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Remote Trials in Tunisia: The Back Door to a Dysfunctional Justice System



Remote Trials in Tunisia: The Back Door to a Dysfunctional Justice System





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Executive Summary

This paper concludes that, in its current form in criminal proceedings, remote trial in Tunisia constitutes a procedural framework that undermines fair trial safeguards guaranteed under the Constitution and international law. Rather than being grounded in a comprehensive reform agenda, the mechanism emerged through the accumulation of ad hoc measures largely driven by security considerations, before its application expanded beyond the scope of the original legislative mandate.

The paper is based on a legal analysis of the provisions governing remote trial and their judicial application, supported by field interviews with lawyers, and compares the Tunisian experience with standards developed by other judicial systems in this area. The paper does not claim that its evidence base is statistically representative: it draws on six interviews with lawyers, and the information gathered is used as qualitative evidence rather than as nationally representative data.

The study shows that this legislative trajectory has transformed remote criminal trial from a limited exception into a near-routine practice, amid legal ambiguity, particularly surrounding the concept of "imminent danger". In practice, this has allowed for an expansion of the circumstances in which remote trial may be imposed on accused persons, at times

without their consent. This raises constitutional and human rights concerns relating to the right to appear in person before an independent and impartial tribunal and the right to a fair trial in which all legal and procedural safeguards are guaranteed.

The field findings and lawyers' testimonies also reveal concrete procedural shortcomings, including restrictions on confidential communication between accused persons and their lawyers, limitations on direct in-person confrontation, disruption of hearings due to inadequate technical infrastructure both in the courtroom and in the prison where the accused is held, and interference with the principle of public hearings. The paper concludes that these shortcomings are not incidental, but stem from a structural mismatch between the requirements of digitalisation and the realities of the existing judicial and legislative framework. This further weakens the position of accused persons, particularly in cases of a political nature. The field findings also reveal significant disparities in implementation across regions: several courts discontinued the use of remote trial after the pandemic ended despite retaining the necessary technical equipment, while its use has become concentrated in particular judicial chambers. This calls into question justifications based on efficiency or the availability of infrastructure.

The paper examines the “conspiracy against State security” case as an illustrative case study. The combination of prolonged pretrial detention, the collective nature of the charges and the severity of the potential penalties brings the effects of this mechanism into particularly sharp relief.

By comparing the Tunisian experience with standards established in European and comparative jurisprudence, the paper identifies three interrelated conditions for the lawful use of remote trial: the accused person’s explicit consent; confidential communication between the accused and their lawyer; and reasoned judicial scrutiny, on a case-by-case basis, of the use of this mechanism. These conditions are either absent or inadequately guaranteed in current Tunisian practice. The paper also weighs this conclusion against arguments advanced in support of remote trial, including the cost of transporting detainees, the associated security risks, and the distance between prisons and courthouses. It concludes that these considerations must be assessed against the requirements of necessity and proportionality: they may justify exceptional and duly reasoned recourse to remote trial, but do not justify turning the exception into the rule.

On this basis, the paper calls for a review of the legal framework governing remote criminal trial and its judicial application, and for its use to be subject



Introduction

The beginning of the twenty-first century witnessed a significant expansion in the use of digital technologies within judicial systems worldwide. Legislators presented this shift as a means of reducing costs, accelerating the resolution of cases, and minimising the risks associated with transporting high-risk accused persons. Human rights organisations, however, warned from the outset that digitalisation in the context of remote trials cannot fulfil its human rights objectives unless accompanied by strict procedural safeguards that protect the dignity of the accused and the rights of the defence, particularly in criminal proceedings, in accordance with Article 14 of the International Covenant on Civil and Political Rights[1] and United Nations principles on the Independence of the Judiciary.[2] An important distinction must therefore be drawn between digitalisation as a mechanism that brings citizens closer to justice by facilitating access to proceedings in administrative and civil matters, and digitalisation as a mechanism that distances citizens from justice when it is reduced to remote trials in criminal cases.

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1 International Covenant on Civil and Political Rights, 1966. https://www.ohchr.org/ar/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights

2 Basic Principles on the Independence of the Judiciary, 1985. https://digitallibrary.un.org/search?ln=fr&as=0&p=subjectheading:[Basic+Principles+on+the+Independence+of+the+Judiciary+%281985%29]

In Tunisia, official figures illustrate the scale of this phenomenon. During a plenary session of the Assembly of the Representatives of the People devoted to consideration of the Ministry of Justice budget on 15 November 2025, the Tunisian Minister of Justice stated that 25,914 detainees had been tried remotely between 2020 and 2025. She further stated that the mechanism was initially introduced at the Sousse 1 Court of First Instance and subsequently extended to 12 Courts of Appeal, 21 Courts of First Instance, six Cantonal Courts, and 11 prisons.[3] However, these figures were not accompanied by any detailed published data that would allow for their verification or breakdown by type of case and level of jurisdiction, which in itself highlights a lack of transparency in judicial data.

These figures raise a central question concerning effects rather than intentions: what is the objective impact, on fair trial safeguards, of the transformation of this mechanism from a limited exception into a widespread practice, including on the accused person's right to appear in person and the ability of their family and the public to follow the hearing, irrespective of the stated reasons for its use?

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3 Tunisian Ministry of Justice, "Response by Minister of Justice Leïla Jaffel to Questions from Members of the Assembly during the Plenary Session Devoted to Consideration of the Ministry of Justice Budget, 15 November 2025," video, official Facebook page of the Tunisian Ministry of Justice, from 37:00 onwards https://www.facebook.com/reel/1247742193917627.

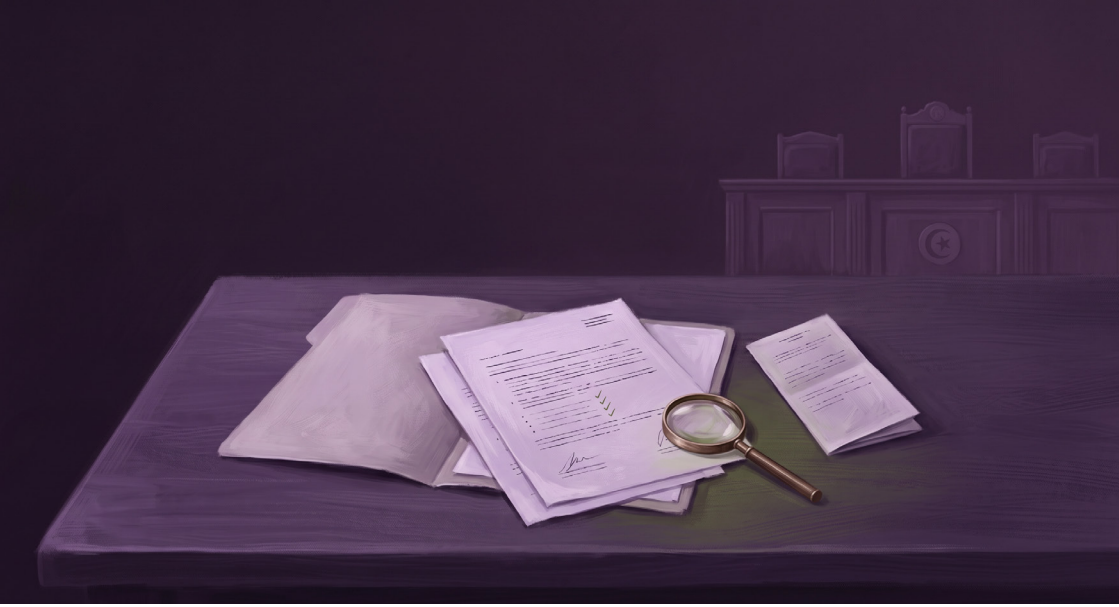
An examination of Tunisian judicial practice indicates that the use of remote trial is not governed by clear and objective criteria. Courts resort to the mechanism selectively and inconsistently: some judicial chambers use it routinely in certain cases, while others refrain from doing so in comparable circumstances. Lawyers report that decisions to use remote trial are sometimes issued without prior notice to the defence, despite the express wording of Article 141 bis of the Code of Criminal Procedure, which provides that: "...the court's decision to use audiovisual means of communication shall be in writing and reasoned and shall not be subject to any form of appeal. The director of the prison concerned, the accused and, where applicable, their lawyer shall be notified of the decision by any means leaving a written record, at least five (5) days before the date of the hearing."[4]

This paper proceeds from the central argument that, in its current form, the remote trial system in Tunisia constitutes a procedural framework that undermines fair trial safeguards and requires urgent legislative and judicial review, both in terms of the governing legal provisions and their application. It

4 Decree-Law of the Head of Government No. 2020-12 of 27 April 2020, supplementing the Code of Criminal Procedure
https://legislation-securite.tn/ar/latest-laws/%D9%85%D8%B1%D8%B3%D9%88%D9%85-%D9%85%D9%86-%D8%B1%D8%A6%D9%8A%D8%B3-%D8%A7%D9%84%D8%AD%D9%83%D9%88%D9%85%D8%A9-%D8%B9%D8%AF%D8%AF-12-%D9%84%D8%B3%D9%86%D8%A9-2020-%D9%85%D8%A4%D8%B1%D8%AE-%D9%81/

seeks to substantiate this argument through four lines of analysis: legislative, constitutional, field-based procedural, and structural and comparative. Their findings are examined through a case study of the "conspiracy against State security" case and then assessed against standards developed through comparative judicial experience.

The paper adopts three interrelated conditions as the normative framework against which the Tunisian experience is assessed in the sections that follow: the accused person's explicit consent; the integrity and confidentiality of communication between the accused and their lawyer; and reasoned judicial review in each individual case. The legislative analysis is addressed in Section One, the constitutional analysis in Section Two, and the field-based procedural analysis in Sections Three and Four. These strands of analysis are then brought together in Section Five through the case study and assessed against comparative standards in Section Six.



