ICT’s in the Chilean and Latin-American civil justice. Analysis from the right of access to justice

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ABSTRACT

The incorporation of Information and Communication Technologies (ICTs) in the justice sector is not necessarily a new phenomenon. Nevertheless, the outbreak of the Covid-19 pandemic accelerated this process, as it required rapid solutions to mitigate the effects of social distancing and other security measures, for which ICTs proved crucial to ensure the continued provision of basic legal services. Initially used only for urgent matters, after two years it has become highly integrated into the regular functions of judicial institutions and is expected to continue as a critical tool against overburdened dockets. ICTs in the justice system can serve different purposes and can therefore be analyzed from different perspectives: efficiency in the administration of justice, interoperability between institutional actors, improvement of information for decision-makers, transparency and accountability, among others. This article focuses on access to justice. Therefore, it analyzes the ICTs implemented in Latin American countries, with a focus on the Chilean judiciary – particularly in the civil justice system – from a critical point of view, based on access to justice standards.

KEYWORDS

technology, access to justice, Covid-19 pandemic, civil justice, judicial reform

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1. INTRODUCTION

The incorporation of Information and Communication Technologies (ICTs) in the justice sector is not necessarily a recent phenomenon in Chile,¹ Latin America,² or abroad.³ Notwithstanding, the outbreak of the Covid-19 pandemic has accelerated this ongoing process since it has required rapid solutions to mitigate the impact of social distancing and other safety measures. Initially used only in urgent matters, after two years it has integrated greatly into the regular functions of judicial institutions and is expected to continue as a critical tool against overburdened dockets. In the Chilean context the State legislature has provided the normative framework for these purposes, ensuring that at least for the years to come technologies such as videoconferencing are here to stay.

ICTs in the justice system might serve different purposes and, therefore, can be analyzed from different perspectives.⁴ This paper focuses on access to justice. Thus, it will analyze ICTs implemented in Latin-American countries and in the Chilean judiciary - especially in the civil justice system - from the point of view of the right to access to justice standards as developed in the International Human Rights Law system.

For these purposes, first, I provide a normative framework based on international human rights standards and other theoretical developments on the right to access to justice and explore how technology poses risks and promises benefits in this regard. Second, I describe in general terms the incremental process of the incorporation of technology in the Latin-American judicial system following the judicial reform movement and during the pandemic, and the Chilean experience with a focus on civil justice. Third, some final thoughts are provided on how the main technological tools implemented in our region might impact access to justice according to the normative standards as developed in the first chapter.

2. ACCESS TO JUSTICE AND THE USE OF TECHNOLOGY

2.1. Access to justice as a human right

It is not easy to define what access to justice means. For example, it is not clear whether it refers to any form of dispute resolution mechanisms or only to the formal adjudication bodies and if so, whether the scope of ‘access’ refers only to the ability to ‘knock on the doors’ of the courts or whether it includes the ability to follow a legal process to its conclusion, i.e. including the enforcement of a final decision. It is also not clear what ‘justice’ means; whether it refers to a moral conception of justice - substantive or procedural - or whether it refers to a particular ‘justice system,’ that is an adjudicative body or other similar legal institutions in charge of the determination of a legal right.⁵ At least three different perspectives have been analyzed in the literature: access to justice in relation to the rule of law, as a theoretical requirement of

²Arellano et al. (2020) 93–96.
⁴Lillo (2021) 29.
procedural fairness, and finally as a human right recognized under international human rights law. While acknowledging this complexity, this paper, and this section particularly, focus on the last of these perspectives. As such, it aims to describe at least some of the basic standards found in its development within the international human rights protection system.

But before going into the subject, it is important to acknowledge that as a legal institution or as a normative provision, access to justice entails an important tradition and history. Its origins are usually identified in the Magna Carta (Pankratz, 1992: 1091; Rhode, 2004: 47; Lillo, 2022: 218). This historical legal document, in its 1215 version, established in its clause 39 what has been interpreted as the basis of the right to due process of law, and in its clause 40 provided: *To no one will we sell, to no one will we deny, to no one will we delay right or justice.* Later, in its version of 1225, both clauses were merged into a single one, numbered 29, and it became the classic normative provision that influenced other normative texts currently in force.

Notwithstanding and beyond the historical debates about the true meaning of this clause, it was Sir Edward Coke’s interpretation made in its Institutes, where he read the clause as a right to have a remedy for any injury suffered (whether to the person or property) freely and without sale, denial or delay, which was the basis for the modern conception. Such an understanding, after its migration from England to the United States, unlike many other of Coke’s interpretations of Magna Carta, did not end up explicitly in the American Constitution but had important recognition in the colonial charters and later in the state constitutions (at least thirty-nine out of fifty), many of them using the same language as the last part of clause 29. Although it was perhaps not the original intention of the framers of Magna Carta, Coke’s interpretation has been identified with the right to a court or access to justice embedded in the due process clause of the American Bill of Rights, a document that has served as an important source for other modern legal documents such as the Universal Declaration of Human Rights (UDHR) of 1948, and from there to others such as the European Convention on Human Rights (ECHR) of 1950.

Nevertheless, at the international level, prior to the adoption of the Charter of Fundamental Rights of the European Union (CFR) in December 2000, access to justice was considered an

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7 ‘No freeman shall be taken and imprisoned, or disseised, or outlawed, or exiled, or in any way destroyed, nor will we go upon him, nor will we send upon him, except by the lawful judgment of his peers and by the law of the land’. See Meyer (1977) 128.
8 Link1.
9 See Radin (1947) 1061; Schwartz (1977) 6.
10 Coke (1797) 55–56.
11 Lillo (2022) 222–23.
12 Lillo (2022) 222–23.
15 Article 47. Right to an effective remedy and to a fair trial. Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.
implicit right, inseparable from the right to a fair trial and, in some cases, from the right to an effective remedy. This is the case in the UDHR (Articles 8 and 10), the International Covenant on Civil and Political Rights (ICCPR) (Articles 2(3) and 14), the ECHR (Articles 6(1) and 13)\textsuperscript{16} or the American Convention on Human Rights (ACHR) (Articles 8 and 25).\textsuperscript{17}

As a fundamental right, access to justice encompasses not only the ability to go to court, but also the right of an individual to have his or her case ‘…heard and determined in accordance with substantive standards of fairness and justice.’\textsuperscript{18} Justice, for this purpose, means the justice system of a particular legal order - national, international or both - to which an individual is entitled, and the sub-systems that make up each of them. For example, a national legal system may consist of a criminal justice system and a civil justice system. Access to justice is therefore a matter of degree, in the sense that an individual is more or less able to bring his or her justiciable problems to the appropriate forum and to use it meaningfully to enforce or protect his or her rights.\textsuperscript{19}

\subsection*{2.2. International standards on the right of access to justice}

Perhaps the main standard derived from the international human rights system is the idea of effectiveness. In fact, as a basic right, it has been defined as an effective right of an individual to advance in the appropriate forum a legitimate legal claim or a defense against a claim made by others.\textsuperscript{20} In the universal system, for example, Article 14 (Right to equality before courts and tribunals and to a fair trial) of the ICCPR has been interpreted by the Human Rights Committee in its General Comment No 32 as encompassing the right of access to the courts and providing that the right to claim justice must be effectively guaranteed in civil and criminal cases. Similarly, in both regional systems mentioned earlier, their international tribunals – the InterAmerican Court of Human Rights (IACHR) and the European Court of Human Rights (ECtHR) — have established in their case law that what matters is that access to a court should be not purely theoretical but effective in practice.\textsuperscript{21} Several basic standards derive from this basic principle.

