



A good place: The issue of remote location in hybrid criminal proceedings

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Abstract

The use of videoconferencing in criminal proceedings has the potential to transform the spatial conditions under which defendants and other participants engage with the trial. However, how the characteristics of a remote location can affect a trial actor's ability to participate in the trial—and potentially the fairness of the trial itself—are largely overlooked. This study examines how criminal proceedings across member states of the Council of Europe address the issue of remote location, as well as the case law of the European Court of Human Rights on this matter. Then, drawing on socio-legal research, it argues that the adequacy of a remote location should be assessed not only on the appropriateness of technological means, but also on environmental, symbolic and personal conditions that collectively shape the remote participant's ability to engage meaningfully with proceedings. The concept of suitability developed here offers a framework for further research into participation in hybrid proceedings and, more broadly, invites renewed attention to the spatial conditions in which criminal justice is administered.

Key words

Virtual criminal justice, remote participation, right to a fair trial, European Court of Human Rights, procedural justice theory.

Resumen

El uso de la videoconferencia en los procesos penales tiene el potencial de transformar las condiciones espaciales en las que los acusados y otros participantes interactúan con el juicio. Sin embargo, se suele pasar por alto en gran medida cómo las

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características de una ubicación remota pueden afectar a la capacidad de un participante en el juicio para intervenir en el mismo —y, potencialmente, a la imparcialidad del propio juicio—. Este estudio examina cómo se aborda la cuestión de la ubicación remota en los procesos penales de los Estados miembros del Consejo de Europa, así como la jurisprudencia del Tribunal Europeo de Derechos Humanos al respecto. A continuación, basándose en la investigación sociojurídica, sostiene que la idoneidad de una ubicación remota debe evaluarse no solo en función de la adecuación de los medios tecnológicos, sino también de las condiciones ambientales, simbólicas y personales que, en conjunto, determinan la capacidad del participante remoto para intervenir de manera significativa en el proceso. El concepto de idoneidad desarrollado aquí ofrece un marco para futuras investigaciones sobre la participación en procedimientos híbridos y, en términos más generales, invita a prestar una atención renovada a las condiciones espaciales en las que se administra la justicia penal.

Palabras clave

Justicia penal virtual, participación a distancia, derecho a un juicio justo, Tribunal Europeo de Derechos Humanos, teoría de la justicia procesal.

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1. Introduction

1.1. *The matter of remote location in criminal proceedings*

It has long been clear that the relationship between the space of adjudication and proceedings is of significance in criminal trials. Legal geographers have explored how the space of adjudication reflects the criminal procedure, and how the trial itself is shaped by the space in which it takes place (Jeffrey 2019, McKay and Macintosh 2024). Although there might be differences in the way participants experience it—for instance, lay versus professional participants (Hynes *et al.* 2020)—the space of the adjudication is technically the same for everyone. At least, it is so in traditional criminal proceedings, where all the parties convene in one physical space: the courtroom. Here, the judiciary executes its mandate and administers justice in front of everyone. Consequently, domestic rules of procedure are written on the assumption of physical co-presence in the courtroom, except for proceedings *in absentia*—that is, when the individual on trial is not present—which take place in the situations and under the conditions provided for by law.

Since the 70s (Turner 2021), and on a much larger scale during the COVID-19 pandemic (Peristeridou and De Vocht 2023), criminal trials in Western legal systems have started to take place in a way that differs from the simultaneous physical presence of all (or the absence of one of) the participants. In hybrid proceedings,² one or some of the parties are connected to the physical courtroom via videolink (Rossner and Tait 2023). In many jurisdictions, such trials are nowadays routinely conducted in a series of procedural situations, including the hearing of witnesses in transnational proceedings,³ the participation of defendants detained abroad who cannot be transferred⁴ and of defendants removed from the courtroom due to their disruptive behaviour,⁵ the appearance of especially dangerous detained defendants,⁶ and the conduct of hearings during epidemic emergencies.⁷ Defendants, witnesses, lawyers, prosecutors, and, in some jurisdictions, even judges may now participate from a variety of remote environments, ranging from prisons and police stations to offices of law firms, or even their own houses. It is a characteristic of hybrid proceedings, therefore, that participants are scattered across different locations (Hynes 2025).

This research concerns the significance of the place of remote participation in the context of such trials. The underpinning premise is that there is not only a difference between participating from a remote location and sharing a physical space, but that different remote locations provide for different conditions of participation. As will be illustrated throughout this paper, the characteristics of the remote location shape the way proceedings are conducted in at least two ways. First, they change the conditions under

² Fully virtual proceedings are not considered in this contribution, as they are a less common occurrence and are usually regulated by national codes only under exceptional circumstances.

³ Portugal, Code of Criminal Procedure, art. 275A.

⁴ Albania, Code of Criminal Procedure, art. 167/a; Italy, Implementing provisions of the Code of Criminal Procedure, art. 205 ter.

⁵ Albania, Code of Criminal Procedure, art. 344(3).

⁶ France, Code of Criminal Procedure, art. 706-71; Italy, Implementing provisions of the Code of Criminal Procedure, art. 146bis paragraph 1.

⁷ Belgium, Code of Criminal Procedure, art. 763sexies 3.4.a.

which the participation takes place by directly affecting the participant's ability to engage meaningfully with the proceedings. If the remote participant is the defendant, this may have consequences for the right to a fair trial, as the remote defendant could struggle to exercise some of their procedural rights (de Vocht and Jacobs 2024, Kremens and Peristeridou 2025). They could for instance, see their right to participate reduced, or their right to confidential communication with their lawyer impaired.

Second, as Bandes and Feigenson (2020) suggest, the individual participates in the trial from a specific place characterized by particular environmental and symbolic conditions which may affect the experience of the trial for the remote participant, in particular how fair they perceive the proceedings to be. As consistently found by proponents of the "procedural justice" theory (Thibaut and Walker 1975), feelings of fair treatment influence the degree of acceptance of the outcome of the criminal trial (Casper *et al.* 1988). This has consequences for the legitimacy of the judiciary and, in turn, for compliance and recidivism (Tyler 2006). Therefore, the features of a remote location might shape how participants, defendants *in primis*, feel about the trial, and consequently how they feel about the decision. This is in line with what socio-legal literature on perceptions of fairness in hybrid criminal trials suggests (Factor *et al.* 2023, Belloni *et al.* 2025).

