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Robes and Algorithms: The Future of Justice in the EU

*A First Look at the Implications of the AI Act**

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ABSTRACT This paper analyses the implications of the EU Artificial Intelligence Regulation in the field of justice, highlighting the transformative potential of digital technologies. While these innovations offer opportunities for greater efficiency, transparency and inclusion, they must be considered carefully to avoid compromising fundamental rights. The paper examines specific applications, such as digital judicial procedures and algorithmic case management, emphasising the importance of balancing technological advances with safeguarding fundamental principles of justice.

KEYWORDS: AI Act – EU Justice system – Transparency – Accountability – Data Governance

1. *Introductory remarks*

The technological advancements that have, in recent decades, permeated and transformed every aspect of contemporary society have not left the justice sector untouched, pushing it towards a substantial shift in the methods by which decisions are rendered.[1]

This domain, traditionally governed by slow and cumbersome bureaucratic processes, has embraced the introduction of digital systems with a combination of optimism and apprehension. While there is hope that these new tools will expedite the justice system, making it more efficient and accessible, such optimism has been tempered by skepticism regarding the delegation of certain phases of the decision-making process to machines, and even more so, the full reliance on such systems to resolve complex cases that require the careful balancing of competing interests.[2] These concerns are fueled by the rapid expansion of digital technologies in the justice system, which now extends far beyond case-management software or the digitization of archives.[3] It now includes a wide array of technologies, ranging from videoconferencing for remote hearings and digital signatures for official documents, to the use of artificial intelligence for legal analysis and the automation of certain judicial processes.

In the aftermath of the COVID-19 pandemic, which accelerated the digitalization of the justice system, numerous initiatives have been launched[4] within the framework of 'EUROPE 2020: A strategy for smart, sustainable, and inclusive growth', a communication from the European Commission dated 3 March 2010,[5] and endorsed by the European Council on 17 June 2010, outlining the flagship initiative 'A

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[1] G. Tesauro, *Manuale di diritto dell'Unione europea*, P. De Pasquale and F. Ferraro (eds.), vol. II, Naples, Editoriale scientifica, 2021, 331.

[2] A. Garapon and J. Lassègue, *Justice digitale. Révolution graphique et rupture anthropologique*, Paris, Presses Universitaires de France, 2018.

[3] Many tools are considered particularly promising, so much so that some believe that online courts will be the main mode of dispute resolution by 2030, A. Kaplan, *Online courts, the future of justice and being bold in 2020*, in *Abajournal*, 2020.

[4] Consider the package on the digitisation of justice (COM(2020) 710 final, Communication from the Commission to the European Parliament, the Council, the European economic and social Committee and the Committee of the Regions *Digitalisation of justice in the European Union A toolbox of opportunities*, Brussels, 2 December 2020; Regulation (EU) 2023/2844 of the European Parliament and of the Council of 13 December 2023 *on the digitalisation of judicial co-operation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation*) as well as the recent *Artificial Intelligence Strategy* developed by the Court of Justice and available at https://curia.europa.eu/jcms/upload/docs/application/pdf/2023-11/cjeu_ai_strategy.pdf

[5] COM(2010) 2020 final, Communication from the Commission *EUROPE 2020. A strategy for smart, sustainable and inclusive growth*, Brussels, 3 March 2010.

Digital Agenda for Europe'.[6]

The broad range of projects (legislative reforms and investments in technological infrastructure) aimed at modernizing the sector have heightened concerns about the centrality of judicial data, whether considered in isolation or in its aggregated form (big data), as an extension of the citizen's sphere of personal freedom, in which they develop their personality and may be subject to harm. Consequently, numerous ethical and legal issues have arisen and continue to be the subject of debate among practitioners and scholars, particularly in relation to transparency, the protection of fundamental rights (including fairness, data security, and privacy), as well as the varying levels of technological literacy among legal professionals.[7]

