



## PROCEDURAL SPECIFICS OF REMOTE CRIMINAL CASE PROCEEDINGS: ISSUES OF LEGAL APPLICATION

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### ABSTRACT

**Objective:** To analyze the procedural specifics of remote criminal case proceedings in Ukraine, particularly under martial law, focusing on legal, technical, and organizational challenges related to the use of videoconferencing in criminal justice.

**Methods:** The study employs a combination of legal-dogmatic analysis, dialectical and systemic approaches, formal-logical interpretation, historical-legal method, comparative legal analysis with international experience, sociological examination of judicial practice, and legal modeling. These methods enabled the identification of regulatory gaps and the development of proposals to improve legislation and judicial procedures.

**Results:** The findings show that, before martial law, Ukrainian legislation strictly limited remote hearings outside court premises. After the outbreak of war, the Council of Judges and the Supreme Court allowed remote participation using personal devices—later incorporated into the Criminal Procedure Code. The study identifies key challenges: participant authentication, ensuring awareness of procedural rights, risks of external influence on witnesses and defendants, difficulties in maintaining attorney-client confidentiality, limited access to evidence during remote hearings, and technical disruptions. Nonetheless, videoconferencing plays a crucial role in maintaining judicial continuity, reducing delays, enhancing participant safety, and improving access to justice.

**Conclusion:** Remote criminal proceedings have significant potential to ensure timely adjudication and maintain access to justice during wartime. However, their effective implementation requires improvements: standardized authentication procedures, confidentiality safeguards, mechanisms ensuring equality of arms, robust technical infrastructure, and uniform regulatory frameworks. The study emphasizes the need for coherent legislative and judicial guidelines to balance procedural efficiency with fundamental guarantees of fair trial.

**Keywords:** criminal proceedings; remote hearings; videoconferencing; martial law; procedural rights.





## ESPECIFICIDADES PROCESSUAIS DOS PROCEDIMENTOS DE CASOS CRIMINAIS REMOTOS: QUESTÕES DE APLICAÇÃO LEGAL

### RESUMO

**Objetivo:** Analisar as especificidades processuais dos procedimentos criminais remotos na Ucrânia, especialmente sob condições de lei marcial, examinando desafios jurídicos, técnicos e organizacionais relacionados ao uso da videoconferência em processos criminais.

**Métodos:** O estudo utiliza métodos jurídico-dogmáticos, dialético-sistêmicos, análise lógico-formal, método histórico-jurídico, técnica comparada com experiências internacionais, análise sociológica da prática judicial e modelagem jurídica. Esses métodos permitiram examinar a evolução normativa, identificar problemas de aplicação e propor melhorias legislativas e procedimentais.

**Resultados:** O estudo demonstra que, antes da lei marcial, a legislação ucraniana restringia rigidamente o uso de videoconferências fora das instalações judiciais. Com a guerra, o Conselho de Juízes e a Suprema Corte autorizaram o uso de dispositivos pessoais, posteriormente incorporado ao Código de Processo Penal. Identificaram-se os principais problemas: autenticação dos participantes; garantias de direitos processuais; riscos de influência externa sobre testemunhas e réus; dificuldades de comunicação entre defensor e acusado; limitações na análise de provas; e obstáculos técnicos. Ao mesmo tempo, evidenciou-se o papel da videoconferência na continuidade da justiça, redução de atrasos, segurança dos participantes e ampliação do acesso ao julgamento.

**Conclusão:** Os procedimentos remotos possuem grande potencial para assegurar a razoável duração do processo e ampliar o acesso à justiça, especialmente em contexto de guerra. Contudo, exigem aperfeiçoamentos, incluindo: padronização de protocolos de autenticação, garantias de confidencialidade, acesso às provas, infraestrutura técnica adequada e regulamentação uniforme. O estudo reforça a necessidade de consolidar diretrizes legislativas e jurisprudenciais que mantenham o equilíbrio entre eficiência e garantias fundamentais do devido processo penal.

