

**THE DIGITAL TRANSFORMATION OF CRIMINAL JUSTICE:
RE-EVALUATING THE PRINCIPLE OF IMMEDIACY AND DEFENSE
RIGHTS IN THE ERA OF REMOTE PROCEEDINGS**

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Abstract

The rapid digitalization of global judicial systems has transitioned remote participation from a temporary emergency measure into a structural pillar of modern criminal procedure, compelling a critical reassessment of foundational principles-most notably the principle of immediacy, which requires the direct and unmediated confrontation of evidence and parties before the adjudicating court. While video conferencing technologies offer advantages in terms of judicial economy and efficiency, they simultaneously undermine the traditional foundations of the right to a fair trial. The courtroom is not merely a logistical venue; it is a space where the principle of immediacy enables the court to directly observe and assess the demeanor of the accused and witnesses. The mediation of a digital screen obscures critical non-verbal cues and creates a psychological distance that may jeopardize equality of arms, the right to confront witnesses, and the right to effective legal assistance under Article 6 of the European Convention on Human Rights. These tensions raise fundamental questions about the capacity of remote proceedings to serve the truth-finding function of criminal adjudication, risking the transformation of trial into a bureaucratic formality rather than a genuine pursuit of material truth. A tension exists between the drive for a data-driven judiciary and the necessity of safeguarding the human-centered procedural guarantees of criminal law. The legitimacy of digital justice depends on strict necessity and proportionality criteria that prevent technological efficiency from eroding the core of defense rights, and *de lege ferenda* proposals are advanced toward reconciling innovation with the enduring imperatives of procedural justice.

Keywords: *Remote Proceedings, Right to a Fair Trial, Principle of Immediacy, Digital Justice, Procedural Safeguards*

Introduction

Few principles of modern criminal procedure are as old and as quietly assumed as the principle of immediacy. Since its codification in the continental reforms of the nineteenth century, the idea has been simple: the court that decides must also be the court that sees and hears the evidence. The principle operates as a structural guarantee of judicial cognition, of defense participation, and of adversarial truth-finding—an architectural feature of the trial that becomes visible only when the architecture is disturbed.

The digital transformation of criminal justice has produced such a disturbance. Videoconferencing has moved in barely two decades from the margins of comparative procedural law to its operational centre. The COVID-19 pandemic accelerated this trajectory but did not begin it: before 2020, videoconferencing was already available in thirty-nine of the forty-seven Council of Europe Member States then in membership, and nearly all of them had legislative frameworks supporting its use (Świecki & Wójtowicz, 2025). What the pandemic added was not the technology but the political will to override the default of physical presence (Sanivar, 2021).

That emergency context has passed, yet the remote-proceedings infrastructure built during the pandemic has not been dismantled. At the supranational level, the European Union has consolidated this trajectory through its e-Justice Strategy 2024-2028 and Regulation (EU) 2023/2844 on the digitalisation of judicial cooperation (Žukovaitė, 2024), while the European Court of Human Rights has developed a body of case-law calibrating remote participation against the fair-trial guarantees of Article 6 ECHR. Türkiye has embraced this transformation with particular vigour. Decree-Law No. 694 of 2017, ratified by Law No. 7078 of 2018, opened Article 196/4 of the Turkish Code of Criminal Procedure (CPC) to discretionary use of the Audio and Visual Information System (SEGBİS) whenever the judge or court deems it necessary, dissolving the previous five-year lower threshold that had served as a structural protection of the accused's right to be physically present (Ateş, 2022; Taner, 2020). The parallel civil-procedure reform under Article 149, amended by Law No. 7251 of 2020, removed the requirement of mutual party consent (Varol Karaosmanoğlu, 2022). The Turkish legislative drift has been one-directional: where physical presence had once been the rule, the new framework entrusts the choice of modality to judicial discretion. This displacement forms one dimension of a wider digital reordering of criminal procedure—covering encrypted-communication interceptions, cross-border production orders, and algorithmic processing of digital data (Turanjanin, 2025; Jurka, 2025).

This paper asks whether the principle of immediacy and the defence rights it supports can survive the digital transformation of criminal justice. It argues that they can, but only if immediacy is reconceived. It must no longer be a topographical demand for shared physical space, but a substantive guarantee of an unmediated, contemporaneous, and effectively adversarial encounter between the trier of fact and the evidence. On this reading, immediacy requires four things: that remote modalities

serve a genuine aim; that they not place the defence at substantial disadvantage; that confidential lawyer-client communication be effectively protected; and that the court retain enough cognitive access to the evidence for a reliable factual finding. The argument proceeds in five parts: the conceptual structure of immediacy (§1); the Strasbourg case-law centred on *Marcello Viola v. Italy* (§2); remote detention hearings under Article 5(3) ECHR (§3); the Turkish trajectory of SEGBİS, the post-2017 expansion of Article 196/4, the Constitutional Court’s *Yayla* and *Çoban* decisions, and the transnational endorsement by the Federal German Constitutional Court (§4); and the substantive reconstruction of immediacy together with *de lege ferenda* proposals (§5).

1. The Principle of Immediacy in Continental and Turkish Criminal Procedure

1.1 Conceptual Structure

The principle of immediacy expresses a simple idea: the court that renders judgment must engage with the evidence directly, without an intermediary (Varol Karaosmanoğlu, 2022). It is not codified as such in the Turkish CPC, yet it shapes a set of more specific rules: the trial must be oral; witnesses must be heard in court; the defendant must be present for the central acts of the proceedings; and the deciding panel must personally encounter the evidence on which judgment will rest.

