

## In the context of the COVID-19 pandemic in Mexico: some guidelines on telepresence in judicial law

## En el contexto de la pandemia por COVID-19 en México: algunas pautas sobre la telepresencia en el derecho judicial

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### Abstract

Purpose: reflect, analyze, and relate the telepresence paradigm in judicial law in a significant contextual sense, from the experience in judicial law, in the environment caused by the global pandemic, caused by the SARS-COV2 coronavirus (COVID-19).

Methodological design: the characterization of the problem and the achievement of the research was carried out through the compilation and systematic review of the specific theory located on the subject, as well as the current guidelines, the Epidemiological Traffic Light, and the Sanitary Protocol in judicial law, in addition to the Experience lived in contact interaction with judicial law. From the documents that make up the description of the operations in the environment caused by the global pandemic caused by the SARS-COV2 coronavirus (COVID-19), the main thing is rescued for the exercise of the functions assigned to judicial law in a remote manner. The regulations are available on the Internet, and it should be mentioned that in terms of content, dissemination, and observance, it is the responsibility of the various entities of the judicial power in Mexico.

Results: the imperative need to analyze and investigate emerging technologies available technologically speaking, such as telepresence, with an interdisciplinary approach emerged, managing to conceptualize and describe the specific situations in which telepresence could converge with judicial law, externalizing the causes - effects. What is significant is introduced, conceptualized, proposed, and discussed, so that the applicability of telepresence in practice is preserved in crisis contexts (such as the current pandemic) or even in contexts that overcome it.

Research limitations: given the prevailing sanitary conditions at this time, the lack of access to collegiate decision makers to know first-hand their assessment of telepresence as a solution for judicial law.

Findings: a way is exposed so that during or after the instructive pandemic, the innovation proposals in judicial law can be specified, precisely through carrying out to determine the warnings that can potentially arise, in the final considerations of outstanding research - lines of investigation- that should be done.

### Telepresence, Judicial law, Pandemic

### Resumen

Objetivo: reflexionar, analizar y relacionar el paradigma de la telepresencia en el derecho judicial en un sentido significativo contextual, desde la experiencia en el derecho judicial, en el entorno propiciado por la pandemia mundial, originada por el coronavirus SARS-COV2 (COVID-19).

Diseño metodológico: la caracterización del problema y consecución de la investigación se realizó a través de la recopilación y revisión sistemática de la teoría específica ubicable en el tema, así como de los lineamientos vigentes, el Semáforo Epidemiológico y el Protocolo Sanitario en el derecho judicial, además de la experiencia vivida en la interacción contacto con el derecho judicial. De los documentos que integran la descripción de las operaciones en el entorno propiciado por la pandemia mundial originada por el coronavirus SARS-COV2 (COVID-19), se rescata lo toral para el ejercicio de las funciones asignadas al derecho judicial de manera no presencial. La referida normatividad está disponible en Internet, y cabe hacer mención que en cuanto a contenido, difusión y observancia, es responsabilidad de los diversos entes del poder judicial en México.

Resultados: se perfiló la necesidad imperiosa de analizar e investigar tecnologías emergentes disponibles tecnológicamente hablando, como lo es la telepresencia, con un enfoque interdisciplinario, logrando conceptualizar y describir las situaciones concretas en que pudiera la telepresencia converger con el derecho judicial, exteriorizando las causas - efectos. Se introduce, conceptualiza, propone y discute lo significativo, para que se preserve la aplicabilidad de la telepresencia en la praxis en contextos de crisis (como la pandemia actual) o aún en contextos que superen la misma.

Limitaciones de la investigación: dadas las condiciones sanitarias imperantes en este momento, el no acceso a los tomadores de decisiones colegiadas para conocer de primera mano su valoración sobre la telepresencia como solución para el derecho judicial.

Hallazgos: se expone el camino para que durante o terminada la aleccionadora pandemia, se pueda concretar las propuestas de innovación en el derecho judicial, justamente a través de realizar para determinar lo advertido que potencialmente se puede suscitar, en las consideraciones finales de investigación destacada -líneas de investigación- que se debiera realizar.