Methodology

This paper combines legal and comparative analysis with field research and open-source material to assess the legal framework governing remote trial against its application in practice. It examines how the evolving use of remote trial affects fair trial safeguards, with particular attention to the right to appear in person, the rights of the defence, confidential communication, and the principles of confrontation and public hearings. The unit of analysis is the judicial procedure and the conduct of hearings, rather than the judgments rendered.

The legal analysis traces the framework governing remote trial since 2003 and examines it in light of the 2022 Tunisian Constitution and the International Covenant on Civil and Political Rights, with priority

given to official and primary sources. The paper also draws on comparative experience from other jurisdictions to identify standards against which the Tunisian experience can be assessed, without seeking to transpose foreign models onto the Tunisian context.

The field research consisted of six semi-structured interviews conducted between April and August 2026 with lawyers who had direct experience of remote trial and were affiliated with regional bar branches in Tunis, Sousse, Kairouan, Jendouba and Nabeul. Participants were selected purposively, with a view to ensuring geographical diversity. The interviews explored how the mechanism was applied, the conditions under which accused persons appeared remotely, its impact on the rights of the defence and communication with lawyers, technical difficulties, appearance in person and confrontation, and the safeguards required. The interviews were supplemented by open-source material, including publicly expressed views of lawyers, a judge and a professor of public law, as well as statements and communiqués issued by professional bodies. These sources were treated as dated testimonies and public positions, rather than as official data.

The research distinguished between facts corroborated by independent sources, facts supported by documentary evidence, and individual accounts, which were expressly attributed to those

who provided them and were not generalised. Information that could not be verified, or that would have required causal inferences unsupported by the evidence, was excluded. The identities of interview participants were withheld at their request, and participants were informed in advance of the subject of the research and how their testimonies would be used. Open-source material was treated as dated public material made available by its authors and was therefore used without seeking prior permission. Only publicly available content was used, and no non-public information was added.

The study does not claim that the sample is statistically representative or that national-level estimates can be derived from it, particularly given the limited availability of detailed official data. Instead, the field findings are used as qualitative evidence to assess the extent to which practice is consistent with legal safeguards, identify concrete procedural shortcomings, and highlight areas requiring further research.



First: Legislative Foundations — From Security Exception to Public Health Necessity

The process by which remote trial was adopted in Tunisia cannot be understood without reference to its historical and legislative context, which clearly shows that this mechanism did not emerge from a comprehensive reform vision aimed at modernising the justice system. Rather, it was introduced in response to successive context-specific considerations, initially driven predominantly by security concerns and, later, by public health considerations.

Tracing this development requires an initial distinction between three concepts that are often used interchangeably. The first is remote interrogation,

whereby an accused person is questioned through audiovisual communication at a particular stage of prosecution or investigation. The second is the remote hearing of a witness or victim, a protective measure intended to avoid direct confrontation. The third is remote trial, which involves conducting the full range of proceedings through audiovisual means, including pleadings, confrontation between the parties or between the accused and witnesses before the court, the presentation of seized items, and the delivery of judgment. Legislation predating 2020 addressed only the first two concepts. The shift to the third occurred in 2020 without the adoption of a separate legislative framework establishing remote trial as such, an issue examined further in the second section of this paper.

In 2003, remote interrogation was introduced for the first time under Law No. 2003-75 on Supporting International Efforts to Combat Terrorism and the Suppression of Money Laundering[5], specifically Article 49[6], which was limited to interrogation and

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5 Law No. 2003-75 of 10 December 2003 on Supporting International Efforts to Combat Terrorism and the Suppression of Money Laundering.
https://legislation-securite.tn/ar/latest-laws/%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%B9%D8%AF%D8%AF-75-%D9%84%D8%B3%D9%86%D8%A9-2003-%D9%85%D8%A4%D8%B1%D8%AE-%D9%81%D9%8A-10-%D8%AF%D9%8A%D8%B3%D9%85%D8%A8%D8%B1-2003-%D9%8A%D8%AA%D8%B9%D9%84%D9%82/

6 Article 49 of Law No. 2003-75: "In cases of imminent danger, the investigating judge or the president of the court may, as appropriate and where necessary, conduct

did not extend to other aspects of trial proceedings. The Law was subsequently repealed by Organic Law No. 2015-26. This provision emerged in a specifically security-oriented context, primarily aimed at managing the risks associated with transporting accused persons in terrorism cases, rather than improving trial procedures or strengthening their safeguards. The mechanism was therefore established as a procedural exception justified by exceptional security considerations, rather than as an instrument of structural reform within the criminal justice system.

In 2015, with the adoption of Organic Law No. 2015-26[7] on Combating Terrorism and the Suppression of Money Laundering, the security-based approach was not abandoned but rather consolidated and expanded within what may be described as a preventive criminal justice policy. Audiovisual communication remained part of the counter-terrorism framework and was incorporated into Article 73 as a protection mechanism for witnesses, whistleblowers and victims, rather than as a means of conducting trials or an alternative to the accused person's appearance

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investigative measures or order that the hearing be held at a place other than its usual venue, while taking the necessary measures to safeguard the accused person's right to defend themselves. They may also decide to question the accused and take statements from any person they consider useful to hear, using appropriate visual or audio means of communication, without requiring the person concerned to appear in person."

7 Organic Law No. 2015-26 of 7 August 2015 on Combating Terrorism and Preventing Money Laundering.

in person. Nor was this accompanied by a critical assessment of its implications for the rights of the defence. This reflects the continued treatment of the mechanism as a functional tool for managing security risks rather than as part of structural reform, thereby entrenching and expanding the exception.

In 2016, under Organic Law No. 2016-61[8] on preventing trafficking in persons, the use of remote judicial proceedings was extended to the context of victim protection. While the legitimacy of this objective is not in question, the expansion remained

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https://legislation-securite.tn/ar/latest-laws/%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A3%D8%B3%D8%A7%D8%B3%D9%8A-%D8%B9%D8%AF%D8%AF-26-%D9%84%D8%B3%D9%86%D8%A9-2015-%D9%85%D8%A4%D8%B1%D8%AE-%D9%81%D9%8A-7-%D8%A3%D9%88%D8%AA-2015-%D9%8A%D8%AA%D8%B9/#:~:text=%D8%A8%20%2D%20%D8%A7%D9%84%D8%A5%D8%B1%D9%87%D9%80%D8%A7%D8%A8-,%D9%82%D8%A7%D9%86%D9%88%D9%86%20%D8%A3%D8%B3%D8%A7%D8%B3%D9%8A%20%D8%B9%D8%AF%D8%AF%2026%20%D9%84%D8%B3%D9%86%D8%A9%202015%20%D9%85%D8%A4%D8%B1%D8%AE%20%D9%81%D9%8A%207%20%D8%A3%D9%88%D8%AA,%D8%A8%D9%85%D9%83%D8%A7%D9%81%D8%AD%D8%A9%20%D8%A7%D9%84%D8%A5%D8%B1%D9%87%D8%A7%D8%A8%20%D9%88%D9%85%D9%86%D8%B9%20%D8%BA%D8%B3%D9%84%20%D8%A7%D9%84%D8%A3%D9%85%D9%88%D8%A7%D9%84.&text=%D9%88%D8%A8%D8%B9%D8%AF%20%D9%85%D9%88%D8%A7%D9%81%D9%82%D8%A9%20%D9%85%D8%AC%D9%84%D8%B3%20%D9%86%D9%88%D8%A7%D8%A8%20%D8%A7%D9%84%D8%B4%D8%B9%D8%A8.

8 Organic Law No. 2016-61 of 3 August 2016 on Preventing and Combating Trafficking in Persons.
https://legislation-securite.tn/ar/latest-laws/%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A3%D8%B3%D8%A7%D8%B3%D9%8A-%D8%B9%D8%AF%D8%AF-61-%D9%84%D8%B3%D9%86%D8%A9-2016-%D9%85%D8%A4%D8%B1%D8%AE-%D9%81%D9%8A-3-%D8%A3%D9%88%D8%AA-2016-%D9%8A%D8%AA%D8%B9/

functionally limited and was not accompanied by a comprehensive conceptual or procedural framework redefining the role of this technology within the justice system.

In 2020, Decree-Law No. 2020-12[9] marked a turning point in terms of the scope of application, as remote trial was extended in the context of the COVID-19 pandemic, in line with the social-distancing measures introduced in response to the pandemic. Despite the scale of this expansion, however, it remained governed by the logic of circumstantial necessity. The technology was deployed as an emergency measure to ensure the continuity of judicial services, without the parallel development of a comprehensive legal framework capable of balancing the requirements of efficiency with safeguards for rights.

This legislative trajectory shows that the adoption of remote trial in Tunisia was not the product of a reform vision aimed at modernising the justice system or systematically digitalising it. Rather, it resulted from the accumulation of piecemeal solutions imposed by successive exceptional circumstances: initially security-related and, later, public-health-related.

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9 Decree-Law of the Head of Government No. 2020-12 of 27 April 2020, supplementing the Code of Criminal Procedure.
https://legislation-securite.tn/ar/latest-laws/%D9%85%D8%B1%D8%B3%D9%88%D9%85-%D9%85%D9%86-%D8%B1%D8%A6%D9%8A%D8%B3-%D8%A7%D9%84%D8%AD%D9%83%D9%88%D9%85%D8%A9-%D8%B9%D8%AF%D8%AF-12-%D9%84%D8%B3%D9%86%D8%A9-2020-%D9%85%D8%A4%D8%B1%D8%AE-%D9%81/

Accordingly, the continued use of this mechanism today, without a fundamental review of its legal framework and safeguards, does not represent the continuation of a reform process. Rather, at its core, it reflects the persistence of the security-oriented logic within which the mechanism first emerged, with the attendant risks this poses to the balance of judicial proceedings and to fair trial safeguards.



