Fundamental rights and Artificial Intelligence in courts in Europe

Young European Lawyers Academy

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Trier, Germany

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Artificial intelligence, Courts and Judges

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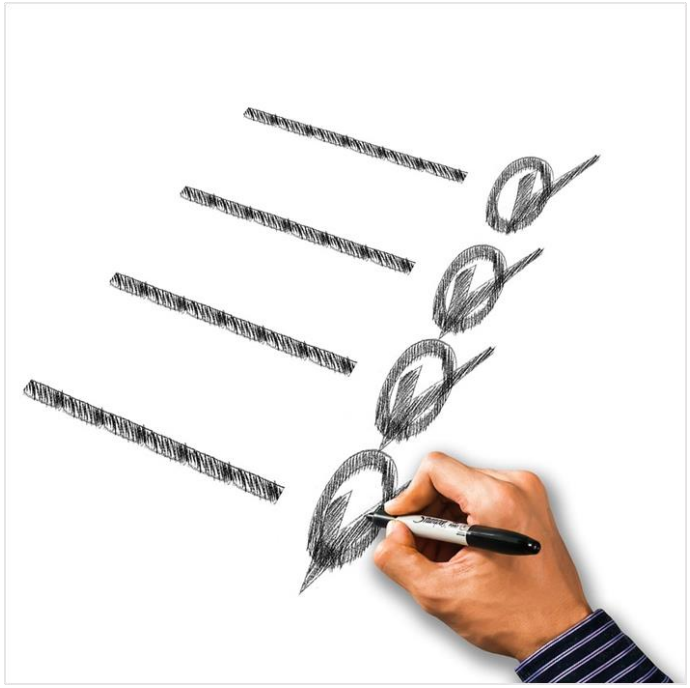
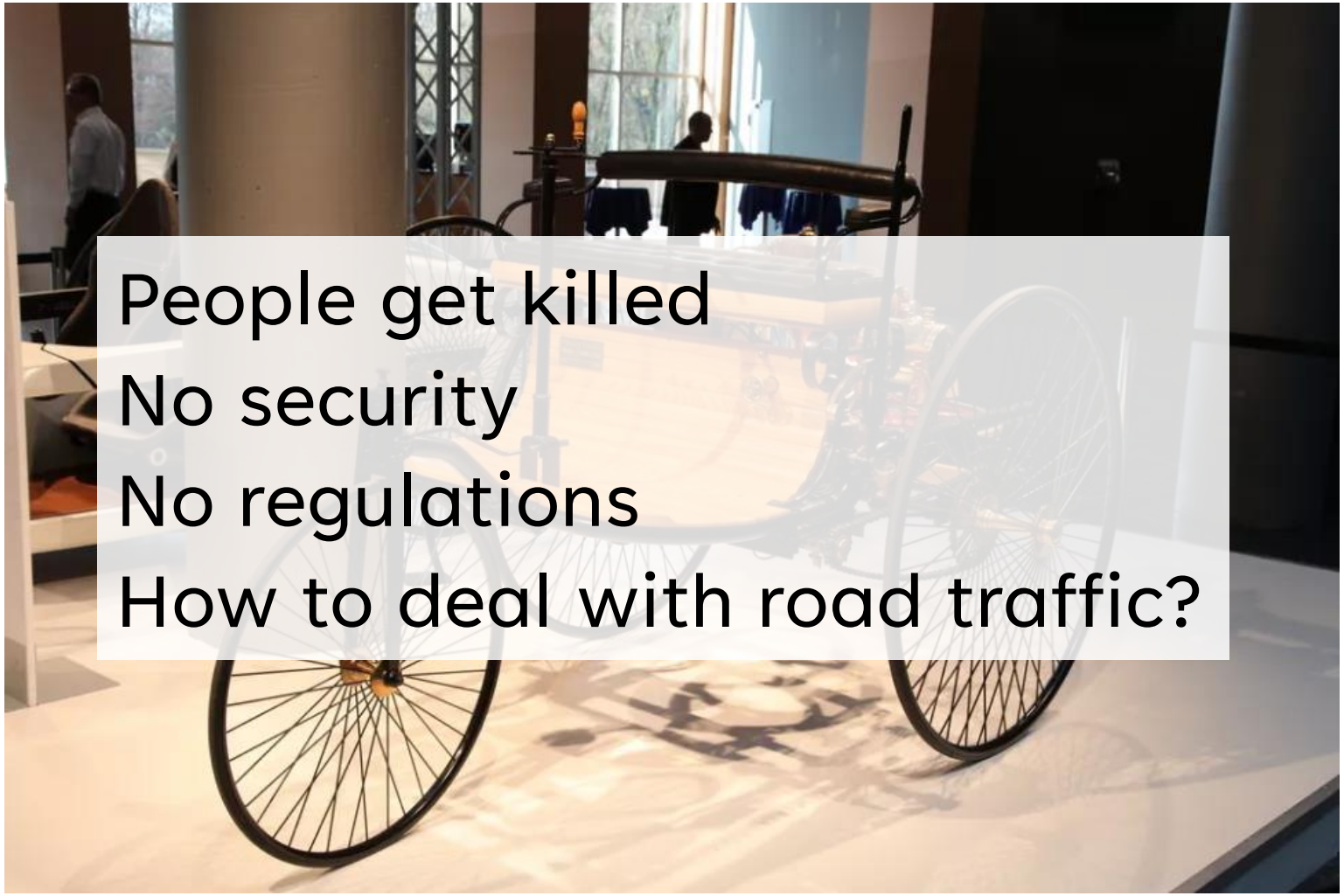
My topics



