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The remote trial: challenges and perspectives in Morocco

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ABSTRACT

The invasion of technology into the world of justice compels judicial clerks to keep pace with this evolution. However, this new guest is not welcomed by all; some see it as a hindrance to a fair trial and its guarantees. Hence, the remote trial seems inevitable, and it is necessary to cope with digital devices and new procedures.

To reveal the truth of this topic, we resort directly to judicial clerks to ask them about this new experience that they have lived during the COVID-19 era, and how they have faced it as a measure of reducing contact between people. To do so, we suggested a survey to be completed by 35 judicial interveners (judges, lawyers, attorneys, etc.).

The results were ambivalent between supporters of the new procedure and those attached to the traditional method. Some are demanding the preservation of criminal justice requirements, in particular the principle of adversarial proceedings and the effective presence of the guilty person before the magistrates, as well as practical constraints.

While others opt for the change of mentality to keep pace with global technological evolution and benefit from its advantages, in particular, the speed of the procedure and the reduction of trial time.

Key words: remote trial, criminal justice, reasonable deadline, rights of individuals, efficiency

1. INTRODUCTION

The scientific and technological development of our current era has experienced significant progress, and many aspects of life have changed, becoming more dependent on what modern science has achieved. Thus, all sectors and companies, in turn, have based the organization of their work on advanced technology due to the opportunities it offers to improve the results of their work and improve their profitability. The justice sector has not been immune to this transformation. In recent years, there have been concrete attempts to move in this direction through the elaboration of plans and programs to achieve digital transformation, through which the justice sector invests, starting from the results of technological development.

The global crisis associated with the COVID-19 pandemic at the beginning of 2020 was a real test for all sectors to measure their willingness to engage in ongoing changes and new concepts of work and management(Epps Jr and Hayter 2021). It has posed a serious and difficult challenge to the justice sector due to its unique sensitivity and specificity; this difficulty manifests itself mainly in its use to avoid the transfer of prisoners from penitentiary institutions to the courts, according to the state of health emergency(Townend and Magrath 2021).

This procedure has been the subject of numerous criticisms and divergent opinions on its legality, effectiveness, and respect for procedural guarantees, despite the approval expressed by the Superior Council of the Judiciary through the statistics provided by it as an indicator of the implementation of remote trial technology by accelerating the deployment in a large number of countries, deadlines...It also opens up promising prospects that go beyond the temporary measure associated with restrictive sanitary conditions towards a project that makes it possible to develop the penal system to ensure the proper functioning of Justice.

On this basis, through this article, we will try to discuss these elements and problems related to the technology of remote trial in Morocco, based on the initial experience during the covid-19 pandemic, its contribution to the resolution of the criminal justice crisis and to what extent it is possible to develop a penal system that guarantees rights and is fair for all members of the criminal litigation before presenting the most important obstacles to the download of this project and the possible solutions to overcome them, relying on the opinion of specialists to take advantage of their professional experience to make suggestions practices to ensure the success of this important judicial structure.

To remedy this systematically, we will start from the main problem of "how does the remote trial contribute to the development of criminal justice and to the guarantee of the rights of individuals?"

2. Hypotheses

- *Has the remote trial contributed efficiently to judicial time?*

- *Has the remote trial transgressed the principles of the equitable trial?*

3. Methodology

We adopted a qualitative and quantitative method to conduct this study using Google Forms to collect data. The study tended to get information from experienced people (lawyers, judges, judicial clerks, etc.) who could present their witnesses by replying to the questions put in the survey.

The target population is all participants in the judicial trial process. We counted 35 participants who consented to contribute deliberately and independently to this study. We would like to highlight this new way of trialling, used notably during the SARS-CoV-19 era. Clerks in charge of the Ministry of Justice chose to respect rules of quarantine to reduce the movement of people from and to courts by using videoconferencing.

The implementation of digital methods in judicial trials has received controversial feedback between partisans and opponents, between those faithful to traditional methods based on paper and those excited to experience the digital one as modern, prompt, and relaxing.

However, many interrogations were raised about the accused people's rights, particularly the right to attend and debate face-to-face in front of judges and victims, and to what extent they can judge the case within a reasonable deadline.

