



Mohammad Owais Farooqui*

A Procedural Right to a Human Judge: Foundations and Framework for Safeguarding Fair Trials in the Age of AI

[Prawo do bycia sądzonym przez człowieka – podstawy i ramy sprawiedliwego procesu sądowego]

Abstract

The integration of artificial intelligence into judicial systems is accelerating worldwide, raising fundamental concerns about the right to a fair trial. This article argues that a procedural right to a human judge constitutes a necessary safeguard within existing international fair trial frameworks. It contends that Article 6 of the European Convention on Human Rights (ECHR) and Article 14 of the International Covenant on Civil and Political Rights (ICCPR) implicitly require human adjudication and that this requirement should be made explicit. A review of scholarship and comparative legal practice indicates that human judges provide attributes of reasoned judgment, empathy, and accountability that current AI systems cannot replicate. A comparative analysis of European, United States, and Chinese approaches reveals a convergent, if variously grounded, commitment to human oversight of judicial AI. Drawing on these foundations, the article proposes a six-element legal framework governing the conditions under which AI tools may be used in judicial proceedings without infringing fair trial rights. The framework centres on human final authority, transparency, contestability, legal accountability, non-discrimination, and proportionality. The article further examines pathways for implementing this right through treaty interpretation, constitutional provisions, and model legislation.¹

Keywords: procedural rights, human judge, fair trial, Artificial Intelligence (AI), judicial oversight, comparative analysis.

* **Mohammad Owais Farooqui** – associate professor, PhD in Law, Department of Public Law, College of Law, University of Sharjah (affiliation), UAE; <https://orcid.org/0000-0003-0154-802X>; mfarooqui@sharjah.ac.ae / profesor uczelni, dr nauk prawnych, Katedra Prawa Publicznego, Wydział Prawa, Uniwersytet w Szardży (afiliacja), ZEA.

¹ M. Górski, *Why a Human Court? On the Right to a Human Judge in the Context of the Fair Trial Principle*, 'European Criminal Law Associations' Forum' 2023, 1, pp. 83–88; <https://eucrim.eu/articles/why-a-human-court-on-the-right-to-a-human-judge-in-the-context-of-the-fair-trial-principle/> [accessed: 28.03.2025]; M. Zou, E. Lefley, *Generative Artificial Intelligence and Article 6 of the European Convention on Human Rights: The Right to a Human Judge?* [in:] M. Zou, M. Ebers, C. Poncibò and R. Calo (eds.), *The Cambridge Handbook of Generative AI and the Law*, Cambridge University Press 2025, pp. 1–20.

Introduction

The settlement of disputes has traditionally been entrusted to human judges. From the earliest courts, the figure of a human judge has served as the embodiment of justice, impartiality, and the rule of law. Rapid advances in artificial intelligence now challenge this paradigm. AI algorithms are being deployed for legal research, outcome prediction, and, increasingly, to assist or guide judicial decision-making in courts around the world. This technological shift raises a fundamental question: Can—or should—machines assume the role of human judges in the administration of justice? This question implicates core tenets of the right to a fair trial and has generated a growing body of scholarship asking whether there is, or ought to be, a right to a human judge.

These developments raise fundamental questions about whether the guarantees of a fair trial—forged in an era when human adjudication was assumed—remain adequate in an age when consequential legal decisions may be shaped or even rendered by algorithmic systems.²

This paper proposes that a procedural right to a human judge be recognized as a necessary component of the right to a fair trial in the AI era. By procedural right to human judge, I am referring to a justiciability right that final judicial determinations impacting upon rights or duties of a person will be made or superintended by human judicial officers, as opposed to being totally devolved to AI systems. This is based on normative and practical issues. Human adjudication is normatively associated with human dignity and the rule of law: to be judged by his or her peers (or human authorities) is a part of treating the parties with respect and empathy.³ In reality, thanks to the existing AI technology, there is no moral reasoning, empathy, and contextual judgment that human judges can offer in the courtroom.⁴ It is possible that an algorithmic judge, however efficient he is, can deliver coldly formalistic justice unresponsive to individual situations, in other words, a trial that is not really fair.

The stakes are high. Providing that society is ready to accept the fully automated judicial decision this will be the seismic shift in the way justice is conceived and served. Proponents of AI in the judiciary argue that algorithms can increase efficiency, consistency, and perhaps even accuracy in adjudication.⁵ Indeed, AI tools promise to alleviate case backlogs and assist judges in han-

² T. Vasdani, *Robot Justice: China's Use of Internet Courts*, Toronto 2020, Feb.; <https://www.lexisnexis.ca/en-ca/ihc/2020-02/robot-justice-chinas-use-of-internet-courts.page> [accessed: 28.03.2025].

