

# Using Modern Videoconference to Hear Witnesses at Criminal Cases: a Comparative Analytical Study

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The present study addresses a new topic in the UAE and Jordanian criminal procedures represented in the use of modern video communication (Videoconference) to hear witnesses, to highlight the advantages of using this method. The topic discussed the definition of videoconference and the reasons for using these methods in criminal justice facilities. Likewise, the legislative basis for resorting to these means to hear witnesses in the Jordanian, Emirati, and French legislation. The findings show that Videoconference is one of the effective and advanced means for conducting remote investigation or trial as it is characterised by speed, reducing costs, and protecting accused persons, witnesses, and juvenile victims. It also results in keeping pace with the UAE and Jordanian legislations technological development and introducing that in criminal justice facilities as is the practice in Western legislation. The present study sums up a set of recommendations.

**Keywords:** *Testimony, criminal cases, criminal justice facility, modern visual media*

## Introduction

The witness is one of the main evidence in the criminal case (Abdulbaqi, 1953) as it constitutes a cornerstone of any criminal procedure aiming at establishing facts and thus reaching the guilt or acquittal of the accused. Witness means proving a specific incident that the witness is aware of through what he/she witnesses or hears. It is often focused on material facts. Also, it is usually produced in the lawsuit, although witness is subject to the judgment of the court of the subject (Abdulfattah, 2014). Given the great importance of witness in criminal cases, the penal legislation regulated the provisions for witness (Abdulsattar, 1986).

The witness is of great importance in forensic evidence. It is considered the mainstay and basis of evidence. Witness during the investigation often has a significant impact on innocence or conviction. The witness is also an inevitable consequence of what is happening in the human psyche of the witness, telling the truth and bearing the result of that or abstaining from the truth and excluding him/herself from everything that may be carried by what cannot be tolerated. In view of the importance of witness in criminal evidence, evident technological development, frequent mobility, and avoiding disadvantages and dangers that may fall on the accused or the victims or witnesses, and to reduce expenditures on the criminal justice facility and keep pace with the technical development in our societies, modern means of visual communication are strongly used in the criminal justice facility for remote trial.

### ***The Research Problem***

The research problem of the present study is in identifying the extent of compatibility of modern technology with criminal justice, the extent to which resorting to these modern technical means is possible, and the extent of to which criminal judiciary need to use these methods.

### ***Objectives of the Study***

The present study aims are to highlight the technical and legal aspects of using modern visual communications in hearing witnesses for criminal cases; the reasons for using them in the criminal justice facility, especially in hearing witnesses; the legislative basis for resorting to these means to listen to witnesses in the Jordanian and Emirati legislations; and comparing them to the French legislation to identify the extent to which they are keeping pace with technological development and benefiting from it in criminal justice facilities.

### ***The Value of the Study***

Confronting crimes, searching for the perpetrators, evidence, and achieving justice constitute a challenging point not only for those working in the justice facility but for the entire judicial process. This prompted legislators in many countries to think of finding the best ways to get rid of this dilemma. They have found that technology is the best alternative to link criminal litigation with judges. Many countries adopt the technology of videoconference in a remote trial. The methods of hearing witnesses evolved. The traditional method used to listen to witnesses is to appear before the Judicial Council at the same place and Time. The witness must be present in the place of the Judicial Council and at the moment of the court sitting (Al-Ghammaz, 1981). However, the technical development of videoconference has led

countries to search for the extent to which these modern methods can be applied in criminal justice facilities so that judges can hear witnesses through modern visual media.

### ***Methodology***

In the present study, the method of analysis and comparison is adopted to evaluate the legal texts in the UAE and Jordanian legislation in light of the experiences of others. The French law is taken as a basis for comparison with the UAE and Jordanian law. To fully understand the research topic, the present study is divided into two sections as follows.

### ***The Research Plan***

Section one presents the definition of the videoconference system and the reasons for resorting to it. Whereas, section two offers the legislative basis for resorting to modern video communication means (Videoconference) to hear witnesses.

### **Defining Videoconference System and Why to Resort To It**

Videoconference is one of the modern technology of visual communication. Audio and video communication is used to bring the interlocutors together (Abdulbaqi, 1953). Countries have resorted to it and are using it in criminal justice facilities for many reasons.

### ***Definition of the Videoconference System***

The video system can be defined as an audiovisual communication that takes place simultaneously between parties interacting together in different locations through which these sites can use the Internet to communicate. They can be linked with the main site through the capabilities of audio and video computers and digital video cameras. Interlocutors in the different sites can raise questions, inquiries, and comments to the main site, and they can receive answers to their inquiries (Abdulfattah, 2014).

The meeting through this technique can be a simple conversation between one person and another in private offices from point to point (place to place). Or perhaps, it can be linked to several different and multiple sites between groups of people at the same time. In addition to visual and audiovisual broadcasting between groups of people, this technology can display documents and electronic files, display information through computers, or see and watch what is written on display during the trial.