4. Ethics approval

This study was reviewed and approved by the ethics committee of the Faculty of Legal and Political Science, University of Sidi Mohamed Ben Abdellah-Fez/Morocco. Dated September, the 21st 2026.

5. Informed consent

"All participants gave their informed consent for inclusion before they participated in the study."

6. Results

This study was based on a survey answered by 35 participants, most of whom are lawyers, as illustrated in Figure 1, with 58% and 18% being court officers. This gave the study a certain credibility and authenticity, as specialists responded to the survey.

The questions were formulated to discover their feedback after experiencing the distance trial as a new way of judicial proceeding in Morocco, commenced during the COVID-19 period, and to reveal to what extent the remote trial respected the legality to show its effectiveness and respect for the procedural guarantees. Furthermore, speeding up the broadcast in a large number of cases within reasonable deadlines.

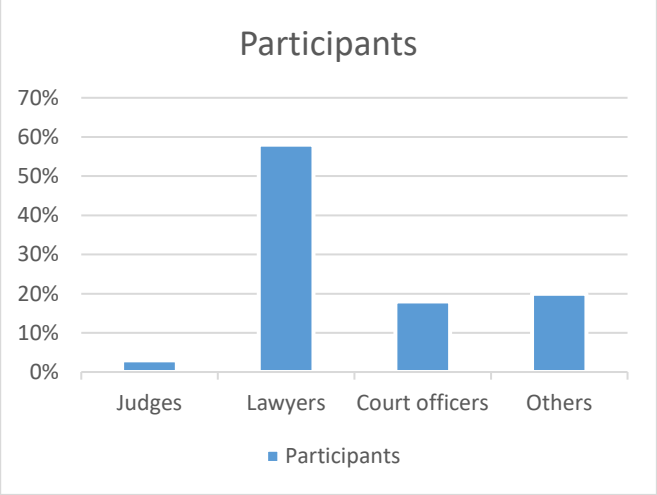


Figure 1: The lawyers represent the majority of the participants, with more than 58 %; the court officers represent 18 %, and the judges 3 %.

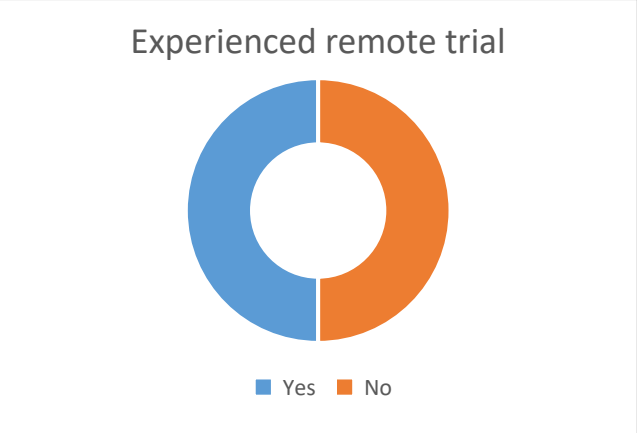


Figure 2: 50% of the participants declared they experienced the remote trial.

Among 35 participants, 50 % have experienced the remote trial, and that represents a performance for our study, as their answers were the result of a real experience. However, in more than 2/3 of the cases, as highlighted in Figure 3, the remote trials were broadcast during the COVID-19 period, as the measures of quarantine were imposed everywhere.

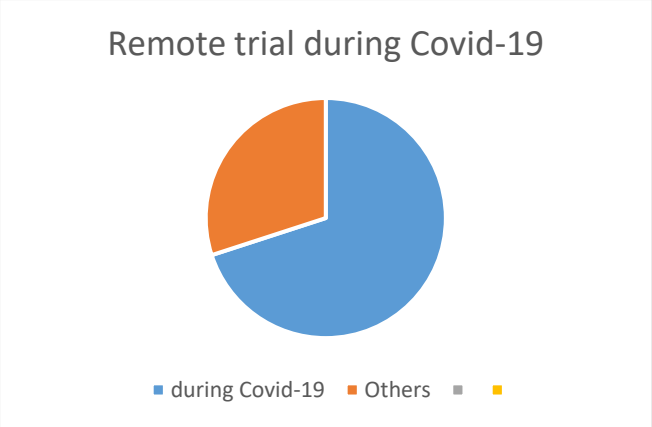


Figure 3: More than 70% of the cases were during the COVID-19 period.