### Telepresencia, Derecho judicial, Pandemia

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## Introduction

The global pandemic of COVID-19 has caused intensive disturbances in judicial law, understood as that discipline whose object of study is “the systematic analysis of Judicial Law, through the set of institutions, principles, doctrines and regulations that govern the activity both of the bodies that provide the jurisdictional function and of those who have the responsibility of carrying out the operation itself” (PJEM, 2021), that is to say, it is the exercise of ideation of the necessary administration in order to supply the operation scaffolding of the judicial branch of the union.

Thus, in the pandemic context, all federal and state courts have been closed for long periods of time, not only in Mexico but in other latitudes of the world (Gómez-Córdoba, 2020), after the declaration of a state of alarm and, in stunned expectation, by the events that have arisen, and especially by the decisions that have been adopted by the different Nation States (De Teruel & Cremades, 2020). In Mexico decisions have been made by the corresponding authorities to declare the Epidemiological Traffic Light in its different colors, considering the risk, which have reached the institutions and society in general, from the federal government, state governments, and municipal governments, which have been complied with in accordance with the Health Protocols of the different entities of judicial law, which prioritize the health and safety of their communities. Thus, judicial law has been minimized, the health authorities have decided that in accordance with current guidelines and the Epidemiological Traffic Light, only strictly essential activities will be operated in judicial law, as established in its Health Protocol, for example: in criminal matters the Court personnel, and executive authorities, such as officers, secretaries and judges, as well as agents of the Public Prosecutor's Office and the police, respectively, are being forced to act in compliance with their work while maintaining themselves and the people safe, amid unprecedented public health concerns (Alapont, 2020), but carrying out their work in what are considered strictly essential activities, that is, taking into account the public health situation caused by COVID-19 (Hernández, 2020), without neglecting trials, investigation and the informal (Franco, 2020).

With which it is understood that judicial law endorses its commitment to the health of the entire judicial community and invites it to be attentive to strictly essential activity, as well as to continue with home protection for non-essentials and security measures for health that have been implemented during the health emergency, despite what this may represent for access to justice for any justiciable citizen.

Therefore, trying to navigate the current crisis has led to the judicial right to seek alternative information and communication technologies of accelerated adoption that allow it to remain in operation, even for only what is strictly essential, all due to the global context of crisis sanitary. However, the adaptation that has been experienced to keep judicial law in operation through the use of information technologies has not gone beyond replicating or emulating the “traditional” operation (Mejía & Guzmán, 2019), with the use of tools of a technological nature (Blanquer, 2020), because there is no digitality of judicial law, that is, channels or means of digital operation as official course flows for the execution of the operation of judicial law.

The foregoing is that for this research, the problem of the digitality of judicial law is raised as a problem, with the objective of reflecting, analyzing and relating the paradigm of telepresence in judicial law in a contextually significant sense, in the environment caused by the pandemic worldwide, caused by the SARS-COV2 coronavirus (COVID-19); As a research question, the following is posed: outlining how telepresence can contribute to maintaining the operation of judicial law in pandemic contexts or not; The hypothetical assumption is that despite the technological availability of telepresence for its adoption in judicial law, that is, that innovation proposals can be materialized in judicial law, interdisciplinary contextualization is imperative considering the technology-law-society trinomial, being a path that will be outlined.

In a succinct way, the parts that make up the article are the following: INTRODUCTION in which it is provided as a review of the literature: the background of judicial law in a contextually significant sense in the environment caused by the global pandemic, caused by the SARS coronavirus- COV2 (COVID-19), this to place the theory of the topic that is treated in the contribution, as well as the importance of the theoretical reflection that is provided in this research for the field; DEVELOPMENT, current events are pointed out, as well as the conceptions of judicial law and the COVID-19 pandemic, in Mexico, also the contribution is made - proposals through guidelines for the consolidation and success in the reception of technologies such as telepresence, that will be imposed product of human need. A DISCUSSION section is included, in which the issues that are outside the scope of telepresence technological solutions are settled and that we will outline so that it is considered as outlining fragments of the guidelines, this being an interpretation of the results. Subsequently, in the ANALYSIS section, through the use of analysis of the argumentation carried out, with a view to tracing a path of what is essential to do, future lines of research, either in the pandemic scenario or if it is decided later, some final considerations of outstanding research that should be carried out are outlined. In CONCLUSIONS - FINAL CONSIDERATIONS the investigation is closed.

