



# Protecting Procedural Rights of Children in the Digital Age



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## Penal Reform International

*Digitalisation of Child Justice Practices – EU Member State Snapshots*

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## PRI: Digitalisation of child justice practices (criminal cases involving children as suspect / defendant) – BELGIUM

### 1 Introduction and Scope of Application of Digital Court Hearings

#### 1.1 When were digital court hearings introduced in Belgium and why?

The wide-ranging use of videoconference / digital hearings in criminal and civil proceedings was introduced by the Act of 25 April 2024 concerning the organisation of hearings by videoconference in the context of legal proceedings (“**the Videoconference Act**”) – which entered into force on 1 September 2024. In parallel to the Videoconference Act, the Belgian judiciary also developed a videoconferencing application / system (JustCourt) that enables digital or hybrid hearings at the Belgian Courts.

The Videoconference Act aims (i) to make justice more accessible and efficient; (ii) to ensure justice system employees’ safety by limiting the movement of detainees.<sup>1</sup> While the use of digital hearings generally is based on a party’s consent, the Videoconference Act also allows the Belgian Courts and Tribunals to *impose* video conferencing in the event of a pandemic or a serious and specific risk to public safety.

Before 2024, digital hearings were possible to some extent:

- In October 2020, in Flanders, the Flemish Community issued the Flemish Decision of 23 October 2020 (the “**Flemish Juvenile Videoconference Decision**”) which implemented the possibility of digital hearings as provided for in the Flemish Decree on Juvenile Delinquency of 15 February 2019, hence opening videoconference to a number of specific juvenile delinquency hearings subject to strict conditions. Flanders aimed at providing a valid alternative for hearing a minor, enhancing judicial process efficiency and accessibility, and offering benefits like time-saving and risk reduction during transportation (as well as cost-saving).
- Digital hearings were used during the COVID-19 pandemic mainly in civil matters, as an extraordinary and temporary measure in light of the sanitary crisis.<sup>2</sup>
- The hearing via videoconference of suspects in preventive custody was made possible in 2016.<sup>3</sup> However, the Belgian Constitutional Court annulled the law in 2018, mainly because it contained insufficient rules clarifying the conditions for the use of videoconferences.<sup>4</sup>
- The hearing via videoconference of witnesses and experts (under certain conditions) has already been possible since 2002.

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<sup>1</sup> Opinion issued by the Belgian High Council of Justice on 15 March 2023 aiming to assess the effects of the Videoconference Hearings Act of 25 April 2024, Section 3.1.2; Available at <https://csi.be/admin/storage/hri/23.03.15-avis-videoconference.pdf>.

<sup>2</sup> Article 2 (2) and (4) of the Decree n°2 of 9 April 2020 concerning the extension of limitation periods and other time limits for taking legal action, as well as the extension of procedural time limits and written procedure before courts and tribunals (adopted in the COVID-crisis).

<sup>3</sup> Law of 29 January 2016 concerning the use of videoconferencing for the appearance of suspects in preventive custody.

<sup>4</sup> Judgment of the Belgian Constitutional Court, nr.76/2018, 21 June 2018. (available [here](#))

## 1.2 What laws, regulation or guidance allowed for the introduction of digital court hearings, particularly for children who are suspected or accused of a crime?

The Belgian Code of Criminal Procedure provides for:<sup>5</sup>

- i. the possibility and conditions for holding digital court hearings in criminal proceedings (and juvenile delinquency hearings as explained below) (as introduced by the Videoconference Act<sup>6</sup> which amended the Belgian Code of Criminal Procedure<sup>7</sup>).
- ii. the possibility for digital criminal court hearings of witnesses and experts under certain conditions, since 2002.<sup>8</sup>

In addition, in October 2020, the Flemish Juvenile Videoconference Decision introduced the possibility for juvenile court hearings via videoconference in specific circumstances and under strict conditions in the Flemish Community.<sup>9</sup> Please see Section 2.1. for further details.

## 1.3 Are digital court hearings mandated for all types of courts and matters, or are there any specific rules for courts or matters involving children (and specifically, criminal matters where a child is suspected or accused of a crime (i.e. a suspect or a defendant)?

Digital court hearings can be used for cases involving a child suspected or accused of an "an act qualified as a crime" ("*als misdrijf omschreven feit*" / "*un fait qualifié d'infraction*") ("**AQC**") in Belgium, though various safeguards guide their use. Please refer to the conditions and safeguards as set out in Section 2.1 below.

Please note that:

- Belgium does not have a system of criminal liability for children (up to the age of 18). A child who commits an act that could be qualified a crime if committed by an adult, is referred to an AQC, and the case is handled by a juvenile judge instead of a criminal judge. The juvenile judge can impose protection and educational measures but not criminal sanctions.<sup>10</sup>

Since 2014, juvenile delinquency is a competence of the Belgian Community Governments rather than the Belgian Federal Government. As a result, there are disparities in the rules for (digital) hearings in juvenile delinquency cases between the Flemish Community, the French-speaking Community and the German Community in Belgium.

<sup>5</sup> The Belgian Code of Criminal Procedure ("*Wetboek van Strafvordering*" / "*Code d'Instruction Criminelle*"); available here: [https://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&cn=1808111930&table\\_name=wet](https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1808111930&table_name=wet)

<sup>6</sup> Available at [https://www.stradalex.com/fr/sl\\_src\\_publ\\_leg\\_be\\_moniteur/toc/leg\\_be\\_moniteur\\_nl\\_03062024\\_1/doc/bs2024003966?access\\_token=ac67ec7eea461f2146773fdb27c211c2030f1d01](https://www.stradalex.com/fr/sl_src_publ_leg_be_moniteur/toc/leg_be_moniteur_nl_03062024_1/doc/bs2024003966?access_token=ac67ec7eea461f2146773fdb27c211c2030f1d01).

<sup>7</sup> Available at [https://www.ejustice.just.fgov.be/mopdf/2024/06/03\\_1.pdf#Page143](https://www.ejustice.just.fgov.be/mopdf/2024/06/03_1.pdf#Page143).

<sup>8</sup> Article 112 of the Code of Criminal Procedure.

<sup>9</sup> Decision of the Flemish Government of 23 October 2023 on the use of videoconferencing for the appearance of a minor suspect; available here: [https://www.ejustice.just.fgov.be/mopdf/2020/12/15\\_1.pdf#Page127](https://www.ejustice.just.fgov.be/mopdf/2020/12/15_1.pdf#Page127).

<sup>10</sup> Article 37§1 of the Belgian Act of 8 April 1965 on the Protection of Juveniles. Available here: [Wet van 08/04/1965 betreffende de jeugdbescherming, het ten laste nemen van minderjarigen die een als misdrijf omschreven feit hebben gepleegd en het herstel van de door dit feit veroorzaakte schade. - officiële coordinatie in het duits](#). There are two exceptions where criminal liability for children can arise: (i) traffic offences, which apply from the age of 16; and (ii) serious crimes that result in a minor of at least 16 years old being "waived" from the youth judge to the criminal judge.

**1.4 Are statistics available to inform an understanding of how widespread the use of digital court hearings are for criminal matters involving children?**

In 2022, press reports and indicated that videoconferences for cases involving minors placed in community centres in Flanders became standard practice before the juvenile courts in Flanders. Digital hearings occurred 545 times in 2020 and 341 times in 2021. In 2023, statistics reported that 215 digital hearings (in juvenile delinquency cases) took place in 2022. The practice was reported to involve a positive evolution valued for efficiency, reducing both transport costs and time.

**2 Safeguards for Children**

**2.1 What safeguards are available for digital hearings in criminal cases where children are suspects of a crime or defendants?**

The Flemish Juvenile Videoconference Decision provides for additional conditions and safeguards for the use of videoconference where children are suspected or accused of a crime (in addition to the general safeguards pursuant to the Videoconference Act as set out further below). We are not aware of similar rules in the French-speaking Community, and therefore only the general conditions above seem to apply there.<sup>11</sup> As a result, there appears to be a disparity in the safeguards applied across Belgian Communities.

***Flanders***

Flanders provides stringent safeguards to preserve the integrity and confidentiality of digital hearings involving minors accused of criminal acts. A minor suspect can expressly choose to appear via videoconference following consultation with its lawyer and subject to juvenile judge's approval, for a limited number of hearings / appearances:

- i. regarding provisional placement of minors who have committed an act described as an offence.
- ii. related to the extension or revision of a measure for provisional placement in an open or closed educational section of a public community institution.
- iii. related to the extension or revision following risk assessment as under the Juvenile Delinquency Law.
- iv. related to the extension or revision of a measure of secure guidance as mentioned in the Decree on Juvenile Delinquency.
- v. in appeal.

However, appearance by videoconference is not possible for (i) the proceedings on the merits (*'geding ten gronde'*), (ii) the hearings concerning conditions or ambulatory measures, or (iii) for the extension of the duration of the pre-trial proceedings.

The possibility for a minor to attend digital hearings in Flanders is further subject to the following conditions and safeguards:

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<sup>11</sup> Please note however that the French-speaking Community specifically provides the possibility for children accused of an AQC and placed in a public institution who are awaiting their hearing, can communicate with juvenile judges via videoconference. Please see Article 52 of the French-speaking Community Government's Decision relating to youth protection public institutions. Available here: [https://etaamb.openjustice.be/fr/arrete-du-gouvernement-de-la-communaute-francaise-du-0\\_n2019030782.html/](https://etaamb.openjustice.be/fr/arrete-du-gouvernement-de-la-communaute-francaise-du-0_n2019030782.html/).

- The general practice is that the initial court appearance (introduction / cabinet hearing) still takes place in person. At the initial court appearance, the minor is notified of the opportunity to conduct future hearings via videoconference, subject to the conditions (as set out below) and can still change the choice (as they continue to have the right to maintain in person contact with the judge).
- Appearance via videoconference is subject to the minor suspect having discussed with a lawyer<sup>12</sup>, and consenting to participate in hearings via videoconference. The minor's choice is further contingent upon securing the approval of the designated juvenile judge (which can always order the personal appearance at a later stage).
- The minor may provide a written declaration of consent to employ videoconferencing technology. This procedure requires the availability of a designated document within the community institutions and must follow consultation with legal counsel. The written consent must be reviewed by the lawyer.

Furthermore, technical and procedural safeguards are required to ensure the protection of legal rights and security of minors:

- The videoconferencing system must ensure that the suspect, juvenile judge, public prosecution, legal guardians<sup>13</sup> or representatives, educational supervisors, and respective lawyers can see and hear each other without any technical impediments. Participants must experience a faithful reproduction of the events occurring within the remote location.
- All parties are granted the capacity to communicate with their lawyers confidentially, prior to, during, and following the videoconference. Safeguards must permit private discussions unobservable by external parties.
- Prior to and during the videoconference, the electronic interchange of documents between parties and lawyer(s) should be possible.
- The recording and processing of the videoconference must remain strictly excluded, preserving the privacy of the participants.

The Flemish Juvenile Videoconference Decision is unclear as to where the lawyer of the minor should be located when the minor opts for a digital hearing. The Agency for Child Development (*'Agentschap Opgroeien'*) has developed a protocol expressing a preference for the lawyer to sit next to the minor in the community institution. The protocol also allows for the lawyer to participate either from the juvenile court or at the cabinet office. However, there should be a 'stand-by lawyer' present in the community institution who can support the minor and ensure compliance with procedural and legal safeguards.

### **Federal rules**

As opposed to Flanders, the Belgian Federal rules do not provide specific safeguards for children. As noted, we are also not aware of specific safeguards in the French-speaking Community. However, the following conditions and safeguards apply in digital court hearings more generally:

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<sup>12</sup> Please note that in Belgium, any minor has the right to assistance of a (pro bono) lawyer – who must have attended a special education in juvenile laws.

<sup>13</sup> The videoconference does not prevent that guardians are present (by telephone, digitally or physically).

