

Session1: Comment on the digitalisation of justice in the European Union and in Spain

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First of all, I would like to thank Professor Deguchi for inviting me as a commentator to attend today's symposium.

And thank you, Professor Fernando Gascón Inchausti, for your wonderful report, which has provided us with a lot of valuable information and ideas to understand more about the development of digitalisation of justice in the EU and Spain.

1. E-Justice in the EU

In addition to the “Strategies,” “Action Plans,” and the Regulations mentioned in your report since 2008, at the end of 2023, the Council has e-Justice Strategy for 2024-2028, which is more ambitious to facilitate the digital transformation for the next five years¹.

As your report has mentioned, the new Regulation on digitalisation focuses mainly on cross-border judicial cooperation in the EU. And, from the perspective of countries outside the EU, there is still much to learn from those Regulations and Strategies, in particular, with regard to the right to effective access to justice, the right to a fair trial, the principle of non-discrimination, the right to respect for private and family life, and the right to the protection of personal data.

E-Justice in Europe sees electronic means as the default channel for communication between the parties and the court and as a way to facilitate access to justice, while in the meantime, it does not treat the ‘digital by default’ approach as the synonym of ‘digital only’. Any citizen should be able to freely access the e-CODEX system or any equivalent electronic communication system (electronic access point). In

¹ Council of the European Union, European e-Justice Strategy 2024-2028, 15509/23. *See:* <https://data.consilium.europa.eu/doc/document/ST-15509-2023-INIT/en/pdf>.

addition, service via the European electronic access point needs the prior consent of the addressee [Art. 4(6) DJCR]. The European legislator thus once again confirms the standard for electronic service on litigants: the consent of the addressee is required.

This approach ensures that the parties are not denied access to the court due to technological disadvantages. I also agree that obtaining the parties' consent for electronic services is essential because it involves their right to information. Nevertheless, the method of expressing "consent" remains unclear. I wonder when an individual submits a claim via the platform, does this act imply their agreement to receive service through the same platform? Or alternatively, must they provide explicit written consent separately, or is there an option within the platform that allows for consent with a simple click?

2. E-Justice in Spain and in Taiwan

The purpose of the digitization of civil procedure is to improve judicial efficiency and to strengthen the guarantees of access to the courts. Similar to Japan, Spain and Germany, Taiwan's Code of Civil Procedure (hereinafter: CCP) contains a number of provisions on the digitalization of civil procedure, which is not a comprehensive online procedure, but rather in relation to several important matters of the procedure, such as:

1. Electronic pleadings and e-filing: Art. 116 (3) of CCP
2. Electronic service (transmission): Art. 153-1 of CCP
3. Remote examination of the witness, expert witnesses: Art. 305 V of CCP
4. Investigation of electronic evidence: Art. 363 of CCP
5. Remote hearing: Art. 211-1 of CCP

The remote hearing in Taiwan is not fully virtual hearing, as judges still must sit in the court room for public hearings (rather than in their offices). The parties, lawyers, witnesses, and other related parties could choose to participate in the extended courtroom inside the court or at other locations outside the court. Therefore, this kind of remote hearing is not unconstitutional nor contrary to the spirits of oral argument and direct hearing, as well as the principles of open trial.

Before Covid-19, remote witness testimony was used less frequently in Taiwan's practice. One common approach was for a remote witness to go to their nearest accessible court and use its facilities to connect with the court where the trial was taking

place. It was also common to use videoconference for the examination of prisoners as witnesses. Most courts considered it "inappropriate" for witnesses to connect remotely from their own location (such as their home or law office) due to concerns such as the risk of witness tampering or leakage of confidential information. After 2020, due to the pandemic, remote hearings have become more common in court cases. However, it is still not used as frequently as in the United States, Germany or Spain.

From Professor Inchausti's report, we are informed that there is also a specific Platform, called LexNet in Spain. In practice, all procedural communications are made primarily by electronic means, with the exception of cases involving amounts of less than €2,000 and the first service to the defendant.

In Taiwan, the Judicial Yuan, which is the highest judicial organ, has also established an online platform for filing lawsuits since 2016, known as the "Judicial Yuan E-filing Service Platform". Various types of litigation are integrated in this platform, including constitutional litigation, civil procedure, civil enforcement, commercial procedure, IP-administration litigation, etc.

E-filing (including online pleading) Service Platform in Taiwan



This is an information system for transmitting (uploading and downloading) pleadings. Upon receipt of the plaintiff's electronic pleading from the e-platform, the Court will serve the defendant with a paper copy of the pleading. The defendant may choose to file a defense either in paper form or in electronic form by using the platform. The general public, lawyers, businesses, or government agencies can use the government-issued digital person certificate, business certificate, government agency certificate, or organization certificate to register an account and set the password. After setting up the account number and PIN, the user no longer needs to use the digital card to access the account but only needs to enter the PIN.