## Developing

### Conceptions of judicial law and the COVID-19 pandemic in Mexico

Although, as already indicated in judicial law, the emulation of strictly essential activities has been maintained, through the use of information technologies, as established in its Sanitary Protocol, for whom we have had the opportunity to litigate in times of pandemic , We are clear that judicial law has not been able to respond effectively to social distancing measures, despite the pandemic everything is operating as if there were no such, establishing as the only restriction whether or not it is essential for it to be carried out or no.

This is due to the lack of telepresence technological infrastructure and the fragmented nature of the judicial systems - judicial law -: federal (federal jurisdiction) and state (common jurisdiction).

As part of their Sanitary Protocol, generally in Mexico, the presidents of the Supreme Courts issued orders that suspended all the trials in the courts for days, weeks and months. Mexico City, the most saturated with cases, did the same and has suspended all non-essential lawsuits in civil, administrative, fiscal, agrarian matters, etc., since the impact of covid-19 is transversal to the various matters of Law (Varsi-Rospigliosi, 2020). Many plaintiffs and defendants find their cases in limbo, with no recourse in sight for the simple fact that their case does not fall within the assumption of what is considered strictly essential activity.

Seeking to maintain the "traditional" operation in the pandemic context, it was outlined as a "recommendation" or actually an imperative and inescapable need: the use of information technologies, which although many of the cutting-edge technologies are widely applicable to the needs of justice , especially the pressing criminal and civil ones, the reality is that such are not available to be immediately operative, because the need was never foreseen and there are no digital conditions in judicial law. With the use of technology, in the best of cases it has been possible to emulate the traditional operation of judicial law.

There is no doubt that the courts could positively adapt to changing circumstances, adopting, for example, the use of telepresence and / or videoconferences, which are technologies that have been suggested to them, not just now, but from the past, as Rodríguez (2008) points out. , or other emerging technologies to resume operations as quickly as possible, and be processed transparently for users of judicial law in settings such as the pandemic, which unfortunately is not the case. Objectively, it is considered that the previous guideline may be one of the alternatives, since the above could well be debated as: to what extent the use of telepresence is really correct, at the moment it is not possible to know it given the absence of specific references around the telejusticia (Martínez, 2020).

Thus, in the current pandemic environment, in which strictly essential activities are maintained, as established in its Sanitary Protocol, as a litigant I appreciate that the institutions that face an unbearable burden of cases, with all judicial law entities becoming a bottleneck in the assumption of the attention of strictly essential cases, therefore in view of the pandemic complexity, as a litigant I have adopted the process of judicial law, through no longer traditional approaches, but alternative ones for the processing of cases, finding in mediation, in the measure of the possibility that for a certain case occurs, to solve the problems of the defendants.

Although the mediation procedure, in certain cases it is feasible to take place through the use of new technologies as a means of emulation of traditional judicial law, being therefore one of the alternatives (Molina et al., 2020), which has the potential to reduce the delay and improve the efficiency of judicial law in all matters, it should be mentioned that it is clear that mediation is not fruitful and applicable in all matters.

Thus, since there is no doubt that in the face of the pandemic reality judicial law was exceeded, the use of telepresence technology is the most promising alternative for all areas and subjects, since it allows an individual or group of individuals to appear in a judicial proceeding from a remote location, whatever the environment one lives, perhaps even with legal assistance for those who need it (Rodríguez, 2020), and inexorably as available technology that can contribute to judicial law (Durán & Castellanos, 2020), including even in digital prosecutors in charge of the executive branch (González et al., 2020). Thus, it can be affirmed that with the use of telepresence it is feasible to give universal access to justice, making it universally accessible as never before, in addition to prompt, expeditious and smooth (González, 2020), but above all transparent regarding judicial law, which would operate without any non-pandemic or pandemic distinction, without exclusion of the execution of strictly essential activities, as established in the Health Protocols of the different entities of judicial law in environments such as pandemic, in which such enabled technology is not available, despite the technological availability.

