

REMOTE TRIALS IN THE DRAFT CRIMINAL PROCEDURES LAW



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Introduction

Remote investigation and trial have emerged in criminal jurisprudence, both internationally and locally, over the past few years. The rapid advancement of communication technologies across various fields has inevitably influenced the judiciary, which continues to grapple with congestion and procedural delays. Many legal systems have adopted these technologies to modernize judicial processes, primarily to save time and reduce substantial financial costs. This evolution is logical and essential, particularly in civil courts, where the parties involved are typically in equal legal positions.

However, the application of remote procedures in criminal justice is far more complex. Unlike civil cases, criminal proceedings pit the individual against the state, which wields significant power and resources in comparison to the limited guarantees and rights of the defendant during investigation and trial.

Errors in criminal trials can carry grave consequences, ranging from lengthy imprisonment to capital punishment in extreme cases. The defendant, often in a vulnerable position, faces a strong adversary in the state, which possesses the exclusive right to exercise force and the potential to misuse its authority to suppress dissent or diminish the safeguards afforded to the defendant.

As an independent authority, the judiciary bears the critical responsibility of ensuring that the executive branch adheres strictly to the rule of law, safeguarding the rights of the defendant and upholding the principles of a fair trial.

The guarantees in question are designed to protect the defendant from potential abuse, ensure their ability to mount an effective defense based on the presumption of innocence, and shield them from errors that might occur during criminal procedures. These guarantees mandate that all stages of the criminal trial fall exclusively under judicial authority and that every procedure is carried out under judicial supervision and evaluation. A criminal trial is inherently an interactive, multi-party process aimed at achieving a fair verdict—whether it results in conviction or acquittal.

This dynamic nature of criminal trials reveals the challenges associated with remote investigation and trial. The question confronting criminal jurisprudence is: How can the standards of a fair trial be upheld in a remote framework? Or, as some argue, is it time to develop new guarantees that align with technological advancements? This is far from a simple issue, as several procedural aspects require in-person execution. These include the prosecutor's direct interrogation of the defendant, the private consultation between the defendant and their lawyer to provide legal advice, the assurance of investigation

confidentiality to protect privacy, and, perhaps most importantly, the preservation of the principle of publicity, which ensures that trial proceedings are open and subject to societal scrutiny.

Beyond the legal challenges inherent in implementing criminal procedures remotely, the technical dimension assumes a pivotal role in ensuring the effectiveness and fairness of remote trials. The technical equipment and devices employed must guarantee that procedures are conducted correctly and equitably for all parties involved, with accessibility ensured for all participants. This introduces several critical legal questions: Who bears responsibility for overseeing the technical aspect? Should it fall under the judiciary's direct supervision, be managed by an independent body, or be delegated to the executive authority? In the latter scenario, would such an arrangement constitute undue interference in the judiciary's mandate?

Given the multitude of questions surrounding remote trials and their increasing significance, this paper will explore the fundamental standards of remote trials and assess the extent to which the draft Criminal Procedures Law aligns with these standards. To achieve this objective, the paper will first examine the evolution of remote trials to clarify the nature and complexity of this judicial procedure. It will then analyze the common characteristics of comparative legal systems that have adopted this approach. Finally, the paper will evaluate the provisions of the draft Criminal Procedures Law concerning remote trials, and analyze Egypt's implementation of remote procedures for renewing pretrial detention orders, with particular attention to European and Arab legal frameworks due to their similarities with the Egyptian legal system.

The beginning and extent of remote trials

Tracing the historical development of remote trial procedures is challenging, given that the practice emerged only 25 years ago and is linked to rapidly advancing technologies that continue to evolve at an unprecedented pace. However, this can be approached by focusing on two pivotal stages, while acknowledging the continuous progression of the field.

The first stage involves examining the initial adoption of remote criminal procedures to understand the underlying reasons and contexts that prompted criminal justice systems to integrate communications technology. The second stage centers on the transformative impact of the COVID-19 pandemic, which witnessed a qualitative leap in remote trial procedures.

