SYNTHESIS[1]

By a mission letter dated 29 May 2024, the First President and the Prosecutor-General established an internal working group within the *Cour de cassation*. This group was tasked with both identifying potential use cases for artificial intelligence (AI) within the Court, and reflecting on the questions these uses might raise, in light of the role of the judge and respect for human rights.

1. The group's methodology: close collaboration between jurists and scientists

The working group, composed of representatives from the First Presidency, Prosecutor-General's Office, each of the Court's chambers, the Documentation, Studies and Reports Department (SDER), and the registry, initially conducted a **broad inventory of AI needs**. This was done by interviewing all of the Court's magistrates and court registry staff. Subsequently, the group undertook an **analysis of each of these use cases**.

To carry out this study, the **working group interviewed around twenty individuals**, including representatives from the Ministry of Justice, the National School of the Judiciary (ENM), legal professionals, the European Commission for the efficiency of justice (CEPEJ), and experts in AI within the field of justice. These experts included scientists, jurists, academics, legal publishers, and representatives from legaltech companies. The group also **exchanged views with other national high courts (the Constitutional Council and the Council of State) and with the Paris Court of Appeal,** regarding their approach to AI. With the assistance of the Court's International Relations Department, the group compiled an overview of AI uses in **foreign jurisdictions**, particularly in the supreme courts.

The working group also heavily relied on the **existing experience of the *Cour de cassation* in the field of AI, as well as on the expertise of engineers from the SDER's innovation laboratory**, who are members of the working group. These engineers provided technical insights into the identified use cases. In this respect, it should be emphasised that the *Cour de cassation* holds a unique position within the judicial institution, as it has been able to set up an internal data science team dedicated to AI-related work. As part of the open data project for judicial decisions, the *Cour de cassation* developed an AI-based anonymization software as early as 2019. In 2020, the Court implemented a tool to assist in directing legal briefs to the various civil chambers of the Court, which significantly improved service organisation. Additionally, the Court has developed an ambitious project aiming to assist in identifying case

[1] Rapport - Preparing tomorrow's Cour de cassation - The Cour de cassation and AI

law divergences, yielding interesting results in terms of decision similarity searches, automated decision summarization, and decision classification by keywords.

In its work, the group aimed to take a broad view of the concept of AI, without limiting itself to examining the potential of generative AI alone. It also referred to older technologies such as expert systems and machine learning, as well as to the combination of different types of AI.

While expressing an interest in existing AI services on the market, for general use or for the needs of legal experts, the working group focused on examining use cases that could be developed by the *Cour de cassation* to meet its own needs. The Court's experience has shown that developing tools in-house offers greater agility in project management, the ability to interconnect technical profiles and occupations, and costs much less than they would by using service providers. It also ensures better control of the data and, as a result, a higher guarantee of the reliability and transparency of the algorithms. This approach also simplifies the hosting of the AI systems (AIS), on the *Cour de cassation*'s own servers or on a secure cloud.

2. Identifying criteria for assessing use cases

The group's work has led it to define criteria for assessing use cases, to facilitate comparison of their strengths and limitations.

These criteria are primarily ethical, legal and functional.

The ethical criteria identified relate to the **conciliation of the AIS with fundamental rights**, and issues relating to **sustainable development**, particularly the energy efficiency of algorithms, i.e. the proportionality of computing power and therefore of the energy deployed to respond to a problem.

The legal criteria reflect the constraints of the legal framework that must be respected when implementing an AIS. Clearly, particular care must be taken **to comply with the Artificial Intelligence Regulation** (AIR), particularly in regards to the essential question of whether or not an AIS intended for implementation is high-risk. On examination, it appears that even if AIS intended for use by the judicial authorities are in theory high-risk, the exceptions are numerous and relatively broad, making it likely that most of the cases of use envisaged in the field of justice would not fall into this category.

Similarly, **compliance with the General Data Protection Regulation** (GDPR) must be the subject of particular vigilance, especially when the AIS requires the processing of special categories of personal data within the meaning of Article 9 of the GDPR (health data in particular), which will be very frequent for judicial data.

The functional criteria correspond to advantages for the professions within the Court, and potentially, more generally, for the judicial institution in setting up an AIS. This interest may result from the prospect of either an **improvement in quality** or an **improvement in efficiency**, which should be precisely assessed.

Second, alongside the ethical, legal and functional criteria, the working group identified technical and economic criteria. The technical criteria are intended to assess, overall, the feasibility of the project from two angles. The first is **data availability**. Indeed, most AI projects rely on the exploitation of data sets and it is necessary, on the one hand, to ensure that this data is available, if necessary with the agreement of a third party; and on the other hand, to assess whether the data is usable as is or if it requires transformation or annotation. The second is that of **feasibility, according to the state of the art** in AI.