**Palavras-chave:** processo penal; videoconferência; procedimentos remotos; lei marcial; garantias processuais.

### 1 INTRODUCTION

The development of digital technologies and global challenges, particularly the COVID-19 pandemic and armed conflicts, have necessitated the transformation of justice mechanisms, including in the sphere of criminal procedure. In Ukraine, which has been in a state of full-scale war since February 24, 2022, ensuring the continuity of criminal case proceedings requires the use of modern remote technologies. At the same time, the use of videoconferencing in criminal proceedings gives rise to a number of problematic aspects related to ensuring the principles of fair trial, equality of parties,



access to justice, authentication of participants, and the technical implementation of relevant procedures. The lack of unified approaches to conducting criminal proceedings in a remote format leads to inconsistent legal application and requires in-depth scientific analysis.

In the Recommendations of the Council of Judges of Ukraine, published on March 2, 2022, it is stated that in cases where a participant in criminal proceedings, due to objective circumstances, is unable to participate in a court hearing via videoconference using the technical means provided by the Criminal Procedure Code, an exceptional procedure is allowed, enabling the use of any other available technological solutions, including personal technical devices.

Furthermore, the Supreme Court, in its letter No. 1/0/2-22 dated March 3, 2022, titled "On Certain Issues of Criminal Proceedings under Martial Law," stated that, as an exception, participation in court hearings via alternative video communication means not provided for by the Criminal Procedure Code is permitted. At the same time, special attention is given to the necessity of providing participants in such hearings with comprehensive explanations regarding their procedural rights and obligations (para. 7).

The purpose of the study is to provide a comprehensive analysis of the procedural features of remote consideration of criminal cases in Ukraine, to identify law enforcement issues and to develop recommendations for improving legislative regulation and court practice. Particular attention is paid to the issues of discrediting the court when making decisions to hold a court hearing in the format of a videoconference, technical aspects of organising remote proceedings, and the impact of this mechanism on the exercise of the rights of participants to criminal proceedings.

The issue of conducting court hearings in criminal proceedings using videoconferencing has been the subject of numerous scientific studies, including dissertations and scientific publications. A significant contribution to the development of this issue was made by such scholars as A. Bezhanova, M. Smirnov, I. Chernichenko, N. Shulga, who in their studies analysed the legal and procedural aspects of remote participation in court hearings, Bezhanova, A. V. 'Principles of the use of technical means and technologies in remote criminal proceedings' (Bezhanova, A. V., 2018).

Additionally, the issue of videoconferencing in criminal proceedings has been explored in the works of A. Antonyuk, I. Basyista, N. Hlynska, I. Hlovyyuk, O. Drozdov,





O. Zakharchenko, T. Pasiuk, M. Pashkovskyi, T. Podorozhna, V. Serdiuk, K. Sikora, O. Starenkyi, Yu. Skorobahata, O. Tarasenko, A. Khudyk, P. Tsymbal, B. Shchur, and others. Their research, including A. O. Antonyuk's "Legal Regulation of Videoconferencing in Criminal Procedure" (2020) and I. V. Hlovyuk's "Holding a court hearing via videoconference in criminal proceedings: doctrinal and practical issues" (2023), examines the peculiarities of videoconferencing application, analyzes issues of its legal regulation, and suggests directions for legislative improvement (Hloviuk, I. V., & Drozdov, O. M., 2023).

Scholars have also paid particular attention to ensuring the rights of participants in criminal proceedings in the context of remote hearings. The works of D. Baiev, P. Bilenchuk, O. Kalman, S. Kozlov, M. Kuryltsia, V. Mykolaichuk, O. Pavlyshyn, I. Polyakov, S. Stashevskyi, I. Fesenko, and others focus on compliance with the principles of adversarial proceedings, equality of parties, and access to justice in a remote format.

Despite the significant academic contributions in this area, there is still no unified approach to defining the legal nature of videoconferencing in criminal procedure. The extent of judicial discretion in deciding on remote hearings remains a matter of debate, particularly under martial law. The impact of military actions on the judicial practice of remote proceedings presents new challenges that require comprehensive research. The insufficient legislative regulation of remote justice in emergency situations, particularly under martial law, necessitates doctrinal analysis and the development of recommendations for improving the provisions of Article 336 of the Criminal Procedure Code of Ukraine.