### **The proposals (guidelines)**

The COVID-19 pandemic will have far-reaching consequences and even transformative implications for all of humanity's activities, judicial law not being the exception. Although the new normality, even in the green color considered low risk by the epidemiological traffic light, which, according to official provisions, allows all activities with caution and prevention, that is, not by such green does it return to normality pre-pandemic, which is why, given that the future trajectory of the pandemic remains uncertain, we can only speculate.

In this sense, given that it is known that the pandemic has already brought many changes to daily life, from how people live, to how we socialize, learn, spend leisure hours, and it is highly likely that it will bring many more and it is not known which ones, but they have to be adopted yes or yes, the value of this synergy must be obtained. Thus, given that clearly the judicial law environment has not been exempting, it aims to take advantage of the convergence, the conjuncture and the massification of the internet in society (Alvarino, 2013), for the benefit of judicial law.

Take advantage of the situation to promote next-generation technologies such as telepresence in judicial law or in another activity for the administration of human activity (De la Hoz Domínguez & Sharline Silena, 2014; De Mata, 2010; Diaz, 2012), can predict the consolidation and success in the reception of this type of technologies, because they are not being imposed as a result of a decision or whim of the high hierarchy with authority, but they will be imposed as a result of human need. Indisputably at the same time, it is imperative to consider the new demands for its implementation, as could be the teaching in the case with which the law is illustrated, because although the technology is available: in judicial law, authorization will be necessary, training and education in terms of digital, which involves skills and abilities from the world of digitality (Rojas, 2016; Flores, 2006).

In addition, if the situation is faced with the advantages that the adoption of technology will bring, such as the prerogatives of telepresence, beyond technology itself (Barrenengoa, 2019), as keys to its implementation, there are To put ahead what will contribute to stop the case, for the legal environment itself, for example: given the inclusion before the adoption, it will provide greater security for the personnel of the institutions by enabling healthy distance, or the reduction of operating costs by the non-concentration of personnel in offices, and the greater efficiency of the authorities when mitigating travel times, all as a practical value in addition to the synergistic one, since for the latter there is no doubt that its adoption in the face of the situation will be guaranteed to be successful coupling product yes or yes due to pandemic.

To think about reactivate the face-to-face administrative activities as they were known, that is, those of judicial law in the various work centers, in any case they will have to be gradually, orderly, cautious and safe, considering, among other factors, that According to what is indicated by the health authorities, the personnel of the sector - judicial branch, will have to be fully inoculated, all within the framework of the National Vaccination Strategy against SARS-CoV-2, which has not happened as if it has happened in other sectors such as education, and in addition, the period corresponding to the generation of neutralizing antibodies to the multiple virus must have elapsed, which implies time, time and more time. From the above, it is totally feasible to look at the technological availability of telepresence, so that it is enabled to assist with the functions of judicial law.

In fact there would be more, telepresence eliminates the need for transportation, both for aggrieved, defendants, accused and criminals, which reduces expenses and possible threats to health in the current pandemic environment and in the environment of the next future new normal. , in addition to the already evidenced integrity and physical security. Eliminating the need to transport insured-detainees, that is, defendants in pretrial detention, could speed up pre-trial procedures, increase efficiency, and reduce time spent in pretrial detention before hearing dates.

Likewise, telepresence technology could increase access to judicial law, for witnesses, experts, experts, aggrieved, victims and other interested parties, who either live in places with high rates of spread of the coronavirus or another pandemic, or who are have to move to places where said indices do not favor, or that live far away, or that for whatever circumstance, not necessarily the pandemic, they fear for their safety in the courts which tend to be places where crowding is a constant . At the same time, in the case of victims, telepresence technology allows these victims to testify without experiencing the trauma represented by being physically in the same place as the person who was potentially their aggressor.

Also, in order to improve the quality of the judicial law service, telepresence technologies can facilitate the provision of language or language interpretation services, which makes it easier for people who do not speak Spanish, but rather their indigenous language, or English or another language, they also access judicial law more easily and with full understanding, with a total guarantee of meaning and therefore access to justice. Likewise, people with disabilities or some special requirement, whether permanent or circumstantial, will be able to access judicial law in a transparent manner.

