

Predictive Justice – IA and the legal sector

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AI – Some introductory remarks

- A definition: «Artificial intelligence mimics certain operations of the human mind and is the term used when machines are able to complete tasks that typically require human intelligence.” (Minsky, 1966)
- The characteristics of AI systems
 - Autonomy
 - Need to use big data (12ms of decisions constitutes a minimum...)
 - Deep learning: Traditional expert systems versus AI:
 - Traditional experts systems: from rules and facts to solutions
 - AI systems: from facts and solutions to rules
 - Evolution and opacity of AI systems' functioning
 - AI and predictive systems
- Method: use of semantic research full text with the use of keywords (ex: wage and remuneration)

The legaltech sector – the services (O. CHAUDEAU, 2018)

- **sharing** : Interactive platforms where customers might exchange and react in real time. Examples - *Doctrine, Juritravail, Le Droit pour moi, Legal Geek, Legal Space, Hub Avocats, Meilleurs Honoraires, Mon Code Juridique, PushLegal, MyLegalWhiz, Solulaw, We Justice, Share Your Knowledge (SYK), HighQ, Sherpany, Avostart, Weblex...*
- **Delivery (Production)** : either to better the legal services production (drafting of contracts), either to reimplace practitioners as regards different tasks linked with the legal services delivery – Major interest –make transparent the legal building process. Examples: *Contract Express, LexDev, Captain Contrat, Legalstart, Rocket Lawyer, SmartContract, Startup Document, Hyperlex, Imanage, Softlaw, Gino Legaltech, WeClaim, Vos Litiges, SaisirPrud'hommes, Pomelaw, MaFiscalité, Litige.fr, LeBonBail, eJust, Concord, Luminance, Risk Genius, Beagle.ai, Avocreator, Agence juridique, Avobot*
- **Advice**: help to identify the relevant data, to extract and to manipulate identifier ces données and finally to ground a decision no more on natural capacities of a human brain (the notion of « anecdonnée » developed by M. Lemsley). Examples: *GovPredict, Judicata, Kira System, Softlaw, LexPredict, Supra Legem, Clearaccessip, Predictice, Case Law Analytics, Juristat, Legal Miner, Legaloptics, Ravn, Sicara, Ebrevia, Lexmachina, Ravel Law, Vijilent*

AI in the legal sector (O. CHAUDEAU, 2018)

- **Towards E-discovery:** since a detailed analysis of a large number of complex documents till a predictive analysis in a litigation procedure, including the costs of the judicial procedure
- **New jobs :** data analyst, data scientist, data miner, data protection officer.
- REIMPLACE or SUPPORT?

- Actors looking after a market:
 - Legal insight, from Wolters Kluwer,
 - Augmented intelligence experience. With Legaltech4you
 - Lawrence de CEW (on line consultation)
 - Case law Analytics (modelling judicial decision)
 - Predictice (France): cooperation with Kluwer – predictive tool as regards the success of a case.

A precondition – The open data

- Open Access vs open data: AI needs Big data
- The PSI Directive 2016 (translated by the Belgian Act on the re-use of Public sector information (May, 4, 2018))–
 - Art.3: to promote the re-use
 - Art. 5 about the available format facilitating the re-use – open format readable by machine + metadata. IF POSSIBLE - *Revision on this point is requested by the Commission*
 - Art 6 Open access free – Possibility in case of re-use for commercial reasons to impose fees but limited to the costs of reproduction, putting at disposal and diffusion
- The Canadian, Dutch and French (art. 19 et 20 – Décret sur la république numérique) initiatives: the 2018 CADIET Report –

A precondition – The open data

- Questions to be raised:
 - The delicate question of data protection (parties, people quoted in the judgment, judges, lawyers) – the use of pseudonyms. Pro and Con's
 - Would it be possible for the Justice to offer a value added service in order to fight against discrimination between the legal offices?
 - What about decisions considered as pure fantasy?
 - Competition or not? Three conditions pursuant to Cadet's report:
 - Transparency of the algorithms
 - Setting-up of a control mechanism by the public authority
 - Adoption of a quality certification system by an independent organism

- *“Wij pleiten dan ook voor de oprichting van een onafhankelijk orgaan, paritair samengesteld door de advocatuur en de magistratuur, om de digitalisering van het rechtsstelsel en het rechtsbestel te begeleiden. Dit orgaan zou dan in haar werking de universiteiten dienen op te nemen zodat via de universiteiten de noodzakelijke kennis bij de werkzaamheden kan worden betrokken. Wij denken hierbij aan de technologische kennis die noodzakelijk zal zijn, alsook aan de disciplines die even belangrijk zijn en die zich verder van onze beleving bevinden, zoals agogiek en (rechts)ethiek. Dit orgaan zou de overheid (de wetgevende macht, de uitvoerende macht alsook onafhankelijke organen zoals de Hoge Raad voor de Justitie) inhoudelijk moeten voeden op het vlak van de uitoefening van de overheidsbevoegdheid betreffende dit onderwerp. Daarnaast denken wij dat dit op te richten orgaan een uitermate belangrijke taak moet krijgen, nl. die van bewaker en beheerder van de juridische data en algoritmes van de procesvoering.”*
- (Report quoted, p. 282)

