
摘要

2020年新冠疫情爆发并持续至今，其传染性强、危害性大的特点对人们生活的各方面造成了巨大的影响。而刑事诉讼恰恰具有时效性、严肃性和强社会影响力的特点，因此就算在疫情期间也不能将刑事案件“一搁置之”。远程诉讼制度在这样的背景下显现了它的优越性。然而受制于理论和技术的多重因素，刑事远程庭审并未被广泛应用，甚至可以说其仅仅是线下诉讼的一种辅助手段。然而在新冠疫情期间，刑事远程庭审作为被官方认可，作为“抗疫”的重要措施，自有其合理性与正当性。这样兼具争议和重任的措施究竟在实践中运行得如何，值得我们去探索。

本文将围绕中国庭审公开网公布的庭审直播回放，以案件数量、案由、庭审持续时间和庭审流程几个维度尝试还原出刑事远程庭审的实践适用面貌，综合运用文献研究法、实证分析法和理论联系实际法进行深入分析，重点讨论了中国刑事远程庭审目前的困境和成因，进而有针对性地提出改进的建议。本文拟从以下几部分进行探讨：

第一部分讨论远程庭审的背景，本部分通过对其概念、政策进行梳理，让读者对刑事远程庭审这一概念及其产生有着基本的认识，进而为后文用实证研究方法分析其实践中适用的情况奠定基础。

第二部分通过实证研究法，以案件数量、案由、庭审时长、庭审流程等维度对庭审直播网中收录的远程庭审案例进行数据分析，再通过研究数据与数据之间的规律勾勒出形式远程庭审在实践中的真实面貌。

第三部分将结合由上文实证分析中发现的现象和规律，以案件类型、规范的明确、理论的支撑三个维度对刑事远程庭审目前的困境及其背后的成因进行论证分析，从而为后文作者对刑事远程庭审的未来展望提供理论支点。

第四部分将立足于上文的研究结论从构建远程庭审法律规范、推动远程庭审平台的发展、深化远程诉讼的理论支撑三个方面对刑事远程庭审未来的适用地位以及如何予以规范进行深入研究。

[关键词] 刑事远程庭审 实证分析 程序正当

Practical Observation and Prospect of Criminal Remote Trial

Abstract

COVID-19 broke out in 2020 and has continued to this day. With its strong infectiousness and great harm, it has had a huge impact on all aspects of people's lives. Criminal litigation is characterized by timeliness, seriousness and strong social influence, so criminal cases cannot be "put on hold" even during the epidemic. The system of remote litigation shows its superiority under such background. However, subject to multiple factors of theory and technology, criminal remote trial has not been widely used, even it can be said that it is only an auxiliary means of offline litigation. However, during the COVID-19 outbreak, remote criminal trial has been officially recognized as an important "anti-epidemic" measure, which has its own rationality and legitimacy. It is worth exploring how this controversial and important measure works in practice.

This article on China's court trial published public network broadcast playback, in case the quantity, the cause of action, the trial duration and attempt to restore the criminal trial process several dimensions remote trial practice apply face, the integrated use of literature research, empirical analysis and theory with practice method, in-depth analysis, discusses the difficulties and reasons of Chinese criminal remote session now, Then put forward the improvement suggestion pertinently. This paper intends to discuss from the following parts:

The first part discusses the background of remote trial. By sorting out its concepts and policies, this part enables readers to have a basic understanding of the concept of criminal remote trial and its generation, and then lays a foundation for the post-textual empirical research method to analyze its application in practice.

The second part uses empirical research method to analyze the data of remote trial cases included in the live trial network in terms of the number of cases, cause of action, trial duration, trial process and other dimensions, and then Outlines the real appearance

of remote trial in practice by studying the rules between data.

The third part will combine the phenomena and laws found in the empirical analysis above to demonstrate and analyze the current difficulties and causes of remote criminal trial from the three dimensions of case type, clear specification and theoretical support, so as to provide theoretical fulcrum for the future prospect of remote criminal trial.

The fourth part will conduct an in-depth study on the future applicable status of long-distance criminal trial and how to regulate it from three aspects of constructing legal norms for long-distance trial, promoting the development of long-distance trial platform and deepening the theoretical support for long-distance litigation based on the research conclusions above.

Key words: Criminal Remote Hearing Empirical Analysis Due
Process of Law

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刑事远程庭审的实践观察与前景展望

导言

（一）选题背景和意义

刑事案件远程庭审是指人民法院借助网络音视频通信技术完成案件庭审工作。我国刑事案件在线庭审最早可以追溯至 2007 年上海第一中级人民法院在线审理的一起盗窃案件，并在该案审结后陆续推出了《刑事二审案件远程审理操作规则（试行）》等规范性文件。

视野转向域外，澳大利亚、韩国和美国等国家目前都已建立了较为完善的远程审判系统。澳大利亚早在 1998 年就提出建立网上法院的构想¹ⁱⁱ，并在多年发展后远程庭审系统开始大规模运用。澳大利亚的实践证明视频技术在诉讼程序的多个方面都有着不凡的效果，其大大提升了证人出庭率，节约了诉讼成本，且提高了诉讼效率。“电子化庭审”也在美国掀起一股浪潮，网上起诉与立案、3D 模拟庭审、自动化录音等新技术都被积极地实践和探索。而在亚洲，韩国是最早将视线投向“电子诉讼”的国家，一系列规范性法案应运而生，如今远程审判模式在民事领域已成为主要的方式。¹纵向对比我国与域外远程庭审的模式与发展，我国远程庭审显然处于初期摸索阶段，而疫情的爆发在此基础上催化了远程庭审制度的发展。

2020 年新冠疫情爆发并持续至今，其传染性强、危害性大的特点对人们生活的各方面造成了巨大的影响。而刑事诉讼恰恰具有时效性、严肃性和强社会影响力的特点，因此就算在疫情期间也不能将刑事案件“一搁置之”。远程诉讼制度在这样的背景下显现了它的优越性。然而受制于理论和技术的多重因素，刑事远程庭审并未被广泛应用，甚至可以说其仅仅是线下诉讼的一种辅助手段。然而

¹ 郑莉：《E-Court 模式下简易程序刑事案件远程审判研究》，《西南民族大学学报》（人文社科版）2019 年第 10 期，第 85 页。

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