

**Mr. Shehabeldine Ismail**

International Dispute Resolution Lawyer, Young ICCA Regional Representative  
for Africa

# Procedural Due Process and the Use of Technology and Artificial Intelligence in Online and Remote Proceedings

■ **Correspondence:**

Mr. Shehabeldine Ismail, Young ICCA Regional Representative for Africa

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■ **E-mail:** [shehabeldineismail@gmail.com](mailto:shehabeldineismail@gmail.com)

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## **Procedural Due Process and the Use of Technology and Artificial Intelligence in Online and Remote Proceedings**

**Mr. Shehabeldine Ismail**

### **Abstract**

In a very dynamic and developing world of technologies, we have, now, a very great opportunity to enhance the rule of law, to ease the access to justice, to be more practical and efficient, to reduce cost, and to integrate new types of claims. To issue an enforced award or decision, domestic courts as well as arbitral tribunals and any other court of law shall maintain minimum level of due process requirements either in the procedures, on substance and even, with respect to post-award proceedings. In the last few decades, any proceedings were subject to facing an abuse of due process and we have witnessed the due process paranoia. Recently, this challenge has appeared again, and any use of new technology shall not harm any individual procedural safeguard. Today, we are challenging the alignment between the past and the future, where law professionals shall be very keen about the good management of the entire process of justice. This article will focus on current challenges of procedural due process in remote, online, and new electronic procedures.

**Keywords:** Procedural Due Process – Online and Remote Proceedings  
– Common International Due Process – International and National Procedural Public Policy – Enforceable Awards

## العدالة الإجرائية واستخدام التكنولوجيا والذكاء الاصطناعي

### في الإجراءات عن بُعد والإجراءات عبر الإنترنت

شهاب الدين إسماعيل

#### الملخص

في عالم متغير ومتطور تكنولوجياً، فإننا، الآن، لدينا فرصة لتعظيم مبدأ سيادة القانون وتسهيل اللجوء للعدالة، ولنكون أكثر عملية وكفاءة، بالإضافة لتقليل التكاليف وإدخال أنواع مطالبات جديدة. ومن أجل إصدار أحكام نافذ، فإنه يجب على المحاكم الوطنية وكذلك هيئات التحكيم أو هيئة قانون أخرى أن تحافظ على الحد الأدنى من مستوى الضمانات القانونية الأساسية سواء من حيث الإجراءات أو في الموضوع أو فيما يتعلق بالإجراءات اللاحقة على إصدار الحكم. ففي العقود القليلة الماضية، كانت تتعرض أي إجراءات لسوء استخدام مبدأ العدالة الإجرائية وشهدنا ما يسمى «ببارانويا العدالة الإجرائية». ومؤخراً، ظهر هذا التحدي مجدداً، وأي استخدام لوسائل التكنولوجيا الحديثة يجب ألا يضر بأي حماية قانونية إجرائية للأفراد. إننا، اليوم، نتحدى المواءمة بين الماضي والمستقبل، ويجب على رجال القانون أن يكونوا حريصين للغاية على احترام جميع الحقوق الدستورية والأساسية في إدارة عملية العدالة بأكملها. تركز هذه المقالة على التحديات الحالية لمبدأ العدالة الإجرائية في الإجراءات عن بُعد وإجراءات تسوية النزاعات عبر الإنترنت والإجراءات الإلكترونية الحديثة.

**الكلمات الرئيسية:** العدالة الإجرائية - الإجراءات عبر الإنترنت والإجراءات عن

بُعد - دولية العدالة الإجرائية - النظام العام الإجرائي الوطني

والدولي - الأحكام النافذة

## Introduction

“However imperfect due process, it has a protective faculty which cannot be removed... It is the natural enemy and the unyielding foe of tyranny, whether popular or otherwise. As long as due process subsists, courts will put in despotism’s path a resistance, more or less generous, but which always serves to contain it... There is in due process something lofty and unambiguous which forces judges to act respectably and follow a just and orderly course.”<sup>(1)</sup>

Due process is one of the very old doctrines or theories of fundamental rights and protections for individuals. It’s a set or group of rights, agreed upon between nations as a whole or in part, along with some specifications for each jurisdiction,<sup>(2)</sup> making together what is called due process.<sup>(3)</sup> Generally, due process – in the wide understanding that includes the basics of due process of law, substantive due process, procedural due process, access to justice, and fairness – exists in criminal matters as well as civil and commercial matters,<sup>(4)</sup> in arbitration, online dispute resolution (ODR), and even in non-adjudicatory alternative dispute resolution (ADR) or any negotiation-based ADR. Furthermore, it exists in, almost, all subjects of law such as competition

(1) Benjamin Constant, *Principles of Politics Applicable to All Governments*, E. Hofman (ed), (Liberty Fund Inc., 2003), 155, as cited in Charles T. Kotuby Jr. and Luke A. Sobota, *General Principles of law and International Due Process, Principles and Norms Applicable in Transnational Disputes* (CILE Studies, OUP 2017), 54.

(2) Ricardo Lillo Lobos, *Understanding Due Process in Non-Criminal Matters, how to Harmonize Procedural Guarantees with the Right to Access to Justice*, (Springer 2022), 10.

(3) *ibid*, 1-2; Matti S. Kurkela, *Due Process in International Commercial Arbitration* (2nd edn, OUP 2010), 1-2.

(4) Ola Johan Settem, *Applications of the ‘Fair Hearing’ Norm in ECHR Article 6(1) to Civil Proceedings* (Springer 2016), 8; Charles and Luke, *General Principles of law and International Due Process*, 168; R. Lobos, *Understanding Due Process in Non-Criminal Matters*, 257; see also Jens Frankenreiter and Julian Nyarko, ‘Natural Language Processing in Legal Tech’ in David Freeman Engstrom (ed), *Legal Tech and the Future of Civil Justice* (CUP 2023).

law,<sup>(1)</sup> intellectual property,<sup>(2)</sup> administrative law and procedures,<sup>(3)</sup> even in law-making process and many others fields of study.

Nations and different legal systems may not agree on the full set of principles that constitute due process,<sup>(4)</sup> however, there is consensus on the existence of due process as a constant theory, and the world has anonymously agreed on many elements of procedural due process. Simply, we could understand procedural due process, accordingly, as a theory of procedural guarantees that are considered to be the minimum requirements for any legal proceedings that might affect an individual's basic procedural fundamental rights.<sup>(5)</sup>

Furthermore, it's very relevant to note that procedural due process and fundamental procedural rights could be named differently between nations and legal systems. In common law jurisdictions, these rights are essentially found in the original theory of 'due process' or could be named, otherwise, today, 'procedural fairness', and in civil law jurisdictions, procedural due process is constituted of the mixture between three main principles 'le droit à un procès équitable', 'le principe de contradiction' and 'le respect des droits de la défense'.

Today, justice and technology are very relevant topics to each other, and in order to ease access to justice and to enhance the rule of law, new civil

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(1) Various approaches for due process are found to be very relevant and interesting, such as, due process of law and non-arbitrariness, procedural fairness, the philosophical concepts and the basic rules of procedural guarantees, the gradual development of the European Competition Law, breaches and criminal sanctions, the increased prominence of individual procedural rights under the EU law, etc. See Haukur Logi Karlsson, Conceptualising Procedural Fairness in EU Competition Law (HART 2020), 2-4, 9 ff.

(2) The same concepts could be found for substantive and procedural due process, and for individuals as well as companies and entities. It's worth noting that FET rules exist in investment disputes over IP rights and policies. See Emmanuel Kolawole Oke, 'Fair and equitable treatment of foreign investments and intellectual property rights', in Daniel J. Gervais (ed), Fairness, Morality and Ordre Public in Intellectual Property (Edward Elgar 2020).

(3) It could be also found either in the exercise of administrative powers by public authorities, non-arbitrariness policies, prohibition of denial of justice, rule-making, etc. It's worth noting that these rules are applied supra-nationally and with respect to procedural due process in administrative procedures as well. See Giacinto Della Cananea, Due Process of Law Beyond the State, Requirements of Administrative Procedure (OUP 2016) 1-2, 17-18, 139 ff.

(4) Matti S. Kurkela, Due Process in International Commercial Arbitration, 9-11.

(5) R. Lobos, Understanding Due Process in Non-Criminal Matters, 10-11.

and commercial dispute resolution procedures shall be created and made available, accessible, and affordable to all.<sup>(1)</sup> These new procedures shall be easy, accessible, costless, effective, proportional, and enforceable,<sup>(2)</sup> and, on the other hand, shall be in accordance with all basic and fundamental rights such as procedural due process, public policy or *ordre public* as well as all international general principles of law.

Procedural due process in new electronic or technology-based civil and commercial procedures as well as other adjudicatory and non-adjudicatory ADR will be our main issue to discuss, and accordingly, many things could cross the mind in assessing procedural due process, starting from the access to justice, accessibility, cost, notifications, access to file and record, equal or fair opportunity in the management of the proceedings, submission of defences and arguments, taking of evidence, rights for hearing, online or remote attendance, representation, rebuttals, examinations, issuance and notification of decision(s) or award(s), etc.

Over the last decades, all types of dispute resolution proceedings (i.e., civil or commercial court proceedings, arbitration proceedings or even mediation and conciliation procedures) have faced abuse either during the proceedings or even after the issuance of the final decision or judgement (if any) as well as international and national arbitral awards based on allegations of breaches of due process.

The losing party, usually, alleges that the tribunal or court made a fatal breach of basic procedural constitutional and fundamental rights such as presenting its case, document production, taking of evidence, ways and arrangements of evidentiary hearings, and many other allegations. During

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(1) See Richard Susskind, *Online Courts and the Future of Justice* (1st edn, OUP 2019), 8-11 and 65-66.

