

<http://dx.doi.org/10.16926/gea.2025.02.02.02>

Dorottya BICZI,

PhD – Student

<https://orcid.org/0009-0001-0873-3095>

Széchenyi István University Győr

e-mail: biczi.dorottya@sze.hu

Challenges to the Right to a Fair Trial in the Context of Technological Advancements

Summary

The advent of contemporary technological advancements has undoubtedly engendered a multifarious challenge for a plethora of academic domains. Jurisprudence, in particular, faces significant challenges in its attempts to regulate technological particularities through legal means. The question arises as to whether the regulatory environment is capable of keeping pace with the dynamics of technological innovation and whether it is not excessively hampered by the rigid structure of legal norms. The challenges posed by technological development and the difficulties of deregulation carry significant risks, particularly with regard to the exercise and enforcement of fundamental rights. This article examines the challenges to the enforcement of fundamental rights, in particular the right to a fair trial, in an ever-changing and technologically evolving socio-political environment. Utilising international legal interpretation, the article elucidates select components of the right to a fair trial that are particularly vulnerable to the potential repercussions of technological advancement. The article goes on to present the dilemmas posed by new technological threats and to offer some conclusions on current and future possibilities.

Keywords: right to a fair trial, algorithms, artificial intelligence, risks.

Introductory thoughts

The field of Artificial Intelligence (AI) has become a focal point in public discourse and scientific inquiry across a wide range of disciplines. Presently, one of the most exciting and significant questions is how the development of technology affects our daily lives. Legal scholars are concerned with the regulatory options for bringing the use of relatively unknown algorithms within a legal framework. It is the contention of the present study that the potential of this development should be exploited, as it is intended to benefit society. The European Union is

at the vanguard of developing a framework for the responsible use of AI. The EU AI Act¹ the first piece of legislation to address the development of this technology, has recently been adopted.¹ In this paper, I will specifically address the impact and risks of AI as a specific technological issue. The impact of AI on the legal system is a vast and complex issue that would be challenging to address comprehensively in this paper. In this context, it is particularly salient to emphasise the potential ramifications for fundamental rights, which are of paramount importance in the context of AI. The potential impact of AI on fundamental rights, particularly the right to a fair trial, is a complex and significant concern. This article aims to provide a non-exhaustive overview of the impact of AI on various aspects of the right to a fair trial.

The examination of the right to a fair trial must be conducted primarily within the system of justice. The application of AI is most likely to be found in profit-oriented areas such as health, pharmaceutical research and the military, as it is extremely costly and, not least, requires expertise². Nevertheless, it is an irrefutable fact that the public sector, including the justice system, will have to undergo change at some point in the future. Concerning the courts, reservations have been expressed regarding the immediate implementation of such a change, due to the perception of such a transition leading to an overly mechanised and unfeeling judicial system. While acknowledging the considerable distance between this ideal and its realisation, it is pertinent to recognise the emergence of algorithms as a support mechanism for judicial processes. The utilisation of such algorithms is not a futuristic concept; indeed, analogous systems are currently in operation in numerous countries³. Within the context of judicial proceedings, the principle of due process is not evaluated solely in the final adjudication, but also in relation to specific procedural actions undertaken during the judicial process⁴. It is therefore important to consider the risks associated with the use of algorithms in judicial procedures, particularly with regard to the enforcement of fundamental rights. The question therefore arises as to whether procedural fairness can be fully achieved even when a foreign entity is present in the proceedings. Furthermore,

¹ 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 (Artificial Intelligence Act) (Text with EEA relevance).

² K. Kálmán, *Nyomokban kódokat tartalmazhat? A mesterséges intelligencia igazságszolgáltatásban történő alkalmazásának alkotmányjogi vonatkozásai a tisztességes eljáráshoz való jog tükrében*, „MTA Law Working Papers” 2021, sz. 2, s. 2–5.

³ K Kálmán, L.O. Kiss, B.Szentgáli-Tóth, *Mesterséges intelligencia alapú szoftverek a világ bíróságain: gyakorlati tapasztalatok, perspektívák és kihívások*, s. 1, <https://real.mtak.hu/155657/1/KalmanKinga....Szoftverek.....pdf> [pobrano dn.:19.09.2025]

⁴ K.Bárd, *Igazság, igazságosság és tisztességes eljárás*, „Fundamentum” 2004, sz. 1, s. 46.

it is crucial to ascertain whether the prevailing conceptual framework of fundamental rights is sufficiently equipped to address the moral and legal risks associated with the integration of artificial intelligence in the administration of justice.

