

2024 Questionnaire of the 1st Study Commission IAJ-UIM

“The Effects of Artificial Intelligence on the Judiciary”

Answers from Iceland

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

Judges in Iceland use certain forms of artificial intelligence (“AI”) technology in their daily work without having decided specifically whether or not to use it. Accordingly, AI is in one form, or another, inevitably involved in the computer technology which is essential to work of judges as most other professions. This is particularly relevant with respect to use of technology, such as audio recording of proceedings, electronic filing systems, electronic case management and videoconferencing, the last having particularly advanced in use as a consequence of the Covid-19 pandemic.

As regards the use of AI within the courts in relation to assisting judicial decision-making such data-tools are at a very early stage in the discussion in Iceland and have not yet been adopted or used by any judges as part of the proceedings. There are no current plans to adopt AI as a specific tool to assist judicial decision-making and such possibilities are not being actively explored.

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

There are as yet no plans to utilize AI in relation to judicial decisions. The issue of AI in the judiciary has briefly been discussed in the *Icelandic Judges’ Association and a recent Opinion of the Consultative Council of European Judges (CCJE) No. 23(2023) of 1 December 2023 on the use of assistive technology in the judiciary has been distributed to members of the Association.*

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

No, there are no legal rules regarding the use of AI in legal proceedings, but as previously mentioned such technique is not applied in relation to judicial decisions. According to Articles 2 and 61 of the Icelandic Constitution only judges exercise the judicial power and special legislation regarding AI in legal proceedings with respect to such decisions could conflict with these principles.

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

As yet no direct impact of AI can be established in relation to evidence. However, in the light of increasing situation where evidence, such as images, may have been created or amended by AI tools there may be a growing need for judges for expert assistance to ensure the necessary support in the assessment of such evidence.

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

The main benefits may be that judges get more efficient tools for case processing, including searching for information and to handle some parts of the case processing. The information analysis capacity by AI tools may assist the judge in their work and possibly provide for more speedy procedure. As the files in courts cases are getting thicker and the cases are more complex AI can accordingly help to handle the rising workload by assisting in processing information from the files.

The main disadvantage would be possible lack of transparency. If judges rely too much on a proposal or information from an AI without a sufficiently thorough review it may create a danger of error. Furthermore, increased use of technology entails large scale data processing, which may interfere with the individual's rights to private life protected under Article 8 of the ECHR, including that of the protection of personal data. There are also concerns related to data protection regarding the risk of system failure which arises from increased use of technology; particularly of e-filing and procedures and case tracking and management systems. Systems failure could render case data inaccessible. Without adequate and effective technological and or paper-based back-up systems, there is a real risk to effective and practical access to justice.

Finally, it is important to underline that judicial decisions shall always be made by judges. The AI tools and the possibilities they provide may lead to a growing risk that individual decisions in court cases will be based on automated processing. This would conflict with constitutional principles as well as general principles of data protection law. See further discussion below on impact on judicial independence.

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

AI technology may facilitate data extraction from case documents to be analysed and help to promote access to justice by providing more accessible information to the public. This can help make the legal system more efficient and accessible, particularly for those who may not have extensive legal knowledge or resources.

Furthermore, AI tools can extract and provide a basis for the analysis of case information to promote the effective classification of cases. They can help judges and court administrators to identify proceedings that are potentially suitable for summary or truncated procedures enabling them to be processed via simplified court-decision mechanisms. Accordingly, the time of proceedings will be accelerated, which may entail major changes in the current justice system. This would have impact on the human resources of the court system, as some of the tasks carried out today by administrative staff can be carried out in the future by AI tools.

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

The AI technological development poses several challenges to judicial independence. Some of these challenges are discussed in the previously mentioned *opinion from the Consultative Council of European Judges (CCJE) No. 23(2023)*. Among them are the concerns that algorithmic design may undermine judicial independence where the judiciary does not have informed and effective input and oversight over it. This may particularly be the case where design and implementation

are outsourced to private companies, not least as the control of the AI tends to be concentrated in the hands of a small number of companies.

Furthermore, as discussed in the opinion, the use of AI to assist case management or assist judicial decision-making may lack transparency as to what and how information is used by such technology. Reduced transparency may inhibit explanatory and appellate accountability of the judiciary. This may call into question judicial independence, and the legitimacy of the judiciary, both individually and institutionally.

Use of data tools as a replacement for judicial legal research and of supportive AI to help judges reach decisions may undermine an individual judge's ability to research and take decisions. Use of predictive coding may, for instance, undermine a judge's ability to determine what is and what is not relevant evidence and may adversely affect their ability to assess the strength of evidence. While such tools are intended to assist judicial decision-making, they may over time reduce judicial skill and experience.

One possible consequence of judges no longer being able to identify and assess the strength of evidence is that they could become dependent upon technological assistance. Were their skills and experience in evidence-taking and identification, and similar areas, to be denuded by reliance on technology such as predicative coding, individual independence, and judicial autonomy, may be reduced. What is intended to be supportive may thus become the *de facto* decision. This may particularly be problematic where such assistance provides individual judges with an assessment of decisional norms based on general trends amongst the judiciary; a problem that would then become self-reinforcing as more judges follow the trend identified by data tools. More broadly, this poses a threat to institutional independence as it would, in effect, place the decision-making process in the hands of those who design the data tools.

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

Reference is made to the answer above regarding challenges to judicial independence which must be guaranteed. These challenges should be assessed thoroughly before any decisions are made to utilize AI tools in relation to judicial decisions. There must be the pivotal aim to ensure that ultimate responsibility for judicial decisions remain with humans, and most importantly that AI tools should only support rather than supersede judges