

SAFEGUARDING THE CHILD'S BEST INTERESTS IN JUDICIAL PROCEEDINGS THROUGH DIGITAL TECHNOLOGY

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Although appearing in court can cause significant psychological distress to children, especially when involved in criminal proceedings or family disputes, their participation in judicial proceedings is sometimes unavoidable. While children's procedural rights are rarely the main issue in proceedings before the ECtHR, its case law has nonetheless established certain standards concerning the need for child-friendly approaches. However, safeguarding children's rights to effective participation and to be heard while simultaneously protecting them from secondary victimisation remains challenging. With the development of technology and the digitalisation of judicial systems, new approaches and opportunities continue to emerge. Remote hearings and various digital tools hold great potential to make judicial proceedings less intimidating and traumatic when implemented with proper safeguards. The paper analyses relevant ECtHR case law, the psychological aspects of remote hearings, and some examples of Slovenian good practices concerning using digital tools in judicial proceedings involving children.

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1 Introduction

Historically, children participating in judicial proceedings have only rarely been at the forefront of legal discourse as a separate subject of rights deserving of special and enhanced protection rather than the extension of their parents. The shift toward a child-centred approach can be attributed to several international instruments, most notably the Convention on the Rights of the Child (hereinafter: CRC), which established certain necessary standards for protecting the child's best interests in legal settings, especially concerning their right to be heard. The recognition that children, as vulnerable participants in judicial proceedings, require additional safeguards to ensure their effective participation and protect their procedural rights arose from the growing understanding that they are not merely passive subjects, but full-rights holders entitled to procedural guarantees in line with their age and maturity. Much of the credit for this development can be assigned to the European Court of Human Rights (hereinafter: ECtHR), which has played a crucial role in shaping these safeguards through its case law, despite the fact that the European Convention on Human Rights (hereinafter: ECHR) does not explicitly grant special procedural protection to children involved in court proceedings. However, as discussed in more detail below, the ECtHR's case law in this area remains somewhat fragmented and narrowly focused, with some key issues still awaiting a satisfying solution.

One of the key challenges in safeguarding children's rights is finding a proper balance between their right to effectively participate in proceedings affecting their interests and the need to protect them from potential psychological harm. Direct involvement and in-person participation in court proceedings, especially in the case of very young or traumatised children, can lead to psychological distress and secondary victimisation, which can be even more harmful to their long-term well-being than the original incident. The digitalisation of judicial systems has opened the door to new solutions and possibilities to tackle these issues (e.g., by minimising distressing encounters or providing a less intimidating environment) but has also given rise to new concerns and challenges that could adversely affect the fairness of proceedings.

The paper analyses the ECtHR case law on children's rights in judicial proceedings and the safeguards established to protect their best interests; evaluates the potential of using digital technology in court settings to meet these standards based on their

psychological impact, both beneficial and adverse; and highlights good practices within the Slovenian justice system, demonstrating that digital tools can be effectively integrated into judicial processes, provided that potential risks are properly managed and mitigated.

2 Children's Procedural Rights in the ECtHR Case Law

2.1 The ECtHR's Approach

The ECtHR is the sole interpreter of the ECHR and has no obligations toward any other international law or jurisprudence, including the CRC. However, even though there is formally no connection between these two instruments, the ECtHR has consistently acknowledged a reciprocal, harmonious relationship between the two conventions and frequently references both when adjudicating cases involving children and their rights. In this regard, it even holds that concerning children, certain positive obligations of contracting states must be interpreted in the light of the CRC.¹ Nonetheless, the fact that the ECHR itself does not explicitly provide special protection or grant special status to children involved in court proceedings can be at least partially blamed for the ECtHR case law remaining somewhat fragmented and isolated in this area. Until relatively recently, the rights of children involved in court proceedings and other legal procedures have not been a primary focus in the case law of the ECtHR but were generally only considered within the broader framework of procedural guarantees and fair trial, frequently as "side issues", or were interpreted equally to those of adults or through the prism of their parent's rights. However, due to the growing emphasis on child-centric approaches and the influence of international instruments dedicated to safeguarding children's rights, most notably the CRC, a globally accepted stance has emerged that children not only have the same rights as adults and must be recognised as full-rights holders, but are also entitled to additional rights due to their special needs and vulnerability to exploitation and abuse, especially when involved in judicial proceedings.²

In the landmark case *Blokhin v. Russia*, the ECtHR thus asserted that when a child enters the criminal justice system, their procedural rights must be guaranteed and their innocence or guilt established in accordance with the requirements of due

¹ See also Helland & Hollekim, 2023, pp. 213-214 and *Harroudj v. France*, 2012.