In the continental tradition that Turkish criminal procedure has historically drawn upon, the principle is analytically divided into three dimensions (Varol Karaosmanoğlu, 2022). Formal immediacy concerns the identity of the cognitive subject: the court that decides must be the court that takes the evidence. Substantive immediacy concerns the proximity of the evidentiary source: the court should engage with the most direct evidence available-the eyewitness rather than the second-hand account, the original document rather than the summary, live testimony rather than a prior statement. Temporal immediacy concerns the rhythm of cognition: the hearing should proceed without disruptive interruptions, so that the court’s impressions remain fresh when judgment is delivered. The common kernel is that judicial cognition must be unmediated; factual findings must rest on the court’s own perceptual encounter rather than on a representation of someone else’s.

This architecture maps closely onto Turkish doctrine, where the principle is analysed under two headings-formal and substantive immediacy-understood as mutually constitutive (Gökpınar, 2024). This unity rules out a rhetorical move common in recent discussions: treating formal immediacy as satisfied by the bare presence of the deciding panel while substantive immediacy is silently abandoned through reliance on prior records. The statutory foothold of formal immediacy is Article 217/1 CPC, which allows the judge to base the decision only on evidence brought into the hearing and discussed in his or her presence. The substantive dimension is anchored in Article 210/1 CPC, requiring that, where the evidence of an

event consists of a witness's statements, the witness must absolutely be heard at the hearing (Gökpınar, 2024).

1.2 The Function of Immediacy in the Defense Architecture

The principle of immediacy is not merely an epistemic preference; it is constitutive of the structure of defence rights. Article 6(3) ECHR lists the minimum guarantees of the accused, including the rights to defend oneself in person or through counsel and to examine or have examined witnesses. None of these rights can be meaningfully exercised in the absence of immediacy. The right to confront witnesses requires that the witness and the accused share a moment of mutual perceptibility before the court. The right to defend oneself in person requires that one's presence be felt by the court. The right to challenge incriminating evidence requires that the court weigh the challenge against its own perception of the evidence (Ateş, 2022).

In Turkish law, the constitutional basis is Article 36 of the Constitution, which guarantees the right to a fair trial. The most operationally significant expression of immediacy is the rule derived from Article 193 CPC: as a general rule, the trial may not be conducted in the defendant's absence. Since its 2014 jurisprudence, the Turkish Constitutional Court has treated this rule as integral to the fair-trial guarantee, even though Article 6 ECHR contains no express right to be present at trial (Ateş, 2022). Any derogation from orality must be supported by a legitimate aim, constitute the least restrictive measure, and preserve the accused's right to an oral hearing in at least one instance hearing the case on its merits (Kaija, 2025).

1.3 The Traditional Exceptions

The Turkish CPC has always known exceptions to immediacy. Letters rogatory under Article 197 allow delegation of evidence examination to another judge when the witness or evidence is outside the court's territorial jurisdiction. The appointed-member procedure permits a single panel member to gather evidence on behalf of the whole. Under Article 196/2 CPC, an accused charged with an offence carrying a minimum sentence of less than five years' imprisonment may, exceptionally, be examined by letters rogatory after being asked whether he wishes to give his statement before the trial court. Judge changes during a proceeding interrupt formal immediacy in a different but equally significant way (Varol Karaosmanoğlu, 2022). These exceptions share a structural feature: they are narrow, justified by the practical impossibility of strict immediacy in the specific case (Ateş, 2022). SEGBİS has been added as a further exception, but one of different character—both in its technological capacity to approximate immediacy and in the systemic risk it poses of inverting the relationship between rule and exception.

The most extensively analysed cluster of traditional exceptions in Turkish doctrine concerns the reading of prior examination records under Article 211 CPC, which sets the practical boundaries of the principle protected by Article 210/1 (Gökpınar, 2024). Reading is permitted in four situations: where the witness has died, become incapacitated, or cannot be located; where attendance is impossible for an

indefinite period; where the value of live testimony is outweighed by the difficulty of obtaining it; and where all procedural actors consent. A structural defect remains: Article 210/1 requires that the witness be heard absolutely, yet Article 211 enumerates cases where that requirement is relaxed (Gökpınar, 2024). Further concerns include the indeterminate language of Article 211/1(b) and the stereotyped formula under subsection 1(c) that the testimony would add nothing to the substance, which simultaneously breaches immediacy and the duty of reasoned decision (Göktepe, 2025). A statutory rule whose absoluteness is contradicted by its application invites the inversion of rule and exception-the structural risk this paper identifies as central to the post-2017 SEGBIS regime, for which the same cure is required: a binding requirement of concrete and reviewable justification for any displacement of live testimony.

2. The Strasbourg Framework: Remote Participation under Article 6 ECHR

2.1 The Right to be Present and its Implicit Status under Article 6

Article 6 ECHR does not, in its text, guarantee the accused a right to be present at trial. The European Court of Human Rights has nevertheless held, since its earliest fair-trial jurisprudence, that the right is implicit in the structure of Article 6 read as a whole. In *Colozza v. Italy* (Application no. 9024/80, 1985), the Court reasoned that the rights under Article 6(3)(c), (d), and (e) would be meaningless if afforded to an accused who was not before the court (Ateş, 2022). The accused must therefore be able to participate effectively, a requirement subsequently elaborated to cover the rights to follow the proceedings, to hear and be heard, and to communicate with counsel (Świecki & Wójtowicz, 2025). The right is not absolute: it may be waived-provided the waiver is established unequivocally and attended by minimum safeguards-forfeited through disorderly conduct, or relaxed for the protection of vulnerable witnesses.

