



# THESSISMUN



## Study Guide

**Council of Europe - Committee of  
Ministers**



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## 1. Welcoming Letter

Distinguished Ministers,

We cordially welcome you to the Committee of Ministers of the Council of Europe in ThessISMUN 2025, which will take place in Thessaloniki from April 23rd to 27th, 2025. As members of the Board, we would like to express our excitement for the Conference and guarantee you the high academic standard of our procedures and plenty of unforgettable moments connected to our participation in the Conference.

This year, the Committee of Ministers of the Council of Europe will focus on “Artificial Intelligence and Human Rights.” 2024 was a historic year for the Council of Europe, as the first international legally binding treaty regarding Artificial Intelligence and its connection to human rights, democracy, and the rule of law was adopted by the Committee of Ministers of the Council of Europe!

Thus, the committee's discussion and all its work will emphasize the influence of Artificial Intelligence on Human Rights, specifically Copyrights, Data Privacy and Freedom of Expression, Access to Information, Education, Work, and Fair Trial. Also, the debate will include the role of the Private Sector in the development of Artificial Intelligence while safeguarding Human Rights, its interaction with Policy Makers, and the Challenges that are facing in the future.

The present study guide will be used as the basis of your research since it contains the outlines of the debate and the primary thematic structure of the Committee. However, we highly recommend



conducting thorough research beyond the Materials provided to be fully prepared. The areas of the topic are demanding; thus, your preparation will be crucial for the outcome of our Committee Work. Remember that you represent a specific state, so you must always consider its specific policy while remaining within the mandate of the Council of Europe.

On behalf of the Board, we would like to thank you for being part of ThessISMUN 2025 and contributing to the growth of the MUN Community. We cannot wait to meet you all during the Conference and witness your fruitful debates. Lastly, we remain at your disposal anytime, so do not hesitate to contact us for more information.

Kind regards,

The Board of the Committee of Ministers of the Council of Europe,

Stefanos Georgopoulos, President

Maria Theotoki Spiliopoulou, Vice - President

Diogenis Zonidis, Secretary General



## 2. Introduction to the Committee

The Council of Europe<sup>1</sup> is the oldest intergovernmental organization in Europe. It was founded in 1949 by the Treaty of London and is based in Strasbourg, France. It consists of 46 member states (following a Decision of the Council of Europe on 16/03/2022, the Russian Federation was excluded from the Council of Europe), 5 Council Observers, and 3 Assembly Observers. The three pillars of the Council are Human Rights, Democracy, and the Rule of Law. Article 10 of the Statute of the Council of Europe mentions two main organs: The Committee of Ministers and the Parliamentary Assembly (initially stated as the Consultative Assembly). The Committee of Ministers serves as the primary decision-making body, and it is composed of the Ministers of Foreign Affairs of each Member - State. On the other hand, the Parliamentary Assembly constitutes a democratic forum where 306 Members of the Parliament (MEPs) of the Member - States participate. Through the Parliamentary Assembly, the election takes place for some of the most crucial institutions of the Council of Europe: its Secretary General, the Human Rights Commissioner, and the Judges of the European Court of Human Rights (created under the European Convention of Human Rights). Other institutions connected with the Council of Europe are the Congress of Local and Regional Authorities and the INGO Conference of the Council of Europe. The Council of Europe conducts important work to ensure the protection and the promotion of human rights, democratic governance, and sustainable democratic societies and all aspects of the Rule of Law, including efficiency of justice, data protection, freedom of expression, the combat of cybercrime and other significant judiciary reforms.

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<sup>1</sup> Council of Europe, “Council of Europe,” accessed December 30, 2024, <https://www.coe.int/en/web/portal>.



## 3. Introduction to the Topic

Artificial Intelligence (AI) is perhaps one of the most consequential innovations ever created by humanity, and in the broadest possible definition refers to intelligence exhibited by machines. It is more specifically a field of research in computer science that deals with the development of software that has the ability to perceive the environment and use learning and intelligence to achieve specific goals and solve set problems.

AI has been a part of human thought long before it was made feasible by technological advancement. As far back as 1949 Alan Turing, the father of computer science, created one of the first definitions for AI, via the eponymous Turing test; the idea that a machine could really be called intelligent if it had the capacity to intelligently communicate with a human in such a way as to be indistinguishable from a real human. From such theoretical considerations, gradual technological growth in the development of computer programming over the latter half of the 20th century saw the processing capabilities of computers growing exponentially, but the major breakthroughs in AI development came with the implementation of machine learning, and more specifically neural networks, through which computer learning, and thus the capabilities of artificial intelligence, could greatly be improved. Deep learning was the next threshold, which starting in the 2010s allowed for the creation of programs demonstrating extreme capabilities, famous among them being AlphaZero, which managed to beat the then leading chess program, Stockfish. Finally, the development of Large Language Models (LLM), such the famous/infamous ChatGPT, have in recent years pushed the boundaries in the creative capabilities of AI programs, convincingly imitating the human creative thinking process.

Therefore, as AI becomes all the more potent as well as present in everyday life, it has the capacity to threaten the proper practice of human rights. The Council of Europe has already taken the first step to establishing standards concerning the fair use of AI, in that it does not undermine the fundamental principles the Council seeks to preserve, by adopting the Framework Convention on Artificial Intelligence. This convention has established fundamental principles according to which



the activities of AI software ought to comply, such as accountability, transparency, and safe innovation, as well as outlined safeguards, and procedural rights for regulating AI systems, primarily through information monitoring.

It will be the aim of the Council to seek to expand upon the precedent established by the convention and further clarify and elaborate upon how the principles of democracy, human rights, and rule of law can be better protected in the face of continuous AI innovation, that could potentially outrun the scope already set by the convention.



## 4. Key Definitions

### 4.1. Artificial Intelligence

AI refers to the ability of a machine to imitate human thinking, by learning patterns and making predictions, and consequently adding value to human judgement. In its simplest form, AI is a field that combines computer science and robust datasets to enable problem-solving. AI can refer to various techniques, including machine learning, expert systems, and neural networks<sup>2</sup>.

### 4.2. Machine Learning

Machine learning is a subset of AI that focuses on the development of algorithms and statistical models that enable a computer to perform tasks without explicit programming<sup>3</sup>. Machine learning systems improve their performance over time based on exposure to new data.

### 4.3. Natural Language Processing (NLP)

Natural language processing (NLP) is the branch of AI concerned with the interaction between computers and humans through natural languages. NLP involves enabling machines to read, interpret, and generate human language in a meaningful way, covering areas like speech recognition, translation, and sentiment analysis<sup>4</sup>.

### 4.4. Deepfake

“Deepfake” is a form of AI-generated content where existing images, videos, or audio recordings are edited and synthesized to create hyper-realistic yet falsified versions of the original. Such products can be used to impersonate individuals, often without their consent, and present them in

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<sup>2</sup> Brookings. “Education and AI: Achieving Equity and Respecting the Rights of Students.” Brookings, July 17, 2024. <https://www.brookings.edu/events/education-and-ai-achieving-equity-and-respecting-the-rights-of-students/>.

<sup>3</sup> SAS. “Machine Learning: What It Is and Why It Matters.” Sas.com. SAS, 2018. [https://www.sas.com/en\\_gb/insights/analytics/machine-learning.html](https://www.sas.com/en_gb/insights/analytics/machine-learning.html).

