



REMOTE TRIAL TECHNOLOGY -BETWEEN INEVITABILITY AND ASPIRATIONS-

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Abstract:

In the era of digitization and informatization, many countries have rushed to focus all their efforts and capabilities to optimize the use of these modern technologies in various fields of life to advance the human being and improve his living conditions. The concept of e-government and e-court came into existence until we reached the e-litigation system, an example of which is the "remote trial technology" or as the Algerian legislator calls it "remote video conferencing technology during judicial proceedings".

This paper aims to highlight the importance of activating the remote trial technique by shedding light on the legal framework of this technique in light of Law No. 15-03 on the modernization of the justice sector and Order 20-04 amending and supplementing the Code of Criminal Procedure, while identifying the most important issues that hinder the proper application of this technique in order to preserve the principle of the legitimacy of judicial procedures.

Keywords: Remote trial; judicial facility; repercussions; principle of legality of proceedings.

Introduction:

The right of access to justice is one of the natural rights inherent in the human person that cannot be violated (Chamy & Asha, 2020, pp 09,10), and it is a sacred right that protects human life and property that cannot be waived, which is constitutionally guaranteed (Art 177, the Algerian Constitution

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states) and stipulated in the provisions of international treaties and charters (The Universal Declaration of Human Rights of 1948, Art 08 and 10). Every individual has the right to resort to the judiciary to seek to enforce a right or defend against an attack, as the components of the right are not complete without strong protection that guarantees its continuity and inviolability.

The litigation system has witnessed several developments in parallel with the technological progress witnessed by society as evidenced by the information revolution, as the latter has affected various fields of life, including the social, economic and scientific fields, which led to the emergence of E- Commerce, E- Government (Matar, 2008, p.35), Distance education (Mahfouz & Soueiki, 2015, p 131), in addition to what is known as E- Litigation.

As the justice sector is one of the most vital and essential facilities in the country, and in order to ensure maximum efficiency, it was necessary for it to keep pace with the scientific developments that the whole world has witnessed by adopting technology in its work, process and even communication, so electronic litigation was materialized, which has become a reality recognized in most advanced legal and judicial systems.

The paper's research question is centered on: **Has the Algerian legislature succeeded in framing remote trial technology as a mechanism to ensure the flexibility of the judiciary?**

Based on the above, and for the purpose of answering the research paper's central question and all its subsidiary questions, we decided to rely on the descriptive method by defining the legal framework for the remote trial technique, and the analytical method with regard to analyzing the legal texts framing this technique to determine the extent to which they preserve the principle of legality of the proceedings. Using the following breakdown:



Section I: Remote trial technology as a narrow scope of e-litigation

Section II: The reality and prospects of remote trial technology

SECTION I : Remote trial technology as a narrow scope of e-litigation

E-litigation is the embodiment of digital development in the justice sector by linking it to a unified database that allows the electronic registration of the case and tracking the progress of litigation proceedings in a way that ensures the preservation of judicial guarantees in accordance with the nature of this technology.

It should be noted here that e-litigation overlaps with a number of similar terms, including "e-court" and "remote trial".

As for the e-court, e-litigation is materialized through it; this is because it allows dispensing with the paper file by managing the entire case electronically, and this litigation process can only be completed through it.

As for the remote trial, which is known as videoconferencing, or as mentioned in Algerian legislation as "remote videoconferencing technology during judicial proceedings," it is intended to use electronic media that allows the transmission of sound and image through various communication waves during judicial proceedings to hear witnesses, experts and parties and conduct both investigation and trial in order to ensure the proper functioning of justice, and constitutes the narrow scope of e-litigation.

First Requirement: The Legal Framework for Remote Trial Technology

Remote trial technology plays a prominent role in shortening and simplifying procedures and reducing expenses. It is the use of modern technical means - Vidéoconférence - between a group

of individuals between them (Yahya, 2006, p 25) to conduct investigation or trial proceedings remotely. This technology defines four different systems: point-to-point, switchboard, active speaker, fixed or standardized continuous presence, and advanced continuous presence (Mohieddine, 2020, pp 54-56).