The participants who experienced the remote trial declared that the remote trial is relevant and saves much time for the whole court clerks, as well as for the parties. Many documents could be seen, sent, and resent among the participants in the trial without being physically present, and that facilitates the procedure and pushes judges to pronounce their verdict within a reasonable deadline.

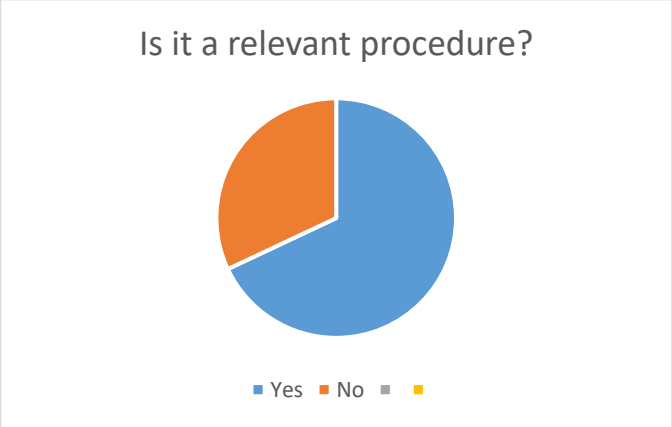


Figure 4: Most of the participants consider this new procedure relevant.

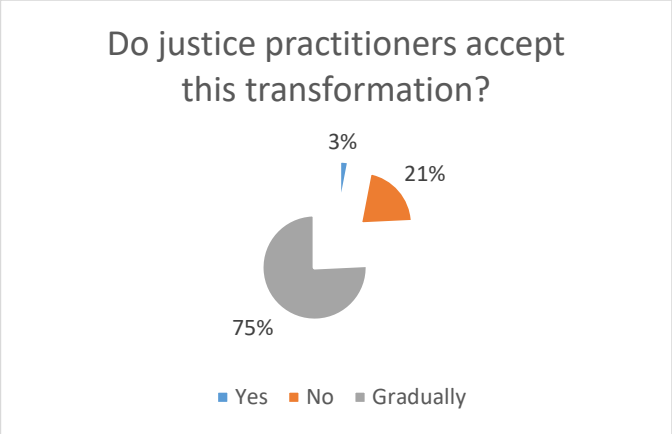


Figure 5: This figure shows that most justice practitioners can accept remote trials; however, there is still resistance from some old participants.

It is obvious that every transition from one situation to another needs time and slowness. Figure 5 shows that the ¾ of the participants accept the change, but gradually, they need to cope with the digital devices as they are accustomed to paper documents. However, they feel optimistic about the future. Nowadays, all sectors have started the digitalisation of their work, and the justice sector should follow the herd so as to be able to give satisfactory services to citizens. Otherwise, it will be out of fashion.

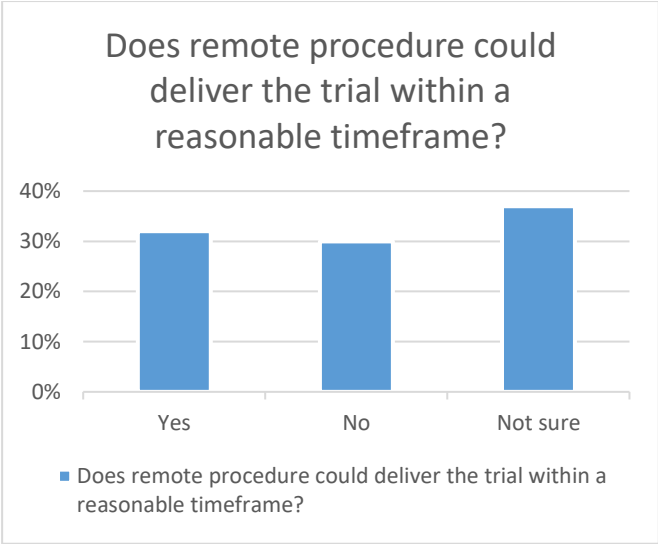


Figure 6: There are a huge proportion of participants who revealed their reluctance to the ability of remote procedure in delivering the trial in a reasonable timeframe.