The issues have further intensified, and the debate has gained renewed vigor following the adoption of the Artificial Intelligence Regulation (AI Act),[8] which seeks to establish a harmonized legal framework for the use of AI across various sectors, including the justice system.[9]

As widely acknowledged, the Regulation adopts a risk-based approach, differentiating between low, medium, and high-risk AI applications, with the aim of ensuring that the most impactful technologies are subject to more stringent oversight.[10] The use of AI in

[6] COM(2010)245 final, Communication from the Commission to the European Parliament, the Council, the European economic and social Committee and the Committee of the Regions *A Digital Agenda for Europe*, Brussels, 19 May 2010.

[7] For a comprehensive survey of the broad debate that has developed on the use of AI in the field of justice, among many contributions, see F. Donati, *Intelligenza artificiale e giustizia*, in *AIC Megazine*, n. 1, 2020; C. Casonato, *Intelligenza artificiale e giustizia: potenzialità e rischi,* in *DPCE online*, n. 3, 2020, 3371; Idem *Per una intelligenza artificiale costituzionalmente orientata*, in Vv.Aa., *Scritti per Roberto Toniatti. Pluralismo nel diritto costituzionale comparato*, 2020, 9; V. Manes, *L'oracolo algoritmico e la giustizia penale: al bivio tra tecnologia e tecnocrazia*, U. Ruffolo (ed.), *Intelligenza artificiale – Il diritto, i diritti, l'etica*, Milan, Giuffrè, 2020; R. Susskind, *Tribunali online e il futuro della giustizia*, Oxford, Oxford University Press, 2019; A. Carleo (ed.), *Decisione robotica,* Bologna, il Mulino, 2019; J. Nieva Fenoll, *Intelligenza artificiale e processo*, Turin, Giappichelli, 2019; M. Bassini and O. Pollicino, *Sistemi di Intelligenza Artificiale, responsabilità e accountability. Verso nuovi paradigmi?* in F. Pizzetti (ed.) *Intelligenza artificiale, protezione dei dati personali e regolazione,* Milan, Giuffrè, 2018; C. Castelli and D. Piana, *Giustizia predittiva. La qualità della giustizia in due tempi,* in *Questione Giustizia*, n. 4, 2018, 153; S. Quattrocolo and U. Pagallo, *The impact of AI on criminal law, and its twofold aspects*, in W. Barfield and U. Pagallo (eds.), *Research Handbook on the Law of Artificial Intelligence*, Cheltenham, Edward Elgar, 2018; D. Ben-Ari, Y. Frish, A. Lazovski, U. Eldan, D. Greenbaum*, Artificial intelligence in the Practice of Law: An analysis and proof of concept experiment*, in *Richmond Journal of Law and Technology*, 2017, 7.

[8] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828, OJ L, 2024/1689, 12 July 2024.

[9] A. Correra, *Il ruolo dell'Intelligenza artificiale nel paradigma europeo dell'E-justice. Prime riflessioni alla luce dell'AI Act,* in the Special Issue *La nuova disciplina UE sull'Intelligenza artificiale*, in *AISDUE Review*, n. 2, 2024. Among other contributions on the topic, see G. De Minico, *Giustizia e intelligenza artificiale: un equilibrio mutevole*, in *Rivista AIC*, n. 2, 2024; and, prior to the approval of the AI Act, M. Fink, *The EU Artificial Intelligence Act and access to justice*, in *EU Law Live*, 10 May 2021; M. Fasan, *L'intelligenza artificiale nel settore della giustizia. Prime riflessioni alla luce della proposta di Regolamento (UE) in materia di AI*, in *Queste Istituzioni*, n. 4, 2022, 190-211.

