



QUESTIONNAIRE – 1st Study Commission

1) In Portugal, Portuguese judges use artificial intelligence tools for the translation of documents, transcription of audio recordings and speech to text. The Supreme Judicial Council is at the beginning of a process of developing a virtual assistant to the judge.

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(b) In Portugal, the use of artificial intelligence tools in the judicial process is not directly regulated, even if the General Data Protection Regulation indirectly applies and has an influence on their use in judicial proceedings.

(c) The use of artificial intelligence tools will have a very relevant impact on the presentation and valuation of the evidence. On the one hand, there is an increase in situations where the evidence provided – images and documents – may have been created by artificial intelligence tools, which makes it increasingly necessary to discern what is actually real, what is artificially constructed. The need to validate the evidence submitted increasingly requires the use of complex expert techniques to enable the judge to be sure that it is true, so as to allow it to be admitted as evidence in a trial. On the other hand, the evidence provided for the case is increasingly digital and complex, requiring the judge to have new knowledge and the judicial system itself new expert structures to ensure the necessary support in its assessment. Finally, the ability to discover and aggregate relevant information through artificial intelligence tools and its presentation to trial has increased significantly, as well as the amount of evidence provided in each case, making proceedings increasingly complex. This increased complexity



requires the use of more and better artificial intelligence tools to “digest” such a body of evidence.

2) The use of artificial intelligence tools by judges has clear advantages but also disadvantages, which are often not fully perceptible today, in their extent and relevance.

As advantages, we can mention the information analysis capacity that artificial intelligence tools enable, giving the judge the capacity to better inform his or her decision. The increase in the information needed for cases is so significant that it is impossible for a judge to examine it in good time without the help of artificial intelligence tools. These tools could improve the quality of decisions, enriching their rationale, as well as allowing faster decisions. Another advantage would be to make it possible to decide almost automatically on repetitive issues without great legal complexity that “intersect” the courts, allocating often scarce human resources, which would be better applied in more complex cases. Finally, at a time when there is a shortage of human resources in Justice in Portugal, be it judicial officer or judges, artificial intelligence tools could allow for a better response of the justice system to an increasing number of cases.

As disadvantages, the current lack of transparency of artificial intelligence models in use should be highlighted. The impossibility of knowing how such tools have reached the results makes it impossible to use them massively in judicial proceedings, since they require the transparency of all proceedings. Only transparency allows decisions to be challenged and the adversarial principle to be observed throughout the procedure. On the other hand, their massive use to replace judges in the decisions to be delivered will diminish the legitimacy of decisions, since in Portugal the principle of natural judge presupposes and



requires that it is a human judge who actually decides the case. Finally, the massive use of artificial intelligence tools in court proceedings could lead to a change in the justice system in Portugal, which is not based on the precedent. Indeed, to the extent that artificial intelligence tools tend to highlight past patterns, their massive use by judges in adjudicating judicial proceedings could strengthen the sense of past decisions, diminishing the ability of the justice system to adapt to new situations, making case-law more conservative and less adaptable to constant changes in society's lives.

2a) In the administration of the justice system itself, artificial intelligence tools could already make it possible to increase their efficiency by making it easier to aggregate all existing information, but also to better inform decisions to be taken. More and better information is always an essential element for better decisions. On the other hand, an increased use of artificial intelligence tools in court proceedings will tend to enhance the transformation of procedural legislation in order to adapt it to the use of these tools. Procedural times will tend to accelerate, which will entail major changes in the current justice model, both in terms of human resources, as some of the tasks carried out today by staff could be carried out in the future by artificial intelligence tools, or in the course of the proceedings itself, as it is possible to apply new processing models using such tools. Finally, civil law models will be under strong pressure to become increasingly permeable to the precedent – characteristic of common law models – as artificial intelligence tools will strengthen the power of the previous one. In conclusion, artificial intelligence tools for justice systems will entail significant transformation in human resources management, legislation and the very nature of justice systems.



2b) The use of artificial intelligence tools could have major implications for judicial independence to the extent that they are used to deliver decisions replacing judges. First of all, because they affect the constitutional principle of judicial function to be exercised only by human judges. Since such tools are the creation of companies without any constitutional legitimacy, this will entail a real replacement of a democratic and constitutionally legitimised power, with the other that none of those legitimities has.

Elsewhere, their massive use could lead to less personal and institutional investment in the training of judges, who will tend to rely increasingly on the results of these artificial intelligence tools, despite the transparency problems they currently experience.

Nevertheless, to the extent that their use can enhance the quality of judicial decisions and the quicker response of the justice system to the disputes brought, they could contribute to a significant improvement in the image of justice and thus enhance citizens' trust in their justice system.

In short, the use of such tools cannot serve to replace the irreplaceable role of the court in the assessment of facts and the outcome of the dispute, but may assist the court in the substantive work which such decisions presuppose.

3) The use of artificial intelligence tools will have to have the limit resulting from the irreplaceable role of the judge in deciding the dispute. The citizen's recognition of the legitimacy of a judicial decision is the result of factors that cannot be transposed into artificial intelligence tools. First of all, a judicial decision is an act of human communication which needs to be understood by its addressees as a decision given by a man who understands the human nature in its complexity. A machine will never be able to feel what is human, just mimetising that meaning, which is not enough to guarantee acceptance of the judgment. Without such social acceptance, a judicial decision is only an increasingly



authoritarian exercise of power, which will lead to the gradual removal of citizens from their justice system, putting at risk one of the pillars of modern democratic societies – the rule of law.

In short, the limit on the use of artificial intelligence tools will have to be that of the judicial decision itself, as a constitutionally legitimised human act, underpinning a democratic rule of law.

Topics to be dealt with in 2025:

The regulation of AI systems used in justice systems

The new dynamics of court proceedings as a result of the use of artificial intelligence tools – a new technological constitutionalism

The role of the judge in a world dominated by artificial intelligence systems