Second: The Constitutional Impasse — When the Legal Framework Exceeds the Limits of the Legislative Mandate

The legislation adopted between 2003 and 2020 marked a gradual shift in which remote trial evolved from an exceptional mechanism of a technical nature, used exclusively in specific circumstances such as the protection of witnesses or the prevention of the spread of communicable diseases, into a permanent institutional mechanism granting courts broader powers that affect the very substance of fair trial safeguards. The central concern is that this transformation occurred beyond the limits of the original legislative mandate, resulting in shortcomings that have affected the fundamental rights of litigants and accused persons.



1. Expansion of the Concept of "Imminent Danger": From a Protective Safeguard to a Tool of Procedural Exclusion

Legislation adopted between 2003 and 2020 saw a significant expansion in the use of the concept of "imminent danger"[10] as a basis for resorting to remote interrogation or remote trial, without providing a precise legal definition or clear and objective criteria for its application. This conceptual ambiguity has transformed "danger" from an exceptional protective safeguard into a flexible basis for justifying the accused person's exclusion from in-person hearings.

10 Farouk El Heni, "Remote Trial in Light of Decree-Law No. 2020-12 of 27 April 2020," Leaders.
https://ar.leaders.com.tn/article/5578

In cases of a political nature, such as the "conspiracy against State security" cases, the concept of "real danger" has been invoked to justify the remote trial of accused persons in respect of whom there was no security-related information warranting restrictions on their transfer to court.[11] This has turned the concept into an overly broad basis for undermining the right to appear in person and the rights of the defence, as guaranteed by Article 33 of the 2022 Constitution (the presumption of innocence and safeguards for the rights of the defence throughout the stages of prosecution and trial) and Article 124(1) (the right to a fair trial and guarantees of the right of access to justice and the rights of the defence).

This expansion has also adversely affected the presumption of innocence. Presenting accused persons on screen, at times in prison clothing or while physically restrained, can create a visual impression of presumed guilt, contrary to the principle of judicial impartiality and the requirements of a fair trial under Article 14 of the International Covenant on Civil and Political Rights. The Human Rights Committee has previously affirmed, in General Comment No. 32,

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11 Karim Marzouki, "Remote Trial in the 'Conspiracy' Case: An Arbitrary Decision that Undermines the Principles of a Fair Trial," The Legal Agenda, 3 March 2025. https://legal-agenda.com/%D9%85%D8%AD%D8%A7%D9%83%D9%85%D8%A9-%D9%82%D8%B6%D9%8A%D8%A9-%D8%A7%D9%84%D8%AA%D8%A2%D9%85%D8%B1-%D8%B9%D9%86-%D8%A8%D9%8F%D8%B9%D8%AF-%D9%82%D8%B1%D8%A7%D8%B1-%D8%AA%D8%B9%D8%B3%D9%81%D9%8A/

that the accused person's presence in person is a fundamental safeguard from which States may depart only in cases of strict necessity and only to the extent required by the actual circumstances.[12]

The issue is not limited to international safeguards, as the Tunisian Constitution itself provides the standard against which this exception is to be assessed. Article 55 of the 2022 Constitution permits restrictions on rights and freedoms only by law and where required by a democratic system, subject to two cumulative conditions: that they do not affect the essence of the right and that they are justified by their objectives and proportionate to their grounds. The same Article requires all judicial bodies to protect these rights against any violation. Measured against these two conditions, the "imminent danger" exception breaches both: it affects the essence of the right to appear in person because it eliminates rather than restricts it, and it is disproportionate when applied collectively to cases without an individual assessment of necessity in each case or any avenue for the accused to challenge it.

12 Human Rights Committee, General Comment No. 32 on Article 14 of the International Covenant on Civil and Political Rights, 2007.
https://digitallibrary.un.org/record/606075?ln=ar&v=pdf



2. Procedural Violations: The February 2025 Decision as a Case in Point

In February 2025, the President of the Tunis Court of First Instance sent a letter to the Tunis Regional Bar Association announcing the use of remote trials for all hearings before Criminal Chamber No. 5, which specialises in terrorism cases, throughout March and until the cases were decided.[13] The letter also covered the accused in the "conspiracy against State security" case. The decision entails four cumulative procedural violations, each of which independently raises a serious question as to its lawfulness and which, taken together, establish its arbitrary nature. These four violations are presented as an evidentiary argument rather than a sequential account: each is

13 Karim Marzouki, op. cit.

independent of the others and sufficient on its own to establish unlawfulness, while their combination produces a cumulative effect.

The first procedural violation concerns the President of the Court exceeding the scope of her legal authority. Article 141 bis expressly provides that it is the "court" that decides on the use of remote trial. Under the Code of Criminal Procedure, "court" can only mean the judicial chamber hearing the case, not the President of the Court. This is further supported by the fact that whenever the legislature intends to confer a power on the President of the Court, it does so expressly by using the term "President of the Court", reflecting the principle that there can be "no competence without a legal basis" in criminal matters. Accordingly, a decision signed by the President of the Tunis Court of First Instance and the Public Prosecutor, rather than by the President of Criminal Chamber No. 5, is procedurally defective and may also be challenged before the Administrative Court as a defective administrative decision. This does not conflict with Article 141 bis, which provides that the decision is not subject to appeal, since the bar on appeal established by that provision applies to a judicial decision issued by the chamber hearing the case, not to an administrative communication issued by the presidency of the court outside the scope of the President of the Court's legal authority.

The Public Prosecutor's signature further compounds the defect, since the prosecution is an opposing party to the proceedings and has no authority to determine how the hearing is to be conducted.[14]

The second procedural violation concerns the lack of reasoning in the decision and an error in its legal characterisation. Article 141 bis requires the decision to be "in writing and reasoned", yet the letter merely referred to the "existence of a real danger", without providing any details as to its manifestations or consequences. Significantly, the legislature uses the term "imminent danger", a characterisation that relates to the seriousness of the danger and the degree of its urgency, whereas the term "real" does not relate to seriousness at all. A danger may be real without being imminent. Therefore, even assuming that the reasoning were formally sufficient, the justification invoked, namely the existence of a "real" danger, does not satisfy the specific statutory requirement of an "imminent" danger. In this regard, the French Court of Cassation (Cour de cassation) has held, by way of comparative guidance rather than as binding authority under Tunisian law, that the danger invoked to dispense with the accused person's consent must be precisely identified and sufficiently supported by

14 Karim Marzouki, op. cit.

facts, rather than inferred merely from the severity of the potential penalties.[15]

The third procedural violation concerns the blanket application of the measure to multiple cases in place of an individual assessment. The letter imposed remote trial on 149 cases at once, the "conspiracy" case and 148 other cases, throughout the month of March and until those cases were decided. This blanket approach is plainly inconsistent with the logic of Article 141 bis, which requires each case to be considered individually to determine whether the requirement of necessity is met. Dispensing with the accused person's consent is, by its very nature, an exceptional measure that cannot be applied on a blanket basis.[16] The letter further provided that it would remain in force "until the aforementioned cases are decided", without setting a specific time limit. Its effects could therefore extend beyond the month in question and potentially continue for years in criminal cases that may take a long time to conclude.[17]

The fourth procedural violation concerns reliance on two conflicting legal bases, as the letter invoked both

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15 Cour de cassation, chambre criminelle, 20 juin 2017, n° 17-82.062. https://www.courdecassation.fr/decision/5fd8fe422ce31e945929f76f

16 Karim Marzouki, op. cit.

17 Samir Dilou, "Justice… Remotely!", public Facebook post, 1 March 2025, accessed 19 August 2026. https://www.facebook.com/share/p/1EeNQQgxhB/

Article 73 of the Counter Terrorism Law and Article 141 bis. Article 73, however, does not regulate remote trial but concerns mechanisms for the protection of witnesses and whistleblowers. It appears in a section entitled "Protection Mechanisms", rather than among the provisions governing the conduct of hearings. Moreover, its second paragraph is limited to interrogation and does not extend to other aspects of trial proceedings, such as confrontation or the presentation of seized items, and remains tied to its protective purpose. This exposes the weakness of the dual statutory basis and, in substance, leaves the measure without a legal basis.[18] This is also supported by public law professor Sana Ben Achour in a public analysis published on 30 March 2025. She explains that "real danger" under the Counter Terrorism Law can only result in hearings being held in camera, meaning that the public is excluded from the courtroom while the parties remain present, rather than the parties themselves being excluded by remaining at the place of detention while the public remains in the courtroom. These are two measures with opposite effects, the latter resulting in what she describes as the "multi location trial".[19]

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18 Karim Marzouki, op. cit.

19 Sana Ben Achour, "Another Remote Hearing!", public Facebook post, 30 March 2025, accessed 19 August 2026.
https://www.facebook.com/share/p/1GBRLjxLfd/

The issue has not remained confined to academic analysis or defence arguments. In a public post dated 7 March 2025, a judge questioned whether a mechanism established by a decree law issued in response to COVID 19 and not approved by the Assembly of the Representatives of the People could lawfully be used, and whether it was appropriate for criminal cases carrying sentences exceeding five years' imprisonment, when leading comparative systems permit its use only for minor offences. The judge concluded that remote trial "has no basis in the Tunisian criminal procedural law currently in force" and that establishing such a mechanism requires legislation setting out the conditions governing its use without infringing the right to a fair trial. The significance of this position is twofold: it comes from within the judiciary itself, and it shifts the debate from individual cases to the thousands of trials that have been, and continue to be, conducted using this technology without attracting attention.[20*]

20 Afif Jaaidi, public Facebook post, 7 March 2025, accessed 19 August 2026. https://www.facebook.com/share/p/1DZMfRbkMe/



3. Exceeding the Limits of the Legislative Delegation: Decree-Law No. 2020-12 as a Turning Point

Decree Law No. 2020-12 represents the culmination of the constitutional issue, as a legislative delegation intended exclusively to address the COVID 19 pandemic was used to establish a near permanent system of remote criminal trials extending to non exceptional circumstances.[21]

This expansion was accompanied by a fundamental procedural shortcoming. The Decree Law was adopted without consultation with the Supreme Judicial Council[22], despite the nature of the subject matter

21 Farouk El Heni, op. cit.

22 Karim Marzouki, op. cit.

requiring such consultation given its direct connection to safeguards for judicial independence and the regulation of criminal procedure. This amounted to an infringement of the principle of the balance of powers.

