

COMPARATIVE AND ANALYTICAL STUDY OF THE COMPATIBILITY OF WITNESS TESTIMONY THROUGH VIDEOCONFERENCES WITH GOOD GOVERNANCE IN CRIMINAL PROCEEDINGS IN THE UAE AND JORDAN

Faisal Shawabkeh,* Tayil Shiyab**

Abstract: *The general public demand for openness in the conduct of investigative actions and trial participants' work is successfully satisfied with the introduction of new technologies that contribute to the establishment of objective disclosure of certain offenses. This article discusses the compatibility of admitting witness testimony through videoconferences with the concept of governance in judicial proceedings, comparing the approaches of the UAE and Jordanian legal systems, with the ultimate purpose of highlighting the advantages of using these modern methods. The article defines videoconferences, the practical and legal reasons for relying upon them and uses examples from the Emirati, Jordanian, and French systems, discusses the extent to which videoconferences are compatible with the concept of governance in the dispensation of judgments. The article suggests that the Emirati and Jordanian legislature develop explicit rules to regulate the process of electronic witness testimony paying attention to the use of new technological and security trends.*

Keywords: *courts, governance, judiciary, procedural rules, testimony, videoconferences*

I. INTRODUCTION

Witness testimony is a cornerstone piece of evidence in criminal proceedings.¹ Witnesses are the eyes and ears of the courts, and the testimony of witnesses in a criminal investigation has a significant impact on assessing the guilt or innocence of a defendant.² Testimony is defined as the establishment of a particular fact known to the witness through what s/he has seen or heard, is based on material facts, and is often productive in the case. However, it is subject to the evaluation and discretion of the trial court. Due to the importance placed on witness testimony as proof in criminal proceedings, recent developments in technology, and the increase in the ability for witnesses to move from one place to another, videoconferences have become increasingly relied upon by courts to work remotely for the realization of the concept of governance, reducing costs, and avoiding risks that might fall upon victims, defendants, and witnesses.³

Facing the crime and bringing a defendant to justice with the appropriate evidence are a challenge not only for those who work within the courts but the entirety of a nation's ju-

* Faisal Shawabkeh, Ph.D. Associate professor of the Department of Public Law at Al-Ain University, Al-Ain, UAE. ORCID: 0000-0002-3736-9587.

** Tayil Shiyab, Ph.D. Associate professor of the Department of Public Law at Al-Ain University, Al-Ain, UAE. ORCID: 0000-0003-0644-7690.

¹ AL-GHAMĀZ, I. I. *al-Shahāda ka Dalīl Ithbāt fī al-Mawād al-Jinā'iyya*. Ph.D. dissertation. Cairo: Ālim al-Kutub, pp. 1981a; AL-GHAMĀZ, I. *Witness as Evidence in Criminal Cases*. Ph.D. dissertation. Cairo: Book World, pp. 1981b; AL-WALIYA, A. Y. *al-Himāya al-Jinā'iyya wa'l-Amniyya lil-Shāhid: Dirāssa Muqārana*. Cairo: Dār al-Fikr al-Jām'ī, 2007; BOUJLOC, B. *Procédure Pénale. 24 édition*. Paris: Dalloz, 2014; MARQUISET, J. *Manuel Pratique De L'instruction*. Paris: Sirey, 1950.

² MERLE, R., VITU, A. *Traité de Droit Criminel Tome II Procédure Pénale*. Paris: Cujas, 1989.

³ SURÜR, A. F. *al-Wasī fī Qānūn al-Ijrā'āt al-Jinā'iyya*. Cairo: Dār al-Nah a al-'Arabiyya, 2014.

dicial structure. Therefore, legislatures in many states attempt to construct laws and procedures that will lead to the best way to solve this challenge. Many have found that the use of technology is the best alternative to the physical presentation of evidence. For example, they have integrated the use of the internet into criminal proceedings to bring together criminal defendants, victims, and judges alike. The use of remote videoconferences has become prevalent in criminal trials, developing the traditional method of taking witness testimony where an individual appears personally in front of the court.⁴ Moreover, this method of communication has become more amenable to legal uses in form of two-way audiovisual interaction for cross-examination and forensic assessment purposes, including determining competence to stand trial.⁵

Meanwhile there is also an opinion that this technological development has pushed states to question its admissibility in courts and whether judges can accurately ascertain the validity of the evidence provided through remote testimony and take advantage of the benefits and reduced costs that this method offers. Thus, when it comes to forensic psychiatry, misuse of the technical capabilities of videoconferencing can lead to errors in diagnosis and civil and procedural justice, which can lead to threats to public safety.⁶ Then, paying attention to the COVID-19 issues, it is still relevant to discuss and regulate the process of introducing such telecommunications software products that meet the specific privacy requirements in the law enforcement and judicial system.⁷ The opinions also concern legal aspects. Thus, the use of these technologies also raises complex legal issues, ranging from the constitutional permissibility of their use in legal processes and procedures for data protection, taking into account rapidly changing social and technological processes – personal access to data transmission technologies, infrastructure development, natural disasters, epidemics etc.⁸ So, in the US, in fact, the right to use videoconferencing in a civil jury trial may not only be permissible, but also necessary for the implementation of the Seventh Amendment to the US Constitution, especially if the Covid-19 pandemic lasts longer than can be expected, which sets a precedent for future similar situations. Indeed, one could argue that the Constitution requires judges to find a way to actualize the Seventh Amendment by restoring trial by jury – even, if necessary, by video conference.⁹ However, the amendment does not affect criminal proceedings and the role

⁴ AL-RA'ŪF MAHDĪ, A. *Sharḥ al-Qawā'id al-'Āmma fī Qānūn al-Ijrā'āt al-Jinā'iyya*. Cairo, 2008; AL-SATTĀR, F. A. *Sharḥ Qānūn al-Ijrā'āt al-Jinā'iyya*. Cairo: Dār al-Nah a al-'Arabiyya, 1986; AWĀD, K. M. *al-Ḍawābiḥ al-Shar'iyya wal-Qānūniyya lil-Adilla al-Jinā'iyya fī'l-Fiqh al-Islāmī wal-Qānūn al-Waḍ'ī*. Cairo: Dār al-Fikr al-Jām'ī, 2013; RAMADĀN, M. *al-Wajīz fī Sharḥ Qānūn al-Ijrā'āt al-Jinā'iyya al-Ittihādī*. Al 'Ayn: Maṭbū'āt Jāmi'a al-Imārāt al-'Arabiyya al-Muttaḥida, 2015.