In line with this continuous development of the digital world, the Algerian legislator, like other comparable legislations, has been interested in reforming the justice sector as one of the most vital and essential facilities in the state, and has taken care of its digitization to upgrade this sector and develop its performance, including for the first time the possibility of using video conferencing technology during judicial proceedings under Law No. 15-03 (Law No. 15-03 of the modernization of justice, 2015) dated 01/02/2015 on the modernization of justice, as a means of hearing witnesses, experts and parties and conducting both investigation and trial in order to ensure the proper functioning of the justice system.

The first remote trial within the country dates back to 07/10/2015 at the Qulaiaa Court without transferring the accused from his penal institution to the courtroom, while the first international trial was remotely on 11/07/2016 at the Messila Judicial Council, where an audio and video connection was established to hear the statements of the witness in the French court of Nanterre in a case of forming a criminal group for the purpose of preparing a murder crime against a French policewoman, in addition to the charge of possession and transportation of weapons and ammunition, which dates back to May 20, 2010 in France (web, 2016).

This technology was known for its conservative applications at the time, only to be implemented more widely due to the epidemiological circumstances that swept the world, which necessitated the need to take precautionary measures to avoid the transmission of the virus, most importantly social distancing to preserve public health, which cannot be achieved during judicial



proceedings unless the trial takes place remotely. Law No. 20-04 (Ordinance No. 20-04 of amending and supplementing Ordinance 66-155 containing the Code of Criminal Procedure, 2020) dated 30/08/2020 amending and supplementing the Algerian Code of Criminal Procedure introduced new provisions that required us to elaborate on them.

In order to provide a comprehensive overview of the legal framework for remote trial technology, we decided to track its development from 2015 - Law No. 15-03 - to 2020 - Order 20-04 - especially since the two laws studied represent different time periods that were determined by the coronavirus pandemic.

1- Paragraph1: Remote trial technology under Law No. 15-03 on the Modernization of the Justice Sector:

Law 15-03 is considered one of the founding laws as it laid the legal foundation for the first time for the adoption of digitization in the judicial system and paved the way for the issuance of other legal texts supporting the same goal. Article 1 states that the aim of this law is to modernize the administration of justice by establishing a centralized information system for the Ministry of Justice, sending documents and judicial documents electronically and using video conferencing technology in judicial proceedings (Art 01, Law 15-03 on the Modernization of the Justice Sector).

In this regard, article 14 of Law No. 15-03 on the modernization of the justice sector stipulates that: "If distance or the proper administration of justice requires it, the parties may be questioned and heard by videoconference, while respecting the rights and rules stipulated in the Code of Criminal Procedure..." Article 15 adds in its second and third paragraphs that: "... the court may also use video conferencing to hear witnesses, civil parties and experts. Judges hearing misdemeanor cases may use the same mechanism to receive statements from detainees if the person concerned and the public prosecution agree to it."

By reading the texts of these two articles, we find that the Algerian legislator, through the Law on the Modernization of the Justice Sector, has restricted the use of remote trial technology to the cases of distance and the proper administration of justice. The use of this technology is limited to criminal jurisdiction and its application is subject to the consent of both the accused and the public prosecution. Thus, if the accused, his defense or the public prosecution do not express their consent to the use of remote trial technology, the trial is conducted in its normal form.

2- Paragraph 2: Remote trial technology under Ordinance 20-04 amending and supplementing the Code of Criminal Procedure:

Pandemic situation that swept the world provided a real impetus for it to activate the digitization of the justice sector more broadly. Order No. 20-04 amending and supplementing the Algerian Code of Procedure was a positive change that contributed to expanding the scope of application of the remote trial technique and facilitating its use.

In this regard, the Algerian legislator, through the provisions of this law, has opened the field of resorting to the use of remote trial technology in criminal matters more and more. In addition to the case of resorting to this technology in all matters required for the proper administration of justice, the legislator has recognized the possibility of adopting this technology in the case of maintaining security and public health, the latter being the most important cases that prompted the Algerian legislator to update the provisions of the remote trial technology to be consistent with the prevailing health conditions (Boussahia & Chenatlia, 2021, p 871), as well as the need to respect the principle of reasonable time limits or as known as speedy resolution of the case.



Second Requirement: Conditions and procedures for the use of remote trial technology

The Algerian legislature has framed the use of remote trial technology with a set of conditions and procedures, some of which are not included in the Law on the Modernization of Justice No. 15-03, through which it aims to ensure the proper functioning of this technology and protect the rights and privacy of the parties.

