

THE LEGAL SYSTEM FOR REMOTE TRIAL IN ALGERIA

FARAOUN MOHAMED¹, ABBAR OMAR²

Associate Professor, Public utility and development laboratory, Djillali LIABES University, Sidi bel abbes, Algeria.

Associate Professor, Public utility and development laboratory, Djillali LIABES University, Sidi bel abbes, Algeria.

Mohamed.fraoun@univ-sba.dz, omar.abbar@univ-sba.dz

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Abstract:

The Algerian legislator adopted the trial system remotely under the law of modernization of Justice 15-03, where a pandemic was reflected in the justice sector and the rights and freedoms of litigants and the interruption of the convening of the urban presence trial to preserve safety and public security, which made the Algerian legislator issuing order No. 13-30 amended and completed the Law of Procedures The criminal, through which he set the conditions and conditions that regulate this type of trial and that solve many procedural problems that were facing the justice sector.

keywords: justice- criminal- trial- system.

INTRODUCTION

The judicial facility in Algeria has been able to make significant strides in the field of using information and communication technologies and the shift towards digital justice in its broad sense. In this respect, many projects have been implemented in order to reach modern justice with international standards, especially in terms of facilitating access to justice for all segments of society, simplifying and improving judicial procedures, upgrading judicial and administrative management methods together with providing and developing remote judicial services for the benefit of citizens. However, such important leap in this field was the resort to using the **remotetrial system or digital trial** due to its fundamental dependence on digital technical means. This system was initially implemented in Law No. 15-03 relating to the modernization of justice and thereby courts began implementing it at the national level. Still some of its provisions became insufficient, especially in light of the spread of the Corona pandemic, which made the legislator intervene again through Order 20-04 amending and supplementing the Penal Acts in order to adapt its provisions to new data, particularly the epidemiological situation.

Through this work, we will address the legal system of digital trial by addressing all its aspects through the following points:

I. Conceptual framework of digital trial technology.

II. Legal controls for the use of digital trial technology.

I. Conceptual framework of digital trial technology:

There is a variety of terms given to this type of trial. Some legislation call it remote trial, and others call it video trial or video chat. Whatever the names differ, they agree upon the use of digital technical means to link the ruling party with the parties to the criminal case; be they defendants, witnesses, civil parties, experts, etc. Below we will discuss the definition of this technique (01), and the justifications for resorting to it (02).

1. Definition of digital trial technology:

Algerian law, like other comparative laws, have not given a definition to digital trial or remote trial, and left room for jurisprudence due to the term's connection to the complexity of legal procedures on the one hand and technical requirements on the other hand. It is, thereby, defined as: "audio-visual communication technology, i.e. a modern means or mechanism for directing investigation procedures or remote criminal trial used in some cases to hear witnesses and those cooperating with justice in order to uncover the ambiguity of serious crimes, especially organized ones. Rather, this goes beyond trying the accused, despite his presence inside the penal institution, in a court that may



be a long distance away from the penal institution.”¹¹This audio-visual technology is carried out using live audio and video broadcast between courts of different degrees and jurisdictions and penal institutions within a controlled legal framework. The reason is to interrogate an accused, a witness, a civil party or an expert who is unable to be present in court due to their penal status represented by imprisonment or for other reasons such as the impossibility of travel to the court because of the location of the court in which the trial is conducted.

In UAE law, for example, remote communication technology is defined in Article 1 as: “an audio-visual conversation between two or more parties in direct communication with one another via modern means of communication to achieve remote presence,” while it defines remote procedures in the same Article as: “Criminal procedures for investigating crimes and collecting evidence, inquiry, or a trial that is carried out through the use of remote communication technology.”

From the above, it can be defined as conducting the trial in accordance with the legal and procedural requirements of the parties to the criminal case, so that the judicial body remains at its headquarters in the courthouse, by linking it via electronic means of communication.