⁵ MANGUNO-MIRE, G.M., et al. The Use of Telemedicine to Evaluate Competency to Stand Trial: A Preliminary Randomized Controlled Study. *Journal of the American Academy of Psychiatry and the Law Online*. 2007, Vol. 35, No. 4, pp. 481–489.

⁶ ADJOROLOLO, S., CHAN, H. C. Forensic Assessment via Videoconferencing: Issues and Practice Considerations. *Journal of Forensic Psychology Practice*. 2015, Vol. 15, No. 3, pp. 185–204.

⁷ SOURDIN, T., ZELEZNIKOW, J. Courts, Mediation and COVID-19. *Australian Business Law Review*. 2020, Vol. 48, No. 2, pp. 138–158.

⁸ TOKSON, M. J. Virtual confrontation: Is videoconference testimony by an unavailable witness constitutional? *The University of Chicago Law Review*. 2007, Vol. 74, No. 4, pp. 1581–1614.

⁹ SHAMMAS, M. *Advocacy Through the Computer Screen: The Permissibility & Constitutionality of Jury Trial by Video Conference*. New York: NYU School of Law, Public Law & Legal Theory Research Paper Series, 2020.

of juries in this context. Although the Federal Rules of Criminal Procedure appear to require physical presence even in this context, however, courts have held that videoconferencing may satisfy “presence” for arraignments when necessary.¹⁰ Given this factor, the discussion on this issue will still be preserved.

This article highlights the technical and legal aspects of the use of videoconferences for witness testimony, its admissibility, and its impact on the realization of the principle of judicial governance. This will be done by defining videoconferences, the reasons for their use in courts for taking witness testimony, and the legal basis for relying upon them in Jordanian and Emirati law. These systems will then be compared with French law to determine the extent to which they are in line with technological developments and their benefits to the justice system.

The purpose of this article is to assess the compatibility of videoconferences with criminal trials and to investigate whether this method is effective in providing witness testimony in a criminal proceeding and to what extent it affects judicial governance.

Modern studies related to the reactions of state bodies, the judiciary, the expert legal community, and the public to the current state policy regarding the process of hearing participants in criminal proceedings are devoted to such issues as:

- determining the appropriateness of using modern visual means of interrogating witnesses;¹¹
- assessing legislative support for the introduction of video communications technology;¹²
- assessing the level of the rapidly changing environment associated with the coronavirus pandemic, which has changed the way people live.¹³

There are also studies related to the technical issues of using special forensic software; they discuss the feasibility of forced disclosure of third-party information in order to improve the quality of digital evidence and ensure its infallibility for a fair trial.¹⁴ The mainstream can be explained by the current global interest to the digitalization and data protection and law enforcement access to digital evidence.¹⁵ Analyzing the literature of the last decade, attention was also paid to the application of these innovations in each group of countries: from the United States to UAE, India, China and Australia, considering their legislation, geography, etc.

¹⁰ United States v. Lawrence, 248 F.3d 300, 305 (4th Cir. 2001). In: *CaseText*. [online]. 27. 4. 2001 [2023-01-06]. Available at: <<https://casetext.com/case/us-v-lawrence-64#p301>>.

¹¹ AUSSEDAI, F. Les Témoignages par Vidéoconférence: Comparaison des Systèmes Canadien et Français'. In: *Les blogs pédagogiques* [online]. 19. 4. 2011 [2022-02-13]. Available at: <<https://blogs.parisnanterre.fr/content/lest-C3%A9moignages-par-vid%C3%A9oconf%C3%A9rence-comparaison-des-syst%C3%A8mes-canadien-et-fran%C3%A7ais-par-fann-0>>.

¹² ADEL, Y. *Remote Investigation and Trial*. Amman: The Arab Renaissance House, 2006.

¹³ SOURDIN, T., ZELEZNIKOW, J. Courts, Mediation and COVID-19. *Australian Business Law Review*. 2020, Vol. 48, No. 2, pp. 138–158.

¹⁴ VAN BUSKIRK, E., LIU, V. T. Digital Evidence – Challenging the Presumption of Reliability. *Journal of Digital Forensic Practice*. 2006, Vol. 1, No. 1, pp. 19–26.

¹⁵ SHURSON, J. Data Protection and Law Enforcement Access to Digital Evidence: Resolving the Reciprocal Conflicts between EU and US Law. *International Journal of Law and Information Technology*. 2020, Vol. 28, No. 2, pp. 167–184.

The procedures related to taking witness testimony through videoconferences are connected to effective governance, an issue that has become a necessary part of judicial practice. Judiciaries and other government agencies have relied upon videoconferences to enhance the culture of just judicial proceedings, transparency, and oversight. This article will discuss the extent to which videoconferences are compatible with understandings of judicial governance by outlining the definitions and principles of governance and clarifying the role of videoconferences in enhancing governance.

