

Digital Justice and the Right to a Fair Trial: Challenges of Videoconferencing in Criminal Proceedings*

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Abstract

This study examines the practice of remote criminal proceedings in Kazakhstan, with a particular focus on their compatibility with the right to a fair trial as guaranteed under international human rights law and the jurisprudence of the European Court of Human Rights (ECHR). Using a mixed-methods approach, the research combines doctrinal analysis of legal sources with case study examination of actual procedural practices in Kazakhstani courts. The findings highlight significant gaps in the Criminal Procedure Code of Kazakhstan, particularly regarding the regulation of videoconference hearings and the absence of explicit provisions addressing the accused's objections to participating remotely. While the implementation of remote justice mechanisms is often justified as a means of improving efficiency, reducing logistical costs, and ensuring timely access to justice, these benefits cannot outweigh the fundamental principles of fairness and equality of arms. The study emphasises that involuntary participation in remote hearings may undermine effective defence rights, the immediacy of oral proceedings, and the psychological perception of justice. Ultimately, the research argues for the necessity of legislative reform that establishes clearer safeguards, ensures voluntary consent of the accused, and aligns Kazakhstan's criminal procedure more closely with ECHR standards to strike a balance between efficiency and the protection of fundamental rights.

Keywords: Right to a Fair Trial; Criminal Proceedings; Remote Court Proceedings; Digitalisation; Videoconference; European Court of Human Rights Practice

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A. INTRODUCTION

In recent years, the rapid digitalization of justice systems has fundamentally changed the nature of criminal proceedings throughout the world ([Beskorovaynaya et al., 2025](#); [Sidorov, 2024](#)). Remote court hearings conducted through videoconferencing technologies have become a widespread response to the challenges arising from globalization, pandemics, and the growing demand for efficiency in the administration of justice. Although the use of such technologies is often justified by their potential to reduce costs, accelerate proceedings, and ensure broader access to justice, they also generate serious concern regarding the protection of the fundamental rights of the accused, in particular the right to a fair trial guaranteed both by national constitutions and by international conventions. ([Begishev et al., 2024](#); [Grudtsina et al., 2025](#))

In connection with the introduction of a state of emergency in the Republic of Kazakhstan (hereinafter – RK) on 16 March 2020, the Supreme Court of RK recommended that judicial proceedings be conducted remotely using IT technologies. In practice, this created several problems, the most significant of which was the absence in the Criminal Procedure Code of the Republic of Kazakhstan (hereinafter – CPC RK) of a regulation governing the procedure for the remote consideration by a court of an entire criminal case in trial proceedings. ([Criminal Procedure Code of the Republic of Kazakhstan No. 231-V, 2014](#))

In practice, this legal gap creates a contradiction between the efficiency of digital technologies and the need to guarantee the constitutional rights of the accused, including the right to defense, the right to personal presence, and the right to confidential communication with defense counsel. International experience, including the case law of the European Court of Human Rights (ECHR), shows that videoconferencing in criminal proceedings is not, in essence, inconsistent with the right to a fair trial, provided that strict safeguards are ensured.

Researchers note that the procedure of remote consideration of criminal cases could ensure the basic requirements of a fair trial, such as the right to be present and to be heard ([Androshchuk, Shved, 2018](#)), the right to defense ([Borisova, 2020](#)), the right to trial within a reasonable time ([Maslennikova, Sushina, 2020](#)), and the right to a public hearing ([Markovicheva, 2021](#)). However, their implementation has certain specific features. The right to be present and to be heard during a remote hearing can be realised without violating the accused's right to a fair trial if adequate quality of communication is ensured, allowing the accused to follow the proceedings and be heard without technical obstacles ([Tereshchenko et al., 2025](#); [Anisimova, 2019](#)). Safeguarding the right to defend

remotely is technically possible. The accused's right to defend counsel during a videoconference hearing may be realized if effective confidential communication with counsel is ensured: the state must provide remote communication channels whose confidentiality is beyond doubt. The guarantee of this right is reinforced by the fact that the position of the defence (the accused) is generally decisive in determining whether a court hearing may be conducted remotely. Proceedings are fair when the accused is provided with the opportunity to challenge the reliability of evidence and object to its use. ([Ramaldanov, 2022](#))

