

## ADVANTAGES OF USING VIDEOCONFERENCES IN CRIMINAL PROCEEDINGS

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### Annotation

Based on the analysis of special literature, some advantages of using the videoconference in national criminal proceedings and international legal assistance are summarized in the article.

**Keywords:** videoconference, criminal proceedings, hearing at distance, interrogation, videomeans, right to confrontation, European Court of Human Rights, fair trial.

## ПРЕИМУЩЕСТВА ПРИМЕНЕНИЯ ВИДЕОКОНФЕРЕНЦИИ В УГОЛОВНОМ СУДОПРОИЗВОДСТВЕ

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### Аннотация

На основании анализа специальной литературы в статье обобщены отдельные преимущества применения видеоконференции в национальном уголовном судопроизводстве и при оказании международной правовой помощи.

**Ключевые слова:** видеоконференция, уголовное судопроизводство, дистанционное судебное разбирательство, допрос, технические средства видеозаписи, право конфронтации, Европейский суд по правам человека, справедливое судебное разбирательство.

### 1. Formulation of the problem in general

Ability to conduct investigation and court proceedings by videoconference in criminal proceedings is foreseen by United Nations Convention against Transnational Organized Crime (New York, November 15, 2000) [1], Second Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters 1959 (Strasbourg, November 8, 2001) [2], United Nations Convention against Corruption (New York, October 31, 2003) [3] and others. The positive experience of conducting hearing at the distance has many countries: the USA, the United Kingdom, Sweden, Germany, Italy, the Russian Federation, Ukraine etc.

Therefore, it is necessary to analyze its advantages, considering special interests to this modern form of criminal proceedings.

### 2. Analysis of recent researches and publications

Some questions of using videoconference are reflected in scientific works of D.T. Arabuli, R.S. Abdulin, K.O. Arkhipova, L.M. Alexeeva, V.P. Barbara, O.H. Volevodz, P.V. Volosyuk, F.M. Vyatkin, T.S. Gavrish, V.T. Malyarenko, V.V. Milinchuk, V.V. Muradov, M.I. Pashkovskiy, A.S. Sizonenko, M.I. Smirnov, O.H. Haliulin etc.

### 3. Purpose of the article

The research aimed at separating and analyzing advantages of using videoconference in national criminal proceedings and international legal assistance.

### 4. Exposition of main material of research

According to the international experience the use of videoconference with the appropriate organizational, technical and human resources in courts and detention centers, proper legal regulation of distance investigative actions and proceedings can provide effective implementation of one of the fundamental principles of justice – *complete recording the progress and results of the proceedings*.

Technical record made by video means is the full official record of the trial and guarantees transparency and openness. Participants of the trial may have doubts about the completeness and accuracy of recording the course and outcomes of legal proceedings during written recording. Moreover, the clerk of the court may not have time to fix full content of the testimony of participants to perform replacement of words and expressions. Therefore, in practice he often has to slow down or even interrupt performances that disrupt the logic reasoning of person who gives testimony.

In comparison with the protocol the use of technical means of recording the criminal proceedings can reflect the progress and results of the proceedings, including the behavior of its members more adequate.

There is the issue of standardization of these methods, their compliance with safety and ease of use due to the mandatory recording of proceedings conducted by videomeans.

Technical video means are the set of software and hardware equipment to ensure the proper recording, storing, copying (dubbing) and the use of information that reflects the videoconference.

If the decision on the implementation of remote preliminary investigation is made by investigator or prosecutor, he performs complete recording progress and results of the proceedings which is conducted in videoconference by technical means. If the decision is made by the judge it is fixed by the court and ensured by clerk of the court, starting with the announcement of the chairman to start its implementation.

Thus, videomeans provides complete, reliable fix and prevent distortion or falsification of the course and the results of the proceedings, which increases confidence in the pre-trial investigation and trial. Privacy of videoconference sessions from other users of computer networks is ensured by means of cryptographic protection.

Another benefit of videoconference is a *significant reduction of criminal proceedings time*. This will help to fulfil the international treaties requirements regarding abidance the reasonable time adjudication and human rights to be tried without undue delay (Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 [4], Article 14 of the International Covenant on Civil and Political Rights, 1966 [5]).

In the case «Pelissier and Sassi v. France» [6], «Drogobetskaya v. Ukraine» [7] European Court of Human Rights stated that reasonableness of the length of proceedings must be assessed in light of the circumstances and taking into account the criteria of complexity of the case, the conduct of the participants and the government agencies.

For example, in the UK in the case of fraud the jury heard the testimony of one witness from Australia and thirteen witnesses from Canada at distance. Four monitors provided an opportunity for all those presented in the courtroom to see and hear the testimony of witnesses and the lawyer had no barriers of cross-examination. In turn, witnesses saw the courtroom in London. As a result, 14 witnesses from two distant countries of the UK gave evidence for one day. Total expenditures amounted to broadcast the 3145 pounds that was less than the cost of the first class ticket from Canada to the UK. Thus, using a video managed to prompt the necessary proceedings, avoiding significant costs related to the appearance of witnesses in court [8].

Videoconference as well *reduces the risk of prisoners escape during their transportation* to the investigations or court proceedings place.

As a result it provides personal safety of employees of institutions of pretrial detention and penal, and it is no need to draw the supporting documents required for transportation. This makes it possible to involve a smaller number of personnel for participation in the proceedings of persons held in custody or serving a sentence, and *reduces the risk of prisoners disease dissemination*. In addition, a person who takes part in the proceedings at distance will feel insecure, as it is often in case with the direct participation when in place of the investigation or in the courtroom attended her relatives and friends.