1- Paragraph1 : Conditions for the use of remote trial technology:

- The Algerian legislature has surrounded the use of remote trial technology with a set of conditions stipulated in Articles 441bis and 441bis1 of the Code of Criminal Procedure, supplemented by Ordinance 20-04, which can be listed as follows:
- Respect the rights stipulated in the Code of Criminal Procedure in order to preserve the principles of fair trial embodied in the aforementioned law, the most important of which is the right to defense
- In addition to protecting the privacy and confidentiality of data and data of litigants and ensuring their confidentiality so that communication takes place through a special communication network created in the justice sector called the "Sectoral Network of the Ministry of Justice", the law requires ensuring the safety of the technical means and devices used in the transmission process.
- Record the statements on an electronic support that guarantees their integrity and is attached to the file of the proceedings as stipulated in the last paragraph of Article 441 bis and by the third paragraph of Article 04 of Law No. 15-03 on the Modernization of the Justice Sector.

If the accused is not detained, he shall be questioned, heard, or confronted with others during the investigation or trial stages at the court nearest to his residence, and the same procedures shall apply to other parties, witnesses, experts, and translators.

2- Paragraph 2 : Procedures for using remote trial technology:

These procedures differ depending on the party that requested the use of remote trial technology: Judicial authorities on their own initiative, the prosecution, one of the litigants or their defense, where:

- If the judiciary deems it necessary to resort to the use of this technique on its own initiative, it must first consult the opinion of the public prosecution and take the views of the litigants as a preliminary restriction, and once one of them starts his objection, justifying his refusal to comply with this procedure, and the judiciary considers that this objection is not serious, it issues a decision that is not subject to any appeal to continue the trial according to this technique (Art. 441 bis 8 of the Code of Criminal Procedure). This creates a major issue related to the lack of harmonization between the authority vested in the judiciary and the rights of the accused, and the question that arises here: What is the place of the guarantees guaranteed by international laws and covenants to the accused if his will is not taken into account?

In the context of our discussion on the need for the accused to consent to the use of remote trial technology, we recall the decision of the French Constitutional Council dated March 15, 2021, issued under No. 2020-872, in which it ruled: "If the development requires that the court and trials must be digitized, it must not be at the expense of the right to physical presence and the right to reply in the court stages, and if the matter is no



different for the judiciary, the matter is different for the defendant and his defense."

- If the party wishing to use this technology is one of the litigants or their defense, the request is submitted to the judicial authority, which decides whether to accept or reject the request after consulting the opinions of the other parties or their defense and the public prosecution, and the law guarantees that it can review its decision if new circumstances arise after the request is submitted (Art 441 bis 09 of the Code of Criminal Procedure).

In all the above cases, and whenever it is decided to use the remote trial technique, the custodian of the penitentiary shall draw up and sign a report on the progress of the process of using this technique and then send it, with the knowledge of the director of the penitentiary, to the competent judicial authority to be attached to the file of proceedings. The defense has the right to be present with its client at the place of hearing and/or before the competent judicial authority in order to guarantee the right of defense.

The Algerian legislator adds that if the trial is to be conducted by remote trial technology and the accused refuses to answer or decides not to attend, the verdict will be rendered in the presence of the accused, as the provisions of the second paragraph of article 347 of the Code of Criminal Procedure apply: "The verdict shall be rendered in the presence of the accused who is free: ... who, despite his presence at the hearing, refuses to answer or decides not to attend. who, despite his presence at the hearing, refuses to answer or decides to fail to appear...".

SECTION II : The Reality and Prospects of Remote Trial Technology

The health crisis has reaffirmed the importance of innovative technologies in developing the performance of the justice facility, and the most prominent evidence of this is the positive and

pivotal role played by remote trial technology in light of the spread of the Corona pandemic as an alternative means to exit the traditional character to a softer, more effortless and less time-consuming character, which has a great role in simplifying and accelerating procedures (Shadifat, 2015, pp 353, 355).

