

2023 Questionnaire of the 1st Study Commission IAJ-UIM
“The Effects of Remote Work on the Judicial Workplace
and the Administration of Justice”

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Questions:

1. Remote work of judges in your country

a. Were judges permitted to work remotely in your country prior to and/or during the COVID-19 pandemic? If yes, please give examples (for example, studying cases at home; discussing cases with colleagues via videoconference applications or the telephone instead of personal meetings; holding hearings online via videoconferencing applications; etc.). Was technical equipment made available to the judges to enable them to work remotely?

Judges’ remote work includes remote hearings, electronic documents, and other administrative tasks.

I. Remote hearings

i. Civil cases

Under the civil regulations¹, before the pandemic, civil courts were

¹ The Code of Civil Procedure (民事訴訟法) Article 211-1 provides, “Where the parties, statutory agents, advocates, assistants, or other interested persons in an action have technology equipment to mutually exchange sound and video with the court to allow the court to proceed with the action, the court may on motion or at its discretion proceed with the action with that equipment where the court deems appropriate. The court shall consult the opinions of the parties in the case of the preceding paragraph.” The Article 305 provides, “The court may examine a witness directly between the location of a witness and the court by using any available technological audio/visual device if the court considers it appropriate to do so.” The Article 324 provides, “Except as otherwise provided in this Item, the

entitled to hold remote hearings in all kinds of civil proceedings except examining parties in non-contentious proceedings. These proceedings included civil litigation involving parties, witnesses, expert witnesses and interpreters, examining witnesses and expert witnesses in non-contentious proceedings, mediation, civil compulsory enforcement, rehabilitation, liquidation, reconciliation, and bankruptcy.

During the pandemic, the Judicial Yuan enacted the Special Act for Judicial Proceedings during Severe Infectious Disease Pandemic (hereinafter called Special Act)(傳染病流行疫情嚴重期間司法程序特別條例), expanding remote hearings to all kinds of civil proceedings, including civil litigation involving parties, witnesses, expert witnesses and interpreters, non-contentious proceedings involving parties, witnesses and expert witnesses, mediation, civil compulsory enforcement, rehabilitation, liquidation, reconciliation, and bankruptcy².

ii. Criminal cases

Under the criminal regulations³, before the pandemic, criminal courts

provisions regarding examination of witnesses shall apply mutatis mutandis to expert testimony.” The Article 207 provides, “The provisions regarding expert witness shall apply mutatis mutandis to the situations provided in the preceding two paragraphs (i.e. interpreter).” The Article 367-3 provides, “The provisions of Article 305 shall apply mutatis mutandis to the examination of parties or their statutory agents.” Other relevant civil regulations include the Compulsory Enforcement Act (強制執行法), the Consumer Debt Clearance Statute (消費者債務清理條例), the Bankruptcy Act (破產法), the Non-Contentious Incidents Act (非訟事件法), and the Rules of Civil Videoconferencing and Documents Delivery for Court (各級法院辦理民事事件遠距審理及文書傳送辦法).

² The Special Act Article 8 provides, “Where the parties, statutory agents, advocates, assistants, or other interested persons in an action have technology equipment to mutually exchange sound and video with the court to allow the court to proceed with the action, the court may on motion or at its discretion proceed with the action with that equipment where the court deems appropriate without being restricted by other civil or family procedural laws.”

³ The Code of Criminal Procedure (刑事訴訟法) Article 177 provides,“(1) If a witness is unable to appear or there are other necessary circumstances, after considering the opinion of the party or defense attorney, he may be examined where he is found or in the court of the judicial district in which he resides. (2) In circumstances specified in the preceding section, if there is audio and video transmission technical equipment that can communicate between the place where the witness is located and the court, the

were entitled to hold remote hearings in criminal proceedings with witnesses, expert witnesses or interpreters, and other proceedings as follows: (1) Examining the incarcerated private prosecutor; (2) Examining the defendant, private prosecutor or other related people in addition to the witness or expert witness; (3) Examining the incarcerated defendant regarding the revocation of detention, release from detention or extension of detention; (4) Announcing verdicts with the incarcerated defendant's and private prosecutor's consent; (5) Other matters approved by the Judicial Yuan or chief judges.

During the pandemic, the Judicial Yuan issued orders⁴ to expand the range of remote hearings as follows: (1) In pretrial hearings; (2) Videoconferencing with the assistant, complaint, complaint agent, victim, participant and participant agent in trial hearings; (3) Unable or inappropriate to take the incarcerated defendant out of the prison when handling compulsory measures in investigation proceedings and trial proceedings; (4) Questioning defendants who receive isolation treatments or home quarantine, show symptoms of COVID-19, contact confirmed cases, or other conditions with the risk of infection when handling compulsory measures. The orders enabled criminal courts to hold remote hearings in all kinds of criminal proceedings except the examination of defendants and arguments between prosecutors and defense attorneys in trial hearings.

court may conduct the examination by utilizing the said technology if the court deems appropriate to do so." The Article 197 provides, "Except as otherwise provided in this Section an expert witness is subject mutatis mutandis to the provisions of the preceding Section relating to a witness." The Article 211 provides, "The provisions of this Section shall apply mutatis mutandis to an interpreter." Other relevant criminal regulations include the Rules of Criminal Videoconferencing (刑事訴訟遠距訊問作業辦法) and the Rules of Expansion of Criminal Videoconferencing at Court (法院刑事遠距訊問擴大作業要點).

