Questionnaire of the 1st Study Commission IAJ-UIM, October 2024 Cape Town

"The Effects of Artificial Intelligence on the Judiciary"

Response from the Finnish Association of Judges

1. **Do judges in your country utilize artificial intelligence technology (AI), and how so?**

   AI is not used widely. In general Finnish judges are critical and cautious concerning the use of digital tools such as AI when handling the cases and writing the judgements. The use of AI or AI related tools is not supported in any way by the IT-support of the Finnish courts. There is no regulation concerning the use of AI in court proceedings. In individual cases translation and text programs as well as search engines to scan large amounts of data can be employed. Some judges use AI-tools to write first drafts of judgement. Judges might also use publicly accessible tools, such as search engines on the Internet, but not actual AI tools.

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

   The potential of AI for the judiciary is an interesting topic. AI can be used to automate administrative operations, to analyze large amounts of text and data, and to facilitate the search of judgments in order to promote legal unity. AI could perhaps be used to reduce workload of judges, maintain and improve quality of judgements. AI is able to quickly process large amounts of information, recognize and describe patterns.

   Process mining - data analysis and work with logs. With the help of artificial intelligence (AI), it could perhaps be identified different steps in the court process and the length of these processes. AI could perhaps allow solutions for better basis for decision-making of resource allocation and to explore which steps in the process take most of the time.

   The Finnish National Court Administration does not actually find out or investigate any specific field of use of artificial intelligence in the field of judiciary., at least not right now. The Administrations view is that artificial intelligence could be used perhaps in interpretation and translation in the future. Along with interpretation, responding to requests for information would be made much easier with the help of artificial intelligence.

   b. **Is the use of AI in judicial proceedings regulated?**

   No. There should be formulated AI strategy on the basis of which the use of AI within the judiciary can be further shaped. The introduction of technologies in the courts requires either legislative reform or public software procurements. Implemented through the reform of the legislation of the utilization of technology as part of the courts' operations can be mentioned as examples The EU's evidence regulation and the legal framework for electronic subpoena applications. Last year EU reached an agreement on harmonized rules for artificial intelligence (EU Artificial Intelligence Act). Next, the artificial intelligence regulation will go through the approval process of EU legislation. European legislators are expected to approve the artificial intelligence regulation during 2024 and after this organizations have two years time to adapt their operations to comply with the

regulation. The European AI Regulation will most likely play a significant role in the regulation of AI within the judiciary.

Regulation of the use of AI in judiciary should answer at least to the questions:

What are the technologies enabling the automation of the judge's decision-making activities key characteristics relevant to the legal assessment?

From the point of view of the automation of the judge's decision making, what are the key legal prerequisites these conditions include - a fair trial and the judge's official responsibility concepts?

Does legal protection actually require the right of the party concerned to receive the case to be processed by a natural person? So far, the right in question has not been read traditionally separately as a guarantee of legal protection. The challenge of coordinating guarantees of legal protection and automated decision-making however, the syntax could support such an interpretation.

c. Does the use of AI effect the handling of evidence?

Machine learning (ML) and artificial intelligence (AI) are two potent technologies that have the potential to revolutionize digital forensics by enabling analysts to process vast amounts of data swiftly and precisely, thereby detecting crucial evidence.

If AI is used in litigation of cases and presenting and producing evidence to courts, the evaluation of the evidence becomes obviously more challenging for judges. This includes serious threats to the liability of the judgements and

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

The automation of decision-making has been combined with several positive factors, such as the object of the decision an increase in the equal treatment of existing persons, a reduction in the number of errors and the efficiency of decision-making. The same benefits would hardly be considered undesirable either in the operation of the courts. The development of various technological solutions seems to be increasing. Administration of justice however, digitalization is not completely free to follow the technical development of the rest of society, because in a democratic society, the use of judicial power must strictly follow the limits regulated by law.

When thinking about automation, it is essential to identify the applications where automation is possible and useful. Legal settlement activity is very diverse, so we cannot talk about it as a single entity. The simplest issues can be solved with a logical syllogism, but most of the time, solving the case requires deeper thinking and weighing between different sources of law. Finding out the actual course of events can also be challenging or even impossible. Judges therefore have a lot of discretion in their work and even an obligation in the absence of a legal norm suitable for creating a law. Legal decision-making may even lead to very deep moral reflection.

Morality is one of the threshold issues in the automation of legal decision making. The computer makes its decisions objectively based on the data fed to it, but morals and values are not objective things but very subjective. On the basis of what kind of world of values should artificial intelligence work? On the other hand, even more relevant is the discussion of whether the use of law is about something that is morally acceptable to transfer to machines. In my opinion, the demand to

maintain human control becomes central; artificial intelligence is a good ring but a bad master. There are also many potential uses for artificial intelligence applications in legal decision-making and courts, and the use of information technology can both make the courts' operations more efficient and improve the quality of work. However, power and responsibility in legal decision-making activities should be kept in the hands of people.