Despite the twofold relevance of the remote location to the conducting of fair proceedings, (socio-)legal research has so far only exceptionally addressed the topic. Notably, this has never been treated as a standalone matter, but only as one aspect within the context of broader discussions. The aim of this article is therefore, first and foremost, to bring the issue of remote participation to the fore in scholarship on the fairness of hybrid criminal proceedings, thereby illustrating how the characteristics of remote participation in such proceedings may be relevant to the conduct of fair proceedings, rather than simply serving as a neutral context for technology-mediated participation.

In bringing this issue to the forefront, this paper adopts a deliberately broad definition of "remote location." By definition, a remote location is connected to the courtroom via a technological medium, typically videoconferencing platforms. Notably, this includes the technology employed – which is often emphasized in the context of best practices for hybrid proceedings (CEPEJ 2025, 17, HEUNI 2026, 3) – and its quality. However, as will be discussed, it is more appropriate to refer to the "remote location" by considering all its characteristics that can potentially influence participation. The expression is thus intended to denote that set of factors that collectively characterize the location of remote participation and potentially alter the way in which one participates in or experiences the proceedings. Think of environmental factors, such as poor choices of spatial arrangements, or personal features, such as limited familiarity with the technology used or a hearing impairment.

1.2. Structure of the work and methodological notes

The work is divided in two sections. Section 2 looks at national procedures that establish rules for remote participation, and asks: do these rules include criteria for determining what constitutes an ideal location for remote participation? And is it possible to identify criteria for the suitability of a remote location by examining domestic criminal procedures? In this regard, two approaches to what constitutes a "good" remote location emerge from domestic procedures. First, the "absence of technical impediment", which

is a common requirement in domestic procedures, is presented (2.1). Case law of the European Court of Human Rights (ECtHR) is brought to illustrate this point (2.2). Then, examples of non-technical standards of “good” remote locations, such as “true-to-life representation” and “interaction” (2.3) are analysed. They are used to discuss how, in granting judges broad discretion when deciding on remote participation, such standards can ensure great flexibility (depending on the individual, procedural activity and purpose of the participation).

Section 3 moves on from this premise to offer some insights into what a broad and flexible notion of suitability of the remote location entails (3.1) Here, it is illustrated how features other than technical ones can play a role in the determination of the suitability of a remote location. Three examples are used to illustrate how the adoption of an open-ended and flexible criterion of suitability proves particularly well-suited to capturing aspects of the remote location that would otherwise be difficult to address. The issue of whether the place of detention is suitable for ensuring the detained defendant’s full participation is cited as an example of how environmental and symbolic factors can influence the assessment of suitability (3.2.1). The problem of ensuring the confidentiality of communication between a lawyer and a client participating remotely is raised to illustrate how appropriate measures—both technical and non-technical—must be taken to ensure that the conversation is genuinely private (3.2.2). Finally, individual characteristics of remote participants—and in particular factors relating to vulnerability—are introduced as elements requiring appropriate consideration in the evaluation of suitability of the location (3.3.3).

A few words should be spent here on a methodological clarification. An investigation was conducted into the domestic procedural rules enabling remote participation in criminal proceedings across Member States of the Council of Europe (CoE). The goal of this investigation was not to compare legal systems in order to draw conclusions on differences and similarities. This work is, therefore, not a comparative study *stricto sensu* (Reitz 1998, 624). Rather, the goal is to observe whether and in which terms the issue of remote location appears in the criminal proceedings of CoE member states. For this reason, the reader will encounter reference to domestic provisions that are of most interest in relation to the issue of remote location, rather than a systematic cataloguing and comparing of all the legal provisions of the CoE’s member states.⁸

A justification of a focus on the CoE is also appropriate. First, it allows the analysis to move within the framework of the right to a fair trial under Article 6 of the European Convention on Human Rights (ECHR). This echoes domestic scholarship, which consistently relies upon this provision to evaluate the compatibility of national

⁸ The selection occurred in the following way. First, online searches have been conducted to locate relevant legislation in each domestic jurisdiction of the CoE through keywords associated to remote participation (such as “video”, “remote”, “audio-visual”, “online”, “videolink”, “link”, “technical means”, “virtual” “videoconference”) and keywords related to criminal trials (such as “criminal trial”, “criminal proceedings”, “pre-trial detention”, “hearing”). These keywords have been searched in English together with the name of the country (for instance: “remote” “criminal trial” “Italy”). Then, the keywords have been translated in the corresponding language and searched again (for instance: “remoto” “procedimento penale” and “Italia”). The results of this search have been analysed to remove false positives (such as provisions related to videorecorded testimonies and confessions) and matched with available literature, to ensure that all relevant legislation had been found.

procedural rules governing videoconferencing with fair trial guarantees. Examples include Falcone (2022) for Italy, Ballin and Castelijns (2024) for the Netherlands, Cordier (2018) for France, Beazley and Van de Gaer (2024) for Belgium, and Laro González (2025) for Spain.

Second, regardless of a highly heterogeneous normative situation as regards the degree to which remote participation has been integrated into domestic criminal procedures, a comparative perspective remains mostly absent from the current European debate on remote participation in criminal proceedings. Sanders (2021) did examine the emergency pandemic legislation of remote participation across Member States of the European Union. And while it is true that several national legal systems have modified retained procedural rules on remote participation initially introduced as emergency measures, many have introduced new regulation or heavily modified the emergency legislation. Comparative research in a post-pandemic context is therefore absent, which leaves European legal scholarship at a disadvantage compared to other contexts where such research has emerged, such as the USA (Lu *et al.* 2025).