If you click on the Civil Litigation portal, you'll be able to see the e-filings, lists of supplementary documents, documents of electronic services, online payments, payment record, access to electronic records and other different options.

Civil Litigation

司法院
電子訴訟文書(含線上起訴)服務平台

KSHEN1224 沈冠伶 君

司法院電子訴訟文書(含線上起訴)服務平台 > 民事事件

最近登入成功時間: 111/04/24 07:31, IP: 118.190.89.79

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- Online filings (線上起訴)
- Lists of Supplementary Documents (當事人(補充)書狀 案件清單)
- Documents of Electronic Service (電子送達文書查詢)
- Payment at once (整批繳費)
- Payment Record (繳費紀錄查詢)
- Access to Electronic Record (電子筆錄調閱)
- File Detection Tools (檔案檢測工具下載)
- Maintenance of Power of Attorney (委任狀維護)

參訪人數: 166598

最新消息

- 113/02/07 1130207院台資三字第1131200299號公告, 公告「電子訴訟文書(含線上起訴)服務平台」新增提供「再延長收容聲請事件」傳送訴訟文書服務, 詳公告。
- 113/01/18 1130118院台資三字第11312006831號公告, 公告本院「電子訴訟文書(含線上起訴)服務平台」新增服務事項, 詳公告。
- 113/01/18 1130118院台資三字第11312006832號公告, 公告本院「修正排除電子簽章法適用項目」, 詳公告。
- 112/08/18 1120818院台資三字第11212018853號公告, 公告本院「修正排除電子簽章法適用項目」(智慧財產民事事件及智慧財產行政事件), 詳公告。
- 112/08/18 1120818院台資三字第11212018852號公告, 公告本院「電子訴訟文書(含線上起訴)服務平台」提供智慧財產民事及智慧財產行政訴訟文書送達服務(包含保全證據、假扣押、假處分、定暫時狀態處分及停止執行之訴訟文書傳送服務), 詳公告。
- 112/06/07 司法院電子訴訟文書(含線上起訴)服務平台系統使用手冊, 請按此。

There is also a specialized portal for lawyers with additional features.



It is not yet mandatory for the parties and their lawyers to use this platform to file lawsuits or exchange the electronic litigation documents for the civil cases. However, for the commercial cases, legislation has been enacted in 2021 to require lawyers to use online filing and document submission². If a lawsuit is filed in paper form, it will be dismissed as not meeting the requirements for filing a lawsuit. Only in limited exceptions are the parties allowed to file actions in paper form.

Although in Taiwan we have a platform similar to the one in Spain, due to the low rate of representation by lawyers, the rate of use of this platform is still very low, less than 5% of all civil litigation cases. Even lawyers do not like to use the platform to file or exchange pleadings. Therefore, discussions in Taiwan are underway on what measures should be taken to increase the willingness to use the platform. For example, whether to reduce court fees, or to amend the rules on service so that documents are

² Article 15 of Commercial Case Adjudication Act: (1) When a petition, action, appeal or interlocutory appeal, which is submitted via the e-filing transmission system by the parties, related parties, interveners or participants, or agents ad litem, conforms to the statutory format after review, the court shall send a certified copy of the petition, action, appeal, or interlocutory appeal, along with the manual of the e-filing transmission system to the opposing party.

(2) After receiving the copy and the notice described in the preceding paragraph, the opposing party shall use the e-filing transmission system to transmit or receive the pleadings.

(3) If the parties, related parties, interveners or participants, or agents ad litem fail to submit a petition, action, appeal or interlocutory appeal, in accordance with the provisions as described in Paragraph 1, the court shall order correction within a designated period of time. If such correction are not made within the prescribed time limit, the court shall rule to dismiss the action.

deemed to be served on the third day after they are uploaded onto the platform, or, whether we should oblige lawyers to use this platform to file electronic pleadings.

However, I think it is more important that assistance should also be provided at the same time to help the general public or lawyers to understand how to use this platform, and how the platform operates, so as to reduce the inadequacy of technological capabilities and the worry about whether they may be disadvantaged.

In addition, with respect to electronic judgements, to date, civil judgments still shall be made in paper form and cannot be served electronically through the platform in Taiwan, even though the courts can use the platform to serve notices of hearings. As the Administrative Litigation Act has been amended in 2022 so that “upon consent by the party to be served, authenticated copy of the judgement can be a record in electronic form, except that service of judgement upon a prisoner cannot be made by delivering electronic record” (Article 210 (1) of Administrative Litigation Act), the Code of Civil Procedure will soon be amended and the same provision adopted.

So, I am curious whether Spain has encountered any opposition or resistance at the initial stage of implementation of the Platform. Has it provided any incentives or imposed any mandatory requirements? If lawyers do not use the platform to file a lawsuit, will the lawsuit be dismissed as unlawful? Can judgements be served electronically through the platform in Spain? Are there any special rules regarding the time of service?

Thank you.