[10] For more on the Regulation and specific issues, please refer to the contributions published in the Special Issue *La nuova disciplina UE sull'Intelligenza artificiale*, in *AISDUE Review*, n. 2, 2024: in particular, see C. Burelli, *Prime considerazioni sul 'ddl intelligenza artificiale': incompatibilità o inopportunità*; E. Cirone, *L'*AI Act *e l'obiettivo (mancato?) di promuovere uno standard globale per la tutela dei diritti fondamentali*; F. Ferri, *Il giorno dopo la rivoluzione: prospettive di attuazione del regolamento sull'intelligenza artificiale e poteri della Commissione europea*; C. Grieco, *Il diritto d'autore nell'AI Act;* M. Inglese, *Il regolamento sull'intelligenza artificiale come atto per il completamento e il buon funzionamento del mercato interno?*; S. Lattanzi, *Prime riflessioni sull'applicazione del nuovo regolamento sull'intelligenza artificiale al settore sanitario*; G. Rugani, *La promozione di strumenti di coregolazione dell'intelligenza artificiale nell'AI Act*, *con particolare riferimento alle regulatory sandboxes*; S. Villani, *Il sistema di vigilanza sull'applicazione dell'AI Act*: *ognun per sé?*; A. Volpato, *Il ruolo delle norme armonizzate nell'attuazione del regolamento sull'intelligenza artificiale*; G. Zaccaroni, *Intelligenza artificiale e principio democratico: riflessioni a margine dell'emersione di un quadro normativo europeo.* But important reflections were also made by M. Carta, *Il Regolamento UE sull'Intelligenza artificiale: alcune questioni aperte*, in *EJ*, n. 3, 2024, 189; C. Schepisi, *Diritti fondamentali, principi democratici, e* rule of law: *quale ruolo e quale responsabilità per gli Stati nella regolazione dell'intelligenza artificiale*, in *Studi sull'integrazione europea*, 2022, 41-69; Idem *Brevi note sulla 'dimensione europea' della regolamentazione dell'intelligenza artificiale: principi, obiettivi e requisiti*, in V. Falce (ed.), *Strategia dei dati e intelligenza artificiale. Verso un nuovo ordine giuridico del mercato*, Torino, Giappichelli, 2023, 53-75; A. Adinolfi, *L'intelligenza artificiale tra rischi di violazione dei diritti fondamentali e sostegno alla loro promozione: considerazioni sulla (difficile) costruzione di un quadro normativo dell'Unione*, Vv. Aa., *Intelligenza artificiale*

the justice sector is classified as high-risk, given its direct implications for fundamental rights, such as the right to a fair trial and the protection of personal data. Accordingly, the Regulation imposes rigorous standards for the deployment of artificial-intelligence systems in this field, mandating requirements to guarantee transparency of algorithms, traceability of automated decisions, and prevention of discriminatory outcomes.

While the potential of AI in the judicial system is substantial, encompassing everything from the automation of specific procedures to the development of advanced tools for legal data analysis, the challenges it introduces are equally significant, raising fundamental concerns about transparency, impartiality, and the protection of fundamental rights.

A primary concern regarding the use of artificial intelligence in the justice system is that automated systems may perpetuate or exacerbate biases already present within the judiciary or broader society, as these systems rely on data inputs that may reflect existing social inequalities.[11] The AI Regulation seeks to mitigate these concerns by requiring that algorithms be designed to prevent discriminatory outcomes and by mandating continuous monitoring of such systems.[12]

Furthermore, the AI Act stipulates that users of high-risk AI systems must be informed of their use, thereby reinforcing the right to defense and enhancing procedural transparency. In legal proceedings, this means that all parties must be made aware of the deployment of artificial intelligence and must be afforded the opportunity to challenge its operation or the results it produces.

Ethical considerations surrounding the use of AI in justice are inextricably linked to legal concerns.[13] The Regulation seeks to address key dilemmas, such as the risk that human judgment may be supplanted by algorithmic logic which, however sophisticated, may not fully capture the emotional, moral, or contextual subtleties inherent in each legal case. As such, AI should be regarded as a tool to assist, rather than replace, judges and other key actors in the legal process.