IEEE standards describe the evolution of broadcasting and how video works. One of the H320 standards shows how Video Conference, (VC) works by ISDN lines, which shows how

sound and image are transmitted over traditional communication lines or over optical fibre lines where ISDN circuits can transmit image and sound faster than regular lines. H323 standard shows how VC via the Internet via TCP/IP or by IP.

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

### ***Remote video and ISDN lines***

ISDN is defined as an abbreviation of Integrated Services Digital Network or the digital network for integrated services provided by telecommunications companies as high-speed telephone lines with a high ability to transmit voice, image, and data digitally across the world via the telephone network. Emirates and Jordan Telecom provides such lines where ISDN technology is used. This technology spread in Emirates and Jordan after liberalising the telecommunications sector. It can be used in criminal justice facilities. This network can transmit voice, pictures, video, and data simultaneously on the same wires through using a technology called Time Division Multiplexing (TDM). This technology allows providing a set of services at one time by creating multiple channels via wires. Each channel is allowed to use an ISDN connection for a particular period. It is also possible to switch from one channel to another in such a way that each channel appears to be active all the time (Abdulsattar, 1986).

### ***Constant Continuous Attendance System***

In this system, the court or public prosecutors meet all the parties. This system links different places with the court or public prosecutors. This system allows communication between five geographically distant from each other places. The accused may be in the penal institution, the complainant may be before the court, and the witness may be in a different geographical area from the court's location.

All are connected to video conferencing (the constant continuous attendance system) with the court body to conduct the trial remotely.

### ***Remote Video and Using IP***

Videoconference technology uses IP-based systems more than ISDN, which provides several features and benefits. The most important of which is the use of a group of users and linking in one IP code. H.323 code or standard that deals with IP technology via Remote video are widely available. Some are available without cost, and it is the cheapest option in some cases. The most common problem when using videoconference via IP technology is unacceptable and slow picture quality.

### ***Why Resort to Modern Visual Means of Hearing Witnesses?***

Videoconference technology is used in hearing witnesses due to several reasons as follows.

1. The difficulty of witnesses being in the same location as the court when listening to their witness. The witness could be outside the court area or the public prosecutor in a distance of more than hundreds of kilometres.
2. Savings on travel expenses and expenses for witnesses and the Criminal Justice Facility as it is from the rights of a witness in a criminal case to claim payment of an allowance for expenses of travelling, transportation, and disruption expenses. The witness, sometimes, is not limited to the same state. It can also be outside the borders of the state, which requires expensive expenses. In addition, the transfer of the sometimes accused from places of detention to the places where the trial or investigation sessions take place leads to an increase in the costs.
3. Protecting witnesses who witness against many organised crimes; terrorist crimes, human trafficking, and drug trafficking. Thus, resorting to videoconference means avoids the risks, assaults witnesses, and influences their witness. Also, using this technology helps the accused to avoid being subjected to abuse or assault, especially organised crimes or intentional killing.
4. Promoting international cooperation in combating crimes and mutual legal assistance between states, especially witnesses. Whereas, states may resort to issuing international judicial delegations to hear some witnesses outside the borders of the region where the tribunal is convened and by diplomatic means. These are lengthy procedures which increase costs.
5. Cooperation between the judiciary, the public prosecutor, and the police in various criminal justice facilities.

### **Discussion**

The legislative basis for resorting to modern video communication means (Videoconference) to hear witnesses.



One of the conditions of witness is that it should be before the Judicial Council. Traditionally, the witness in the Judicial Council means that there is no direct contact between the judiciary and the witness, so that time and place in the Judicial Council unite. It was not acceptable to remotely hear from the witness even if the witness cannot be present due to a disability or illness. In such cases, the court moves to the place of the witness to hear his/her statements there. However, technological development has laid new rules for investigation and trial using Videoconference technology (Abdulbaqi, 1953). Many countries have adopted using this technology due to the great benefits that can be achieved (Abdulfattah, 2014).

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

The importance of videoconference is also one of the effective means of protecting witnesses, victims, and any other person cooperating with criminal justice. Therefore, this technique is used as witnesses in organised crimes and terrorist crimes, as well as in juvenile crimes (Abdulsattar, 1986). Videoconference has been used in many cases in Western countries. In 2001, in *Wright v. Wasilewski's* case, the Supreme Court in Ontario, Canada accepted to hear from 20 US witnesses via videoconference because it reduces costs and allows the judge and jury to form an emotional conviction in the witness. In 2007, in the *Archambault v. Kalandi* case, the Ontario Supreme Court issued a decision accepting the hearing of the Austrian witness via visual communication (Al-Ghammaz, 1981). The British Columbia Supreme Court also agreed to allow the use of visual media to hear witnesses when they could not move because of work and family obligations (Al-Jabri, 2014). This procedure saves a lot of time, effort, and costs on witnesses and criminal justice facilities.