The first phase: The onset of remote criminal procedures

- The first practical application of remote criminal procedures started in Italy in 1992 during the prosecution of mafia organizations. The Italian legislator codified these practices through Law 306 of 1993. Article 147 bis permitted the use of video technology to hear testimony from witnesses and collaborators cooperating with the justice system against organized criminal gangs. This measure was introduced primarily to safeguard witnesses, informants, and collaborators from retaliation by mafia groups, as well as to mitigate risks associated with the transportation of dangerous criminals. The law mandated the Ministry of Justice to provide secure audiovisual means for such proceedings, with the presence of a clerk to ensure the orderly conduct of the hearing. The Italian Constitutional Court affirmed the constitutionality of this legislation.
- In 1998, Italy expanded the use of remote procedures through Law 11 of 1998, which allowed defendants to participate in trials from within detention facilities via television links. The provision was specifically applicable to cases involving organized crime or terrorism, marking the first instance where defendants themselves were enabled to partake in trial proceedings remotely.
- By 1999, a Europe-wide initiative commenced with the launch of a research project dedicated to exploring the integration of communications technology in criminal proceedings. The project culminated in the first European symposium on court technology, aimed at evaluating the implications of remote trials on the guarantees of fair trial standards.
- In France, remote trial procedures were introduced in 2001 through an amendment to the Criminal Procedure Code (1062/2001) authorizing the judiciary to conduct remote hearings for witnesses and experts, provided that all parties to the trial consented. Law 222/2019 was enacted to expand these procedures, permitting remote confrontations or the hearing of witnesses located in distant or foreign locations. However, this was limited to witnesses, experts, and civil parties, and required the approval of the Public Prosecutor and the agreement of all parties involved in the case.
- In 2000, the European Convention on Mutual Assistance in Criminal Matters, originally issued in 1959, was amended to enable the use of communication technologies for the remote hearing of witnesses and the exchange of expert reports among European Union member states. The following year, the Second Additional Protocol to the European Convention was introduced, entering into force in 2004, obligating signatory states to incorporate remote procedures for hearing witnesses and exchanging expert reports into their bylaws.
- By the late 20th century and the early years of the 21st century, the majority of legal systems in the European Union had embraced remote criminal procedures. Germany pioneered this practice in 1998, focusing on remote witness hearings to ensure their protection. Belgium followed in 2002 with the enactment of Law 35,

which authorized remote witness testimony. Austria achieved a notable milestone in 2004 by extending remote procedures to include the defendant. By the end of the first decade of the 21st century, most European nations had partially implemented remote criminal procedures, particularly for the hearing of witnesses and experts.

- In 2010, the Arab Convention on Combating Transnational Organized Crime, the Arab Convention on Combating Corruption, and the Arab Guiding Law endorsed the use of communication technologies for hearing witnesses, informants, experts, and victims.

This phase can be described as an exception driven by necessity. The primary reason for adopting remote trial procedures during this period was the protection of individuals cooperating with justice systems. Most legal frameworks restricted the application of these methods to specific types of trials, particularly those involving organized crime or terrorism. Furthermore, these procedures were generally confined to the hearing of witnesses and experts, with Austria standing as an exception by permitting remote hearings of the defendant.

The second phase: Justice in the face of the pandemic

The outbreak of the COVID-19 pandemic led to an unprecedented state of near-total paralysis in daily life, with stringent public health measures such as social distancing and curfews being imposed. This disruption extended to the judiciary, which faced the challenges of potential court shutdowns and the violation of defendants' rights, particularly for those in pretrial detention, due to the fact that criminal proceedings are tied to strict timelines.