This technology is characterized by four systems, respectively²:

a- Remote video chat system from one place to another: In this case the video chat takes place from the base of the sessions or investigation to another place far away from it, such as a penal institution, which is usually hundreds of kilometers away.

b- Individual remote video chat system between multiple places and the court room or the investigation hall: This system is known as the active speaker system, where the hearing hall is in one country and the witnesses are in another country, and all parties are displayed on one screen.

c- Group remote video chat system between multiple places and the court room or the investigation hall: This is known as the continuous and fixed or unified presence system, in which communication takes place between five geographically distant places, including the trial session hall. Each of these places must have a display screen divided into four parts, so that the voice and image of the session participants are heard and seen at the same time.

d- Continuous and advanced remote video chat: Through this modern technology, the display screen present in every location is divided into four sections. The first section is installed to display a general panorama of the hall in which the trial is taking place, and two other sections in two of the places connected to this hall. The fourth section, however, shows the screen that displays the image.

2. Justifications for resorting to digital trial technology:

Compared to traditional litigation, which relies more on manual work than electronic work, the use of remote communication technology is distinguished by many characteristics³. The introduction of this technology into the judicial facility is necessary based on the facility’s different legal and

¹¹- Namur Muhammad Saeed, *Principles of Criminal Procedure: an explanation of the Algerian principles of criminal trials procedure*, Dar Al-Thaqafa for Publishing and Distribution, Jordan, 2013, p. 327.

²- Amara Abdel Hamid, *Using remote video chat technology in investigation and criminal trial*, *Journal of Studies and Research, Arab Journal of Humanities and Social Sciences*, Issue Three, Volume Ten, September 2018, p. 61.

³- Amir Faraj Youssef, *Electronic Courts and Electronic Litigation*, Modern Arab Office, Cairo, 2014, p. 41.

- Providing protection in cases of hearing witnesses whose identities cannot be revealed and, importantly, victims of some crimes whose identities should not be revealed. These witnesses or victims can be placed in another courtroom and listened to via a given communication system without seeing their faces.

- Benefiting from the expertise of specialists in areas that do not exist at the level of the jurisdiction of some courts.

- Adjudicating cases or completing investigation procedures within reasonable deadlines, since this technology is characterized by the speed of executing litigation procedures without the need for the parties to the case to move to the court. This saves time and reduces congestion during sessions in court rooms.

- Avoiding the risks of transporting detainees and the resulting accidents.



practical justifications. Such use only takes place within a specific legal framework that guarantees the integrity of the process on one hand and the rights of litigants on the other hand. This is included in the provisions of Law 15-03 mentioned above, as well as the provisions of Order 20-04 amending and supplementing the Code of Criminal Procedure. Among the possible justifications for using video chat technology in the justice sector the following:

- Keeping pace with the development witnessed by comparative systems in the field of modernizing the judicial facility by introducing modern technologies into it. This comes as an implementation of international texts and conventions that approved this technology to facilitate litigation procedures and support international cooperation to combat crime.
- Reducing pressure on the courts and on the sectors charged with transporting the accused, as conducting trials remotely ensures greater speed of litigation procedures with less effort and at a lower cost.
- Reducing distances for witnesses who are located in distant places, to encourage the participatory role of citizens through cooperation with the judiciary so as to reduce crimes and eliminate the crime of covering up criminals.

In fact, there is an increasing demand by judicial authorities for video court technology through modern communication services owing to its success in developing and accelerating not only the work of the competent authorities in the justice facility, but also saving effort and money. This technology does, indeed, relieve the pressure on the criminal judge for the large files that are adjudicated on a daily basis and which mostly concern prisoners in penal institutions far from the court of jurisdiction. Additionally it even allows the adjudication of pending files. Among the most beneficiaries of the video litigation service are detainees and those with limited income and juveniles. In other terms, the transfer of the accused from the house of prevention and punishment is one of the most important reasons leading to the slowness of criminal trials, in addition to the fact that this type of visual litigation eliminates the need for specialized personnel to move from prisons to competent courts.

