



Viti i XVI-të i Botimit, Nr.2

Dhjetor 2024

SFIDAT E RUAJTJES SË NATYRËS NJERËZORE TË DREJTËSISË.

RASTI I SHQIPËRISË

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Përmbledhje

Inteligjenca artificiale dhe ligji, të cilët kanë qenë në qendër të vëmendjes së diskutimeve të fundit politike dhe akademike, janë dy tema kryesore të strukturës sonë sociale të cilat po pësojnë ndryshime themelore. Kur bëhet fjalë për rastin e Shqipërisë, një shqetësim që me të drejtë do të lindte është: si do të ndikojë në gjyqësor ky automatizim artificial që ka zënë rrënjë në ekzekutivin dhe legjislativin? Ky studim do të shqyrtojë se si automatizimi i drejtësisë procedurale do të ndikonte në sundimin e ligjit dhe të drejtën për një gjykim të drejtë në Shqipëri, në krahasim me vendet me institucione të forta demokratike.

Për më tepër, ky hulumtim analizon nëse ekziston një domosdoshmëri për të mbajtur një aspekt njerëzor në procesin gjyqësor, duke ngritur çështjen e rolit dhe rëndësisë së një mendjeje njerëzore prapa marrjes së vendimeve gjyqësore?

Duke analizuar në mënyrë kritike literaturën përkatëse mbi integrimin dhe ndikimin e inteligjencës artificiale në sisteme të ndryshme ligjore, do të mblidhen të dhëna cilësore për të propozuar rekomandime për përmirësimin e legjislacionit vendas shqiptar.

Ky studim fut një qasje të re në fushën e së drejtës duke kryer një analizë krahasuese të përdorimit të inteligjencës artificiale kundrejt inteligjencës njerëzore. Duke theksuar ndikimin specifik të këtyre teknologjive në nivele të ndryshme të sistemit gjyqësor, duke përfshirë gjykatat e shkallës së parë dhe të apelit kundrejt gjykatave supreme dhe kushtetuese, ky kërkim ofron një perspektivë të re mbi integrimin e inteligjencës artificiale në proceset ligjore të vendim-marrjes.

Fjalë çelës: *Automatizimi i drejtësisë, inteligjenca artificiale, e drejta për një gjykim të drejtë, sundimi i ligjit, gjyqësori.*

CHALLENGES OF MAINTAINING THE HUMAN NATURE OF JUSTICE. THE CASE OF ALBANIA

Abstract

Artificial intelligence and law, who have been in the spotlight of recent political and academic

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discussions, are two main topics of our social fabric which are undergoing fundamental changes. When it comes to the case of Albania, a concern that would rightly arise is: *how this artificial automation which has been taking root in the executive and legislative, will impact the judiciary?*

This study will examine how the automation of procedural justice would affect the rule of law and the right to a fair trial in Albania, in comparison to countries with strong democratic institutions. Furthermore, this research analyses whether there is a necessity to maintain a human aspect in the judicial process, raising the question of *the role and importance of a human mind behind judicial decision making?*

By critically analyzing relevant literature on the integration and impact of artificial intelligence in various legal systems, qualitative data will be gathered to propose recommendations for enhancing Albanian domestic legislation.

This study introduces a novel approach to the field of law by conducting a comparative analysis of the utilization of artificial intelligence versus human intelligence. By highlighting the specific impact of these technologies on various levels of the judicial system, including first instance and appeal courts versus supreme and constitutional courts, this research offers a fresh perspective on the integration of artificial intelligence in legal decision-making processes.

Keywords: *Automation of justice, artificial intelligence, right to a fair trial, rule of law, judiciary.*

The history of artificial intelligence and its relation to the law.

In the past few years, remarkable advancements have been achieved in the fields of computer science and artificial intelligence. Nowadays, an increasing number of businesses rely on artificial intelligence to enhance efficiency and reduce costs, making it indispensable for their operations.

Undoubtedly, AI systems prove incredibly beneficial. As our world grows increasingly intricate, the utilization of our human capabilities alongside high-caliber computer systems becomes imperative. This holds true particularly for endeavors necessitating intelligence. However, the flip side of the AI coin evokes fear in many—the notion that machines could attain intelligence. If intelligence becomes mechanized, what remains unique about humanity? What sets humans apart from machines?

