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**REMOTE CRIMINAL TRIAL  
AND REMOTE DETENTION HEARING  
IN THE LIGHT OF THE EUROPEAN CONVENTION  
ON HUMAN RIGHTS**

**Introduction**

The development of new technologies is closely linked to digitalization, which influences the judicial system and its functioning. Conducting a remote trial or a hearing, provided that the court and the participants have the necessary technical tools, has become possible, and in many countries, including Poland, also permitted by law. The outbreak of the pandemic of COVID-19 in 2020 accelerated this change, forcing the introduction of such regulations to criminal proceedings. However, the context justifying the introduction of these regulations (protection of health and life) in 2020, now in 2025 is quite different. At the same time, the development of new technologies creates new dangers which raise questions about whether remote trial and detention hearing can conform to the right to a fair trial and *habeas corpus* standard under the European Convention on Human Rights<sup>1</sup>.

The aim of this article is to present the question of the admissibility of remote criminal trial and remote detention hearing in the light of Art. 6.1 and Art. 5.3 and 5.4 of the ECHR. This issue will be compared to the polish regulation concerning remote participation in criminal proceedings.

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<sup>1</sup> *European Convention on Human Rights*, Rome 4th of November 1950, as amended by Protocols Nos. 3, 5, 8 and 2 (hereafter as: ECHR).

## Remote trial under the ECHR

The analysis of the case-law of the European Court of Human Rights enables to indicate the most important aspects and conditions that the Court has developed over the years in terms of remote participation in criminal proceedings. Although the question of the admissibility of remote participation has increased in significance since the outbreak of COVID-19 pandemic, the relevant case-law in this regard is dated back to 2006. Hearing by videoconferencing is defined as a direct live image and sound connection created between the judge hearing the case and the party being heard with direct communication options for both sides<sup>2</sup>. The first case in which the Court tackled the problem of participation by videoconference was the case of *Viola v. Italy*<sup>3</sup>. The current position of the Court reflected in later judgments is that the use of video link in the proceedings is not, *per se*, incompatible with the notion of a fair and public hearing under Art. 6.1 of the ECHR<sup>4</sup>. In the case of *Viola v. Italy* the Court concluded that implementing remote participation must serve legitimate aim, must not put the defence at a substantial disadvantage as compared with the other parties to the proceedings, and the arrangements for the giving of evidence are compatible with the requirements of respect for due process, as laid down in Art. 6.1 of the ECHR<sup>5</sup>.

Considering the first condition, in the Court's view the legitimate aim is served when the videoconference meetings are held for the purpose of the protection of public order, protection of health or life, protection of witnesses and victims of offences in respect of their rights to life, freedom and security or compliance with the "reasonable time" requirement in judicial proceedings<sup>6</sup>. Therefore, if a remote participation by videoconference serves a legitimate aim, there must be a compelling reason justifying the exemption of a physical presence of the parties during a trial. Article 6.1 of the ECHR grants the right to a fair trial that has a very strong pro-guaranteed nature. Article 6, read as a whole, guarantees the right of an accused to participate effectively in a criminal trial, which includes right to be present, but also to hear and follow the proceedings<sup>7</sup>. This provision, however, does not grant an absolute right, it can be balanced with other rights protected by the ECHR such as the protection of human health, which was evident in the example

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<sup>2</sup> E. van der Vils, *Videoconferencing in criminal proceedings*, [https://www.videoconference-interpreting.net/wp-content/uploads/2014/04/02\\_vanderVlis.pdf](https://www.videoconference-interpreting.net/wp-content/uploads/2014/04/02_vanderVlis.pdf) (15.03.2025), p. 12.

<sup>3</sup> Case of *Marcello Viola v. Italy*, no. 45106/04, HUDOC.

<sup>4</sup> Case of *Dijkhuizen v. the Netherlands*, no. 61591/16, § 53, HUDOC; Case of *Bivolaru v. Romania*, no. 66580/12, § 138, HUDOC; Case of *Marcello Viola v. Italy*, no. 45106/04, § 67, § 73–74, HUDOC; Case of *Petri Tapani ALPPI v. Finland*, no. 15736/22, § 19, HUDOC.

<sup>5</sup> Case of *Marcello Viola v. Italy*, no. 45106/04, § 67, § 76, HUDOC.

