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Legal and AI – Need and Customs

Carmen Silvia Paraschiv

Professor, PhD, Titu Maiorescu University, Faculty of Law, Bucharest, Romania, paraschivcrmn@yahoo.com
https://orcid.org/0009-0002-1235-5813

Abstract: Artificial intelligence (AI) has had a skyrocketing development in the last few years due to the fast-paced advancement of technology, integrating itself into multiple domains. However, it is a technology that is unstable and still under development, and because of that, we cannot lean on it. Even so, many people use it for their tasks. In this paper, we will observe the effects of AI on criminal procedures, how it can be implemented, how things would go if judges, prosecutors, and lawyers were replaced by AI, and analyze case studies.

Keywords: Artificial Intelligence, Criminal Procedures, Judge, Lawyer, Prosecutor, Justice, Implementation, Replacement

1. Overview

Artificial intelligence has been evolving at an alarming rate in recent years. We have gone from software like Google to search for information to ChatGPT that finds answers to our questions and more in less than 10 years. According to a recent definition given to artificial intelligence in the AI Act (Art. 3, Regulation (EU) 2024/1689), artificial intelligence is a machine-based system that, for explicit or implicit purposes, can, from the data it receives, infer how to generate results, such as predictions, content, recommendations, or decisions that can influence real or virtual physical environments. The goal of AI is to facilitate our daily tasks and make them perfect. In fact, this technology has been implemented in several fields such as the economic, social, medical and even legal. Many people believe that AI should be implemented in the legal system more than it is today because they consider AI to be impartial, therefore able to provide conclusive information and decisions. At the same time, AI is not perfect, in the sense that it also gives both major and minor errors in the legal field, for example, it can give laws or articles of laws that do not exist, thus compromising a process if we were to rely only on AI.

In this scientific communication, we want to observe the effects of AI in criminal proceedings, how it would help in criminal proceedings and what errors could occur as a result. In order to observe, we will see how AI can be implemented in practice in the criminal legal system, then how AI could be a substitute for magistrates and lawyers, and finally case studies that could give us an idea of what AI would be like in reality in the Romanian criminal legal system.

2. Can AI be implemented in practice in the criminal legal system?

By legal system we understand both the legal system as a normative structure, as well as other components, consisting of the content and form of law, the sources of law, equity, legal conscience and the legal order (Andrei, 2015). This can be in several branches of law, such as civil law, criminal law, etc. A criminal legal system is the set of legal norms, institutions and procedures through which the state regulates the prevention, investigation, trial and punishment of crimes. It includes criminal legislation, law enforcement agencies (police, prosecutors), courts and the penitentiary system.

AI is already implemented to some extent in the legal system. For lawyers, their tasks have been made easier by adopting AI in document analysis, drafting and the possibility of carrying out their work in a hybrid manner. For magistrates, AI is already implemented through applications such as ECRIS (Electronic Judicial Registry Information System), which uses algorithms to randomly distribute files and generate statistical reports on the efficiency of the court, or EMAP, a program of the Superior Council of Magistracy, allowing judges

access to the case law of other courts, using AI to search for relevant decisions based on words or key phrases (Ciuca, 2024).

To facilitate tasks more than they do now, the implementation of AI in the criminal justice system requires a well-structured process that takes into account the needs of judicial authorities and ensures compliance with technical and legal requirements. In order to be able to implement AI in practice, we must first identify the problems and needs of the judicial system. For example, judicial authorities are faced with an overload of evidence and files that need to be analyzed manually, which can lead to errors, delays and omissions, affecting the criminal process. To reduce these difficulties, we could implement an automatic analysis system of evidence and files based on machine learning and NLP (Natural Language Processing). Machine learning is a subset of artificial intelligence (AI) that focuses on building systems that can learn – or improve their performance – based on the data they process, and can fall into two categories: 1. supervised, where a data expert acts as a guide and teaches the algorithm what conclusions it should draw, or 2. unsupervised, where the computer learns to identify complex processes and patterns without the help of a human to provide constant, close guidance (Chen, 2024). Natural language processing (NLP) allows computers to understand, generate, and manipulate human language, which could be used to automatically analyze witness statements to identify inconsistencies with existing evidence (Chen, 2024). Then, we choose the right technologies for the chosen tasks so that we can then develop and test them. This requires collaboration between IT specialists and lawyers to train AI. Then we integrate AI into practice, in other words, we create a clear regulatory framework for its use once the testing is finished and the AI can be put into operation. Moreover, last but not least, its monitoring, in other words the periodic review and updating of the system to reduce the chances of errors.

