



GOVERNMENT OF MALTA
MINISTRY FOR JUSTICE

CELEBRATING 20 YEARS OF CEPEJ MALTA | 27, 28 JUNE 2022

38TH PLENARY MEETING
20TH CEPEJ ANNIVERSARY

**Intervention by Ambassador Thomas SCHNEIDER (Switzerland) Chair of the
Committee on Artificial Intelligence (CAI)**

**CELEBRATING 20 YEARS OF CEPEJ
FURTHERING QUALITY AND EFFICIENCY OF A DIGITALISED JUSTICE**

Excellencies, Ladies and Gentlemen,

It is a great pleasure for me to participate in your meeting today and celebrate with you the important work of the CEPEJ in the past 20 years. As the current Chair of the Committee on Artificial Intelligence (CAI), and former member of the Ad hoc Committee on Artificial Intelligence (CAHAI) for Switzerland, I can assure you that the work of the CEPEJ on AI in formulating and adopting the principles of the Ethical Charter on the Use of AI in judicial systems and their environments (2019) is truly pioneering. Your work was very useful for the CAHAI – not least in providing inspiration on how to address the issue of deployment of AI systems in human rights and rule of law sensitive sectors, such as the administration of justice.

I am not an expert on the administration of justice, and I hope that you will forgive me for not trying to give you advice on the challenges of a digitalized justice system but rather providing you with an overview of where the Council of Europe currently stands on AI.

The CAHAI ended its mission on 31 December 2021, having adopted and submitted to the Committee of Ministers both a feasibility study “On a legal framework on AI design, development and application based on Council of Europe standards” and a paper detailing the “Possible elements of a legal framework on artificial intelligence, based on the Council of Europe’s standards on human rights, democracy and the rule of law”.

The CAHAI offered a multi-stakeholder and multi-disciplinary forum for brainstorming on the question of if and how to regulate the design, development, and application of AI systems to ensure compatibility with relevant international human rights and rule of law standards.

With the CAI, the Committee of Ministers has provided for the next step in the process. This Committee has been tasked with elaborating an appropriate legal instrument on the design, development, and application of AI systems, based on Council of Europe standards and conducive to innovation by 15 November 2023. This effectively leaves 12 months to conduct the negotiations – a very ambitious schedule.

In addition, the CAI has been tasked with co-ordinating its work on AI with other Committees, including by providing advice to them, if necessary.



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The legal instrument which the CAI shall elaborate will be based on the work done by the CAHAI and the instructions received from the Committee of Ministers. These underline that the instrument should be of a transversal character and focus on “general common principles”. In short, the transversal instrument will not address specific AI issues in much detail but instead provide the general framework for development, design and application of AI systems. However, where there may be a need to regulate more closely, this should be done sector-by-sector across the Council of Europe mandate by the relevant steering committees which have both the expertise to do so and are responsible for the policymaking in their respective areas. This can indeed happen in tandem with the work of the CAI, if close coordination on key points, such as definitions used, is ensured.

In the case of the CEPEJ, I would like to highlight that the instrument prepared by the CAI will also touch on some basic concepts which are important for the rule of law. I will therefore call on your Committee to provide the CAI with your precious expertise and actively assist us in formulating the applicable guiding principles on how best to regulate the use of AI systems in decision-making in the public sector, in particular as regards the administration of justice.

I have personally been actively participating, for more than 15 years now, in the work of the Steering Committee on Media and Information Society (CDMSI) and many of its expert groups. In the CDMSI, we have been looking into the impact of the internet and digital technologies on human rights, in particular the right to freedom of expression, the right to freedom of association and also the right to private life. In the past few years, we have put a special focus on the use of algorithmic systems in the media, the public sphere and democratic processes. To name one important instrument, we have developed – under my chairmanship of the CDMSI – a recommendation on the human rights impacts of algorithmic systems which was adopted by the committee of ministers two years ago.

Let me end by mentioning some very basic concerns that we have regarding the increasing use of artificial intelligence, both in the public and private sectors.

Firstly, AI must be a force for good – a servant of humanity – and not replace the “rule of law” with the “rule of algorithm”. This, in fact, does not really depend on the technology, but on the way in which it is used or abused by humans.

Secondly, the technology is neither inherently good nor bad. It offers great promise in multiple areas, ranging from science and medicine to business and public administration. At the same time, over-reliance on the infallibility of technology combined lack of proper understanding of the ways in which AI functions may lead to serious breaches of human rights and the rule of law. Unchecked surveillance together with facial recognition, and worse “emotion recognition”, making use of AI and combined technologies, may not only undermine basic human rights, but the very fabric of democracy itself. Hence there is every reason to now establish a proper legal framework ensuring that existing human and other legal rights continue to be seamlessly applied in an AI context. This cannot be left to self-regulation by the industry alone. At the



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same time, my experience from the CDMSI has taught me that it is crucial that we are involving not just governments, but all stakeholders – civil society, the industry and the technical and academic community – into our work. This helps us to ensure that we do not only produce legal instruments that look good on paper, but instruments that can and will be implemented by all stakeholders – in their respective roles. Such multi-stakeholder dialogue and cooperation is even more important in the field of AI, where governments often struggle with keeping pace with the developments driven by science and industry and with understanding what the technical and economic circumstances are that these technologies are being developed and used in.

It is therefore indispensable in my view that we enhance dialogue and cooperation also across the silos and sectors within the Council of Europe in order to be able to at the same time understand the full picture of what is going on and to be able to develop appropriate guidance in the specific sectors of our expertise. The CDMSI has therefore decided to seize the fact that I am currently still one of its bureau members in order to facilitate the exchange of information and expertise between it and the CAI. In order to enable us to best fulfil our mandates, I think it is not only important that all relevant standard setting committees have channels for such exchange of information and expertise not only with the CAI, but also with all other committees relevant for each other's work.

Finally, AI is a global technology – and the challenges it raises cannot possibly be addressed efficiently at the national or regional levels. The world needs a global, legally binding instrument how to develop, design and apply AI systems in accordance with human rights and the rule of law. Despite it being a regional organisation, the Council of Europe has a history of providing just such legal solutions with a reach way beyond Europe (the most famous of which is the "Budapest Convention" on cybercrime), and it is my hope that we can repeat this feat on AI. I am for this reason also very pleased to note the interest in the work of the CAHAI (and now the CAI) from States all over the world.

This is a unique opportunity to find common ground between States while involving civil society, academia, and industry in the process of establishing certain basic principles to govern the use of AI systems and ensuring that the benefits of this ground-breaking technology can be enjoyed across the world.

Thank you for your attention.