II. METHODOLOGICAL FRAMEWORK

Using the analytical method, the study examines the concept origin and evolution of using the videoconferences for witness testimony, as well as various approaches relating to their practical application. Moreover, this article utilizes the comparative legal methods, evaluating Emirati and Jordanian legal texts and comparing them to French and other European legislation related to the subject, namely:

International normative and legal regulations: resolutions of the European Court of Human Rights (ECHR), European Convention on Human Rights 1950.

National legal acts: Code de procedure penale – The French Code of Criminal Procedure 1959, United Arab Emirates Law No. 5 on the use of remote communication technology for criminal procedures 2017; United Arab Emirates in Federal Law No. 51 of 2006; Jordan Law No. 32 of 2017 amending the Code of Criminal Procedure, judicial decisions in Canada.

These countries were chosen taking into account political system stability, strong legal traditions, and the availability of new information and telecommunication technologies for their intended use. At the same time, acceptability and admissibility of the applicable legislation are considered to improve the prospects for the application of these innovations for the administration of justice.

The article is divided into the following sections:

- Defining videoconferences and the reasons courts rely upon them
- The legal basis for depending upon videoconferences for witness testimony
- The compatibility of videoconferences with witness testimony procedures.

III. RESULTS

A. Definition

Nowadays, a videoconference can be defined as an audiovisual communication that takes place simultaneously between parties interacting together via the Internet while being in different locations.¹⁶

The meeting through this technique can be a simple conversation between one person and another in private offices. Perhaps, it can be linked to several different and multiple sites between groups of people at the same time. In addition to visual and audiovisual

¹⁶ ADEL, Y. *Remote Investigation and Trial*.

broadcasting between groups of people, this technology can display documents and electronic files, display information through computers, and help one see and watch what is written on the display during the trial.

Institute of Electrical and Electronics Engineers (IEEE) standards describe the evolution of broadcasting and how video works. One of the H.320 standards shows how Video Conference (VC) works by ISDN lines, which shows how sound and image are transmitted over traditional communication lines or over optical fiber lines where ISDN circuits can transmit image and sound faster than normal lines. H.323 standard shows how VC is held via the Internet via TCP/IP or by IP.

The quality of video broadcasting depends on the circuits between the different sites. Using the H.323 standard, it is possible to obtain a high degree of clarity in the picture and sound, which requires 768 KB/s. This technology is reasonable and available in the facilities of the UAE judiciary. Abu Dhabi and Dubai courts have begun equipping justice facilities with this technology so that the judiciary can conduct a remote trial with this technology. Sometimes, the court or public prosecutors cannot meet personally face-to-face with the witness due to the distance or fear for his/her life, which requires the use of another technique of conversation, which is the telephone conversation or communicating via email or video (VC).

It is also important to specify the significance of the technical systems that are currently used to conduct legal proceedings. First of all, it will be about the Integrated Services Digital Network or ISDN. It is a digital network for integrated services provided by telecommunications companies as fast telephone lines with a high ability to transmit voice, image, and data in a digital way across the world via the telephone network. Emirates and Jordan Telecom provide such lines where ISDN technology is used. This technology has spread in Emirates and Jordan after liberalizing the telecommunications sector. It can be used in criminal justice facilities. This network can transmit voice, pictures, video, and data simultaneously on the same wires through using a technology called Time Division Multiplexing (TDM). This technology allows providing a set of services at one time by creating multiple channels via wires. Each channel is allowed to use an ISDN connection for a particular period of time. It is also possible to switch from one channel to another in such a way that each channel appears to be active all the time.¹⁷

Next means of communication is a constant continuous attendance system, in which the court or public prosecutors meet all the parties. This system links different places with the court or public prosecutors. This system allows communication between five geographically distant from each other places. The accused may be in the penal institution, the complainant may be before the court, and the witness may be in a different geographical area from the court's location. All are connected to video conferencing (the constant continuous attendance system) with the court body to conduct the trial remotely.

An extremely important component of the communication system is remote video and using IP. Videoconference technology uses IP-based systems more than ISDN, which provides several features and benefits. The most important of which is the use of a group of users and linking in one IP code. H.323 code or standard that deals with IP technology via

¹⁷ BREWSTON, R. L. *ISDN Technology*. Dordrecht: Springer Science + Business Media, 2012.

remote video is widely available. Some are available without cost and it is the cheapest option in some cases. The most common problem when using videoconference via IP technology is the unacceptable and slow picture quality.

B. Reasons to Use

Videoconference technology is used in hearing witnesses due to several reasons:

1. Witnesses are not obliged to be in the same location during the hearing. The witness could be hundreds of kilometers away from the court area or the public prosecutor.
2. Savings on travel and other expenses for the Criminal Justice Establishment (a witness in a criminal case can claim reimbursement for travel and other expenses). The witness, sometimes, is not limited to the same state. It can also be outside the borders of the state, which is expensive. In addition, the transfer of the accused sometimes from places of detention to the places where the trial or investigation sessions take place leads to an increase in the costs.
3. Protecting witnesses who witness against many organized crimes, terrorist crimes, human trafficking, and drug trafficking. Thus, resorting to videoconference helps avoiding risks, witness assaults, and influence on witnesses. In addition, using this technology helps the accused to avoid being subjected to abuse or assault, especially organized crimes or intentional killing.
4. Promoting international cooperation in combating crimes and mutual legal assistance between states. Whereas, states may resort to issuing international judicial delegations to hear some witnesses outside the borders of the region where the tribunal is convened and by diplomatic means. These are lengthy procedures which increase costs.
5. Cooperation between the judiciary, the public prosecutor, and the police in various criminal justice facilities.

