AGORA International Journal of Juridical Sciences, http://univagora.ro/jour/index.php/aijjs
ISSN 1843-570X, E-ISSN 2067-7677
Vol. 18, No. 1 (2024), pp. 36-43

THE INTERSECTION BETWEEN RULE OF LAW AND ARTIFICIAL INTELLIGENCE

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Abstract: *Like every innovation in history, Artificial Intelligence also needs to be governed for its disruptive power and impact on people, economy, society, rights and freedoms. Its impact does not only concern innovative areas but permeates all corners of our personal, social, economic and professional lives. Artificial intelligence has become a central component of our daily lives in many ways, so the perspectives are both for the positive results they can bring to humanity and concerns for their disruptive potential. It brings structural changes that are captured by legal norms, but which sometimes go beyond the existing legal framework by transforming it. To this global revolution the law response must provide an equally innovative approach in order to ensure that complex technology does not undermine the rule of law.*

Keywords: *artificial, intelligence,*

Introduction

Artificial intelligence contains and raises profound and unprecedented questions, which affect the fields of legal civilization, and come to prefigure scenarios in which the very essence of what we consider human identity can be called into question. The main concerns that raise are related to the appropriate regulations, the new tools that should be put in place. Jurists of different backgrounds, philosophers, robotic and AI scientists are trying to answer all these questions.

The concept of artificial intelligence has gone from being synonymous with science fiction to becoming a tool used by millions, as experts warn of its risks and amid the emergence of the first attempts to regulate it worldwide.

This year, social media was full of photos and videos that users created using various generative AI tools and screenshots with conversations with AI on all kinds of topics. The trigger for this technology came from the popularity of the ChatGPT chatbot that the OpenAI company launched in November 2022 and which, in a few days, captured the attention of millions of people.

The definition we have for the artificial intelligence is the Alan Turing Institute that defines AI as algorithmic models that perform 'cognitive or percep tual functions in the world that were previously reserved for thinking, judging and reasoning human beings'(turing.ac.uk). Current AI derives its 'intelligence' from Machine Learning – rather than humans inputting rules into a machine, it learns by itself.

In the last two years, we have witnessed a huge amount of activity regarding the policies to be implemented to ensure the full development of artificial intelligence with national strategic documents on the matter.

Artificial intelligence can greatly improve predictive analyses that can allow companies to have greater certainty on the long-term effects of a given market choice. In this perspective, it will be necessary to deal increasingly with regulatory aspects, in the awareness of the numerous and complex problems that arise on a legal level and will increasingly arise. In fact, an adequate legal framework based on fundamental rights must be ensured, including respect and protection of personal data, in the awareness that artificial intelligence and robotics will allow a new approach to the provision of services, an approach that can be defined as "machine-to-machine": in the immediate future, in fact, many services offered will be provided through direct interaction between objects, without the need for human intervention. Issues such as civil liability for conduct arising from algorithms, or consumer protection with respect to commercial practices implemented directly by software without human intervention, will then become crucial to guarantee full and orderly economic development.

1. The introduction of the artificial intelligence concept in the European legal framework

In March 2023, entrepreneurs and researchers in the technology sector demanded in a public letter that A.I. systems to be suspended for six months. Two months later, hundreds of experts warned that A.I. implies a risk of extinction, comparable to that of pandemics or a nuclear war.

However, the first entity to develop the first major regulation for A.I. was the European Union, which in December 2023, after extensive negotiations, agreed on the artificial intelligence law with a regulation that allows or prohibits the use of technology depending on the risk it poses to people and aims to boost European industry against giants such as China and the US

If, until now, the relationship between computer science and law has focused on the way in which the former has been able to help legal practitioners in carrying out their work or, on the new cases that computer science has been able to produce in terms of legally relevant human conduct, it is reasonable to think that in the near future the aforementioned relationship will be enriched by the legal regulation of non-human conduct.

In this regard the doctrine has defined the expression "cybernetics of law" to indicate the hypothesis in which the computer is programmed for the automatic application of the law or for the stipulation of contracts without human intervention. The presence of intelligent machines that enable high-level cognitive processes such as thinking, perceiving, learning, problem solving and decision making, provides humanity with an endless series of new opportunities to integrate human intelligence with non-human intelligence and change the way people interact and work.