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

If AI is used responsibly it could perhaps bring efficiency to handle cases in courts. The use of AI could benefit the administration and organization of the judiciary by automating work processes. AI could perhaps allow solutions for better basis for decision-making of resource allocation and to explore which steps in the process take most of the time. AI could also open possibilities in distributing cases among judges more efficiently and transparently.

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

Interesting question is how is the judicial process and the judge's official responsibility lfilled by the judge's decision-making activity in automation.

As the role of assistive technology grows however, it would be important to take into account the prerequisites for a fair trial and official responsibility when developing systems. There should be no attempt to increase the role of technology in the courts without thorough assessments of the effects of its use on the legality of the exercise of judicial power. It would be worrisome if systems were developed and the scope expanded slowly efficiency goals above, without the use of constitutional marginal conditions that would be duly taken into account.

A law enabling fully automated settlement operations should be enacted for now, be cautious. If such a law were enacted, the goal should be to appeal procedure, where the right to a fair trial and the decision-maker's will come true. So far, however, it cannot be clearly defined which kind a regulatory solution would achieve this goal, but the matter would require a more detailed assessment.

Distributing justice is exercising social power. Although the court's Judicial enforcement always takes place in accordance with the established jurisdiction, the claims presented, and the facts of the case and within the limits of the law. Control of the use of power requires the transparency of the procedure and the rustling. Reasoning opens the way to criticism of decisions and the work of the courts for the control.

Using AI in the judicial process AI could cause threats to the independence of judiciary if AI is used carelessly and not openly based on procedural laws. AI could also cast a shadow to the reliability of judgements.

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

The role of the court in our society is very significant and judges implement the basic rights of citizens in their work. The work of judges crystallizes the legitimacy of the administration of justice and citizens' trust in the functioning of our rule of law. The legal process is guided by several goal

and value principles that define what a good and fair process is like. The judge's activities are also guided by legislation and principles, and in addition, as a civil servant, the judge is accountable for his actions.

The realization of official responsibility in automated decision-making is an interesting question, because computer software cannot naturally be put under criminal responsibility, for example, but the responsibility must be shared among people. Pursuant to the public entity's liability for compensation according to the tort law, the injured party can also receive compensation based on the fault of an anonymous person, so the court has the so-called organic responsibility for its activities even in the event that the person causing the damage cannot be identified. This means that with regard to automated decision-making, the responsibility for the damage caused to the customer may belong to the court as a community. Liability issues should also take into account the software developer's responsibility for possible error situations.

Responsibility is also strongly related to the possibility of transferring judicial power to computers and away from judges. According to § 3 and § 7 of the constitutional law, independent courts exercise judicial power, and constitutional committee has considered in its opinion practice that the threshold for the transfer of judicial power is high. The transfer of judicial power should be regulated by law either in the ordinary or in the constitutional legislative order, depending on the relevance of the transfer. When considering the transfer of judicial power from judges to artificial intelligence, the transfer from judges to court clerks can be used as a point of comparison. Chapter 19, § 6 of the Courts Act provides for the competence of the office staff, which also includes jurisdictional tasks, such as issuing judgments in summary disputes. Jurisdiction tasks that fall under the jurisdiction of the office staff are also potential targets for automation.

Before the automation of solution operations, i.e. different ones assistive applications, advanced information systems and fully automatic individual the introduction of decisions, should be evaluated in the use of judicial power in constitutional law fulfillment of the boundary conditions and resolve how is justice, the judicial process and the judge's official responsibility fulfilled by the judge's decision-making activity in automation.

The Consultative Council of European Judges (CCJE) adopted, on 1 December 2023, its Opinion No. 26 (2023) "Moving forward: the use of assistive technology in the judiciary". The purpose of the Opinion was to examine the advantages and disadvantages of the use of assistive technology in the judiciary. It recognises that the use of technology will continue to develop, and that judicial systems should keep pace with such developments. The Opinion of the CCJE stresses the importance of developing and using technology in ways that maintain and reinforce the fundamental principles of the rule of law. The use of technology should serve in particular to enhance judicial independence and impartiality. Furthermore, it can promote speed and efficiency in the administration of justice. It can also be used to support the work of judges and of parties to judicial proceedings improving accuracy in decision making. The Opinion provides a durable set of principles for the future use of technology in the judiciary. The central aim of these principles is to better secure effective and practical access to justice, while maintaining and enhancing judicial legitimacy and public confidence in the judiciary.

Artificial intelligence should also always be under the control of a human in the last resort. The rapid development of technology and artificial intelligence have increased the need for their regulation. The European Union's Artificial Intelligence Act (AI Act) applies to both the development of artificial intelligence and its use after publication. The task of the law is to set the framework for legislation related to artificial intelligence and to ensure that artificial intelligence is transparent,

traceable, non-discriminatory and environmentally friendly. The procedure to handle the cases should be always transparent, well-reasoned and the judgement must be well reasoned so that the judiciary stays trustworthy. Technological interests should not in the future push the constitutional requirements for the distribution of justice.