The economic criteria enable the evaluation of the overall cost of a project, distinguishing human resources **(data science resources, professional resources, other development resources**), **the cost of computing power** that may be required for the training of algorithmic models and the **operating costs**.

It should be noted that this evaluation methodology could serve as a reference for jurisdictions that would follow a similar approach and would in turn wish to develop and explore AI programs tailored to their specific needs.

3. Identification of use cases

The working group considered five categories of use cases that meet distinct needs. Even if these use cases are subject to specificities for the *Cour de cassation*, they seem to be applicable to all jurisdictions.

First, the working group considered the use of an AI to structure and enrich the documents submitted, for instance by identifying normative or jurisprudential references cited in submissions. It also identified specific use cases for the registry.

Second, it highlighted three main groups of use cases. These are first of all the use cases relating to the **exploitation of the parties' briefs**. These use cases would enable the Court to improve its system for referring appeals, to better identify material or intellectual connections between appeals, and to facilitate the initial analysis of the file (for example, to assess its complexity), or to facilitate the understanding of the dispute by mapping its key elements.

Then, there are use cases relating to **the search and exploitation of the numerous documentary databases** which meet, in part, the Court's own needs. However, these use cases are part of the development of its mission to disseminate case law to the courts (in continuity with the Jurica and Jurinet databases accessible to judges) and to the general public (in the continuity of the Judilibre database, which brings together all the decisions available in open data). This could include improving the search of these databases through the implementation of retrieval augmented generation (RAG) or conversational tools. Functions for the comparison of case law, and possibly assistance in finding divergences, or automated analysis of case law, may also be considered.

Finally, there are use cases relating to **drafting assistance**. These may be fairly simple use cases, involving the standardisation of drafting or compliance with input standards, as well as more complex use cases, such as a tool based on the search for comparisons with similar cases previously judged, or a tool to assist in the handling of serial litigation. It is clear that drafting

assistance raises all the more ethical questions as they are likely to have an impact on the decision.

It is pertinent to observe that no need for **decision assistance** has been identified within the *Cour de cassation*. This can be attributed, in particular, to the extensive specialization of the Court's magistrates, encompassing both the legal areas they adjudicate and their expertise in cassation methodology. Moreover, the fundamental premise of deploying decision-making assistance tools would present substantial ethical and legal challenges to the Court, given its role as the final court of appeal regarding the application and interpretation of law. These concerns would likely be more acute than those arising from their use in lower courts.

The working group also identified other use cases, such as translation and interpreting applications, or speech transcription, which it did not analyse in depth, as it considered that they were not specific to the *Cour de cassation* and would fall more naturally under a development by the Ministry of Justice to be used by all jurisdictions and the administration.

The working group also noted that many of the needs expressed were related to more of the digital working tools than AI applications.

4. The options identified by the working group for the pursuit of AI projects at the Cour de cassation

Each of the use cases identified has been evaluated both mathematically and literally. This evaluation enabled the working group to identify avenues for the development of AI by linking, on the one hand, the efforts required to implement projects, and on the other hand, the expected return on investment, as they can be assessed to date.

It appears, first of all, that **some relatively simple use cases which do not pose any legal or ethical difficulties are able to offer significant functional gains without requiring significant investments**. These are, for example, cross-sectional use cases of structuring and enriching documents, which could benefit many other use cases, whether they relate to the processing of the parties' written submissions, help with the search and exploitation of documentary databases, or assisting with drafting.

Then, **certain use cases, more complex in terms of legal, ethical or technical analysis criteria, require a heavier investment, which seems fully justified in light of the results expected, as established by the scientific literature and the state of the art**. These include, in particular, with regard to the use of the parties' written submissions, cases of use for researching material and intellectual connections between legal briefs, as well as cases of use for the detection of precedents and reconciling case law in the analysis of these briefs. There are also use cases relating to the exploitation of documentary databases, which includes searching for case law elements useful for the Observatory of Judicial Disputes' work (new questions of law, divergences between decisions on the merits, serial disputes, questions of societal interest).

Finally, some projects, particularly those relating to drafting assistance, would be of great interest, especially with regard to the treatment of serial disputes. However, they are **particularly complex, in particular with regard to ethical, legal and technical issues.**

5. Highlighting guiding principles for the development of a judicial AI

The discussions conducted within the working group made it possible to take stock of the challenges of the development of AI, both within the Court and for the entire judicial institution.

Although the focus of the working group was on **use cases** for the Court's own needs, several of those recommended for development are of **interest to all jurisdictions**. Thus, the use of documentary AIS for research in internal and external databases, such as the AIS for analysis of extensive jurisprudential data, are intended to be accessible to the judges of first instance jurisdictions. Similarly, use cases of drafting assistance could lead to the creation of technologies that can then be used to develop tools adapted to the needs of the courts in the main proceedings.