The development of new-generation algorithms and increasingly sophisticated automated data processing techniques offers new opportunities but, at the same time, poses complex challenges that affect almost every area of law (Decebal, 2023). Intervention called to promote the development of a technology that is now indispensable for economic growth

and social well-being, on the one hand, and to guarantee the protection of fundamental rights and the principles of freedom and democracy on which the constitutional State is based, on the other. Recent initiatives by international and supranational institutions are moving in this perspective, including in particular the proposal for a European Union regulation on AI.

The European Ethical Charter on the use of Artificial Intelligence in judicial systems and related fields issued by the European Commission for the Efficiency of Justice, organ of the European Commission for Justice through the issuance of the aforementioned charter established the basic principles to be observed in Europe in terms of AI. The ECEJ is a judicial body composed of technicians, representing the 47 countries that are part of it. The five principles of the Ethical Charter are meant to ensure the development and implementation of artificial intelligence tools and services are compatible with fundamental rights:

- Principle of non-discrimination: aims to specifically prevent the development or intensification of discrimination between people or groups of people.

- Principle of quality and security: It concerns the use of technologies that process judicial decisions and data and therefore, in order to process judicial decisions and data, it is recommended to use certified sources and intangible data with models developed multi-disciplinary, in a secure technological environment.

- Principle of transparency, impartiality and fairness: data processing methodologies must be made accessible and understandable, external checks must be authorised.

- Principle of user control: it must avoid a prescriptive approach and ensure that users are informed actors and have control over their choices.

It is worth noting that the CEPEJ not only encourages the use of such tools in national and supranational judicial systems, so as to improve the efficiency and quality of justice, but also seeks to identify general ways to implement this innovative process in a responsible manner, in compliance with the fundamental rights of the person.

The European Union is preparing to introduce the first law in the world on artificial intelligence (AI) in order to regulate its complex use. This initiative is part of the EU digital strategy and aims to create a regulatory framework that promotes the responsible development of AI, while ensuring the protection of citizens and safeguarding their rights. The proposed EU law includes a number of measures to address the different levels of risk associated with AI. AI systems will be analysed and classified according to the degree of danger they pose to users. This will allows specific and proportionate rules to be set in relation to each level of risk.

The European Parliament's priority is to ensure that AI systems used in the EU are safe, transparent, traceable, non-discriminatory and environmentally friendly. Work is underway to define a technology-neutral and uniform definition of AI that can be applied to future artificial intelligence systems. The new law includes different risk categories for AI systems. Systems with unacceptable risk, which pose a threat to people, will be banned. This includes, for example, the use of AI to manipulate dangerous behaviour in vulnerable groups, the social classification of people based on personal characteristics and real-time and remote biometric identification, such as facial recognition. High-risk AI systems, which may have a negative impact on security or fundamental rights, will be subject to stricter requirements. These include systems used in sectors such as toys, aviation, cars, medical devices and others.

In addition, AI systems used for biometric identification, management of critical infrastructure, education and training will be registered in an EU database.

The international organizations such as OECD, UNESCO and WHO have promoted action initiatives for the ethical development of A.I., proposing non-binding governance principles to inspire practice and regulation in the future. At the same time, there is an evolution of voluntary norms (AFNOR, ISO, etc.) aimed at the reliability, auditability and security of technologies, as well as the useful articulation of legal rules.

In the development of AI, the law appears to be a privileged tool, the fundamental responses to risks, challenges and accruals being legal. Classic legal rules must deal with a set of topics related to AI technologies, but new challenges, such as the application of responsibility, and the need to repair the damage of such a complex human act with AI, are almost impossible. In the rationale of the complexity and evolution of AI, the principle of transparency is essential, as are the major principles of lawfulness, fairness and proportionality (Aziz, 2021).

The AI-Act text establishes 3 levels of risks and adopted frameworks:

a) the unacceptable risk of using the A.I. system - prohibited (eg exploitation to cause damage);

b) the high risk requires compliance measures "by design", in particular a strict policy, to constrain data governance, to inform users (e.g. employee management, medical devices)

c) the risk of limiting the simplified measures, including the obligation of transparency towards users (e.g. anti-spam filter).

The Draft Regulation (EU) of 8.12.2023 provides that for organizations using I.A. obligations are express, such as data control, daily retention and suspension of use in case of non-compliance. This regulation is to be applied not only to A.I. technologies, but also to any economic operator of the European market, the applicable financial sanctions rising up to 30 million euros or 6% of the consolidated annual turnover.

