GA5: Legal Committee

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Issue: Mitigating the potential threats of artificial intelligence involvement in judicial procedures

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I. Introduction

Artificial Intelligence (AI) has become part of our everyday lives. It has found its way into our school systems, jobs, judicial systems, and so much more. AI has helped many achieve new standards and use their time efficiently. AI's speed and near-perfect accuracy have led many to adopt AI as a reliable source. AI has the potential to remove human errors and recognize patterns promptly with less manpower. Thus artificial intelligence could be more cost and time-efficient compared to human intelligence.

However just because something is easy, doesn't mean it is the right option. At the end of the day, testimonies, the relevance of the burden of proof, credibility etc. are up to the interpretations of the jury. Juries might determine the ruling of a case based on humane ideals or pure facts. If AI takes over the role of human juries, for example, the ruling would be based upon an algorithm removing the human factor. Making the determination black and white, while in reality nothing truly is.

In addition, the usage of AI could create an environment where "biased data and algorithms leading to discriminatory outcomes and greater inequality; the proliferation of misinformation and disinformation…" (Coglianese et al.) will occur. All of the points stated above and more could cause catastrophic outcomes in judicial proceedings.

II. Involved Countries and Organizations

Germany

"The demand for an automated solution arrives as Germany's government has mandated that electronic file management be implemented by courts in all civil, administrative, social and criminal proceedings by 2026 as part of digitalization goals established by the European Union (EU)." (Schindler) After the digitalization of all other records, Artificial Intelligence has been able to access the records. This has led to AI assisting German courts with their caseload. After the possible success AI could provide "The Ministry of Justice in Baden-Württemberg recommended using AI with natural language understanding (NLU) and other capabilities to help categorize each case into the different case groups they were handling." (Schindler). The usage of AI was incorporated into the German judiciary system with OLGA, an AI aide

created by IBM (International Business Machines Corporation). This system has helped the system comb through cases easily.

In addition, another AI system created by IBM called "Frauke" short for Frankfurt Judgment Configurator Electronic, has assisted the Frankfurt courts with cases concerning airlines. Frauke has lowered attorneys' workload as the system managed to do the preparatory work quickly and sufficiently. Even though AI has managed to do the majority of the work, the counsellors still need to vet and validate the work produced by the system.

France

In 2018, France launched its National Strategy for Artificial Intelligence, which led to an increase in AI usage within the nation. Even though France doesn't have any specific laws against AI, laws on protection are in place. Regulations are set for privacy, liability data protection and much more. France chose to follow the European Commission's Act I when it comes to viewing and analyzing the risks of Artificial Intelligence, which categorizes AI applications by the risk they pose and codifies regulations in accordance with the risk associated with that application of AI. This categorization puts most uses of AI in the "minimal risk" category, where the use of AI is not subject to regulations.

United States of America

Artificial Intelligence is a relatively new addition to the American judiciary system. The main uses of AI are assessments of the truthfulness and accuracy of trials, the possibility of reoffence, etc. "At present, more than 60 risk assessment tools are being used in the USA.[1]" (Memisoglu) One of the systems being utilized is COMPAS which stands for Correctional Offender Management Profiling for Alternative Sanctions. This system consists of 137 questions that aim to assess the accused's risk of re-offending. Even though systems such as COMPAS have been helping out with the judicial system, the program had issues when it came to race. After systematic errors were discovered alongside many things, "The Supreme Court put forward the 'limitations and cautions' the sentencing court must behold when utilizing COMPAS."(Memisoglu)

In addition, after the usage of AI was advertised, many realized that it wasn't the best option: "The American Bar Association is one of the organizations which prompted the use of algorithms in states."[19] However, it also highlighted the above-mentioned labelling of low-risk individuals as a high-risk problem that may be destructive to the individual's rehabilitation efforts and raise rather than reduce recidivism.[20]"(Memisoglu).