2.2 *Marcello Viola v. Italy* and the Four Conditions

The leading Strasbourg decision on remote criminal participation remains *Marcello Viola v. Italy* (Application no. 45106/04, 5 October 2006). The applicant was charged with multiple counts of murder, attempted murder, mafia-type association, and unlawful possession of weapons, and was subjected to the special detention regime under section 41-bis of the Italian Prison Organisation Act (Law no. 354 of 1975). His participation in three appellate hearings was secured by videoconference rather than by transfer to the courtroom. The Court held that this arrangement did not, by itself, violate Article 6.

The *Viola* judgment articulated four conditions that have structured the Strasbourg approach to videoconferencing ever since. First, the use of video link must pursue a legitimate aim; the Court accepted that aims could include protection of

public order, of witnesses and victims, prevention of escape or attack during the transfer of dangerous detainees, and compliance with the reasonable-time requirement of Article 6(1) (Świecki & Wójtowicz, 2025). Second, the use of video link must not place the defence at a substantial disadvantage. Third, the arrangements for the giving of evidence must be compatible with due process. Fourth, the accused must retain effective access to confidential communication with counsel (Ateş, 2022).

The reasoning underlying *Viola* has been developed in subsequent decisions. In *Bivolaru v. Romania* (No. 2) (Application no. 66580/12), the Court found no violation of Article 6 § 1 where the High Court had offered to question the applicant by video link and had also arranged for his examination by way of letters rogatory; these procedural arrangements were considered sufficient to ensure effective participation. In *Dijkhuizen v. the Netherlands* and *Alppi v. Finland*, the Court restated that videoconferencing is not in itself incompatible with Article 6(1), provided the *Viola* conditions are observed (Świecki & Wójtowicz, 2025). At EU level, the CJEU has interpreted Directive 2016/343/EU in *FP and Others* (C-760/22) as compatible with remote participation, provided national arrangements do not undermine the Directive's goal of strengthening the right to a fair trial (Žukovaitė, 2024).

An important caveat regarding the transposition of *Viola* into the Turkish setting must be noted. The applicants in *Viola* and parallel Italian cases were defendants charged with mafia-related offences subject to the section 41-bis regime; the security rationale was specific to organised crime trials. The Turkish post-2017 framework, by contrast, opens SEGBİS to all categories of offence regardless of gravity. The gravity of the offence cannot, by itself, justify remote participation; to treat every defendant facing a serious charge as presumptively dangerous offends the presumption of innocence (Taner, 2020). The *Viola* conditions cannot legitimise the Turkish practice without an independent showing that the legitimate-aim condition is satisfied on the facts of the individual case.

2.3 The Confidential Communication Requirement

Of the four *Viola* conditions, the requirement of confidential communication between accused and counsel has received the most rigorous elaboration. In *Sakhnovskiy v. Russia* (Application no. 21272/03), the Grand Chamber found a violation of Article 6 where the applicant had communicated with newly-appointed counsel only through a video link controlled by the prison authorities, with no opportunity for confidential consultation. The right to consult counsel out of the earshot of third parties is a basic requirement of effective legal assistance, a point reinforced in *Gorbunov and Gorbachev v. Russia* (Świecki & Wójtowicz, 2025), and extended in *Zagaria v. Italy* (Application no. 58295/00), where a prison officer overheard a counsel–client consultation. The Court treated this as a violation of the right to legal assistance even absent deliberate eavesdropping (Taner, 2020).

The confidential-communication requirement is the most demanding of the *Viola* conditions and cannot be satisfied by technological adequacy alone. Even a high-fidelity connection does not deliver the unmediated, private exchange between

accused and counsel that is the practical foundation of effective defence. The Strasbourg case-law has insisted that, when video link is used, counsel must be physically present with the accused, or a private channel must allow unmonitored exchange (Ateş, 2022). The Turkish Court of Cassation has reached the same conclusion, holding that an accused examined by SEGBİS in the absence of counsel suffers a restriction of the defence right that vitiates the proceedings. The deficit of the Turkish regulatory framework is structural: the Regulation makes the presence of a public prosecutor or judge at the location of the person to be heard contingent on the requesting authority's wishes (Article 18), and contains no guarantee of a confidential consultation channel between the remote accused and counsel attending the hearing (Taner, 2020).

The empirical record of European practice during the pandemic shows how fragile this requirement has proved. A survey of defence lawyers across nine European jurisdictions documented that, where remote consultations replaced in-person attendance, the confidentiality of lawyer-client communication was essentially non-existent in practice (Fair Trials, 2020). The European Union has responded at the level of binding law: in cross-border criminal matters, Article 6 of Regulation (EU) 2023/2844 establishes an express right to consult counsel before consenting to participate by videoconference, and requires confidentiality of communications both before and during the hearing (Žukovaitė, 2024). For Turkish law-which has addressed this only at the level of appellate jurisprudence and circulars-this represents an emerging external standard against which the current SEGBİS regulation will increasingly be measured.

