied and differed. However, they generally stem from the difficulties faced by traditional judiciary practices in their operations. These justifications can be summarized in the following points.

### **2.1-Use of Remote Criminal Trial Technology Due to Long Distance:**

This refers to cases where the litigant is an inmate in a correctional facility far from the location of the judicial authority responsible for deciding on his case. In such instances, this technology may be adopted to ensure a smooth trial process. In Algeria, for example, the inmate might be held in a correctional facility located hundreds of kilometers away from the court, sometimes exceeding one thousand kilometers, because the country has a large geographical area. Using remote trial technology helps avoid the difficulties of transporting detainees, a process that requires vehicles, long security details, and lots of paperwork, while still ensuring a fair trial.<sup>15</sup>

### **2.2-Use of Remote Criminal Trial Technology for the Sake of the Proper Administration of Justice:**

This principle does not have a precise, comprehensive, and exclusive definition, but it is always applied to protect rights and preserve freedoms. The greatness of the judiciary lies in its role in safeguarding rights, protecting freedoms, and ensuring stability in circumstances and transactions. In my opinion, and especially during the pandemic that affected most countries and forced people into isolation and distancing, states and their governments were compelled to take the necessary measures to protect public health. Among these measures was the suspension of judicial work while maintaining operations at a minimum level. One of the types of cases that courts continued to examine were those of pretrial detainees, due to the sensitivity of their situation and the legal time limits of detention that cannot be breached under penalty of arbitrary detention. This made it imperative for judicial authorities to preserve the health of inmates in correctional institutions while also ensuring them a fair trial in which all their rights are respected. To ensure the proper management of judicial files, most judicial authorities resorted—under these circumstances—to using this technology, which facilitated the work of judicial authorities and ensured that detainees were tried under appropriate protective conditions.<sup>16</sup>

<sup>15</sup> - Hadi Hussein Al-Kaabi and Naseef Jasim Mohammed Al-Karawi : “The Concept of Remote Litigation and Its Requirements,” *Al-Muhaqqiq Al-Hilli Journal of Legal and Political Sciences*, Faculty of Law, University of Babylon, Vol. 8, No. 1, 2016, p. 260.

<sup>16</sup> - Safwan Mohammed Shdeifat, op. Cit. p. 3.



### **2.3-The use of remote criminal trial technology on the grounds of speeding up procedures and reducing costs:**

Many modern criminal legislations, through international agreements, are moving toward enhancing international cooperation in combating crimes, by taking legislative and practical measures to raise the efficiency of criminal justice systems and improve their performance. The use of modern technological means in the field of criminal investigation and inquiry represents one of the most important of these measures at all stages of the criminal proceedings. The remote communication technique is an important means of criminal investigation and trial due to its significant role in simplifying and speeding up criminal justice procedures .<sup>17</sup>

### **2.4-The use of remote criminal trial technology on the grounds of protecting witnesses and victims:**

Video conferencing is clearly important as an effective way to ensure the safety of those involved in a dispute or legal case, such as witnesses, victims, and any other persons cooperating with justice. Some consider it necessary to use this technique in hearing witnesses and repentant defendants cooperating with justice, in order to obtain their statements related to organized criminal gangs or armed terrorist groups about their future criminal plans and other information that benefits criminal justice in apprehending them.<sup>18</sup>

This technique is used to prevent these criminal groups from discovering the whereabouts and movements of the witnesses, thereby protecting them from possible retaliation. Some modern criminal legislations also tend to use it in the field of investigation and criminal trials related to juvenile offenders, in order to avoid the harmful psychological effects associated with the minor's physical presence in court sessions and in front of everyone, which is what Canada, Australia, and New Zealand are applying.<sup>19</sup>

### **B) Elements of Using Video Conferencing Technology for Remote Criminal Trials:**

Legislations have moved towards modernizing the justice sector through the use of modern technologies to facilitate criminal procedures on the one hand, and to strive as much as possible to bring justice closer to individuals by providing as many remote services as possible on the other hand.

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<sup>17</sup> - Adel Yahya, op. cit. p. 25.

<sup>18</sup> - Ibid., p. 27.

<sup>19</sup>- Sanan Suleiman Sanan Al-Tayari Al-Tahrawi : Remote Criminal Trial Procedures in UAE Law, Master's Thesis, Faculty of Law, University of Sharjah, United Arab Emirates, 2019, p. 19.



