Repercussion of artificial intelligence in the STF: monocratic judgments from 05/11/2022 to 11/28/2024

Repercussion of artificial intelligence in the STF: single-judge trials from 05/11/2022 to 11/28/2024

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SUMMARY

The virtual world and the Law are getting closer every day, due to the increasing emergence of several artificial intelligence (AI) tools, such as: ChatGPT, currently MARIA of the STF and previously VitórIA with the objective of providing greater speed and effectiveness to the Judiciary. However, although such technologies provide several benefits to the performance of simple, repetitive tasks and data organization, the implementation of AI mechanisms presents several risks to the correctness and legitimacy of the system, in view of the perspective of due constitutional process and procedural transparency of monocratic decisions. Thus, we discuss the influence of artificial intelligence tools, especially on algorithms – models that abstractly represent certain real-world processes – and machine learning, to demonstrate that even tools

exact sciences, supposedly impartial, are imbued with the subjectivity of their creators and directly affected by the quality of the data provided. Thus, it is essential to recognize the existence of algorithmic biases, given the possibility of harming the constitutive principles of the Democratic State of Law, such as due constitutional process and access to justice, so that it is then possible to think of ways to circumvent them, through machine learning and algorithmic procedural transparency.

Keywords: Artificial intelligence (AI) – STF Monocratic Decisions – Constitutional due process – Algorithmic biases

ABSTRACT

The virtual world and the Law are becoming increasingly closer, due to the increasing emergence of several artificial intelligence (AI) tools, such as: ChatGPT, currently MARIA of the STF and previously VitórIA, with the aim of providing greater speed and effectiveness to the Judiciary. However, although such technologies provide several benefits to the performance of simple, repetitive tasks and data organization, the implementation of AI mechanisms presents several risks to the correctness and legitimacy of the system, in view of the perspective of constitutional due process and procedural transparency of monocratic decisions. Thus, we discuss the influence of artificial intelligence tools, especially on algorithms – models that abstractly represent certain real-world processes – and machine learning, to demonstrate that even tools from exact sciences, prominently impartial, are imbued with the subjectivity of their creators and directly affected by the quality of the data provided. Therefore, it is essential to recognize the existence of algorithmic biases, given the possibility of harming the constitutive principles of the Democratic State of Law, such as due constitutional process and access to justice, so that it is then possible to think of ways to circumvent them, through machine learning and algorithmic procedural transparency.

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Introduction

The use of artificial intelligence (AI) systems is growing in the most diverse segments of the Brazilian Judiciary, especially in the Supreme Court, due to the supposed efficiency, speed and precision of the services they provide. The initial objective of the tool was to read the extraordinary appeals filed, identifying links to topics of general repercussion, with the aim of increasing the speed of processing. However, Artificial Intelligence, through "Machine Learning" and procedural law, end up generating algorithmic biases that can negatively influence monocratic decisions, due to the lack of transparency of this machine feeding (input). In Law, this phenomenon is already evident, with the use of solutions known as "lawtechs", for example, to optimize services, especially with regard to monocratic trials, helping to carry out boring and repetitive work, with repercussions in other branches of the judiciary, such as: the Public Prosecutor's Office, Public Defenders' Offices and Courts, which have made significant investments to implement and use these AI systems.

According to research, around 48% of London law firms already use artificial intelligence systems and 41% intend to implement them, with AI being used mainly to generate and review documents, electronic discovery, legal research and due diligence – prior investigation of companies before doing business.
 The same phenomenon is seen in Brazil. The Office of the Attorney General (AGU) began implementing its AGU Legal Intelligence System (Sapiens) in 2014, which aims to "facilitate the work of the attorney, making the production of documents faster and simpler, automating and eliminating the need for manual recording of legal production". This tool also assists in decision-making, suggesting legal theories that are applicable in each specific case.

These processes are closely related to the development of the aforementioned artificial intelligence systems, in which machines are programmed to perform functions that would originally require logical-mathematical reasoning and human commitment.
This does not mean that the machines will think for the judges, but they will only be programmed with the theses, foundations and jurisprudence already consolidated by the Brazilian Legal System, which, in the same way that input 2+2 generates output 4, the machine will be able to generate a legal output suitable for the solution of the legal conflict for which it is being demanded, as it was previously programmed.

Artificial intelligence is born from natural intelligence, and it gets its name because this information is provided to machines by human beings. The field is so vast that it cannot be restricted to a specific area of research; it is a multidisciplinary scientific branch, with current goals of developing automatons that solve problems better than a human being, by all available means. Thus, AI reaches the core of interdisciplinarity, encompassing: computer science, mathematics (logic, optimization, analysis, probabilities, linear algebra), cognitive science and even specialized knowledge of the fields to which we want to apply it. The algorithms that support it are based on equally varied approaches: semantic analysis, symbolic representation, statistical or exploratory learning, neural networks and so on.