## 2 METHODS

The methodological framework of this study is based on a combination of general scientific and specialized legal methods, ensuring a comprehensive analysis of the procedural features of remote criminal case proceedings and the challenges of its legal application.

The dialectical method was employed to examine the development of legal regulation of remote justice and to identify patterns and contradictions in judicial practice. The historical-legal method allowed for tracing the evolution of legislative approaches to the use of videoconferencing in criminal proceedings, from the initial



provisions on remote participation in court hearings to the most recent changes prompted by martial law.

The application of the comparative-legal method facilitated an analysis of the experience of other jurisdictions in remote justice and an assessment of the feasibility of adopting effective mechanisms to enhance national legislation. The systemic-structural method was used to determine the place and role of legal norms on videoconferencing within the overall system of Ukraine's criminal procedural law, as well as their interrelation with other regulatory acts. The formal-logical method enabled an analysis of the content of legal norms governing remote proceedings, revealing their shortcomings, contradictions, and issues in legal application.

The sociological method was applied in the analysis of judicial practice regarding the use of videoconferencing in criminal proceedings, allowing for an evaluation of the actual enforcement practices and key difficulties in conducting remote hearings. The legal modeling method contributed to formulating proposals for improving the regulatory framework of remote court proceedings, particularly in the context of martial law.

The comprehensive application of these methods ensured an in-depth examination of the research problem, facilitated the formulation of scientifically substantiated conclusions, and enabled the development of recommendations for enhancing procedural regulation of remote hearings in criminal proceedings.

### 3 RESULTS AND DISCUSSIONS

Unlike administrative, commercial, and civil proceedings, where remote participation in court hearings has become common practice, criminal procedure legislation for a long time restricted the use of videoconferencing to court premises, pre-trial detention facilities, or penal institutions. The use of personal technical devices by participants in criminal proceedings remained outside the scope of legal regulation, as confirmed repeatedly by judicial practice (Borysova, V. I., et al., 2019).

For instance, the Supreme Court, in case No. 760/15429/20, stated that part 4 of Article 366 of the Criminal Procedure Code of Ukraine does not provide for the possibility of conducting court hearings via videoconference using the personal technical devices of participants outside the court premises. A similar legal position was expressed in the Supreme Court's ruling of June 3, 2021 (case No. 431/1397/20),





where the court emphasized that the use of videoconferencing via personal technical devices of the parties is not regulated in criminal proceedings.

After the outbreak of the full-scale war on February 24, 2022, the approach to the use of videoconferencing in criminal proceedings began to change. Amid active hostilities, it became evident that the traditional court hearing mechanism could not ensure the necessary speed and accessibility of justice. Consequently, the Council of Judges of Ukraine, in its decision of February 24, 2022, recommended reconsidering the established court proceedings framework, allowing participants to use any available technical means to attend hearings via videoconference.

Subsequently, on April 14, 2022, amendments were made to part 2 of Article 336 of the Criminal Procedure Code of Ukraine, granting courts full discretion over conducting remote court proceedings under martial law. From that point onward, the defendant's consent was no longer a decisive factor, and courts began actively using videoconferencing to ensure reasonable case processing times. Judicial practice has reflected this new reality, with various videoconferencing platforms being widely adopted for remote hearings.

Videoconferencing is one of the most in-demand and modern technologies provided for by the norms of the Criminal Procedure Code of Ukraine. Its application facilitates the protection of the rights of participants in criminal proceedings by allowing them to submit motions, file challenges, provide explanations and testimony, present evidence, and participate in its examination, regardless of their physical presence in the courtroom. This is particularly important in cases where there is a significant distance between the participants and the court where the case is being heard (Moskvysh, L., Riepina, Y., & Shcherbinin, K., 2021).

The use of videoconferencing in judicial proceedings is of great significance as it:

Ensures the continuity and efficiency of court hearings despite external factors such as pandemics, emergencies, or armed conflicts.