- ✓What is AI
- ✓AI in courts around the world
- ✓Some problems
- ✓Predictive justice
- ✓Laws and ethics for the use of AI
- ✓Challenges for courts – a discussion
- ✓Break
- ✓A Fundamental Rights Impact Assessment

Source: Reiling, A.D. (Dory), 2020. Courts and Artificial Intelligence. *International Journal for Court Administration*, 11(2), p.8. DOI: http://doi.org/10.36745/ijca.343

Benz no. 1, the world's 1st automobile (1890s)



People get killed
No security
No regulations
How to deal with road traffic?

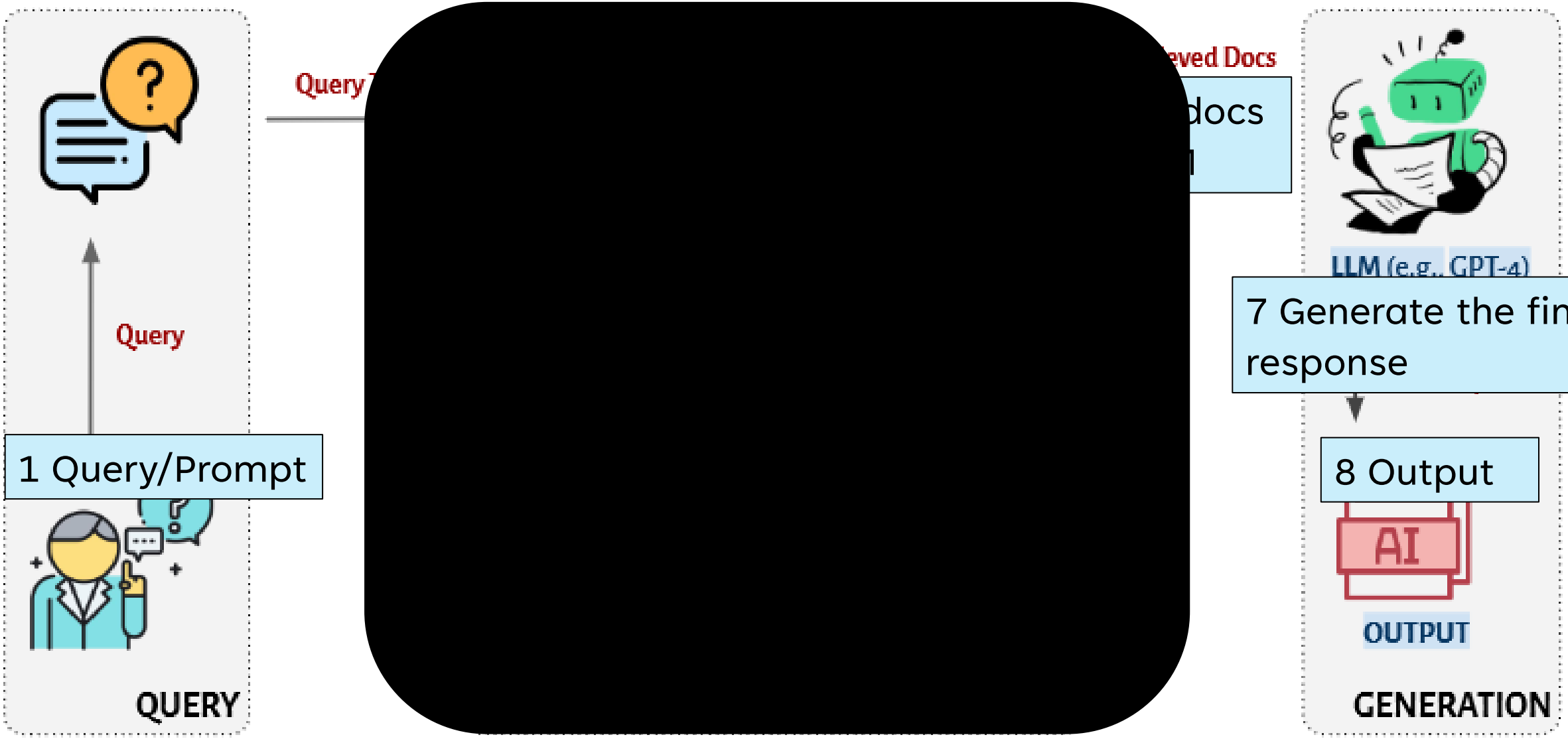
Not very intelligent yet

What is AI and how does it work?

