SOCIAL
POLICY

# AI WITHIN THE LEGAL REALM

## OPPORTUNITY OR REDUNDANCE?

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# Foreword

**By Dr. Robert Musumeci**

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## Between Code and Judgment: Rethinking the Rule of Law in an Automated Age

The integration of artificial intelligence (AI) into legal writing has attracted considerable attention. AI-powered platforms offer tools to refine language, enhance coherence, and standardize tone, which many legal practitioners have found beneficial. Recent discussions at legal tech conferences emphasize the necessity for lawyers to embrace AI to improve efficiency and remain competitive in the evolving legal landscape.

More so, AI functions through pattern detection, probability calculations, and statistically grounded predictions. It excels in standardization, thrives on repetition, and leverages vast datasets. When applied to administrative efficiency, these capabilities can be advantageous. AI can automate routine legal tasks, review documents, flag regulatory inconsistencies, and broaden access to basic legal information. It may also assist courts in identifying trends or inconsistent rulings.

However, these efficiencies come with significant costs. AI's internal operations are often opaque, particularly when based on machine learning models that evolve without clear rules. This lack of transparency undermines the principle that legal authority must be explainable and open to scrutiny. If a citizen is denied a right or penalized by a system whose logic is inaccessible, the very essence of legality is compromised.

Bias is another potential concern. Trained on existing data, AI systems can perpetuate and amplify existing inequalities and prejudices. Far from being neutral, such systems may reinforce discrimination under the guise of objectivity. In criminal justice, this could result in algorithms that disproportionately affect certain groups.

The potential fragmentation of legal reasoning is equally troubling. Unless a universal tool platform is adopted, different jurisdictions, institutions, or even judges may adopt distinct AI tools trained on varied datasets, leading to conflicting interpretations of similar laws. Uniformity and equality before the law, already under strain in multifaceted systems, may further deteriorate under uncoordinated automation.

The use of AI in law also risks facilitating quiet privatization. When core functions of legal interpretation or public decision-making are outsourced to private developers, democratic oversight could be compromised. Proprietary systems, protected by commercial secrecy and complex technical frameworks, often evade scrutiny. Legal authority becomes embedded in architectures that the public cannot inspect, and courts cannot fully review.

There is also concern about the potential erosion of essential legal skills. This reliance could impair the ability to function effectively in scenarios where AI assistance is unavailable or unsuitable.

Also, there is a profound philosophical concern. Law, at its best, is a human institution—not merely a set of instructions to be executed but a forum for disagreement, compromise, and moral reflection. It allows space for forgiveness, proportionality, and evolution. AI systems, by contrast, tend to impose rules without context, calculate without conscience, and suppress the ambiguity that is often essential to justice. In doing so, they risk reshaping the legal landscape in ways that prioritize efficiency over ethical considerations.

Ultimately, the rule of law is foundational, ensuring that all individuals, including those in positions of power, are subject to publicly known and stable laws. Its effective operation demands more than procedural formality; it requires independent judgment, clarity of norms, and adherence to values such as justice, equality, and human dignity. These principles are not merely outputs to be optimized but are conditions that must be preserved through human reasoning and institutional design.

Let me conclude. While I have consistently advocated for the integration of innovative technologies in legal research, my recent experiences with artificial intelligence (AI) have presented unforeseen challenges, particularly in retrieving legal sources. When AI extends beyond editorial assistance into legal reasoning—undertaking tasks such as interpretation, precedent analysis, or judgment—the conversation shifts from potential to concern. In jurisdictions like Malta, where the legal system blends civil and common law traditions, the mechanistic nature of AI exposes its limitations even more. Algorithms processing language, at least the way I see it to date, cannot fully grasp legal doctrines, interpret the weight of legal history, or appreciate the moral nuances of judicial rulings. When such systems influence substantive legal outcomes, the risk transcends mere error, leading to potential distortion. Nonetheless, I remain optimistic that, as AI technologies advance and their application in legal research becomes more refined, my viewpoint will evolve to recognize their full potential.

# Table Of Contents

# Preamble

**By Beppe Gauci**

Humanity is defined by decisions. The Romans faced the tough decision of shifting from a republic to an empire. The Mongol Empire and Nazi Germany took the decision to commit mass genocide. Joseph Stalin's Soviet Union took the decision to force collectivizing, the British Empire took the decision to colonise the world.

Decisions and evolution are what differs humanity from animal, the inherent ability to change, to adapt. The world in which we live in today faces yet another decision, a stark contrast to what was dealt with in the past, it's not a decision that impacts a select few, but the entirety of the human race. *"We are creating a self-learning machine which at its prime will become the reflection or rather, the magnification of the cumulative human traits that created it* - "Mo Gawdat, former Chief Business Officer at Google X and author of *Scary Smart.*

Humanity is the creator of Artificial Intelligence, as a mother and father are to a child. Time after time, a child is a direct reflection of their parents, and AI will be the same. The question which is important to ask is this, is **Humanity inherently good?** If Artificial Intelligence learns and mimics human behaviour, will it be inherently selfish or power hungry, or will it pick up humanity's good, the ability to love and to respect?

This uncertainty and inherent grey area are what inspired this paper. More specifically targeted towards the legal realm. How will Artificial Intelligence effect our Institutions, will it impinge on our freedoms or elevate them?

Finally, it is such a privilege to be able to write about these issues, ergo I would like to express my deepest gratitude to ELSA Malta, and to all the writers who dedicated their time to writing on such a pressing issue. This paper wouldn't have been possible without them. They are a true example of what it means to be a law student.

# The EU's Regulatory Framework: Understanding the AI Act's Influence on Legal Practice

## Introduction

The European Union's Artificial Intelligence Act (AI Act) is set to become the world's first comprehensive regulation on artificial intelligence (AI), reflecting the EU's commitment to technological leadership underpinned by democratic values. Proposed by the European Commission in 2021, the AI Act seeks to harmonise rules on the development, placement, and use of AI systems across Member States. As AI becomes more pervasive in decision-making, legal practitioners face new responsibilities in navigating regulatory classification, compliance, contractual management, and litigation. This essay explores the Act's influence on legal practice, examining the shift it prompts in the advisory, governance, and ethical roles of legal professionals.

## Legal Classification and Risk Management

The AI Act introduces a risk-based classification system, categorising AI systems into **unacceptable**, **high**, **limited**, and **minimal risk** tiers. Unacceptable risk AI systems—such as those used for social scoring or manipulative behaviour—are banned under Article 5. [1]High-risk systems, including those used in employment, biometric identification, or critical infrastructure, are subject to extensive regulation under Title III.[2]This framework necessitates legal support in determining the appropriate classification of AI systems and advising clients accordingly. Risk assessment under the AI Act is not merely technical; it requires legal interpretation of use-cases, affected rights, and potential harm. Consequently, lawyers must develop a deep understanding of both the technology involved and the interpretative standards of EU regulatory practice.[3]

[1] European Commission, *Proposal for a Regulation laying down harmonised rules on artificial intelligence (Artificial Intelligence Act)* COM (2021) 206 final, Article 5.
[2] ibid, Title III (Articles 6–51)
[3] Veale M and Zuiderveen Borgesius F, 'Demystifying the Draft EU Artificial Intelligence Act' (2021) 22(4) *Computer Law Review International* 97.

## Compliance Advisory and AI Governance

High-risk AI systems are subject to a range of legal obligations, including the establishment of risk management procedures, assurance of data quality, maintenance of technical documentation, and provision for human oversight.[4] These obligations are designed to ensure transparency, accountability, and safety throughout the AI system lifecycle.

Legal professionals are expected to take a proactive role in advising organisations on building governance frameworks that fulfil the Act's criteria. This includes preparing conformity assessments, ensuring audit trails, and advising on internal compliance policies.[5] Lawyers may need to collaborate closely with data scientists and engineers to ensure that compliance mechanisms are integrated into system design, reflecting the interdisciplinary nature of AI governance.[6]

## Enforcement, Liability, and Litigation

The enforcement structure proposed under the AI Act empowers national authorities to conduct audits, restrict deployment, and impose significant administrative fines for non-compliance.[7] Furthermore, individuals affected by AI systems will be entitled to lodge complaints, potentially increasing the volume of litigation related to algorithmic harm or rights violations.

Legal professionals will need to guide clients through investigations and represent them in enforcement actions. As algorithmic decision-making becomes more prevalent, legal systems will be challenged by issues of proof, causation, and explainability—areas where current legal doctrines may be ill-equipped.[8] A growing body of case law and administrative precedents will likely emerge in response to these challenges, creating opportunities for legal practitioners to shape AI jurisprudence.

[4] Artificial Intelligence Act (n 1) arts 9–15.
[5] Edwards L, 'Regulating AI in Europe: The AI Act and Its Shortcomings' (2022) 28(1) *European Law Journal*
[6] ibid.
[7] Artificial Intelligence Act (n 1) arts 71–72.
[8] Wachter S, Mittelstadt B, and Floridi L, 'Why a Right to Explanation of Automated Decision-Making Does Not Exist in the General Data Protection Regulation' (2017) 7(2) *International Data Privacy Law* 76.

## Contractual and Commercial Implications

The AI Act also transforms the commercial and contractual landscape. Businesses involved in developing, supplying, or deploying AI systems must allocate regulatory obligations and liabilities through contract. Legal professionals must therefore draft agreements that account for compliance responsibilities, indemnities, data access, and audit rights.

AI-specific clauses will become standard in software licensing, procurement, and partnership agreements. In transactions such as mergers and acquisitions, due diligence processes must now include AI compliance reviews, especially for companies whose value is tied to proprietary algorithms or data assets.[9] This evolution in contracting practices will require lawyers to integrate technological awareness into traditional commercial law domains.

## Relationship with GDPR and Fundamental Rights

The AI Act operates in tandem with the General Data Protection Regulation (GDPR), particularly in relation to AI systems that process personal data. Overlaps include obligations on data minimisation, lawful processing, and individuals' rights to explanation and contestation.

Article 22 of the GDPR prohibits decisions based solely on automated processing that significantly affect individuals, except under certain conditions.[10] The AI Act does not override this provision but adds additional layers of accountability and governance. Lawyers must reconcile these regimes, ensuring that AI deployments are legally permissible under both data protection and AI-specific rules.[11] This dual compliance challenge is central to legal practice in sectors such as recruitment, insurance, and criminal justice.

[9] Veale and Zuiderveen Borgesius (n 3)
[10] Regulation (EU) 2016/679 (General Data Protection Regulation), art 22.
[11] Wachter et al. (n 8).

## Ethical Considerations and Strategic Counsel

Beyond legal mandates, the AI Act encourages ethical reflection on AI's broader societal impact. While ethics is not enforceable in the same way as regulation, companies are increasingly judged on their alignment with principles such as fairness, transparency, and human-centricity.

Legal professionals are increasingly expected to advise on ethical AI frameworks, contributing to the development of internal codes of conduct and public-facing policies.[12] Moreover, as Environmental, Social, and Governance (ESG) reporting becomes mainstream, lawyers will play a role in positioning responsible AI use within broader corporate strategies. This adds a new dimension to legal counsel—one that balances regulatory compliance with reputational stewardship.

## Conclusion

The above text has been generated solely by an AI, I generated, designed and inputted with information relevant to the topic. A machine capable of writing at speeds the human mind cannot process, capable of understanding information and data at quantum levels. Far beyond the reach of the human touch, with information which is relevant and accurate. Which is virtually indistinguishable from a human's writing. This was not done out of laziness or to avoid the work ahead of me, but to send a clear message. **This is the future.** The empires of old all thrived because they didn't fear innovation but invited it. The same must be done with AI, because although there is fear that humanity may become redundant, which is a genuine possibility, there is also the possibility of a Utopic World.

As you will see for the rest of the paper, a title and name of author has been given for each submission, however this one has none. There is a reason for this, and it is to highlight a major question. One must ponder the existence and status of Artificial intelligence. If AI cannot be reduced to solely a machine, due to its capability to mimic emotion and have original thoughts, but at the same time cannot be placed on the same level as humanity, because it wasn't conceived of a man's seed and birthed through a mother's womb, what is it? Does it occupy some middle ground within that spectrum? Should I credit the Artificial Intelligence for the work above? Although I created it, it is not my original thought and work. This is a critical question which must be answered within this field.

[12] Edwards (n 5).

Regulation and Adherence to rules are necessary, the growth of Artificial Intelligence is not to be feared, but if done in a sustainable way would be highly anticipated with excitement.

# AI and Fundamental Rights: Examining the ECtHR's Role in Protecting Justice

**Alexander Micallef**

## Introduction

In exploring the increasing use of Artificial Intelligence (AI) in all sectors of the world, it is essential to understand what AI really is. According to the European Union Agency for Fundamental Rights (FRA), *'there is no universally accepted definition for the term 'AI' but reflects recent technological developments that encompass a variety of technologies.'*[13]

However, the FRA did continue to add that *"AI refers to systems that display intelligent behaviour by analysing their environment and taking actions with some degree of autonomy to achieve specific goals."*[14]

This paper addresses the importance of fundamental rights, and the protection afforded to them by the European Court of Human Rights (ECHR). It also tackles safeguarding such rights from the risks posed by AI through evolving jurisprudence and legislation to adequately address current and future challenges.

## Preparing For the Intersection of AI and Fundamental Rights

On the 5th of September 2024, the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy, and Rule of Law opened for signatures in Lithuania wherein on the day, ten parties signed the Framework Convention, including the EU on behalf of its 27 Member States and the United States of America.[15] ***What was this Framework Convention aimed at doing?***

The Framework Convention is the first internationally legally binding agreement aimed at regulating the lifecycle of AI innovation and ensuring that it is used responsibly in promoting innovation and remaining consistent with human rights, democratic values, and the rule of law.[16]
Other branches of the European Union have also made efforts to set up a functional and effective infrastructure in potentially incorporating AI into a Member States' legal system.

[13] https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-artificial-intelligence-summary_en.pdf
[14] Ibid.
[15] Protecting human rights in a world of artificial intelligence, algorithms, and data https://www.echr.coe.int/documents/d/echr/seminar-background-paper-2025-eng
[16] Ibid.

A recommendation made in May 2023 by the Commissioner for Human Rights titled *'Human rights by design – future-proofing human rights protection in the era of AI'*[17], reviews the challenges faced by Member States in promoting and protecting human rights in the use of AI. Member States are encouraged to make use of Human Rights Impact Assessments (HRIAs) before the use of AI systems to assess their impact and risks potentially posed against human rights.[18]

The recommendation also comments on the scope of the HRIAs, stating that they should be broad enough to cover risks to all human rights but should not narrowly define the risks being assessed. Furthermore, in 2022 the Netherlands was the first nation to make HRIAs mandatory before a public institution uses an algorithm to make evaluations or decisions about people, accounting for AI's increasing usage and ultimately initiating the preparation stage for a new era of technology.[19]

## AI, Fundamental Rights, and the ECHR

The Charter of Fundamental Rights of the European Union brings all personal, civil, political, economic, and social rights of EU citizens and residents. Certain articles that form as part of the Charter would certainly be challenged in the upcoming rise of AI in the legal sphere, such as those of the Right to protection of personal data, the Right to a fair trial, Prohibition of discrimination, and Freedom of expression.

Reviewing Article 8 of the Charter which states.

*'Everyone has the right to the protection of personal data concerning him or her.'*[20]

[17] https://rm.coe.int/follow-up-recommendation-on-the-2019-report-human-rights-by-design-fut/1680ab2279

[18] Protecting human rights in a world of artificial intelligence, algorithms, and data https://www.echr.coe.int/documents/d/echr/seminar-background-paper-2025-eng

[19] https://rm.coe.int/follow-up-recommendation-on-the-2019-report-human-rights-by-design-fut/1680ab2279

[20] https://www.europarl.europa.eu/charter/pdf/text_en.pdf

## How can AI affect such a Right?

As anything else does, AI has its positives and negatives. When it comes to the fundamental right of protection of personal data, AI systems can be used negatively for various reasons, such as that of mass data collection and surveillance. Most AI systems rely on large sets of data to function which can result in intrusive profiling of an individual or even breaches of datasets if not protected properly.

According to Article 22 of the General Data Protection Regulation[21], individuals enjoy the right not to be subject to decisions based solely on automated processing. This would include AI, should it make decisions in areas of automated decision-making without human oversight.

However, AI can be used positively in such an area. It can be used for better enforcement and security where it can be set up to detect potential data breaches and monitor compliance.

When it comes to the right to a fair trial, being Article 47 of the Charter, AI can prove to be a risky tool to implement in a sector where the human aspect is so crucial in decision making. It poses risks in various sections of the criminal justice system, such as that of biased decision-making, with fears that it could discriminate against certain groups of people, having racial bias or socio-economic. This ties in with Article 21 of the Charter, being the right to non-discrimination of an individual.

However, should such tools be used in a proper manner, they can serve as great accelerants to the criminal justice process. An effective AI tool may be able to handle large volumes of legal information and expedite certain procedures which could reduce delays and support the notion of reasonable time. AI could also prove as a legal assistant to legal professionals such as lawyers or judges in analysing legal precedents or even identifying inconsistencies.

Stated in Article 11 of the Charter is the freedom of expression and information. AI can challenge this right when it comes to content moderation and censorship since it is used widely by platforms to detect and remove harmful content. Yet it can over-censor legitimate speech or lack the understanding of satirical content or cultural nuance. Another issue which may arise in this sector is that of deepfakes and disinformation, where AI can be used to create fake content which could manipulate the public opinion and undermine trust in the media.

[21] https://gdpr-info.eu/art-22-gdpr/

On the contrary, AI can be used to detect deepfakes and flag manipulated media. It may also assist the individual in expressing themselves through creative AI generating tools.