² Durandelle, Enslen & Thomas, no date, p. 2. For more, see also Drnovšek, 2024, pp. 111-129.

process and the principle of legality, with respect to the specific act they have allegedly committed. A child must not be deprived of important procedural safeguards solely because the proceedings that may result in their deprivation of liberty are deemed under domestic law to be protective of their interests as a child and juvenile delinquent rather than penal. Discretionary treatment based on someone being a child, a juvenile, or a juvenile delinquent is only acceptable where their interests and those of the state are not incompatible. Otherwise – and proportionately – substantive and procedural legal safeguards do apply.³

Special consideration of children's procedural rights and a distinct interpretation of these otherwise traditional legal concepts is reflected in the ECtHR case law concerning the child's right to effective participation in criminal proceedings as part of the right to a fair trial under Article 6 of the ECHR, and the right to be heard in family matters as part of the right to respect for private and family life under Article 8 of the ECHR.

2.2 The Right to Effective Participation

In the controversial⁴ cases of *T. v. the United Kingdom* and *V. v. the United Kingdom*, the ECtHR affirmed that the right to effective participation is integral to the child's right to a fair trial under Article 6 of the ECHR. Given that there is no universally agreed-upon standard among the Council of Europe Member States regarding the minimum age of criminal responsibility, the ECtHR established that attribution of criminal responsibility to the child of such age does not in itself give rise to a breach of the ECHR, nor does the criminal trial of a child as such violate the fair trial guarantees under Article 6(1). However, a child charged with an offence must be treated in a manner that takes full account of their age, level of maturity, and intellectual and emotional capacities, and that steps are taken to promote their ability to understand and participate in the proceedings. In the case of a young child charged with a grave offence attracting high levels of media and public interest, the hearing should be conducted in such a way as to reduce their feelings of intimidation and inhibition as much as possible. While public trials may serve the general interest in the open administration of justice, where appropriate, in view of the age and other

³ *Blokhin v. Russia*, 2016.

⁴ At the age of ten, the applicants abducted a two-year-old boy from a shopping mall, took him over two miles away, tortured him, battered him to death and left him on a railway line to be run over. They were convicted of murder and abduction following a highly publicised trial.

characteristics of the child and the circumstances surrounding the criminal proceedings, this general interest could be satisfied by a modified procedure providing for selected attendance rights and judicious reporting. The ECtHR further emphasised that in such cases, even special measures taken in view of the child's young age and to promote their understanding of the proceedings (for example, explaining the trial, showing them the courtroom in advance) and the representation by skilled and experienced lawyers might not be sufficient. If it is highly unlikely that the child would have felt sufficiently uninhibited in the tense courtroom and under public scrutiny to have consulted with the lawyers during the trial or, given their immaturity and their disturbed emotional state, to have cooperated with them outside the courtroom, a conclusion has to be drawn that the child was unable to participate effectively in the criminal proceedings against them and was, in consequence, denied a fair hearing in breach of Article 6(1) of the ECHR.⁵

"Effective participation" in this context presupposes that the child has a broad understanding of the nature of the trial process and what is at stake for them, including the significance of any penalty that may be imposed. Article 6(1) of the ECHR does not require that a child on trial for a criminal offence should understand or be capable of understanding every point of law or evidential detail. Given the sophistication of modern legal systems, many adults of normal intelligence cannot fully comprehend all the intricacies and all the exchanges taking place in the courtroom. However, the child should be able to understand the general thrust of what is said in court (if necessary with the assistance of an interpreter, lawyer, social worker or friend) and to explain to their representative their version of events, point out any statements with which they disagree and make them aware of any facts which should be put forward in their defence.⁶

In other rulings, the ECtHR emphasised that the right of a juvenile defendant to effective participation in their criminal trial requires that the authorities deal with them with due regard to their vulnerability and capacities from the first stages of their involvement in a criminal investigation and, in particular, during any questioning by the police. The authorities must take steps to reduce, as far as possible, the child's feelings of intimidation and inhibition and ensure that they have a broad understanding of the nature of the investigation, of what is at stake for them,

⁵ Summarised from *T. v. the United Kingdom*, 1999 and *V. v. the United Kingdom*, 1999.

⁶ *S.C. v. the United Kingdom*, 2004; *Panovits v. Cyprus*, 2008.

including the significance of any penalty which may be imposed, as well as of their rights of defence and, in particular, of their right to remain silent.⁷ Where the child's young age and limited intellectual capacity impair their ability to participate effectively in judicial proceedings (e.g., they fail to comprehend the importance of making a good impression on the jury), it is essential that they are tried before a specialist tribunal, which is able to give full consideration to and make proper allowance for the handicaps under which the child labours, and adapt its procedure accordingly.⁸

2.3 The Right to be Heard in Family Matters

Article 8 of the ECHR (Right to respect for private and family life) does not impose any explicit procedural requirements concerning children participating in family law proceedings. However, to respect their interests protected by this article, the ECtHR case law established that children must be sufficiently involved in decisions related to their family and private life, as guaranteed by several international legal instruments, such as Article 12 of the CRC, Articles 3 and 6 of the European Convention on the Exercise of Children's Rights,⁹ and Article 24 of the Charter of Fundamental Rights of the European Union (the Charter).¹⁰ The ECtHR has thus reinforced international and European standards through its case law, emphasising that children must no longer be considered as their parents' property but rather as individuals with independent rights.¹¹