What is required is not only that a formal mechanism exists, but also that it is useful in the sense that it is capable of producing the desired result by which the individual seeks judicial protection. For example, in Barbani Duarte, the IACHR held that the right to be heard as established in Article 8.1. entails not just a formal and procedural aspect that ensures access ‘…but also includes a material aspect of protection which means that the State must guarantee that the decision produced by the proceedings satisfies the end for which it was conceived.’\textsuperscript{22} Similar reasoning might be found in the ECtHR case law concerning effective remedies in relation with Article 6, such as the so-called ‘Pinto Act’ proceedings cases against Italy for

\textsuperscript{16}Palombella (2021) 122.
\textsuperscript{17}Medina (2016) 355–58.
\textsuperscript{18}Francioni (2017) 1.
\textsuperscript{19}Lucy (2020) 379.
\textsuperscript{20}Trebilcock et al. (2012) 3.
\textsuperscript{21}Lillo (2022) 157.
\textsuperscript{22}Barbani Duarte et al. v. Uruguay Serie C No 234 (IACHR, 13 October 2011) 122.
the excessive length of civil proceedings.\textsuperscript{23} For example, in Simaldone v. Italy, the ECHR decided that by taking more than 12 months before implementing the required measures to comply with the ‘Pinto’ decisions, the Italian authorities excluded Article 6(1) any effet utile.\textsuperscript{24}

With the effectiveness criteria at the center of the analysis, the obligations that arise for States are not merely absence of interference, but also positive action. In Cantos v. Argentina, the IACHR held that under Articles 8(1) (right to a fair trial) and 25 (right to judicial protection), access to justice entails a positive obligation which consists in making available to individuals a mechanism for effective judicial protection against acts that violate their fundamental rights as recognized in the convention or by state laws. It is not enough that the remedies exist formally - they must be effective.\textsuperscript{25}

In the European system, this criterion has been used to determine whether procedural safeguards, not explicitly guaranteed in Article 6(1), are required in particular cases under the right to a court. Since Airey v. Ireland, where the question was whether free legal aid was required in civil matters under Article 6(1), the ECtHR held that while there is no general obligation to do so, particular circumstances of a case - such as the complexity of the proceedings or of the case itself - may require the State to provide for the assistance of a lawyer where such assistance proves indispensable to effective access to a court.\textsuperscript{26}

According to the same principle, violations of the right of access to justice may not only stem from legal provisions that contravene it, but also from de facto obstacles. At the General Comment No 32, the Human Rights Committee says that ‘A situation in which an individual’s attempts to access the competent courts or tribunals are systematically frustrated de jure or de facto runs counter to the guarantee of Article 14, paragraph 1,’ a doctrine established at the first case in which the right to access to justice was identified by the ECtHR, Golder v. United Kingdom.\textsuperscript{27}

Both regional systems recognize that access to justice is not absolute and may be subject to certain discretionary limitations by States.\textsuperscript{28} In ECtHR case law it is clear that while access may be restricted, such restrictions must not reduce the individual’s access in such a way or to such an extent as to affect the very essence of the right.\textsuperscript{29} It must also pursue a legitimate aim. For example, the ECtHR has held that some immunities or limitations on civil suits against diplomats, parliamentarians, other servicemen, or sensitive sector workers are permissible.\textsuperscript{30} At the

\textsuperscript{23}Lillo (2022) 139.
\textsuperscript{24}Simaldone v. Italy App no 22644/03 (ECtHR, 31 March 2009) 55.
\textsuperscript{26}Airey v. Ireland App no 6289/73 (ECtHR, 9 October 1979) 26–8.
\textsuperscript{27}Golder v. United Kingdom App no 4451/70 (ECtHR, 21 February 1975) 26.
\textsuperscript{28}Cantos v. Argentina Serie C No 97 (IACHR, 28 November 2002) 54; Lithgow and Other v. United Kingdom no. 9006/80; 9262/81; 9263/81; 9265/81; 9266/81; 9313/81; 9405/81 (ECtHR, 8 June 1986) 194.
\textsuperscript{29}Stanev v. Bulgaria no. 36760/06 (ECtHR, 17 January 2012) 230.
\textsuperscript{30}A v. The United Kingdom no. 35373/97 (ECtHR, 17 December 2002) 77; Fayed v. United Kingdom no. 17101/90 (ECtHR, 21 September 1990) 70; Ashingdane v. United Kingdom no. 8225/78 (ECtHR, 28 May 1985) 56–59.
IACHR, restrictions based on what is reasonably necessary for the administration of justice have been found to be consistent with the requirements of Articles 8 and 25.\(^{31}\)

When a legitimate aim standard is satisfied, both tribunals use a proportionality test between objectives pursued and the means used. One example comes from cases concerning court fees, which has been upheld by these tribunals unless they prove to be disproportionate in terms of the correspondence between the means used and the objective pursued.\(^{32}\) Another example of proportionality comes from an interest case concerning technology and limitations, namely Lawyer Partners a.s. v. Slovakia. In this case, the applicant was obliged to sue persons who had refused to pay debts which this company had acquired the right to recover. Because of the high number of payment orders to be issued against debtors, the actions were generated by means of computer software and recorded on DVDs. The DVDs were sent to the district courts concerned, accompanied by an explanatory letter. The courts refused to register such claims, indicating that they lacked the equipment to receive and process submissions made and signed electronically. At the end, they became statute barred. By the approach just described, the Court found a violation of the right to a court because the refusal imposed a disproportionate limitation on the applicant company’s right to present its cases to a court in an effective manner.\(^{33}\)

Three other standards on the right of access to justice are worth mentioning because they relate to dimensions where technology may be important. First, as noted above, the right of access to justice concerns not only the possibility of failing in a claim, but also the right to a final decision\(^{34}\) and its enforcement. The leading case in this regard is Hornsby v. Greece, where the ECH\(\text{R}\) clearly specified that the right to the execution of a decision given by any court is an integral part of the ‘trial’ for the purposes of Article 6.\(^{35}\) Second, if the question is ‘access to what,’ the IACHR has held that an effective judicial protection mechanism must comply with procedural guarantees of a fair trial.\(^{36}\) Third, a broad conception of access to justice includes not just a right to access to a court but also to any other public forum provided to effectively pursue the protections of rights, resolve or settle disputes or to satisfy legal needs.\(^{37}\) In this regard, the ECH\(\text{R}\) in Mutu and Pechstein v. Switzerland has recognized that this right it is not necessarily to be understood as access to a court of law of the classic kind, but is also compatible with mechanisms of dispute resolution such as arbitration proceedings.\(^{38}\)

2.3. The risks and the potential of technology for improving access to justice

From a formal account, Lucy argues access to justice has three general components: i) the production and promulgation of legal knowledge; ii) guidance on what the law requires; and


\(^{32}\)Mémoli v Argentina Series C No. 265 (IACHR, 22 August 2013) 193.

\(^{33}\)Lawyer Partners a.s. v. Slovakia nos. 54252/07, 3274/08, 3377/08, 3505/08, 3526/08, 3741/08, 3786/08, 3807/08, 3824/08, 15055/08, 29548/08, 29551/08, 29552/08, 29555/08 and 29557/08 (ECH\(\text{R}\), 16 June 2009) 8–11, 52–55.

