

2024 Questionnaire of the 1st Study Commission IAJ-UIM

“The Effects of Artificial Intelligence on the Judiciary”

ITALY

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

At the moment, this is still at an experimental level, particularly in the civil sector.

More specifically, in the field of judicial activity, artificial intelligence systems are being used to organise and simplify judicial work and for jurisprudential and doctrinal research (e.g.: AI tools are very well used for the creation and management of databases).

In the field of ordinary justice, beyond the official initiatives of the Ministry of Justice, some experiments are underway in Italy, mainly at the local level in so-called pilot judicial offices, often shared with universities or research institutes. The activities concern both the most elementary uses of AI, such as the use of queries enabled by algorithms to promote knowledge and rationalisation of jurisprudence, and, in a few cases, the use of more complex AI systems to provide organisational support in terms of predicting litigation flows.

More specifically, the Courts of Appeal of Bari, Brescia and Venice have launched a number of experiments aimed at improving the predictability of decisions in many civil cases, by promoting knowledge of local jurisprudential trends. In Venice, in particular, the aim is to develop an algorithmic programme that will make it possible to “predict” the outcome of a judgment by using certain key words. The Court of Appeal of Genoa and the Court of Pisa, with the help of the Scuola Superiore Sant’Anna of Pisa, have also launched the “*PredictiveJurisprudence*” project, which aims to create reasoning models, starting from the recognition of judicial decisions, with a so-called “local semantic” search engine, in order to arrive at a predictive jurisprudence platform for the analysis of specific legal cases. The Court of Cassation, through the Electronic Documentation Centre (Centro elettronico di documentazione, CED), has signed a framework agreement with the Scuola Superiore IUSS of Pavia to carry out research projects aimed, among other things, at finding implicit correlations, identifying jurisprudential and/or legislative orientations through legal analysis and AI tools.

As for other concrete applications in the judicial sector, in order to complete the digitalisation process also of non-digital native files, it is worth mentioning the project to create a centralised data lake (a repository designed to store, process and protect large amounts of data in their native format, including non-digital ones, ignoring size limits) that can be interrogated with modern AI tools.

Also planned, again as an experimental activity and using AI algorithms, are systems for monitoring the work of judicial offices and analysing case law in both civil and criminal matters; a system for extracting advanced statistics in both civil and criminal matters; a system for automatically summarising decisions using software capable of identifying key words and intuitively grasping the connections underlying the meaning of the various sentences (although human input still seems unavoidable here, given the sensitivity of the activities to be delegated to machines); the creation of a free database of civil decisions, fully accessible to all and developed with intelligent search functions.

With regard to the applications in use, in Italy, for several years now, magistrates have been using applications (almost entirely in the civil sector and more recently in the criminal sector) developed and made available by the Ministry of Justice, both for the purpose of organising justice and assisting magistrates in the study of cases, and to support the process of dematerialisation and digitisation of documents. In this respect, it should be noted that the Ministry of Justice holds all judicial data (not only information on files and the status and outcome of proceedings, but also native digital information on the content of the acts of the judge and the parties) and is therefore the only entity that can effectively apply the new technology to judicial activity and proceedings.

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

--

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

As anticipated in the answer to question 1 above, the use of AI in judicial activity in Italy is at an experimental stage.

Regarding the regulation of the use of AI in legal proceedings, it should be noted that at the European level, the so-called EU AI ACT Regulation was adopted by the European Parliament on 13 March 2024 (then by the European Council on 21 May 2024), which contains a regulation of AI systems based on risk levels, prohibitions and related obligations. With regard to AI systems intended for the administration of justice, this Regulation specifies in recital 61 that “*certain AI systems intended for the administration of justice and democratic processes should be classified as high-risk, considering their potentially significant impact on democracy, the rule of law, individual freedoms as well as the right to an effective remedy and to a fair trial. In particular, to address the risks of potential biases, errors and opacity, it is appropriate to qualify as high-risk AI systems intended to be used by a judicial authority or on its behalf to assist judicial authorities in researching and interpreting facts and the law and in applying the law to a concrete set of facts. AI systems intended to be used by alternative dispute resolution bodies for those purposes should also be considered to be high-risk when the outcomes of the alternative dispute resolution proceedings produce legal effects for the parties*”. The recital goes on to point out that “*the classification of AI systems as high-risk should not, however, extend to AI systems intended for purely ancillary administrative activities that do not affect the actual administration of justice in individual cases, such as anonymisation or pseudonymisation of judicial decisions, documents or data, communication between personnel, administrative tasks*”.