- Machine learning
  - Goal-defined algorithm
  - Supervised, unsupervised
- Deep learning
  - Learns from data
  - Can play chess and Go
- Generative AI
  - Produces content from data

- Data extraction
- Identical patterns
- Drafting documents
- AI is already baked in
- Analytics

Retrieval-augmented generation (RAG)



de Rechtspraak
Raad voor de rechtspraak

Co-pilot, give me picture of a Dutch court

AI in courts in Europe

CCJE survey for Opinion 26

- Consultative Council of European Judges (CCJE)
- Opinion 26: moving forward
- Survey: What AI in your courts?
- 9 mentions out of 33

What?

Govt. Strategy

Vision

Plan for measures

Thinktank

Initiatives

Pilot projects

Ideas, chatbots

Source: CCJE survey for Opinion 26

de Rechtspraak
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The Dutch experience regarding AI in courts

What is happening in the Dutch judiciary?

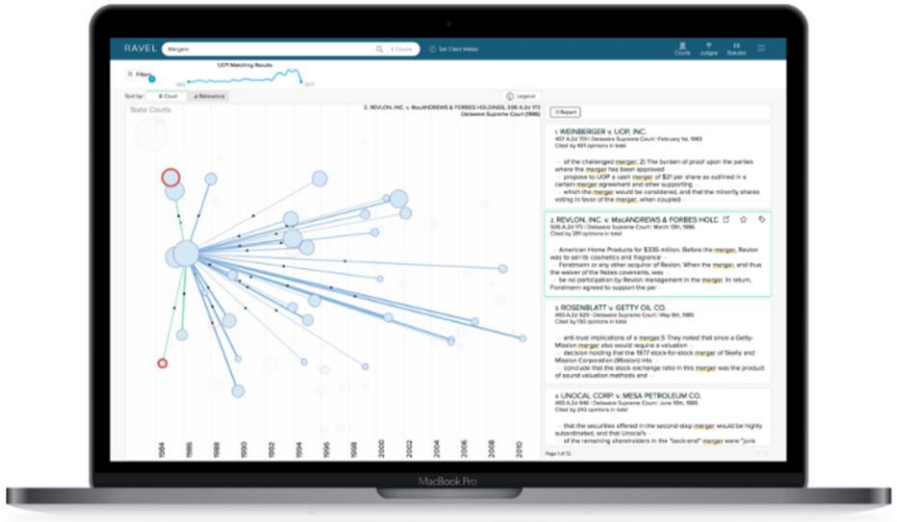
- Debate
- Government policy development
- Vision development
- PhD: AI in judicial decision making
- Case law
- Experimenting with FRIA Assessment

Discussion Question

A case (1)

- ECLI:NL:RBGLD:2024:3636
- Existing case law:
- factual data not in the case file, but found on the internet of its own accord ECLI:NL:HR:2011:LJNBP5612
- failed to give the parties an opportunity to present arguments on the matter ECLI:NL:HR:2011:BR1653

AI in use by lawyers in U.S.



Harvard Content

Search Visualization

Try now!

- Citations analysis
  - Which cases support your case?
- Comparing forums
  - Which forum is sympathetic to your case?
- Judge profiles
  - Which judges are sympathetic to your case?
- Workings are trade secret
  - We don’t know how they work

AI in use in courts in US

- Chatbox
  - NJ State Miami Circuit FAQ
- Sentencing algorithms
  - Robust guidance Lot of info
- Translations
  - for customer service, not in the courtroom
- Data extraction
  - Courts control data, no access for outsiders
- Speech to text
  - Now at a low level
  - Recognising accents

source: US state court managers expert group

Co-pilot, what is happening in AI in courts in Asia?

India

India
Singapore
Malaysia
South Korea
China (PRC)

What?

ChatGPT for legal research in some courts:
Case research, bail jurisprudence
Initiative with live transcription
Chief Justice of India DY Chandrachud advocates for ethical AI integration in legal research - Times of India (indiatimes.com)

Co-pilot, what is happening in AI in courts in Asia?

Singapore

- India
- Singapore
- Malaysia
- South Korea
- China (PRC)

What?