\(^{34}\)Kutić v. Croatia no. 48778/99 (ECH\(\text{R}\), 1 March 2002) 25.

\(^{35}\)Hornsby v. Greece no. 18357/91 (ECH\(\text{R}\), 19 March 1997) 40.

\(^{36}\)Claude Reyes y otros v. Chile Serie C 151 (IACHR, 19 September 2006) 127; Fornerón and Daugter v. Argentina Serie C 242 (IACHR, 27 April 2012) 66.


\(^{38}\)Mutu and Pechstein v. Switzerland nos. 40575/10 and 67474/10 (ECH\(\text{R}\), 2 October 2018) 94–96.
iii) a legal forum that serves as a dispute resolution mechanism - traditionally but not exclusively - provided by the State courts. Technology has the potential to enhance these three dimensions.

Regarding the first dimension, the idea is that access to justice requires that the public have understandable information about the justice system, its resources, and means of access. Technology has the potential to improve access to such information in a number of ways. Some are simpler, others more complex. For example, judicial institutions could use simple websites, electronic bulletins, mailing lists, or subscription services to provide court information to individuals. Others might use automated chat bots or web-based portals or applications to provide information that is tailored or personalized to each individual’s needs, based on their previous interactions or gathered from other public services. In this regard, technology could serve as a ‘triage’ system to direct individuals to the appropriate forum for their legal needs.

Guidance on what the law requires could be improved in several ways. One is, of course, the provision of a legal aid system for those who cannot afford a lawyer, but as the ECtHR jurisprudence has established, the right to a court allows for different ways of ensuring the effectiveness of that right. Legal aid is one important mechanism, but there may be others, such as simplification of procedures. Technology could help in this regard. Automated chat bots could be used not only as information providers, but also to connect services directly with end users, or even to facilitate access to support services or even legal aid. For example, the recent exponential developments of AI powered chatbots and large language models (LLMs) such as ChatGPT, has been explored and in some cases tested by their potential to provide legal assistance to end users and especially to underrepresented groups of the population.

Of course, simplicity is not a silver bullet. It may be useful in certain types of cases, but not in many others, usually the more complex ones. For example, in the United States, pro se litigation is now an important part of the civil docket, and in many simple cases, the use of digital forms - publicly available or on-demand - for uncontested divorces is proving to be a viable alternative for many people. Contested or moderately complicated divorces, on the other hand, are something else for low- and middle-income Americans, and many of them simply choose to ‘lump it.’

Regarding the third dimension, technology could facilitate the real possibility of reaching the legal forum that serves as a dispute resolution mechanism provided by the state. Even before the

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42 Cabral et al. (2012) 293.
43 Airey v. Ireland no. 6289/73 (ECtHR, 9 October 1979) 26. More recently: Steel and Morris v. The United Kingdom no. 68416/01 (ECtHR, 15 February 2005) 60; Assunção Chaves v. Portugal no 61226/08 (ECtHR, 31 January 2012) 70.
44 Jauhar (2021) 7.
45 Legg and Song (2021) 134.
46 Dhru et al. (2021) 45.
47 See Queudot et al. (2020); Al-Qasem et al. (2023).
48 Barton and Bibas (2017) 52.
49 Barton and Bibas (2017) 46–43.
pandemic, it was recognized that remote participation through the use of videoconferencing could improve access to justice by enabling participation despite great distances, reducing costs such as lost wages and childcare, or avoiding the inherently stressful experience that the courtroom environment represents, especially for some populations.\footnote{Legg and Song (2021) 132.}

While ICTs have the potential to improve access to justice, they may also pose risks to this and other fundamental rights, such as the inherently intertwined right to a fair trial. First, it is important to ensure that technology does not prevent those with legal needs from participating meaningfully in the judicial process by ensuring that all participants have equal and secure access to technological resources.\footnote{UNDP (2005) 18.} In this regard, the digital divide, digital exclusion and digital illiteracy are the most common risks identified in the literature as a particular form of inequality that can be exacerbated by the increased use of technology. Digital inequalities include lack of access to facilities, infrastructure and devices (laptops, smart phones, etc.); slow, limited or no Internet connectivity; and lack of or insufficient computer literacy among justice users. Populations that are particularly vulnerable to technology and connectivity barriers include women, children, transsexuals, religious minorities, and other vulnerable and marginalized people, especially those in remote areas.\footnote{See Pérez-Escolar and Canet (2022).}

Similarly, people with physical and mental disabilities, learning disabilities, and those who require translation and interpretation services are often cited as being at high risk of experiencing additional barriers to access and effective participation in a virtual setting. Such vulnerabilities or special needs may be more difficult or impossible for an online court to identify;\footnote{Carrera et al. (2021) 42.} people with disabilities may have difficulty understanding, following, and participating in the online proceedings;\footnote{Fair Trials (2020) 8.} and the accommodations they need may not be available in the virtual setting.

A joint declaration by the Inter-American Commission on Human Rights and the United Nations Special Rapporteur on Independence, issued during the pandemic, recognizes that technology can sometimes have a negative impact on access to justice for some sectors of the population as a result of the existing digital divide, since the use of these media requires access to electronic media and technological knowledge to access legal services. It adds that access to technological infrastructure (e.g., the Internet) varies among States and their populations.\footnote{Link2.}

Of course, the use of ICTs can also pose risks to other fundamental rights, such as the right to a fair trial. This tension stems from the fact that, on the one hand, it is necessary that the justiciable problems or legal needs of the population reach the justice system and that it is able to provide an effective response to them, and, on the other hand, the administration of justice cannot make a decision in which the rights of the parties are determined in any way other than, as explained above, within the set of minimum conditions that constitute the right to due process. In this regard, the above-mentioned joint statement points to the need to safeguard the rights of participants in virtual hearings, such as the right to a defense. Finally, it emphasizes

\cite{Legg and Song (2021) 132.}
\cite{UNDP (2005) 18.}
\cite{See Pérez-Escolar and Canet (2022).}
\cite{Carrera et al. (2021) 42.}
\cite{Fair Trials (2020) 8.}
\cite{Link2.}
the need to protect the right to be tried within a reasonable period of time under a mechanism that ensures the confidentiality and security of the information transmitted.\textsuperscript{56}

In this regard, it is important that the use of technological tools for the transmission of written or audiovisual information (e-filing systems, case management, videoconferencing and others) comply with standards of transparency and accountability, but also with normative mandates for the protection of personal data and privacy, where applicable; for example with regard to confidential information. The use of various payment platforms or private providers (such as Zoom, Webex, or others) must also respect these standards, and there must be clarity about the ownership of information, especially when it comes to web-based or cloud-based maintenance mechanisms.\textsuperscript{57}

With regard to remote hearings, it is recommended that they be based on a legal framework that allows them to be held under certain common minimum conditions. This will undoubtedly facilitate their implementation and reduce the possible problematic knots that could otherwise generate resistance from the various stakeholders.\textsuperscript{58} As stated in a report by the European Commission for the Efficiency of Justice (CEPEJ), the basic principle for conducting hearings at remote locations is that due process guarantees apply, with the key elements being effective access to the court, the adversarial nature of the proceedings, equality of arms, the administration of evidence, the availability of time and access to adequate materials to prepare the defense, a reasonable time, and security of information.\textsuperscript{59}

Next, access to the necessary technical equipment must be available to all participants at all times. To this end, the necessary support should be available during the hearing to ensure that everyone can participate effectively, and in the event of a connection failure, the hearing can be suspended until the technical problem is resolved. Pre-testing is good practice, as is having more than one means of communicating with participants.\textsuperscript{60}