2. Legal standards of appropriateness of remote locations

2.1. *Absence of technical impediments in domestic jurisdictions*

Domestic legal systems regulate remote participation of procedural actors in significantly different ways. Most states have either introduced legislation regulating remote participation in criminal proceedings or are currently in the process of reviewing them (such as Poland).⁹ Some codes limit remote participation to a specific circumstance, such as the hearing of witnesses and experts in Germany¹⁰ and Switzerland.¹¹ Many countries generally recognise remote participation but limit it to certain procedural actors or specific conditions, as in Italy, the Netherlands, and France. Some jurisdictions adopt a broader approach, under which videoconferencing may in principle be used in all proceedings, as in Belgium and the United Kingdom. Spain constitutes a notable exception as the only jurisdiction where the principle is expressly established that participation should, in principle, occur remotely, albeit subject to an extensive list of exceptions.¹²

No CoE country, when regulating the cases and procedures for remote participation in criminal proceedings, details what constitutes an appropriate location. This, however, does not imply a complete absence of any requirements with regard to the remote location. In fact, national procedures frequently display two types of relevant requirement. A first set of rules, which is dealt with in this subsection, has to do with the absence of impediments that may hinder the correct use of the technological means. A

⁹ See the proposed reform at: Kancelaria Prezesa Rady Ministrów, *Projekt ustawy o zmianie ustawy - Kodeks postępowania karnego, ustawy - Kodeks karny wykonawczy oraz ustawy - Kodeks postępowania w sprawach o wykroczenia* (<https://www.govpl/web/premier/projekt-ustawy-o-zmianie-ustawy--kodeks-postepowania-karnego-ustawy--kodeks-karny-wykonawczy-oraz-ustawy--kodeks-postepowania-w-sprawach-o-wykroczenia>).

¹⁰ Germany, Code of Criminal Procedure, §§58b and 247a(1)(2).

¹¹ Switzerland, Code of Criminal Procedure, art. 144.

¹² Spain, Code of Criminal Procedure, article 258bis.

second set refers to broader requirements that pertain to the location but not necessarily to the technology employed. This will be discussed in the next subsection.

Often, national procedures require that a remote participant is able to perceive what occurs at the other location. Many codes explicitly define “live video link” as a real-time audio-video connection allowing participants located both in the courtroom and in one or more remote locations to see and hear what occurs elsewhere.¹³ It follows that a remote location is ineligible not only when the technology employed does not permit participants to see and hear the proceedings at all, but also where such conditions cease to exist (even temporarily) because of unexpected technical difficulties. Domestic procedural rules frequently formulate this criterion in the negative, requiring the absence of technical impediments. Examples are provisions such as “unless technical reasons prevent this”¹⁴ or “without technical hindrance”.¹⁵

Even at the EU law level, the recent Proposal for a Directive 2026/0172 (European Commission 2026) adopts the standard of technical impediments. The Proposal would introduce the possibility for a national judicial authority to issue a European Remote Participation Order (ERPO). Based on an ERPO, a video link connection could be established between the courtroom and a defendant, witness, or victim located in another EU member state. In describing this tool, the Proposal acknowledges that interruptions in communication with the courtroom and other technical failures—including technical issues that may affect the confidentiality or effectiveness of communication between the lawyer and the person concerned—may adversely affect the effective exercise of procedural rights and the fairness of the proceedings (Proposal for Directive 2026/0172, para 64).

The articulation of technological requirements in these terms is undoubtedly functional. First, it is relatively straightforward to verify. Either a technical malfunction impairing audio or video transmission occurs—typically, frozen video, inaudible audio or failure of the internet connection (CEPEJ 2021, 4)—or it does not. Secondly, it is comparatively easy to remedy: once informed of the difficulty, the proceeding judge may take appropriate measures, such as suspending the hearing until the problem is resolved or adjourning the proceedings. At the same time, however, the standard of absence of technical impediments remains insufficiently precise because it focuses exclusively on the presence or absence of identifiable technical malfunctions rather than on the overall quality of the technology employed or how the technological means are used.

This may prove problematic because the absence of specific technical impediments does not necessarily entail that the remote location is adequate for meaningful participation: technological systems may function without interruption while nevertheless providing a qualitatively inadequate form of participation. But to what extent can poor communication quality (in the absence of technical problems) affect the right to participate in the proceedings? The case law of the ECtHR regarding the ability to

¹³ UK, Criminal Justice Act 2003, sec 56; Italy, Code of Criminal Procedure, art. 133(3); Ireland, Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020, section 22.

¹⁴ Poland, Code of Criminal Procedure, art. 374(3).

¹⁵ Belgium, Code of Criminal Procedure, art. 558(2)(2).

participate in proceedings in hybrid settings provides a useful basis for further discussion on this point.

2.2. Suboptimal quality of technological means and the right to participate in the case law of the European Court of Human Rights

According to the ECHR's interpretation, Article 6(3) of the ECHR must be interpreted in the sense that the defendant has the right to be present at his or her trial (Registry of the ECHR 2026, para 304). The scholarly literature has already focused on the evolution of the Court's interpretation of the meaning of "presence" in traditional and hybrid criminal proceedings (Klip 2024, Allegrezza and Bernardini 2025). What is of interest here is not so much the meaning of presence in the Court's interpretation, but rather how the Court has addressed the issue of the adequacy of remote participation over time and what standards it has applied to assess it.

The landmark case of *Viola v Italy* (2007) sets out the central tenets of the Court's case-law concerning a defendant's participation in a hearing via videoconference (Registry of the ECHR 2025, 1). Ever since then, the Court has assessed whether the remote participation of the defendant is compatible with the right to defend oneself primarily by asking whether the defendant was able to follow the proceedings and to be heard without technical impediments (*Viola v Italy* 2007, para. 49ff). This is consistent with its case law regarding in-person proceedings. There, the Court recognizes that an inability to hear properly may impair the ability to follow the proceedings adequately, and that factors such as poor acoustics in the courtroom or hearing difficulties are sufficient to impair the exercise of the right to follow the proceedings (*Stanford v UK* 1994, para. 29; *Timergaliyev v Russia* 2009, para. 52).