- Experiment with generative AI to help self-representing litigants
- (…)
- Generative AI being tested for use in Singapore Courts, starting with small claims tribunal - CNA (channelnewsasia.com)

Co-pilot, what is happening in AI in courts in Asia?

Malaysia

India
Singapore
Malaysia
South Korea
China (PRC)

What?

Incidental
Sentencing prediction
Malaysia tests AI court sentencing despite ethical concerns raised by lawyers - Tech (mashable.com)

Co-pilot, what is happening in AI in courts in Asia?

South Korea

India
Singapore
Malaysia
South Korea
China (PRC

What?

assisting judges in
legal research,
document analysis, and
case predictions.
concerns remain about AI-generated
biases and the reliability of
automated legal reasoning

Co-pilot, what is happening in AI in courts in Asia?

China (PRC)

India
Singapore
Malaysia
South Korea
China (PRC)

What?

Smart courts assisting judges with case analysis and legal interpretations. Signaling significant cases, to be followed by the hierarchy

Online courts, case filings, organizes evidence, and even suggests legal interpretations.

Piloting **AI judges**, which analyze evidence and propose draft judgments for human judges to review.

Source: Lessons from China's Smart Court Reform, IACA Journal 16, 1 https://doi.org/10.36745/ijca.679

What AI found hard, and why

Facial recognition

Recognising black faces

Algorithm trained on white faces

Google recruitment

Did not find suitable women

Trained on Google staff data

Data were mostly men

What else went wrong?

- Steven Schwartz submitted non-existent judicial opinions with fake quotes and citations created by ChatGPT
- A federal judge tossed the lawsuit and issued a $5,000 fine

ChatGPT, what do you know about Dory Reiling (???)

- Awards and Recognition:
- Women in eDiscovery Lifetime Achievement Award in 2015
- Infosecurity Award
- Publications:
- Co-authored the book "Electronic Evidence”

“Predictive” ”Justice”

- Unpredictable court case outcomes are a risk
- Principle: past judgments are correct
- Secure data
- Correct data
- Trained algorithm

Predicting SCOTUS outcomes: 70,2 accuracy

- Predictive justice?
- Yes/no
- No legal reasoning
- Claim 70,2% accuracy

No legal reasoning, not a judgment

Katz, Daniel Martin et al. A General Approach for Predicting the Behavior of the Supreme Court of the United States (January 16, 2017). SSRN: https://ssrn.com/abstract=2463244 or http://dx.doi.org/10.2139/ssrn.2463244.