2.4 Technical Adequacy and Effective Participation

A further strand of the Strasbourg jurisprudence concerns the technical adequacy of the videoconferencing arrangements. In *Stanford v. the United Kingdom* (Application no. 16757/90), the Court accepted that defective audio could in principle give rise to an Article 6 issue (Świecki & Wójtowicz, 2025). Where the audio-visual connection is unreliable, where the image is too poor to permit observation of demeanour, or where transmission delays disrupt the natural rhythm of examination, the accused's capacity for effective participation is compromised. Regulation (EU) 2023/2844 reflects this concern in its definitional core, confining permissible videoconferencing to audio-visual transmission allowing two-way and simultaneous communication of image and sound, with telephone-only communication expressly prohibited (Žukovaitė, 2024).

The corollary of the *Stanford* rule is a procedural duty of contemporaneous objection. Where the audio-visual quality is inadequate, the accused or counsel must raise the difficulty during the hearing and ensure that the failure of a particular procedural act, and its bearing on overall fairness, is recorded in the minute (Taner, 2020). This duty corresponds to the cumulative methodology by which both the Strasbourg Court and the Turkish Constitutional Court assess Article 6 violations:

they review the fairness of the proceedings as an integrated whole. Without a contemporaneous record of the technical failure and its consequences, the prospects of obtaining a finding of violation are correspondingly diminished.

The doctrinal upshot is that videoconferencing is not itself incompatible with Article 6; its compatibility depends on the cumulative satisfaction of four conditions: a legitimate aim genuinely served in the specific case; the absence of substantial disadvantage to the defence; respect for the procedural framework governing the giving of evidence; and effective protection of confidential communication. The aim must be specific, not generic; the disadvantage must be assessed in concrete terms; the whole package must be evaluated against the comparative test: whether physical presence would have been feasible, and if so, what compelling reason justified its displacement. The Strasbourg case-law does not establish a right to physical presence in every case but a presumption in its favour, rebuttable only on specific and compelling grounds.

3. The Special Problem of Remote Detention Hearings

3.1 The Habeas Corpus Standard of Article 5(3) ECHR

The case for physical presence is structurally stronger in detention hearings than in trials. Article 5(3) ECHR requires that arrested persons be brought promptly before a judge, the modern codification of the habeas corpus principle. The Strasbourg Court has not ruled directly that Article 5(3) requires physical presence, but its incidental observations repeatedly emphasise that arrested persons must be physically brought before a judicial officer (see, e.g., *Medvedyev and Others v. France*, Application no. 3394/03; *Öcalan v. Turkey*, Application no. 46221/99). Their cumulative weight suggests that the Court treats physical presence as the default mode of compliance with Article 5(3), with remote modalities tolerated only where physical transfer is genuinely impossible (Świecki & Wójtowicz, 2025).

The function of the Article 5(3) hearing is not merely to obtain a judicial decision on continued detention, but to provide a moment of physical confrontation between the detained person and a judicial officer outside the custodial environment—allowing the judge to detect signs of ill-treatment and the detained person to speak freely (Świecki & Wójtowicz, 2025). A remote hearing satisfies these functions inadequately: the judge cannot reliably observe the detained person's condition through a screen, and the detained person cannot be confident that custodial officials are not out of camera. Practitioner surveys confirm the point: the presence of prison staff during video consultations made it impossible for clients to disclose human rights violations within the custodial facility (Fair Trials, 2020).

3.2 Article 5(4) Review and Implications for Turkish Practice

The position is more nuanced for the periodic review of detention under Article 5(4) ECHR. In *Kampanis v. Greece* (Application no. 17977/91), the Court held that the opportunity to be heard is a fundamental procedural guarantee in matters

of deprivation of liberty, but did not require every review hearing to be attended in person. Article 5(4) requires an adversarial procedure with equality of arms, appropriate to the type of deprivation of liberty. In *Karachentsev v. Russia* (Application no. 23229/11), the Court accepted that remote participation in periodic detention review is in principle compatible with the Convention, provided the accused is given the opportunity to be heard and to defend his rights (Świecki & Wójtowicz, 2025). The Turkish Constitutional Court has likewise developed an extensive case-law on detention review under Article 19/8 of the Constitution, emphasising the equality-of-arms and adversariality requirements (Sanıvar, 2021).

The aggregate position is therefore asymmetric: initial detention hearings call for physical presence absent compelling reason, while periodic review hearings may, in principle, be conducted by video link. Turkish practice does not reflect this asymmetry: SEGBİS is routinely used at all stages, including initial appearances, without statutory or jurisprudential distinction. Persons in pre-trial detention spent longer in custody during the pandemic, with custody time limits being extended as a matter of routine (Fair Trials, 2020). This position is incompatible with the Strasbourg standard insofar as it permits initial detention hearings by video link without compelling reason—a gap any forward-looking reform must address.

4. The Turkish Trajectory: SEGBİS, CPC Article 196/4, and the Constitutional Court

4.1 The Origins of SEGBİS

The Audio and Visual Information System (SEGBİS), integrated with the National Judicial Network Project (UYAP), was developed by the Turkish Ministry of Justice in the late 2000s and entered operational use in 2013 (Ateş, 2022). The 2011 Regulation defines SEGBİS as the system in which sound and image are simultaneously transmitted, recorded, and stored electronically within UYAP, requiring transmission that permits observation of facial expressions, body movements, and demeanour. The accompanying Circular No. 150 of 14 December 2011 framed deployment as an instrument for the constitutional duty under Article 141/4 of the Constitution to conclude proceedings with the least cost and the greatest expedition compatible with Articles 5(3) and 6(1) ECHR (Sanıvar, 2021).