The European Court of Human Rights has affirmed that the use of the (Videoconference) method does not contradict the European Convention on Human Rights. This technique can be used to hear the statements of witnesses, experts, and accused, as well, in the event of their different locations (Al-Woulia, 2007).

The French legislator has inserted these means in the Criminal Procedure Law with the text of Article 706, paragraph 71, which permits the use of visual means of communication in case of necessity at the stage of investigation or trial to hear witness statements and confrontation between people residing in different regions on French soil or residing in France And the European Union, as well to extend the pretrial detention, which requires the accused to appear in court (Awad, 2011). The Emirati legislator also adopted the use of Videoconference technology in trial procedures (Bernard BOULOC, 2014) and Federal Law No. 5 of 2017 was issued regarding the use of remote communication technology in criminal

procedures. The law was published in the last issue of the Federal Official Gazette in Article 2 of the Federal Law. It is incumbent on the competent authority to use the technique of remote communication in criminal procedures with the accused, the victim, the witness, the lawyer, the expert, the translator, the plaintiff in civil right, or responsible for the civil right. According to Article 4 of the Federal Law, the head of the competent authority or his authorised representative may take action remotely whenever he deems it necessary to do so at every stage of the criminal case in a manner that achieves the ease of evidentiary, investigation, or litigation procedures. It is also permissible to take measures remotely outside the department of the competent emirate in coordination with the competent authority if there is someone to take action with (Korari and Ghannam, 2011). The accused may, at the first session of his trial via the technique of remote communication in any degree of litigation, request that he/she appears in person before the court that decides his/her request by accepting or rejecting it (Mahdi, 2008).

The method of remote trial is applied by means of video communication technology with the detainees and the inmates of the penal institutions. This method reduces the possibilities of escape, the possibility of a crime during transportation and waiting, and during the deliberation of the sessions. It also enables to handle criminal case hearings, minor misdemeanours, through the direct live transport feature of the arrested person or the inmate of the penal institution, that allows a judge to review the detainee and issue decisions and rulings from anywhere and at any time through the live video session (MARQUISET, 1999). The Center for Lease Dispute Resolution in the Emirate of Dubai has announced the start of its first real-time first-trial in partnership with the Wasl Asset Management Group in Dubai, on the sidelines of its participation in “GITEX Technology Week 2018”. It has participated in the remote trial, reformers of the people of law and experienced to manage the operations of settlement between the disputants, with the aim of documenting the success of operations with an agreement signed between the parties and the reformer to be approved by the supervising judge. This agreement takes the force of implementation.

This method of remote trial via videoconference means is recently identified in Jordanian legislation according to Law No. 32 of 2017. In Article 158, paragraph C of the Code of Criminal Procedures, the Jordanian legislator mentions that in light of the provisions of Article 74 of this law and items A + B of this paragraph, the Prosecutor uses the Modern Technical Court in accordance with the provisions of Clause D of this paragraph in order to protect witnesses under eighteen years upon giving their witness. These means allow any opponent to discuss the witness during the trial. This witness is considered acceptable evidence in the case. Paragraph D of the article also indicates that for Paragraph C of this Paragraph, the use of modern technology is obligatory if the victim's statements are heard in assault crimes against the offer unless this is impossible and permissible in all other cases. The public prosecutor or the court may use modern technologies in the investigation and trial

procedures without prejudice to the right to debate, including the trial of the inmate remotely from the deposited correction and rehabilitation centre in the manner indicated in the system issued for this purpose. The tools used in modern technology, including tapes and CDs, are subject to the prescribed protection measures to preserve their secrecy and the privacy of the witness or the inmate (Recommandation Rec, 2005; Salama, 1971; Sorour, 2014; Tokson, 2007).

Finally, the legislation that accompanies technological development in criminal justice facilities has led to speedy litigation and lessening the burden on the justice facility in addition to dedicating the system of international cooperation in combating crime.

## **Results**

1. Videoconference has proven to be one of the most effective and advanced means for conducting remote investigation or trial.
2. Videoconference is a fast technology, reduces costs, and protects defendants, witnesses, and juvenile victims.
3. It is possible to resort to Videoconference technology to hear witnesses and conduct the trial remotely.

### Recommendations.

1. Having the Emirati, Jordanian, and French legislation adopting the technology of Videoconference to conduct the trial remotely, it is necessary to conduct many courses, seminars, and lectures to deal with Videoconference for members of the Public Prosecution and the judiciary and all workers in justice facilities.
2. The Emirati and Jordanian legislators are recommended to issue special provisions clarifying the competent court in the trial of a witness who commits a crime while having his/her witness heard by means of modern video communication, especially, some witnesses have their witnesses heard from outside the state.
3. The Emirati and Jordanian legislators are recommended to put in place a particular system that shows how to use modern visual communication methods.

## **Conclusion**

Reviewing the use of modern visual media to hear witnesses in the criminal case in the UAE and Jordanian legislation and comparing that to the French legislation indicates that these legislations pay great attention to this issue.

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