3. Replacing judges with AI

Replacing judges with AI raises fundamental questions about the nature of justice and the role of magistrates in the criminal process, because judges represent the main pillars of the criminal process. Judges are the ones who have the role of interpreting the law, analyzing evidence and pronouncing fair solutions, based not only on legal norms, but also on reasoning and moral balance. However, as human beings, judges can be influenced by subjective factors, such as emotions, external pressures or personal prejudices, which can affect the impartiality of decisions. That is why the use of AI instead of judges is debated, to ensure a more objective process and free from external influences. This possibility, however, raises legal, ethical and technical challenges

3.1. The right to a fair trial

By replacing judges with AI, we could improve fairness in criminal proceedings. According to Article 6 of the European Convention on Human Rights, everyone has the right to be tried by an independent and impartial tribunal. It is also one of the fundamental principles of criminal procedural law, being an obligation of judicial bodies to carry out criminal prosecution and trial with due process guarantees and the rights of the parties and subjects of the proceedings, so that the facts constituting crimes are established in a timely and complete manner (Art 8 C.pr.pen). Particular importance is given to fairness because justice must not only be punitive, but also fair and proportionate to the gravity of the crime. In addition, citizens are equal before the law and public authorities, without privileges and without discrimination (Art 16 para. 1, Constitution of Romania). Even if the importance of fairness is provided for in legal texts, it is not always respected. For example, in a criminal case, a judge from the Oradea Court of Appeal was convicted of two crimes of influence peddling and three crimes of false statements, one of which was a continuing offense. He received bribes twice from the same whistleblower to intervene with the judges to issue a favorable decision in his favor in 2009 and 2011 (Bonchis, 2014). AI is a machine, it does not feel emotions, it objectively analyzes the data provided to it. Since it has no

subjective side, it means that it is completely impartial, therefore being able to make decisions in the criminal process. In addition, AI can contribute to respecting the reasonable term by automating the analysis of evidence, managing files faster and reducing judicial errors. The analysis of evidence could be done through machine learning that can automatically identify relevant information from voluminous files, facilitating access to essential evidence. Faster case management could be done by an AI system that can analyze the volume of cases and distribute cases to less crowded courts. And the reduction of judicial errors could be done by deep learning algorithms that can detect inconsistencies between evidence and statements to prevent wrongful convictions. However, there are obstacles that cannot be ignored.

3.2. Lack of transparency

One of the most difficult obstacles would be the lack of transparency. AI algorithms are often black boxes (Lazar, 2024, p. 173), which can sometimes make it difficult to understand how decisions are made. If the reasoning behind the decision is not understood, then it cannot be challenged. If an AI system were to decide on the preventive detention of a defendant, it must clearly explain the criteria on which it was based. In the absence of a clear justification, the decision could not be effectively challenged, which could violate the right to defence. The explainability of a decision is therefore fundamental (Ciutacu, 2022).

3.3. Principle of non-discrimination

At the same time, it may violate the principle of non-discrimination provided for in Article 14 of the European Convention on Human Rights and Article 16 of the Romanian Constitution. Even if AI does not have personal emotions or prejudices, it can pick up on existing discriminations in the data it analyses. Given that discrimination can be both direct and indirect (UK Government, n.d.), AI can overlook the indirect one. For example, if an employer sets graduation from a prestigious university as a criterion within an AI CV filtering application for hiring, even if this criterion does not constitute a reason for discrimination in itself, in practice, those people who could not afford to study at such a university for financial reasons would clearly be excluded (Lazar, 2024, p. 173).

3.4. What difficulties arise in the legal classification of the act and in determining the penalties

One of the biggest challenges in replacing judges with AI lies in the interpretation of legal norms. While a human judge analyzes not only the text of the law, but also the specific circumstances of each case, AI systems rely on algorithmic models that apply predefined rules (Aletras et al., 2016). This deterministic approach can lead to the mechanical application of the law, without taking into account the flexibility needed in certain criminal cases. Also, in criminal law, the principle of individualization of punishments is a fundamental one (Art. 74 C.pr.pen). Human judges analyze factors such as mitigating or aggravating circumstances, the perpetrator's intention and the social danger of the act. AI, however, could omit such nuances, applying standardized sanctions that may not always reflect the real gravity of the crime.