The early statutory framework integrated SEGBİS into specific procedural acts: Articles 52, 58, and 180 CPC (witness and expert examination), Article 147 (suspect/accused interrogation), Article 196/4 (examination of the accused excused from attendance), Article 94 (judicial questioning of an apprehended person who cannot be brought before a judge in the statutory period), and the cross-border judicial assistance regime. SEGBİS operated as an instrument permitting the procedural act to be completed when physical presence was impractical or impossible; its deployment was, in principle, exceptional (Ateş, 2022).

4.2 CPC Article 196/4 Before and After 2017

The pre-2017 text of CPC Article 196/4 represented a relatively cautious legislative settlement. Read together with the preceding three subsections, which permitted examination by letters rogatory only for offenses carrying a minimum penalty of less than five years' imprisonment, Article 196/4 was widely understood to incorporate the same threshold (Ateş, 2022). On this reading, the use of SEGBİS for the query of an accused charged with an offense carrying five years or more was simply unavailable; the accused was entitled to physical presence before the trial court. The protection was indirect, but it had teeth.

Decree-Law No. 694 of 25 August 2017, ratified by Law No. 7078 of 1 February 2018, dissolved that protection. The amended Article 196/4 now provides that, in cases the judge or court deems necessary, the query of an accused located within the country may be conducted, or the accused may be permitted to participate in hearings, by means of the simultaneous use of audio and visual communication technology. The five-year threshold disappeared. The decision to use SEGBİS for any query, in any case, became a matter of judicial discretion.

Turkish doctrine has responded sharply to this shift. The amendment inverts the relationship between rule and exception: previously, physical presence was the rule for serious offences and SEGBİS the narrow exception, while the amended provision permits SEGBİS in any case at the court's discretion (Ateş, 2022; Taner, 2020). The amendment has further been characterised as the modern statutory descendant of an earlier involuntary letters rogatory regime: the procedural defect that the original Article 196 had sought to remedy was reintroduced in a new technological register (Taner, 2020). A discretionary power to dispense with presence is, in substance, a discretionary power to dispense with one of the foundational guarantees of Article 6 ECHR. The argument that the reasonable-time guarantee of Article 6(1) provides an independent legitimating ground is unpersuasive: reasonable time cannot be invoked as a pretext for restricting the time required for the proper exercise of defence rights (Taner, 2020, p. 928).

4.3 The Court of Cassation's Three-Part Test

The Court of Cassation responded to the legislative shift by articulating a structured framework for SEGBİS use. The 16th Criminal Chamber formulated what has come to be regarded as the canonical three-part test in decisions handed down on 19 June 2015 (Ateş, 2022; Yerdelen, 2019). First, as a general rule, the accused must be present at the hearing; this right may be limited only on concrete and serious grounds, by reasoned court decision. Second, the accused's participation by SEGBİS in hearings at which the initial and final defences are made, and at which substantive evidence is taken, requires the accused's express acceptance. Third, where defence is taken by audio-visual means, the conditions of a fair hearing are met only where, upon the accused's request, counsel is afforded the opportunity to be present with the accused.

The three-part test is a sophisticated jurisprudential response to the structural risk posed by the 2017 amendment. It does not invalidate the discretionary power conferred by Article 196/4, but it constrains its exercise. The first element addresses the legitimate-aim condition under *Viola*; the second responds to the consent strand of the Strasbourg case-law; the third operationalizes the confidential-communication requirement.

The Court of Cassation has also articulated a complementary hierarchy of modalities for the examination of witnesses outside the trial court’s physical seat. Drawing on Article 180 CPC, the 3rd Criminal Chamber has held that, where physical presence is not feasible, evidence must be taken in a strict sequence: SEGBİS in real time first; and only where the technical means for SEGBİS are unavailable, by the appointed-member procedure or letters rogatory (Göktepe, 2025). This treats SEGBİS not as a freely available alternative to in-person examination but as the modality closest to it in substantive-immediacy terms-preferable to letters rogatory because it preserves the contemporaneity of question and answer.

4.4 The Constitutional Court’s Emrah Yayla and Şehrivan Çoban Decisions

On 6 February 2020-immediately before the COVID-19 pandemic and within the post-2017 statutory framework-the Turkish Constitutional Court delivered two parallel individual-application decisions that gave the Strasbourg standard its most authoritative domestic translation: *Emrah Yayla* and *Şehrivan Çoban* (Ateş, 2022). In *Yayla*, a prison inmate’s complaint application to the enforcement judge was set down for hearing; the judge ordered SEGBİS participation from the place of detention and refused the applicant’s request to appear in person. The Constitutional Court found a violation of the right of presence under Article 36 of the Constitution: no effort had been made toward personal participation, and the impossibility of bringing him from a penal institution in the same city was not explained. A general justification-the bare convenience of SEGBİS-could not satisfy the constitutional standard. In *Çoban*, decided the same day, the applicant had appeared in person at the first hearing on a charge of membership of an armed terrorist organisation; following his transfer for security reasons to another city, the trial court ordered SEGBİS for subsequent hearings and refused his written request to attend in person. He was convicted. The Constitutional Court again found a violation.

The structural significance of *Yayla* and *Çoban* lies in the case-specific justification standard the Court adopted. Where the post-2017 statutory framework confers an apparently unstructured discretion on the trial court, the Constitutional Court has read into that discretion a constitutional duty of articulated, fact-specific justification of any displacement of physical presence-in effect, the domestic constitutional analogue of the *Viola* comparative test. Türkiye has thus aligned its constitutional standard with the Strasbourg framework, even where the statutory provision continues to leave room for broader discretion.