Minimizes delays in criminal case hearings by reducing the number of postponed sessions due to the absence of participants.

Enhances security for participants, both in terms of protection from undue influence and in preventing the spread of dangerous infections.

Reduces financial costs associated with the transportation of parties to the court and the execution of procedural actions.



Provides equal access to justice and promotes the transparency of judicial proceedings.

Enables the preservation and subsequent use of materials from hearings conducted in a remote format.

Strikes an optimal balance between the speed of case resolution and adherence to procedural guarantees protecting the rights of the parties.

By integrating videoconferencing into criminal proceedings, the justice system can adapt to modern challenges while maintaining the fundamental principles of fair trial and due process.

According to Part 7 of Article 11 of the Law of Ukraine "On the Judiciary and the Status of Judges," participants in judicial proceedings have the right to take part in court hearings via videoconference, provided that an appropriate court decision has been issued, as stipulated by the applicable legislation. The general procedural framework for conducting remote court hearings in criminal cases is regulated by Article 336 of the Criminal Procedure Code of Ukraine. Specifically, Part 1 of this article states that remote court proceedings are conducted via videoconferencing, which ensures the broadcasting of the hearing from a location that may be either within or outside the courthouse.

Furthermore, under Article 15-1 of the Law of Ukraine "On the Judiciary and the Status of Judges," the judicial system operates the Unified Judicial Information and Telecommunication System (UJITS), which, among other functions, provides participants with the ability to join court hearings in a videoconference format.

Additionally, Clause 5 of the Regulation "On the Functioning of Certain Subsystems (Modules) of the UJITS," approved by the High Council of Justice on August 17, 2021 (Decision No. 1845/0/15-21), defines videoconferencing as a telecommunication technology that enables interactive communication between two or more participants in judicial proceedings, allowing real-time exchange of audio and video information.

V. Serdiuk considers videoconferencing as a complex telecommunication technology that enables simultaneous two-way exchange, processing, transformation, and presentation of interactive information at a distance in real-time. It operates through hardware and software solutions that allow for the acquisition of factual data, which are crucial for establishing key circumstances in criminal proceedings, while taking into account the procedural mechanisms for their recording (Serdyuk, V. 2013).



A similar approach is supported by N. Shulha, who defines videoconferencing as an information technology provided for by the norms of the Criminal Procedure Code of Ukraine, enabling instant two-way transmission, processing, transformation, and visualization of interactive information in real-time through the use of hardware and software computing technologies (Shulga, N. V., 2019).

This approach to defining videoconferencing allows for a focus on its technical capabilities and specific components of information and communication technologies. However, it is essential to consider that the use of this technology in judicial proceedings has not only a technical dimension but also a legal one. Beyond the reception and procedural recording of relevant information, the legal aspect of videoconferencing also involves legislative regulation of the grounds, conditions, and procedures for its application in criminal proceedings. This ensures the proper functioning of the remote trial mechanism and guarantees its compliance with the fundamental principles of criminal procedure.

The legislative regulation of remote participation in criminal proceedings for individuals who cannot be physically present in the courtroom is a necessary step to balance the exercise of procedural rights of participants with the objectives of criminal justice. Allowing individuals to participate in judicial proceedings from their location, using personal technical devices and appropriate software, enhances the efficiency of legal proceedings and the speed of case resolution, particularly under martial law conditions.

The codification of this approach was reflected in the Law of Ukraine No. 3604-IX, adopted on February 23, 2024, which was based on Bill No. 8219 from November 23, 2022, titled “On Amendments to the Criminal Procedure Code of Ukraine Regarding the Gradual Implementation of the Unified Judicial Information and Telecommunication System.”

According to the new version of Part 5 of Article 336 of the Criminal Procedure Code of Ukraine, participants in criminal proceedings are allowed to take part in court hearings via videoconference outside the courthouse, using their personal technical devices and a qualified electronic signature, in compliance with the Regulations on the Unified Judicial Information and Telecommunication System (UJITS) and/or provisions governing the operation of specific UJITS subsystems (modules).