As children lack the full autonomy of adults but are nonetheless subjects of rights, their right to personal autonomy (as an inherent part of the "private life") has a limited scope and is exercised through their right to be consulted and heard.¹² In any judicial or administrative proceedings affecting children's rights under Article 8 of the ECHR, children capable of forming their own views must thus be provided with the opportunity to be heard and express their views. Otherwise, it cannot be said that they were sufficiently involved in the decision-making process.¹³ For children of a certain age, the ECtHR favours the national judge hearing them in person;

⁷ *Blokhin v. Russia*, 2016; *Adamkiewicz v. Poland*, 2010; *Martin v. Estonia*, 2013; *S.C. v. the United Kingdom*, 2004.

⁸ *S.C. v. the United Kingdom*, 2004.

⁹ *European Convention on the Exercise of Children's Rights*, 1996.

¹⁰ *Charter of Fundamental Rights of the EU*, 2012.

¹¹ ECHR-KS, 2022.

¹² *M.K. v. Greece*, 2018.

¹³ *M. and M. v. Croatia*, 2015; *C v. Croatia*, 2020; *M. K. v. Greece*, 2018; *N. TS. and others v. Georgia*, 2016.

however, depending on their age and maturity, interviews by experts and subsequent reports for the judges referred to in the judicial decisions could be considered sufficient.¹⁴ In the case of very young children who may not yet be capable of forming or expressing their wishes, especially when their behaviour suggests that their opinion might not be properly autonomous but rather influenced by one of the parents, domestic authorities should seek expert opinion to determine whether it is possible, given the child's age and maturity, to interview them in court, if need be with the assistance of a specialist in child psychology.¹⁵ If the domestic authorities conclude that the child lacks the discernment necessary to be heard, expert reports giving an account of their opinion regarding the situation in dispute should be obtained to make up for the failure to hear the child.¹⁶ Similarly, in cases involving children who have experienced trauma, an expert should be appointed to determine whether requiring the child to participate in court proceedings or undergo repeated questioning would be contrary to their best interests. Taking into account the margin of appreciation granted to domestic authorities, who are better positioned than the ECtHR to assess such circumstances, the domestic courts may justifiably determine, based on expert opinions, that it is inappropriate to hear the child in person, especially if they were caught up in a conflict of loyalties and direct participation could have harmful psychological effects or considerably prolong the proceedings.¹⁷

It is worth emphasising that, according to the ECtHR, the views of a child are not necessarily immutable, and while their objections must be given due weight, they are not necessarily sufficient to override their parents' interests (particularly regarding the maintenance of regular contact between a child and a parent in cases where the child resists it). The right of a child to express their own views should not be interpreted as effectively giving unconditional veto power to children without any other factors being considered and without an examination being carried out to determine their best interests. Such interests normally dictate that the child's ties with their family must be maintained, except in cases where this would harm the child's health and development.¹⁸ On the other hand, it is generally accepted that there may come a stage where it becomes pointless, if not counter-productive and harmful, to

¹⁴ ECHR-KS, 2022.

¹⁵ *Petrov and X v. Russia*, 2018; *Zelikha Magomadova v. Russia*, 2019; *Gajtani v. Switzerland*, 2014.

¹⁶ *Neves Caratão Pinto v. Portugal*, 2021.

¹⁷ *R.M. v. Latvia*, 2021; *Gajtani v. Switzerland*, 2014.

¹⁸ *Zelikha Magomadova v. Russia*, 2019; *K.B. and others v. Croatia*, 2017; *Raw and others v. France*, 2013; *Suur v. Estonia*, 2020; *Gajtani v. Switzerland*, 2014; *I.S. v. Greece*, 2023.

attempt to force a child to conform to a situation which, for whatever reasons, they resist.¹⁹

Very similar views are reflected in the case law of the Court of Justice of the European Union (CJEU), which is not surprising, given that the CJEU attaches great importance to opinions and interpretations adopted by the ECtHR in its case law and that it follows from Article 52(3) of the Charter that, in so far as the Charter contains rights which correspond to rights guaranteed by the ECHR, their meaning and scope are to be the same as those laid down by the ECHR (not precluding wider protection by the EU law). The CJEU clarified that Article 24(1) of the Charter requires that children should be able to express their views freely and that the views expressed should be taken into consideration on matters which concern the children, solely 'in accordance with their age and maturity', while Article 24(2) of the Charter demands that account be taken of the best interests of the child in all actions relating to children. Thus, in the matters of parental responsibility, it is for the court that has to rule in the case to assess whether such a hearing is appropriate since the conflicts requiring judgment awarding custody of a child to one of the parents and the associated tensions create situations in which the hearing of the child, particularly when the physical presence of the child before the court is required, may prove to be inappropriate and even harmful to the psychological health of the child. Therefore, it is not necessary that a hearing before the court takes place, but the right of the child to be heard does require that legal procedures and conditions are made available for the child to express their views freely and that the court obtains those views. In other words, while it is not a requirement of the applicable EU instruments that the views of the child are obtained in every case through a hearing and the court thus retains a degree of discretion, the court that does decide to hear the child is required to take all measures which are appropriate to the arrangement of such a hearing, having regard to the child's best interests and the circumstances of each case, in order to ensure the effectiveness of those provisions, and to offer the child a genuine and effective opportunity to express his or her views.²⁰

¹⁹ *C. v. Finland*, 2006; *Plaža v. Poland*, 2011. For more, see also Kraljić, 2016, pp. 11-30 and Kraljić & Drnovšek, 2022, pp. 101-116.