It is important to mention that in the new normality, it is pointed out that the general measures that are established in the Health Protocol of the Institutions will be preserved, that is, not only while the health emergency continues, but forever as normality, those that are thinks sanitary measures are here to stay, such as: sanitary filters, healthy distance, the use of specific personal protective equipment - for example, permanently use face masks, gel and / or mask, hand washing as much as possible possible-, the constant cleaning and sanitization of spaces, among other general health protection measures that favor a healthy coexistence of those involved in the interactions in the entities that make up the institutions where judicial law is studied, that is, the community of the judiciary, which goes to the centers and facilities to interact with said power.

**Discussion**

It is clear that those who should collectively value telepresence are the entities of judicial law, beyond, among other things and situations, the architecture of the scaffolding of current judicial law, the architecture possible with telepresence, in addition to sanitary conditions prevailing at this time, all in order to determine the modality of judicial law for the new normality or subsequent normalities that could be predicted. However, from our experience in the world of litigation and expertise in the technological field, seeking to add value, we developed the following discussion.

As part of the community that lives, lives and interacts with the judiciary, reaffirming our commitment to the health of the entire community of the judiciary, it is that we consider pertinent, convenient and of value, to continue maintaining the sanitary measures that have governed during the health emergency, look towards telepresence as a viable technological alternative with the transforming power of judicial law in the judiciary.

While it is true that telepresence can represent an alternative to judicial law, it is no less true that such technology can arouse concerns about the potential impact of telepresence on: constitutional rights, the behavior of the actors before the judiciary and the judiciary itself. court, perceptions of credibility, and the attorney-client relationship, issues that are beyond the scope of technology solutions and that we will outline for consideration as a delineating fragment of the guidelines.

As regards constitutional rights, it is considered that the risk comes from the fact that telepresence technologies are really far from being infallible. A bad connection, whether it is deficient in terms of data connectivity, or intelligibility of the audio or the video itself, may well raise concerns about the constitutional rights of the parties, with all that this may represent, despite the fact that they are not deficiencies in the procedure, but only technical problems, which could only delay or interrupt judicial proceedings, but should not be grounds for claiming constitutional rights.

However, as long as the technology is not perfect, it cannot be guaranteed that the technical deficiency will be sought for the benefit of the litigation and that it will allow the legal strategists the path to a protection, because they will surely seek to walk such a path.

Regarding the behavior of the actors before the judiciary and the court itself. It is a reality that telepresences can influence the judgment itself and undoubtedly the behavior of people who appear in court remotely, in fact there are people who consider they have one personality online and another physically, but it should not be demonize, you have to experience it.

In the same vein of ideas, telepresence can have an appreciable negative impact on the results of the cases in which it is intended to use. Hypothetically, it could inadvertently encourage harsher responses from the court, since technology enables the medium of communication in total isolation, which is useful in pandemic consideration, but which in turn introduces the caveat of harsh judgments.

With regard to credibility perceptions. It is considered that it is possible that the accused or defendants and the witnesses, in terms of the perception of credibility, who are not physically present due to the pandemic issue, but rather tele-present, do not fully appreciate the formality, seriousness and commitment within the procedure, which reveals, warns, and in fact it can be pointed out that the risk of the actors engaging in behavior other than desirable, which can even be seen as impulsive or deviating from the legal process, increases.

Additionally, telepresence could affect evaluations of behavior and non-verbal signals in ways that reduce the perceived credibility of the speaker, as is happening in the pandemic scenario of other human endeavors, in which isolation translates into disbelief of the speaker, despite the urgent need to continue human activity in the epidemic scenario.

Finally, it should be mentioned that, given the pandemic need-condition of isolation, as far as litigation is concerned, telepresence can affect the lawyer-client relationship, a relationship that has always been very close, very close and trusting, even that cannot be sustained with total certainty in the pandemic scenario and therefore it is visualized there is a “threat” to the capacity of telepresence to offer this that in physical environments does occur, that is, there will be a deficiency to offer to carry out totally private attorney-client communications.

### **Analysis**

Embracing COVID-19 and the resulting challenges for judicial law as a transformative event, one that will undeniably lead to innovation and a whole new world, for judicial power and law, is certainly the right thing to do. Thus, during or after the instructive pandemic, innovation proposals can be materialized in judicial law, such as telepresence, interdisciplinary contextualization, such as the one offered in this work with the technology-law trinomial, is imperative. society.