Therefore, the first section will discuss how video conferencing technology is used, while the second part will cover the components of remote trials.

### **1-Means of Using Video Conferencing Technology for Remote Criminal Trials:**

With rapid technological evolution of all aspects of life, the introducing of modern mechanisms with the purpose of helping public service facilities to provide their services in a more effective and fast way has come as citizens' needs grow. One of the public facilities with great attention in various countries is the justice sector, which uses today several advanced technologies for the delivery of its various services, the most dominant being video conferencing technology, which is based on a set of technical instruments and electronic records (first), and on a well organized information system (second).

#### **1.1-Electronic Technologies and Electronic Records:**

##### **1.1.1-Electronic Means:**

This refers to a set of computing equipment and its accessories, and the special software for computers, in addition to the provision of the Internet – an internal network that connects all departments, units, and courtrooms with each other. This internal network is restricted to the communication line that links them together, allowing all court staff to communicate among themselves and exchange documents and case files without personal presence or sending an employee to receive or deliver files, documents, and correspondences as practiced in traditional courts.<sup>20</sup>

##### **1.1.2-Electronic Records:**

An electronic record must be established for every electronic court. This file includes a database for every case. Consequently, the electronic record can be characterized as a database within each court's internal network, where case data is recorded or assigned a sequential information number, allowing the electronic case file to be retrieved from this record. This document is a software application that includes two forms of technical storage:

The first type: exhibits, documents, and papers (such as the pleadings and the powers of attorney sent by the litigants) in a file format that supports storage and prevents its content from being easily altered.

The second type: electronic minutes in which all trial procedures are recorded using a direct technical recording mechanism. After completing the design of the case file, it is sent through the internal network to the follow-up

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<sup>20</sup>- Safwan Mohammed Shdeifat, op. cit., p. 19.



office of the information judge to be presented at the scheduled session date according to established programmatic rules and mechanisms.<sup>21</sup>

### **1.2-An Informational System for the Court:**

To activate the remote trial technique, it is necessary to design a website on the Internet that serves as an electronic address for the court or judicial district. Through this website, any person involved in a case can perform two types of services:

The first is to obtain information by browsing the website's pages and searching for data and the procedures taken regarding the cases, or through direct electronic communication with court employees via a video conferencing program. This allows the programming of what can be called the "electronic judicial mediator," which is a high-tech communications program enabling the public, lawyers, and judges to directly communicate with those working within the system.

The second is to carry out procedures, initiate lawsuits, and engage in litigation without the need for personal attendance, also through the electronic judicial mediator and the technical linking to the case files for documentation.<sup>22</sup>

## **2. Elements of Remote Criminal Trial:**

For electronic court litigation, three essential elements must be in place: information judges, website administration, and electronic court clerks. These individuals form the human foundation of the court, managing its information system and records, and we will analyze this structure in more detail

### **2.1-Information Judges:**

They are a specialized group of regular judges who conduct trials through their designated platform on the electronic court, which has an online website within a judicial system that can be referred to as the Judicial Informatics Division.<sup>23</sup>

These judges carry out remote litigation procedures and document them in the electronic case file. This mechanism allows for the establishment of the right—the subject of the lawsuit—through a set of advanced electronic procedures, ordered by the judge to a group of employees specialized in computer and information work, known as website clerks, who are responsible for preparing the litigants or their representatives and initiating the trial, which is electronically documented in audio and video.

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<sup>21</sup> - Ibid., p. 20.

<sup>22</sup> - Adel Yahya, Op. Cit., p28.

<sup>23</sup> - Hatem Mohamed Fathi Ahmed Al-Bakri: The Principle of Orality and Modern Technologies in Criminal Trials, Master's Thesis, University of Mansoura, Egypt, p. 39.