Furthermore, it is noted that “*the use of AI tools can support the decision-making power of judges or judicial independence, but should not replace it: the final decision-making must remain a human-driven activity*”.

In Italy, there is still no specific regulation on the subject.

It is to point out that article 8 of legislative decree 51/2018 established that “*decisions based solely on automated processing, including profiling, which produce negative effects on the data subject are prohibited unless authorized by European Union law or specific legislation*”.

Although there is not yet a specific regulation on the use of AI in judicial activities, draft law No. 1146, which contains “*provisions and delegations to the Government on artificial intelligence*”, is dated May 2024.

The draft law intervenes in the research, experimentation, development, adoption and application of artificial intelligence systems and models, in order to promote their transparent and responsible use, with guarantees of supervision of the economic and social risks and the impact of new technologies on fundamental rights. The draft law commits the State to promoting the use of artificial intelligence for the purpose of improving productivity and the organisational functions of economic activities, without prejudice to the non-substitutability of human activity in certain particularly sensitive and high-risk sectors, such as the judiciary.

In particular, as regards judicial activity (Article 14), it is provided that “*artificial intelligence systems are used exclusively for the organisation and simplification of judicial work, as well as for jurisprudential and doctrinal research*”. The Ministry of Justice is entrusted with the task of regulating the use of artificial intelligence systems by ordinary judicial offices, whereas for other jurisdictions, the use of AI tools is to be regulated in accordance with their respective sectors. The

rule in question gives express centrality to the value of human activity, establishing that “*the magistrate is always reserved to the magistrate to decide on the interpretation of the law, the assessment of facts and evidence, and the adoption of any measure*”.

The framework is in line with the indications of the above-mentioned EU Regulation (AI ACT), where AI systems designed for the administration of justice have been classified as high risk due to their potentially significant impact on democracy, the rule of law, individual freedoms and the right to an effective remedy and a fair trial.

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

As we have seen, in Italy there is currently no structured and massive use of AI in judicial activity and, in particular, in the management of evidentiary activity, as there only experimental paths.

As for the evidentiary use, however, it has been observed that algorithms could be very useful, for instance, in the assessment (referred to the judge as a natural person) of the degree of reliability of eyewitnesses since they could provide more precise and objective indications on atmospheric conditions or visibility of the places where a certain event took place or could help to establish more precisely the provenance or authenticity of a document.

In the criminal field, examples of the use of AI tools in the evidentiary field are: the use of computer capturing devices, the coercive trial acquisition of telematic correspondence and documents contained in electronic devices, the acquisition in national law of wiretap results ordered by foreign authorities contained in encrypted platforms and cryptophones.

Certainly, however, it must be considered that AI tools can also generate distorted or falsified evidence through the processing of inaccurate information (so-called hallucinations): there are currently no specific cases of this kind, but certainly the judge’s role in guaranteeing the authenticity of evidence is (and must remain) central. In essence, since the product of AI in the evidentiary sphere represents atypical digital and scientific evidence, as it is not specifically regulated by law, in order to be admissible in court (the reference is in particular to criminal proceedings: see Art. 189 of the Code of Criminal Procedure) it is necessary not only to prove its suitability for ensuring the establishment of facts, but also that the evidence is formed in the contradictory manner of the parties.

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

The advantages of using AI tools in judicial activity lie in the streamlining of many procedures, also thanks to the greater ease of research and study (very useful for the judge’s work can be: the activity of classifying documents by categories; the possible improvement of the linguistic style of the measures; the ex-post evaluation of the conformity of the decision with previous decision-making models; the indexing of files and, therefore, the search activity within them), the saving of human resources, money and time.

Among the most immediately perceived disadvantages are certainly the technical problems that can occur (even with the blocking of computer systems) and that in some cases are not easily solved except with the help of specialised personnel who, however, are not permanently present in every court office.

Much attention must then be paid to the risk (to be averted) of devolving any decision or motivational processes to AI tools: on this point, the regulatory proposals mentioned above – see answer to question no. 1(b) – entrust the decision only to the activity of the judge as a natural person on the assumption that motivation is and must remain the product of human reasoning, and this also in order to protect the independence and autonomy of the judiciary.