The notion of animating lifeless objects to create intelligent entities has captivated humanity's imagination for centuries. Ancient Greeks wove myths around the concept of robotics, while Chinese and Egyptian engineers crafted automatons. The genesis of modern artificial intelligence can be traced back to efforts to model human thought as a symbolic system, echoing the philosophical frameworks of classical thinkers. However, formal recognition of the field didn't occur until 1956, marked by the inaugural "Artificial Intelligence" conference held at Dartmouth College in Hanover, New Hampshire.² Cognitive scientist Marvin Minsky,³ alongside other prominent researchers, expressed

2 The Dartmouth Summer Research Project on Artificial Intelligence was a 1956 summer workshop widely considered to be the founding event of artificial intelligence as a field. - *An Inductive Inference Machine, Dartmouth Summer Research Conference on Artificial Intelligence, Solomonoff, Ray (1956).*

3 Marvin Lee Minsky was an American cognitive and computer scientist concerned largely with research of artificial intelligence. Minsky defined AI as "the science of making machines do things that would require intelligence if done by men." Despite some early successes, AI researchers found it increasingly difficult to capture the external world in the cold, hard syntax of even the most powerful computer programming languages. - *Minsky, Marvin (1986), The Society of Mind, Simon and Schuster.*

considerable optimism about the prospects of artificial intelligence during this event. As Minsky stated “It’s ridiculous to live 100 years and only be able to remember 30 million bytes. You know, less than a compact disc. The human condition is really becoming more obsolete every minute.”⁴

It is quite understandable to say that the definition of artificial intelligence has changed over the years, just as all concepts and definitions in the world have evolved.

*“AI is typically defined as the ability of a machine to perform cognitive functions we associate with human minds, such as perceiving, reasoning, learning, interacting with the environment, problem solving, and even exercising creativity.”*⁵

Even though it originated from human learning processes and there was widespread hope that AI with human-like cognitive abilities was achievable, the advancement of perceptron technology faced setbacks due to its incapacity to handle basic logic and its overwhelming computational complexity.⁶ Over time, the outlook on AI has shifted towards a narrower focus on facilitating analytics. In this view, AI tools serve as enhancements to the expertise of human professionals in various fields, rather than aiming to replace them in the workplace.⁷

It must be said that there is a two-way relationship between law and technology. This is as a result of continuous developments in the field of technology and its impact on all aspects of life. So, on the one hand, the law stands as the only “restrictor” of technology, imposing rules and sanctions on its use. On the other hand, there is technology that is interfering with law and justice by automating judicial systems and replacing the human mind that writes and drafts the law.

When a new technology or a new application of an already existing technology lands on the markets and in society, there are always legal issues related to it. Law is implicated with AI in two key ways.⁸

There is a field of study called legal Informatics that is a specialized area of study concerned with the interaction between law and computers, as well as automated information processing in a broader sense. However, it does not aim to develop an all-encompassing theory of regulation and control.

The inception of legal informatics stemmed from the rising intricacy and abundance of legal data, alongside the expanding influence of technology in societal dynamics. Its evolution can be attributed to several pivotal elements:

Firstly the rise of computing technology, the emergence of computing technology during the mid-20th century brought forth fresh techniques and instruments for managing, storing, and scrutinizing vast quantities of data. This spurred legal scholars and professionals to delve into the possibilities of employing computers in tasks such as legal research, document organization, and case examination.

Secondly information explosion, as laws, regulations, court rulings, and legal literature multiplied, the legal sector encountered difficulties in handling and retrieving extensive volumes of legal data. This underscored the necessity for enhanced techniques in legal research and information retrieval to meet the escalating demand for efficiency.

Thirdly interdisciplinary collaboration, the advancement of legal informatics was facilitated by the cooperation among legal specialists and professionals from diverse fields, notably computer science and information technology. This cross-disciplinary strategy enabled the creation of inventive solutions that merged legal acumen with technological proficiency.

4 History of Artificial Intelligence Maad M. Mijwel Computer science, college of science, University of Baghdad Baghdad, Iraq

5 Chui, L., Kamalnath, V., and McCarthy, B., 2018, An Executive’s Guide to AI, McKinsey,

6 Cardon, D., Cointet, J. P., and Mazières, A., 2018, “Neurons Spike Back: The Invention of Inductive Machines and the Artificial Intelligence Controversy,” *Rezeaux*, 5(211), pp. 173–220.