- Physical attendance remains the rule and digital hearings the exception. Videoconference participants have the same rights and obligations as those granted in physical hearings.<sup>14</sup>
- Digital hearings can be requested by the Court as well as the suspect but always require the consent of the party/accused that would be attending the hearing digitally (with exceptions for (pandemic / security) crisis situations).<sup>15</sup>
- Digital hearings are only allowed if the particular circumstances of the case so allow, requiring a case-by-case assessment by the judge. Particular circumstances relate to the duration and stage of proceedings, the number of parties and possibility of interaction between them, the nature and complexity of the case, the assistance of a lawyer, appeal possibilities, the technical capacity of jails or community centres, the residence situation of a party, the physical or mental situation and the vulnerable situation of a person who is to be heard, etc.
- Videoconferencing system must comply with strict technical guarantees.<sup>16</sup>

Additional safeguards apply if the hearing takes place behind closed doors (which is common in juvenile proceedings): the person appearing via videoconference, or their lawyer must inform the Court that no one other than themselves and any specifically authorised individuals (e.g. guardians) are present at the location during the hearing. Specifically, they must confirm that no one else can overhear or follow what is spoken at the location. The Court also has the authority to check the absence of unauthorised individuals through technological or organisational measures.<sup>17</sup>

### **3 Assessment of Effectiveness of Current Practices**

#### **3.1 Have there been any reviews, commentary or critique on the effectiveness, or impact of online hearings in the child justice system in this jurisdiction?**

Parliamentary debates in the French-speaking Community on the potential for digital appearances for children accused of an AQC showcased contrasting views between supporters emphasising efficiency savings and sceptics concerned by the potential for digital appearances and hearings to undermine the “protectional” philosophy applicable to juvenile justice which privileges regular contacts between child and judge.<sup>18</sup>

In 2021, the Flemish Lawyers’ Association commented on the Flemish Juvenile Videoconference Decision, noting that the practical implementation of the Decision was not yet on point. The Flemish Lawyer Association has always strongly advocated against digital

<sup>14</sup> Article 558,§1 of the Code of Criminal Procedure.

<sup>15</sup> See Articles 558 §1 and §2, and Article 560§1 and §2 of the Code of Criminal Procedure.

<sup>16</sup> These are: (i) the videoconference system must enable participants to effectively engage in legal proceedings and fully follow the debates without interruption; (ii) participants must be able to express themselves and be visibly and audibly clear, free from technical hindrances; (iii) individuals represented by a lawyer during the videoconference should be able to securely and confidentially communicate with their lawyer; (iv) if multiple parties or witnesses are involved, the system must allow them to see and hear each other simultaneously, in accordance with legal permissions; (v) except for legally specified exceptions, recording, storing, or processing the videoconference in any form is prohibited. The Court may record the videoconference session to ensure the openness of proceedings, but any recordings should not be preserved beyond the session’s duration; (vi) access to the videoconference system should be obtained through federally supported authentication protocols or equivalent methods.

<sup>17</sup> Article 561 of the Code of Criminal Procedure.

<sup>18</sup> 19 April 2016 minutes of the Committee on youth protection of the French-speaking Community parliament. Available here (p.4): <https://archive.pfwb.be/1000000020370f4>.

conferences, and noted that in many cases, a digital hearing may not be in the interest of the client. It stressed the importance of pointing a minor to the disadvantages of the digital proceedings.<sup>19</sup>

That said, an early preliminary analysis conducted in 2021 of juveniles' experiences presented the following positive picture. Around 95% of the children reported to see and hear the judge and the lawyer clearly and were satisfied with the proceedings. In addition, 69% had consulted with their lawyer before the session.<sup>20</sup> Among the 30% of minors who did not consult with a lawyer, nearly half (40%) deemed it unnecessary. In 66% of the sessions, parents were also present. A priority at that time was to remain ensuring the consultation between the juvenile and their lawyer. In a limited number of situations (15%), juveniles indicated that they felt they *'could not consult with their juvenile lawyer'*.

### 3.2 Are there any legal cases or complaints on the infringement of procedural rights of a child due to digital practices brought before the national courts? If not, are there any reports or news articles covering similar incidents?

We have found one judgment of 28 June 2018 where digital practices raised questions about the procedural rights of a child (but this predates entry into force of the Flemish Juvenile Videoconference Decision). The Juvenile Court of West-Flanders prolonged the placement of a juvenile in a juvenile detention center after hearing the juvenile over the phone.<sup>21</sup> While the juvenile should have been heard in person, the police had invoked *force majeure* and as a result, the juvenile could not be safely transferred from the juvenile detention center to the court. To avoid the early release of the minor (which was deemed to have a very problematic personality), the juvenile was therefore heard via the phone. The juvenile's lawyer, his father, and social counsellor were however present in court. The lawyer of the juvenile decided not to appeal the judgment, but the decision has been reported to constitute an infringement of the procedural rights of the juvenile.

Moreover, on 11 February 2021, the Belgian Constitutional Court rejected an action for (partial) annulment of the Flemish Decree on Juvenile Delinquency.<sup>22</sup> Article 15 of the Decree on Juvenile Delinquency states that juvenile offenders must be heard personally, or via videoconference, by the youth judge. Exceptions apply if (i) the juvenile cannot be found (ii) health issues prevent appearance (iii) or the juvenile refuse to appear. The plaintiffs argued that this provision contains a violation of the juvenile's rights of defence as, according to the plaintiffs' reading, juvenile offenders would lose their right to be assisted by a lawyer if they do not appear in person. The Constitutional Court rejected the action and instead deemed the provision in the Flemish Decree to precisely confirm the juvenile's right to legal assistance, even if the juvenile does not appear in person and is heard via videoconference.

<sup>19</sup> Available here <https://www.ordevanvlaamsebalies.be/nl/nieuws-en-events/videoconferentie-in-jeugdzaken-hier-moet-u-op-letten>.

<sup>20</sup> In most of the cases where the minor consulted a lawyer, the consultation occurred over the phone. Exceptionally, the consultation occurred digitally or through a physical meeting.

<sup>21</sup> Judgment of the Juvenile Court of West-Flanders (section Bruges), nr. 2018/1133, 28 June 2018 (summary available on Jura [here](#)) [no access to the full judgment].

<sup>22</sup> Judgment of the Belgian Constitutional Court, nr.22/2021, 11 February 2021 (available [here](#)).



## PRI: Digitalisation of child justice practices (criminal cases involving children as suspect / defendant) – CROATIA

### 1 Introduction and Scope of Application of Digital Court Hearings

#### 1.1 When were digital court hearings introduced in Croatia and why?

Legal regulation for remote hearings (including use of video equipment and video transmission) was already in place before the COVID-19 pandemic,<sup>23</sup> although remote hearings were not used very often in practice. The use of remote hearings increased in response to the COVID-19 pandemic, and further regulation in the area of remote hearings followed.

#### 1.2 What laws, regulation or guidance allowed for the introduction of digital court hearings, particularly for children who are suspected or accused of a crime?

The main piece of legislation regulating criminal procedure where children are suspected or accused of a crime is the Juvenile Courts Act.<sup>24</sup> In cases where the Juvenile Courts Act does not regulate a specific issue, the general provisions of the Criminal Procedure Act (“CPA”),<sup>25</sup> applies.

Since the Juvenile Courts Act does not regulate remote (including video) hearings, the CPA applies. Prior to 2022, Croatian laws provided for the use of digital (i.e., video) hearings in an appellate tribunal context, as well as to conduct evidentiary hearings remotely – for example where there is a risk that the witness may be unable to be examined later during the main hearings due to age or illness. The CPA was amended in 2022 to expand the ability to conduct remote hearings in additional, certain stages of criminal proceedings, such as in preliminary hearings and when holding sessions of the indictment tribunal. These provisions are only used very sporadically – the vast majority of criminal cases are carried out with all parties physically present (i.e., without holding any part of the proceedings remotely).

**NB:** It is not possible to conduct main proceedings (i.e., discussion on the merits of the case) remotely – physical presence is mandatory for these stages.

In addition to remote hearings, digitalisation and electronification of the Croatian justice system has been supported by other systems and platforms, for e.g., regarding electronic communication, case management and filing systems.<sup>26</sup>

#### 1.3 Are digital court hearings mandated for all types of courts and matters, or are there any specific rules for courts or matters involving children (and specifically,

<sup>23</sup> For example, in a civil context, amendments to the Civil Procedure Act were introduced in 2019 for remote hearings in civil proceedings. Amendments of Civil Procedure Act regulating *inter alia* remote hearings and Regulation on remote hearings were enacted in 2022.

<sup>24</sup> Available here: <https://www.zakon.hr/z/180/zakon-o-sudovima-za-mladez>.

<sup>25</sup> Available here: <https://www.zakon.hr/z/174/Zakon-o-kaznenom-postupku>.

<sup>26</sup> E-Communication (in Croatian: *e-komunikacija*), a service used by attorneys, insolvency administrators, public notaries, court experts, court interpreters, as well as other natural and legal persons to electronically file submissions with the courts, receive court documents and perform remote access to their court cases; *E-Case* (in Croatian: *e-Predmet*) website, which provides public access to basic (partially anonymized) data on court cases; E-Filing system (e-Spis), which is an integrated case management system used by courts; and The website *e-BulletinBoard*, which is a free public service that enables the viewing of electronic bulletin boards of courts and other competent bodies.

**criminal matters where a child is suspected or accused of a crime (i.e. a suspect or a defendant)?**

As noted in Section 1.2 above, digital court hearings are not mandatory for any criminal proceedings, including those involving children where the child is suspected or accused of a crime. Digital hearings can only be used during a very limited number of stages of criminal proceedings, as provided by the CPA (per Section 1.2 above), and these are only used at the judge's discretion, which is rare in practice. Courts are even more reluctant to use digital technology (and especially digital hearings) in criminal cases involving minors, in order to fully ensure the protection of the defendant's rights and other procedural rights and guarantees.

**1.4 Are statistics available to inform an understanding of how widespread the use of digital court hearings are for criminal matters involving children?**

No such statistics are publicly available.

**2 Safeguards for Children**

**2.1 What safeguards are available for digital hearings in criminal cases where children are suspects of a crime or defendants?**

There are no specific safeguards for digital/remote hearings, where children are suspects/defendants, however all safeguards that are generally applicable to criminal procedures involving children as suspects or defendants are also applied in the case of remote hearings. For example, (i) a minor must have a defendant attorney present from the first action taken in the case, (ii) a minor cannot be tried *in absentia* (i.e., without being present), (iii) when questioning a minor or conducting any proceedings in their presence, caution must be exercised to ensure that the process does not negatively impact their psychological development, considering their mental maturity and personal characteristics.

**3 Assessment of Effectiveness of Current Practices**

**3.1 Have there been any reviews, commentary or critique on the effectiveness, or impact of online hearings in the child justice system in this jurisdiction?**

No information on such reviews or commentary is publicly available.

**3.2 Are there any legal cases or complaints on the infringement of procedural rights of a child due to digital practices brought before the national courts? If not, are there any reports or news articles covering similar incidents?**

No information on any such cases or complaints are publicly available. Also, there appear to be no reports or news articles on such incidents.

## PRI: Digitalisation of child justice practices (criminal cases involving children as suspect / defendant) – FRANCE

### 1 Introduction and Scope of Application of Digital Court Hearings

#### 1.1 When were digital court hearings introduced in France and why?

Digital court hearings were introduced in France as part of the broader digital transformation of the judiciary. Their implementation was accelerated in response to the COVID-19 crisis in March 2020, when the French government passed emergency legislation allowing the use of videoconferencing technology in courts to ensure continued court operation during lockdowns. Since then, use of digital hearings has been expanding and improving.

#### 1.2 What laws, regulation or guidance allowed for the introduction of digital court hearings, particularly for children who are suspected or accused of a crime?

The framework for digital court hearings is spread across several pieces of legislation and guidelines, including:

- The Code of Criminal Procedure (in particular Articles [706-71](#), [706-71-1](#) and [R.53-33 to R.53-39-1](#));
- The Code of Juvenile Criminal Justice (in particular Articles [L.334-6](#) and [L.413-10](#));
- Ministry of Justice guidelines and protocols on criminal proceedings involving children (including, the [Circular on the Use of Videoconferencing in Criminal Matters](#) of August 2024, and the [Guide on Juvenile Justice](#) of March 2023).