II. Legal regulations for using digital trial technology:

The Algerian legislator's dedication to video chat technology is a significant step toward developing the judicial system as a whole, and adjudicating cases within reasonable deadlines, as well as avoiding the accumulation of files and procedures for reasons that are often beyond the scope of the judge. Significantly, the law has set specific conditions for resorting to digital trial technology (01), and specified the procedures for its conduct in the judicial investigation stage (02) and during the trial stage (03).

1. Conditions for using the digital trial:

The Algerian legislator has specified a number of conditions that must be met in order to resort to the use of video chat, which are respectively:

a. Determining the reasons for resorting to this technology:

Law No. 15-03 related to the modernization of justice specifies the cases or reasons for a judge to resort to using this technology⁴ based on distance; that is, the existence of a significant distance between the seat of the court before which the judicial file is placed and the person's place of residence or whereabouts. The law did not specify a minimum limit for this distance, and hence there is nothing preventing a video conversation from being conducted with a person outside the national territory, or the proper administration of justice. That is a condition that accommodates any expected or unexpected situation. Moreover, Order 20-04 amending and supplementing the Code of Criminal Procedure has added other cases⁵, namely maintaining security and public health, or during natural disasters or for reasons of respecting the principle of reasonable deadlines.

⁴- Article 14, f 01 of Law No. 15-03 relating to the modernization of justice.

⁵- Article 441 bis, f 01 of the Code of Criminal Procedure.



b. Complete confidentiality:

The method used must guarantee the confidentiality and honesty of communication⁶. In other words, this type of conversation does not take place through social media or through unprotected networks. Rather, it takes place through a private communication network that was created in the justice sector called the sectoral network of the Ministry of Justice. The latter takes into account the privacy and sensitivity of information circulating in the justice sector, and ensures electronic communication and the immediate and secure exchange of information between the various interests of the sector according to the intranet system. Thereby, all judicial authorities and penal institutions are linked to one another, together with the Supreme Court and the Council of State.

c. Recording statements on a support:

Statements or trial phases must be recorded using video chat technology on an electronic support or CD that ensures their safety⁷.

d. Recording the statements:

The statements must be written down in full and verbatim on a report signed by the judge in charge and the registrar⁸. In this regard, the Algerian legislator's tendency not to omit writing is due originally to the possibility of damage to the electronic support over time, so the statements and investigation and follow-up procedures are kept in written records that guarantee the possibility of returning to them.

e. The problem of the consent of the imprisoned accused and the Public Prosecution:

The last paragraph of Article 15 of Law 15-03 stipulates that the accused, who is an inmate in a penal institution in misdemeanor cases, must consent to the use of the remote trial technology in conducting his trial procedures. It also stipulates that the consent of a second party, which is the Public Prosecution. In the event that one of the parties refuses, it is prohibited to use such technology or to receive statements from a prisoner in a penal institution. However, after amending the Code of Criminal Procedure pursuant to Order 20-04 it has become linked to whether or not the trial party approves or rejects the use of the technology and the approval of the accused and the prosecution has become not binding on the judge.

3. Procedures for using the digital trial in the judicial investigation stage:

The law of modernizing justice has allowed the investigating judge to use video chat remotely to interrogate or hear a person and to conduct confrontations between several people⁹.

Some consider that the investigation using this technique constitutes a departure from the general rule in investigation sessions that take place within one geographical area¹⁰, which raises several procedural problems, mainly represented in the issue of jurisdiction, presence, orality, confrontation, and recording. Nevertheless, many opinions say that these issues are not considered with regard to the achievement of presence audio-visually, which is tantamount to actual presence of the court in which the investigation or trial is conducted. As for the issue of writing, it has previously been required to write down statements verbatim in accordance with the provisions of the law, and yet the problem that remains is how those whom the investigating judge is hearing can sign their statements due to the distance from the investigation room.

The investigating judge hearing the parties remotely is inconceivable outside of two cases:

First: The presence of the person to be heard in a place far from the headquarters of the court in which there is the file. In this case, his hearing will take place at the court headquarters that is close

⁶- Article 441 bis f 02 of the Code of Criminal Procedure.

⁷- Article 441 bis f 03 of the Code of Criminal Procedure.