## Jurisprudence Linking AI and Fundamental Rights

The conclusions held in the 2008 European Court of Human Rights case S. and Marper Vs. the United Kingdom[22] prove to be relevant to the intertwining of AI and Fundamental Rights. The court addressed the retention of biometric data, such as fingerprints and DNA profiles, by UK authorities. The Court ruled that retaining such data from individuals who were acquitted or had charges dropped violated Article 8 of the European Convention on Human Rights, which protects privacy. Although the case didn't involve AI, its principles are highly relevant to AI technologies, which often rely on large datasets, including biometric information.

The judgment emphasizes the need for proportionality and necessity in data retention, which is crucial for AI systems which process personal data. This case highlights the importance of safeguarding privacy and ensuring that data collection and retention practices in AI comply with ethical and legal standards, particularly in the context of personal and biometric data.

The Taxquet v. Belgium[23] case underscores the fundamental importance of transparency and explainability in decision-making processes that carry significant consequences for individuals. In this case, Richard Taxquet was convicted of murder by a jury that provided no reasoning for its verdict. He was unable to access the evidence used against him or challenge an anonymous witness whose statements contributed to his prosecution. The European Court of Human Rights found this to be a violation of the right to a fair trial under Article 6 of the European Convention on Human Rights, affirming that individuals must be able to understand the rationale behind decisions that affect them.

This principle has direct relevance to the use of artificial intelligence in high-stakes contexts. Much like opaque jury verdicts, AI systems that lack transparency or explainability pose risks to fairness, accountability, and public trust. Both human and algorithmic decisions must be interpretable to ensure procedural justice and uphold individual rights.

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[22] Judgement of S and Marper. Vs The United Kingdom, 30562/04 and 30566/04, 4th December 2008 https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-90051%22]}

[23] Judgement of Taxquet Vs Belgium, 926/05, 16th November 2010, https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-101739%22]}

## The ECHR's Future with AI

The European Union Artificial Intelligence Act poses as one of the most significant regulatory frameworks in the global governance of artificial intelligence. With the implementation of such an act which at its core aims to balance technological innovation and the protection of human rights in ensuring that natural principles of justice are followed, along with the rule of law, and democratic values. [24]

The Act will shape how states design and deploy AI systems, especially in high-risk areas like law enforcement, welfare, and employment. The ECHR will be essential in interpreting how the European Charter on Fundamental Rights applies to these technologies, particularly regarding the rights to privacy (Article 8), a fair trial (Article 47), and non-discrimination (Article 21).

Key challenges include ensuring transparency, preventing algorithmic bias, and upholding accountability when harm arises from AI use. As the AI Act sets new regulatory standards, the Court must adapt its jurisprudence to address emerging risks while reinforcing legal safeguards. The ECHR's continued relevance will depend on its ability to respond to these developments and ensure that innovation does not compromise human rights.

## Conclusion

In conclusion, the integration of artificial intelligence into legal and public governance systems presents both significant opportunities and complex challenges. As AI continues to evolve, it is imperative that its use remains firmly anchored in the protection of fundamental rights, as enshrined in the European Charter of Fundamental Rights.

The European Court of Human Rights will play a pivotal role in interpreting and enforcing these rights in the context of emerging technologies, ensuring that principles such as transparency, accountability, non-discrimination, and privacy are not eroded. Instruments such as the Council of Europe's Framework Convention on AI and the EU's Artificial Intelligence Act represent important steps toward aligning innovation with democratic values and the rule of law. Moving forward, the Court must continue to evolve its jurisprudence to address new legal questions posed by AI, maintaining its role as a guardian of human dignity in a rapidly digitising world.

[24] The EU AI Act and its Adherence to the Convention on Human Rights, Dr. Srabonty Das Gupta, https://emildai.eu/the-eu-ai-act-and-its-adherence-to-the-european-convention-on-human-rights/

# Constitutional Safeguards: Ensuring Due Process and Fair Trials with the Possibility of Integration of AI

By Alexander Apap Bologna

## Introduction

In modern democracies, the preservation of individual rights through constitutional safeguards is paramount. Among these rights, the right to a fair trial as well as the notion of due process, serves as a cornerstone of the justice system. It is in this manner that legislation itself may safeguard against the "miscarriages of justice" by ensuring "impartiality, transparency, and access to an effective legal process".[25] Furthermore, one's entitlement to be tried fairly is recognized as a fundamental human right, described by Sir Thomas Bingham as a "cardinal requirement" for any democratic state that aspires to uphold the rule of law.[26] This right is further entrenched in Article 6 of the European Convention on Human Rights, underscoring its critical role in maintaining justice and fairness within legal systems.[27]

Malta as a democratic state and member of the ECHR is no exception. The right to a fair trial is a core element of the Maltese legal system and deemed as supreme law through Article 39 of the Maltese Constitution. [28] It is a principle on which the Maltese and any legal system that aims to proport justice should not only contain but protect and administer. This is done through a system of established rules and principles that encompass the notion of due process, ensuring that legal disputes of any nature, be it civil or criminal, are administered in a fair manner with the end goal of reaching justice. [29]

[25] The right to a fair trial does not only apply to criminal proceedings but also to proceedings determining Civil rights and Obligations - GTG Legal, (-01-20) <https://gtg.com.mt/right-to-fair-trial-civil-and-criminal-cases/> accessed Apr 6, 2025.
[26] Tom Bingham, *The Rule of Law* (Page 90).
[27] 'European Convention on Human Rights - Article 6 | European Union Agency for Fundamental Rights' (2018) <https://fra.europa.eu/en/law-reference/european-convention-human-rights-article-6> accessed on Apr 8, 2025.
[28] Constitution, Article 39
[29] 'Due Process Defined and How It Works, With Examples and Types' <https://www.investopedia.com/terms/d/due-process.asp> accessed on Apr 1, 2025.

However, as society moves towards increasing reliance on technology, particularly artificial intelligence (AI), the intersection between technology and human rights in the legal domain has become a critical issue. AI has had an overreaching impact on almost all sectors of modern of life with its powerful capabilities capturing attention across the globe and its impact universal. The justice system is no exception. The question being asked is not whether AI will affect the legal systems around the world but rather how and what will it affect. A key concern being raised is how the use of AI in the legal world might impact an individual's essential right to a fair trial and adherence to due process principles. To examine this conundrum this paper will highlight the key elements on which this right is built on and the possible roles AI may take and the consequences that may arise.

## The Right to an Independent and Impartial Tribunal

In order to carry out a fair trial the parties in which the dispute is had must be subject to a judiciary power that is both independent and impartial.[30] It is essential that the judgements that are conducted in order to settle the dispute between the two parties is obtained independently and impartial to any bias, external pressure or conflicts of interest. This is a cornerstone of a fair trial and is enshrined on a European level by its inclusion in Article 6 of the ECHR and nationally by Article 39 (1) of the Maltese Constitution.[31] Furthermore, all Judges and Magistrates in Malta, before commencing their duties are subject to an oath in which they swear to "faithfully perform the duties of Judge [or Magistrate] without favour or partiality".[32]

Before going into the arguments posed against AI implementation in the judicial process, it is important to dismiss a most pertinent argument. AI can never be solely entrusted with the judicial decision-making process as it is crucial to recognize the Oath of Office previously mentioned. No form of technology, regardless of its intelligence, can be held accountable to this oath and therefore is not fit for the role of reaching a *Vere dictum.*
The central arguments to AI being implemented into the legal system to assist the judiciary, in terms of the notion of independence and impartiality, could be split up into three:

[30] 'The Judiciary' <https://judiciary.mt/en/the-judiciary/> accessed on 10/04/2024.
[31] Constitution, Article 39 (1)
[32] --, The Judiciary in Malta <https://www.gov.mt/en/Life%20Events/Pages/Services%20and%20Information%20Pages/Justice/Judiciary-in-Malta.aspx> accessed Apr 6, 2025.

## Risk of Embedding Structural Bias

In certain legal systems, machine learning models are already employed to predict recidivism rates. In essence these systems, such as COMPAS used in the United States, assess the likelihood that an offender will reoffend to inform the judiciary on decisions related to parole and even sentencing. This is done to help the judiciary in making more consistent and informed decisions.[33]
However, these systems have faced significant scrutiny and criticism, particularly regarding their potential for racial and socioeconomic bias. A ProPublica study, released in 2016, found that since COMPAS' algorithms are often trained on historical criminal data, the results that were seen inherently reflected past societal biases.[34]

This sheds light on the issue that if AI, in order to fulfil its role in analysing date to assist the judiciary, analyses data that is biased in nature, then its conclusion will be biased too. This results in the Judiciary's conclusion on the information produced by AI to not be impartial either.

## Lack of Transparency

An issue that arises in AI implementation is a lack of transparency. There is a lack of knowledge, and therefore clarity in how the technology functions, often secured by impeding factors such as 'trade secrecy' which do not correlate with the notion of being independent and impartial. The reasoning Dr. Monika Zalnieriute uses in favour of this argument is that "Judges would not accept or tolerate relying on expert evidence where the expert need provides no qualifications or demonstrable expertise, no explanation of reasoning or methodology and no assurance of the reliability of their evidence".[35]

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[33] Mattu, Jeff Larson, Julia Angwin, Lauren Kirchner, Surya. 'How We Analysed the COMPAS Recidivism Algorithm' <https://www.propublica.org/article/how-we-analyzed-the-compas-recidivism-algorithm> accessed on Apr 6, 2025.
[34] Olsson, Alex. 'AI in the courtroom: navigating the right to a fair trial' (2024) <https://www.irissd.org/post/ai-in-the-courtroom-navigating-the-right-to-a-fair-trial> accessed on Apr 6, 2025.
[35]Dr. Monika Zalnieriute, *Technology and the Courts: Artificial Intelligence and Judicial Impartiality* (04 June, , 2021) 8 <https://allenshub.unsw.edu.au/sites/default/files/inline-files/20210604%20Judicial%20Impartiality%2004June21MZ.pdf> accessed 10/04/2025

## Risk of AI Dependence

The application of AI tools in judicial decision-making raises concerns about whether a decision is truly the judge's independent assessment. While judges are trained to evaluate arguments and safeguard their impartiality, the subtle influence of AI recommendations could affect their judgment. Furthermore, there is a risk of "AI creep," where judges, initially using AI for minor tasks like summarizing evidence, may gradually start to rely more heavily on AI for substantive matters. The UK judicial guidance on AI addressed these concerns by emphasizing that judges must maintain autonomy but permits the use of AI for tasks like drafting or summarizing but prohibits its use in substantive legal reasoning or final decision-making.[36]

## The Right to a Trial within a Reasonable Time

Article 6 of the European Convention on Human Rights explicitly states that in order for a trial to be fair one must be tried "within a reasonable time".[37] This notion is echoed on a national scale through Article 39 of the Maltese Constitution and also via its inclusion in the Code of Ethics of the judiciary.[38] This fundamental right protects those accused of a crime as well as those involved within a civil dispute from being left in legal limbo. Furthermore, it ensures that individuals are not subjected to prolonged or indefinite legal proceedings. Although the term "reasonable time" is not defined, and its interpretation is wide, it does not negate its importance and necessity to any legal system.

Court delays are a serious problem in Malta and are the antithesis to this right. According to a report completed by the European Commission, the "estimated time needed to resolve administrative cases at first instance in, Malta was 2.8 years" resulting in Malta being placed below Portugal at the bottom of the list.[39] This issue can be solved in a multitude of ways. For example, an increase in Magistrates and Judges, or in the introduction of more Courts. However, possibly the most effective of them all could be the further digitalisation of the courts, including the introduction of AI systems to perform simple administrative duties. AI has the potential to significantly improve the efficiency of legal proceedings by reducing the time required for routine and procedural tasks. AI tools can assist in case management, court scheduling, and document filing, automating these

[36] The Pitfalls of Using AI in UK Civil Litigation – Legal Lens, (-03-06) <https://legallens.org.uk/the-pitfalls-of-using-ai-in-uk-civil-litigation/> accessed Apr 6, 2025.
[37] Tonio Borg, A Commentary on the Maltese Constitution (Page 23).
[38] --, Code of Ethics Judiciary <https://judiciary.mt/wp-content/uploads/2022/09/Code-of-Ethics-Judiciary-2010-1.pdf>.
[39] Ellul, Daniel. 'Justice delayed...Malta still at the bottom of EU scoreboard' (2024) <https://timesofmalta.com/article/justice-delayedmalta-still-bottom-eu-scoreboard.1093818> accessed on Apr 6, 2025.

functions to ensure that administrative processes are expedited. This could facilitate the faster resolution of cases, helping to alleviate the backlog that often burdens legal systems.

While AI's ability to process large volumes of data and automate mundane tasks offers a promising avenue for enhancing court efficiency, the emphasis on speed must not overshadow the need for a thorough and fair examination of the evidence. There is a risk that a focus on efficiency could lead to hasty decisions that fail to account for the complexities of a case or the fundamental rights of the accused. It is crucial that the use of AI in legal proceedings does not compromise the fairness of the trial process, ensuring that the pursuit of expedience does not come at the expense of justice.

## The Right to Information (In Relation to Criminal Offences)

Both Article 6 of the ECHR[40] and Article 39 of the Maltese constitution, articles relating to the fundamental human right to a fair trial, contain sub-articles which bestow upon the individual to whom the criminal offence has been charged the minimum rights to be.

- Clearly and thoroughly informed, in a language he understands, about the specific nature and details of the charges brought against him.

The right to understand the cause of the charge and the nature of the accusation is a crucial aspect of ensuring a fair criminal trial. With the integration of Artificial Intelligence (AI), this right could not only be upheld more efficiently but also significantly enhanced.

AI has demonstrated significant capabilities in the linguistic field, particularly in translation. While AI will not replace human translators, it can make the process faster and more reliable. In certain cases, AI can even improve translations by addressing ambiguities or gaps that human translators might overlook, ensuring a higher degree of accuracy in conveying the nature of legal charges.[41]
Beyond translation, AI can also play a key role in simplifying complex legal materials.[42] The adoption of AI tools in relation to the provision of simplified and

[40] 'European Convention on Human Rights - Article 6 | European Union Agency for Fundamental Rights' (2018) <https://fra.europa.eu/en/law-reference/european-convention-human-rights-article-6> accessed on Apr 8, 2025.
[41] Crangasu, Adria. 'How is Artificial Intelligence Changing the Translation Services Industry?' (2025) <https://www.getblend.com/blog/artificial-intelligence-changing-the-translation-services-industry/> accessed on Apr 8, 2025.
[42] 'How AI is transforming the legal profession (2025) | Legal Blog' (2025) <https://legal.thomsonreuters.com/blog/how-ai-is-transforming-the-legal-profession/> accessed on Apr 10, 2025.

summarized information to the accused would increase clarity and accessibility, ensuring that individuals are fully informed of their legal rights.

## The Right to a Defence

***"(c) shall be permitted to defend himself in person or by a legal representative and a person who cannot afford to pay for such legal representation as is reasonably required by the circumstances of his case shall be entitled to have such representation at the public expense."***

Above one can find Article 39 (6) (C) of the Maltese Constitution.[43] In essence, the foremost notion wished to be expressed by this sub-section is one's right to a defence. Here the Constitution, once again in line with Article 6 of the ECHR, makes clear that in order for one to have his right to a fair trial fulfilled they must be accommodated with a legal representative.

Furthermore, according to the "Moral Code of Conduct for European lawyers", the lawyer who has been vested with the duty to defend this client "must always act in the best interests of the client".[44] Essentially, it is the lawyers duty that to the best of their ability, in line with the Code of Ethics they are subjected to, to act in a manner that benefits their client. This is where AI can make its mark.

AI can be used as a tool by legal representatives. Just as a lawyer may use a pen to write his notes to fulfil his duties, AI can be used like any other tool as a means to reach the best possible result for their client. In the quest for efficiency and proficiency AI tools can assist the lawyer in analysing large volumes of legal texts, precedents, and statutes which will consequently help in the creation of strong legal arguments. The technology can be used as another set of eyes, uncovering elements that without its involvement could go unnoticed.[45]

However, it is imperative for a lawyer to bear in mind that according to the "Code of Ethics and Conduct for Advocates" it would in counter to their duty as lawyers to "deceive or mislead the court".[46] Therefore, if in the quest for a result that

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[43] Constitution, Article 39 (6) (C)

[44] *Model Code of Conduct for European Lawyers* (, 2021) 16 <https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/DEONTOLOGY/DEON_CoC/EN_DEONTO_2021_Model_Code.pdf> accessed 10/04/2025

[45] 'How AI is transforming the legal profession (2025) | Legal Blog' (2025) <https://legal.thomsonreuters.com/blog/how-ai-is-transforming-the-legal-profession/> accessed on Apr 10, 2025.

[46] 'Code of Ethics & Conduct for Advocates in Malta' (2015) <https://legal-malta.com/articles/code-of-ethics-conduct-for-advocates-in-malta> accessed on Apr 11, 2025.

benefits their client, the use of AI leads to them providing ‘misleading’ or ‘inaccurate’ information, the responsibility would fall on them.

## Moving Forward and Concluding Remarks

The integration of AI into the legal system must be done in a cautious manner. Pivotal values of justice, such as one’s entitlement to a fair trial and the notion of due process, as pillars of democracy, must never be compromised. The efficiency that AI offers should never, under any circumstances, take prevalence over what “protects and preserves every individual’s humanity”.[47]

Whilst the idea of an AI judiciary is ludicrous, AI has an incredible potential to play a supportive role. With the implementation of standards and procedures, as well as its use is done vigilantly and transparently, it can assist legal professionals in research, streamline court administration, and help ensure defendants are properly informed of their rights. All of these roles have the ability to strengthen the guarantee one has to be subject to legal proceedings that is fair and just.

[47] 'Questions and answers about Human Rights - Manual for Human Rights Education with Young people - www.coe.int' <https://www.coe.int/en/web/compass/questions-and-answers-about-human-rights> accessed on Apr 11, 2025.