⁴ 2020.3.5 Yuan Tai Ting Xing Yi Zi No. 1090006072 (109 年 3 月 5 日院台廳刑一字第 1090006072 號函) and 2021.5.24 Yuan Tai Ting Xing Yi Zi No. 1100015650 (110 年 5 月 24 日院台廳刑一字第 1100015650 號函).

Since the above regulations and orders were not sufficient to address cases under the pandemic, the Judicial Yuan then enacted the Special Act, expanding remote hearings to all kinds of criminal proceedings, including the examination of defendants and arguments between prosecutors and defense attorneys in trial hearings⁵.

II. Electronic documents

i. Civil documents

Under the civil regulations⁶, before the pandemic, civil documents, pleadings, statements or written oaths may be submitted or transmitted via telefax or other technological devices except judgments, rulings, settlement transcripts, mediation transcripts,

⁵ The Special Act Article 4 provides, "If a criminal party or related person is unable or inappropriate to appear at court, and there is audio and video transmission technical equipment that can communicate between the place where the party or related person is located and the court, after considering the opinions of the party and related person and receiving the consent of the defendant, the court may conduct the examination by utilizing the said technology upon request or ex officio if the court considers that the communication between the defendant and defense attorney is not interfered and the right of defense is exercised effectively."

⁶ The Code of Civil Procedure Article 116 provides, "Parties may submit pleadings to the court by telefax or by any other technological device, and pleadings so submitted shall take full effect as if they were submitted in the original copy." Article 153-1 provides, "Any litigation paper may be transmitted by telefax or by any other technological device, and such transmission shall have the same effect as service in the case of any of the following: 1. The person to be served notifies the court that he/she has received the paper; 2. A person interested in the action moves for transmission of a specific litigation paper." Article 211-1 provides, "Where the transcript or other documents regarding the proceeding conducted pursuant to the first paragraph require a signature by the person making the statement, the court shall deliver the documents to the whereabouts of the person who makes the statement, who shall confirm with the content therein and sign on the documents before returning to the court by facsimile or other technology equipment." Article 305 provides, "A witness may transmit the documents provided in the second paragraph (i.e. witness statement before a notary), the third paragraph (i.e. witness statement outside the court), and the preceding paragraph (i.e. written oath) to the court via telefax or other technological devices, and documents so transmitted shall operate the same as those submitted in writing." Article 324 provides, "Except as otherwise provided in this Item, the provisions regarding examination of witnesses shall apply mutatis mutandis to expert testimony." Article 207 provides, "The provisions regarding expert witness shall apply mutatis mutandis to the situations provided in the preceding two paragraphs." Article 508 provides, "Applications for the issuance of a payment order and the handling thereof may be conducted through computer or other developed technological equipment as available." Other relevant civil regulations include the Rules of Civil Videoconferencing and Documents Delivery for Court (各級法院辦理民事事件遠距審理及文書傳送辦法) and the Rules of Telefax or Other Technological Device for Civil Documents (民事訴訟文書使用電信傳真或其他科技設備作業辦法).

agreement transcripts of evidence preservation, oral-argument transcripts substituted for judgments, documents regarding mediation, demand, provisional remedies and public summons proceedings, documents related to privacy or secrets, pleadings of commission and termination of commission, pleadings of evidence preservation and suspension of compulsory execution, and written oath by the parties or statutory agents.

During the pandemic, the Judicial Yuan enacted the Special Act, lifting the restriction listed in the Code of Civil Procedure Article 153-1⁷ (i.e. the person to be served notifies the court that he/she has received the paper; a person interested in the action moves for transmission of a specific litigation paper).

ii. Criminal documents

Under the criminal regulations⁸, before the pandemic, only affidavits and statements were permitted to be transmitted via telefax or other technological devices. Criminal documents other than affidavits and statements were not permitted to be transmitted via telefax or other technological devices.

During the pandemic, the Judicial Yuan enacted the Special Act, expanding the range of criminal documents permitted to be

⁷ The Special Act Article 9 provides, "If the parties, statutory agents, advocates, assistants, or other interested persons notify the court that they have telefax or technological devices to transmit documents, the court may transmit documents via telefax or technological devices. Such transmission shall have the same effect as service, which is not limited by the Code of Civil Procedure Article 153-1 and relevant provisions of the Family Incidents Act."