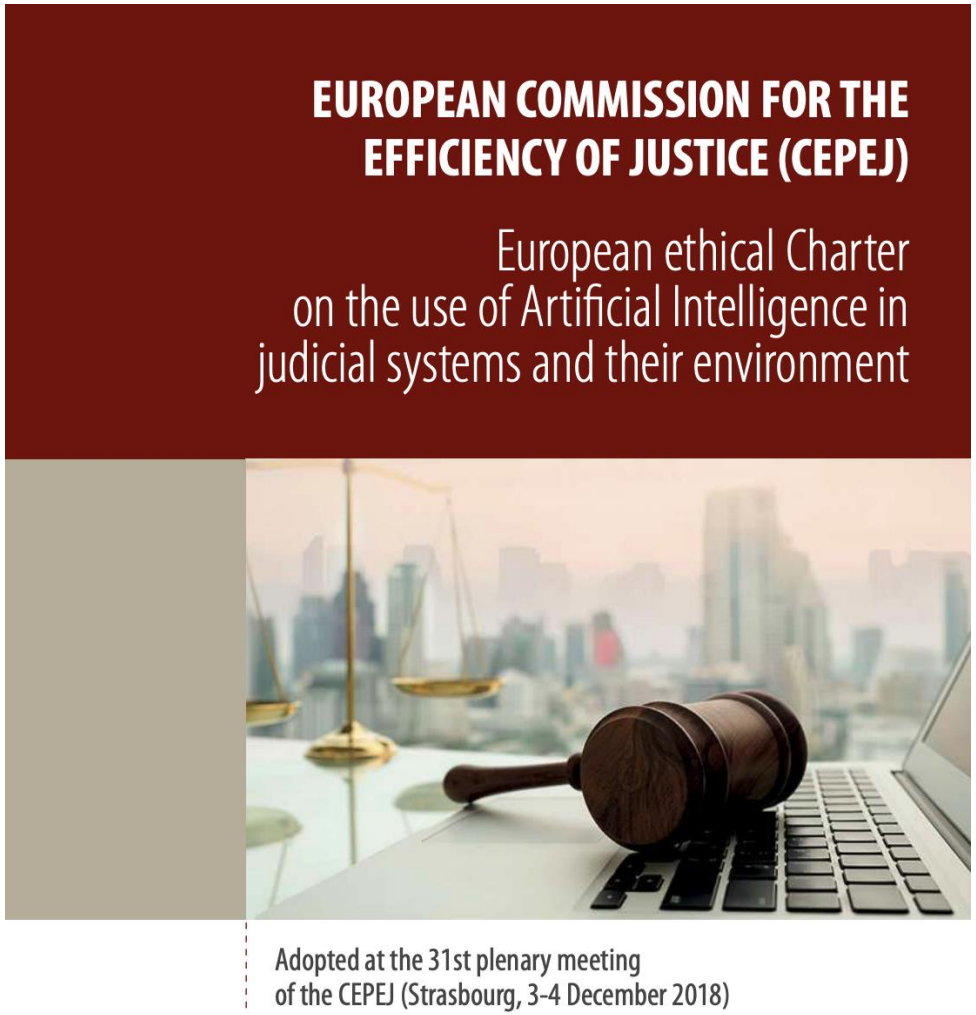
Predicting ECHR outcomes: 79% accuracy

- Yes/no violation?
- Claim: 79% accuracy on average

Yes/no violation? Not a judgment

  - All cases: 84% probability
- Judicial decision-making is significantly affected by the stimulus of the facts

Source: Aletras N, Tsarapatsanis D, Preoţiuc-Pietro D, Lampos V. 2016. 'Predicting judicial decisions of the European Court of Human Rights: a Natural Language Processing perspective', *PeerJ Computer Science* 2:e93 https://doi.org/10.7717/peerj-cs.93



cepej
European Commission for the Efficiency of Justice
Commission européenne pour l'efficacité de la justice

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

2018: European Ethical Charter for the use of AI in judicial systems and their environment

- ✓ 1 Respect for fundamental rights
- ✓ 2 Non-discrimination
- ✓ 3 Quality and security
- ✓ 4 Transparency, impartiality and fairness
- ✓ 5 Under human control

Judiciaries' Consensus on using AI in courts

Use AI to support, not decide

Understand how it works

Be aware of bias

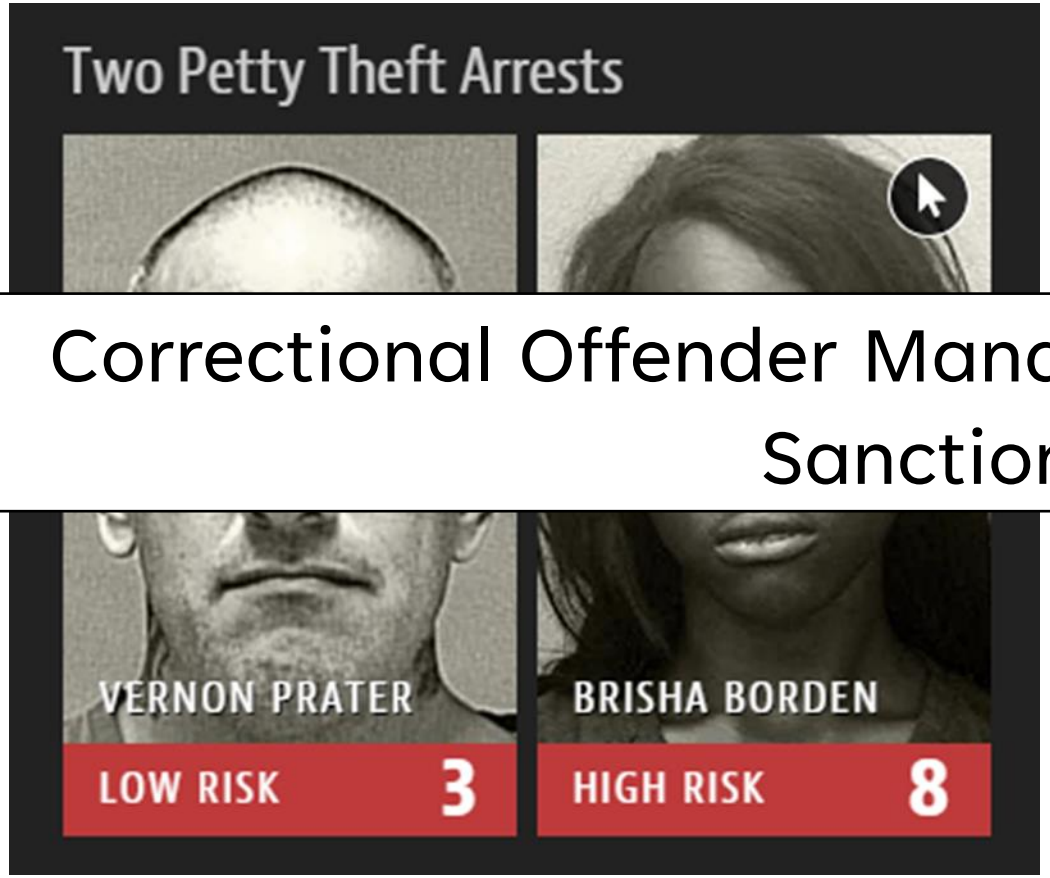
Is predictive justice dead?