It is recognized that it may not be possible to hear all matters by means of remote hearings. Their use will be appropriate where the delay in appearing in person may have a significant impact. In such cases, consideration should be given to the nature of the particular hearing, the complexity of the matter at issue, the need for live evidence, the availability of equipment, the identification of factors that may adversely affect the ability of intervenors to participate effectively (e.g., impaired vision or hearing, age of intervenors, etc.), the ability of counsel to interact with their clients in a confidential manner, and the need to ensure that the hearing is conducted in a timely manner.\textsuperscript{61}

As we said, it is necessary that there is a clear regulatory framework on these issues, which does not preclude that decisions on what matter should be heard by this means or not can be taken based on a concrete analysis of the specific circumstances of the case (for example, the need for live evidence and where the analysis of witness credibility is at stake), and must also be based on such a decision. In this regard, the parties should have access to the court to influence

\textsuperscript{56}Link2.  
\textsuperscript{57}OSCE (2020) 13.  
\textsuperscript{58}OSCE (2020) 23.  
\textsuperscript{59}CEPEJ (2021) 2  
\textsuperscript{60}OSCE (2020) 23; CEPEJ (2021) 3.  
\textsuperscript{61}OSCE (2020) 23.
such a decision - for example through a preliminary hearing held especially for this purpose - and, at the same time, in coordinating the specific arrangements for it, as well as to express any security concerns or to substantiate why such a hearing should be held in person.\footnote{CEPEJ (2021) 3.}

This legal framework for conducting remote hearings should be easily accessible. To this end, the CEPEJ recommends the development of informative texts and various audiovisual materials, tutorials and others that facilitate the use of the platform on which remote hearings are conducted. This should take into account the manner in which the parties must present themselves, as well as the necessary formalities of a court.\footnote{CEPEJ (2021) 6.}

For effective participation in a remote hearing, the CEPEJ draws attention to several relevant aspects. First, prior to the hearing itself, the parties should have the opportunity to test the audio and video quality, either in advance through an automated system or by connecting to the court before the hearing begins. Thereafter, the court should have adequate technical support to monitor the image and sound quality, as well as the connection signal, in order to minimize the risk of technical problems affecting the participation of the parties, as well as the transmission to the public. The court should pay special attention to persons in vulnerable situations, such as children and adolescents, migrants, persons with special needs, etc.\footnote{CEPEJ (2021) 3.}

A particularly sensitive aspect in the context of remote hearings is the respect for the public nature of the judicial process, which is the general rule in civil and criminal matters, subject to exceptions provided for by international instruments, for reasons of public order, national security or the special conditions of the parties, among others.\footnote{International Commission of Jurists (2020) 7.} To maintain this standard, there should be an accessible process for public participation in hearings (online streaming) or a system for remote access to recordings of hearings. This public policy should be directed by the court, which must authorize any form of dissemination of hearing information.\footnote{CEPEJ (2021) 3.} In this sense, it has been pointed out that, outside the authorized cases, the absolute limitation of the publicity of the hearings for reasons of public health, without any substitute, may constitute an undue derogation or violation of this guarantee.\footnote{International Commission of Jurists (2020) 7.}

With regard to mediation and arbitration, the International Council for Online Dispute Resolution (ICODR) points out that, in order to carry out this type of dispute resolution mechanism through videoconferencing systems, it is necessary to take into account some minimum principles. First of all, a stable and easily accessible platform must be used for the participants, who must give their consent to its use and receive the necessary information to enable them to access the platform. Next, it is important that the person in charge of the sessions adequately manages the characteristics of the platform, understands the ethical implications of using these tools, and trains the parties in their use. In this regard, for example, it is important to emphasize the confidential nature of mediation sessions or arbitration hearings and to ensure that they are not directly recorded, either by the facilitator or by the parties. For the latter, it is possible to ask them to sign a prior undertaking not to record or take photographs. Then, the
conditions of the session should be constantly monitored so that, in the event of technical problems, the session can be suspended and resumed once they have been resolved. Finally, the platform must comply with computer security measures, such as encryption on both sides, disabling the file-sharing function, and enabling an automatic shutdown option in the event of inactivity, among others.68

3. COURT TECHNOLOGY IN CHILE AND LATIN AMERICA

While the Covid-19 pandemic could be seen as a catalyst, especially in some countries where the judiciary was less prepared in terms of level of development, the process of technological modernization began much earlier in the Latin American region. In fact, the decade of the 1980s has been identified as the starting point, a time when a major judicial reform movement began in the region, as part of the efforts of many countries where new democracies were in place. This section describes the two relevant moments, the incorporation of ICTs before and after the Covid-19 pandemic.

3.1. ICTs and the judicial reforms in Latin America

In the second half of the twentieth century, many Latin American countries embarked on a profound process of judicial reform with the purpose of bringing their justice systems up to ‘modern’ and ‘democratic’ standards. Although various waves of reform began as early as the 1960s, it was not until the 1980s, a period of emerging democracies, that these reforms became a regional phenomenon or movement rather than isolated efforts.69 While criminal justice reform was the starting point, probably because of the gross human rights violations that had occurred in many Latin American countries,70 other areas of the administration of justice were also addressed. For the purposes of this paper, which focuses on civil justice, it is important to note that these reforms were aimed at improving access to justice.71

Where these reforms had a better potential to successfully change practices and ways of doing things, they were intended to replace not only normative standards and legal procedures, but also institutional organization and management. In this context, the incorporation of ICT was an important part of this modernization process, as the new legal procedures in place required better document management, scheduling of hearings, recording and, in general, a more efficient back office in order to be successful. In this regard, with different stages of development between countries, a regional phenomenon of the incorporation of ICTs has been identified by organizations such as the Justice Studies Center of the Americas (JSCA).72

Across the region, Latin American countries have experienced a similar evolution in terms of technological tools. The first developments, in the 1980s and 1990s, were aimed at introducing word processors and replacing registry books with simple case management systems that would

68Link3.
allow judicial officers and lawyers to find basic information on written documents produced by the courts - mainly court decisions and notices - but also to collect basic statistics. Many innovation projects at that time did not cover all judicial matters and instances. In Argentina, for example, a digital database was created in 1989 to provide access only to federal case law and a system to help parties estimate civil damages, but it did not cover state jurisdictions. In Colombia, starting in the 90's, the system 'Justicia XXI,' a client-server technology, was implemented in individual courts and some tools were developed to provide national databases, allowing some users to consult the progress of the proceedings through the website platform of the Superior Judicial Council, and providing only limited document management capabilities. In addition, this system was not able to interconnect with other judicial institutions, such as the Public Defender's Office or the Public Prosecutor's Office. During this period, although there were many normative efforts pushing for digital transformation in the Colombian justice system, only some local projects were able to see the light of day, and they couldn't penetrate the functioning of the justice system as a whole.

At the beginning of the century, Latin American countries, especially those more advanced in terms of ICT penetration, such as Brazil, Chile or Costa Rica, began to implement more complex case management systems. In Brazil, 'e-proc' was implemented in the Fourth Judicial District in 2004, allowing electronic filing for 'special courts' dealing with small claims, later extended to the federal judiciary. In 2008, the Federal Court, and then in 2010, the National Judicial Council, adopted the 'Sistema PJe', a single web-based case management system for the entire and massive docket of the Federal Judicial System in civil and criminal cases - which includes more than 270,000 internal and external users and more than 25 million cases filed per year. This system was specifically designed for judicial officers and lawyers, who are its main users. In terms of interoperability, it allowed access to public databases to collect information based on the identification number of taxpayers, the Bar Association to collect data on lawyers, the National Bank and other public entities.