The pillars of due process

According to Tamás Sulyok⁵, the quality of a fair trial cannot be considered as solely dependent upon the formal and independent application of legal norms and principles, since formal compliance with certain detailed rules does not necessarily ensure the achievement of a fair trial. It is imperative to elucidate the conceptual framework of the right to a fair trial, and thus, in this chapter, an overview of the elements of this fundamental right will be provided in an international context, drawing upon the general commentaries of the treaty monitoring body of the International Covenant on Civil and Political Rights (ICCPR)⁶ and the case law of the European Court of Human Rights.

The content of due process in the context of the general commentaries of the Human Rights Committee

The Universal Declaration of Human Rights was given legally binding force for States Parties through the International Covenant on Civil and Political Rights (ICCPR), which was adopted in 1966 and entered into force in 1976⁷. Article 2 of the ICCPR states that “each State Party to the Covenant undertakes to respect and to ensure to all persons within its territory and subject to its jurisdiction the rights recognised in the Covenant, without discrimination of any kind”⁸.

The right to a fair trial is enshrined in Article 14 of the ICCPR, which delineates the pertinent guarantees chiefly in the context of criminal proceedings. This Article is especially concerned with the special protection of minors, the possibilities of exclusion of the public, and the right to a remedy. Additionally, the presumption of innocence, an essential component of a fair trial, is firmly

⁵ T. Sulyok, *A védelemhez való jog összehasonlító vizsgálat [w:] A bírói függetlenség, a tisztességes eljárás és a politika*, red. A. Badó, Budapest, Gondolat 2011, s. 206.

⁶ Legislative Decree No. 8 of 1976 was issued in accordance with the proclamation of the International Covenant on Civil and Political Rights, which was adopted by the United Nations General Assembly at its twenty-first session on 16 December 1966.

⁷ B. Kiss, *A kínzás és más kegyetlen, embertelen, megalázó büntetés vagy bánásmód tilalma az emberi jogok rendszerében*, „Acta Universitatis Szegediensis. Forum acta juridica et politica” 2018, évf. 8, sz. 2, s. 201.

⁸ ICCPR, Article 2.

entrenched in Article 14⁹. The implementation of the Covenant is overseen by the Human Rights Committee, a body of human rights experts established under Article 28 of the Covenant. The Commission is responsible for examining the implementation of the commitments of States Parties, utilising a dual-pronged approach that incorporates both regular reports and independent expert opinions¹⁰. The Human Rights Committee provides general commentary on the rights enshrined in the Covenant, with a particular focus on international standards for ensuring the right to a fair trial. The decisions and recommendations made by the Commission, in conjunction with the general commentaries issued in their wake, assume a pivotal role in the international implementation of the principle of due process and in the shaping of Member States' practices.

The comprehension of fundamental rights cannot be confined to a simplistic textual interpretation. The concrete content of individual human rights, and the determination of whether they have been violated, can be understood primarily through practical experience and case law analysis. In this process, commentaries on the interpretation of the law and the results of the Human Rights Committee's investigative work play a pivotal role, serving as a reference in numerous cases.

The right to a fair trial is comprised of several elements, with equality before the courts representing a fundamental criterion for the protection of human rights. This principle also functions as a procedural mechanism to ensure the rule of law is upheld. Article 14 of the ICCPR is intended to ensure the proper administration of justice and guarantees a number of specific rights for this purpose. The nature of Article 14 is such that it combines different guarantees with different scopes of application, rendering it a complex text. As a set of procedural guarantees, Article 14 of the ICCPR often plays an important role in implementing the more substantive guarantees of the ICCPR that must be taken into account in the criminal prosecution and in the determination of a person's rights and obligations in litigation. From a procedural standpoint, the nexus with the right to an effective remedy, as enshrined in Article 2(3) of the ICCPR, assumes particular significance¹¹. It is imperative to note that this provision is to be upheld in instances where any of the guarantees enshrined within Article 14 have been violated. With regard to the requirement of a trial within a reasonable time, it is noteworthy

⁹ E. Schmid, *The Right to a Fair Trial in Times of Terrorism: A Method to Identify the Non – Derogable Aspects of Article 14 of the International Covenant on Civil and Political Rights*, „Göttingen Journal of International Law” 2009, No.1, s. 31–32.

¹⁰ Hungarian Helsinki Committee, FILE: REPORTS TO INTERNATIONAL ORGANISATIONS Article 11, 22 March 2018 Reports to the UN Human Rights Committee.

