

Impact of Confessions Taken Remotely Via Modern Technology on the Conscientious Conviction of the Criminal Judge

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Abstract

The Jordanian legislature has introduced virtual communication to criminal trials through the application of remote trials. Thus, it is possible to take the defendant's confession through virtual communication, which leads us to the following inquiries: Does hearing the defendant's confession in a remote trial have a negative effect on the judge's conscientious conviction? If the judge forms such a conviction, will it be considered equal to the one formed in a regular face-to-face trial? Should it not be the same? Does such disparity disturb the parameters of criminal justice? The study found an impact of remote trials on the judge's conscientious conviction arising from the confession. This is due to the absence of body language and the judge's lack of effective control over the remote trial. Therefore, the study makes several recommendations, notably the use of highly accurate modern means of communication and the assignment of a judicial officer to supervise the remote proceedings.

Keywords: criminal evidence, remote trial, conscientious conviction, confession, defendant, criminal law, criminal procedures.

1. Introduction

The judicial facility had its share of scientific developments in various fields, including the e-transformation of access towards the remote litigation system to avoid any obstacles that disrupt or impede the conduct of the criminal trial, and as the commencement of the remotely held criminal trial was accompanied by the taking of the defendant's confessions by such means, that is why we have dealt with a very

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precise matter. The defendant's confession may result in issuing the final verdict regarding the case without proceeding to view the remainder of the evidence.

Thus, while the use of such technology in remote trials is considered to keep pace with scientific developments, it may not be without creating legal problems related to remote confession. This may sometimes have a role in influencing the judge's conscientious conviction derived from that remote confession, which may lead to imbalances in criminal justice and thus less justice as opposed to face-to-face trials.

The matter discussed in this research can be concluded to try to investigate the potential impact of the use of virtual communication on a criminal judge's conscientious conviction when taking the defendant's remote confession and the extent to which the judge can strike a balance between the exercise of his freedom of conviction with the remote confession in a trial that is not subject to his physical control of the judge and the absence of the communication and physical language, such as the tone of voice, body posture, and facial expressions. The latter would ensure criminal justice was achieved as in the case of a regular trial

The importance of this research is highlighted by attempting to investigate one of the latest topics of importance, arising from the use of modern technology in criminal trials. It is also important that it tries to show how much procedural criminal justice is done if the criminal judge's conscientious conviction was based on the remote confession instead of a regular trial confession.

2. Research Methodology

This research is based on the following approaches:

- The prescriptive approach through the illustration of the legal provisions and legislation concerning the use of modern technology in the conduct of criminal trials, as well as the rules of criminal evidence relating to confession; reaching of the main principle of proof, namely the principle of conscientious conviction of the criminal court.
- The analytical approach through analyzing legal provisions and legislations to identify the main significant points therein, while illustrating some of the jurisprudence, and referring to some of the Jordanian judicial verdicts relevant to the subject matter of the study.
- Comparative approach through consideration of the comparative legislation applicable in the Kingdom of Saudi Arabia, and illustrating the extent to which the latter uses the system of remote trial in criminal

matters, as well as considering its legal regulation of remote litigation in matters other than criminal matters.

Research Questions

The subject of this research gives rise to the following questions:

- 1 Does body language and posture play a role in forming the conscientious conviction of the judge, whose absence in the case of a remote trial may impact this conviction?
- 2 - What is the impact of the judge's lack of physical control over the confession hearing on his conscientious conviction formed from such a hearing?
- 3 - Is there parity between the judge's conscientious conviction formed due to a confession in a remote trial as opposed to the one formed in a regular trial?

Research Objectives

This research seeks to achieve many objective, particularly:

- 1- Demonstrate the extent to which the absence of body language in remote trial affects the criminal judge's sentimental conviction.
- 2- Demonstrate the extent to which the confession taken remotely is productive and its role in forming the judge's conscientious conviction.
- 3- Indicate the extent to which the absence of the judge's real control over a remote trial affects the criminal judge's conscientious conviction.