<sup>4</sup> Holmes, Wayne, Maya Bialik, and Charles Fadel. “Artificial Intelligence in Education. Promise and Implications for Teaching and Learning.” ResearchGate. Center for Curriculum Redesign, 2019. [https://www.researchgate.net/publication/332180327\\_Artificial\\_Intelligence\\_in\\_Education\\_Promise\\_and\\_Implications\\_for\\_Teaching\\_and\\_Learning](https://www.researchgate.net/publication/332180327_Artificial_Intelligence_in_Education_Promise_and_Implications_for_Teaching_and_Learning).



situations or expressing opinions they never participated in. Technology poses significant challenges to privacy, human dignity, and democratic processes, as it can be exploited for misinformation, fraud, or defamation<sup>5</sup>.

#### 4.5. Privacy-by-Default

Privacy-by-Default refers to the requirement that data protection settings must be set to the highest level of privacy automatically, without requiring any manual intervention by the user. This principle ensures that, by default, only the minimum amount of personal data necessary for the specific purpose of processing is collected, and this data is not made accessible to an indefinite number of people without the data subject's explicit consent. Under Convention 108+, the Privacy-by-Default principle emphasizes that controllers must implement appropriate measures to ensure that personal data is not automatically shared or made accessible beyond what is strictly necessary. It ensures that individuals' data privacy rights are protected without needing to adjust settings themselves.

#### 4.6. Privacy-by-Design

This principle mandates that privacy and data protection must be embedded into the design and architecture of information systems and processes. From the earliest stages of the development cycle, all systems, services, products, and business practices should consider privacy principles. This approach means that privacy is not just an add-on or afterthought but a proactive consideration at every stage of processing, ensuring that data protection is built-in by default.

In the context of the Council of Europe's framework, Article 10 of Convention 108+ explicitly refers to this principle by requiring data controllers to design systems that incorporate privacy safeguards in a way that minimizes risks to data subjects. This also includes ensuring that only the

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<sup>5</sup> Data Protection. "Declaration by the Committee of Ministers on the Manipulative Capabilities of Algorithmic Processes." Council of Europe, February 14, 2019. <https://www.coe.int/en/web/data-protection/-/declaration-by-the-committee-of-ministers-on-the-manipulative-capabilities-of-algorithmic-processes>.



necessary personal data is processed, and that data minimization, transparency, and accountability are core components of the system from the outset.

#### 4.7. Generative AI

It is a form of artificial intelligence, focusing primarily on the creation of images, texts and music in the form of new content. Such content is a product of complex algorithmic processes which find and edit already existing data, in order to generate similar content<sup>6</sup>.

#### 4.8. Copyrights

Copyrights are a branch of intellectual property law that protect the original works of authorship, whether in literary, dramatic, musical, or artistic forms. It simply means that the owner of a copyright has the exclusive right to reproduce, distribute, perform, display, and create derivative works from his or her copyrighted material<sup>7</sup>.

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<sup>6</sup> Nvidia. “What Is Generative AI?” NVIDIA, 2024. <https://www.nvidia.com/en-us/glossary/generative-ai/>.

<sup>7</sup> Hauer, Tomas. “Importance and Limitations of AI Ethics in Contemporary Society.” *Humanities and Social Sciences Communications* 9, no. 1 (August 17, 2022). <https://doi.org/10.1057/s41599-022-01300-7>.



## 5. Legal Framework

### 5.1. European Convention of Human Rights<sup>8</sup>

The European Convention of Human Rights, established in 1950 by the Council of Europe, is one of the most important texts of international law protecting human rights. It mainly focuses on civil and political rights, such as the right to life, the right to private and family life, the freedom of expression, the right to a fair trial, etc. Under the European Convention of Human Rights, the European Court of Human Rights is the judicial monitoring body interpreting the ECHR.

### 5.2. European Social Charter<sup>9</sup>

The European Social Charter was adopted by the Council of Europe in 1961 and revised in 1996 to complement the European Convention of Human Rights. It focuses on social and economic rights, such as the right to work, the right to education, the right to social security, and the right to health protection. The European Committee of Social Rights observes the implementation of the Charter.

### 5.3. The Council of Europe Framework Convention on Artificial Intelligence and human rights, democracy and the rule of law<sup>10</sup>

The Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy, and the Rule of Law of 2024 is the first-ever international legally binding treaty in this field. It contains several guidelines for ensuring that the use of Artificial Intelligence respects the values of the Council of Europe and its three pillars: Democracy, Human Rights, and the Rule

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<sup>8</sup> European Court of Human Rights, “European Convention on Human Rights,” 1950, [https://www.echr.coe.int/documents/d/echr/Convention\\_ENG](https://www.echr.coe.int/documents/d/echr/Convention_ENG).

<sup>9</sup> Council of Europe, “The European Social Charter,” European Social Charter, accessed December 30, 2024, <https://www.coe.int/en/web/european-social-charter>.

<sup>10</sup> Council of Europe, “Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law,” September 5, 2024, <https://rm.coe.int/1680afae3c>.



of Law. Also, it establishes a special body, the Conference of the Parties, responsible for overseeing the implementation of the Convention.

#### 5.4. The Convention for the Protection of Individuals with regards to Automatic Processing of Personal Data (Convention 108+)<sup>11</sup>

The Convention 108+ of the Council of Europe of 2018 is the modernized version of the Convention 108 of 1981 that regulated in a pioneering manner for its time the protection of personal data of individuals when they get automatically processed. The Convention not only provides a plethora of rights to the individuals that safeguard their privacy but establishes a sphere of cooperation between Member - States and their authorities to transfer personal data securely and productively.

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<sup>11</sup> Council of Europe, “Convention 108 and Protocols,” Data Protection, accessed December 30, 2024, <https://www.coe.int/en/web/data-protection/convention108-and-protocol>.



## 6. Topic Analysis

### 6.1. AI Impact on Human Rights

#### 6.1.1. AI and Copyrights

The rise of Artificial Intelligence, especially natural language models and other generative AI technologies, transformed how we perceive Copyrights. Imagine that the hard Work of music composition<sup>12</sup> can be done today by AI software that can adjust the outcomes based on our instructions. The interlink between AI and Copyrights is characterized by its complexity, and it is a field where settlement between States is hardly achieved. Each jurisdiction applies its rules, and the shift to consensus in the context of an International Organization, such as the Council of Europe, is difficult.

Last year, in 2024, the Council of Europe adopted the Framework Convention on Artificial Intelligence, Human Rights, Democracy, and the Rule of Law, a landmark treaty at the European level. Although the Convention does not specifically address Copyrights, Articles 4 and 21<sup>13</sup> state that AI systems should respect and safeguard existing human rights, including intellectual property rights.

Additionally, the Convention highlights the necessity of mechanisms regarding AI systems that are based on transparency and oversight, that establish accountability and responsibility, that are reliable, and that promote safe innovation. At the same time, all technologies that are developed should guarantee human dignity and personal autonomy, equality, and non-discrimination while

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<sup>12</sup> Sylvia Smith, “Iamus: Is This the 21st Century’s Answer to Mozart?,” *BBC News*, January 3, 2013, <https://www.bbc.com/news/technology-20889644>.

<sup>13</sup> “Explanatory Report to the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law,” Council of Europe, September 5, 2024, <https://rm.coe.int/1680afae67>.



respecting privacy and data protection. Of course, all these principles should be taken into consideration during discussions on AI and Copyrights.

However, until now, a specific policy by the Council of Europe on the topic has not existed. Thus, the “tabula rasa” that exists must be properly utilized to create an inclusive mechanism that can be widely adopted by the Member - States that encourages innovation while maintaining the prioritization of human rights. Consequently, even though it is not ordinary for Committee Study Guides, there will be some references to the Works of Other Committees and Institutions that can positively impact structuring the system that establishes the connection between AI and copyrights in the Council of Europe.