In practice, whenever the Court tries to determine if the conditions of remote participation are satisfactory, it limits itself to determining whether the defence had brought identifiable technical difficulties to the attention of the trial judge. This happens in *Viola v Italy* (2007) and in *Sakhnovskiy v Russia* (2010). But there is a contradiction in the Court's reasoning. Consider *Asciutto v Italy* (2008): there, the Court observed that the applicant had access to an audiovisual link with the courtroom which enabled him to see the persons present, hear what was being said, and make statements to the court from the place of detention (*Asciutto v Italy* 2008, para. 69). The Court further acknowledged that "it is possible that, due to technical issues, the connection between the courtroom and the place of detention may not be ideal, which could lead to difficulties in transmitting sound or images" (*Asciutto v Italy* 2008, para. 70).

The Court has not clarified yet the extent to which these "difficulties" might undermine the right to participate to the proceedings, even though opportunities to do so have presented themselves. In one case, the applicant, whose ability to hear and follow the proceedings was reduced by a hearing impairment, alleged that "it had been impossible to concentrate at the appeal hearing due to the inferior transmission of sound" and that "he had drawn the court's attention to his poor state of health and hearing impairment" (*Grigoryevskikh v Russia* 2009, para. 73). In another, the applicant argued that "[h]e suffered from a 30% hearing loss, and the sound quality of the video transmission was poor" (*Yuriy Dmitriyev v Russia* 2026, para. 89). The Court did not take a stance in either case: the issue of poor communication was subsumed within that of adequate

representation by the lawyer, which was lacking in both cases (*Grigoryevskikh v Russia* 2009, para. 94; *Yuriy Dmitriyev v Russia* 2026, para. 101).

So, on the one hand, the ECtHR does not exclude the possibility that the connection may be qualitatively suboptimal even in the absence of concrete malfunctions (especially when a hearing impairment is present). On the other hand, it does not clarify to what extent poor quality of technology can impair the exercise of the right to be present, while systematically excluding a violation of Art. 6 whenever specific technical impediments have not been expressly raised by the defence. This reasoning ends up placing a significant burden upon the defendant, as illustrated by *Kucera v Austria* (2026). In that case, both parties complained that the hearing had been characterised by technical difficulties, and, on several occasions throughout both the trial and subsequent stages of the proceedings, the applicant and defence counsel alleged recurring sound problems during the videoconference (*Kucera v Austria* 2026, para. 11 and 16). Having established that the problem had been resolved quickly and without significant interruption, the Court considered the technical means adequate (*Kucera v Austria* 2026, para. 64). It further observed that, had the parties wished formally to raise concerns regarding persistent sound problems, they should have ensured that such remarks were entered into the official record of the hearing.

Kucera v Austria (2026) exemplifies how the procedural position of the remote defendant claiming suboptimal quality of the technology but not a specific technical hindrance is especially problematic: not only must the defendant promptly raise the claim that the quality of the connection is inadequate to guarantee their meaningful participation, but they must also give demonstration that the deficiencies impaired the ability to effectively follow the proceedings. To require the defendant to give proof of procedural errors during the domestic procedures is of course the operating procedure in front of the ECtHR, but establishing such a causal link (the one between the less-than-optimal technology and the impairment to follow the proceedings meaningfully) would be especially burdensome in the case at hand. Indeed, if the ECtHR's reasoning in such cases is to always equate the absence of specific technical obstacles with the non-infringement of the right to be present, it is not clear how the defendant could prove that they were unable to participate adequately in the absence of any clear impediment. Overall, the Court in *Kucera* did not show particular attention to the allegation of the party that technical difficulties had limited the defendant's ability to participate in the proceedings. (*Pivaty* 2026).

It is also worth highlighting how the reasoning of the Court in these situations also presents a matter of principle. Within the context of the CoE, states bear the responsibility to ensure adequate conditions of the technological means adopted in criminal trials (*Asciutto v Italy* 2008, para. 64). But, if defendants were required to give proof of suboptimal quality of the technological means whenever they deem their ability to participate meaningfully compromised, states could simply equip remote locations with technological means of suboptimal quality and wait for defendants to give proof that that impaired their ability to follow the proceedings.

2.3. *Non-technical standards: true-to-life representation, interaction, suitability*

Some domestic procedures provide for rules that, while not detailing what features remote locations must present, do relate to the remote location in a broader sense than simply the technology employed. In this section, some examples of these rules are given, followed by a discussion of what they entail. In the Netherlands, where hearings and other procedural acts may take place by videoconference,¹⁶ the Videoconferencing Decision (Besluit Videoconferentie) provides that videoconferencing systems must be configured according to certain principles.¹⁷ From its text, it appears that the term “systems” is primarily intended to refer to technological systems. There is, for example, a reference to the possibility of exchanging documents¹⁸ and to the need that the system is protected against loss or any form of unlawful processing.¹⁹

However, there appears to be more to it than compliance with technical requirements. Firstly, systems must guarantee a “true-to-life representation” of what is occurring in the other space.²⁰ Rather than the mere absence of technical obstacles, this provision seems to imply a more nuanced assessment into the quality of the communication, which would have to be high enough (in terms of video and audio, but also, for example, in terms of immediacy, framing and camera positioning) that participants present themselves to one another in the same way as they would in person. Secondly, the system must be designed in such a way to guarantee that “consultation can be held without this being audible to third parties”.²¹ As well as providing secure communication channels—such as breakout rooms to which only the defendant and their lawyer have access, or ensuring communication by telephone—this appears to refer to the remote participant’s surroundings, which should be a situation in which their conversations cannot be overheard.

In Belgium, where the legislation is fairly permissive regarding participation via videoconference, the requirements stipulate more than merely ensuring the absence of technical obstacles in the organization of videoconferences and the videoconferencing system.²² For example, it is stipulated that the remote participant must be able to participate effectively in the proceedings and to follow the proceedings effectively and in full,²³ and that, if a lawyer is acting on behalf of the person appearing, that person must be able to communicate effectively and confidentially with their lawyer during the videoconference.²⁴ There are also provisions specific to certain procedural situations. For example, a judge assessing whether to allow remote participation in cases of pre-trial detention is required to take the possibility of interaction between those present at the

¹⁶ Netherlands, new Code of Criminal Procedure, art. 1.11.3(1).

¹⁷ Netherlands, Videoconferencing Decision, art. 4(1), issued under article 131(4) of the former Code of Criminal Procedure (Wetboek van Strafvordering).