C. The Legislative Basis for Resorting to Modern Video Communication Means (Videoconference) to Hear Witnesses

One of the conditions of witnessing is that it should be before the Judicial Council. Traditionally, witness in the Judicial Council means that there is no direct contact between the judiciary and the witness so that time and place in the Judicial Council unite. It was not acceptable to remotely hear from the witness even if the witness cannot be present due to a disability or illness. In such cases, the court moves to the place of the witness to hear his/her statements there. However, the technological development has laid new rules for investigation and trial using videoconference technology.¹⁸ Many countries have adopted this technology due to the great benefits that can be achieved. Thus, the US legislation has adopted this technique in the field of international judicial assistance in criminal matters when there is an international agreement. The Italian legislator also used this technique in criminal procedures when hearing witnesses in the investigation (Article 147

¹⁸ TOKSON, M. J. Virtual Confrontation: Is Videoconference Testimony by an Unavailable Witness Constitutional? *The University of Chicago Law Review*. 2007, Vol. 74, No. 4, pp. 1581–1614.

bis – penal procedures) under Decree No. 306 of 1992. Then the Italian legislator expanded its use under Law No. 11 of 1998 to include the trial of dangerous people while they were inside penal institutions which are hundreds of kilometers from the courtroom, without prejudice to the rights of the defense. While Canadian, Australian, and New Zealand legislation used modern videoconference means in the field of juvenile trial in order to avoid the bad psychological damage that may result from their personal attendance at court sessions and to give the juvenile the opportunity to give his/her words freely or fearfully.¹⁹

Videoconference helps achieve enhancement of international cooperation in combating crimes and mutual legal assistance between states, especially in the area of interrogating the accused and hearing witnesses when they are residing in the territory of a state other than the one that conducts the investigation and trial.

Videoconferencing is also important in providing protection for witnesses, victims and anyone else who cooperates with the criminal justice authorities in their case. Basically, this technique is used for witnesses in serious crimes, for example, organized crime and terrorist attacks, as well as juvenile crimes.²⁰ Videoconference has been used in many cases in Western countries. In 2001, in *Wright v. Wasilewski*'s case, the Supreme Court in Ontario, Canada accepted to hear from 20 US witnesses via videoconference because it reduced costs and helped the witnesses to form an impartial conviction.²¹ In 2007, in the *Archambault v. Kalandi* case, the Ontario Supreme Court issued a decision accepting the hearing of the Austrian witness via visual communication.²² The British Columbia Supreme Court also agreed to accept the use of visual media to hear witnesses when they could not move because of work and family obligations.²³ This procedure saves a lot of time, effort, and costs for witnesses and criminal justice facilities.

At the same time, the issue of using videoconferencing is still controversial and becomes the subject of legal controversy, especially in the context of the criminal process. This is especially true for the US judiciary. It should be emphasized that, under federal constitutional law, recourse to remote witnesses is generally inadmissible in criminal proceedings, especially in misdemeanor cases, under the confrontation clause, unless such remote testimony is necessary for protecting certain urgent public interests. Such an exception was made in *Maryland v. Craig*, 497 U.S. 836 (1990) when, during a trial at first instance, the injured minor was unable to testify in the physical presence of the accused due to severe emotional trauma. The trial court placed her in a separate room with the judge, prosecutor, and defense counsel so that the defendant and jury could only see her testimony through a live screen in the courtroom, and she could not see it. After the announcement

¹⁹ ADEL, Y. *Remote Investigation and Trial*.

²⁰ ABDULSATTAR, F. *Explaining the Code of Criminal Procedure*. Amman: Arab Renaissance Office, 1986.

²¹ AUSSÉDAT, F. Les Témoignages par Vidéoconférence: Comparaison des Systèmes Canadien et Français. In: *Les blogs pédagogiques* [online]. 19. 4. 2011 [2022-02-13]. Available at: <<https://blogs.parisnante.fr/content/lest%C3%A9moignages-par-vid%C3%A9oconf%C3%A9rence-comparaison-des-syst%C3%A8mes-canadien-et-fran%C3%A7ais-par-fann-0>>; En 2001, dans l'affaire *Wright v. Wasilewski*, la Cour suprême de l'Ontario accepte que les 20 témoins américains de la demanderesse américaine témoignent par vidéoconférence car cela permet de réduire les coûts du procès et des éventuels retards, tout en donnant la possibilité au juge et au jury de se faire une opinion plus juste que si les témoins n'avaient simplement pas comparus.

²² Ibid. En 2007, dans l'arrêt *Archambault v. Kalandi* rendu également par la Cour suprême de l'Ontario, un témoin autrichien est autorisé à témoigner via vidéoconférence.

²³ Ibid.

Legislative changes regarding the availability of the use of videoconferencing for the administration of justice were also recorded in France.

The French legislator has inserted these means in the Criminal Procedure Law with the text of Article 706, paragraph 71, which permits the use of visual means of communication in case of necessity at the stage of investigation or trial to hear witnesses residing in different French regions.²⁹ However, given the threatening situation related to the spread of the pandemic in the country, on the basis of the adopted Law on the state of emergency No. 2020-290 of March 23, 2020 to combat the COVID-19 epidemic and Decree No. 2020-303 of March 25, 2020 d. on the adaptation of criminal procedure rules based on the Law on the state of emergency No. without the detainee being able to object, which could result in depriving the detainee of the opportunity to appear physically before his judge. In this regard, a complaint was submitted to the French Constitutional Court, stating that such risks on the part of the investigation may lead to a violation of the rights of the defense, which cannot be justified by the goals of the proper administration of justice and the protection of public health. Based on the results of the consideration, the Constitutional Court decided to recognize Part 1 of Article 5 of Resolution No. 2020-303 of March 25, 2020 as unconstitutional.³⁰ As a result, it should be noted that in order for the videoconference to take place, it is necessary to obtain consent from the defense again.