#### 1.3 Are digital court hearings mandated for all types of courts and matters, or are there any specific rules for courts or matters involving children (and specifically, criminal matters where a child is suspected or accused of a crime (i.e. a suspect or a defendant)?

Judges in France typically have discretion as to whether a digital hearing is appropriate for a criminal matter:

- Their authority extends broadly<sup>27</sup>, covering all phases of the criminal trial process (i.e. during the investigation, inquiry, or trial phase). They can mandate the use of digital hearings for various proceedings, including conducting hearings of detainees before the criminal court if they are in pretrial detention.
- In limited circumstances, the use of videoconferencing is prohibited (e.g. examinations by doctors or psychologists tasked with assessing an indicted person must never be conducted via videoconferencing).

An individual cannot challenge the judge's decision to employ videoconferencing. However, there is one exception: if the hearing pertains to a decision regarding placement in pretrial detention or its extension, the individual concerned has the right to refuse the use of audiovisual telecommunication, and this decision is binding on the judge. This choice must

<sup>27</sup> As detailed in [Article 706-71 of the Code of Criminal Procedure](#).

be considered carefully, as once consent is given or there is no opposition, it cannot be withdrawn later.<sup>28</sup>

The above applies to all individuals, including children. There are few specific provisions for children:

- Audiovisual telecommunications can never be used to decide on: (i) the placement of a minor in pre-trial detention or (ii) the extension of such detention. The exception applies unless it is deemed necessary to avoid their transport due to serious risks of public disorder or the potential for escape, as outlined in Article [L.334-6](#) of the Code of Juvenile Criminal Justice.
- However, the hearing for the extension of the detention of a minor under sixteen years old may be conducted via audiovisual telecommunication if the offence they are suspected of committing or attempting to commit is a crime or a misdemeanour punishable by a sentence of five or more years' imprisonment, in accordance with the provisions of Article 706-71 of the Code of Criminal Procedure (Article [L.413-10](#) of the Code of Juvenile Criminal Justice).

In all other criminal matters involving children (suspected or accused of a crime), the provisions of Article 706-71 of the Code of Criminal Procedure apply. Judges are not legally obligated to consider factors such as the child's age, maturity, or the nature of the case. They decide on a case-by-case basis. Judges are, however, encouraged to employ videoconferencing in situations where (i) the procedural implications for the person concerned are minimal and they are not required to discuss the charges, such as during the notification of certain expert reports to detainees, or (ii) transporting an individual to court poses significant risks to prison administration staff, judicial personnel, and, more broadly, the general public.

If a digital hearing is used, safeguards can be put in place to protect the child's privacy and psychological well-being – see **Section 2** below.

#### **1.4 Are statistics available to inform an understanding of how widespread the use of digital court hearings are for criminal matters involving children?**

There are no public statistics available in France to understand the extent of the use of digital court hearings for criminal matters involving children.

## **2 Safeguards for Children**

### **2.1 What safeguards are available for digital hearings in criminal cases where children are suspects of a crime or defendants?**

Apart from the provisions described above regarding the prohibition of digital hearings to decide on (i) the placement of a minor in pre-trial detention or (ii) the extension of such detention, French law does not offer specific protections applicable to digital hearings in criminal cases involving children. The safeguards outlined in Article 706-71 of the Code of Criminal Procedure and the Circular on the Use of Videoconferencing in Criminal Matters apply equally to adults and children. Based on this, the following protections are applicable:

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<sup>28</sup> [Article 706-71-1 of the Code of Criminal Procedure.](#)

- The use of digital court hearings must be justified by the proper administration of justice (this condition will be assessed in the context of the child's specific situation).
- If a minor becomes an adult during the course of legal proceedings, a digital hearing may be conducted, provided the newly-turned adult does not object.
- Digital court hearings must ensure the confidentiality of communications.
- The child's lawyer or interpreter must be able to participate in the digital court hearing either (i) alongside the competent magistrate, jurisdiction, or commission or (ii) alongside the child.
  - When the lawyer participates in digital court hearings alongside the competent magistrate, jurisdiction, or commission, they must be able to communicate with the child confidentially using the audiovisual telecommunication means.
  - When the lawyer participates in digital court hearings alongside the child, a copy of the entire file must be made available to them in the detention premises (as the case may be) unless a copy of this file has already been provided.
- Courts must ensure that:
  - Lawyers have access to a room within the court premises equipped with videoconferencing equipment, enabling them to confer with their clients before the hearing begins. This best practice should help eliminate the need for adjournments to conduct confidential discussions in the courtroom.
  - Local IT technicians (deployed in each court since 2024) are available for the preventive maintenance of videoconferencing equipment to minimise the risk of technical issues. In the event of a technical incident during a digital hearing, these technicians should be called upon to quickly perform corrective maintenance on the equipment.
- The conditions of the hearing must ensure the child's right to present their own observations.

Additionally, digital court hearings must incorporate the essential legal protections afforded to children suspected or accused of a crime. While these safeguards are not exclusive to digital proceedings, the judiciary should always consider the following legal measures when conducting digital court hearings involving children:

- The child's legal representatives should be present at all court hearings and, if necessary, during the child's interviews and interrogations. When it is not possible or desirable for the minor to be accompanied by their legal representatives, the minor is accompanied by another appropriate adult designated by the child or by the court (Articles [L.311 and seq.](#), Code of Juvenile Criminal Justice);
- It is recommended to use child-friendly language, make procedural adjustments, and ensure the environment is as supportive as possible to minimise the stress or intimidation that the court process might impose on children (see the [Guide on Juvenile Justice](#)).

### 3 Assessment of Effectiveness of Current Practices

#### 3.1 Have there been any reviews, commentary or critique on the effectiveness, or impact of online hearings in the child justice system in this jurisdiction?

There are currently no publicly available reviews, commentary, or critique identified on the effectiveness or impact of online hearings in the child justice system in France.

#### 3.2 Are there any legal cases or complaints on the infringement of procedural rights of a child due to digital practices brought before the national courts? If not, are there any reports or news articles covering similar incidents?

*Cour de cassation*, 16 October 2024, No. [24-84.966](#):

The hearing on the pre-trial detention of a minor who reaches adulthood during the proceedings may be conducted via audiovisual telecommunications only when there is a serious risk to public order or a potential escape, in line with the provisions of the Juvenile Criminal Justice Code. However, if the individual, now an adult, is assisted by a lawyer and does not oppose this mode of appearance, they are considered to have waived their right to contest this procedural irregularity.

## **PRI: Digitalisation of child justice practices (criminal cases involving children as suspect / defendant) – GERMANY**

### **1 Introduction and Scope of Application of Digital Court Hearings**

#### **1.1 When were digital court hearings introduced in Germany and why?**

Video hearings for criminal proceedings were introduced in 1998 with the primary aim of protecting witnesses rather than enhancing efficiency. This approach is distinct from other European countries, as it permits only witnesses to be heard remotely during criminal cases. Despite the legal framework being established under Section 247a of the Code of Criminal Procedure (*Strafprozessordnung*), video hearings were infrequently utilised before the Covid-19 pandemic. The pandemic prompted a more widespread adoption of digital tools also within criminal courts out of necessity.

For civil court proceedings, digital hearings were introduced in 2002,<sup>29</sup> with a view to improved efficiency and cost reduction. Despite early introduction, widespread adoption faced obstacles due to technical limitations (i.e. courts not being connected to the internet) and resistance from judges who preferred traditional methods. The Covid-19 pandemic emphasized the necessity of digital tools', accelerating their use in civil courts. From July 2024, a further amendment to the Civil Procedure Code strengthened judges' authority to order video hearings.<sup>30</sup>

#### **1.2 What laws, regulation or guidance allowed for the introduction of digital court hearings, particularly for children who are suspected or accused of a crime?**

German criminal main proceedings generally require the physical presence of all necessary participants i.e. the judge, the public prosecutor, the defendant and, in cases of mandatory defence, their counsel, according to Section 226 of the Code of Criminal Procedure. This follows from the immediacy principle (*Unmittelbarkeitsgrundsatz*), which is one of the main principles of criminal procedure – applicable in any German criminal procedure. This is why, up to now, there is no central norm allowing for main proceedings to being conducted via video and audio transmission.

Nonetheless, Section 247a of the Code of Criminal Procedure, introduced through the Witness Protection Act (*Zeugenschutzgesetz*), allows for witnesses to testify digitally, when there is an imminent risk of serious detriment to their wellbeing by being present in the courtroom during a main hearing. This does exclusively apply to witnesses and does not extend to other participants in the main hearing.

For appeal proceedings a different approach was introduced with the Act for Further Digitalisation (*Gesetz zur weiteren Digitalisierung der Justiz*) an amendment, to Section 350 of the Code of Criminal Procedure, which will start to apply as of 17 July 2025, introducing video hearings in appeal proceedings. This allows defendants, their legal representatives,

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<sup>29</sup> Via Section 128a of the Civil Procedure Code (*Zivilprozessordnung*) on 1 January 2002. This provision was aimed at modernising legal processes by allowing digital video conferencing technology during oral hearings. It enabled procedural actions to be taken outside the courtroom, breaking with traditional principles of appearing (physically) before the court in favour of process economy.

<sup>30</sup> An amendment to Section 128a of the Civil Procedure Code following the Act to promote the use of videoconferencing technology (*Gesetz zur Förderung des Einsatzes von Videokonferenztechnik*). This law, effective from 19 July 2024, strengthened judges' authority to order video hearings. Moreover, judges are now obliged to provide justification when denying such requests from other parties involved in the proceeding. However, this does not extend to other participants being entitled to demand video hearings themselves.

defence lawyers, public prosecutors, and other relevant parties to participate in an appeal proceeding from another location if requested. The new Section 350 paragraph 3 of the Code of Criminal Procedure requires hearings to be broadcasted in video and audio both to these locations and into the courtroom. Participants can join via video conference if they are in an official room or a lawyer's office. The change aims to enable more participants to attend proceedings remotely, particularly benefiting defendants who are being detained. Since the defendant has already appeared physically during the previous instance, the immediacy principle (*Unmittelbarkeitsgrundsatz*) is preserved, and as the court of appeal only judges on the law and reviews legal mistakes of the previous instance but not on the facts anymore, there is less necessity for physical presence in appeal proceedings. Consequently, having the defendant present in the room is less relevant as the judges will not conduct a hearing of evidence. This can be a chance to make proceedings more effective and less complicated in preparation.<sup>31</sup>

Furthermore, as of 2021, Section 463e of the Code of Criminal Procedure allows oral hearings of convicted individuals in court decisions following the main procedure (after the sentencing) to be conducted via video conferencing. This provision aims to reduce the risk of escape attempts by detained persons during transportation to and from courtrooms. Additionally, it seeks to enhance the efficiency and safety of conducting such hearings by eliminating logistical challenges associated with physical presence. This provision does also apply to criminal procedures of minors. However, it is not exclusively applicable on such cases.

### **1.3 Are digital court hearings mandated for all types of courts and matters, or are there any specific rules for courts or matters involving children (and specifically, criminal matters where a child is suspected or accused of a crime (i.e. a suspect or a defendant)?**

In Germany, digital court hearings are not mandated for any criminal cases, this includes those involving children suspected or accused of a crime. As noted above, German Criminal Procedure Law generally requires the physical presence of all necessary participants in criminal proceedings, including minors (following from the principle of immediacy – *Unmittelbarkeitsgrundsatz*). Section 226 of the Code of Criminal Procedure states that the main hearing must be conducted with the uninterrupted presence of those individuals required to reach a judgment. The term “presence” in the German law is understood as physical presence which means that the suspect must be in the courtroom.

However, Section 70c of the Youth Courts Act (*Jugendgerichtsgesetz*) mandates that interrogations of an accused minor must be conducted in a manner appropriate to the child's age and developmental and educational level. The Youth Courts Act applies, according to Section 1, to minors aged 14 to 18 years and young adults who have not yet reached the age of 21. Minors under 14 years can not be criminally charged, as Section 19 of the Criminal Code provides for an irrefutable presumption that they are not culpable.