Furthermore, the Decree Law empowered the court to impose remote trial without the accused person's consent in cases of "danger", while providing that such a decision was "not subject to appeal by any means". This deprives the accused person of the right to object to the manner in which the trial is conducted and strips the rights of the defence of their substance.[23]

The Decree Law was also not submitted to Parliament for approval within the prescribed period following the expiry of the delegation granted to the Head of Government, as required by Article 70 of the 2014 Constitution, which was in force at the time. Public law professor Sana Ben Achour argues that the absence of parliamentary approval deprives the Decree Law of its legal force and effects, since Parliament holds original legislative authority. This view, however, is doctrinal rather than judicial. The effect of the

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23 "Remote Trials in Egypt and Tunisia: An Analysis of the Legal Framework and Practice in Light of International Fair Trial Standards," The Tahrir Institute for Middle East Policy (TIMEP), 4 November 2025.
https://timep.org/post-arabic/%D8%A7%D9%84%D9%85%D8%AD%D8%A7%D9%83%D9%85%D8%A7%D8%AA-%D8%B9%D9%86-%D8%A8%D9%8F%D8%B9%D8%AF-%D9%81%D9%8A-%D9%85%D8%B5%D8%B1-%D9%88%D8%AA%D9%88%D9%86%D8%B3-%D8%AA%D8%AD%D9%84%D9%8A%D9%84-%D9%84%D9%84/

absence of parliamentary approval on the Decree Law, whether invalidity, cessation of effect, or temporary continued validity, has not been judicially settled in Tunisia and remains the subject of doctrinal debate. This conclusion is therefore not presented as settled.

Nevertheless, Article 141 bis continues to be applied in practice to this day. This continued application does not resolve the constitutional issue but deepens it in two respects. First, judicial practice relies on a legal basis that has not fulfilled the condition for its entry into force. Second, even assuming that the Decree Law remains in force, the delegation under which it was adopted was confined to its stated purpose, namely addressing the COVID 19 pandemic. Its use today, after that purpose has ceased to exist, therefore remains beyond the substantive limits of the delegation, not merely its temporal limits.

This calls for the legal status of the Decree Law to be expressly resolved, rather than leaving it suspended between a text that was not approved and an ongoing judicial practice.[24]

24 Karim Marzouki, op. cit.



Third: Procedural Architecture: Delays and the Absence of Safeguards

Alongside the constitutional issues, the practical application of remote trials has revealed documented procedural gaps that have deprived a number of legal safeguards of their practical effect. This section draws on testimonies from lawyers belonging to the Sousse Regional Bar Association, as well as other human rights reports.



1. Legitimising Forced Absence through the "Imminent Danger" Exception

The first paragraph of Article 141 bis of the Code of Criminal Procedure, added by Decree Law No. 2020-12, provides that the use of remote trial is conditional upon the "consent of the accused". The second paragraph of the same Article, however, effectively opened a "back door" allowing courts to bypass this safeguard by permitting them to order remote trial "without requiring the consent of the accused" in cases of "imminent danger" or for the prevention of communicable diseases.

Judicial practice reveals a fundamental reversal in the application of Article 141 bis. While the provision expressly establishes the accused person's consent as the rule and the danger exception as the exception,

this relationship has been reversed in practice. The danger exception has come to be routinely invoked, without any reasoning, to circumvent the requirement of consent. This is at odds with the Human Rights Committee's emphasis that fair trial safeguards must be effective rather than merely formal and must not be circumvented through expansive interpretations of exceptions.[25]

The Sousse 1 Court of First Instance has come to use remote trial systematically in the majority of criminal cases[26], disregarding the requirement of the accused person's prior consent, expressly rejecting requests for physical presence, and invoking the "danger" exception without factual reasoning or a precise definition of the nature of the danger. The fact that the decision is not subject to appeal has also been used to close off any avenue for objection by the defence. According to one interview, the appeal proceedings in the Ben Guerdane events case, in which the accused were interrogated on 30 December 2024, were among the first cases in which remote trial was reintroduced after the end of the pandemic, and the mechanism was used at both the interrogation and pleadings

25 Human Rights Committee, General Comment No. 32, op. cit.

26 Telephone Interview No. 1 with a lawyer registered with the Sousse Regional Bar Association, 15 April 2026. Identity withheld at the interviewee's request.

stages. The February 2025 letter therefore did not establish this practice but rather generalised it.[27]

As a result, the "consent of the accused" has been transformed from a fundamental safeguard of the rights of the defence into a mere formality that can easily be bypassed. Field testimonies indicate that courts have come to treat remote trial as the default option, considering the absence of an objection by the accused, who may not be fully aware of their rights, as implicit consent. Conversely, an explicit objection is met by invoking the "imminent danger" exception to impose remote trial, thereby depriving the right to appear in person of its substance.

27 Telephone Interview No. 2 with a female lawyer registered with the Tunis Regional Bar Association, 19 August 2026. Identity withheld at the interviewee's request.



2. Undermining the Rights of the Defence and Breaching Confidentiality of Communications

The physical separation of the accused from their lawyer during the hearing reshapes the relationship between them in a manner that affects the essence of the rights of the defence. The accused appears from within the prison in a security controlled environment, often in the presence of officers, restricting the possibility of confidential communication with their lawyer and preventing them from freely reporting any potential violations. Whichever location the lawyer chooses, whether the prison or the courtroom, the rights of the defence are affected in either case: attending from the prison weakens the lawyer's ability to plead before the judge, while attending from the courtroom weakens communication with the client.

Field testimonies confirm this and provide further detail. Three interviews indicated that the accused appears in a transmission room inside the prison, with security officers positioned immediately beside them.[28] A comparison with physical appearance before the court is revealing: an accused person who is physically present before the court stands alone before the judge, whereas this degree of independence is lost when they are interrogated inside the prison and under the watch of prison officers.[29] This is not merely an incidental logistical arrangement, but a reshaping of the accused person's position within the hearing. They give their statements from a space controlled by the same authority about whose detention conditions they may wish to complain, affecting their freedom to speak in a way that cannot be measured by the quality of the audio and video connection.[30]

The Human Rights Committee, in General Comment No. 32,[31] affirmed that this right requires the accused to be able to communicate with their lawyer under conditions that fully respect confidentiality and without any surveillance or interference. This practice is also

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28 Telephone Interview No. 2, op. cit.

29 Telephone Interview No. 4 with a lawyer registered with the Jendouba Regional Bar Association, 17 August 2026. Identity withheld at the interviewee's request.

30 Telephone Interview No. 6 with a lawyer registered with the Tunis Regional Bar Association, 19 August 2026. Identity withheld at the interviewee's request.

31 Human Rights Committee, General Comment No. 32, op. cit.

inconsistent with the Basic Principles on the Role of Lawyers, which emphasise that the confidentiality of professional communications between lawyers and their clients must be guaranteed at all times.[32]



3. Weakening the Principle of Direct, In-Person Interaction

Direct, in person interaction between the judge and the accused is an essential element in the formation of the judge's assessment, allowing the judge to observe the accused person's conduct and direct reactions. The Human Rights Committee, in General Comment No. 32, has affirmed that this right includes the possibility of effective participation in

32 United Nations, Basic Principles on the Role of Lawyers, 1990. https://www.ohchr.org/ar/instruments-mechanisms/

trial proceedings, enabling the judge to assess the credibility of the parties directly.

The Tunisian experience has shown that digital mediation diminishes this human dimension. Recurring technical difficulties, including poor transmission quality, interruptions on several occasions, and the lack of adequate audio equipment, have resulted in hearings marked by repeated communication failures and interrupted exchanges, limiting the possibility of a comprehensive judicial assessment.

The interviews and public professional posts converge on a specific procedural situation that encapsulates this problem. The accused, inside the transmission room at the prison, can see the judicial panel on the screen but cannot see the defence team or the rest of the courtroom, and cannot clearly hear what is taking place there. In other words, when direct interaction takes place, it is between the accused and the court alone, with the defence visually excluded. A lawyer documented this situation in two public posts dated 23 April 2025[33] and 24 June 2025[34]. One interview also confirmed it[35] and highlighted an impact beyond the procedural dimension: seeing their lawyer

33 Ines Harrath, public Facebook post, 23 April 2025, accessed 18 August 2026. instruments/basic-principles-role-lawyers

34 Ines Harrath, public Facebook post, 24 June 2025, accessed 18 August 2026. https://www.facebook.com/share/p/1DUL8byehj/

35 Telephone interview No. 2, op. cit.

beside them provides the accused with a sense of reassurance and trust that helps them communicate with their lawyer, while the absence of that presence intensifies their sense of isolation within proceedings in which their fate is being decided.

In the context of protests against this practice, the Sousse Regional Branch of the Tunisian Bar Association expressed its rejection of remote trials in a statement calling for a general in person strike across all Sousse courts on 16 April 2026. The strike was called in protest against what it described as the "continued use of the remote trial mechanism, which does not provide the requirements of a fair trial" at the Sousse 1 Court of First Instance[36]. The Sousse Regional Bar considered the practice an infringement of the right to appear in person before a judge and a restriction on the scope for uncovering the truth in the courtroom.