The pandemic exposed vulnerabilities in criminal justice systems worldwide. Under the imposed social distancing measures, defendants were kept away from courts, families, and even their lawyers. The principle of public criminal trials was suspended. This raised a critical question: how could fair trial guarantees be upheld amidst the pandemic? This was especially pressing in basic proceedings, such as reviewing the cases of detainees in custody. The solution to this dilemma was the adoption of remote trial procedures, which eliminated the need for parties to convene in confined courtroom spaces. However, this shift carried risks of compromising fair trial guarantees. Below, we outline some of the transformative changes in remote trial procedures that have emerged since 2020:

- **France:** In response to the pandemic, France enacted Law 1401/2020, which permitted the defendant to participate in hearings remotely from detention facilities, even against their will. This marked a departure from the prior requirement under the Criminal Procedure Code, which mandated the consent of

the defendant for remote participation. The law was introduced following the declaration of emergency measures under Article 38 of the Constitution.

- **The Netherlands:** In March 2020, the Netherlands passed legislation authorizing the remote conduct of investigation and trial procedures across all cases, including criminal procedures.
- **Tunisia:** In 2020, a presidential decree was issued permitting the implementation of investigation and trial procedures remotely, conditional upon the defendant's consent. However, the requirement for consent could be waived in situations involving public danger or the prevention of contagious diseases.
- **Egypt:** The Egyptian Minister of Justice issued Decision No. 8901 of 2021, which authorized judges to consider the renewal of pretrial detention remotely through technological means. The decision also allowed for the written documentation of session minutes, to be signed by both the presiding judge and the session secretary.

The above examples illustrate the advancements in the adoption of remote trial procedures globally during the COVID-19 pandemic. The majority of countries adopted remote criminal procedures to address the urgent need for justice while adhering to strict social distancing measures. These measures were crucial to uphold procedural timelines and justice guarantees, while simultaneously averting the risks of court case backlogs and judicial paralysis—challenges no nation could afford to endure.

Post-pandemic stage

The cessation of the exceptional circumstances of necessity, as seen with the end of the COVID-19 pandemic, would naturally signal the conclusion of remote trial procedures. However, this has not been the case, particularly given the perceived advantages such as ensuring the continuity of court operations, reducing transportation costs, and saving significant amounts of time. These practical benefits, while noteworthy, are peripheral to the core principles of criminal justice, which fundamentally rely on established procedural guarantees. These guarantees are tied to physical presence and direct interaction, such as in the processes of interrogation and confidential communication between the defendant and their lawyer. Most critically, the principle of a public trial becomes challenging to uphold in a remote format.

Current debates surrounding the legitimacy and effectiveness of remote trials are deeply complex, delving into both legal and interdisciplinary dimensions. Legal concerns focus on the extent to which remote trials adhere to the procedural guarantees foundational to a fair trial. Additionally, psychological studies explore the effects of remote interaction on participants' mental and emotional engagement. Technical considerations also play a significant role, particularly the capabilities of digital platforms to ensure data protection,

privacy, and the accurate transmission of nuances such as facial expressions, gestures, and subtle reactions.

Despite the end of the pandemic, the continued application of remote trial procedures has raised concerns within the international legal community. In 2023, the High Commissioner for Human Rights issued a formal communication to member states regarding the monitoring of remote hearings. The letter referred to the digital barriers that face individuals in trials conducted via the Internet, such as language barriers, the lack of confidentiality between the defendant and their lawyer, the difficulty of authenticating the identities of witnesses and parties involved, the risk of influencing witnesses by a third party, and denying the public the ability to monitor hearings.

The concept of remote investigation and trial

Defining the concept of remote trials with precision is a challenging endeavor, primarily due to the novelty and evolving nature of this subject, which continues to undergo development and evaluation. Nonetheless, jurisprudence has a critical role in exploring and refining this emerging aspect of criminal trials. It is imperative to strive for an accurate and stable legal definition, given its significance as a legal concept. Below, we outline a number of notable definitions, due to the similarities between the definitions adopted generally in jurisprudence and the definitions adopted in the Arabic jurisprudence specifically.

