

THE IMPACT OF AI DEVELOPMENT ON LAW AND JUSTICE. RESPONSABLE USE BASED ON HUMAN RIGHTS PROTECTION

*Irina MOROIANU ZLĂTESCU**

Abstract

The application of artificial intelligence (AI) in law is becoming increasingly effective in both the legal and judicial spheres. In this period of the Covid-19 pandemic, things went differently for theorists of law than for practitioners. If researchers and university professors had become accustomed to online activity, because some of the international or national conferences but also some courses have been held for many years and online, and legal scientific publications exist in increasing numbers online, was more difficult for the courts. They have become physically inaccessible to the process. However, judicial proceedings have largely advanced through the use of artificial intelligence, which is thus a chance to modernize the legal professions, and in some states, where certain disputes are already settled by an AI program, those courts have functioned normally.

Key Words: *artificial intelligence, law, justice, legal professions*

JEL Classification: [K10]

1. Introduction

The last few months, in which the entire planet has been confronted by Covid-19, an invisible enemy but which has produced more casualties in some states than World War II, have been a real challenge. Quarantine, with the constraints it imposes, is also an opportunity to recognize that due to the level reached today by information and communication technology, state authorities, citizens have managed to react quite promptly. At European and international level, however, states have also faced the obligation to correctly apply the standards that must be observed in a democratic society. The authorities are obliged to respect the proportionality between the measures adopted, which unfortunately limit the exercise of some of the fundamental human rights, and the objective pursued. Moreover, the European Commission, in paragraph 15 of its Recommendation of 8 April 2020 on the use of mobile applications and mobile data in the fight against the coronavirus pandemic, pointed out that their use "is likely to affect the exercise of certain fundamental rights, including which the right to respect for private and family life"¹.

* Prof. PhD., Titular Member of the IACL-AIDC and of the ASJR.

¹ Commission Recommendation(EU) 2020/518 of 8 april 2020.

2. Overview

In these difficult times that we go through, however, each individual has with him the computer that performs extremely complex activities autonomously. Many of the professional legal, economic, financial activities, etc. are carried out during this period, through telework because, in various states, based on regulations imposed by the pandemic, one can leave the home only under special conditions.

By making an arc over time, we come to the way it was imagined at the end of the last millennium, in terms of the evolution of information and communication technologies, our current era.

Thus, at European level, the revolution of these technologies led to multiple scenarios regarding the cyber future of mankind, with unsuspected effects, in which there would be high-speed means of communication, which would fundamentally change the relations between individuals. It was claimed that the entire planet would be covered by a huge network, a real roof, made up of information highways. If in the 80's of the last century a computer system assisted people with a high level of expertise, the world did not think that in the not too distant future unsuspected changes would take place politically, legally, economically, socially, ethically. To due to technological developments, that life will change, it will change multidimensional all the time. All this was going to happen with great speed. And yet the basic question, which was asked, as a leitmotif, was related to the content of the information transmitted, to its cultural and ethical aspect, to the way in which the infrastructures were to be financed so that the information was correct. There have been alarm bells on the freedom to access information, on the need to create jobs for IT specialists and last but not least on the future of man face to face with these technologies. Attention was drawn to the responsibility that would weigh on the shoulders of politicians, who obviously had to take on new tasks, namely to civilize cyberspace and link the internet to human values, fundamental human rights and freedoms because it was clear that profound changes were to take place in society.

It was obvious that we were moving towards a new democratic civilization and it was becoming extremely important that new technologies be used in the service of democracy, the rule of law, human rights, in order to avoid slippage, a chasm between citizens and their elected representatives, which could endanger democracy. Especially since it went from a pyramidal structure of society in which the citizen was a simple user of information, to a network structure, in which the emphasis is on the individual, the human person. He had to trust in the very principles of democracy.

