

Optimal model of using audio-visual transmission in criminal process: between efficiency of proceedings and participants' guarantees

The rapid and relentless development of information technologies, universal access to the Internet and the relatively low requirements placed on users provide enormous opportunities, which society has been using more and more frequently and courageously in recent years. This leads to a situation in which particular spheres of social activity are definitely subject to a dynamic process of virtualisation. Nowadays, it is no longer surprising that in certain areas, virtual reality can complement or even replace the real one. It is natural, therefore, that questions arise, not so much about whether, but to what extent, information technologies are able and should be used by the judiciary. In the era of the SARS-CoV-2 virus pandemic, which has become a catalyst for the virtualisation of justice, these questions resonate with multiplied power. This also applies to the area of the functioning of the criminal process. In fact, recent technical and IT developments are seen as an opportunity to increase the efficiency of proceedings and reduce their costs, regardless of emergency situations. In the realities of the modern world, it is therefore no longer possible to avoid the question of whether a conventional court hearing, as a relic of the past, may be replaced by videoconferencing? Whether and, if so, to what extent, may conditions related to the rules of the criminal proceedings stand in opposition to the remote conducting of proceedings, from behind a computer by a judge or prosecutor? Does the principle of publicity mean that the hearing might be transmitted on the Internet, for example in the form of streaming? What risks should be expected when conducting a hearing remotely and how to avoid them?

In order to answer these and a number of other questions, the research undertaken in this project aims to determine the optimal scope for the use of audio-visual transmission in criminal proceedings and to set limits which should not be exceeded in their implementation and application in criminal justice practice. At the same time, having regard to the degree of mobility of modern society and the cross-border element in many proceedings, the project also aims to examine whether and to what extent it is possible to harmonise EU Member States' procedural rules on remote participation in criminal proceedings.

An essential distinguishing feature of the proposed research is the complexity and interdisciplinarity of the analysis of the application of video and audio transmission techniques in criminal proceedings. The research will first of all define the fundamental factors that determine the scope of use of audio-visual transmission in criminal proceedings, which have been placed in the following areas – the principle of immediacy, the right of defence and procedural guarantees of participants, the principle of publicity and the efficiency and effectiveness of proceedings. As a result, the constitutional and ECHR's case-law standard will also be reconstructed in terms of fairness of the trial, transparency of proceedings and the right of defence in the context of the use of audio-visual transmission in criminal proceedings. Subsequently, the normative solutions currently in force in Poland and in selected foreign legal systems regarding the use of audio-visual techniques in criminal cases will be analysed in detail. Further, empirical research will be conducted, consisting of observation of the course of procedural activities undertaken with the use of audio-visual transmission and surveys among practitioners, additionally supplemented by structured interviews. Psychological experiments will be also carried out to verify whether activities conducted using audio-visual transmission (e.g. interrogating a witness) provide evidence that is qualitatively comparable to evidence conducted in a traditional way in a courtroom. To enrich the research perspective, current research results in the field of communication psychology will also be taken into account, in particular in the field of verbal and non-verbal communication in the courtroom. The research will also include a technical perspective, so the achievements in the field of information technology and the possibilities for using audio-visual transmission in criminal proceedings will be analysed also.

The most important expected results of the research are the presentation of appropriate implementation proposals for the Polish legislator and the identification of good practices in the application of the indicated techniques by the criminal proceedings authorities, as well as the assessment of the possibility of harmonising the procedural regulations of EU Member States in the indicated area.