3. Remote trials and the criminal judge's conscientious conviction

The idea of using communication technology in criminal prosecution raises many problems (Abu Issa, & Juwaihan, 2021). The trial stage is the crucial stage of the criminal case, at which the judgement of acquittal, conviction, or others is established in the judge's conscience. The principle of conscientious conviction is a well-established principle of criminal evidence, which gives the judge the power to rule, assess, and be satisfied with the evidence and rely upon the latter to render a verdict.

3.1 Definition of remote trial

Technological development imposed itself on various sectors, which also had a direct impact on the judiciary. So, now we hear of the electronic court, the electronic litigation systems, and the electronic judge. Since these developments ensure that the facilities of justice will not be disrupted, A good example is the COVID-19 pandemic

crisis, which has ravaged the entire world and influenced all sectors and areas of life by imposing the necessity of social distancing among individuals. The solution was to use the services provided by electronic means for their alternative and efficient solutions (Alid & Adrodor, 2020).

Based on the previous, the remote trial can be defined as follows:

The remote trial is technically defined as "a means of visual and audio communication for meeting two or a number of persons in different places, whether within the same country or different countries. This enables them to participate effectively in discussions and dialogues, thus making all interlocutors see, hear, and talk to each other at the same time" (Yahia, 2021).

From a legal aspect, the Jordanian regulation on the use of modern technology in criminal procedures, number (96) for 2018, did not address the definition of the remote trial but merely defined what modern technology means in article (2). The latter article stipulates "modern visual and audio means of communication adopted in accordance with the provisions of this regulation to conduct investigation and criminal trial procedures." (Article 2, The Use of Modern Technology Means in the Jordanian Criminal Proceedings, 2018).

In contrast, the Kingdom of Saudi Arabia has defined the electronic trial in the Procedural Guide for E-Litigation Service, although it does not consider the remote trial in criminal matters (Al Qathamy, 2021). Article (3) states: "Visual trial is when the department holds an audio-visual hearing in electronic halls, attended by the parties through the means of communication approved by the Ministry for Electronic Litigation, where discussion is made for the parties, litigation proceedings are proceeded with, and sentencing is rendered." (Saudi Procedural Guide for E-Litigation Service, 1441 AH).

As the legislature of the United Arab Emirates set out in "UAE Federal Law No. (5) of 2017 on the use of telecommunication technology in criminal proceedings," a definition of remote trial under Article 1 The article defines telecommunication technology as "audible and visual conversation between two or more parties directly contacting each other via modern means of communication in order to achieve remote attendance ". While remote proceedings are defined in the same article as "criminal proceedings in the investigation of crimes and the collection of evidence, investigation or prosecution carried out through the use of telecommunication technology." (Article 1, UAE Federal Law regarding the use of the tele-communication technique in the criminal proceedings, 2017).

On the other hand, remote trial is defined in the terminology as "the conduct of the trial in accordance with the legal and procedural requirements of the parties to the criminal proceedings, so that the tribunal remains in its location in court by linking it through electronic means of communication" (Mosbeh, 2018).

3.2 Definition of the principle of conscientious conviction of the criminal judge

Conscientious conviction is defined as "a mental and emotional state. It is a practical, scientific, and logical outcome provoked by the merits of the criminal case in the judge's consciousness, and this activates his memory to invoke the legal rules of exemplary merits that have the potential of matching the respective case facts. This condition essentially depends on the result of the process of comparison between the two incidents, so it may help the judge to unequivocally, with ease of conscience, form a judgement of guilt on the defendant's side, but it could also potentially create doubt with the judge. Finally, it could be the judge's plea of conscience that the incident has not occurred and that the defendant is not liable (Al Jouhary, 1999).

In another definition, "is when the judge finds within the presented evidence a sufficient reason to rationalise the verdict he/she rendered, and attributing such evidence to the defendant. In this case, the conviction is a definite belief based on objective evidence; that is, the conscientious conviction is based on the investigation of the provided proofs and scrutinising them until being convinced". (Abu Amer, 1984).