AI and the legal sector – Towards a deep modification of the legal sector **market**

- Legal tech: new competitors for the traditional ones – the new players – the start up coming from the computer sector – certain big Lawyers firms e.g. (Denton) – the publishers of legal text or documents, the consultancy's companies – the sectoral federation - ...): See « *L'avenir de la profession d'avocats* » (P.HENRY and P. HOFSTROSSLER, Report, 25 feb., 2018, p. 277 and ff.)
- Legal tech and globalisation: 518 international firms on a total amount of 843; In US, 50 % of the legal offices + 1000 employees are using IA LS (10% for the others)
- the Directive 2018/ 958 (26/08/2018) on Proportionality control before the adoption of a new regulation of the professions – Main principles: No discrimination except for GI purposes - Strict proportionality of the rules adopted – Impact on the deontological rules???
- Possible attitudes –to integrate Legaltech in legal offices (OK) or to maintain exclusion ?
- The problem of the small legal offices

AI and the legal sector

- The advantages linked with the AI legal system use
 - Better service (reduction of the cost linked with the sources' research and thus possibility to invest in the time spent with the customer.
 - E-delivery: A better management of the service
 - Reduction of costs ... for the customer but what as regards the lawyer (cost of licensing the AI systems) and to monitor it)
 - Possibility to predict the judgment outcomes and to engage negotiation in position of force.
 - AI systems as a way to help the lawyer to focus on his or her job

AI and the legal sector: the need for an ethical charter

- **Between all the Legaltech actors:** for instance the French Open law Charter (December 2017)
- Main ideas :
 - Protection of the customer's interests – Confidentiality, Conflict of interest, Conformity to the present state of the Law, Clarity, fairness and transparency of the service offered
 - Civil liability
 - Cooperation between professions and fair and loyal competition + respect of the legal monopoly of each profession and obligation to respect their deontology

AI and the legal decisions

- The robot judge or the judge assisted by a robot : Still a Myth?
 - « *What I mean by LAW are the prophecies of what will be concretely decided by the Courts* » (HOLMES, 1987): A dream ... the argument of a Legal system secure because predictable.
 - The apparent fiability of the AI systems (COMPASS US, CASE CRUNCHER Alpha)
 - The bias' problem: the famous example about calculation of 'recidive' risks (Northpoint IA systems and its racial bias) – possible solutions – modify the outcomes or the logic.
 - The implicit normativity of the AI. Is that still possible to express a dissenting opinion
 - The problem of the hierarchy of the tribunals?
 - How to ensure a 'fair' trial? (art. 6 ECHR): the right to contest the automated decision (GDPR – art. 22)
 - The use for certain legal sectors, the interdiction for others (e.g.the criminal law (Predictice)).
 - The use of AI legal systems by ADR systems.

AI and a new conception of the legal system hierarchy

- **Case LAW**
 - The increasing reference to the case-law in the conclusions of the lawyer: the motivation by the quantity and no more by the quality of the logic followed
 - ...and the risk of a conservative reasoning
 - ... and the other risk of a normalization of legal decisions: « *transform the liberty into « fatum »* » (Garapon) The praise of dissent decisions
 - The need to pay attention to the facts.
- **Legal Doctrine**
 - Where is the Doctrine? How to integrate the doctrine in the AI legal system focusing on the case law decisions
- **Legislative norms:**
 - Is the Law still the predominant source within the legal system?
 - The necessary recursivity of the Legal system (F.OST)
 - How to take into account the modifications of the Law?

AI and the education of Lawyers

- The introduction of courses on computing (programming, data mining,...) in order to understand (not to build up) the functioning and characteristics of the systems proposed or used by the lawyers – *« Pour juger de questions algorithmiques, il faut des connaissances de base sur les algorithmes. De même, pour juger de questions de base sur l'accès à Internet et son usage, il faut des connaissances sur les réseaux et l'apprentissage automatique. Et pour comprendre ce que fait une machine, il faut des éléments de programmation et d'architecture des machines ainsi que de bases de données. »* (ABITBOUL)
- The introduction of courses on projects' management
- The importance of soft skills.
- The need for a permanent education
- Towards a more interdisciplinary education of the lawyers (K. GEENS)

- ***From Artificial Intelligence to Predictive Justice : A Challenge for the profession – the need for cooperation between legaltech actors.***
- ***Decreased Justice or/and decreased Judges???***
- ***In favour of a Justice for human people expressed by human people***