(2) The common expectation of individuals is that technology ‘promises to lower costs of delivery’, and that justice shall provide its ‘consumers’ with new automated processes and practices that reduce cost, effort, and time. See John Armour and Mari Sako, ‘Lawtech: Leveling the Playing Field in Legal Services?’ in D. Engstrom (ed), *Legal Tech and the Future of Civil Justice*.

the last years, the international law community struggled to well present this challenge and to make all law professionals aware of both due process as a fundamental theory and the abuse of due process as a challenge.<sup>(1)</sup>

While we are describing the past, it's very important to note that we still have this phenomenon of abuse of due process and this paranoia thereto, but in new ways. Today, we may see new allegations for breaches of procedural due process in all typical proceedings as well as new online, remote, or even technology-based civil or commercial dispute resolution mechanisms (e.g., online notification, languages and translation, internet, accessibility, etc.); however, we shall understand that the same base will remain existing while the details may vary.<sup>(2)</sup>

In the following, we will be discussing the origins of due process as a theory, what can be considered as a procedural due process rule, the common international understanding of procedural due process rules, the types and

(1) Many international thoughts could be very relevant and interesting in understanding procedural abusive behaviour in the course of procedures and the tribunal's professional and technical duty of making the needed balance between acting positively for all requests concerning the parties' rights to present their case and the good management of the procedure, including preventing prolongation, as it hurts due process in another way. See e.g., Queen Mary University of London and white & Case LLP, 'International Arbitration: Improvement and Innovation in International Arbitration, the executive summary, 2015 <<https://arbitration.qmul.ac.uk/research/2015/>> accessed July 2023; Yves Derains and Eric A. Schwartz, 'Due process paranoia and the procedural judgment rule: a safe harbour for procedural management decisions by international arbitrators' (July 2016) vol 32/3 Arbitration International, OUP, 415; Rémy Gerbay, 'Due Process Paranoia', (June 2016) Kluwer Arbitration Blog <<https://arbitrationblog.kluwerarbitration.com/2016/06/06/due-process-paranoia/>> accessed August 2023; Rémy Gerbay and Badar Al Raisi 'Due Process Paranoia (part 2) Assessing the Enforcement Risk under the English Arbitration Act' (February 2017) Kluwer Arbitration Blog <<https://arbitrationblog.kluwerarbitration.com/2017/02/20/due-process-paranoia-part-2-assessing-the-enforcement-risk-under-the-english-arbitration-act/>> accessed August 2023; Micheal Polkinghorne and Benjamin Ainsley Gill, 'Due Process Paranoia: Need We Be Cruel to Be Kind', (2017) vol 34/6, Journal of International Arbitration, Kluwer Law International, 935; Lucy Reed, 'Ab(use) of due process: sword vs shield' (2017) vol 33/3 Arbitration International Oxford University Press, 361; Rutger Metsch and Rémy Gerbay, 'Prospect Theory and Due Process Paranoia: what behavioural models say about arbitrators' assessment of risk and uncertainty' (2020) vol 36/2 Arbitration International, Oxford University Press, 233; Simon Sloane and Emily Wyse Jackson, 'Due Process and Procedural Irregularities: Challenges' (June 2021), Global Arbitration Review <<https://globalarbitrationreview.com/guide/the-guide-challenging-and-enforcing-arbitration-awards/2nd-edition/article/due-process-and-procedural-irregularities-challenges>> accessed July 2023; LAU, Louis Yi Hang, 'Two steps forward, one step back? An attempt to cure due process paranoia', (2021), 1, (1), 17-35. Singapore Law Journal (Lexicon) <<https://ink.library.smu.edu.sg/sjllexicon/1/>> accessed July 2023.

(2) These behaviours went beyond the parties, where the losing party may act against members of the tribunals or the arbitration institutions for responsibility over the procedural management of the case, based on allegations of the tribunal's failure to provide fair proceedings. See e.g., Cass., Civ. (1), 22 Mars 2023, 21-16.238.



nature of procedural due process, the relevance of procedural due process to public policy or public order, the development and use of technology and Artificial Intelligence (AI) in law profession as well as in civil and commercial justice, ADR, new remote or online procedures, and the effect of procedural due process' breaches on the final award and justice.

#### A try to understand Procedural Due Process

“Whatever disagreement there may be as to the scope of the phrase “due process of law”, there can be no doubt that it embraces the fundamental conception of a fair trial, with opportunity to be heard.”<sup>(1)</sup>

While all legal systems have admitted due process as a theory of fundamental rights or constitutional safeguards, there is no consensus on a proper definition for due process. Internationally, many approaches shall be taken into consideration in understanding due process, either in civil or commercial proceedings or arbitration proceedings, or even with respect to the recognition and enforcement of international decisions and awards. There are many different thoughts for due process in criminal and civil matters, procedural and substantive due process, international and domestic procedural public policy or ordre public. However, Today, we have new insights to considering procedural due process as a general principle whose content may vary in each case rather than being a set of elements to be applied in all cases.<sup>(2)</sup>

Undoubtably, due process is an old concept, where its roots went in the very old history. Many writings went on to identify the origin and the beginning of the development of due process and to consider the Roman Law as the first written illustration of due process.<sup>(3)</sup> However, one of the very interesting

(1) Frank v. Magnum, 237 U.S. 309, 347 (1915) (Holmes, J., dissenting) as cited in Charles and Luke, General Principles of law and International Due Process, 157.

(2) R. Lobos, Understanding Due Process in Non-Criminal Matters, 9.

(3) Charles and Luke, General Principles of law and International Due Process, 55; see also Franco Ferrari, Friedrich Jakob Rosenfeld and Dietmar Czernich, 'Chapter 1: General Report' in Franco Ferrari, Friedrich Jakob Rosenfeld and Dietmar Czernich (eds), Due Process as a Limit to Discretion in International Commercial Arbitration (Kluwer Law International 2023).

sources of due process, as an old rule, can be found older, in the story of the Prophet “Dāwūd”, “David” or “King David”, that went a few centuries before the “Twelve Tables Law” or the “Law of the Twelve Tables”.<sup>(1)</sup> That was the story of two litigants that entered to ask him to judge a matter between them, and he issued his judgment after listening to one party without listening to the other, and therefore, he discovered himself guilty. This story has many details, however, there are two relevant rules, of which the most relevant to our case is that the Prophet Dāwūd or King David discovered that he might only issue judgment after giving an equal opportunity to all parties.<sup>(2)</sup>

Many of the contemporary elements of due process have their origins in the middle and modern ages, where it was primarily provided under the revolutions of civil rights. At that time, it was adopted especially to support basic civil rights and fundamental safeguards that individuals had to have before justice and the state. In this regard, many significant steps and milestones could be found in understanding the development of due process.<sup>(3)</sup> In common law jurisdictions as well as civil law jurisdictions, there is an international common heritage of due process, such as the “Magna Carta”,<sup>(4)</sup> the “Déclaration des Droits de l’Homme et du Citoyen”,<sup>(5)</sup> and many other resources.

Today, in modern domestic laws, due process, generally, exists as a fundamental right in almost all written constitutions and under almost all

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(1) The “Twelve Tables” or “Law of the Twelve Tables” could be considered the oldest written legislation from the ancient Roman Law that were written around 450 BC, where the first two tables were concerned with the basic procedural rights of individuals in any trial.

(2) The Holy Quran, Ch.38, Verses 21 to 25; and for different interpretations, see Al-Tabary (pt 6, 1st edn, Al-Resala publishers, 1994); Al-Kortoby (pt 18, 1st edn, Al-Resala publishers, 2006); Ibn Kathir (1st edn, Ibn Hazm publishers, 2000).

(3) Charles and Luke, General Principles of law and International Due Process, 55-64.

(4) The “Great Charter” or “Great Charter of rights”, issued by King John of England in 1215, that contains articles 39 and 40 providing the basics for what we can call ‘due process’, and it’s very interesting to note that these two provisions are applicable till today, and over centuries, these rules were exported to the Americas and many English-speaking countries.

(5) Déclaration des Droits de l’Homme et du Citoyen de 1789 (DDHC), art XVI.

legal systems, such as the USA,<sup>(1)</sup> France,<sup>(2)</sup> Egypt,<sup>(3)</sup> Lebanon,<sup>(4)</sup> Brazil,<sup>(5)</sup> and others. However, in the UK, it seems to be a little bit different, and alongside the Magna Carta, due process exists under English case law throughout years until today where same concepts have been developed and are still at the core of the rule of law and natural law.<sup>(6)</sup>

In regulating and covering civil and commercial court proceedings, domestic civil procedural laws and acts provide provisions related to procedural due process and we can find provisions providing protections and guarantees for procedural due process. This could be found in common law as well as civil law jurisdictions, such as Egypt,<sup>(7)</sup> France,<sup>(8)</sup> Lebanon,<sup>(9)</sup> the UK,<sup>(10)</sup> Switzerland,<sup>(11)</sup> and almost all other jurisdictions around the world.

In international arbitration, the UNCITRAL Model Law provides procedural securities and due process (i.e., the parties' right to have an equal opportunity to present their case, etc),<sup>(12)</sup> however, many countries have added or amended some provisions in adopting the Model Law to provide a flexible understanding of procedural fairness that shall not be strictly understood as giving an identical opportunity rather than granting a fair opportunity for

(1) The US Constitution, amendments V and XIV.

(2) French Constitution of 1958, art 66.

(3) Egyptian Constitution 2014, art 54, 55, 94, 95, 96, 97 and 98.

(4) Lebanese Constitution 1926/2004, art 7 and 8.

(5) Brazilian constitution 1988, art 5.

(6) See e.g., Lord Neuberger, the President of the UK Supreme Court, Justice – Tom Sargant Memorial Lecture, Justice in an Age of Austerity, October 2013 when said "...That is rule by law, but the rule of law requires more than that. First, the laws must be freely accessible: that means as available and as understandable as possible. Secondly, the laws must satisfy certain requirements; they must enforce law and order in an effective way while ensuring due process, they must accord citizens their fundamental rights against the state, and they must regulate relationships between citizens in a just way. Thirdly, the laws must be enforceable: unless a right to due process in criminal proceedings, a right to protection against abuses or excesses of the state, or a right against another citizen, is enforceable, it might as well not exist...".

(7) Egyptian Civil and Commercial Procedure Code (ECCPC), art 102, 258, 259, 261 and 262.

(8) The French Civil Procedure Code (FCPC) provides many provisions to regulate the "Contradiction", either as a general principle of civil proceedings providing rights of the parties to be notified and heard (art 14), rights for defence (art 15) and the court's duty to check or observe the "contradiction" proprio muto at any time.

(9) Lebanese Civil Procedure Code (LCPC), art 7, 52, 364, 372, 373 and 374.

