

Justice on Screen

– using remote communication
in the criminal justice system



**HUNGARIAN
HELSINKI
COMMITTEE**



COVID-19

JUSTICE

CAMPAIGN

Executive summary of the research report

Remote hearings in criminal proceedings are when defendants are not present at certain parts of proceedings (e.g. in the courtroom). Instead, they follow the proceedings and participate (for example make statements or give evidence) using some means of remote technology, that is in the framework of a videoconference, through the monitor of a computer, a screen, or simply via telephone.

In European Union member states, it has already been disputed before the COVID-19 crisis, whether the participation of the defendant in the criminal proceeding is guaranteed in case they are heard via video. So far, the application of such technologies in criminal proceedings has not been common practice and most of EU member states have not even intended to introduce remote hearings widely until most recently. Nevertheless, the situation drastically changed after the coronavirus pandemic outburst, because while it is in the interest of individuals and of society to ensure the functioning of the judicial system, it was necessary to reduce the number of in-person contacts to the minimum due to the pandemic.

This paper presents both HHC's analysis and assessment of Hungarian legislation and the outcome of its empirical research on remote hearings, highlighting issues of implementation. Analysing the legislative environment is especially important because there is a good chance that remote hearings will stay in use, or even continue to expand and become the norm after pandemic has ended. Omitting the personal presence of the defendant raises serious concerns and problems with respect to the full effectiveness of defendants' rights – in particular the right to a fair trial (e.g. it is questionable, whether the defendant can follow everything that occurs during the trial, whether they have the possibility to consult with their defence counsel confidentially and in private).

This paper provides a brief overview of domestic legislation on remote hearings. A key finding is that almost uniquely in Europe, at the regulatory level, remote hearings has already been the main rule in Hungary, even before the coronavirus pandemic. At the same time, this overview focuses on the legislative changes affecting remote hearings and adopted during the pandemic. In this regard, it became evident, that the new procedural rules introduced during the pandemic further strengthened the general nature of remote hearings in criminal proceedings. Among others, this further hinders the insurance of the presence of the defendant at procedural acts that otherwise require it.

We are concerned of some of the new provisions from the perspective of defendants' rights allowing for:

- the wider use of voice-only devices at remote hearings,
- authorities not obliged to obtain the defendant's consent for a remote hearing,
- reducing the scope of remedies relating to remote hearings and to the defendant's request for personal presence at hearings.

The rights to a fair trial of defendants with special needs in relation to remote hearings are dealt with in a separate section.

The paper also analyses public data and interviews conducted with former detainees and professionals involved in the practice of remote hearings (judges, lawyers, general and prison probation officers). A key finding is that the security measures introduced during the pandemic did not ensure all elements of the fundamental right to a fair trial. In the first wave of the pandemic, "deadlocked trials" violated the right to be heard within a reasonable time, and the increased use of remote hearings in later waves may have violated the principle of equal access and immediacy by not requiring the physical presence of the defendant.

Data provided in response to HHC's freedom of information requests show that while the court system has recognised the need to increase its capacity for remote hearings, no new endpoints have been established in the penitentiary system to accommodate these. Therefore, a number of penitentiary institutions exist with insufficient capacity for conducting remote hearing. This way, there are only 63 devices available to conduct remote hearings within the penitentiary system where around 18 thousand people are held. Similarly, there has been no capacity development for remote hearing in police jails.

According to the data provided by the National Police Headquarters, there are no remote hearing endpoints available in police jails, and no remote hearings were carried out between 2018 and 2021.

The use of remote hearings in general is precisely intended to make the criminal justice system more efficient. During the pandemic, it even prevented the criminal justice system from becoming completely inoperable. Nonetheless, serious deficiencies in the available infrastructure has led to absurd situations. For example, one of HHC's clients was transferred from a penitentiary where he was being held, to a facility 430 kilometres away to participate in a remote hearing. For the sake of this "remote hearing", he was also quarantined following both transfers. It is the duty of the State to create the infrastructural conditions, in which such incidents do not occur.

The majority of professionals who participated in our research expressed concern about the violation of some criminal procedural guarantees, and several of them expressed doubts about whether the educational purpose of prison sentences can materialise when the sentence is imposed via screen.

Finally, the research shows that the pandemic and the impossibility of maintaining personal contacts have placed both prisoners and probation officers in a difficult situation. For example, probation officers highlighted how quickly it became apparent that it is impossible to do their job over the phone, such as conducting an assessment of the personal circumstances of convicts, or to provide the necessary control that comes with being under probation supervision and more importantly, to support them over the phone in the required quality.

Recommendations

1. Revoke from effect the most concerning aspects of new criminal procedural provisions introduced during the COVID-19 having a negative effect on defendants' procedural rights and get back to at least the legislation prior to the pandemic.
2. Amend – or where appropriate repeal – any provisions in the criminal procedure code prior to pandemic that was restricting defendants' rights, with a special focus on the exercise of the right to a fair trial.
3. Restore the practice of holding trials in person after the pandemic is over.
4. Reduce prison population on a systemic level by prioritising the use of alternative sanctions. This kind of reduction will reduce the need for required infrastructure to ensure the participation of detainees in criminal proceedings.
5. During the pandemic, penitentiary institutions and the National Police Headquarters should take steps to procure equipment required to conduct remote hearings.
6. In general, the criminal justice system should have sufficient means to avoid the risk of prolonged proceedings, and to ensure that the defendant is able to participate in a remote hearing instead of requiring their transportation hundreds of kilometres from one penitentiary institution to another.
7. Attention must be paid to ensure that confidential communication between the defendant and their defence counsel can take place both in a face-to-face and in a remote setting.
8. Authorities concerned shall take steps to make remote hearings publicly available to ensure that the right to a public hearing is not violated in a remote setting.
9. Probation officers should work in-person even during the pandemic under strict health safeguards. In particular, contact should remain personal between the probation officers working in penitentiaries and their detained clients. Rooms should be set up at penitentiary institutions that are suitable for meetings between probation officers and their clients, minimising the risk of transferring the virus, such as security booths that are already in use by penitentiary institutions.