The Emirati legislator also adopted the use of videoconference technology in trial procedures, Federal Law No. 5 of 2017 was issued regarding the use of remote communication technology in criminal procedures. The law was published in the last issue of the Federal Official Gazette in Article 2 of the Federal Law. It is incumbent on the competent authority to use the technique of remote communication in criminal procedures with the accused, the victim, the witness, the lawyer, the expert, the translator, the plaintiff in civil right, or responsible for the civil right. According to Article 4 of the Federal Law, the head of the competent authority or his/her authorized representative may take action remotely whenever s/he deems it necessary to do so at every stage of the criminal case in a manner that achieves the ease of evidentiary, investigation, or litigation procedures. It is also permissible to take measures remotely outside the department of the competent emirate in coordination with the competent authority if there is someone to take action with.³¹ The accused also has a lot of legal rights that he can use in defending his legitimate interests during the trial. Paragraph (3) item (D) of Ministerial Decree No. (259) of year 2019 on Procedural Manual for the Regulation of Litigation Using Electronic Means and Telecommunication in Criminal Proceedings states that "After coordination with the competent authority, the accused's lawyer may meet with his/her client or appear with him/her during his/her remote trial. In that

²⁹ Code de procédure pénale, 1959, les dispositions des troisième à huitième alinéas de l'article 706-52 sont alors applicables.

³⁰ Conseil constitutionnel. Décision n° 2020-872 QPC du 15 janvier 2021. M. Krzysztof B. [Utilisation de la visioconférence sans accord des parties devant les juridictions pénales dans un contexte d'urgence sanitaire]. In: *Conseil-constitutionnel.fr* [online]. 15. 1. 2021 [2023-01-06]. Available at: <<https://www.conseil-constitutionnel.fr/decision/2021/2020872QPC.htm>>.

³¹ Article 5 of Federal Law No. 5 of 2017 regarding the use of remote communication technology in criminal procedures

latter case, the lawyer should be technically ready as necessary and familiar with the use of the devices that enable him/her to communicate with the competent court, as per the circumstances, so that the sound and the image should be fully clear, provided that this shall take place in a place befitting the prestige of the court.³² The accused may, at the first session of his/her trial via the technique of remote communication in any degree of litigation, request that he/she appears in person before the court, and the latter decides whether to accept or reject his/her request.³³ The method of remote trial is applied by means of video communication technology with the detainees and the inmates of the penal institutions. This method reduces the possibilities of escape, the possibility of a crime during transportation and waiting, and during the deliberation of the sessions. It also enables to handle criminal case hearings, minor misdemeanors, and issue decisions and rulings from anywhere and at any time through the live video session.³⁴ The Center for Lease Dispute Resolution in the Emirate of Dubai has announced the start of its first real-time trial in partnership with the Wasl Asset Management Group in Dubai, on the sidelines of its participation in 'GITEX Technology Week 2018'.³⁵ It should be noted that the growing COVID-19 pandemic has only further stimulated the use of videoconferencing during court hearings. According to UAE practice, the introduction of digital technologies has been very fast, since the "first among equals" of the emirates of Abu Dhabi, where they announced that they would conduct a trial using video recording.³⁶

In general, speaking about the purely criminal nature of legal proceedings, information in this area is not widely presented, in contrast to civil proceedings or business arbitration. This may be due to the traditional closed nature of the system, and in the Arab world, trends towards promoting an open data policy are not fully supported. It is need to get access – register for a court hearing, express motivation for participating in these hearings, after which the interested subject can get access to the broadcast through the Secretariat of the Court.³⁷ Moreover, some categories of cases cannot be accessed at all because the case has delicate circumstances, which is typical for both the criminal sphere and the sphere of family disputes. However, this does not mean that the judiciary renounces the principle of public hearings. It is understood that trials should be held in the presence of the public, which should be able to have access to and be informed about trials without discrimination, and to follow all debates, statements and decisions and decisions taken in the course of them. At the same time, con-

³² ALKRISHEH, M. Guarantees to the use of telecommunication technology in the criminal proceedings in the United Arab Emirates. *The Lawyer Quarterly*. 2020, Vol. 10, No. 4, pp. 209–520.

³³ Article 6 of Federal Law No. 5 of 2017 regarding the use of remote communication technology in criminal procedures

³⁴ ALBAY. *Remote Criminal Court' in Dubai*. Dubai: Dubai Media Incorporated. In: *albayan.ae* [online]. 2018 [2022-02-13]. Available at: <<https://www.albayan.ae/across-the-uae/news-and-reports/2018-07-15-1.3315458>>.

³⁵ SAYIDATY. Dubai Witnesses First Remote Real Estate Dispute Resolution Litigation. In: *sayidaty.net* [online]. [2022-02-13]. Available at: <<https://www.sayidaty.net/node/786811>> -أسرة ومجتمع/أخبار -أسرة ومجتمع/دي-تشهد-تنظيم- photo/1>.

³⁶ THANVI, I. A. UAE legal amendments during the Covid-19 pandemic. *Law & Political Review*. 2022, Vol. 7, pp. 109–127.