²⁰ *Joseba Andoni Aguirre Zarraga v. Simone Pelz*, 2010. See also *Dynamic Medien Vertriebs GmbH v. Avides Media AG*, 2008 and *M. A. v. État Belge*, 2021.

A common guiding principle can be extracted from the case law analysed above that applies to both criminal and family law proceedings.²¹ The ECtHR (as well as the CJEU) has consistently emphasised that children must be granted procedural guarantees and the possibility to express their views according to their age and maturity to ensure their effective participation and the right to be heard. While the participation of children in judicial proceedings is fundamental for the protection of their rights, the ECtHR has also acknowledged that their direct involvement may, in some cases, be harmful and thus contrary to their best interests, particularly when the child is very young, traumatised, or subject to (unfriendly) public scrutiny. In such cases, the national courts are directed to adopt child-sensitive approaches that minimise intimidation and further traumatising. To this effect, digital tools – such as remote hearings via videoconference, recorded interviews and testimonies, and child-friendly digital platforms – carry a notable potential for enhancing the protection of children's rights by providing less intrusive means of participation without direct court exposure while still allowing children to express their views in proceedings.

3 Digital Tools as a Means to Safeguard Children's Procedural Rights

3.1 Psychological Benefits and Risks of Using Digital Technology in Court Proceedings

While the advantages and disadvantages of remote hearings and videoconferencing have been the subject of debate among its proponents and critics for some time, interest in the psychological implications of their application has increased more recently, with several empirical studies focusing on the impact of remote proceedings on the psychological state of participants – including or especially children – and the resulting quality of their participation in judicial proceedings. While these issues remain critically under-researched, the studies have already yielded some insightful findings.

Depending on the individual, videoconference and other digital tools have a great potential to either alleviate or exacerbate anxiety about appearing in court, which can, in turn, heavily affect the quality and usefulness of one's participation in judicial

²¹ See also Drnovšek, 2024, pp. 111-129.

proceedings. Participants who are not very familiar with the courtroom environment, procedures, and protocols (e.g., witnesses or other participants who are testifying for the first time) are especially prone to the so-called anticipatory anxiety, i.e., an unpleasant psychological state in response to feelings of uncertainty and stress concerning the performance of a task. Its negative impact on performance is reflected in physiological responses (increased heart rate, breathing rate, muscle tension, and sweating),²² cognitive and behavioural responses (avoidance and negative self-talk, feeling helpless or powerless),²³ or even decreased motor skills.²⁴ Research has shown that anxious and preoccupied individuals performed worse on a test measuring eyewitness accuracy, with their perception and recall of significant information also being negatively affected.²⁵ In cases of abused children, the fear and trauma associated with testifying in front of the offender may cause psychological injury to the child and overwhelm them to the extent that prevents effective testimony.²⁶ This is particularly true for older children, whom the attorneys tend to question more aggressively than younger children.²⁷ A study done on children has shown that children who were questioned in a mock courtroom demonstrated impaired memory performance and greater heart rate variability (a stress response) compared to children interviewed in a small, private room.²⁸ Videoconferencing might allow participants to avoid some sources of anxiety by giving them the option of testifying in a more private and comfortable environment, which might, in turn, enhance their performance. On the other hand, carrying out remote hearings requires special care to prevent the opposite effect, as using unfamiliar equipment and technology can be its own source of anxiety and thus adversely affect the quality of testimony.

Several factors can contribute to the stress of appearing in court. The formal setting, complex legalese, potential legal consequences for improper conduct, facing the offender and challenging them, testifying publicly and reliving the trauma can all be extremely intimidating. Research supports that testifying in judicial proceedings can be harmful to a person's mental health.²⁹ While some victims or witnesses appreciate

²² Streetman et al., 2022, pp. 1349-1350.

²³ Seligman & Csikszentmihalyi, 2014; see also Clemente & Padilla-Racero, 2020.

²⁴ Streetman et al., 2022, p. 1350.

²⁵ Siegel & Loftus, 1978.

²⁶ For more, see Thoman, 2013, p. 243.

²⁷ Thoman, 2013, p. 240.

²⁸ Nathanson & Saywitz, 2003.