## Copyright Ownership of AI-generated Content

Article 1 of the First Protocol to the European Convention of Human Rights highlights the importance of property<sup>14</sup> and the legal protection of every individual regarding their possessions. So, when we address the topic of Content produced with the help of AI (partially or fully), it is crucial to define the concept of Copyright Ownership: Who is the Owner of this Content? The person who contributed to the Creation of the Software (the developer)? The users of the platform who may or may not have contributed to the production of the Work (the users)? Or can it not be assigned to an owner since it is an element of the public domain? The question is highly theoretical, and until now, it has mostly depended on national jurisdictions rather than unified approaches to the issue<sup>15</sup>.

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<sup>14</sup> European Court of Human Rights, “Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights,” Council of Europe, August 31, 2020, <https://rm.coe.int/guide-art-1-protocol-1-eng/1680a20cdc>.

<sup>15</sup> Konstantinos Christodoulou, *Δίκαιο Πνευματικής Ιδιοκτησίας*, 2nd ed. (Nomiki Bibliothiki, 2023), 71–76.



First of all, we should focus on the primary elements of a Work: originality and human contribution. The concept of originality means that Work produced cannot exist prior to the Creation. There should be certainty that WorkWork is a prototype, although it could be based on other contents. Human contribution, on the other hand, means that WorkWork should be created by a human (author), who will engrave WorkWork (of course, metaphorically) with the stamp of their personality. That human contribution is often questioned, especially the extent to which it is considered adequate. For example, in a recent case of the Prague Municipal Court, it was judged that AI pictures are not copyrighted under Czech law<sup>16</sup>, as the author of these cases cannot be found.

In the European Union, despite the thorough regulation of AI with the historical AI Act of 2024, the authorship of AI content has not been solved. The European Court of Justice, in one of its most fundamental copyright cases up to date, Infopaq International A/S v Danske Dagblades Forening, has concluded that the factor of originality depends on whether a Work is created intellectually by the author<sup>17</sup>. A different approach is implemented in the United Kingdom, where copyright protection does not stop at human creations, just like in the EU. However, it goes beyond that to include “computer-generated works,” as stated in the Copyright Designs and Patents Act 1988 (CDPA).

Also, it is interesting how AI can transform classical principles of AI. Nowadays, to enhance technological progress while cultivating artistic prosperity, the concept of joint ownership<sup>18</sup> in

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<sup>16</sup> Vojtěch Chloupek, “Czech Court Denies Copyright Protection of AI-Generated Work in First Ever Ruling,” Twobirds.com, May 29, 2024, <https://www.twobirds.com/en/insights/2024/czech-republic/czech-court-denies-copyright-protection-of-ai-generated-work-in-first-ever-ruling>.

<sup>17</sup> “Judgment of the Court (Fourth Chamber) of 16 July 2009. Infopaq International A/S v Danske Dagblades Forening.,” EUR-Lex Access to European Union law, accessed December 30, 2024, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62008CJ0005>.

<sup>18</sup> Imane El Atillah, “Who Owns the Copyright to AI-Generated Content?,” Euronews, July 10, 2023, <https://www.euronews.com/next/2023/07/10/copyright-challenges-in-the-age-of-ai-who-owns-ai-generated-content>.



copyrights seems to appear without disrupting the exclusive nature of these rights. The specific regulations of joint ownership can be mentioned ad hoc and attached to the Software's license as Terms and Conditions (T&C)<sup>19</sup>. Without a doubt, contractual principles can be applied to these terms.

## The use of copyright-protected materials in AI algorithmic training

In the previous chapter, we covered the “outputs” of AI and copyrights and the legal treatment of AI products. With equal attention, we should also address the “inputs,” which are the data used for algorithmic training. So far, the Council of Europe has not regulated that field, so it is up to the Member States to create their regulatory framework. For educational purposes, we will mention the rules set by the European Union, but since these Bodies are distinct, the States (especially those not part of the EU) may submit their proposals while respecting their preexisting obligations.

The first detailed regulatory approach at a European Union level was Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market<sup>20</sup>. The Directive regulated the use of Text and Data Mining (TDM), the process of extraction of data from large data pools and introduced the concept of “TDM Exceptions” that allow TDM without the approval of rights holders<sup>21</sup>. These Exceptions are stated in Articles 3 and 4 of the Directive. According to these, TDM is allowed by anyone (Article 4)

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<sup>19</sup> European Innovation Council and SMEs Executive Agency, “Artificial Intelligence and Copyright: Use of Generative AI Tools to Develop New Content - European Commission,” IP Helpdesk, July 24, 2024, [https://intellectual-property-helpdesk.ec.europa.eu/news-events/news/artificial-intelligence-and-copyright-use-generative-ai-tools-develop-new-content-2024-07-16-0\\_en](https://intellectual-property-helpdesk.ec.europa.eu/news-events/news/artificial-intelligence-and-copyright-use-generative-ai-tools-develop-new-content-2024-07-16-0_en).

<sup>20</sup> “Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on Copyright and Related Rights in the Digital Single Market and Amending Directives 96/9/EC and 2001/29/EC (Text with EEA Relevance.)” EUR-Lex Access to European Union law, accessed December 30, 2024, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019L0790>.

<sup>21</sup> Elena Varese and Carolina Battistella, “Can Generative AI Rely on the Text and Data Mining (TDM) Exception for Its Training? | DLA Piper,” DLA Piper, June 13, 2023, <https://www.dlapiper.com/es-pr/insights/publications/law-in-tech/l-ai-generativa-puo-fare-affidamento-sulla-eccezione-text-and-data-mining-per-il-suo-addestramento>.



under the condition that the authors of the data have not forbidden this specific practice (TDM opt-out). At the same time, “Opt-outs” are not permitted in scientific research conducted by cultural heritage institutions and research organizations if the access to the source is legitimate.

Regarding Article 4, a heated development had occurred about whether TMD exceptions include AI training, and luckily, the AI Act regulated the issue. Under Recital 105 of the Act, Article 4 of the Directive is applied to developing general-purpose AI models<sup>22</sup>. Additionally, Recital 107 of the Act obligates providers of AI models to publish lists of the Content that was used to train the AI algorithms to maximize transparency and allow the audit of copyright laws in the training process<sup>23</sup>.

On the other hand, in UK jurisdiction, the TDM exceptions remain limited to non-commercial use (see the Copyright, Designs and Patents Act 1988, etc.).

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<sup>22</sup> “EU AI Act: Shaping Copyright Compliance in the Age of AI Innovation,” KEA European Affairs, March 14, 2024, <https://keanet.eu/eu-ai-act-shaping-copyright-compliance-in-the-age-of-ai-innovation/>.

<sup>23</sup> Ursula Feindor-Schmidt, “How to Comply with Copyright under the European AI Act When Placing a General-Purpose AI Model on the European Market - Lausen Rechtsanwälte,” Lausen Rechtsanwälte, June 24, 2024, <https://www.lausen.com/en/how-to-comply-with-copyright-under-the-european-ai-act-when-placing-a-general-purpose-ai-model-on-the-european-market/>.



## 6.1.2. AI and the right to Data Privacy

Artificial Intelligence has paved the way for changing human life in many sectors, ranging from healthcare and education to finance and public administration. Its ability to process large volumes of data in a short time is of great relevance for modern decision-making processes, providing efficiency standards that were previously unattainable. Yet, with these developments, the need to protect the fundamental rights of individuals, especially the right to data protection, becomes increasingly urgent.