# Balancing Innovation and Human Rights: The ECtHR's Perspective on AI in the Justice Sector

**By Valentina Micallef**

The justice system plays a vital role in peoples' lives and our democracy. Justice is administered through just and lawful procedures, and the adjudication process, is handled by the court system. This component is crucial for upholding the rule of law and administering justice equitably and efficiently.[48] Artificial intelligence refers to computer systems that can perform complex tasks normally done by human reasoning and decision making, among other things. However, there is no single, simple definition of artificial intelligence because AI tools are capable of a wide range of tasks and outputs.[49]

## The ECtHR's Possible Inclusion of AI

The European Court of Human Rights (ECtHR) is an international judicial body established under the European Convention on Human Rights (ECHR), tasked with interpreting and enforcing the Convention's provisions to protect fundamental human rights across its member states (Council of Europe, 1950). The ECtHR ensures that national legal systems align with human rights standards, particularly in areas were emerging technologies challenge traditional legal frameworks.[50]

Artificial Intelligence is transforming the justice sector by enhancing efficiency and streamlining judicial processes. AI driven innovations, including predictive analytics, automated decision making, and legal research tools, offer significant advantages in handling legal proceedings. However, the adoption of AI in the judiciary also raises critical concerns regarding fairness, accountability, and the protection of human rights.

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[48] Written by Sarah Shelley, 'What Is the Criminal Justice System? Insights for Aspiring Legal Minds' (*University of the Cumberlands*, 24 May 2024) <https://www.ucumberlands.edu/blog/what-is-the-criminal-justice-system#:~:text=The%20court%20system%20handles%20the,administering%20justice%20equitably%20and%20efficiently.> accessed 29 March 2025

[49] 'What Is Artificial Intelligence?' (*NASA*, 13 May 2024) <https://www.nasa.gov/what-is-artificial-intelligence/> accessed 29 March 2025

[50] *(ECHR - homepage of the European Court of Human Rights - ECHR - ECHR / CEDH*) <https://www.echr.coe.int/> accessed 29 March 2025

The European Court of Human Rights (ECtHR), as the guardian of fundamental rights under the European Convention on Human Rights (ECHR), plays a crucial role in balancing the benefits of AI with the protection of fundamental freedoms. To this one may ask the question, how does the ECtHR navigate AI driven innovations in the justice system while ensuring that human rights are upheld?
AI has the potential to improve administrative and judicial processes by automating tasks, providing advanced support through context aware search engines, machine proposed summaries, and anonymisation algorithms. AI powered virtual assistants can streamline administrative tasks, while also enhancing the quality and consistency of judicial decisions by automatically correlating and classifying cases, automating the processing of originating documents, and potentially employing advanced legal research tools**.** AI can also enhance legal research by analysing large datasets and providing recommendations, as well as offering visual representations of case connections.[51]

AI can increase access to justice and transparency for EU citizens by providing assistive technologies like text-to-speech, speech-to-text, screen readers, and image recognition. Chatbots, virtual assistants, and AI avatars can provide easier access to information on the Court's website, while translation tools based on Natural Language Processing (NLP) can break down language barriers. However, AI integration in the judiciary presents risks such as biases, sensitive data disclosure, false or inaccurate information, over reliance on technology, hyper abuse, ethical concerns, lack of explainability, resilience, and disinformation, censorship, and control. To mitigate these risks, the ECJ is proposing strategies such as adopting an appropriate governance model with an AI Management Board, defining "red lines" for AI usage, ensuring human oversight, implementing robust security measures, upskilling staff, and adopting a clear architectural approach.[52]

The European Court of Human Rights has not yet issued specific rulings directly addressing the implications of artificial intelligence on human rights. However, existing jurisprudence provides foundational principles that can be applied to potential AI related human rights concerns.

[51] *(Artificial Intelligence Strategy - Curia) <https://curia.europa.eu/jcms/upload/docs/application/pdf/2023-11/cjeu_ai_strategy.pdf> accessed 29 March 2025*
[52] *ibid*

## Highlights and Concerns in Article 6

The right to a fair trial is guaranteed by Article 6 of the ECHR. There are serious concerns about preserving judicial independence and guaranteeing human oversight when AI is included in legal procedures. The principles outlined in Article 6 highlight the importance of a fair and public hearing by an independent and impartial tribunal, even though the ECtHR has not made a direct ruling on AI in this particular situation. These principles must not be compromised by the deployment of AI, highlighting the significance of human participation in decisions made by courts to protect the right to a fair trial.[53]
Legal scholars have emphasised the inherent worth of human judgement and empathy in their argument that human dignity demands the participation of human judges in the decision-making process.

The Right to Privacy is dealt with in Article 8 ECHR. Article 8, offering protection of the right to privacy may be threatened by AI technologies, especially those used in mass monitoring. In instances like as S. and Marper v. the United Kingdom and Roman Zakharov v. Russia, the European Court of Human Rights has addressed surveillance and data protection problems, highlighting the need for sufficient protections against misuse. Even if artificial intelligence was not a factor in these situations, the guidelines set forth emphasise the necessity of strict control and regulation of AI driven monitoring in order to avoid invasions of privacy.[54]

Article 14 of the ECHR, deals with non-discrimination, thus raising concerns about the possibility that AI systems will reinforce or magnify preexisting biases. Even though the ECtHR hasn't yet decided cases regarding AI induced discrimination directly, its larger body of case law emphasises how crucial it is to make sure that new technologies don't lead to unfair treatment or strengthen existing prejudices. It is thus crucial to provide accountability and openness in AI systems in order to avoid discriminatory results.

Perhaps one may argue that we are currently living part of a new era, where the use of AI may be seen as a useful tool rather than a so called ‘enemy’. Thus, rather than being completely opposed to the idea of using AI, one must come to terms with the fact that human beings are not perfect, and we must thus utilize the tools

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[53] *Zou M and Lefley E, ‘Generative Artificial Intelligence and Article 6 of the European Convention on Human Rights: The Right to a Human Judge?’ (SSRN, 23 January 2025) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5040351&utm_source=chatgpt.com> accessed 2 April 2025*

[54] *(Ai act- case law.pdf) <https://interoperable-europe.ec.europa.eu/sites/default/files/custom-page/attachment/2021-06/AI%20ACT-%20CASE%20LAW.pdf> accessed 2 April 2025*

we are given in order to improve certain outcomes. However, it is essential that there is a fair balance between the use of AI and the justice sector, keeping in mind the principles of fairness, justice, and legal certainty while leveraging technological advancements. This balance should be guided by three key considerations: the irreplaceable role of human judicial reasoning, the efficiency and consistency offered by AI, and the necessity of human oversight to prevent rights violations.

With regards to the irreplaceable role of human judicial reasoning, legal interpretation and the application of justice require human empathy, moral judgment, and contextual understanding. Notably these are all qualities that AI lacks. Article 6 ECHR (Right to a Fair Trial) underscores the necessity of a fair and impartial hearing, which depends on human judges exercising discretion and adapting legal principles to unique cases. AI lacks the ability to weigh social, historical, and ethical considerations that influence legal decisions.

In cases involving human dignity, such as Pretty v. UK (2002)[55] which dealt with assisted suicide, if ruled purely using AI, such a system would struggle to consider cultural sensitivities and evolving human rights principles. Justice is not just about legal accuracy but also about moral and human reasoning.

As I previously stated, due to the rapidly evolving world we live in, we should learn to incorporate AI into our tasks to enhance the overall outcome of our decisions rather than completely opposing it. For instance, AI can complement human judges by improving efficiency and consistency in legal decision making. AI driven tools can analyse vast amounts of case law, identify precedents, and detect potential biases in judgments. This is particularly relevant in reducing backlogs and ensuring timely rulings, as required under Article 6 of the ECHR. For example, AI could assist in analysing the ECtHR's extensive jurisprudence to maintain consistency in decisions made. AI tools can ensure that similar cases receive consistent treatment, thus strengthening legal certainty.

While AI can enhance judicial processes, it cannot be allowed to replace human judges due to the risk of systemic bias and a lack of accountability. AI systems trained on biased datasets may reinforce discrimination, violating Article 14 ECHR (Non-Discrimination).

[55] *Echr, 'European Court of Human Rights' (HUDOC) <https://hudoc.echr.coe.int/fre# {%22itemid%22: [%22002-5380%22]}> accessed 3 April 2025*

The integration of artificial intelligence in the judiciary presents both opportunities and challenges. One of the most significant challenges in using AI for judicial purposes is regulating AI in accordance with the ECHR framework. The European Convention on Human Rights establishes important legal protections, such as Article 6 (Right to a Fair Trial) and Article 8 (Right to Privacy). AI driven tools must be built to protect fundamental rights, ensuring that judicial rulings are fair, impartial, and free of undue influence. Furthermore, AI's role in judicial procedures must not jeopardise human judges' ability to exercise discretion, which is a fundamental component of a just legal system. The potential for AI to spread systemic biases complicates complying with human rights duties, necessitating regulatory control.

To address these challenges, it is crucial to establish AI ethics guidelines for the judiciary. These guidelines should set clear standards for transparency, accountability, and fairness in AI assisted legal decision-making, while also ensuring that regular audits and reviews are carried out to assess AI systems' bias, accuracy, and conformity with legal norms. Ensuring human oversight is another key recommendation, as AI should serve as a tool to support judges rather than replace them. Maintaining judicial discretion ensures that AI driven decisions remain subject to human judgment, thereby preserving the integrity of the legal system.

## Concluding Remarks

In conclusion, AI can enhance judicial efficiency and consistency but must be used responsibly to uphold fairness, transparency, and human rights. While AI can assist in legal processes, it should never replace human judges, who provide essential moral reasoning, empathy, and contextual understanding. In my opinion, AI should be seen as a tool to support, not replace, human decision making in the judiciary. A balanced approach, with strong ethical guidelines and human oversight, is essential to ensure that technological advancements align with the principles of justice and respect for fundamental human rights.

# AI in Democratic Governance and its Implications

**Karelle Galea**

## Introduction

The success and widespread use of artificial intelligence has impacted various sectors in society. It has now expanded and extended its reaches with applications ranging from self-driving cars, social media content, medical diagnosis and now, even the workings of society. This powerful form of machine learning has fuelled an "AI boom"[56] whereby it has started to integrate itself with the practice of democracy. Although this mechanism has greatly impacted certain aspects of our lives, we must consider the consequences when it comes to its deployment in democracy.

This tool has no longer stayed in its technological field but has now embedded itself in our lives, so it is crucial to consider its utilization in economic, political and social structures[57]. Certain societies have adopted AI in their jurisdictions; in this way they have taken a proactive and unified approach towards developing regulations. By using this technique, they are not letting it 'destroy' their democracy or rather viewing it as an enemy, but they are using it hand-in-hand with their legislation. Others have preferred to ban the use of AI altogether to prioritize critical thinking in their courts.

## The Possible Decline in Democracy and the Rise of AI

The impact of AI has been revolutionary in medical and technological fields, but can we say the same when it comes to its influence on democracy? Deploying AI in something as social as government brings its own risks and numerous difficulties – like data bias, manipulation and misinformation, privacy concerns, potential for surveillance and legal challenges[58]. There are fast growing fears that these risks will impact and destabilize democracy in unsought ways. One of the critiques which circles around the use of AI is when it comes to creating false content, its initial idea was to digitalize and make content creation easier but when

[56] Dr John Varghese, '' <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5056102> accessed 16 February 2025.

[57] Jungherr, A. (2023). Artificial Intelligence and Democracy: A Conceptual Framework. Social media + Society, 9(3). https://doi.org/10.1177/20563051231186353 (Original work published 2023).

[58] Helene Landemore, 'Fostering More Inclusive Democracy with AI by Landemore' (*IMF*December 2023) <https://www.imf.org/en/Publications/fandd/issues/2023/12/POV-Fostering-more-inclusive-democracy-with-AI-Landemore>.

it landed in the wrong hands this idea grew out of proportion generating misleading and deceptive content. This material could be used to create foreign content regarding the political sphere jeopardizing the community's notion on the government. In doing so, these tools have advanced faster making it harder to manage their effects and the manipulation it may have on people. This tool in particular threatens global stability and democracy since once deployed it may be weaponized on social media platforms creating misleading content. These systems can generate highly persuasive content enabling misinformation and malicious narratives at scale[59].

This manipulative content is becoming less expensive to produce and giving way for local and foreign maltreaters to replicate, a person's appearance, voice and style to mislead society. This is no warning or caution but simply a reality, AI synthetic content has permeated worldwide political spheres where deceptive pictures/videos/audios are rapidly increasing because of the rise and misuse of AI tools and fake news websites. The impact of this depends on how political opponents use it and how it is spread on social media. In relation to democracy, this content can shape public perception in unpredictable ways, while some see it as 'political satire'[60] this flood of AI-driven misinformation can confuse voters, distort views of candidates and increase distrust in elections. This problem on its own is an unforeseen influence when it comes to how AI jeopardizes democracies' fair elections.

Examples where this catastrophe can be seen is in recent U.S political elections where, now President Trump, reposted an image of famous singer Taylor Swift endorsing his campaign, which she never did. Trump was then accused by democrats how he was promoting his campaign with images produced by AI tools to attack his opponents or create illusions of support. Whilst democrats also posted AI-made fake photos of Trump being arrested. Such content created by AI began to saturate social media risking enduring people's trust in misinformation. Other examples can be seen in fake audio clips of British Prime Minister Keir Starmer and Slovakia's opposition head, Michal Šimečka, which circled and erupted in social media controversies before they were found out to be fake.[61] Meanwhile in Turkey this tool was proven to be destructive as seen from a presidential candidate who withdrew from the election after explicit AI videos went viral ruining his image. Not only can AI generated content be created by citizens to harm a candidate's run, but they can also be used as a source to mock and ruin opponents created by candidates themselves. As seen in Argentina's

[59] Raluca Csernatoni, 'Can Democracy Survive the Disruptive Power of AI?' (*Carnegie Endowment for International Peace*18 December 2024) <https://carnegieendowment.org/research/2024/12/can-democracy-survive-the-disruptive-power-of-ai?lang=en>.
[60] Ibid.
[61] Ibid.

2023 presidential election where both leading candidates utilised AI to create content that mocked their opponents.

Overall, the risk implied by this is that as false AI-driven information risks distrust within the community. Its potential to distribute misinformation may be felt even more in countries where there are lower levels of digital democracy. People might not know what to believe, may lead to public anxiety and compromise democratic benefits especially since nowadays trust in media is already low, therefore more inauthentic content will 'erode that trust even more'.[62] In doing so, more misleading, AI-made political media will erode public trust, which is the essential glue that holds together democratic societies.[63] Additionally, emerging concerns from AI correspond when democracy is in decline globally.

## Benefits of AI in Democracy

Although AI has its negative implications, we must not discard it but realise that it has its own benefits which may be of value to society and its governance. Indeed, when used in a responsible way, advanced, Machine Learning algorithms could drastically improve operating methods of the public sector paving the way for enhanced governance by optimizing resources. [64] Socially, AI for government improves various factors like detecting fraud and supporting smart city initiatives like traffic management[65]. Other improvements AI makes for governments include efficiency and especially helps in analyzation of vast amounts of data for decisions, as well as decision making and public services which vary from data analysis to the improvement of citizens' lives. In hope of all this it also relieves resource constrained organisations from mundane and repetitive tasks.

Continuous improvements in advanced machine learning algorithms significantly reduce administrative delays, streamlines governmental operations, and allows personnel to focus on complex decision making. [66] Other significant advances also include the enhancement AI has on security. It allows better safeguarding of sensitive government data and digital assets as seen through real-time threat detection and automated cybersecurity. AI can be leveraged to identify suspicious

[62] Sarah Kreps and Doug Kriner, 'How AI Threatens Democracy' (*Journal of Democracy* October 2023) <https://www.journalofdemocracy.org/articles/how-ai-threatens-democracy/>.
[63] Ibid.
[64] Maciej Kuziemski and Gianluca Misuraca, 'AI Governance in the Public Sector: Three Tales from the Frontiers of Automated Decision-Making in Democratic Settings' (2020) 44 Telecommunications Policy 101976.
[65] Dharmesh Patt, 'AI in the Public Sector: Enhancing Governance, Security, and Citizen Services' (EvinceDev Blog4 February 2025) < https://evincedev.com/blog/impact-of-ai-in-the-public-and-governance-sector/> accessed 3 April 2025.
[66] Ibid.

transactions and potential security threats before they escalate and prevent potential financial crimes. Apart from detecting suspicious trades it can detect anomalies ensuring government funds are safe from glitches and/or cybercrime. This ability ensures robust national security whilst funds are allocated utilized responsibly. [67]

Apart from bureaucratic operations, AI provides virtual assistance to optimize citizen service, providing real-time responses. This tool enables to improve efficiency and reduce the burden on public service departments.[68] The success of its implementation is already evident in various chatbots used for question-and-answer services on organizational websites, as well as in other generative AI chatbots such as ChatGPT, Bing Chat, and Google Gemini. This generative machine learning is open dialogue programme-powered for customer service platforms which can handle citizen queries efficiently.