Nonetheless, many participants expressed their reluctance towards the ability of the distant trial to guarantee a fair trial and to deliver it in a reasonable timeframe, because the mindset of a lot of court clerks is still glued to the paper procedure; they do not believe in technology, and the guilty have to attend the prosecution proceedings physically to feel satisfied.

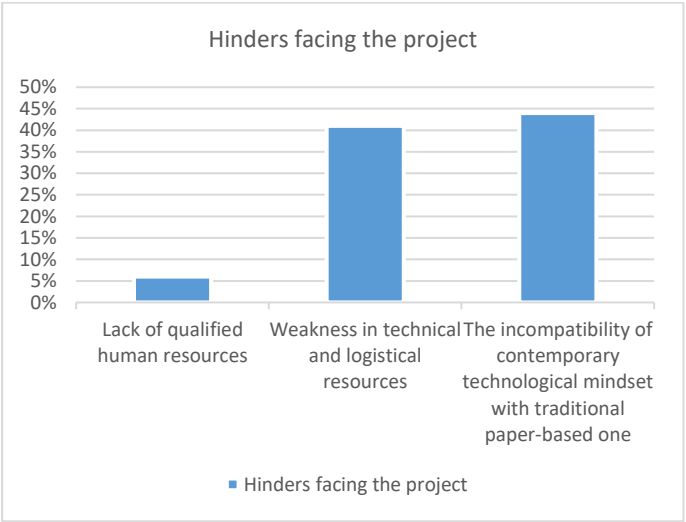


Figure 7: It illustrates the most crucial hindrances that the distance trial could face during the real implementation.

The implementation of the numeric proceeding would confront many hurdles that could postpone its start-up. One known one is human resources; the transition needs the recruitment of qualified clerks who have a mentality of technology and digital devices. Although Figure 7 did not reveal the primacy of the factor, human resources are the most essential aspect of the success of every project.

7. Discussion

7.1 The contribution of remote trial to the efficiency of judicial time

Judicial time refers to the period of time that the criminal dispute lasts, which extends from the date of its registration in the official archives of the court until the sentence acquires the force of res judicata. Recently, justice reform workshops have adopted the term judicial time efficiency and linked it to all stages of litigation, even between actors in the judicial system. From here, a broad meaning can be given to not wasting judicial time by being the litigation process takes place within a reasonable time that takes into account the requirements of the litigant, their rights and freedoms(Turner 2020).

It was therefore necessary to discuss solutions to preserve judicial time and solve the problem of the dissemination of cases by facilitating criminal proceedings and keeping abreast of developments and novelties that the world has witnessed thanks to digitization in the field of justice.

On this basis, the technology of remote communication in criminal proceedings is linked to the rule of broadcasting in cases within a reasonable time, since the right of citizens to obtain their rights within a reasonable time is considered one of the most important indicators for strengthening the trust of litigants in the judiciary and its members, as it is linked to the field of respect for human rights and fundamental freedoms (Mattsson 2017).

7.2 Dissemination of cases in a reasonable order

The phenomenon of slow resolution of cases is a serious issue that affects all members of society and is caused by a malfunction of the judicial system, and it must be treated. The security in the state can only be ensured through justice; injustice and violence will increase, and individuals will resort to force to obtain their rights and protect their property and their lives. From then on, the realization of justice was and still is linked to the safety of people, and the slowness of justice is closer to injustice because the speed of dissemination in disputes is a factor of security and stability (Min 2022).

In fact, relevant international and national reports on judicial cases still highlight the low efficiency of the traditional judiciary and its inability to keep up with contemporary times. An increase in the volume of civil and criminal cases brought before the courts was observed, and the slowness of the issuance and execution of judgments was recorded. This judicial bottleneck and this slowness in the processing of cases prevent the ultimate objective of recourse to justice, which is to decide the case within a reasonable time, from being achieved.

The principle of reasonable delay is closely linked to the rights and freedoms of individuals, in addition to being an important element in the protection of the presumption of innocence, resolving the fate of the individual without delay that would affect the rights of the defence due to the long period of complex procedures with which the details of the facts can disappear from the memory of witnesses, their absence or the alteration of the evidence. This rule also aims to reduce the psychological stress suffered by the accused for fear of his fate and to avoid the stigma that can be inflicted on him socially by being accused of having committed an illegal act, despite the presumption of innocence.