¹¹ E.g. Communications No. 1033/2001, *Singarasa v. Sri Lanka*, para. 7.4; No. 823/1998, *Czernin v. Czech Republic*, para. 7.5.

that the Commission has determined that in instances where an individual suspected of having committed a criminal offence and detained under Article 9 of the ICCPR is charged with a criminal offence yet not subjected to trial, the prohibition of undue delay in trial as stipulated in Articles 9(3) and 14(3) (c) of the Covenant may also be violated¹². It is important to acknowledge that the ICCPR exclusively stipulates a reasonable time limit for criminal proceedings¹³. In accordance with Article 14 of the ICCPR, an independent and impartial tribunal is considered to be an essential element of the right to a fair trial. This tribunal is established by law for the purpose of hearing the case in a fair and public hearing¹⁴.

Relevant findings of the European Court of Human Rights In what follows, the author will set out some of the most salient findings of the European Court of Human Rights (ECtHR).

This is due to the fact that the European Convention on Human Rights (ECHR) formulates the right to a fair trial differently from the ICCPR, and the national law of the States Parties generally follows this formulation. Article 6(1) of the ECHR sets out mandatory requirements for all types of proceedings in the broad sense of due process. These requirements can be divided into three main groups: 1) certain conditions apply to the courts (it must be established by law, impartial and independent), 2) general principles are laid down for the judicial (official) procedure (it must be fair and must be concluded within a reasonable time), 3) the final decision must be taken within a reasonable time and the court must be independent and impartial¹⁵.

It is interesting to note that neither the ICCPR nor the ECHR explicitly stipulate the right to a reasoned decision. However, the European Court of Human Rights (ECtHR) has acknowledged the right to a reasoned decision as an integral component of the right to a fair trial, as outlined in Article 6 of the Convention. The Court of Justice has developed extensive case law on this right, as evidenced by numerous decisions over the past decades. The Court has consistently held that the requirement that courts must state in sufficient detail the reasons on which they base their decisions is part of the principles of fair trial and the rule

¹² Communication No. 909/2000, *Mujuwana Kankanamge v. Sri Lanka*, para. 9.4.

¹³ *General Comment No. 32: Article 14: Right to Equality before Courts and Tribunals and to Fair Trial*.

¹⁴ Everyone has the right to a fair and public hearing by an independent and impartial tribunal established by law of any charge against him or of his rights and obligations in any legal proceedings (Article 14.1 of the ICCPR).

¹⁵ Á Békés, *A tisztességes eljáráshoz való jog érvényesülése Magyarországon a strasbourgi bíróság esetjoga alapján*, „Állam – és Jogtudomány” 2017, évf. LVIII, sz. 4, Különszám, s. 81.

of law (Suominen v Finland, 37801/97; 1 July 2003; § 34; Vojtechová v Slovakia, 59102/08; 25 September 2012; § 35.)¹⁶.

To summarise the international legal interpretation examined for the above conceptual clarification, it can be stated that the right to a fair trial is the most complex fundamental right, the enforcement of which is of paramount importance among the guarantees of the rule of law. In all cases, the fairness of the proceedings necessitates an autonomous and impartial tribunal established by the court, equality before the court, the right of access to the court, and the guarantee of publicity of the proceedings. Furthermore, all judicial proceedings are required to adhere to the principle of being conducted within a reasonable time-frame. Judicial decisions must be supported by cogent reasoning, and the right to an effective remedy is recognised as a fundamental right. Given the complexity of the legal system, even a breach of some of these elements can result in a violation of the fundamental right. The ensuing discourse will address the methodologies through which each component of this fundamental right can be operationalised within the technological milieu characterised by algorithms.

Due process in the age of algorithms

A „just”, independent and impartial court

The notion of justice is a complex concept that has been extensively debated and discussed in the domain of legal theory. However, the objective of this article is not to delve into the intricacies of such a concept. It is important to distinguish between justice and fairness. Justice is relative, since each person perceives their own justice in a given case. In contrast, fairness is not a matter of subjective judgement. The limits of discovery impose constraints on the attainment of truth, and thus, the assurance of a fair trial becomes pivotal in ensuring a just outcome¹⁷. The fairness of decisions will not be affected by the use of AI. Nevertheless, the question remains: to what extent can people be confident in the fairness of a decision made using an algorithm in a process? The fundamental paradox inherent in the regulatory oversight of AI pertains to the reconciliation of the rationales underpinning the governance of emerging technologies with the foundational principle of trust in AI, a paradigm characterised by its inherent reliance on trust¹⁸.

