

SOME LEGAL PERSPECTIVES ON ARTIFICIAL INTELLIGENCE AND HUMAN RIGHTS

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Abstract

The emergence of the notion of "artificial intelligence" (AI) and its evolution so far have led to a massive increase in the interest given to the challenges that artificial intelligence touches upon in the current digital age. In light of these challenges, this article seeks, in broad terms, to emphasize the interconnection of AI and human rights, generating different perspectives, but which, overall, aim to ensure the appropriate legal framework for the development and implementation of AI with respect for human rights, democracy and the rule of law. The conclusions drawn from this analysis refer to the imposition of legislative regulations at state and organizational level that provide the necessary framework for a democratic society and a global predictability, in which ethics, transparency of the legal framework and intelligent use of AI, but also universality of human rights need to contribute more in order that the end goals are achieved.

Key Words: *Artificial intelligence, European Union, democracy, rule of law, human rights*

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1. Introduction

Today, the growing presence of artificial intelligence (AI) poses challenges and bring about changes that are related to human rights. It is obvious that AI will have a profound impact on society, but beyond this impact, AI emphasizes that the future belongs to information technology. In any case, the legal perspectives, which are the subject of this article, require us to approach and view/analyse AI with objectivity, responsibility and positiveness, trying to see the good side of AI, and less the part that can be subjected to quite severe criticism.

As the rule of law, democracy and human rights must be fundamental guide marks in the work of each state, the use of AI must be handled in an appropriate way to ensure that the foundations of these guide marks are permanently ensured, and ethics, transparency of the legal framework and intelligent use of AI must be components of effective governance ready for openness when it comes to its citizens.

It is therefore important to ask ourselves how we will use AI in order to benefit from its positive impact, as it is up to society to implement it in the best way

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possible. To this end, advocating for the observance and promotion of human rights, society must encourage and ensure that all actors involved play an active role, assuming responsibilities and respecting ethical principles.

2. Human rights aspects

In order to present a legal approach to AI from a human rights perspective, we will try to make a brief description of the concept of "human rights" below.

Starting from the idea that human rights are based on natural law, that *"jus naturale est quod natura omnia animalia docuit; nam just istud non humani generis proprium, sed omnium animalium... commune est"*, more precisely, it is the law of the people, the law of nations (Maine, A. L., 2008, cited in Gordon Campbell, 2008, p. 166) and that through a social contract (Zlătescu V.D., Moroianu Zlătescu I., 2003, p. 23), the state was formed because "from human nature itself ensues the need to organize a state, which emphasizes the idea, so important for political philosophy, according to which man cannot exist without a state" (Zlătescu V.D., Moroianu Zlătescu I., 2003, p. 28), we could add to these ideas by mentioning that the state cannot exist either in the absence of human being.

The substantiation of human rights based on natural law is also strengthened by the role assigned to the state, namely that "the state is the one that sanctions and guarantees rights and freedoms. But, conceived as deriving from human nature, it follows that the state always remains the same", regardless of the change of leadership, which "means that rights and freedoms become perennial, they must withstand all vicissitudes, this being a fundamental principle for human rights" (Zlătescu V.D., Moroianu Zlătescu I., 2003, p. 28). However, we agree that "freedoms depend on positive law" and that it is "dangerous for human rights to be based only on state authority, as this could be a gateway to arbitrariness and totalitarianism", hence an extensive approach of human rights law is in order" (Renucci, J.F., 2009, p. 3).

So far "the history of human being emancipation shows that it was a long lasting, dramatic process that involved all peoples and found its driving force in several fundamental principles of rights and freedoms which make up humanity's moral patrimony. They were principles ripening in the minds of a few reform-promoting scholars, principles that in time were arranged in coherent systems which gave birth to the modern-day law. Human beings' privileges were established in the framework of their duties as a result of a slow, clumsy yet progressive evolution towards what is meant as a triumph of human rights in all fields." (Moroianu Zlătescu, I., 2015, p. 7)

Apart from this brief historical inroad into human rights, the nation-state, international and regional¹ organizations and their human rights related activities are now highly visible, supporting the idea that the history of human rights is

¹ United Nations, Council of Europe, Organization for Security and Co-operation in Europe, Organization for Economic Co-operation and Development etc.

undoubtedly linked to the history of human behaviour, and human rights cannot be compared to any other right.