4. Replacing prosecutors with AI

The prosecutor is the one who directly directs and controls the criminal investigation activity of the judicial police and the special criminal investigation bodies, provided for by law. The prosecutor also supervises that the criminal investigation acts are carried out in compliance with the legal provisions (Art. 56 C.pr.pen). Therefore, we can say that the criminal investigation bodies, in the judicial activity consisting of the procedural activities carried out during the criminal investigation, are led and controlled by the prosecutor, being in a hierarchical subordination relationship (Crișu, 2019, p. 9). If prosecutors were replaced by AI, the impact on the judicial system would be significant. Although the impact on fundamental rights would, in

theory, be less than if judges were replaced by AI, a number of legal, ethical and practical issues would arise that could seriously affect the criminal process.

4.1. Presumption of innocence – a basic principle

A major risk would be the impact on the presumption of innocence, i.e., the principle that a person is presumed innocent until proven guilty (Art. 4 C.pr.pen). In today's reality, prosecutors must gather sufficient evidence for a charge and ensure that there are reasonable and solid facts to support it. However, AI, seen as an objective and impartial system, may persuade judges to have greater confidence in the evidence it provides than in evidence collected by a human prosecutor (Ciutacu, 2022). This problem is compounded by the phenomenon known as the illusion of technological infallibility (Coravu, n.d.), which refers to the fact that people tend to believe that technology, especially AI, is less prone to error than human judgment, even though, in reality, AI may have its own limitations and biases. Furthermore, AI cannot distinguish between the formal and substantive aspects of a case. In criminal proceedings, certain procedural shortcomings can invalidate evidence or even the entire criminal case. A human prosecutor can assess these circumstances in a broader context, but an AI might rely only on inflexible algorithms that cannot interpret legal nuances.

4.2. Objectivity and Impartiality of AI

During the scientific research, we recalled that AI is impartial and objective because it is not a human, it has no emotions, it only knows how to do what it is asked to do or according to the way it was created (for example, if an AI was created only to help you with questions about certain products in a grocery store, it will not be able to answer your questions about criminal law). However, in reality, AI algorithms can take on and amplify existing biases. It relies on historical data to learn and make decisions. If the data used to train the algorithms contains systemic or discriminatory errors (for example, ethnic profiling in criminal investigations), AI will perpetuate these problems. In the case of an AI prosecutor, there is a risk that it will give more weight to evidence that supports the accusation if its training model was based on cases in which the majority of defendants were found guilty. This phenomenon can lead to an imbalance in the criminal process, favoring conviction at the expense of a fair analysis of each case.

4.3. Interpretation and application of the law during the criminal process

The activity of a prosecutor does not only involve the mechanical application of laws, but also their interpretation depending on the circumstances of each case. For example, if two people may be suspected of the same crime, but the context and reasons behind their actions may be very different. A human prosecutor can assess such nuances and decide whether it is worth continuing the criminal prosecution, applying alternative sanctions or closing the case. In contrast, AI could not make an appropriate contextual assessment. Legislation is also constantly changing. Some rules may be interpreted differently depending on recent case law. For example, in 2024, the crime of rape of a minor was introduced, a crime that the legislator regulated differently in 2023. A human prosecutor can adapt to these changes, but an AI system would need constant updates to remain relevant.

5. Replacing defense attorneys with AI

A lawyer is someone who assists or represents, in a criminal trial, the parties or main procedural subjects, under the terms of the law (Art. 88 C.pr.pen). He can be ex officio, that is, given by the state, or elected, meaning that he is chosen by a subject in the criminal trial to represent him. It is one of the professions that is in the greatest danger of being replaced by AI. This is due to the fact that tools have been invented that can search for laws for the average person, solutions to their

legal problem, and provide predictability in relation to the decision-making of judges in a criminal trial.

One of the biggest advantages of implementing AI instead of traditional lawyers is the cost savings for people who cannot afford a lawyer. Modern AI technologies can provide fast and efficient legal advice without incurring significant costs. Especially for low-income people, AI could facilitate access to legal information and contribute to the democratization of access to justice. AI can also provide predictability in court decisions by analyzing large volumes of data, which could help clients better understand the outcomes of legal processes. However, one of the biggest risks in using AI instead of a lawyer is the risk of client data confidentiality. Client personal data can be compromised following cyberattacks that can lead to unauthorized access to sensitive client information as well as data leaks (personal information ending up on the Internet, where everyone can see it). In addition, the management of data by AI raises questions about client consent and the transparency of its processing. AI algorithms, if not properly regulated, can store information without adequate protection or transfer data in a way that compromises privacy. Moreover, if this were to happen because of AI, who would be responsible? AI does not have criminal capacity (Universul Juridic, 2024), so it cannot be held accountable. It is essential that legal regulations provide clear responsibilities for technology developers and entities implementing AI in legal processes to ensure the protection of citizens' fundamental rights.