To ensure an appropriate manner of proceedings involving children as suspects or defendants and to protect them effectively, Section 70c allows for audio-visual recording of interrogations outside the main trial. This is an exception to Section 169 of the Courts Constitution Act (*Gerichtsverfassungsgesetz*), which establishes the principle that hearings shall be public. It generally prohibits audio, television, radio and film recordings intended for public presentation or publication. In cases in which the presence of the defending counsel

<sup>31</sup> See “Bundesgesetzblatt Teil I - Gesetz zur weiteren Digitalisierung der Justiz - Bundesgesetzblatt”, page 3.



is legally required, but he / she is not present during non-judicial interrogations, Section 70c mandates that the interview must be recorded. This requirement ensures documentation of both the content and conduct during these interviews, offering more protection for interrogated minors who are suspected or accused. Section 70c has been implemented following the EU Directive 2016/800, where the EU law has required national jurisdictions to set safeguards for children in place, including the possibility to record hearings (though this is not mandated).

#### **1.4 Are statistics available to inform an understanding of how widespread the use of digital court hearings are for criminal matters involving children?**

Currently, there are no official statistics available regarding the use of digital court hearings for criminal cases involving children as suspects or defendants. This is in part due to the relatively recent introduction of Section 70c of the Youth Courts Act (*Jugendgerichtsgesetz*) in 2019. As such, widespread implementation and tracking have yet to be fully realised. Moreover, the judicial system in Germany is characterised by significant independence among judges, meaning decisions on the application of digital tools can vary. This independence makes it challenging to collect uniform statistics, as practices can differ widely between individual cases. While this autonomy aims to preserve procedural fairness and integrity, it results in a lack of coordinated records on digital practices within the justice system.

## **2 Safeguards for Children**

### **2.1 What safeguards are available for digital hearings in criminal cases where children are suspects of a crime or defendants?**

Generally, the Youth Courts Act is the primary legislation governing juvenile justice in Germany. It does not provide for any specific safeguards protecting children in digital hearings during criminal proceedings, as digital hearings are currently not yet performed in main proceedings. Nonetheless, the Youth Courts Act does provide for provisions setting out general safeguards for children in hearings, to ensure procedures are adapted to suit their age and circumstances. The main trials are conducted with strict confidentiality requirements, protecting the identity and privacy of the children involved. For example, according to Section 48 of the Youth Courts Act, hearings and announcements of decisions must not be open to the public. Besides those general safeguards for children, no specific safeguards for digital hearings exist. Information regarding safeguards in cases with digital hearings where children are suspects or defendants specifically is therefore not available.

## **3 Assessment of Effectiveness of Current Practices**

### **3.1 Have there been any reviews, commentary or critique on the effectiveness, or impact of online hearings in the child justice system in this jurisdiction?**

Since digital hearings in criminal cases are not permitted during the main trial, there are no reviews into their effectiveness.

However, the introduction of the new amendment to Section 350 of the Code of Criminal Procedure has sparked ongoing discussions regarding its benefits and appropriateness in

the legal literature.<sup>32</sup> Critics primarily challenge the emphasis on effectiveness, arguing that criminal proceedings, which have profound impacts on human lives, should not prioritise speed and efficiency over careful deliberation and fairness.

Furthermore, regarding children as suspects or defendants, experts<sup>33</sup> raise concerns about the complexities in maintaining privacy as mandated by Section 48 of the Youth Courts Act and highlight the challenges in enforcing this exclusion effectively, particularly when hearings are broadcasted to locations beyond the direct supervision and control of court authorities. This potential for unauthorised access poses a significant risk to the confidentiality and integrity of the judicial process, undermining the protective measures intended for young individuals.

**3.2 Are there any legal cases or complaints on the infringement of procedural rights of a child due to digital practices brought before the national courts? If not, are there any reports or news articles covering similar incidents?**

No cases have been brought before national courts yet, and there is no report covering similar incidents.

To sum up, German Criminal Procedure Law currently does not permit digital hearings in main proceedings. Nonetheless, significant changes are on the horizon as an amendment to Section 350 of the Code of Criminal Procedure will allow for digital hearings in appeal proceedings starting in July 2025. This shift reflects broader efforts to integrate digitalisation within the judicial process, aiming to improve efficiency while still safeguarding procedural integrity.

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<sup>32</sup> In their article "Zwei Schritte vor, ein Schritt zurück: Das Gesetz zur weiteren Digitalisierung der Justiz" (LTZ 2024, no. 308), Hagemeyer-Witzleb and Maroldt address the scepticism surrounding this amendment.

<sup>33</sup> See Dr. A. Allgayer in "Stellungnahme zu BT-Drs. 20/10943", page 8

## PRI: Digitalisation of child justice practices (criminal cases involving children as suspect / defendant) – GREECE

### 1 Introduction and Scope of Application of Digital Court Hearings

#### 1.1 When were digital court hearings introduced in Greece and why?

Digital court hearings were introduced in Greece in 2024 through Law 5090/2024, which sought to modernise the Criminal Code and the Criminal Procedural Code, and to make the criminal justice system more efficient in general.

The Ministry of Justice issued a press release in March 2025 confirming that the first digital hearing in a criminal trial had taken place (see here: [Πρώτη εικονοτηλεδιάσκεψη στο πλαίσιο της ποινικής δίκης – Υπουργείο Δικαιοσύνης](#)).

#### 1.2 What laws, regulation or guidance allowed for the introduction of digital court hearings, particularly for children who are suspected or accused of a crime?

Article 82 of Law 5090/2024, which introduced a new Article 238A of the Criminal Procedure Code. The new Article 238A reads as follows:

*“Article 238A Examination by technological means*

*1. Any testimony of any person, such as a witness, expert, technical advisor, interpreter, person present in support of the prosecution, as well as any explanations provided by a suspect without taking an oath or the questioning/plea of the defendant, may be conducted by the use of technological means, without the physical presence of that person, when there is a serious impediment to appearance or a risk from the postponement or for the safe conduct of the procedure.*

*2. The examination of the persons of para. 1 is carried out in the above manner either ex officio or at the request of the person under examination.*

*3. The questioning/plea of the defendant is carried out in the above manner, only if the defendant or the defence attorney representing him does not object. The presiding judge may, upon a proposal from the prosecutor, decide the exclusion of the defendant's in-person appearance in court, only in the case of a felony and in particular in multi-person trials or trials involving organized crime or having a serious social impact. An appeal may be brought before the entire court against the decision of the second sentence [of this para.] which is pronounced in open court, in accordance with paragraph 2 of article 335.*

*4. The examination in the above manner shall be conducted in the presence of an investigating officer or court secretary in a specially designed office at the place of residence of the person referred to in paragraph 1, which shall have the appropriate technical specifications for conducting videoconferencing, as regulated by a joint decision of the Ministers of Justice and Citizen Protection, which shall determine all the details of its application in criminal proceedings. In any case, it shall be ensured that the defendant follows the proceedings without interruption and has effective and confidential communication with their lawyer.”*

In addition, Joint Ministerial Decision 262 of 10 March 2025 provides further details on the procedure under which the examination of Article 238 para. 4 of the Criminal Procedure Code can take place. This Decision does not include any further provisions specific to children.

**1.3 Are digital court hearings mandated for all types of courts and matters, or are there any specific rules for courts or matters involving children (and specifically, criminal matters where a child is suspected or accused of a crime (i.e. a suspect or a defendant)?**

There is no specific information on whether digital hearings are mandated specifically for criminal cases involving children, however Greece has aimed to adopt a child-friendly approach in criminal proceedings concerning child suspects and defendants. It should be noted that Article 238A of the Criminal Procedure Code, which provides for digital hearings, allows for the person under examination to request such examination by technological means. It also allows for a defendant or their attorney to object to examination by such means, in cases where this procedure is proposed ex officio / by the court.

**1.4 Are statistics available to inform an understanding of how widespread the use of digital court hearings are for criminal matters involving children?**

Such statistics are not readily available, considering that the relevant legal framework for digital hearings is still very nascent. In view of the recent Ministry of Justice press release regarding the first use of videoconferencing in a criminal trial, the practice (in general, not restricted to child defendants) seems to be in its infancy still.

**2 Safeguards for Children**

**2.1 What safeguards are available for digital hearings in criminal cases where children are suspects of a crime or defendants?**

As described above, safeguarding mechanisms (although not specific to children suspects / defendants) include the availability of effective legal representation, the ability of the defendant to object to the use of technological means (videoconferencing) to carry out a hearing, and the possibility to appeal the presiding judge's decision to exclude the defendant from appearing in court in person.

**3 Assessment of Effectiveness of Current Practices**

**3.1 Have there been any reviews, commentary or critique on the effectiveness, or impact of online hearings in the child justice system in this jurisdiction?**

As described above, the legal framework for digital hearings in criminal trials is still nascent, so no such review or commentary is readily available.

**3.2 Are there any legal cases or complaints on the infringement of procedural rights of a child due to digital practices brought before the national courts? If not, are there any reports or news articles covering similar incidents?**

As described above, the legal framework for digital hearings in criminal trials is still nascent, so no such information is readily available.

## PRI: Digitalisation of child justice practices (criminal cases involving children as suspect / defendant) – HUNGARY

### 1 Introduction and Scope of Application of Digital Court Hearings

#### 1.1 When were digital court hearings introduced in Hungary and why?

Digital court hearings (closed telecommunications hearings) were first introduced in Hungary in 2003 via legislative reform in 2002,<sup>34</sup> primarily as a means of witness protection. In practice, the use of such hearings was negligible, pursuant to the rigidity of the legislation and the lack of technical conditions.

In 2017, a modern digital hearing system was introduced with the new Criminal Procedure Act, which sought to redefine digital hearings (via videoconference) from only being used in exceptional circumstances to being used in everyday court proceedings. Roll-out occurred in 2018.<sup>35</sup> Digital hearings have now become the primary way of securing the presence of detained defendants.

The COVID-19 pandemic further accelerated the adoption of digital solutions in judicial proceedings. During the state of emergency, Government Decree 74/2020 (III. 31.), effective from 1 April 2020, introduced special procedural rules that enabled the holding of e-hearings.

#### 1.2 What laws, regulation or guidance allowed for the introduction of digital court hearings, particularly for children who are suspected or accused of a crime?

The introduction of digital court hearings was supported by various pieces of legislation, some of which is no longer in force<sup>36</sup>. For current purposes, the framework for digital hearings is spread across several pieces of legislation and guidelines, including:

- **Act XC of 2017 on the Code of Criminal Procedure** (<https://njt.hu/jogszabaly/2017-90-00-00>) – The New Criminal Procedure Act, which came into force on 1 January 2018 and introduced more detailed regulations on the use of electronic communication tools in criminal proceedings. The act allows for video conferencing in court proceedings under specific conditions, primarily when personal attendance is impractical or unnecessary;
- **Decree No. 12/2018 (VI. 12.) of the Ministry of Justice on the rules applicable to certain acts of criminal procedure and persons participating in criminal proceedings** (<https://njt.hu/jogszabaly/2018-12-20-06>) – The decree regulates the use of telecommunication equipment and the recording of procedural acts.
- **Decree No. 14/2002 (VIII.1) on the Rules of Court Procedure of the Ministry of Justice** (<https://njt.hu/jogszabaly/2002-14-20-06.39#PR>) – The decree contains

<sup>34</sup> The Act XIX of 1998 on criminal procedure ("Former Criminal Procedure Act") was modified by Act I of 2002 to include the regulations regarding the possibility to hold hearings via a closed telecommunications network

<sup>35</sup> In September 2018, the President of the National Office for the Judiciary launched a project to connect courtrooms with international bodies, domestic partner institutions and other courts by means of modern technology. The project has established 215 remote hearing endpoints across Hungary. The system was considered unique in Europe, as it was available not only in courts, but also in district and government offices, police stations, penitentiaries and even in public administration bodies. The priority was to have at least one remote hearing endpoint in each court.