³⁷ *Ibid.*

fidentiality is strictly required, namely, it is forbidden to illegally extract, copy records of remote proceedings, except when authorized by the prosecutor's office or the competent court, as the case may be.³⁸

Beyond UAE, the method of remote trial via videoconference has been recently identified in Jordanian legislation according to Law No. 32 of 2017. In Article 158, paragraph C of the Code of Criminal Procedures, the Jordanian legislator mentions that in light of the provisions of Article 74 of this law and items A + B of this paragraph, the Prosecutor uses the Modern Technical Court in accordance with the provisions of Clause D of this paragraph in order to protect witnesses under eighteen years upon giving their witness. These means allow any opponent to discuss the witness during the trial. This witness is considered acceptable evidence in the case. Paragraph D of the article also indicates that for the purposes of Paragraph C of this Paragraph, the use of modern technology is obligatory in the event that the victim's statements are heard in assault crimes unless this is impossible and permissible in all other cases. The public prosecutor or the court may use modern technologies in the investigation and trial procedures without prejudice to the right to debate, including the trial of the inmate remotely from the correction and rehabilitation center in the manner indicated in the legislation.³⁹ Modern tools, such as tapes and CDs, are subject to the prescribed protection measures to preserve their secrecy and the privacy of the witness or the inmate.⁴⁰

Finally, the legislation that accompanies technological development in criminal justice facilities has led to fast litigation and lessening the burden on the justice facility, in addition to facilitating international cooperation in combating crime. Nevertheless, it is impossible not to pay attention to the current gaps in the implementation of videoconferencing practices. These include the unsettledness of offices for holding court hearings in remote cities, the lack of highly qualified personnel capable of administering technological processes and maintaining information security uninterrupted. And this is typical not only for Jordan, but also for many Arab countries, considering their territorial size and economic situation.⁴¹ However, in Jordanian realities, there are attempts to move the process off the ground. Thanks to international cooperation, law enforcement agencies and specialized agencies within the country have the opportunity to protect victims from possible emotional upheavals of victims. This is especially true for the psychological protection of socially unprotected categories of victims, for example, women, children, the elderly who have suffered from domestic violence. Thanks to the introduction of videoconferencing practices, they will not have to see the criminal in person, who caused both possible physical injury and emotional suffering.⁴² The experience of training the Family

³⁸ Article (8) of UAE Law No. (05) of year 2017 on the use of telecommunication technology in criminal procedures, and Article (19) of the UAE Ministerial Decree No. (259) of year 2019 on the Procedural Manual for Regulating Litigation Using Electronic Means and Telecommunication in criminal proceedings.

³⁹ Article 158, paragraph 2, of Law No. 32 of 2017 amending the Code of Criminal Procedure

⁴⁰ Article 158, paragraph 3 of Law No. 32 of 2017 amending the Code of Criminal Procedure

⁴¹ ALL, E., AL-JUNAID, H. Literature review for videoconferencing in court "E-justice-Kingdom of Bahrain". *2nd Smart Cities Symposium*. SCS, 2019, pp. 1–5. In: *IET Digital Library* [online]. 2019 [2023-01-06]. Available at: <<https://digital-library.theiet.org/content/conferences/10.1049/cp.2019.0181>>.

⁴² SARHAN, T. M. A. Family Protection Department (FPD) in Jordan: The legal arm to protect women and children from violence, exploitation, and abuse. *Journal of Humanities and Social Sciences*. 2019, Vol. 2, No. 2, pp. 1–5.

Protection Department (FPD) in Jordan will contribute to an overall improvement in the protection of victims and witnesses in the detection of crimes and the judicial process.

D. Compatibility of Videoconferences with Witness Testimony Procedures

Although differing interpretations exist to the precise meaning of ‘governance’, the term refers in general to implementing the principles of the rule of law, transparency, oversight, and the participation of individuals and non-governmental organizations (NGOs) in the creation of general policies and decision-making in the judicial process. Governance focuses on changing the role of government from individual to participatory creation of public policy and decision-making and coordination between these participants in the management of the state. Therefore, it is accurate to state that a government, in addition to its role as executor of public policy, is also responsible through governance to include the participation of other stakeholders in public services, such as civil society and individuals, in the management and betterment of the level of service provided to the public and oversight of government performance. The adoption and application of governance in the public sector, particularly in the judiciary, impact the effectiveness of public service programs and enhance the feeling that individuals belong to and participate in the protection of their rights and freedoms. Governance in the judicial system is not an end in itself. Instead, it is a method through which the quality of services presented to litigants is improved.⁴³ Therefore, governance is an essential requirement to guarantee the development of the judiciary and effective decision-making that takes into account justice and protects the rights and freedoms of individuals who interact with the judicial system. For government institutions to play their role effectively, they must apply the principles of good governance in their daily activities, particularly in their administrative decisions, as governance is a system of institutional oversight and guidance. The responsibilities, rights, and relationships between administrators, employees, and customers are defined and the foundations and processes necessary for effective institutional decision-making are clarified through governance. The result is an institution that stands on its own, enhancing justice, transparency, and accountability and deepening trust and credibility in the work environment. There is no doubt that good governance is connected to a balance between strategic and practical responsibilities in an organized and knowledgeable way. It is also clear that a government entity managed by laws and executive procedures cannot be considered implementing governance except if it applies the following:

The Rule of Law – Meaning that authorities and individuals are subject to the law. This is a fundamental part of governance that must be present in legal entities that are organized justly and honestly to guarantee the protection of individual rights.

Participation of Stakeholders – Participation is a foundation of governance and begins with the work of leadership and employees to serve individuals and offer services to the public.

Transparency – Meaning that making and implementing decisions are done through

⁴³ AL-BASSĀM, B. A. A. *al-Ḥūkama fī al-Qiṭā’ al-‘Ām*. Riyadh: Maktabat al-Malik Fahad al-Wa aniyya, 2016; AL-JĀBIRĪ, Ī. M. *al-Wajiz fī Qānūn al-Ijrā’ āt al-Jizā’ iyya al-Imārātī*. Alexandria: Dār al-Jāmi’ a al-Jadida, 2014.

legal methods that permit the presentation of information through means such as the media and public statements made by government institutions.

Responsiveness – Effective governance requires responding to the needs of all stakeholders in a reasonable and set time.

Compatibility – Individuals and departments within a government ministry hold differing opinions and approaches with varying consequences. Effective governance means creating effective methods to coordinate between entities, leading to a greater and more comprehensive agreement and consistency between stakeholders.