(10) The UK Civil Procedure Rules 1998, s 1.1, 1.4, 27.6, 27.8, 31.16.

(11) Swiss Civil Procedure Code (SCPC), art 52, 53, 55, 59, 60.

(12) UNCITRAL Arbitration Model Law, art 18.

all parties.<sup>(1)</sup> Notwithstanding that, almost, all domestic arbitration laws and acts provide similar protections; for example, the UK,<sup>(2)</sup> France,<sup>(3)</sup> Morocco,<sup>(4)</sup> Switzerland,<sup>(5)</sup> and even institutional arbitration rules provide provisions for procedural due process and procedural fairness, such as the ICC,<sup>(6)</sup> LCIA,<sup>(7)</sup> UNCITRAL,<sup>(8)</sup> ACICA,<sup>(9)</sup> CRCICA,<sup>(10)</sup> and almost all other laws, acts and rules.

However, and while many legal provisions could be found to provide due process, no detailed international or domestic definition was adopted to identify what constitutes procedural due process. Even though due process will remain a complex concept from the point of view of jurisprudence, it draws on “profound philosophical ideas of procedural and substantive justice that have changed over time”,<sup>(11)</sup> and finds its different elements and theories of application in jurisprudence.<sup>(12)</sup>

As long as civil and commercial justice should be “accessible” to solve different types of legal needs or disputes, whether big or small disputes and for high or low complexity cases, individuals shall have an easy access to any available dispute resolution mechanism, and whatever the mechanism that the parties may choose, rules of procedural due process shall be protected or granted in all types of civil and commercial procedures as well as all types of ODR and ADR.<sup>(13)</sup>

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(1) E.g., art 18-C of the Australian International Arbitration Act 1974 (AIAA) provided a further clarification for the term “full” by providing that “For the purposes of Article 18 of the Model Law, a party to arbitral proceedings is taken to have been given a full opportunity to present the party’s case if the party is given a reasonable opportunity to present the party’s case.”

(2) English Arbitration Act 1996 (EAA), s 33.

(3) FCPC, art 1510.

(4) Moroccan Arbitration Law 2022, art 33-5.

(5) SCPC, art 373; Swiss Private International Law (SPIL), art 190.

(6) ICC Rules of Arbitration 2021, art 22-4.

(7) LCIA Arbitration Rules 2020, art 14-1.

(8) UNCITRAL Arbitration Rules 2022, art 17-1

(9) ACICA Arbitration Rules, 2021, art 25-1 and 25-2.

(10) CRCICA Arbitration Rules 2011, art17.

(11) R. Lobos, *Understanding Due Process in Non-Criminal Matters*, 7.

(12) *ibid.*, 1-2.

(13) *ibid.*, 257; Charles and Luke, *General Principles of law and International Due Process*, 168; see also Jens Fran-

In all cases, procedural due process is protected even without any need to provide specific provisions in adopting or admitting any new electronic or online dispute resolution procedure or mechanism. People, when resorting to domestic court as well as arbitration or any other ODR, are expecting to have all procedural protections during the entire process. This understanding shall be granted in all types of new online and remote adjudicatory or non-adjudicatory procedures.

At the end of any adjudicatory proceedings, a final award shall be issued in accordance with the law governing the procedure, including public policy rules, and without prejudice to procedural due process as an international rule provided under international treaties or as a constitutional right, as shown, that is considered in a way or another, accordingly, an element of procedural national or international public policy or *ordre public*.

### **Public Policy and Procedural Due Process**

‘The rule as to public policy was established in the middle ages...Public policy changes... Public policy does not admit of definition and is not easily explained... [It] is a variable quantity; ... it must vary and does vary with the habits, capacities, and opportunities of the public.’<sup>(1)</sup>

Generally, the ‘*ordre public*’ in civil law countries and the ‘public policy’ in common law countries are also undefined between nations and different law communities.<sup>(2)</sup> Each nation has its own public policy or *ordre public*, and applies *ex officio* its own *lex fori* in considering breaches of *ordre public* or public policy. Even though, it’s very important to note the difference

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kenreiter and Julian Nyarko, ‘Natural Language Processing in Legal Tech’ in D. Engstrom (ed.), *Legal Tech and the Future of Civil Justice*.

(1) *Davies v. Davies*, [1887] 36 Ch. D. 359, 364 (Kekewich, J.), cited in Charles and Luke, *General Principles of law and International Due Process*, 34.

(2) Still, we don’t have a definition for the public policy or *ordre public*, where precedents play the most important role in identifying elements of severe violations. However, there are different thoughts of defining natural law, *ordre public*, morality, and others in some limited subjects of law. See e.g., D. Gervais, *Fairness, Morality and Ordre Public in Intellectual Property*, 1-2.

between national and international public policy. It was introduced in civil law jurisdictions in the middle of the 20th century;<sup>(1)</sup> and progressively, this new approach of having a smaller scope for national public policy or *ordre public*, and applying a narrow consideration in international disputes was admitted in all common law jurisdictions as well.<sup>(2)</sup>

Whatever the definition of procedural due process, and regardless of any specification in considering the proper understanding for each nation, there is consensus among all legal systems that procedural due process is a fundamental right. Procedural due process breaches are all violations of public policy or *ordre public*, and all jurisdictions have admitted a connection between irregularities in the procedures and public policy or *ordre public*, on the basis that these breaches affect the procedure itself regardless the substance under question.

For example, in Egypt, most civil and commercial procedural provisions that are provided to regulate access to justice, fundamental safeguards, and awards are all considered matters of public policy or *ordre public*,<sup>(3)</sup> and accordingly, any procedure that was made or completed in breach of a procedural public policy rule shall be decided null and void on the basis of a procedural nullity.<sup>(4)</sup>

Generally, in many jurisdictions, procedural domestic laws provide

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(1) The international public policy or *ordre public* international was firstly introduced and admitted by civil law jurisdictions. See e.g., Cass., Civ., 25 Mai 1948; Cass., Civ., 21 Juin 1950.

(2) E.g., in the USA, defences of public policy shall be 'limited to situations where the contract as interpreted would violate "some explicit public policy" that is "well defined and dominant, and is to be ascertained" by reference to the laws and legal precedents and not from general considerations of supposed public interests.'"<sup>1</sup> Paperworkers v. Misco, Inc., 484 U.S. 29, 43, U.S. Supreme Court (1987); see also Parsons & Whittemore Overseas Co. v. Societe Generale de L'Industrie du Papier (RAKTA), 508 F.2d 969, US Court of Appeals (2d Cir. 1974).

(3) Breaches of procedural fundamental rights are all violations of the Egyptian *ordre public* or public policy without indication for procedural public order and substantive public order. In all cases, breaches of *ordre public*, whether procedural or substantive, are considered breaches to public policy. See e.g., Egyptian Court of Cassation, no. 10132/78, 11 may 2010; see also Ahmed Abulwafa, Civil and Commercial Procedures (Al-Wafaa publisher, Alexandria, Egypt), 8.

(4) *ibid*, 393.

provisions regulating the effect of procedural breaches, such as France,<sup>(1)</sup> Egypt,<sup>(2)</sup> Italy,<sup>(3)</sup> and many others; however, we may still find different approaches, such as the Lebanese law that provides a general rule that courts, in assessing the illegality of a procedure, shall consider the circumstances of the case and parties' interests in accordance with the application of the law.<sup>(4)</sup>

Procedural due process rules are considered public policy rules. Accordingly, and along with any other protection for procedural due process, any new online or electronic procedures shall be designed and implemented in full accordance with procedural due process. Therefore, we shall be working to enhance an international approach or understanding for procedural due process rather than definition, and to develop a transnational procedural public policy accepted by all nations.<sup>(5)</sup>

### **Procedural Due Process is an International Rule**

'Party autonomy in matters of procedure and due process are both well established across national arbitration regimes. The term "due process" here refers to a number of notions with varying names under different national laws, including natural justice, procedural fairness, the right or opportunity to be heard, the so-called principle de la contradiction and equal treatment.'<sup>(6)</sup>

Today, it's very interesting to understand how an international rule is made or what we should consider an international rule. Among centuries and decades, the international community has agreed on many rules, and consequently, the

(1) The FCPC, art 114 provides that any procedure shall not be decided null unless (1) there is a law providing such effect, (2) it misses an essential or fundamental rule of public policy or ordre public, (3) the requested party proves that there is damage caused by such breach, where art 115 provides that rectification of a defected procedure shall be accepted unless damage occurred.

(2) The ECPC, art 20 and 25; in this sense, it's a very interesting to note a rule, admitted by the court of cassation, providing that procedures are to be considered respected and validly concluded, unless otherwise, the opposing party shall prove the breach, see e.g., Egyptian Court of Cassation, no. 1088/51JY, 31 January 1985,

(3) Italian Civil Procedure Code, art 156 and 157.

(4) The LCPC, art 226; it's worth noting that the same rule was admitted in many jurisdictions such as Germany, Austria, Algeria, and others. See Ahmed Abulwafa, *Civil and Commercial Procedures*, 392.

(5) See Charles and Luke, *General Principles of law and International Due Process*, 184 ff.

(6) Gabrielle Kaufmann-Kohler, 'Globalization of Arbitral Procedure', (oct 2003), Vol 36.4, *Vanderbilt Journal of Transnational Law*, 1314, as cited in Matti S. Kurkela, *Due Process in International Commercial Arbitration*, 2.

wide agreement, or consensus in some cases, makes constant international rules. While there are differences between different international sources, such as treaties, customs, general principles of law,<sup>(1)</sup> or others, it's undeniable that the world has agreed to consider them all of great value.<sup>(2)</sup>

It's worth noting that international adjudication precedents have played a role in the development of international law and the international understanding of most common doctrines and theories including the common understanding of procedural due process.<sup>(3)</sup> Accordingly, a contemporary understanding of due process could be seen in many international frameworks.<sup>(4)</sup>

Due process, generally, exists in all types of international rules as a fundamental right under many regional and international treaties and statutes, such as the UDHR,<sup>(5)</sup> the ECHR,<sup>(6)</sup> and the EU charter of the European Court of Justice,<sup>(7)</sup> the African Charter on Human and Peoples' Rights,<sup>(8)</sup> the American Convention on Human Rights, and almost all similar texts.<sup>(9)</sup> Even in bilateral investment treaties (BIT), "Fair and Equitable Treatment", "good faith", and many other due process elements are commonly provided in most of the BITs and regional investment frameworks around the world.<sup>(10)</sup>

Furthermore, it could be considered as a "general principle of law" recognized by all "civilized nations". This understanding is to be taken on the basis that all nations have admitted laws and/or precedents in identifying

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(1) The Statute of the International Court of Justice, art 38.