Colombia and UNESCO

"The Superior Council of the Judiciary of Colombia" and UNESCO have come together to help develop a programme called "Artificial Intelligence and the Rule of Law"(UNESCO). This program aims to create borders when it comes to AI usage, inform the public about AI and in the process learn more about AI's usage, create international relations with other nations and "[create] guidelines to assess algorithm impacts, promoting transparency and accountability in AI applications" (UNESCO).

Costa Rica

Costa Rica hosted a conference where professionals from the judicial systems around the world would learn about ""Artificial Intelligence and the Rule of Law" in a training activity organized by UNESCO [and the "Superior Council of the Judiciary of Colombia" (UNESCO)] together with the Inter-American Court of Human Rights, with the support of the European Union." (UNESCO) The program that took place in 2023 in San José aimed to teach the pros and cons of AI and how to understand its bias.

Council of Europe's European Commission for the Efficiency of Justice (CEPEJ)

The Council of Europe's European Commission for the Efficiency of Justice (CEPEJ) held a plenary session to determine the right usage of Artificial Intelligence in judiciary systems. A document was created based on their 31st plenary session.

Throughout the 5th section of the document AI's probability of accurately guessing the bias of judges is discussed. The document mentions how the marital status, family situation, and cultural background of a judge can affect how a judge perceives a case. Also, biases aren't always superficial and detectable which would inevitably lead the AI system to create inaccurate data. An AI machine cannot detect all of the biases of a judge. Decisions of a case are determined by how the prosecution and defence play their cards. Even if there isn't any bias involved, the judges' emotions and the understanding of a case can depend on how the counsellors present their evidence, how the witnesses deliver their testimony and act during cross-examination etc.

International Business Machines Corporation

IBM helped Germany create two artificial intelligence systems called OLGA to assist with their workload. The International Business Machines Corporation also created a system that would assist specific judiciary disputes. Frankfurt Judgment Configurator Electronic, also known as Frauke, helps Frankfurt courts with airline-related disputes.

The Brazilian courts have struggled with a "... huge backlog of pending cases ranging up to 80 million cases that would constitute the biggest court backlogs in the world," (K S). Findings showed that the only way to relieve the legal system would be to incorporate AI into its judiciary system. Based on this "The National Council of Justice (CNJ) stands at the forefront, responsible for developing and promoting the Electronic Judicial Process (PJe), a system designed to digitize and authenticate judicial documents," (K S). After the advancements in AI systems, Brazil opted to utilize AI's such as LEIA, Victor and Socrates to manage their caseload.

III. Focused Overview of the Issue

The Areas Artificial Intelligence Could Be Incorporated into Within a Judicial System

Artificial intelligence could play a role in the assessment of the possible outcome of the trial, of the truthfulness of court testimonies, of the likeness of a persecuted offender reoffending, help the counsellors find relevant information, and help dismiss biased judges. One such case of AI taking on these roles in Latin America is an AI tool called VICTOR being used to conduct preliminary case analysis to reduce the burden on the court in Brazil. The tool supports the Brazilian Supreme Court by providing analysis of cases using document analysis and Natural Language Processing (NLP)... Another example is the public prosecutions office of Buenos Aires (Argentina) and the Constitutional Court of Colombia, who utilize a tool called Prometea to predict the outcome of cases; the tool has so far recorded a 96% success rate. (Strathmore University).

The Biases of Artificial Intelligence: Its Own Bias, If It Can Be Manipulated into Having a Bias, and the Effects It Could Have on Cases

Artificial intelligence could be utilized to try to get rid of judges' bias, however, the system itself has bias as well. AI is a man-made tool that typically mirrors its creator or popular culture's belief, thus "Tech companies and labs developing many large scale AI systems tend to be mainly white and male" (Said et al.) is a problem. One measure delegates could seek is to help ensure greater diversity of origin and opinion on the boards responsible for creating AI that is meant to be unbiased. As an example, asking an AI judge who has a premeditated bias against abortion to determine the fate of a case has the potential to be unjust and cause significant harm. With humans, you can appeal to their emotions. Even if they do not fundamentally and morally understand or reason with the defendants/prosecution's reasoning, if one side manages to appeal to the judges' feelings they still have a possibility of winning the case. This is one point that makes AI's bias worse than that of humans. Robots have a reputation for sticking to what they know. Having something that cannot intellectually see the opposite point of view has the potential to finish a case before it

even starts, which would derail many nations' justice systems. In addition, when trying to prove a point, sentences and pieces of evidence are structured to be directly proportional to the point of view at hand, which is a biased point of view. Asking an already biased question to a biased AI machine could assist attorneys in manipulating evidence, arguments or facts to confuse and deflect the trial, possibly leading to wrongful judgements.