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36 "Protest and Strike at Sousse Courts over the 'Deteriorating State of the Justice System'," Ultra Tunisia, 16 April 2026.
https://ultratunisia.ultrasawt.com/%D9%88%D9%82%D9%81%D8%A9-%D8%A7%D8%AD%D8%AA%D8%AC%D8%A7%D8%AC%D9%8A%D8%A9-%D9%88%D8%A5%D8%B6%D8%B1%D8%A7%D8%A8-%D8%A8%D9%85%D8%AD%D8%A7%D9%83-%D9%85-%D8%B3%D9%88%D8%B3%D8%A9-%D8%A7%D8%AD%D8%AA%D8%AC%D8%A7%D8%AC%D9%8B%D8%A7-%D8%B9%D9%84%D9%89-%D8%A7%D9%84%D9%88%D8%B6%D8%B9-%D8%A7%D9%84%D9%85%D8%AA%D8%B1%D8%AF%D9%91%D9%8A-%D9%84%D9%85%D8%B1%D9%81%D9%82-%D8%A7%D9%84%D8%B9%D8%AF%D8%A7%D9%84%D8%A9/%D8%A7%D9%84%D8%AA%D8%B1%D8%A7-%D8%AA%D9%88%D9%86%D8%B3/%D8%B3%DB%8C%D8%A7%D8%B3%D8%A9/%D8%A7%D9%94%D8%AE%D8%A8%D8%A7%D8%B1

A joint declaration by the United Nations Special Rapporteur on the independence of judges and lawyers and the Inter-American Commission on Human Rights expressly stated that the use of technological means for the provision of justice services cannot undermine the due process rights of parties and participants in virtual hearings, particularly the right to a defence in criminal matters, the right to legal assistance, the right to adversarial proceedings, and the right to be tried without delay. Both noted that remote working, digital platforms, and hearings by videoconference had become widely used during the pandemic, while expressly warning that the use of such technologies could not justify undermining the safeguards afforded to the accused.[37]

The impact of digital mediation is not limited to the relationship between the judge and the accused. It also extends to the right of the defence to examine witnesses against the accused, a distinct right guaranteed by Article 14(3)(e) of the International Covenant on Civil and Political Rights. Hearing witnesses remotely may weaken the ability of the defence and the judge to assess their credibility and make it more difficult to verify that testimony is free from pressure exerted outside the camera's field

37 Joint declaration on access to justice in the context of the COVID-19 pandemic, January 27, 2021.
https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021015/.asp

of view, as concerns raised in comparative judicial practice have shown.

In the same context, in Khodorkovskiy and Lebedev v. Russia (No. 2) (2020), the European Court of Human Rights found violations of Article 6 §§ 1 and 3(d) in relation to restrictions on the defence's examination of experts and witnesses. Separately, it found a violation of Article 6 §§ 1 and 3(c) arising from restrictions on the applicants' effective participation and access to practical and effective legal assistance, including their confinement in a glass dock that physically separated them from their lawyers. The Court found that these restrictions were neither necessary nor proportionate. The significance for the present context is that any physical or technical arrangement separating the accused from their lawyer during the hearing must satisfy a test of necessity, and that this aspect of fair trial safeguards is eroded when remote trial is used without a precise framework.[38]

This problem is at its most acute when an accused person's health prevents them from following a hearing conducted through a screen. During a hearing before Criminal Chamber No. 5 of the Tunis Court of First Instance on 24 June 2025, one of the accused, an elderly man who had partially lost his hearing and

38 European Court of Human Rights, Khodorkovskiy and Lebedev v. Russia (No. 2), nos. 51111/07 and 42757/07, Judgment, 14 January 2020. https://hudoc.echr.coe.int/eng?i=001-200333

sight following a stroke suffered in prison, interrupted the proceedings to ask the person beside him to explain what was happening. A few minutes later, he asked who was representing him and whether his lawyer was present, even though she was in the courtroom. The hearing ended with his lawyer withdrawing from the case and requesting that the reason be entered into the record: her client could not hear, could barely see, and was unable to follow the remote trial or understand what was happening. This incident encapsulates the difference between formal presence and the effective participation required by international standards: the accused was "present" on screen without being a participant in his own trial. It also shows that accessibility safeguards for persons with disabilities involved in proceedings, already weak in in person trials, break down entirely when the additional barrier of a screen is introduced.[39]

39 Ines Harrath, public Facebook post, 24 June 2025, op. cit.



4. Disrupting the Continuity and Immediacy of Proceedings

Testimonies from lawyers belonging to the Sousse Regional Bar Association indicate recurring disruptions in connections with accused persons held in prison, forcing the judge to suspend consideration of the case and move on to in person hearings until the connection is restored. This abrupt shift between the “virtual” and “physical” settings within the same hearing disrupts the ordinary course of the trial and breaks the continuity of pleadings and arguments, undermining the immediacy of proceedings and the direct presentation of pleadings before the same judicial panel, both of which require continuity and coherence throughout the hearing.

This also reduces the trial to its technical dimension, making it dependent on the quality of the connection. Although Decree Law No. 2020-12 permits a hearing to be suspended for up to two hours or adjourned in the event of a technical malfunction or loss of connection, it does not address the impact of such interruptions on the judge's assessment or ability to continuously evaluate the condition of the accused.

In this context, the Human Rights Committee stated in General Comment No. 32, issued in 2007, that an important aspect of the fairness of a hearing is its expeditiousness. The Committee noted that the right to be tried without undue delay in criminal proceedings is expressly guaranteed by Article 14 (3) (c) of the International Covenant on Civil and Political Rights, while delays in civil proceedings that cannot be justified by the complexity of the case or the conduct of the parties detract from the principle of a fair hearing enshrined in Article 14 (1).[40] Also relevant here is the Committee's interpretation of equality of arms. The Committee has stated that this principle requires the parties to be afforded the same procedural rights and that each side must be given the opportunity to contest all the arguments and evidence presented by the other party. In the context examined here, that guarantee is difficult to realise when the course of a hearing is repeatedly

40 Human Rights Committee, General Comment No. 32, op. cit.

interrupted and fragmented between two different technological settings.

Within this framework, the Tunisian legislature established the principle of the unity of the hearing in Article 151 of the Code of Criminal Procedure, according to which pleadings are expected to take place within a single, coherent timeframe and the judge to deliver judgment following continuous deliberation. The fact that Decree Law No. 2020-12 allows a hearing to be suspended or adjourned in the event of a technical malfunction does not provide an effective remedy for this problem, as the law permits an incidental interruption without regulating the resumption of pleadings in a manner that ensures continuity in the judge's assessment of the accused person's condition as observed before the interruption.

The effect of such an interruption is not limited to the organisation of proceedings, but also affects the principle of the unity of the hearing and the immediacy of pleadings as established by Article 151 of the Code of Criminal Procedure. Resuming pleadings after a technical interruption does not necessarily restore the judge to the same state of mind as before the interruption, nor does it recreate the direct impression of the accused that had already been formed. This intersects with the Human Rights Committee's affirmation that the accused person's right to

adequate time and facilities for the preparation of their defence is an essential element of the guarantee of a fair trial. That right is eroded when the lawyer and the accused are required to reconstruct the context of the pleadings from the beginning each time the connection fails.

A documented incident before Chamber No. 27 of the Tunis Court of Appeal on 20 November 2025 provides a precise example of this effect. The transmission was interrupted immediately after the pleadings and before the accused were invited to make their final statements. The hearing was suspended, after which the judicial panel proceeded to consider applications for release while waiting for the transmission to resume. The connection was restored approximately half an hour later, at which point the accused were invited to make their final statements. The procedural significance of this incident lies in the fact that one of the most critical moments of the hearing, when the accused is given the last word, occurred after a temporal and cognitive break separating it from the pleadings on which it was supposed to build. This directly undermines the principle of the unity of the hearing.[41]

41 Ines Harrath, public Facebook post, 20 November 2025, accessed 15 August 2026. https://www.facebook.com/share/p/1b91A4JtV6/



5. Undermining the Principle of Public Hearings

The principle of public hearings is enshrined in Article 124 of the 2022 Constitution, which provides that court hearings are public unless the law requires them to be held in private, and that judgments may be pronounced only in a public hearing. In a number of cases, however, remote trial hearings have been limited to transmission within restricted technological settings that do not allow for meaningful public scrutiny, thereby weakening the function of public hearings as a means of ensuring transparency and judicial accountability.

The principle of public hearings is also a fundamental pillar of international procedural safeguards. In General Comment No. 32, the Human Rights Committee affirmed that the publicity of hearings

ensures the transparency of proceedings and constitutes an important safeguard for the interests of both the individual and society at large. The Committee further stated that courts must make information regarding the time and venue of hearings available to the public and provide adequate facilities for the attendance of interested members of the public.[42]

This is also consistent with the European Court of Human Rights' interpretation of Article 6 § 1 of the European Convention on Human Rights. The Court has held that the public character of proceedings protects litigants against the administration of justice without public scrutiny and that, by rendering the administration of justice transparent, publicity contributes to the achievement of a fair trial.[43]

The United Nations Office on Drugs and Crime addressed this issue directly in the context of COVID-19, stating that the accused person's right to a public trial and to be physically present is an essential component of the right to a fair trial guaranteed by Article 14 of the International Covenant on Civil and Political Rights. It further warned that a failure to ensure adequate fair trial safeguards in remote hearings could, at best, increase the burden on

42 Human Rights Committee, General Comment No. 32, op. cit.

43 Fundamental rights under Covid-19: an European perspective on videoconferencing in court, Pierpaolo Gori and Aniel Pahladsingh.
https://link.springer.com/article/10.1007/s120275-00643-020-

appellate courts and, at worst, create a new category of victims of the crisis in the longer term.[44]



Fourth: A Reality Check: The Promises of Digitalisation and Fragile Infrastructure

Tunisia's remote trial system raises a fundamental issue concerning the gap between legislative ambitions and the deteriorating material conditions of the justice system.

