

Online Hearings vs. Traditional In-Person Hearings in Criminal Proceedings: Efficiency and Limitations

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Abstract: Developments in recent years, marked by the pandemic crisis and technological advancements, along with the free movement of people, are increasingly making it physically impossible for individuals who are parties to proceedings to be heard in the traditional manner, leading them to request online hearings or hearings via videoconference. In our view, recurring issues with online hearings stem primarily from the need to secure communication channels and ensure electronic identification; other challenges to be overcome relate to the hearing of suspects or defendants, ranging from identity verification to the difficulty of determining whether they are telling the truth. This is because methods related to the tactics of questioning a person are more difficult to implement in the context of online hearings. On the other hand, this method offers undeniable advantages, primarily related to the speed of resolving the case and compliance with the reasonable time limit for the proceedings.

Keywords: Criminal Procedure, Online Hearing, Videoconference, Discovery of the Truth

Introduction

Judicial proceedings inherently require speed and efficiency and, consequently, an increase in public confidence in the judicial system, regardless of whether it is based on the civil law or common law tradition. Respect for fundamental human rights and freedoms is an inalienable corollary of the administration of justice, and the settlement of cases cannot compromise the right to effective access to justice, the right to a fair trial, the principle of non-discrimination, the right to respect for private and family life, and the right to the protection of personal data - all of which are fundamental principles of any type of proceeding. Technological development encompasses not only digitization but also the use of artificial intelligence, which, as specialized studies have highlighted, poses serious risks in terms of the right to a fair trial, accountability, and ethical issues (Ümütlü, 2025). Consequently, debates have become more intense on how technological advances could be used in court to resolve disputes (Selçuk et al., 2025). Within these debates, efforts to integrate artificial intelligence (AI) models into legal systems have intensified, with the aim of improving access to justice and streamlining judicial proceedings; at the same time, approaches centred on the human person as a party to the proceedings have gained prominence (ibid). Legal doctrine has rightly maintained that the fundamental principles of the trial cannot be significantly abandoned or "fundamentally altered by emerging technologies" (ibid).

1. The Right to Be Present vs. the Obligation to Appear

Regardless of the legal system, we can affirm, in accordance with legal doctrine and judicial practice, that the defendant's right to be personally present at trial (in the sense of physical presence) is part of the right to a fair trial, as provided for in Article 6 of the ECHR. Based on the idea that a person's right to be present gives them the opportunity to understand the criminal proceedings against them, the right to be fully informed of the charges against him, and to exercise his right to a defense properly and fully - all of which are integral to the right to a fair trial - the question arises as to whether this right may be restricted or limited. In its wide-ranging case law on the subject, the European Court of Human Rights has held that this right is not absolute, in the sense that it is not without limits (*Jussila v. Finland* (GC), 2006, para. 40;

Marcello Viola v. Italy, para. 67). The European Court ruled in the aforementioned case that, for example, a person held in special security detention may participate in the proceedings via videoconference.

It should be emphasized that this right to be present during the proceedings allows the defendant to verify the accuracy of their defense and to compare it with the statements of the victims and witnesses (*Medenica v. Switzerland*, 2001, para. 54). To guarantee this right, domestic courts are obligated to take the necessary steps to ensure the defendant's presence by properly summoning him or her (*Colozza v. Italy*, 1985, para. 32; *M.T.B. v. Turkey*, 2018, paras. 49-53) and, equally, must take measures to deter the defendant's unjustified absence from the hearing (*Medenica v. Switzerland*, 2001, para. 54). In certain specific situations, the suspect or accused may waive this right, but only of their own free will and expressly, and must meet the criterion of a "*conscious and informed*" waiver as established in the case of *Sejdovic v. Italy* [GC] 2006, paras. 86-87) (implicit waiver is also possible), but must unequivocally waive this right (Brodowski & Szabo, 2024) or, in the event that they abscond from the proceedings (*Lena Atanasova v. Bulgaria*, 2017, para. 52).

This study does not aim to analyze this case law, but rather to observe certain limitations on the right to be present and to examine whether the participation in proceedings or the hearing of a suspect or accused person via videoconference or online could constitute procedural defects in criminal proceedings, with a wide range of consequences. However, to date, the European Court has not provided an analysis from the narrow perspective of the suspect's or accused person's participation in proceedings via videoconference, but only from the broader perspective of the right to defense and the right to a fair trial. In this regard, according to the Court's case law, in certain cases, participation in a hearing via videoconference could constitute a measure ensuring effective participation in the proceedings (*Bivolaru v. Romania* (No. 2), 2018, paras. 138-139 and 144-145; *Dijkhuizen v. the Netherlands*, 2021, para. 56).

In essence, it is worth noting that Article 6, interpreted as a whole, guarantees the right of the accused to participate effectively and in person in criminal proceedings (*Murtazaliyeva v. Russia* [GC], 2018, para. 91). The main argument considered by the Court is that this right includes, among other things, not only the right to be present, but also the right to hear and follow the proceedings.

