

## ПОРІВНЯЛЬНЕ ПРАВОЗНАВСТВО

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### REMOTE JUSTICE: ENHANCING ACCESS TO JUSTICE - A COMPARATIVE STUDY OF EU POLICIES AND UKRAINE'S EXPERIENCE<sup>1</sup>

The article is devoted to a comprehensive and comparative study of the theoretical and practical aspects of remote justice - a complex, interdisciplinary concept that inherently integrates advanced legal doctrines and modern technological solutions. This study aims to systematically compare, analyze, and evaluate the strategic policies and empirical practices of implementing remote technologies within the judiciary, with a primary focus on their ultimate effectiveness in improving and safeguarding access to justice. As a crucial, evolving component of electronic justice, remote justice involves the strategic deployment of innovative information and communication technologies to conduct various stages of court proceedings efficiently, thereby eliminating the traditional requirement for the physical attendance of participants in the courtroom.

The author rigorously investigated the efficacy of remote court proceedings as a viable means of guaranteeing uninterrupted access to justice, meticulously taking into account a wide array of interrelated legal, technical, psychological, and social factors. Furthermore, the study provides concrete, practical suggestions and actionable recommendations for the future structural and legislative advancement of this modern form of justice. It was firmly established that remote court hearings offer numerous tangible benefits, including significantly increased procedural efficiency, broader geographical accessibility, and reduced administrative and logistical costs for all parties involved. However, the widespread adoption of these technologies also poses critical, multifaceted challenges. These include ensuring robust data confidentiality, improving software quality, preventing digital exclusion, and maintaining strict compliance with fundamental fair trial guarantees.

Ultimately, it was concluded that the admissibility and procedural validity of videoconference court sessions must strictly comply with international fair trial standards, ensuring that technological convenience never compromises human rights or statutory protections. When properly regulated and securely implemented, remote court proceedings serve as a highly effective, indispensable means of ensuring continuous access to justice, public safety, and the timely consideration of legal cases, particularly during emergency situations or global crises.

**Keywords:** *remote justice, access to justice, e-justice, videoconferencing, fair trial guarantees, judicial technologies, public safety.*

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**Паскар Ауріка. Дистанційне правосуддя: покращення доступу до правосуддя - порівняльне дослідження політики ЄС та досвіду України.**

Статтю присвячено комплексному та порівняльному дослідженню теоретичних і практичних аспектів дистанційного правосуддя - складного, міждисциплінарного поняття, яке органічно інтегрує передові правові доктрини та сучасні технологічні рішення. Метою цього дослідження є систематичне порівняння, аналіз та оцінка стратегічної політики й емпіричної практики впровадження дистанційних технологій у судову систему з основним акцентом на їхню кінцеву ефективність у забезпеченні та захисті доступу до правосуддя. Як ключовий елемент електронного правосуддя, що постійно розвивається, дистанційне правосуддя передбачає стратегічне розгортання інноваційних інформаційно-комунікаційних технологій для ефективного проведення різних стадій судового процесу, що дозволяє усунути традиційну вимогу обов'язкової фізичної присутності учасників у залі судових засідань.

Автор детально дослідив ефективність дистанційного судочинства як життєздатного засобу гарантування безперервного доступу до правосуддя, ретельно врахувавши широкий спектр взаємопов'язаних правових, технічних, психологічних та соціальних факторів. Крім того, у дослідженні сформульовано конкретні практичні пропозиції та дієві рекомендації для подальшого структурного та законодавчого вдосконалення цієї сучасної форми правосуддя. Було чітко встановлено, що дистанційні судові засідання мають численні відчутні переваги, зокрема суттєве підвищення процесуальної ефективності, розширення географічної доступності та зниження адміністративних і логістичних витрат для всіх залучених сторін. Водночас широке впровадження цих технологій породжує серйозні багатоаспектні виклики. До них належать забезпечення надійної конфіденційності даних, мінімізація технічних збоїв, підвищення якості програмного забезпечення, запобігання цифровому виключенню та дотримання суворих вимог фундаментальних гарантій справедливого судового розгляду.