3. The new civilization induced by artificial intelligence

To think in terms of democracy means to think in terms of values. The new civilization induced by artificial intelligence systems which, according to the definition proposal given by the Independent High Level Expert Group set up by the European Commission in June 2018², represent “software systems (and possibly hardware) designed by humans, which, if they are given a complex objective, they act in the physical or digital dimension, perceiving the environment through data retrieval, through data interpretation structured or unstructured data collected, by reasoning about knowledge or by processing the information obtained from these data and by deciding on the best action (s) to be taken to achieve the given objective. Artificial intelligence systems can either use symbolic rules, or learn a numerical model, and they can also adapt their behavior by analyzing how the environment is affected by their previous actions”³ cannot deviate from this requirement. All the scientific research in the field, all the sociological studies carried out confirm this. People are attached to the principles and values of democracy. Even though it is often imperfect, democracy still ensures a peaceful, amicable settlement of conflicts and differences of opinion and even interests. By reaching an agreement, through dialogue, following the path of compromise and last but not least by voting, democracy ensures the rule of law and the inner peace that each of us wants. Therefore, it is necessary to act in a way that achieves a balance between the indispensable development of technology, which is ultimately related to human genius and the obligation to use it in the service of humanity. An important role will, of course, belong to theorists, scientific researchers and university teachers in the field of philosophy, sociology, law, economics, etc. In this regard, we mention that at the end of 2018 France and Canada launched: G2IA, an International Group of Experts in Artificial Intelligence, modeled on the Intergovernmental Panel on Climate Change (IPCC), focused on respect for human rights, inclusion, diversity, innovation, economic growth, with the attribution and facilitation of collaboration, at international level, between the scientific community, industry, civil society, think tank at a very high level, independent. This will lead to an artificial intelligence "that develops while protecting the interests of all and fundamental values."

Here we are today in a world in which, although the political field is wider and wider, politicians have less and less means to control it, due to the

² Created by the European Strategy on Artificial Intelligence. We specify that at the level Council of Europe, the Committee of Ministers set up an Ad Hoc Committee on Artificial Intelligence on 11 September 2019.

³ 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 on https://www.europarl.europa.eu/metdocs/2014_2019/pmlrp/COMMITTEES/JURI/DV/2019/11-06/Ethics-guidelines-AI_RO.pdf, accessed on 15.04.2020.

globalization of society that leads to a multiplication of interacting powers although it is in competition. They are amplified by artificial intelligence whose development is unlimited. It is enough to mention political power, economic power, financial power, media power, etc. The realities of new technologies must be taken into account for the normal functioning of society. We are in the situation where the space of responsibility and freedom must be specified and delimited between the right to do everything and the right to do nothing. After all, in the current stage of technological development, everyone and not the equipment, no matter how sophisticated, is the one who makes politics. But the evolution of the computerized society always requires new legal regulations. The legislative framework must be constantly adapted to technology development, so as to regenerate democracy. Data users should not be forced to disclose their data to others, nor should false data and information be disseminated.

Given that artificial intelligence promotes better citizen participation in political decision-making, conditions of transparency and correct information are essential. But participation also means meeting financial and economic conditions and respecting democratic principles. In this context, a key role must be played by legal doctrine and judicial practice that must use new tools. Obviously, artificial intelligence is an important support for this purpose, and its use makes "the language, logic and methods of law" to be "transformed by their computerization, bringing computerized law closer to the Kelsenian ideal while giving the means to instrumentalize it", (Billion, Guillermin, 2019).

4. The impact of the development of artificial intelligence on law

If we refer to the legal doctrine, we must specify that it continues to pay special attention to codification. Some scholars have reservations about the vocation that codification would have to develop in the coming years (Oppetit, 1998), and others appreciate that it has a great future in the postmodern era, through universalism acquiring the vocation to contribute to building a new world legal order (Zenati-Casting, 2011).

As highlighted in the specialized doctrine, when we refer to codification, we must keep in mind that it is a common fact but not necessarily universal. It is situated in a social environment and responds to legal requirements but is still linked to political concerns. It is intended for a social group, there are technicians who develop it and a power that demands it and often sanctions it. There are three aspects to consider when coding: the social, the technical and the political aspect (Gaudemet, 1986). From a social point of view, codification is, not infrequently, part of a crisis in society which, through codified law, seeks to reduce antagonisms or set new rules in order to respond to newly created situations ;from a technical point of view, coding meets

technical requirements, which are often those that lead to codification ; from a political point of view coding reflects the political structure of a state, hence the complexity of the legal phenomenon to which it responds Gaudemet, 1986). Coding rules can guide the computer scientist in his legal programming activity (Billion, Guillermin, 2019). Artificial intelligence becomes an important tool for coding.