(2) Charles and Luke, *General Principles of law and International Due Process*, 1-3.

(3) See Marc Jacob, 'Precedents: Lawmaking Through International Adjudication', in Armin von Bogdandy and Ingo Venzke (eds), *International Judicial Lawmaking: On Public Authority and Democratic Legitimation in Global Governance* (Springer, 2012).

(4) Charles and Luke, *General Principles of law and International Due Process*, 68-69.

(5) The Universal Declaration of Human Rights, art 1, 7 and 10.

(6) European Convention on Human Rights of 1950, art 5 and article 6.; see also O. Settem, *Applications of the 'Fair Hearing' Norm in ECHR Article 6(1) to Civil Proceedings*, 1-2.

(7) European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02, art 47.

(8) The African Charter on Human and Peoples' Rights of 1981, art 3 and 7.

(9) The American Convention on Human Rights of 1969, art 8.

(10) Charles and Luke, *General Principles of law and International Due Process*, 6.



procedural due process.<sup>(1)</sup> Accordingly, and since procedural due process is a general principle in the sense of an establishing rule recognized by all civilized nations, we can notice the international consensus on minimum requirements and “baseline standards of fairness” that shall be granted in any “court of law”.<sup>(2)</sup>

Consequently, all systems of law have, gradually, admitted many rights of procedural due process, such as notification, jurisdiction, impartiality and independence, attendance and representation, procedural equality and fairness, the right to be heard, submission of evidence and production of documents, along with all basics of natural law, and justice that all could be considered as international due process rules.<sup>(3)</sup>

This international understanding of procedural due process is very important for the cross-border, regional or even the international success of any new electronic civil procedures, online arbitration and any potential technology-based dispute resolution mechanism. Law professionals would necessarily deal with new types of claims with the involvement of many legal systems, laws, and cultures. Accordingly, having and using smart tools along with a common understanding of basic procedural rights will provide new, efficient, and reliable online and electronic transnational civil justice or ODR.

### **The use of AI and Technology in Law Practice**

‘Legal tech, together with the aggregation of data, has enormous potential to transform the way legal services and legal advice are delivered in both hemispheres. Repetitive and scalable tasks can be automated, substituting technology for human lawyers and lowering unit costs.’<sup>(4)</sup>

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(1) *ibid*, 32.

(2) *ibid*, 55.

(3) *ibid*, 157.

(4) See John Armour and Mari Sako, ‘Lawtech: Leveling the Playing Field in Legal Services?’, in D. Engstrom (ed), *Legal Tech and the Future of Civil Justice*.

Firstly, junior law professionals shall not be confused in understanding the use of technology whether as a practical tool in the hands of law professionals involved in any adjudicatory proceedings or as part of the proceedings. It's very important to note that the use of technology as a tool does not have any impact on the legal validity of the proceedings, and we have witnessed, during the last few years, a significant development in all practical tools for law professionals.

By the end, legal professionals had been influenced by technology on a personal level, and they had grown increasingly dependent on it for the practice of law.<sup>(1)</sup> Technology has supported legal frameworks, and law professionals have had to use many technologies in performing their duties. They are using advanced tools such as search engines, legal database platforms, electronic and online book libraries, online blogs and journals, and all different types of legal information solutions.<sup>(2)</sup>

In this sense, we may understand the 'legal tech' as the technology that supports legal services and law professionals. We could consider it as 'broad category, encompassing the use of interactive websites, electronic documents, and elements of artificial intelligence (AI) to automate the review and prediction from text, and automation of workflow and matter management'.<sup>(3)</sup> It's worth noting that the use of technology has been developed gradually through generations and waves of consecutive innovations.<sup>(4)</sup>

The use extended to procedures and defence, and technology started to

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(1) R. Susskind, *Online Courts and the Future of Justice*, 40-41.

(2) See Mohamed S. Abdel Wahab and Ethan Katsh, 'Revolutionizing Technologies and the Use of Technology in International Arbitration: Innovation, Legitimacy, Prospects and Challenges', in Maud Piers and Christian Aschauer (eds), *Arbitration in the Digital Age, The Brave New World of Arbitration* (CUP 2018); see also John Armour and Mari Sako, 'Lawtech: Leveling the Playing Field in Legal Services?', in D. Engstrom (ed), *Legal Tech and the Future of Civil Justice*; see also J.J. Prescott, 'Using ODR Platforms to Level the Playing Field: Improving Pro Se Litigation through ODR Design', *ibid*; see also Albert H. Yoon, 'Technological Challenges Facing the Judiciary', *ibid*.

(3) *ibid*.

(4) R. Susskind, *Online Courts and the Future of Justice*, 270.

play more important roles, such as presenting documents, pleading, submit evidence, manage hearings, and many other computer or technology-based tools.<sup>(1)</sup> To a further extent, it's very interesting to note new AI-based tools for evaluation of case and proportionality, hearing conclusions, transcript auto-generation, examinations of witnesses and experts, audio analysis, suggestion of documents and evidences, inconsistency and gape testing of witnesses and experts, lie detection via involuntary imperceptible movements in facial muscles, eye movement, automated real-time fact detectors, and many other machine learning-based tools, and many more to come.<sup>(2)</sup>

Today, we can clearly see and admit that AI and technology will support all law professionals in many tasks in a super-fast and accurate way. However, it's very important to note that there are still many tasks that will never be made by machines, and even if they're not part of the legal procedures, these innovations, as just practical tool, have impacts on the performance of the law profession and, accordingly, on results and justice.<sup>(3)</sup>

Our current world moves faster than ever. The legal world 'will change more radically over the next two decades than over the last two centuries'.<sup>(4)</sup> New technologies will appear faster, new tools will be designed, new software

(1) See Jens Frankenreiter and Julian Nyarko, 'Natural Language Processing in Legal Tech', in D. Engstrom (ed), *Legal Tech and the Future of Civil Justice*; see also John Armour and Mari Sako, 'Lawtech: Leveling the Playing Field in Legal Services?', *ibid*.

(2) See David Freeman Engstrom and Nora Freeman Engstrom, 'Legal Tech and the Litigation Playing Field', in D. Engstrom (ed), *Legal Tech and the Future of Civil Justice*; see also Robert Bradshaw, 'Arbitration Tech Toolbox: Cross Examination? There's an App for that', (February 2023), *Kluwer Arbitration Blog* <<https://arbitrationblog.kluwerarbitration.com/2023/02/06/arbitration-tech-toolbox-cross-examination-theres-an-app-for-that/>> accessed August 2023.

(3) See e.g., Gary B. Born, *International Commercial Arbitration*, (3rd edn, Kluwer Law International, 2021), S.15.08, in emphasising the importance of the demonstrative evidence, which, basically, are charts and computer-generated statistics that are used to well demonstrate arguments, and that these types of submissions are very useful to well understand the facts, especially in complicated cases, and that these types could not be considered as evidence and/or factual evidence. They are very 'useful, understandable and explaining' to the extent that 'no surprise shall be made by one party' in the use of these types of submissions, and all parties shall have 'equal opportunity' in using these tools. Moreover, we still have challenges with the efficiency and accuracy of witnesses and experts' examinations in online hearings that also may affect results, see also Renee L. Danser, D. James Greiner, Elizabeth Guo, and Erik Koltun, 'Remote Testimonial Fact-Finding', in D. Engstrom (ed), *Legal Tech and the Future of Civil Justice*.

(4) Richard Susskind and Danial Susskind, *The Future of the Professions. How Technology will transform the Work of Human Experts*, (OUP 2022), 84.

will be developed and individuals' expectations will be increased accordingly. In all cases, law professionals shall be trained to well use technology and shall work more closely with technology engineers to introduce more efficient solutions, and law students as well as young professionals shall dedicate more time to understanding the core of the law profession and the development of new methods to efficiently use technology in law practice.<sup>(1)</sup>

The use of Technology and Artificial Intelligence as part of the Proceedings  
'(Access to the courts) must mean more than some abstract or theoretical right to use the courts. It means they must be accessible in the practical sense of being financially affordable as well as physically approachable.'<sup>(2)</sup>

Enhancing access to justice in today's world<sup>(3)</sup> would necessarily require the introduction of new electronic and technology-based civil and commercial dispute resolution procedures, and therefore it's very important to note that individuals are expecting the development of new solutions to facilitate their access to justice by using the internet and new devices to act remotely and without the need to any physical involvement.<sup>(4)</sup>

In domestic courts as well as arbitration and any other new electronic ODR mechanism shall be developed accordingly, in a satisfactory manner to litigants and without prejudice to procedural due process. It's worth noting that, practically, online civil justice as well as ODR, as an electronic form

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(1) The existence of AI and technology offer new space for law professionals, and will 'creates new tasks for humans, necessitating a multi-disciplinary mix of skills and expertise – not just legal but also data science, information security, process and project management, and user experience,' John Armour and Mari Sako, 'Lawtech: Leveling the Playing Field in Legal Services?', in D. Engstrom (ed), *Legal Tech and the Future of Civil Justice*. These creations are transforming the legal practice, and lawyers will have more time than before, where 'finding answers to discrete legal questions can now take a few minutes rather than a few hours' by using these new AI-based solutions. See Albert H. Yoon, *Technological Challenges Facing the Judiciary*, *ibid*.

(2) (Rosenberg, Smit, and Dreyfuss 1990, 46) as cited in Louis Kaplow and Steven Shavell, *Fairness versus Welfare*, (Harvard UP 2006), 229.

(3) Aside from our main issue of discussion, it's very important to note that globally, humanity is facing a problem of access to justice in all types of claims, and still many countries and regions around the world are suffering from basic rights. See R. Susskind, *Online Courts and the Future of Justice*, 295 ff.