Автором було зроблено висновок, що допустимість та процесуальна правомірність судових засідань у режимі відеоконференції повинні чітко відповідати міжнародним стандартам справедливого суду, гарантуючи, що технологічна зручність ні за яких обставин не нівелює права людини чи законодавчо закріплені гарантії. За умови належного регулювання та безпечного впровадження дистанційне судочинство є високоефективним і незамінним засобом забезпечення безперервного доступу до правосуддя та своєчасного розгляду судових справ, особливо в умовах надзвичайних ситуацій, глобальних криз або періодів дії форс-мажорних обставин.

**Ключові слова:** дистанційне правосуддя, електронне правосуддя, судові засідання в режимі відеоконференції, доступ до правосуддя, гарантії справедливого судового розгляду, судові технології, публічна безпека.

**Introduction.** In recent years, technological advancements have changed our lives forever, and the justice system is no exception. Global trends necessitate making legal protection accessible not only to urban residents, but also to those who live remotely from the centers of justice. Today, remote justice is a necessary tool that enables access to justice. However, remote forms of justice pose complex challenges for ensuring the reliability and fairness of the judicial process. In this regard, the issue of ensuring fairness and reliability of the remote justice has become relevant for academic research and legislative initiatives.

Remote court proceedings are one of the revolutionary innovations that have emerged in the field of justice in recent times. Through video conferencing and other electronic

communication tools, court hearings and proceedings can be conducted online, regardless of the territorial location of the participants. This became particularly relevant during the COVID-19 pandemic and continues to be so during the war in Ukraine, where ensuring the safety and health of participants in the trial is a priority. Remote court proceedings are a way of ensuring the functioning of courts in emergency circumstances, continuing the administration of justice and ensuring access to justice. At the same time, remote court proceedings are not just a response to current situation but also a new challenge for the justice system, which requires courts and other interested parties to adapt to new technologies and develop new approaches to solving legal issues.

The main problems related to remote hearings include, in particular, such issues as ensuring data confidentiality and protecting information from abuse and unauthorized access to it, technical problems, software quality, compliance with fair trial guarantees, etc. Resolving these issues is essential to ensure reliable and effective remote justice and an important task in ensuring access to justice. The scientific research issue in this area is related to the fact that the question of using information and communication technologies to conduct remote court hearings has an interdisciplinary nature, being at the intersection of law and technology. It is noted that the study of law and information technology is associated with a contradiction arising from the fact that technology develops rapidly and encompassing such concepts as internationalization and globalization, while traditional law usually cannot react quickly to technological progress and is mostly limited by national borders [6, p. 291]. Undoubtedly, the modern justice cannot exist without innovative technologies. However, it should be taken into account that they have the potential both to improve access to justice and to increase inequality. Without sufficient conceptualization, we risk losing the ability to use the opportunities of legal technologies and to face the challenges that they generate [22, p. 67].

79

The purpose of the study is a comparative analysis of the policies and practices of the use of remote technologies in the judiciary in the European Union and Ukraine to determine their effectiveness in improving access to justice, taking into account legal, technical, and social aspects, and to provide practical recommendations for further development of this form of justice.

**The aim of the article** is to conduct a comprehensive comparative analysis of the theoretical frameworks and practical applications of remote justice, examining European Union policies alongside Ukraine's unique legal and technological experience to evaluate their impact on enhancing access to justice.

The **methodological framework** of the study is based on a combination of general scientific and specialized legal methods. The comparative-legal method serves as the primary tool for analyzing and comparing EU judicial policies with Ukraine's legislative and practical experience in implementing remote justice. The systematic and structural-functional approaches were applied to explore remote court proceedings as a component of electronic justice, taking into account legal, technical, and social factors. Additionally, the formal-legal method was used to interpret procedural codes and fair trial guarantees, while logical-analytical synthesis allowed for the formulation of practical suggestions aimed at enhancing access to justice through remote technologies.