Further risks of using particularly structured generative AI tools can lead to: the production of inaccurate information (so-called hallucinations); the disclosure of sensitive data; the violation of intellectual property rights; and the so-called exaggeration of cognitive bias (i.e. cognitive distortions), thus providing suggestions for the use of generative AI systems. In this regard, it should

be recalled that these risks have been highlighted in an effective and very detailed manner in the CEPEJ-GT-CYBERJUST (the CEPEJ Working Group on Cyberjustice and AI) briefing note of 12.2.2024 on the use of generative AI by judicial professionals in a work context.

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

The impact of AI on the administration of justice, and therefore on the use of computer applications in judicial offices and by judges, raises complex issues.

It should be noted that in December 2018, the CEPEJ (European Commission for the Efficiency of Justice) adopted the “*European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems*”, and in Italy, article 8 of legislative decree 51/2018 established that “*decisions based solely on automated processing, including profiling, which produce negative effects on the data subject are prohibited unless authorized by European Union law or specific legislation*”.

That being said, in Italy, for example, projects have been launched in some judicial offices aimed at experimenting with the use of artificial intelligence systems in judicial activities – see answer to question no. 1 – to create a database that can be queried using natural language to assess the potential judicial outcome of a given case. This project is based on the idea that predictability of judicial decisions represents an indicator of the quality of judicial activity. However, there is a risk of “judicial conformism” whereby the use of certain computer applications and tools impoverishes and misrepresents the quality of jurisdiction, producing negative effects on the administration of justice and, in particular, on the perception of the independence and autonomy of the judiciary (see below).

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

With regard to the consequences on the independence of the judiciary of the use of AI in judicial activity, it must be premised that the progressive dematerialisation of procedural documents, their digital management and, in general, the telematic process do not represent only and simply a technical and organisational change of judicial offices and of the administration of justice that cannot interfere with judicial activity and the exercise of jurisdiction, but can, on the contrary, condition them by affecting the autonomy and independence of the judiciary. In fact, the configuration and operation of the software made available to the judges (also to facilitate remote work) for the management of the acts of the proceedings may also condition their formation and structure.

Ultimately, now that the use of AI can go well beyond the support service for the jurisdiction through very complex generative AI systems and that the prospect is in fact internal to the jurisdiction, interlocution with other subjects (such as the Italian Superior Council of the Judiciary – Consiglio Superiore della Magistratura) besides the Ministry of Justice becomes necessary. This is also due to the fact that there is a risk that the Ministry, if not adequately resourced also in terms of technical and IT personnel, will operate in a perspective of privatisation of the sector by entrusting large private companies with the contracts for the construction and management of AI systems applied to the judicial sector, with the risk of failing to provide adequate controls and operational guidance.

An emphasis on possible risks for the independence of the judiciary was made in particular in the criminal field in the “*Report on the State of Telematic Justice – 2021*” by the Italian Superior Council of the Judiciary (Consiglio Superiore della Magistratura) where it is stated that the installation and functioning of the technical infrastructure (hardware and software) that will manage all procedural activities in the future (with specific reference to the criminal process) “*today conditions and will increasingly condition the concrete methods of exercising judicial activity and, ultimately, the autonomy and independence of the judiciary*”. This statement highlights the potential impact of the technological infrastructure on the actual exercise of judicial functions and emphasizes the need for careful consideration to ensure that the implementation of such systems does not compromise the independence and autonomy of the judiciary.

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

The use of AI in judicial activity is now a matter of course that will also be regulated in the near future.

As regards possible limits, in the light of what has been said so far, reference can be made to the principles already set out in the *European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems*” adopted in 2018 by the CEPEJ.

In particular, the following must be guaranteed: the dominance of the human being (i.e. the judge) at least over the motivational processes and over all decision-making activities; the control by the user of the tool in use, excluding a deterministic and uncritical approach to the products generated by AI, ensuring that all users have control over their choices; the development and implementation of AI tools and services that are compatible with fundamental rights which, as such, cannot be undermined; the principle of non-discrimination, preventing the development of possible algorithms that discriminate between people or between groups of people; quality and security, in the sense that the use of certified sources and intangible data processed in a secure technological environment is ensured; transparency, impartiality and fairness by making data processing methodologies accessible and understandable.