The information judge listens to their statements, pleadings, and defenses, and also communicates with employees and inquires about administrative and procedural matters related to the cases, while the recording continues and is transmitted to the site of the Judicial Informatics Division, with its content made available to the parties involved within this system.<sup>24</sup>

## **2.2-Website Administration and the Electronic Website Clerks of the Remote Criminal Court:**

We will detail each one separately as follows:

### **2.2.1-Website Administration and Programmers:**

They are a group of administrators and technicians located outside the courtroom and in adjacent departments. Among their most important duties are monitoring the progress of the trial procedures, handling malfunctions that may occur in the devices and equipment during the hearing, as well as addressing technical errors before they occur, protecting the system from viruses, and preventing attempts by vandals and intruders to access the court's website. In addition, they assist the clerks in carrying out their technical duties.<sup>25</sup>

### **2.2.2-Electronic Website Clerks:**

They are a group of legal employees who are also specialized in computer technologies, software, and the design and management of electronic websites, qualified to work in this field. They perform numerous tasks in procedural judicial work, the most important of which are as follows:

- Registering cases and sending them along with any included evidence or other documents, which can be sent via a scanner, while keeping the original for submission to the court if requested.
- Preparing the schedule of hearing dates.
- Collecting fees electronically through one of the electronic payment methods.
- Contacting the case parties and informing them of scheduled session times, after confirming everyone's identity (whether they are parties, witnesses, or others) before they join the judge on the court's website
- Monitoring the progression of cases and displaying the scheduled sessions.

## **Section II: Implementing Video Conferencing Technology for Remote Criminal Trials in Algeria**

The development of communication and information technology has contributed to shrinking distances and borders and making human life easier. Today, it has extended to facilitate access to justice by enabling individuals to

<sup>24</sup>- Sanan Suleiman Sanan Al-Tayari Al-Tahrawi, op. cit., p. 20.

<sup>25</sup>- Adel Yahya, op. cit., p. 29.



claim and exercise their rights, through the transmission of visual and audio data and information in record time, in order to determine their rights as quickly as possible. As previously mentioned, the Algerian legislator has gone through two phases in implementing communication technology in the judicial field. Through this, it has organized the use of video conferencing technology in criminal trials by specifying the methods and conditions to be followed for the implementation of this technology, while also establishing legal guarantees to ensure the proper application of these technologies.<sup>26</sup>

Based on this, the procedural provisions for implementing video conferencing in criminal trials will be addressed in the first section, next section will examine how implementing this technology affects what makes a trial fair.

### **A) Procedural Provisions for Implementing Video Conferencing Technology for Remote Criminal Trials:**

As one of the legal systems, Algeria's adoption of modern technologies in the judicial field (for example, video conferencing) is a major launching pad for the development of the judicial system and its smooth functioning in its various units and services, particularly when such legislation is supplemented by clear implementation mechanisms, for example in the investigation, trial or even in other aspects such as cooperation with other institutions to combat organised crime, or in the training of employees of the justice sector (internal and external) aimed at improving the productivity of human resources and thereby enhancing the performance of the public service in general. The laws regulating the use of remote communication technology have defined a set of conditions and steps to be followed in order to implement video conferencing technology in criminal trials. They have also determined the authorities empowered to decide on the use of this technology, as well as the scope of its application.

#### **1-How to Resort to Implementing Video Conferencing Technology for Remote Criminal Trials:**

Determining how to resort to implementing video conferencing technology in criminal trials requires addressing the authorities competent to decide on the possibility of using this mechanism (First), and then addressing the cases in which resorting to this technology is necessary (Second).

##### **1.1-The Authority Responsible for Deciding on the Use of Video Conferencing Technology for Remote Criminal Trials:**

Article 441 bis 7 of the Code of Criminal Procedure allows the Public Prosecutor, a party, or their lawyer to request video conferencing. The court can also use it independently after consulting the prosecutor and informing other parties (Article 441 bis 8).

<sup>26</sup> - Amara Abdel Rahim, op. cit. p. 65.



## **1.2-Cases and Stages of Resorting to Video Conferencing Technology for Remote Criminal Trials:**

Video conferencing technology is used at all stages of final investigation or trial. This technology is relied upon for interrogation, hearing individuals, as well as for confrontation between parties. It may also be used for pronouncing the judgment, which is thereby considered a judgment rendered in presence by force of law.

It is also understood from Law 20-04 that this technology is implemented in all types of offenses, namely felonies, misdemeanors, and infractions.

### **1.2.1-Conditions for Resorting to Video Conferencing Technology for Remote Criminal Trials:**

There are different requirements for using video conferencing in the Law on the Modernization of Justice compared to Law 20-04, which amends the Code of Criminal Procedure. We will explain these differences

#### **2.1-The Conditions Stipulated in Law 15-03:**

The mechanism of investigation or trial by remote means is resorted to if certain conditions stipulated in Article 14 of the aforementioned law are met:

- If the distance requires it: for example, if the party to be heard or tried is located in an area far from the court where the procedure is taking place.<sup>27</sup>

- If the proper functioning of justice requires it: this is a broad criterion, as the proper functioning of justice may, for example, require not transferring a detainee from one correctional facility to another to attend court, given the expense and dangers of transporting or the danger posed by the accused himself, as well as to avoid lengthy time and procedures.