Certain legal scholars define remote trials as:

“A technological means that facilitates the hearing and observation of investigation or trial sessions via modern communication tools, without the physical presence of individuals, provided that the rights of the defendant and other parties to the criminal dispute are safeguarded.”

Another definition frames it as:

“Conducting the trial in compliance with the legal and procedural requirements applicable to the parties to the criminal case, wherein the judicial body remains at its headquarters in the courthouse, connected to other parties through electronic means of communication.”

Both definitions emphasize the alignment of remote trials with guarantees of a fair trial, integrating remote communication with traditional procedures. The focus remains on preserving fundamental judicial principles, such as the presence of judges in the courtroom, while enabling remote interaction with other parties to the case.

The UAE legislation defines it as:

“Criminal procedures initiated using remote communication technology to ensure attendance, publicity, and confidentiality of investigations, presenting pleadings, submitting documents and memoranda, and issuing judgments—whether during crime investigation and evidence collection or at the stages of investigation or trial.”

This comprehensive approach by the UAE legislator encapsulates all stages of the criminal justice process, including evidence gathering, investigations, and trials. It adheres to core principles such as the confidentiality of investigations, the transparency of trials, the right to oral pleadings, and the legitimacy of issued judgments. The UAE law notably considers the condition of "attendance" fulfilled through remote communication.

European legal jurisprudence has drawn a distinction between hybrid sessions, where one or more parties to the trial participate remotely, defining such sessions as those "in which one or more participants attend the hearing from a remote location via a video link or through other means of communication technology," and fully virtual procedures, characterized as "complete remote proceedings where all participants attend via the Internet."

Despite these and similar definitions prevalent in contemporary legal scholarship, a definitive and universally accepted concept for conducting criminal procedures remotely remains elusive. It is likely that this definitional ambiguity will persist for a considerable time. The implementation of remote criminal procedures challenges the foundational guarantees of a fair trial, which rest on direct and live interaction among the parties to a case. Criminal jurisprudence continues to rely on principles of justice established within the context of physical, in-person interactions.

Today, however, legal systems are confronting an entirely new paradigm in which communication technologies assert an unavoidable influence on judicial practices. This shift has been particularly evident in enabling courts to maintain operations during emergency conditions. Yet, this emerging reality remains fluid, its contours still evolving, and its eventual stabilization uncertain in the near future. This transition raises profound existential questions regarding the adequacy and adaptability of traditional justice guarantees. Consequently, attempts to articulate a precise and comprehensive definition of remote criminal procedures, while important, may necessarily remain provisional and incomplete.

A working definition might conceptualize remote trials as the implementation of criminal procedures during court proceedings through the virtual participation of the parties using modern communication technologies, provided that such methods adhere to established guarantees of criminal justice. These include ensuring the publicity of the trial, maintaining the confidentiality of communication between the defendant and their

lawyer, safeguarding the defendant against any adverse impacts of virtual proceedings, and respecting the defendant's right to decline virtual participation.

Characteristics of remote investigation and trial

The characteristics of remote trials can be discerned through an analysis of their historical evolution and by examining comparative legal systems that have codified this method in criminal procedures. These characteristics are closely tied to the traditional procedural guarantees of a fair trial. Remote trials emerged primarily from necessity, initially serving to protect trial participants—such as witnesses, informants, and experts—and later becoming a response to the exigencies of the COVID-19 pandemic. Initially, legal systems implemented these measures on an exceptional basis, restricting their application to specific procedures.

However, the defining features of remote trials pertain specifically to the guarantees necessary to legitimize the use of technology in the judicial process. Both international frameworks and comparative law shed light on these characteristics, acknowledging that future developments will likely expand and refine them.

At the international level, significant guidance comes from the European Court of Human Rights, which has affirmed that online hearings do not violate the principle of a "fair and public hearing." Nevertheless, the court has stipulated specific conditions for the legitimacy of such procedures:

- Remote hearings must serve a justifiable purpose.
- The process must align with the fundamental criminal procedural demands.
- The defendant must be able to follow the proceedings.
- The defendant's ability to be heard should not be impeded by technical difficulties.
- Effective and confidential communication between the defendant and their lawyer must be ensured.