7 Wang, L., Gao, R., Váncza, J., Krüger, J., Wang, X. V., Makris, S., and Chrysosolouris, G., 2019, “Symbiotic Human-Robot Collaborative Assembly,” *CIRP Ann.*, 68(2), pp. 701–726. 10.1016/j.cirp.2019.05.002

8 The European Union’s AI Act: Guarding against or Employing Artificial Intelligence”-Dr. Pjereta Agalliu and Prof..Dr. Artan Hoxha

Fouthly legislative and regulatory changes, The implementation of electronic filing systems and the digitization of legal documents, driven by alterations in legislation and regulations, compelled the legal profession to adjust to evolving technological landscapes. This transition towards digitalization opened doors for the emergence of electronic legal tools and platforms, presenting new avenues for development.

In its composition, this field of study is divided into three subjects areas, as follows:

1. *Legal Information Science* is an interdisciplinary field that focuses on the study, management, and utilization of legal information. It encompasses various disciplines such as law, library science, information science, computer science, and more. Legal Information Science involves the creation, organization, retrieval, analysis, and dissemination of legal information through the use of technology and information science principles. It addresses issues related to legal research, document management, information retrieval, electronic legal resources, legal databases, and the impact of technology on the legal profession and legal systems. Overall, Legal Information Science aims to improve the accessibility, efficiency, and effectiveness of legal information services and resources.
2. *Computational Law* is an emerging field that applies computer science, artificial intelligence, and computational techniques to address legal issues and challenges. It involves the development of algorithms, software systems, and computational models to automate legal tasks, analyze legal data, and support decision-making processes within the legal domain. Key aspects of Computational Law include:

Automation- Richard Susskind⁹ in his book “*Tomorrow’s Lawyers: An Introduction to Your Future*,”¹⁰ explores the concept of automation in the legal profession. He argues that advancements in technology, particularly artificial intelligence and machine learning, will lead to the automation of many routine legal tasks, such as document review, legal research, and contract drafting. Susskind emphasizes that automation will not replace lawyers but will rather transform their roles and the way legal services are delivered. He suggests that lawyers should embrace these changes and adapt to new technologies to remain relevant in a rapidly evolving legal landscape. In summary, according to Richard Susskind, automation in law refers to the use of technology to streamline and automate routine legal tasks, allowing lawyers to focus on higher-value activities such as strategic advice and client counseling.

Another author, Mark T. Greene explores how automation, particularly through the use of semantic web technologies, can enhance legal information retrieval and analysis. Greene discusses how automation in law involves the use of computer algorithms and artificial intelligence to perform various legal tasks, such as document analysis, legal research, and contract drafting. He emphasizes the importance of creating structured legal data and ontologies to facilitate automated processing and retrieval of legal information. Overall, Greene’s work highlights how automation can improve efficiency and accuracy in legal practice by leveraging technological advancements in information retrieval and analysis.¹¹

Data Analysis- Applying computational techniques to analyze legal data, including court decisions, statutes, regulations, and case law, to extract insights, identify patterns, and predict legal outcomes. Daniel Martin Katz does a study on the application of data analytics and

9 President of the Society of Law and Computers at Oxford

10 “*Tomorrow’s Lawyers: An Introduction to Your Future*” by Richard Susskind. Oxford University Press 2013

11 Greene, M. T. (2010). *Law and the Semantic Web: Legal Ontologies, Methodologies, Legal Information Retrieval, and Applications*. Springer.

quantitative methods in the legal profession. He examines how data analysis techniques, such as machine learning and predictive modeling, can be used to extract insights from legal data and improve decision-making processes within the legal domain. Katz argues that data analysis in law involves the systematic collection, processing, and interpretation of legal data to identify patterns, trends, and relationships. By leveraging data analytics, legal professionals can better understand legal issues, predict case outcomes, and formulate effective legal strategies. He emphasizes the growing importance of data analysis in law and the potential for data-driven approaches to transform the practice of law.¹²