<sup>6</sup> Case of *Marcello Viola v. Italy*, no. 45106/04, § 72, HUDOC.

<sup>7</sup> Case of *Murtazaliyeva v. Russia*, no. 36658/05, § 91, HUDOC; Case of *Stanford v. the United Kingdom*, no. 16757/90, § 26, HUDOC.

of COVID-19<sup>8</sup>. In the post-COVID era, protection of health is no longer such an urgent reason, hence a stronger attention should be paid to the guarantee of exercising the accused right to defense, including his active participation in the trial. The Court in the case of *Bivolaru v. Romania* held that the questioning by video-link of the accused who consented to a voluntary participation because he was abroad and unable to appear in person was a measure ensuring effective participation of the accused in the proceedings<sup>9</sup>.

Another condition of the accused's remote participation in a trial refers to his right to communicate with his lawyer out of the earshot of third parties<sup>10</sup>. The form of the communication can vary, e.g. the counsel can attend videoconference room with his client personally or be able to send a replacement and entrust the lawyer replacing him with his client's defence before the court<sup>11</sup>. In this context it is noted that even if the counsel's remote participation might ensure the right to confidential communication, it might have an adverse effect on the principle of equality of arms because the counsel is not physically present with the accused and other trial participants<sup>12</sup>. In the case of *Gorbunov and Gorbachev v. Russia*, the Court found a violation of the Art. 6.1 of the ECHR since the arrangements made by the Regional Court were insufficient and did not ensure that the first applicant had effective legal assistance during the appeal hearing. A detained person was able to talk to the lawyer only by means of a videoconferencing system installed and operated by the State, which might legitimately have made the accused anxious in terms of the lack of privacy of communication<sup>13</sup>. Ultimately, the Court held that there was no compelling reason not to ensure for the accused a legal counsel in person as well as to ensure participation of the accused in the appeal hearing in person rather than *via* videoconference<sup>14</sup>.

An aspect that also affects the respect of the right to a fair trial relates to the level of technical standards during remote hearings. The connection between the court and the parties must enable audio and video without any disruption. Particularly, the accused should be seen and heard by the court and other participants. Poor acoustics in the courtroom which might prevent the accused from hearing the proceedings could give rise to an issue under Art. 6<sup>15</sup>. Nevertheless,

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<sup>8</sup> C. Kulesza, *Remote Trial and Remote Detention Hearing in Light of the ECHR Standard of the Rights of the Accused*, "Białostockie Studia Prawnicze" 2012, vol. 26, no. 3, p. 210.

<sup>9</sup> Case of *Bivolaru v. Romania*, no 66580/12, § 138–146, HUDOC.

<sup>10</sup> Case of *Marcello Viola v. Italy*, no. 45106/04, § 75, HUDOC.

<sup>11</sup> Case of *Saknovskiy v. Russia*, no. 21272/03, § 103–107, HUDOC.

<sup>12</sup> M. Hirsch Ballin, T. Castelijn, *The Use of Videoconferencing at Trial and Its Effects on the Rights of the Defense: A Study of the Future Regulation in The Netherlands*, "Tilburg Law Review" 2024, no. 29(2), p. 54, <https://tilburglawreview.com/articles/10.5334/tilr.391> (15.03.2025).

<sup>13</sup> Case of *Gorbunov and Gorbachev v. Russia*, nos. 43183/06 and 27412/07, § 37, HUDOC.

<sup>14</sup> Case of *Gorbunov and Gorbachev v. Russia*, nos. 43183/06 and 27412/07, § 38, HUDOC.

<sup>15</sup> Case of *Stanford v. the United Kingdom*, no. 16757/90, § 29, HUDOC.

the Court acknowledges that technical problems may result in transmission of the voice or images by videoconference, however it is important that the accused can bring this issue to the attention of the court<sup>16</sup>.