The above "data" refers to information that is not filtered, whether it belongs to individual users or is just publicly available, making the potential risks of data breaches, unauthorized surveillance, and automated profiling grow. The CoE has been at the forefront of addressing these concerns<sup>24</sup>. It tries to balance Artificial Intelligence development and the protection of personal data with individual privacy through legal tools like Convention 108+ and Guidelines on Artificial Intelligence and Data Protection. However, in spite of these great steps forward in protecting data, much remains in the way ahead to rest assured that our personal data is protected.

The Council of Europe has been strongly promoting data protection as a fundamental right, especially in the case of emerging technologies like AI. In 1981, CoE adopted Convention 108, an international treaty to protect individuals against the implications of the processing of personal data. This was modernized with Convention 108+, which came into force in 2018 and reflects the challenges thrown up by new technologies, including AI.

More precisely, Convention 108+ outlines in concrete terms the principles behind the treatment of data under conditions of legality, equity, and transparency. In particular, it prescribes that personal

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<sup>24</sup> Convention 108 +.” Council of Europe, June 2018. [https://www.europarl.europa.eu/meetdocs/2014\\_2019/plmrep/COMMITTEES/LIBE/DV/2018/09-10/Convention\\_108\\_EN.pdf](https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/LIBE/DV/2018/09-10/Convention_108_EN.pdf).



data shall be treated only in strictly specified and legitimate purposes, whereas one has the right to access, modify, and rectify personal information about himself or herself. This section is important in that many activities in our discussion have a lot of personal data collected, analyzed for decision-making by automated procedures. This convention makes sure the artificial intelligence systems respect individuals' rights to privacy and protection of personal data by underlining human responsibility and control in automated processes. Further, besides Convention 108+, Guidelines on AI and Data Protection were adopted in 2019 and provided more detailed guidance to member states on applying commonly established standards of data protection to AI systems.

These guidelines mean that there should be transparency in AI decision-making processes: individuals should be informed when they are subject to a decision based on automated processing and should have the right to contest its outcome. In addition, guidelines call for privacy-by-design and privacy-by-default principles (see Key Definitions) to be implemented in order to ensure data protection is integrated into AI systems at the design phase<sup>25</sup>. On the other hand, AI presents a myriad of challenges to data protection; among them, the volume of data needed for AI systems to be effective stands out. Large datasets are often required by AI algorithms in "learning" and making predictions based on patterns, which may also involve collecting and analyzing sensitive data.

This increases the likelihood of data breaches and unauthorized disclosure of personal information when there is a lack of adequate security in AI systems. There is also an issue with regard to profiling for automated decision-making. AI systems may come up with thorough profiles relating to data subjects, to be later used by specified firms in targeting advertisements and credit scoring or by each country's legal instruments for criminal sentencing.

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<sup>25</sup> "Recommendation CM/Rec(2020)1 of the Committee of Ministers to Member States on the Human Rights Impacts of Algorithmic Systems." Council of Europe, April 8, 2020. <https://rm.coe.int/09000016809e1154>.



While these applications can increase effectiveness, they also pose a number of ethical and serious legal questions. People do not always know whether they are being profiled, nor are they able to object to the decisions that artificial intelligence systems make. Such situations can only be possible by infringing on the rules of fairness and accountability-those principles that underlie the Convention mentioned above, along with the set of guidelines published by CoE. This certainly goes without saying that all the adopted legislation underlines the importance of human intervention in AI systems. As implied above, a right to be informed about the fact that one is subject to a decision taken by an automatic decision-making system, with the possibility to request human review, exists under Convention 108+. Moreover, the guidelines call for impact and risk assessments prior to deploying AI systems that would ensure that any potential risks to data protection are identified and contained. But there is a happy ending, as happens in every story, because there are several countries members of the Council of Europe that have taken CoE's indications on AI and data protection seriously and many times more. For example, Germany and France are showing strong data protection policies and, as such, standing up for the values of the CoE.

More concretely, Germany is a signatory to Convention 108+, as also the General Data Protection Regulation of the European Union<sup>26</sup>, which provides for making DPIAs for AI systems required in several fields, notably healthcare and finance. It was leading from the front in framing AI policies-particularly those used in public administration and law enforcement-ahead of France.

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<sup>26</sup> European Union. "Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA Relevance)." Europa.eu, April 27, 2016. <https://eur-lex.europa.eu/eli/reg/2016/679/oj>.



The country's data protection authority enforces strict controls on technologies that involve facial recognition, making sure of transparency and accountability, according to the CoE's Guidelines on AI and Data Protection. Both countries are examples of how the CoE principles of privacy-by-design and privacy-by-default can be put into practice and, therefore, lead and inspire the adoption of such practices in all member states. Others have poorer adherence to the regulations. While Türkiye has managed to develop an advanced AI sector, it is repeatedly in the headlines for failure to implement its data protection law with respect to government surveillance. There have been grave concerns of privacy violations over the usage of AI systems in policing and border management, and the legal framework in Türkiye has loopholes in taking the CoE principles on transparency and oversight of AI decision-making<sup>27</sup>. While countries like Germany and France have set very strong examples with robust frameworks on data protection, other countries like Türkiye face problems in alignment with CoE standards. While technologies continue to improve and their scope broadens, all the member states of the Council of Europe have to further align with these recommendations to ensure that the privacy of an individual and other basic human rights that such developments might violate are duly protected.

The Council of Europe platform should take up these issues and hence encourage cooperation, transparency, and accountability in the development of AI.

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<sup>27</sup> “Artificial Intelligence (AI) and Human Rights: Using AI as a Weapon of Repression and Its Impact on Human Rights.” DIRECTORATE-GENERAL FOR EXTERNAL POLICIES POLICY DEPARTMENT, May 2024. [https://www.europarl.europa.eu/thinktank/en/document/EXPO\\_IDA\(2024\)754450](https://www.europarl.europa.eu/thinktank/en/document/EXPO_IDA(2024)754450).



## 6.1.2. AI and the right of Expression and Access to Information

Article 10 of the European Convention on Human Rights (ECHR) establishes the right of the individual to freely express his opinion and further includes in it the freedom to receive and impart information at will. Whilst certain provisions and limitations are included with the aim of safeguarding vital interests such as national security and public order, it is imperative that any such restrictions are maintained only to the level of absolute necessity and do not fundamentally infringe upon the rights to express oneself and seek true information from a variety of sources. That is because without the proper exercise of these rights abuses may take place unobstructed, while policies severely affecting the public may be developed and deployed without the prior consultation of the affected parties. This can eventually lead to an overall decrease in the level of civic engagement and political participation, which would be extremely detrimental to the health of democracies the world over.

The proliferation of AI, which is largely encountered in the online sphere, can have various and significant, both positive and negative, effects on the capacity of the public to have unimpeded and complete access to information, as well as on the degree they are capable of expressing their informed opinions on the vast and far-reaching audience chambers that the online social media constitute today.

To begin with, major social media companies will routinely seek to remove objectionable content, in accordance with government regulations, as well as international human rights law (e.g. article 19.3 of the International Covenant on Civil and Political Rights (ICCPR), which allows some restrictions of free expression in order to protect the rights and reputations of others, and to safeguard the public order). In addition to such limitations, online communities may impose additional standards that content posted there must abide by. Traditionally, the role of moderating, and subsequently removing offending material, has been performed by human reviewers,



employed by the companies owning the social media. However, the sheer amount of traffic generated online has necessitated investment in and gradual adoption of AI systems in order to automate this task, as any inability of these corporations to swiftly and promptly remove content violating national laws would leave them open to facing legal penalties for noncompliance. This technology (Natural Language Processing, NLP) is however still in its infancy, and as such features higher error rates than human reviewers, specifically when it comes to false positives, which can represent a significant risk of infringement of the rights to freedom of expression and access to information, as it means flagging for removal content that isn't violating neither laws nor community standards<sup>28</sup>. It is therefore advisable that these AI systems remain on an assistant role to the human reviewers.