Decision Support Systems- Developing computational models and decision support systems to assist legal professionals in making informed decisions, evaluating legal risks, and formulating legal strategies. Author *Ewa Ziemba*, in her book “*Decision Support Systems in Law: Legal and Ethical Implications*,” addresses how DSS can be used to assist legal professionals in making informed decisions and solving complex legal problems. Author analyses the various components of DSS, including data analysis, modeling techniques, and user interfaces, and discusses their application in the legal context. She also considers the legal and ethical implications of using DSS in decision-making processes within the legal profession. *Ziemba’s* work provides insights into the potential benefits and challenges of implementing DSS in law and highlights the importance of considering ethical considerations in the development and use of these systems.¹³

Natural Language Processing- Leveraging NLP and machine learning techniques to interpret and understand legal texts, contracts, and documents, enabling computers to extract meaning and context from legal language. Author *Adam Wyner* explores the application of NLP techniques to analyze and interpret legal texts in his book “*Automating Legal Analysis: Empirical and Legal Perspectives*”. *Wyner* discusses how NLP can be used to extract meaning, structure, and relationships from legal documents, statutes, regulations, and case law. He examines various NLP methods, including text classification, information extraction, sentiment analysis, and summarization, and considers their implications for legal research, document analysis, and decision support.

In this book he makes an in-depth study about the potential of NLP to enhance the efficiency and effectiveness of legal analysis and the importance of interdisciplinary collaboration between computer scientists and legal experts in developing NLP applications for the legal domain.¹⁴

3. *Administration & Management*, i. e., the automation of legal office work. Raising questions like “*What parts of legal work can be automated?*” or “*How must laws be formulated to be automatable?*”¹⁵

Jurimetrics

12 Katz, D. M. (2017). *Quantitative Legal Prediction*

13 Ziemba, E. (2013). *Decision Support Systems in Law: Legal and Ethical Implications*. Springer.

14 Wyner, A. (2019). *Automating Legal Analysis: Empirical and Legal Perspectives*. Springer.

15 Jörg Pohle “A Legal Discipline of the Future” *A Short History of the Intersection of Law and Computer Science*

The term “jurimetrics” is derived from “juris” (law) and “metrics” (measurement), reflecting its focus on the measurement and analysis of legal phenomena using quantitative methods. Jurimetrics encompasses various areas of legal research and practice, including legal analytics, empirical legal studies, forensic statistics, and computational law.

In the late 1940s, Lee Loevinger¹⁶ introduced the term “jurimetrics” into legal discourse. Loevinger envisioned jurimetrics as part of a broader effort to bring a scientific approach to the creation and application of law, as well as legal research. His goal was to examine law and legal phenomena within the realm of social behavior control, moving away from reliance solely on intuition, speculation, or outdated beliefs, and towards rigorous scientific inquiry. Loevinger highlighted the established disciplines of semantics and statistics, along with the evolving specialized techniques in psychology, anthropology, sociology, and econometrics, as valuable tools for this purpose.¹⁷

Loevinger identifies several areas suitable for Jurimetrics exploration, including the conduct of witnesses, judges, and lawmakers, the language and communication within legal contexts, legal processes and record-keeping, and broader legal effects on society, encompassing both the overall impact of law and the specific consequences of individual laws.

The right to a fair trial. Case of Albania.

The right to a fair trial is a fundamental legal principle that ensures individuals are entitled to a fair and impartial judicial process when facing legal proceedings. It encompasses various procedural safeguards and guarantees designed to protect the rights of individuals accused of crimes or involved in legal disputes. Key components of the right to a fair trial include: *Impartial Tribunal, Legal Representation, Presumption of Innocence, Due Process, Fair and Public Hearing, Equality Before the Law, Access to Justice*.

Justice reform in Albania has been a major issue for the country in recent years. The Albanian judicial system has been plagued by corruption, inefficiency, and a lack of independence. In response to these challenges, the Albanian government has made significant efforts to reform the justice system and improve its effectiveness.

In 2016¹⁸, Albania adopted a package of constitutional amendments that laid the foundation for the implementation of the justice reform measures. These amendments included provisions for the establishment of a new independent institution, the High Judicial Council, which is responsible for the selection, evaluation, and discipline of judges and prosecutors.

The effectiveness and efficiency of the judiciary in Albania have been a topic of concern for many years. Despite efforts to reform¹⁹ and improve the judicial system, there are still numerous challenges

16 Former Commissioner of the Federal Communications Commission of the United States

17 Ibid (15)

18 The Constitutional amendments entered into force on 11 August 2016

19 The Justice Reform legal package consisted of 7 new organic laws, amendments to Law no. 7895, dated 27.1.1995 “Criminal Code of the Republic of Albania (RoA)”, as amended; Law

that hinder its overall performance.