The working group was convinced of the potential already offered by AI, which, considering the rapidity of progress, should increase exponentially in the future.

The development of AI is thus an **opportunity to be seized**, not only to **gain in efficiency**, at a time when the judicial institution is facing an unprecedented crisis of resources, since AI is able to accomplish in a few seconds tasks that are time-consuming and without real added value when they are performed by humans, but also to **gain in quality**. This gain in quality is particularly apparent, for instance, when the aim is to identify, in extensive masses of data, new and/or serial issues, or to detect divergences in case law. Such research, which would not be reasonably feasible without the assistance of AI, would particularly enable courts to streamline and better coordinate the handling of emerging litigation and enrich the legal debate and dialogue between judges.

Nevertheless, the working group believes that the **commitment to AI** is **conditional on the fulfilment** of technical, ethical and governance **prerequisites**.

Firstly, on a **technical level**, the working group stresses the very strong link that exists between the development of AI projects and the benefits of a **solid, reliable information system, focused on the needs of users and taking into consideration the objectives of good structuring** and conservation of useful data. In addition, the question of hosting of services and computer power must also meet the requirements of sovereignty. Direct control of hosting, either on the servers of the *Cour de cassation*, or on clouds that meet security and territoriality requirements in order to comply with the applicable European law, guarantees the independence of the courts in their operation, data security and transparency of use.

Secondly, the working group wishes to emphasise the **primacy of ethical guidelines**.

Indeed, compliance with the GDPR and the AIR, as essential as it is, and while it contributes to protect fundamental rights, is not sufficient to guarantee a virtuous use of AI, that preserves the totality of the judge's role, and does not come to diminish or undermine the fundamental

balances of a fair trial. The working group stresses the need to, in addition to compliance with legal requirements, **take into consideration ethical principles** relating to the impact on the function of ruling, the impact on fundamental rights, as well as transparency, ethics and frugality of algorithms.

In this regard, the working group considers the **European Ethical Charter on the use of artificial intelligence in judicial systems and their environment, adopted by the CEPEJ** in December 2018, to remain a key **reference document**, retaining its relevance despite significant technical developments since. The working group took into account the five principles set out in the Charter of **respect for fundamental rights, non-discrimination, quality and safety of algorithms, transparency and explicability as well as human oversight and control over decisions**. The latest principle is essential to keeping the role of the judge intact. Its implementation requires that there always be human intervention in the various stages of the decision-making process, from the analysis of the file to the drafting of the decision, the use of AI only providing assistance on an ad hoc basis and always at the request of, and under the control of the magistrate. Ethical criteria, which are based on human rights as well as epistemological, deontological or social considerations, constitute, according to the working group, **guiding or cardinal principles that precede and supersede the other functional, legal, technical and economic criteria.** They must dictate the choice of AI tools to be retained, but also accompany their development and guide judges in their use, this element echoing the issue of judicial AI's governance.

Thirdly, with regard to **governance**, the working group has set out to provide a number of benchmarks whose scope goes beyond the Court's remit.

To begin with, it believes that the methodology suggested for evaluating AI use cases should not only be applied *ex ante*, to inform choices and determine which AI programmes to launch, but should also be applied continuously throughout the life cycle of a project, up to the decision, if necessary, to abandon it. In order to implement this '**end-to-end' evaluation method**, the working group recommended the creation of a **committee to monitor the development of AIS at the Court**, charged with this evaluation, and made up of magistrates and scientists from the SDER innovation laboratory, in addition to other Court departments.

Then, the effectiveness of the implementation of ethical uses of AI is detached from the need for users, magistrates, civil servants and members of the registry to acculturate to the issues of AI. This acculturation necessarily involves a **training approach for professionals**. Similarly, it requires the development of **a guide to best practices, an internal reference document or an "ethical charter"**, similar to those put in place by many foreign jurisdictions.

Finally, the competent supervisory authority for jurisdictions, which will soon be designated to implement IA regulation, should play its full role. In addition, the question of the creation, at the level of the institution, of an advisory committee on ethics for judicial AIS will arise, as well as that of the place to be given to the *Cour de cassation*. In this regard, the working group stresses the importance of guaranteeing the independence of this committee, in that it would be consulted on the impact on human rights of the AIS used by magistrates in their judicial activity.

In conclusion, neither technophile nor technophobe, the working group has identified several major axes of development of AI within the Court, for its own use or for the benefit of all magistrates and even the legal community as a whole, in a realistic and prudent manner, in order to use AI to its full potential, while leaving it at its proper place, in order to preserve the fullness of the judge's role in a state of right and to guarantee human trust and control.

In the future, the Court's role in developing judicial AIS, if given the means to do so, could prove to be extensive, given the technical expertise it has acquired and its own missions, the interpretation and harmonisation of law as well as the dissemination of case law from all courts.