This paper provides a thorough analysis of the application of the Artificial Intelligence Regulation, emphasizing that the adoption of digital technologies within the justice system represents a significant turning point. It has the potential to make the judiciary more efficient, transparent, and inclusive, but like any innovation, it requires careful reflection and continuous monitoring to ensure that the benefits outweigh the risks. It is essential that technology serves the purpose of justice without undermining its fundamental principles, particularly regarding the protection of fundamental rights.

Specifically, this paper will address issues such as the implementation of digital court procedures, the use of algorithms in case management, and the role of new technologies in ensuring access to justice for all citizens. Particular attention will be given to balancing innovation with the protection of fundamental rights, a crucial factor to prevent automation and digitalization from leading to a dehumanized or unjust system of justice.

2. *Balancing Innovation and Safety: High-Risk AI in Justice*

As anticipated, the pervasive spread of

e diritto: una rivoluzione?, Bologna, il Mulino, 2022, 127; Idem *L'Unione europea dinanzi allo sviluppo dell'Intelligenza artificiale: la costruzione di uno schema di regolamentazione europeo tra mercato unico digitale e tutela dei diritti fondamentali*, in S. Dorigo (a cura di) *Il ragionamento giuridico nell'era dell'Intelligenza artificiale*, Pisa, il Mulino, 2020, 27; G. Finocchiaro, *La proposta di regolamento sull'intelligenza artificiale: il modello europeo basato sulla gestione del rischio*, in C. Camardi (ed.), *La via europea per l'intelligenza artificiale. Atti del Convegno del Progetto Dottorale di Alta Formazione in Scienze Giuridiche*, Milan, Giuffrè, 2022, 222-223.

[11] One thinks of the well-known case *State v Loomis* 881 N.W.2d 749 (Wis. 2016), which made COMPAS (Correctional Offender Management Profiling for Alternative Sanctions) - an algorithmic system predicting risk of recidivism and violent behaviour, owned by a private company and widely used in some American courts - notorious for assigning African-Americans a rate of high-risk recidivism twice as high as other populations, while white defendants were wrongly labelled low risk more often than black people. See J.Angwin, J. Larson, S. Mattu, L. Kirchner, *Machine Bias: There's Software Used across the Country to Predict Future Criminals. And It's Biased against Blacks,* ProPublica, 2016; C. McKay, *Predicting risk in criminal procedure: actuarial tools, algorithms, AI and judicial decision-making,* The University of Sydney Law School, November 2019.

[12] A. Adinolfi, *Processi decisionali automatizzati e diritto antidiscriminatorio dell'Unione europea*, A. Adinolfi and A. Simoncini (eds.), *Protezione dei dati personali e nuove tecnologie. Ricerca interdisciplinare sulle tecniche di profilazione e sulle loro conseguenze giuridiche*, Naples, Editoriale scientifica, 2022, 31.

[13] C. Grieco, *Intelligenza Artificiale e tutela degli utenti nel diritto dell'Unione europea*, Naples, Editoriale scientifica, 2023.

artificial-intelligence systems has profound repercussions on human rights, extending beyond traditional concerns related to privacy and non-discrimination. As AI penetrates all areas of society, its influence on fundamental rights becomes increasingly evident. In the courtrooms, AI-based decision-making processes can influence access to justice, fair trial and due process.

The AI Act highlights the urgent need for a comprehensive regulatory framework to address these challenges.

While personal-data protection is essential, it alone is insufficient to safeguard human rights in the age of artificial intelligence. For this reason, the European legislator has opted for a broader approach to ensure that AI systems be developed and deployed in a manner that respects and promotes human rights.