The digitalisation of justice has featured in plans to modernise Tunisia's judicial system since 2012, as part of the programme to modernise judicial administration

44 Defence Rights in Remote Justice Procedures, UNODC. https://www.unodc.org/dohadeclaration/en/news/202006//defence-rights-in-remote-justice-procedures.html

launched by the Ministry of Justice with the support of national and international partners. In November 2017, a memorandum of understanding was signed to implement the "Digital Justice" programme[45], with a substantial budget estimated at TND 62 million and an implementation period of three years.[46] Yet, by the time this paper was prepared, most of these projects had not been effectively implemented, amid structural obstacles to putting the announced programmes into practice. These difficulties were further compounded by the rejection of a proposal to establish a dedicated fund to support court infrastructure under the 2020 Finance Law,[47] resulting in the remote trial system being introduced in a context in which equipment and funding remained inadequate.

This situation also reflects concerns raised in recent international literature. In its report 'E-Justice: Digital Transformation to Close the Justice Gap', the United Nations Development Programme[48] warned that digital transformation unsupported by adequate

45 Issam Yahyaoui, « Plaidoyer pour une transformation numérique de la justice en Tunisie », Leaders.tn, 17 avril 2020.
https://www.leaders.com.tn/article/29709-plaidoyer-pour-une-transformation-numerique-de-la-justice-en-tunisie

46 Farouk Hani, op. cit.

47 Farouk Hani, op. cit.

48 Sarah McCoubrey, "e-Justice: Digital Transformation to Close the Justice Gap", New York, UNDP, 2022.
https://www.undp.org/sites/g/files/zskgke326/files/202206-/E%20justice-Report%2005.pdf

infrastructure, legislation, and digital capacity may deepen the digital divide and undermine human rights rather than strengthen them, emphasising the importance of appropriate reform sequencing before digitalisation. This is precisely what the Tunisian case illustrates: remote trials were introduced in 2020, the same year in which the establishment of a dedicated fund to support court infrastructure was rejected. In other words, technical implementation preceded the material conditions required to sustain it, rather than following them. This represents a reversal of the sequence of reform, rather than merely a shortage of equipment.

Field testimonies reveal another dimension of this gap: the use of remote trials is not uniform across the country. Three interviews indicate that the use of this mechanism ceased after the end of the COVID-19 pandemic in courts in the north-west[49], including Beja, Jendouba, Kef and Siliana, as well as in the courts of Kairouan[50] and Nabeul[51], even though the technical equipment remains in place in those courts to this day. In other words, the technology is available where it is not used, while being used extensively in

49 Telephone Interview No. 4, op. Cit.

50 Telephone Interview No. 3 with a lawyer registered with the Kairouan Regional Bar Association, 18 August 2026. Identity withheld at the interviewee's request.

51 Telephone Interview No. 5 with a lawyer registered with the Nabeul Regional Bar Association, 17 August 2026. Identity withheld at the interviewee's request.

certain chambers. This disparity turns the rationale for its use on its head: if the objective were procedural efficiency or reducing the costs and risks associated with transporting detainees, it would be more logical to apply the mechanism more broadly to ordinary cases, which are greater in number, and in regions where prisons are located far from courthouses. Instead, its use has been concentrated in chambers specialising in a particular category of cases, making the mechanism appear closer to a tool for managing this category of cases than to a project for digitalising the justice system. From a purely practical perspective, this pattern weakens justifications based on infrastructure or efficiency.

None of the above denies that serious considerations may be advanced in support of this mechanism. The cost of transporting detainees may be high; transporting accused persons in terrorism cases may involve genuine security risks; and the distance between some prisons and courthouses may prolong proceedings and place an additional burden on detainees themselves. Yet, however valid these considerations may be, they must be assessed against the requirements of necessity and proportionality, rather than administrative convenience. They may justify exceptional and reasoned recourse to remote trials in clearly defined circumstances, but they do not justify turning the exception into the rule,

dispensing with the accused person's consent, or dispensing with an individual assessment of each case. The distinction between the two is precisely what separates digitalisation that serves justice from digitalisation that replaces it.

Accordingly, the introduction of remote trials in Tunisia without first ensuring the necessary substantive conditions reflects more than a technical shortcoming. It represents an incomplete use of technology that risks transforming it from a tool for strengthening justice into a factor that may exacerbate existing shortcomings.



Fifth: The State Security Conspiracy Case: A Revealing Case Study

While the procedural issues discussed above affect the remote trial system as a whole, the conspiracy case illustrates these problems in their most acute and serious form. The combination of three factors, the length of pretrial detention, which exceeded the maximum legal limit of fourteen months[52], the collective nature of the charges involving 40 accused

52 Article 85 of the Code of Criminal Procedure: "... Pretrial detention in the cases referred to in the preceding paragraph may not exceed six months.
Where the interests of the investigation require that the accused remain in detention, the investigating judge may, after obtaining the opinion of the Public Prosecutor and by reasoned order, extend the period of detention once, for a period not exceeding three months in the case of a misdemeanour, and twice, for periods not exceeding four months each, in the case of a felony."

persons, and the severity of the penalties, which may extend to the death penalty, makes the use of remote trial in this case appear closer to a means of managing the judicial process than to serving a procedural purpose.

The case attracted intense public attention and was closely followed by political and civil society actors, particularly after the authorities imposed a ban on media coverage throughout the investigation. The defence viewed the subsequent decision to conduct the trial remotely as a continuation of the same restrictions on public scrutiny, depriving the accused of the opportunity to address the court openly and to have their statements heard by the wider public.

Even more significant is that the judicial authorities granted a request allowing Ghazi Chaouachi, one of the accused, to leave the prison where he was being held in order to attend his brother in law's funeral. Another accused, Issam Chebbi, was likewise permitted to leave prison on two occasions to attend the funerals of relatives. These instances were not accompanied by any publicly announced exceptional security measures, nor was any official security report presented documenting the existence of an imminent danger that would justify resorting to the remote trial exception. From a strictly legal perspective, the absence of such a documented security basis weakens the factual basis for characterising the

situation as one of “imminent danger”, as required by the provisions governing this exception.[53]

The state security conspiracy case is not the only example of this contradiction. In a public post dated 23 April 2025, a lawyer specialising in terrorism cases documented a revealing comparison. The defendants in the “Ben Guerdane” case appeared in person at first instance, but were tried remotely on appeal for “security reasons”. Two months later, the same defendants were brought before the same chamber, in the same court, for another case. Nothing relevant had changed: the defendants, the court and the number of accused remained the same. This inconsistency undermines the factual basis of the “danger” justification. A danger invoked to prevent their appearance in one case had apparently disappeared in another involving the same individuals, without explanation.[54]

The defendants’ rejection of this measure went as far as a collective written declaration. In a statement issued on 8 April 2025, six detainees announced that they were going on hunger strike and categorically refused to participate remotely in trial hearings, protesting their exclusion from the courtroom after more than two years in detention and their inability

53 Karim Marzouki, op. cit.

54 Ines Harrath, public Facebook post, 23 April 2025, op. cit.

to respond to the charges against them directly. The legal significance of this statement is that the absence of consent was no longer merely an implicit consequence of the exception provided for under Article 141 bis, but had become an express and documented objection. Continuing with remote proceedings in these circumstances therefore amounted to an explicit judicial decision to proceed against an expressed objection, rather than merely the application of a statutory provision.[55]

This raises a fundamental procedural question: if allowing an accused person to leave prison to attend a funeral does not, from a security perspective, require heightened security measures, on what documented procedural and security basis is the assessment of "imminent danger" made when it is used to justify denying that person the right to appear in person at trial? It may be argued that a temporary release under security escort differs from prolonged attendance in a public courtroom. That distinction, however, does not eliminate the issue, since both situations require the physical transport of an accused person who is purportedly considered the source of the "imminent danger". If that danger is considered manageable when the accused attends a funeral,

55 Statement by the Detainees in the State Security Conspiracy Case, Tunisia, 8 April 2025, accessed 19 August 2026.

https://www.facebook.com/share/p/19VMa3deNr/

then those relying on it to justify remote participation at trial should, all the more, be required to provide a documented security basis specific to the trial. This question remains unresolved in the absence of any published official reasoning explaining the criteria used in making such an assessment.



Sixth: Comparative Experiences: How Other Legal Systems Have Approached Remote Trials

Tunisia is not alone in confronting the question of how to balance the digitalisation of justice with fair trial guarantees. Other legal systems, particularly in Europe, have faced a similar challenge as they expanded the use of videoconferencing technology in criminal proceedings. In response, they have developed more precise legislative and judicial standards that place the consent of the accused and the integrity of the proceedings at the centre of determining whether recourse to remote proceedings is lawful.



1. European Union: Express Consent as a Condition of Lawfulness

At the European Union level, the Court of Justice of the European Union held in its judgment of 4 July 2024 in FP and Others v Bulgaria (Case C-760/22) that the EU Directive on the presumption of innocence and the right to be present at trial does not preclude an accused person from participating in their trial by videoconference. Such participation, however, must take place at the accused person's express request, rather than being imposed by the prosecution or the court, and the right to a fair trial must be guaranteed. This includes the ability to follow the proceedings without technical impediments and to communicate effectively and confidentially with a lawyer. The accused person's free and express consent therefore remains central to the lawfulness of any departure from the principle of physical presence.[56]

56 Cour de justice de l'Union européenne, FP e.a. (Procès par visioconférence), affaire C-760/22, arrêt du 4 juillet 2024 (première chambre), ECLI:EU:C:2024:574, JO



2. France: A Graduated Approach Based on the Seriousness of the Proceedings

In France, the expanded use of videoconferencing in criminal proceedings has led to a more cautious judicial approach, distinguishing between different types of proceedings and the extent to which physical presence affects the exercise of defence rights. In decisions issued in 2019 and 2020, the Constitutional Council held that the use of videoconferencing without allowing a detained person to object to it in certain proceedings concerning pretrial detention could constitute an excessive restriction on defence rights, emphasising the importance of the opportunity to appear in person before a judge.[57]

C/2024/4932.