- While respecting all the rights and rules in the Code of Criminal Procedure, especially those about fair trials and defense rights.

- If the Public Prosecution and the detained defendant agree, a remote trial can be held in the Misdemeanor Court .

- That the statements be recorded on a medium that ensures their integrity and that they be attached to the case file.

- It is worth noting here that despite the availability of reasons for resorting to this technology, the matter remains merely an option for the judge if he wishes, he may resort to it, and if he refuses, he may use traditional means and procedures.

#### **2.1.1-Complete Confidentiality:**

The means for remote trials shall have features that guarantee the confidentiality and integrity of communications, in other words that such

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<sup>27</sup> - Safwan Mohammed Shdeifat, op. cit, p. 24.



communication does not take place on social media platforms or on unsecure networks, but instead through a special communication system set up within the justice sector (the Ministry of Justice's Sectorial Network), which considers the importance and privacy of the information shared and ensures secure and fast electronic communication between different parts of the sector. rather through a dedicated communication network established within the jurisdiction of the sector through an intranet system. All judiciaries and penal institutions have been linked, as well as the Supreme Court and the Council of State. Local networks were initially installed at two pilot sites (the Court of Algiers and Oran), in 2004, then on other sites. In 2006 all judicial authorities and penal institutions have been equipped with local networks, and these local networks—of courts, judicial councils, the Supreme Court and the Council of State—were connected to the central administration by 2007, respectively.

Finally, in cooperation with the European Commission a parallel network called “Rescue Network” was connected, operating via satellites on VSAT technology allowing communication with any person from any place to give evidence, and with the adoption of Law 15/03 this network was restructured and developed in order to guarantee the confidentiality of video communications carried out on the basis of this technology.

### **2.1.2-Recording the Statements (Conversation) on a Medium:**

Article 14 of Law 15/03 stipulates that the statements or stages of the trial conducted using video conferencing technology must be recorded on an electronic medium or compact disc that ensures their integrity.

### **2.1.3-Transcription of Statements:**

Article 14 ends by requiring that the statements be submitted in their entirety in a report signed by both the presiding judge and the clerk of the court. The reason given for the Algerian legislator's inability to ignore the written record is firstly because of the possibility that the electronic medium will become damaged with time - and so the statements, investigation procedure and proceedings are recorded in written reports (for the purpose of facilitating future reference).

### **2.1.4-Approval of the Detained Defendant and the Public Prosecution:**

Article 15 of Law 15/03 concludes by stating that the agreement of a detained defendant in a penal institution is necessary in misdemeanor cases to use this technology in conducting the procedures of his trial. The same article also requires the approval of a second party, which is the public prosecution. In the event of refusal by either party, the use of this technology for remote trials or for receiving statements from a detainee in a penal institution is prohibited.

### **2.2-The Conditions Specified in Law 20-04:**



The latest amendment to the Code of Criminal Procedure includes a set of conditions, some of which were previously specified in the Law on the Modernization of Justice and others that are new or explicitly mentioned. Therefore, we will focus on the most important conditions as follows:

-If the court suggests using video conferencing, it must consult the Public Prosecutor and inform the parties involved.

-A party wishing for a remote trial must submit a request to the court, in accordance with Article 441 bis 9. This request is ruled upon by the competent authority either by acceptance or rejection, after consulting the remaining parties, adversaries or their defense, along with the Public Prosecutor.

-The condition of the parties' acceptance of resorting to this technology, as evidenced by the content of Article 441 bis 88.

As for the procedures through which detained persons are tried remotely using video conferencing technology, they are procedures derived solely from practical reality and are not clarified in this law, as previously mentioned in the investigation phase. When trials are done this way, the judge gets the case file after it's scheduled, and it says 'detained for another reason.' The judge then checks the accused's legal situation by asking the Public Prosecutor. In the case that the detention is confirmed and sufficient justifications exist to allow the use of this technology, the judge directs a request to the court's Prosecutor General, who in turn contacts the Public Prosecution within the jurisdiction where the concerned person is detained in order to confirm the parties' consent, and a session is set up to take statements, using the same rules and steps as during the investigation.