¹⁸ Netherlands, Videoconferencing Decision, art. 4(1)(c).

¹⁹ Netherlands, Videoconferencing Decision, art. 4(1)(d).

²⁰ Netherlands, Videoconferencing Decision, art. 4(1)(a).

²¹ Netherlands, Videoconferencing Decision, art. 4(1)(b).

²² Belgium, Judicial Code art. 558.2(2).

²³ Belgium, Judicial Code art. 558.2(1).

²⁴ Belgium, Judicial Code art. 558.2(3).

hearing into account.²⁵ There is therefore an element of interaction which, as is the case in the Netherlands, seems to go beyond the absence of technical impediments. In such cases, the relevant requirement is not merely that the technological system functions without interruption, but that it attains a sufficiently high qualitative standard capable of fulfilling a specific procedural purpose, which is the interaction among participants in different locations.

In Italy, remote participation in criminal trials has a long history dating back to 1992.²⁶ Currently, article 133^{ter} paragraph 4 of the Code of Criminal Procedure, introduced by the 2022 reform²⁷ to lay down a general regulation of remote participation in criminal trials, dictates that participants attending proceedings remotely must connect either from a judicial office or from a police station designated by the judicial authority, provided that “suitable technical equipment” and “suitable logistical conditions are available”.²⁸ As an exception to this rule, defence counsels may connect remotely from their offices or from any other “suitable location”.²⁹ The law does not clarify the meaning of suitability in the context of article 133^{ter}. “Suitable technical equipment” could include the absence of technical impediments and a sufficiently good technology, for instance in terms of the internet connection, cameras and microphones. As far as “suitable logistical conditions” are concerned, this must be something different from technological means (unless one wishes to assume that there is a repetition in the text), but nothing more can be deduced from the letter of the law.

In the United Kingdom too there is a requirement regarding the suitability of the remote location. The Criminal Justice Act, which grants courts broad discretion to issue a live link direction, requires judges to consider “the suitability of the facilities at the place where that person would take part in the proceedings” before authorizing participation by audio or video link.³⁰ The Guidance on Live Links in Criminal Courts issued by the Lady Chief Justice (LCJ) in 2026 clarifies that such a direction should not be made unless the facilities are available, in working order, and reliable (LCJ 2026, 8). With regard to witnesses, the judge must be satisfied not only that the connection is reliable and the audio and video quality sufficient for the witness to be seen and heard clearly, but also that the environment is suitable (LCJ 2026, 7). Additionally, the facilities must meet any additional needs of a participant (LCJ 2026, 8). The court must consider whether remote attendance would improve or diminish that participant’s ability to participate effectively when the participant is “a child or a participant who has additional needs, a disability, a communication difficulty, or other vulnerability” (LCJ 2026, 8).

In Spain, where all criminal court proceedings must in principle be conducted remotely (although a number of exceptions and limitations significantly restrain the scope of this principle),³¹ whenever a video-conferencing system is used, it must be ensured in all

²⁵ Belgium, Act on the organisation of hearings by videoconference in the context of judicial proceedings of 25 April 2024, introducing art. 98(3)(1) of the Code of Criminal Procedure.

²⁶ Italy, Law Decree n. 306 of 8 June 1992; Italy, Law 7 January 1998 n. 11.

²⁷ Italy, Legislative Decree no. 150 of 2022 (Riforma Cartabia).

²⁸ Italy, Code of Criminal Procedure, art. 133^{ter} par 4. Emphasis added.

²⁹ Italy, Code of Criminal Procedure, art. 133^{ter} par 7. Emphasis added.

³⁰ UK, Criminal Justice Act 2003, Section 51.6.d.

³¹ Spain, Code of Criminal Procedure, art. 258 bis, introduced by the Real Decreto-ley 6/2023 de 19 de diciembre.

cases that the parties can challenge each other and that the right to a defence is safeguarded.³² In Italy, the audiovisual link must be implemented not only in such a way to ensure the simultaneous, effective and reciprocal visibility of the persons present in the various locations, as well as the ability of each of them to hear what is being said by the others, but also to safeguard the right to be heard and the effective participation of the parties in the proceedings.³³ So, in both Italy and Spain, the legislator has sought to lay down requirements that have nothing to do (directly) with the characteristics of the venue or the technical means, but rather with the type of participation that must be guaranteed. Such participation must be such as not to undermine the right to a fair trial.

The examples brought so far in this section differ from the mere absence of technical impediments. It is worth here spelling out this difference. The criterion of absence of technical impediments consists of assessing whether an unexpected technical malfunction temporarily prevents participants from seeing or hearing one another. Instead, the standards presented in this section allow for a broader evaluation of conditions of participation.

First, because they require an overall evaluation of the technological means employed, and not only the absence of a specific impediment. Imagine, for example, a remote location equipped with state-of-the-art technology, including the highest-quality cameras available on the market, but where the cameras are positioned in such a way that they show the courtroom participants from behind or from a great distance. It does not seem that genuine interaction can be guaranteed in this way, nor that it provides a true-to-life representation of the other participants, nor that presence is really guaranteed to the defendant.

Second, because they extend beyond the technological means and into the other features of the location. There are aspects of the remote location that are not dependent upon the technological means as such, and yet, they influence the conditions of participation. For instance, location characterised by background noise, overcrowding, interruptions, poor lighting, or other environmental disturbances may still be unsuitable for remote participation despite the technical quality of the videoconferencing system. The assessment of the suitability of a location should therefore require consideration of the broader environment within which remote participation occurs and of the practical conditions under which procedural interactions take place. There would be little point, for example, in having an encrypted connection using the latest security standards if the remote participant is in a location where there is no guarantee that they are not being listened in on by others.

Even in the absence of technical hindrances, judges faced with the choice to authorize remote participation could evaluate if the technical means at the disposal of the court and of the remote setting would allow a sufficiently high quality, together with any other characteristic of the location they consider relevant, for instance to enable participants to perceive their interlocutors clearly enough to obtain “true-to-life representation”, or to interact with them in a meaningful way. This evaluation could be done with a particular regard for the function of the participation and for the participant themselves. Let us

³² Spain, Organic Law of the Judiciary, art. 229(3).