First Requirement: Remote trial technology and the principle of legality of proceedings :

The principle of legality of proceedings is an important principle first enshrined in the Universal Declaration of Human Rights and enshrined by the constitutional founder under Article 41, which states: "Everyone is presumed innocent until proven guilty by a judicial authority in a fair trial." The principle of legality of proceedings is an external framework that guarantees the application of the substantive rule. The principle of procedural legality is the external framework that guarantees the correct application of the substantive rule and is one of the most important pillars of a fair trial, defined as: "The accused is presumed innocent, and no criminal action may be taken against the accused except in accordance with the law and under judicial supervision within the limits of the established guarantees based on the presumption of innocence" (Srou, 1977, p 16).

In this regard, the issue of the physical presence of the accused before the judiciary in the courtroom raises a wide debate between those who insist on the necessity of this presence and those who adopt the virtual presence of the accused, which has been adopted by most comparative judiciaries. There is no objection to remote trial in this aspect, as what is most important is the judicial oversight of the quality of the technical means used in the trial, which guarantees the parties to the proceedings to communicate with each other and exercise the procedures.

We cite the jurisprudence of the European Court of Human Rights, which held that: "The use of telecommunication techniques in trial proceedings does not in itself diminish the



guarantees of a fair trial, as long as the aim of resorting to these means is legitimate and the means used do not conflict with the rights of the defense."

In practice, problems are often encountered because of the means used and the poor quality of communication, which does not effectively link the courtroom to the penitentiary. For example, Algeria's frequent poor internet connection, which frequently interrupts trials and often results in poor audio and video quality, which affects the proper conduct of proceedings, as well as the distraction of judges and lawyers during these interruptions.

Second Requirement: Advantages of remote trial technology

There is no doubt that the post-coronavirus pandemic is a crucial stage for reconsidering several factors, as it is an opportunity to move to more distinguished levels in the performance of services and promote a productive work environment that keeps pace with the current development, and the remote trial technology will no doubt crystallize over time for its positives that justify its application, especially as it enshrines the idea of flexibility of procedural rules and maintaining the continuity of the performance of the judicial facility (Boussahia & Chenatlia, p 885).

There is no denying the meaningful and positive results achieved by remote trial technology in developing the services of the judiciary, starting with deciding the case within a reasonable time, which is the most important guarantee of a fair trial, and minimizing the financial burden on the parties to the case. It is also an effective way to protect the parties to the dispute, such as witnesses and victims, and some comparative penal legislations tend to use this technology in the field of investigation and criminal trials of juveniles to avoid the psychological effects that may result from their presence in the session.

In order to achieve the establishment of a remote trial that guarantees the development of the judicial work system and the promotion of services in the justice facility, several aspects must be reconsidered. In addition to technical failures, which require the need to provide the necessary and appropriate logistical capabilities capable of keeping pace with digital justice, it must be taken into account that the intervention of the Algerian legislator to define the appropriate offenses for the use of remote trial technology in criminal matters is extremely important.

In this regard, we note that the Algerian legislator, through Order 20-04, has authorized the extension of the application of trial technology in criminal cases after the Modernization of Justice Act limited its application to criminal cases only, which we find to be a very big gamble that cannot be applied without violating many guarantees. If the application of technology in criminal cases is hampered by a number of obstacles, how much more so in criminal cases, which are governed by special and unique procedures based primarily on the personal conviction of the judge, as stipulated in Article 307 of the Code of Criminal Procedure, and therefore the physical presence of the accused is extremely important, especially since sentences can reach the death penalty and life imprisonment.

Conclusion:

Remote trial technology has become an urgent necessity in light of the rapid digital transformations and the quest for more flexible justice, as this technology has proven its effectiveness in ensuring the continuity of the judiciary, especially in exceptional circumstances.

Finally, the study came up with a number of suggestions, the most important of which are listed below:

- The need for the Algerian legislature to define the types of crimes suitable for the use of remote trial technology



according to their seriousness and not to leave the field open.

- Emphasizing the importance of harmonization between the judicial authority and the right and freedom of the accused, the Algerian legislature eliminated the requirement for the accused to consent to the adoption of the remote trial technology, and stipulated that the decision issued by the judicial authority to approve or reject it is categorical and not subject to any appeal, is a blatant violation of fair trial guarantees.
- The need to provide appropriate logistical capabilities capable of keeping pace with digital justice, as well as attention to developing human resources and equipping them with the necessary skills to optimize the use of information technology, including judges, lawyers, regulators and all employees of the justice sector.
- The use of remote trial technology raises the issue of what constitutes a hearing offense.

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