⁸ The Code of Criminal Procedure Article 189 provides, "If the witness is examined by utilizing technical equipments specified in section II of Article 177, the context of the affidavit to tell the truth may be transmitted to the court, or public prosecutor's office by electronic facsimile or other technical equipments followed by the original." The Article 197 provides, "Except as otherwise provided in this Section an expert witness is subject mutatis mutandis to the provisions of the preceding Section relating to a witness." The Article 211 provides, "The provisions of this Section shall apply mutatis mutandis to an interpreter." Other relevant criminal regulations include the Rules of Criminal Videoconferencing (刑事訴訟遠距訊問作業辦法) and the Rules of Expansion of Criminal Videoconferencing at Court (法院刑事遠距訊問擴大作業要點).

transmitted via telefax or other technological devices to other documents, including rulings, dispositions or writs of detention and other documents except judgments and rulings⁹.

III. Other administrative tasks

Before the pandemic, judges were not allowed to work from home. They needed to work in the office without any exception.

During the pandemic, the Judicial Yuan issued the Guidelines of Epidemic Prevention for Courts in Response to COVID-19 Pandemic (hereinafter called Guidelines)(因應 COVID-19 疫情之法院防疫指引). According to the Guidelines, judges were allowed to work from home with the approval of chief judges or authorized personnel under the following circumstances: (1) Having contact with people who are asked to home quarantine or who are suspected cases or confirmed cases; (2) Serving in the areas under the Level 3 epidemic alert¹⁰. The Guidelines also suggested that activities or affairs unrelated to cases to be held remotely, such as remote conferences and classes.

⁹ The Special Act Article 5 provides, "If the court questions the defendant through technical equipment and determines to detain the defendant whose personal freedom is restricted, it may transmit the ruling, disposition or writ of detention to the defendant via telefax or other technological devices before sending original documents to the defendant. If defense attorneys notify the court that they have telefax or technological devices to transmit documents, the court may do so as well. If the parties or interested persons, other than people in detention, notify the court that they have telefax or technological devices to transmit documents, the court may transmit documents via telefax or technological devices. If the parties or interested persons, other than people in detention, receive the approval of the court, they may transmit documents via telefax or technological devices."

¹⁰ The Central Epidemic Command Center (CECC) announced that the epidemic alert of Taipei City and New Taipei City was elevated to Level 3 from May 15th, 2021, and then continued to announce that the Level 3 epidemic alert was expanded nationwide from May 19th, 2021, and extended to July 26th, 2021. The following measures were implemented under the Level 3 epidemic alert: (1) Wearing of masks at all times outdoors; (2) The maximum crowd size: under 5 people indoors and 10 people outdoors; (3) All places of business and public venues are shuttered, with the exception of essential services, police departments, hospitals, and government buildings; (4) Masks and social distancing required at all businesses or venues that remain open; (5) In areas where community transmission has taken place, residents are restricted to a set perimeter and must submit to COVID-19 testing.

IV. Technical equipment

i. Remote hearings

To facilitate judges to conduct remote hearings, the Judicial Yuan issued the Manual of Videoconferencing for Court (hereinafter called Manual for Court)(法院辦理遠距視訊開庭參考手冊). The Manual for Courts lists three types of videoconferencing as follows: (1) Standard-between the main courtroom inside the courthouse and the place outside the courthouse; (2) Extended courtroom-between the main courtroom and the extended courtroom inside the courthouse; (3) Hybrid-between the main courtroom and the extended courtroom inside the courthouse and the place outside the courthouse. Due to the information security concern, the Zoom Meeting is not allowed by the Judicial Yuan; instead, the U Meeting is taken by courts to conduct remote hearings. Courtrooms are outfit with technology equipment to hold remote hearings with U Meeting.

ii. Electronic documents

The civil regulation lists three types of technological devices as follows: (1) E-filing Service System (電子訴訟服務平台); (2) Telefax; (3) Email¹¹. Courts are equipped with the above devices to receive or transmit documents electronically.

iii. Other administrative tasks

To facilitate judges to work from home, the Judicial Yuan issued the Manual for Users of WFH Technology Equipment (hereinafter called Manula for Users)(提供居家辦公資訊設備使用者參考手冊). According to the Manual for Users, judges are allowed to take their office computers home or use the notebooks or tablets provided by

¹¹ The Rules of Telefax or Other Technological Device for Civil Documents (民事訴訟文書使用電信傳真或其他科技設備作業辦法).

courts to handle official affairs at home. Technological staffs also install VPN software for judges to enable them to work from home efficiently and effectively. Besides, the U Meeting, Teams or Googlemeet are utilized to organize remote conferences and classes¹². Judges' offices are outfit with technology equipment to attend remote conferences and classes with U Meeting, Teams or Googlemeet.

b. What is the status of remote work by judges in your country now? Do many judges still work remotely in your country, and to what extent? (for example, all or just a certain percentage of judges? Only in certain fields of law or for certain types of cases? Only in lower courts or higher courts? etc.)