The judiciary's success is measured by its ability to provide timely and high-quality judicial services that can resolve legal disputes quickly and restore legal relationships between parties. Improving access to the justice system is essential for achieving efficiency and reducing delays in the administration of justice.

The right to a fair trial is also sanctioned in the Constitution of the Republic of Albania in Article 42 *"Everyone, for the protection of his constitutional and legal rights, freedoms, and interests, or in the case of an accusation raised against him, has the right to a fair and public trial, within a reasonable time, by an independent and impartial court specified by law"* thus placing a major importance on it.

The first constitutional notion that becomes significant in guiding AI legislation and, most importantly, reducing the hazards posed by the black box phenomena is the principle of transparency. The second constitutional component that must be considered as establishing a legal framework for AI is the concept of equality. This principle is crucial in addressing potential partiality and discriminatory practices in AI, ensuring equality, and protecting people's rights.²⁰

The duration of a trial in Albania can vary depending on the complexity of the case, the number of witnesses and evidence presented, and any delays or procedural issues that may arise during the proceedings. Generally, a trial in Albania can last from several months to a few years. This can be frustrating for all parties involved, as prolonged trials can result in increased costs, emotional stress, and uncertainty about the outcome.

In a study done by the Centre for Public Information Issues (CPII), 37,854 decisions rendered by the Appeals Courts of General Jurisdiction during the years 2020-2023 were analyzed.²¹

As a result of this study was that the length of proceedings on the merits got worse year after year at the Courts of Appeals as it was doubled and even tripled in 2022 as compared to 2016. The only exception is the Appeals Court of Durrës, where the indicators on the average length of proceedings for criminal cases tried on merits improved.

As this study mentions the evaluations for 2020-2022 reveal a noticeable decline in performance measures related to prolonged court proceedings, especially in civil cases heard in full. This decline worsened in the initial six months of the Tirana Appeals Court of General Jurisdiction, which commenced operations on 1 February 2023 following the Judicial District Reform. In 2016, in all Appeal Courts of General Jurisdiction altogether, around 1% of civil cases tried on merits showed an excessive length of proceedings. Meanwhile, in 2022, 54% of the cases exceeded this sensitive time limit for human rights. In 2023, in the first six months of operation of Tirana ACGJ, 78% of the civil cases on the merits, for which a decision was issued, exceeded the length of proceedings. This is a deterioration by 24 percent as compared to the previous year, which is the highest negative intensity measured in the eight-year period from 2016-2023.

no. 7905, dated 21.3.1995 "Criminal Procedure Code of RoA", as amended; Law no. 8116, dated 29.3.1996 "Civil Procedure Code of RoA", as amended; Law no. 49/2012 on the "Organisation and Functioning of the Administrative Courts and Adjudication of Administrative Disputes", as amended; Approval of Law no. 37/2017 "Criminal Justice for Children Code"; and 30 other laws, to include laws regulating the activity of freelancers, and the package of the penitentiary system laws. EU for Justice, Annual Action Plan in favour of Albania for 202, IPA III/2021/ 043-666/1

20 "The European Union's AI Act: Guarding against or Employing Artificial Intelligence"-Dr. Pjereta Agalliu and Prof.Dr. Artan Hoxha

21 <https://www.infocip.org/al/wp-content/uploads/2023/11/executive-summary-english-ok.pdf>

For this reason, the use of artificial intelligence in courts is being tested in many countries of the world. Research on the utilization of artificial intelligence in the legal proceedings of various countries indicates that it offers numerous benefits in promoting transparency, consistency, and predictability within the legal system.

Rather, some would raise the question of “*How would artificial intelligence help in the courtroom?*”

Firstly, AI can analyze data from previous cases and predict potential outcomes, helping lawyers and judges make informed decisions.

Secondly, AI-powered tools can quickly sift through large volumes of documents, saving time and improving efficiency.

Thirdly, AI can quickly search through legal databases to find relevant cases and precedents, saving lawyers time on their research.

Fourthly, AI can assist in managing case workflows, scheduling, and tracking deadlines, ensuring that all tasks are completed on time.