At the level of comparative law, several common characteristics emerge among legal systems that have adopted remote trial procedures:

First: The consent of all parties to the trial, particularly the defendant and the victim. Consent may be waived only in cases of necessity.

Second: Modern technical capabilities must be available to guarantee effective and reliable communication among the parties.

Third: Limiting remote procedures to hearing witnesses and experts. The remote participation of the defendant is generally restricted to situations of necessity.

Remote hearings for pretrial detention: The Egyptian experience

In December 2021, the Minister of Justice issued Decision No. 8901 of 2021, permitting the remote conduct of hearings to review and appeal pretrial detention decisions using technology. The decision also mandated that minutes of such hearings be recorded in writing and signed by both the head of the court and the session clerk. The decision aimed to ensure the continuation of detention renewal hearings during the pandemic, given their binding legal timelines. The following discussion examines the decision from a legal perspective and evaluates its practical application.

Legal perspective

The decision by the Minister of Justice was unprecedented within the Egyptian legal system, which historically had not embraced remote trials. Technological applications in court proceedings had been confined to civil cases, reflecting the criminal trial's unique nature, which demands direct and personal interaction between the parties. Introducing remote procedures in criminal cases would logically require a thorough study to assess their compatibility with established principles of justice. However, the Ministry of Justice hastily issued the decision without sufficient research or consultation, raising a host of legal and practical concerns.

The interference of the executive authority, represented by the Minister of Justice, into matters concerning criminal procedures and fair trial guarantees is a blatant violation of the Constitution. Criminal procedures are fundamental legislation which should be issued by the House of Representatives through a set of procedures. During the pandemic, the House of Representatives was not in recession and the executive authority expressed pride in conducting the legislative elections of 2020 amid the pandemic. This means that the executive authority has usurped the Parliament's right to legislate, which undermines the legitimacy of the decision.

The decision suffers from notable vagueness and significant limitations in its scope and content. Article 1 permits judges to conduct pretrial detention hearings remotely using technology but fails to establish any specific conditions or detailed guidelines regarding the use of such technology. Crucially, it omits provisions ensuring adherence to the guarantees of a fair trial.

Article 2 allows the recording of session minutes in writing, requiring the signature of the court president and the session secretary. This raises critical questions: in the absence of such written minutes, would the session proceedings lack any legal record? Would electronic recordings alone suffice in such cases?

From a strictly legal perspective, the decision's shortcomings become even more apparent. A judge reviewing pretrial detention is required to fulfill several essential

duties, including hearing the defendant and their defense, as well as assessing the conditions under which the defendant was held during the detention period. This includes ensuring that the defendant received their rights, such as adequate healthcare, the ability to communicate with their lawyer, and maintaining contact with their family. Typically, these matters are examined by the judge in the presence of the involved parties, a critical aspect neglected by the decision of the Minister of Justice.

What further complicates the issue is the continuation of this decision beyond the conclusion of the pandemic, contradicting the established provisions of the Criminal Procedures Law.

Practical application of the Justice Minister's decision

In October 2020, the Ministers of Justice and Communication experimented with communications technology to conduct remote pretrial detention hearings through closed-circuit television linking the New Cairo Court to Tora Public Prison, 15 May Central Prison, and Nahda Central Prison. The defendants participated in these hearings from designated halls in the prisons, accompanied by their lawyers.

Official statements from the two ministers lauded the experiment as a success, framing it as a preliminary step towards the broader implementation of remote pretrial detention renewal sessions. By January 2022, some criminal courts had begun conducting these sessions remotely, particularly in terrorism circuits responsible for political cases involving pretrial detention decisions.

The remote detention renewal sessions involve communication between the courtroom—where judges, lawyers, and other trial participants are present—and the defendant, who remains within the prison facility. The proceedings are broadcast via screens installed in the courtroom.