³³ Italy, Code of Criminal Procedure, art. 133(3).

take as an example the “logistical conditions” of the Italian code of criminal procedure. When called to assess the suitability of the logistical conditions, the judge’s evaluation could vary if the remote participant is a key witness being cross examined, or a lawyer taking part in a scheduling hearing, or a defendant being present at their hearing.

As mentioned, the criteria presented in this section would leave a great deal of discretion to the judge. Unlike the binary distinction between the presence and absence of technical impediments, these tests imply an element of discretion. What, for instance, constitutes a “true-to-life representation” for a Dutch participant? When is interaction between participants properly guaranteed for a Belgian defendant? And when can an Italian defendant claim that the logistical conditions were unsuitable to the point that their effective participation is not guaranteed? Inevitably, it would fall to courts to develop case law over time. This, however, might not be so straightforward for countries with a civil law tradition, where judges generally have more limited room for this type of assessment.

3. Towards an open and flexible notion of suitability

3.1. Notion: suitability as a complex socio-technical environment

In the previous section the issue of suitability of remote location in hybrid criminal proceedings was discussed. It was noted that certain standards of appropriateness can be identified within the national procedures of CoE member states. It was illustrated how the most widely used test—namely, the absence of technical obstacles—is unsatisfactory for two reasons. First, because it fails to take into account how, even in the absence of technical problems, the quality of participation could be compromised by inadequate technological equipment (or its improficient use). This was revealed by an analysis of the case law of the ECtHR. Second, because the aspect of technology does not fully capture the significance of the remote location for the purposes of effective participation, overlooking factors that could be relevant such as environmental conditions or the presence of other individuals.

The tests subsequently presented demonstrate that certain national procedures are potentially open to an assessment of the suitability of the remote location that goes beyond the mere absence of technical obstacles. In some countries, judges are required to assess whether to allow remote participation on the basis, for example, of the suitability of the logistical conditions in Italy, of suitability in general in the UK, of interaction in Belgium, or of the “true-to-life” representation of the other participants in the Netherlands. Similar criteria assign to courts the task to determine what compliance with that criterion entails in a perspective broader than just the absence of technical impediments. In this sense, these tests imply a broader and more flexible understanding of what suitability entails.

This section provides three examples of why the concept of suitability, understood in this way, is more appropriate than the standard of absence of technical impediments. Three situations have been selected in which a broad criterion of suitability is able to fully capture the conditions for participation from a remote location. The following subsections briefly describe and discuss these situations with the aim to provide insights into what the suitability of a remote location might entail beyond technical aspects. In

line with this purpose, this paper, which up to this point has consisted of a legal analysis, also incorporates a socio-legal perspective informed by research on what constitutes a “good” remote location from a communicative and experiential perspective.

Taken together, these examples showcase why suitability should not be understood as a fixed checklist of requirements. Rather, the assessment should allow for a broader focus on the overall conditions present and the interactions between different elements. Understood as a flexible evaluative standard capable of accommodating the diversity of situations in which remote participation occurs, suitability would allow courts to consider the interaction between technological, environmental, social, personal, and even symbolic factors, and to assess their cumulative impact. The question to be asked when remote participation is an option should therefore not be if a location satisfies predetermined formal requirements, but whether, in the circumstances of the specific case and for the participant involved, it allows for the appropriate form of participation.

3.2. Testing: suitable location and...

3.2.1. ... participation from detention facility

The first situation showcasing how non-technical standards are more appropriate for the evaluation of the suitability of the remote location is that of forced remote participation of the defendant from the place of detention. Indeed, while remote participation is generally presented as an option, there are cases wherein the law requires participation from a specific location. A notable example is that of defendants participating from custodial settings. Criminal proceedings commonly allow for the remote participation of detained defendants. In systems like the French one,³⁴ courts are required to take the defendant’s consent into account. In others, like the Italian,³⁵ consent may be necessary depending on the circumstances. In others still, such as in the Romanian³⁶ and Hungarian,³⁷ safeguard clauses ensure that remote participation remains compatible with procedural fairness even when consent is not required.

But in cases of defendants detained for serious crimes (such as terrorism or organised crime) criminal procedures often include more stringent rules in favour of remote participation from the place of detention. Reasons include heightened risks of escape, threats to public security, or excessive burden for the administration of justice. In France, for example, detained defendants may not refuse the use of videoconferencing where transportation should be avoided because of a serious risk of escape, a threat to public order, or the particular dangerousness of the defendant.³⁸ Similarly, in the Netherlands, the consent of the suspect brought before the examining magistrate is not required where videoconferencing is deemed necessary in the interest of security during the hearing or transport.³⁹ In Italy, detainees for certain serious offences must participate remotely from

³⁴ France, Code of criminal procedure, Art 706-71.

³⁵ Italy, Implementing provisions of the Code of Criminal Procedure, article 146 *bis*.

³⁶ Romania, Code of Criminal Procedure, art. 106.

³⁷ Hungaria, Code of Criminal Procedure, sec 122.

³⁸ France, Code of Criminal Procedure, art. 706-71.

³⁹ Netherlands, Resolution on Videoconferencing, art 2.3.

the place of detention⁴⁰ unless the judge deems physical presence necessary.⁴¹ In Denmark, courts may order detained defendants to appear remotely where there is a risk of escape, provided that such participation is appropriate in light of the purpose of the hearing and the circumstances of the case.⁴²

It is important to underline how, according to the ECtHR, the imposition of remote participation in such cases is not incompatible with the right to be present under Article 6(1) ECHR. Because physical presence is not an end in itself (*Golubev v Russia* 2006), it may be restricted in pursuit of legitimate aims such as public safety, as long as the ability to follow the proceedings and to be heard without technical impediments is guaranteed via videolink (*Kozlitsin v Russia* 2013, Kamber 2022, 18). At the same time, however, regulations requiring remote participation in similar cases do not require the proceeding judge to assess if the prison facility is an appropriate place for the participation and instead assumes that the necessary conditions are in place there. Indeed, such a location could well be perfectly suitable for remote participation from a technical point of view, as prisons are generally equipped with video-conferencing tools. But even assuming that such technological means are sufficiently good and that no technical impediments arise, is the place of detention always a suitable place for remote defendant participation?