The universal Declaration of Human Rights² considers that it is essential that human rights are being protected by the rule of law, and that Member States are committed to promoting, in cooperation with the United Nations, universal and effective respect for human rights and fundamental freedoms, as well as their enactment, as a common ideal to which all peoples and all nations must strive, so that respect for these rights and freedoms is ensured through progressive, national and international measures, and their recognition and enforcement becomes universal and effective. The declaration is completed by the International Covenants on Civil and Political Rights and Economic and Social Rights³, respectively, including their optional protocols, together forming the International Charter of Human Rights.

The time that has elapsed since the proclamation, more than 70 years ago, “of the Universal Declaration of Human Rights by the United Nations General Assembly, on December the 10th, 1948 has not diminished the force of the message of this document of exceptional significance, designed to establish a common ideal for all nations, a foundation on which the edifice of human rights has risen and continues to rise” (Moroianu Zlătescu I., 2008, p. 65). On the contrary, “on the basis of the Universal Declaration of Human Rights a whole system of treaties has been built, worldwide and regionally”, which is why we always refer to the Universal Declaration of Human Rights being aware that the promotion and protection of fundamental rights and freedoms is an evolving process that must keep pace with society, with the new challenges of history, science and technology”. (Moroianu Zlătescu I., 2008, p. 79)

A rich activity in the field of human rights is exercised by the Council of Europe, an international organization with interstate character, with an essential political and cultural vocation (Moroianu Zlătescu, I., Marinică, C.E., 2017, pp. 40-48), the ideas that underlie its foundation are represented in the adoption of the Convention for the Protection of Human Rights and Fundamental Freedoms in 1950 (Marinica, C.E., 2018, p. 3), which is characterized by a permanent evolutionary capacity. This evolutionary character allows progressive commitments, more and more binding for the states. But, beyond this progress, the most important idea is that it must be in permanent symbiosis with the evolution of society, of mentalities, in order to provide an adapted and effective protection of human rights. (Renucci J.F., 2009, p. 33)

² It was adopted and proclaimed by the United Nations General Assembly on 10 December 1948 in Paris by means of Resolution 217 A (III).

³ International Covenant on Civil and Political Rights adopted by the United Nations General Assembly by Resolution (d) 2200A (XXI) of 16 December 1966, which entered into force on 23 March 1976, and the International Covenant on Economic and Social Rights and Cultural Affairs, adopted by the General Assembly of the United Nations by Resolution 2200A (XXI) of 16 December 1966, which entered into force on 3 January 1976. These two Covenants are joined by the Optional Protocols (e.g. the Optional Protocol to the International Covenant on Civil and Political Rights intended to abolish the death penalty).

As for the European Union, it "is based on the values of respect for human dignity, freedom, democracy, equality, the rule of law, as well as respect for human rights, including the rights of persons belonging to minorities". Consequently, it is easy to understand that "the Union's action on the international stage is based on the principles of democracy, the rule of law, universality and indivisibility of human rights and fundamental freedoms" (Marinică, C.E., 2018, p.167). Currently, its activity in the field of human rights is based on the Charter of Fundamental Rights of the European Union, on the regulations of the two treaties that ensure its functioning⁴, on an impressive volume of legislative acts adopted in compliance with them, including the functioning of the entire institutional system when it comes to respecting and promoting human rights.

In the following sections we will describe by means of a concise approach, from a legal perspective, the measures taken at the level of the United Nations, the Council of Europe and the European Union (with emphasis on the latter), in terms of the interaction of human rights with AI.

3. Artificial intelligence and human rights

To begin with, we will present a definition proposal given to AI, namely: "Artificial intelligence (AI) systems are software (and possibly hardware) systems designed by humans that, if given a complex objective, act in the physical or digital dimension, perceiving the environment through data retrieval, by interpreting structured data or unstructured data it collected, by reasoning concerning acquired knowledge or by processing the information obtained from these data and by deciding on the best action to be taken to achieve the given objective. AI systems can either use symbolic rules, or learn a numerical model, and they can also adapt their behaviour by analysing how the environment is affected by their past actions"⁵. This definition is provided by the High-Level Group of Independent Experts set up by the European Commission in June 2018⁶, but it is only one of the many definitions and meanings given to the notion/concept of artificial intelligence.

The European Union has decided also upon seven essential aspects for an artificial intelligence that would generate responsibility for the whole society. Thus, "an artificial intelligence that we can trust should comply with all applicable rules, as well as a number of requirements: human involvement and supervision (so as not to reduce the limit or compromise human autonomy), robustness and security (algorithms should be secure, reliable and sufficiently robust), respect for privacy and data governance (citizens should have full control over their own data, which should not be used for harmful or discriminatory purposes), transparency

⁴ Treaty on European Union and Treaty on the Functioning of the European Union.