¹⁶ L.Ravasz, *Bírói függetlenség és a tisztességes eljáráshoz való jog*, „Debreceni Jogi Műhely” 2015, 3–4. s. 71.

¹⁷ Á.Varga, *Igazságosság kontra igazságosság? Gondolatok a jogbiztonság, az igazságosság és a tisztességes eljárás kapcsolatáról*, „Iustum Aequum Salutare” 2015, évf. 11, sz.3, s. 135.

¹⁸ A. Tóth, *A Mesterséges intelligencia szabályozásának paradoxonja és egyes jogi vonatkozásainak alapvető kérdései*, „Infokommunikáció és jog” 2019, sz. 2, s. 3.

*It has been contended by some that the utilisation of AI within the judicial system holds particular promise. In principle, the deployment of software-based decision-making could theoretically ensure impartiality and independence, while concurrently fostering the predictability of judicial decisions*¹⁹. However, it is this author's opinion that the existence of requirements for AI, such as transparency, predictability, accountability, fairness, certain expectations and other such notions, is the consequence of a complete misunderstanding of the way in which it works. It is important to note that a system based on empirical distributions and mathematical probabilities cannot do the following: even using complex 'AI algorithms', it cannot respect the cognitive²⁰.

Pursuant to the logical assumptions underpinning this study, it is posited that algorithms are devoid of sentiments, impartial, and impervious to external influences. This would suggest that the use of algorithms in the judiciary contributes significantly to the requirements of the right to a fair trial, since the presence of an independent and impartial judge is no longer a matter of concern. However, this notion is quickly disillusioned when one considers the actual impact of AI. The notion of algorithmic neutrality, in this context, is a fallacy, as the creators of these algorithms, whether intentionally or not, inevitably impart their own value systems during the process of creation²¹. The process of constructing and interpreting algorithms is inherently subject to human fallibility, potential biases, values, human interests and concerns. The primary cause of undermining impartiality may be the inadequacy or flaw in the data set utilised by the AI or employed for the training of the AI, or the inherent bias in the system. Errors in data sets can result in bias in algorithmic decision-making, which can lead to unlawful consequences even in the absence of intentionality or human awareness. In the event that AI systems are exposed to training data that contains discriminatory patterns, there is a risk that their subsequent decisions may also become discriminatory. The adverse effects of biased training data can be manifold, including the possibility of the AI being trained with biased data, the system drawing conclusions from biased patterns, and the AI system passing on these biases²².

The notion of algorithmic independence can be compared to the independence of the judge when considering the right to a fair trial. It is an irrefutable assertion that a fundamental tenet of the rule of law is the separation of powers.

¹⁹ J. Vajda, *Álmodnak-e az androidok elfogult bírókkal? Kognitív torzítások és önbeteljesítő jóslatok a mesterséges intelligencia peres előrejelzéseiben*, „Infokommunikáció és Jog: Fórum” 2022, sz.1, s. 21–22.

²⁰ J. Végh, *Mi is valójában a mesterséges intelligencia? A Belügyi Tudományos Tanács online folyóirata*, red. I. Sabjanics, „Rendvédelem” 2024, évf. XIII, sz.1, s. 29.

²¹ More about this: E. Sadin, *L'Intelligence artificielle ou l'enjeu du siècle. Anatomie d'un antihumanisme radical*, L'Échappée, Paris 2018.

²² K. Mezei, *Diszkrimináció az algoritmusok korában*, „Magyar Jog” 2022, sz. 6, s. 332.

Judicial independence is widely regarded as a manifestation of this principle. The question thus arises as to whether this can be replaced by what is termed the independence of an algorithm. Judges and their independence and subordination to the law are indispensable; however, the true substance of this legal provision lies in the making of a decision according to their own convictions and sense of justice. The significance of human rights is not the subject of this discussion, but it is clear that judges and their independence are fundamental to both the rule of law and human rights. Barnabas Lenkovics, drawing from the oath of a judge, asserts that while judges are bound by law, they are also bound by justice and fairness in the execution of their duties²³. In this respect, it can also be concluded that, at the current level of technological development, AI will likely be unable to ensure independence, as this is closely linked to the individual judge.

It is hypothesised that impartial and independent adjudication by a court cannot be achieved, as it is currently understood, even if the algorithm is only present in part of the procedure and not only in the final decision. Empirical evidence has demonstrated that individuals frequently accept the outputs of the algorithm, despite their own convictions, as if they were factual. This phenomenon, which has been scientifically validated, is referred to as automation bias²⁴. Consequently, AI systems that facilitate the work of judges can be equally as susceptible to infringing the right to a fair trial as a process that is entirely governed by an algorithm.