### **B) The Impact of Using Remote Video Conferencing Technology on the Principles of a Fair Trial:**

The use of video conferencing in the domain of criminal trials finds its practical basis in the idea that the parties are, virtually, within the geographic scope of the courtroom—through electronic presence. Attendance at the trial session has always been surrounded by numerous legal safeguards, which has led to the implementation of remote video conferencing technology raising several legal issues that spark debate, particularly regarding the extent to which this technology respects the principles of a fair trial.

This issue has ignited intense jurisprudential debate between the progressive camp—which believes that technology is capable of ensuring the realization of these principles just like traditional methods—and the conservative camp, which views it as a method that threatens the disappearance of such principles. This is perhaps one of the main reasons why legislation differs and remains cautious in expanding the use of this technology.



Therefore, the first section will discuss the positive impacts of this method, while the second will cover the negative impacts.

### **1-Positive Effects:**

The implementation of video conferencing technology results in a number of positive outcomes that can be outlined as follows:

#### **1.1-Realizing the Principle of Carrying Out Procedures Within a Reasonable Timeframe:**

Remote trial technology significantly contributes to upholding the principle of speed in proceedings, or executing them within a reasonable timeframe, as stated in Article 1, Paragraph 4 of the Algerian Code of Criminal Procedure. This technology helps overcome most of the obstacles to physical attendance—such as illness, geographical distance, disasters, unrest, and difficult weather conditions. Furthermore, it provides a solution to the issue of embarrassment, which may cause some to avoid appearing—such as a witness who fears the personal security consequences of giving testimony. Because of this, the Algerian legislator permitted witnesses to testify remotely without revealing their identity, according to Article 65 bis 27 of the Code of Criminal Procedure.

Moreover, giving testimony remotely can make witnesses more comfortable because they don't have to face the potentially embarrassing stares of the opposing party and their lawyer.

The same applies to the victim—sometimes appearing remotely can provide psychological relief, since being present and encountering their adversary again during the session can increase their emotional suffering<sup>28</sup>, especially if they are a minor or the assault involved a violent or moral offense.<sup>29</sup>

As for the detained defendant, remote trial technology has proven to be effective as a solution for holding court sessions on schedule, even when it is impossible to transfer the detainee due to security conditions in the country or natural disasters affecting it.

#### **1.2-Remote Trial Technology in Strengthening the Right to Access Justice:**

Remote trial technology enables communication between all parties to the public prosecution and allows their oral interventions to be heard, even if they are not physically present in the courtroom. Thus, it contributes to fully realizing the principle of adversarial proceedings, as long as it provides the

<sup>28</sup> - Belfanti Ludovic : Videoconferencing in Criminal Matters : Between Utility and Controversies, p. 165.

<sup>29</sup> - Baral Imma, op. cit, p. 13.



conditions that allow each party to make statements and discuss the evidence presented in the session.<sup>30</sup>

In this way, it can be said to support the right to appear before a judge, as it provides the possibility of communication when necessary. This means having laws in place so everyone gets legal protections when the state wants to punish them, which directly impacts the freedom of someone facing criminal charges.

Since the judiciary is the natural guardian of those freedoms, it is logical that it bears the responsibility to prevent the abuse of this right and to define its scope with full independence and impartiality.<sup>31</sup>

Consequently, remote trial technology facilitates the judge's exercise of their judicial authority in evaluating the probative weight of the accusatory evidence, as it enables uninterrupted communication and the hearing of all parties involved, notwithstanding the use of audiovisual devices.<sup>32</sup>

### **1.3-Consolidating the Principle of Public Trial through Remote Trial Technology:**

Remote trial technology allows the principle of publicity to be applied in its best form, as long as it is accessible to the public, not to mention the ability to monitor all interventions by the parties.

Nevertheless, certain issues emerge concerning the parameters of this publicity and whether it extends in tandem with the broadening of the spatial scope of the session. This encompasses both the primary venue of the hearing—namely, the courtroom within the court—and the location from which the accused person is communicating, which is typically the correctional facility .

This engenders the inquiry: does upholding the principle of publicity necessitate the physical presence of the public within the correctional facility to observe the session from that location? The prevailing view among legal scholars and within the judiciary is that the essence of publicity does not invariably require the physical co-location of the public with the parties to the public lawsuit within the same session venue. Rather, it is deemed sufficient to afford the public the opportunity to follow the proceedings of the session, either

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<sup>30</sup>- Sontag Koenig Sophie : Rights of Defense and Information and Communication Technologies, p. 86.