During a pretrial detention renewal session held on January 21, 2024, at the Badr City Correctional and Rehabilitation Center, the judge decided to postpone proceedings affecting 375 defendants due to logistical issues in establishing communication with the defendants in the prisons. These sessions have also seen several violations of fair trial guarantees.

As per established legal principles and Article 143 of the Criminal Procedures Law, the validity of an initial pretrial detention order expires once its period lapses without a renewal decision. Any continuation of detention beyond this period, even for a single day, constitutes illegal detention. The failure to review or renew these pretrial detention decisions in a timely manner directly contravenes the provisions of the Criminal Procedures Law, mandating the immediate release of the defendant under such circumstances.

The same issues persisted the following day when the court decided to postpone the pretrial detention hearings for over 513 defendants based on information provided to the judge, alleging that the defendants had refused to attend the session. Such a claim is difficult to accept logically, as it is implausible that such a large number of defendants from various prisons would uniformly agree not to attend. What is even more concerning is the absence of a legal mechanism to facilitate judicial communication with the defendants to verify the authenticity of their purported refusal to participate.

The remote pretrial detention renewal hearings have faced numerous challenges, many of which constitute clear violations of fair trial guarantees. Key issues raised by lawyers include:

- Poor sound quality and inadequate communication systems hinder effective interaction with the defendants.
- A lack of mechanisms to confirm defendants' refusals to attend sessions.
- Prohibition of oral pleading.

These issues pose a risk of rendering detention renewal decisions invalid under the Criminal Procedures Law, as they represent serious violations of the rights and freedoms of accused citizens. Such shortcomings undermine the integrity of criminal justice, particularly given the substandard quality of the technology employed, which fails to ensure the judge's ability to assess the defendant's capacity to follow up on the session. The risks heighten with the lack of judicial control over this technology, coupled with the absence of legal mechanisms to monitor its operation, evaluate the performance of those responsible, and enforce accountability for any disruptions to trial guarantees, be they intentional or the result of neglect.

Remote investigation and trial in the draft Criminal Procedures Law

In sharp contrast to the outcomes of the remote detention renewal sessions, which were marred by numerous violations, the draft Criminal Procedures Law seeks to fully legalize remote investigation and trial procedures. The provisions pertaining to remote investigation and trial are outlined in Articles 525 to 532 of the draft. We will analyze these provisions within the framework of established standards for a fair trial.

Article 525 establishes the fundamental rule for remote investigation and trial, stating: "Without prejudice to the rules, dates, periods, and other procedural provisions stipulated in this law, the provisions of this chapter shall apply to remote investigation and trial procedures using modern audio and visual communication means and technologies, all in a manner that guarantees the confidentiality of investigations, attendance, publicity, oral pleading, and confrontation between opponents, as stipulated in this law."

The article signifies the draft's adoption of the concept of virtual presence at all stages of the criminal trial. It ensures the fulfillment of all traditional guarantees, including adherence to established rules, dates, and provisions, while safeguarding the confidentiality of investigations, maintaining attendance and publicity, allowing for oral pleading, and ensuring confrontation between adversaries. Thus, the draft deems the condition of presence as satisfied through remote means.

Following the draft's comprehensive endorsement of remote trials, subsequent articles address the specific provisions for remote trial procedures, which are:

1. The permissibility of conducting all investigation and trial procedures remotely, involving all parties to the case, including the defendant and the victim.¹
2. The authorization to consider and appeal orders related to pretrial detention, precautionary measures, and temporary release remotely.
3. It is permissible to conceal the real identity of witnesses using technology.
4. Children may be exempt from attending the proceedings, with the investigation recordings being deemed sufficient for the purposes of the trial.²
5. Sessions shall be recorded and archived according to the discretion of the prosecution or judge, who may seek the assistance of experts. The sessions will be transcribed into written records, which must be signed by the investigator or judge and the session clerk.³

1. Article 526 states: "The investigating authority or the competent court, as the case may be, may conduct all or some of the investigation or trial procedures remotely with the defendant, witnesses, the victim, experts, the civil rights claimant, and the person responsible for them, as stipulated in this law.