4.5 The Transnational Reach of SEGBİS: The Federal German Constitutional Court's Extradition Ruling

The substantive standards developed in *Yayla* and *Çoban* have received an unexpected external endorsement. In a decision of 18 December 2023 (2 BvR 1368/23), the First Chamber of the Second Senate of the Federal German Constitutional Court annulled an order by the Celle Higher Regional Court approving the extradition of a Turkish citizen to face drug-trafficking charges before the 8th Heavy Penal Court of Izmir. The ground was a violation of Article 19(4) Basic Law: the Higher Regional Court had not adequately clarified whether participation by SEGBİS from the Yalvaç Penal Institution—some 400 kilometres from the courtroom—would satisfy the minimum standards of Article 6 ECHR (Duygun & Özyüksel, 2025). The Federal Constitutional Court underscored that the Higher Regional Court should have examined whether, under Turkish law, the applicant had the right to attend in person; that the Strasbourg differentiation between first-instance and appellate proceedings had been insufficiently considered; and that the legitimate aim of videoconferencing in the concrete case had not been ascertained. Although the Federal Constitutional Court did not rule on the merits of Article 6 ECHR, it treated the conditions of remote participation as substantively bearing on the lawfulness of extradition.

The decision confirms that the criteria identified in *Marcello Viola* and consolidated in *Yayla* and *Çoban* now operate as a benchmark of mutual legal assistance, and vindicates the reading of immediacy as a substantive rather than purely spatial guarantee. What determines compatibility with fair-trial standards is the conditions of the encounter, not the bare availability of the technology. For Turkish criminal procedure, the implication is direct: the manner in which SEGBİS is deployed domestically has begun to generate consequences in international cooperation, and the absence of case-specific justification can now produce concrete obstacles in extradition matters—a powerful institutional incentive for the consolidation of the *Yayla/Çoban* standard at the statutory level.

5. The Substantive Reconstruction of Immediacy

5.1 Substantive Immediacy and the Comparative Test

The Strasbourg framework converges with the Turkish Constitutional Court's reasoning in *Yayla* and *Çoban*, pointing to a doctrinal reconstruction of immediacy adequate to the digital age. The traditional reading treats immediacy as a topographical demand that the court, the accused, and the witnesses occupy the same physical space. This reading is no longer sustainable: contemporary practice generates many cases in which physical co-presence is impossible or possible only at disproportionate cost. The doctrinal work that immediacy must do does not depend on physical co-presence as such.

The substantive reconstruction proceeds in three steps. First, immediacy is reconceived as a guarantee of unmediated, contemporaneous, and effectively adversarial encounter between the trier of fact and the evidentiary material; the guarantee shifts from the physical courtroom to the conditions of the encounter itself. Second, assessment shifts from a binary inquiry (present or absent) to a graduated one (sufficiently immediate or not). Third, the criteria for sufficiency become the operative legal test: a legitimate aim; the absence of substantive disadvantage to the defence; effective confidential communication between accused and counsel; and adequate technical conditions for the perception of the evidence.

The most important practical implication is the comparative test against physical presence: where physical presence is feasible, its displacement requires justification, and where the justification fails, the remote modality is impermissible. The Strasbourg case-law and the Turkish Constitutional Court in *Yayla* and *Çoban* have made this the central operative criterion. The discipline it imposes is concrete: a court contemplating SEGBİS must articulate, on the record, the reasons why physical presence is not feasible in the specific case, engaging with concrete facts-the location of the accused, the security context, the availability of secure transfer-rather than with generic categories. A reference to the convenience of SEGBİS does not satisfy the test.

5.2 The Limits of Technological Substitution

A further implication concerns the limits of technological substitution. The doctrinal debate often treats videoconferencing as a modality-neutral substitute for physical presence, but the empirical literature does not support this view (Świecki & Wójtowicz, 2025). Comparative studies consistently report that the mediation of a digital screen alters the cognitive texture of the hearing: remote witness testimony is perceived as less accurate and less believable than in-person testimony; videoconferencing limits the assessment of non-verbal communication; and practitioners report markedly lower scores for remote evidence-collection in proceedings involving children, adolescents, sexual offences, and domestic violence (Costa, Lunardi, & Guimarães, 2026). The Turkish empirical record points the same way: connection failures, audio-visual desynchronisation, and the impossibility of observing the accused’s facial expressions through the SEGBİS interface reduce the reliability of judicial cognition, and the recurrent need to adjourn hearings owing to technical malfunction inverts the efficiency rationale typically invoked to justify remote modalities (Alagüney, 2023). The European-wide survey of defence lawyers confirms the structural pattern: remote hearings render the encounter dehumanised and undermine equality of arms by privileging the prosecution’s documentary record over the defence’s oral engagement (Fair Trials, 2020).

These findings do not establish that remote modalities are always inferior; the same body of research suggests that judges and practitioners find remote modalities more acceptable in cases involving primarily procedural or legal questions, and less

acceptable in those turning on credibility (Świecki & Wójtowicz, 2025). They indicate, rather, that the substitution of videoconferencing for physical presence is not modality-neutral. The choice of modality is not a matter of administrative convenience subject to free judicial choice; it is a substantive procedural decision that must be justified by reference to the criteria immediacy itself supplies.