⁸- Article 441 bis 01 f 02 of the Code of Criminal Procedure.

⁹- Article 15 F01 of the Modernization of Justice Law.

¹⁰- SafwanShadiqat, Investigation and Criminal Trial via Videoconferencing Technology, Dirasat Journal, Sharia and Law Sciences, Volume 42, Issue 1, 2015, p. 354. SafwanShadiqat, Investigation and Criminal Trial via Videoconferencing Technology, Dirasat Journal, Sharia and Law Sciences, Volume 42, Issue 1, 2015, p. 354.



to the place of residence of the person whose statements are requested to be received, in the presence of the regionally competent public prosecutor and the clerk of the court. The goal of the public prosecutor's presence is to confirm the identity of the person to be heard¹¹. This will be done in complete confidentiality through the sectoral network of the justice sector.

Second: The presence of the person whose statements are to be received in the penal institution, whether within the framework of temporary detention or in execution of a sentence. In this case, his statements are received from the penal institution in which the detainee is present¹².

What is noted about the use of this technology in light of Law 15-03 related to the modernization of justice during the investigation stage is the lack of precise and rapid procedures to ensure its use in a way that makes it an alternative to the regular physical investigation. Its use is also guaranteed by written procedures, correspondence, and requests for approval which may limit its practical usefulness. As such, the process, which made the Algerian legislator _ under pressure from the spread of the Corona virus and the inability to take out detainees for fear of its spread within penal institutions and the inability of grouping people in one place in implementation of preventive measures to limit the pandemic _ intervene to correct these shortcomings and keep pace with the epidemiological situation through Order No. 20-04 amending and supplementing the Code of Criminal Procedure. Moreover, he has devoted a number of practical measures¹³, through which he has expanded the use of video chat in interrogating and hearing notifications about which the Code of Criminal Procedure requires preparing reports¹⁴.

Therefore, the use of video chat technology in criminal procedures does not go beyond the limits of two assumptions:

The first hypothesis: If the person for whom videoconferencing is intended to be conducted is not suspended.

The Algerian legislator, in Article 441 bis 3, specifies the persons on whose behalf the video chat can be conducted, by stating: "If the person who is not under arrest is to be heard, interrogated, notified, or interviewed," then the hearing shall be for the witness, the civil party, the civil official, or the expert, but the interrogation shall not be except for the accused, whether through accusation by the prosecution directly or after being charged by the investigating judge. Notification can, as well, be made to any party to the case, just like the confrontation that takes place between any party to the case.

If the person to be heard resides in the jurisdiction of a court other than the court before which the judicial file is placed, the investigating judge of the competent authority shall direct a request to the public prosecutor of the court closest to the place of residence of the person concerned. The reason behind that is to summon that person to the specified date in order to hear him, interrogate him, notify him, or conduct a confrontation between him and the parties or others; taking into account the provisions of Article 105 of the Code of Criminal Procedure.

The second hypothesis: If the person for whom videoconferencing is intended to be conducted is suspended.

Basically, the detained person is heard, interrogated, notified, or a confrontation takes place between him and other parties in the office of the investigating judge. However, if it is not possible to take him out and he is detained within the jurisdiction of the investigating judge. Or, if he is transferred, being detained outside the jurisdiction of the investigating judge, the investigating judge can hear him via video chat technology after notifying the director of the penal institution within whose jurisdiction the person is to be heard, in the presence of the penal institution's supervisor.

¹¹- Article 16 f01, 02 of the Modernization of Justice Law.

¹²- Article 16 f03 of the Modernization of Justice Law.

¹³- Articles 441 bis 2, 441 bis 3, 441 bis 4, 441 bis 5, 441 bis 6.

¹⁴-Among the notifications stipulated in the Code of Criminal Procedure are notification of the results of any experience ordered by the investigating judge, notification of the results of the social research conducted on the accused, and notification of the results of mental experience.



The court clerk of the penal institution shall prepare a report on the progress of the process to the competent judicial authority to attach it to the procedures file. Importantly, he should sign it with the knowledge of the director of the penal institution

As to the defense, there is right of the presence with the client or before the competent investigation authority.