Publicity of court hearings and online courts

In the context of the global pandemic caused by the novel virus known as Severe Acute Respiratory Syndrome (SARS-CoV-2), the judicial system has been confronted with significant challenges on the international stage. This has precipitated a rapid process of digitisation within the domain of judicial proceedings. In an effort to combat the virus, numerous states have virtually abolished the holding of oral hearings in official court premises on a temporary basis²⁵. It is evident that, while not universally applicable, there are certain states where this practice persists subsequent to the conclusion of the epidemic. This observation is derived from the analysis of online negotiations, which have been utilised as a means to investigate the ongoing implementation of this phenomenon²⁶.

²³ B. Lenkovics, *Az igazságosság keresése [w:] Pro Vita et Scientia – Ünnepi kötet Jobbágyi Gábor 65. születésnapja alkalmából*, red. L. Tattay, A. Pogácsás, S. Molnár, Szent István Társulat, Budapest 2012, s. 182.

²⁴ G. Karácsony, *Inkább bízunk a robotokban? A mesterséges intelligencia döntéseiről való emberi felelősség kritikája*, „Jog Állam Politika: Jog – és Politikatudományi folyóirat” 2020, Különszám, s. 34.

²⁵ Report of a CEPS and QMUL Task Force 2021. 43.

²⁶ More about this: A. Fülöp, *Online bíróságok 2.0: tovább nemzetközizgyakorlatok és tapasztalatok. „Jogászvilág”*, <https://jogaszvilag.hu/a-jovo-jogasza/online-birosagok-2-0-tovabbi-nemzetkozi-gyakorlatok-es-tapasztalatok/#> [pobrano dn.: 15.09.2025].

The notion of moving trials online is challenging to accept within the context of prevailing conceptualisations of fundamental rights, as it carries a potential risk of compromising the right to a fair trial if such proceedings were to be conducted virtually. However, the present study has concluded that the right to a fair trial can be ensured if trials are conducted online rather than physically in the court building. It must be acknowledged, however, that this assertion is not universally applicable, as there exist cases where the fairness of the proceedings is contingent on the physical presence of the judge. The preceding assertion pertains to legal proceedings in which the nature of the case permits such remote participation. Additionally, the sociological dimension of trials within the online domain, and the impact of conducting these trials online versus in-person, merits consideration. From a constitutional perspective, and focusing exclusively on civil cases, it is crucial to acknowledge that the principle of openness of the trial may give rise to concerns. The increasing prevalence of online trial broadcasts, a practice that has seen significant uptake during the epidemic in Europe, gives rise to concerns regarding fundamental rights that extend beyond the principle of a public trial. This form of publicity has the potential to redefine the concept of judicial proceedings as it pertains to openness, by virtue of the fact that it enables unrestricted access to information, images and sound recordings of proceedings. This development carries with it implications for the right to privacy and the fairness of the evidence-taking process²⁷. Examining this issue from a different perspective, it is possible to suggest that the right to go to court could be extended by conducting court hearings online. However, it must be noted that this would only be a temporary measure, as it is not universally accessible due to the lack of skills and computer equipment required to participate in such an online environment²⁸.

Reasoned decision and effective remedy in case of AI

As was stated in the preceding chapter, the substantiation of judicial decisions is to be regarded as an element of the right to a fair trial. At present, the utilisation of automated procedures within the judicial system remains a distant prospect. However, it is imperative to contemplate the potential benefits and risks associated with such a transition. Algorithms should be replaced by a person and the characteristics of that person in the decisions they make, which, again referring

²⁷ A. Madarasi, *A tisztességes online tárgyaláshoz való jog* [w:] *Jogi Tanulmányok. Jogtudományi előadások az Eötvös Loránd Tudományegyetem állam – és jogtudományi kar doktori iskolájának konferenciáján*, red. M. Nagy M. Fazekas, Budapest 2022, s. 431.

²⁸ A. Zámponi, *A digitalizáció fejlődésének hatásai a polgári perbeli bizonyításra*, „Multidiszciplináris Tudományok” 2021, sz. 5, s. 349–350.

back to what has been said above, are the foundations of judicial independence. The question of discretion remains unresolved, as the robot is incapable of assessing the potential consequences of its “decision”. The crux of the issue lies in the fact that the precise algorithms imparted to the robot lack the capacity to refine or ‘think through’ the case. One potential resolution to this predicament would be to convert the existing legal codes into a binary – 0-1 number system. However, this transition remains unaccomplished at the present moment²⁹. For these and related reasons, the MI is not yet in a position to justify its decisions. It is not merely a matter of providing a justification for the final decision; a fair procedure necessitates that the parties involved are informed and aware of the rationale behind the decisions that have been made. Nevertheless, in the absence of such reasoning, the scope for effective recourse is constrained.

