

Virtual Justice.

Remote proceedings before the International Criminal Court - threat or opportunity?

The COVID-19 pandemic was a turning point in the use of new technologies during court proceedings in all jurisdictions. Due to the serious health risk, all courts have quickly opened up to the deployment of various mechanisms offering remote versions of regular proceedings. Court procedures have been rapidly revised and updated to keep the system working as easily as possible through that crisis. Everyone has been forced to quickly become familiar with the online hearings, learning how helpful and easy to use they might be and growing a confidence in them. This, probably, might mean that remote proceedings will not disappear with the end of pandemic but rather will take root in courts' practices in many, if not all, jurisdictions. This new setup creates a meaningful change especially for the criminal justice systems. Due to the unique nature of criminal process remoteness of proceedings cast doubt on their assumed fairness.

Thus, **the aim of this project is to analyze the competing interests of defendants, victims, witnesses and public when remote proceedings take place.** The main research question concerns **how to properly balance frequently mutually exclusive rights of those who participate in criminal proceedings when the proceedings are conducted remotely?** An attempt to find an answer to the question thus posed should assume that **digitalization of criminal process is inevitable.** If technology is present in our everyday life the criminal justice system cannot stay behind.

The analysis will be conducted on the example of **criminal proceedings of the International Criminal Court [ICC].** First, the ICC has the **unique understanding of the use of technology during criminal proceedings.** The ICC stands out significantly in that regard as for many years it has been using technological developments and has been infrastructurally adapting to digital transformation long before pandemic. Second, the ICC, created on the crossroads of inquisitorial and adversarial systems carries in its criminal proceedings a unique mixture of Continental and common law traditions. This makes the **analysis of the researched problem on the example of ICC proceedings more universal in its outcome.** Third, the impact of the ICC on the national systems should not be underestimated especially in the context of positive complementarity mechanism. **Domestic criminal courts look up to the ICC achievements and frequently relate to the ICC case law.** Hence, the conduct of remote hearings by the ICC and principles applied hitherto will be, presumably, closely followed by national jurisdictions.

The main research question concerns how to properly balance frequently mutually exclusive rights of those who participate in criminal proceedings when the proceedings are conducted remotely? The project will unfold through detailed research questions: 1) What forms of remote proceedings are used during proceedings before the ICC? 2) How the use of remote proceedings before the ICC affects the defendant's rights, especially the right to fair trial? 3) How the use of remote proceedings before the ICC affects the witness' rights, especially with reference to the access to justice? 4) How the use of remote proceedings before the ICC affects the victim's rights? 5) How the use of remote proceedings before the ICC affects the public's right to public trial? 6) Where can conflicts between the rights of participants be identified? 7) Which of these competing interests should prevail when deciding on the form in which the proceedings should be conducted? 8) What should be minimum standards for hearings conducted remotely?

The rationale behind this project is to: 1) provide a comprehensive proposal for a system of using new technologies, finding the right balance between the need to use them, how to do it, and the middle ground between the rights of the accused, the victim, the witness and the public; 2) find previously unseen tension between the rights of the accused, the victim, the witness and the public during the proceedings; 3) address the challenges of conducting a trial related to the current state of the pandemic and impose safeguards in the event of further ones.