The Ethical Boundary Between Artificial Intelligence and Judicial Systems

Artificial intelligence can assist lawyers to get the information they need momentarily. However, this may only sometimes be the ethically right thing. With AI on the rise the privacy of personal information, and protection of human rights are under fire. As Article 12 of the Universal Declaration of Human Rights states, "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to be protected by the law against such interference or attacks." (United Nations) The privacy and security of personal information shouldn't be manipulated or exposed in an unneeded manner. This right comes under threat as in order to develop AI, many nations have adopted the usage of an open data policy which allows the public and AI to reach needed information. The risk that comes along with this is that with the depths AI can reach and the amount of data it can exploit, the usage of these systems for harmful purposes is enabled. Robust measures and accountability need to be assured in order to prevent the exploitation of such policies.

In addition, AI's bias can lead to discrimination and unjust outcomes. As mentioned above the United States' COMPAS risk assessment was found to have prejudicial outcomes towards a specific profile. In a paper written by Maria Dyimitruk, "Using apparently neutral statistical data, showing that some African-American individuals are more often involved in criminal acts, the American system COMPAS, has led to a higher risk factor for the entire African-American population. Despite the fact that such systems are not designed to discriminate against anyone, the approach based only on statistics and machine learning has led to the denial of the idea of legal individualization" The bias collected by an originally unbiased AI system led to an unjust outcome for people based on race. Delegates are expected to come up with methods to prevent or reduce bias in AI systems meant for judicial use.

Liability Issues

When human lawyers make a mistake, clients can sue them for damages or fire them and get a new lawyer. When it comes to AI the liability gets mixed up. Artificial intelligence creates the answers one is looking for and presents them. The faith in whether it is correct or not is up to the recipient. If AI comes up with a piece of evidence or factual statement that could lead to a mistrial, the question of whether holding AI responsible in a lawsuit is possible arises. When AI makes a mistake, it could result from the bias it was created with, the structure of a sentence or maybe because the information is now archaic. A Monash

University website noted that if a certain AI system is put under the same microscope of cooperation it could be a variable of, "[the] vicarious liability theory, developed in the UK in 1842 in the case of R v Birmingham & Gloucester Railway Co Ltd. This landmark case was the first to hold a corporation liable for the actions of its employees. Now, the question is, "Can we consider AI as a corporation or company?" (Syed).

Imputed liability, sometimes referred to as vicarious liability occurs when a major party is held accountable for the culpable behavior of their employee because of the two parties' affiliation. Thus, if AI is accepted as a cooperation, the mistakes the AI systems could make could be brought back to the chairpeople of the said systems.

Inequality Issues:

As Article 10 of the Universal Declaration of Human Rights states, "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him,"(United Nations) This right has been upheld by appointing a legal aid to those who cannot afford a private lawyer. Although wealthier individuals can afford private lawyers with perhaps greater experience and resources, what ultimately decides the outcome of a case is the quality of the argument presented by either side. In this case, an aide with relatively limited resources, who still works to ensure their clients the best defence, can win cases regardless of their client's financial situation. This won't be the case if AI takes over the jobs of attorneys. A client with more money will inevitably have more access to information, better AI services etc. because they can pay all the way. On the other hand, a client who is financially struggling won't be able to access the 'best' resources and will have to settle for lower-quality resources. This naturally creates an unfair playing field as the financially less able client is set at a disadvantage.

Furthermore, when it comes to international cases, some States may have access to better AI sources than others. Regulating international websites and interfering with other nations' sovereignty could cause the case to be constantly delayed and be another factor creating unfairness.