The most significant challenge in this regard pertains to the opacity of the algorithms. This may be due to technical reasons, more precisely to the complexity or dynamic nature of the algorithms, or to the fact that the workings of some algorithms are not well understood, and thus the data they take into account to produce a given result is not well known. The comprehension of such algorithms can necessitate substantial resources and specialised knowledge or competencies. Moreover, their dynamic nature implies that even if one were able to ascertain the algorithm’s³⁰.

From a legal standpoint, the opacity of algorithms may stem from contractual clauses or legal provisions that restrict access to information for the purpose of safeguarding other rights, including trade secrets, intellectual and industrial property, personal data, privacy, and the right to information. It is conceivable that access is restricted during the decision-making process in order to avoid inferring (rightly or wrongly) that the. Furthermore, it should be noted that the algorithms utilised are frequently, and in the majority of cases, programmed by private sector companies, and that it is therefore common for contractors themselves to open up new cases³¹. The principle of transparency is widely regarded as being of the utmost importance in ensuring a fair trial. With regard to the right to reasoned judgments, the European Court of Human Rights (ECtHR) is of the opinion that objectivity and transparency in judicial decisions are required in all democratic states governed by the rule of law. This is because such transparency prevents arbitrary decisions by public authorities and courts, and

²⁹ J. Balogh, *M.I vs J.O.G. Azaz „mesterséges intelligencia” versus „jogászság okos generációja”,* <https://arsboni.hu/m-i-vs-j-o-g/> [pobrano dn.: 15.09.2025].

³⁰ A. Etzioni, O. Etzioni, *Keeping AI legal*, „Vanderbilt Journal of Entertainment & Technology Law” 2016, Vol. 19, Issue 1, s. 133–146.

³¹ A. Cerrillo i Martínez, *How can we open the black box of public administration? Transparency and accountability in the use of algorithms*, „Revista Catalana de Dret Públic” 2019, núm. 58, s. 17.

strengthens public confidence in judicial decision-making and the authority of judicial decisions³². The practical implementation of this has encountered numerous issues that have yet to be resolved.

A substantial proportion of documentation pertaining to AI asserts, and various States have contended, that the retention of ultimate human control over procedures is imperative and can serve as an adequate safeguard against any transgressions in the implementation of AI. This prompts further inquiries into the potential benefits of establishing a dedicated forum for redress in all proceedings involving AI. Such a forum could expedite the resolution of cases and prevent the reallocation of cases between levels of jurisdiction, which might be perceived as a trap. While acknowledging the fallibility of judges, it is noteworthy that, at present, there is a greater degree of confidence in a process that is wholly under the purview of human judgment. This inherent uncertainty can, in certain instances, be abusive, particularly in cases where an individual is dissatisfied with a decision and asserts that the AI was involved in any stage of the procedure, thereby bypassing the appeal forum. This approach, however, can also impose limitations on the efficacy of the system. The right to appeal is also an element of due process, which may provide reassurance against artificial intelligence systems. The efficacy of this right, however, is contingent upon the individual's capacity to comprehend the intricacies of the AI's functionality, which is essential for the pursuit of redress. While an effective remedy is reassuring, it does not constitute a substitute for measures to avoid violations of fundamental rights. In instances where the decision rendered by the AI is found to be erroneous or unlawful, the remedy may be available only after the decision has been made and the consequences thereof have become apparent, or at least perceptible. *It is evident, therefore, that in numerous instances, the legislator is unable to safeguard individuals from the direct repercussions of an erroneous machine decision, but only from the consequences of a decision that is more temporally remote*³³.

The conclusions and further dilemmas

The article presented the possibilities for enforcing the right to a fair trial, albeit in a non-exhaustive way, in the context of the possible impact of technological developments. In relation to this fundamental right, the utilisation of algorithms in specific proceedings poses a significant risk. A number of significant

³² *Taxquet kontra Belgium*, 926/05.; 16 November, 2010.; § 90.; *Shala kontra Norvégia*, 15620/09.; 10, July 2012.; § 29.