It is now clear that the widespread adoption of AI in the justice sector presents both opportunities and risks. To ensure that AI benefits society while minimizing potential harm, the EU has sought to develop a robust regulatory framework that prioritizes human rights and ethical considerations. As seen, AI applications employable in justice are qualified in the regulation as high-risk.[14]

Precisely, Annex III of the Regulation, identifies only one 'use case' of AI applications that can have a systemic impact on the security of individuals and on fundamental rights in the sector under analysis and, that is, 'systems used to assist a judicial authority in researching and interpreting facts and law and in applying the law to a concrete set of facts'.[15]

In general, in these hypotheses, the use of AI is not prohibited, but is considered permissible *sub condicione*. In particular, a 'risk management system'[16] is envisaged, based on a set of *ex ante* and *ex post* precautions in the form of evaluations and self-assessments of product and risk conformity, information and transparency, as well as safety and reliability, preparatory to the issue of compulsory certifications, through which the operators concerned can demonstrate the reliability of the 'high-risk' IA systems employed, certifying their compliance with the ethical, legal and technical requirements laid down in the Regulation, before the relevant products or services can be placed on the market.

Leaving aside the choice of graduation of rules on the basis of risk, which is not new for the European legislator - since it reflects policy solutions already successfully tested in related sectors (e.g. medical devices)[17] what characterises the IA Regulation compared with already-existing mechanisms, conceived with reference to 'finished' products placed on the EU market, is the provision of appropriate expedients aimed at making the rules that will be analysed shortly more adaptable to the characteristics of IA applications, especially the high-risk ones, as well as an articulated system of supervision on the application of the rules laid down therein.[18]

Beyond the final result to which the European legislator aspires, it is above all the process developed to achieve it that is interesting from the point of view of regulatory policy. With a view to preparing a discipline that is attentive to the evolution of AI, in fact, instead of rushing into a premature process of regulating the new technologies, the Union has opted for a 'monitoring phase' that can be traced back to the idea of policy sandboxing, in order to test how an innovative and multi-purpose technology such as AI can be governed and how such challenges can best

[14] The risk matrix, intrinsically linked to AI instruments, has underpinned the anthropocentric paradigm that underpins the entire regulatory framework, situating it within the context of the New Legislative Framework. This framework represents a regulatory approach to EU commercialization designed to guarantee the circulation of safe goods and services and the implementation of internal-market control and monitoring mechanisms. Specifically, Article 6 of the Regulation defines high-risk AI as systems fulfilling both conditions: a) serving as a product-safety component or being a product itself, as regulated in Annex I; b) requiring third-party conformity assessment for market placement or service introduction, as detailed in Annex I'.

[15] See Annex III of the Regulation, para. 8 (a).

[16] See Article 9 of the Regulation.

[17] The risk-based approach to regulation is a well-established practice in the EU, applied in many sectors, including medical devices. The EU Regulation aligns with this approach, mirroring the directives on CE marking. By enabling consumers to easily assess product quality, these regulations stimulate competition.

[18] The Explanatory Memorandum to the proposed regulation, specifically at point 1.1, underscores the necessity of implementing tools that enable the regulatory framework to adapt 'dynamically as technology advances and new concerning scenarios arise'. For further insights on this matter, refer to F. Ferri, *Il giorno dopo la rivoluzione: prospettive di attuazione del regolamento*, 5; C. Casonato and B. Marchetti, *Prime osservazioni sulla proposta di regolamento dell'Unione Europea in materia di intelligenza artificiale*, in *BioLaw Journal – Rivista di BioDiritto*, vol. III, 2021, 419.

be addressed.

In this vein, the Regulation provides the possibility of amendment every five years after its entry into force, in order to update systems that qualify as 'high risk', as well as to revise individual regulatory provisions. Similarly, the provision of a constant process of analysis can suggest, where appropriate, the use of specific measures to prevent the technologies in use from negatively affecting the fundamental rights of individuals. Finally, the conformity assessment itself of high-risk AI systems may always be subject to review by the Commission, which may, if it deems appropriate, update conditions and procedures.