<sup>36</sup> For example, the former Criminal Procedure Act was amended in 2002 to enable hearings via close telecommunications networks, and further rules were introduced in 2015 on electronic document management etc.. Additionally, various temporary emergency measures were in place during the COVID-19 pandemic.

provisions on the inspection of visual and audio recordings, the provision of information by means of a hearing and the making of copies thereof.

**Judicial Guidelines and Internal Regulations, which the National Office for the Judiciary (OBH)** were also issued to guide the practical implementation of remote hearings.

– Hungarian courts have developed internal protocols for video hearings, particularly regarding technical requirements, procedural safeguards, and data protection. One of the key guidelines is the President of the **OBH's Recommendation 6/2015. (X. 5.)** (<https://birosag.hu/obh/ajanlas/62015-x5-obh-elnoki-ajanlas-tavkozlesi-halozat-utjan-lefolytatott-tavmeghallgatasrol-es>), which provides recommendations for the use of electronic communication in court procedures. These guidelines are continuously updated to reflect current legal and technological standards.

### **1.3 Are digital court hearings mandated for all types of courts and matters, or are there any specific rules for courts or matters involving children (and specifically, criminal matters where a child is suspected or accused of a crime (i.e. a suspect or a defendant)?**

The new Act of Criminal Procedure provides the possibility for remote hearings in certain circumstances, but it does not impose a general obligation to conduct hearings digitally for juvenile<sup>37</sup> defendants.

In practice, the personal presence of the juvenile is preferred in criminal proceedings to ensure their effective participation, the protection of their rights, and proper legal representation. The Hungarian legal system emphasizes the individual assessment of the juvenile's needs and circumstances, and courts typically prioritise in-person hearings unless exceptional circumstances justify the use of remote technology. In addition, digital hearings may raise questions and problems in relation to the enforcement of the rights of the accused, in particular the right to a fair trial, such as whether appropriate technical, physical and interpreting assistance is provided during the tele-hearing for accused persons belonging to vulnerable groups (e.g. juveniles).

The Hungarian approach is intended to be consistent with international human rights standards. The Committee on the Rights of the Child has recognized<sup>38</sup> that the lack of in-person contact in digitised court proceedings may negatively impact rehabilitative and restorative justice measures, which rely on developing relationships with the juvenile.

### **1.4 Are statistics available to inform an understanding of how widespread the use of digital court hearings are for criminal matters involving children?**

Research reports highlight the rapid digitalisation of legal process, but do not include any specifics relating to demographics.

Challenges relating to implementation of legislation and empirical data regarding remote hearings are addressed in the [‘Justice on Screen’ report](#) by the Hungarian Helsinki Committee (HHC). According to the HHC's research, before the COVID-19 pandemic,

<sup>37</sup> **NB:** The term “juvenile” is used here to refer to a person who is between 12 and 18 years and whose action is not de-criminalised on the grounds of “childhood” (a concept under Hungarian criminal law). The concept “childhood” (i.e. being under 14) is a ground for non-criminalisation (the court will terminate the proceedings by a final order), except in the case of serious crimes. For serious crimes (such as homicide, manslaughter, battery, assault of public officials, terrorism, etc.) if the child is twelve at the time of the offence and has the capacity to understand the nature and consequences of their acts then they will be punishable.

remote hearings were not widely used in criminal proceedings across the EU, including in Hungary as well. However, the situation changed drastically due to the pandemic, leading to an increase in digital court proceedings. Despite the expansion of remote hearings, the research found serious deficiencies in the available infrastructure. For example, in the penitentiary system, only 63 devices were available in 2021 to conduct remote hearings across a system housing around 18,000 detainees. Furthermore, no remote hearing endpoints existed in police jails, and between 2018 and 2021, no remote hearings were conducted in police detention facilities.

Although the report does not contain child-specific data, the general lack of infrastructure and digital endpoints suggests that the use of remote hearings for juvenile defendants is likely very limited. Additionally, concerns were raised about procedural rights, such as whether defendants in remote settings can properly follow the proceedings, consult confidentially with their defense counsel, or experience a fair trial.

Potentially relevant publications can also be accessed via official platforms such as the [National Office for the Judiciary](#), which offers general guidelines on electronic communication and processes.

## 2 Safeguards for Children

### 2.1 What safeguards are available for digital hearings in criminal cases where children are suspects of a crime or defendants?

The 'Child-centred Justice' programme, run by the National Office for the Judiciary, focuses on protecting children's interests in court procedures. Whilst not explicitly concerning digital hearings, this programme includes general principles, such as educational initiatives for judges dealing with cases involving minors.

EU Directive 2016/800 on procedural safeguards has also been fully implemented into the new Criminal Procedure Act to apply to all criminal proceedings involving juveniles, including digital hearings.<sup>39</sup>

In Hungary, juvenile criminal proceedings are conducted separately from adult criminal proceedings. Specifically, only judges specialised in juvenile cases can preside over proceedings involving juveniles, including digital hearings, ensuring a certain level of expertise and sensitivity toward the juvenile's specific needs.

Hungarian literature emphasizes several further practical considerations in general (i.e. not specifically for criminal procedures) regarding digital hearings:

- Ensuring that digital hearings involving juveniles occur exclusively through the officially approved and secure ViaVideo system, preventing the use of less secure platforms such as Skype for Business, which pose risks due to limited judicial oversight and potential unauthorised influence.

<sup>39</sup> This provides various minimum standards for EU Member States on the treatment of children in criminal proceedings. It specifies various rights to: information, legal assistance, individual assessment, medical examination, privacy, to be accompanied by someone with parental responsibility, to attend and participate in their own trial, and to state-sponsored legal aid, as well as protections in the context of audiovisual recordings, limitation on deprivation of liberty, that proceedings should occur in a timely fashion etc.

- Ensuring juveniles' rights to express themselves freely and observe non-verbal cues—such as gestures or signs of stress—emphasizing why in-person or adequately supervised digital hearings are crucial.
- The judiciary is encouraged to adapt to new forms of evidence (such as digital platforms like Messenger, SMS, Facebook posts, or TikTok videos) and ensure child-friendly communication, considering the child's comfort and the procedural reliability of testimonies.

### **3 Assessment of Effectiveness of Current Practices**

#### **3.1 Have there been any reviews, commentary or critique on the effectiveness, or impact of online hearings in the child justice system in this jurisdiction?**

We have not found any formal reviews or commentary regarding the effectiveness of the current practices regarding juvenile defendants.

However, several reviews and studies have examined in general the effectiveness of digital court hearings in Hungary, particularly their impact on procedural fairness, judicial efficiency, and security. In addition, both international human rights bodies and domestic legal experts emphasize the need to balance efficiency with procedural safeguards, particularly for vulnerable groups such as juvenile.

A Hungarian Helsinki Committee (HHC) report highlights that remote hearings are primarily intended to improve judicial efficiency by ensuring procedural steps can continue without unnecessary delays.<sup>40</sup> According to their research, legal professionals interviewed noted that remote hearings can help prevent excessive delays in criminal proceedings, as they allow key participants to attend without being physically present.

However, the report also raises concerns about the impact of digital hearings on defendants' rights. In some cases, digital hearings have reduced fair trial guarantees, particularly when defendants were required to participate via voice-only connections, limiting their ability to fully understand or engage with the proceedings. Additionally, defendants are not always given the option to request in-person hearings, which could restrict their right to a fair trial.

Another study published in the Prison Review<sup>41</sup> discusses the logistical advantages of digital hearings, particularly in cases involving detainees. The article highlights that digital hearings significantly reduce security risks and transport costs, as they minimise the need for moving high-risk prisoners between facilities. This is particularly relevant for cases involving dangerous offenders, where transportation requires special security measures, such as police escorts and armored vehicles.

At the same time, the Prison Review article also acknowledges that digital hearings cannot fully replace the benefits of in-person proceedings, especially in cases where personal engagement with the court is necessary for rehabilitative or procedural reasons. The Office of the United Nations High Commissioner for Human Rights has similarly noted that the removal of face-to-face interactions in court proceedings can have negative consequences for rehabilitative and restorative justice measures, particularly for juvenile defendants.

<sup>40</sup> Available here: [https://helsinki.hu/en/wp-content/uploads/sites/2/2020/11/HHC\\_remote\\_justice\\_HUN\\_211130.pdf](https://helsinki.hu/en/wp-content/uploads/sites/2/2020/11/HHC_remote_justice_HUN_211130.pdf)

<sup>41</sup> Available here (pages 15-25): <https://bv.gov.hu/sites/default/files/Börtönügyi%20Szemle%202018%204.pdf>



**3.2 Are there any legal cases or complaints on the infringement of procedural rights of a child due to digital practices brought before the national courts? If not, are there any reports or news articles covering similar incidents?**

Currently, there are no publicly available records or reports indicating that legal cases or formal complaints specifically related to the infringement of procedural rights of children due to digital hearings have been brought before Hungarian national courts. A thorough search of available Hungarian legal databases, NGO reports, and recent research publications, including those by the Hungarian Helsinki Committee, has not revealed documented cases explicitly dealing with juvenile defendants' rights being infringed by digital hearings.

## **PRI: Digitalisation of child justice practices (criminal cases involving children as suspect / defendant) – ITALY**

### **1 Introduction and Scope of Application of Digital Court Hearings**

#### **1.1 When were digital court hearings introduced in Italy and why?**

While digital court hearings (in written form or via remote communication) were initially introduced via emergency legislation in 2020 in response to the COVID-19 pandemic, the process to digitalise court hearings in Italy more generally began much earlier – in 2012 – under a process called “*Processo Civile Telematico*”.<sup>42</sup> Following the COVID-19 pandemic, steps were taken to codify this approach through the introduction of permanent legislation in 2022.

#### **1.2 What laws, regulation or guidance allowed for the introduction of digital court hearings, particularly for children who are suspected or accused of a crime?**

Digital hearings in criminal cases were introduced permanently in 2022 by the so-called “*Cartabia Reform*” and further legislation in 2024, which amended the Code of Criminal Procedure.<sup>43</sup>

Article 133-bis of the Code of Criminal Procedure introduces a general provision for remote hearings,<sup>44</sup> and Article 133-ter regulates the methods and procedural guarantees of remote participation.

#### **1.3 Are digital court hearings mandated for all types of courts and matters, or are there any specific rules for courts or matters involving children (and specifically, criminal matters where a child is suspected or accused of a crime (i.e. a suspect or a defendant)?**

Digital court hearings are not mandatory and judges have discretion as to when they are used in criminal cases where the child is suspected or accused of a crime.

The Code of Criminal Procedure (in Article 133-ter) sets out certain generally applicable safeguards, which are described further in Section 2.1 below.

#### **1.4 Are statistics available to inform an understanding of how widespread the use of digital court hearings are for criminal matters involving children?**

No specific statistics are available for use of digital court hearings for criminal cases where the child is a suspect or defendant of a crime.

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<sup>42</sup> Early developments included the introduction of Law Decree no. 179/2012 which provided that, as of 30 June 2014, proceedings could be initiated by electronic means before the courts of first instance and, as of 30 June 2015, before the courts of appeal.

<sup>43</sup> Article 133-bis and ter of the Code of Criminal Procedure were introduced by Article 8 of the so called “*Cartabia Reform*” (D.Lgs. 10 ottobre 2022 n. 150) and the first period of art 133-ter was amended by art. 2, comma 1, lettera c) of the D. Lgs. 19 march 2024, n. 31.

<sup>44</sup> ‘1. Unless otherwise provided, when the judicial authority orders that an act be performed remotely or that one or more parties may participate remotely in the performance of an act or the holding of a hearing, the provisions of article 133-ter shall apply.’

## **2 Safeguards for Children**

### **2.1 What safeguards are available for digital hearings in criminal cases where children are suspects of a crime or defendants?**

There are no specific provisions in relation to digital hearings in criminal cases involving juveniles, however Art. 133-ter of the Code of Criminal Procedure provides general safeguards for the use of digital hearings in criminal cases (following the “Cartabia Reform”).