The Court of Cassation's (public tribunal) Decision No. 1515 of 2006 in its capacity as a criminal court attests to this: "One of the principles of jurisprudence and the judiciary is that the trial judge is free to assess the evidence provided to him in criminal matters, and he may be convinced of what puts his conscience at ease and reject other evidence. The Court of Cassation has no right to have control over him in this substantive matter, and it may not proceed with the weighing and preponderance of evidence. The above decision however excluded from these principles:

1. If the evidence the trial court relied upon in forming its belief is illusory and does not exist in the proceedings.
2. In case of this evidence exist but defy what the judgment established in its facts and narratives.
3. If the evidence is not contradictory but it is impossible to extract the facts from it (Jordanian Court of Cassation in its criminal capacity, 2006).

4. The likelihood of the judge's conviction of a false confession in a remote trial

Despite the scientific and technological development in the field of criminal evidencing, the confession remains at the forefront of the proofs of the criminal evidence (Articles 216 and 172 of the Jordanian Criminal Procedure Law, 1961, and its amendments, as well as the Jordanian Court of Cassation in its criminal capacity, 2022), as previously the confession was taken solely to convict the defendant. However, as human rights evolved, confession became similar to other criminal evidence, subject to the principle of conscientious conviction. Thus, the confession before the judge must be subject to his discretion, assessment, and justification of his judgment.

Confession means "the defendant's acknowledgment of his commitment to the crime of which he is accused before expressly before the Judicial Council, provided that this acknowledgment shall be on the basis of free will" (El Said, 2005; also Jordanian Court of Cassation in its criminal capacity, 2022).

4.1 The likelihood of the judge's conviction of a false confession is due to the fact that the defendant feels more confident

One of the purposes of the personal appearance was to awe the same defendant when he appeared before the court. The allocation of a special guarded place for the defendant against the judge and the public, the fact that the arrested defendant was brought to the courtroom under a high level of guardianship in vehicles designated for the transportation of inmates, and his long stay inside the court waiting for the trial role make him feel the strength and power of the court, which may stir his instincts of fear and tension (Tabbash, 2020).

Based on the foregoing, the researchers consider that the defendant's question about the charge against him via electronic screens, away from the judge's actual watch, without earlier observing the public eyes around him, could reflect positively on him, giving him the confidence and strength to make his confession. This could result in the confession appearing serious and firm, as if it were a confession of facts, when in fact it may be contrary to that. This is especially true if he intends, through his confession, to hide another crime that is more serious than the one he has confessed to committing or to receive an amount of money for bearing the charges on behalf of another offender. This confession may reflect negatively on the judge's conscientious conviction, since this confidence may lead the judge's conviction to tend to believe the confession and rely on the same as evidence of conviction, which could otherwise be deemed to lack standing in a regular trial.

With reference to Irbid Magistrates' Court, in its criminal capacity, Decision No. 13023 of 2022, the defendant made his confession in a remote trial after being asked about the charge against him. Upon the conclusion of the pleading, the court concluded, according to its peace of conscience, that the defendant is guilty due to his confession of committing the crime he is accused of, in addition to other evidence (Irbid Magistrates' Court Decision, 2022; also Tafila Criminal First Instance Court Decision, 2022).

On the other hand, questioning the defendant about the charge from behind electronic screens allows him enough time to choose his words and not answer spontaneously and intuitively, especially since it can justify the delays of his answers by claiming technical failures that have prevented the clarity of the voice. He could also argue any other impediment (Yahia, 2021). This may lead the judge to refrain from questioning the truthfulness of this confession and may lead the judge to express his or her conscientious conviction in favour of the confession, indifferent to the time the defendant took to confess. However, if the judge had taken the same confession in a face-to-face trial and if the defendant had taken the same amount of time to answer, it would have led to questions about the honesty of his answers.

4.2 The likelihood of the judge's conviction of a false confession due to coercing the defendant

In the opinion of the researchers, taking the defendant's confession remotely removes the judge's effective control over him and imposes the supervision of law enforcement, based on the provision of article (3/a) of the Jordanian Regulation of the Use of Modern Technology Means in Criminal Proceedings, which sometimes wastes many legal safeguards that must surround the confession.