## Remote detention hearing under the ECHR

The issue of admissibility of the remote detention hearing has not been decisively addressed by the European Court of Human Rights. The reason behind differentiating detention hearing and criminal trial lies within the specific nature of a detention hearing. Articles 5.3 of the ECHR ensures that everyone arrested or detained shall be brought promptly before a judge or other officer authorized by the law to exercise judicial power, which is called the *habeas corpus* standard. Consequently, in the question of remote participation, the term “brought promptly before a judge” must be interpreted whether it denotes a physical presence of the detained or arrested person. If the answer is affirmative, *habeas corpus* standard does not allow the detention hearing to be conducted in the form of a videoconference. The Court, although not deciding about the question of remote participation, in some of the judgments stressed that the purpose of Art. 5.3 of the ECHR is to ensure that arrested persons are physically brought before a judicial officer promptly<sup>17</sup>. However, it can be said that it is not a strongly compelling argument because the Court stated it out of the context of the remote participation. The cases in question, in fact, concerned the issue of the material impossibility to “physically” bring the applicant because of the travel time<sup>18</sup>. The term *habeas corpus* translated from Latin indicates a physical appearance before a court<sup>19</sup>. However, the ECHR itself is a “living instrument” and it must be interpreted in the light of present-day conditions<sup>20</sup>. Hence one may imply that it should include the omnipresence of the digitalization and consequently the possibility of videoconferencing. It is pointed out that the aim of the Art. 5.3 of the ECHR can provide the answer to the question of admissibility of remote participation. *Habeas corpus* standard provides an important measure of protection against arbitrary behaviour, illegal detention and ill-treatment<sup>21</sup>. The judicial control must be automatic and prompt to allow detection of any ill-treatment and to keep to a minimum any unjustified interference with individual

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<sup>16</sup> Case of *Marcello Viola v. Italy*, no. 45106/04, § 74, HUDOC.

<sup>17</sup> Case of *Medvedyev and Others v. France*, no. 3394/03, § 118, HUDOC; Case of *Öcalan v. Turkey*, no. 46221/99, § 103, HUDOC; Case of *Magee and Others v. the United Kingdom*, nos. 26289/12, 29062/12 and 29891/12, § 74, HUDOC.

<sup>18</sup> Case of *Rigopoulos v. Spain*, no 37388/97, HUDOC.

<sup>19</sup> J. Skorupka, *Przesłanki, organy i tryb stosowania środków zapobiegawczych* [in:] *System Prawa Karnego*, vol. IX: *Środki przymusu*, ed. P. Hofmański, Warszawa 2021, p. 359.

<sup>20</sup> Case of *Tyrer v. the United Kingdom*, no. 5856/72, § 31, HUDOC.

<sup>21</sup> Case of *Medvedyev and Others v. France*, no. 3394/03, § 118, HUDOC.

liberty<sup>22</sup>. With the physical presence in the courtroom a judge can verify if there is a mistreatment. Additionally, if there is a detention hearing *via* video link and the accused connects at the detention centre with the assist of law officers who mistreat him, there is a reasonable suspicion that the accused cannot speak freely. Therefore, in the literature it is noted that a remote participation in detention hearings violates the Art. 5.3 of the ECHR as it deprives the judge, to a significant extent, of the controlling instruments on the lawfulness of the deprivation of liberty, it limits the judge's ability to assess the case and increases the risk of worse treatment dictated by the conditions of remote communication<sup>23</sup>. A similar view on this matter is that the importance of direct contact for assessing the situation of a person deprived of liberty makes a physical appearance an element of *habeas corpus* standard and any derogation from this rule should be based only on Art. 15 of the ECHR (e.g. in case of pandemic) or be in the form of individual cases justified by the impossibility of appearing in person<sup>24</sup>. Accordingly, the Court ruled that the lack of being heard in person or by tele or videoconference was compatible with Art. 5.4 of the ECHR, having regard to the general interest of public health (COVID-19 pandemic) and the fact that the applicant had been represented and heard through his lawyer<sup>25</sup>. Concluding, a remote detention hearings can disproportionately restrict the accused's right to defense and is therefore incompatible with *habeas corpus* standard derived from the Art. 5.3 of the ECHR.