These provisions, if placed in the specific judicial dimension, should imply that judicial operators/users of goods or services based on AI applications should be constantly informed and updated about the possibility that they may lead, for instance, to discriminatory decisions, deterministic evaluations or erroneous crystallisations of caselaw, and suggest, if necessary, the appropriate remedies and/or corrective measures.

3. *Unlocking the Black Box: Data Governance and Transparency in Judicial AI*

In addition to the general requirements outlined above, the AI Act establishes more specific rules regarding the quality of data employed in automated decision-making processes, the transparency of AI mechanisms, and human-oversight measures. More precisely, for the training of high-risk AI models, the (EU) Regulation identifies certain criteria that must oversee the implementation of design choices, data collection, and processing operations (including annotation, labeling, cleaning, updating, enrichment, and aggregation), to ensure not only the accessibility, quantity, and adequacy of the datasets used but also, and most importantly, to identify, prevent, and address potential distortions, gaps, or significant deficiencies in the information utilized.[19]

The rationale for such arrangements also addresses the necessity of ensuring that the data inputted into the AI system throughout its lifecycle are 'relevant, sufficiently representative, and, as far as possible, error-free and complete in light of their intended purpose.' Additionally, the data must be 'statistically appropriate' for the context and objectives of the system's use.

This latter assumption is particularly pertinent when processing sensitive data, such as those related to racial or ethnic origin, socioeconomic background, trade-union membership, political opinions, religious or philosophical beliefs, or even genetic data, biometric data, health data, or data concerning an individual's personal life or sexual orientation. Should discrimination be identified, it becomes imperative to implement corrective measures to mitigate or, if feasible, neutralize these risks and raise awareness among the relevant parties.

A distinct, yet interconnected, aspect related to the regulation of the data used is compliance with the transparency obligation imposed on suppliers and producers of high-risk AI tools by the regulation.[20] This duty takes the form of the need to design and develop intelligent systems in such a way that all operations are sufficiently comprehensible to end users, who must be able to interpret the results of AI and use them appropriately.

To this end, the burden is on distributors to provide 'instructions for use of the system', with 'clear, concise, complete, accessible, relevant and comprehensible information' on every relevant aspect of the entire life cycle of the machine.[21]

In an attempt to make an initial projection of the application of these provisions to the hypotheses of the use of AI in the context of the administration of justice, it follows first of all that the data used must come from certified sources and correctly report the legal rules applicable to the context being examined from time to time; that they provide a survey of the legal situations relevant to the case under consideration and a careful selection of case-law guidelines, ensuring that they are truly representative of the different factual contexts in which the judge is called upon to rule and do not correspond to 'pre-packaged' schemes of analysis.

In concrete terms, this should entail for the judge who makes use of AI tools the possibility of identifying the biases that could give rise to erroneous judicial decisions; but

[19] See Article 10 of the Regulation, in particular paragraphs 2 to 5.

[20] See Article 13 of the Regulation.

[21] See Art. 13 of the Regulation, in particular para. 3 (a) to (f).

above all, of accessing the input dataset in order to understand the reasons why the machine has arrived at a certain output. This latter profile is of crucial importance both in the case where the judge wants to agree with the result proposed by the machine and in the case where he/she wants to disregard it. In both hypotheses, in fact, the judge should be able to explain in a clear and comprehensible manner the reasons why he or she decided to agree with the 'automated' path or to disregard the algorithmic solution to the extent necessary to allow the decision to be challenged.

Similarly, transparency requirements should ensure that judges who decide to avail themselves of the aid of algorithmic tools have all the necessary information on their operation, performance and limitations, as well as all the indications for understanding the results produced, so that he/she can employ such systems in a conscious and appropriate manner with respect to the guarantees and fundamental rights pertaining to the judicial activity.

But in addition to making the judicial operator more aware of the capabilities and limitations of the machine, measures concerning transparency and interpretability of the results produced could be particularly important at the moment of decision-making to facilitate the judge's task of motivating the measure he/she wishes to adopt.

