

INPUT BY VALIDITY FOUNDATION ON THE APPLICATION OF DIGITAL TECHNOLOGIES IN THE ADMINISTRATION OF JUSTICE

The Validity Foundation is an international non-governmental organisation based in Budapest that promotes the rights of persons with intellectual and psychosocial disabilities worldwide. Validity seeks a world where emotional, mental, and learning diversity are acknowledged equally, individual autonomy and dignity are honoured, and human rights are realised for all without discrimination.

The UN Convention on the Rights of Persons with Disability (CRPD) embraces social and human rights disability models. Disability is part of human diversity and must be recognised and supported in all its forms. The social and human rights models of disability focus on identifying and removing barriers that prevent persons with disabilities from exercising their rights, recognising that disability is caused by social, legal, environmental and other barriers. The CRPD requires general accessibility for persons with disabilities in all their diversity at all phases of public service design and delivery. Under this Convention, Member States are required to adopt reasonable and procedural accommodations to ensure access to justice where general accessibility measures are insufficient. Digital technologies, if developed with a strong rights-based framework, can support persons with disabilities in their home, at school and may be a valuable resource to promote their participation in justice (when used in combination with individual assessments for adoption reasonable and procedural accommodations and appropriate support).

I. Validity's initiatives in digital technologies in the administration of justice:

Validity has increasingly encountered multiple applications of digital tools in the criminal justice system in its initiatives, which impact the rights of persons with disabilities. This has been the result of research Validity and our partners have conducted on barriers facing children,¹ women² and men³ with disabilities in criminal proceedings, whether as a victim or defendant across 6 EU co-funded projects and in 11 EU countries since 2020.⁴ We have identified four main concrete applications of technologies that affect the rights of persons with disabilities: 1) case management systems; 2) digital case files; 3) remote hearings or video

¹ Child-Friendly Justice: Developing the Concept of Social Court Practices - 878552 (CFJ-DCSCP) and LINK: Linking Information for Adaptive and Accessible Child-Friendly Courts - 101097047 (LINK); DIS-CONNECTED: Disability-Based Connected Facilities And Programmes For Prevention Of Violence Against Women And Children – 101049690 (DIS-CONNECTED).

² DIS-CONNECTED project and ENABLE: Enabling inclusion and access to justice for defendants with intellectual and psychosocial disabilities - 101056701 (ENABLE)

³ Communicating with Victims of Crime with Disabilities (InfoCOMPWD - 878604 (Voices for Justice); Changing the Accessibility of Tools for Victims - 101056702 (CHAT for Victims) and ENABLE project.

⁴ Bulgaria, Croatia, Czechia, Hungary, Italy, Lithuania, Portugal, Romania, Slovakia, Slovenia, Spain. All national references to EU countries can be found in national reports available on our website here:

<https://validity.ngo/projects-2/>

Postal address

Milestone Institute,
Impact Hub
Wesselényi u 17.
1077 Budapest Hungary

Registered address

Impact Hub
Ferenciek tere 2.
1053 Budapest Hungary

Validity is registered

as a Foundation in
Hungary (No. 8689)
and as a charity in the
UK (No. 1124016).

conferencing; 4) remote support, which carry risks and opportunities to the rights to fair trial, legal capacity, non-discrimination, privacy and data protection.

II. Impact of Digitalisation on the Rights of Persons with Disabilities

Whereas different technologies are in use in criminal proceedings the focus has been on improving efficiency and reducing costs of the system, without a prior assessment of the impact on their accessibility for persons with disabilities and their situation. To ensure inclusion and prevent bias, the design, deployment and validation of technology must be done in co-production with persons with disabilities and respecting principles of universal design. As an expert with disability interviewed by Validity shared, otherwise Member States bolster the perception of state institutions as coercive, consequently disempowering and viewed with mistrust by persons with disabilities.⁵ It is essential that digitalisation schemes promote participation with safeguards against exclusion.

Case management systems and digital case files have been used to enable sharing information between judiciary and police authorities and to reduce paper-based costs in at least 7 EU countries. Although in most countries these systems are not interoperable across criminal justice authorities, with investigatory and court authorities having separate case management systems. This limits the ability of Member States to provide necessary procedural accommodations across different stages of criminal proceedings. Few adult persons with disabilities interviewed who experienced criminal proceedings were offered procedural accommodations, nor identified promising practices explicitly designed for this purpose.⁶

Another application of technology has been reliance on video-link to conducting hearings remotely. Most countries have rules in their criminal procedure code or legislation enabling judges to conduct hearings for the protection of victims. Others enable participation of a person that cannot join the hearing physically due to being in a different country, due to a physical condition, because of COVID-19 related restriction measures, or for those who are detained in a detention facility or psychiatry institution. In at least 7 of 11 EU countries,⁷ video links have been used by judicial authorities in criminal proceedings for children and women victims of crime as a form of 'protective measure' to prevent secondary victimisation in hearings.⁸ There are accounts in some countries where justice professionals indicated a preference to conduct hearings in-person to assess reliability of the evidence.⁹ Video links have also been used to facilitate participation of persons detained in psychiatric institutions in court hearings, although support and protection concerns need to be addressed to prevent undue influence of third parties.¹⁰

⁵ CHAT for Victims Project, Interview male academic with disabilities, 2022.