A remote court hearing allows the court and the parties to examine effectively certain types of evidence, testimony, and electronic evidence. The absence of legislative regulation of the remote presentation of material objects, as well as specific objective difficulties in their examination, may lead to a violation of the accused's right to a fair trial ([Markova, 2024](#); [Anisimova, 2019](#)). Nevertheless, the practice of remote criminal proceedings has also been subjected to severe criticism. Researchers assert that the faithful supporters of videoconference hearings among defendants are mainly senior judges, lawyers, police officers, and criminal commissioners, who regard virtual justice primarily as a mechanism for saving time and financial resources ([Velicogna, 2018](#)). At the same time, research indicates that many prisoners also favour videoconference hearings for pragmatic reasons, since they avoid obstacles, lengthy transfers, and the risks associated with relocation in places of detention. ([Lupo, Velicogna, 2018](#))

As noted by Antonov ([2016](#)), most lawyers have always opposed virtual justice for both principled and practical reasons. They are concerned that their clients cannot present their best evidence on a video screen and, as a result, judicial outcomes may be biased. Mishchenko et al. ([2022](#)) also report numerous technical problems: defendants appearing on video are, to varying degrees, vulnerable; they appear without accompaniment, except for a guard officer, isolated from the court, their lawyer, court staff, and family, and poor technical conditions complicate their ability to communicate. According to Silnov ([Silnov, German, 2012](#)), virtual justice makes individuals even more vulnerable by failing to provide accommodations for people with intellectual disabilities. In some specific circumstances, the possibility of testifying by video may be beneficial for those with mental health issues, particularly social anxiety. However, practitioners consider that virtual justice in most cases aggravates existing difficulties in assessing disability and vulnerability and in facilitating the participation of persons with disabilities. ([Usmanova et al., 2025](#); [Artamonova, 2012](#))

Videoconferencing also fosters and encourages inappropriate behaviour, the consequences of which are not visible to the defendant and deprives defendants of the choice of whether to appear by video ([Bryantseva, Soldatkina, 2019](#)). In the view of researchers ([Miller, Blumstein, 2020](#)), defendants may prefer the convenience of prison video links, but they are also deprived of the information they need to form an informed position. Some legal scholars raise the question of whether virtual justice influences judicial outcomes, arguing that videoconference hearings undermine justice ([Arkhipova, 2011](#)), including respect for justice itself. At the same time, judges are concerned that the delivery of a sentence by video undermines its importance and their ability to interact with the accused. ([Lupo, 2016](#))

It should be noted that researchers have systematised violations of criminal procedure law in remote proceedings ([Voskobitova, 2020](#)). Relying on the thesis formulated in specialized legal literature that abuses may also be characteristic of participants in criminal proceedings vested with powers (in particular, the prosecution), since the discretionary nature of some of those powers leaves room for their misuse contrary to the purposes of criminal proceedings ([Kachalova, Kachalov, 2019](#)), and taking into account the approaches identified to some typical forms of abuse committed by investigative bodies and prosecutors when conducting investigative actions ([Mikheenkova, 2012](#)), it should be noted that in order to prevent courts from abusing their powers through the formal use of remote proceedings, remote adjudication is appropriate not in every case, but only where in a particular proceeding the relevant circumstances exclude the possibility of the accused's direct participation in the trial.

The purpose of this article was to analyse the prospects for legislative consolidation in the CPC RK of the procedure for conducting remote court proceedings. Particular attention is given to identifying the significance and consequences of an accused's objection to remote adjudication where the accused is outside the courtroom, as well as to substantiating the possibility of remote participation in a hearing using the accused's own technical means.