In response to the relief of the pandemic¹³, the regulations regarding remote work were adjusted accordingly.

I. Remote hearings

Although the Special Act enables courts to hold remote hearings to all kinds of civil and criminal proceedings, the Special Act only applies to the period of severe infectious disease pandemic, which is approved by the Judicial Yuan and the Administrative Yuan. The Judicial Yuan first announced that the period of severe infectious disease pandemic

¹² The Zoom Meeting is not allowed by the Judicial Yuan because of the information security concern.

¹³ The CECC lowered the epidemic alert to Level 2 from July 27th, 2021, extended the Level 2 epidemic alert to February 28th, 2022, and finally cancelled the epidemic alert since March 1st, 2022. The following measures were implemented under the Level 2 epidemic alert: (1) With the exception of eating and drinking, people must wear masks at all times when going out; (2) Implementation of real-name registration; (3) Maintain a socially safe distance; (4) Social distance of at least 1.5 meters in indoor spaces and 1 meter in outdoor spaces; (5) The maximum crowd size: under 50 people indoors and 100 people outdoors; (6) Places with indoor dining must follow Ministry of Health and Welfare regulations.

was under the Level 3 epidemic alert, and then approved that the Special Act also applied from May 25th, 2022, to November 24th, 2022. Therefore, the Special Act doesn't apply after November 24th, 2022. Nowadays, judges are entitled to hold remote hearings subject to other regulations as those before the pandemic.

i. Civil cases

Currently, civil courts are entitled to conduct remote hearings in all kinds of civil proceedings except examining parties in non-contentious proceedings. These proceedings include civil litigation involving parties, witnesses, expert witnesses and interpreters, examining witnesses and expert witnesses in non-contentious proceedings, mediation, civil compulsory enforcement, rehabilitation, liquidation, reconciliation, and bankruptcy.

ii. Criminal cases

Currently, criminal courts are entitled to hold remote hearings in the following matters: (1) Questioning witnesses, expert witnesses or interpreters who are unable to appear or there are other necessary circumstances; (2) Examining the incarcerated private prosecutor; (3) Examining the defendant, private prosecutor or other related people in addition to the witness or expert witness; (4) Examining the incarcerated defendant regarding the revocation of detention, release from detention or extension of detention; (5) Announcing verdicts with the incarcerated defendant's and private prosecutor's consent; (6) Other matters approved by the Judicial Yuan or chief judges; (7) Questioning defendants who receive isolation treatments or home quarantine, show symptoms of COVID-19, contact confirmed cases, or other conditions with the risk of infection when handling compulsory

measures.

II. Electronic documents

Since the Special Act doesn't apply after November 24th, 2022, documents permitted to be transmitted via telefax or technological devices are subject to other regulations as those before the pandemic.

i. Civil documents

Currently, civil documents, pleadings, statements or written oaths may be submitted or transmitted via telefax or technological devices except judgments, rulings, settlement transcripts, mediation transcripts, agreement transcripts of evidence preservation, oral-argument transcripts substituted for judgments, documents regarding mediation, demand, provisional remedies and public summons proceedings, documents related to privacy or secrets, pleadings of commission and termination of commission, pleadings of evidence preservation and suspension of compulsory execution, and written oath by the parties or statutory agents.

ii. Criminal documents

Currently, only affidavits and statements are permitted to be transmitted via telefax or technological devices. Criminal documents other than affidavits and statements are not permitted to be transmitted via telefax or technological devices.

III. Other administrative tasks

The Judicial Yuan updated the Guidelines periodically since the outbreak of the pandemic. According to the updated Guidelines, judges are allowed to work from home with the approval of chief

judges or authorized personnel under the following circumstances: (1) It is necessary to take care of sons or daughters studying in junior or senior high schools with certificates of disability or children under 12 years old due to epidemic prevention (e.g. taking care of sons or daughters absent from school because of testing positive); (2) Superiors consider it is appropriate to work from home due to epidemic prevention (e.g. people testing positive but free from home quarantine and sick leaves). The Guidelines continuously suggest that activities or affairs unrelated to cases to be held remotely, such as remote conferences and classes.

IV. Remote work in Practice

Although remote hearings are allowed in most of the civil proceedings, civil courts are less likely to conduct remote hearings after the pandemic. Criminal courts seldom hold remote hearings since remote hearings are merely allowed in limited conditions.