These limits become more acute when one considers the structural preconditions effective remote participation presupposes-stable network access, adequate human resources, and a developed regime for the protection of personal data (Barlian et al., 2025). Comparative experience shows that, even where statutory frameworks attempt to preserve the exceptional character of remote proceedings, the safeguard of exceptionality tends to be progressively devalued in practice, with the requirement of a reasoned court ruling interpreted divergently (Žukovaitė, 2025). Legislative caution does not, by itself, secure the substantive guarantees of immediacy. The Turkish lesson points the same way: the *Yayla/Çoban* standard does the protective work the statutory text of Article 196/4 alone fails to perform.

5.3 Remote Testimony, Witness Protection, and Hearsay

The reconstruction also clarifies the doctrinal relationship between three modalities usually treated as distinct: remote examination by videoconference, examination of anonymous or protected witnesses, and reliance on indirect testimony. Each operates as a derogation from the substantive dimension of immediacy. In each, the court's perceptual encounter with the original source is attenuated by an additional mediation—a screen, a partition, or a second testifying subject. The conditions for legitimate use are correspondingly continuous rather than discrete.

The point is most clearly visible in the Strasbourg case-law on anonymous witnesses. The two-step test articulated in *Doorson v. The Netherlands* and refined in *Van Mechelen v. The Netherlands* requires that the handicap suffered by the defence be sufficiently counterbalanced by procedural measures, and that the conviction not be based solely or to a decisive extent on the anonymous statements. Anonymity is a measure of last resort, justified in respect of each witness by reference to a specific and concrete danger (Randelović, 2025). The conceptual structure is identical to the one identified here for remote participation: a legitimate aim, compensatory procedural measures, and a limitation on evidential weight.

The continuity extends to indirect testimony. In Turkish doctrine, indirect testimony is increasingly analysed not as a categorical breach of immediacy but as a question internal to the free evaluation of evidence, with the Constitutional Court's jurisprudence on uncrossed witness statements organising itself around the same trio of criteria identified in *Yayla* and *Çoban*: a legitimate ground for the inability to confront, an assessment of the decisive weight of the statement, and compensatory factors preserving overall fairness (Gökpınar, 2024). Videoconferencing should not be treated as a procedural anomaly requiring a new normative framework; it is one further modality along an existing continuum of derogations from substantive immediacy. The governing criteria are already articulated in the Strasbourg case-law

on anonymous and indirect testimony, in the Turkish hierarchy among in-person examination, SEGBİS, the appointed-member procedure, and letters rogatory, and in the case-specific justification standard of *Yayla* and *Çoban*. Each derogation must be tied to a concrete legitimate aim; the defence handicap must be compensated by procedural means preserving effective adversarial engagement; and the evidential weight attached must correspond to the degree to which substantive immediacy has been preserved.

5.4 In Extremis Substitution and the Outer Bounds of Digital Adaptation

A separate question arises in what may be termed in extremis substitution-the operational displacement of ordinary procedure under emergency conditions. In extremis conditions may justify modified procedural arrangements, but they intensify rather than dissolve the judicial duty to articulate the necessity of any digital substitution by reference to specific case facts (Sedláček et al., 2026). Even where ministries of justice issued emergency guidance during the pandemic, the courts retained an obligation to ensure that the means of participation matched the gravity of the procedural act (Sanıvar, 2021). A generally legitimate aim-public health, security, institutional continuity-does not by itself discharge the duty of specific justification in the individual case. The same logic governs the cognitive and evidential preconditions of digital adjudication: confirmation bias and the availability heuristic enter the formation of judicial conviction at the point where free evaluation of evidence operates (Žibaitė-Neliubšienė, 2025), and electronic evidence must be assessed against authenticity, integrity, and accountability standards (Marcinauskaitė, 2025). The principle of immediacy supplies the doctrinal frame within which both forms of digital integration must be evaluated.

5.5 De Lege Ferenda Proposals for Turkish Criminal Procedure

The doctrinal reconstruction advanced here points to a concrete reform agenda for Turkish criminal procedure, capable of reconciling the structural commitment to digital adaptation with the enduring imperatives of procedural justice. Five proposals are advanced.

First, CPC Article 196/4 should be amended to restore a structured statutory framework for the use of SEGBİS in the examination of the accused, replacing the present unstructured judicial discretion with explicit statutory criteria. The amendment should require, as a condition of any displacement of physical presence, a reasoned decision identifying (a) the legitimate aim served by remote participation in the specific case, (b) the unfeasibility of physical presence, and (c) the procedural arrangements adopted to compensate for the modality-related disadvantage to the defence. This statutory consolidation of the *Yayla/Çoban* standard would close the gap between the constitutional and the legislative level and reduce the dependence of fundamental rights protection on subsequent individual-application review.

Second, the asymmetry between initial detention hearings and periodic detention review should be expressly codified. Drawing on the Strasbourg case-law under Articles 5(3) and 5(4) ECHR, the Turkish framework should treat initial detention hearings as presumptively requiring physical presence, with remote participation permitted only on demonstrably compelling grounds, while permitting SEGBİS for periodic review of detention subject to the equality-of-arms and adversariality conditions identified in *Karachentsev*. This distinction is not currently reflected in Turkish statutory law and is the most concrete protective gain that an Article 5-centred reform would deliver.

Third, the Regulation on the Use of the Audio and Visual Information System in Criminal Procedure should be amended to incorporate an express statutory right to confidential consultation between the accused and counsel, both immediately before and during a SEGBİS hearing. A dedicated, technologically protected channel for unmonitored exchange should be made an operational precondition of any SEGBİS hearing, mirroring the obligation now imposed at EU level by Article 6 of Regulation (EU) 2023/2844 in cross-border matters. The Court of Cassation has already insisted on this requirement in its jurisprudence; raising it to the statutory level would discharge the structural deficit identified at section 2.3 above.