³³ G. Karácsony, op. cit., s. 34.

risks associated with the utilisation of AI, which cannot be addressed through legislative measures alone, have been identified through an examination of several sub-elements. It is crucial to emphasise that the objective of highlighting these risks is not to advocate for a blanket opposition to AI, but rather to underscore the concerns that arise from the intersection of fundamental rights and technological advancement in the justice sector. It is evident that advancements in technology, while potentially beneficial, carry inherent risks that demand careful consideration. In the pursuit of progress within the legal field, it is essential to acknowledge these challenges and adapt legal frameworks and interpretations to ensure the preservation of fundamental rights in the digital age. The integration of novel technologies can also yield numerous advantages within the justice system. The judicious employment of AI within the judicial apparatus could be a development that is purely efficiency-oriented and low-risk, provided that the objective is to alleviate the burden on courts by replacing administrative processes with algorithms. While it is not believed that fundamental rights constitute an impediment to progress and regulation, given the inherent complexity of protecting fundamental rights in practice, the use of AI makes it even more illusory to expect that this will be fully achieved. The EU AI Act is a potential instrument to facilitate the responsible use of AI; however, it does not negate the pressing necessity for Member States to proactively regulate. It is evident that for a considerable duration, the prospect of automated decision-making in the absence of human intervention remains implausible. The judge, as an individual, will continue to serve as the “bastion” of justice and the right to a fair trial. However, it is important to note that an alien entity may challenge the fairness of the procedure at any stage of the proceedings. Therefore, the legal community must be prepared to respond quickly to any practical problems and infringements that may arise in the context of rapid developments. For this reason, it is timely and important to examine the risks and potential threats.

Bibliografia

Literatura

- A bírói függetlenség, a tisztességes eljárás és a politika*, red. Badó A., Budapest, Gondolat 2011.
- Bárd K., *Igazság, igazságosság és tisztességes eljárás*, „Fundamentum” 2004, sz. 1.
- Békés Á, *A tisztességes eljáráshoz való jog érvényesülése Magyarországon a strasbourgi bíróság esetjoga alapján*, „Állam – és Jogtudomány” 2017, évf. LVIII, sz. 4, Különszám.

- Cerrillo i Martínez A., *How can we open the black box of public administration? Transparency and accountability in the use of algorithms*, „Revista Catalana de Dret Públic” 2019, núm. 58.
- Etzioni A., Etzioni O., *Keeping AI legal*, „Vanderbilt Journal of Entertainment & Technology Law” 2016, Vol. 19, Issue 1.
- Jogi Tanulmányok. *Jogtudományi előadások az Eötvös Loránd Tudományegyetem állam – és jogtudományi kar doktori iskoláinak konferenciáján*, red. Nagy M. Fazekas M., Budapest 2022.
- Kálmán K., *Nyomokban kódokat tartalmazhat? A mesterséges intelligencia igazságszolgáltatásban történő alkalmazásának alkotmányjogi vonatkozásai a tisztességes eljáráshoz való jog tükrében*, „MTA Law Working Papers” 2021, sz. 2.
- Karácsony G., *Inkább bízunk a robotokban? A mesterséges intelligencia döntéseiért való emberi felelősség kritikája*, „Jog Állam Politika: Jog – és Politikatudományi folyóirat” 2020, Különszám.
- Kiss B., *A kínzás és más kegyetlen, embertelen, megalázó büntetés vagy bánásmód tilalma az emberi jogok rendszerében*, „Acta Universitatis Szegediensis. Forum acta juridica et politica” 2018, évf. 8, sz. 2.
- Mezei K., *Diszkrimináció az algoritmusok korában*, „Magyar Jog” 2022, sz. 6.
- Pro Vita et Scientia – Ünnepi kötet Jobbágyi Gábor 65. születésnapja alkalmából*, red. Tattay L., Pogácsás A., Molnár S., Szent István Társulat, Budapest 2012.
- Ravasz L., *Bírói függetlenség és a tisztességes eljáráshoz való jog*, „Debreceni Jogi Műhely” 2015, 3–4.
- Sadin E., *L’Intelligence artificielle ou l’enjeu du siècle. Anatomie d’un antihumanisme radical*, L’Échappée, Paris 2018.
- Schmid E., *The Right to a Fair Trial in Times of Terrorism: A Method to Identify the Non-Derogable Aspects of Article 14 of the International Covenant on Civil and Political Rights*, „Göttingen Journal of International Law” 2009, No.1.
- Tóth A., *A Mesterséges intelligencia szabályozásának paradoxonja és egyes jogi vonatkozásainak alapvető kérdései*, „Infokommunikáció és jog” 2019, sz. 2.
- Vajda J., *Álmodnak-e az androidok elfogult bírókkal? Kognitív torzítások és önbeteljesítő jóslatok a mesterséges intelligencia peres előrejelzéseiben*, „Infokommunikáció és Jog: Fórum” 2022, sz.1.
- Varga Á., *Igazságosság kontra igazságosság? Gondolatok a jogbiztonság, az igazságosság és a tisztességes eljárás kapcsolatáról*, „Iustum Aequum Salutare” 2015, évf. 11, sz.3.
- Végh J., *Mi is valójában a mesterséges intelligencia? A Belügyi Tudományos Tanács online folyóirata*, red. Sabjanics I., „Rendvédelem” 2024, évf. XIII, sz.1.
- Zámpori A., *A digitalizáció fejlődésének hatásai a polgári perbeli bizonyításra*, „Multidiszciplináris Tudományok” 2021, sz. 5.