In this regard, it should also be asked if the accused or detained person has a right to be heard in person in an appellate hearing regarding his detention. Art. 5.4 of the ECHR provides the right to actively seek a judicial review of the detention by which the lawfulness of the detention is decided speedily. The Court in the case of *Kampanis v. Greece* held that the opportunity for a detainee to be heard either in person or through some form of representation features among the fundamental guarantees of procedure applied in matters of deprivation of liberty<sup>26</sup>. In other case the Court stressed that the Art. 5.4 of the EHCR does not require that a detained person is heard every time he lodges an appeal against a decision extending his detention, but that it should be possible to exercise the right to be heard at reasonable intervals<sup>27</sup>. Regarding the appellate proceedings, the Court is in the position that even if the second instance court has jurisdiction to review the case as

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<sup>22</sup> Case of *Ladent v. Poland*, no. 11036/03, § 73, HUDOC.

<sup>23</sup> D. Marko, *Remote Participation of a Suspect in a Pre-trial Detention Hearing in the Light of Article 5(3) ECHR*, GSP 2024, no. 2, p. 127.

<sup>24</sup> A. Lach, *Exercise of the Right to Defence in Connection with Interrogation and Remote Participation in a Criminal Trial and Detention Hearing in the Light of ECtHR Case Law*, GSP 2024, no. 2, pp. 13–14; C. Kulesza, *Remote Trial...*, pp. 218–219.

<sup>25</sup> Case of *Bah v. the Netherlands*, no. 35751/20, § 40–45, HUDOC.

<sup>26</sup> Case of *Kampanis v. Greece*, no. 17977/91, § 47, HUDOC.

<sup>27</sup> Case of *Knebl v. the Czech Republic*, no. 20157/05, § 85, HUDOC; Case of *Altinok v. Turkey*, no 31610/08, § 45, HUDOC; Case of *Çatal v. Turkey*, no. 26808/08, § 33, HUDOC.

to both the facts and the law, it is not always required under the Art. 6.1 of the ECHR to appear in person<sup>28</sup>. Furthermore, it is not always necessary that an Art. 5.4 procedure is attended by the same guarantees as those required under Art. 6, but it must provide guarantees appropriate to the type of deprivation of liberty in question<sup>29</sup>. The proceedings must be adversarial and must always ensure “equality of arms” between the parties, but it does not imply a physical appearance before a court<sup>30</sup>. It is worth to underline that the Court in the case of *Karachentsev v. Russia* found a violation of Art. 3 of the ECHR as the accused was held in a metal cage at the remand prison for the purposes of his participation by means of a video link in the judicial examination of his appeals, but the Court did not find his participation *via* a video link incompatible with Art. 5.4 and 5.3 of the ECHR<sup>31</sup>. Concluding, a remote participation of the detained or accused person in hearing regarding detention review is not incompatible with Art. 5.4 of the ECHR, provided that the accused is given the opportunity to be heard and defend his rights before the court.

### **Dangers of remote participation**

The question which is often posed in terms of remote participation in the criminal proceedings is whether a judge can perceive non-verbal messages and evaluate the defendant’s or witness’s behaviour during remote participation to the same extent as during physical participation. One of the studies in the USA showed that in criminal bail hearings conducted by videoconference there were substantially higher bond amounts set (from 54 to 90%) for the defendants than when the bail hearings were in person<sup>32</sup>. A correlation between remote and physical participation was also proven in terms of witness testimony by children. The children who appeared over video were perceived as less accurate, believable, consistent, and confident<sup>33</sup>. These findings highlight risks. Remote participation may also impact on observing physical reactions of a witness, which can influence on evaluating the credibility of the testimony. An empirical study conducted in Belgium covering *inter alia* the interviews of the judges present general

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<sup>28</sup> Case of *Monnell i Morris v. the United Kingdom*, nos. 9562/81 and 9818/82, § 58, HUDOC; Case of *Sutter v. Switzerland*, no 8209/78, § 30, HUDOC.

<sup>29</sup> Case of *A. and Others v. the United Kingdom*, no. 3455/05, § 203, HUDOC.

<sup>30</sup> Case of *A. and Others v. the United Kingdom*, no. 3455/05, § 204, HUDOC.

<sup>31</sup> Case of *Karachentsev v. Russia*, no 23229/11, § 51–54, § 66–68, HUDOC.

<sup>32</sup> A. Bannon, J. Adelstein, *The Impact of Video Proceedings on Fairness and Access to Justice in Court*, p. 2, Brennan Center for Justice at New York University School of Law, <https://www.brennancenter.org/our-work/research-reports/impact-video-proceedings-fairness-and-access-justice-court> (15.03.2025).