## A Targeted Approach for the Use of AI

Legislation and jurisprudence of the courts has been proven to be seen as a living instrument since it has been interpreted to reflect modern trends. The wide spreading of artificial intelligence requires regulations which should be applied and adapt existing digital laws to AI technology. Several jurisdictions have taken a targeted approach to the use of GenAI; to ensure ethical use of AI, courts have established general guidelines for the implementation of AI and automation in court systems. However, these frameworks often fall short of addressing the specific risks introduced by recent developments in generative AI. This guidance encourages innovation and flexibility and overall risks overlooking specific challenges and ethical concerns raised by GenAI.[69]

In 2023, the Courts and Tribunals Judiciary of the United Kingdom, encouraged the use of AI in court in their manual called "Artificial Intelligence Guidance for Judicial Office Holders".[70] This guide was created to help those who hold judicial office with the application of artificial intelligence and sets out key risks and issues associated with using AI. It provides suggestions for minimising threats and also emphasises that any application of AI by the judiciary or on its behalf must uphold the judiciary's fundamental duty to maintain the integrity of the justice system. This guidance applies to all judicial office holders under the

[67] Ibid.
[68] Ibid.
[69] David Uriel and Nydia Remolina, 'Artificial Intelligence at the Bench: Legal and Ethical Challenges of Informing—or Misinforming—Judicial Decision-Making through Generative AI' (2024) 6 Data & Policy.
[70] 'Artificial Intelligence (AI) Guidance for Judicial Office Holders' (2023) <https://www.judiciary.uk/wp-content/uploads/2023/12/AI-Judicial-Guidance.pdf>.

authority of the Lady Chief Justice and the Senior President of Tribunals, as well as their clerks and support staff. [71]

Similarly, Courts of New Zealand established "Guidelines for use of generative artificial intelligence in Courts and Tribunals". They have in all recognized 3 individual guidelines: the first addressing 'judges, judicial officers, tribunal members and judicial support staff'. These guidelines focus on risks associated with the use of GenAI chatbots. Overall, the use of AI is allowed as long as they do so in a way that does not harm the fairness or trust in the justice system. [72] The second relates to lawyers, the guidelines are made to assist lawyers through the use of chatbots in court cases. The rules remind lawyers that they still must follow their usual professional duties when exercising these tools. Since the answers of the chatbots may not always be accurate and may be misleading, hence these rules also give simple tips to help lawyers use AI safely and responsibly. Lastly, these rules apply to assist people who are not lawyers (people representing themselves or aiding others) using AI chatbots in court or tribunal cases.

Likewise in July 2024 an AI act was published in the Official Journal of the European Union. This Act is a thorough legislation designed to regulate artificial intelligence development and use in the European Union. It creates a legal framework to guarantee the ethical and safe application of AI systems in a variety of sectors. First it classifies AI according to risk; it sections what is prohibited (e.g. social scoring systems and manipulative AI), most of what the text addresses as high-risk AI systems, which are regulated. Subsequently other sections target limited and minimal risk AI systems, subject to lighter transparency obligation.[73] Secondly, it addresses prohibited AI systems (e.g. exploiting vulnerabilities, deploying subliminal, manipulative, or deceptive techniques etc.) as well as examining the General-Purpose AI (GPAI system). The GPAI is like a versatile tool that can do many different things and can also work with other tools to enhance their capabilities, which is why the EU established various protection regulations, codes of practice and more. Among other things, the AI Act outlines how it will be put into action. To ensure companies follow the rules, an 'AI Office' will be created within the Commission.[74] If a company using a GPAI model thinks the provider isn't following the rules, they can file a complaint. The AI Office can also check if the models are complying with the rules, especially if there isn't

[71] Ibid.
[72] 'Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals' (*Courts of New Zealand*2023) <https://www.courtsofnz.govt.nz/going-to-court/practice-directions/practice-guidelines/all-benches/guidelines-for-use-of-generative-artificial-intelligence-in-courts-and-tribunals> accessed 5 April 2025.
[73] EU Artificial Intelligence Act, 'High-Level Summary of the AI Act' (*EU Artificial Intelligence Act*27 February 2024) <https://artificialintelligenceact.eu/high-level-summary/>.
[74] Ibid.

enough information available, and investigate potential risks, especially if experts raise concerns.

## Conclusion

In conclusion, the rise of artificial intelligence, has brought both significant opportunities and challenges to society, especially data privacy, ethics and bias which require careful regulation to ensure fairness and transparency to be implement ethically within the realm of democracy.[75] While AI offers great potential for enhancing efficiency in government, improving public services and revolutionising sectors like healthcare, it also raises critical concerns. These difficulties like misinformation and manipulation pose a threat to public trust. The erosion of trust in democracy is critical, demanding responsible implementation and apparent oversight. As AI becomes more integrated into political spheres, the risk of misuse may potentially ruin the very foundation of democratic integrity.

However, it is important to recognize that AI itself it not inherently harmful. With the right regulatory frameworks, as seen in the approaches taken by jurisdictions, AI can be harnessed responsibly to benefit society and offer significant rewards. While the challenges are significant, responsible implementation can help to drive progress. Ultimately, the future of AI in democracy hinges on our ability to balance innovation with caution, ensuring that its deployment strengthens rather than undermines democratic values.

[75] Dharmesh Patt, 'AI in the Public Sector: Enhancing Governance, Security, and Citizen Services' (*EvinceDev Blog*4 February 2025) <https://evincedev.com/blog/impact-of-ai-in-the-public-and-governance-sector/> accessed 3 April 2025.

# AI, Judicial Autonomy, and the Right to a Fair Trial Under Article 6 of the European Convention on Human Rights

*Nina Privitera*

## Balancing Justice and Innovation: The Effect of AI on Judicial Autonomy

The gradual implementation of artificial intelligence (AI) in the legal world is the product of the on-going digitalisation of our lives. Not only have we digitalised our materials, written resources and most information, but this innovative concept has digitalised critical thinking – an aspect which is inherent to law and justice. This new aid in legal decision-making proves to be helpful in various aspects including automating certain repetitive tasks, which in turn, gives lawyers ample time to work on more crucial matters.[76] Moreover, the principle of Judicial Autonomy is now interacting with the use of AI, showing positive signs of increased efficiency, although it might contradictorily cloud one's impartial judgement.[77] This displays the dichotomy between AI being a beneficial tool and it being an outright breach of one's rights – including the right to a fair trial as stated in article 6 of the European Convention on Human Rights (ECHR), which establishes the significance of being tried independently and impartially.[78] Therefore, it is vital to properly examine the true nature of legal AI in order to use it to one's advantage, as this development has proven to be greatly valuable. However, it is important not to undermine this weighty right to a fair trial; otherwise, the use of AI would become detrimental rather than beneficial.

[76] Thomson Reuters, 'How AI Is Transforming the Legal Profession | Legal Blog' (*Thomson Reuters Law Blog*19 September 2023) <https://legal.thomsonreuters.com/blog/how-ai-is-transforming-the-legal-profession/> accessed 9 April 2025.

[77] Giulia Gentile, 'EUIdeas | AI in the Courtroom and Judicial Independence: An EU Perspective' (*Euideas.eui.eu*22 August 2022) <https://euideas.eui.eu/2022/08/22/ai-in-the-courtroom-and-judicial-independence-an-eu-perspective/> accessed 9 April 2025.

[78] European Court of Human Rights, 'European Convention on Human Rights' (1950) <https://www.echr.coe.int/documents/d/echr/convention_ENG> accessed 9 April 2025.

## Article 6 of the European Convention on Human Rights: The Right to a Fair Trial

The right to a fair trial, as explained through the European Convention on Human Rights, proposes that anyone facing legal charges is entitled to such a right. This right displays an outward respect to the concept of democracy in European countries, as well as follows the rule of law.[79] Initially, one is attributed the right to have access to a tribunal which would hear their case but more importantly, it is emphasised that this tribunal must be both independent and impartial – giving rise to doubts about AI's ability in adopting these characteristics – and this hearing must be held within reasonable time.[80] The Convention also establishes that the hearing must held in a public manner (unless in special circumstances where such publicity would affect the impartiality of justice). Moreover, there is the concept of one being "presumed innocent until proved guilty" enshrined in this article, emphasising the fairness being proposed.[81] Finally, this article also establishes the right one has to being catered for in a language they understand whilst also being provided adequate resources and legal professionals, especially in cases of financial instability.[82]

The case of Findlay versus the United Kingdom is a case decided by the European Court of Human Rights and deals precisely with this article and the right to a fair trial.[83] Findlay was convicted of several offences by a court-martial (a military tribunal) and therefore, he argued that this process was not independent or impartial, claiming the violation of his right to a fair trial. This is because the officer had multiple roles which were conflicting (appointing the prosecution, appointing members of the court-martial, etc.) which certainly proved him not to be independent. Furthermore, the court ruled in favour of Findlay, establishing a precedent for interpreting Article 6's requirement of an "independent and impartial tribunal".[84]

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[79] Mr Justice Christos Rozakis, 'The Right to a Fair Trial in Civil Cases: Article 6 Para. 1 of the ECHR' <https://www.um.edu.mt/library/oar/bitstream/123456789/65606/1/The_right_to_a_fair_trial_in_civil_cases.pdf> accessed 9 April 2025.

[80] Council of Europe, 'Right to a Fair Trial' (*Impact of the European Convention on Human Rights* 2014) <https://www.coe.int/en/web/impact-convention-human-rights/right-to-a-fair-trial> accessed 9 April 2025.

[81] European Court of Human Rights, 'European Convention on Human Rights' (1950) <https://www.echr.coe.int/documents/d/echr/convention_ENG> accessed 9 April 2025.

[82] Ibid.

[83] *Findlay v United Kingdom (1997) 24 EHRR 221*.

[84] Paul Magrath, 'Law Report: Soldier's Trial by Court Martial Was Unfair | the Independent' (*The Independent*4 March 1997) <https://www.independent.co.uk/news/people/law-report-soldier-s-trial-by-court-martial-was-unfair-1270970.html> accessed 9 April 2025.

## Judicial Autonomy and the Role of AI in a Legal Atmosphere

Judicial Autonomy establishes that courts, as part of the legal sphere, have independence as a judiciary – therefore, judges and courts should not be under pressure from another authority, especially from the executive and legislative branches of power. This is necessary in order to ensure decisions are made fairly and in an unbiased manner, rather than based on certain influences or interests. The legal system is autonomous in the sense that it functions based off of its own code and does not base its decisions on other systems' sources.[85] If the courts are ever in a position where their decision depends on external factors outside of the legal system, they would have lost their autonomy.[86] Such an instance is seen when a decision is up for sale or when political and ecclesiastical authorities attempt to direct such a decision.[87] Therefore, courts must try their best to always remain impartial and maintain normative boundaries, whilst being open to new ideas, legally.

Furthermore, the introduction of AI in judicial operations has shown great developments as it dramatically improves efficiency in courts and decreases accumulated work. It is also significant that AI judges, as non-humans, do not require any form of respite, so they are continuously at work. Moreover, the fact that human lawyers are sometimes out of reach for certain people, having an AI-based judicial system could offer a more affordable option.[88] At present, courts are using AI in criminal law decision-making through risk assessment programmes.[89] Other AI software is being used to present evidence at trial which includes predictive analytics and facial recognition – these programmes affect the product of judicial processes.[90]

However, it is important to recognise the risks that AI poses when used legally and the potential harmful effect it has on Judicial Autonomy. One might suggest that a lawyer's reliance on AI for litigation purposes or even argument structuring might be a false representation of their claimed expertise.[91] This would be a blatant form of legal malpractice as well as an unpleasant representation of the

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[85] Randy David, 'What Judicial Autonomy Means' (*INQUIRER.net*2016) <https://opinion.inquirer.net/19349/what-judicial-autonomy-means> accessed 9 April 2025.
[86] Ibid.
[87] Ibid.
[88] Sir Robert Buckland, 'AI, Judges and Judgement: Setting the Scene' (*www.hks.harvard.edu*November 2023) <https://www.hks.harvard.edu/centers/mrcbg/publications/awp/awp220> accessed 9 April 2025.
[89] Robert Sanger, 'Artificial Intelligence and Criminal Law' (*The Colleges of Law*12 January 2024) <https://www.collegesoflaw.edu/blog/2024/01/12/artificial-intelligence-and-criminal-law/> accessed 9 April 2025.
[90] Ibid.
[91] Thomson Reuters, 'Key Legal Issues with Generative AI for Legal Professionals' (*Thomson Reuters Law Blog*1 March 2024) <https://legal.thomsonreuters.com/blog/the-key-legal-issues-with-gen-ai/> accessed 9 April 2025.

lawyer himself. Moreover, if the generative AI platform employed bases its knowledge on biased data, this will also reflect on the data it produces. Therefore, the notion of Judicial Autonomy would be highly at risk in such a scenario, unless the lawyer is carefully reviewing the minute details of the AI-produced information.[92]

## Ethical and Privacy Challenges in AI: Implications for Judicial Autonomy and the Right to a Fair Trial

The right to a fair trial as employed in article 6 of the European Convention on Human Rights places a dark shadow on the usage of AI in legal circumstances as it gives rise to various ethical issues. As AI data might involve biased opinions and unfair suggestions, this would amplify the discrimination put out. Since AI learns from historical data, it may involve certain discriminatory notions which are nowadays unacceptable. However, AI might not recognise this and rather use it as an argument on which it bases its judgement, leading to doubts on whether legal officials retain the concept of Judicial Autonomy. Moreover, this risk is supported in the fact that AI bases many of its decisions on past court judgements, therefore reproducing historical legal biases.[93] In fact, the European Union's Artificial Intelligence Act aims to abandon loopholes and possibilities of discrimination and bias through the data being processed.[94] One way in which it does so is by prohibiting the assessment of a criminally charged individual based on their personality traits (except when these characteristics can be objectively traced back to criminal activity).[95]

[92] 'What Are the Risks of AI in Law Firms?' (*Bloomberg Law*23 May 2024) <https://pro.bloomberglaw.com/insights/technology/what-are-the-risks-of-ai-in-law-firms/#litigation-risks> accessed 9 April 2025.

[93] Yuri Kozlov, 'The Risk of Discrimination in AI-Powered Judicial Decision - the Legal Wire' (*The Legal Wire - Where Law and Technology Converge*31 March 2025) <https://thelegalwire.ai/the-risk-of-discrimination-in-ai-powered-judicial-decision/> accessed 9 April 2025.

[94] Stefano De Luca and Marina Federico, 'Algorithmic Discrimination under the AI Act and the GDPR | Think Tank | European Parliament' (*Europa.eu*2025). <https://www.europarl.europa.eu/thinktank/en/document/EPRS_ATA(2025)769509> accessed 9 April 2025.

[95] European Union, 'Regulation - EU - 2024/1689 - EN - EUR-Lex' (*Europa.eu*2024) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32024R1689> accessed 9 April 2025.

Furthermore, the risk of data privacy and security is prevalent when discussing the use of AI, especially in sensitive legal proceedings. Therefore, in training the AI platform, a litigator must be cautious not to disclose sensitive information, which comes with the promise of confidentiality, to these data-processors.[96] If they are not careful of this, such information may be memorised in these programmes and eventually passed on to third parties, leaving room for further legal consequences.

Also, the European Union's AI Act distinguishes between the most and least harmful algorithmic systems through the level of their risk.[97] According to this, the AI Act prohibits legal authorities from using biometric systems to identify people in order to retain some form of privacy.[98] Moreover, general-purpose AI platforms are equipped with transparency and quality requirements, ensuring that privacy (and justice) is upheld – this includes publicly displaying the data being used to train the AI systems.[99]

## Balancing Innovation and Autonomy Through the Current Framework

Since AI is becoming normalised and practically a part of our daily lives, legislation has had to keep itself in line with these current developments. Initially, the European Union proposed its AI Act back in 2021 and it is still being revised and revamped to this day. As mentioned, this Act categorises the different levels of risk which AI poses, starting from minimal risks up to the unacceptable cases. The different levels of risk also entail a varied form of control – some usages of AI being prohibited, whilst some are simply limited. Most importantly, in order to ensure that Judicial Autonomy is upkept, the AI Act establishes certain transparency requirements. This includes the enforcement of outwardly claiming what information is AI-generated as opposed to information which is the product of a human's critical thinking, ensuring that legal officers maintain their independence and lack of bias in their own thoughts.[100]

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[96] 'What Are the Risks of AI in Law Firms?' (*Bloomberg Law*23 May 2024) <https://pro.bloomberglaw.com/insights/technology/what-are-the-risks-of-ai-in-law-firms/#litigation-risks> accessed 9 April 2025.

[97] European Union, 'Regulation - EU - 2024/1689 - EN - EUR-Lex' (*Europa.eu*2024) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32024R1689> accessed 9 April 2025.

[98] Ibid.

[99] Caitlin Chin-Rothmann, 'Protecting Data Privacy as a Baseline for Responsible AI' (*Csis.org*18 July 2024) <https://www.csis.org/analysis/protecting-data-privacy-baseline-responsible-ai> accessed 9 April 2025.

[100] European Parliament, 'EU AI Act: First Regulation on Artificial Intelligence' (*European Parliament*19 February 2025) <https://www.europarl.europa.eu/topics/en/article/20230601STO93804/eu-ai-act-first-regulation-on-artificial-intelligence> accessed 9 April 2025.

However, the implementation of AI in the legal world also displays great promise in establishing beneficial qualities and improving the efficiency of work. The European Commission for the Efficiency of Justice in its European Charter regarding the use of AI sets out principles ensuring the respect of human rights; as is the right to a fair trial.[101]

Moreover, it is also possible that AI may help humans recognise bias easier and therefore, strengthen the notion of Judicial Autonomy. Algorithms are able to expose a bias, which in turn helps the legal authority separate the bias from the facts themselves – improving the notion of an impartial decision. It can help bring out the objectivity in data whilst segregating the biased information, ensuring the right to fair trial is observed.[102]

## Conclusion

Finally, it is important to have an optimistic outlook on the ways in which AI can benefit the legal sector and promote the fundamental right to a fair trial. Whilst it poses certain risks on a human's critical thinking skills, the efficiency it offers along with the cognitive recognition it employs, are undoubtedly beneficial. As long as one is educated on how to utilise legal AI's benefits and make use of such a high-quality tool, Judicial Autonomy shall prevail in the daily proceedings of a court.

It is imperative that as this AI digitalised world continues to grow, our regulatory frameworks must evolve to reflect this. Moreover, it is important that AI legislation is in line with the current frameworks, such as the European Convention on Human Rights itself, to ensure a smooth incorporation of these two worlds to maximise the efficiency and proficiency of the legal work produced.

[101] 'CEPEJ European Ethical Charter on the Use of Artificial Intelligence (AI) in Judicial Systems and Their Environment - European Commission for the Efficiency of Justice (CEPEJ) - Www.coe.int' (*European Commission for the Efficiency of Justice (CEPEJ)*2018) <https://coe.int/en/web/cepej/cepej-european-ethical-charter-on-the-use-of-artificial-intelligence-ai-in-judicial-systems-and-their-environment> accessed 9 April 2025.