⁶ The exception was Spain where criminal justice authorities have protocols for assessment of accommodations.

⁷ Bulgaria, Czechia, Italy, Lithuania, Slovakia, Slovenia, Portugal.

⁸ Italy and Slovenia.

⁹ Czechia, Slovakia, Portugal.

¹⁰ E.g. Bulgaria.

Postal address

Milestone Institute,
Impact Hub
Wesselényi u 17.
1077 Budapest Hungary

Registered address

Impact Hub
Ferenciek tere 2.
1053 Budapest Hungary

Validity is registered

as a Foundation in
Hungary (No. 8689)
and as a charity in the
UK (No. 1124016).

Live chat services and instant messaging services have been used to provide information and support by support organisations and professionals. Such modes have been used and tested to provide long-distance or remote support to persons with disabilities to enhance their access to support and information, including during emergencies such as COVID-19.

III. Benefits of using digital technologies

Digital justice administration may improve efficiency, transparency, and stakeholder participation for persons with disabilities. Digital case management systems between criminal, child protection, and other assistance agencies are in general not interoperable. There are few privacy and data protection-compliant regulations for sharing information to support and improve procedures, including on reasonable and procedural accommodations. A Lithuanian health expert stated that case management system interoperability with police would reassure them that the victim is being cared for and enable the professional to support them.¹¹ The right to non-discrimination and fair trial for people with disabilities is compromised without systematic and consistent adoption of procedural accommodations across criminal procedures. Processual accommodations, notably for defendants with disabilities, are not explicitly regulated in the 11 EU countries.

Video-links can improve the exercise of their legal capacity and the right to a fair trial. For example, in the UK, there were accounts of persons with disabilities welcoming ability to participate remotely, since this allowed them not to worry about having their needs met and a family member can sit beside them.¹² Enabling video-link may pursue justice and, when adopted as a procedural accommodation for persons with disabilities, may contribute to the right to fair trial and equal participation in judicial proceedings, provided it aligns with their preferences.¹³

Criminal procedural statutes in 11 EU countries allow recorded pretrial hearings for child victims to prevent secondary victimisation by only hearing the child once. As a procedural accommodation for children, this is a good practice under the International Principles on Access to Justice for Persons with Disabilities.¹⁴ However, in at least four countries there have been communication issues between courts and children, judges and communication professionals, and equipment failures that precluded audio or image recording.¹⁵

In emergencies or when persons with disabilities cannot enter the building due to distance or inaccessibility, live chat and instant messaging can facilitate access to support and information.

¹¹ DIS-CONNECTED project, Lithuania.

¹² Janet Clark, "Evaluation of remote hearings during the COVID 19 pandemic", 2021, 72-73. Available at: https://assets.publishing.service.gov.uk/media/61b71ebd8fa8f5037b09c7b1/Evaluation_of_remote_hearings_v23.pdf

¹³ Validity Foundation, Voices for Justice: Communicating with victims of crime with disabilities: Toolchest, 2022, 20. Available at: <https://validity.ngo/wp-content/uploads/2023/01/Voices-for-Justice-TOOLCHEST-for-professionals- EN.pdf>

¹⁴ Para. 32 (c (vi).

¹⁵ Bulgaria, Romania, Lithuania, Portugal.

Postal address

Milestone Institute,
Impact Hub
Wesselényi u 17.
1077 Budapest Hungary

Registered address

Impact Hub
Ferenciek tere 2.
1053 Budapest Hungary

Validity is registered

as a Foundation in
Hungary (No. 8689)
and as a charity in the
UK (No. 1124016).

Social protection and health specialists in Italy's juvenile system provided support via phone or WhatsApp during COVID-19. In the United Kingdom, Victim Support United Kingdom uses live chat systems to provide information and support to all victims of crime.¹⁶ In Croatia, Victim Support Croatia is implementing a live chat to provide information and support to all victims, especially those in rural areas or who use alternate methods of communication.¹⁷

IV. Challenges in/of using digital technologies

Despite all its benefits there are also challenges using technology in the criminal justice system. Results from qualitative research findings in the 11 EU countries show that in part due to technological applications were not designed with persons with disabilities in mind. Nor was their social context and personal situation considered.

We found no evidence across all 11 countries that design, adoption, deployment and validation of technologies used in criminal proceedings was based on principles of universal design and/or with the participation of persons with disabilities.¹⁸ The consequence of this is that there is not currently any application of technology that is universally accessible for all types of disability and diverse forms of communication used. All technological applications must enable the use of alternative and augmentative communication (AAC) devices. In 6 countries,¹⁹ we found no processes or evidence showing how child victims that use AAC devices would be able to be accommodated in criminal proceedings, especially considering existing rules of testimony.