The researchers further believe that if a defendant, who was somehow influenced to confess by law enforcement during his arrest, did not dare to disclose to the judge in a remote trial what he had suffered to confess, he would still be in the custody of law enforcement and under their guard. This would probably make the defendant provide the same confession, which could potentially be against his free will.

Moreover, the defendant may be subjected to any means of influencing his will by law enforcement, such as coercion, to compel him to make confessions contrary to the facts; thus, he would provide the confession he is demanded to provide by law enforcement in order to stop or prevent the influence. This resulted in the judge's potential conviction contrary to the facts. On the contrary, if he had been

present in a regular trial, the judge would have extended his effective control over him, which guarantees the judge that the defendant is not subjected to any influence on his free will. Hence, the judge would form his or her conviction in conformity to the truth.

Notwithstanding Article No. 8 of the Jordanian Regulation on Modern Technology Use, this is not sufficient to ensure that the defendant's free will is influenced (Article 8, Jordanian Regulation of the Use of Modern Technology Means in Criminal Proceedings, 2018, also Amman Magistrate Court Decision, 2020).

Although the Saudi Electronic Litigation Service's Guide does not apply to criminal matters, it provides an important provision, which would have been a great adoption for the Jordanian Regulation of the Use of Modern Technological Means in Criminal Proceedings. This provision states the following: "The judicial officers shall prepare the parties to the proceedings, verify their identities and their capacity in the proceedings, and write them down prior to the commencement of the proceedings of the (visual hearing)" (Article No. 5/3 of the procedural guide of the Saudi e-litigation, 1441 AH). Therefore, the two researchers consider that the presence of the judicial officers alongside the defendant at the remote trial has a role to play in limiting the risk of coercion and bending of free will. This would prevent the potential negative impact on the judge's conscientious conviction in this case, as the defendant's confession expresses his valid and free will.

5. The likelihood of the judge's conviction of a false confession is due to the absence of body language and external distractions in the remote trial

5.1 The Likelihood of the judge's conviction of a false confession due of the absence of body language.

The researchers believe that the defendant needs to use body language to his advantage in the trial. The judge also needs it for the purposes of building his conviction. Converting to appearing remotely interrupts the direct eye contact between the judge and the defendant, through which the judge can understand the physical expressions instantaneously. The defendant behind the electronic screen reflects an image that is deficient and only shows his upper half, not to mention the insufficient clarity of the picture and vision of the judge due to either poor lighting, camera angle, or poor hardware used in the telecommunication process.

Moreover, it is crucial to observe the tone of voice, which is a part of body language. It is recognised that the high tone of voice indicates anger, tension, and anxiety, while the low tone of voice is evidence of sadness and fear. The fluctuation of

tone from high to low has many indications for discovering the truthfulness of a person's utterance. (Al Atoum, 2020; Al Shamma, 2019).

By applying this to the confession, the researchers believe that it is quite difficult for the judge to discern the tone of voice, whereas a close or far-away microphone for the defendant may have a role in how high or low the judge hears the defendant. Additionally, since the judge had no chance of observing the defendant's normal voice face-to-face and that natural voice may differ when transferred via telecommunication, it became even harder for the judge to discern.

Based on the foregoing, the researchers think that the defendant's remote confession could be abstract, which may have a negative impact on the judge who seeks to form his conviction based on this confession. A judge's conviction can be influenced by mere movements of hands or legs, such as trembling, tension, or changing facial expressions such as exclamation, doubt, or anger. The judge observes the defendant's movements and tones when confessing in regular trials, which is easier for the judge to recognise during regular trials.

Inevitably, the situation in the remote trial might not seem so simple. The appearance of the defendant when confessing via electronic screens significantly limits the judge's ability to understand his body language, which reinforces the judge's conviction. This means that the judge's formed conviction from an abstract confession could have been different if body language and tone of voice were accessible to the judge.