#### **General protections re. digital hearings in criminal cases**

At a high-level Art. 133-ter of the Code of Criminal Procedure covers that:

- Orders that a digital hearing be used have to guarantee the defence counsel the exercise of relevant rights;
- the audiovisual connection between the courtroom or the judicial office and the location of the individuals participating in the remote hearing must be of a manner suitable to safeguard the adversarial process and the effective participation of the parties in the action or hearing, ensuring the simultaneous, effective, and mutual visibility of individuals present in different locations, and allowing each to hear what is being said by others. In cases of public hearings, adequate publicity of actions carried out remotely is ensured. An audiovisual recording of the action or hearing is always arranged;
- the judicial authority will identify locations with suitable technical equipment and logistical conditions for the audiovisual connection (generally a judicial office or a judicial police office, except for the categories of individuals below), and may authorise individuals to remotely connect from a different location after hearing the parties:
  - Detainees, internees, individuals in preventive custody, or confined in prison following arrest or detention, connect from their current location;
  - Defence counsels connect from their offices or another suitable place. It is always ensured that defence counsels or their substitutes have the right to be present in the location where their client is. Equally, the right of the defence counsels or their substitutes to consult privately with each other and the assisted party via suitable technical means is always ensured;
- a judicial officer (or a judicial police officer, who has not been involved in the investigation etc. into the accused) will be present at the location of the remote hearing to certify the individuals’ identity and draft a report on the proceedings (noting compliance with the precautions to ensure safeguards have been followed, and confirming no impediments or limitations to the exercise of relevant rights).

#### **General protections in juvenile criminal cases<sup>45</sup>**

Criminal proceedings against a minor are conducted before the Court for Persons, Minors, and Families (formerly called the Juvenile Court) and are governed by the provisions

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<sup>45</sup> These protections are in addition to the national law implementation of the EU Directive 800/2016 which provides various minimum standards for EU Member States on the treatment of children in criminal proceedings. This specifies various rights to: information, legal assistance, individual assessment, medical examination, privacy, to be accompanied by someone with parental responsibility, to attend and participate in their own trial, and to state-sponsored legal aid, as well

contained in Presidential Decree No. 448 of 22 September 1988. This Decree does not specifically deal with digital hearings, meaning that Art. 133-ter of the Code of Criminal Procedure (as discussed above) applies.

Presidential Decree No. 448/1988 introduces an autonomous framework for proceedings against minors, separate from the provisions of the ordinary procedural code, while respecting the constitutional principles established for the protection of minors.<sup>46</sup> Key principles include that: the communication between the judge and the minor defendant is adequate for their personality and educational needs,<sup>47</sup> those involved in the juvenile criminal proceedings should be specialised in that area (including via use of specific juvenile judicial bodies), the criminal trial should be specific and adapted to be suitable for the individual minor and their overall condition, the criminal trial should be free of punitive and stigmatising characteristics (with a focus instead on rehabilitation and education) that cause unnecessary suffering to the defendant and negatively affect their development, and the process should respect their fundamental rights.

### **3 Assessment of Effectiveness of Current Practices**

#### **3.1 Have there been any reviews, commentary or critique on the effectiveness, or impact of online hearings in the child justice system in this jurisdiction?**

The introduction of online hearings in the child-justice system has been met with significant challenges and critiques regarding its effectiveness and impact.

Critical feedback and issues identified:

- **Infrastructure and Technical Issues:** the transition to the new digital platform (*Sicid*) has been fraught with technical difficulties, disrupting court operations. Both judges and court staff (including, i.e., the Juvenile Court of Brescia) have reported system malfunctions and inefficiencies in handling electronic filings. The prior system (*Sigma*), although outdated, provided a level of functionality that has not been matched by the new platform, which lacks essential features tailored for juvenile justice.<sup>48</sup>
- **Training and Preparation:** Court staff received inadequate training for the new system, leading to inefficiencies. This lack of preparedness has exacerbated the inefficiencies observed in digital court proceedings.<sup>49</sup>
- **Administrative Burden:** The shift to digital has increased workload significantly, especially in urgent cases, with some legal professionals reverting to paper submissions. Courts must now manage documents electronically while facing

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as protections in the context of audiovisual recordings, limitation on deprivation of liberty, that proceedings should occur in a timely fashion etc.

<sup>46</sup> In particular: Articles 2, 3, 30, and 31 of the Constitution and international sources in the field (in particular, among others, UN Declaration on the Rights of the Child of 20 November 1959; United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) of 29 November 1985; Convention on the Rights of the Child of 20 November 1989; United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) of 14 December 1990, etc.).

<sup>47</sup> Including explaining the content and socio-ethical reasons for any decisions.

<sup>48</sup> ['Juvenile telematic trials, what a chaos: "Systems in a tailspin block our work"'](#).

<sup>49</sup> [The ANM on the serious inefficiencies of the electronic process in juvenile offices and at justices of the peace | National Association of Magistrates](#).

obstacles in data migration and system integration. This is particularly critical in urgent cases involving minors where timely decisions are paramount.<sup>50</sup>

- **Legal Procedures and System Adaptation:** legal professionals, including lawyers and judges, have encountered substantial difficulties in electronic submissions, with some courts reverting to paper-based processes as temporary solutions. The challenges have drawn interventions from judicial leadership, with calls for a reconsideration of the wholesale digital transition approach, emphasising the need for a more gradual and strategic implementation process.<sup>51</sup>
- **Institutional Awareness:** Judicial bodies recognise the need for improvements, acknowledging debates over privacy and transparency concerns, particularly impacting minors.<sup>52</sup>
- **Impact of COVID-19 Regulations:** While digital processes ensured continuity, they also challenged procedural fairness, especially critical in child-related cases.<sup>53</sup>
- **Child Participation and Privacy:** There's a balance between children's comfort participating remotely and ensuring they understand proceedings. Privacy concerns about maintaining confidentiality for children are also prominent.<sup>54</sup>
- **Effectiveness and Fairness:** Online hearings can help streamline processes and reduce geographical barriers, offering timely resolutions, but risk losing personal interaction, which is crucial for assessing credibility and understanding nuanced emotional responses, which are vital in child justice settings. Ensuring comprehension without the immediate physical presence of supportive adults is a challenge often highlighted.<sup>55</sup>
- **International Standards:** There's advocacy for maintaining the child's best interests using a hybrid approach to balance digital and in-person elements.
- **Communication Challenges:** Digital hearings complicate communication between children and lawyers, potentially hindering a child's understanding of legal processes. They can result in children feeling disengaged and overwhelmed, thereby affecting the fairness of the proceedings.
- **Need for Child-Centric Approach:** Emphasis is on aligning digital reforms with juvenile needs, ensuring face-to-face hearings remain an integral part of the system which guarantees the best interest of the child accused of an offence.

From a procedural rights perspective, concerns have been raised regarding:

- **Rights of Defence and Procedural Integrity:** The move to virtual formats may compromise trial fairness and the adversarial process, essential under Italian

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<sup>50</sup> ['Juvenile telematic trials, what a chaos: "Systems in a tailspin block our work"'.](#)

<sup>51</sup> ['Juvenile telematic trials, what a chaos: "Systems in a tailspin block our work"'.](#)

<sup>52</sup> [The ANM on the serious inefficiencies of the electronic process in juvenile offices and at justices of the peace | National Association of Magistrates.](#)

<sup>53</sup> [Giuseppe Di Vita, Paolo Lorenzo Ferrara & Alessandra Patti \(2024\) An empirical study of administrative justice at times of COVID-19 in Italy, Regional Studies, Regional Science, 11:1, 558-582; Remote justice before Italian civil courts during Covid-19, Niccolò d'Andrea.](#)

<sup>54</sup> [Videoconferencing in Italian Criminal Proceedings: Reflections on the sidelines of the recent Carabia Reform on Remote Participation, Antonella Falcone \(PhD student in criminal procedure law, University of Messina\).](#)

<sup>55</sup> [Vulnerable individuals, tools for online protection, Children and age verification - Spring Conference 2023](#)

constitutional and procedural law. Concerns focus on how these practices might weaken defendants' rights, particularly impacting the quality and effectiveness of defence.

- **Publicity of Trials:** Using platforms like Microsoft Teams, which aren't universally accessible, could compromise the openness of trials, a fundamental component of public sovereignty in the justice system.
- **Quality of Cross-Examinations and Adversarial Process:** Virtual hearings could dilute the effectiveness of cross-examinations, a crucial element in the Italian confrontation-based legal tradition. The immediacy and orality of hearings are pivotal to maintaining the adversarial nature crucial to fair trials.

**Ensuring Fair Trials:** Critics argue that remote participation might weaken the perception of defendants, witnesses, and their interactions, affecting decisions such as whether to intensify questioning during cross-examinations.

**3.2 Are there any legal cases or complaints on the infringement of procedural rights of a child due to digital practices brought before the national courts? If not, are there any reports or news articles covering similar incidents?**

We are not aware of specific legal cases or complaints, nor news reports or articles covering specific incidents.

## PRI: Digitalisation of child justice practices (criminal cases involving children as suspect / defendant) – NETHERLANDS

### 1 Introduction and Scope of Application of Digital Court Hearings

#### 1.1 When were digital court hearings introduced in Netherlands and why?

Digital court hearings were introduced in the Netherlands from 2007 (through 2005 legislation, the [Besluit videoconferentie](#) (“**Videoconferencing Decree**”). The aim was to modernise judicial proceedings by allowing people to be heard via videoconference—defined broadly as any direct audio-visual connection. The widespread and practical use of videoconferencing in court hearings significantly increased as a result of the COVID-19 pandemic. Emergency legislation, such as the [Tijdelijke wet COVID-19 Justitie en Veiligheid](#) (Temporary COVID-19 Act on Justice and Security), allowed hearings to proceed remotely to prevent delays in legal proceedings while ensuring health and safety. The Temporary COVID-19 Act expired on 1 September 2023, but the pandemic experience has fueled discussions about the permanent integration of digital hearings into the Dutch justice system.

#### 1.2 What laws, regulation or guidance allowed for the introduction of digital court hearings, particularly for children who are suspected or accused of a crime?

[Article 78a of the Dutch Criminal Code](#) (“**DCC**”) and [Article 131a of the Dutch Code of Criminal Procedure](#) (“**DCCP**”) allow individuals to be heard, questioned, or examined via videoconference, as long as a direct audio-visual connection is established. Detailed rules and exceptions are set out in the Videoconferencing Decree which outlines specific situations where videoconferencing may or may not be used.

#### 1.3 Are digital court hearings mandated for all types of courts and matters, or are there any specific rules for courts or matters involving children (and specifically, criminal matters where a child is suspected or accused of a crime (i.e. a suspect or a defendant)?

No, digital court hearings are not mandated in criminal cases involving children who are suspects or defendants. The general principle, as laid down in [Article 495a of the DCCP](#), is that juvenile suspects must be physically present at the court hearing. However, Dutch law does allow digital court hearings in criminal cases involving children, which is subject to judicial discretion. The court must assess whether a digital court hearing is appropriate, taking into account the interests of the child, the nature of the hearing, and the child’s ability to participate effectively.

Moreover, under the Videoconferencing Decree, digital court hearings cannot be used in certain hearings (such as pre-trial detention or substantive hearings) without the consent of the child or their lawyer, unless there are exceptional circumstances—such as security risks—that justify its use. In all cases, the principle of fairness and the child’s right to be heard in person play a central role in the court’s decision.

The version of the Videoconferencing Decree applicable before the COVID crisis stipulated that digital court hearings could not be used at all in cases involving juvenile suspects (from the moment they were taken into custody.) When the COVID crisis started, this prohibition was removed from the Videoconferencing Decree because it was considered that there may be situations in which the use of digital court hearings is in the best interests of the juvenile suspects due to special circumstances, for example if the personal appearance of the minor

is impossible or very difficult due to exceptional circumstances. In such exceptional cases, a digital court hearing allows the juvenile suspect to be heard without having to leave the place where he or she is staying. However, in the [explanatory note](#) to the Decree of 20 March 2020 amending the Videoconferencing Decree, it is stated that the fact that the suspect is a child, is a contraindication that argues against the use of digital court hearings.

#### 1.4 Are statistics available to inform an understanding of how widespread the use of digital court hearings are for criminal matters involving children?

No detailed statistics are readily available for public access.

