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STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

DRAFTING GROUP ON HUMAN RIGHTS AND ARTIFICIAL INTELLIGENCE
(CDDH-IA)

Summary of exchange of views with experts of the 3rd meeting of CDDH-IA
(held on 5 February 2025)

(prepared by the Secretariat)

1. INTRODUCTION

The CDDH-IA held an exchange of views at its third meeting with external independent experts and representatives of the Criminal Justice Division of the Council of Europe, the Steering Committee for Education (CDEDU), the Workplace Relations Commission of Ireland, and the Office of the United Nations High Commissioner for Human Rights.

The CDDH-IA held the exchange of views with:

- Ana BEDUSCHI, Professor of Law at the University of Exeter
- Gwendolen MORGAN, Registrar to the Workplace Relations Commission (Ireland)
- Eva PASTRANA, Head of the Criminal Justice Division of the Council of Europe, and Secretary of the CDPC
- Marie-Anne PERSOONS, Chair of the Steering Committee for Education (CDEDU)
- Nathalie STADELMANN, Human Rights Officer, Office of the United Nations High Commissioner for Human Rights

2. SUMMARY OF DISCUSSIONS

Key points made by Ana BEDUSCHI

- Artificial Intelligence (AI) is being increasingly used for international migration management in different phases of the migration process: pre-departure, transit, arrival, stay, return.
- There are a number of advantages in using AI in international migration management, for example: the analysis of vast amount of data; streamlining repetitive tasks; increasing efficiency in immigration and asylum processing; expediting identity verification at border crossing points; and identifying potential threats to national security or public safety. At the same time, AI systems may also present risks concerning the right to privacy, non-discrimination and equality or to the right to an effective remedy. More broadly, on a systemic level, any overuse of AI in migration may have various negative consequences such as creating dependencies, perpetuating biases and errors, promoting excessive reliance on technological solutions, and undermining trust in decision-making processes.
- The use of AI systems in migration management and border control should not disproportionately interfere with migrants' right to private and family life under Article 8 of the European Convention of Human Rights (ECHR). While surveillance might be necessary to ensure national security and public safety, measures that disproportionately infringe on individual rights should not be tolerated in a democratic society. Accordingly, public authorities implementing AI technologies in migration management and border control should strive to achieve a fair balance between safeguarding public interests and protecting migrants' right to privacy.
- Furthermore, AI systems may reflect the biases of their human designers and developers or arise from a lack of representation of diverse population. While this issue is not

exclusively related to migration, the consequences for migrants' rights can be significant. For example, if facial recognition technologies are used for identification and identity verification at pre-departure or on arrival at borders, individuals with darker skin types may be more exposed to inaccuracies and misidentification. If such mistakes are not corrected, misidentified individuals may face situations in which they may be denied entry. That could lead to unlawful discrimination if the AI systems' risks were known and not addressed or mitigated by public authorities.

- The difficulties in understanding the internal functioning of AI systems and the lack of transparency on whether and how States are using AI coupled with the possibility of automation bias (the tendency for humans to over-rely on automated systems, even when they provide incorrect or suboptimal information), raises questions about individuals' ability to seek effective remedies and redress. While decisions on immigration and related matters, such as entry, residence, and removal of aliens, fall outside the scope of Article 6 ECHR (right to a fair trial), Article 13 ECHR (right to an effective remedy) is applicable to these matters. Arguably, if individuals are unaware of AI systems' involvement in the assessment of their cases, they are unable to seek appropriate redress, as they do not know if any issues (e.g. bias) have affected the outcome of their case thereby impacting their right to obtain an effective remedy under Article 13 of the ECHR.
- While the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law (Framework Convention) allows for an exception in matters related to national security interests, State Parties' practice should still be 'consistent with applicable international law, including international human rights law obligations.'¹ This exception could apply to matters relating to international migration management and border control if these fall within national security interests. Nonetheless, States would still need to comply with international human rights law, including the ECHR.