Distance hearing *provides participation of persons who are unable to appear for conducting investigative (detective) actions or court proceedings* due to health problem or other valid reasons. Those involved in the proceedings remotely, have the opportunity to ask questions and receive answers, and implement other procedural rights granted to them and perform procedural obligations.

Videoconference *facilitates to follow the right of persons accused of committing a criminal offense* to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. This right to confrontation provided by paragraph 3 of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms [4].

Despite the fact that the videoconference equipment of pretrial investigations, courtrooms, pretrial detention and penitentiary systems requires substantial material costs, the total economic impact of the introduction of this form of criminal proceedings is far greater – *decreasing of financial expenses* for transferring persons summoned to court, business trips, prisoners transportation, sending subpoenas etc.

Hearing at distance provides **significant advantages for international legal assistance** as well. In particular, interrogation by videoconference for request of foreign competent authority allows to *reduce the time of fulfillment international investigators (court) orders*, because the distance on which videoconference can be installed is unlimited and depends only on the availability of the equipment and communication lines.

In addition, the international legal agreements governing legal aid in criminal cases do not contain provisions that would regulate future performance of such assignments. In this regard, there are situations when international orders are carried out for a long time, jeopardizing the tasks of criminal proceedings in terms of rapid investigation and trial.

Remote interrogation *solves the problem of admissibility of evidence obtained from abroad*. Videoconference permits to apply the procedural law of requesting State if it is not contrary to the principles of criminal procedural law of the requested State and recognized standards of human rights and fundamental freedoms.

The court of the requesting State depending from content of the testimony questioned, from his position on the case, can specify some provisions, put further questions to the person who is in another country and receive answers. Describing the commission of international legal assistance, Mr. Smirnov noted as disadvantage that it is impossible to predict all the necessary questions. Also, the investigator, the prosecutor and the court of the requesting State are unable to assess the competent authority of the State evidence, and announcement of testimony can not replace a communication with participants in real time [9, Smirnov M.I., 2005, p. 115].

Videoconference enables to *realize the responsibility for refusal or giving false testimony* unlike the compliance of international investigators (court) orders that do not involve

the use of any measures of procedural coercion. For example, Article 8 of the European Convention on Mutual Assistance in Criminal Matters, 1959 does not provide sanctions against the witness or expert who appears to the court for summons served on him at the request of the requesting State even if the summons contains a warning about responsibility [10]. The appearance of these persons in judicial or law enforcement authorities of foreign country is their right and not an obligation. This emphasizes the voluntary nature of this form of legal aid.

However, persons who are in foreign country and take part in distance hearing, distributed administrative and criminal jurisdiction of the requested State for failure to appear for summons, refuse to testify, and giving false testimony.

One of the important advantages of the use of videoconference in the provision of international legal assistance is that it *solves the problem of transit through the third country*, in case when between the requesting and requested States are no direct connections, because bilateral video,- and audio link allows criminal proceedings participants to see and hear each other, communicate and share their data online.

Moreover, during the proceedings by videoconference with a person in custody in foreign country, the grounds for refusal of such person contained in the European Convention on Mutual Assistance in Criminal Matters, 1959, no longer have mandatory. Whereas, in accordance with Article 11 of this Convention, one of the reasons is the need for the presence of that person to carry out criminal proceedings in the requested State. Videoconference allows extradite a person in custody to the requesting State and at the same time ensure the implementation of the criminal proceedings in the requested State to that person.

According to other grounds provided by the Article of the Convention, extradite of a person may be refused if the despatch can result in extension of person's detention. The use of videoconference in this situation provides the necessary legal proceedings involving such person as soon as possible.

If a person is detained in foreign country for carrying on its proceedings involving supposed to obtain her consent for temporary transfer, agreement terms, the objectives, the duration of such transmission, routing and organization of transportation. As noted by Mrs. Milinchuk temporary transfer of a person without his or her consent, is related more to the provisions of temporary surrender than ensuring attendance of a person as a witness [11, Milinchuk V.V., 2001, p. 101]. Therefore, failure to obtain consent from the individuals whose temporary transfer is requested by the requesting State is an independent basis for denying the request.

Consent to conduct by its participation in the videoconference proceedings is optional because it is not violated one's right to security of person and freedom.

It is evident that distance hearing provides remote presence of a person to the competent authorities of two or more requesting State, thus *solving the problem of simultaneous requests*.

It is clear that the simultaneous satisfaction of the two States requests the issuance of a temporary person in custody in the requested state is impossible. It was assumed that the requested State that received such a request making decisions was to inform the requesting State of that fact and prefer to petition of the State, which is a contractual legal relationship.

So, to international investigators, court orders characterized by certain disadvantages that influence the effectiveness of international cooperation and legal assistance. In particular, the acting assignment has a smaller amount of information about the circumstances of the

criminal proceedings and there is an intermediate – executive order, which can distort the information, perhaps the difference in the applicable tactical conduct certain investigations.

## 5. Conclusion

The advantages of videoconference in national criminal proceedings and international legal assistance are essential. The benefits of the so-called «virtual court» are obvious, especially for the suspect, accused, defendant (realization of the right of confrontation, reduction the criminal proceedings time etc.), other criminal proceedings participants (guarantee personal safety of the witness, ability to hear and see the progress of the proceedings, ask questions, get answers if their participation is impossible due to health or other valid reasons) and state (decrease the financial cost, effective solution the problem of criminal proceedings recording by technical means, reduction the risk of prisoners escaping during their transportation, accelerating the implementation of international investigators (court) orders, the problem of the admissibility of evidence received abroad in the provision of international legal assistance, transit through a third country entities subject to questioning at the request of the authorized body and et all.).

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