2. Hearings by videoconference

As previously noted, hearings via videoconference have become widespread during the pandemic, thereby bringing judicial systems closer together, particularly in the area of international judicial cooperation. This primarily concerns requests regarding the execution of European Investigation Orders, but also other requests for cooperation, such as the execution of European Arrest Warrants. Given the need to simplify these procedures and their urgent nature, the pandemic period led to the resumption of debates on hearings via videoconference, including in joint proceedings, with an emphasis on respecting the fundamental principles of criminal procedure and, in particular, the right of the individual to be present at trial; In some legal systems, there is also an obligation for the suspect or accused to appear in person. Thus, the issue has arisen of hearing individuals located at a distance via videoconference as a means of streamlining proceedings that would otherwise be extremely cumbersome, involving long delays, the obligation for the individual to travel long distances, or the detention facility's inability to bring the detained person before the judicial authority.

On the other hand, it is important to emphasize that in most legal systems, a person's right to be present enables them to understand the criminal proceedings against them and to properly and fully exercise their right to a defense - aspects that are integral to the right to a fair trial.

Consequently, in recent years, most legal systems have regulated hearings via videoconferencing as a means of streamlining criminal proceedings.

For example, under Romanian law, the provisions of the Code of Criminal Procedure stipulate that there are certain situations in which the hearing of an individual - regardless of their procedural status - is subject to special rules. Thus, Article 106 of the Code of Criminal Procedure governs two such situations, namely:

- a) when the person being heard is in a medical condition that impairs their normal ability to participate in the hearing;
- b) when the person is in custody and cannot be brought before the judicial authority for questioning, in which case videoconferencing is used.

In order to conduct a questioning via videoconferencing in a criminal proceeding, the following conditions must be met cumulatively:

- a) the person to be heard must be in custody (it is irrelevant whether the person being heard is serving a custodial sentence or a custodial educational measure, is subject to a security measure of medical detention, or is in pretrial detention);
- b) there must be an exceptional situation (for example, when bringing the person to be heard before the judicial authority or hearing them in person at their current location is impossible or involves risks that endanger important social values);
- c) the proper conduct of the criminal proceedings or the rights and interests of the parties must not be prejudiced.

A defendant who is deprived of liberty, as well as a convicted prisoner whose request regarding the enforcement of criminal judgments is being adjudicated, is considered to be present at the hearing if they consent to the proceedings concerning them being conducted via videoconference and are represented by counsel.

Witnesses who are threatened or vulnerable, or victims who are threatened or vulnerable, must be heard via videoconference, if necessary, with the image and voice distorted.

Regarding hearings conducted through rogatory letters, a controversial issue concerns the possibility of hearing the defendant.

Although the law does not expressly exclude this possibility, legal scholarship has highlighted the risk of undermining the principle of direct examination and the right to a defense. In practice, the examination of the defendant through a letter rogatory must remain an exceptional measure; it is preferable for such an examination to be conducted directly by the competent authority, including via videoconference.

The concept of the “presence” of the suspect or defendant at trial must be understood in two ways: physical presence and active presence, by ensuring the opportunity to exercise the procedural rights and safeguards granted to them (Franguloiu, 2026). The Criminal Procedure Code provides for the mandatory presence of the suspect or defendant at certain types of proceedings in a series of provisions; some of these require *expressis verbis* the presence of the suspect or defendant; at the same time, the very scenario regulated by certain provisions leads to the conclusion that the provision is *imperative*. The law provides that if the defendant participates in the hearing via videoconference, he or she is considered present.

However, there are also countries whose legislation requires the presence of the defendant and other participants or parties to the proceedings: this is, for example, the case in the German legal system. The legal provisions in Sections 226(1), 230(1), and 338(5) of the German Code of Criminal Procedure require the mandatory presence of the court, the prosecutor, the defendant, and - in cases where defense counsel is mandatory—the defendant’s attorney (Sommerer, 2021). In particular, Section 230 provides that: “*No main hearing shall be held against a defendant who fails to appear. (2) If no sufficient justification has been provided for the defendant’s failure to appear, an order shall be issued to bring the defendant before the court or an arrest warrant shall be issued, to the extent that this is*

necessary for the conduct of the main hearing. Only in exceptional circumstances and in cases of minor importance may the requirement that the defendant be present be waived.”

There is one exception to this requirement for the defendant’s presence (Section 233(1) of the German Code of Criminal Procedure, n.d.), which applies only at the defendant’s request and strictly in cases involving minor offenses, such as: *“where a prison sentence of no more than six months, a fine of no more than 180 daily installments, a warning with a suspended sentence, a driving ban, the confiscation, destruction, or rendering inoperable of an object, or a combination thereof is anticipated. In the defendant’s absence, a more severe penalty or a re-education and prevention measure may not be imposed.”*

With regard to the use of videoconferencing technology in judicial proceedings, the ECHR has established that this form of participation in proceedings is not, in itself, incompatible with the concept of a fair and public trial.