Additionally, at the outset of the full-scale war, the Council of Judges of Ukraine, in its recommendations on court operations under martial law, specified that







if the technical means for videoconferencing provided by the Criminal Procedure Code were unavailable, participants in judicial proceedings could be permitted to use any other available technical means, including personal devices. This provision also applies to cases where a judicial panel is unable to convene in the same location (Rodrigues, L. C., Dagobi da Silva, R., Espinosa, S. M., & Riscarolli, V., 2024).

A similar approach was supported by the Supreme Court in its letter dated March 3, 2022 (No. 1/0/2-22), which stated that in exceptional cases, when due to objective circumstances a person cannot participate in a court hearing via videoconference as prescribed by the Criminal Procedure Code, the use of alternative communication means is permitted. However, a mandatory condition for such participation is the comprehensive explanation of procedural rights and obligations to the participants.

The necessity of this approach is driven by ongoing threats, including missile and artillery attacks, drone strikes, and frequent air raid alarms, which make the traditional functioning of courts unstable. In this context, it is expected that Ukrainian courts will develop judicial practice that aligns with the realities of wartime, ensuring a balance between the efficiency of criminal proceedings and adherence to fundamental procedural principles.

At the legislative level, it is crucial to thoroughly regulate the procedure for remote justice, taking into account all potential risks and procedural safeguards outlined in the Criminal Procedure Code of Ukraine. A well-defined framework will help maintain legal certainty while ensuring that remote court proceedings uphold the rights of all parties involved (Sikora, K., 2022).

Before the introduction of martial law, judicial practice generally adhered to the position that videoconferencing in criminal proceedings could not be conducted outside the courthouse using participants' personal technical devices. An analysis of court rulings suggests that this approach was largely based on the provisions of the Instruction on the Procedure for Working with Technical Means for Video Recording the Course and Results of Procedural Actions Conducted via Videoconference During a Court Hearing (Criminal Proceedings) (hereinafter referred to as the Instruction).

Although this Instruction was repealed in 2021, courts have continued to refer to its provisions when reviewing motions regarding the possibility of conducting videoconferencing using personal technical devices.

This document, in accordance with Clause 10 of Part 1 of Article 146 and Part





5 of Article 147 of the Law of Ukraine "On the Judiciary and the Status of Judges," established a uniform procedure for the use of technical means for video recording of procedural actions conducted via videoconference during court hearings. Specifically, Clause 1.2.1 of the Instruction stipulated that participation in a court hearing via videoconference was only allowed if the necessary technical capabilities were available in courts, government bodies, or institutions responsible for conducting procedural actions.

Until 2022, legislative and regulatory acts strictly limited the conduct of remote court hearings to specially equipped premises, thereby precluding the use of alternative technical means, including the personal devices of participants.

Despite the clear advantages of remote court proceedings, their application in criminal procedure gives rise to a number of legal challenges that may impact the fairness of judicial proceedings.

The issue of participant identification is a fundamental aspect of criminal proceedings. However, during remote hearings, the court lacks the ability to physically verify original identification documents, creating a risk of formal rather than substantive authentication of participants.

The guarantee of participant awareness of their procedural rights is another critical concern. Under normal circumstances, individuals receive a written notice of their rights, which they acknowledge with a signature. In a remote format, this mechanism is more complex, potentially leading to situations where participants do not fully understand their rights and obligations (Razmetaeva, Yu., Barabash, Yu., & Lukianov, D., 2022).

The confidentiality of testimony and the independence of participants pose significant challenges. A remote hearing prevents effective oversight of whether a witness is under external pressure. For instance, a person giving testimony may be in the same room as other witnesses or third parties, potentially influencing their statements.

The protection of attorney-client privilege is also at risk. In a remote trial setting, the defense attorney and the accused may be in separate locations, making real-time communication difficult and compromising the right to an effective defense.

The formal nature of evidence examination in remote proceedings is another concern. Participants do not always have full access to case materials, which is particularly problematic for the accused, who may find themselves in a disadvantaged



position without direct access to the case file compared to other parties.

The loss of logical continuity in court proceedings due to technical interruptions, delays in transmitting electronic evidence, and connection failures may result in chaotic judicial proceedings, thereby affecting their efficiency.