B. METHODS

To achieve the stated objective, a mixed approach was chosen, combining source analysis and the case study method. The research was conducted in several stages in 2024.

Stage 1. At this stage, the authors selected information sources, including monographs, scholarly journal articles, and conference materials. In total, 34

sources of information were collected, necessary for the implementation of the research objective. The search was carried out primarily in the Scopus and Web of Science databases, which ensured the academic reliability and relevance of the selected publications. The keywords used were “videoconference,” “criminal procedure,” “digital justice,” “fair trial,” “Kazakhstan”, which made it possible to identify the most relevant studies.

Stage 2. The principal research method was the case study, aimed at analysing the specific features and difficulties of one particular situation. The resulting multiple case study, “Conducting Court Hearings by Videoconference in Criminal Proceedings: Doctrinal and Practical Problems,” was directed towards the development of the theory of criminal procedure and included the following components: 1). Normative regulation of remote court proceedings in the legislation of the Republic of Kazakhstan: existing provisions and problems of law enforcement; 2). Convention-based and procedural guarantees of the effective participation of the accused in criminal proceedings are the basis for the conditions of remote adjudication (based on the case law of the European Court of Human Rights).

C. RESULTS

Case Study 1. Normative regulation of remote court proceedings in the legislation of the Republic of Kazakhstan: existing provisions and problems of application

Part 1 of Article 345 of the Criminal Procedure Code of the Republic of Kazakhstan (CPC RK) establishes that the main trial shall take place under conditions ensuring the normal functioning of the court and the safety of participants, and that it may also take place by means of videoconference, the decision on which is made by the presiding judge in the case.

However, the provisions of the CPC RK do not regulate the procedure for conducting the entire court hearing remotely, nor do they determine the list of procedural acts that may be carried out by videoconference or the procedure for their implementation, except certain norms of the CPC RK (Articles 369, 370), which provide for the use of videoconferencing in trial proceedings only in relation to the remote questioning of the victim and witnesses, according to the rules set out in Article 213 CPC RK. This implies summoning them to the court of the district (region) in which they are located or reside (Part 8 of Article 370 CPC RK), including the questioning of a protected witness in order to ensure his or her safety (Paragraph 3, Part 2 of Article 98 CPC RK). At the same time, Part 2 of Article 213 of the CPC RK provides that the use of scientific and technical

means and technologies during remote questioning must ensure the adequate quality of the image and sound. Thus, the possibility of remote trial proceedings by videoconference with respect to other procedural acts (such as questioning of the accused, expert, or specialist, examination of material evidence and documents, or other procedural acts including the authentication of participants in the trial) is not provided for in the norms of the CPC RK.

The law regulates the use of videoconferencing by the court only in some instances and at particular stages of criminal proceedings, namely: by order of the investigating judge (Part 2 of Article 56, Part 6 of Article 106 CPC RK); when considering motions for reopening proceedings on newly discovered circumstances in respect of a convicted person held in custody (Part 2 of Article 505 CPC RK); in relation to procedural acts at the request of a competent authority of a foreign state in the cases provided for in Part 1 of Article 576 CPC RK and to the extent that such procedure does not contradict the principles of the criminal procedure legislation of RK (Part 2 of Article 576 CPC RK). Procedural acts may also be carried out via videoconference at the request of a competent authority of RK (Part 6 of Article 577 CPC RK); in respect of a person for whom a decision has been made on extradition, with the participation of his or her defence counsel (Part 4 of Article 591 CPC RK).

The provisions of the CPC RK do not envisage the possibility of hearings by videoconference in the appellate court either, except the participation of a convicted person held in custody if he has submitted a motion to participate in the hearing of the appellate court when considering a complaint or a prosecutor's motion aimed at worsening his situation (Part 2 of Article 428 CPC RK). In view of this, according to Suleimenova ([2020](#)), the conduct of court hearings by videoconference, not provided for in the norms of the CPC RK, does not ensure the normal functioning of the court during the main trial.