**Results and Discussion.** In the Recommendations of the Council of Europe on e-democracy, electronic justice is defined as the use of information and communication technologies (ICT) in the administration of justice by all participants in the process, improving the quality of judicial services for citizens and businesses. Electronic justice covers a variety of measures, including the possibility to make online applications to the

court, the use of electronic means of communication and data exchange between the court and other participants in the process, access to court information, conducting court hearings through video conferencing, electronic document management, online access to court decisions, etc. [19].

Remote justice is defined as a component of electronic justice, that covers the process of consideration and resolution of court cases using information and communication technologies without the physical presence of participants in the courtroom (including judges and court personnel) [25, p. 73]. Remote justice can be seen as an additional step towards ensuring access to justice, especially in terms of the physical distance of the court and the reduction of court costs related to court appearances. Improving citizens' access to justice contributes to increasing the efficiency of the judicial system and the quality of justice.

The European Commission for the Efficiency of Justice (CEPEJ) proposes a comprehensive understanding of remote hearings as hearings conducted via video conference - a system that allows simultaneous two-way transmission of image and sound, thereby providing visual, audio, and verbal interaction during remote hearings [9]. Remote judiciary means conducting a court session via video conference with the remote participation of participants in court proceedings.

Online dispute resolution is considered as a form of alternative dispute resolution that uses ICT and the Internet to simplify and speed up dispute resolution [1]. The use ICT in the field of justice helps to increase the efficiency and transparency of the judicial process. However, there is a risk that the complete replacement of the traditional court procedure with a technological one may limit access to justice for some people, particularly for the underprivileged or those with limited access to the Internet or insufficient skills in using electronic technologies. In light of this, the Parliamentary Assembly of the Council of Europe calls on member states to use new technologies to ensure access to justice, but emphasizes that they must also guarantee that there are alternative forms of access to justice for categories of people who are disadvantaged in this regard [10]. This is quite a valid warning, because not every person has the opportunity and ability to use ICT. For such cases, the traditional form of judicial proceedings should remain available. Although the vast majority of people now have access to Internet and search for information, including legal information, with the help of Internet resources [12], the Court of the European Union notes that exercising rights may become practically impossible or extremely difficult for some persons, in particular for those, who do not have access to the Internet, if the settlement procedure can only be accessed electronically. To ensure equal and non-discriminatory access to court and justice, states must guarantee the preservation of traditional forms of justice along with the introduction of new forms that require additional equipment or qualifications on the part of the person who will use them. At the same time, when conducting judicial proceedings in a remote mode, it is important to ensure the effectiveness of judicial protection, which is a general principle of European Union law arising from the generally accepted constitutional traditions of the member states, which was enshrined in Articles 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), and confirmed by Article 47 of the Charter of Fundamental Rights of the European Union [8]. It should be noted that the transition to the practice of conducting procedural actions and court hearings remotely means not so much technical re-equipment as the creation of an appropriate legal framework that regulates procedural features and procedural issues, the scope of application of this form of court hearing and its consolidation in the national procedural legislation [27, p. 120]. In this

context, the problem of proper legal regulation of remote hearings, taking into account European and international standards of fair trial, arises. And even if Art. 6 of the ECHR does not specifically highlight standards or requirements for a trial using technology, such court sessions, or even proceedings as a whole, must take place in compliance with the guarantees provided for by the right to a fair trial in the sense of this Convention and the case law of the European Court of Human Rights (ECtHR).

Remote justice standards are not something new, but a kind of «digital extension» of already existing, traditional standards of fair trial. It is the right to a fair trial and access to justice, which are fundamental in democratic societies, can be viewed from a completely new perspective in the light of developments in artificial intelligence specifically designed for the judicial system [2, p. 13]. Recent scientific research draws attention to the fact that unacceptable and inconsistent use of technology may be some of the modern challenges to the right to a fair trial, as well as old procedural guarantees that are not adapted to modern processes and services of digital evidence [18].

