

# NOTITIE

## 2024 Questionnaire of the 1st Study Commission IAJ-UIM “The Effects of Artificial Intelligence on the Judiciary”

The Dutch Association for the Judiciary  
15<sup>th</sup> July 2024

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### Questions:

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

The use of AI or AI related tools is not supported by the IT-organisation of the Dutch judiciary. In individual cases translation and text programs as well as search engines to scan (large) amounts of data are being employed. Judges obviously also use publicly accessible tools, such as search engines on the Internet, however information provide for by the parties remain the main source of information of judges. In general, Dutch judges are (very) cautious about innovative digital developments.

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

Already in 2019, an issue of the journal *Rechtstreeks*<sup>1</sup> has been published, exclusively dedicated to the potential of AI for the judiciary. For example, AI can be used to automate administrative operations, to analyze large amounts of text and data, and to facilitate the search of judgments in order to promote legal unity. In her dissertation *Artificial Intelligence in Judicial Decision Making* (2022), Dutch judge Manuela van der Put writes:

*“To reduce workload, maintain and improve quality, perhaps AI can provide a solution. AI is able to quickly process large amounts of information, recognize and describe patterns. Herein lies absolute potential to utilize AI within the judiciary.”*

During her PhD research, Van der Put and the Jheronimus Academy for Data Science developed an AI tool that allows judges to handle the large volume of appeals on minor traffic violations more efficiently. In a dashboard, the tool provides an overview of the case: for example, whether it is inadmissible (because of late filing of the appeal), a summary of the substance of the case and how similar cases have been decided.<sup>2</sup>

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<sup>1</sup> [Algoritmes in de rechtspraak. Wat artificiële intelligentie kan betekenen voor de rechtspraak](#)

<sup>2</sup> [Kunstmatige intelligentie bij rechterlijke oordeelsvorming, theoretische analyse en praktische implementatie. — Tilburg University Research Portal](#)

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

No.

The Council for the Judiciary does write in its 2024 annual plan that it is in the process of formulating a so-called AI strategy on the basis of which the use of AI within the judiciary can be further shaped. Furthermore, the European AI Regulation will play a significant role in the regulation of AI within the judiciary. The regulation is expected to be in full force by mid-2027; parts of it will be implemented in 2025.<sup>3</sup>

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

The reliability of evidence can be strained by the use of AI. For example, the Dutch police use algorithmic search engines to detect child pornography. Scrolling through huge amounts of data takes a lot of manpower, not to mention the emotional strain on detectives. An algorithm can do the initial screening and thus take a lot of work off their hands. However, its use does raise all sorts of legal questions. What about the equality of arms? Do defense-lawyers have the possibility to scroll through the raw data themselves? How does the judge determine that this type of evidence was obtained lawfully? And how does the judge still determine whether certain texts or visual material is "real" as evidence (deepfakes)?

The police have also been using AI-related investigative tools for cracking so-called ENCRO chats. The Dutch Supreme Court has so far ruled that the use of these chats for evidence may be tolerated, but that the judge should (be able to) examine the reliability integrity and/or traceability of that data, this in connection with the right to the accused under Article 6 ECHR to challenge the authenticity and reliability of the evidence and oppose its use.<sup>4</sup>

In administrative law, the so-called Toeslagenaffaire<sup>5</sup> brought to light that government departments (in this case the Tax Office) use algorithms when assessing fraud that can be prejudicial and discriminatory. The Judiciary only reacted to these signals after some years and was unaware of which algorithms were being used to detect potential fraudsters. The correlation between facts on which AI is based, seems to easily to be confused with a causal relationship.

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

As already noted under I.a and I.b, the use of AI could benefit the administration and organisation of the judiciary by automating work processes, facilitating the finding and searching of relevant literature and predicting possible outcomes of legal proceedings (e.g. the likelihood of appeal). In her thesis, Van der Put concludes that digitized information systems could also benefit fundamental principles such as legal certainty and legal equality. Among other things, she writes:

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<sup>3</sup> [AI-verordening: eerste regels voor artificiële intelligentie | Onderwerpen | Europees Parlement \(europa.eu\)](#)

<sup>4</sup> [ECLI:NL:HR:2023:913, Hoge Raad, 23/00011, 23/00010 \(rechtspraak.nl\)](#)

<sup>5</sup> [Toeslagenaffaire - Wikipedia](#)

*"For certain cases, the computer can reach decisions autonomously and for almost all cases it can play an important supporting role in terms of improving efficiency and quality. But it can also serve as a tool that can lead to better justice by removing human biases/biases and by increasing legal certainty, for example."*

Another question is how judges should rule in cases in which other parties (such as the public administration) have used AI and its underlying algorithms. The use of such tools is not always knowable (transparency) which can adversely affect judicial decision-making. For example, the Dutch research institute TNO warns that algorithms tend to adopt human biases. In other words, judges, when using (or judging) algorithms, will have to ask themselves how they were created.<sup>6</sup>

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

Answer as formulated above.

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

With regard to the EU-AI Regulation – certain parts of which are expected to enter into force as early as January 2025 – the Dutch Personal Data Authority (Autoriteit Persoonsgegevens) writes that market surveillance of AI systems used for the benefit of the judiciary must be shaped in such a way that the independence of judicial authorities is guaranteed.<sup>7</sup> What is specifically meant by this is as yet unclear. Professor of Law and Computerization Corien Prins, also chair of the Scientific Council for Government Policy (VRR), stresses the positive aspects of use of AI by the judiciary. She thereby refers directly to the interest of citizens who demand accessible and sufficiently available justice. *"That could include digital justice instead of having to wait years for a judgment in proceedings that an average citizen cannot afford at all,"* she says.<sup>8</sup>

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

The Dutch Association for the Judiciary (NVvR) published an anniversary book in 2023 (*Het Spiegelpaleis*) that included experts in the field of digitization and AI. In the book, the NVvR quotes lawyer and publicist Maxim Februari, among others, who in his book *Doe zelf normaal* (2023) warns against the use of AI by judges too quickly. Not only because AI could affect evidence or touch the independence of judges, but also because technology is changing the law itself. He writes:

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<sup>6</sup> [Eerlijke besluitvorming in het recht met AI | TNO](#)

<sup>7</sup> [AP en RD: Toezicht op AI-systemen vraagt samenwerking en moet snel geregeld worden | Autoriteit Persoonsgegevens](#)

<sup>8</sup> Smilde M. *Het Spiegelpaleis* (2023), pag. 117, Uitgeverij Verloren

*"The technology has to conform to the law, but the law is changing at the same time because of the technology. A digitized information system is not an improved version of humans, but substantially different from humans. If you use such a system to take over legal processes, by doing so you do not improve those processes, you change them. If you translate laws into digital information, you do not improve them, it changes their place in the constitutional system and you simultaneously change the system itself."*<sup>9</sup>

Further discussion on the limits of judges' use of AI will also have to explicitly include this realization; that technology can change the law itself.

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<sup>9</sup> Februari, M. *Doe zelf normaal* (2023), pag. 83, uitgeverij Prometheus