Session 10: Comments on E-Justice in International Civil Procedure Law

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I. A Comparative Analysis of the European Union and Taiwan

After Covid, digital civil procedure is no longer an optional tool or supplementary mechanism. It has evolved into an independent system with its own set of principles and procedural rules. This transformation is particularly evident in the European Union (EU), where civil procedure has undergone substantial digital reforms intended to make justice more accessible, transparent, and fair. Primarily aimed at judicial cooperation, these EU initiatives serve as models for global judicial reforms.

Similarly, Taiwan has embarked on its own judicial digital transformation. In July 2023, the Judicial Yuan of Taiwan introduced *Judicial Digital Policy 2.0*—a strategic framework aimed at modernizing judicial procedures. The policy identifies four key areas of reform: **remote court hearings, electronic procedures, digital case management, and smart justice**. The core objectives are to enhance judicial efficiency and improve public accessibility. However, unlike the EU Digital Justice Strategy 2024-2028, Taiwan's *Judicial Digital Policy 2.0* does not establish fundamental principles or a guiding philosophy for future developments.

While the EU has established a structured framework to promote cross-border judicial cooperation and procedural harmonization, Taiwan's reforms have mainly focused on improving efficiency and accessibility within its own legal system. However, in terms of cross-border remote video hearings, Taiwan's courts have permitted video testimony from a witness in Singapore and conducted video hearings for a defendant incarcerated in a mainland Chinese prison in a divorce lawsuit. pursuant to the judicial assistance agreement between Taiwan and China.

II. The Role of AI in Judicial Digitalization and the Recognition of Foreign Judgments

The use of digital technology has become a significant trend in global procedural law to enhance judicial efficiency. However, legislative approaches and practical implementation may vary across jurisdictions. The use of AI in judicial decision-making raises further concerns about procedural fairness, transparency, and accountability. While AI-assisted judgments may be accepted under certain conditions, fully AI-rendered judgments remain legally and ethically contentious. Professor Hau raises a critical question regarding the recognition and enforcement of foreign judgments rendered with AI assistance or even entirely by AI.

In recognizing and enforcing foreign judgments, Article 402 of the Taiwan Code

of Civil Procedure requires domestic courts to examine whether such judgments comply with ***ordre public***. Although there are no specific cases yet, I think the main considerations for foreign judgments made by AI include:

1. **Due Process**: Human judges can explain their reasoning, address case-specific nuances, and ensure fairness. Judgments assisted by AI may be recognized, provided that human judges retain ultimate control and review the results. However, judgments rendered exclusively by AI may lack human oversight and potentially undermine **core principles of transparency and the right to be heard**. To mitigate these concerns, at a minimum, information regarding the judicial data used to train AI and its decision-making process must be made publicly accessible.

2. **Reliability and Accountability**: While AI can help process large amounts of data and occasionally reduce human error, it also **introduces risks of bias, misinformation, and unclear accountability**. Determining responsibility for erroneous or unjust outcomes becomes problematic.

III. Questions:

1. The right to effective legal protection does not necessarily guarantee a *specific* mode of proceedings. Whether online or in person, it requires fair access to justice. If the digitization of civil proceedings offers a more effective method of dispute resolution, or even significantly facilitates access to the courts, do the parties have the right to request or choose for online proceedings?

2. If a foreign court's decision is based on **the parties' consent** to have AI as the judge, does it meet the requirements of due process and ***ordre public***? Can it be recognized?

3. If both parties agree, can AI adjudication be recognized as a form of alternative dispute resolution within the court system? Similar to how parties would select an arbitrator, would an AI judge be a potential option? Or would AI adjudication only be viewed as a form of private arbitration or ADR, where parties appoint an AI arbitrator as they would select a human arbitrator? Additionally, does AI adjudication meet the criteria of a valid arbitration award under international arbitration frameworks like the New York Convention of 1958? More specifically, can an AI system be considered an "arbitrator" within the meaning of arbitration laws, and can an AI-generated award be enforced if it lacks human reasoning and discretion?