There is also the issue of cybersecurity vulnerabilities. As the internet in general and social media in particular become, if not the primary, one of the most predominant means through which people practice their right to express their opinions and seek and disseminate information, the vulnerabilities of this medium become all the more apparent and important. The most relevant such threat concerning freedom of expression lies in the deployment of artificial agents for the surveillance of civilians by governments, such as predictive policing algorithms<sup>29</sup>. Meanwhile, the employment of AI systems can enable larger scale and more strategic versions of current advanced targeting campaigns of political messages on social media, which would jeopardize the right of access to information in an exceedingly harmful manner.

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<sup>28</sup> Raso, Filippo, Hannah Hilligoss, Vivek Krishnamurthy, Christopher Bavitz, and Levin Yerin Kim. 2018. "Artificial Intelligence & Human Rights: Opportunities & Risks." SSRN Electronic Journal: 40-41. <https://doi.org/10.2139/ssrn.3259344>.

<sup>29</sup> Rodrigues, Rowena. 2020. "Legal and Human Rights Issues of AI: Gaps, Challenges and Vulnerabilities." Journal of Responsible Technology 4 (100005): 3. <https://doi.org/10.1016/j.jrt.2020.100005>.



Finally, another possible negative effect of the prevalence of AI concerns result optimization algorithms. These are used to assist individuals using private-sector digital platforms to access information to do so more efficiently but can have the adverse effect of streamlining and determining the kinds of information people will be exposed to<sup>30</sup>. Thus, in a roundabout way, such algorithms could in practice impede access to information.

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<sup>30</sup> Donahoe, Eileen, and Megan MacDuffee Metzger. 2019. "Artificial Intelligence and Human Rights." *Journal of Democracy* 30 (2): 117. <https://doi.org/10.1353/jod.2019.0029>.



### 6.1.3. AI and the right to Education

The integration of Artificial Intelligence into education systems is one of the most important developments that hold a host of possibilities for personalized learning, administrative efficiency, and inclusivity. Besides customizing learning experiences, AI can also be used to smooth assessments and can even help implement remote learning environments. However, like any other technological innovation, AI in education also raises ethical challenges that need to be addressed with care, especially in the CoE framework, which puts human rights, democracy, and rule of law at the core.

AI has great potential for improving education, especially in personalizing learning experiences according to individual students' needs. The AI-powered tools, such as intelligent tutoring systems, analyze the pattern of learning, strengths, and weaknesses of students to offer personalized pathways to success.

Although, and despite its many benefits-one of the most critical areas in which the use of AI is of utmost importance is in supporting students with disabilities. AI tools can support people with learning disabilities, hearing impairments, or mobility challenges in participating at all levels of education thanks to personalized assistance. For example, speech recognition and language processing AI currently provide real-time transcription services for students with hearing impairments. In this respect, AI contributes to the realization of the CoE's Disability Strategy 2017-2023<sup>31</sup>, which focuses on inclusive education as a core right. These advancements highlight AI's potential to reduce educational barriers and create more inclusive learning environments.

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<sup>31</sup> “ARTIFICIAL INTELLIGENCE and EDUCATION: A Critical View through the Lens of Human Rights, Democracy and the Rule of Law.” Council of Europe, November 2022. <https://rm.coe.int/prems-092922-gbr-2517-ai-and-education-txt-16x24-web/1680a956e3>.



Despite its many benefits, the use of AI in education raises several ethical concerns. The most prominent of these is privacy. AI systems in schools often rely on the collection and analysis of vast amounts of student data, including performance metrics, behavioral analytics, and personal information. Although that's important information for tailor-made learning experiences, such collection of data does give rise to some very genuine privacy risks. In Europe, where the protection of data is considered paramount, GDPR gives a sound legal framework on collection and use of personal data<sup>32</sup>. Any educational institution that introduce AI will need to make sure such systems fall within the GDPR framework and protect the privacy of the students.

Another significant concern is the potential of AI to further exacerbate bias. AI systems, if trained on biased data, may further extend inequities in education. For instance, AI-powered grading systems or algorithms for admissions could be discriminatory against students from low-income backgrounds or those with special learning needs<sup>33</sup>. The CoE's commitment to non-discrimination, entrenched in the European Convention on Human Rights, provides the basis for guiding the development of AI systems. For this reason, schools and universities should ensure that the algorithms used are transparent and that the results are checked for bias.

The more AI there is in education, the more the question of a future role for human educators arises. Although AI will no doubt assist teachers with administrative work and be able to provide personalized tutoring, it cannot take the human touch. CoE's Recommendation CM/Rec (2019)10 on the ethics of AI strongly stated a need for maintaining appropriate measures that guarantee the

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<sup>32</sup> “Convention 108 +: Convention for the Protection of Individuals with Regard to the Processing of Personal Data.” Council of Europe, June 2018. <https://rm.coe.int/convention-108-convention-for-the-protection-of-individuals-with-regard/16808b36f1>.

<sup>33</sup> Brookings. “Education and AI: Achieving Equity and Respecting the Rights of Students.” Brookings, July 17, 2024. <https://www.brookings.edu/events/education-and-ai-achieving-equity-and-respecting-the-rights-of-students/>.



role of AI is to complement, not substitute, human judgment in those spheres where, as in education, much of the social and emotional development of students depends on it<sup>34</sup>.

The Council of Europe plays the main role in setting ethics policies related to AI on the continent. The European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems can serve as an example of how AI may be ethically applied in education. First, the Charter underlines the need for transparency and fairness in AI systems with respect to accountability, important features also in education<sup>35</sup>.

Besides, the Declaration of the CoE on the manipulative capabilities of algorithmic processes underlines the urgent need for regulatory frameworks that definitely ban the use of AI for manipulative or unfair influence on individuals, much less on vulnerable individuals such as students. The key ethical consideration going forward will be to make sure that AI empowers students, not exploits them.

Integration of AI into European education systems encompasses interesting perspectives and serious ethical implications simultaneously. If European schools and universities follow standards outlined by the Council of Europe with regard to personal data protection, non-discrimination, and assurance that human judgment is maintained, AI would be a tool toward academic progress with preserved safety for students' rights. As AI continues to evolve, it is crucial that policy thinkers, educators, and technologists collaborate to design systems reflecting the values of inclusivity, fairness, and human dignity.

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<sup>34</sup> “Recommendation CM/Rec(2020)1 of the Committee of Ministers to Member States on the Human Rights Impacts of Algorithmic Systems.” Council of Europe, April 8, 2020. <https://rm.coe.int/09000016809e1154>.

<sup>35</sup> “EUROPEAN COMMISSION for the EFFICIENCY of JUSTICE (CEPEJ) European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and Their Environment.” Council of Europe, February 2019. <https://rm.coe.int/ethical-charter-en-for-publication-4-december-2018/16808f699c>.



## 6.1.5. AI and the right to Work

The rapid developments in Artificial Intelligence (AI) seem to have a strong impact on employment, affecting primary aspects of the Right to Work. Thus, the Council of Europe plays a major role in achieving a balance between technological advancement and the protection of these rights.

### The right to Work

The right to Work refers to the concept that every human should have the freedom to engage in a form of employment of their choice. The prevention of access to employment leads to a violation of this right. The right to Work is stated in Article 23 of the Universal Declaration of Human Rights and Article 6 of the International Covenant on Economic, Social and Cultural Rights.

