

# **THE EFFECTS OF ARTIFICIAL INTELLIGENCE ON THE JUDICIARY**

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## **Use of AI In Judicial Systems**

The use of AI in judicial systems varies widely across countries, ranging from no use at all to limited, experimental capacities, to more advanced applications. Where AI is used, it is primarily for administrative tasks, legal research, and document management rather than for decision-making. Common applications include speech recognition for transcription, case management systems, and AI-powered legal research tools.

Some countries not currently using AI are exploring its potential applications in the judiciary. The most commonly considered uses of AI technology include AI-assisted legal research, document analysis and summarization, case management, translation of documents, and automation of administrative tasks.

Some countries have more advanced AI implementations, including systems for predictive analytics and automated drafting of routine documents. However, even in these cases, AI is used as a support tool rather than a replacement for judicial decision-making. Many countries express caution about AI use, emphasizing the need for human oversight and control. Many countries emphasize that any AI implementation should be to support judges rather than replace their judgment.

The country-specific responses are listed on the IAJ's website under the 1<sup>st</sup> Study Commission. I will highlight a few of the more advanced applications. In Austria, judges regularly use AI-powered technologies for legal research and AI-powered dictation software. In addition, the courts utilize a chatbot for citizen service inquiries on the Court's website JustizOnline. The chatbot is able to recognize the questions presented and provide prepared answers to the public.

In France, the judiciary uses AI for pseudonymizing court decisions before public dissemination and for directing appeals to the correct chambers. The Ministry of Justice is developing an AI-powered bodily injury compensation framework to improve the predictability of decisions in that area of law. The Kazakhstan judiciary utilizes Digital Judicial Analytics software to understand the essence of court decisions, compare them with each other, identify anomalies, and predict the outcome of civil cases. Kazakhstan also has software that can prepare draft court acts in cases where the judge's discretion is strictly limited by law and there is no evaluation of the evidence.

In Sweden, some judges on an individual basis have used ChatGPT to draft decisions. The judiciary has used AI for data analysis, translation, anonymization of

documents, and automatic transcription and interpretation. The Taiwan Judicial System is considering utilizing AI to draft judgments for high-volume standard case types, such as driving while under the influence or aiding fraud. The AI system only acts as an aid in drafting the judgment and does not replace the judge's role in decision-making.

In the United States, an AI tool called Quick Check Judicial allows court users to upload multiple filings to receive a comprehensive report detailing the validity of the authority cited by both parties, plus relevant legal authority that may have been omitted. As a test case, I decided to take one of my opinions I had already issued and upload the parties' briefs into Quick Check Judicial to see if it mirrored my well-reasoned opinion. I'm pleased to report it did.

### **Regulatory and Guideline Framework**

Many countries and international bodies are developing guidelines and regulations for AI use by the judiciary. These frameworks emphasize ethical considerations, transparency, and the protection of fundamental rights. The evolution of these regulations will be crucial in shaping the future of AI in judicial systems.

The European Commission for the Efficiency of Justice issued the "European Ethical Charter on the use of Artificial Intelligence in Judicial Systems and Their Environment." That opinion sets forth principles for AI use: the rule of law; judicial independence and impartiality; judicial autonomy; judicial oversight; accessibility and quality; interoperability and continuous improvement; piloting; non-discriminatory design and operation; transparency and intelligibility; accountability; integrity, security and data protection; openness and privacy; funding; and training and operability. Additionally, England and Wales released judicial guidance entitled "Artificial Intelligence (AI) – Guidance for Judicial Office Holders. The guidance sets forth seven points for the responsible use of AI by courts and tribunals. I commend the thoughtful and practical European Commission opinion and England and Wales guidance. They are cited on the IAJ website under the 1st Study Commission.

### **Effects of AI on the Administration of Justice**

The potential effects of AI on the administration of justice are seen as far-reaching and potentially transformative. Most countries anticipate significant improvements in efficiency, including faster case processing, improved consistency in decision-making, and enhanced access to legal information. These improvements in speed and efficiency could lead to the quicker resolution of cases, assisting courts in managing their caseloads and providing litigants with speedier access to justice. AI is also expected to streamline administrative tasks, potentially freeing up judicial resources for more complex matters. Some responses suggest that AI could contribute to more uniform application of the law and potentially improve the overall quality of judicial decisions through better information

access and analysis both for the courts and the public. These improvements in the administration of justice could lead to strengthened faith and confidence in the judiciary.