²⁹ For details, see Clemente & Padilla-Racero, 2020.

the opportunity to share their story in a public setting, others prefer discretion.³⁰ Repeated questioning, public scrutiny, adversarial questions and scepticism can intensify trauma, feelings of helplessness, misunderstanding and self-blame, thus triggering severe anxiety or depression. The justice system itself can become a source of negative experiences and of so-called secondary victimisation, i.e. distress suffered by a victim of offence due to the negative psychological, social, legal and financial impact of being processed by the justice system.³¹ Digital tools can potentially prevent or minimise secondary victimisation by reducing contact between victims or witnesses and the offender, minimising public exposure, and accelerating legal proceedings to provide closure.

On the other hand, remote hearings facilitated by digital technology are intrinsically linked to certain unique challenges that are less prevalent in traditional, in-person judicial proceedings. Some – but not nearly all – include the following:

A) Forming impression and assessing credibility. Impression formation is an ongoing process (in which an individual collects and combines information about another in order to form a global impression of that person) and can be impacted by anything, e.g., the firmness of a handshake or the person's outfit,³² the rate of speech and speech patterns (people who employ slow rates of speech are viewed as more calm, composed, trustworthy, and honest),³³ directness of eye contact, smiling, etc.³⁴ Research suggests that someone's perceived characteristics can impact judicial decision-making. The testimony of witnesses who are seen as more confident is considered more accurate and believable; the testimony of likeable witnesses seems more impactful and credible and holds a greater persuasive power.³⁵ Similar seems to apply to the testimonies of expert witnesses.³⁶ Since people who collaborate and communicate face-to-face are perceived as more likeable and more intelligent than those who collaborate and communicate with each other over video,³⁷ remote hearings can potentially result in a less favourable perception of a person and, in turn, in different decisions. For example, research conducted in Cook County

³⁰ Stepakoff et al., 2014, p. 9.

³¹ Clemente & Padilla-Racero, 2020, p. 866 ff.

³² See, for example Chaplin et al., 2000.

³³ Cramer, Brodsky & DeCoster, 2009, p. 64.

³⁴ Kilgo, Boutler & Coleman, 2018.

³⁵ McGuire, 1969.

³⁶ See, for example, Brodsky et al., 2009.

³⁷ Fullwood, 2007.

(Illinois) has shown that felony bail amounts increased by an average of 51% in the eight years after they were moved from in-person to video initial bail hearings.³⁸

B) Narrowed field of perception. The remote format of hearing inherently alters the setting and affects the observer's visual field and the quality of visually presented information.³⁹ Perception is limited to what the technology (camera and microphone) can capture and transmit, which might exclude important non-verbal cues (e.g., fidgeting, disability, smell as a sign of intoxication). This can present a significant obstacle, given that, according to estimates, 60 to 65% of interpersonal communication is conveyed via nonverbal behaviours, many of which are unconscious and can often be a more authentic reflection of someone's thoughts and emotional state.⁴⁰ Furthermore, videoconferencing does not allow a choice of whom and what to observe during testimony, and what is shown on screen may not always be the only or the most relevant information. Even though impression formation and interpersonal dynamics begin even before direct interaction (e.g., observing how a person enters a courtroom, how they walk, sit, etc.),⁴¹ such aspects become unobservable with the remote testimony, which starts only when the camera is turned on. Judges have also expressed concerns about witnesses being prompted by another person off-camera, potentially resulting in unreliable testimony.⁴²

C) Manipulation of physical environment and setup. Camera angles, lighting, and location can all influence someone's perception and impression.⁴³ Research has shown that gazing directly at the camera is positively associated with likeability, social presence and interpersonal attraction, that high camera angles increase interpersonal attraction and decrease threat perception, and that faces closer to the camera are perceived as more threatening than in other positions.⁴⁴ All these factors can be manipulated, which raises additional concerns. The ability to simulate eye contact by staring at the camera instead of the screen – and thus leave a more favourable impression – can be more easily manipulated by individuals who are more comfortable with the camera and have more experience with technology (e.g.,

³⁸ Diamond et al., 2010; see also Vavonese et al., 2020.

³⁹ Goldenson & Josefowitz, 2021, p. 93.

⁴⁰ Foley & Gentile, 2010, p. 39; see also Burgoon, Manusov & Guerrero, 2022, p. 4 ff.

⁴¹ Argelander, 1976, p. 29 ff.

⁴² Williams, 2011, p. 9.

⁴³ Turner, 2021, p. 218; Tran, 2023, p. 494.