Moreover, although most of the civil documents are permitted to be transmitted via telefax or technological devices, simply 1% of the civil documents are transmitted electronically¹⁴. Criminal documents are seldom transmitted electronically as merely affidavits and statements are permitted to be transmitted via telefax or technological devices. Besides, few judges work from home nowadays as working from home is only permitted in rare situations. Nonetheless, remote conferences (e.g. mostly hybrids with both physical and remote modes) and remote classes are often organized in the judicial workplace. Some judges tend to attend physical conferences and

¹⁴ According to the statistics provided by the Judicial Yuan.

classes while others like to participate in remote conferences and classes.

2. Effect on judicial work

a. *Did remote work change judicial work in general for better or worse – or both – in your country? Please give examples.*

Remote hearings and electronic documents enabled courts to take epidemic prevention measures (e.g. maintaining social distance and decreasing aggregation) without seriously affecting the schedule of handling cases. Although case backlog still occurred, it didn't cause severe disadvantages in the justice system. However, remote hearings, which lack face-to-face interactions and examinations, jeopardize the right of confrontation, the right of access casefiles, and the right of confidential communication with defense attorneys. Therefore, the court refers to the following guidelines to ensure the correctness of fact-finding.

I. The right of confrontation¹⁵

The Manual for Courts suggests, "To ensure the interviewee's freedom of expression and the correctness of statement, the court shall pay attention to the following matters. The court may order to adjust technology equipment of the court or the remote place, or to verify the interviewee, the people around the interviewee or the place where the interviewee is located when it is necessary. (1) Whether the interviewee's personal freedom is restricted. (2) Whether the

¹⁵ The right of confrontation is confirmed in the Interpretation No. 384 and 582 of the Constitutional Court.

interviewee is safe; whether anyone is present in the place where the interviewee is located and the reason; whether the presence of another person affects the interviewee's freedom of expression or interferes the correctness of the interviewee's statement. (3) Whether the interviewee prepares adequate technology equipment. For example, if the angle of camera lens is wide or narrow; if the interviewee's whole body is shown in the camera lens; the clarity of images; the quality of sounds; if the interviewer or interviewee misunderstands each other's expression. (4) Before videoconferencing, the court shall confirm if the interviewee is able to express freely; during videoconferencing, the court may confirm the same matter at any time; the court may confirm in writing when it is necessary. (5) During videoconferencing, the court shall pay attention to the abnormality of interviewee's tones, facial expressions and gestures continuously, and forbid the interviewee to use background effects." The above factors ensure the freedom of expression and the correctness of statement. Judges are required to confirm that statements are consistent with interviewees' will before and during the process of remote hearings.

II. The right to access casefiles¹⁶

The Manual for Courts provides three methods for the court to show evidence to the parties: (1) Showing electronic casefiles by clicking the Share Screen tab in the U Meeting; (2) Showing real evidence by using image presenters and then clicking the Share Screen tab in the U Meeting; (3) Showing real evidence in front of the camera lens. However, if the clarity of images is poor, or if the parties need to see or

¹⁶ The right to access casefiles is confirmed in the Interpretation No. 737 and 762 of the Constitutional Court.

touch the evidence personally, the court shall not conduct remote hearings to prevent the right to access casefiles from being infringed.

III. The right of confidential communication with defense attorneys¹⁷

In remote hearings, the private communication between defendants and defense attorneys shall be guaranteed without being heard by others. The Manual for Court suggests that the court may use the breakout room in the U Meeting to allow defendants and defense attorneys to communicate privately. The private communication is neither heard by others nor recorded by the court.

b. Does the remote work of judges have an impact on the judicial workplace in your country? Negative, positive or both? Please give examples.

I. Remote hearings and electronic documents

To facilitate the effectiveness and efficiency of remote hearings as well as remote conferences and classes, both hardware and software have been advanced accordingly. Courtrooms and judges' offices have been equipped with technical devices, and court staffs have received technical training to develop relevant skills.

II. Other administrative tasks

Working from home and attending remote conferences and classes decrease judges' commute time. Judges are able to have extra time to

¹⁷ The assistance of counsel, which contains complete and free communication between the defendant and the defense attorney without obstruction and interference, known as the right of confidential communication, is confirmed in the Interpretation No. 654 of the Constitutional Court.

spend on either judicial affairs or other matters. Nonetheless, the efficacy of conferences and classes decline since there are no personal interactions and fewer mutual discussions in remote conferences and classes.

c. *From your point of view, what future effects of remote work on the judicial workplace – negative, positive or both – can be expected?*

I. Remote hearings

As remote hearings risk the right of confrontation, the right of access casefiles, the right of confidential communication with defense attorneys as well as the correctness of fact-finding, it is anticipated that the admissibility and credibility of evidence might be a controversial issue at the appellate court. If the appellate court confirms the lack of freedom of expressions and correctness of statements, the judgments might be reversed.

II. Electronic documents

Although most of the civil documents are permitted to be transmitted via telefax or technological devices, the utilization rate of technological devices is around 1% currently. Since transmitting civil documents via telefax or technological devices increases efficiency (e.g. transmitting documents in seconds) and reduces costs (e.g. paper costs and time spending), the use of electronic documents shall be promoted in the future.