It should be noted that the Constitution of RK establishes several fundamental principles ensuring the rights and freedoms of individuals, some of which are enshrined and specified in the norms of the CPC RK. Thus, according to Paragraph 2 of Article 13 of the Constitution of the RK and Article 12 CPC RK, everyone is guaranteed the right to judicial protection of their rights and freedoms. According to Paragraph 3 of Article 13 of the Constitution of RK and Article 26 of the CPC RK, everyone is entitled to receive qualified legal assistance, which is realised, in particular, through the right of the accused to defence through counsel (Paragraph 1 of Article 26 of the CPC RK).

Guaranteeing these rights, Paragraph 1 of Article 39 of the Constitution of RK states that "human and civil rights and freedoms may be restricted only by

law...,” and Paragraph 3 of Article 39 provides that in no case may rights and freedoms guaranteed, including those in Article 13 of the Constitution, be restricted. Specifying these constitutional norms, the CPC RK determines that: The procedure for criminal proceedings established by law must ensure protection from unlawful restriction of rights and freedoms (Part 2 of Article 8 CPC RK); Violation of the principles of criminal procedure, depending on its nature and gravity, entails the recognition of a procedural act or decision as unlawful, the annulment of decisions made during such proceedings, or the recognition of the materials collected as inadmissible as evidence, or the invalidation of the proceedings (Part 2 of Article 9 CPC RK); Courts may not apply laws and other normative legal acts that infringe the rights and freedoms enshrined in the Constitution of RK (Part 2 of Article 10 CPC RK).

In the context of these constitutional and criminal procedure norms, the conduct of proceedings by videoconference raises several problems, as it violates the rights of a defendant held in custody to receive legal assistance from counsel privately and confidentially during the hearing itself. This constitutes a substantial violation of criminal procedure law and should entail the annulment of the court's judgment or decision (Part 1 of Article 436 CPC RK). Furthermore, difficulties arise when, directly during trial proceedings (for example, during the questioning of witnesses or the examination of evidence), defence counsel must perform certain procedural acts (such as submitting motions or objections), which require consultation with the accused directly in court. The videoconference format does not provide them with such an opportunity, which constitutes a violation both of the right to legal assistance and of the right of the accused to defence.

Judicial practice in conducting hearings by videoconference has also revealed several existing problems. For example, Part 2 of Article 370 CPC RK provides that before questioning a witness, his or her identity must be established, and he or she must sign a statement acknowledging that obligations and responsibilities have been explained to them, which must be attached to the record of the court hearing. As noted above, in the case of remote questioning, a witness must be summoned to the court of the district (region) in which he or she is located or resides (Part 8 of Article 370 CPC RK). However, analysis of individual hearings conducted by videoconference shows that this legal requirement is not always complied with. Witnesses are often questioned not in court but at their place of residence or work. At the same time, the identity of witnesses is frequently established without the presentation of identity documents, and no signed statement is obtained. This raises legitimate doubts

about the identity of the witness and the possible presence of third parties who may influence the reliability of testimony.

Another general condition of trial proceedings that is complicated in remote hearings is the immediacy requirement, whereby material evidence, including documents admitted during the investigation or newly submitted, must be examined by the court, presented to the parties, and reviewed (Part 1 of Article 331, Article 375 CPC RK). However, in videoconference hearings, such an examination is impossible. First, the law requires examination of the original physical evidence, including documents, not copies. Even with electronic document exchange, it is impossible to determine whether a document is an original or a scanned copy.