[102] SAP, 'How AI Can End Bias | SAP' (*Sap.com*2025) <https://www.sap.com/blogs/how-ai-can-end-bias> accessed 9 April 2025.

# ‘AI and the Data Subject; An Appeal to the ‘Open’ through Ethics and Law as a Defence of Human Dignity.’

**By Andrea Farrugia**

## 0.0 Introduction

It is a rule; technology develops a new tool. Then, we observe its use, and effect within civil society. Creating legislation on innovation risks restricting technological development, yet as the law is concerned with human affairs it ultimately answers to the human subject. In this article, I shall conduct an observation of landmark legislation, while emphasizing the importance of the human person as per Article 1 of the UDHR, considering the right to data protection.

This article shall argue that the value of the human person stems from innate qualities, and in relation to one’s personal data, promotes that an ‘open’ approach to A.I. ought to be considered for future legislation. The effects of generative Artificial Intelligence[103] and content creation relies on data which already exists – including intellectual property. Meta, for example, trained its A.I. model on pirated books.[104] Unveiling the methods of A.I. engineers place us in a complex environment, wherein the application of A.I. tools may serve to improve human work, and simultaneously attack human affairs[105]. Therefore, ethical and transparent development of A.I. tools is argued for under the principles of open-source software as a legislative condition.

[103]Andrew Y. Ng, and Michael I. Jordan, *on discriminative vs. Generative Classifiers: A Comparison of Logistic Regression and Naive Bayes* (Advances in Neural Information Processing Systems 14 (1) 2001) 841–848. “Generative AI generally refers to deep learning models that can generate high-quality text, images and other content based on the data they were trained on.”

[104]Alex Reisner, *The Unbelievable Scale of AI’s Pirated-Books Problem* (The Atlantic, March 20th 2025) Available at: https://www.theatlantic.com/technology/archive/2025/03/libgen-meta-openai/682093/ (Accessed: 09 April 2025).

[105]Kevin Macnish, David Wright, & Tilimbe Jiya, *Predictive Policing in 2025: A Scenario* (1st ed. 2020. [Online]. Cham: Springer International Publishing. 2020) 1 – 2. Two research institutions brainstormed a possible 2025 scenario, wherein deployment of ‘predictive policing’ ends up encroaching on one’s fundamental rights. This example is only one of many regarding the wishful impact of A.I. integration.

# 1.0 Right to Data Protection

The cornerstone to any attempt at measuring the impact of Artificial Intelligence is the information which it is fed. That information is derived from a human operator – therefore, its capture and electronic input maintains that the content it frames are derived from human sources. Data has been defined in law categorically – the Data Protection Directive of 1995[106] creates a category for 'personal data' and defines it as.

*"Any information relating to an identified or identifiable natural person ('data subject'); an identifiable person is one who can be identified, directly or indirectly, by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity"*[107]

If one were to observe the GDPR, this definition is not amended. This is because it is, as a general assumption, the compounding of 'person' and 'data' imposes both subject and object as relevant inquiries to the interpretation of the law, *sans dire* each part of the regulation is presupposed by these two.

## 1.1 Data Subject as Protagonist

Consequently, this balance, whilst made to ensure fairness within its context, may prejudice the person as subject insofar as the subscription made between the subject, and the intellectual object may diminish the person to the object *de jure*. Legally, this did not cause problems to the pre-generative A.I. application of the law concerning personal data.

Today, its capability to apply within cases involving Artificial Intelligence may prove underwhelming. Whilst A.I. utilizes already existing data, its output is fundamentally determined through the operation of another person. This means that any data which is rendered to the model, will be subject to any augmentation designed primarily by the end user, therefore rendering an artifice composed of human data.

[106]Directive 95/46/EC
[107]ibid. Article 2

This description is inherently basic and describes simple A.I. programs which pale in comparison to the generative models that 21st Century A.I. engineer's design. Crucially, such data which contemporary A.I. models rely on is automatically 'scraped' from digital repositories. Indeed, when one inquires onto the anxieties which develop from the encroachment of private companies upon personal data, it is not difficult to imagine the concerns which manifest from such reliance on personal data.

## 1.2 Data Subject as Being

The most important piece of legislation which observes not only recent technological progress in Artificial Intelligence but also explores the value of being is the EU A.I. Act.[108] This legislation promotes a compliance-based approach to companies which offer generative A.I. products. Crucially, it does not create any rights for the end user. However, the right to data protection features as the regulation's centrepiece.

During the regulation's drafting, there was an expansion in generative A.I. service usage.[109] This required further consideration on the impact of A.I. tech, and so the final regulation contains Article 5 (1), which prohibits A.I. systems whose deployment is intentionally designed to install subliminal, manipulative, or deceptive techniques[110].

Other prohibited design includes the exploitation of human persons, use in facial recognition and biometric data analysis, and valuation of human behaviour. Furthermore, Article 50 imposes an exhaustive list of obligations onto A.I. development. The first sub-article makes it obligatory for A.I. providers to state which information is manufactured through A.I. means, coming off the heels of recent technological development such as lifelike A.I. assistants being capable of booking reservations.[111]

This Regulation offers a wide framework for future legislation, and its expansion ought to consider not only the value of the data subject as contributor, but also

[108]Regulation 2024/1689.

[109]Krystal Hu, *ChatGPT sets record for fastest-growing user base - analyst note | reuters*, (Reuters 2nd of February 2023). Available at: https://www.reuters.com/technology/chatgpt-sets-record-fastest-growing-user-base-analyst-note-2023-02-01/ (Accessed: 08 April 2025).

[110]sub-article (a).

[111]Alex Blake, *Google's incredibly lifelike AI can now call businesses for you – here's how to use it* (Techradar 31st of January 2025) Available at: Google's incredibly lifelike AI can now call businesses for you – here's how to use it (Accessed: 08 April 2025).

through creating new obligations, if need be, to secure information produced uniquely through human means *sans* A.I.

## 1.3 Data Subject as Dependent and Rational

Inquiring further unto the contribution of data which express the data subject provides for a consideration of human dignity. Once data protection is subsumed with a definite appeal towards human rights, one must adjourn not without establishing any relevant inquiry into human beings. Prior to the mapping of the cross-section between human rights, and the legal results of any A.I. legislation, one ought to suspend their first thought unto a conclusion which further defines the human person.

This leads us to a philosophical consideration, one which may prove difficult. Under the anxieties professed from the innovations we bring forward; it seems that such increase in technological activity is perpendicular to the desire of human persons to construct human qualities. If one observes the formula which expressed the necessity of human rights, therein appears a response to technological implementation within the operation of state coercion.

Of course, when we are granted the opportunity to define the human person further, we will end up similarly with the initial conflict present during the drafting of Article 1 of the Universal Declaration of Human Rights. Today, the Article reads.

"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

From this choice of words, we can determine that the composition of human beings, as separate from other animals, include the faculty of reason, and dependence on others. Charles Malik, president of the Commission of Human Rights, acting as representative for Lebanon, emphasized that "unless we succeed in preserving and promoting man's inalienable freedom, we shall have traded away his dignity, and we shall have destroyed his word."[112] Indeed, it is the endowment of reason, and our obligations to others which owes to the crystallization of being – not as facultative, but through the results which derive from it.

[112]Pedro Pallares-Yabur, *Charles Malik, his idea of 'reason' and the formula 'being endowed with reason' from the Universal Declaration of Human Rights's Article 1.* (Revista de estudios histórico-jurídicos. [Online] (44) 2022) 187.

## 2.0 The Concept of the 'Open'

Artificial Intelligence is theoretically accessible to all human beings, provided that such means are themselves available. There ought to be no legal obstacle to this fact. Insofar as the use of Artificial Intelligence itself, therein provides a wide gamut of legislation which calibrate the applicability of its input and output within civil society as oriented towards common human concerns.

Society, in the philosophy of Bergson, apprehends either the two states of 'closed' or 'open'.[113] The 'open' provides for universal objects whose formulation extends from the human being as a legal consequence of human uniqueness. This theory is preliminary to the creation of a universal right. I shall extend this theory of the 'open' to A.I. development.

## 2.1 An Explanation of 'Open-Source'

Open-Source is an approach to digital software development which has grown exponentially in recent years. Rod Dixon, writing in 2003, explains the core thought.

"Open-source software authors want the widest dissemination possible of their information products. For these authors and developers, the traditional view that copyright holders must have access to the greatest economic gain possible in exchange for producing a copyright-protected work is not only outdated, but unfounded."[114]

This is not to say that there cannot be a for-profit approach to distributing open-source solutions.[115] Indeed, the current license framework for open-source distribution does not prohibit the commercialization of the end product, as long as the code base of product itself is simultaneously open, and accessible to everyone – meaning that the for-profit approach within open-source distribution relies on other methods.[116]

## 2.2 The 'Open', A.I., and Human Dignity

[113]Brian Macallan, *Bergson and Freedom: The Creation of the New Within the Flow of Duration*. 1st ed. [Online] (Springer Nature Switzerland 2024) 116. "It is not so much instinct that provides greater freedom, but the method of intuition and it is re-connecting with instinct, that breaks open the dangers of intellect and its tendency to close off the new."

[114]Rod Dixon, *Open-source software law*. 1st ed. (Boston: Artech House. 2004) 2.

[115]Andrea Fosfuri, Marco S. Giarratana, Alessandra Luzzi, The Penguin Has Entered the Building: The Commercialization of Open-Source Software Products (Organization Science 2008) 292 – 305.

[116]no. 12. 41 – 70.

On the 21st of January, the Red Hat Blog published an article titled 'Why open source is critical to the future of AI'.[117] This blog is connected to 'Red Hat, inc', a company which provides commercial open-source distribution of enterprise software. Whilst this article contains several musings over the company's involvement within the sector, it highlights general advantages of enabling 'open source' development, such as the 'democratization of accesses, and improvements in trust and privacy, whilst other authors argue that it may also help in diminishing anti-competitive practice.[118]

Then, if we were to use Bergson's concept of the 'open' as an indicator of universal objects which derive from human affairs, one may link the use and distribution of A.I. as an open, transparent, and therefore human tool, to the primacy of human dignity, useful to all human beings. This link establishes itself once the purpose of A.I. is driven towards common human concerns.

Thomas de Koninck refers to the 'classical' definition of human dignity as; "l'être humain est infiniment au-dessus de tout prix."[119] This definition logically develops the placement of human beings in law – wherein the exertion of technological development ought to become subsidiary to the will, and capacity of the subject in respect of their dignity.

This connection with the 'open' is tantamount. If the use, and abuse of A.I. tools is rendered within private, and closed-source means, it would jeopardize the civil contribution insofar as it becomes locked within a private society. This may prejudice the A.I. service itself, since the lack of transparency, and human bias which any and every private enterprise holds could produce a negative effect to civil society.

Many A.I. involved companies already practice an 'open-source' model, yet it is not equivocal to the 'open' as universal.[120] This becomes apparent once the 'open/closed' language of A.I. involved companies restricts the code base, thereby instead of 'open-source' they use 'open-foundation'.[121]

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[117]Deb Richardson, Why open source is critical to the future of AI (Red Hat Blog, 2025) (Available at: https://www.redhat.com/en/blog/why-open-source-critical-future-ai) (Accessed: 10 April 2025).
[118]no. 12. 122 – 123.
[119]Thomas De Koninck *De la dignité humaine*. (Éthique en éducation et en formation, (3) 2017) 11.
[120]Mike Sexton, What Is 'Open' AI? (Third Way, 2024).
[121]ibid. '" Foundation" underscores that ChatGPT, Llama, and Gemma are foundations for more specialized AIs, while "open/closed" signifies whether the developer (Meta/OpenAI/Google) retains control over how the specialized AI is used downstream.'

## 2.3 Beyond the 'Open'

This is the key difference between the 'open' and 'closed source' approach. Whereas one relegates the object as subsidiary to the human subject through universalization, the other transpires only to a concentrated, and potentially biased will. The EU AI Regulation is a step in the right direction, and one which ought to be developed alongside a clear, legal plan for A.I. development.

A few months after the promulgation of the A.I. Regulation, the European Data Protection Board released an opinion[122] concerning the harvest of personal data, and A.I. models. The board posed four questions concerning; 1. the anonymity of A.I. models, 2. demonstration of legitimate interest, 3. deployment, and 4. unlawful processing of data and its consequences.

Inquiring on the board's opinion to the fourth question, three scenarios are provided. Each require compliance with the GDPR. From these possible scenarios, the second contains what is arguably the most important narrative, wherein a clear reference to the 'source' of such data is emphasized to concretize the bridge within which grounds of infringement appear. In surveying the risks of developing A.I. which does not rely on personal data collection, this scenario posits that the data subject is involved as a manufacturer of their own copies, images, voice, opinions, intellectual property, etc. Perhaps this resolution ought to presuppose the 'opening up' of A.I. software as a marker of the data subject, thereby 'closing' in on the most relevant matter; that the data subject is human.

## 3.0 Conclusion

The 'open sourcing' of A.I. models, and services through the imposition of legislative obligations as a complement to Article 1 of the UDHR is presented as a defence of human dignity. This is not to say that the open sourcing of A.I. is without risk. Yet, if one can envision that the potency of A.I. is to exceed its current form, and eventually contribute to societal degradation, how could this risk differ between the closed-source, and open-source approach? If the risk is itself a mirror to material which already exists, this fact requires the enforcement of already existing laws. Thereby, an open-source, and transparent approach allows not just for law enforcement, but also the public to witness the exploitation of such material.

[122]European Data Protection Board Opinion 28/2024.

# From Traditional Courts to AI-Assisted Decision Making: Constitutional Challenges in Malta

**By Gianni Farrugia**

## Introduction

To assume their office, members of the judiciary subscribe to the Oath of Office, through which they profess their affirmation to:

*"Faithfully perform the duties of Judge [or Magistrate] without favour or partiality, according to justice and right, and in accordance with the laws and customs of Malta, to the honour of God and the Republic of Malta."*[123]

Obviously and fundamentally, artificial intelligence (AI) does not subscribe to this oath.

The involvement of artificial intelligence in the judicial system generally is quite a contentious issue in that different jurisdictions are addressing it in different manners; some have already embraced and integrated it while other judicial systems are treading lightly or even banning it outright, as happened earlier last year in the United States.[124]

Sir Geoffrey Vos, Master of the Rolls of England and Wales, has contended that AI poses an "existential challenge to our humanity" and that it "could undermine some of the foundations of the administration of justice"[125]. He has refuted the prospect of allowing AI to author or assist in authoring court decisions, and has advocated for such a human-centric approach to be entrenched as a legal right.[126] Certain jurisdictions such as Estonia have, however, already made years-old

[123] Government of Malta, *Judiciary in Malta* (Gov.mt) <https://www.gov.mt/en/Life%20Events/Pages/Services%20and%20Information%20Pages/Justice/Judiciary-in-Malta> accessed 1 April 2025.

[124] Nate Raymond, 'US appellate judge calls bans on AI use by lawyers 'misplaced'' (*Reuters*, 5 April 2024) https://www.reuters.com/legal/transactional/us-appellate-judge-calls-bans-ai-use-by-lawyers-misplaced-2024-04-05/ accessed 1 April 2025

[125] John Barwell, 'The Pitfalls of Using AI in UK Civil Litigation' (*Legal Lens,* 6 March 2025) https://legallens.org.uk/the-pitfalls-of-using-ai-in-uk-civil-litigation/#:~:text=These%20developments%20are%20seen%20as,of%20the%20administration%20of%20justice%E2%80%9D. accessed 1 April 2025

[126] Jonathan Ames, 'Call for human right to have legal case heard by a person, not AI' (*The Times*, 9 March 2024) https://www.thetimes.com/uk/law/article/call-for-human-right-to-have-legal-case-heard-by-a-person-not-ai-lq5vb3k22? accessed 1 April 2025.

considerable strides in incorporating AI in their judicial system, with the initial minute and administrative objective of clearing backlog by deploying it in small claims courts.[127]

To discredit artificial intelligence's potential to eliminate case backlog and expeditiously retrieve previous court judgements, among others, however, would be a disservice to its innovation.

Undoubtedly, a number of questions arise on the implications of including artificial intelligence in decision making, some of which will be tackled in this contribution, such as those concerning the legal authority and ethics of AI *intra curiam,* the potential outright replacement of judges and judicial officers by artificial intelligence, *et cetera.*

However, I find that, in the realistic and pragmatic light of AI's position today, the nexus of this issue lies in the question of to what extent should AI be admitted into the process of judicial decision making, bearing in mind that, with the passage of time, AI is not diminishing or disappearing; in fact, much to the contrary. It has become generally agreeable to say that people from all walks of life should embrace AI in their day-to-day life, and while such a stance is understandable, the natural question arises; should AI assume such an extensive and sweeping place that it undermines human agency?

## The Ethics and Legal Authority of Artificial Intelligence in Judicial Decision-Making

Judges and Magistrates of the Court of Malta are bound by Code of Ethics for Members of the Judiciary[128] which, *inter alia*, establishes that members of the judiciary "are to ascertain that their decisions shall, whenever required, be duly motivated so as to understand the reasoning for such a decision." The Code of Ethics furthermore places within members of the judiciary the duty to "completely interpret and apply the laws of the land", in addition to "carry(ing) out their duties with dignity, courtesy and **humanity"**; with the latter of the three values being a poignant contrast to the inherent nature of artificial intelligence.