<sup>31</sup>- Ahmed Fathi Sorour : Constitutional Protection of Rights and Freedoms, 2nd Ed., Dar Al-Shorouk, Egypt, 2000, p. 630.

<sup>32</sup>- Sontag Koenig Sophie, op. cit, p. 86.



at the location where it is being conducted or through the medium of a screen directed towards them.<sup>33</sup>

Another issue arises concerning closed hearings that are conducted remotely from the correctional facility. Because this method needs guards and a video person to keep the connection between the court and the accused working, it makes it hard to have a secret trial.<sup>34</sup>

## 2-Negative Effects:

Opposing legal scholars question the ability of remote trial technology to ensure the exercise of the right to defense—that is, its capacity to allow the prosecuted individual, whether a suspect or an accused, to present their requests and respond to the prosecution's authority in order to refute its evidence.

The presumption of innocence requires that it not be undermined except by a final judgment issued by a competent judicial authority in which all rights of defense are guaranteed, according to Article 56 of the Algerian Constitution.<sup>35</sup>

Therefore, they have identified several flaws related to the right of defense and the conduct of criminal trials.

### 2.1-Remote Trial Loses the Dignity and Traditions of Criminal Trials:

Criminal trials are held in an atmosphere characterized by a sense of firmness, dignity, and seriousness that makes the wronged party feel safe and the wrongdoer feel fear. However, because remote trials mean the accused doesn't have to be in the courtroom or the judge's office, some people argue that the way courts are set up usually makes the accused feel more disciplined and respectful of the law when they're physically there.<sup>36</sup> The way the spaces are arranged within the courtroom, starting from the seats for the public, then each party having its designated spot, ensures that one's position is recognized as soon as they enter. Additionally, the way interventions are made—some speak sitting, others standing—expresses the symbolic tradition of the establishment

<sup>33</sup> - Tabash, Ezzedine. "Appearance Before the Criminal Court via Remote Communication Technology : A Comparative Study." *\*Egyptian Journal of Legal and Economic Studies\**, Issue 15, July 2020, Egypt. P 71.

<sup>34</sup> - Perrocheau Vanessa and Zerouki Cottin Djoheur : Videoconferencing in the French Criminal Trial, From One Ritual to Another ? p. 359.

<sup>35</sup> - Article 56, Constitutional Amendment, Law No. 16/01, 6 March 2016, Official Gazette of the Algerian Republic, No. 14, 7 March 2016.

<sup>36</sup> - Sauvez Juliette : "Specificities of Videoconferencing Before the Criminal Court," *AJ Pénal*, 2019, p. 249.



of justice and the unequal positions of the parties in the criminal trial.<sup>37</sup> This symbolism is lost when all parties are gathered in a virtual world without physical face-to-face communication.

Moreover, the sense of frustration from the trial, as well as the feeling of fear that can only be observed during the forced appearance of the accused, which is common in English legal tradition,<sup>38</sup> is also lost. If the prisoner appears via remote communication technology, they participate directly from their cell without undergoing the experience of being transported from the correctional facility to the court in a specially designated vehicle, in a convoy surrounded by security forces, which evokes feelings of humiliation and anxiety, not to mention the confusion caused by the long waiting times inside the court, sometimes lasting for hours. All of this makes the accused feel the power of the state in deterring and exercising its authority in applying the law. In contrast, participating in the trial from a chair in the correctional facility, in front of just a camera, strips the appearance of its dignified character.<sup>39</sup>

It even happened once that a prisoner was asked to testify via remote communication, and when he stood in front of the camera, he appeared in inappropriate clothing, apologizing because he had just returned from physical exercise.<sup>40</sup>

In the context of vision, in a trial with physical presence, it is enough to simply turn one's head to the right or left to see everyone present in the courtroom. However, in the case of a trial using remote communication technology, the ability to view any angle of the courtroom is controlled by the person responsible for the camera. This is seen by some as a violation of the principle of neutrality that should be imposed on the judge. The judge isn't just responsible for fair speaking turns; they also need to ensure the images are distributed equally.