According to the above-mentioned provisions of the CPC RK and the Rules on the use of technical means of communication for participation in court hearings and requirements for them ([Order of the Head of the Department for Supporting the Activities, 2018](#)), videoconferencing must be carried out via the “Judicial Cabinet” service and its application ([Fedorchuk et al., 2025](#)). However, judicial practice shows that the use of videoconferencing via the “Judicial Cabinet” is impossible in cases involving the simultaneous participation of several persons. Therefore, other platforms (Zoom, WhatsApp, Skype) have been used in hearings, the use of which is not provided for by law. This raises questions regarding the legality of using such software in light of their user agreements with rights holders, the integration of such messengers into the official judicial information system “Torelik,” and the legitimacy of establishing videoconferencing outside the “Judicial Cabinet.”

Thus, analysis of the normative framework of RK and judicial practice revealed the following obstacles to the implementation of criminal proceedings by videoconference: Absence in the CPC RK of regulation governing the procedure for remote consideration by a court of an entire criminal case at trial; Violation of constitutional and procedural rights of participants in proceedings when a case is heard by videoconference; Failure or impossibility of fulfilling several requirements of the CPC RK during remote hearings; Shortcomings of the technologies used in remote hearings.

In view of the above, it is proposed that court hearings by videoconference be conducted (within the framework provided for by the CPC RK) in cases that are not particularly complex (for example, in cases of criminal misdemeanours, cases considered under conciliation procedures, etc.). However, in cases of severe and grave crimes, including those committed in complicity, and in cases

involving large volumes of evidence, hearings should be conducted in the traditional format.

Case Study 2. Convention-based and procedural guarantees of the effective participation of the accused in criminal proceedings as the basis for remote adjudication

The Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) provides minimum rights for anyone accused of committing a criminal offence. One such right, according to Article 6 of the Convention, is the right to defend oneself in person. The practice of the European Court of Human Rights (hereinafter – the ECHR) proceeds from the fact that Article 6(3)(c) is a specific aspect of the right to a fair trial guaranteed by Article 6(1) (“*Dvorski v. Croatia*,” § 76; “*Correia de Matos v. Portugal*”). It guarantees that proceedings against an accused shall not be conducted without proper representation for defence. (“*Pakelli v. Germany*,” Commission’s Report, § 84)

This provision encompasses three distinct rights: the right to defend oneself in person, the right to legal assistance of one’s own choosing, and the right to free legal assistance (“*Pakelli v. Germany*,” § 31). The opportunity for the accused to participate in the hearing follows from the subject matter and purpose of Article 6 as a whole (“*Zana v. Turkey*,” § 68; “*Monnell and Morris v. the United Kingdom*,” § 58), and closely linked to this is the right to defend oneself personally. Furthermore, Article 6 as a whole guarantees the right of the accused to effective participation in criminal proceedings. This includes not only the right to be present, but also the right to hear and observe the proceedings. Such rights are inherent in the very notion of adversarial procedure. They may also derive from the guarantees contained in subparagraphs (c), (d), and (e) of Article 6(3) (“*Stanford v. the United Kingdom*,” § 26). Measures restricting participation in the courtroom may also affect the fairness of proceedings, thereby violating the accused’s right to effective participation in the trial.

At the same time, security concerns during criminal proceedings, particularly in large-scale or confidential cases, may justify the use of extraordinary measures, such as glass cabins. However, given the importance of defence rights, any measures that restrict a defendant’s participation in proceedings or limit communication with counsel must be taken only to the extent necessary and must be proportionate to the risks in the particular case. For example, in “*Yaroslav Belousov v. Russia*” (§§151–154), the Court found a violation of Article 6(1) due to the applicant’s inability to have confidential

exchanges with counsel during the hearing as a result of being placed in a glass cabin, and the first-instance court's failure to recognise the impact of these measures on defence rights or to adopt compensatory measures. Similarly, in the criminal case of Sakhnovskiy, the applicant was not provided with an opportunity for confidential communication with his defence counsel before the court hearing in which he participated via videoconference, and accordingly, a violation of Article 6(3)(c) was found. ([Council of Europe, 1950](#))