In Costa Rica, a new case management system was implemented in 2000, including a new module for document transfer, automated notifications, and the integration of several courts, including courts of first instance and high courts. In 2008, this project evolved into a program called 'Zero Paper,' which aimed to completely digitize the case lifecycle and included a platform for parties and the general public to access the case file in its entirety - with the exception of some criminal and family law cases - and allowing e-filing. The case management platform included a remote desk, e-signing, an electronic scheduling system for court hearings, an SMS and e-mail notification system, and a judicial statistics module. It also allowed interoperability with other public institutions, such as the Land Registry, Social Security, and the Bank of Costa Rica, among others. In 2009, this system was piloted for a new civil admonition procedure for the enforcement of debts in the capital, San José, and by 2012, 100% of the court offices were

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75Ramos (2021) 81–82.
76CEJA and Microsoft (2008) 47.
connected to the institutional network and 80% of the procedures were carried out through this case management system.\textsuperscript{79}

On our continent, ICTs were introduced - especially in the first wave - to improve efficiency, reduce processing times and generally make life easier for judicial officers. This may be explained by the fact that the first modernization projects began in the 1980s, a time when the Internet was not available. When the technological infrastructure allowed, technological services for users were focused on lawyers and not necessarily directly on those who could not reach civil courts or those who experienced the justiciable problems.\textsuperscript{80} The website of the Judiciary of Costa Rica, a leading institution in terms of technological modernization, as described by Navarro in 2011, provided both information and services, which, although important and useful, were available but without a clear distinction between different types of users. They were all mixed and not organized in such a way as to be accessible to the general population or to those who do not master legal terminology. Although there is a lot of valuable information and services, the technological transformation has not been designed with a public perspective and according to the interest of ordinary people, which should be simple and in clear language, but instead it is still directed to the internal bureaucracy.\textsuperscript{81}

Some other countries provided access to the courts in situations where physical presence was too inconvenient through the use of basic videoconferencing equipment. This was already being used in the criminal justice system before the pandemic, particularly in cases where security and geography made it impossible to hold a pre-trial or trial hearing with all parties physically present. For example, in Colombia, seven witnesses in a drug trafficking case in the Villavicencio criminal courts were in a distant region. Because of this geographic barrier, and especially because the court could not be moved due to security concerns caused by the armed conflict, the trial was conducted in a hybrid mode using simple but specialized videoconferencing equipment.\textsuperscript{82}

In the last decade, there have been some efforts to use technology to provide solutions aimed at improving access to justice for end users. For example, in Colombia, in 2017, a project was implemented between the Superior Council of Justice and the Constitutional Court to digitize a constitutional action called ‘tutela,’ which can be filed by any person – self represented or not - to protect their rights enshrined in the Constitution. This legal instrument, created in 1991, has experienced a systematic and significant increase in filings per year, reaching hundreds of thousands (amounting to nearly seven hundred thousand per year in 2020).\textsuperscript{83} This project, piloted in some jurisdictions, was not extended to the whole country because the aforementioned Justicia XXI case management system did not allow it in every city, and digital case files were only implemented in certain jurisdictions. More recently, the judiciary and the Constitutional Court have been able to implement a user-friendly and web-based application for the filing of these petitions, and they are currently being screened and processed with the support of

\textsuperscript{79}Morales (2012) 48.
\textsuperscript{80}Chayer (2012) 73.
\textsuperscript{81}Navarro (2011) 250–54
\textsuperscript{82}Florez (2012) 61–63.
\textsuperscript{83}Saavedra and Upegui (2021) 22.
an AI-based system called ‘PretorIA,’ piloted in 2021.\textsuperscript{84} Specifically, this system was designed for the revision phase by which the Supreme Court exerts its discretion in selecting cases which will be decided on the merits.\textsuperscript{85} For this purpose, the system takes the previous decisions of the Constitutional Court and tags or classifies them according to pre-defined categories by the expert knowledge of the court, but also provides statistical information about such decisions, both in order to provide relevant data for the human officer and in order to facilitate and make more efficient her decision-making process.\textsuperscript{86}

The evolution of the Chilean judiciary has been similar to that of the rest of the region. The first developments in the use of ICT in the Chilean judiciary date back to 1980,\textsuperscript{87} when the first computers were brought into the courts. This was a computer installed in the Budget Department of the Supreme Court, an institution later replaced by the Administrative Corporation of the Judiciary (or CAPJ), the current agency in charge of the administration of the courts and especially of technological innovations.\textsuperscript{88} In 1983, the first case management system, which basically allowed the registration of basic case data, was piloted in 6 criminal courts and later extended in 1987 to other courts, based on their overloaded workload, in order to improve efficiency.\textsuperscript{89} These attempts by the judiciary - still during the last decade of the Augusto Pinochet dictatorship - were aimed at bringing more efficiency to the administration of the system, rather than questioning the role of the judiciary in a democracy or under the rule of law.\textsuperscript{90}

In the 1990s, with the return to democracy, the government of Patricio Aylwin undertook several projects to reform the judicial system, but none as significant as the criminal justice reform that began around 1995 with the legislative approval of a new Code of Criminal Procedure.\textsuperscript{91} This reform was considered the ‘reform of the century.’\textsuperscript{92} Aimed at replacing the old inquisitorial system with an adversarial criminal procedure, perhaps the greatest innovation - at least in comparison with other similar reforms in the region - was the attempt to replace not only a procedural code, but the entire framework of the criminal justice system. It was a public policy with an important diagnostic process, the involvement of different stakeholders in its design, the use of clear and measurable objectives, and a gradual process of implementation that began in 2000 and ended in 2005 with its entry into force in Santiago, the country’s capital and largest city.\textsuperscript{93} From the outset, it was conceived as part of the democratic process, in terms of bringing the criminal justice system into line with the standards and values inspired by that political system.\textsuperscript{94} Despite this local justification, as described above, it was part of the regional

\textsuperscript{84}Ramos (2021) 82.
\textsuperscript{85}Saavedra and Upegui (2021) 18–19.
\textsuperscript{86}Saavedra and Upegui (2021) 35–36.
\textsuperscript{87}Muñoz (2021) 18.
\textsuperscript{88}Corporación Administrativa del Poder Judicial (2019) 18.
\textsuperscript{89}Corporación Administrativa del Poder Judicial (2019) 19.
\textsuperscript{90}Vargas (1998) 67.
\textsuperscript{91}Vargas (1998) 55.
\textsuperscript{92}Duce (2011) 24.
\textsuperscript{93}Duce (2011) 26–28.
\textsuperscript{94}Riego (1998) 34.
movement to update criminal justice to respect the right to a fair trial standards of international human rights law.\textsuperscript{95}

During this period, the basic technological infrastructure in the judiciary was established and expanded, initially using computers and case management systems developed in Virtual Address Extension (VAX) platforms - a technology developed in the 1970s - and used mainly for basic data registration, case file reports and data maintenance, as basic networks that allowed the exchange of information between some terminals.\textsuperscript{96} Second generation case management systems were later developed using client/server architectures, which included features aimed at improving the case distribution system within the courts and providing access to case files in the Superior Courts.\textsuperscript{97}