## **2.2-Remote trial drains the trial session of its human character:**

The principle of orality, according to the law, means that the judge must base their conviction on the procedures that occur orally before them, which consist of requests, defenses, and direct discussion of the evidence during the session they preside over. From this definition, it appears that the law gives the principle of orality a somewhat abstract concept, as it limits this principle to speech as a means of expression and to embodying the elements of presence in

<sup>37</sup> - Dumoulin Laurence and Licoppe Christian : *Appearances by Videoconference : The Confrontation of Two Worlds. Prison and Court. Final Report*, Institute of Social Sciences of Politics (CNRS-UMR 7222), ISP – Cachan Site, Paris, 2013, p. 28.

<sup>38</sup> - Baral Imma, op. cit, p. 11.

<sup>39</sup> - Sauvez Juliette, op. cit, p. 249.

<sup>40</sup> - Tabash Azeddine, op. cit, p. 97.



the session.<sup>41</sup> If this is the case, there is no objection to involving the accused in the discussion through remote communication technology. However, the reality of the individual as a human being proves that expressing what is inside them is not limited only to the words they speak, but extends to the movements and signs on their face or body during a face-to-face confrontation, which is called body language.<sup>42</sup> Some believe that a person being heard remotely remains psychologically distant from the enthusiasm that arises among those physically present in the session, which leads to a lack of direct visual contact, the only way to observe the immediate non-verbal physical expressions.<sup>43</sup> How can this be achieved by watching the person on a screen, where only the upper part of their body is visible in most cases? And their clarity depends on the quality of the imaging tool, the type of screen, as well as the lighting and the environment.<sup>44</sup> According to judges who have used remote communication technology with the accused, it leads to a reluctance to ask many questions, which makes the discussion formal, lacking spontaneity and precision. Thus, the judge often resorts to returning to the written file, which severely undermines the principle of oral procedures.<sup>45</sup>

The remote trial technique presents a new concept for the principle of orality, in which it is difficult for the judge to form their conviction without the means of legal debate that they hear, without observing other forms of expressions that might influence their belief to the extent that they may base their position on a simple movement, such as an eyebrow raising or a certain look.<sup>46</sup> These expressions, which appear in the human body, may take the form of physical movements in the hands and legs, such as tension, shaking, or hesitation. They may also appear as changes in facial features, expressing surprise, doubt, anger, guilt, regret, or understanding. These expressions are part of body language, which is another form of communication that is difficult for the judge to notice during a remote trial.<sup>47</sup> Even more concerning is the fact that the person controlling the imaging technology has the technical ability to manipulate the image to the extent that they may present the person involved in

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<sup>41</sup> - Fawzia Abdel Sattar : Explanation of the Code of Criminal Procedure, 2nd Ed., Dar Al-Nahda Al-Arabiya, Cairo, 1990, p. 468.

<sup>42</sup> - Tabash Azeddine, op. cit, p. 100.

<sup>43</sup> - Milburn Philip : "Judging via Screen : An Anthropological Revolution," AJ Pénal, 2019, p. 255.

<sup>44</sup> - Tabash Azeddine, op. cit, p. 100.

<sup>45</sup> - Lavric Sabrina : Videoconferencing : The Trial of Tomorrow?, p. 464, See also : Sauvez Juliette, op. cit, p. 249.

<sup>46</sup> - Tabash Azeddine, Op. Cit., p101.

<sup>47</sup> - Sauvez Juliette, op. cit, p. 249.



the virtual trial in a way that does not reflect their true appearance, using what is known as cinematic deception techniques to read body language.<sup>48</sup>

### **2.3-The remote trial technique undermines the principles of presumption of innocence and equality of arms:**

If the danger posed by the accused to public order or the risk of their escape when being transferred from the penal institution is one of the main justifications for using this technology, then the judge who presents this justification would have made a presumption of criminal danger regarding this person. This would significantly impact their personal conviction and incline them to believe in the accused's guilt, thereby violating their right to the presumption of innocence.<sup>49</sup>

Furthermore, the implementation of remote trial technology has implications for the right to equality of arms in the context of exercising one's defense, signifying the necessity of maintaining a comparative equilibrium between the rights of the defense and those of the prosecution.<sup>50</sup> This balance should not reach a point where the procedures solely reflect the prosecution's case, to which the accused is subjected absolutely. Considering that the accused's situation is different depending on whether they're there in person or joining remotely, the latter lacks essential characteristics that are mostly detrimental to the accused's interests. Therefore, the claim of respecting the balance between rights while applying this technology seems difficult, especially when we know that the prosecutor often needs to be present in person in the session, and thus is in a better position to present their requests and explain the prosecution's evidence face-to-face before the judge.