Consequently, the ECHR considers the physical presence of the accused at trial to be a component of the guarantee of effective participation in proceedings and the right to defend oneself personally. Restrictions for security reasons may not negate the very essence of this right. It should be noted that the Convention is also referenced in the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (hereinafter referred to as the Protocol) ([Council of Europe, 2001](#)). Article 9 of the Protocol (Hearings by videoconference) provides that member states may, at their discretion, also apply the provisions of this article, where necessary and with the consent of their competent judicial authorities, to hearings by videoconference with the participation of the accused. In such cases, the decision to conduct a videoconference and the manner in which it is conducted shall be agreed upon between the states concerned in accordance with their national law and relevant international instruments, including the European Convention on Human Rights of 1950.

D. DISCUSSION

The analysis of the case studies revealed one of the key problems in conducting criminal hearings by videoconference, which is present both in European and domestic judicial practice: the accused's right to refuse the use of videoconferencing, including in situations where it is impossible to ensure his or her direct participation or delivery to the courtroom, as well as where the accused poses a threat to the life or health of other participants in the proceedings due to illness.

It should be noted that the introduction of modern technologies into criminal procedures must, above all, be accompanied by an increase in access to justice and the safeguarding of individual rights, and only thereafter by procedural efficiency in terms of time and costs. Videoconferencing, as a product of modern video technologies, should therefore be regarded not only as a formally regulated means of communication used by participants in criminal proceedings, but also as one of the guarantees of the realisation of the right to a fair trial. In view of the challenges currently faced by the judicial system, the videoconferencing mechanism is undoubtedly necessary and important for

ensuring the timeliness of criminal proceedings. However, its application cannot substantially restrict the Convention-based and procedural rights of the accused. Consequently, the court is not entitled to decide to conduct remote proceedings where the accused is located outside the courtroom if the accused objects.

Moreover, in the view of the European Court of Human Rights (ECHR), as already noted, the use of videoconferencing systems may be permissible and justified. However, in any case, it places the accused at a disadvantage in communicating with the court, whereas the prosecutor is always physically present in the courtroom. At the same time, it must be emphasized that the use of videoconferencing must ensure not merely the formal presence of the accused during the hearing, but effective participation in the trial, which includes, above all, the right to see, hear, and observe what is taking place in the courtroom without technical impediments (*"Marcello Viola v. Italy,"* Application No. 45106/04). Therefore, it should be borne in mind that, despite its apparent advantages, such as saving time and resources, the use of videoconferencing in criminal proceedings has a serious drawback recognised by the ECHR: the restriction of the accused's right to confidential and timely communication with defence counsel, which may result in a violation of the right to defence.

In determining the legal significance of the accused's expression of will, it should be recognised that, unlike other participants in the proceedings, the will of the accused in deciding the form of conducting procedural acts by videoconference during trial must have binding force. In our view, given that the general permissive type of legal regulation applies to the accused in criminal proceedings, an objection is admissible in any form that clearly expresses the individual's will to be personally present in court. Accordingly, if the accused in his motion expressly states his wish to participate personally in the appellate review of his case, this implicitly signifies rejection of participation in the appellate hearing by videoconference.

The ECHR proceeds from the principle that "neither the letter nor the spirit of Article 6 of the Convention prevents a person from voluntarily waiving, expressly or tacitly, the right to the guarantees of a fair trial. This applies to the right to legal assistance. However, to be effective for the Convention, such a waiver must be established unequivocally and accompanied by at least minimum safeguards commensurate with its importance. Such a waiver does not necessarily have to be made orally, but it must be voluntary and constitute a conscious and reasonable renunciation of the right. For the accused to be considered to have tacitly waived a significant right guaranteed by Article 6 through their conduct, it must be proven that they could reasonably have

foreseen the consequences of such conduct. Furthermore, the waiver must not run counter to any important public interest.” Thus, if it is unequivocally established that the accused wishes to participate personally in the hearing and has submitted a motion to that effect, this excludes any interpretation of his will as acquiescence to participation by videoconference.