Fifthly, AI can analyze data to help select a more impartial jury, reducing the chances of bias affecting the trial.

Sixthly, AI-powered tools can help draft legal documents, motions, and briefs, saving time for lawyers.

Seventhly, AI can be used to create virtual witnesses, saving time and costs associated with bringing in physical witnesses.

Currently, many countries are using artificial intelligence in the courtroom;

1. United States: Several states in the U.S. have started using AI technology in courtrooms for tasks such as predicting case outcomes, identifying patterns in criminal behavior, and automating legal research. AI technology is increasingly being used in the courtroom in the United States. This technology is being used to improve the efficiency of legal processes, help lawyers predict outcomes of cases, conduct legal research, and even assist judges in making decisions.
2. United Kingdom: The UK has also explored the use of AI in courtrooms through projects like the “Robot Judge” which was used to predict the outcome of European Court of Human Rights cases.
3. China: China has implemented AI-powered judges in some of its courts to assist with case analysis and decision-making. China is utilizing artificial intelligence (AI) in its courtrooms to improve efficiency and reduce human biases in decision-making processes. The Chinese government has introduced AI technologies, such as AI-powered robots and machine learning algorithms, to assist judges in legal research, case analysis, and prediction of trial outcomes. By using AI in courtrooms, China aims to enhance the speed and accuracy of legal proceedings, identify patterns and trends in legal cases, and improve access to justice for all citizens. However, there are concerns about the ethical implications of using AI in the legal system, such as privacy issues, potential discrimination, and lack of transparency in the decision-making process. Despite these challenges, China continues to invest in AI technologies for its court system to create a more efficient and fair judicial process. As AI continues to evolve and become more advanced, its role in the courtroom is likely to expand, raising important questions about the future of justice and the rule of law.
4. Australia: In Australia, AI tools are being used in courtrooms for tasks such as legal research, case prediction, and evidence analysis.
5. South Korea: The South Korean legal system has implemented AI technologies to assist

- judges in analyzing evidence and making decisions in court cases.
6. Singapore: Singapore has been using AI in courtrooms for tasks such as case management, legal research, and predicting case outcomes.
 7. Estonia: Estonia has also explored the use of AI in courtrooms, particularly in the area of e-justice, to improve efficiency and streamline legal processes

Results:

The use of AI in court can have both positive and negative aspects.

On one hand, AI technology can help streamline legal processes, analyze and interpret large amounts of evidence, and assist in decision-making by providing data-driven insights. This can potentially lead to more fair and efficient outcomes in court cases.

On the other hand, there are concerns about bias in AI algorithms, potential errors in machine learning models, and the ethical implications of relying on AI technology to make important legal decisions. Additionally, there may be challenges in ensuring transparency, accountability, and oversight when using AI in court.

Artificial intelligence presents various risks when it comes to its limited software capabilities in the IT sector. Government officials and legal bodies involved in law and criminal proceedings need to be mindful of the potential advantages AI can offer and closely monitor its development in real time. One potential risk is the calibration of AI algorithms using past family history and criminal behavior of certain groups, which may bias decision-making against individuals from different social backgrounds. Human decisions are influenced by factors that AI may not fully understand, such as personal values and experiences. For instance, a judge may consider releasing a pregnant woman at risk of relapse, despite the algorithm recommending otherwise due to the high potential for recidivism.

Therefore, while AI can be useful in processing statistical data, assisting with legal document preparation, and gathering information from websites, it may not be suitable for all aspects of criminal proceedings. It is essential for officials to carefully consider the limitations and ethical implications of using AI in such contexts.

When utilizing AI in criminal proceedings, it is crucial to uphold fundamental legal principles such as the presumption of innocence and the right to challenge the validity of AI algorithms. The decision to use artificial intelligence in judicial processes should ultimately rest with the judge, who must consider factors such as an individual's personal background and circumstances. Additionally, the issue of accountability for any harm caused by AI developers should be thoroughly examined.²²

We are of the opinion that for the reasons of the relief offered by the acceleration of judicial procedures, artificial intelligence would be appropriate to be used in the courts of first instance and appeal. As far as the high court and the constitutional court are concerned, it would be impossible for artificial intelligence to replace the human mind.

Overall, the impact of AI in court is still being explored and debated, and it will be important to carefully consider the potential benefits and risks of integrating AI technology into legal proceedings.

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