The European Convention on Human Rights, even though it does not protect the right to work, through an “integrated approach to interpretation,” the invocation of other articles of the ECHR is widely discussed, particularly of Articles 8, 9, and 14. Regarding Article 8, which focuses on the protection of private life, in *Lykourazos v Greece Case (2006)*, two of the judges have expressed their point of view that the necessity of privacy includes the sphere of profession, consequently highlighting the need for a “private, professional life.” Related to Article 9, which provides a right to freedom of thought, conscience, and religion, in the *Ahmad v United Kingdom Case (1982)*, the European Commission on Human Rights (former organ of the Council of Europe) had stated that employers should consider respectively the requests of their employees, that are connected with their religion. Also, there has been a heated debate about Article 14, which forbids discrimination practices. However, the European Convention on Human Rights limits its scope of protection to the rights it recognizes. Since the right to Work is not established directly, a theoretical issue arises, which is solved by the European Court of Human Rights, which interprets the ECHR. A



characteristic case is *Sidabras v Lithuania* (2006), where Article 14 was combined with Article 8 to prevent discrimination based on professional past, which is undoubtedly a reflection of private life.

Moreover, to complete the human rights system in the framework of the Council of Europe, in 1961, the European Social Charter was established. In contrast to the ECHR's focus on civil and political rights, the ESC emphasizes social and economic rights. Even though the Charter covers the whole world of employment, including labor rights, this study will be limited to the right to Work. In the Charter (as it was revised in 1996) it is protected in Articles 1, 9, 10, 15, 18, 20, 24, 25<sup>36</sup>, where apart from the fundamental provisions regarding access to employment, the Charter sets a whole mechanism, which includes vocational guidance, vocational training, the prevention of discriminatory practices and the cooperation of States. Lastly, the Revised European Social Charter of 1996 (not ratified by all States of the Council of Europe) includes new rules about protecting workers in employment termination cases and of employers' insolvency.

### Job Creation, Job Displacement, AI Training and Accessibility

When Artificial Intelligence was first introduced to our lives, a vast percentage of the population expressed their fear that AI would become a “job replacement,” leading the human workforce to unemployment. Luckily, none of these rumors seemed to become a reality. Nowadays, the use of artificial intelligence is becoming a prerequisite to economic growth and innovation. Thus, AI-related jobs are growing more than ever, and professionals are evolving into one of the most sought-after specialties globally. Of course, this includes specialized professionals in related fields, experts in machine learning technologies, data science and algorithm training, and AI ethics. At

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<sup>36</sup> Aoife Nolan, “A Brief Overview of the European Social Charter System,” *Working Paper*, March 2020, [https://www.housingrightswatch.org/sites/default/files/Nolan\\_A%20Brief%20Overview%20of%20the%20European%20Social%20Charter%20System.pdf](https://www.housingrightswatch.org/sites/default/files/Nolan_A%20Brief%20Overview%20of%20the%20European%20Social%20Charter%20System.pdf).



the same time, expanding AI to numerous other professional fields, such as healthcare, will create a need for AI professionals. Even in technical fields (manufacturing, agriculture, etc), AI systems will play a valuable role.

But what about job displacement? It is well known that Artificial Intelligence is closely linked with automation practices that could lead to job displacement phenomena. Especially jobs based on manual, repetitive tasks<sup>37</sup> could be vulnerable to automation and thus to replacing human personnel. However, the concepts of automation and job displacement should not be confused. It has been monitored that the unemployment rates are at their lowest in certain countries where automation has been extensively developed<sup>38</sup>. That means that job reorganization is capable of limiting job displacement. Even though it is expected that by the end of the year, 85 million jobs could be replaced by automation practices, around 97 million new positions will be created<sup>39</sup>!

Additionally, it is important to understand that the prevention of job displacement can be achieved via the AI training of the employees, which reflects our commitment to continuous learning as a component of the right to Work<sup>40</sup>. Transitioning to AI requires empowering all workers as a whole and providing all opportunities that could promote their professional development in the new technological era. Retraining and continuous upskilling must remain a top priority for employers

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<sup>37</sup> Minas Stravopodis, “The Impact of AI and Automation on the Right to Work: Challenges and Policy Solutions,” IRIS Sustainable Development, January 24, 2024, <https://www.irissd.org/post/the-impact-of-ai-and-automation-on-the-right-to-work-challenges-and-policy-solutions>.

<sup>38</sup> “Your Job Is (Probably) Safe from Artificial Intelligence,” The Economist, May 7, 2023, <https://www.economist.com/finance-and-economics/2023/05/07/your-job-is-probably-safe-from-artificial-intelligence>.

<sup>39</sup> Indiana Gregg, “Council Post: The Future of Work: Embracing AI’s Job Creation Potential,” *Forbes*, August 12, 2024, <https://www.forbes.com/councils/forbestechcouncil/2024/03/12/the-future-of-work-embracing-ais-job-creation-potential/>.

<sup>40</sup> Valerio De Stefano, “‘Negotiating the Algorithm’: Automation, Artificial Intelligence and Labour Protection,” International Labour Organization, July 10, 2018, <https://www.ilo.org/publications/negotiating-algorithm-automation-artificial-intelligence-and-labour>.



who wish to implement AI technologies because they contribute to the maintenance of the employment of their employees<sup>41</sup>.

At the same time, AI can create a more inclusive, accessible working world. People with disabilities could benefit from the new technologies and overcome all the obstacles that prevent them from finding employment<sup>42</sup>. AI can be combined with unique technologies that aid the visually impaired (voice-to-text software) or people with mobility limitations. Remote jobs and assistive technologies have also been developed significantly with the use of AI, leading to the augmentation of job inclusivity<sup>43</sup>. Also, an inclusive working world means that all people could be assisted during AI transitioning, especially those who fall under special categories, such as older workers and low-skilled ones. In any case, AI allows the personalization of all this training to adapt the approach, the duration, and the materials provided according to the needs of every individual.

### Algorithmic Bias in the Hiring Process

The Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law in Article 10 protects individuals from discriminatory practices, reflecting the principles of non-discrimination of the Council of Europe, as they are established primarily in Article 14 of the European Convention of Human Rights. As AI is widely used in

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<sup>41</sup> Kya Hector, “A Worker-Resistant Approach to AI Is Harming Our Workforce, Economy, and Civil Rights.,” The Leadership Conference on Civil and Human Rights, August 28, 2024, <https://civilrights.org/blog/a-worker-resistant-approach-to-ai-is-harming-our-workforce-economy-and-civil-rights/>.

<sup>42</sup> OECD, “USING AI to SUPPORT PEOPLE with DISABILITY in the LABOUR MARKET OPPORTUNITIES and CHALLENGES,” December 30, 2024, [https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/11/using-ai-to-support-people-with-disability-in-the-labour-market\\_e9463967/008b32b7-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/11/using-ai-to-support-people-with-disability-in-the-labour-market_e9463967/008b32b7-en.pdf).

<sup>43</sup> Ryan Honick, “AI: The Game-Changer for Accessibility and Inclusion in the Workplace,” Ryan Honick, June 12, 2024, <https://www.ryanhonick.com/blog/2024/6/12/ai-the-game-changer-for-accessibility-and-inclusion-in-the-workplace>.



algorithms for hiring employees, it is of utmost importance to ensure that the AI algorithms used promote equality and fairness and are not biased towards discriminatory choices<sup>44</sup>.

Since the first uses of algorithmic recruiting, discriminatory practices have been monitored, favoring men for most job positions<sup>45</sup>. The most prevalent explanation was that the data, according to whom the algorithm was trained, contained a vast pool of candidates, only a small part of which were women. Discriminations of this kind may refer not only to sex but also marginalize people with disabilities, people of color, etc. Also, since AI knowledge is almost necessary for most technology-focused positions, the algorithms may abstain from opting for candidates with limited technological skills<sup>46</sup>.