## 2 Safeguards for Children

### 2.1 What safeguards are available for digital hearings in criminal cases where children are suspects of a crime or defendants?

First of all, it is important to note that:

- i. in criminal hearings, the judiciary (*rechterlijke macht*) is always physically present. The Supreme Court does not allow criminal court cases to take place entirely online. Fully digital hearings therefore do not occur in criminal proceedings, only hybrid hearings. The reference to digital hearings in criminal cases below is therefore in fact a reference to a hybrid hearing; and
- ii. the safeguards determined in the DCCP, are in general also applicable to (i) both pre-trial hearings and trial hearings in court; (ii) juvenile suspects; and (iii) cases to be determined in council, hearing, examining or questioning by videoconference.<sup>56</sup>

In 2019, the EU Directive 2016/800 entered into force in the Netherlands. Following on this, several safeguards for cases where a juvenile suspect is involved were implemented in (a.o.) the DCCP, including:

- **Presence of legal guardians** - ensuring that children have the support and guidance of their legal guardians during (digital) hearings<sup>57</sup>;
- **Use of child-appropriate language** - adapting communication to be understandable and appropriate for children, taking into account their age and cognitive development<sup>58</sup>;
- **Secure digital platforms** - utilising secure and reliable digital platforms to protect the privacy and integrity of the proceedings<sup>59</sup>;
- **Interest of the suspect** - the court must on a case-by-case basis determine whether the use of videoconference is in the best interest of the minor and whether it will not hinder the search for the truth;
- **Similar protection as in physical hearings** - unless a treaty says otherwise, the rules of the DCCP about questioning a (juvenile) suspect by the examining magistrate also apply to questioning by videoconference; and

<sup>56</sup> Article 131a(1) DCCP.

<sup>57</sup> Article 488ab, 491a DCCP.

<sup>58</sup> Article 488a (5) DCCP.

<sup>59</sup> Article 4 Videoconferencing Decree.



- **Additional measures** – if necessary, the competent authorities and the examining magistrate may agree on additional measures to protect the suspect to be questioned, i.e. ensuring that children have access to their legal representatives and can communicate privately with them during a digital hearing.

### 3 Assessment of Effectiveness of Current Practices

#### 3.1 Have there been any reviews, commentary or critique on the effectiveness, or impact of online hearings in the child justice system in this jurisdiction?

##### Report Dutch Council for the Judiciary (2024)

In 2024, a report was published by the Dutch Council for the Judiciary (*Raad voor de Rechtspraak*) which included the results of a survey in which 123 criminal court judges participated.<sup>60</sup>

Firstly, it is important to note that the report indicates that digital hearings involving minors are rare in criminal cases.

The report shows that experiences with digital hearings vary widely as judges' opinions on digital hearings differ. The report lists the following **advantages**:

- Efficient solution, especially for non-substantive hearings, where suspects who are in custody do not have to be transported to court (saving travel time, expenses and the inconvenience and/or emotional strain for children due to the transport);
- Increasing the accessibility of the justice system - hearings do not have to be postponed as often when people are unexpectedly unable to attend, which benefits the progress of the legal process; and
- Digital hearings can reduce the anxiety that juvenile suspects can experience when appearing in a physical courtroom.

However, the report also lists several **disadvantages**:

- Digital hearings are at the expense of the quality of the contact with the litigants, including suspects, as it is more difficult to fully perceive their physical reactions. This could result in a greater sense of distance and sometimes making suspects feel less heard;
- Technical problems, such as faltering connections, poor sound quality or delays in image and sound may not only lead to frustration among all involved, but could also cause delays and disruptions in the hearing;
- Lawyers finding it difficult to consult with their clients during digital hearings;
- Digital hearings have additional limitations with vulnerable suspects because of the lack of physical proximity, which makes it more difficult to recognise emotions and respond properly to the vulnerable suspects; and
- Judges indicated that the presence in a physical courtroom brings more decorum and has a greater impact on minor defendants.

<sup>60</sup> Report Digital Hearings in the Judiciary Status Report 2024 (*Digitale zittingen in de Rechtspraak. Stand van zaken in straf-, jeugdbeschermings-, vreemdelingen-, en toezichtzaken in 2024*), Marijke ter Voert, Marieke Dubelaar, Karen Geertsema, Franz Neumann, Marc Simon Thomas, Sigrid van Wingerden, Eddy Bauw, Lize Glas, Anna Pivaty, (Radboud University, Utrecht University, Leiden University, December 2024).

When asked about the participating judges' preference for a physical or digital hearing, three out of ten judges indicated that their preference depends on the characteristics of the case or the type of hearing. Seven out of ten judges indicated a preference for a physical hearing. Comments made by judges in response to the survey questions show that physical presence remains preferable, especially for overcoming communicative and emotional barriers and ensuring good procedural dynamics.

### **Advisory Report Federal Insititute for the Promotion and Protection of Human Rights**

In January 2023, the Federal Insititute for the Promotion and Protection of Human Rights (**FIRM**) (*Federaal Instituut voor de bevordering en de bescherming van de Rechten van de Mens*) published an advisory report that addressed a the (at that time) draft of the Videoconferencing Decree.<sup>61</sup> The report emphasises the need for informed consent, the right to physical presence, and ensuring a fair trial.

More specifically, the report advised the following:

- **Best interests of the child:** The report emphasises that the "best interests of the child" should always be paramount;
- **Priority to physical participation:** The report advocates for prioritising the physical participation of the child in the judicial process to ensure their effective involvement. This recommendation is in line with the guidelines of the UN Committee on the Rights of the Child, which stress the importance of the child's physical presence to guarantee their active and meaningful participation in the proceedings;
- **Vulnerable situation:** The report highlights the need to consider the vulnerable situation of children when deciding whether to use videoconferencing. It notes that children require special consideration due to their heightened vulnerability; and
- **Effective participation:** The report underscores the importance of ensuring that videoconferencing does not hinder the child's effective participation in the judicial process. It recommends that physical presence should be the norm, especially for children, to avoid any potential negative impact on their ability to engage fully in the proceedings.

Overall, the report calls for careful consideration of the unique needs and vulnerabilities of minors and children in criminal cases, advocating for their physical presence in court to ensure their rights and effective participation are fully protected.

### **3.2 Are there any legal cases or complaints on the infringement of procedural rights of a child due to digital practices brought before the national courts? If not, are there any reports or news articles covering similar incidents?**

There have been very few legal cases and complaints regarding the infringement of procedural rights of children due to digital (hearing) practices in the Netherlands:

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<sup>61</sup> Federal Institute for the Promotion and Protection of Human Rights, Advisory Report on Video Conferencing in Court, 31 January 2023.

- [Supreme Court \(\*Hoge Raad\*\), 15 December 2020](#): The central legal issue was whether a decision made via videoconference adheres to the statutory requirements for judicial decision-making, especially in the sensitive context of juvenile criminal proceedings. The Dutch Supreme Court considered (i) that the law does not explicitly require the physical presence of all litigants during decision-making; (ii) the Court acknowledges the advancements in technology and societal changes that facilitate remote decision-making, provided procedural safeguards are maintained; and (iii) special attention is given to the unique aspects of juvenile criminal cases, emphasising the need for transparency, fairness, and the ability of all parties, including the juvenile defendant, to fully participate in the proceedings.

[Supreme Court Hoge, 3 December 2024](#): The case revolved around the decision to utilise videoconferencing technology in legal proceedings. The Supreme Court evaluated the implications and appropriateness of using videoconferencing, especially in cases involving minors. The court's decision highlights the following critical aspects: impact on minors, the need for specific safeguards and protocols (including ensuring that technology is reliable and the privacy and security of minors is maintained), best interests of the child (the decision to use videoconferencing must prioritise the welfare and rights of the child) and practical considerations (such as the availability of the technology and training of legal professions). The Supreme Court concluded that while videoconferencing can be a valuable tool in legal proceedings, its use, particularly in cases involving minors, must be carefully regulated and monitored. The decision mandates the implementation of robust safeguards to protect the interests and rights of children, ensuring that their participation in the judicial process is fair, supportive, and respectful of their unique needs.

## PRI: Digitalisation of child justice practices (criminal cases involving children as suspect / defendant) – POLAND

### 1 Introduction and Scope of Application of Digital Court Hearings

#### 1.1 When were digital court hearings introduced in Poland and why?

Prior to the COVID-19 pandemic, Poland already permitted the use of digital equipment in civil and criminal proceedings (for instance, conducting sessions remotely or questioning witnesses with the use of technical devices). However, the response to the COVID-19 pandemic and the experience gained during this period have contributed to significant changes (including legislative amendments) and informed ongoing discussions in Poland about the integration of digital tools into regular judicial processes. The country's lockdown restrictions excluded the possibility of traditional in-person hearings and therefore remote hearings became a regular manner of proceeding.

#### 1.2 What laws, regulation or guidance allowed for the introduction of digital court hearings, particularly for children who are suspected or accused of a crime?

The framework for digital court hearings in Poland is outlined across several pieces of legislation and guidance. Laws, regulations and guidance that allowed for the introduction of digital court hearings include:

- COVID-19 emergency legislation, “Anti-crisis Shields” (in Polish: “*Tarcze antykrzysowe*”), included provisions for the judiciary to adapt<sup>62</sup> – in particular “Anti-Crisis Shield 3.0” from 14 May 2020 and “Anti-Crisis Shield 4.0” from 19 June 2020; and the Act of 10 July 2015<sup>63</sup> amending the Act of 23 April 1964 – Civil Code, the Act of 17 November 1964 - Civil Procedure Code and certain other acts
  - In particular, “Anti-Crisis Shield 4.0” allowed for the digital hearings to be used in criminal proceedings. This legislation introduced § 3-9 to Article 374 of the Code of Criminal Procedure, which allowed for a defendant to attend a trial that is conducted remotely through audiovisual communications.
- The Act of 7 July 2023 amending the Act of 17 November 1964 - Civil Procedure Code, the Act of 27 July 2001 - Law on the System of Common Courts, the Act of 6 June 1997 - the Criminal Procedure Code and certain other acts (partially enforced on 14 March 2024);<sup>64</sup>
- Procedural regulations – in particular for criminal proceeding, the Act of 6 June 1997 - Code of Criminal Procedure (“**Code of Criminal Procedure**”)<sup>65</sup>;

<sup>62</sup> [Ustawa o szczególnych rozwiązaniach związanych z zapobieganiem, przeciwdziałaniem i zwalczaniem COVID-19, innych chorób zakaźnych oraz wywołanych nimi sytuacji kryzysowych - COVID-19](https://www.defensoriuris.pl/wp-content/uploads/2020/08/Przewodnik_po_tarczach_antykrzysowych_EBOOK.pdf). Please also see a publication summarising changes introduced by Anti-crisis Shields here:

[https://www.defensoriuris.pl/wp-content/uploads/2020/08/Przewodnik\\_po\\_tarczach\\_antykrzysowych\\_EBOOK.pdf](https://www.defensoriuris.pl/wp-content/uploads/2020/08/Przewodnik_po_tarczach_antykrzysowych_EBOOK.pdf).

<sup>63</sup> Please see a link to the Act: <https://www.infor.pl/akt-prawny/DZU.2015.173.0001311.ustawa-o-zmianie-ustawy-kodeks-cywilny-ustawy-kodeks-postepowania-cywilnego-oraz-niektorych-innych-ustaw.html>. Until the outbreak of the pandemic, the possibility of holding a hearing using means of remote communication in civil litigation was rarely used, because the participants of the proceedings had to appear in person at the building of another court.

<sup>64</sup> <https://api.sejm.gov.pl/eli/acts/DU/2023/1860/text.pdf>.