Maintain

- Confidentiality and privacy
- Security, Accountability and Accuracy

- Source: ARTIFICIAL INTELLIGENCE (AI) Judicial Guidance, UK Courts and Tribunals

CEPEJ Principle 2: Non-discrimination

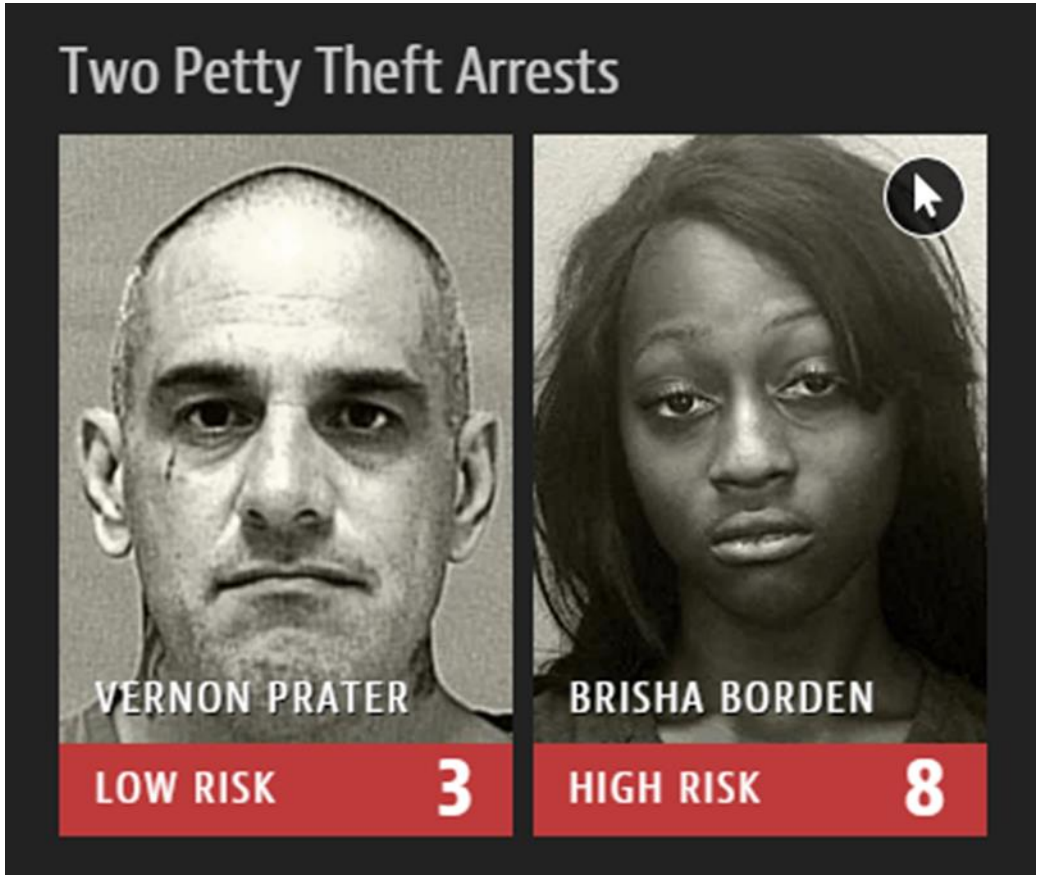


- Prevent discrimination between groups and individuals

Correctional Offender Management Profiling for Alternative Sanctions (COMPAS)

- Recidivism risk assessments in custody, sentencing and parole
- Source: J. Angwin. 'Machine Bias', *ProPublica*, May 23, 2016

Some causes for discrimination



Cause?