III. Other administrative tasks

Remote conferences and classes are often held in the judicial workplace, even after the pandemic. Some judges claim that remote conferences and classes shall be continued on account of cost reduction (e.g. paper costs and time spending), while others advocate that physical conferences and classes shall be held more because people pay less attention and have fewer interactions when attending remote conferences and classes.

3. Effects on the administration of justice

<p><i>a. What are the pros and cons of remote work on the administration of justice?</i></p>

I. Remote hearings

The effectiveness of remote hearings lies in the quality of technical equipment and the technical capability of users (e.g. the parties, lawyers and witnesses). Thus, the advance of technical devices in courtrooms and the promotion of training course for court staffs are necessary. Besides, to ensure the clarity of images and the quality of sounds during remote hearings, whether users have technical devices and skills needs to be ensured before remote hearings. Court staffs contact users in advance, even several times, to confirm if users have technical devices and skills to attend remote hearings. In addition, when technical problems occur during remote hearings, technical staffs are required to resolving problems immediately.

II. Electronic documents and other administrative tasks

The use of electronic documents, working from home and attending

remote conferences and classes increase efficiency (e.g. transmitting documents in seconds) and reduce costs (e.g. paper costs and commute time). Nevertheless, technical equipment needs to be installed in advance, and technical problems need to be addressed in time.

b. Does remote work have a positive or negative impact on the administration of justice in general in your country? Please give examples that include, but are not limited to, the quality of the administration of justice.

I. Remote hearings and electronic documents

To facilitate remote hearings, the Judicial Yuan installed advanced technical devices in courtrooms as well as holding training courses for court staffs. Since the internet connection was poor in the beginning of the pandemic, the Judicial Yuan broadened the bandwidth to promote the quality of remote transmission in a short period of time. To enhance the use of electronic documents, the Judicial Yuan established E-filing Service System and have continuously encouraged the parties to utilize the system.

II. Other administrative tasks

Remote conferences allow members who are far away to attend conferences conveniently and efficiently (e.g. save transportation costs and commute time). Moreover, remote classes allow more attendants to participate in classes. Generally, a remote classroom can accommodate more than 100 attendants, while a physical classroom

can only contain dozens of attendants.

c. *Are you aware of the public's perceptions of remote work by judges?
Please give examples of positive or negative perceptions.*

Whether remote hearings influence the parties' and the public's rights is controversial.

I. The right of litigation¹⁸

Remote hearings and electronic documents guaranteed the parties' access to justice during the pandemic. The court were able to take epidemic prevention measures while dealing with cases on schedule. Thus, the parties' right of litigation was not seriously infringed with the use of remote hearings and electronic documents. Nevertheless, the justice is unaffordable and unfavorable to the parties who lack technical equipment or relevant skills. Impoverished or ill-educated people have difficulty in attending remote hearings and transmitting electronic documents.

II. The right to a public trial¹⁹

The right to a public trial ensures the public's right to know about cases. People are allowed to view court proceedings as audiences in trial hearings. In the United States and the United Kingdom, courts set up

¹⁸ The right of litigation is guaranteed in the Constitution (憲法) Article 16.

¹⁹ The Court Organization Act (法院組織法) Article 86 provides, "The argument of a suit and the pronouncement of a judgment shall be conducted in a public court session. However, when there are issues that may hinder national security, public order, or social values, a court may decide to deny public access." The Regulations of Court Audience (法庭旁聽規則) Article 2 provides, "Court shall set up a section in the courtroom for audiences and may place seat numbers on all seats. Court audiences shall be permitted unless otherwise prohibited."

Youtube channels to allow the public to view trial proceedings online. People who record trial proceedings are subject to the penalties for contempt of court²⁰. In Taiwan, it is criticized that allowing people to view trial proceedings online is substantially equal to courtroom photographing, videotaping and broadcasting, contributing to the invasion of privacy of the parties, witnesses and related people, or the unduly or irrelevant use of images or sounds of videoconferencing. As the contempt of court is not regulated in Taiwan's laws, there is no effective legal measure to prohibit people from recording trial proceedings.

