Response from the Spanish Association of Judges
2024 Questionnaire of the 1st IAJ-UIM Study Commission "The Effects of Artificial Intelligence on the Judiciary".

1) Do judges in your country use artificial intelligence ("AI") technology, and why?

Under the notion of artificial intelligence we refer to systems that manifest intelligent behaviour, as they are able to analyse their environment and take action, with a certain degree of autonomy, in order to achieve specific objectives[1].

Our judicial system, however, relies exclusively on a treatment of justice based on human intervention in decision-making, with the help of technology.

AI is not used as a working tool, although some individual judges may use it as an auxiliary means in their work.

a) If not, have judges in your country considered using AI and, if so, how?

There is no implementation of Artificial Intelligence in our law in the jurisdictional sphere.

Nor is there a collective pronouncement by judges on the use of AI, although there is a professional debate on its incorporation, weighing its pros and cons.

b) Is the use of AI in judicial proceedings regulated?

It is not, as mentioned above.

c) Does the use of AI affect the handling of evidence?

Although there is no specific provision that foresees the use of artificial intelligence in the process, its existence and its generalised extra-procedural use has increased the demands for guarantees in certain evidence that is presented to be incorporated into a trial (photographs, documents, voice evidence...) whose authenticity is usually verified by means of expert opinions that establish its authenticity.

2) What are the advantages and disadvantages of judges using AI?

In general, the introduction of artificial intelligence systems has its advantages and disadvantages. In this regard, the "Independent High Level Expert Group on Artificial Intelligence" under the auspices of the European Commission, published on 8 April 2019, the work entitled "Ethical Guidance for Trustworthy Artificial Intelligence".

For its part, in the judicial field, the Council of Europe has approved the European Charter of Ethics on the Use of Artificial Intelligence in Judicial Systems and their Environment adopted by the CEPEJ during its 31st plenary session (Strasbourg, 3-4 December 2018)[2].

These instruments highlight the great potential of artificial intelligence and its applicability (in some countries it is already a reality and in others it is an imminent projection), as well as the concern that its use without adequate control or orderly regulation that respects individual rights could be detrimental to citizens.

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[1] Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions COM/2018/237

[2] https://www.algoritmolegal.com/wp-content/uploads/2018/12/Etica-de-la-IA-documento-del-Consejo-de-Europa-del-4.12.2018.pdf

The ideal would be to build an AI system that respects human autonomy and freedom, that establishes mechanisms to prevent harm derived from its use, a system that is equitable and transparent.

It would be advisable for there to be certification or a "label" that guarantees these requirements, as happens in other regulated sectors: liberalisation and compliance; prior definition of what is public that can be approved - via certification - and a posteriori control of the adjustment of the actions of agents and actors to what has been previously declared, with the establishment of a sanctioning regime[3].

As various authors have pointed out, the dangers of massive data processing and its repercussions on the lives of citizens are the misuse that may be made of them, which could lead to limitations on individual rights or facilitate discrimination against certain individuals or groups.

These effects could be avoided by enhancing aspects such as transparency, the intelligibility of decision-making systems and the voluntariness of individuals when subject to algorithm-based procedures.

a) What are the possible effects of AI on the administration of justice?

The European AI Law adopted in March 2024, in its Annex III, qualifies the administration of justice as a "high-risk system" in its paragraph 8. Therefore, Article 6 establishes an exclusion system that imposes the adoption of the following precautions:

-adequate risk assessment and mitigation systems;

-high quality of the data sets feeding the system to minimise risks and discriminatory results;

-recording of activity to ensure traceability of results;

-detailed documentation providing all the necessary information about the system and its purpose for authorities to assess its compliance;

-clear and adequate information for the implementer;

-adequate human oversight measures to minimise risk;

-high level of robustness, security and accuracy.

b) What are the possible effects of AI on judicial independence?

To the extent that AI is capable of making decisions, the possible generalisation of its use and the tendency to displace the judge's personal work, may disempower the judge of his or her prerogatives, turning him or her into a mere supervisor of the operation of AI tools that replace the decision-making function that is proper and exclusive to him or her.

3) Should there be limits to the use of AI by judges and, if so, to what extent?

In other sectors in Spain, AI is used to analyse data (fire risk, premises to be inspected), process natural language (review of requests made by citizens or detection of irregularities and fraud in public tenders), recognise images (counting people in public spaces or identifying potential offenders), make or facilitate decision-making (awarding public aid, determining which streets to send police officers to patrol, identifying

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[3] THE IMPACT OF ARTIFICIAL INTELLIGENCE ON PUBLIC AFFAIRS: A CONTINENT TO BE EXPLORED. APM Digital Magazine 3.9. May 2019. Juan José Carbonero Redondo

schools that may have a higher dropout rate or treatment for a certain disease) or to personalise public services (providing information, advice and citizen services)[4].

Also in the jurisdiction we can affirm the usefulness of AI as a tool to help the judge in decision-making, always with the guarantees of reliability and security in the system used, and underlining the auxiliary condition of these means that can never displace the personal decision-making powers of the judge.

These tools have apparently proved particularly useful in the criminal field in the resolution of so-called "cold cases" (cases that have not been resolved for some time)[5].

In any case, as the administration of justice is an area of special risk in the use of AI, it is advisable to adopt precautions in its implementation and use, such as those established in Article 6 of the European Law on AI, and to control its use through bodies such as the European Office of AI, to ensure an adequate and safe environment that facilitates judicial decision-making, without the risks presented by AI.

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[4] CONCLUSIONS OF THE 1st INTERNATIONAL SEMINAR ON ADMINISTRATIVE LAW AND ARTIFICIAL INTELLIGENCE, Toledo, 1 April 2019

[5] https://thenextweb.com/newa/how-the-ditch-police-is-using-ai-to-unravel-cold-cases