Key points made by Gwendolen MORGAN

- AI is increasingly being used in the employment sphere, including recruitment processes, administrative tasks, micro surveillance, and assessing performance. The pervasive use of AI raises concerns in relation to Articles 8 (right to respect for private and family life), 11 (freedom of assembly and association), 13 (right to an effective remedy), 14 (prohibition of discrimination), and Article 1 of Protocol 1 (protection of property) ECHR.
- There is already domestic caselaw, both adjudicated and pending, which highlights potential human rights risks of AI systems used in the employment and labour context.² These national cases address various concerns, including the potential chilling effect of AI systems on union membership, real-world examples of bias in shift assignments, discriminatory restrictions on access to delivery platforms, algorithmic management of workers, and the implications of automated systems for workers' rights and non-discrimination.

¹ Article 3 (2) of the Framework Convention.

² A complete list of the presented caselaw can be found in the "[Compilation of written contributions and presentations received from experts of the exchange of views of the 3rd meeting of CDDH-IA](#)"

- To help avoid bias and discrimination when implementing AI systems in human resources processes, States should ensure that employers or agents maintain adequate human oversight of AI-driven processes. Employers should assess potential bias risks or adverse impacts on protected groups, establish objective justifications for differential treatment, and undertake remedial measures if necessary. Staff should receive training on acceptable AI use in the context of human resource management and on identifying and mitigating bias. AI systems should be regularly tested and audited to prevent discriminatory outcomes. Employers should not rely solely on assurances from AI providers but actively ensure compliance with equality legislation. They should also transparently explain AI-driven decision-making to affected individuals, notwithstanding intellectual property considerations. Failure to ensure fairness in AI systems can harm trust, reputation, and talent attraction if diversity is not prioritized and if candidates are selected based on biased criteria. Clear and effective remedies must also be available.

Key points made by Eva PASTRANA

- The European Committee on Crime Problems (CDPC) is the principal intergovernmental body within the Council of Europe responsible for setting standards and policies in the field of criminal law and procedure, criminology and penology, and overseeing their implementation by national authorities. The Council for Penological Cooperation (PC-CP), a subcommittee of the CDPC, elaborated Recommendation [CM/Rec\(2024\)5 of the Committee of Ministers to member States regarding the ethical and organisational aspects of the use of artificial intelligence and related digital technologies by prison and probation services](#).
- CM/Rec(2024)5 aims to help prison and probation services use AI and related digital technologies in an ethical manner, ensuring respect of human dignity and human rights, of prisoners, probations, prison and probation staff, and other actors assisting in the reintegration and rehabilitation of offenders. AI should support but never replace meaningful human contact and social interaction, as the staff plays a crucial role in resocialisation and rehabilitation. Public authorities remain responsible for AI use, even when private companies provide the AI systems.
- The implementation of CM/Rec(2024)5 is followed up by the CDPC and complemented with cooperation activities or projects with key stakeholders. The CDPC is now considering, as per its terms of reference for 2024-2027, the elaboration of a draft legal instrument on criminal liability related to the use of AI.

Key points made by Marie-Anne PERSOONS

- The Steering Committee for Education (CDEDU) elaborated the report “Artificial Intelligence and Education: A critical view through the lens of human rights, democracy and the rule of law”. The report examines the relationship between AI and education, presents challenges for AI in education, looks critically into the intersection of AI, education and human rights and conducts a preliminary needs analysis. It also conducted a survey on the “State of artificial intelligence and education in Council of Europe member States and put forward recommendations for action.

- As to the effects of AI on education, there is a growing awareness since Covid that IT-supported education is not always conducive to better learning and can lead to new divides between those that are bound to having online provision only and those that can afford face-to-face instruction. Additionally, AI-generated content is standardised and thus, by definition, not “excellent” in the strict sense. Excessive use of AI leads to mediocrity instead of stimulation of (creative, critical and explorative) skills and original (out of the box) thinking. Specific concerns relate to privacy, effects on professional status and professional autonomy, integrity, plagiarism and fraud detection.
- Learning about AI is key in the educational context. AI literacy (or education about AI) may be defined as comprising three dimensions: technological, practical, and human. The technological dimension encompasses how AI works and how it might be developed. The practical dimension refers to the way in which AI can be used effectively. Lastly, the human dimension refers to the impact of AI on humans, human rights, democracy and the rule of law. AI literacy should then be considered in the broader context of digital citizenship education to link it with other subjects, such as civics, humanities, history, etc.
- Responsible use of AI in education should be solely geared at enhancement of learning and teaching, the agency of learners and teachers, and should not serve other interests (e.g. commercial, surveillance, security).