<sup>33</sup> *Ibidem*.

concerns that the quality of interaction and the human aspects are more limited by videoconferencing than in person<sup>34</sup>. Interviewers highlighted that hearing a witness or the accused online make it difficult to assess the reliability of the non-verbal elements of communications, hence leaving to focus exclusively on the verbal side of the communication, which reduces the full-scale evaluation<sup>35</sup>. Consequently, interviewers were more likely to accept videoconferencing in cases concerning more procedural, technical or legal aspects<sup>36</sup>. It was also pointed out that digital participation may be a barrier for older participants<sup>37</sup>. However, a research based on online survey sent to judges and judicial organizations from Quebec points out that judges did not consider “body language” the most important factor in determining the credibility of testimony. They expressed their reluctance to rely on the witnesses’ nervousness and composure, because an honest witnesses can be intimidated by courtrooms while dishonest witnesses can be prolific at lying<sup>38</sup>. The results of the following research in terms of credibility and assessment of non-verbal signals, can be applied to the accused’s remote participation.

## Remote participation under the Polish Code of Criminal Procedure

The amendment to the Polish Code of Criminal Procedure of 19 June 2020 introduced the possibility to conduct a remote criminal trial and a remote detention hearing<sup>39</sup>. The introduction of the provisions regulating remote participation in the trial (Art. 374 § 3–9 of the Code of Criminal Procedure) and remote detention hearing (Art. 250 § 3b–3h of the Polish Code of Criminal Procedure) was related to the COVID-19 pandemic and the need to limit the situation where the detained person is physically brought before the court. These regulations have remained to this day, therefore it can be assumed that their aim was not episodic<sup>40</sup>.

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<sup>34</sup> M. Panzavolta, *A Defendant’s Right to Videoconference? Looking at Online Participation in Criminal Trials in a Different Light*, “Tilburg Law Review” 2004, no. 29(2) p. 78, <https://tilburglawreview.com/articles/10.5334/tilr.392> (15.03.2025).

<sup>35</sup> *Ibidem*, p. 76.

<sup>36</sup> *Ibidem*, p. 74.

<sup>37</sup> *Ibidem*, p. 75.

<sup>38</sup> V. Denault, C. Leclerc, V. Talwar, *The Use Nonverbal Communication when Assessing Witness Credibility: A View From the Bench*, Psychiatry, Psychology and Law, [https://www.researchgate.net/publication/370212722\\_Nonverbal\\_communication\\_and\\_witness\\_credibility\\_A\\_view\\_from\\_the\\_bench](https://www.researchgate.net/publication/370212722_Nonverbal_communication_and_witness_credibility_A_view_from_the_bench) (15.03.2025).

<sup>39</sup> Ustawa z dnia 19 czerwca 2020 r. o dopłatach do oprocentowania kredytów bankowych udzielanych przedsiębiorcom dotkniętym skutkami COVID-19 oraz o uproszczonym postępowaniu o zatwierdzenie układu w związku z wystąpieniem COVID-19 (Dz.U. 2022, poz. 2141).

<sup>40</sup> J. Karaźniewicz [in:] *Kodeks postępowania karnego. Komentarz*, ed. J. Zagrodnik, Warszawa 2024, Art. 250, p. 620.

## Remote participation in a remote detention hearing

Firstly, the Polish Code of Criminal Procedure does not indicate the circumstances that justify conducting a remote detention hearing<sup>41</sup>. The provision requires one technical condition to be met, i.e. the possibility of providing appropriate equipment so that the detained person is provided with simultaneous direct transmission of image and sound. If the detained person can participate by videoconference, the technical and organizational assistance must be provided<sup>42</sup>. Depending on the place where the detained person is located, it can be a representative of the administration of the prison, a representative of the detention centre, a court registrar or a judge's assistant. Consequently, it should be analysed whether Polish regulation on remote detention hearing implements all the procedural guarantees of the detained person, including the right to be brought before a judge, the right to defense and *habeas corpus* standard from Art. 5.3 of the ECHR. The first contact of the detained person with the court is especially crucial in the case of first decision on detention. The Polish regulation allows for a situation in which at no stage of the proceedings during which detention is applied, the detained person will appear before a judge. It constitutes a violation of the right to Art. 5.3 of the ECHR. A similar position regarding the violation of the convention standard within the scope of Article 5.3 of the ECHR was adopted by the Supreme Court of the Kingdom of Norway in its decision of 8 May 2000<sup>43</sup>. On the other hand, remote participation of the detained person *via* videoconference in the hearing on the extension of detention or appeal against detention remote participation of the detained person is recognised to be in line with the convention standard.