The ECtHR has addressed the issue of remote justice on several occasions in its practice. One of such decision is the case of *Marcello Viola v. Italy* [11] in which the applicant claimed that he was deprived of the opportunity to follow the proceedings due to the fact that his participation in the hearing was conducted via videoconference. In his opinion, the use of this technical means created difficulties for his defense. However, according to the ECtHR, the applicant's participation in the appeal hearings via videoconference pursued legitimate purposes under the Convention, namely the protection of public order and the prevention of crimes [11]. In general, the ECtHR's position on the admissibility and legitimacy of the use of technology in judicial proceedings, including the remote participation of individuals in court proceedings, boils down to the fact that the use of technology may be acceptable in cases where it ensures the principles of a fair trial and ensures the equality of arms between the parties. The use of technology can be particularly useful in cases where the parties cannot attend the court hearing in person due to distance or other circumstances. In such cases, videoconferencing can allow the parties to be present in court from a distance.

Regarding the feasibility and effectiveness of remote court proceedings, the Consultative Council of European Judges notes that the use of video conferences can facilitate the conduct of court hearings. However, special attention must be paid to the fact that the use of conference communication does not violate the guaranteed right of individuals to a fair trial [15]. Thus, the admissibility and effectiveness of remote court proceedings directly dependent on the degree of ensuring and guaranteeing the applicant's access to effective procedural guarantees of a fair trial, which must be provided by the state. When applying remote justice, the possibility of the applicant to exercise effective control over the conduct of the court process must be taken into account. Therefore, we agree with the statement that at the current stage of the development of the judiciary, with appropriate technical modernization of court premises, as well as comprehensive procedural regulation by the legislator, the implementation of this form of justice is extremely necessary and justified [27]. Remote consideration of court cases should not be considered in comparison with the traditional form of court hearings, but only as new opportunities for process participants, with modern resources. Their use should be aimed at optimizing the accessibility of justice and judicial information, rather than as a mechanism for changing traditional principles and procedures of the judiciary.

Considering the widespread use of remote court hearings, the European Commission for the Efficiency of Justice has developed Guidelines for conducting court proceedings via

videoconference [9] - an important legal instrument in the field of establishing European standards in the field of conducting court proceedings in the remote mode. This document contains a set of measures that should be taken by states and courts to ensure compliance with the right to a fair trial, which is guaranteed by Art. 6 of the ECHR and the requirements of the Convention on the protection of individuals in connection with the automated processing of personal data during court hearings in videoconference format. These measures aim to ensure compliance with the rights of the parties, including their right to participate in proceedings and to be heard during remote court hearings. The guidelines apply to all types of court proceedings and consists of two parts: the first part focuses on the procedural aspects of all types of court proceedings with a special emphasis on criminal proceedings, and the second part contains the technical and organizational requirements for conducting court hearings via videoconference.

Remote justice is an important tool - a response to modern social and legal realities by allowing court hearings to be conducted virtually, at a distance, without the need for parties or judges to be physically present in the courtroom.

Remote court hearings conducted using video conferencing technologies and Internet communication have many advantages. In particular, court hearings in this format contribute to the reduction of court expenses by avoiding the costs of travel, accommodation, meals and other expenses associated with the physical presence of the participants in the court process. Remote justice can make the court system more accessible to those who have limited travel opportunities, such as people with disabilities or those who live far from the place where the case is being heard.

Another important advantage of remote court hearings is that they contribute to increasing the promptness and efficiency of justice. They can reduce the time required to hear a case because they allow a more efficient use of participants' time. The experienced conditions of a global pandemic, and now the war in Ukraine, confirm the fact that remote hearings can reduce the risk of infection with infectious diseases that can spread during physical contact, promote the safety of the participants in the process, or be the only possible way to continue court activities in emergency and crisis situations. These advantages have a significant impact on improving the accessibility of justice and the effectiveness of judicial protection of the rights, freedoms and interests of individuals.