6. Practical examples

6.1. Robot lawyer, United States of America (USA)

Robot lawyer platforms are not a new concept in the US. However, one particular robo lawyer that has stood out is *DoNotPay*. In 2023, DoNotPay CEO Joshua Browder announced on the X platform (formerly Twitter) that he would pay $1 million to anyone who would use the robot's pleading (the person would wear headphones/AirPods and let the robot present the arguments in court, then repeat exactly what they say) in a case before the United States Supreme Court (Mihalascu, 2023). This would have a financial purpose, in other words to help the client save money. To give more context, DoNotPay is not a humanoid robot but a mobile application, similar to ChatGPT. This explains the need for headphones. However, the use of such a "robot lawyer" in court raises legal concerns, as in many US jurisdictions audio recording or the use of electronic devices is not allowed without the consent of all parties involved. Therefore, DoNotPay was not used in court.

We can see that no matter how efficient a robot lawyer is, it also has major difficulties. DoNotPay was not given permission because, first of all, if the person were to use headphones to be guided during the trial, without the prosecutor and the judge knowing, it would violate the principle of transparency. At the same time, it is to prevent possible external interference in the judicial process, unauthorized listening to conversations or to protect the confidentiality of data. As in Romania, robot lawyers are more guides than lawyers in the true sense of the word. They can provide automated and generalized assistance, not personalized legal advice or official representation before a judge. Only licensed lawyers can represent a person in court, and this principle is strictly enforced, including in criminal cases. The representation of a defendant, even in simple defense cases, must be carried out by a licensed lawyer.

6.2. Robot Judge, Estonia

In 2019, the Estonian Ministry of Justice requested the development of a "robot judge" to handle small claims, initially set at under 7,000 euros. The main purpose of this system was to analyze legal documents and relevant information to issue preliminary decisions, which were then reviewed by human judges. This approach was aimed at reducing the workload of the courts and

speeding up the judicial process in less complex cases. It resolves approximately 30,000 cases annually (Archip, 2022). Currently, only 10% of cases have been appealed, with cases being sent to a human judge. This indicates that AI has increased proficiency, with appeal cases being rare, and therefore a real success. However, there are situations in which it has made inadequate decisions; hence the need to resort to appeal and have a human judge reject or uphold the decision made by the AI.

Even if the percentage of appeals is almost insignificant, behind these files are people with problems who may have had to resort to the judicial path to resolve them. This AI is implemented to resolve civil cases, but what if it were to resolve criminal cases? Let's assume that this AI would actually resolve criminal cases, with the same number of successes and appeals. That number, 10%, means people whose case was not judged fairly, who feel unjustly treated, and maybe they really are. 10% of cases involve ordinary people who are either wrongly convicted or released despite having committed the crime. Lives destroyed because an AI "thought" the wrong case, based only on what it has in its algorithms. Let's not forget that AI cannot be held accountable, because it does what it was programmed to do. That is why it is important for the human factor, or rather the human judge, to understand the legal nuances and to think critically, so that an innocent person does not go to prison or a guilty person does not go free because of a technicality.

7. Conclusion: AI and justice – complementary functioning, not replacement

In conclusion, we can say that, for now, AI is not ready to fully replace magistrates and lawyers. Indeed, AI greatly facilitates tasks that would have taken an eternity before, such as analyzing files. It would also have many benefits, but at the same time, many risks. AI does not understand the subtleties of language and lacks contextual understanding at the moment, it goes by algorithms and what it has learned. It cannot think differently from the way it was programmed to do it. In contrast, humans can adapt from case to case, having mental flexibility, but they can make mistakes if they are over-strained. So, for the moment, AI and legal bodies should go hand in hand, in other words, AI should deal with everything that means repetitive tasks, organization, etc., and judicial bodies with tasks that require critical thinking and understanding of human nuances. In this way, the judicial system would benefit from the efficiency of technology, without compromising the quality of judgment and the fundamental rights of citizens.

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