This basic framework was crucial to support the requirements that the criminal justice reform, first, and the labor and family courts, later, demanded between 2000 and 2009, when these several judicial reforms were implemented in the country. This period has been pointed out as a pivotal point in terms of the technological modernization process.\textsuperscript{98} Initially, each type of court - criminal, family, labor - had its own case management system created independently, with these later being interconnected through an integrated system. Initially, these systems allowed only the exchange and management of documents, but over time they facilitated the implementation of digital case files - which contain all the materials of a case -, monitoring the efficiency of court administration, managing judges and hearing schedules, and even allowing interoperability between public agencies.\textsuperscript{99}

The reform of the criminal justice system led to the creation of the Judicial Management Support System, which has a modular and integrated structure and enables the interconnection and effective transfer of information between criminal courts and the Public Prosecutor’s Office. This system has provided benefits mainly as a tool to support the management and control of the court in the effective progress of each case, guaranteeing the availability of information, promoting transparency in processing, and security in the handling and protection of data, and optimizing work processes. Since the new criminal procedure is conducted through a series of hearings during the preliminary and trial phases, the criminal courts have received equipment consisting of amplifiers, speakers, mixing consoles, microphones, head-phones, computers, recording software and backup equipment in case of power outages. In addition, judges, court administrators, and IT managers received email. An integrated human resources and contract management system was also implemented by the judiciary around the same time.\textsuperscript{100}

This know-how was soon extended to the entire judiciary, taking into account the reform trend that extended beyond the criminal field to other courts. To this end, great efforts were made to develop and strengthen technological tools, considering not only the need to consolidate case processing systems, but also the improvement of administrative and management

\textsuperscript{95}See Langer (2007) 617–76.
\textsuperscript{98}Corporación Administrativa del Poder Judicial (2019) 19.
processes within the institution. Thus, the expansion of digital services and connectivity played a key role in the work plan of the judiciary. Some examples of innovations during this period were geolocation services for personal notification of legal claims, internal videoconferencing systems, voice recognition for transcripts, digital vouchers for judicial transfers and deposits, new statistical tools, SMS reminders, and e-filing, among others.101

Another important year was 2014. In that year, for the first time, an internal regulation provided for electronic filing and the creation of a complete digital case file in civil courts. Since this jurisdiction had not been part of the judicial reform of the previous decade, and therefore its procedure was still based on the exchange of documents and in a piecemeal format, the experience gained from the previous reforms allowed at least the modernization of the civil courts by replacing paper with a digital version of the case file, the use of electronic means of communication between the parties and the civil courts, and electronic signatures. Through a gradual implementation and pilots in several civil courts of the country, the consolidation of the fully electronic civil procedure took place in 2016 with the entry into force of Law N° 20.886, also called the Electronic Litigation Act.102

This regulation, based on the gradual process of technological modernization and infrastructure already in place, provided for the entire court system - which includes all civil, criminal, family and other specialized lower and higher courts - the mandatory use - for internal and external users - of the digital case file and a single web-based platform - the Virtual Judicial Office (OJV). In this way, this platform became the main tool for the exchange and storage of case information, electronic signatures, geolocation for the delivery and communication of the main procedural acts, and electronic notification by e-mail and directly on the platform. In the case of civil procedure, and except for personal activities (which are very limited in an extremely written procedure), almost the entire procedure could be conducted remotely.

Although the Chilean judiciary had a strong infrastructure and years of experience in ICT implementation projects, this new regulation naturally presented a major challenge. It made it necessary to review the different existing processing systems to adapt them to the new requirements, especially in relation to the interaction with the OJV that would be used by the users, and which would have to take into account both the filing of new claims and the processing of other types of pleadings, incorporate a mechanism for distributing cases between courts of the same jurisdiction, the use of simple or advanced electronic signatures, the validation of the registration of lawyers, the provision of internal connections covering the entire range of different courts, and the possibility of geo-referenced activities of judicial officers in charge of personal communications, among others, in a single platform that must comply with significantly high security standards.103

In terms of informing the public, in addition to a website that has been frequently recognized by the Justice Studies of the Americas Index on Access to Judicial Information on the

103 Corporación Administrativa del Poder Judicial (2019) 76.
The Chilean judiciary began using social networks such as Twitter, Facebook, and YouTube in 2012, and more recently Instagram. These accounts, managed by the Communications Office, are used to interact with their users by providing information in plain language - usually with the participation of judges - or by streaming live or recorded hearings in relevant cases of public interest. For example, in a section called ‘Judges Respond,’ a journalist from the Communications Office interviews different judges who are asked to explain, as simply as possible, various relevant issues in a video format that lasts between 40 seconds and one and a half minutes. The judiciary’s social networking project can be considered a success. If in 2012 the Communication Office reported 4 thousand Facebook friends, 8.5 thousand Twitter followers and 100 subscriptions to YouTube channels, a quick visit to each social network website shows that they have reached 230 thousand Facebook followers, 270 thousand Twitter followers and 124 thousand subscriptions to YouTube channels.

More recently, and integrated to the OJV, a platform was especially designed to provide information and standardized forms for end users in more than twenty frequent court requests and paperwork. Some of these applications range from taking precautionary measures in alimony cases and providing new address and contact information, to modifying court hearing dates, requesting urgent measures for minors, and requesting wire transfers from courts, among others. While a quick review of the website shows a pending challenge in terms of plain language and design, this infrastructure allows for future improvements in a more user-oriented development.

### 3.2. The Covid-19 pandemic as a catalyzer

At the onset of the Covid-19 pandemic, virtually all Latin American judiciaries ordered the suspension of judicial services, deadlines and hearings, maintaining only a minimum level of service. The provision of judicial services was thus limited to the resolution of urgent matters or those directly related to the public health emergency. In some countries, laws or agreements explicitly defined which matters were considered urgent or essential services, particularly in criminal cases involving the deprivation of liberty of the accused, detention controls, habeas corpus, family protection measures and gender or domestic violence, among others.

During the pandemic, most countries took rather improvised and scattered measures to allow their officials to continue working somehow by telecommuting. Only a few countries use remote desktops via VPN connections and with the use of advanced electronic signatures.
Even fewer countries have integrated management systems that would allow for the integrated exchange of information with the other parties involved in the judicial process and that would allow for the sending of notifications or communications by the same means. In general, the latter has been done through improvised commercial platforms.113

Almost all Latin American countries authorized virtual hearings, most of them using different systems in a way that was not necessarily uniform among the courts, and where the training of internal or external operators in their use was not generalized. In addition, in general, protocols for the conduct of hearings have not been established that go beyond the functionalities of the tool to include rules on how to make its use compatible with the basic requirements of these hearings. No clear guidelines or criteria were found as to what type of matters or issues may or may not be heard in a videoconference hearing, or when its use falls below the minimum acceptable standard. In those countries where it was possible to continue to hold virtual hearings outside the criminal and emergency sphere, it was not for all types of matters, but for a smaller proportion - often for matters related to the pandemic - and rather for mere formality. Normative frameworks in this regard were contingent and varied across jurisdictions and courts, rather than being permanent and systemic.114