Źródła internetowe

Kálmán K., Kiss L.O., Szentgáli-Tóth B., *Mesterséges intelligencia alapú szoftverek a világ bíróságain: gyakorlati tapasztalatok, perspektívák és kihívások*, s. 1, <https://real.mtak.hu/155657/1/KalmanKinga....Szoftverek.....pdf> [pobrano dn.:19.09.2025] .

Balogh J., *M.I vs J.O.G. Azaz „mesterséges intelligencia” versus „jogászság okos generációja”*, <https://arsboni.hu/m-i-vs-j-o-g/> [pobrano dn.: 15.09.2025].

Fülöp A., *Online bíróságok 2.o: további nemzetközi gyakorlatok és tapasztalatok. „Jogászvilág”*, <https://jogaszvilag.hu/a-jovo-jogasza/online-birosagok-2-o-to-vabbi-nemzetkozi-gyakorlatok-es-tapasztalatok/#> [pobrano dn.: 15.09.2025].

Orzecznictwo

Mujuwana Kankanamge v. Sri Lanka (2000), Communication No. 909/2000, para. 9.4.

Shala v. Norway (2012), Communication No. 15620/09, para. 29.

Singarasa v. Sri Lanka (2004), Communication No. 1033/2001, para. 7.4.

Taxquet v. Belgium (2010), Communication No. 926/05, para. 90.

Akty prawne i dokumenty normatywne

European Parliament and Council (2024), Regulation (EU) 2024/1689 on harmonised rules on artificial intelligence (Artificial Intelligence Act).

Human Rights Committee (1966), International Covenant on Civil and Political Rights (ICCPR), Article 2.

Legislative Decree No. 8 of 1976 (1966), International Covenant on Civil and Political Rights, adopted by the United Nations General Assembly.

Inne dokumenty i opracowania

Report of a CEPS and QMUL Task Force (2021), AI and the Rule of Law.

Hungarian Helsinki Committee (22 March 2018), Reports to international organisations, Article 11.

Wyzwania dla prawa do rzetelnego procesu sądowego w kontekście postępu technologicznego

Streszczenie

Dynamiczny rozwój współczesnych technologii niewątpliwie generuje wielowymiarowe wyzwania dla wielu dziedzin nauki, w tym w szczególności dla nauk prawnych. Jurysprudencja staje wobec istotnych trudności w zakresie prób normatywnego ujęcia zjawisk technologicznych, których charakter i tempo zmian często wykraczają poza możliwości adaptacyjne obowiązujących systemów prawnych. Powstaje pytanie, czy istniejące ramy regulacyjne są w stanie skutecznie nadążać za dynamiką innowacji technologicznych oraz czy nie są one nadmiernie ograniczane przez formalistyczną strukturę norm prawa pozytywnego. Rozwój technologiczny, a także problemy wynikające z niedostatecznej deregulacji, wiążą się z istotnym ryzykiem w sferze realizacji i ochrony praw podstawowych jednostki. Artykuł podejmuje analizę wyzwań dla wykonywania i egzekwowania praw podstawowych, w szczególności prawa do rzetelnego procesu sądowego, w kontekście ewoluującego technologicznie środowiska społeczno-politycznego. Na gruncie wykładni prawa międzynarodowego wskazano wybrane elementy prawa do rzetelnego procesu, które pozostają szczególnie narażone na potencjalne konsekwencje rozwoju technologicznego. W dalszej części opracowania omówiono dylematy wynikające z pojawiania się nowych zagrożeń technologicznych oraz sformułowano wnioski dotyczące obecnych i przyszłych kierunków rozwoju w tym obszarze.

Słowa kluczowe: prawo do rzetelnego procesu sądowego, algorytmy, sztuczna inteligencja, ryzyka.