(4) *ibid.*, 19; see also Todd Venook and Nora Freeman Engstrom, 'Toward the Participatory MDL: A Low-Tech Step to Promote Litigant Autonomy', in D. Engstrom (ed), *Legal Tech and the Future of Civil Justice*.

of ADR, will remain very useful for different types of disputes.<sup>(1)</sup> Indeed, individuals would accept any mechanism that seemed to be more reliable, accessible, easy to use, fast, etc.<sup>(2)</sup>

In all cases, party's autonomy prevails no matter the dispute resolution mechanism used or chosen by the litigant, whether it's an adjudicatory procedure or a non-adjudicator procedure. In civil law jurisdiction as well as common law jurisdiction, access to civil justice faces a crisis of accessibility and satisfactoriness for individuals with respect to time, cost, proportionality, etc.,<sup>(3)</sup> and accordingly, more efforts shall be made toward more access to civil justice and electronic or online civil and commercial dispute resolution procedures.<sup>(4)</sup>

During the last few decades, many early attempts were launched to use and develop new ODR mechanisms, such as the first e-bay online dispute resolution project that ended with the development of a new 'technology-assisted online dispute resolution process', the 1990s online process of resolving disputes of trademark owners and domain name holders, the 'Uniform Dispute Resolution', and many other steps. It's worth noting that the internet and the rapid expansion of e-commerce have raised a huge number of disputes between buyers and sellers, consumers and providers, and between users themselves,<sup>(5)</sup> and accordingly, many developments followed to introduce 'technology-assisted ODR', 'technology-based ODR', 'preventive

(1) Colin Rule, *Online Dispute Resolution for Business, B2B, E-Commerce, Consumer, Employment, Insurance, and Other Commercial Conflicts*, (Jossey-Bass 2002), 1-2; see also Norman W. Spaulding, 'Online Dispute Resolution and the End of Adversarial Justice?', in D. Engstrom (ed), *Legal Tech and the Future of Civil Justice*.

(2) See J.J. Prescott, 'Using ODR Platforms to Level the Playing Field: Improving Pro Se Litigation through ODR Design', *ibid*.

(3) In the meaning of cost proportionality on litigants against the potential success, where this task could be delegated to a tech-based solution to provide outcome prediction. For further information, see Jens Frankenreiter and Julian Nyarko, 'Natural Language Processing in Legal Tech', *ibid*; see also Charlotte S. Alexander, 'Litigation Outcome Prediction, Access to Justice, and Legal Endogeneity', *ibid*.

(4) R. Lobos, *Understanding Due Process in Non-Criminal Matters*, 19.

(5) Colin Rule, *Online Dispute Resolution for Business, B2B, E-Commerce, Consumer, Employment, Insurance, and Other Commercial Conflicts*, (Jossey-Bass, 2002), 89; R. Susskind, *Online Courts and the Future of Justice*, 27-32 and 296.

justice’, ‘Online Dispute Prevention (ODP)’, etc.<sup>(1)</sup> Even before the web, it’s very interesting to note that the use of technology in court has started firstly by using video links between hearing rooms.<sup>(2)</sup>

Over years, governments, legislators, national courts, and the entire law society have observed the development of international arbitration and all other types of ADR mechanisms that, according to many scholars, were ‘grown out of the failure of civil court’.<sup>(3)</sup> From an individual perspective, it’s very important to note that any online procedure – in the wide sense that could include any procedures designed for this purpose – to resolve his dispute could be an ODR. Nevertheless, the difference between public and private dispute resolution systems exists.<sup>(4)</sup>

Law professionals were progressively performing their mission with the use of emails, online communication, calls, video conferences, and all available flexible tools, to the extent that domestic courts have had to admit these tools,<sup>(5)</sup> especially after the COVID-19 pandemic,<sup>(6)</sup> where the change was a need and a must.<sup>(7)</sup> Online adjudatory proceedings is an undeniable fact,

(1) Colin Rule, *Online Dispute Resolution for Business*, 55-56 and 229-230; see also M. Abdel Wahab and E. Katsh, ‘Revolutionizing Technologies and the Use of Technology in International Arbitration’, in M. Piers and C. Aschauer (eds), *Arbitration in the Digital Age*; Norman W. Spaulding, ‘Online Dispute Resolution and the End of Adversarial Justice?’, in D. Engstrom (ed.), *Legal Tech and the Future of Civil Justice*.

(2) R. Susskind, *Online Courts and the Future of Justice*, 57.

(3) *ibid.*, 22.

(4) See M. Abdel Wahab and E. Katsh, ‘Revolutionizing Technologies and the Use of Technology in International Arbitration’, in M. Piers and C. Aschauer (eds), *Arbitration in the Digital Age*.

(5) Jens Frankenreiter and Julian Nyarko, ‘Natural Language Processing in Legal Tech’, in D. Engstrom (ed.), *Legal Tech and the Future of Civil Justice*; Victor D. Quintanilla, Kurt Hugenberg, Margaret Hagan, Amy Gonzales, Ryan Hutchings, and Nedim Yel, ‘Digital Inequalities and Access to Justice: Dialing into Zoom Court Unrepresented’, *ibid.*; see also Ahmed Mohamed Essam, ‘electronic litigation procedures in the economic court’, the *Law Journal* (ISSN: 2537-0758).

(6) Patricia Louise Shaughnessy, ‘Chapter 2: Initiating and Administering Arbitration Remotely, International Arbitration and the COVID-19 Revolution’, in Maxi Scherer, Niuscha Bassiri and Mohamed S. Abdel Wahab (eds), *International Arbitration and the COVID-19 Revolution* (Kluwer Law International 2020); see also Renee L. Danser, D. James Greiner, Elizabeth Guo, and Erik Koltun, ‘Remote Testimonial Fact-Finding’, in D. Engstrom (ed.), *Legal Tech and the Future of Civil Justice*; Bridget Mary McCormack, ‘The Disruption We Needed: COVID-19, Court Technology, and Access to Justice’, *ibid.* However, it’s very important to note that the pandemic participated in the increase of some types of claims (i.e., small debt collections, etc.), see Tanina Rostain and Amy O’Hara, ‘The Civil Justice Data Gap’, *ibid.*

(7) See Renee L. Danser, D. James Greiner, Elizabeth Guo, and Erik Koltun, ‘Remote Testimonial Fact-Finding’, *ibid.*

and we need, accordingly, to well prepare for that and to meet individuals' expectations thereto.<sup>(1)</sup>

It's very important to note that either before domestic courts, arbitral tribunals, or any other ADR mechanism, individuals are expecting to have more access to their own desired justice electronically. They are expecting to have the entire process of justice conducted online. This could be legally complicated, however, it provides huge benefits for time, cost, efficiency, climate change, and many others.<sup>(2)</sup>

Recently, we have witnessed developments in most domestic judiciary bodies in using new technologies in justice and introducing new civil and commercial electronic procedures, such as in the USA, the UK, China, Singapore, Australia, France, and in the MEA region, we have some initiatives, such as the UAE,<sup>(3)</sup> the Saudi Arabia,<sup>(4)</sup> Egypt,<sup>(5)</sup> and many other jurisdictions.

(1) R. Susskind, *Online Courts and the Future of Justice*, 2.

(2) See Mahmoud Elhagras, 'Towards an Electronic Egyptian Civil Judiciary', (October 2022), Vol 2/2, *Journal of Law and Emerging Technologies (JOLETS)*, <<https://doi.org/10.54873/jolets.v2i2.69>> accessed August 2023.

(3) It's very interesting to note that during 2017, even before COVID-19, the federal law no. 5/2017 was adopted to admit remote procedures in criminal matters, and many provisions followed this law, such as ministerial decrees no. 259, 260/2019 and many other steps for online and remote procedures.

(4) The Saudi Arabia had admitted an electronic justice system to have access to case record, submit document and attend hearing remotely, moreover, they issued a "Procedural Manual for Remote Litigation" to provide the users with all procedural rights and details of acting in justice and attending hearings remotely. <<https://www.moj.gov.sa/Documents/ManualForRemoteLitigation.pdf>> accessed August 2023

(5) Two very remarkable initiatives have been announced in the last few years regarding the use of technology in both civil and criminal proceedings. The first, the economic court has recently admitted an electronic system to file cases by introducing a new 'Electronic Lawsuit'. It provides a mechanism of registry for users, online filling for the case, online payment with registration fee (not less than EGP 100 and not exceeding 1000) that shall be made electronically, electronic notification and announcement of hearing and public registry, access to record, submit defences and submissions, evidences, submit electronic requests, attendance of hearing and the effect of failure to attend a hearing on the final award. This process is considered to cover the proceedings from filling the case to the award's notification for the parties, however, the new amendment does not provide any provision for 'e-deliberation', which is considered part of the proceedings. Moreover, it does not provide any provision for what is to be expected and could be called the 'electronic award' or 'e-award', despite that Egypt has significant legislation to support the e-award such as the electronic signature. See Hisham Zowin, *The Economic court and the new electronic lawsuit, explanation of economic court*, (Dar Al-Kanoun, 2020). The second is regarding criminal proceedings, where the ministry of justice has issued decree no. 8901/2021, allowing the conclusion of hearings for extension of remand remotely with a possibility to record and use an auto-generated written transcript. This mechanism simply provides that the court's panel, in full composition, and lawyers will attend the hearing from the court room, and the suspect will attend remotely by video conference in a room made for this purpose at the place of detention. It's worth noting that 1st instance district courts as well as higher courts have started to introduce new online services and gradually launch online procedures to some specific claims or lawsuits.

While we are developing new online solutions, we have to remember that online judging is not appropriate for all cases. Consequently, we may find many comments regarding procedural due process and the individual's basic rights in criminal remote procedures,<sup>(1)</sup> privacy and cybersecurity,<sup>(2)</sup> infrastructure and technical accessibility obstacles,<sup>(3)</sup> etc. Nevertheless, it's well-suited to many low-value disputes that current courts struggle to handle efficiently,<sup>(4)</sup> and therefore, decision makers and legislators shall ensure that the procedure itself will lead to what they consider a fair result for its intended purpose.<sup>(5)</sup>

It's undeniable that reducing time and cost are very interesting benefits for admitting new civil and commercial online procedures. During COVID-19, online and remote hearings "proved to be helpful" in reducing cost and time in international arbitration compared to in-person or physical hearings.<sup>(6)</sup> Today, either before national courts or international arbitration, the conclusion of online and remote procedures could be more reliable and will certainly reduce cost and time.