All A.I. systems that are an obvious threat to the security, livelihoods and rights of individuals will be outlawed as will the social notations of rulers who use real assistance and encourage dangerous behavior. Also, high risks. A.I. systems identified with high technological risk are used in:

a) critical infrastructures, likely to endanger the life and health of citizens;

b) educational or professional training, which allows determining access to education and the professional course of a person's life;

c) product security components;

d) work, management of workers and access to self-employment;

e) essential public and private services;

f) migrant management, asylum and border control;

g) repressive services likely to interfere with the fundamental rights of individuals;

h) administration of justice and democratic processes.

The need to implement ethics in the use of AI is imperative and constitutes a major challenge for all those involved in trying to control a phenomenon whose consequences and evolution are still unknown to us.

The concern for regulation as a tool of control and protection clearly outlines the emergence of a right of artificial intelligence. The inadequacies of the new artificial

intelligence law concern the slow legal reaction, the lack of clear and common definitions of different types of artificial intelligence technologies, etc.

In the context of the implementation of AI in most sectors of activity, its widespread use including in public institutions combined with the digitization process, we can speak of the emergence of a new concept, the digital state. The development of a human-centric AI is approached from two points of view: the first focuses on risks, self-regulation and self-evaluation of the development of new technologies, the second on the integration of human rights in the whole life cycle of AI.

It is rightly said that technology is the key to all fundamental problems of the 21st century and that artificial intelligence (AI) constitutes, in such a perspective, its new frontier, an inevitable technological revolution, comparable to electricity or the automobile. It is par excellence a disruptive innovation, as it upsets the control and acquisition of knowledge and affects virtually all sectors of human activity.

At the same time, the Convention Council of Europe framework on artificial intelligence, human rights, democracy and the state of law) inaugurates the international legal framework in the field.

In the end, the idea of a global regulation was imposed, by adopting, at March 21, 2024, of the first resolution of the UN General Assembly in the matter, regarding the promotion artificial intelligence systems that are safe, secure and conducive to sustainable development. In just a few months, artificial intelligence has gone from development to reality, asserting itself as the most powerful and fastest technological revolution in history.

Norm, regardless of its nature, must, on one hand, not prevent the assertion of technological innovation, and on the other, avoid as much as possible or minimize in extremis the risks they present for the rights fundamentals and (democratic) foundations of society (Manolescu, 2014). In a system of legal regulation like the European one, such reasons are often provided with the title of exposition of reasons of the legislative approach initiated or in the process of being initiated. Thus, in the adoption of Regulation IA (2024) the European legislator invoked "the risk of seeing that the future norms in the matter of AI to be developed abroad, often by non-democratic actors" (Deteseanu, 2024).

In such a perspective it is up to the politics as by democratic assumption, on the way of regulation to establish the line of balance between the two fundamental aspects, which can sometimes prove contradictory, but in some respects can be overcome. Indeed, as in any field and even more so in situations of rupture such as the one generated by the AI revolution, the compatibility between the imperative of economic growth and the essential demands of the rights of individuals and social becoming in general presuppose negotiated and structured remedies (Marcellin, 2023). This is how it happens that, if at first the regulatory reflection and action were only aimed at a framework of normative suppleness, expressed in soft law instruments, promoting above all an ethics and involving at least the legal, gradually the general orientation moved towards more normativity of legal essence, primarily at the European level, both that of the EU and the Council of Europe.

Indeed, according to its rationale of being (primarily normative) the EU opted for innovation regulation; in turn, like any technological revolution, AI demands a certain regulation. But Europe cannot claim an extended one, through the enticing effect of model and exciting cooperation, when it is excluded from the race of artificial intelligence and

therefore from productivity gains that drive increased growth, profitability, capital and labor remuneration. The two sides of the equation seem inseparable and deserve to be treated as well promoted as such.

Is considered so that only soft law regulation would allow a harmonious regulation of this technology emergent. With regard to the proposed contents, there is a slight mix of genres, in the sense that an important number of commitments in reality resume a series of fundamental rights. Proper to an ethical norm is to be a rule of behavior, free of state sanction, on which the actors impose on themselves, or respect for fundamental rights is not optional, she is not it must in no way depend on the will of those involved. And this without taking into account the fact that those actors are the most powerful of the existing ones, the only ones who impose a norm of behavior. Indisputably, soft law presents certain advantages: it is transnational, its rule is agile, detached from any normative procedure and respected, being accepted by the parties interested. But the privatization of the norm with its corollary disengagement of states is not desirable. While the appeal to fundamental rights can be appreciated as a consolidation through confirmation, parasitism normative entails the risk of degradation of fundamental rights, giving the impression that they would not enjoy imperativeness.

