



Strasbourg, 5 March 2019

CEPEJ-GT-QUAL(2019)1

**EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE
(CEPEJ)**

WORKING GROUP ON THE QUALITY OF JUSTICE (CEPEJ-GT-QUAL)

Possible actions to be taken to ensure a wider dissemination and implementation of the European Ethical Charter on the use of artificial intelligence (AI) in judicial systems and their environment

Discussion paper

BACKGROUND

The “European Ethical Charter on the use of artificial intelligence (AI) in judicial systems and their environment” (hereafter: the Charter), adopted by the CEPEJ on 3 December 2018, has been the subject of in-depth interest by the media, legal professionals and public institutions. A special file on the Charter, available on the main CEPEJ website, includes a non-exhaustive list of news, scientific articles and events in which this text was presented. Particularly worth mentioning in this respect are the Charter’s presentations in important European and international fora¹.

The challenge for the near future seems to be, on one hand, to continue to ensure the dissemination of this document among legal professionals, academia and private companies (legaltechs), and on the other hand, to keep monitoring the evolving situation of use of AI tools and services in the European judiciaries. Moreover, it is essential to support the Charter’s implementation, so that it becomes really a “living instrument” that can be used by public and private actors, as well as by courts testing and using AI tools.

Specific actions are proposed hereafter to meet the above-mentioned challenges².

ACTION #1: TO ENSURE A BROADER DISSEMINATION OF THE CHARTER

In addition to being available on the CEPEJ website, the Charter has now become an official COE publication, in English and French. Complementary actions could be undertaken with a view to ensuring its broader dissemination:

- a) To ensure the translation of the Charter in other languages. However, this cannot be ensured through the CEPEJ ordinary budget – therefore it is worth considering whether CEPEJ-GT-QUAL members and observers could make a contribution in this respect.
- b) To prepare a more reader-friendly document for users who mostly have a beginner’s knowledge in this field. It could be a booklet in a plain language with graphics for example, explaining what AI is in the first instance and how it can impact the day-to-day work of legal professionals, the risks and opportunities it offers, and why an ethical framework is necessary.
- c) Involve national judicial training institutions, high judicial councils so that awareness can be raised in the framework continued education for judges and court staff, as well as other influential institutions for legal professionals (national Bar associations, experts’ and judicial officers’ associations). Guidance is needed from CEPEJ-GT-QUAL members and observers as to how to achieve this, as different options can be envisaged: go through international partners (European Judicial Training Network, international networks such as the Judicial Policy Research Institute or the International Organisation of Judicial Training), or involve selected European training institutes;
- d) Create a network of Charter experts who can help address the multiple requests for presentation and dissemination still reaching the Secretariat. The Secretariat has already a small pool of experts on IT matters who could be involved, in addition to interested CEPEJ-GT-QUAL members and experts.

ACTION # 2: TO KEEP OBSERVING AI DEVELOPMENT WITHIN EUROPEAN JUDICIARIES

¹ At the request of the European Commission, the Charter was presented at the meeting of EU Scoreboard correspondents on 11 December 2018, as well as at the meeting of the Council of the European Union on 1 March 2019. The United Nations and the Judicial Policy Research Institute became aware of the Charter in December 2018. This instrument was also praised by three Ministers during the high-level conference on AI held in Helsinki on 26-27 February 2019 and some high-level scholars such as Joanna Bryson.

² Such actions should be in principle included in the CoE forthcoming global Internet Governance / Digital transformation strategy 2020-2023 to contribute to deliver a global response to the challenges raised by the development, the design and the use of AI.

For various reasons, knowing exactly the different AI solutions and tools being tested and used in European judiciaries is not an easy task. On one hand, tests are very often carried out at the level of single courts, so as to get feedback and allow adaptation before ensuring dissemination on a wider scale. On the other hand, legaltechs are leaders in developing AI-based solutions, and they seem to primarily target lawyers or legal departments and not judicial authorities. CEPEJ correspondents and members are not necessarily aware of the different initiatives undertaken by the private sector in their own countries. Yet, it is essential to be able to follow the developments regarding the open data of judicial decisions and AI's steady deployment in the European judiciaries. It is interesting to note in this respect that both the Council of European Union and the European Commission intend to publish reports on this latter issue in 2019.

Possible actions which could be undertaken in this respect are:

- a) To keep and if necessary develop new questions on open data and the existence of AI tools and services for the judiciary in CoE member states, in the framework of the CEPEJ Evaluation cycle 2018 – 2020;
- b) Subject to funding, support specific research on these issues.
- c) Use the CEPEJ Innovation Centre as a permanent observatory of AI deployment in European judiciaries, which ensures the collection and sharing of good practices, particularly of CEPEJ members and the CEPEJ pilot courts' network. The latter in particular could be invited to inform the Secretariat regularly of any initiatives undertaken in this field.
- d) Use the current CEPEJ network of representatives of interest (CCBE, notaries, bailiffs) to contribute to a specific data collection in their field, so as to enable the CEPEJ Innovation Centre to fulfill its mandate.
- e) To collect legislative developments in the Member States as well as national strategies developed in this field;

ACTION # 3: TO MAKE THE CHARTER A LIVING INSTRUMENT AND ENSURE ITS PRACTICAL IMPLEMENTATION BY DIFFERENT ACTORS

The Charter is an important milestone in the process of definition of substantive and methodological principles on the use of AI in judicial systems. While it is a not-binding instrument, it is hoped that its principles will guide the definition of public policies in this field. The Charter is also an important reference for courts testing and/or using AI tools and service, as well as for legaltechs developing AI tools.

To make the Charter a living instrument and ensure its implementation by public authorities and private actors, the following actions are proposed, to be carried out under the aegis of CEPEJ:

- a) To expound on the Charter's principles and to provide further methodological and operational guidance (in particular for public authorities – legislators, public policy makers etc) on the way such principles should be applied. For example, if we take principle n°1, reference is made to the need to develop "human rights by design" solutions, but the Charter does not specify what "human rights by design" implies. Hence, it is felt that a complementary document (like a Manual on the Charter), which would include additional background information and operational steps to better implement the principles, would be particularly useful. This could be accompanied by a more precise Checklist of questions for developers of AI solutions, aimed at making (self-)evaluation easier.
- b) In parallel, it is essential to reflect on the possible establishment of a mechanism to certify AI solutions and in particular to which extent they are compliant with the Charter's principles. The feasibility of a certification, its pros and cons should be analysed in terms of opportunities and risks. The setting up of an independent, specialised and multi-disciplinary Group under the aegis of the CEPEJ-GT-QUAL, in charge of reviewing applications and granting

certification could be explored. Applicable procedures, the resources at its disposal, objectives and features of the certification would obviously have to be addressed as part of this endeavour.

- c) Finally, it is important to anchor the Charter to the day-to-day use of AI applications and services by courts and legal professionals. As mentioned earlier, most of the tools are being tested in order to measure the opportunity of deployment on a wider scale. It is important that the Charter is used as a reference point against which the different AI solutions proposed can be assessed. This would offer the courts as well as the legal professionals involved, the opportunity to assess to what extent AI solutions respect the Charter's principle, and provide a reassuring implementation framework. It is worth mentioning that an experiment of this kind is currently being carried out at the Tribunal de Grande Instance de Strasbourg (France), with the support of the CEPEJ and the Institut des Hautes Etudes sur la Justice, and the involvement of the University of Strasbourg. It would be important to encourage and support other European courts in following the same approach.