⁴⁴ Fauville et al., 2022.

content creators).⁴⁵ Videoconferencing platforms that allow participants to see themselves may intensify their emotions and increase self-awareness, which can result in heightened self-criticism and an urge to adapt the testimony and behaviour to better align with personal standards and societal norms (self-regulatory behaviour).⁴⁶ Research has shown that someone's behaviour can even be affected by the size of their picture on screen.⁴⁷ Furthermore, the background can also influence how someone is perceived; e.g., if someone is testifying from prison, they might be perceived as dangerous, if testifying from a hospital, they might invoke compassion, and if testifying from their office, they might give the appearance of authority.⁴⁸

D) Psychological significance of judicial symbols. While courtroom settings can induce anxiety, the formality and symbolism of judicial proceedings (the robes, wigs, emblems, positioning of a judge, architecture of court buildings, etc.) serve an important psychological function by evoking respect, signifying the authority of the judge and legitimacy of proceedings.⁴⁹ In a videoconferencing setting, the judge has less control over projecting their own appearance and public image, which might impact how the authority of the court and the judge are perceived.⁵⁰

E) Technical aspects. Technical issues and frequent interruptions (technical glitches, lags, asynchronicity) might affect the perception of testimony by not letting participants express themselves fully, especially on an emotional level. For example, a witness recalling and reliving a traumatic event might experience and express emotions that align with their verbal account; however, if the video freezes, the disruption may alter the flow of the testimony, possibly resulting in distrust or misperception. Moreover, such disruptions can impact the psychological state of the person testifying by causing frustration, distraction, emotional detachment, or anger over having to repeat themselves. Even minor asynchronicity can contribute to the so-called "Zoom fatigue", i.e. a cognitive strain supposedly caused by the brain having to work harder to synchronise delayed audio and video signals received via technology.⁵¹ Given that court proceedings are communicative processes taking

⁴⁵ Bellone, 2013, p. 31.

⁴⁶ Wegge, 2006, p. 279.

⁴⁷ Wegge, 2006.

⁴⁸ Rowden & Wallace, 2019, p. 708.

⁴⁹ Kutz, 2022, p. 297; Rowden & Wallace, 2018, p. 505. For more about the importance of judicial symbols, see Kessler, 1962.

⁵⁰ Rowden & Wallace, 2018, p. 510.

⁵¹ Wiederhold, 2020, p. 437; Tran, 2023, p. 494.

place in a group of people, remote hearings can be plagued with issues related to impaired turn-taking, difficulties in pointing and referring to objects out of sight, signals indicating understanding, interruptions, or even in "we versus them" thinking when in different locations.⁵²

The challenges discussed above represent only a minor fraction of issues faced by courts and participants in judicial proceedings conducted remotely, and with the rapid technological development and digitalisation, new challenges will inevitably emerge. With the increasing rate of reliance on videoconferencing and other digital tools within the justice system, it is crucial for the courts to pay attention to all potential disadvantages of remote trials and implement necessary protocols, safeguards, and measures to mitigate such obstacles and ensure procedural fairness to the same extent as for in-person trials. When used with all due consideration, digital technology can be a powerful tool to better safeguard the rights of participants in proceedings and improve their experience with the justice system. This is especially true in cases involving children, where the use of digital tools can uphold their best interests by decreasing their anxiety, preventing secondary victimisation, and reducing exposure to intimidating court proceedings and distressing encounters while still allowing them to participate and express their views in a safer, more familiar, and less traumatic environment. The possibility of conducting proceedings involving children remotely, via videoconference, thus brings certain undeniable psychological advantages and is also consistent with standards established by the ECtHR to uphold children's rights to effective participation and to be heard.

3.2 Good Practices in the Republic of Slovenia

The justice system in the Republic of Slovenia has recognised the potential of digital tools to enhance the protection of children in judicial proceedings and has been actively integrating their use in an attempt to establish child-friendly practices. To mitigate the risk of secondary victimisation and other harmful outcomes, special measures and protocols were implemented to protect vulnerable child witnesses, especially those who were the victims of criminal offences against sexual integrity, marriage, family and youth, enslavement, or human trafficking. Under paragraph six of Article 240 of the Slovenian Criminal Procedure Act (*Zakon o kazenskem postopku*

⁵² Wegge, 2006, p. 276.

– ZKP),⁵³ in such cases, the hearing of witnesses who are younger than 15 years must be carried out in specially adapted premises, depending on their personal circumstances, unless this is not necessary for justifiable reasons that must be substantiated explicitly by the court. To that effect, child-friendly facilities have been introduced at all district courts in the Republic of Slovenia. These special rooms are designed to be less intimidating and stressful and are equipped with toys, colourful furniture, and hidden cameras that children do not easily detect. Generally, they have a special entrance where the child does not need to undergo regular security measures (security guards, scanners, intimidating main entrance, etc.) and can avoid stressful encounters (especially with offenders). Instead of appearing in the main courtroom, where other participants are located, the child is interviewed by a specially trained professional (e.g., social worker), who is in contact with the judge via headset. The child's hearing is streamed live to a screen in the main courtroom, and the judge and participant can instruct the interviewer on which questions to ask.⁵⁴

A further step towards child-friendly justice was taken with the implementation of the project Barnahus (meaning "Children's House" in Icelandic), a leading European model for child-friendly, multidisciplinary, and inter-institutional treatment of children, witnesses, and victims of sexual abuse.⁵⁵ The Barnahus model aims to coordinate parallel criminal and child protection proceedings by bringing together all relevant activities of the criminal justice process under one roof, thus preventing the re-victimisation of children during the investigation process and the court proceedings. The crucial role of the service is to gather valid evidence using forensic interviews that can be used in court proceedings, meaning that the child can avoid going to court. The child also receives help and support, including medical assessment and care, mental health assessment and therapy.⁵⁶ To establish legal grounds for implementing this model in the Republic of Slovenia, the Act on the Protection of Children in Criminal Proceedings and Their Comprehensive Treatment in the Barnahus (*Zakon o zaščiti otrok v kazenskem postopku in njihovi celostni*

⁵³ Official Gazette of the Republic of Slovenia, No. 176/21 – official consolidated text, 96/22 – odl. US, 2/23 – odl. US, 89/23 – odl. US and 53/24.