Civil justice is expected to be easy, fast, and costless, and procedural due process shall be granted throughout the entire process. Consequently, individuals and litigants would need, necessarily, to have integrated and consolidated solutions for new electronic-based justice that ends, accordingly, with an award issued without any breach of procedural due process, where every single detail matters and every step in the process could be a very valid

(1) See e.g., the 'Legal comment on the conclusion of extension of remands' hearings remotely', the Egyptian Commission for Rights and Freedom, published report on the website, <<https://www.ec-rf.net/>> accessed July 2023.

(2) Jonah B. Gelbach, 'Free PACER', in D. Engstrom (ed.), *Legal Tech and the Future of Civil Justice*; Albert H. Yoon, 'Technological Challenges Facing the Judiciary', *ibid.*

(3) See Jonah B. Gelbach, 'Free PACER', *ibid.*

(4) R. Susskind, *Online Courts and the Future of Justice*, 6.

(5) Isabel Lischewski, *Lawful by Design; Measuring Procedural Justice in Global Governance*, (CUP 2022), 4.

(6) See Maxi Scherer, 'The Legal Framework of Remote Hearings', in M. Scherer, N. Bassiri and M. Abdel Wahab (eds), *International Arbitration and the COVID-19 Revolution*; see also J.J. Prescott, 'Using ODR Platforms to Level the Playing Field: Improving Pro Se Litigation through ODR Design', in D. Engstrom (ed.), *Legal Tech and the Future of Civil Justice*; Bridget Mary McCormack, 'The Disruption We Needed: COVID-19, Court Technology, and Access to Justice', *ibid.*



reason to destroy the final award or decision.<sup>(1)</sup>

### Final Awards and Procedural Due Process

‘[I]nternational law ... as it existed among the States in 1790, was that a judgment rendered in one State, assuming to bind the person of a citizen of another, was void within the foreign State, when the defendant had not been served with process or voluntarily made defence; because neither the legislative jurisdiction nor that of courts of justice had binding force.’<sup>(2)</sup>

As it’s not part of the proceedings, the award shall be validly issued, and today, while different nations are taking very significant steps toward online justice, there is still a need to widely admit “electronic award” or “e-award”. In this regard, many considerations shall be noted in understanding the relevant issues for e-awards. In arbitration as well as in national courts, awards are subject to formalities provided under either national civil procedural laws or national arbitration laws and acts, where awards, generally, shall be in writing. However, many approaches could be found very interesting and they are all steps toward having e-awards, such as ‘e-signature’ and ‘e-authentication’, etc.<sup>(3)</sup>

(1) It’s very important to note the fact that ‘there is no justice without due process, not even quick justice. Only a dispute resolution mechanism that respects fundamental norms of due process—which may increase the accuracy and legitimacy of the outcome—deserves endorsement by legal systems and enforcement through State authority. Where a procedure does not meet these standards, it is as useless as any attempt at resolving a dispute by tossing a coin.’, see Franco Ferrari, Friedrich Jakob Rosenfeld and Dietmar Czernich, ‘Chapter 1: General Report’, in F. Ferrari, F. Rosenfeld and D. Czernich (eds), *Due Process as a Limit to Discretion in International Commercial Arbitration*; See also Doug Clark and Elizabeth Chan, *Notice-ably Wrong: The Importance of Proper Notice in Arbitration Proceedings*, <<https://www.tannerdewitt.com/notice-ably-wrong-the-importance-of-proper-notice-in-arbitration-proceedings/>> accessed September 2023. This is a very good example for the fact that a ‘minor error might jeopardise an award entirely’. In this case, the Hong Kong Court of First Instance in *G v P* [2023] HKCFI 2173, accepted to set aside an enforcement order for an arbitral award on the basis that the Notice of Arbitration (NoA) was not served properly based on missing one letter in the Respondent’s email when serving the NoA, where the Court considered that ‘Despite the pro-arbitration approach, an arbitral award is recognized and enforced by the Court only if the award and the arbitral process leading to the award is structurally intact and that there is due and fair process’.

(2) *Pennoyer v. Neff*, 95 U.S. 714, 730 (1878) (quoting *D’Arcy v. Ketchum*, 52 U.S. 165, 176 (1851)), as cited in Charles and Luke, *General Principles of law and International Due Process*, 160.

(3) See Reinmar Wolff, ‘E-Arbitration Agreements and E-Awards: Arbitration Agreements Concluded in an Electronic Environment and Digital Arbitral Awards’, in M. Piers and C. Aschauer (eds), *Arbitration in the Digital Age*; see also M. Abdel Wahab and E. Katsh, ‘Revolutionizing Technologies and the Use of Technology in International Arbitration’, *ibid.*

At a certain point, and whatever the nature or type of the award, nations have agreed that breaches of procedural due process are reasons to set aside or vacate awards, or even to reject requests for recognition and enforcement of foreign decisions or awards. As previously discussed, many elements of procedural due process have become “general principle of law”. Consequently, provisions were adopted easily, foreign court precedents were admitted globally, and domestic laws as well as courts’ precedents became very similar in their findings. Even under special and controversial frameworks, procedural due process could be the only common procedural cornerstone of all types of procedures.

Under all international and regional frameworks of recognition and enforcement of foreign decisions as well as international arbitral awards, breaches of procedural due process are reasons to reject any request. Procedural due process and public policy or public order still prevail, and they present together a double protection for procedural due process.

We have many examples of international and regional frameworks of recognition and enforcement of foreign decisions that provide this double protection, such as the Hague Convention, which provides provisions regarding due process and procedural fairness as reasons to reject a request made under the convention as well as public policy or *ordre public*,<sup>(1)</sup> the EU regulation on recognition and enforcement of judgments that provide the same double protection, and others.<sup>(2)</sup>

In investment disputes, procedural due process could not be breached; however, many interesting approaches could be noted thereto. For example,

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(1) Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters Articles 7-1-a regarding notifications and the right to be notified and presented before the court, and 7-1-c regarding public policy and compatibility with due process and specifically “fundamental principles of procedural fairness”.

(2) Regulation (EU) No. 1215/ 2012 of the European Parliament and of the Council of December 12, 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, art 45-1-b provides due process and 45-1-a regarding public policy.

under the “annulment mechanism” of the ICSID treaty, Article 52-1-d provides breaches of procedural due process as a base for an annulment request. This unique mechanism does not present any new rule for due process, and the purpose of this procedure is still to verify, mainly, the alignment with all fundamental rights.<sup>(1)</sup> It’s worth noting that ICSID annulment committees, in reviewing awards under Article 52, are looking for “egregious conditions” for the violation of the “fundamental rule of procedure”.<sup>(2)</sup> Under the Arab Investment Treaty, Article 34 provides no option of appeal for final awards, and Article 35 introduces, however, another system of “re-examination” or “re-consideration” that provides reasons for breaches of procedural due process as well.<sup>(3)</sup>

In international arbitration, Article V of the New York Convention (NYC) provides the same two provisions to reject requests made under the convention.<sup>(4)</sup> Moreover, UNCITRAL Model Law provides breaches of public policy or *ordre public* as a reason to set aside arbitral awards as well as breaches of procedural due process.<sup>(5)</sup> This very interesting issue of providing this ‘double protection’ or ‘dual protection’ for due process is applied in annulment procedures as well as enforcement requests of foreign judgments and foreign arbitral awards.<sup>(6)</sup>

This double protection exists under many domestic laws, such as France,<sup>(7)</sup>

(1) See Judith Levine, ‘Navigating the parallel universe of investor–State arbitrations under the UNCITRAL Rules’, in Chester Brown and Kate Miles (eds), *Evolution in Investment Treaty Law and Arbitration*, (CUP 2011); Sam Luttrell, ‘Bias challenges in investor–State arbitration: Lessons from international commercial arbitration’, *ibid*.

(2) Charles and Luke, *General Principles of law and International Due Process*, 86.

(3) Abdel Monem Zamzam, *International Investment Law*, (Dar Misr, 2022-2023), 776 ff, 871 ff.

(4) The New York Convention 1958, art V-1-b regarding due process and V-2-b for public policy or *ordre public*.

(5) UNCITRAL Arbitration Model Law, art 34-2-a-ii regarding due process and art 34-2-b-ii. for public policy.

(6) See Franco Ferrari, Friedrich Jakob Rosenfeld and Dietmar Czernich, ‘Chapter 1: General Report’, in F. Ferrari, F. Rosenfeld and D. Czernich (eds), *Due Process as a Limit to Discretion in International Commercial Arbitration*.

(7) The FCPC, art. 1520-4 provides that breaches of “principe de contradiction” and art. 1520-5 provides that breaches of “French international public order” are all reasons to set aside arbitral awards. Moreover, art 1525 provides that the same reasons shall be considered in assessing an enforcement request of an arbitral award issued outside France.

Egypt,<sup>(1)</sup> Switzerland,<sup>(2)</sup> Australia,<sup>(3)</sup> and many other jurisdictions. In the UK<sup>(4)</sup> and the USA,<sup>(5)</sup> breaches of procedural due process are reasons to “challenge” or “vacate” arbitral awards, however, neither the FAA nor the UK Act explicitly state the public policy. Even though, courts apply constitutional principles in domestic litigation as well as reviewing arbitral awards, that include, as shown, public policy rules and procedural due process.<sup>(6)</sup>

This double protection, provided under international treaties as well as domestic laws, raises a very interesting argument for excluding the court’s check over procedural public policy issues and limiting the public policy check to substantive public policy only.<sup>(7)</sup> However, and as we previously saw, the most common accepted understanding for public policy or *ordre public* is that the court’s check shall include procedural public policy as well as substantive public policy.