Video chat technology is associated with one of the most important principles required for a fair trial, which is the right to be tried within a reasonable time, the use of this technology to keep pace with technological development and the modernization of Justice accelerates and simplifies the criminal procedure, in many cases, hearings are postponed due to the geographical distance between the place of arrest of the accused and the investigation or trial rooms, or for reasons related to the hearing of the testimony of a witness at the request of the court or one of the parties to the case due to the remoteness from his place of residence, these and other procedural reasons that will prolong the life of the criminal case, video chat technology can the trial procedure should reduce all this to a brief circumstance.

Criminal proceedings require material and human resources, represented by means of transport and agents responsible for ensuring protection during the extraction of detainees and their transfer to and from the place of investigation or trial, in addition to the problems that may arise from the movement of people from remote places, all this would burden the state budget and the citizen, and would also negatively affect the procedure, all this can be avoided by using the technology of remote video conversation.

Video chat technology is considered a way to bring distances closer, because this technology leads to the creation of a virtual rapprochement relationship to bring distances closer

geographically, where physical distances are always an obstacle to justice, and therefore, this technology greatly helps to overcome them (Bossan 2011). In addition to the importance of video chat technology to simplify the procedure, it is a means of protection, since the issue of protection has been one of the reasons for the introduction of this technology in the procedure in some countries, such as Italy, not only to hear the accused, but also to protect witnesses.

7.3 listening to the witnesses

The Code of criminal procedure authorizes the use of remote communication technology in criminal proceedings, since the court can order, at the request of the public prosecutor, to hear the depositions of witnesses using remote communication technology, provided that the presence of the witness in court or his confrontation with the accused or his defence of endangering his life, his physical integrity, the life or physical integrity of a member of his family or his relatives or their fundamental interests, and to find evidence of this(الحديثي 2017).

In this regard, the first trial of the remote trial system was launched in 2016 at the Court of Appeal of the White House, where remote communication technology was used with the prisoner of Akasha Prison, equipping a room equipped with display screens that connect sound and image are directly visible on the screens located in the courtroom in front of the judges and the public prosecutor's office, in addition to providing a large display screen for the public.

The majority of the legislations that have adopted the system of anonymity of witnesses have sought to ensure respect for the rights of the defence, recognizing the right of the accused and his defence to demand to confront the anonymous witness by indirect means, including remote communication technology.

When these legislations have turned to the use of modern technological data in the field of criminal investigations and prosecutions to ensure greater protection of witnesses, by authorizing the use of modern technologies as well as the use of remote communication technology to hear the witness anonymously, which allows the secrecy of his identity on the one hand, and allows on the other hand to conduct a confrontation between the witness, the accused and the defence, then to obtain a certificate free of any falsehood or falsification by accessing the criminal justice service.

Based on the foregoing, the refusal of the accused to confront the witnesses and prevent him from asking them questions constitutes an act contrary to the principle of confrontation between opponents in the criminal case, which constitutes a violation of the fundamental rights of the defence.

The new provisions introduced by the various criminal legislations as part of the measures taken to protect witnesses - including the measure of anonymity of witnesses - although they stipulate the need to respect the rights of the defence, but they raise particular legal problems at the trial stage, such as the lack of presence the witness is sent to the courtroom, or to testify with a videotape shown to the investigation or to the justice, or to hear their testimony behind the curtain, without the possibility of knowing them or confronting them by the accused or the defence, which becomes a real threat to the rights of the defence, the failure to confront the defence with witnesses, sometimes the judge can judge the testimony by the features of the witness and his movements, and listening to it from a distance would miss the opportunity for the judge or the defence to reveal the inconsistency or inconsistency of the testimony, in addition to the technical problems that may appear during the hearing of the witness, and thus there may be difficulties in transmitting the testimony, an interruption in sound or image, and other problems(معروف and 2024 يوسف).