⁵⁴ For more, see Drnovšek & Berk, 2024, pp. 246-247.

⁵⁵ What is Barnahus?. Retrieved from: <https://www.hisa-za-otroke.si/en/barnahus/> (accessed: 28 February 2025).

⁵⁶ Hiša za otroke, 2024, pp. 2-3. Retrieved from: https://www.hisa-za-otroke.si/wp-content/uploads/2024/05/BROSURA_HisaZaotroke_175x250_high_spread.pdf (accessed: 28 February 2025). See also Mikec & Stankić Rupnik, 2022, p. 44; Drnovšek & Berk, 2024, pp. 248-251.

obravnavi v hiši za otroke - ZZOKPOHO)⁵⁷ was adopted, which established a comprehensive and systematic framework for treating child victims and witnesses of criminal offences. With a strong emphasis on the child's best interests and the prevention of secondary victimisation, the act supplements criminal legislation by introducing clear guidelines to ensure a child-friendly and trauma-sensitive approach in legal proceedings.⁵⁸ While the Barnahus model was originally designed as a response to criminal offences against sexual integrity, it has been adapted in the Republic of Slovenia also to include child victims and witnesses of other violent crimes. Furthermore, if the best interests of the child so require, comprehensive treatment may also be provided to a minor under the age of 18 who is subject to pre-trial or criminal proceedings.⁵⁹ Following the adoption of the ZZOKPOHO, the public institution Children's House was formally opened in Ljubljana, Slovenia, on 27 May 2022. In the first year of its existence, it already provided support to 26 children who were victims of criminal offences against sexual integrity.⁶⁰

In its activities, the Children's House relies heavily on using digital tools to pursue its main objective – the child's best interests and the prevention of secondary victimisation – especially in conducting interviews and training professionals. The child's interview is conducted based on a written court order issued by the court, either as an ex officio or upon the parties' proposal. While the court retains the substantive and procedural management of the questioning, the Children's House is responsible for its organisation and execution. Before the interview, a preparatory meeting is held at the Children's House, led by the investigating judge, during which the participants may give their statements on the facts and circumstances relevant to the conduct of the interview, on the questions to be posed to the child, and the method of conducting the interview. The forensic interview is then conducted in accordance with the protocol for forensic interviewing of a child by a trained professional from the Children's House. The interview takes place in a specially designed setting consisting of two separate rooms, connected via audio and video systems, which ensures that there is no unwanted personal contact between the child and the suspect or the accused immediately before, during and after the interview.

⁵⁷ Official Gazette of the Republic of Slovenia, No. 54/21.

⁵⁸ *Hiša za otroke*, 2024, p. 4. Retrieved from: https://www.hisa-za-otroke.si/wp-content/uploads/2024/05/BROSURA_HisaZAotroke_175x250_high_spread.pdf (accessed: 28 February 2025).

⁵⁹ ZZOKPOHO, art. 1 and 43.

⁶⁰ *Hiša za otroke v letu dni obravnavala 26 otrok, žrtev spolnih zlorab*. Retrieved from: <https://www.hisa-za-otroke.si/hisa-za-otroke-v-letu-dni-obravnavala-26-otrok-zrtev-spolnih-zlorab/> (accessed: 28 February 2025).

The child and the professional conducting the interview are confined in one room while all other participants observe from another. Communication between the professional and the judge leading the interview is transmitted through electronic communication equipment. All interviews are audio and video recorded, ensuring that recordings can be used as evidence in criminal and other legal proceedings (e.g., family law cases) and also serve as a tool for providing crisis and psychosocial support to the child.⁶¹

It is self-evident that professionals conducting forensic interviews with children under such sensitive circumstances need to be properly trained. While digital tools were already used for this purpose before (simulations with pre-programmed sequences limited to a fixed set of actions), a new pilot tool was developed in 2024 (in collaboration between the Ministry of Justice, the Ministry of Digital Transformation, the Children's House, and the Faculty of Computer and Information Science at the University of Ljubljana) to train forensic interviewers working with children, as well as to support the general training of professionals conducting interviews with children in distress, using high fidelity simulations of interviews that take into account the importance of non-verbal communication.⁶²

Another measure aimed at making unfamiliar judicial proceedings less anxiety-inducing for children is the publication of illustrated brochures prepared by the Supreme Court of the Republic of Slovenia for boys aged 5 to 9,⁶³ girls aged 5 to 9,⁶⁴ and children of both genders aged 10 to 14⁶⁵ appearing at court as witnesses.⁶⁶ These activity books are intended to familiarise children, especially younger ones, with courtroom procedures and their role as witnesses by presenting legal concepts in a clear and child-friendly manner. Through a combination of text, illustrations and interactive exercises (drawing, connect-the-dots, matching professions with

⁶¹ ZZOKPOHO, art. 16-28. See also Hiša za otroke, 2024, p. 11. Retrieved from: https://www.hisa-za-otroke.si/wp-content/uploads/2024/05/BROSURA_HisaZAotroke_175x250_high_spread.pdf (accessed: 28 February 2025).