Let us consider situations where it is impossible to ensure direct participation or delivery to the courtroom, as well as where the accused poses a threat to the life or health of other participants in the proceedings due to illness, and the question of remote proceedings. The state, under Article 1 of the Convention, has positive obligations to guarantee the right to a fair trial. These obligations include, *inter alia*, ensuring the presence of a person who is deprived of liberty under the control of the state. The state cannot justify delays in proceedings by procedural or other shortcomings of the judicial system. Consequently, the state must ensure the delivery of the accused to court if he is located within the country’s territory and take measures for international cooperation if he is abroad. If the accused poses a threat to the life or health of other participants in the proceedings due to illness, it is necessary, first, to adopt measures to neutralize the risks to the health of the accused and other participants in the criminal process; and second, if this is impossible, to ensure that the proceedings are suspended for the period objectively necessary to eliminate such risks, after which the accused is delivered to court. Otherwise, this will result in defendants with illnesses being *de facto* deprived of their fundamental right to appear personally before the court and to present their case and prove their innocence at trial.

Thus, where the health condition of the accused prevents his direct participation in the hearing or poses a threat to the life or health of other participants, measures must be taken either to neutralise the risks or to suspend the proceedings for a period objectively necessary to eliminate them. Only thereafter, considering the insurmountable nature of the risks, and in accordance with international law and national legislation, should the court decide to conduct proceedings by videoconference with the participation of the accused, with appropriate justification ([Balgynbaev, 2022](#); [Tleubaev, 2021](#)). Furthermore, compelling an ill defendant to participate in hearings may, under certain circumstances, go beyond abuse of power and constitute treatment that is inhuman or degrading, contrary to Article 3 of the Convention.

E. CONCLUSIONS

At present, digital technologies are being introduced into all areas of law enforcement and judicial activity. This process is objective in nature, as it is

driven by rapid scientific and technological progress which determines the digitalisation of social relations and the widespread use of new technologies. The broad application of technical innovations in various spheres of human activity makes the issue of legal regulation of the achievements of scientific and technological progress especially pressing.

The analysis of the normative framework of the Republic of Kazakhstan and judicial practice revealed the following obstacles to the implementation of criminal proceedings by videoconference: The absence in the CPC RK of regulation governing the procedure for the remote consideration by a court of an entire criminal case at trial; Violations of the constitutional and procedural rights of participants in trial proceedings when cases are heard by videoconference; Failure or impossibility to comply with several CPC RK requirements during remote hearings; Shortcomings of the technologies applied in remote hearings.

In view of the above, it is proposed that court hearings by videoconference be conducted (within the framework provided for by the CPC RK) in cases that are not particularly complex (for example, cases involving criminal misdemeanors or those considered under conciliation procedures). However, in cases involving serious and especially serious crimes, including those committed in complicity, where there is a large volume of evidence, hearings should be conducted in the traditional format.

When introducing videoconference hearings in criminal proceedings, particular attention must be given to the consequences of an accused's objection to remote participation. If the accused requests direct participation in the courtroom, yet the court decides otherwise, such action constitutes a serious violation of criminal procedure law. Exceptions arise only when illness or health conditions make attendance impossible or pose risks to others, in which case postponement should be the proper measure until the risks are resolved. Forcing an ill defendant to participate remotely, however, raises significant concerns and may, under certain circumstances, amount to a violation of Article 3 of the European Convention on Human Rights, which prohibits inhuman or degrading treatment. Videoconferencing in criminal trials improves efficiency but threatens fair trial rights. Kazakhstan's laws and ECHR case law reveal gaps, especially regarding objections to remote participation and confidential counsel access. While suitable for simple cases, complex trials risk violations. Legal reforms must ensure digitalisation upholds, not undermines, justice.

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