However, the right to a public trial still needs to be protected in remote hearings. Hence, people are allowed to enter the main courtroom or the extended courtroom to view court proceedings as audiences when the court conducts remote hearings. If the main courtroom and the extended courtroom cannot accommodate all the audiences, the court may set up other venues in the courthouse for the audiences to view trial proceedings via technical equipment.

d. *What are the positive and/or negative effects of holding remote hearings/conferences?*

Remote hearings enabled courts to take epidemic prevention measures

²⁰ Contempt of court, also referred to simply as "contempt" is the disobedience of an order of a court. Additionally, conduct tending to obstruct or interfere with the orderly administration of justice also qualifies as contempt of court. A party that fails to perform a specific act, in accordance with a judgment by a court, can be charged with contempt and subsequently penalized. The purpose of recognizing contempt of court is to secure the dignity of the courts and the uninterrupted and unimpeded administration of justice. Contempt of court can be classified as either civil contempt or criminal contempt. Jurisdictions have articulated their distinctions differently, but the Supreme Court of the United States has held that whether a contempt proceeding is criminal or civil depends on the substance of the proceeding and character of relief.

without seriously influencing the schedule of handling cases. None of the courts closed during the pandemic, and few cases were suspended for a long period of time. With the use of remote hearings, the parties' right of litigation was protected. Nevertheless, since there is no face-to-face interactions in remote hearings, the correctness of fact-finding and the defendant's right of confrontation, right to access casefiles and right of confidential communication with defense attorneys might be impaired if necessary measures are not taken in accordance with the actual conditions of cases.

Technical devices and skills are prerequisites to remote hearings. Hence, remote hearings are more favorable to well-educated and wealthy people instead of ill-educated and impoverished people, leading to substantial inequality between the parties with different levels of education and economic status. Moreover, the Judicial Yuan have made efforts to utilize technology in the justice system in accordance with the digital trends. The use of remote hearings enhances the quality of technical devices and strengthens the technical skills of court staffs. With the advance of hardware and software, Taiwan's justice system is going to achieve the purpose of "Technology Courts" in the near future.

4. Remote work and judicial independence

Do you see any positive or negative effects of remote work on judicial independence? If yes, please give examples.

Judicial independence is guaranteed in the Constitution²¹, which

²¹ The Constitution Article 80 provides, "Judges shall be above partisanship and shall, in accordance with law, hold trials independently, free from any interference."

assures that judges are able to exercise judicial discretion in cases regarding fact-finding, law-applying and sentence-deciding without being interfered or influenced by politics, media, public opinions or other power. Judicial independence is related to two aspects: the freedom of expressions and recording of images or sounds.

I. Freedom of expressions

In remote hearings, there are no face-to-face interactions and examinations between the parties and witnesses. Thus, it is tough to evaluate the credibility of witnesses and achieve the correctness of fact-finding. It is significant for the court to ensure the freedom of expressions and the correctness of statements before and during the process of remote hearings. If statements are inconsistent with interviewees' will (e.g. the interviewee is instructed or influenced by others outside the camera lens), judges are not able to exercise their discretion adequately. Therefore, judicial independence might be impaired consequently.

II. Recording of images or sounds

During remote hearings, the parties, witnesses or other related or unrelated people might record images or sounds of court activities. The recording might be used on unduly or irrelevant purposes subsequently. Since the contempt of court is not legalized in Taiwan's laws, there is no effective legal measure to prohibit people from recording court proceedings. In addition, there are no technological measures to avoid recording court activities so far, which also jeopardizes judicial independence and fair trial.

5. Limits on remote work for judges

a. Does your country place any limits on the remote work of judges (for example, limits on remote hearings in criminal cases)? If yes, please give examples.

I. Remote hearings

Although the Special Act enables courts to hold remote hearings to all kinds of civil and criminal proceedings, it only applies to the period approved by the Judicial Yuan and the Administrative Yuan and it doesn't apply after November 24th, 2022. There are some limitations subject to regulations other than the Special Act.

i. Civil cases

Civil courts are allowed to conduct remote hearings in all kinds of civil proceedings except examining parties in non-contentious proceedings. These proceedings include civil litigation involving parties, witnesses, expert witnesses and interpreters, examining witnesses and expert witnesses in non-contentious proceedings, mediation, civil compulsory enforcement, rehabilitation, liquidation, reconciliation, and bankruptcy.

ii. Criminal cases

Criminal courts are allowed to hold remote hearings in the following matters: (1) Questioning witnesses, expert witnesses or interpreters who are unable to appear or there are other necessary circumstances; (2) Examining the incarcerated private prosecutor; (3) Examining the defendant, private prosecutor or other related people in addition to the witness or expert witness; (4) Examining the incarcerated

defendant regarding the revocation of detention, release from detention or extension of detention; (5) Announcing verdicts with the incarcerated defendant's and private prosecutor's consent; (6) Other matters approved by the Judicial Yuan or chief judges; (7) Questioning defendants who receive isolation treatments or home quarantine, show symptoms of COVID-19, contact confirmed cases, or other conditions with the risk of infection when handling compulsory measures.