So, in a more general plan, the ethical norm must to be articulated with the legal rule and not to be substituted for it; in other words, it's not about rivalry, but of complementarity. In essence, if fundamental rights undeniably appear as a shared objective, the criticisms regarding the perception of the related requirements and their guarantee, they mainly go towards the approaches of legal regulation.

2. Artificial Intelligence and its Impact on Justice

Artificial intelligence has demonstrated enormous potential in the justice sector. AI algorithms can analyse large amounts of legal data, including legislative texts, judicial precedents and court decisions, in order to provide support for judicial decisions. One of the main AI tools used in predictive justice is machine learning, which allows systems to learn from data and improve their performance over time. For example, a predictive justice system can be trained on a large set of past judicial decisions, allowing it to make predictions about future outcomes.

Two important topics that attract increasing interest in the legal field is jurimetrics and predictive justice. Jurimetrics is the application of computer science to law, while predictive justice uses complex algorithms to make judicial decisions or predict the outcomes of decisions. These digital innovations offer advantages such as greater legal certainty and uniformity in legal interpretations, but they also raise concerns about the risks and transparency of decisions based on algorithms. Currently, predictive justice is more widespread in the United States, while in Europe and Italy it is still in the experimental phase. It can be defined as a method that allows the possibility of entrusting judicial decisions to an algorithm, instead of a human judge.

For some authors, computer science applied to law would have the advantage of ensuring a certain, clear, knowable, univocal and uniformly interpreted and applied law by the various judicial offices. It is important to evaluate the benefits and disadvantages that this

digital innovation will bring to the judicial system. Some authors already highlight the risks. However, at the state of the art it is not easy to resolve these doubts.

Intended as the possibility that in a trial the judicial decision is entrusted to an algorithm to guarantee a certain, clear, knowable, univocal law, as well as interpreted and applied in a homogeneous way in the different judicial offices. Well, predictive justice represents an emerging field that combines jurimetrics and artificial intelligence to improve the efficiency and accuracy of judicial decisions.

Jurimetrics closely related to predictive justice is a discipline that deals with the measurement and analysis of legal phenomena through quantitative methods. In the field of predictive justice, jurimetrics is used to examine past judicial decisions and identify patterns or trends that can provide indications on the probability of outcome in similar future cases. Jurimetric analysis involves several factors, including the type of case, the characteristics of the parties involved, previous decisions and other relevant elements. It uses statistical models and machine learning algorithms. Jurimetrics seeks to predict the outcomes of legal cases based on this information.

The adoption of predictive justice, supported by jurimetrics and artificial intelligence, has several potential benefits. First, it can help reduce the discretion of judicial decisions, ensuring greater consistency in the application of the law. Second, it can help identify high-risk or high-priority cases, allowing courts to allocate resources more efficiently. However, the use of predictive justice also raises some challenges. For example, the accuracy of predictive models depends on the quality of the data used for training. If the data contains bias or discrimination, these could be amplified by machine learning algorithms, leading to unfair or wrong decisions. It is therefore essential to ensure the quality, impartiality and transparency of the data used in predictive justice systems.

Predictive justice, combining jurimetrics and artificial intelligence, promises to revolutionize the judicial system, improving the efficiency and fairness of decisions. However, it is necessary to address the challenges related to data quality, impartiality of algorithms and privacy protection to ensure that the use of these technologies is fair and respectful of fundamental rights. The balance between automation and the role of humanity in justice remains a central theme in the debate on the evolution of predictive justice and requires continuous reflection and regulation.

Conclusions

The use of AI in the justice sector raises important ethical and legal issues, such as transparency, accountability, data privacy and fairness in the use of decision-making algorithms. Therefore, a thoughtful approach and ongoing dialogue are needed to ensure that AI is used ethically in the justice context.

In the criminal sector, it can be useful for the identification of fraud and suspicious behavior, helping in the fight against financial crime and organized crime, provided that it does not conflict with art. 6 ECHR and other rules that prohibit automated decisions. However, the implementation of Cyber justice also raises concerns about the transparency of decisions taken by algorithms, the responsibility of robots' actions, the protection of personal data and the risk of algorithmic discrimination.

It is therefore essential to ensure that the use of robots and artificial intelligence in the justice system is fair, transparent and in compliance with fundamental legal principles. At the moment, robotic justice is still in an early stage of development and testing, and its impacts and limitations need to be carefully assessed. It is necessary to balance the adoption of new technologies with the protection of fundamental rights and the maintenance of trust in the justice system.

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