In addition, automated hiring patterns should undergo frequent audits to avoid implementing discrimination even by mistake. Alternatively, it is believed that even though AI completely transforms the recruiting sector, all the decisions concerning the final choice of candidates should be made by humans or at least under human oversight. Thus, constant reconsideration should revise the hiring past in a way that equality and inclusivity are achieved in the workplace. It is stated that algorithmic hiring is especially likely to multiply bias compared with decisions made exclusively by humans. Hence, constant evaluation of the data used for algorithmic training remains crucial<sup>47</sup>.

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<sup>44</sup> Burçak Kurt Biçer, Can Güner, and İrem Efe, “DIFFUSION of ARTIFICIAL INTELLIGENCE in EMPLOYMENT LAW,” accessed December 30, 2024, <https://bicerguner.com/userfiles/file/6.pdf>.

<sup>45</sup> “Employees’ Rights in the Age of AI,” Klie Law, accessed December 30, 2024, <https://klielaw.com/workers-rights-ai-surveillance-technology/>.

<sup>46</sup> “The Impact of AI on Work and Employment,” International Organisation of Employers, June 2024, <https://www.ioe-emp.org/index.php?eID=dumpFile&t=f&f=160463&token=8a7078c15874881a559cd18ae85a0b9283afd5db>.

<sup>47</sup> Deepak Maheshwari, “The Future of AI: Is Human Oversight Always Necessary?,” Medium, September 29, 2024, <https://maheshwari-bittu.medium.com/the-future-of-ai-is-human-oversight-always-necessary-3d9f427c43ae>.



Also, the ethical development of algorithms should be guaranteed by developers and applied by the enterprises. For example, AI should respect the rights regarding personal data and privacy when assessing the profiles of potential candidates (status on digital profiling). Let's not forget that AI hiring practices may include the automated assessment of video interviews that could be used with psychometric tests and personality tests<sup>48</sup>, the ethical justification of which remains problematic<sup>49</sup>.

To conclude, AI is undoubtedly a transformative factor in the recruiting industry. To ensure its ethical use, hiring systems that use AI should respect all principles that are mentioned in the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law: Human dignity and individual autonomy, Equality and non-discrimination, Respect for privacy and personal data protection, Transparency and oversight, Accountability and responsibility, Reliability and Safe innovation.

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<sup>48</sup> Ben Dattner et al., "The Legal and Ethical Implications of Using AI in Hiring," Harvard Business Review, April 25, 2019, <https://hbr.org/2019/04/the-legal-and-ethical-implications-of-using-ai-in-hiring>.

<sup>49</sup> OECD, "OECD Employment Outlook 2023 ARTIFICIAL INTELLIGENCE and the LABOUR MARKET," 2023, [https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/07/oecd-employment-outlook-2023\\_904bcef3/08785bba-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/07/oecd-employment-outlook-2023_904bcef3/08785bba-en.pdf).



## 6.1.6. AI and the right to Fair Trial

Article 6 of the European Convention on Human Rights enshrines the Right to a Fair Trial, the cornerstone of any just judicial system. It affirms such requirements as the necessary transparency of the legal proceedings and the impartiality and independence of the appointed tribunal. Amongst the important pillars of the criminal justice system is risk assessment, the process by which the possibility of recidivism of an individual is calculated. This process informs on many key decisions that are to be made over and even after a trial, including whether the defendant ought to be detained before the trial, how high should bail be set at, how harsh the sentencing should be, and finally if and when should parole be granted. Unfortunately, the fairness of such processes can be inadvertently compromised by human bias and subjective decision making. Thus, criminal justice systems have in recent years started turning towards algorithmic risk assessment tools.

The long-term goal of such utilisation of AI is to detach from such processes the inherent human bias, and thus ensure better consistency in such rulings. And such systems have, in certain proof-of-concept studies, succeeded in providing more accurate predictions on recidivism chances, results which suggest that wider adoption of these tools could allow for lower incarceration rates with no corresponding rise in crime levels<sup>50</sup>. However, these systems are not perfect, and at times may even replicate the same human biases they are purported to counter. This can be attributed to the fact that data being used to train these AI systems are “tainted” with said systematic biases.

There are also two very important factors to consider that can cast shadows on the potential benefits of the use of AI systems. Namely, these are lack of algorithmic transparency and lack of

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<sup>50</sup> Raso, Filippo, Hannah Hilligoss, Vivek Krishnamurthy, Christopher Bavitz, and Levin Yerin Kim. 2018. “Artificial Intelligence & Human Rights: Opportunities & Risks”: 23. SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.3259344>.



contestability<sup>51</sup>. First and foremost, the inner logic and mechanisms of AI systems can be very inscrutable, making it very difficult for those subjected to decisions by AI to understand and accept them. Adding to this, the constant evolving nature of such algorithms can produce results which are sometimes non-reproducible, significantly reducing their reliability and credibility<sup>52</sup>. Closely related is the difficulty to contest the results of AI, as when the inner workings of a decision making process are imperceptible it is extremely hard to pinpoint the fault in the reasoning. This of course is a terrifying prospect when applied to the criminal justice system as it could result in unappealable verdicts, and as such further reinforces the viewpoint that the use of AI systems carries with it significant to the right to a fair trial.

## 6.2. AI and the Private Sector

Throughout recent years, AI technology has been advancing in leaps and bounds, one of the latest breakthroughs being the explosion of deep-learning algorithms. At the forefront of such innovations stand major internet platform companies, such as Amazon, Apple, Facebook, Google, and Microsoft. And the core issue that arises from this are the incompatible incentives of private sector AI.

In brief, when subjects interact with an algorithm, they provide input through their presentation, which then the algorithm uses to provide its output. If it is easy enough for the subject to alter its presentation, and the consequences of the algorithm's output (impact) are significant enough, then

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<sup>51</sup> Rodrigues, Rowena. 2020. "Legal and Human Rights Issues of AI: Gaps, Challenges and Vulnerabilities." *Journal of Responsible Technology* 4 (100005): 8. <https://doi.org/10.1016/j.jrt.2020.100005>.

<sup>52</sup> Raso, Filippo, Hannah Hilligoss, Vivek Krishnamurthy, Christopher Bavitz, and Levin Yerin Kim. 2018. "Artificial Intelligence & Human Rights: Opportunities & Risks": 24. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.3259344>.



we have what has been termed an *elastic*, or *fragile* algorithm, which creates a strong incentive for subjects to change their presentation in order to get more beneficial outcomes<sup>53</sup>.

This necessitates the institution of *guardrails*, external rules that limit the possible responses, thus controlling the way subjects interact with algorithms. And thus the issue of algorithmic governance arises. If left entirely up to the algorithm owners, i.e. the private companies, this would create temptations to apply guardrails arbitrarily, and only when and if the company faces potential brand damage<sup>54</sup>.

It is thus demonstrated that when it comes to designing and implementing values-based rules in AI governance, the technology companies that create the algorithms in need of guardrails are ill-suited to do so, which leaves the question of efficient AI governance still open.

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<sup>53</sup> Slee, T. (2020). The Incompatible Incentives of Private Sector AI. In M. D. Dubber, F. Pasquale, & S. Das (Eds.), *The Oxford Handbook of Ethics of AI*. Oxford University Press.

<sup>54</sup> Slee, T. (2020). The Incompatible Incentives of Private Sector AI. In M. D. Dubber, F. Pasquale, & S. Das (Eds.), *The Oxford Handbook of Ethics of AI*. Oxford University Press.