II. Electronic documents

Although the Special Act lifts the restriction on civil documents under the Code of Civil Procedure and expands the range of criminal documents permitted to be transmitted via telefax or technological devices, it doesn't apply after November 24th, 2022. There are some limitations subject to regulations other than the Special Act.

i. Civil documents

Currently, civil documents, pleadings, statements or written oaths may be submitted or transmitted via telefax or technological devices except judgments, rulings, settlement transcripts, mediation transcripts, agreement transcripts of evidence preservation, oral-argument transcripts substituted for judgments, documents regarding mediation, demand, provisional remedies and public summons proceedings, documents related to privacy or secrets, pleadings of commission and termination of commission, pleadings of evidence preservation and suspension of compulsory execution, and written oath by the parties or statutory agents.

ii. Criminal documents

Currently, only affidavits and statements are permitted to be transmitted via telefax or technological devices. Criminal documents other than affidavits and statements are not permitted to be transmitted via telefax or technological devices.

III. Other administrative tasks

Currently, judges are only allowed to work from home with the approval of chief judges or authorized personnel under the following circumstances: (1) It is necessary to take care of sons or daughters studying in junior or senior high schools with certificates of disability or children under 12 years old due to epidemic prevention (e.g. taking care of sons or daughters absent from school because of testing positive); (2) Superiors consider it is appropriate to work from home due to epidemic prevention (e.g. people testing positive but free from home quarantine and sick leaves).

b. Are there any proposals to change rules or statutes in your country either to permit more, or to limit, remote work by judges?

I. Remote hearings

Whether the scope of remote hearings shall be expanded or limited is controversial, depending upon the characteristics of cases.

i. Civil cases

Civil proceedings are more suitable to be held remotely for the following reasons: (1) Litigants need not to be present at court; they are mostly represented by advocates or lawyers. (2) Lawyers usually have better technology equipment and skills than litigants. (3) There

are more legal issues rather than factual issues; investigating evidence doesn't occur often. (4) Since litigants don't appear at court with their advocates or lawyers, there is little need to communicate between litigants and advocates or lawyers at court. Nonetheless, civil cases with more factual issues and evidence investigation, or cases where litigants have difficulty in accessing technology equipment, are inappropriate to be held remotely.

ii. Criminal cases

Criminal proceedings are less appropriate to be conducted remotely for the following reasons: (1) Defendants have the right to be present at court. (2) Defendants have the right to confront witnesses. (3) Defense attorneys are not retained or appointed in some cases. (4) Defendants usually have poorer technology equipment and skills than lawyers. (5) There are more factual issues rather than legal issues; investigating evidence takes place in most cases. (6) Since defendants need to appear at court with their defense attorneys, communicating between defendants and defense attorneys at court is necessary. Nevertheless, criminal cases with less factual issues and no evidence investigation, such as cases in the second or third instances, or cases where lawyers are equipped with better technology equipment and skills, are suitable to be held remotely.

II. Electronic documents

Although most of the civil documents may be submitted or transmitted via telefax or technological devices, electronic signatures are not applied in all the civil documents transmitted via telefax or

technological devices. The Judicial Yuan issued orders²² to allow electronic signatures in civil pleadings or documents submitted by the parties or advocates. Nevertheless, electronic signatures are neither applied in civil statements and affidavits nor criminal documents. It is proposed that electronic signatures shall be applied in civil statements and affidavits as well as certain criminal documents.

c. Should there be any changes of rules or statutes in your country either to permit more, or to limit, remote work for judges?

I. Remote hearings

i. Civil cases

Although civil courts are entitled to conduct remote hearings in most of the civil proceedings, examining parties in non-contentious proceedings is not permitted to be held remotely. Nevertheless, the characteristic of examining parties in non-contentious proceedings is almost equal to other types of civil proceedings. Since other civil proceedings are permitted to be conducted remotely, examining parties in non-contentious proceedings shall be held remotely as well. Therefore, relevant civil regulations shall be amended accordingly to allow examining parties in non-contentious proceedings to be held remotely.

ii. Criminal cases

Criminal courts are entitled to hold remote hearings in criminal proceedings under limited circumstances. As criminal cases involve

²² 2002.3.28 Yuan Tai Zi Er Zi No. 08387 (91年3月28日院台資二字第08387號函); 2007.12.20 Yuan Tai Zi Yi Zi No. 0960026780 (96年12月20日院台資一字第0960026780號函); 2016.7.6 Yuan Tai Zi Yi Zi No. 1050017621 (105年7月6日院台資一字第1050017621號函).

issues of the right to be present, the right of confrontation, and the right of confidential communication, showing that the nature of criminal cases is fundamentally different from that of civil cases, it is inappropriate to expand remote hearings to other criminal proceedings after the pandemic. Hence, there is no need to amend current regulations regarding remote hearings in criminal proceedings.

II. Other administrative tasks

Currently the Guidelines allow judges to work from home in limited situations, while remote conferences and classes are usually held in the judicial workplace. Since the pandemic conditions change from time to time, the Judicial Yuan adjusts the Guidelines periodically in accordance with the epidemic situations.

Proposal for 2024 topic:

The legislation process and judicial practice of combating gender-based violence, including sexual assault, sexual harassment, domestic violence, stalking and harassment, and cyberviolence.