It may conduct these procedures concerning the consideration of extending pretrial detention, measures, temporary release, and the appeal of its orders.

Furthermore, it may, as necessary, decide to prevent the disclosure of the true identity of witnesses using appropriate modern means and communication technologies during their testimony. All of this shall be subject to the provisions of Article 520 of this law."

This article grants the investigating authority or court the discretion to conduct various procedural steps remotely, covering all parties involved in the case, such as the defendant, witnesses, victims, and others. It also allows for remote consideration of matters related to pretrial detention, precautionary measures, temporary release, and appeals concerning these orders. Additionally, the provision permits the use of modern technology to protect the identity of witnesses when necessary, ensuring compliance with the relevant legal provisions.

2. Article 527 states: "Without prejudice to the Child Rights Law, procedures may be conducted remotely with children. The investigating authority or the competent court may exempt the child from appearing before them and may review only the recordings of those procedures if they deem it necessary for the child's best interest."

3. Article 528 states: "The investigation authorities and the competent court shall take all necessary measures to record and preserve all procedures conducted through remote communication means and technologies, and transcribe them into official minutes. They may seek the assistance of experts in this regard and ensure the proper deposition of the case file."

6. The defendant may object to virtual attendance during the first session at any level of litigation. The court is required to decide on the request, either by accepting or rejecting it.⁴
7. The defendant shall be uncuffed, and necessary observations shall be made as required by law.
8. The lawyer shall attend with the defendant. It is not allowed to separate them.⁵
9. The technical equipment required for remote proceedings shall be the responsibility of the Ministries of Interior and Justice, in collaboration with the relevant official authorities.⁶

By analyzing these provisions, it becomes evident that the draft embraces an expansive concept of remote criminal trials, allowing all procedures across the stages of the criminal trial to be conducted remotely with the involvement of all parties. These provisions attempt to reconcile the traditional guarantees of a fair trial with the realities of remote implementation, presuming that such guarantees are adequately upheld through virtual means.

However, a closer examination of the relevant legal texts reveals a complex legal and technical contradiction. From a purely legal perspective, fair trial guarantees are designed to protect the defendant—presumed innocent—from potential arbitrariness or errors in the execution of criminal procedures. These guarantees also ensure the defendant's ability to mount a robust defense. Under Articles 9 and 11 of the International Covenant on Civil and Political Rights, as well as the Egyptian Criminal Procedures Law and established principles of criminal justice, the state is legally obligated to uphold these safeguards.

Technically, the draft assumes the availability of advanced, high-quality communication systems capable of transmitting every detail of the trial sessions via the Internet. This assumption, however, raises significant doubts. In practice, the draft provisions generate far more questions than they resolve, leaving critical procedural gaps that undermine the principles of criminal justice. A comparison of the draft's provisions with established fair

4. Article 530 states: "The defendant may, in the first session at any level of litigation, object to not appearing in person before the competent court, and it shall decide on the objection by accepting or rejecting it."

5. Article 531 states: "The defendant shall attend the session without restrictions or shackles and shall be subject to the necessary observation. The defendant's lawyer shall meet with him and be present during the investigation and trial procedures remotely where he is present. In all cases, the defendant may not be separated from his lawyer while these procedures are being conducted."