Therefore, we believe that it is necessary to take into account the need to allow the accused or his lawyer to challenge this testimony, because the State must reconcile the rights of the defence and the duty to ensure the necessary protection to the witness, even though this technique can make it possible to circumvent the problems related to the hearing of witnesses in terms of notification or impossibility of the place where he used the technology of distance communication related to the case of necessity when the impossibility or the inadequacy of the witness to appear in person before the competent judicial authority to testify is proven, and authorized – as a matter of necessity exceptional in a restricted setting to hear the statements of the accused and interrogate him when he is on the territory of a State other than the one directly conducting the trial, subject to consent(Jackson 2021).

There is a special agreement between the two countries, taking into account their internal criminal laws in the use of this technology.

8. Results of the distance test on the general principles of the distance test

The procedures of the final investigation or the trial will take place in the presence of the opponents of the trial. The criminal judge freely builds his faith based on the discussions presented to him at the hearing. No doubt, following the trial procedures in the presence of the accused allows him a real

defence and to face the charge brought against him. His presence helps the judge to form his faith correctly, and then to render a fair verdict on the case before him. The rule is that no one is convicted until he has heard his statements and expressed his defence (De Vocht and Jacobs 2024).

8.1 virtual presence of the accused and realization of the presentiment principle

This rule remained stable for a long time, until the technology of visual debate led to its destabilization. Access to cameras, television screens, loudspeakers, and an internet connection between the court and the prison allowed the judge to preside over the sessions remotely on television screens, which made it possible to reduce the impact of spatial and temporal distancing by opening the way to remote communication (Poulin 2003).

Before delving into the magnitude of the impact of this type of remote trial on the presence of the accused, it was possible to define a remote trial as the use of modern technical means to conduct a judicial trial between parties who are not united by the same spatial space, where the trial takes place thanks to remote communication technology.

The technique of visual debate has often been presented to achieve communication at the lowest cost, without making any real change in the test conditions. This technique is often defended as producing no tangible harm at trial without providing any scientific proof, as if remote presence at trial sessions replaced face-to-face presence; it can even take its place, while it remains otherwise (Qin and Chen 2025). Communication and information technologies are reshaping social, political, and economic practices and are causing many changes in various fields and at many levels.

In this context, a study conducted by the American researchers Daniel Lassiter and Audrey Irvine(Lassiter and Irvine 1986) on the impact of the confessions included in the video recordings on the investigators, concluded that the angle of filming the confession can exert its influence on the viewer's perception of the free will to confess, and consequently in the verdict of conviction of the accused; the researchers concluded that the more the camera is focused during which the focus is on the interrogator or both(Johnson and Wiggins 2006).

Based on the foregoing, it is clear that the limited frame of vision that characterizes videoconferencing technology makes many features and elements more visible, while impairing the possibility of seeing others, compared to any face-to-face communication. In addition, the limited shooting margin of the camera limits the movement space of the rest of the judicial actors, which will subsequently affect their perceptions and impressions of the trial (Rowden and Wallace 2018).

In short, the limited visibility of videoconferencing technology, its inability to transmit non-verbal speech, in addition to its potential malfunctions, pose numerous technical problems related to the way in which the accused is presented before the various participants in the trial, as well as to the way in which the various participants in the hearing are presented before the accused, and consequently, the way to mitigate the impact of the video presentation on the interactions and mutual perceptions between the various participants.

8.2 The right of the accused to exchange orally (principle of orality) in the context of a remote trial

If the issue of using the technology of remote conversation is realized after the oral hearing, however, this constitutes a significant loss of the quality of the exchange in the judicial process between the parties to the trial, judges, opponents, witnesses, lawyers, and others. So, the use of the technique of visual debate in the trial prevents the physical appearance of the accused, which fundamentally affects the quality of the discussions, and pushes the emergence of a new type of oral, and therefore, a fundamental change in the course of the formation of judicial truth(Dubuc 2024).

In this regard, videoconference technology limits the ability of the accused to confront witnesses, weakens the possibility of counter-interrogation, and counter-debate.

In addition, they weaken the possibility for judges to assess the credibility of statements made in the case of a remote trial, unlike in the case where the accused is represented in person. All this leads to the impoverishment and weakening of the discussions that take place during the sessions due to compulsions imposed by technology, technical malfunctions and instability of the Internet connection, poor sound and image quality, and subject to numerous influences and the persistence of numerous technical problems related to the devices, which leads the court and the parties to reduce the questions asked, and sometimes to cancel them even if they are of interest.