Videoconferencing has become an integral part of judicial proceedings, enabling remote participation, increasing access to justice, and enhancing the efficiency of criminal case adjudication. Its use has become particularly relevant under martial law conditions, where the physical presence of participants in court hearings is often impossible or unsafe.

However, despite the wide opportunities offered by videoconferencing, its potential is not fully utilised by the courts. This is due to both technical limitations and regulatory gaps in legal regulation. The absence of unified standards for organising remote court hearings, issues of authentication of participants in the process, ensuring the confidentiality of court proceedings and observance of the adversarial nature of the parties remain pressing issues that require a comprehensive solution.

## 4 CONCLUSIONS

The development of digital technologies and emerging challenges, particularly the COVID-19 pandemic and the full-scale war in Ukraine, have necessitated the adaptation of the judicial system to new realities. Videoconferencing has become a key mechanism for ensuring the continuity of criminal proceedings; however, its application is accompanied by numerous challenges and issues in legal enforcement.

An analysis of the legal framework and judicial practice indicates that before the introduction of martial law, legislation significantly restricted the possibility of remote criminal case hearings. Judicial authorities generally adhered to an approach whereby participation in videoconferencing could only take place from court premises or correctional facilities. The first changes in this area were driven by decisions of the Council of Judges of Ukraine and the Supreme Court in 2022, which, considering security threats, allowed participants to use personal technical devices for remote participation in proceedings. The subsequent legislative codification of this mechanism in the new version of Part 5 of Article 336 of the Criminal Procedure Code of Ukraine marked a significant step in expanding the scope of remote criminal proceedings.

At the same time, the study revealed that the legal regulation of



videoconferencing in criminal proceedings remains insufficiently unified. In particular, several key issues arise:

Lack of clear mechanisms for participant identification: Courts do not always have the means to verify participants' identities, creating risks of unauthorized participation or identity fraud.

Inadequate participant awareness of procedural rights: Since there is no standardized mechanism for confirming a participant's awareness of their procedural rights in a remote format, this may affect compliance with the principles of fair trial.

Risks of outside influence on the participants in the process. The lack of physical control over the environment in which the accused, witness or victim is located may affect the objectivity of their testimony.

Communication problems between defence counsel and the accused. In the context of remote proceedings, the confidentiality of consultations between the defence counsel and his client may be violated, which affects the effectiveness of legal defence.

Difficulties with the examination of evidence. Lack of direct access to the case file, the possibility of incorrect display of documents or the inability to examine them in real time may negatively affect the implementation of the adversarial principle.

Technical obstacles. Connection interruptions, broadcast delays, and poor video quality can affect the perception of court participants and impede effective communication between the court and the parties to the proceedings.

Despite these challenges, the practice of remote court proceedings in Ukraine demonstrates significant potential to increase access to justice and ensure that cases are heard within a reasonable time. The introduction of videoconferencing allows for the participation of persons who cannot physically attend a court hearing, reduces the risk of delays in the trial and optimises administrative costs.

However, for this mechanism to function effectively, it is necessary to:

Develop unified standards for remote criminal proceedings, including a procedure for authentication of participants, confirmation of familiarisation with rights and introduction of a single algorithm for organising remote meetings.

Provide technical infrastructure for videoconferencing that meets the requirements of an uninterrupted connection, data protection and prompt access to case files.

Ensure compliance with the principle of equality of arms in the process,



including the possibility of confidential communication between defence counsel and the accused, proper access to evidence and the possibility of effective participation in court hearings.

To legislate measures to ensure the confidentiality of court proceedings in a remote format in order to minimise the risks of external influence on the participants in the process.

Thus, further development of the legal regulation of remote proceedings requires not only the improvement of legislative mechanisms, but also the formation of a unified court practice that will ensure a balance between the efficiency of the trial and compliance with the fundamental principles of criminal procedure. In the context of martial law, the use of modern technologies for the administration of justice is an inevitable step forward, but it must be accompanied by clear guarantees of protection of the rights of participants in criminal proceedings.

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