⁶ Article 532 states: "The Ministry of Justice, in cooperation with the Ministry of Interior and the relevant ministries and authorities, shall prepare the halls and communication devices required to implement investigation and trial procedures using modern communication methods and technologies in the competent authorities, penal institutions, reform and rehabilitation centers, and other relevant departments, and provide the necessary technical assistance for this."

trial guarantees highlights several violations of the rights afforded to the defendant during the investigation phase, including:

First: The guarantee of the defendant's unrestricted presence and necessary interview

The draft fails to address the procedural mechanics of conducting remote interviews, a critical safeguard designed to verify the validity of detention and ensure that the defendant has not been subjected to violations during the evidence-gathering and preliminary investigation stages. Conducting hearings with the defendant present remotely from their place of detention conflicts with the principles of unrestricted presence. The very premise of remote hearings undermines the intent of ensuring the defendant's physical presence without restraints or prison attire—a measure rooted in the presumption of innocence. This principle is intended to reinforce the perception that the defendant is a civilian subject to an independent judiciary. Such an environment is difficult to envision when the defendant participates from a detention facility.

Second: Guarantees of the right to defense

The guarantees of the right to defense encompass both the rights of the defendant and those of the lawyer, ensuring confidential communication, access to legal advice, and adequate preparation of the defense. The draft law, however, fails to address the practical mechanisms for implementing these guarantees in a remote trial setting.

Third: The principle of non-separation between the lawyer and the defendant

The draft introduces an ambiguous provision that stipulates the lawyer's presence with the defendant in the detention facility during remote proceedings. This raises significant legal and practical concerns. Does the draft consider the lawyer's presence in the courtroom or investigation venue sufficient to meet the non-separation requirement, or does it necessitate the lawyer's physical presence with the defendant inside the detention facility, as implied? In the latter scenario, the lawyer's ability to effectively perform their duties—such as reviewing evidence, cross-examining witnesses, and preparing the defense—is severely compromised. Furthermore, relocating the lawyer's work environment from the courtroom to a detention facility poses safety risks, particularly when the lawyer is required to challenge law enforcement officers accused of rights violations against their client.

Fourth: The absence of serious consideration of pretrial detention orders

The draft law fails to establish safeguards ensuring the integrity of pretrial detention renewal procedures. It provides no remedies for common technical issues such as sound failures, connectivity disruptions, or other technological malfunctions that have frequently plagued remote detention renewal sessions.

Fifth: The denial of the defendant's right to physical attendance

The draft law eliminates the defendant's right to request physical attendance at trial, a right recognized by many legal systems that permit remote trials and affirmed by the European Court of Human Rights. While the draft allows the court to reject such a request and proceed remotely, it provides no clear legal framework or criteria for evaluating and deciding on the request.

Sixth: Guaranteeing equality in legal resources between parties to the dispute

The draft law entrusts the executive authority—represented primarily by the Ministries of Interior and Justice, alongside government agencies specializing in communications technology—with responsibility for technical equipment. This arrangement poses significant legal and practical risks. The executive authority may arbitrarily wield technological tools against the defendant. Responsibility for technology should rest with an independent body subject to direct judicial oversight. This is particularly vital in light of recurring technical malfunctions and irregularities observed during remote pretrial detention renewal sessions.

Conclusion

Despite the rapid adoption of remote trials globally, this approach to criminal procedure remains experimental. There are wide disparities among countries in their technological capabilities, coupled with the conservatism of judicial systems. The reality on the ground is that several fair trial guarantees have been violated in the previous stage.

The legal community must restrict the executive authority's inclination to expand remote trials. The financial benefits which have encouraged the government to pursue this path are not sufficient for criminal justice and carry grave risks for fair trial guarantees.

The limited experience with remotely handling pretrial detention renewals has exposed numerous legal issues and violations to which defendants are frequently subjected during these sessions. Chief among these is the physical and procedural separation between the defendant and their lawyer. Additionally, the inadequacy of technical infrastructure, particularly in audio and video transmission quality, has highlighted significant shortcomings that demand urgent attention, including system development, modernization, technician training, and other essential improvements to facilitate remote trials effectively.

The potential for fair trial guarantees to be compromised in their traditional form is a critical concern, sparking widespread debate in countries that have embraced this unorthodox approach to criminal justice. The research community has yet to establish a clear and comprehensive framework for ensuring fair trial guarantees in remote proceedings. This affirms the need for thoughtful deliberation, extensive study, and rigorous research across various levels.