Another important issue to note is the exercise of the detained person's right to defence during the detention hearing. According to Art. 250 § 3d and 3e of the Polish Code of Criminal Procedure, the defence lawyer may freely decide either to participate in the hearing at the place of the detained person or to appear in court. Nevertheless, the court can oblige the defence lawyer to participate in the hearing in the court building due to the need to decide on the detention before the expiry of the detention time. However, such a risk should be real. It will most often materialize in the case when the detained person is staying in a detention centre significantly distant from the court and reaching this place by the defense lawyer would make it impossible to decide on detention on time<sup>44</sup>. A situation in which the defense lawyer is not physically at the place of the detained person may affect the right to defense.

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<sup>41</sup> K. Eichstaedt [in:] *Kodeks postępowania karnego*, vol. I: *Komentarz aktualizowany*, ed. D. Świecki, LEX/el. 2025, Art. 250.

<sup>42</sup> K. Sychta [in:] *Kodeks postępowania karnego. Komentarz*, ed. J. Zagrodnik, Warszawa 2024, Art. 177, p. 485.

<sup>43</sup> Supreme Court of Norway, 8th of May 2020, HR-2020-972-U, no. 20-065997STR-HRET, § 23.

<sup>44</sup> K. Eichstaedt [in:] *Kodeks postępowania karnego*, vol. I: *Komentarz aktualizowany*, ed. D. Świecki, LEX/el. 2025, Art. 250.



Another issue is the detained person's right to confidential contact with his defense lawyer. At the request of the detained person or the defense lawyer, the court may order a break to allow them to contact each other by telephone. However, the court may not consent if it disrupts the proper course of the hearing or creates a risk of failure to decide on detention before the expiry of the detention time. Consequently, this regulation does not ensure the detained person's right to confidential communication with his defense lawyer. Article 250 § 3f of the Polish Code of Criminal Procedure stipulates that the accused who is deaf, mute or blind cannot participate in remote detention hearing. It should be assessed positively. In the case of such persons, it is obligatory to bring the detained person directly before the court.

### **Remote participation in a criminal trial**

Under the Article 374 § 3 of the Polish Code of Criminal Procedure the accused has the possibility of participating remotely in the trial. The presiding judge may release him from the obligation to appear in person. It is only possible after fulfilling three conditions. The first of them is that the accused's appearance must be obligatory<sup>45</sup>. The Polish legislator therefore decided that obligatory appearance is a reason which constitutes a legitimate aim for the remote participation of the accused. In cases where the accused can facultatively participate in the trial, the legislator does not provide him with the initiative to submit a motion for the possibility of connecting by videoconference, which is inconsistent with the regulation regarding the participation of the prosecutor who can always submit such a motion. Moreover, the court is bound by the prosecutor's motion, as long as the technical condition is met<sup>46</sup>. It violates the principle of equality of arms and affects the right to a fair trial. The second condition is that the accused is deprived of liberty. The auxiliary prosecutor and the private prosecutor can also participate remotely if they are deprived of liberty. The third of the conditions is the technical condition, i.e. ensuring the participation of the accused in the hearing using technical devices that allow participation in the hearing remotely with simultaneous direct transmission of image and sound. In the case of the accused, whose participation is obligatory, but he is not deprived of liberty, it is only permissible for him to provide explanations remotely, if he has not yet provided explanations in court (Art. 377 § 4 of the Polish Code of Criminal Procedure).

The issue of the technical and organizational assistance at the accused's place is the same as in the case of the detained persons' remote participation in the

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<sup>45</sup> D. Świecki [in:] *Kodeks postępowania karnego*, vol. I: *Komentarz aktualizowany*, LEX/el. 2025, Art. 374.