- **In both cases:** If the person for whom the video chat is to be conducted is detained or not detained, he must sign the report of his remote hearing sent to him by any means of communication, after it is signed by the judge and the clerk of the competent judicial authority. Nevertheless, if he abstains from signing, or if he is unable to provide a copy of the record, the copy to be signed shall be returned by the same means of transmission to the competent judicial authority to be attached to the file of the proceedings.

If the investigating judge decides to place the accused heard in temporary detention through the video chat technology, he shall address the order verbally using the same technology as well as inform him of his rights stipulated in Article 123 bis of the Code of Criminal Procedure. Subsequently and according to the case, a copy of the consignment order shall be sent for execution via one of the means of communication is referred to the public prosecutor or the director of the penal institution.

II. Legal controls for the use of digital trial technology.

The Modernization of Justice Law allowed the possibility of using remote video chat technology before the ruling body to hear witnesses, civil parties, or experts. If it concerns an accused, this is limited to misdemeanor cases only and with clear conditions; represented by the approval of the detained accused on the one hand and the Public Prosecution on the other hand¹⁵.

What is noted during the trial stage about the use of this technology, in light of Law 15-03 related to the modernization of justice, is the lack of precise and rapid procedures that guarantee its use in a way that makes it an alternative to the regular physical trial. Undeniably, its use is guaranteed by written procedures, correspondence, and requests for approval which may limit its practical usefulness. However, under the pressure of the spread of Corona virus and the inability to take out detainees for fear of its spread within penal institutions and the inability of people to meet in one place within the framework of preventive measures to limit the pandemic, let alone the accumulation of judicial files day after day without adjudication. The Algerian legislator was obliged to intervene in order to correct these shortcomings and keep pace with the epidemiological situation through Order No. 20-04 amending and supplementing the Code of Criminal Procedure, and thus he has devoted a number of practical measures¹⁶, through which he expanded the circle of using video chat from interrogation and hearing to pronouncing the ruling. Resorting to this technology before the ruling authority shall be on its own initiative or at the request of the opponents:

If the ruling body i.e. the ruling body at the first and second level, decides to resort to remote video chat technology on its own initiative, it must seek the opinion of the Public Prosecution, and inform the rest of the litigants of that. In addition, if the Public Prosecution or the rest of the parties to the case or their defenders object to that and the ruling body deems that the objection or defences are not serious, it would issue a decision that is not subject to any appeal, and the trial takes place according to video trial procedures. If one of the parties or their defenders submits a request to the judicial authority to use video chat remotely, the ruling party must consult the opinion of the remaining parties, their defence, and the Public Prosecution. The decision about the request may be accepted or rejected but it is subject to review if new circumstances arise after submitting the request.

In the event that remote video chat technology is used during the trial, the court clerk of the penal institution prepares a report on the progress of the process of using this technology, sign it, and then send it, after informing the penal institution, to the competent judicial authority to attach it to the procedures file.

¹⁵- Article 15 F02, 03 of the Modernization of Justice Law.

¹⁶- Articles 441 bis 7, 441 bis 8, 441 bis 9, 441 bis 10.



The defender has the right to appear with its client at the place of his hearing or before the competent authority.

Remote video chat can be used when sentencing, and in this case the sentence is delivered in presence of the defendant.

As a whole, some people argue that the quality of Internet remains the main stumbling block in adopting this type of trial in Algeria, as it remains far from the rest of the developed countries in which remote litigation has become common and does not raise any problems. Another problem is the lack of interaction of the accused with the interrogation of the judicial body and the questions of the defence and the Public Prosecution, and his direct confrontation with the witnesses in addition to what each witness declares in the session.

Furthermore, the judge's inability to read the facial expressions of the accused, his movements or tone of his voice during the discussion of the file is also of paramount importance because the picture may not express the reality behind body language.

Although many shortcomings are encountered, the positive effects of such technology on the rights of the parties, especially the right to trial within reasonable time besides the alleviation of the tension caused by the long waiting times for trial for the detained accused and his family.