Fourth, minimum technical standards for SEGBİS hearings should be codified, drawing on the *Stanford* line of Strasbourg jurisprudence and the definitional core of Regulation (EU) 2023/2844. These standards should at a minimum prohibit telephone-only modalities, require two-way simultaneous transmission of image and sound at a defined quality threshold, and impose a documented contingency procedure for adjournment in case of technical failure. A standardised proces-verbal of technical conditions, completed at the start and end of each SEGBİS hearing, would facilitate the cumulative review of fair-trial compliance.

Fifth, the choice of modality should be made subject to a formalised hierarchy of preferences, drawing on the 3rd Criminal Chamber's reading of Article 180 CPC. The hierarchy should provide expressly that, where the witness or the accused is outside the trial court's territorial jurisdiction, evidence is to be taken in the following order: in-person examination at the trial court; SEGBİS in real time; and, only where the technical means for SEGBİS are unavailable, the appointed-member procedure or letters rogatory. This codification would prevent the routinised use of SEGBİS as a default modality and embed the substantive-immediacy logic in the choice of procedural form.

Taken together, these proposals do not seek to reverse the digital transformation of Turkish criminal procedure. They seek to discipline it, ensuring that the technological capacity of SEGBİS is harnessed to, rather than allowed to displace, the substantive guarantees of immediacy and defence rights.

Conclusion

The digital transformation of criminal justice is among the most consequential structural developments in contemporary procedural law, and it has rendered the principle of immediacy more, not less, important. The argument advanced here has been that the principle can survive this transformation only if it is reconceived as a substantive guarantee of an unmediated, contemporaneous, and effectively adversarial encounter between the trier of fact and the evidence, rather than as a topographical demand for shared physical space. The reconception is not a retreat: it is the doctrinal precondition for the continued operational relevance of immediacy in an era in which physical co-presence has ceased to be the default of criminal procedure.

Three doctrinal sources converge on this reading. The European Court of Human Rights, beginning with *Marcello Viola v. Italy*, has crystallised four conditions governing the compatibility of videoconferencing with Article 6 ECHR: a legitimate aim genuinely served in the specific case; the absence of substantial disadvantage to the defence; respect for the procedural framework governing the giving of evidence; and effective protection of confidential communication between accused and counsel. The Turkish Constitutional Court, in *Emrah Yayla and Şehrivan Çoban*, has carried these standards into domestic constitutional law through the operative requirement of case-specific justification—the comparative test against physical presence. The European Union’s consolidation in Regulation (EU) 2023/2844, together with the CJEU’s ruling in *FP and Others*, provides a supranational framework in which the same criteria are crystallising as binding minimum standards. This convergence reflects a shared recognition that the legitimacy of digital justice depends on strict necessity and proportionality.

The Turkish trajectory illustrates both the promise and the risk of the digital transformation. The pre-2017 framework tied SEGBİS to the gravity of the offence, preserving the structural protection of physical presence for serious charges. The post-2017 framework substituted unstructured judicial discretion for that threshold, exposing the system to a drift toward remote participation as default—a drift that the Constitutional Court has begun to arrest through case-specific justification, and that the Federal German Constitutional Court’s 2023 extradition ruling has brought within the orbit of international judicial cooperation. Statutory provisions conferring broad discretion without structural safeguards tend, absent robust constitutional review, to produce a routinisation of derogation. The corrective lies in the conjunction of constitutional standards, appellate guidance, and statutory consolidation—the package the *de lege ferenda* proposals advanced in section 5.5 seek to provide.

Three considerations should orient future development. First, the empirical evidence is consistent: videoconferencing is not modality-neutral, and its substitution for physical presence systematically affects the assessment of credibility, the perception of demeanour, and the dynamics of confidential lawyer-client communication. The doctrinal framework must take this evidence seriously. Second,

the protection of confidential lawyer-client communication is not a desirable supplement; it is a constitutive condition of compatibility with Article 6 ECHR, and the existing Turkish regulatory framework remains structurally deficient on this point. Statutory consolidation of this right, with a dedicated technological channel, is the most urgent reform identified here. Third, the case for physical presence is structurally stronger at the initial detention hearing than at any other moment: the hearing performs a function no remote modality can adequately replicate, allowing the judge to detect signs of ill-treatment and the detained person to speak freely. The routinisation of remote initial detention hearings is incompatible with the Strasbourg standard and should be reversed.

The conclusion is not that remote criminal proceedings should be prohibited. Rather, the legitimacy of digital justice depends on disciplined preservation of the substantive guarantees of criminal procedure. Immediacy requires three things. The court must engage with the evidence directly enough to support reliable factual finding. The defence must engage with it effectively enough to mount a meaningful challenge. The choice of modality must be justified by reference to the conditions of effective participation, with physical presence considered, weighed, and rejected only on substantive grounds. So understood, immediacy is not a relic of pre-digital adjudication; it is a discipline indispensable to its integrity—a guarantee that the transformation remains accountable to the reliability of judicial cognition, the effectiveness of the defence, and the protection of the accused against the displacement of presence by mediation. The tension between a data-driven judiciary and human-centred procedural guarantees is real but not irresolvable. The frameworks of the Strasbourg Court, the Turkish Constitutional Court, and the European Union’s recent consolidation, together with the *de lege ferenda* proposals advanced here, point toward a sustainable equilibrium in which technological efficiency is harnessed to, rather than allowed to erode, the core of defence rights.

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