<sup>65</sup> In particular Article 177, Article 184 § 4, Article 250 § 3b, Article 374 § 3-8, Article 377 § 4, Article 390 § 3-4 and Article 517b of the Code of Criminal Procedure. For completeness, some provisions concerning digital hearings in relation to

There have also been various regulations and guidance on more procedural and technical aspects of utilizing digital hearings. For example, this includes guidance from the Minister of Justice on technical standards and hardware requirements necessary to participate in a remote hearing,<sup>66</sup> on entrusting the Court of Appeal directors with certain tasks relating to the digitalisation of the judiciary's court IT systems,<sup>67</sup> and guidelines / recommendations on practical implementation.<sup>68</sup>

There are no specific regulations on digital court hearings for children who are suspected or accused of a crime. Rather, there are some provisions relating to the use of technical devices in criminal cases which only cover children who are witnesses and/or victims,<sup>69</sup> as well as specific rules for individuals (being adults and juveniles in certain circumstances where they are held responsible based on the same rules as adults (see **Section 1.3**)) that are criminal suspects or defendants.<sup>70</sup>

### 1.3 Are digital court hearings mandated for all types of courts and matters, or are there any specific rules for courts or matters involving children (and specifically, criminal matters where a child is suspected or accused of a crime (i.e. a suspect or a defendant)?

Digital court hearings are not mandated for any types of courts or matters in Poland. Further, the Polish Court<sup>71</sup> has found that the Code of Criminal Procedure does not exclude in advance any categories of cases in which digital hearings would be prohibited (if they meet statutory requirements).

With respect to digital hearings in criminal trials more generally, the decision to conduct a hearing remotely is at the discretion of the court or the presiding judge, who will consider factors such as whether there are technical issues preventing a digital hearing.<sup>72</sup> Further and in exceptional circumstances, if there is a justified risk that the presence of the accused may have an inhibiting effect on the explanations given by their co-accused or the testimony of a witness or an expert witness, the presiding judge may conduct questioning remotely through audiovisual equipment.<sup>73</sup> A digital hearing may be ordered *ex officio* or at the request of a participant.

With respect to criminal proceedings involving children more specifically, there are a few specific procedures that apply in the context of digital hearings:

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criminal law are also regulated in the Act of 24 August 2001 – Code of Proceedings in cases of Offences, for instance, Article 41 § 1, Article 91 § 2a and Article 92a.

<sup>66</sup> See the Announcement from the Minister of Justice dated 5 March 2024: <https://www.gov.pl/web/sprawiedliwosc/du-24-082>.

<sup>67</sup> See the Order of the Minister of Justice dated 30 October 2024 Act: <https://www.gov.pl/web/sprawiedliwosc/du-24-260e>.

<sup>68</sup> During the COVID-19 pandemic, the District Court for Łódź-Śródmieście prepared a technical manual for other courts on how to use the equipment owned in district courts to conduct delocalised court hearings and configure videoconferencing software (see: [https://courtwatch.pl/wp-content/uploads/2020/12/FCWP\\_report\\_online\\_access\\_to\\_courts\\_in\\_poland\\_and\\_selected\\_countries.pdf](https://courtwatch.pl/wp-content/uploads/2020/12/FCWP_report_online_access_to_courts_in_poland_and_selected_countries.pdf)). Other courts also have issued guidelines and instructions on videoconferences (for example, see: <https://www.wroclaw.sa.gov.pl/wideokonferencje.m.mg.385>).

<sup>69</sup> In particular Article 185b in relation to Article 177 § 1a of the Code of Criminal Procedure.

<sup>70</sup> In particular Article 250 § 3b-3f, Article 374 § 4-9, Article 390 § 3-5, Article 517b § 2a-2d and Article 589zj § 2 point 7) of the Code of Criminal Procedure.

<sup>71</sup> Decision of the Polish Supreme Court of 22 June 2022, IV KK 79/22.

<sup>72</sup> Article 374 § 3 of the Code of Criminal Procedure.

<sup>73</sup> Article 390 § 3 in relation to § 2 of the Code of Criminal Procedure.

- As a starting point, in certain kinds of criminal cases,<sup>74</sup> a juvenile witness who at the time of questioning is at least 15 years of age shall be questioned with the use of audiovisual communications remotely if there is a justified concern that the direct presence of the accused at the questioning could have a constraining influence on the testimony of the witness or a negative influence on their psychological condition.<sup>75</sup> In these circumstances, the use of remote questioning is mandatory. However, this does not apply if the witness is a co-accused of the conduct in question, or they have committed an act which is related to the conduct in question.<sup>76</sup> This exception would apply even if the witness is 15 years or older (but under 18 years old).
- For provisional detention proceedings, the in-person appearance in court by a juvenile suspect cannot be waived by use of remote hearings if the suspect is deaf, mute, or blind.<sup>77</sup>
- For completeness, in Polish law, the age for criminal liability of a juvenile is dependent on the type of crime committed.<sup>78</sup> While regulations on the age of criminal liability do not contain provisions concerning digital hearings, there will be situations where juveniles who are suspected or accused of a crime may be held responsible like an adult suspect or accused. In these scenarios, digital hearings provisions which apply to adults may apply to juveniles – for example, Article 390 § 4 of the Code of Criminal Procedure states that when an accused is ordered to leave a courtroom for the duration of the victim's testimony in a case in certain circumstances, the presiding judge shall allow the accused to participate in the trial by means of remote audiovisual equipment.

Accordingly, there are limited specific rules in Polish law on the use of digital hearings where a child is involved as a suspect or accused. There may be some circumstances where judges in Poland have the discretion in deciding whether a digital hearing is appropriate for a specific case involving a child, taking into account the nature of the case.

#### **1.4 Are statistics available to inform an understanding of how widespread the use of digital court hearings are for criminal matters involving children?**

There are no public statistics available to provide an understanding of how widespread the use of digital court hearings is for criminal matters involving children. However, some commentaries discuss remote court proceedings in all types of cases. Please see the following examples:

- “E-TRIALS IN POLISH COURTS: How Has the COVID-19 Pandemic Affected the Work of Polish Courts?”<sup>79</sup> – This report includes responses to survey forms sent to

<sup>74</sup> Being cases related to criminal offences committed with the use of violence or unlawful threat, or an offence against sexual freedom and decency, and against family and guardianship

<sup>75</sup> Article 185b § 2 in relation to Article 185b § 1 and Article 177 § 1a of the Criminal Procedure Code.

<sup>76</sup> Article 185b § 3 of the Criminal Procedure Code.

<sup>77</sup> Article 250 § 3f in relation to Article 79 § 1 point 2 of the Criminal Procedure Code.

<sup>78</sup> See Act of 9 June 2022 on Support and Resocialization of Juveniles. Under Article 2 of the Act, different provisions will apply in each of the following circumstances: (i) Proceedings in cases of demoralisation - for individuals who are at least 10 years old and not yet of legal age; (ii) Proceedings in cases of punishable acts - for individuals who committed such acts after turning 13 years old but before turning 17 years old; (iii) Implementation of educational measures, medical measures, or corrective measures - for individuals for whom these measures have been imposed until the age of 21 years old, unless this Act states otherwise.

<sup>79</sup> [https://hfhr.pl/upload/2021/09/e-rozprawy\\_en\\_ver\\_2.pdf](https://hfhr.pl/upload/2021/09/e-rozprawy_en_ver_2.pdf)

the courts of appeal, the regional courts and select district courts in Poland, and includes commentary on the use of remote trials generally.

- “Poland among the European leaders in the digitization of the judiciary” – This article notes that Poland is ranked third in the use of digital tools in criminal cases within the EU.<sup>80</sup> Regarding criminal cases generally, 85% of arrest cases and 78% of cases conducted in Regional Prosecutor's Offices were already in digital written form (i.e., digital files and records etc.).

## **2 Safeguards for Children**

### **2.1 What safeguards are available for digital hearings in criminal cases where children are suspects of a crime or defendants?**

In Poland there are no specific legal safeguards applicable to digital hearings in criminal cases involving children that are suspects of a crime or defendants. Conducting digital hearings in criminal cases was only recently made possible, as it was introduced as a result of the COVID-19 pandemic.

Rather, there are some general safeguards that apply where digital hearings are used in all criminal matters, and these safeguards will apply to juveniles who may, in certain circumstances, be held criminally liable based on standards that apply to adult offenders. One example of such general safeguards in criminal matters applies where a presiding judge has waived the obligation for an imprisoned defendant to appear at trial in person (such that they are connected to the hearing remotely) – in these circumstances, an alternative party (such as a defence counsel, court clerk, assistant judge or other specific official) must be present at the trial in-person.<sup>81</sup>

There are also some safeguards for children who are accused or suspected of a crime, although these safeguards do not apply specifically to digital hearings. The Code of Criminal Procedure includes specific measures for the treatment of minor children in criminal cases, ensuring that proceedings are adapted to the needs and sensitivities of children. For example, these safeguards include that the conduct of hearings advising should be adapted to reflect the age, health condition and mental age of the accused/suspect;<sup>82</sup> it is mandatory for an accused to have defence counsel if they are under 18 years of age;<sup>83</sup> and when a person under 18 years of age is subject to questioning, procedural actions should be carried out in the presence of a statutory representative, an actual guardian, or an adult designated by the minor.<sup>84</sup>

Lastly, the Minister of Justice has also issued Guidelines which set out safeguards relating to suspects who are under the age of 18 years old. However again, these do not relate to digital hearings specifically. For example, the Minister of Justice's Guidelines cover processes and methodologies which should be used when questioning suspects under the

<sup>80</sup> <https://www.gov.pl/web/sprawiedliwosc/polska-wsrod-europejskich-liderow-cyfryzacji-sadownictwa>

<sup>82</sup> Article 16 § 3 of the Code of Criminal Procedure.

<sup>83</sup> Article 79 § 1 point 1 and § 3 of the Code of Criminal Procedure.

<sup>84</sup> Article 171 § 3 and § 8 of the Code of Criminal Procedure.

age of 18 years old (e.g. how suspects should have the scope of their rights and obligations explained to them).<sup>85</sup>

### **3 Assessment of Effectiveness of Current Practices**

#### **3.1 Have there been any reviews, commentary or critique on the effectiveness, or impact of online hearings in the child justice system in this jurisdiction?**

There are no available reviews commentary or critique on the effectiveness, or impact, of online hearings in the child justice system in Poland. However, commentary which looks more generally into the impact of digital hearings in Poland is available, for example:

- “E-TRIALS IN POLISH COURTS: How Has the COVID-19 Pandemic Affected the Work of Polish Courts?”<sup>86</sup> – This report found that before 2021 criminal divisions of Polish courts very rarely processed cases remotely, there were considerable variations between courts in terms of software used to conduct remote hearings, and there was no coordinated action in training judges and court personnel on how to handle remote hearings and trials;
- “Online Access to Courts in Poland and Selected Countries”<sup>87</sup> – This report presents a number of recommendations, such as keeping case files only in digital form, implementing a uniform and comprehensive IT system of the judiciary, and standardising interfaces and rules for using centralised justice services available via the internet;
- Virtual hearings in Poland and Germany (podcast)<sup>88</sup>, which noted there is a lack of legislative provisions to provide for solutions where there are technical issues in digital hearings. However, the podcast (from 2021) also considered that digital hearings provide time- and money-saving efficiencies for the parties.

#### **3.2 Are there any legal cases or complaints on the infringement of procedural rights of a child due to digital practices brought before the national courts? If not, are there any reports or news articles covering similar incidents?**

No legal cases or complaints, nor any reports or articles covering similar incidents on this topic have been identified.

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<sup>85</sup> Annex No. 1 to the Act of the Minister Justice dated 31 October 2024 on defining templates for information about the process, method, and conditions of questioning suspects and witnesses who are under 18 years old ([link](#)).

<sup>86</sup> [https://hfhr.pl/upload/2021/09/e-rozprawy\\_en\\_ver\\_2.pdf](https://hfhr.pl/upload/2021/09/e-rozprawy_en_ver_2.pdf)

<sup>87</sup> [https://courtwatch.pl/wp-content/uploads/2020/12/FCWP\\_report\\_online\\_access\\_to\\_courts\\_in\\_poland\\_and\\_selected\\_countries.pdf](https://courtwatch.pl/wp-content/uploads/2020/12/FCWP_report_online_access_to_courts_in_poland_and_selected_countries.pdf)

<sup>88</sup> <https://www.eversheds-sutherland.com/en/austria/insights/podcast-virtual-hearings-in-poland-and-germany>