8.3 Publicity between the traditional concept and the virtual form

One of the basic principles on which the Moroccan judicial organization is based is the principle of publicity, which means that all the procedures carried out by the court before

rendering a verdict, such as the investigation of a case, for example, must be carried out in public.

This principle must be legally supported in Moroccan legislation in Article 300 of the Code of criminal proceedings, that stated the following: "Under penalty of nullity, the search procedures and the discussions must be carried out in a public meeting, all persons, whether before the courts. In determining any criminal charge brought against him or his rights and obligations in any civil action, everyone has the right to have his case examined fairly and publicly by a competent, independent, and impartial court established by law".

In this regard, the public is an important guarantee to obtain a fair trial against any secret justice, because it is the censor of the fairness of the procedure. One of its most striking manifestations is to allow the public to enter the room where the trial is taking place, and to allow them to see what is happening in the procedure. The discussions and statements, except in cases provided for by law, and the court is not obliged to summon the public, so that the public does not disappear until the public is present, it is enough that the court has allowed them to do so, as long as the doors of the room are open.

With the introduction of remote communication technology during the trial procedure, there has been a clear change in the notion of publicity, because the monitoring of the follow-up phases has become limited to the main parties to the case, away from the public eye, due to the symbolism of the latter, which gives the trial a human rights dimension and the impression to the accused that the board of directors is being monitored by the public and therefore a feeling of comfort about his fate(Panzavolta 2024).

In addition, the public trial, according to the use of remote video chat technology, does not obtain the desired benefit required in litigation procedures, as is the case when it is practiced in the traditional form and before the judges, partly because some lawyers can plead their case from their offices, or from certain private places; moreover, the ineffectiveness of the public trial in electronic form is due to the low personal conviction of the public in electronic litigation.

CONCLUSION

In conclusion, the adoption of remote trial technology constitutes a qualitative change in the modernization of the criminal justice system, as it offers important opportunities to accelerate case resolution, streamline court time, and reduce the material and human costs associated with traditional procedures. However, this transformation, despite its practical advantages, raises, on the other hand, delicate legal and human rights problems, in particular concerning the extent to which the fundamental guarantees of a fair trial are respected, first of all, the principle of presence, the rights of defense, and the oral nature of discussions and public hearings.

Therefore, the real Bet does not lie in the adoption of this technology per se, but rather in the extent of the ability to legally and institutionally regulate it in such a way as to achieve a balance between the requirements of judicial efficiency and the guarantees of a fair trial, in a way that strengthens the trust of litigants in justice and enshrines the rule of law.

10. RECOMMENDATIONS

Develop an explicit and integrated legal framework that organizes the remote trial by modifying the Code of Criminal Procedure to determine the conditions and controls of recourse to it and precisely frame the scope of its application.

Link the adoption of a remote trial to the explicit consent of the accused, especially in criminal cases, to enshrine his right to choose the mode of his presence and to guarantee the rights of the defense.

Strengthen technical guarantees by providing an advanced digital infrastructure that ensures sound and image quality and continuity of communication, to avoid any violation of the proceedings or the rights of the parties.

Enable the defense to communicate effectively and safely with the accused during the hearings remotely, to preserve the confidentiality of the professional relationship and ensure the full exercise of the rights of the defense.

Restrict the use of this technique to cases of necessity or exception, especially in relation to the hearing of witnesses or the accused, giving priority to an adversarial trial whenever possible.

Re-envisioning the principle of publicity in the digital environment by establishing mechanisms to ensure that the public is informed about the conduct of sessions in an orderly manner, without prejudice to public order or the rights of the parties.

Formation and qualification of judicial actors (judges, lawyers, employees) in the field of using modern technology, to ensure their proper employment and achieve the required efficiency.

Conducting a periodic evaluation of the experience through field studies and official reports that monitor the strengths and shortcomings, allowing their gradual and balanced development.

Thus, the success of the remote trial experience remains dependent on the extent to which it achieves an exact formula: speedy justice without compromising the guarantees of a fair trial.

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