⁵ Independent High-Level Expert Group on Artificial Intelligence set up by the European Commission in June 2018, *Ethical Guidelines for Reliable Artificial Intelligence* (AI), p. 46, available on https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/JURI/DV/2019/11-06/Ethics-guidelines-AI_RO.pdf, accessed on 09.04.2020.

⁶ Created by the European Artificial Intelligence Strategy.

(traceability of AI systems should be ensured), diversity, non-discrimination and equity (AI systems should take into account the full range of skills, competences and requirements of the human factor and ensure accessibility), societal and environmental well-being (their use leading to accelerating positive social change and to fostering sustainable development and ecological accountability) and responsibility⁷.

From the point of view of the Council of Europe, AI is seen as an opportunity as well as a risk, taking into consideration that human rights should be strengthened by AI, not undermined⁸ The Council of Europe has adopted the *European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and their environment*⁹, *Guidelines on Artificial Intelligence and Data Protection adopted by the Consultative Committee of the Convention for the Protection of individuals with regard to automatic processing of personal data*¹⁰, the *Declaration of the Committee of Ministers on the capabilities of algorithmic processes*¹¹ and the *Study on the human rights dimensions of automated data processing techniques and possible regulatory implications*.

European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and their environment (CEPEJ) is the first European text adopted by the Council of Europe setting out ethical principles for the use of AI in judicial systems. The ethical principles referred to in the Charter aim to support policy makers, legal professionals, in ensuring that the use of AI in judicial systems and in their environment is in line with international regulations in areas such as human rights and confidentiality, and data protection.

Thus, we are talking about five key principles, starting from the principle of respect for fundamental rights, continuing with the principle of non-discrimination (which means avoiding the developing or increase of any form of discrimination), the principle of quality and security (data output and decisions must be made through certified sources and data), the principles of impartiality, transparency, but also fairness and, last but not least, the principle of ensuring control of the user (which presupposes that users receive the necessary information, acting according to their own choices/beliefs). (Moroianu Zlătescu I., Zlătescu P.E., 2019, pp. 237-242).

⁷ See https://ec.europa.eu/commission/presscorner/detail/ro/IP_19_1893, accessed on 06.04.2020.

⁸ Council of Europe, *Unboxing Artificial Intelligence: 10 steps to protect Human Rights*, p.8, available at <https://rm.coe.int/unboxing-artificial-intelligence-10-steps-to-protect-human-rights-reco/1680946e64>, accessed on 09.04.2020.

⁹ Adopted at the 31st plenary meeting of the CEPEJ (Strasbourg, 3-4 December 2018), available on <https://rm.coe.int/ethical-charter-en-for-publication-4-december-2018/16808f699c>, accessed on 09.04.2020.

¹⁰ Adopted by the Consultative Committee of the Convention for the Protection of individuals with regard to automatic processing of personal data. – Strasbourg, January, 2019.

¹¹ Adopted by the Committee of Ministers on 13 February 2019 at the 1337th meeting of the Ministers' Deputies available on https://search.coe.int/cm/pages/result_details.aspx?objectid=09000168092dd4b, accessed on 09.04.2020 .

With regard to human rights, because this principle is based on the drafting of the Charter, we agree with the view stating that "since the principles of the Council of Europe are pluralistic democracy, respect for human rights and the rule of law, it is natural that the CEPEJ Ethics Charter states as its first principle: "The principle of respect for fundamental rights: ensuring a conception and application of artificial intelligence tools and services that are compatible with fundamental rights". This is especially important if one considers that for Europe's democratic future the use of new technologies is needed both for the purpose of strengthening, consolidating democratic commitments, and also for understanding the impact of technological developments on certain aspects of the Council's way of acting". (Moroianu Zlătescu I., Zlătescu P.E., 2019, p. 240).

Guidelines on Artificial Intelligence and Data Protection supports decision makers, AI developers, manufacturers and service providers to ensure that AI applications do not undermine the right to data protection, human dignity, human rights and fundamental freedoms of every individual. Thus, these guidelines must not be interpreted as opposing or limiting the provisions of the European Convention on Human Rights and the Modernized Convention 108¹².

The Council of Europe is of the opinion that states must effectively implement the UN Guidelines for Business and Human Rights and Recommendation CM / Rec (2016) 3 of the Committee of Ministers, in a non-discriminatory manner, paying special attention to high-risk groups (such as women, children, the elderly, the economically disadvantaged, members of the LGBTI community, people with disabilities and 'racial', ethnic or religious groups) as their rights are disproportionately affected by AI¹³.