5. The impact of the development of artificial intelligence on justice

European regulations require that the justice system in the member states of the Council of Europe be adapted to the requirements of the rule of law, which implies integrity, efficiency, transparency but also means access to justice, reducing the length of trials, the existence of uniform case law and last but not least, a predictable justice. All this works if there is a concern to improve the regulatory and institutional framework in accordance with international standards based on integrated strategic management, the use of the most appropriate means of administering justice, the obligation of justice to adapt to the constant evolution of society in terms of quality and depth the act of justice. By carrying it out and establishing a new type of relationship between justice and litigants, the judiciary is increasingly fulfilling its public service role. In this context, the incorporation of artificial intelligence in the administration of justice is of major importance. The Council of Europe also has statistical data on "European judicial systems, the efficiency and quality of justice, the use of information and communication technologies in European judicial systems"⁴. It has succeeded through the European Commission for the Efficiency of Justice (CEPEJ) to adopt in 2018 the first European text establishing ethical principles regarding the use of artificial intelligence in judicial systems. We refer to the CEPEJ European Charter of Ethics on the use of artificial intelligence in judicial systems and their environment, the first European regional instrument that focuses on a framework of ethical principles that can help legislators, decision makers, perpetrators the act of justice to cope with the rapid development and application of artificial intelligence in national judicial proceedings. Under these conditions, the CEPEJ can contribute to improve the work of justice, to make it more efficient, to increase the quality of justice, while respecting individual fundamental rights, guaranteed at regional level, first of all by the European Convention on Human Rights and Fundamental Freedoms, by the Council of Europe Convention on Protection of Personal Data⁵ and the Protocol Amending the Convention on the Protection of Personal Data⁶. A further

⁴ CEPEJ Studies 0.24 2016 Edition.

⁵ ETS no. 108.

⁶ CETS no. 223.

problem is that if the states of the European Union have signed and ratified the above Conventions, the same cannot be said in relation to the Protocol which has not yet been ratified by any Member State of the Union.

6. Principles to be followed in the use of AI according to the European Charter of Ethics

According to the CEPEJ European Charter of Ethics, the principles that must be respected in the use of artificial intelligence are the principles that underlie this democratic European society of this century, facing certain types of problems, challenges and opportunities, a society that must face certain challenges. internal difficulties, specific to the functioning of democracy in some countries or to a certain international context, challenges pointed out by the Council even in some of its activities or more specifically in its institutions, and taking into account the opportunities the Council has in particular in exploiting new technologies, perceived as a support of democracy even on our continent (Moroianu-Zlătescu, Zlătescu, 2019).

1. Since the principles of the Council of Europe are pluralist democracy, respect for human rights and the rule of law, it is natural that the first principle set out in the CEPEJ Charter of Ethics should be „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 true given that the democratic future of Europe requires the use of new technologies both to strengthen, strengthen democratic commitments and to understand the impact of technological developments on aspects of the Council's action.

2. Because judicial activity is an essential component of a democratic society, which aims to resolve disputes between the parties in such a way as to meet the requirements of the right to a fair trial, ensured by an independent and impartial court, respecting the equality of arms, another An important principle set out in the Charter is "The principle of non-discrimination: the specific prevention of the creation or intensification of any discrimination between individuals or groups of individuals".

3. Whereas judicial activity in a democratic society presupposes the protection of human dignity, privacy, the reputation of the person, the presumption of innocence, etc. It is necessary to respect an essential principle, mentioned in the CEPEJ Charter of Ethics, "The principle of quality and security: regarding the processing of judicial decisions and data, using certified sources and intangible data with models designed in a multidisciplinary manner in a secure technological environment.

4. But because the work of the various courts has shown the importance of establishing direct relations between the courts and the general public, it has

been appreciated that the insertion of justice in society presupposes that judicial institutions open up to the outside world, learn to be known, contribute to transparency of justice. Obviously, this transparency cannot be total. It also presupposes the need to protect the effectiveness of the investigations and the interests of the persons concerned. In these circumstances, another basic principle, which is found in the Charter, is "The principle of transparency, impartiality and intellectual integrity: making data processing accessible and intelligible, authorizing external audits.

5. The last principle enunciated in the Charter implies a great responsibility for all those involved in the use of artificial intelligence in the act of justice. This is the principle "Under the control of the user": excludes a prescriptive approach and ensures that users are informed actors who control their choices ".

Conclusions

Artificial intelligence is a present reality that is increasingly required in the field of law and justice. Obviously, in the years to come, AI will have an unimaginable impact on society and will play an increasingly important role in all areas. For lawyers, this evolution of AI will create new horizons, from the point of view of each profession. It is essential that it be used with respect for democratic values, the rule of law and human rights.

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