### **Effects of AI on Judicial Independence**

The potential impact of AI on judicial independence is a significant concern. The proper and effective use of AI by the judiciary can assist judges in making more informed and well-researched decisions, which can bolster judicial independence. But an overreliance on AI by the judiciary could harm judicial independence by discouraging judges from relying on their own experience, moral judgment, and values in decision-making and eroding or disempowering the judge's ability to exercise discretion. Too much standardization through the use of AI could reduce a judge's ability to tailor decisions to the particular circumstances of each case. A judge could turn into a mere supervisor of the AI tools as opposed to being the decision-maker in the case. This could lead to justice governed by the private creators of the AI software as opposed to judges. Therefore, any implementation of AI by the judiciary should ensure that the judge retains power as the decision-maker and is free to depart from the analysis or recommendations provided by AI.

The use of AI data-collection tools by litigants could also harm judicial independence. Such tools allow litigants to discover trends among judges and utilize that information for forum shopping. The use of these tools could make judges more cautious about certain decision-making or even cause judges to sacrifice their independence in an effort to counter the discovered trend.

### **Effects of AI on the Evaluation of Evidence**

AI might also play a role in a judge's evaluation of evidence presented by litigants. In light of AI's ability to produce falsified evidence (such as "deepfakes"), courts might need to be more cautious in evaluating evidence and ensuring that it is authentic. In addition, courts might need new methods to assess the reliability of AI-processed evidence that is submitted to the courts.

### **Positive and Negative Impacts with the Use of AI**

There are positive and negative impacts with the use of AI. On the positive side, AI is widely seen as a tool to enhance efficiency, consistency, and access to information. Many countries highlight the potential for AI to speed up case processing, improve research capabilities, and assist in managing large volumes of data. Particularly, AI tools can assist judges with administrative tasks or tedious, repetitive tasks, thereby allowing judges more time to focus on complex tasks and allowing judges to handle higher caseloads. AI research tools can also enhance adherence to existing precedents, resulting in more well-reasoned and consistent decision-making. Some responses also suggest that AI could contribute to

more objective analysis and potentially reduce human biases in certain aspects of judicial work.

However, these potential benefits are balanced against several concerns. A primary worry is the risk of over-reliance on AI, potentially undermining human judgment and the nuanced understanding that judges bring to cases. Overreliance on AI by judges could result in a less human judiciary, eroding public confidence in the courts. Overreliance on AI could also make judges' mental processes more passive, which could lead to errors, because AI tools have the capacity to "hallucinate," *i.e.*, provide false or erroneous responses. Let me give you an example. For the 1st Study Commission report, I spent all weekend reviewing the 38 questionnaire responses submitted by different countries to generate a first draft of the report. As an experiment to evaluate the use of AI in this context, we made PDFs of each questionnaire response and sent them through an AI tool called Claude. In just 15 seconds, the tool provided a summary of the 38 reports. But there was one problem: Claude hallucinated. It made up reports for India and China. When confronted, it admitted that it made a mistake. This calls into question the validity of its other responses. In sum, while AI can be a useful tool, it is not always reliable.

### **Bias in AI Systems**

There are also significant concerns about bias in AI systems. If an AI system has biases in its training data, the system can reproduce or even amplify those biases, leading to unfair decisions. Mexico reported that the use of AI in parole cases has shown biases, especially against minorities.

### **Transparency in AI Systems**

There are also transparency concerns. AI systems lack transparency regarding how specific decisions are made. A lack of transparency regarding how the AI systems are designed and used could also harm public confidence in the judiciary.

### **Privacy, Security, and Cybersecurity Concerns**

Privacy and security concerns are also frequently mentioned. The use of litigants' personal data by AI systems raises privacy and confidentiality concerns. AI tools generally need to collect large amounts of data from the parties involved in a process, which may lead to revealing undue or inappropriate personal or private information. Additionally, cyber security may be an issue if users unknowingly upload a program that contains malware, or otherwise negatively impacts the court's information technology systems.

### **Accountability Concerns**

Additionally, AI systems also raise accountability concerns because AI systems are not accountable to the public in the same way as judges. Many responses emphasize that

while AI can be a powerful tool, it should complement rather than replace human judgment in the judicial process.

## **Conclusion**

In sum, AI should be a tool to assist judges rather a replacement of their decision-making role. It is important to maintain human judges as the ultimate arbiters, with AI serving in a supportive capacity. There is a widespread recognition that certain aspects of judicial decision-making, particularly those involving complex ethical considerations or the interpretation of nuanced human behavior, should remain firmly in the domain of human judges. There is unanimous agreement with the principle expressed in the EU AI Act that states: “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.”