⁶² For more on the tool, see Pilotno digitalno orodje za usposabljanje strokovnjakov za izvedbo forenzičnih intervjujev, retrieved from: <https://www.youtube.com/watch?v=Vy9g2BXY4MA> (accessed: 28 February 2025).

⁶³ Supreme Court of the Republic of Slovenia, 2022a. Retrieved from: https://www.sodisce.si/mma_bin.php?static_id=20220721115657 (accessed: 28 February 2025).

⁶⁴ Supreme Court of the Republic of Slovenia, 2022b. Retrieved from: https://www.sodisce.si/mma_bin.php?static_id=20220721115656 (accessed: 28 February 2025).

⁶⁵ Supreme Court of the Republic of Slovenia, 2020. Retrieved from: https://www.sodisce.si/mma_bin.php?static_id=20201119103419 (accessed: 28 February 2025).

⁶⁶ Brochures were published in 2010 by the Supreme Court of the Republic of Slovenia and updated in 2020 and 2022.

their attire, crossword puzzles), these materials explain the key roles of persons involved in proceedings (judge, prosecutor, attorneys, court clerks, expert witnesses), courtroom and security protocols, as well as highlight the importance of child's participation in judicial proceedings (heavily emphasising that the child's role is to help the court, that they did not do anything wrong, and that they do not need to fear any consequences, regardless of how well they testify). More recently, this approach has been upgraded with video animations published by the Supreme Court of the Republic of Slovenia that serve the same purpose while increasing accessibility and engagement for the digitally inclined generation.⁶⁷ In addition to the Slovenian version, these animations are also available in Italian and Hungarian languages (minority languages), English, and sign language.⁶⁸

4 Conclusions

Safeguarding children's procedural rights in judicial proceedings requires careful balancing between the child's rights to effective participation and to be heard on the one hand and their mental well-being on the other. The ECtHR case law emphasises the need to involve children in court proceedings, but also urges the courts to employ child-friendly measures tailored to their age, maturity and personal situation. In that regard, digital tools have a great potential to make proceedings less intimidating and more child-sensitive, thus contributing to procedural fairness and the prevention of secondary victimisation. However, while the digitalisation of the justice system presents new opportunities to safeguard children's rights (as well as the rights of adults), it also raises serious concerns from legal, practical, but also psychological aspects that all require careful consideration.

Different jurisdictions have adopted various approaches to addressing these challenges, with varying levels of digitalisation employed in the conduct of judicial proceedings. As discussed in this paper, the Republic of Slovenia has been quite proactive in integrating digital tools into its justice system. The measures such as child-friendly premises in combination with remote testifying, the Barnahus model, and informative animations, all contribute to alleviating psychological distress and trauma while still ensuring the effective participation of children in judicial

⁶⁷ Otrok na sodišču. Retrieved from: <https://www.youtube.com/watch?v=NYuIwVVtGI&t=146s> (accessed: 28 February 2025).

⁶⁸ Uredništvo VSRS. Retrieved from: <https://www.youtube.com/@SupremeCourtSLO/videos> (accessed: 28 February 2025).

proceedings. However, while these national solutions (as well as solutions in other countries, which were not subject to this paper) should be emphasised as a step in the right direction, stronger cross-border cooperation remains necessary. Differences in procedural rules and digital infrastructure can lead to incompatibilities and inconsistent levels of procedural protection among the EU Member States and, even more so, other countries. Given the rapid pace of technological development (especially the yet unknown impact of AI on the conduct of judicial proceedings), legal frameworks must stay flexible to respond to the new emerging challenges but must also remain mutually consistent. While international efforts to implement child-friendly policies continue to recognise the need for special adjustments in judicial proceedings involving children,⁶⁹ more (international) attention should be directed to researching the potential of digital tools in achieving these aims and establishing proper safeguards to mitigate the accompanying risks.

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⁶⁹ See, for example, Council of Europe's Strategy for Children's Rights (2022-2027) adopted in 2022 (Retrieved from: <https://rm.coe.int/council-of-europe-strategy-for-the-rights-of-the-child-2022-2027-child/1680a5ef27#:~:text=The%20Strategy%20for%20the%20Rights,at%20the%20same%20time%2C%20finding> (accessed: 28 February 2025)) or Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice adopted in 2010 (Retrieved from: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168045f5a9> (accessed: 28 February 2025)).

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