Despite the existing advantages, conducting court hearings in a remote format also has its drawbacks, that can affect their effectiveness and the level of trust in the judicial system. It is noted that while virtual hearings may allow for a hearing that would otherwise be canceled, it can be argued that virtual hearings do not fully capture the experience of being physically present in court in the traditional sense. In this regard, research have shown that virtual technologies worsen the quality of human interaction. Lawyers may find it more difficult to communicate with or support their clients during video conferences, communications may be distorted or unclear, technology may malfunction, and misunderstandings may go unnoticed. Such unwanted gaps can lead to biased judicial outcome [16, p. 33]. The lack of physical presence of the participants in the case and direct communication between them can negatively affect their correct perception and understanding of information, their emotional relationship, accordingly, reduce the possibility of a fair assessment of the relationship between the parties. However, if we assume that all communication are divided into two categories: real-time and asynchronous, then «real-time communication» over computer networks is very similar to a live conversation [24]. From this point of view, the answer to the question whether the

combination of «gradual virtualization and the reduction of physical control will not lead to the decline of individual legal positions» is relevant [9, p. 348].

Conducting remote court hearings can also be complicated by technical problems, such as Internet connection loss, problems with sound or image that may lead to the interruption, postponement, or delay of the hearing. The success of a court hearing conducted using video communication requires a careful selection of technology, environment, personnel and compliance with the legally prescribed procedure of their use. These factors work together and none of them should be ignored or considered in isolation. Researchers note that the characteristics of the remote participant, the reason for their remote participation and the nature of the remote space from which they appear are key factors in determining the way in which these components should be configured to achieve the best results [21, p. 10]. Thus, remote court hearings require a reliable technical base (computers, web cameras, microphones, fast Internet, special software) and unfortunately, not all participants in the process have access to the necessary equipment or the skills to use it properly.

Possible privacy and data protection issues should also not be overlooked. Remote meetings may be less secure from privacy breaches, especially when using platforms that may be vulnerable to cyber attacks. Information that will be discussed during the court session may be intercepted by third parties. Therefore, it is important to ensure the confidentiality, integrity, and availability of electronic evidence and information, to prevent unauthorized access to it, and protect data related to court proceedings and process participants. Adequate and effective legal regulation of data protection issues and prevention of unauthorized access to confidential information is probably one of the biggest challenges of modern technogenic society. That is why government authorities, IT administrators and software developers must ensure not only the protection of the connection between the device and the network, but also the use of software for processing digital documents with a high level of security, including encryption of transmitted digital documents [14, p. 25].

To participate in remote court proceedings, a participant in the process must have skills in using the latest means of communication (smartphones, computers, laptops, tablets), basic skills in using software or applications for online communication, etc. This can be a significant obstacle for individuals who do not possess these skills at an adequate level, or who do not have such devices at all. This problem is especially acute for representatives of the older generation or low-income segments of the population. The Action Group on Access to Justice conducted an comprehensive online survey of Ontario millennials (aged 18-36) regarding their perceptions of digital justice initiatives and the accessibility of the legal system. Respondents were asked whether they preferred an in-person or digital approach to obtaining legal information. Nearly two-thirds (65%) of millennials preferred to receive legal information in person, while the remaining 34% preferred to receive it through online applications or websites [12, p. 4]. According to 27% of respondents, the biggest obstacle to the implementation of digital legal services is processes that require identification of a person [12, p. 7]. And this despite the fact that the target group was a generation that is familiar with digital innovations and is ready to easily perceive the expansion of the spectrum of industries using the latest technologies. That is why access to legal information should be as easy as possible for both end users and data processing specialists. Centralized web search interfaces that serve as a «one-stop-shop» with a graphical interface for accessing legal documents from various authorities, simplify the search process for users, citizens and lawyers [5, p. 523]. As noted, understanding the

challenges of remote justice is essential to ensure that lawyers, clients and stakeholders in court do not experience a smaller, but more simplified court process [20]. The above should be taken into account by the legislator during the development and improvement of norms dedicated to the legal regulation of issues related to remote court proceedings.