Sir Thomas Bingham stated that "The rule of law requires that the exercise of public power be authorized by law and constrained by law, to prevent arbitrariness and to protect individuals from unfair treatment." It naturally follows

[127] Tara Vasdani, 'Estonia set to introduce 'AI judge' in small claims court to clear court backlog' (*Law360 Canada*, 10 April 2019) https://www.law360.ca/ca/articles/1747943 accessed 1 April 2025
[128] Judiciary of Malta, Code of Ethics for the Judiciary (2010) https://judiciary.mt/wp-content/uploads/2022/09/Code-of-Ethics-Judiciary-2010-1.pdf accessed 1 April 2025.

that artificial intelligence must be regulated by a framework that preserves the rule of law and somehow ensures impartiality, transparency and answerability.[129]

In addition, Justice Michael Kirby, an Australian jurist, wrote in 1999 that there exists a need for a 'public and open nature' of adjudication within courts, which may arguably be incompatible with the notion of an 'electronic court'. He stated that "The right to see a judicial decision-maker struggling conscientiously, in public, with the detail of a case is a feature of the court system which cannot be abandoned, at least without risk to the acceptance by the people of courts as part of their form of governance."[130]

## The Constitutionality of AI-assisted Judicial Decision Making

The European Union's Artificial Intelligence Act classifies AI-assisted legal adjudication to be "high-risk" within the ambit of safeguarding the rights enshrined in the Constitution of Malta, European Convention on Human Rights (ECHR) and the Charter of the Fundamental Rights of the European Union,[131] with the two latter instruments possessing constitutional status in Malta.

Article 39(1) of the Constitution of Malta, which establishes the right to a fair trial and thusly demands the impartiality and independence of the judiciary, may be seen to clash with the concept of an AI judge. While in response to this it may be said the artificial intelligence operates on an objective mathematical and calculative level, there are doubts that while it can eliminate certain prejudices, how can its independence be guaranteed when information surrounding how the AI system operates, the extent of its databases and the integrity of the data thereof is rarely made available and is often contentious, as certain datasets often house algorithmic biases.[132]

These datasets find their origin in "historical data or human inputs", which may result in the unfair benefit or disadvantage of either party in a case, based on training data patterns, predictably leading to discriminatory decisions and consequences.[133] This "automation of justice" could put constitutional right to equality before the law at jeopardy, as AI, if involved in, for example, settlement decisions, claims from certain demographics could be undervalued due to

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[129] Shashvat Tiwari, 'Legal Implications of AI in Judicial Decision-Making' (2025) IJLLR 4577

[130] Prof. T. Sourdin, 'Judge v robot? Artificial intelligence and judicial decision-making' (*Judicial Commission of New South Wales,* n.d.) https://www.judcom.nsw.gov.au/publications/benchbks/judicial_officers/judge_v_robot.html#id-1.5.10.7.7 accessed 1 April 2025.

[131] 'Legal Implications of AI in Judicial Decision-Making' 4575

[132] Maja Brkan, 'Opinions · Artificial Intelligence and Judicial Decision-Making'. (*European Data Protection Law Review Volume 9, Issue 3* (2023)) 290 - 295

[133] 'The Pitfalls of Using AI in UK Civil Litigation' (n 3)

historically lower awards, leading to outcomes that conflict with non-discrimination principles and potentially weaken trust in judicial impartiality.[134]

Furthermore, a human judge may, by virtue of pure human nature, be wary of certain inherent biases and consciously exclude them from his decision, with such consciousness applying to the ability of a human judge to be aware of any biases that may influence his own impartiality.

The point here is that there should be a clear distinction between a human judge; a person who possesses a strong degree of integrity and able to profoundly discern, as opposed to an AI system which is dependent on a number of technical factors that do not necessarily guarantee impartiality and, as a technological machine, is incapable of the human faculty of self-doubt[135].

The last point made in the above paragraph brings us to another right put into contention; the right to an effective remedy enshrined in Article 13 of the Convention. The right to legal challenge and appeal is a cornerstone in any legal system, challenging AI-generated decisions may expectedly prove difficult as artificial intelligence, which although possesses a vast array of data, is not omniscient and may struggle to provide a transparent and understandable legal review process.

The *ratio decidendi* of AI-generated judgements originate from "opaque black-boxes"[136], which make it challenging to comprehensibly explain or construe. This breaches the fundamental legal principle of clear explainability and rationality in a court decision, which are composite of the due process of law and entrenched in other national constitutions, such as the U.S. Constitution through the Fifth and Fourteenth Amendments to the same Constitution.[137]

In the American case of State v. Loomis (2016), an AI-based risk assessment tool called the Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) was used in the sentencing process for a traffic offence. The defendant argued that the use by the lower court (Circuit Court) of the COMPAS violated his right to due process.[138] While in this case the Supreme Court did affirm the legitimacy of the use of the COMPAS, it firmly warned against exclusive reliance on AI-based tools. The Court accentuated that such tools should instead supplement judicial decisions and should fulfil a consultatory role

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[134] ibid
[135] ibid
[136] 'Legal Implications of AI in Judicial Decision-Making' 4572 (n 7)
[137] ibid
[138] *State v Loomis*, 2016 WI 68, 371 Wis 2d 235, 881 NW2d 749 https://law.justia.com/cases/wisconsin/supreme-court/2016/2015ap000157-cr.html accessed 2 April 2025.

rather than serve as conclusive determinants in court judgements, to avoid indeed violating the constitutional right due to process.[139]

## The Role and Accountability of AI Judges

The role and accountability of an AI judge who issues a judicial decision seems to be all too ambiguous. In a case where, as occasionally happens, a judge issues a decision that runs contrary to precedent or case-law as a result of societal or factual shifts, a decision issued by artificial intelligence would not have this humanly determinative faculty.

Furthermore, the question of who definitively bears the final responsibility for judicial decisions also hangs in the balance. In normal and obvious circumstances, this would be the presiding the adjudicating judge. However, when a decision is issued by an AI judge, or even when AI was factored into a decision authored by a human judge, who bears full and definite responsibility of and who can be held accountable for the decision?[140]

It is no secret that artificial intelligence is indeed being incorporated in judicial system around the world. Malta has itself made a step towards this direction. While no judicial decisions have been delivered by AI in Malta,[141] preliminary preparations and discussions have taken place for AI to decide cases before the Small Claims Tribunal. Studies however maintain that even in such a case, while AI does have the capability to respect both the right to a fair hearing and adhere to established legal principles, human intervention is still warranted and necessitated.[142]

There also comes to the fore the penumbra of judicial discretion. The exercise of judicial discretion cannot be made as a calculative exercise within a database comprised of existing datasets, as would predictably be the case with AI.[143] Judicial discretion responds to unmarked legal territory with certain erudition and sapience and is something that may happen on a quotidian basis, and, in my opinion, warrants human agency.

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[139] Legal Implications of AI in Judicial Decision-Making' 4574 (n 7)
[140] 'Opinions · Artificial Intelligence and Judicial Decision-Making' (n 10)
[141] Chambers and Partners, Artificial Intelligence 2024: Malta (Practice Guides, 2024) https://practiceguides.chambers.com/practice-guides/artificial-intelligence-2024/malta accessed 2 April 2025.
[142] Bonello, L. (2022). The legal implications of artificial intelligence being included in the decision-making process of the Small Claims Tribunal (bachelor's dissertation).
[143] 'Opinions · Artificial Intelligence and Judicial Decision-Making' (n 10)

# Conclusion

Artificial intelligence has already integrated and even embedded itself in the quotidian work and life of many people. At face value, using AI to draft judicial decisions may seem viable, but only to supplement or support and not to wholly author. Artificial intelligence may prove most facilitative to retrieve case law and legislation, to translate certain documents, transcribe court hearings and even possibly cross-examine previous judgements to highlight inconsistencies or incoherence, among other minor supportive functions,[144] The Court of Justice of the European Union (CJEU or CVRIA), through its recent adoption of its Artificial Intelligence Strategy has pragmatically explored the more viable integrations of AI for the aforementioned usages.[145]

The quasi-universal conviction among jurists remains that artificial intelligence has no substantive or determinate place in judicial decision-making. Interpreting and applying the law in judgment is a sagacious process that warrants strong introspectiveness and even creative mental discernment.

As discussed in this paper, while artificial intelligence does indeed prove useful to eliminate case backlog and would most probably deliver judgements in an efficient manner, and can indeed be of support in the process, judicial decisions demand a certain discretion guided by a principled sense of justice and rectitude, that in addition to protecting the rights of fair trial, due process, equality before the law and protection from unfair treatment, no form of artificial intelligence, however sophisticated, can replace.[146]

[144] ibid
[145] ibid
[146] Legal Implications of AI in Judicial Decision-Making' 4577 (n 7)

# AI in Criminal Justice: Assessing its Impact on Human Rights and Legal Protections

**By Maya Briffa**

Artificial Intelligence has taken the world by storm in recent years, with the legal sector being no exception. The influx of artificial intelligence into criminal justice can best be described as a double-edged sword. On one hand, it has undoubtedly accelerated legal processes that once required hours of deliberation and the input of seasoned professionals. Tasks that previously demanded expert analysis and time-consuming effort can now, in some cases, be completed in a matter of seconds. The efficiency gained is not merely a convenience—it is, in many instances, transformative.

Yet, this speed comes at a cost. In the rush toward automation, we risk losing the very qualities that make justice meaningful: empathy, discretion, and moral judgment. One of the most pressing concerns associated with the use of artificial intelligence in criminal justice is its propensity to produce discriminatory outcomes, which may constitute violations of the right to a fair trial as protected under Article 6 of the European Convention on Human Rights [147], as well as the right to non-discrimination under Article 14 of the same Convention [148].

A notable example is the Correctional Offender Management Profiling for Alternative Sanctions, more commonly known as COMPAS, a risk assessment tool developed and implemented in the United States to assist judges in determining appropriate bail conditions by estimating the likelihood of reoffending. Despite its intended purpose of promoting objectivity in pre-trial assessments, studies revealed that COMPAS systematically generated racially biased outcomes. Black defendants were consistently assigned higher risk scores than white defendants, even when controlling for identical risk factors. Alarmingly, the tool was found to be inaccurate in approximately 77 percent of cases involving Black individuals. These disparities are not just technical flaws—they point to a more serious breakdown in the principles of equal treatment and fair process in the justice system. When algorithmic systems amplify entrenched societal biases and operate without transparency or accountability, they undermine the foundational principles of fairness and impartiality upon which the rule of law depends. When a person's future is decided by a tool whose logic they

[147] European Convention on Human Rights (ECHR) Art 6.
[148] European Convention on Human Rights (ECHR) Art 14.

cannot see, let alone challenge, the human touch that underpins justice is fundamentally compromised [149].

Still, to ignore the potential of AI would be equally shortsighted. The goal must not be to reject innovation, but to ensure that technological advancement does not come at the expense of fairness, transparency, and human dignity. The law is not just a system of outcomes—it is a process grounded in understanding, context, and moral responsibility. These are things no algorithm can replicate.

## Mapping the Landscape: Artificial Intelligence in Criminal Justice Today

Artificial Intelligence is gradually being adopted by multiple criminal justice systems, marking a significant shift towards the automation of various stages within the legal process. From predictive policing to digital evidence management, AI tools are increasingly used to enhance efficiency and precision, positioning themselves as integral components of modern criminal justice. By examining the various instances in which AI is being utilised, one can better understand the growing reliance on these technologies. However, this also opens the door to critical ethical, legal, and human rights concerns. This section provides an overview of the key AI applications in criminal justice globally and explores their current or prospective use within the Maltese and broader EU context.

## Predictive Policing

Predictive policing systems analyse historical crime data in an effort potentially predict where crimes are likely to occur or who may be more likely to commit them. While these systems are theoretically intended to aid in crime prevention, in practice they have proven to be deeply flawed. Despite this, they have been adopted by many jurisdictions worldwide, including the United States. One notable example is the "Geolitica" system—formerly known as PredPol until its rebranding in 2021—which uses crime incident reports to generate daily forecasts indicating when and where crimes are most likely to happen. However, an analysis of 23,631 Geolitica predictions made for the Plainfield Police Department revealed a success rate of less than 0.5%, with fewer than 100 predictions matching reported crimes. Predictions for robberies, assaults, and

[149] How we analysed the COMPAS Recidivism Algorithm – ProPublica https://www.propublica.org/article/how-we-analyzed-the-compas-recidivism-algorithm accessed on 6th April 2025.

burglaries were similarly inaccurate [150]. While such tools may aid in resource allocation, their reliance on biased datasets raises significant concerns about equality and the risk of discriminatory profiling, potentially conflicting with Article 14 of the European Convention on Human Rights. These shortcomings cast doubt on the overall reliability and fairness of predictive technologies, raising serious questions about whether artificial intelligence should be used in the legal and law enforcement spheres at all.

## Sentencing and Parole Predictions

The integration of artificial intelligence into judicial sentencing marks one of the most controversial developments in criminal justice. AI tools are being used in several jurisdictions, particularly in the United States, to assess the likelihood of recidivism and assist judges in determining appropriate sentences. These tools promise efficiency and consistency, but they also raise profound ethical, legal, and human rights concerns. Sentencing is not merely a mathematical exercise—it involves moral judgment, discretion, and a careful evaluation of the human context. Delegating such decisions to algorithms risks reducing individuals to data points, where crucial elements like remorse, rehabilitation potential, and personal history may be overlooked. Moreover, as Kieran Newcomb notes in his research, this trend could represent the beginning of AI encroaching on one of the judiciary's most fundamental roles [151]. The growing use of algorithmic systems in sentencing decisions may threaten the right to a fair trial under Article 6 of the European Convention on Human Rights, particularly where defendants are unable to understand, challenge, or appeal the basis of these decisions. Replacing judicial deliberation with algorithmic output risks undermining the core principles of fairness, transparency, and accountability—principles that form the foundation of both justice and human rights.

## The Situation in Malta and the EU

The rapid advancement of artificial intelligence has prompted the European Union to take decisive steps to ensure that its deployment, particularly within criminal justice systems, aligns with fundamental rights and democratic values. The proposed Artificial Intelligence Act (AI Act), currently in its final legislative stages, represents the EU's first comprehensive legal framework on AI. It adopts a risk-based approach, classifying AI used in criminal justice as "high-risk" and

[150] Aaron Sankin and Surya Mattu 'Prediction: Bias – Predictive Policing Software Terrible At Predicting Crimes' (2 Oct 2023) < https://themarkup.org/prediction-bias/2023/10/02/predictive-policing-software-terrible-at-predicting-crimes> accessed 8 April 2025.

[151] Kieran Newcomb, 'The Place of Artificial Intelligence in Sentencing Decisions' (20 March 2024) < https://www.unh.edu/inquiryjournal/blog/2024/03/place-artificial-intelligence-sentencing-decisions> accessed 8 April.

subjecting it to strict obligations. These include transparency requirements, human oversight, and conformity assessments aimed at safeguarding the rights to a fair trial and data protection. Notably, the Act proposes prohibitions on AI practices deemed to pose "unacceptable risk," such as real-time biometric surveillance and social scoring by public authorities and includes limits on predictive policing tools that could lead to discriminatory profiling.[152]

The European Parliament endorsed these measures, voting in favour of amendments that explicitly ban AI systems used for predictive policing and indiscriminate facial recognition.[153] This reflects growing concern within the EU that unregulated AI in criminal justice may infringe upon the rights enshrined in the Charter of Fundamental Rights and the European Convention on Human Rights (ECHR), particularly Articles 6 and 14.

Malta, as an EU Member State, is actively aligning itself with this emerging legal framework. While Malta has not yet enacted binding national legislation specifically addressing AI in criminal justice, preparatory work is underway. The Malta Digital Innovation Authority Act is progressing through Parliament and is expected to empower regulators to implement subsidiary legislation in line with the AI Act. [154] Malta has also published an Ethical AI Framework under its national strategy "Malta: Towards an AI Strategy 2030," which outlines key principles including transparency, fairness, and accountability. However, this framework remains non-binding, and its impact on criminal justice applications is currently limited.[155]

Despite its non-binding nature, Malta's Ethical AI Framework reflects a structured and rights-conscious approach that aligns closely with the European Union's broader vision for responsible AI governance. Developed under the national strategy, the framework is grounded in principles such as transparency, accountability, fairness, and non-discrimination—values that resonate with the EU's Charter of Fundamental Rights. In anticipation of the forthcoming EU Artificial Intelligence Act, Malta is also preparing for legislative alignment through instruments like the Malta Digital Innovation Authority Act, which is expected to empower regulators to implement binding rules. A notable feature of

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[152] European Commission, 'Proposal for a Regulation Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act)'

[153] Fair Trials, 'EU Parliament Approves Landmark AI Law' (Fair Trials, 14 June 2023) https://www.fairtrials.org/articles/news/eu-parliament-approves-landmark-ai-law accessed 8 April 2025.

[154] Chambers and Partners, 'Artificial Intelligence 2024: Malta' (Chambers Practice Guides, 2024) https://practiceguides.chambers.com/practice-guides/artificial-intelligence-2024/malta accessed 8 April 2025.

[155] Government of Malta, Malta Towards Trustworthy AI – Malta's National AI Strategy (2019) < https://malta.ai/wp-content/uploads/2019/08/Malta_Towards_Ethical_and_Trustworthy_AI.pdf> accessed 9 April 2025.

Malta's strategy is the proposed introduction of the world's first national AI certification programme, designed to ensure that AI systems meet ethical and governance standards throughout their lifecycle. Nonetheless, the absence of enforceable legal mechanisms specifically regulating AI in criminal justice means that key safeguards—particularly around explainability, human oversight, and redress—remain underdeveloped. As Malta moves towards full implementation of the AI Act, the challenge lies in translating strategic ambition into concrete legal protections, particularly in critical domains such as sentencing, predictive policing, and digital evidence analysis. The success of Malta's approach will ultimately depend on whether its frameworks can effectively safeguard fundamental rights, such as the right to a fair trial, privacy, and equality before the law, in the face of advancing technological capabilities.