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The recent boom in artificial intelligence is due to significant advances in machine learning. Machine learning techniques are a revolution in

AI approaches: instead of programming the rules (much more complex than one might imagine) that govern a task, it is now possible to let the machine figure it out for itself.
All this unstoppable movement referred to, which is called the "technological shift in law", imposes on jurists the need for adequate legislative regulation and not just the glimpse of efficiency and productivity gains in the activities to be carried out, virtues presented ("commercialized") by suppliers of products and services (Legal Techs) who avoid disclosing the risks of illegalities committed in the use of these technologies that are still obscure and lacking legal regulation.

This research work aims to analyze the monocratic pronouncements by the Ministers of the STF in the period between 05/11/2022 and 11/28/2024 related to the concept of AI, through research carried out on the STF website itself, using the search tool in monocratic decisions.

2 ALGORITHMIC BIASES

It is essential to note that artificial intelligence mechanisms depend on models, which consist of abstract representations of a given process, in this work, the judicial process, and are, by their very nature, precise simplifications of the universe in which we wish to implement this technology. When creating a model, programmers must select the information that will be provided to the AI system (inputs) and that will be used to predict future solutions and/or results (output). These choices, therefore, mean that there are always blind spots in the algorithms, which reflect the objectives, priorities and conceptions of their creator, so that the models are, at all times, permeated by the subjectivity of the creator/developer, which represents an obstacle to constitutional principles, especially due process, provided for in article 5, item LIV, of the Constitution of the Republic of Brazil, which guarantees that the individual is deprived of his freedom or his rights through a **legal process,** exercised by the Judiciary, through a natural judge, ensuring the adversarial system and full defense.

The lack of transparency in algorithms is the Achilles heel of this wonderful technological system. How can you defend yourself against an "index" without knowing how it is calculated?
How can the "index" be subject to due process control? No matter how much the questions asked are disclosed, the accused do not know how their answers influence the final result (output). Thus, the defense of the accused becomes impossible due to opaque and algorithmically biased mathematical data, camouflaged by the "security" of mathematics as supposedly impartial, impersonal and fair.

3. THE EFFECTS OF THE USE OF ARTIFICIAL INTELLIGENCE SYSTEMS IN THE STF

According to MI 7483: Inserted into the proceedings by the TJSP's *artificial intelligence* and automation system. It claims that the inappropriate use of automated systems and *artificial intelligence* algorithms in the Judiciary is contributing to procedural errors and, in the case in question, has harmed the investigation of the case, causing data manipulation and harm to fundamental rights. It points out the lack of regulation for the ethical and safe use of *artificial intelligence.* Based on such allegations, and on the grounds of the lack of specific regulatory standards, it requests the prohibition of the use of *artificial intelligence* in criminal matters, especially in cases involving children who are victims of heinous crimes. This is the report. "I DECIDE. Ab initio, I grant free legal aid, under the terms of art. 98 of the CPC, and the request for judicial secrecy,

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dispensing with the ministerial opinion, especially because the Plenary has already established case law on the matter and the case is sufficiently substantiated (article 52, sole paragraph, of the RISTF). In summary, this injunction order claims that the lack of regulation of the use of *artificial intelligence* in criminal and civil actions involving the fundamental rights of children constitutes an omission that can be remedied by means of this petition. From reading the confusing introductory, it can be inferred that the National Congress is in arrears in enacting a rule that prohibits the application of *artificial intelligence* throughout the national judiciary. In this case, in addition to the injunction order being inadmissible, the initial petition is inept and does not present an intelligible wording, since the request does not logically follow from the narration of the facts. In fact, the requirements for the admissibility of the injunction are not met, namely, the lack of a regulatory standard for constitutional rights and freedoms and prerogatives inherent to nationality, sovereignty and citizenship, and that this absence makes the exercise of such guarantees unfeasible. In order to handle the writ, there must be a constitutional imposition of the duty to legislate, associated with the omission of the authority responsible for issuing the standard. Furthermore, I also note that there are three lawsuits filed by the same party, narrating the same facts, as can be seen from the analysis of the following lawsuits: MI 7446, MI 7447 and MI 7483. All of them". Even though the Injunction Writ is denied, there is a lack of adequate regulation for the use of AI in criminal matters, especially in cases involving children who are victims of heinous crimes.