Cour de justice de l›Union européenne, FP e.a. (Procès par

57 Conseil constitutionnel, décision n° 2019-802 QPC du 20 septembre 2019, M. Abdelnour B. [Utilisation de la visioconférence sans accord du détenu dans le cadre d'audiences relatives au contentieux de la détention provisoire].

This approach was reinforced by an order of the urgent applications judge of the French Conseil d'État on 27 November 2020. The judge accepted that videoconferencing could be used in certain criminal proceedings, subject to judicial assessment and safeguards concerning the identity of the parties, the quality of the connection, and the confidentiality of communications between the accused and their lawyer. A stricter limit was drawn, however, in relation to trials before criminal courts. Given the seriousness of the penalties involved and the importance of oral proceedings in criminal trials, the physical presence of the accused was considered essential, and considerations relating to the proper administration of justice or difficulties in transporting detainees were insufficient to justify restricting that presence. The Conseil d'État therefore suspended the use of videoconferencing in proceedings before criminal courts in those circumstances. The suspension was

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Conseil constitutionnel, Décision n° 2020-836 QPC du 30 avril 2020, commentée dans Landot Avocats, « Justice, Constitution et visioconférence : décision du Conseil constitutionnel ce jour », 30 avril 2020.

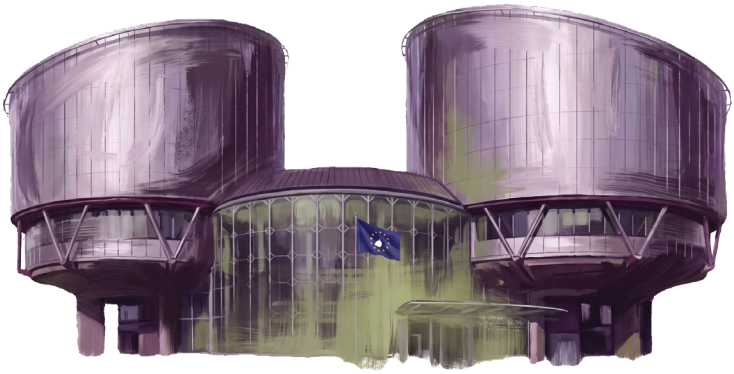
https://www.lexisveille.fr/le-conseil-detat-suspend-la-possibilite-dutiliser-la-visio-conference-devant-les-cours-dassises-et 57_ Cour de justice de l›Union européenne, FP e.a. (Procès par visioconférence), affaire C-760/22, arrêt du 4 juillet 2024 (première chambre), ECLI:EU:C:2024:574, JO C/2024/4932.

https://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=OJ:C_202404932

provisional, given the nature of the urgent proceedings, but the reasoning underlying it remains instructive.[58]

The French experience therefore shows that the issue is not simply whether remote trial technology should be accepted or rejected, but how its use affects fundamental fair trial guarantees. The more serious the proceedings and the potential penalty, and the greater the importance of physical presence and oral argument, the stricter the limitations on the use of videoconferencing. Necessity and proportionality, together with the protection of defence rights and physical presence, therefore provide essential criteria for assessing whether recourse to this technology is justified.

58 Conseil d'État, juge des référés, Ordonnance du 27 novembre 2020, nos 446712, 446724, 446728, 446736 et 446816, commentée dans Lexis Veille, « Le Conseil d'État suspend la possibilité d'utiliser la visio-conférence devant les cours d'assises et les cours criminelles », 30 novembre 2020.
https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-77246%22]}



3. European Court of Human Rights: From Technical Presence to Effective Participation

At the European human rights level, the European Court of Human Rights held in Marcello Viola v. Italy (2006) that an accused person's participation in criminal proceedings by videoconference is not, in itself, incompatible with the right to a fair trial. The Court did not, however, treat the use of technology as an end in itself. It applied a twofold test: recourse to videoconferencing must serve a legitimate aim, and the arrangements for its use must be compatible with the requirements of a fair trial and the rights of the defence. In that case, the Court accepted that considerations relating to public security, the protection of witnesses and victims, the prevention of crime, and the reasonable duration of proceedings could constitute legitimate aims, particularly given the nature of mafia related offences. It also examined the practical safeguards surrounding the accused person's participation, including his ability to see and

hear what was happening in the courtroom and to be heard by the court, as well as his lawyer's ability to be present with him and communicate with him confidentially.[59] In light of these safeguards as a whole, the Court concluded that participation by videoconference had not placed the defence at a substantial disadvantage.

This acceptance in principle does not mean, however, that providing a video link is sufficient in every case to guarantee a fair trial. In Sakhnovskiy v. Russia (Grand Chamber, 2010), the Court stressed that the right to legal assistance must be practical and effective rather than merely theoretical or formal. The accused participated in the appeal hearing by video link and was given an opportunity to communicate confidentially with his newly appointed lawyer before the hearing. The Court did not consider the mere availability of these arrangements sufficient, but examined the circumstances in which legal assistance was provided and whether the relationship between the accused and his lawyer was effective in practice. It reaffirmed that an accused person's ability to communicate with counsel, particularly confidentially and without surveillance, is a fundamental requirement of a fair trial, and that compliance with this requirement must

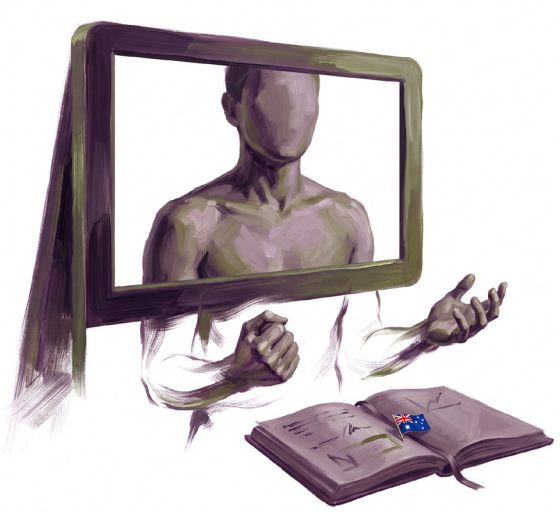
59 European Court of Human Rights, Marcello Viola v. Italy, no. 45106/04, Judgment, 5 October 2006, §§ 49–77.
https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-101568&filename=001-101568.pdf

be assessed in light of the proceedings as a whole rather than simply by reference to the existence of a technical means of communication.[60]

Read together, the two judgments show that the Court's approach does not rest on a simple choice between accepting and rejecting remote participation. The more precise question is whether, in the circumstances in which the technology is actually used, it preserves the accused person's effective participation and the effectiveness of the rights of the defence. In Viola, the Court considered the safeguards surrounding the videoconference sufficient in light of the nature of the proceedings and the particular circumstances of the case. Sakhnovskiy, by contrast, demonstrates that the existence of a video link and a means of communicating with counsel does not in itself resolve the issue. It remains necessary to determine whether those arrangements genuinely enable the accused to understand the proceedings, consult with counsel, and prepare and conduct an effective defence. The focus therefore shifts from mere technical presence to the quality of participation in the proceedings and the effectiveness of the defence.

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60 European Court of Human Rights, Sakhnovskiy v. Russia [GC], no. 21272/03, Judgment, 2 November 2010, §§ 82–104.
https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-101568&filename=001-101568.pdf



4. Empirical Evidence: What the Screen Cannot Convey

In Australia, comparative empirical research has also revealed the limitations of videoconferencing in conveying certain aspects of judicial interaction. Particularly relevant in this regard is Emma Rowden and Anne Wallace's study, 'Remote Judging: The Impact of Video Links on the Image and the Role of the Judge'[61]. Rather than offering a purely theoretical analysis of remote proceedings, the study draws on three years of empirical research, including visits to 27 courts and 22 video link sites and interviews with 61 judges, lawyers, experts and court staff.[62] This

61 Remote Judging: The Impact of Video Links on the Image and the Role of the Judge.

62 Emma Rowden et Anne Wallace, « Remote Judging: The Impact of Video Links on the Image and the Role of the Judge », International Journal of Law in Context 14, no

broad empirical basis gives its findings significance beyond individual impressions.

One of the study's key findings is that videoconferencing does not fully convey judicial interaction, but removes important elements that judges may be unable to compensate for. Judges reported that the limits of the screen reduced their ability to observe a participant's body language and emotional responses, factors that can inform assessments of credibility. This could make it more difficult to determine whether a person's apparent distress reflected a genuine emotional response or the pressure of questioning.[63] The study also shows how a judge's ability to manage proceedings may be weakened when participants are divided between different locations, increasing reliance on technology and on people at remote sites over whom the judge has no direct control.[64]

The significance of these findings is that presence through a screen is not simply a smaller equivalent of physical presence, but a more limited form of participation. An in person hearing constitutes a complete interactive environment in which participants' behaviour, their direct relationship with

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4 (2018): 507.

https://doi.org/10.1017/S1744552318000216. .

63 Rowden et Wallace, « Remote Judging », 513.

64 Rowden et Wallace, « Remote Judging », 521.

the judge, and the physical context of the hearing interact in ways that cannot be reproduced merely by providing sound and video. If these limitations are observable in systems where videoconferencing is used with the participant's consent and supported by advanced technological infrastructure, their impact may be even greater when remote participation is imposed on a detained accused person without their consent and with more limited technical resources, as in the Tunisian context. The decisive criterion for assessing remote trials, therefore, is not simply whether the technical connection functions properly, but whether it preserves the essential functions of direct presence and effective judicial interaction. Comparative experience suggests that these functions may be diminished even under favourable conditions, and all the more so under less favourable ones.