- Algorithm
- Programmer
- Lack of data
- Biased laws
- Biased judges

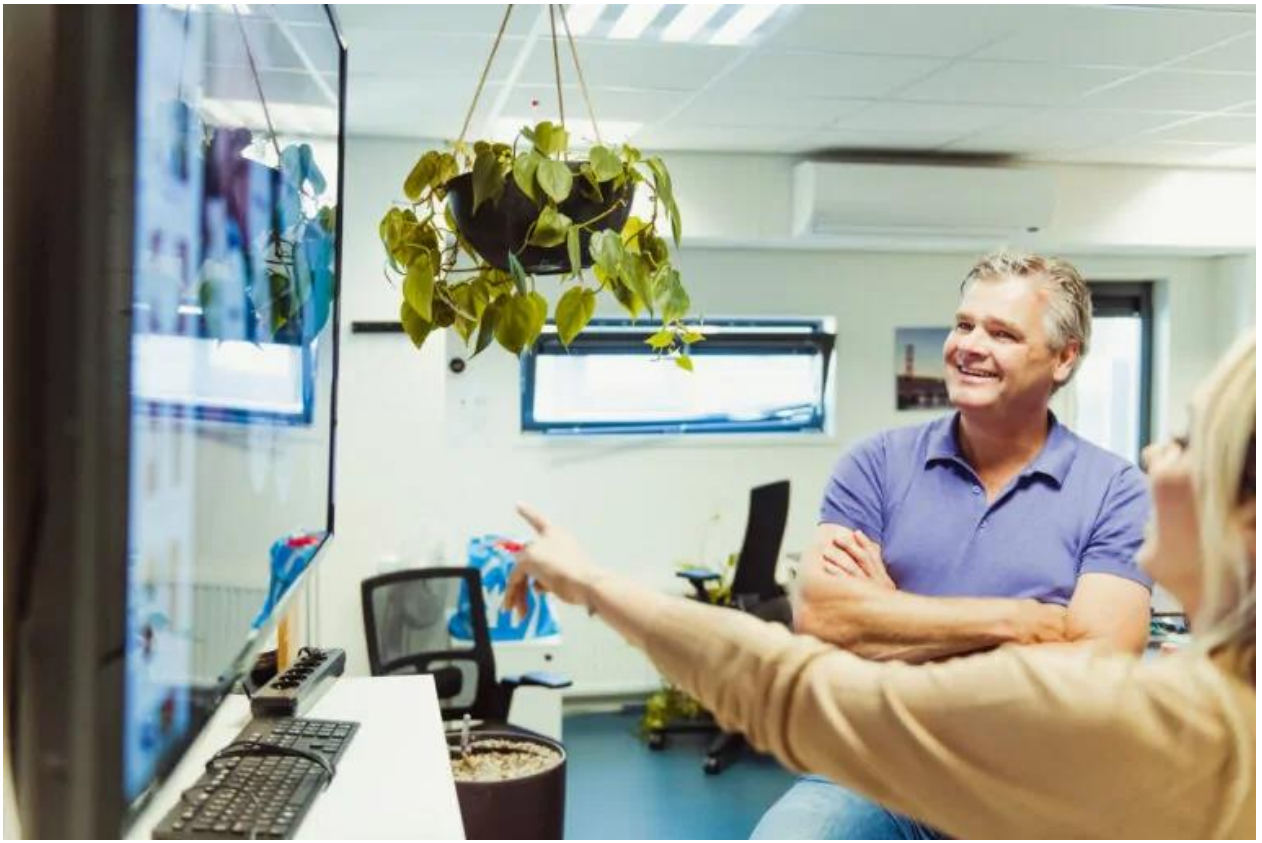
Transparency is current case law

- NL Supreme Court and Council of State:

- full, timely and appropriate disclosure
- (ex ante or ex post?)
- to assess the choices made and the data and assumptions used, so as
- to ensure effective legal protection against decisions based on those choices, data and assumptions, with the possibility of judicial review by the courts.

ECLI:NL:RVS:2017:1259
ECLI:NL:RVS:2018:2454
ECLI:NL:HR:2018:1316

Principle 5: AI under user control



- ✓ Preclude a **prescriptive approach**
  ⇢ The computer does not decide on its own
- ✓ Ensure that users are **informed actors**
  ⇢ Users understand what the AI does
- ✓ Users are **in control** of their choices
  ⇢Users can decide what to do with the AI's result

Challenges for courts (1): judge profiles

- Profiling judges

- What for?
- By whom?
- By others
- By their own court (system)

Judge profiling is now a crime in France

- Ethical, legal principles:
- Regulation, policy?
- Ban?

Challenges for courts (2): What to do with AI results?

- General search results
- Case law search results
- AI results as evidence

Challenges for courts (3) AI to-do

- Human, judiciary and court control:
  - Design
  - Development
  - Safeguarding correct workings
- Improving legal source input
  - Correct data
  - Secure data
  - Enough data
  - Machine-processable judgments

Discussion Question

A case (2)