It should also be noted that hearings via videoconference are subject to strict rules regarding the security of communication channels. However, online hearings are subject to the fundamental requirement that they be used only in justified cases and always serve a legitimate purpose. Furthermore, for a defendant to participate in an online trial, they must be guaranteed the ability to effectively participate in the proceedings through the chosen means of communication, and any limitation of their rights caused by online participation must be compensated for by the court through other means. Effective participation via online means includes access to technical equipment, uninterrupted visibility, the ability for both parties to hear the proceedings, and continuous participation without technical obstacles. Furthermore, in the case law of the European Court of Human Rights (ECHR), it is of paramount importance to ensure effective and confidential communication between the defendant and the defense during an online trial.

On the other hand, the CJEU has stated that it will not rule on the question of whether EU law grants defendants the right to participate in proceedings remotely via videoconference (*AVVA and Others*, Joined cases C-255/23 and C-285/23). The Latvian Economic Court, which has jurisdiction over large-scale organized fraud and money laundering offenses, was the referring court. The subject of the request was the interpretation of Directive 2014/41 on the European Investigation Order and Directive 2016/343 on the presumption of innocence, since the defendants in the main criminal proceedings, who reside in Lithuania and Germany, respectively, argued that they had the right to participate in the proceedings via videoconference, on the grounds that no European Investigation Order had been issued in the case. The court found that “despite filing its request for a preliminary ruling, it did not stay the proceedings and continued the hearings in which E participated both in person and remotely via videoconference,” and thus concluded that it was no longer necessary to rule on the request, since, in preliminary matters, it does not provide answers that have a purely advisory effect. After a request for a preliminary ruling has been filed, national courts may continue the main proceedings only to carry out procedural acts concerning matters unrelated to the questions referred for a preliminary ruling (para. 37).

However, the procedural measures taken by the commercial court in question were such as to prevent the court from complying with a potential ruling by the Court of Justice of the European Union (paras. 39-40).

3. Online Hearings

There are jurisdictions that permit online hearings (County Court of Victoria (n.d.), Australia) through platforms such as Cisco Webex Meetings (“Webex”). Webex is videoconferencing software that facilitates participation in conferences and remote court hearings. The County Court of Victoria’s* user guide for the Webex platform states that it will be used in conjunction with traditional video-linking technology and in-person attendance in court, where necessary. A Webex session can be connected to the courtroom’s technology in addition to traditional video

links, allowing parties or others to participate in or observe a hearing in several different ways simultaneously. The guide further states: “An important objective of the court at this time is to reduce the number of people physically present in court, and to this end, technology-including Webex and video links-will be used to achieve this objective.” However, the presiding judge of the panel is the one who decides whether a case can be conducted such that the hearing may take place via Webex or whether participants should appear, attend, or observe the court hearing via Webex, with the judge also being permitted to preside over the hearing without being physically present at the courthouse, via Webex. In addition to the parties to the proceedings, the accused’s or victim’s family members, as well as members of the accredited press, are permitted to access the hearing via the platform.

The main issue raised in the context of online hearings conducted via platforms (regardless of which ones-Webex, Zoom Meetings, Microsoft Teams, Google Meet, Zoho Meetings, etc.) is whether the rights of any party to the proceedings can be respected and to what extent. Of course, there is no doubt that these rights are, at least, partially respected; however, to guarantee the fairness of the proceedings, full and complete respect for these rights is necessary, in all their aspects and components.

Clearly, it is impossible to provide a definitive answer to this issue in a single study, especially since legal doctrine and judicial practice offer divided and, at times, irreconcilable opinions, particularly in situations where some participants connect via telephone (by dialing the court’s number or vice versa) rather than through an application. For this reason, the present study has instead sought to highlight this issue, for reasons related to the security of communication lines.

Conclusions

Clearly, technological advances can lead to changes in how these long-standing judicial principles, which represent the legacy of human judicial culture, are applied, but the principles themselves should not be ignored under any circumstances. This paper endorses the view expressed in legal scholarship that these principles, which have been accepted and practiced for centuries, are the pillars that underpin legal theory, and without them, a system aligned with the ideals of human civilization cannot be achieved (Selçuk et al., 2025). For these reasons, without denying or downplaying the importance and utility of technology, which has fully proven its value in certain fields (forensics, for example), This paper advocates solely for the preservation of these stable pillars, while acknowledging that judicial procedure cannot ignore scientific and technological advancements and will inevitably be influenced by these developments (Selçuk, 2025). However, it remains imperative to uphold trust in judicial authorities and to accord due importance to the evaluative concepts of criminal procedural law (Barannik et al., 2026).

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