### **2.4-The remote trial technique undermines the right to assistance by a lawyer:**

Since the remote trial technique assumes the existence of at least two locations from which the trial proceedings take place, the defense lawyer, in particular, will be forced to choose between being with their client who is incarcerated and being communicated with through this technique, or being physically in the courtroom present in front of the judge. In both cases, the lawyer cannot perform their task in the best possible way. In a regular case, the lawyer, during a direct defense, has the ability to move between their client and the judge, sometimes addressing the judge directly and sometimes talking to their client, and occasionally engaging in a private conversation with them. This will not be possible with the remote trial technique.<sup>51</sup> Furthermore, when we

<sup>48</sup> - Tabash Azeddine, op. cit, p. 102.

<sup>49</sup> - Siber Jonas : The Image and the Criminal Trial, p. 525.

<sup>50</sup> - Ahmed Fathi Sorour, op. cit, p. 706.

<sup>51</sup> - Tabash Azeddine, op. cit, p. 102.



find that most lawyers prefer to be present in the courtroom, as it is the true place for making their defense arguments, they will inevitably miss this tradition.<sup>52</sup>

The presence of multiple trial locations also raises the issue of access to the file. If the lawyer has not received a copy beforehand and chooses to be with their client in the penal institution, the file must be provided at the penal institution for their review, or else it would constitute a violation of their right. Therefore, the use of the remote trial technique requires the lawyer to notify the court registry in advance of the location from which they will be making their defense. According to the French Court of Cassation, without file access, they lose the right to claim defense rights were violated.<sup>53</sup>

### **Conclusion :**

The deep reforms witnessed in the justice sector aim to make optimal use of information and communication technologies. The main goals of these reforms are to simplify procedures, bring justice closer to the citizen, replace paper-based documentation with electronic means, as well as save time and reduce costs. This objective is what the Algerian legislator has endeavored to realize through the enactment of the Law on the Modernization of Justice and its subsequent amendment to the Code of Criminal Procedure by virtue of Order 20-04. Drawing upon the aforementioned analysis, we have arrived at the following results, which serve as the foundation for our recommendations.

#### **Results:**

The topic of using remote trial technology in criminal trials at this specific time has significant implications, mainly related to the major transformations the world is undergoing due to the pandemic caused by the novel coronavirus, which forced the creation of new lifestyles. This shift led to adopting alternative transactional traditions to face the paralysis that affected all areas of life, including the judicial field. Recently, this field has witnessed the widespread use of information and communication technology to maintain continuity in this system by activating the procedural measures designed for this purpose. Therefore, after focusing mainly on the impact of this shift in the criminal field, we concluded a series of results upon which we based a set of recommendations.

#### **Recommendations:**

The use of this technology should not be expanded to procedures that could be handled in place of personal appearance, as this could harm the principles of a fair trial.

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<sup>52</sup> - Bossan Jérôme : Videoconferencing in the Criminal Trial : A Tool to Master, p. 813.

<sup>53</sup> - A decision issued on 19/02/2014, referenced in:



The use of this technology should be limited to cases that require appearance but are of a formal nature, such as cases of extending detention for investigation, certain matters of temporary detention, sessions of overall questioning before an investigative judge, and appeal hearings, particularly in cases involving an incarcerated defendant.

The use of this technology should not be lenient, and its application should remain an exception; otherwise, we may one day see criminal trials with a judge presiding remotely, the defendant participating in the same manner, and both witnesses and victims also participating in the same way, thus rendering the trial devoid of the presence of its parties. The judge may even issue a ruling against a defendant who was never seen face-to-face.

The types of crimes where remote trial technology can be used should be defined, such as crimes of violence, morality offenses, and those involving minor victims.

The use of this technology should be avoided in serious felonies due to their complexity and the degree of their seriousness, especially during the trial, whether at the first instance or on appeal. It should also be avoided in the initial appearance session before the investigating judge, and generally in cases where the defendant appears before the court for the first time.

Finally, the use of the technology should not be generalized until it is ensured that all necessary material and technological resources are available to conduct remote trials without technic obstacles that could hinder the proper exercise of the right to defense.

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