In the case of Chile, a well-implemented pre-pandemic e-filing and case management system proved to be a key component in the rapid transition to remote courts. According to the judiciary, more than 12,000 VPN accounts for internal users and government institutions were created in 2020, allowing officials from the various courts and departments to connect to the internal network and its institutional applications from home. Then, during the same period, the number of connections to the videoconferencing platform was increased, offering other access mechanisms such as Zoom and Cisco Webex platforms, allowing an increase from 50 to about 2,500 videoconferences per day with more than 26,000 participants, with more than 383,000 sessions held in 2020, taking into account both meetings in various collaborative environments and court hearings. In addition, nearly 900 laptops have been purchased and distributed to judges in the various courts throughout the country.115

During the pandemic, videoconferencing technologies proliferated and became critical to the adversarial and trial structure of the proceedings. The challenge in this regard was how to provide judicial functions remotely while respecting basic fair trial standards. Similar experiences can be described in the Chilean non-criminal arena, and especially in family and labor law, two areas of the justice system that followed the criminal justice reform and implemented new procedural rules inspired by the same principles of orality and immediacy in hearings-based procedures. Therefore, during the pandemic, the problems were not concentrated in the availability of the technological infrastructure. What had to be done was to create a normative framework for the functioning of the remote courts, allowing for remote hearings (videoconferencing via Zoom or similar platforms), extending the electronic signature to other legal documents beyond the current use in the context of the e-filing system (e.g. court auctions), simplifying the initial notification requirements, etc.116

113 Arellano et al. (2020) 96–97.
114 Arellano et al. (2020) 94, 98.
115 Link9.
116 Lillo and Vargas (2021) 225.
4. BRIEF COMMENTS ON THE CURRENT STATE OF TECHNOLOGICAL DEVELOPMENT IN LATIN AMERICA FROM AN ACCESS TO JUSTICE PERSPECTIVE

Based on the previous section, the right of access to justice can be understood as the right that guarantees people the opportunity to have their claims heard by a court or other functional equivalent, so that their rights are effectively protected, in a procedure that ensures their effective participation and under the minimum conditions guaranteed by the right to a fair trial.

As explained above, technology has the potential to improve each of the three dimensions of this right - access to legal knowledge, guidance on what the law requires, and the effective use of a legal forum. However, while it has the potential to make justice systems inclusive and accessible to those who need assistance to effectively exercise their procedural rights, this depends on how and for whom ICTs are implemented.

Particularly in the aftermath of the pandemic, as we have seen in the previous section, it is possible that many of the ICTs implemented in the justice system will be part of the ‘new normal’; for this particular use of technology to become a reality, there is a fundamental need to understand the lessons learned about how the system functioned during the pandemic and to identify gaps that need to be addressed.

In the case of Chile, as the pandemic progressed and extended far beyond initial estimates, what was initially an emergency response was, after two years, largely integrated into the regular functions of judicial institutions. The focus was not only on the delivery of judicial services, but also as a key strategy to address overburdened courts as delayed cases began to return to the courts. This is because, as early research suggests, these regulations left ample room for each court to apply the technological solutions without clear and common guidelines.\textsuperscript{117} This became a problem especially in the civil justice system, where many procedural acts, including the taking of evidence, still had to be done in person. In practice, there was a radical stagnation in most courts of the civil justice system. Studies suggest that a critical issue in this context was not the incorporation of technology, about which there are no doubts regarding its potential to improve access, but how and why technology was implemented. Improvisation, lack of training and other factors have led to a staggering number of civil cases.\textsuperscript{118} While much research remains to be done, a likely explanation is that while there has been an important process of modernization, in many courts the incorporation of ICT has not resulted in a transformation of traditional ways of ‘doing things’ but rather in the continuation and maintenance of the same workflow, but now through technological means.

The implementation of technology by the Latin American judiciaries in general, and in Chile in particular, as described above, may have acquired an important degree of infrastructure, but the use of technology to reduce the distance from end-users is still a pending task. A preliminary conclusion of this study is that the implementation of ICTs in the justice system could bring several benefits if it is dedicated to the task of improving access to justice, and not only to improving efficiency and making life easier for internal or frequent external users. It should not

\textsuperscript{117} Lillo and Vargas (2021) 218.
be forgotten that the incorporation of new technologies should not become an entry barrier for those who do not have the necessary resources to reach the courts, and that it is essential to consider their implementation in the Latin American context, where there has been an intense and profound process of discussion and regulatory change in recent years, but where the processes of implementation of standards and cultural changes or changes in the practices of actors have been rather weak and unplanned, which has led to the fact that in many countries we find ourselves with advanced standards, but with practices typical of the system that we are trying to overcome.

There is a lack of empirical research on the impact on the use of the OJV platform by those who have justiciable problems and who may wish to use this platform without the intermediation of a lawyer. While previous research has highlighted the existence of numerous digital divides based on the socio-economic and demographic characteristics of users, their access to ICTs, motivation, skills and opportunities, we don’t know specifically how the intensive use of technology by the Chilean judiciary has impacted in this regard. As mentioned above, there is still a lack of empirical research in this area.

We have evidence that many common justiciable problems experienced by Chileans do not reach the civil courts. At present, our civil justice system does not represent a real alternative for the satisfaction of a number of the population’s legal needs, especially with regard to justiciable problems of low complexity but of high prevalence among the population. For example, a study published in 2020 by the Administrative Corporation of the Judiciary shows that three out of four people claim to have experienced a justiciable problem (76% of those questioned). The most common problems are those related to contractual products and services (such as telephone, Internet, cable or digital television), with 52.7%, followed by money and financial problems (not being able to pay with a credit card or business card, money owed to people, tax collection, among others), with 30.2%. Health-related legal needs (obtaining or receiving health care, inadequate medical care, access to medicines, etc.) came in third at 27.7%.

On the contrary, according to an empirical study carried out in the civil courts of Santiago, 92% of the cases are debt collection proceedings, in which more than 90% of the plaintiffs are large financial companies, of which at least 66% are repeat players. In comparison, most of the defendants are individuals who generally do not appear in court. As such, civil justice has been characterized as a mechanism that is part of a broad collection strategy of large corporations, while their relevant conflicts are resolved in private arbitration. The literature in Chile has pointed to several barriers that impede access to justice, such as the lack of information, the location of courts, the formalism and lack of flexibility of legal procedures, delays, and the mandatory requirement of legal representation. These barriers create a situation in which the sporadic individual, based on a cost-benefit analysis, decides not to solve his legal need through civil justice. This explanation can also be applied to small and medium-sized businesses, which are likely to be sporadic litigants themselves and cannot afford the luxury of litigation as a regular conflict resolution mechanism. In conclusion, although there is a strong technological framework, the current situation of access to justice in Chile is critical and

119 OECD (2019) 121.
120 Departamento de Estudios de la Corte Suprema (2020) 52–53.
121 Lillo (2020) 128–42.
supports the many criticisms made since the 1990s that Chilean civil justice is inaccessible to many sectors of the population and especially for simple but widespread justiciable problems of a civil nature.\textsuperscript{122}

The pandemic has deteriorated the situation in some types of legal needs,\textsuperscript{123} increased the vulnerability of those with legal needs, and exacerbated specific justiciable problems in the case of Chile, according to preliminary findings based on qualitative data in a recent study.\textsuperscript{124} One of these problems, which became much more relevant during the pandemic, relates to landlord-tenant problems, especially those related to evictions. These civil cases became much more frequent, which could be caused by the economic difficulties of tenants and landlords to meet their financial obligations. The situation of the judiciary with regard to these justiciable problems was particularly difficult. Due to the lack of clear guidelines and the resulting dispersion of criteria among the civil courts, the emergency regulation that suspended time limits - including evidentiary measures by its own procedural design - suffered massive paralysis and, what is more, could clog the civil docket now that it has resumed as the pandemic recedes.\textsuperscript{125}