Efficiency and Effectiveness – Effective governance means that institutions within a society seek to fulfill the needs of society through the best use of available resources, resulting in the efficient investment of these resources.⁴⁴

Through an analysis of these foundations and principles, which constitute the understanding of 'governance', one can suggest that governance places a moral and legal framework for the complete operation of an institution based on the laws, systems, and decisions in place to regulate the relationship between the core parties of the institution. This framework sets out the responsibilities of each party, achieving transparency and justice while simultaneously combating corruption to reach quality and excellence in institutional actions to reach the set goals.

With regard to the role of videoconferences in enhancing governance, the UAE has taken significant steps in development and modernization in all governmental institutions, particularly the judiciary. This process aims to improve the working of the court and achieve better quality outcomes not limited to the outward formalities of modernity, such as using modern data collection or adopting the latest technology. The development in the UAE also includes integrating the latest ideas, concepts, and practical steps in the judiciary for a fast and effective dispensation of justice.

The process of developing and modernizing the judiciary requires a comprehensive view of three areas: the human side (judges and lawyers), the legal framework and procedures that should be adhered to, and the physical construction of courthouses. Additionally, development should include a search for the ultimate goals desired. It is essential to note the external motivations that have led the Emirati legislature to incorporate remote trials and witness testimony. The need of the UAE to respond to the requirements of development and modernization to ease the access of citizens and litigants to justice has pushed the UAE government to implement modern methods of communication and conduct remote judicial proceedings.

The modern methods used by the UAE, particularly taking witness testimony through videoconferences, embody the concept of governance in the judiciary to ease access for litigants to reach justice and reduce the financial burden on litigants quickly. Videoconferences also reduce the time and effort required for individuals to exercise their rights. In addition, videoconferences are also compatible with the principles of just trials, ensuring the transparency of procedures and guarantee the proper application of justice. The purpose of using videoconferences is to speed up the work, especially if one of the defen-

⁴⁴ Federal Authority for Government Human Resources. Official Web site. In: *fahr.gov.ae* [online]. 2021 [2022-02-13]. Available at: <<https://www.fahr.gov.ae/>>.

dants or witnesses are involved in more than one case or if a defendant is imprisoned hundreds of kilometers away, making the case more efficient if the testimony can be taken remotely, as the cost and effort of bringing them to testify in front of the court are quite significant.

The application of video conferences in taking witness testimony does not negate the principles of verbal testimony, the right of an individual to respond to the charges against them in court, and the foundations of a just trial. Videoconferences have merely transferred the traditional concepts of verbal testimony to modern methods of electronic communication. This was explicitly referenced in Article 7 of the amended Criminal Procedure Code, which allows the attorney of the accused to meet his/her client or be present with him/her during investigation or trial through remote means, in coordination with the relevant authorities and in accordance with the rules of the Criminal Procedure Code.

What distinguishes the use of videoconferences in testimony is that it does not rely upon written evidence, as testimony is taken without written documents. This complies with the goal of remotely conducted trials to create a paperless society, removing the large amount of paperwork usually produced in a trial. It also vastly reduces the need to transfer and store paperwork in the courthouses, ensuring that important information is not lost in the process.

The use of videoconferences embodies essential principles of governance, namely effectiveness and efficiency, as the needs of litigants are met through technology with a high degree of effectiveness. The UAE has worked to train judges, administrators, and lawyers to work with modern methods of communication so that they will positively impact judicial governance. To effectively apply the procedures of taking witness testimony remotely, the UAE government has made three crucial elements available to the courts:

(a) 'Data Judges' – These are a group of government judges trained to conduct trials online. These judges implement trial procedures remotely, including taking witness testimony and record the information they receive in a digital trial file. This file is then made available for the judge, lawyers, and other parties to the case to view.

(b) 'Electronic Clerks' – This is a group of legal employees who are specialists in computers, programming, and website design, qualified to work in this field, and able to fulfill several roles in the trial procedure.

(c) Website Management and Programmers – This includes a group of managers and technicians who, although not present in the court, work alongside it. Their duties include following up with the smooth running of trials and repairing technical difficulties that might occur during witness testimony. They also work proactively, protecting the court's electronic system from viruses and preventing attempts at hacking, in addition to helping clerks to fulfill their daily tasks.

(d) 'Digital Lawyers' – These are the attorneys who have the right to file cases in these courts and represent a modern update to the legal profession. They carry licenses issued by the court and are certified in computers, communication, and information technology. The courts also provide them with the necessary technology to carry out their duties professionally and transparently.

IV. DISCUSSION

In addition to all the positive effects of the use of telecommunication technologies in criminal proceedings, there should still be a discussion of issues arising from the practice of using videoconferencing in litigation. First of all, this concerns such a defining area as forensic medicine, in particular, forensic psychiatry. Forensic examinations performed using video can also be challenged, where questions may arise about the appropriateness of the technology and the accuracy, validity and reliability of the results.⁴⁵

Nowadays, humanity faces new challenges related to the public health. Indeed, an issue with the COVID-19 responses arises because videoconferencing tools such as Zoom and Skype prioritize openness and commercial viability over privacy and security, and therefore such systems are not widely used in the legal domain. It is further suggested that community responses to the pandemic need to be informed and tailored to meet the specific needs of citizens in order to combat the inevitable tsunami of litigation that will occur as a result of COVID-19 – especially in the family, insolvency, commercial, civil, labor, and criminal law fields. Indeed, it was suggested that in order to manage and resolve the coming wave of disputes, the issues associated with videoconferencing technology and its applicability to the varying legal domains need to be addressed.⁴⁶