At the same time, states must create a diverse information environment to ensure freedom of expression, free access to information and freedom of opinion, especially since the exercising of these freedoms is different in the on-line environment compared to the off-line environment. The right to work must also be taken into account, in the context in which AI intensifies automation and, consequently, will have a negative impact on the labour market, by making some jobs unavailable and others disappearing altogether; we hope that, instead, automation will lead to the creation of new trades and new jobs.

States must provide legislation to establish a procedure for public authorities to conduct human rights impact assessments of the AI systems they have acquired or implemented. At the same time, through open governance, open procurement/acquisition standards need to be regulated, which should be applied through a transparent process where access to information is ensured.

¹² Adopted by the Council of Europe in 1981, the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, known as the "Convention 108", is one of the first legal instruments adopted at international level in the field of personal data protection.

¹³ Council of Europe, *Unboxing Artificial Intelligence: 10 steps to protect Human Rights*, p.13, available at <https://rm.coe.int/unboxing-artificial-intelligence-10-steps-to-protect-human-rights-reco/1680946e64>, accessed on 09.04.2020.

We support the idea that AI systems "must always remain under human control, even in situations where machine learning or similar techniques allow the AI system to make decisions independently of specific human intervention. Member States need to establish clear lines of responsibility for human rights violations that may occur at different stages of an AI life cycle. Liability and liability incurring from human rights violations that occur in the development, deployment or use of AI systems must always be borne by a natural or legal person, even in cases where the human rights violation measure has not been directly ordered by a commander, or responsible human operator"¹⁴.

The interaction between AI and human rights, viewed through the perspective of the UN, emphasizes the fact that the fundamental elements of human rights must be protected in order to ensure the exercising of human rights in a lawful and equal manner, along with confidentiality, ethics and transparency. The digital print that people leave in everyday life can offer benefits both individually and collectively in the community, but also entails a lack of protection of data considered confidential, which can be interpreted through algorithms, unveiling information about oneself that can be used not only for the benefit of the citizen, but which in turn can increase discrimination, inequality, creating even prejudice.

The UN has issued a series of general guidelines on data confidentiality, data protection and data ethics on the use of Big Data, offering various perspectives on the challenges and risks that AI entails, including the ethical, social and human rights effects, to ensure a secure and reliable AI through collaboration between global and national actors, public and private parties, including academia and civil society.

Following the same guideline, at the UN level, *The Instructions for the use of social media networks by judges* were launched¹⁵, thereby aligning the Bangalore Principles on Judicial Conduct, which underlie the codes of conduct of magistrates in UN Member States. At the same time, reference is made to the World Judicial Integrity Network, which facilitates access to resources and tools related to strengthening judicial integrity but also for preventing corruption in the justice system.

As for the European Union and its ability to protect human rights, we note the constant attention paid to landmarks such as democracy, the rule of law and human rights, but we cannot help but wonder, in the context of the legal approach to artificial intelligence, how can they be protected and by whom?

According to Article 2 of the Treaty on European Union, the EU revolves around the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society

¹⁴ *Ibidem*, p. 13.

¹⁵ *Non-binding Guidelines on the Use of Social Media by Judges*, available at https://www.unodc.org/documents/ji/social_media/Draft_Non-binding_Guidelines_on_the_Use_of_Social_Media_by_Judges_-_for_circulation.pdf, accessed on 09.04.2020.

characterized by pluralism, non-discrimination, tolerance, justice, solidarity and equality between men and women. In addition, these regulations are supplemented by the provisions of the Charter of Fundamental Rights of the European Union, which contain all the rights that citizens have within the EU (personal, civic, political, economic and social rights).

It is imperative that democracy must be characterized by legitimacy, transparency and authority, and that special attention must be paid to the relationship between the state and the citizens; however, this is where the balanced, effective, use of artificial intelligence while taking into account human rights comes in, as otherwise fundamental questions may arise as to how democracy and human rights are understood and applied (an example of this being facial recognition as surveillance technology, which could lead to an increase in the power of the state and other actors in monitoring the lives of citizens).

At this point, it is necessary to analyse the ethical and legal issues that AI raises, especially in the context where it is considered that “the EU has the potential to become a world leader in the field of secure artificial intelligence. By developing a sound regulatory framework based on human rights and fundamental values, the EU can develop an AI system that benefits citizens, businesses and public administrations”¹⁶.

We understand/acknowledge that the EU has a solid regulatory framework¹⁷, thus the “General Data Protection Regulation ensures a high standard of personal data protection” and the “Regulation on the free movement of non-personal data in the European Union removes barriers to the free movement of non-personal data and ensures the processing of all categories of data, all over Europe”¹⁸.