<sup>46</sup> M. Klejnowska [in:] *Kodeks postępowania karnego. Komentarz*, ed. J. Zagrodnik, Warszawa 2024, Art. 374, p. 940.

detention hearing. Contacts between the accused and the defense lawyer have also been regulated similarly, although during the hearing, the court cannot oblige the defense attorney to participate in the court building. The court may not consent to the motion to order a break on the ground that this break clearly does not serve to exercise the right to defense, in particular is intended to disrupt or unjustifiably prolong the proceedings. It should be strongly emphasized that there is no possibility for the court to determine that a given break does not serve to exercise the right to defense. It should be reminded that the contact of the defense lawyer with the accused is covered by the defense professional privilege. Therefore, the court has no tools to determine the abovementioned circumstance. In addition, the decision to order a break by the presiding judge cannot be subject to any review if the court consists only of a one judge<sup>47</sup>. Consequently, the Art. 374 § 7 of the Polish Code of Criminal Procedure is incompatible with the Art. 6.1 of the ECHR.

## Conclusion

In the context of polish regulation, it is proposed *de lege ferenda* to eliminate the circumstance “a break clearly does not serve to exercise the right to defense” and the word “may”, which will affect the mandatory nature of the judge’s decision to order a break. Additionally, it is also suggested that remote participation in the trial should be conditional on the deprivation of the accused’s liberty. The change should also allow the accused to participate remotely when his participation is facultative. Such a shape of the provisions would meet the convention standard, provided that a positive decision of the court in this respect would depend on the existence of an important reason preventing the accused from appearing in court in person (serve a legitimate aim), e.g. a significant distance of the place of residence from the court, or the accused’s disability. In conclusion, remote participation in criminal proceedings presents opportunities but also significant challenges. It requires careful consideration of technical, procedural, and ethical factors to ensure that the rights of the accused are ensured.

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<sup>47</sup> D. Świecki [in:] *Kodeks postępowania karnego*, vol. I: *Komentarz aktualizowany*, LEX/el. 2025, Art. 374.

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## Summary

The article addresses the issue of remote criminal trial and remote detention hearing in the light of the European Convention on Human Rights, as well as Polish provisions of the Code of Criminal Procedure regulating this matter. The case-law of the European Court of Human Rights on the accused's participation by videoconferencing in criminal proceedings is presented and the conditions that need to be met. *Habeas corpus* standard from Art. 5.3 of the ECHR requires the physical presence of the detained or arrested person before the court if a decision on deprivation of liberty is made for the first time. Article presents also dangers related to the remote hearing of a witness or the accused. Finally, the postulates for changes in the Polish regulation concerning remote participation of the accused are presented to ensure their compliance with the convention standard.

**Keywords:** remote criminal trial, remote detention hearing, remote participation, right to fair trial, habeas corpus, European Convention on Human Rights

## ZDALNA ROZPRAWA KARNA ORAZ ZDALNE POSIEDZENIE ARESZTOWE W ŚWIEŁIE EUROPEJSKIEJ KONWENCJI PRAW CZŁOWIEKA

### Streszczenie

Artykuł porusza problematykę zdalnej rozprawy karnej oraz zdalnego posiedzenia aresztowego w świetle Europejskiej Konwencji Praw Człowieka, a także polskich przepisów Kodeksu postępowania

karnego regulujących tę materię. Zaprezentowane zostało orzecznictwo Europejskiego Trybunału Praw Człowieka w przedmiocie udziału oskarżonego za pomocą wideokonferencji w postępowaniu karnym przed sądem, w tym warunki, jakie muszą być spełnione. W ocenie autorów niniejszej pracy standard *habeas corpus* z art. 5 ust. 3 EKPC wymaga fizycznego doprowadzenia zatrzymanego lub aresztowanego przed sąd, jeżeli po raz pierwszy podejmowana jest decyzja w przedmiocie pozbawienia wolności. Artykuł przedstawia także możliwe zagrożenia związane z przesłuchaniem świadka lub oskarżonego w formie wideokonferencji. Następnie zaprezentowane zostały przepisy polskiego Kodeksu postępowania karnego regulujące zdalny udział oskarżonego w rozprawie i w posiedzeniu aresztowym oraz postulaty *de lege ferenda* w tym zakresie.

*Słowa kluczowe:* zdalna rozprawa karna, zdalne posiedzenie zażaleniowe, prawo do sądu, *habeas corpus*, Europejska Konwencja Praw Człowieka