## 7. Recent Developments and Challenges Ahead

Artificial Intelligence has the potential to change the way almost everything in life is perceived and carried out around the world—from health care and governance to security. Ethical considerations of AI are, nonetheless, highly important, mainly with regard to human rights, democracy, and rule of law. Since Asimov's laws on robotics, a lot of thinkers have plunged deep into the uncharted waters of the possible threats and challenges that the use and development of AI may pose, especially in regard to human rights, democracy, and security.

First, one of the most salient points that we seem to be facing is that of AI affecting the privacy of individuals. AI systems, in particular, those applied for surveillance or data analysis, may infringe on individual privacy in ways that may not be directly apparent. The application of AI on public surveillance has brought forth a number of ethical concerns. While AI can improve monitoring and, consequently, the regulation of criminal activities, it may also spy on individuals without their knowledge or consent, infringing on their right to privacy. The CoE has constantly warned against the use of AI for mass surveillance<sup>55</sup>, calling for strict oversight and accountability mechanisms to be integrated into the Member State's legislation. The Council of Europe Commissioner for Human Rights also underlined the risks from AI for privacy and freedom of expression, especially in cases when AI systems are used for filtering media flow or controlling access to information.

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<sup>55</sup> Data Protection. “Declaration by the Committee of Ministers on the Manipulative Capabilities of Algorithmic Processes.” Council of Europe, February 14, 2019. <https://www.coe.int/en/web/data-protection/-/declaration-by-the-committee-of-ministers-on-the-manipulative-capabilities-of-algorithmic-processes>.



Great thinkers, including Henry Kissinger and Yuval Noah Harari, also point to great threats imposed by the rapid development of AI, threats that are appropriate to our discussion. Kissinger hints that increasing the autonomy of AI systems has the potential to pass beyond human understanding<sup>56</sup>, making accountability assurance difficult when AI decisions do not include oversight or human interference. He mentions, further, the risks of AI systems acting like "black boxes," whereby internal processes cannot be fully comprehended, and the threat this poses in the case of such systems being used in the mainstays of public administration, justice, and health. On the other side, Yuval Noah Harari warns of the possible uses of AI by a small minority at the expense of everybody else to create new forms of inequality and in their wake destroy democratic processes<sup>57</sup>. It talks more about how manipulative AI systems would impact public opinion and the role of AI in obstructing elections, for which democratic institutions are brought to their foundations. That this technology has the potential to impede democratic processes is amongst one of the most considerable ethics challenges facing the European region at this time. The threats entailed are huge, including those from misinformation to AI interference with the process of voting. The CoE's 2019 report on Democracy and AI outlines the ways in which AI could be used to manipulate public opinion, influence voting behavior, or undermine trust in democratic institutions<sup>58</sup>. As AI-generated deepfakes and other forms of disinformation become more

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<sup>56</sup> Kissinger, Henry, Eric Schmidt, and Daniel P Huttenlocher. *The Age of A. I. : And Our Human Future*. New York: Little Brown & Company, 2021.

<sup>57</sup> Yuval Noah Harari. *21 Lessons for the 21st Century*. Spiegel & Grau, 2019.

<sup>58</sup> search.coe.int. "Recommendation CM/Rec(2019)10 of the Committee of Ministers to Member States on Developing and Promoting Digital Citizenship Education." Council of Europe, November 21, 2019. <https://search.coe.int/cm#>.



sophisticated, there is an increasing need for sustainable legal frameworks that would prevent the abuse of AI in a political context.

The challenge of accountability for AI systems increases with increased autonomy. For instance, autonomous systems, like self-driving cars or AI-driven medical devices, can act with growing independence and may make decisions that would not be the choice of a human operator. The CoE's Recommendation CM/Rec(2020)1 on the human rights impacts of algorithmic systems stresses the importance of human oversight in AI applications, especially in cases where decisions could have significant consequences for the individuals subjected to them.

Likewise, AI's use in military applications, through the use of autonomous weapons, poses some of the most difficult challenges the CoE's member states need to tackle. The CoE has actively participated in the international debate on the need for regulating autonomous weapons systems through international instruments, requiring human control and oversight with regard to the use of AI systems in warfare<sup>59</sup>. The Commissioner for Human Rights of the CoE warned against "killer robots" causing violations of international humanitarian law and human rights. Kissinger also points out in *The Age of AI* that using AI in military contexts could mean autonomous systems making decisions with life-and-death consequences without human oversight.

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<sup>59</sup> "EUROPEAN COMMISSION for the EFFICIENCY of JUSTICE (CEPEJ) European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and Their Environment." Council of Europe, February 2019. <https://rm.coe.int/ethical-charter-en-for-publication-4-december-2018/16808f699c>.



As an organization with a strong commitment to human rights, democracy, and the rule of law, the Council of Europe needs to lead the ethical regulation of AI technologies. In sum, CoE has taken a leading role in various initiatives in pursuit of the development of AI according to European values. International debate on the ethics of AI has especially been led by the Ad Hoc Committee on Artificial Intelligence of the Council of Europe-CAHAI, an emphasis being placed on the importance of transparency, accountability, and human oversight of AI systems.

The future of AI carries tremendous opportunities and equally profound ethical challenges. Coupling theory with strict adherence to the principles laid out by the Council of Europe will allow Europe to take the lead in creating an ethical future for AI. Through its focus on human rights, democracy, and the rule of law, the CoE ensures that AI technologies are developed in a way that benefits all, while safeguarding the fundamental values that define Europe.

## 8. Conclusion

It is without a doubt that the development of Artificial Intelligence systems has made possible the integration of ground-breaking technologies into the everyday lives of millions of people worldwide. With the perks of its use ranging from advanced and concise healthcare services to the provision of specialised education, and the acceleration of the time needed to provide specified services (legal consulting, essay evaluations, interviews), it would be naive to consider that this advancement shouldn't be examined as a matter of utmost importance.

Living in the age of AI brings numerous ethical considerations regarding the parameters and the limitations in its use, to the spotlight. Many issues have emerged along with the rise of AI, especially when it comes to the protection of human rights, which falls exactly within the mandate



of our Committee's work. With numerous issues to tackle, in order to enhance the protection of the rights mentioned above, a productive and fruitful conversation shall emerge, in order to do - once again- what we do best; protect human rights, democracy, and the rule of law. As always, we state present to any new challenges, ready to create a harmonious co-existing environment with the emerging technologies of the future.

## 9. Points to be Addressed

- A. How is AI defined within the CoE framework, and what are the main parameters that should be taken into consideration?
  
- B. How can the Members - States decide upon a common framework regarding AI and copyrights ownership?
  
- C. In which terms should algorithm training be regulated in general and how can copyrighted data be protected in these processes?



- D. What measures should the CoE adopt in order to ensure that all private data are protected against any potential misuse?
- E. How can AI be used more effectively to moderate online content, without infringing upon the right to freedom of expression and access to information?
- F. What are the main problems that AI may pose in educational activities, and how can they be prevented?
- G. What is the role of AI in safeguarding the right to Work?
- H. Under what kind of framework can AI be beneficially integrated in the criminal justice system, without jeopardising the right to a fair trial?
- I. What measures should the Council of Europe adopt in regards to the governance of private sector algorithmic AI systems?
- J. How can the Council of Europe cooperate with external partners such as the European Union in order to advance its approach to AI?
- K. What are some of the main threats that may be posed in the future due to the development of AI, how will they impact human rights and what further measures could be implemented within the committee's framework?
- L. How can the Council assist Member - States without significant AI advancements in developing their technological capacities, while respecting human rights?



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