Cyber Security:

If artificial intelligence takes over the roles of lawyers that would entail that all evidence that is crucial to make a case be stored on the internet. With important and confidential information stored in AI programs, unauthorized access to this information could become easier for the opposing party and their supporters. A capable hacker could access, manipulate, delete, steal or alter information and evidence anonymously which would pose problems for the fairness of the trial at hand as well as future appeals or retrials.

Likewise, if the role of the jury is taken over by AI their deliberation could become a liability. Since AI is an online platform it can be hacked. If the AI servers that are debating the outcome of the case get hacked

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the possible decision could get altered, leaked and so much more. In addition, if the final decision made by the jury leaks before it is announced in court, it could lead to a mistrial, dismissing all of the work that went in. If the discharged case gets re-tried because of this, the witnesses and victims could through revictimization of a trial, private information could be spread and so much more.

IV. Key Vocabulary

Artificial Intelligence: "Artificial intelligence is an umbrella term that was first used at a conference at Dartmouth College in the United States in 1956. It basically refers to computers doing tasks that would normally require intelligence, such as performing cognitive tasks, i.e., learning, reasoning, analysis, which were once thought to be the sole province of humans." (Grossman et al.)

Legal aid: "a system of providing free advice about the law and practical help with legal matters for people who are too poor to pay for it" (Cambridge Dictionary). This may imply that the financially incapable party is being allocated a lawyer for free.

To pseudonymize: Basically, publishing the right amount of information so that the issue at hand can be understood, but finding the source of the delicate information is unattainable.

Open Data Policy: "The Open Information and Open Data Policy increases government transparency and accountability through the public release of information, including data" (Province of British Columbia) refers to the policy upheld by many nations such as Bosnia and Herzegovina, Turkey, Belgium, Russia, Luxemburg, Armenia and Spain. This system allows the general population to access data used in court cases/the government. Having all of the data on the internet enables AI to deal with and analyze all of the information. The publication of delicate details could be put in jeopardy due to this. For this reason, some nations choose to pseudonymize personal information.
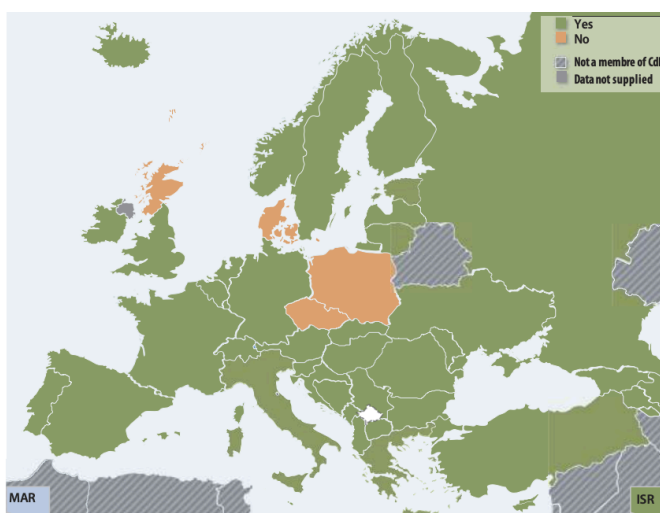
("Table showing CoE member States having introduced open data on judicial decisions in 2016" (Council of Europe))

V. Important Events & Chronology

Date (Day/Month/Year)	Event
3-4/12/2018	The "European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems," adopted by the European Commission for the Efficiency of Justice (CEPEJ) under the Council of Europe, puts guidelines for the usage of AI and the ethics of using artificial intelligence
09/12/2023	A provisional agreement between the European Council and Parliament to impose AI sanctions. These regulations concerned law enforcement and restricted the usage of some applications. In addition, residents got the right to report AI systems if they are too invasive and "general-purpose AI (GPAI) systems, and the GPAI models they are based on, will have to adhere to transparency"(European Parliament)
13/06/2024	Act I by the European Commission is the pioneering legislation on AI. It mentions the need for rules on AI, the levelled danger-based strategy (minimum-limited-high danger probability), legislation and enforcement, etc.