Completing the picture of the precautions provided by the European legislator for high-risk AI systems, are the very important rules on human surveillance and those on the need to create a secure technological environment to guarantee the integrity of the system.

More specifically, the (EU) Regulation is characterised by the introduction of a sort of 'humanity coefficient' in the process of machine operation, whereby human control, supervision and power of intervention must be measured according to the intensity and nature of the risks generated by AI and related technologies.[22] In this sense, human involvement can take the form of human-in-the-loop (mere human intervention), human-on-the-loop (human supervision of the process) and human-in-command (human control of the final outcome).[23]

More specifically, the relevant regulatory provisions require suppliers to design and develop AI systems with adequate human-machine interfaces that enable those who will be entrusted with human supervision to 'correctly understand the capabilities and limitations' of the machine and to be able to 'duly monitor its operation' so as to intervene promptly in the event of 'anomalies, malfunctions and unexpected performance'.

Moreover, with the explicit aim of avoiding the phenomenon of automation bias, human-surveillance measures require that the user be informed of 'the possible tendency to automatically rely or over-rely' on the output produced by the AI system, as well as the possibility of always being able to disregard, cancel or ignore the proposed solution or interrupt the operation of the machine even before any result be produced.

Again, the principle under user control underlying the regulatory requirements should increase the autonomy of the judicial operator and preserve his or her self-determination when using AI tools. In this way, the (EU) Regulation seeks to rule out a prescriptive approach to the use of AI and ensure that users act as informed subjects and retain full control over their choices.

In view of the fact that the user can be both the legal practitioner using the tool and the recipient of the decision, this principle should translate, for the former, into the possibility of reviewing the decisions and data used to produce a result, even possibly overriding the solution suggested by the AI tool, in the light of the characteristics of the specific case; for the latter, on the other hand, into the right to be informed of the different options available and the right to legal advice and access to a judge.

4. *Final remarks*

The efforts made by the EU in recent years testify to the need for a radical change to fully exploit the potential of modern digital tools while respecting fundamental rights.

It is certainly too early to try to draw a balance on whether the recent intervention of the EU legislator will be able to effectively respond to the critical issues that this new

[22] See Article 14 of the Regulation.

[23] D. Amoroso, G. Tamburrini, *I sistemi robotici ad autonomia crescente tra etica e diritto: quale ruolo per il controllo umano?,* in *BioLaw Journal – Rivista di BioDiritto,* n. 1, 2019, 33; L. Parona, *Prospettive europee e internazionali di regolazione dell'Intelligenza artificiale tra principi etici, soft law e self regulation,* in *RRM*, n. 1, 2020, 70.

technology entails when used in the field of justice. In fact, the entire regulatory architecture suffers from a profound tension between two opposing requirements, namely, on the one hand, that of seizing the great opportunities that AI systems offer and, on the other, that of preventing the risks that the most advanced technologies entail for fundamental rights and freedoms. On the other hand, when we speak of AI, we are referring to one of the most promising technologies, in respect of which it is desirable to create a single market in which production and research be facilitated as much as possible, but we are also referring - and therein lies the ambivalence - to a set of instruments that are accompanied by risks of negative consequences, in particular for fundamental rights.

Indeed, the horizontal approach adopted by the legislator still leaves room for uncertainty when one wonders how the requirements laid down are to be applied to the specific field of justice.

The proportional nature of human intervention that characterises the new (EU) regulation, whose variability depends on the characteristics of the context in which AI is employed, as well as on the extent of the consequences that its use might cause, certainly denotes the option for artificial intelligence to complement - rather than replace - human intelligence, enabling respect for the fundamental values and principles on which the Union is founded. But in spite of the explicit provision of obligations on manufacturers and suppliers, it is not known what the involvement, role and duties of judges and other players in the judiciary in the use of such technology will be in practice.