Research suggests that environmental conditions may influence conditions of participation. Factors such as poor lighting and room size may directly influence how (well) the participant is seen, as well as background visual cues (Muir *et al.* 2025). Background noise is also known to be an important factor to characterise the experience of the participants to the criminal trial (Flower 2025, 30). When participation takes place from an institutional setting, such as a room in a courthouse or in a detention facility, the room should be soundproofed to this end (HEUNI 2026). If not sufficiently isolated, the “soundtrack of incarceration” (McKay 2018, 77) could be heard in the courtroom. All these environmental conditions, which are entirely independent of the quality of the videoconferencing technology itself or the presence of a technical impediment, could nonetheless reduce the participant's capacity to follow the hearing by impairing concentration and communication. Additionally, they could potentially change how the participant is perceived by the other participants in the courtroom (Nir and Musial 2022, 731).

Additionally, symbolism can play a determining role in assessing the appropriateness of the remote location when a defendant participates from prison. Would a location permeated by an idea of guilt and punishment be suitable? Objects and places charged with a symbolic function are a characteristic element of criminal proceedings (Rowden and Wallace 2018), and they can affect both the participant's experience and the perceptions of others involved in the proceedings. Participation from a prison environment may expose visual elements associated with detention and punishment, such as the wearing of certain clothing or barred windows. This could potentially reinforce assumptions concerning dangerousness or guilt (Muir *et al.* 2025). The symbolic and ritualistic dimension of remote participation therefore forms part of the broader assessment of whether a location is appropriate.

⁴⁰ Italy, Implementing Provisions to the Code of Criminal Procedure, art. 146 *bis* comma 1.

⁴¹ Italy, Implementing Provisions to the Code of Criminal Procedure, art. 146 *bis* comma 1*ter*.

⁴² Denmark, Administration of Justice Act, Section 748a(2).

3.2.2. ... confidential communication with lawyer

Another context in which the suggested notion of suitability proves to be advantageous has to do with the matter of confidential communication between lawyer and client, which is one of the aspects of the right to be effectively defended by a lawyer under Article 6(3)(c) of the ECHR (Registry of the ECHR 2026, para 513). What happens to this right when the defendant takes part in the proceedings remotely? First, let us note that some domestic procedures regulate the location from which lawyers must participate when the defendant appears remotely. In Romania, for example, when the defendant is detained, defence counsel must be physically present at the place of detention.⁴³ Likewise, in Denmark, when the defendant participates remotely, defence counsel must ordinarily attend the hearing from the same location, unless the court authorizes counsel to appear in the courtroom instead.⁴⁴

More commonly, however, national legal systems leave the choice to the defence counsel. In Spain, when the testimony of the accused is taken remotely, counsel may either appear alongside the defendant or remain in the courtroom.⁴⁵ In Italy, lawyers may connect from their offices or from any other suitable location, without prejudice to their right to be physically present with the assisted person.⁴⁶ In France, lawyers may be present with the court or with their clients.⁴⁷ Finally, in the Netherlands, when the defendant is participating remotely, the defendant and their counsel may choose the location of the latter.⁴⁸ In many countries, in conclusion, it is possible that the defendant takes part in the proceedings remotely while their representative is in the courtroom.

This does not constitute in itself a breach of the right to effective legal assistance, but only if “remote” access to legal representation is effective (*Medvedev v Russia* 2017). In order for it to be effective, the defendant appearing remotely must be granted adequate facilities and sufficient time to consult with their lawyer, and such consultation must not risk being overheard (*Sakhnovskiy v Russia* 2010). Therefore, when assessing the appropriateness of the location from which the defendant or defence counsel is participating, it is necessary to consider whether it guarantees such conditions. This may depend on a number of factors.

First, the remote location might offer insufficient privacy because adequate technical arrangements are simply not in place (Turner 2025, 31). Although national rules often require that the defendant’s right to communicate confidentially with their lawyer via technical means such as videoconferencing be guaranteed,⁴⁹ and that the communication not be overheard by third parties,⁵⁰ only a limited number of CoE countries have mechanisms allowing private consultation during remote hearings in place (CEPEJ 2025, para. 23). But the ECtHR itself has on multiple occasions highlighted how the

⁴³ Romania, Code of Criminal Procedure, art. 106.

⁴⁴ Denmark, Administration of Justice Act, sec 748a(1).

⁴⁵ Spain, Code of Criminal Procedure, art. 258 *bis*.

⁴⁶ Italy, Code of Criminal Procedure, art. 133 *ter* par 7.

⁴⁷ France, Code of Criminal Procedure, art. 706-71.

⁴⁸ Netherlands, Resolution on Videoconferencing, art. 4.1.b.

⁴⁹ Italy, Code of Criminal Procedure, art 133 *ter* par 7; France, Code of Criminal Procedure, art. 706-71.

⁵⁰ Belgium, Code of Criminal Procedure, art. 159(2); Netherlands, Resolution on Videoconferencing, art. 4.1.b.

(reasonable) suspicion that the conversation is not secret greatly impacts on the right to defence (*Medvedev v Russia* 2017, *Gorbunov and Gorbachev v Russia* 2016).

Secondly, even if means of private communication were provided between the defence counsel in the courtroom and the defendant in custody, not all methods of communication provide sufficient guarantees that a conversation is not overheard. For example, according to the case law of the ECtHR, if the remote location allows for communication via a secure telephone line, the requirement of confidentiality is respected (*Viola v Italy* 2007), while the same is not true if a video-conferencing system installed and operated by the State is used, as it might legitimately make defendants uneasy when discussing with their lawyer (*Sakhnovskiy v Russia* 2010, *Gorbunov and Gorbachev v Russia* 2016, *Medvedev v Russia* 2017). Moreover, the use of videoconferencing tools can raise privacy concerns, for example when the defendant is asked to share personal information (Nir and Musial 2022, 736).

And even when adequate technical arrangements are in place and they grant a satisfying level of confidentiality, other features of the location might disrupt the confidentiality of the communication. Other subjects may be present within earshot, which may lead to participants remaining subject to excessive supervision or interference. For example, the defendant could take part in the trial from the same location as their co-defendants, with whom they may not share the same defence strategy.