This issue is not confined to European contexts. The Egyptian experience reflects a similar trajectory even more clearly, as remote proceedings ultimately became regulated by legislation. Remote proceedings in Egypt began as a temporary measure under Ministerial Decree No. 8901 of 2021, limited to the renewal of pretrial detention and to judges. The draft of the new Code of Criminal Procedure subsequently introduced an entire chapter on remote investigation and trial, expanding the exception in three directions at once: from detention renewal to all or some stages

of trial, from judges to the Public Prosecution, and from a temporary measure to a permanent provision within the law.

The concerns raised by these provisions overlap with those documented in this paper. Article 525 of the draft allowed a detainee to be denied physical appearance, limiting direct interaction with the accused and making it more difficult for the investigating authority to identify violations to which the accused may have been subjected during arrest or detention. Article 527 permitted children to be tried remotely without appearing in person, while Article 529 dispensed with the signatures of accused persons and witnesses on transcripts of their recorded statements. Articles 266 and 267 made the broadcasting of hearings subject to written authorisation and criminalised unauthorised publication.[65]

The most significant point of comparison, however, concerns the process of legislative scrutiny rather than the substance of the provisions. The draft prompted widespread objections, culminating in the President's refusal to promulgate it on 21 September 2025 and its return to the House of Representatives.

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65 Halim Henish, "Draft Criminal Procedure Code Expands Security and Prosecution Powers in Egypt," Tahrir Institute for Middle East Policy, 1 October 2024 https://timep.org/post-arabic/%D8%B6%D8%B1%D8%A8%D8%A9-%D9%81%D9%8A-%D9%82%D9%84%D8%A8-%D9%86%D8%B8%D8%A7%D9%85-%D8%A7%D9%84%D8%B9%D8%AF%D8%A7%D9%84%D8%A9-%D8%A7%D9%84%D9%85%D8%B5%D8%B1%D9%8A-%D8%AA%D8%AD%D9%84%D9%8A%D9%84-%D9%82/

Parliament subsequently approved most of the requested amendments, and Law No. 174 of 2025 was promulgated.[66] The law retained the substance of these provisions with little change, although their numbering was altered. The provision allowing a detainee to be denied physical appearance became Article 531, while Articles 535 and 536 added the accused person's right to object to not appearing in person and to meet with their lawyer during a remote hearing, without requiring the court to accept the objection. Remote trials of children without their physical appearance became Article 532, the removal of the requirement for accused persons and witnesses to sign transcripts became Article 534, and the requirement of written authorisation for broadcasting hearings became Article 268.

The expansion of remote proceedings in Egypt therefore passed, at least, through a public legislative process involving public debate, presidential objection and parliamentary amendment. In Tunisia, by contrast, the mechanism was introduced by a decree law adopted under a temporary legislative delegation without consultation with the Supreme Judicial Council, and its judicial application subsequently

66 Human Rights Watch, "Egypt: President Rejects Flawed Criminal Code," 23 September 2025; and Law No. 174 of 2025 (Criminal Procedure Code), Official Gazette, No. 45 bis (D), 12 November 2025.
https://www.hrw.org/ar/news/2025/09/23/egypt-president-rejects-flawed-criminal-code

expanded without legislative review or parliamentary debate. The comparison is not intended to assess the relative level of protection in the two countries, as the Egyptian legislation is substantively more expansive. Rather, it illustrates the consequences of the absence of an open legislative process: where there is no legislative text subject to debate, there is no corresponding opportunity to challenge it.

Taken together, these comparative experiences show that the decisive criterion for the lawfulness of remote trials is not the technology itself, but compliance with three interrelated conditions: the accused person's free and express consent, confidential communication with counsel, and effective judicial scrutiny of whether recourse to remote proceedings is necessary in each individual case. The stringency of these requirements increases with the seriousness of the proceedings. The more severe the potential penalty and the greater the importance of oral proceedings, particularly in serious criminal cases, the narrower the scope for the use of videoconferencing becomes. These are the same three safeguards that this paper finds to be absent or insufficient in the Tunisian experience, where the "imminent danger" exception has displaced the accused person's consent and judicial scrutiny has given way to the blanket application of remote proceedings.



Conclusion: Remote Trials as a Form of Dysfunction within the Justice System

The legal analysis of remote trials in Tunisia leads to a central conclusion: a procedure presented as a means of modernising the judiciary and accelerating the resolution of cases has become a tool that contributes to undermining fair trial guarantees and weakening the right to a defence. This is not due to shortcomings in the technology itself, but to an ambiguous legal framework, procedural imbalances, fragile infrastructure, and the political use of the mechanism. Rather than serving as a means of improving the quality of judicial proceedings and facilitating access to justice, digitalisation has produced a procedural reality in which fundamental safeguards are increasingly subordinated to technical, administrative and political considerations.

The problem, therefore, does not lie in digitalisation itself, but in its implementation within inadequate infrastructure and in a context in which institutional safeguards for judicial independence have weakened. This contradiction has transformed the promise of "swift justice" into a fragile procedural reality in which fair trial guarantees are compromised by an incomplete technological system that reduces human presence to a digital image incapable of fully conveying the judicial reality.

The effects are not limited to cases that attract public attention. In a public post dated 23 June 2026, a lawyer documented a shift in the conduct of accused persons themselves: some have begun refusing to appear, either by submitting a written statement from prison or by entering the video hearing room and then withdrawing after making a statement, particularly in the conspiracy cases. This results in the automatic waiver of the right to defend oneself and the right to have a defence presented through pleadings. Whatever the reasons for this shift, its recurrence among defendants of different backgrounds and facing different charges raises a question that goes beyond the procedure itself. When a person relinquishes a safeguard established for their benefit because they no longer see any meaning in it, what is affected is not only that person's right, but also the legitimacy of the trial in the eyes of those subjected to it.[67]

In this context, Intersection Association for Rights and Freedoms considers that remote trials can no longer be regarded as a merely neutral technical option. In politically sensitive cases, they have produced an objective effect: excluding accused persons from the courtroom and limiting the effectiveness of the right to a defence, regardless of the stated intentions and under the justification of security and health

67 Ines Harrath, public Facebook post, 23 June 2026, accessed 20 August 2026. https://www.facebook.com/share/p/1GZQ8zYnTV/

considerations. While establishing a political motive falls beyond the scope of legal analysis, this paper documents how the existing procedural framework consistently produces this effect in the absence of adequate safeguards.

On this basis, the paper does not call for rejecting digitalisation itself, but for reordering the conditions under which it is introduced. Legislative reform and adequate infrastructure should precede technical implementation, rather than follow it. Appearance in person should remain the rule, with any departure permitted only with the accused person's explicit consent, detailed reasons, and effective judicial scrutiny on a case by case basis. These standards are further elaborated in the recommendations set out below.

Recommendations

First: Recommendations to the Tunisian Parliament

- Conduct a comprehensive review of Article 141 bis of the Code of Criminal Procedure to re-establish the relationship between the rule of physical presence and the exception of remote trial.
- Establish mandatory physical appearance during the questioning of the accused before the court, and prohibit the use of remote trial at this stage under any circumstances, including in terrorism cases.
- Establish clear and objective criteria for determining what constitutes an "imminent danger" in order to prevent arbitrary use.
- Expressly provide for the right to challenge a decision ordering a remote trial before a competent judicial body.
- Establish mandatory safeguards for every remote trial, including a secure and confidential channel of communication between the accused and their lawyer and transmission quality sufficient to ensure effective participation in the hearing, with non-compliance resulting in nullity.

Second: Recommendations to the Temporary Supreme Judicial Council

- Issue guidelines through a regulatory circular setting out objective criteria for the use of remote trials without restricting judicial discretion in individual cases, while reiterating the requirement under Article 141 bis to provide explicit reasons for such decisions. Any binding requirements should be established by legislation rather than by a decision of the Council.
- Establish a unified national register of remote trial decisions, recording the reasons for their use, their legal basis and their outcome. The register should be reviewed every six months by an independent judicial inspectorate to assess compliance by judicial chambers with the requirements of necessity and reasoned decision making.
- Expressly provide for the nullity of proceedings resulting from a decision that was not notified to the defence within the statutory period established by Article 141 bis, namely five days before the hearing, and provide for disciplinary liability in cases of repeated non-compliance.

Third: Recommendations to the Ministry of Justice

- Suspend the use of remote trials and restrict them to strictly defined exceptional circumstances, such as the transport of high risk defendants in terrorism

cases where security reports establish that physical appearance poses a risk. This exception should not apply to the questioning of the accused, for which physical appearance should remain mandatory in all circumstances. These restrictions should remain in place until the technological infrastructure has been adequately upgraded.

- Provide properly equipped rooms within prisons to ensure confidential communication between accused persons and their lawyers.
- Ensure that accused persons remain alone in the video hearing room within the prison during proceedings, without security officers present beside them, so that they can speak freely before the court.
- Ensure that accused persons can see the entire courtroom, including the defence team, and clearly hear the proceedings, rather than being shown only the judicial bench.
- Publish regular and comprehensive statistics on the number and nature of remote trials and the reasons for their use.
- Adopt a data protection and cybersecurity protocol governing the security and encryption of hearing transmissions, retention periods for recordings, and procedures for their deletion, in order to prevent leaks or tampering.

- Ensure accessibility for accused persons with disabilities and those who do not speak Arabic by providing interpretation and the technical accommodations necessary for their effective participation in remote hearings.

Fourth: Recommendations to Civil Society Organisations

- Expand systematic field monitoring across different Tunisian courts and systematically document violations, based on a publicly announced monitoring schedule and standardised documentation indicators, with a defined number of courts targeted in each monitoring cycle.
- Publish periodic reports based on quantitative and qualitative evidence and submit them to relevant United Nations mechanisms, particularly the Universal Periodic Review, the Human Rights Committee, and the Special Rapporteur on the independence of judges and lawyers.
- Coordinate advocacy efforts with the Tunisian Bar Association to call for the suspension of remote trials and their restriction to clearly defined exceptional circumstances until legislative reform is completed and the necessary infrastructure is upgraded, in line with the recommendations addressed to the Ministry of Justice.