In the first place, the very generic prevision of IA applications identified by the European legislator seems to raise some doubts, within the limit of those intended ‘for the assistance of a judicial authority’, without further clarifying what is to be understood by ‘judicial authority’.

If one were to opt for a restrictive interpretation, one could circumscribe the notion to the ‘authority capable of providing effective judicial protection’ guaranteed by Article 47 of the Charter of Fundamental Rights, but such a reading *stricto sensu* would imply that, for instance, the work of a Public Prosecutor’s Office does not fall within this specific high-risk category.

Another controversial aspect, related to the provision under consideration, concerns the fact that the same system of legal-information retrieval or case-law research, if used in private practice (e.g. by lawyers), is not considered, at least in theory, to be high risk. In the latter case, it seems questionable not only that the different nature (private) of the user, who is still a practitioner, could change the system’s risk category, but also that, if an IA system, marketed exclusively for private practice, is unintentionally used by a judge, it would not meet the requirement and thus not be considered high-risk.

Similarly, despite the fact that the (EU) Regulation prescribes the need to use accessible, secure, error-free and bias-free datasets for the training of intelligent machines, doubts remain as to what actions can be taken in practice to overcome the critical issues related to the black-box phenomenon and to ensure compliance with the judge’s duty to give reasons for his/her decisions, the principle of independence and impartiality and the right to effective judicial protection.

The problems of lack of transparency and obscurity in the decision-making process appear in fact difficult to be counterbalanced by the rules of use of the data and/or the technical standards envisaged, especially when it involves machines whose operation is not intelligible to the human mind such as deep learning based on self-learning techniques are involved.

For these reasons, it will be necessary to identify possible developments in the judicial system and to identify models that comply with fundamental rights.[24]

This proves to be particularly complex due to the simple fact that algorithmic tools, developed outside the judicial system, create an unprecedented situation with respect to the classical conception of the trial, in which the only element external to the parties is the judge. Nevertheless, automated systems are far from being neutral objects or actors, since the machine that follows the steps of an algorithm to achieve a result obeys external instructions, for which there is no guarantee of either fairness or impartiality, and mere reference to ethics by design may prove insufficient.

[24] A. Adinolfi, *Evoluzione tecnologica e tutela dei diritti fondamentali: qualche considerazione sulle attuali strategie normative dell’Unione*, in *Quaderni AISDUE*, Naples, 2023, 321.

As things stand, in the absence of tools enabling the judge to understand the functioning of the system used, the question remains open as to whether he/she would actually be able or willing to deviate from AI decisions and suggestions, all the more so given that judicial personnel, at least as things stand, do not have adequate digital training to raise awareness of the use of modern technologies.

Notwithstanding these doubts, it should be noted that the AI Regulation, in keeping with its vocation, limits itself to providing rules that are susceptible of general application. Therefore, specific provisions, such as those of the administration of justice, will necessarily have to be accompanied by other rules specifically aimed at the area in question.

To this end, the CJEU's AI Strategy,[25] which may in the future be incorporated into a binding act, presents itself as a useful instrument for supplementing the regulatory requirements of the AI Act in the specific field of justice. Indeed, more than a mere set of guidelines, it offers a far-sighted vision of the integration of modern technologies in the sector under consideration, giving a precise direction to the path of renewal of the European administration of justice.

In this sense, the document drawn up by the Court, on the one hand, emphasises the broader acceptance of technology in the administration of justice and, on the other hand, identifies in concrete terms the activities in the field that can be carried out with the support of AI. It therefore represents not only a profound change of perspective for one of the EU's traditionally most conservative institutions, but also a first step towards promoting the responsible use of AI in the member states' judicial systems, in accordance with the values of the European Union.

[25] For more on CJEU'AI Strategy see A. Correra, *Il ruolo dell'Intelligenza artificiale nel paradigma europeo dell'E-justice.*