A number of national surveys conducted in different countries show not only the high prevalence of justiciable problems among the population, but also how they are resolved in proportions that do not exceed 30% or 40% of the total, and that less than 10% of the cases involve responses from the formal justice system.\textsuperscript{126} In our country, the scenario is not very different. The data from the survey conducted by the Administrative Corporation of the Judiciary show that, on the one hand, a significant group of respondents who had experienced a justiciable problem ‘did nothing’ (44.9%). Among the reasons for inaction, economic costs, geographical distance, time and effort (25.9%) and not knowing where to turn (25.1%) stand out.\textsuperscript{127}

The inability of the system to provide answers to these types of issues and the existence of these barriers ultimately contribute to the poor public perception of civil justice and the crisis of legitimacy of the courts, which encourages even fewer of the population to initiate legal proceedings or to resort to the judiciary to resolve civil disputes.\textsuperscript{128} For these and other reasons, the lack of access to civil justice in our country has been described as one of the main dimensions of the ‘crisis’ of Chilean civil justice.\textsuperscript{129}

As explained in the previous section, the main strategy in the civil justice system before and during the pandemic was the incorporation of ICT. In this sense, and although the technological modernization of the judiciary has a long history in our country, the recent developments of the fully electronic civil procedure, with the entry into force in 2016 of the Electronic Litigation Act and the OJV, which allow the entire life of the processing of a civil case to be carried out by technological means, stand out. In addition, during the COVID-19 pandemic, the

\textsuperscript{122}Lillo and Riego (2015) 12–17.  
\textsuperscript{123}OECD (2020) 2–6.  
\textsuperscript{124}Lillo and Vargas (2021) 192–203.  
\textsuperscript{125}Lillo and Vargas (2021) 214–25.  
\textsuperscript{126}Hiil. (2022) 56; OECD (2020) 2.  
\textsuperscript{127}Departamento de Estudios de la Corte Suprema (2020) 87–90.  
\textsuperscript{129}Lillo (2020) 142–51.
The implementation of other technological tools that have allowed the work of officials and the holding of hearings by electronic means, such as remote desks, the expansion in the use of electronic signatures or the use of private videoconferencing systems, are good evidence of the important technological infrastructure achieved in the judiciary.

The intensive use of technology has not necessarily led to a reduction in access barriers, or in other words, to an improvement in the level of satisfaction of legal needs or in the resolution of justiciable problems of the population, especially those who do not have the means to hire a lawyer. On the one hand, there is a structural problem of the Chilean justice system that severely limits the scope of such technological developments. For many of the types of issues or justiciable problems prevalent among the population, the competent courts to hear them are not the civil courts, but other specialized minor local courts that are not formally part of the judicial hierarchy (although they are supervised by the judiciary). On the contrary, they belong to the municipalities and their main activity is the collection of administrative fines. This is the case, for example, with issues related to the individual protection of consumer rights or disputes arising from co-ownership of real estate. Since these courts are organizationally and financially dependent on the municipalities, they have a very diverse technological infrastructure; however, from the few studies that exist, we know that they generally have a very low or rudimentary level of technological modernization compared to the traditional courts.\textsuperscript{130}

Moreover, there is no diagnosis of how these technological tools that allow the digital processing of civil cases have affected access to justice for ordinary people, and not only for those who can afford a lawyer, who are the main users of the system and for whom tools such as the OJV were designed. Of course, this problem is even more evident with regard to the innovations made during the pandemic, since the urgency created has led to an accelerated process of implementation that has not allowed for diagnosis and evaluation. Although it is possible to identify a rather positive perception, especially among judges and practitioners, i.e. those who practice law,\textsuperscript{131} we still do not know for sure what impact technology has had, not only on the efficiency of the system, but most importantly on individuals and their own needs for protection of their rights. For example, although online hearings have been one of the most important tools in facilitating the appearance of parties to a case or their legal representatives, it is not at all clear to us whether this has meant an improvement for ordinary people in terms of respect for their right to ‘their day in court’ or their perception of the fair and dignified treatment they should have received. Only a few studies have shown some particular problems associated mainly with the use of these instruments in the context of the pandemic, and how they have had a negative impact on some particularly important legal needs whose mechanism for protecting rights is the civil courts, such as justiciable problems between landlords and tenants.\textsuperscript{132} There is an urgent need for more data on the impact of ICTs on the special needs for better access to justice, which could provide indicators for governments, justice systems and civil society to monitor and evaluate the effectiveness of justice systems and facilitate continuous improvement. This is particularly the case for civil justice.

\textsuperscript{130}Fandiño et al. (2019) 49–51.
\textsuperscript{131}Lillo and Vargas (2021) 213–19.
\textsuperscript{132}Lillo and Vargas (2021) 214–19.
5. CONCLUSIONS

In the first part of this paper, the basic standards on the right of access to justice and the use of technology were synthesized. The most important idea is that the right of access to justice requires effectiveness in practice. This means that a judicial dispute resolution mechanism must not only exist and be formally available to the individual, but it must be useful or capable of producing the desired result by which the individual seeks judicial protection. This ranges from filing a claim to enforcing a final decision. Violations of this standard may result from normative provisions or from factual circumstances.

The paper then analyzed how the use of ICTs in the justice system can bring several benefits if it is dedicated to the task of improving access to justice, and not only to improving efficiency and making life easier for internal or frequent external users. ICTs have the potential to improve access to justice, but they can also pose risks to fundamental rights, such as the right to a fair trial. It is essential to ensure equal access to technological resources for all participants and to address the digital divide, digital exclusion and digital illiteracy.

After describing the main technological tools implemented as part of the judicial reform movement and during the COVID-19 pandemic, which acted as a catalyst, and analyzing the current state of affairs, it is possible to conclude that the implementation of ICTs in the justice system could bring several benefits if it is dedicated to the task of improving access to justice, and not only to improving efficiency and making life easier for internal or frequent external users. However, as mentioned above, the implementation of ICTs in Latin America and in the Chilean justice system has focused mainly on improving internal work, the back office, and the delivery of one-dimensional information to external users, usually considered as those who can deal with technical legal language. On the other hand, the use of technology in the delivery of judicial services, as well as the direct link with the end user, has been an open task, a challenge that has yet to be met.

Moreover, there is a lack of empirical research on the impact of technology on those with justiciable problems, especially in cases where the intermediation of a lawyer between the client and the judicial system is not possible. While the main strategy in the civil justice system before and during the pandemic was the incorporation of ICTs, building an impressive technological infrastructure, the current situation of access to justice in Chile is still far from ideal, as it is still perceived as inaccessible by many sectors of the population and especially for simple but widespread justiciable problems of a civil nature.

This is critical because it is easier to believe that the mere incorporation of technology is the solution to the problems of the administration of justice, and therefore the modernization process becomes the goal rather than the tool. Thus, it has been pointed out that ‘…the massive incorporation of ICT will lead to a redefinition of processes, reducing time, economic costs and human resources, an aspect that will improve even more when there is a generalized use of the digital judicial file.’ On the contrary, it should be the other way around. This modernization process must be accompanied by the necessary fundamental transformation. Otherwise, as we have already said, there is a serious risk that the vices and problems of written, secret procedures,
based on the accumulation of documents and the exclusion of ordinary people from courts with unresolved justiciable problems, will remain intact.

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