The analysis of the experience of using remote justice in Ukraine under martial law indicates that the possibility of administering justice via video conference outside the courtroom is an optimal alternative for continuing the activities of courts and protecting the rights of individuals even in extreme conditions associated with the presence of a threat to the life, health, safety and security of judges and participants in the judicial process. In wartime, when a person's personal involvement in a court hearing often becomes dangerous for their life, further expansion of the possibilities of remote proceedings is necessary. Specialized theoretical studies indicate that the main problems of the use of remote court hearings in Ukraine are related to the inadequate level of information and technical support of courts, the lack of a single format for data exchange between automated document management systems of various instances and specializations, the imperfection of information protection systems, the shortcomings of information legislation etc [13, p. 164]. In order to solve urgent practical problems, a draft of the Law on Amendments to Certain Legislative Acts on Digitalization of the Judiciary and Improvement of Writ Proceedings in Civil Proceedings was developed [26]. This law provides for amendments to the Civil and Commercial Procedural Codes, the Code of Administrative Proceedings of Ukraine, which provide for the possibility of conducting remote court proceedings via videoconference outside the courtroom using the judge's own technical means. Witnesses, interpreters and experts will be sworn in remotely as well. The court minute will be kept in electronic form, and if for some reason it is impossible, the secretary will make written records, and the judge will use his own technical means for recording. The court decision will be drawn up and signed only in electronic form using an electronic signature, which will help develop e-justice and ensure the safety of participants in the court process.

In the implementation and legal regulation of remote court proceedings, it is important to comply with standards of a fair trial. The main international documents that provide for minimum standards of a fair hearing and guarantees of access to justice are the International Covenant on Civil and Political Rights (Article 14), the ECHR (Article 6), the Charter of Fundamental Rights of the European Union (Article 47). These standards include: equality before the court and the right to a fair and public hearing by a competent, independent and impartial court established by law [7, art. 6]; the right to a hearing of case within a reasonable time [3, art. 6]; the right to an effective means of legal protection before the court and legal assistance [23, art. 47]; ensuring access to justice and the right to defense; compliance with the principles of competitiveness and equality of arms; timely delivery of judgments by the court [17], etc. The introduction of the specified standards into national legislation and making them mandatory for remote judicial proceedings is a guarantee of optimizing the accessibility of justice and increasing the efficiency of the judicial system as a whole.

**Conclusions.** Remote justice is a large-scale legal phenomenon that involves not only purely technical issues of implementing cutting-edge information and communication technologies in the activities of courts and justice. The admissibility of videoconference court sessions is primarily determined by the need to ensure and comply with the guarantees of the right to a fair trial and effective legal remedies established by the Convention for the Protection of Human Rights and Fundamental Freedoms. With appropriate legal regulation, ensuring compliance with the standards of a fair trial, remote court proceedings are an effective (and sometimes the only possible) means of ensuring

access to justice in crisis and emergency situations, which can contribute to the fair judicial protection of individual rights and freedoms.

In modern socio-political conditions and in the context of the creation of a single European information space, the implementation and development of remote justice can solve a number of urgent problems, including ensuring accessibility to justice, the safety of participants in court sessions, and ensure timely consideration of cases. The introduction of this technology can also contribute to reducing the costs of court proceedings, compliance with generally recognized standards of justice and increasing the efficiency of the judicial system. The effectiveness of remote justice depends on the perfection of legal regulation, and the ability to address logistical, technical, organizational and other issues at the national level. Proper legal regulation and standardization of remote court hearings will increase accessibility of justice.

Potential directions for the development of remote justice include expanding the use of innovative technologies in the process of administering justice, which will reduce court costs, increase the speed of handling cases, and improve overall access to judicial protection of individual rights. The further development and expansion of cryptographic technologies and personal data protection will contribute to the security and confidentiality of participants in remote court proceedings. States should take measures to strengthen informational and technical support for judicial authorities and participants in the judicial process, which will allow them to use remote technologies more effectively and increase their activity.

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