10/10/2024	"Superior Council of the Judiciary of Colombia" (UNESCO) and UNESCO have come together to help develop a programme called "Artificial Intelligence and the Rule of Law"(UNESCO). This program aims to create borders when it comes to AI usage, teach more and learn about AI, create international relations with other nations and "[create] guidelines to assess algorithm impacts, promoting transparency and accountability in AI applications" (UNESCO).

VI. Past Resolutions and Treaties

- **Act I by the European Commission:** This commission talks about how Artificial Intelligence should be approached, the standards, and regulations, and what is below the ethical and dangerous limit. This is the first commission signed on how AI should operate. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1689

- **CONSULTATIVE COMMITTEE OF THE CONVENTION FOR THE PROTECTION OF INDIVIDUALS WITH REGARD TO AUTOMATIC PROCESSING OF PERSONAL DATA (Convention 108):** This is a convention that aims to regulate how AI utilizes data, the access it has, the precautions to ensure the authenticity of the AI programs, privacy details and so much more. https://rm.coe.int/guidelines-on-artificial-intelligence-and-data-protection/168091f9d8

VII. Failed Solution Attempts

- **Art. 22 GDPR Automated individual decision-making, including profiling:** The European Union's General Data Protection Regulation's ('GDPR') 22nd Article states that digital resources e.g. AI, shouldn't be the only juries on cases: https://gdpr-info.eu/art-22-gdpr/

- **Art. 11 of (LED) the Law Enforcement Directive:** This directive forbids European Union "s Member States to prohibit decisions based solely on automated processing, where they

produce 'adverse legal effects' on the individual, or effects that are 'similarly significant'" (Min and Ferris) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016L0680

- Both of these attempts aren't prone to assist the matter as a whole as they focused on outlawing conclusions only made by artificial intelligence, disregarding the cases where artificial intelligence was used as a tool. This opens up a grey area where the question of 'how much AI is too much' is raised. Also, EU member states can waver some restrictions based on their countries' judicial systems. This allows each nation to protect its sovereignty but dismisses the aim of an international agreement.

VIII. Possible Solutions

- Creating Government-affiliated AI checkers that consider the social, cultural etc. background of the nation and the people in court. Having the plaintiffs fill out questionnaires concerning their personal lives and setting the AI system to reboot itself to get rid of biases in this direction.
- Creating a system where a certain person knows when their information/information that could relate to them is being used by AI to follow up on a court investigation/case.
- Provide AI resources to both sides. If one side uses an AI tool the other plaintiff cannot access press charges/declare a mistrial.
- Create a system where accountability is certain. For technical-based mistrials the developers, phrasing, the plaintiff etc. Provide clear guidelines, and manuals, that require signatures.
- Compose a binding international law.
- Updating all of the AI systems that have been confirmed by judges and legal teams before trial preparations begin to make sure all data is new.

IX. Useful Links

- Act I by the European Commission
  https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1689
- European Commission for the Efficiency of Justice:
  https://www.europarl.europa.eu/cmsdata/196205/COUNCIL%20OF%20EUROPE%20-%20European%20Ethical%20Charter%20on%20the%20use%20of%20AI%20in%20judicial%20systems.pdf
- A Nice and Explandatory paper on the Adaptation of Legal Systems to the Development of Artificial Intelligence: Solving the Global Problem of AI in Judicial Processes:

https://irshadjournals.com/index.php/ijcl/article/view/49/35

- Detailed publication on Cyber Security published by the Government of the United Kingdom: https://www.gov.uk/government/publications/research-on-the-cyber-security-of-ai/cyber-security-risks-to-artificial-intelligence

- A document by the Court of Justice of the European Union on Artificial Intelligence Strategy: https://curia.europa.eu/jcms/upload/docs/application/pdf/2023-11/cjeu_ai_strategy.pdf

- Regulating Artificial Intelligence for Use in Criminal Justice Systems in the EU Policy Paper: https://www.fairtrials.org/app/uploads/2022/01/Regulating-Artificial-Intelligence-for-Use-in-Criminal-Justice-Systems-Fair-Trials.pdf

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