3.2.3. ... personal features

The last situation showcasing the advantages of a broad notion of suitability has to do with the personal features of the parties to proceedings, in particular lay participants. Rules on the remote examination of witnesses and expert witnesses, for instance, are widespread among national procedures. Witnesses and experts can be heard remotely by the court even in countries that otherwise do not regulate remote participation, such as Germany⁵¹ and Switzerland.⁵² Some countries are even more open to the possibility of remote examination. In Portugal, for instance, experts are “heard by teleconference from their workplace, whenever technically possible”,⁵³ and in Spain the principle is established that “statements or interrogations of the accusing parties, witnesses or experts are carried out electronically.”⁵⁴

In addition, *ad hoc* provisions are often present to regulate the use of videoconferencing when certain subjects are involved—such as minors,⁵⁵ protected witnesses,⁵⁶ vulnerable victims,⁵⁷ and people with mental and physical conditions.⁵⁸ Frequently, national procedures regulate remote participation as a means to protect vulnerable subjects participating in the hearing. For instance, in Spain, victims of gender-based violence, sexual violence, human trafficking, minors, or victims with disabilities, may intervene

⁵¹ German Code of criminal procedure, §§58b and 247a(1)(2).

⁵² Switzerland, Code of Criminal Procedure, art 144.

⁵³ Portugal, Code of Criminal Procedure, article 158(1).

⁵⁴ Spain, Code of Criminal Procedure, article 258*bis* par 3b.

⁵⁵ Czechia, Code of Criminal Procedure, section 183a(2).

⁵⁶ Romania, Code of Criminal Procedure, Article 129; Albania, Code of Criminal Procedure, Art 361/b; Czechia, Code of Criminal Procedure, section 183a(2).

⁵⁷ Albania, Code of Criminal Procedure, Art 58/b; Austria, Code of Criminal Procedure, §165(3) and 66a.

⁵⁸ Belgium, Code of Criminal Procedure, Article 559.

from the places where they are officially receiving assistance, care, advice, or protection, or from any other place.⁵⁹ Videoconferencing is also considered (potentially) detrimental for some participants. For instance, in Belgium, where the hearing of witnesses and experts via videolink is generally possible,⁶⁰ the physical or psychological state and the vulnerable condition of a person who must be heard via videolink must be taken into account by the judge,⁶¹ while in Dutch courts videoconferencing may not be used for persons with auditory or visual impairment.⁶²

Whether a venue is suitable for remote participation also depends on the characteristics of the participant themselves, and that what is suitable for a subject might not be suitable for another. First, elements of vulnerability could suggest the non-suitability of a location. For example, for a victim of domestic abuse, their own home—even if equipped with the necessary technical facilities and offering suitable conditions—might not be suitable because it is associated with the violence suffered. Literature has brought examples of victim taking part in the proceedings from the same location as the defendant. At the same time, remote locations can also be perceived as a safe space by vulnerable individuals (McKay 2026, 89). To this factor, the judge might attach importance. In such situations, a flexible notion of suitability would allow the judge to balance needs and risks according to the situation.

Second, features of the participants could influence how they interface with the technological infrastructure and their ability to operate the system. A technologically advanced environment may be unsuitable for participants who lack the capacity to use it effectively. There are several relevant considerations in this regard. The digital literacy of the participant, for instance, could influence how easily they can interface with the system, which is troubling considering that a significant proportion of Europeans still lack basic digital skills (European Commission 2023). A lack of familiarity with videoconferencing systems could constitute an obstacle especially for senior participants, as their percentual numbers in penitentiaries is on the rise (Aebi and Cocco 2025, 8). Language barriers could also pose a problem to the operability of the instruments—which is especially problematic considering that a considerable share of defendants in Europe is of foreign nationality (Aebi and Cocco 2025, 12). Further, the ability to fully comprehend how the technology works could be limited for mentally disabled defendants (de Vocht 2022, 38), or it could be more cognitively demanding to stay engaged (Muir *et al.* 2024).

4. Conclusions

This paper draws attention to the issue of the “remote location”, that is, the place other than the courtroom from which participants can take part in hybrid proceedings. The remote location is a significant issue both in terms of remote participation and the right to a fair trial, and in terms of participants’ experiences. Yet, it has been neglected both in academic scholarship—which has addressed other aspects of remote participation—and in national procedures that permit and regulate remote participation. In light of this gap,

⁵⁹ Spain, Code of Criminal Procedure, Art 258 *bis* 3a.

⁶⁰ Belgium, Code of Criminal Procedure, Article 560.7.

⁶¹ Belgium, Code of Criminal Procedure, Article 763*sexies*.

⁶² Netherlands, Resolution on Videoconferencing, art. 2.2.

this paper suggests a broad notion of “suitability” that can be used to assess the appropriateness of a remote location beyond the quality of the technology employed. It suggests that aspects such as environmental, social, personal and symbolic conditions, should cumulatively form part of the assessment. In this sense, it proposes to view the remote location not as a room with a computer, a camera and a microphone, but as a complex socio-technical environment composed of multiple interacting elements that collectively shape the participant's experience of the proceedings.

I believe this proposal to have two merits. The first is that it provides a starting point for legal scholarship to consider the issue of the remote location while taking a social science perspective into account. If remote location is understood as a social and spatial environment rather than merely a room, then suitability may serve as a useful heuristic for works on fairness and procedural justice in hybrid proceedings. For instance, this concept could be used to examine how external aspects, such as spatial arrangements and organisational practices, and individual conditions, such as digital literacy and vulnerabilities, shape the opportunity and the quality of the participation for the participant. The second merit of this proposal is that it prompts a broader reflection on the spaces of justice themselves. The question of suitability is not unique to remote locations; it also invites attention to the adequacy of the courtroom, the detention facility, the police station, and other institutional spaces in which criminal justice is administered in a non-digital format. In this sense, the concept of suitability may serve as a bridge between the study of remote participation in criminal proceedings and a wider inquiry into the spatial conditions of the trial.

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