



**09-10 December 2020**  
On-Line Classroom

**EJTN ADMINISTRATIVE LAW TRAINING**  
**Administrative Law and Procedures**

**The use of IT and Artificial Intelligence in judicial procedures: are  
Artificial Intelligence Systems able of replacing judges?**

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# OUTLINE

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- I) Introduction
- II) The Facebook example
- III) AI systems in courts today
- IV) CEPEJ's core principles
- V) 3 challenges for the transition to an AI era in justice
- VI) Conclusion

# I) Introduction

- Most courts use Information Technologies (IT) systems in their daily functions
  - ✓ Commission's Proposal for a Regulation on e-CODEX (02.12.2020)
- The use of Artificial Intelligence (AI) systems is still scarce
  - ✓ Commission's communication on the "Digitalisation of justice in the European Union-A toolbox of opportunities" (02.12.2020)
- Are AI Systems able of replacing judges? A two-fold question:
  1. *Available technology - Strong v weak AI systems*
  2. *Legal and ethical propriety of AI systems*

## II) The Facebook example (1/2)

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- Reviewing posts of objectionable content
- This is done manually by moderators in different countries *and* by an AI system
- As of 2016 more pictures were flagged by AI than by actual persons → AI nowadays is the “Facebook judge” of content

## II) The Facebook example (2/2)

- Advantages:

- **Speed** = Ability to process a huge quantity of data in a very short period of time

- **Predictability** = uniformity of criteria used. *AI is one single judge.*

- Disadvantages:

- Lack of perception of context

- Cultural imposition



Eugene Delacroix, *La Liberté guidant le peuple*, 1830, Louvre, Paris

# III) AI systems in courts today (1/2)

- Pre-sentence Risk Assessment systems in the USA (e.g. COMPAS)
  - ✓ People v. Younglove 2019, WL 846117, at \*1 (Michigan Ct. App. Feb. 21, 2019).
  - ✓ State v. Loomis, 881 N.W.2d 749 (Wisconsin Supreme Court 2016): *“[i]f a COMPAS risk assessment were the determinative factor considered at sentencing, this would raise due process challenges regarding whether a defendant received an individualized sentence”*
  - ✓ Malenchik v. State, 928 N.E.2d 564 (Indiana Supreme Court 2010).



## III) AI systems in courts today (2/2)

- E-judge in Estonia: *“AI is capable of making autonomous decisions within more common court procedures/tasks that would otherwise occupy judges and lawyers alike for hours”*
- Alternative Dispute Resolution systems in China and Canada
- The experiment of Rennes and Douai Appeal Courts (*Predictice software*): *“The software only cares for the operative part of a decision. The algorithm can’t read all the subtleties of the reasoning especially when the decision is complicated”*

Xavier Ronsin, President of Rennes Appeal Court

# IV) CEPEJ's core principles

1. Principle of respect of fundamental rights at the design and implementation of AI tools
2. Principle of non-discrimination
3. Principle of quality and security: use of certified sources and intangible data with models conceived in a multi-disciplinary manner, in a secure technological environment;
4. Principles of transparency, impartiality and fairness: making data processing methods accessible and understandable, authorizing external audits;
5. Principle “under user control”: precluding a prescriptive approach and ensuring that users are informed actors and in control of their choices.



# V) 3 challenges for the transition to an AI era in justice

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1. Making judicial systems algorithm-friendly
2. Earning public trust
3. Overcoming inherent obstacles:
  - ✓ Evaluation of evidence
  - ✓ Incorporating abstract notions of justice, such as the principles of equity, fairness and proportionality
  - ✓ Avoiding a chilling effect on case-law development

# VI) Conclusion

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- Synergy of judges and AI systems in the future:
  - ✓ out-of-court settlement mechanisms
  - ✓ auxiliary tools for judges and lawyers
  - ✓ autonomous decision makers in simple court procedures under the supervision of judges

# Thank you!

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