Individuals shall not take charge of legal assessment and analysis for each process of justice independently, and we have to understand that they

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- (1) The Egyptian arbitration law provides breaches of procedural due process (art. 53-1-c) together with (53-1-g) or breaches of public policy (art. 53-2) that include procedural public policy rules as well as substantive public policy rules with no difference between international or national public policy, procedural due process rules, and public policy rules. The Egyptian court of cassation went to admit this dynamic understanding for considering breaches of procedural due process. See Egyptian Court of Cassation, no. 10132/78, 11 May 2010.
  - (2) The same provisions are provided under Article 190 of the SPIL, where sub-art (2-b) provides procedural due process and sub-art (2-e) provides breaches of public policy or public order as reasons to set aside an arbitral award. It’s worth noting that public policy, here, means ‘international public policy in the sense of the core of most fundamental principles of legal order, as opposed to domestic public policy or domestic mandatory rules, which is a broader concept’, and that the Swiss Federal Supreme Court admitted that public policy, in this context, includes both procedural public policy as well as substantive public policy, see Simon Hohler, ‘Chapter 18: Country Report: Switzerland’, in F. Ferrari, F. Rosenfeld and D. Czernich (eds.), *Due Process as a Limit to Discretion in International Commercial Arbitration*.
  - (3) The AIAA, art 8-5-c regarding due process and 8-7-b for public policy.
  - (4) The EAA, s 68.
  - (5) The United States Federal Arbitration Act, s 10; and e.g., California Code of Civil Procedure, s 1286.2(a)(5).
  - (6) One of the most common findings in international precedents is that ‘Article V(2)(b) must be “construed very narrowly” to encompass only those circumstances “where enforcement would violate our most basic notions of morality and justice.”’; see eg, *Telenor Mobile Communications AS v. Storm LLC*, 584 F.3d 396, 411 (2d Cir. 2009); see also Ina C. Popova and Duncan Pickard, ‘Chapter 20: Country Report: The United States of America’, in F. Ferrari, F. Rosenfeld and D. Czernich (eds.), *Due Process as a Limit to Discretion in International Commercial Arbitration*.
  - (7) Koji Takahashi, ‘Exclusion of Arbitral Procedure from the Scope of Public Policy Scrutiny as a Measure to Curb Due Process Paranoia, a Proposal under the UNCITRAL Model Law’, (2021), vol 29/3, *Michigan State International Law Review*.

are seeking more integrated solutions for dispute resolution that are based on technology with a complete electronic process. However, even with the introduction of new online and electronic procedures, the final binding awards still face challenges of exequatur, recognition, and enforcement.

### **Reliability and efficiency Challenges of online and remote procedures**

‘[S]cientific truth does not triumph by convincing its opponents and making them see the light, but rather because its opponents eventually die, and a new generation grows up that is familiar with it’<sup>(1)</sup>

We are now witnessing the use of old technology, and individuals are expecting that technology will make their lives much easier, and accordingly, many developments could take place. It’s very interesting to note that 50% of individuals are active on the internet, while 46% are covered by or live under the protection of the law, and a third of this percentage is in need for legal aid.<sup>(2)</sup> Today, we don’t have any other option than making law online.<sup>(3)</sup>

Before the use of technology in new online procedures, the world acted positively to support international arbitration and to face the abuse of due process as a reason to destroy awards.<sup>(4)</sup> All over the world and over years, annulment courts, enforcement courts, and national high courts have issued hundreds of decisions to support the efficiency of proceedings against this type of abuse.<sup>(5)</sup>

(1) Max Planck, *Scientific Autobiography and Other Papers*, (Trans. F. Gaynor, 1949) 33, by Thomas Kuhn, *The Structure of Scientific Revolutions* (3rd edn, The University of Chicago Press, 1996) 151, as Cited in R. Susskind, *Online Courts and the Future of Justice*, 2.

(2) *ibid*, 27.

(3) *ibid*, 107.

(4) See Jasmine Feng and Benjamin Teo, ‘Judicial Support against Due Process in International Arbitration’, (June 2020), *Kluwer Arbitration Blog*, <<https://arbitrationblog.kluwerarbitration.com/2020/06/16/judicial-support-against-due-process-paranoia-in-international-arbitration/>> accessed August 2023

(5) See e.g., Cairo Court of Appeal (91 com.), no. 4/120 and 5/120, 28 Jan 2004; Cairo Court of Appeal (7 com.), no. 31/133, 7 December 2016; *Tampico Beverages, Inc. v. Productos Naturales de la Sabana S.A.* (Alquería), Corte Suprema de Justicia, Civil Cassation Chamber, SC9909-2017, 12 July 2017; *Dunav Re A.D.O. Beograd v. Dutch Marine Insurance B.V.*, *Gerechtshof, The Hague*, no. 200.223.489/01, 17 April 2018; *Vijay Karia & ORS. v Prysman Cavi E Sistemi SRL & ORS*, the Supreme Court of India, Civil Appellate Jurisdiction, Civil Appeal no. 1544 OF 2020, 13 February 2020; *Carpatsky Petroleum Corporation v PJSC Ukrnafta*, High Court of Justice, Commercial Court, no. CL-2016-000547, 31 March 2020; *OJSC Ukrnafta v. Carpatky Pe-*

Technology and AI may present many solutions and support access to justice, especially for low-income individuals.<sup>(1)</sup> It may introduce more affordable, accessible, fast, accurate, and efficient civil and commercial procedures.<sup>(2)</sup> Accordingly, designing new civil procedures and enhancing dispute resolution mechanisms with electronic, online, and remote proceedings will enhance access to justice, and any new online procedure shall be designed to ease the access to justice and to provide balance between efficiency, cost of the entire process, and power between litigants. These concerns shall be protected even in the absence of a common definition for procedural due process.<sup>(3)</sup>

From an individual perspective, and basically, access to civil justice today could be the faculty to resort to justice or any other dispute resolution mechanism by internet or online to solve disputes fast, costlessly, fairly, and with a final enforced award.<sup>(4)</sup> Nonetheless, on the other hand, law professionals, when assessing or designing new civil procedure, shall take into consideration access to justice in a comprehensive legal understanding that includes ‘access’ and ‘justice’,<sup>(5)</sup> and how we can really enhance access to justice, in our case with new electronic and remote procedures, in full adherence with basic fundamental rights.<sup>(6)</sup>

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troleum Corporation, United States Court of Appeals, Fifth Circuit, no. 19-20011, 6 April 2020; PAO Tatneft v. Ukraine, United States District Court, District of Columbia, 24 August 2020; Singapore International Commercial Court, [2023] SGHC(1) 10, 31 May 2023.

- (1) See Charlotte S. Alexander, *Litigation Outcome Prediction, ‘Access to Justice, and Legal Endogeneity’*, in D. Engstrom (ed), *Legal Tech and the Future of Civil Justice*; see also Victor D. Quintanilla, Kurt Hugenberg, Margaret Hagan, Amy Gonzales, Ryan Hutchings, and Nedim Yel, ‘Digital Inequalities and Access to Justice: Dialing into Zoom Court Unrepresented’, *ibid*.
- (2) Another challenges appear with the use of these new civil and commercial ODR such as, access to internet, electronic copies, public record, etc. See R. Susskind, *Online Courts and the Future of Justice*, 215; see also Victor D. Quintanilla, Kurt Hugenberg, Margaret Hagan, Amy Gonzales, Ryan Hutchings, and Nedim Yel, ‘Digital Inequalities and Access to Justice: Dialing into Zoom Court Unrepresented’, in D. Engstrom (ed), *Legal Tech and the Future of Civil Justice*; Bridget Mary McCormack, ‘The Disruption We Needed: COVID-19, Court Technology, and Access to Justice’, *ibid*.
- (3) R. Lobos, *Understanding Due Process in Non-Criminal Matters*, 25.
- (4) See Todd Venook and Nora Freeman Engstrom, ‘Toward the Participatory MDL: A Low-Tech Step to Promote Litigant Autonomy’, in D. Engstrom (ed), *Legal Tech and the Future of Civil Justice*.
- (5) R. Susskind, *Online Courts and the Future of Justice*, 11.
- (6) *ibid*, 20; see also William Lucy, ‘Access to Justice and the Rule of Law’, (2020), vol 40/2, *Oxford Journal of Legal Studies*, 337.

It's worth noting here that time, cost, the effect of prolongation, and the management of the proceedings are very important issues for tribunals or any court of law in considering parties' requests. Practically, it's very common to have abuse during any proceedings. Notwithstanding that parties as well as tribunals and courts shall act in the proceedings in good faith, especially with due process, where parties shall exercise their rights lawfully<sup>(1)</sup> and all tribunals as well as any court of law shall manage the proceedings fairly and in good faith since these rules have become international rules.<sup>(2)</sup>

In the management of the procedures, providing equal and fair treatment or opportunity doesn't mean to giving the parties with identical treatment. Parties shall be treated fairly and not equally in the sense of 'giving the parties reasonable opportunity', and procedural fairness shall be based on giving fair treatment rather than identical treatment.<sup>(3)</sup> In the same sense, managing online and remote procedures shall be very wise in considering what needs to be done in order for any process to be due.

Cost is still a very important issue when observing litigants' expenses in the performance of their constant right to resort to justice, and any new online civil or commercial procedure is not expected to impose any direct or indirect

(1) We can find the lawful use of right theory in many domestic laws, such as Egypt (art. 4 ECCPC), Lebanon (art. 7 of the LCPC) and many other jurisdictions. It's worth noting that many jurisdictions have admitted the damage and the proportionality as criterion of assessment, for e.g., Egypt (art.5), Lebanon (10 and 11) providing a fine for abuse of right to access to justice and right of defence, and many others. The FCPC provides the right to act in justice (art. 30 and 31), however, any person who abusively acts in justice may be ordered to pay a fine without prejudice to the right to claim compensation (art. 32-1). It's very important to note that a defence for abuse of the right to act in justice could only be accepted by the court if it's clear that particular circumstances of abuse of right or the abusive behaviours or actions have occurred. See e.g., Cass., Civ. (1), 3 Août 1915, 00-02.37; Cass., Civ. (20), 2 Septembre 2015, 14-11.676; Cass., Civ. (1), 1 Juin 2017, 16-17.744; Cass., Civ. (3), 8 Mars 2018, 16-15.437; Cass., Com., 28 Mars 2018, 16-24.150; Cass., Civ. (1), 14 Novembre 2018, 17-21.697; Cass., Civ. (3), 12 Novembre 2020, 19-18.208.