In this sense, with a view to charting a path of what is essential to do, either in the pandemic scenario or if it is decided later, the following final considerations of the outstanding research that should be carried out are outlined:

In the first instance, pilot courtrooms should be set up or created (as if they were laboratories) where judiciary personnel can test out new technologies and feel as comfortable as possible with all of them.

It is a necessity that research should be carried out on the options to improve network connectivity and the best practices and minimum standards for the audio configuration, this to avoid constitutional controversies before the adoption of technologies such as telepresence. In addition, investigations must be conducted to evaluate the impact of telepresence technology on the experiences of witnesses and victims, you cannot bet that de facto everything will work well for them just because the technology is adopted, either at this time due to pandemic necessity or due to the introduction of innovation in judicial law.

If for the victims and witnesses, it has already been suggested that it is necessary to carry out studies on what would happen in the telepresence scenario, it is also necessary to carry out studies or investigations to better understand the effect of telepresence technology on the experiences of the accused-defendants in judicial processes, and especially studies on perceptions of procedural justice that can be undermined.

Similarly, technical problems that influence the effectiveness of telepresence technology should be identified and national standards should be developed for the configuration of telepresence systems for use in judicial law, such that they serve as the minimum standards for judicial law. to be fulfilled yes or yes in said scenario.

While the necessary technologies can be developed or purchased, in both cases, configurations of telepresence models of use in judicial law should be deployed, which can be used to help either developers or buyers to make decisions about intelligent development or purchase, to be building the homologation of telepresence in the judiciary.

Given the technological relevance, not only within the judiciary, but also within the environment of all the actors involved, research must also be carried out on the appropriate levels of video quality and image size, and implementation standards must be developed for users. -actors and in general for all those involved in the courts and who intend to make use of telepresence.

It is worth noting that it is also imperative to carry out an investigation to determine if there is a difference in the confrontations or cross-examination, which today are carried out face to face in person, and with the use of technology they would be carried out not face to face, but in front of technology telepresence.

Likewise, it should be mentioned that a training plan must be developed for each of the different judicial actors that would interact at a certain moment with telepresence technology, because anyone who interacts in some way must be prepared to behave naturally in such an environment. possible of digital judicial law.

Finally, to mention the need to act, the COVID-19 pandemic continues in progress and without stopping, in fact it is altering all facets of daily life, of human activity in general and it is not seen when the collection will stop of lives, not only in Mexico but throughout the world. It is not known if the worst is yet to come. What we do know is about the situation, which has already stated, it can be used to get the best out of judicial law or any human activity.

### Conclusions - final considerations

This research achieves, as stated in the research problem and objective: to reflect, analyze and relate the paradigm of the digitality of judicial law, outlining through the analysis of telepresence in judicial law, in a contextually significant sense, in the environment caused by the global pandemic, caused by the SARS-COV2 coronavirus (COVID-19), some guidelines and outlining fragments of the guidelines, giving an answer to the research question that was posed, outlining how telepresence can contribute to maintaining the operation of judicial law in pandemic contexts or not.

In addition, the hypothetical assumption is unraveled that the technological availability of telepresence because it exists is enabling, which is not necessarily, since for its adoption in judicial law, that is, that innovation proposals can be materialized in judicial law, The interdisciplinary contextualization is imperative considering the technology-law-society trinomial, aiming for this a path of lines of research as a contribution to future lines of exploration.

There is no doubt that from the experience of judicial law, speaking: reflecting, analyzing and relating the paradigm of telepresence with judicial law in a contextually significant sense is extremely valuable, beyond the environment caused by the global pandemic, because much of what was experienced during the pandemic is here to stay and has to be refined.

The imperative need to analyze, with an interdisciplinary approach, the concrete situations that converge in judicial law has become visible, all introducing, conceptualizing, proposing and discussing, so that the applicability of telepresence in praxis in crisis contexts is preserved (such as the current pandemic) or even in contexts that overcome it. In the final considerations, limiting the limitations of the investigation, a way is set out so that during or after the sobering pandemic, innovation proposals in judicial law can be materialized. Everything achieved in this work is considered to be the research findings, which make explicit and account for the contribution of the article in the advancement of knowledge.

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