Then, the financial side of the issue can also complement the problem. It can be promoted that the argument of being a cost-beneficial process is right only in the long run, initial installation costs are a heavy expenditure that the judiciary has to bear for the adoption and integration of video conferencing as a part of the permanent court proceedings.⁴⁷ We should not ignore the problem of infrastructural equipment of locations that provide judicial review. Despite the processes of digitalization and the ability to conduct meetings “from home” in the manner of Dubai in the UAE, many regions in the UAE, Jordan and other countries of the Arab world have not succumbed to such urbanization as Dubai or Abu Dhabi. Many other locations will need extensive refurbishment of the premises to receive and connect new equipment, ensuring a fast, uninterrupted and secure data transfer process. Delay in these steps may exacerbate technical inconveniences that may adversely affect a fair trial.⁴⁸

The situation can be difficult for another important category of participants who make fateful decisions in the criminal process – judges, which have fundamental judicial obligation to control the conduct of court proceedings in order to achieve a fair trial. The risks of behind-the-scenes pressure during the broadcast of the hearing can affect the intransigence and sincerity of the testimony of witnesses, which have a chance to affect the impartiality of the judge. Thus, to solve the mentioned problem situations, judges should do active steps to exert control and authority in a video-linked

⁴⁵ ADJOROLOLO, S., CHAN, H. C. Forensic Assessment via Videoconferencing: Issues and Practice Considerations. *Journal of Forensic Psychology Practice*. 2015, Vol. 15, No. 3, pp. 185–204.

⁴⁶ SOURDIN, T., ZELEZNIKOW, J. Courts, Mediation and COVID-19. *Australian Business Law Review*. 2020, Vol. 48, No. 2, pp. 138–158.

⁴⁷ PATEL, S., MUKHERJEE, R. R., SNIGDH, S. Videoconferencing: An Emerging Concept in Courtroom. *International Review of Law and Technology*. 2020, Vol. 1, No. 1, pp. 1–15.

⁴⁸ AL-NAIMAT, O., AL-DABBAS, N. A., MAAQQBEH, M. M. F. Transition to E-litigation as a mechanism to activate e-court in Jordan: an analytical study. *Journal of Legal, Ethical and Regulatory Issues*. 2021, Vol. 24, No. 1, pp. 1–10.

court proceeding and understand how it may impact the perception of their authority and their role.⁴⁹

The study also touched upon the behavioral subtext, which also became the subject of scientific discussions. Face-to-face and online communication between people can form subjective assessments of any employee interviewing a witness or an accused. Depending on the legal system, the question of the equivalence of testimony in both interview formats remains controversial. However, all the same, these controversial points will not be able to change the practical benefits of distant communication with much lower physical and financial costs, which is perceived exclusively with optimism.⁵⁰

It is hard to disagree that the volume and complexity of what we know have exceeded our ability to deliver its benefits correctly, safely, or reliably.⁵¹ Thus, to keep pace with the times and to carry out their work at the highest level, the judiciary and its administrative staff should increase their involvement in the specifics of digital systems, and the multiplicity of discussions could update the topic as a whole and give a new image of the future of the law enforcement and judicial system.

V. CONCLUSION

The study identified the mechanisms and expediency of videoconference regime for the efficient administration of justice. After discussing the use of videoconferences in taking witness testimony and their compatibility with the principles of governance in the judicial process in the UAE and Jordanian legal systems, compared with French law, it has become clear that these laws have prioritized videoconferences and created unique rules to regulate them. The article has reached the following results. Firstly, videoconferences have been proven an effective and modern method for conducting investigations and trials remotely and are compatible with the principles of judicial governance. Secondly, although not traditional methods, videoconferences promote transparency, speed up the trial process, and reduce the costs and effort necessary to protect litigants and witnesses. Thirdly, the legal systems studied in this article accept the possibility of using videoconferences to take testimony from witnesses and conducting trials remotely. The legal systems studied have also made several legal amendments and additions to reflect this possibility.

Moreover, as mentioned in the paper, videoconferences can embody one of the essential principles of governance by raising efficiency and effectiveness, responding to the needs of litigants through the use of reliable modern technology. This will help to simplify and structure the conduct of the entire criminal process, on the basis of which it is even more likely to make an objective decision. Eventually, the use of videoconferences in taking witness testimony has transferred the understanding of law from the traditional view

⁴⁹ ROWDEN, E., WALLACE, A. Remote Judging: The Impact of Video Links on the Image and the Role of the Judge. *International Journal of Law in Context*. 2018, Vol. 14, No. 4, pp. 504–524.

⁵⁰ NASH, R. A. et al. Remembering Remotely: Would Video-Mediation Impair Witnesses' Memory Reports? *Psychology, Crime & Law*. 2014, Vol. 20, No. 8, pp. 756–768.

⁵¹ SUSSKIND, R. E., SUSSKIND, D. *The Future of the Professions: How Technology Will Transform the Work of Human Experts*. Oxford: Oxford University Press, 2015.

of verbal testimony to a modern view of a just trial, as indicated in the UAE by Article 7 of the amended Criminal Procedure Code.

Moreover, given the detailed analysis of the scope of national legislation, the most important recommendations from this study are presented. Based on the successful experiences of the UAE, Jordan, and France in the use of videoconferences to conduct trials remotely, it would be relevant to organize and manage training sessions to enhance the competencies of those who work within the judiciary (in both courts and the public prosecutor office) through workshops and lectures that will allow them to work more effectively through videoconferences. This will be especially true for the less urbanized areas of both the UAE and Jordan, as some regions are still experiencing difficulties with the necessary network equipment, which limits the quality of the litigation process. It is categorically impossible to ignore the work with the affected categories, on the moral state of which the perception of the case and the objective process objective process of testifying, which is still far from perfect.

This article encourages the UAE and Jordanian legislatures to outline the legal system necessary for the use of videoconferences as well as to create special legislation that clarifies the court's jurisdiction in relation to a witness during the remote testimony, especially if a witness is from another country.