(2) Since it became an admitted "general principle" under domestic laws as well as international cases in either inter-state cases or investor-state cases. See e.g., *Methanex Corp. v. United States of America*, NAFTA, Final Award, 54 (Aug. 3, 2005) (stating that "the Disputing Parties each owed in this arbitration a general legal duty to the other and to the Tribunal to conduct themselves in good faith during these arbitration proceedings and to respect the equality of arms between them"); see also *Libananco Holdings Co. Ltd. v. Republic of Turkey*, ICSID Case No. ARB/06/8, Decision on Preliminary Issues, 72 (June 23, 2008), as cited in Charles and Luke, *General Principles of law and International Due Process*, 2017, 108 and 181.

(3) See Yves Derains, Eric A. Schwartz, *A Guide to the ICC Rules of Arbitration*, 2nd edn, (Kluwer Law International, 2005), Commenting on the Article 15.2, the new Article 22(4).

additional cost on individuals, otherwise, we will be facing a breach of the general principle of access to justice.<sup>(1)</sup> In many states, access to justice, in the very basic and general understanding of individual fundamental rights, is free for any person that is incapable of paying the judiciary fees.<sup>(2)</sup> Accordingly, any development to introduce any new online procedures shall not add any additional cost.

Counsels' involvement and attorneys' fees are very important issues that individuals consider – along with the cost of justice or ADR – when qualifying the proportionality of their actions, and this topic shall be covered in many ways, such as the nature of the dispute and the amount of claim.<sup>(3)</sup> However, this argument would raise the actual need for developing new civil procedures that do not require representation by lawyers and, accordingly, the introduction of new small claims where litigants can have direct access to justice.<sup>(4)</sup> In addition, these procedures shall be user-friendly to the extent that parties can represent themselves easily.<sup>(5)</sup> However, it's very important to note that individuals could hurt their own legal positions.

Accordingly, and in order to enhance a self-representation option, individuals shall have information, resources, and proper and minimum knowledge of the law and procedures when practicing this self-representation.<sup>(6)</sup> Moreover, they shall have more legal aid assistance, awareness activities, and resources to understand the basics of law and legal procedures, to well act if

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(1) L. Kaplow and S. Shavell, *Fairness versus Welfare*, (Harvard University Press, 2006), 227.

(2) There are many examples for waivers or exemptions of judiciary or justice fees, such as, in the USA, each state has its own Fee Schedule, however, they all admit that any litigant who cannot afford to pay the required fee can apply for a waiver, see e.g., New York Civil Practice Law and Rules, s1101, and in Egypt, art 24 of the law no. 90/1944 provides the right for exemption from judiciary fee for incapables by submitting a request, see also Ahmed Abulwafa, *Civil and Commercial Procedures*, 36 ff.

(3) See Margaret Hagan, 'The Supply and Demand of Legal Help on the Internet', in D. Engstrom (ed), *Legal Tech and the Future of Civil Justice*.

(4) R. Susskind, *Online Courts and the Future of Justice*, 101-102, 235-236.

(5) *ibid.*, 123

(6) See Bridget Mary McCormack, 'The Disruption We Needed: COVID-19, Court Technology, and Access to Justice', in D. Engstrom (ed), *Legal Tech and the Future of Civil Justice*;



needed, and, at least, to understand the consequences of self-representation.<sup>(1)</sup>

It's very important to note and understand that the development of any new type of civil or commercial procedure would depend on providing integral solutions, which shall include trust, expertise, convenience, and shall be designed without sacrificing important values that have been built and developed through time and agreed upon among nations, including access to justice, procedural due process, and all other principles of natural justice, fundamental justice, and the rule of law.<sup>(2)</sup>

Unification of terms is one of the most important challenges that we face today. We have new and different understandings of new notions such as remote and virtual (where it could be understood differently),<sup>(3)</sup> virtuality, virtual reality, virtual hearing, video court services,<sup>(4)</sup> the virtual-arbitrator as a fourth party actor or artificial intelligence-based,<sup>(5)</sup> and many other new terms that became very important in dispute resolution and justice.

Unfortunately, we still need more time to realise what we are dreaming and hoping for. Most of the world are missing capability, fund and resources to build a real online justice system that requires multiple development

(1) R. Susskind, *Online Courts and the Future of Justice*, 121; see also Margaret Hagan, 'The Supply and Demand of Legal Help on the Internet', in D. Engstrom (ed), *Legal Tech and the Future of Civil Justice*; Bridget Mary McCormack, 'The Disruption We Needed: COVID-19, Court Technology, and Access to Justice', *ibid*. Many jurisdictions provide provisions for self-representations with different approaches in admitting this faculty. For e.g., art 762, 931 and 1510 of the FCPC, art 378 of the LCPC that provides that the parties shall be represented by lawyers in some cases and in all cases exceeding a specific amount, and other national laws.

(2) R. Susskind, *Online Courts and the Future of Justice*, 77; R. Lobos, *Understanding Due Process in Non-Criminal Matters*, 2; see also M. Abdel Wahab and E. Katsh, 'Revolutionizing Technologies and the Use of Technology in International Arbitration', in M. Piers and C. Aschauer (eds), *Arbitration in the Digital Age*; W. Lucy, 'Access to Justice and the Rule of Law'.

(3) See Maxi Scherer, 'The Legal Framework of Remote Hearings', in M. Scherer, N. Bassiri and M. Abdel Wahab (eds), *International Arbitration and the COVID-19 Revolution*.

(4) It's worth noting that the video technology in courts, as part of the proceedings, could be a physical hearing into which some participants are linked by video or where no physical event exists and all participants are linked by video. For further information, see R. Susskind, *Online Courts and the Future of Justice*, 57 ff and 256 ff.

(5) Colin Rule, *Online Dispute Resolution for Business*, 55-56 and 229-230; see also M. Abdel Wahab and E. Katsh, 'Revolutionizing Technologies and the Use of Technology in International Arbitration', in M. Piers and C. Aschauer (eds), *Arbitration in the Digital Age*.

of infrastructure, state and public sector.<sup>(1)</sup> The future will depend on the development of data that will, certainly, be ‘the fuel of the next generation’,<sup>(2)</sup> and in order to hold a real data, huge infrastructure work shall be made.

AI and technology will support law and justice. However, and even if the process will depend mainly on technology, the core of justice and law can’t be made by machines. Justice is different, and junior law professionals as well as students shall be trained to use technologies in law practice, and law programs shall dedicate new spaces for developing the use of technology in law practice. This could be found, consequently, reasonable when understanding all previous developments and building upon them toward the future.<sup>(3)</sup>

Justice is a very important part of humanity. It’s one of God’s names and will never rule without human conscience. Junior law professionals and students shall understand more about the core of the law and justice. We shall be working more on developing and enhancing moralities and ethics,<sup>(4)</sup> and taking our history to the real future that we hope, and to remember that we shall be seeking nothing but justice.

‘Man naturally loves justice, for its own sake, as the natural object of his conscience. As the mind loves truth and beauty, so conscience loves the right; it is true and beautiful to the moral faculties. Conscience rests in justice as an end, as the mind in truth. As truth is the side of God turned towards the intellect, so is justice the side of Him which conscience looks upon. Love of justice is the moral part of piety.’<sup>(5)</sup>

(1) See R. Susskind, *Online Courts and the Future of Justice*, 243 ff.

(2) See Jonah B. Gelbach, ‘Free PACER’, in D. Engstrom (ed.), *Legal Tech and the Future of Civil Justice*.

(3) See Tamara D. Bogdanova and Svetlana S. Simonova, ‘the use of artificial intelligence and information technology in the training and professional activities of lawyers’, (August 2021), vol 11/1 (20th Annual Conference), *Journal of Legal and Economic Research*, Mansura University, 61.

(4) Douglas Birsch, *Introduction to Ethical Theories; A Procedural Approach*, (Waveland Press 2014), 17-18.

(5) Theodore Parker, *Ten Sermons of Religion*, III, justice and the conscience, *Turn and Do Justice*, Tobit xiii.6., (Harvard College Library 1853).

## Final remarks and thoughts for the future

Finally, it will be important and useful to share together our insights toward a better future. Surely, we shall, always, have new suggestions and remarks for the future of online and remote adjudicatory and non-adjudicatory procedures, such as;

Legislations, texts and international resources; today, it's undeniable that we are living in a new dawn, and accordingly, more flexible and dynamic thinking along with a new generation of legislations and texts are highly needed to follow with individuals' expectations. The flexible approach of international precedents and doctrine, that we have in many questions, shall be seen and reflected in new dynamic texts with more simplified civil procedures and rules.

Comprehensibility, sustainability and consolidation; we need more reliable, efficient, intelligible and confident innovations that include all requirements of fair process, transparency, accessibility, balance, proportionality, sufficiency, sustainability, enforceability, etc.

Communication; today, we can surely admit the successful and stable communications established between the law community. However, we need to create new spaces for communication with non-law professionals in any relevant part (e.g., involvement of AI and technology engineers in the preparatory discussions of any new law that will include any type of usage of new technologies in the procedures, etc.).

Unification of terms; we highly need more effort to enhance, at least, a common flexible understanding of terms and notions among the transnational and intercontinental development of human civil and commercial relations and transactions that we have. We need to conclude more multilateral efforts to exchange, discuss, admit, and recognize findings, theories, and doctrines.

Infrastructure and data: Most of the world, especially in Africa, the Middle East, Asia and Latin America, is struggling to take significant steps toward building a stable and efficient infrastructure, and we still need more time, effort, and fund to have a real technological infrastructure as well as electronic data base that will consequently create new abilities to provide more stable solutions, to introduce more efficient tools for law education, legal practice, legal aid, self-representation, etc.

Cost; any new online or remote procedure that imposes additional expenses, in a way or another, on litigants will be an obstacle for the access to justice, and accordingly, violation of due process and public policy. At the same time, building electronic infrastructure, online justice systems and ODR mechanisms require huge funds. This challenge needs moral beliefs and social responsibility rather than financial feasibility.

Practical development; law practice needs more practical smart tools in the entire performance of the legal profession, and law professionals need to develop new types of skills. We need to be more flexible and trained to use and understand technology and future innovations without any sacrifice of law. At the same time, we have to enhance the good management of the proceedings, and to increase practical activities for students as well as young professionals to be well trained to efficiently manage any proceedings thereto.

Morality and ethical education; we need new contemporary discussions on law and morality, natural justice, conscience and ethics. In today's world, we need to enhance our morality more than ever before. Law community shall keep enhancing care for morality and the values of law and justice.

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