However, an appropriate ethical and legal framework needs to be ensured, as the AI raises a number of ethical and legal issues regarding liability and how the decision-making process can be affected in its objectivity. For this reason, the European Commission has presented a series of ethical guidelines on the development of AI, elaborated on the basis of the EU Charter of Fundamental Rights, respecting principles such as data protection and transparency.

The EU wants a reliable AI, which in its view should have three components, met cumulatively throughout the life cycle of the system: (1) the legal component; (2) the ethical component and (3) the component regarding its soundness. The European Union “identifies a number of ethical principles and their related values that must be respected in the development, implementation and use of AI systems”. We mention in this regard: (a) the development, implementation and use of AI systems in such a way as to respect the following ethical principles: respect for human autonomy, damage prevention, fairness and accountability; (b) paying

¹⁶ See https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/excellence-trust-artificial-intelligence_ro#consolidarea-ncrederii, accessed on 06.04.2020.

¹⁷ The specification belongs to the European Commission.

¹⁸ Commission Communication of 8 April 2019 (COM (2019) 0168), *How to build citizens' trust in human-centred artificial intelligence*, p. 2.

particular attention to situations involving several vulnerable groups, such as children, people with disabilities and other groups that have been historically disadvantaged or at risk of exclusion, and to situations of power asymmetries; or of information, such as between employers and workers or between businesses and consumers; (c) recognizing and taking into account the fact that, although they bring substantial benefits to individuals and society, AI systems may also present certain risks and have a negative impact, including an impact that may be difficult to anticipate, identify or measure (for example, on democracy, the rule of law and distributive justice or even on the human mind)¹⁹.

We should also mention the work carried out by the European Commission in order to increase confidence in the use of artificial intelligence, which advances that “the ethical dimension of AI is not a luxury technical feature or a simple accessory function. Only if we feel that we can trust AI-based technology can we fully benefit, as a society, from all the benefits it brings”. The European Commission considers ethical artificial intelligence to be a proposal that benefits all parties and can become a competitive advantage for Europe if it is to establish itself as a leader in the development of human-centred artificial intelligence, in which people feel that they can trust²⁰. Initially, in April 2018, the European Commission published a European Strategy, which placed man at the centre of AI development. Later, in December 2018, the European Commission presented the “*Coordinated Plan for Artificial Intelligence*” and the “*Coordinated Plan for the Development and Use of Artificial Intelligence Developed in Europe -2018*”, elaborated with Member States, particularly Norway and Switzerland, during the work session of the Group of Member States for the digitization of European industry and artificial intelligence, this being the beginning of the work organized in this field. The objective set by these plans was to stimulate cross-border cooperation and increase public and private investment, to a minimum of € 20 billion annually, for the next ten years.

It can be seen that the AI approach is increasingly precise, if we refer to its fragile beginnings in the EU in 2017, and it started to be clarified in the following years (2018-2019), including the current year (2020), being regulated in the form of legislative acts.

Conclusions

Following this concise legal approach observing the use of AI while taking into account fundamental human rights and freedoms, we note that trust is a key

¹⁹ Independent High-Level Expert Group on Artificial Intelligence established by the European Commission in June 2018, *Ethical Guidelines for Reliable Artificial Intelligence (AI)*, p.2, available on https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/JURI/DV/2019/11-06/Ethics-guidelines-AI_RO.pdf, accessed on 09.04.2020.

²⁰ European Commission, *Artificial Intelligence: Commission moves towards adopting ethical guidelines*, available on https://ec.europa.eu/commission/presscorner/detail/ro/IP_19_1893, accessed on 09.04.2020.

criterion in addressing AI, as AI is a creative tool for ensuring human well-being and not an end in itself. We cannot fail to notice the timid steps being taken in the field of regulating the legal framework at the international level to ensure the transparency of the legal framework, its ethical approach, as well as an intelligent use of AI.

However, we believe that, despite the proposals regarding the rules applicable to AI, the implementation of the latter is much faster than the legal regulations for the protection of human rights. We believe that there is a need for a legal qualification of AI, moreover, for a clear regulation of it, which the academic environment is looking forward to.

Finally, we believe that these brief presentations only highlight part of the attention paid to AI, with a view to human rights, convinced that things will not stop here and in this way. Obviously, the perfectibility of such regulations, mandatory or optional, is a desideratum for people, for states, but also for all actors involved, but we cannot ignore the small but constant steps taken in this area globally. We believe that both the European Union, the Council of Europe, the United Nations, the Organization for Economic Cooperation and Development and all other international organizations interested in deepening these issues must regulate AI, digital technologies and human rights accordingly.

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