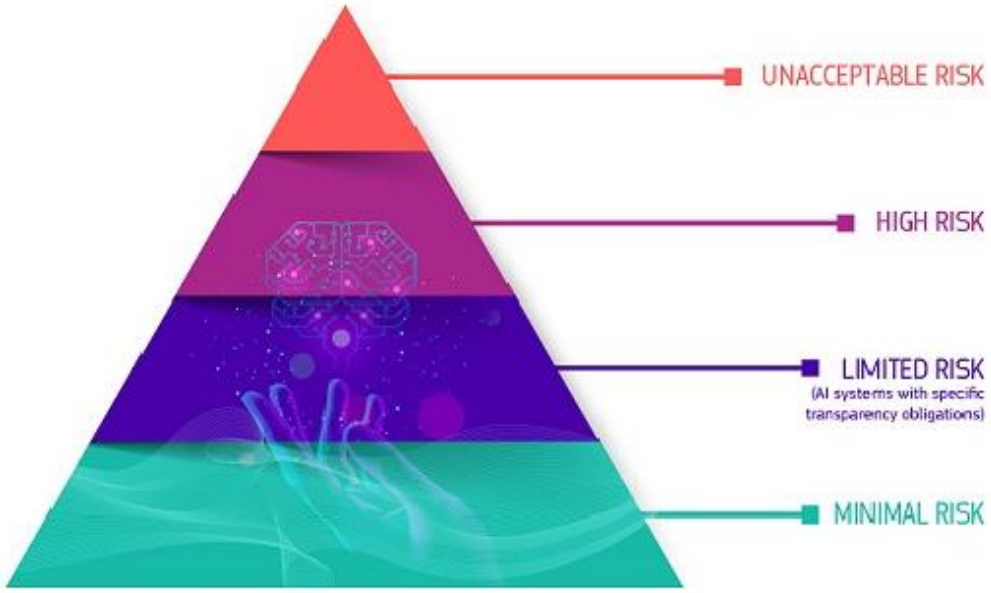
- In country x, the judiciary's IT services are managed by the MoJ
- Microsoft offers Co-Pilot
- The MoJ thinks this is a good tool for judges to – for instance – summarise case files, to save time
- The MoJ includes the Co-Pilot plugin into the judiciary systems.
- What needs to be done to make this work properly?

3. Discussion

break

13/3/24: AI Act adopted by EU Parliament

A risk-based approach



Unacceptable risk

Clear threat to security, rights

High risk

Administration of justice etc.

Limited risk

i.e., chatbots

Minimal risk

Video games, spam filters

Fundamental Rights Impact Assessment

FRIA, FRAIA

Impact Assessment on Human rights and AI

- **Art. 27 AI Act: assessment consisting of:**
- (a) a description of the deployer's processes
- (b) a description of the period of time
- (c) the categories of natural persons and groups likely to be affected by its use in the specific context;
- (d) the specific risks of harm
- (e) a description of the human oversight measures
- (f) the measures to be taken in the case of the materialisation of those risks,
- https://artificialintelligenceact.eu/article/27/

Fundamental Rights Impact Assessment

3 cases

June 24 2025

ERA Trier

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Case 1: SmartCam

Background:
Your client is the city of Haarlem in the Netherlands.
The municipality of Haarlem is piloting “SmartCam Haarlem,” an AI-enhanced public surveillance system aimed at improving urban safety. The system uses facial recognition, crowd analysis, and behaviour pattern detection in real time to assist local authorities in identifying potential threats and managing public spaces more efficiently.
Your client asks that you advise them with a Fundamental Rights Impact Assessment (FRIA) on the use of SmartCam Haarlem.

Case 2: Smart Schools

Background:
Your client, a local government in a mid-sized European city, implemented a biometric attendance system in public schools to streamline attendance tracking and reduce administrative burdens. The system uses fingerprint scanning to record students' daily attendance. While the initiative aimed to improve efficiency, concerns arose regarding its potential impact on fundamental rights, particularly privacy, data protection, and equality.
Your client asks for your advice. You use a FRIA for your analysis.

Case 3: Smart City Surveillance System (SCSS)

Background:
Your client, a mid-sized city, plans to implement a **Smart City Surveillance System** (SCSS) to enhance public safety and traffic management. The system includes AI-powered cameras, facial recognition technology, and real-time data analytics. While the project promises improved security and efficiency, concerns arise about its potential impact on fundamental rights, such as privacy, non-discrimination, and freedom of expression.
Your client asks for your advice. You use a FRIA.

Structure of your advice

- a description of the deployer's **processes**
- a description of the period of time
- **the categories of natural persons and groups likely to be affected by its use in the specific context**
- **the specific risks of harm**
- a description of the **human oversight measures**
- the **measures** to be taken in the case of the materialisation of those ris
- (AI Act art. 27)

2x3=6 groups

Choose a reporter

Use any resource you want

Structure of your advice

- a description of the deployer's **processes**
- a description of the period of time
- **the categories of natural persons and groups likely to be affected by its use in the specific context;**
- **the specific risks of harm**
- a description of the **human oversight measures**
- the **measures** to be taken in the case of the materialisation of those risks,

3. Discussion