

2024 Questionnaire of the 1st Study Commission IAJ-UIM

“The Effects of Artificial Intelligence on the Judiciary”

Answers submitted by AUSTRIA

Questions:

1) Do judges in your country utilize artificial intelligence technology (“AI”), and how so?

Judges regularly make use of AI-supported data tools for legal research or dictation software which are AI-based.

A chatbot for citizen service enquiries is already available on JustizOnline (= the digital information and service offerings of the Austrian justice system). There natural language understanding technologies are used. The chatbot can recognise the ‘intent’ of enquiries and provide prepared answers based on this. The chatbot helps with questions about navigation and simple terms.¹

As far as the decision-making process is concerned there are automated standardised procedures. which can be seen as first steps to support decision-making - especially in connection with the order for payment (according to Austrian law). Based on the information provided by the claimant, the order for payment is issued. If there are contradictions in the claimant's details, then the system automatically points this out. Of course, it is up to the decision-making body to decide whether to issue the order for payment anyway.

a) If not, have judges in your country considered utilizing AI, and, if so, in what ways?

See answer 1).

In general the following is to be noted:

¹ Kodek, KI in der Justiz – Hype oder Gamechanger, Written version of a keynote speech held as part of the Judges' Week on 14 May 2024; Hackl, AnwBI 2024, 32 (33);

The Austrian judiciary has always been open to technical developments, for instance land register and company register to name just 2 examples of the successful use of technology in the judiciary at a very early stage. Consequently, many judges are also quite open-minded dealing with new technologies.

b) Is the use of AI in legal proceedings regulated?

AI is only a matter of public discussion, but hasn't led to regulations.

c) Does the use of AI impact the handling of evidence?

Given the possibilities of (mis)using AI to generate falsified evidence, judges will have to pay more attention to the authenticity of evidence in the future., ie the task of judges will be even more challenging. It is necessary to ensure that the evidence is genuine and not falsified.

2) What are the pros and cons of having judges utilize AI?

AI can help manage workloads and gather information and structure large files. A phenomenon of recent years are mass proceedings (i.e.hundreds or even thousands of similar cases that differ - if at all - only in a few details). These proceedings are characterised by extremely extensive pleadings with numerous repetitions – AI can be helpful for handling.

a) What are the possible effects of AI on the administration of justice?

AI can be a useful assistant in carrying out administrative tasks, e.g. transcribing audio recordings, anonymising court decisions.

b) What are the possible effects of AI on judicial independence?

First of all, with all templates, samples and designs in both the analogue and digital world, there is a risk that they will be used without reflection or without sufficient scrutiny.

Judicial independence can also be violated by measures that are intended or suitable to directly or indirectly influence the judicial determination of law through psychological pressure or in any other way directly or indirectly. This also includes orders issued by the supervisory authority in connection with the use of equipment and aids required for judicial work.

The software in the area of assistance is to be welcomed; however, if activities from the core area of judicial activity are depicted or otherwise influenced in terms of content, the limit of what is legally permissible is exceeded.

However, this limit would also be exceeded if the judicial administration were to oblige judges to use certain decision-support software.²

3) Should there be limits on the use of AI by judges, and, if so, to what extent?

As a general principle, in a positivistic legal system rules are issued by human beings, addressed to human beings; decisions have to be made by human beings for human beings.

The Austrian Federal Constitution is based on a personalised concept of the court.³

The European Commission for the Efficiency of Justice (CEPEJ) also cites access to a 'human' judge as an essential aspect of a fair trial⁴

Any modern technology is and should remain a tool, in the hands and under full control of human beings and fully comprehensible in the case of review. It should facilitate the access to and service of justice.

Submitted by Yvonne Summer

² Kodek, KI in der Justiz – Hype oder Gamechanger, Written version of a keynote speech held as part of the Judges' Week on 14 May 2024;

³ Mayrhofer, Rechtliche Herausforderungen und Grenzen des Einsatzes von Assistenzsystemen in der Gerichtsbarkeit, RZ 2024, 27;

⁴ CEPEJ, European ethical charter on the use of Artificial intelligence in judicial systems and their environment (2019) 8, 15; Mayrhofer, RZ 2024, 27 (28 FN 9)