European Committee on Legal Co-operation (CDCJ)

Strengthening Judicial Independence: Career and training of judges

Launch conference of the report on the first thematic review under the Sofia Action Plan

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SESSION II: JUDICIAL TRAINING

16.15 p.m. to 17.00 p.m

Artificial intelligence and emerging challenges

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Good afternoon. I want to highlight six AI challenges for judicial training.

They arise out of the increasing use and misuse of AI by lawyers, expert witnesses and litigants. They arise through the increasing use of AI by judges themselves, both where that is authorised and where it is, perhaps, not necessarily authorised. And, they arise out of the need to maintain judicial independence, particularly institutional independence, which is at risk where AI use is concerned.

Each issue will move judicial training beyond its more traditional areas: law, procedure, and ethics. The key issue where each is concerned will be to ensure that judges are capable of remaining independent, impartial, accountable and – as decision-makers – fully responsible for their decisions in an environment that is and will only become ever-increasingly AI-enabled.

Turning then briefly to the six challenges.

First, and most obviously, judges will need to be trained to identify AI hallucinations – fictitious authorities, fabricated citations, AI-generated submissions and expert reports. Such issues are already a commonplace problem, and we are already seeing such matters finding their way into judgments.

Incorporation of a fictitious authority into a judgment has already led the Indian Supreme Court to hold that any such judgment is a nullity. The effective administration of justice, and confidence in the judiciary, requires judges to take steps to ensure that the occurrence of such problems is minimised. Training is key to this.

The same point can be made with equal force where AI-created or manipulated evidence is concerned. Whether that is deep fakes, cloned voices or AI-generated material, the need for judges to be able to respond to such evidence also requires training if the integrity of the judicial process is to be maintained.

Training needs to go further that this though. AI risks do not stop at identifying fake precedent or evidence. Judges also need to be trained in how to recognise when AI is influencing their reasoning. Judicial training may well have focused historically on helping judges identify when they are or may be subject to personal bias or external pressure, and how to resist it.

It will in future also have to focus on helping judges to identify when and how the use of AI may influence their decision-making: how it might influence how they select information, prioritise issues, approach authorities and evidence, and - importantly – how individual uses of AI that on their own may not be problematic when taken together can become very problematic.

Risks do not just arise from AI use in that way. Judges will also need to be trained in how to identify when they are deferring to AI-generated output: how to identify and resist automation bias or cognitive offloading.

In essence, judicial training will need to do something that it has not had to do in the past: train judges how to remain active decision-makers rather than the passive recipients of AI-generated content.

In doing so, training will need to also ensure that judges are aware of the potential limitations and biases that may inform AI-generated content. We are all too familiar with the problems of AI bias.

If judges are to maintain procedural fairness, equality before the law, then they will need to be able to recognise that AI outputs or content may reflect systemic bias in training data. Training is required to minimise the prospect of future Compass-type situations arising.

These various points focus on individual judicial decision-making. Training will need to go further than this. It will also need to have an institutional dimension.

AI is already embedded in some judicial systems, whether that is through the deployment of judicial use of generative AI tools, such as Microsoft Copilot or other AI-tools. If judges are to, as they should – consistently with the approach identified in the CCJE's Opinion No. 26 – maintain oversight of such tools as they are introduced into justice systems, they need to understand how they are designed, how they operate, how they are procured, and how their operation can be evaluated. They need to have the ability to do these things carefully and thoughtfully; with a critical and informed eye. If they do not or cannot, judiciaries run the risk that institutional independence will be compromised.

Hence, judicial training must equip judges now to participate effectively in technological governance, rather than simply equip them with the skills to use AI tools.

Technological governance also points to an area where what ought to be existing training will need to be expanded. Judges should by now be familiar with data protection and data security. The use of AI by judiciaries will need to be incorporated, if it is not already, into such training. We are already seeing lawyers and expert witnesses falling foul of placing confidential and privileged material into AI tools that expose it to the world.

Judges too need training in how to maintain data security when using AI tools, and in the threats to confidentiality and privilege, particularly in family or criminal proceedings. Information security if it is not already, needs to be understood to be a core judicial competence with appropriate training.

Finally, training needs to be continuing. It cannot be viewed as one-and-done. AI is and will continue to evolve rapidly. Agentic AI is already emerging. Other AI tools will emerge. They will bring with them new risks, and are also likely to see existing risks change. Governance frameworks to secure individual and institutional judicial independence will need to respond accordingly.

Therefore, judicial training will also need to be systematic and ongoing. It will need to be embedded into judicial governance.

It is more than likely that in the future education in AI will be recognised as a safeguard of judicial independence and the rule of law. Judicial training will need to reflect that. Thank you.