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Comment

on

Sheng-Lin JAN: „Digitalization and the Use of AI in the Taiwanese Judiciary“

I. Citizens' Trust in the Judicial Process

Sheng-Lin JAN states in his well balanced and thoughtful paper on the digitalisation and the use of AI in the Taiwanese judiciary, that it was a major concern of the Judicial Yuan to promote and to further the citizens' trust in the judicial process (i.e. especially the predictability, transparency and equity of the sentencing in criminal cases) by introducing AI based systems in the Taiwanese Judiciary. In general, public trust in the proper functioning of the state's institutions is of paramount importance for functioning democracies because even though the people are the sovereign in a democratic system, typically power is exercised by separate state institutions such as the judiciary.¹ Trust in the proper functioning of these institutions therefore is of the greatest importance. This is true, especially for democratic legal systems that demand a monopoly on coercive means when it comes to the enforcement of subjective rights. This e.g. is the case for the German legal system where citizens – as a general rule – have to enforce their rights through state enforcement procedures, cf. Sec. 704 et seq. German Code of Civil Procedure (*Zivilprozessordnung*).²

As I have learned from Sheng-Lin JAN's paper, the use of AI systems in the Taiwanese judiciary has supportive function. It is meant to support (not to replace) the judge in the decision-making process, i.e. to assist the judge by collecting, organising and presenting (but not evaluating) the facts and considerations to the judge that are relevant for the resolution of the case. The system is a fact-based one and compares the facts of the present case to cases decided prior. As the information is also available to the parties of the proceeding, prosecutors, attorneys and the accused criminals, the sentencing process shall be made more transparent and fair in terms of the judicial outcome. Also predictability of outcomes is enhanced. Similar considerations apply in the use case of family proceedings concerning guardianship arrangements where the courts have to evaluate the facts of the case with regard to the best interest of the child requirement.

Nevertheless, AI based systems, especially those using large language models (LLM) and machine learning (ML) techniques, tend to be not 100% reliable. False positives may occur as well as hallucinations. Furthermore, due to system characteristics, the so-called "black box"-problematic exists, i.e. outcomes are neither explainable nor transparent and cannot be reproduced reliably. The lacking explainability of the very

¹ See e.g. the situation under German constitutional law, Art. 20 (2) Basic Law (*Grundgesetz*) – Principle of Democracy.

² Self enforcement instruments like the right to self defence according to Sec. 229 German Civil Code (*Bürgerliches Gesetzbuch*) form the exception.