5.2 The likelihood of the judge's conviction of a false confession due to external distractions

The Jordanian legislature was keen to grant the criminal trial the right atmosphere for its conduct. Thus, it is stipulated in the Code of Criminal Procedure in article No. 141 to grant the power of controlling and administering the sessions to the judge (articles Nos. 141 and 1/212 of the Jordanian Law of the Principles of the Criminal Courts, 1961, and its amendments). In the context of remote trials, the Jordanian Regulation on the Use of Modern Technical Means in Criminal Proceedings has neither stipulated the necessity of public attendance at remote trials nor specified the location where the public should be. Therefore, control and administration of electronic trials are automatically relegated to the provisions of Article 141 mentioned above.

From the researchers point of view, the above article is insufficient. Allowing the public to attend a remote trial presupposes opening the space before them to attend

from wherever they want, such as from their homes, workplaces, or in a public place, which may be teeming with background noise, such as car sounds or street vendors, as well as chatter among other people in the same place as the attendee.

Reference to the Saudi Electronic Litigation Service's procedural manual to reference some provisions that regulated the attendance process at the visual trial. Article (3), paragraph 8, states: "Whoever attends (the visual hearing) shall maintain order, mute the microphone, not interrupt, heckle, or repeatedly enter and exit. All attendees must activate their cameras throughout the time of the visual session." Paragraph (10) of the same article also stated, "Speaking, after the permission of the President of the Session, shall be calm and balanced, avoiding speeding or moving away from the microphone during the speech". This is followed in paragraph (11): "When holding the visual hearing, the parties to the case shall respect the tribunal and choose the appropriate place..." (Sections 8/10/11 of article No. 3 of the Saudi Procedural Guide for the E-litigation, 1441 AH).

Accordingly, the researchers consider that a confession in a hearing teeming with noise would have a double negative effect on both the judge and the defendant. The latter, in reading out the charge against him and asking for his answer, will not be able to focus to the extent necessary to understand the charges brought against him. In addition, the noises and interruptions that could occur during the session will confuse and stutter the defendant, which could lead the judge to believe that his testimony is incorrect. Also, the formation of the conviction about the confession requires some kind of calm. However, in the light of these commotions, the judge's attention will be distracted between the defendant making his confession and controlling the hearing, which can lead the judge to make a false conviction.

Hence, the researchers' view is that it is conceivable that the judge could form a sentimental conviction based on the confession taken remotely. However, the disparity between such a conviction and one formed in an ordinary trial must be considered. This is due to the fact that the judge does not have all the elements and circumstances of an ordinary trial, which contributes to and helps the judge form his own conviction about confession. All of the foregoing is likely to affect the judge's conviction, which may be contrary to the truth. This leads to undermining criminal justice as compared to a regular trial.

6. Conclusion

The Jordanian legislature has implemented remote trial in all criminal cases, unlike the Saudi legislature. Remote trials might lead to overconfidence when defendants make statements on screens. Because he is invisible, he has more time to plan and prepare his words. This can convince the judge of his statement's accuracy, which may alter his conscientious conviction. Remote trials may compromise the judge's conscientious conviction about the confession due to a lack of visual connection, speech clarity, posture, or other features. A remote trial without the judge's actual presence may hurt conscientious conviction. This lack of control may allow trial hearing distractions. Digital defendants who make comments disclose coercion and other methods of influencing their free will. False statements result. Thus, a judge's belief that such a statement could be false.

Due to the severity of the sanctions, we urge the Jordanian courts limit distant criminal trials. At the same time, we urge the Saudi legislature to use remote trial for misdemeanours and not Sharia punishments and felonies due to their severity. Modern telecommunications technology should be used to improve video and audio quality so the judge can see the defendant's body language and posture. This would also let the defendant use body language to persuade the court. We know that no matter how good video and audio remote telecommunication technology is, it can never match the quality of actual appearance before the judge in a typical trial. As per Saudi law, require a court officer or public prosecutor to remotely supervise the trial. This ensures that distantly present people cannot be influenced and that law enforcement does not collude with them.

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