Furthermore, due to lack of access to inclusive digital education and to computer technology may create a digital divide for persons with disabilities. Therefore, digital innovations should not become the only medium for persons with disabilities to receive or share information, particularly how this disproportionately affects persons with disabilities. This is especially the case for persons with disabilities in Bulgaria, Hungary and Romania under severe segregation in closed residential settings under inhuman conditions where not even basic needs are met, much less access to computer technology or inclusive digital education. If technology is used in criminal proceedings, they must be accompanied with supported decision-making measures to enable all persons with disabilities to exercise their legal capacity and access to justice.²⁰

Sharing information on supportive and procedural accommodations without violating privacy, data protection, or disability rights requires more guidelines. Sharing sensitive disability data puts people at risk of prejudice or violation of their right to privacy. In Bulgaria and Hungary, women with disabilities who were victims of gender-based violence choose not to disclose their

¹⁶ Victim Support, "Live Chat", available at: <https://www.victimsupport.org.uk/help-and-support/get-help/support-near-you/live-chat/>

¹⁷ Chat for Victims project, Croatia, Forthcoming 2024.

¹⁸ As required by Article 2, 4(3) and 9 of the United Nations Convention on the Rights of Persons with Disabilities.

¹⁹ Bulgaria, Czechia, Italy, Lithuania, Portugal, Slovenia.

²⁰ In line with Article 12 and 13 of the UNCRPD.

Postal address

Milestone Institute,
Impact Hub
Wesselényi u 17.
1077 Budapest Hungary

Registered address

Impact Hub
Ferenciek tere 2.
1053 Budapest Hungary

Validity is registered

as a Foundation in
Hungary (No. 8689)
and as a charity in the
UK (No. 1124016).

disability due to fear of not being taken seriously. There is a need for clarifying limits of interoperability and imposition of limitations to ensure a sensitive and appropriate sharing of information between relevant authorities. All data collection practices must follow the principle of informed consent, which includes obligation to ensure that right to information of persons with disabilities is fulfilled in an accessible manner.

The needs, barriers, and personal situation of people with disabilities must be assessed before using technology to ensure gender-, age-, and disability-appropriateness and resolve conflicts of interest. In all 11 EU countries, many persons with disabilities depend on their carers, relatives, or residential institution staff for support and information in justice matters. The same people who often are the abusers. We found evidence of gender-based violence victims and children in at least 5 countries having their communication devices and/or computer usage regulated by perpetrators such as carers, medical staff, institutional workers, or those who serve them.²¹ In Portugal and Bulgaria, there are reports of persons with disabilities attending court hearings while heavily medicated in psychiatric institutions, hampering their ability to exercise their right to a fair trial, including through remote hearings. To minimise excessive influence by external parties, there must be support and protection standards.

V. Conclusion

The use of technology in justice poses risks and opportunities for persons with disabilities, including women and children. To improve trust and involvement in justice processes, technology solutions must be inclusive since persons with disabilities often face various and intersecting types of discrimination. AAC devices and other communication methods must be accessible in digital solutions. This could improve the right to a fair trial and facilitate the equitable participation of persons with disabilities in court.

We submit the following recommendations:

- Justice systems should ensure that the design, deployment and validation of digital justice applications are based on principles of universal design to ensure accessibility and access to information and communication and for person's disability, including users of AAC.²² In this vein, persons with disabilities in closed institutions, tend to not have access to computer technology or inclusive digital education;
- Justice systems should also respect privacy, data protection, and disability non-discrimination when interoperating case management systems and sharing sensitive data. Informed consent is essential to allow persons with disabilities to choose what information to disclose;

²¹ Interviews with persons with disabilities and social protection professionals (Bulgaria, Hungary, Portugal, Slovakia, Slovenia).

²² Victim Support Croatia and Victim Support Europe are developing a handbook on how to create a live chat system that is accessible to multiple disabilities (Forthcoming, 2024).

Postal address

Milestone Institute,
Impact Hub
Wesselényi u 17.
1077 Budapest Hungary

Registered address

Impact Hub
Ferenciek tere 2.
1053 Budapest Hungary

Validity is registered

as a Foundation in
Hungary (No. 8689)
and as a charity in the
UK (No. 1124016).

- Video-link, live chat, or instant messaging may be a reasonable or procedural accommodation if the person has support, a lawyer, and it aligns with their preferences. For persons with disabilities to utilise them without fear of abuse, or retaliation, specific support and protection criteria must be in place, especially in closed settings and institutions;

9 March 2024

Postal address

Milestone Institute,
Impact Hub
Wesselényi u 17.
1077 Budapest Hungary

Registered address

Impact Hub
Ferenciek tere 2.
1053 Budapest Hungary

Validity is registered

as a Foundation in
Hungary (No. 8689)
and as a charity in the
UK (No. 1124016).