MS 39784 1. This is a writ of mandamus filed against an act attributed to the National Council of Justice, consisting of the judgment of inadmissibility of the request made by the claimant in PCA 0000416-89.2023.2.00.0000. 2. The claimant reports, "on 01/31/2023 (...) he filed an administrative proceeding with the CNJ alleging, in brief, that the use of ChatGPT *(Artificial Intelligence* from the company Open AI) to produce judicial decisions represented a risk to the Judiciary. As a result, he requested "...the granting of an injunction to prohibit Brazilian judges from using ChatGTP to issue and/or substantiate their decisions in the specific cases in which they act. On the merits, after due processing of this present case, it requests that the CNJ define rules that allow judges to use Open AI only for recreational purposes, preserving the validity and effectiveness of the constitutional rule that guarantees Brazilian citizens the right to see their cases judged only by the competent authorities (which excludes the transfer of this power/duty conferred on judges to Open AI)". 3. It continues stating that, "days before the trial, Councilor Luís Roberto Barroso, when receiving representatives of the company that owns ChatGPT at the CNJ and promoting that *Artificial Intelligence,* Councilor Luís Roberto Barroso participated in the trial and voted against the request made by the petitioner. This blemish completely compromises the validity and effectiveness of the decision that was rendered". 4. As a request for judicial protection, "it requests the granting of a preliminary injunction, ordering the petitioner to suspend the progress of PCA 0000416-89.2023.2.00.0000. Whether or not the injunction is granted, the present writ of mandamus is requested to be processed, summoning the coercive authority to provide the information it considers indispensable and relevant. Furthermore, by analogy with art. 146 of the CPC and accompanied by the documents on which the allegation is based and a list of witnesses, the allegations of impediment or suspicion of judges must be processed before the adjudicating body in which

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the main process or proceeding is underway, so much so that, in this case, the CNJ itself provides for the action of the procedural class "Allegation of Suspicion or Impediment" (art. 43, inc. XII, of the RICNJ). 7. Furthermore, the simple fact that the President of the CNJ holds a meeting with representatives of a certain information technology and/or *artificial intelligence* company does not fit into any of the hypotheses of impediment or suspicion described in arts. 144 and 145 of the CPC, from which the manifests the inadmissibility of the allegations in the initial claim. Device 8. In view of the above, I deny the continuation of the writ of mandamus, as the present petition is inadmissible (art. 21, § 1, of the RISTF), thus precluding the analysis of the request for a preliminary measure. 9. Costs in accordance with the Law. No fees (art. 25 of Law No. 12,016, of 2009). 10. Notification to the defendant authority and to the Attorney General's Office of the Union about this decision. Publish it. The conflict generated by the lack of legislative regulation for the adequate use of ChatGPT by the Judiciary is observed.

According to HC 230963 AgR Decision:

> Preventive effect, given the imminent start of the execution of the sentence.
> It argues that the refusal to follow up on grounds unrelated to the purpose of the action – absence of a "non-existent coercive act" – disrespects the principle of congruence and causes irrefutable harm to the patient's rights.
> The Court reiterates that, in this case, there was no coercive act by the Superior Court of Justice, stating that both the initial complaint and the collated documents were not read accurately, and that, due to the brevity of the grounds set forth in the appealed decision, "it is believed that the admissibility judgment was made by *artificial "intelligence"* which, sorry to the Court, is not at all intelligent". The Court reiterates the need to correct the irregularities committed by the 31st Criminal Court of the Central Court of the Capital of São Paulo and confirmed by the 14th Criminal Law Chamber of the Court of Justice of the State of São Paulo. In view of the above, the Court requests that the appealed decision be reconsidered due to its nullity, since it was based on nonexistent motivation. Alternatively, the Court requests that the procedural appeal be submitted to the Judging Panel for regular processing. This is the report.

> I decide. There is a lack of legislative regulation for the use of Artificial Intelligence in the admissibility of appeals to the Supreme Court.

According to ARE 1380579, decision:

> in general terms, that: (a) the simple reiteration of the contested decision – with the maintenance of the decision with reference to its grounds – does not correspond to the reasons presented by the party to reform the judgment, which is not compatible with the expected jurisdictional provision. Furthermore, the reproduction of arguments shows the lack of innovation or presentation of new grounds, not addressing the reasons previously stated, which violates the duty to justify decisions; and (b) the generic method of judgment then adopted by the Honorable Minister President of the STJ, based on *artificial intelligence analysis,* violates due process of law, which is why it is necessary to declare the nullity of the decision due to defect in reasoning, with the determination to address all defensive matters addressed in the divergence embargoes, in view of the

violation of art. 93, IX, of the Federal Constitution" (eDoc. 76, fls. 9-10). Finally, it requests that the extreme appeal be granted so that the divergence embargoes are annulled and rejudged, dismissing the violation of art. 93, IX, of the Federal Constitution; c. subsidiarily, that the Extraordinary Appeal be granted so that the procedural appeal is annulled and rejudged, dismissing the violation. There is a lack of adequate regulation for the use of AI in the Judiciary, a generic method of judgment that violates due process.

4. CONCLUSION

In view of the analyses of the monocratic decisions made by the ministers of the Federal Supreme Court during the period between 05/11/2022 and 11/28/2024, it was verified the negative influence that the lack of adequate regulation for the conscious and legitimate use of Artificial Intelligence systems is generating on the Judiciary of the Federative Republic of Brazil, damaging the credibility of the judgments of the Federal Supreme Court, with repercussions throughout the national territory.
It is necessary and essential to immediately and constitutionally regulate all Artificial Intelligence systems used by the national Judiciary so that justice and social peace can once again reign in the Federative Republic of Brazil.

5. REFERENCES

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