While Malta's strategic direction is commendable, the absence of binding national legislation means that significant legal gaps remain, particularly in ensuring adequate oversight and accountability within AI-driven criminal justice systems. Current frameworks, though promising in their ethical emphasis, lack the enforceability needed to safeguard against misuse or rights violations in high-risk contexts such as sentencing, predictive policing, and digital evidence analysis. As Malta prepares to implement the AI Act, the central challenge will be to ensure that the adoption of emerging technologies strengthens—rather than undermines—the rule of law. Legal and procedural safeguards must be established to ensure that automation does not displace fundamental human rights, including the rights to a fair trial, privacy, and non-discrimination. The success of Malta's transition will ultimately depend on its ability to move from principle to practice—by embedding enforceable protections that hold both systems and their operators accountable within a justice system increasingly shaped by algorithmic decision-making.

## Responsible AI in Criminal Justice: A Balanced Policy Perspective

As AI applications in criminal justice continue to expand—from predictive policing to sentencing algorithms—so too does the urgency to define the line between responsible innovation. Following the EU's regulatory direction and Malta's cautious alignment, this section moves beyond surface-level critique and addresses how AI can be effectively harnessed to serve justice without undermining it. The focus here is twofold: exploring the potential of AI to support legal systems and outlining the legal and ethical safeguards necessary to protect human dignity, transparency, and the rule of law.

While it is of utmost importance to take into considerations the draw-backs of incorporating AI in the legal sphere, such as inaccurate predictions and the loss of the human touch which is essential in the legal field; one must not overlook

the ways in which AI can enhance the sector and create a more flowing working environment for all those in the field. One must consider that a bulk of work that was previously done by many people, today can be done in a click of a button.
AI can also aid in the process of criminalizing an individual. Digital forensics, empowered by AI, has become a cornerstone in modern investigative work—particularly in combatting online child sexual abuse. While technology has unfortunately enabled new and deeply concerning forms of abuse—such as live-streamed assaults, online grooming, and sexual extortion—digital forensics has emerged as an indispensable countermeasure. The 2020 UNICEF evidence review underscores how the online facilitation of abuse is escalating in both scale and complexity. Yet, this same digital landscape has allowed forensic tools to develop, enabling investigators to trace, recover, and analyse many quantities of digital evidence with exceptional speed and precision. Forensic screening methods are now crucial in uncovering hidden abuse networks and identifying victims and perpetrators, often before crimes are reported. Far from being a threat to justice, digital forensics enhances the investigatory capacity of child protection agencies and raises evidentiary standards by offering concrete, traceable, and verifiable data in cases that once relied solely on victim testimony[156].

Another promising use case is AI in victim support systems. Tools like chatbots and automated legal platforms are being designed to guide people through understanding their rights, finding the right services, and even starting the process of filing a complaint. This kind of help is especially important in places where legal aid is stretched thin or where victims may feel unsafe or uncomfortable speaking to someone in person. In these situations, AI isn't replacing human support—it's making justice more accessible, acting as a bridge rather than a barrier [157].

[156] United Nations Children's Fund, Action to End Child Sexual Abuse and Exploitation: A Review of the Evidence (UNICEF 2020) < https://www.unicef.org/media/89096/file/CSAE-Report-v2.pdf> accessed 9 April 2025.
[157] Thomas Reuters, 'AI in Legal Aid: A Generational Opportunity' (4 October 2023) < https://www.thomsonreuters.com/en-us/posts/ai-in-courts/ai-legal-aid-generational-opportunity/> accessed 9 April 2025.

# How AI Can Aid in the Backlog of Many Criminal Jurisdictions Worldwide

Many jurisdictions worldwide are facing significant case backlogs, often due to limited judicial resources and inefficient case management. It is important to note that such judicial delays may infringe upon Article 6(1) of the European Convention on Human Rights (ECHR), which states that "*everyone is entitled to a fair and public hearing* ***within a reasonable time***." Artificial intelligence (AI) can help address this issue and may ultimately serve as a viable solution to overcoming these systemic delays.
Digitization has created a vast pool of legal data—ranging from court opinions and statutes to pleadings and judgments—that can now be used to train AI models capable of assisting judicial staff.

Germany offers a strong example of AI adoption in the judiciary. Faced with a backlog of over 10,000 cases, the Stuttgart Higher Regional Court partnered with IBM to develop OLGA, an AI assistant that categorizes cases, extracts metadata, and summarizes complex legal documents. This allowed judges to focus on substantive matters while reducing repetitive workload. Similarly, in Frankfurt, the District Court tested another AI system, Frauke, to assist in drafting judgments for air passenger rights cases. By extracting case-specific data and applying prewritten text modules, Frauke significantly cut down judgment preparation time [158].

These cases demonstrate how AI can reduce procedural delays and improve court efficiency without compromising judicial integrity. However, legal professionals must remain at the centre of decision-making, ensuring AI is used ethically and transparently. Trustworthy AI—anchored in principles like explainability and data privacy—is essential. The judiciary must also remain vigilant about potential biases in AI systems and maintain oversight to prevent automation from undermining fairness and due process [159].

[158] 'Judicial Systems are Turning to AI to Help Manage Vast Quantities of Data and Expedite Case Resolution < https://www.ibm.com/case-studies/blog/judicial-systems-are-turning-to-ai-to-help-manage-its-vast-quantities-of-data-and-expedite-case-resolution> accessed 9 April 2025.
[159] Ibid.

## Recognising the Downfalls of AI in Criminal Justice

As AI becomes more embedded in judicial processes, concerns surrounding its misuse and unintended consequences have become increasingly urgent. A central concern lies in the lack of transparency surrounding many AI models, especially those built using proprietary algorithms. These systems often operate as impenetrable "black boxes," making it difficult—if not impossible—for defendants or their legal representatives to understand or challenge the reasoning behind an automated decision. Such opacity poses a fundamental threat to procedural safeguards and the adversarial nature of legal proceedings.

Another challenge arises from accountability. When an AI system reaches an erroneous conclusion, it is often unclear who bears legal responsibility: the software developer, the vendor, or the public authority implementing the tool. This diffusion of liability complicates access to remedies and undermines the rule of law. The European Court of Human Rights (ECtHR) has emphasised the need for clear procedural protections and meaningful access to justice. In ***Hirsi Jamaa and Others v Italy***, the Court held that individuals must be provided with adequate information and effective remedies to challenge state action.[160] Likewise, in ***Salduz v Turkey***[161], the Court stressed the critical importance of access to legal counsel during the investigative phase of police proceedings[162]. Although these rulings do not directly address AI, they underscore the incompatibility of inscrutable algorithmic processes with the principles of open and fair adjudication.

## AI and the ECHR: Risks to Fair Trial, Privacy, and Equality

The integration of artificial intelligence (AI) into criminal justice systems raises pressing concerns regarding compliance with the European Convention on Human Rights (ECHR)**,** particularly the rights to a fair trial, privacy, and non-discrimination.

AI tools in criminal justice are raising real concerns about compliance with core protections under the European Convention on Human Rights—especially the right to a fair trial under Article 6[163]. When these systems rely on complex,

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[160] *Hirsi Jamaa and Others v Italy* (2012).

[161] *Salduz v Turkey (2008).*

[162] *Salduz v Turkey* (2008) ECHR 36391/02 (GC), 27 November 2008, summarised in Human Rights Law Centre, https://www.hrlc.org.au/human-rights-case-summaries/salduz-v-turkey-2008-echr-3639102-grand-chamber-27-november-2008 accessed 9 April 2025.

[163] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) art 6 https://www.echr.coe.int/documents/d/echr/convention_ENG accessed 9 April 2025.

unexplained reasoning, they make it difficult for defendants to understand or challenge how a decision was reached. This lack of transparency weakens essential trial protections, such as the right to a fair contest between parties and the principle of equality of arms. In ***Kruslin v France*** [164], the ECtHR found a violation of Article 8 [165] where a phone tap—although authorised by a judge—was carried out under a legal framework that lacked clear rules and proper safeguards. The Court made it clear that when the state uses intrusive methods, it must do so within a legal structure that people can understand, and courts can oversee.

The same principle applies to how AI is being used in criminal investigations today. Tools like predictive policing and facial recognition involve large-scale data collection and surveillance, often without clear limits or transparency. Article 8 protects the right to private and family life, and in ***Zakharov v Russia*** [166], the Court ruled that mass surveillance without meaningful oversight breached that right. If AI systems are deployed without proper legal checks—especially when collecting personal data—they pose similar risks. These tools may improve efficiency, but without strong rules on transparency, accountability, and oversight, they could end up undermining the very rights they're meant to support.

Moreover, AI systems trained on biased data sets may breach Article 14 of the ECHR [167], which prohibits discrimination in the enjoyment of Convention rights. Algorithms can unintentionally reinforce historical biases embedded in data collected over the years, leading to disparate outcomes for marginalised communities. The ECtHR has held that differential treatment must be objectively justified and proportionate; if it is not, it constitutes a violation of Article 14 [168]. The Council of Europe has called for a human rights-based approach to AI, advocating for safeguards such as transparency, human oversight, and accountability.[169] Without these protections, AI risks eroding, rather than enhancing, justice.

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[164] *Kruslin v France* App no 11801/85 (ECtHR, 24 April 1990).

[165] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) art 8 https://www.echr.coe.int/documents/d/echr/convention_ENG accessed 9 April 2025.

[166] *Roman Zakharov v Russia* App no 47143/06 (ECtHR, 4 December 2015) (Grand Chamber).

[167] European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) art 14 https://www.echr.coe.int/documents/d/echr/convention_ENG accessed 9 April 2025.

[168] Ibid.

[169] Council of Europe, 'Artificial Intelligence and Justice Systems' (CEPEJ) https://www.coe.int/en/web/cepej/artificial-intelligence-in-justice-systems accessed 9 April 2025.

## Legal and Procedural Safeguards: Ensuring Accountability

To limit the risks associated with artificial intelligence in high-stakes areas such as sentencing, bail, or predictive policing, appropriate legal frameworks must carefully draft in order to ensure procedural compliance. The European Commission's proposed Artificial Intelligence Act (AI Act) identifies AI used in criminal justice as "high-risk," imposing obligations of transparency and human oversight to ensure compliance with fundamental rights and democratic values [170] Among the most critical protections is the right to an explanation for algorithmic decisions. Rooted in Article 22 of the General Data Protection Regulation (GDPR), this right ensures that individuals are not subject to decisions based solely on automated processing without the possibility of human intervention or meaningful challenge [171]

Explainable Artificial Intelligence (XAI) aims to make the decision-making processes of AI systems transparent and intelligible to both users and those affected. This is essential, particularly in contexts like justice, where decisions carry serious consequences. When AI systems operate without explanation, they risk producing harmful or biased outcomes that cannot be challenged or scrutinised effectively. XAI enables stakeholders to audit and validate AI decisions, fostering trust and accountability. It also aligns with legal principles such as transparency, fairness, and the right to a remedy, by revealing the rationale behind automated decisions and allowing meaningful oversight [172].

Moreover, mandatory human oversight must be preserved, especially in decisions that affect liberty. Decisions about sentencing, parole, and detention should always be monitored by a human source. These are too important to be left to complex systems that people can't fully understand. To make sure AI tools are fair, they should be independently audited and tested for bias—otherwise, there's a real risk they'll reinforce the same inequalities we're trying to eliminate. These safeguards are essential to ensure that AI does not reinforce systemic inequalities or erode the legitimacy of the judicial process.

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[170] European Commission, *Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts*, 21 April 2021.

[171] *General Data Protection Regulation (GDPR), Regulation (EU) 2016/679 [2016].*

[172] European Data Protection Supervisor, 'TechDispatch: Explainable Artificial Intelligence (XAI)' (EDPS, 2020) https://edps.europa.eu/data-protection/our-work/publications/techdispatch/techdispatch-3-explainable-artificial-intelligence_en accessed 9 April 2025.

## Addressing the Human Fallibility Argument

A common counterargument is that human decision-makers are themselves subject to bias, error, and inconsistency—so why not rely on AI, which at least offers consistency and speed? This reasoning, however, overlooks a key distinction. While human judgment is indeed fallible, it operates within transparent legal and ethical frameworks, is subject to challenge and appeal, and is guided by duties of reasoning and accountability. Human decision-makers must justify their conclusions, are bound by legal standards. They can be held responsible through institutional review mechanisms. In contrast, many AI systems—particularly those relying on complex machine learning techniques—function as so-called "black boxes," where the reasoning behind AI decisions is often unclear—either because it's hidden behind trade secrets, or because the technology is so complex that even experts struggle to explain how it works.[173]

This lack of transparency raises serious concerns under Article 6 of the European Convention on Human Rights, which guarantees the right to a fair hearing and effective access to justice. If individuals cannot understand or contest how decisions are made—especially in contexts such as sentencing, parole, or detention—the core values of legal certainty and procedural fairness are undermined. This can also increase to the percentages of recidivism due to the gap, which is left by such a system, the first step to prevention must always be education and understanding of the core reasons which criminalize such an action.

Furthermore, while human bias is often visible and subject to criticism, algorithmic bias can be systemic and concealed. For instance, the COMPAS algorithm used in U.S. criminal justices. This does not simply represent technical failure—it reveals how unexamined data patterns can entrench structural discrimination when not subject to proper oversight and public accountability.

[173] Frank Pasquale, The Black Box Society: The Secret Algorithms That Control Money and Information (Harvard University Press 2015).

## Ethical Integration, Not Technological Rejection

While artificial intelligence holds significant potential to improve the efficiency of criminal justice systems, particularly by accelerating administrative processes and reducing the strain on limited human resources, its deployment must be approached with caution. AI technologies can assist in sorting and prioritising cases, expedite legal research, and facilitate faster decision-making, thereby helping overburdened courts manage increasing caseloads with fewer personnel. However, these advantages must be carefully weighed against the serious legal and ethical concerns that arise from their unregulated or poorly monitored use. As outlined in this paper, AI systems can entrench systemic biases, hide reasoning behind decisions, and hinder individuals' ability to contest outcomes—all of which threaten foundational principles such as legal certainty, equality of arms, and access to justice. These risks are especially pronounced in high-stakes contexts such as sentencing, predictive policing, and bail decisions, where algorithmic outcomes directly impact personal liberty. To safeguard human rights and preserve public trust, it is essential that AI in the justice sector is deployed only within a robust legal and procedural framework. Such a framework must prioritise explainability, ensure independent auditing, and mandate meaningful human oversight at every critical juncture. The role of the human judge or decision-maker must remain central—not as a passive overseer of automated outcomes, but as an active guardian of fairness, proportionality, and accountability. Technology must be treated as a tool that supports, rather than supplants, justice.

It must be remembered that the legal system operates at the very heart of people's lives. Decisions made within this sphere can profoundly affect an individual's future—and such consequential judgments should never be left solely to machines, particularly in matters as serious as criminal charges. AI should not replace the research and learning processes fundamental to legal education and practice. Overreliance on automated systems risks diminishing the development of future legal professionals, which could ultimately weaken the integrity and quality of legal systems worldwide.

# Conclusion and Recommendations: A Final Word

In conclusion, artificial intelligence can be a valuable support tool within criminal justice, helping courts manage growing workloads, improve efficiency, and enhance access to essential services. However, these benefits must not come at the expense of fairness, transparency, or human dignity. As shown throughout this paper, the risks of bias, lack of explainability, and reduced accountability are real and significant—particularly in high-stakes areas such as sentencing, bail, and predictive policing. While AI can process large amounts of information at speed, it cannot replicate the ethical reasoning, empathy, or contextual judgment that human decision-makers bring**.** To ensure responsible integration of AI into criminal justice systems, the following recommendations are proposed:

1. **Codify Clear Legal Frameworks**: National legislation should clearly regulate AI tools in criminal justice, particularly those considered "high-risk," in line with the EU's Artificial Intelligence Act.
2. **Enforce Explainability Standards**: AI systems must be subject to explainability requirements that ensure decisions can be understood and challenged.
3. **Mandatory Human Oversight**: Human decision-makers must remain actively involved in all critical decisions, with legal obligations reinforcing this principle.
4. **Bias Auditing and Data Transparency**: Independent audits must routinely assess algorithms for bias and discriminatory outcomes, particularly under Articles 6, 8, and 14 ECHR.
5. **Training for Legal Professionals in AI**: **Judges, prosecutors, defence lawyers, and other legal professionals must be trained in AI tools, systems, and risks** to ensure they can critically assess and appropriately respond to AI-driven processes within the justice system.
6. **Strengthen Remedies and Accountability**: Establish clear mechanisms for redress in cases of algorithmic harm, ensuring responsibility does not diffuse across developers, vendors, and public authorities.

The objective should not be to resist innovation, but to ensure that AI supports—rather than supplants—justice. With the right legal frameworks, AI can serve as a tool that enhances, rather than erodes, the integrity of criminal justice.

# Ensuring Accountability and Transparency: EU Law and the ECtHR's Approach to AI in Courts

**By Michaela Grima**

## Introduction

In recent years, the integration of Artificial Intelligence (AI) into judicial systems has shifted from theory to practice. Courts across Europe now employ algorithmic tools for case allocation, legal research, predictive analysis, and risk assessments. While these technologies offer efficiency, they also pose risks to core legal values if used without transparency of data or accountability. These are not mere technical ideals, but legal imperatives grounded in European Union (hereinafter 'EU') law and the jurisprudence of the European Court of Human Rights (hereinafter 'ECtHR').

This paper examines how EU legal instruments and ECtHR principles respond to the challenges AI presents. While the EU adopts a proactive regulatory approach, the ECtHR contributes a rights-based framework through its data protection and surveillance case law. Together, they form the basis for a coherent, human-centred European model of judicial AI.

The paper begins by outlining the normative foundations of accountability and transparency in judicial contexts. It then analyses the practical integration of AI in courts and the associated risks, before turning to the EU's regulatory framework—particularly the AI Act and GDPR. The subsequent sections assess the ECtHR's evolving jurisprudence on surveillance and data governance, exploring its relevance to AI governance. Finally, the paper evaluates institutional gaps and proposes a harmonised European approach to safeguarding accountability and transparency in AI-assisted adjudication.