Key points made by Nathalie STADELMANN

- The United Nations Guiding Principles on Business and Human Rights (UNGPs) are the global authoritative standard for preventing and addressing human rights harms connected to business activity and are aimed at both States and businesses enterprises. They comprise three separate, but mutually reinforcing pillars that provide a framework for government to protect and businesses to respect human rights (‘Protect, Respect, Remedy’ framework).
- State Duty to Protect Human Rights: the UNGPs emphasise the State’s obligation to protect human rights by preventing and addressing abuses linked to business activities, including AI. States are encouraged to adopt a “smart mix of measures” to foster business respect for human rights such as regulations, guidance, incentives, and transparency requirements to advance corporate responsibility and accountability for human rights harms stemming from or being linked to AI. Impacts on human rights should sit at the core of governing artificial intelligence. Meaningful reporting and transparency standards introduced by Governments can enhance the understanding of risks to people related to AI and provide better evidence to compare corporate actions to address such risks. Additionally, governments must exercise oversight when partnering with tech companies in public services to ensure human rights are respected. The UNGPs stress the importance of policy coherence across government agencies to provide businesses with clear, predictable human rights expectations.
- Corporate Responsibility to Respect Human Rights: businesses should respect human rights by embedding them into policies and processes appropriate to their size and circumstances. Companies must implement human rights due diligence (HRDD), a four-step process involving identifying risks, taking actions to mitigate them, tracking effectiveness, and transparently reporting results. This is particularly crucial for AI

companies, as AI systems can impact privacy, equality, and fairness. HRDD should extend to the entire supply chain, ensuring that all business relationships are assessed for human rights risks. Companies must also consider the impacts on vulnerable groups. Engaging with affected stakeholders, including marginalised communities, is critical for effective HRDD, ensuring that companies address risks proactively rather than reactively. By adopting HRDD, businesses can better manage AI's human rights impacts and increase transparency and accountability. Very importantly, HRDD should be ongoing, not a one-off exercise.

- Access to Remedy: effective remedies should be provided for individuals harmed by business-related human rights abuses, including those involving AI technologies. The UNGPs outline three types of grievance mechanisms: judicial, State-based non-judicial, and non-State-based. Judicial mechanisms involve courts, where victims can seek compensation for harm, while State-based non-judicial mechanisms include public bodies like regulators or national human rights institutions that offer alternative routes for remedy. Non-State-based mechanisms are run by private companies or industry groups and provide another avenue for seeking redress. States are responsible for establishing and maintaining accessible remedy systems, while businesses should also set up internal grievance mechanisms.

Discussion

- A question was raised regarding the link between disinformation campaigns and the key uses of AI in border control. Ana BEDUSCHI explained that disinformation campaigns illustrate collective harm. In that regard, AI systems can facilitate access to state and non-state malicious actors leading disinformation campaigns. This is particularly true for generative AI systems, that generate content that may be used for disinformation campaigns.
- Another question concerned whether regulatory restraints on AI systems could undermine rights. Ana BEDUSCHI explained that balancing human rights with efficiency is not a trade-off, but rather it is an issue of proportionality in the use of these emerging technologies.
- Another question addressed the difficulty in assessing the level of bias in AI systems and compare it with the level of human bias in the same context. Gwendolen MORGAN explained that more transparency is needed regarding the dataset going into the AI system, how the machine is working, as well as AI literacy to be able to interpret the information given. Being provided with this information and testing out technologies can be a method to evaluate bias.
- A question was raised on whether the use of AI had been considered in its interaction with the concept of dynamic security to develop good relations between prison guards and prisoners. Eva PASTRANA explained how the concept of dynamic security has been considered by the Council of Europe in penological work. The use of AI systems should free time to ensure that the principle of dynamic security works. In fact, if prison staff is provided with more time, they can better engage with detainees.