## Accountability and Transparency in AI-Assisted Judicial Decision-Making

Accountability and transparency are core principles of both national and supranational legal systems. In the judicial context, they uphold the legitimacy of decisions and procedural fairness. As AI is integrated into adjudicative and administrative functions—such as sentencing recommendations, case triage, or risk assessments—it introduces layers of technical and procedural complexity. This complexity can obscure responsibility and reduce the transparency of legal

reasoning and decision-making, making it harder for parties to understand, challenge, or appeal outcomes.

In this context, transparency refers to the ability of parties to understand how decisions are made—including the logic, data inputs, and legal rules applied by AI tools. This is essential to safeguard equality of arms, facilitate appeals, and uphold the right to a fair trial under Article 6 of the European Convention on Human Rights (ECHR).[174] Similarly, accountability entails the identification of legal responsibility and institutional oversight mechanisms, ensuring that the deployment of AI in courts is subject to legal control and public justification.[175]

Reiling highlights the growing use of artificial intelligence in judicial contexts, including tools that claim to predict decisions of the European Court of Human Rights with up to 79% accuracy based on past rulings.[176] These systems, while potentially useful in recognising patterns and aiding judicial reasoning, rely on pre-processed data and exclude inadmissible cases, raising concerns about fairness and representativeness. Reiling also references real-world examples such as the COMPAS tool used in the United States to assess recidivism risk, which has been shown to produce racially biased outcomes. As she explains, "technology is one thing, but how we can and should work with it, in practice, is still heavily debated," especially when such systems operate opaquely or without adequate safeguards. She emphasises that the increasing reliance on AI in courts must be tempered by strong ethical commitments to ensure that these technologies do not undermine procedural fairness or fundamental rights.

To that end, the Council of Europe has articulated a set of ethical principles that should guide the use of AI in judicial systems. These principles stress the importance of aligning AI development and application with fundamental rights, particularly the right to a fair trial and judicial independence. They call for safeguards against discrimination, urging developers and institutions to avoid reinforcing social biases through automated systems. The principles also highlight the need for quality and security, advocating for certified data sources and multidisciplinary design processes within secure technological environments. Just as importantly, they underscore the value of transparency and fairness, requiring that data processing methods be explainable and subject to independent review. Finally, they affirm that AI should remain under user control, meaning that legal professionals must retain the ability to understand, contest, and override

[174] European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) ETS No 5, art 6.
[175] European Union Agency for Fundamental Rights, Getting the Future Right – Artificial Intelligence and Fundamental Rights (FRA 2020) 36–38.
[176] A D (Dory) Reiling, 'Courts and Artificial Intelligence' (2020) 11(2) International Journal for Court Administration 8 https://ssrn.com/abstract=3736411 accessed 30 March 2025

algorithmic outputs when necessary. These ethical commitments reflect a broader consensus that AI must remain a tool for human judgment—not a substitute for it—and must function within a framework that protects the very rights courts are meant to uphold.[177]

These principles have long-standing roots, dating back at least to the early 2000s in the ECtHR's jurisprudence, particularly in cases concerning surveillance and data retention. Although these judgments do not yet address AI in courts directly, they establish a doctrinal framework that underscores the need for legality, foreseeability, and access to remedies—conditions equally vital for evaluating the legitimacy of AI-assisted adjudication.

## Risks and Safeguards in the Use of AI in Judicial Systems

The deployment of AI in judicial systems is often justified by its capacity to streamline administrative tasks, accelerate decision-making, and reduce human bias. However, these claimed efficiencies come with trade-offs. In judicial contexts, AI systems may influence outcomes directly—such as in sentencing or risk assessments—or indirectly, by shaping how information is sorted, cases are triaged, or evidence is interpreted.[178]

As Reiling notes, courts are increasingly integrating AI-based decision-support systems into workflows without necessarily adapting their institutional structures to absorb the legal and ethical implications.[179] These systems operate across a spectrum: from back-end automation tools, like case classification algorithms, to front-end tools that may provide judges with sentencing recommendations. While these applications can improve consistency, they may also obscure reasoning processes when judges or litigants are unable to challenge or interrogate the logic behind automated suggestions.[180]

The concern lies in what scholars have termed the "black box problem"—the difficulty to understand or explain how a given AI system reached its recommendation or decision.[181] This becomes particularly problematic in adversarial legal systems, where parties are entitled to contest evidence and

[177] Council of Europe, European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and their Environment (2018)
[178] A D (Dory) Reiling, 'Courts and Artificial Intelligence' (2020) 11(2) International Journal for Court Administration 8 https://ssrn.com/abstract=3736411 accessed 30 March 2025.
[179] ibid
[180] ibid
[181] Sandra Wachter, Brent Mittelstadt and Chris Russell, 'Counterfactual Explanations without Opening the Black Box: Automated Decisions and the GDPR' (2018) 31(2) Harvard Journal of Law & Technology 841.

reasoning. If AI tools embedded in judicial processes are opaque, even to their operators, transparency and accountability become unattainable.

This risk is heightened when AI systems rely on extensive datasets, often involving sensitive personal data or behavioural profiles. The ECtHR has repeatedly stressed that surveillance and data collection technologies must be accompanied by adequate legal safeguards. In *Zakharov v. Russia*, the Court held that the absence of clear, accessible procedures to authorise secret surveillance rendered the system incompatible with Article 8 ECHR.[182] Similarly, in *Szabó and Vissy v. Hungary*, the Court emphasised that surveillance powers must be subject to "effective and independent oversight", capable of preventing abuse.[183] Although these cases concerned national security rather than judicial tools, the principles they articulate—particularly the requirements of legal foreseeability and external review—are equally applicable to the deployment of AI in courtrooms.

The risks of normalising long-term data processing in the name of efficiency were underscored in *Gaughran v. the United Kingdom*, where the Court found that the indefinite retention of biometric data from non-convicted individuals violated Article 8.[184] Applied to judicial AI systems, the same logic cautions against retaining datasets—including litigants' behavioural patterns or court performance indicators—without purpose limitation or temporal safeguards. As AI tools become embedded in judicial infrastructure, maintaining control over data lifecycle and ensuring proportionality in retention practices are essential to preserving the legitimacy of the system.

These rulings demonstrate that technologies—whether surveillance tools or judicial analytics—must remain subordinated to human rights frameworks. When AI enters judicial systems without oversight, explainability, or legal safeguards, it replicates the very opacity and arbitrariness that the ECtHR has consistently sought to prevent.

## EU Approach to Regulating AI and Protecting Rights

Unlike the ECtHR, which operates on a case-by-case basis, the European Union has adopted a regulatory approach that anticipates risks posed by AI. The Artificial Intelligence Act, currently under legislative development, sets out a horizontal legal framework for AI, classifying applications according to their potential impact on fundamental rights. Judicial AI tools, particularly those used

[182] Zakharov v Russia [GC] App no 47143/06 (ECtHR, 4 December 2015) paras 229–234.
[183] Szabó and Vissy v Hungary App no 37138/14 (ECtHR, 12 January 2016) paras 70–75
[184] Gaughran v the United Kingdom App no 45245/15 (ECtHR, 13 February 2020) paras 87–90.

in criminal justice or public decision-making, are designated as high-risk and thus subject to stringent requirements.[185]

Among the safeguards mandated by the draft AI Act are obligations for human oversight, transparency, data quality, and risk management.[186] These provisions reflect the EU's broader normative stance that fundamental rights must be embedded into system design—what has come to be known as a "rights by design" approach. The emphasis on ex ante compliance contrasts with the ECtHR's ex post adjudication model, which depends on litigation and case-specific remedies.

In addition, Article 22 of the General Data Protection Regulation (GDPR) provides that individuals have the right not to be subject to decisions based solely on automated processing, including profiling, where such decisions produce legal or similarly significant effects.[187] While judicial decisions often involve human oversight, the line between decision-support and decision-making is increasingly blurred when algorithms become the default basis for recommendations.

Further procedural protections are embedded in Articles 41 and 47 of the Charter of Fundamental Rights of the European Union, which guarantee the right to good administration and effective judicial protection.[188] These provisions reinforce the principle that individuals should understand how decisions are made and should be able to challenge them when necessary. Taken together, the GDPR, the Charter, and the AI Act form a layered system of protection aimed at preventing accountability gaps before they arise.

As previously mentioned, the Council of Europe's Ethical Charter provides a soft-law framework grounded in five core principle. Its five principles—including respect for fundamental rights, non-discrimination, and quality and security—underscore the need for AI to be auditable and understandable to both users and litigants.[189] While not legally binding, these guidelines provide a shared normative reference that can inform both EU regulation and ECtHR interpretation.

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[185] European Commission, 'Proposal for a Regulation Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act)' COM (2021) 206 final.
[186] ibid
[187] Regulation (EU) 2016/679 of the European Parliament and of the Council (General Data Protection Regulation) [2016] OJ L119/1, art 22.
[188] Charter of Fundamental Rights of the European Union [2000] OJ C364/01, arts 41 and 47.
[189] Council of Europe, European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and their Environment (2018)

# The ECtHR's Evolving Role in AI Governance

While the European Court of Human Rights (ECtHR) has yet to adjudicate a case directly concerning the use of artificial intelligence within judicial decision-making, its well-developed case law in the areas of surveillance, data protection, and state interference lays a normative foundation that is highly applicable to AI governance. These aforementioned judgments articulate constitutional standards that constrain the deployment of intrusive technologies—standards that become increasingly relevant as AI systems are introduced into core adjudicative functions, particularly in criminal justice.
Three principles emerge from this jurisprudence: the necessity of ex ante legal safeguards, the demand for procedural guarantees, and the requirement that intrusive or obscure practices be subject to independent review.[190]

In *Zakharov v. Russia*, the Court invalidated a system of secret surveillance operated without meaningful judicial control.[191] The judgment established that laws permitting technological interference with privacy must include safeguards that are both foreseeable and accessible, and must not enable unchecked discretion by public authorities.[192] This requirement of legal foreseeability and prior judicial authorisation is foundational for assessing the legality of any automated system that processes personal data or influences liberty-related decisions—including those used for risk scoring or sentencing recommendations in courts.

This principle was affirmed and further refined in *Szabó and Vissy v. Hungary*, where the Court addressed legislation authorising intelligence gathering without sufficient independent oversight. The Court reiterated that effective supervision by an external body, ideally of a judicial nature, is essential in order to prevent abuse of surveillance powers.[193] In the context of AI-assisted adjudication, the opacity of algorithmic processes creates a parallel risk: without mechanisms for independent verification, judicial reliance on such systems may infringe upon the procedural rights of the accused.

A related concern is the long-term storage and use of biometric or behavioural data by public authorities. In *S. and Marper v. the United Kingdom*, the Court held that the blanket and indiscriminate retention of fingerprints and DNA profiles of non-convicted individuals was disproportionate and failed to strike a

[190] Melinda Szappanyos, 'Artificial Intelligence: Is the European Court of Human Rights Prepared?' (2023) 11 Acta Humana 93 https://doi.org/10.32566/ah.2023.1.6.
[191] Zakharov v Russia [GC] App no 47143/06 (ECtHR, 4 December 2015) paras 229–234.
[192] ibid
[193] Szabó and Vissy v Hungary App no 37138/14 (ECtHR, 12 January 2016) paras 70–75.

fair balance between public interests and personal privacy.[194] The Court underscored that the state must justify any intrusion with sufficiently compelling reasons, and that such interference must be necessary in a democratic society. These requirements apply equally to AI systems in judicial settings, where profiling, pattern analysis, or data-driven recommendations may influence the outcome of proceedings.

What unites these decisions is a commitment to proportionality, transparency, and accountability—principles that resonate with the broader concerns around AI in the courtroom. Though the Court has not yet ruled on AI in sentencing or adjudication, its jurisprudence implies that any use of opaque or automated processes in legal decision-making would need to satisfy the same stringent tests as traditional surveillance or data retention regimes.

In effect, the ECtHR's role in AI governance is anticipatory. It provides a jurisprudential architecture that states must internalise as they begin to integrate AI into their justice systems. To meet these standards, judicial AI must not only be explainable and reviewable but also embedded within legal procedures that guarantee effective redress.

## The ECtHR's Institutional Limits in Addressing AI and Automated Decision-Making

The ECtHR faces structural limitations in responding to AI in judicial settings. Its lack of internal technical expertise and reactive posture constrain its ability to assess cases involving opaque algorithmic systems.[195] As Melinda Szappanyos observes, the Court's handling of AI-related claims—such as those involving software-generated evidence—reveals its limited engagement with the legal and evidentiary challenges posed by new technologies.[196]

Applicants before the European Court of Human Rights (ECtHR) have raised concerns regarding the use of AI tools in legal proceedings, particularly where such tools limit access to evidence. In Sigurður Einarsson and Others v Iceland,[197] the applicants argued that their fair trial rights under Article 6(1) and 6(3)(b) of the European Convention on Human Rights were violated when the prosecution used software called Clearwell to filter and select the evidence made available to the defence. While the Court did not find a violation, Judge Pavli issued a partly

[194] S and Marper v the United Kingdom [GC] App nos 30562/04 and 30566/04 (ECtHR, 4 December 2008) paras 121–126.
[195] Melinda Szappanyos, 'Artificial Intelligence: Is the European Court of Human Rights Prepared?' (2023) 11 Acta Humana 93 https://doi.org/10.32566/ah.2023.1.6.
[196] ibid
[197] *Sigurður Einarsson and Others v Iceland* App no 39757/15 (ECtHR, 4 June 2019)

dissenting opinion, criticising the Court for missing an opportunity to engage with the complex challenges posed by AI and high-volume evidentiary processes. He emphasised that such technological developments may undermine key procedural safeguards, including the principle of equality of arms.[198]

Moreover ECtHR encountered analogous concerns in *Breyer v Germany*, where the Court recognised the challenges individuals face in tracing and contesting state-held data.[199] Similarly, in *Gaughran v the United Kingdom*, the indefinite retention of biometric data was struck down due to the lack of procedural visibility and review.[200] Although these cases did not involve AI, they underscore a shared deficit: the absence of accessible redress when public authorities rely on automated or data-driven tools.

## Recommendations for a Coherent European Approach

To ensure accountability and transparency in the deployment of AI within judicial systems, a coherent European approach must bridge the EU's regulatory model with the ECtHR's rights-based jurisprudence. This requires aligning the EU's risk-oriented and ex ante safeguards with the ECtHR's emphasis on legality, procedural fairness, and effective redress under Article 6 ECHR.[201] A harmonised framework should include:

- A **mandatory obligation to disclose** the use of AI tools in judicial proceedings, allowing litigants to understand when and how automated systems influence outcomes;[202]

- A **right to explanation and human oversight**, in line with Article 22 GDPR and the principles of good administration and effective remedy enshrined in Articles 41 and 47 of the Charter of Fundamental Rights of the European Union;[203]

[198] Melinda Szappanyos, 'Artificial Intelligence: Is the European Court of Human Rights Prepared?' (2023) 11 Acta Humana 93 https://doi.org/10.32566/ah.2023.1.6.
[199] *Breyer v Germany* App no 50001/12 (ECtHR, 1 February 2018) paras 81–90.
[200] Gaughran v the United Kingdom App no 45245/15 (ECtHR, 13 February 2020) paras 87–90.
[201] European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) ETS No 5, art 6.
[202] European Commission, 'Proposal for a Regulation Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act)' COM (2021) 206 final.
[203] Charter of Fundamental Rights of the European Union [2000] OJ C364/01, arts 22, 41 and 47.

- **Interpretive guidance from the ECtHR**, through advisory opinions or jurisprudential clarification, on the implications of AI for fair trial rights under the ECHR;[204]

- **Joint training initiatives** between the EU and the Council of Europe to enhance judicial and institutional capacity to evaluate and oversee AI-driven legal technologies.[205]

As previously mentioned, the Council of Europe's Ethical Charter provides a normative bridge through its five core principles.[206]

## Conclusion

This paper has shown that as artificial intelligence becomes increasingly integrated into European judicial systems, upholding accountability and transparency is not only necessary but legally imperative. While the EU provides a proactive regulatory framework through instruments like the AI Act and the GDPR, the ECtHR contributes vital rights-based principles drawn from its jurisprudence on surveillance and data governance.

Yet institutional and procedural gaps remain. The opacity of algorithmic decision-making, combined with the ECtHR's reactive structure and limited technical expertise, risks leaving national AI practices unchecked. Without robust safeguards, AI risks eroding procedural fairness, legal clarity, and public trust in judicial systems.

To prevent this, the paper recommends a harmonised approach built on four pillars: mandatory disclosure of AI use in courts; the right to explanation and human review; interpretive guidance from Strasbourg on how Article 6 ECHR applies to AI-assisted adjudication; and cross-institutional training to strengthen judicial oversight. The Council of Europe's Ethical Charter can serve as a soft-law bridge, anchoring this alignment in shared values.

Ultimately, a coherent and future-proof European response requires that technological efficiency never come at the expense of justice. AI must remain a tool of the court, not its master.

This paper contends that the strength of the European framework lies in its normative foundations—but its practical success will depend on institutional

[204] Melinda Szappanyos, 'Artificial Intelligence: Is the European Court of Human Rights Prepared?' (2023) 11 Acta Humana 93 https://doi.org/10.32566/ah.2023.1.6.
[205] Council of Europe, European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and their Environment (2018) Principles 1–5.
[206] ibid

courage and interpretive innovation. The mere existence of safeguards is insufficient if courts and regulators lack the willingness or capacity to operationalise them rigorously. As AI systems permeate adjudication, judicial authorities must go beyond passive oversight and actively interrogate the legal and ethical architecture of these technologies. Transparency must be more than procedural disclosure—it must enable substantive understanding and contestability. If left unchecked, AI risks embedding opaque rationalities into legal systems that pride themselves on openness and fairness. Upholding the rule of law in the algorithmic age requires that human judgment not be displaced but augmented under conditions of full accountability. Courts must therefore reclaim their constitutional role as guarantors of justice—not only in outcomes, but in the processes that lead to them.

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