³ M. Zou, E. Lefley, *Generative...*, *ibid.*

⁴ M. Górski, *Why a Human...*, *ibid.*; <https://eucrim.eu/articles/why-a-human-court-on-the-right-to-a-human-judge-in-the-context-of-the-fair-trial-principle/> [accessed: 28.03.2025].

⁵ I. Banks, *Operationalising Human Oversight of AI-Supported Judicial Decision-Making: A Systemic Perspective*, 'Algorithms, Data and Society' 2023; <https://algosoc.org/research/the-rise-of-technocourts-and-governing-the-appification-of-justice> [accessed: 28.03.2025].

dling complex data.⁶ But these gains must be weighed against fundamental rights and the public's confidence in the justice system. A court's legitimacy rests not only on correct outcomes but also on fair processes and public trust. I must ask whether a litigant can trust—and accept—a judgment if it is rendered by a machine. As this paper will explore, studies in procedural justice suggest that people value having their voice heard by an impartial human decision-maker, and that the perceived legitimacy of decisions may suffer if rendered by an impersonal algorithm.⁷

Today's debate on AI in the judiciary has only recently moved from speculative to serious. While early scholarship has begun to ask whether we have a right to a human judge, this paper breaks new ground by offering a concrete framework and comparative perspective that previous works have not. For example, Marcin Górski's 2023 essay argues that under modern fair trial standards "courts cannot operate without a human element"⁸ and concludes that using AI in place of judges "does not seem to be reconcilable" with the fairness required by a fair trial. Similarly, Zou and Lefley (2025) focus on Article 6 ECHR and, through a human dignity lens, contend that the right to a human judge is implicit—emphasizing the intrinsic value of human judgment, empathy, and being heard by a human decision-maker.⁹ Nonetheless, both of these sources do not give a step-by-step plan on how to execute such a right within various legal frameworks. The paper expands on their observations; however, it goes a step ahead: it provides the first practical system to instantiate a procedural right to human judge and discusses the way this right can be achieved in practice all over the world. By so doing, it addresses an important gap in the literature by bridging the gap between principles and the practice and across a variety of jurisdictions as compared to the Euro-centric focus of previous research.

Within the passages which follow, I establish a procedural right to a human judge. In the following Part, the contemporary situation: the emerging body of research on AI and fair trial rights, and the practice of various jurisdictions, will be reviewed. The following Part offers a comparative study of the strategies in Europe, the United States, and China, which elucidates the differences and common trends in the human regulation of AI in the judicial system. Then I presented our new offering: a systematic legal approach that defines the way in which AI can be incorporated into the judicial process without undermining the human essence of the process. This includes a proposed test

⁶ Ibid.

⁷ A. Završnik, M. M. Plesničar, *The Right to a Human Judge in Criminal Justice Settings*, paper presented at the American Society of Criminology 79th Annual Meeting, San Francisco, 15.11.2024; https://convention2.allacademic.com/one/asc/asc24/index.php?program_focus=view_paper&selected_paper_id=2163748&cmd=online_program_direct_link&sub_action=online_program [accessed: 28.03.2025].

⁸ M. Górski, *Why a Human...*, *ibid.*

⁹ M. Zou, E. Lefley, *Generative...*, *ibid.*

or set of principles to determine the permissible uses of AI in light of fair trial guarantees. Finally, I discuss how this proposed right can be implemented and address potential counterarguments. I conclude that recognizing a right to a human judge is both a principled and a practical step to safeguard fair trials amid rapidly evolving technology.

Literature Review

The Question of a Human Judge: The notion of an explicit “right to a human judge” has only recently emerged from the realm of science fiction into legal scholarship. Traditional fair trial doctrine assumed judges are human without saying so. With AI now entering courtrooms, jurists and scholars have begun to articulate why the human element is indispensable to justice. This section surveys the burgeoning debate on AI adjudication, distills the key concerns about replacing human judges, and shows how a consensus is forming around preserving a human judge’s role—setting the stage for our novel framework.

Human Judges vs. AI Adjudicators—Key Concerns: A central theme in the literature is the comparative strengths of human versus algorithmic decision-makers. Many scholars suggest that a fully autonomous AI judge would inherently breach core fair trial criteria. An AI is not “independent” in the sense a human judge is it remains a tool designed and controlled by those who program or train it. In Górski’s analysis, an algorithmic court would always lack the *personal conscience and autonomy* that human judges possess, meaning such a system could never truly satisfy the requirement of an independent and impartial tribunal.¹⁰ While it is theoretically possible to engineer safeguards for an AI’s impartiality, ensuring the strict level of judicial independence demanded by instruments like Article 6 ECHR is extraordinarily difficult in practice.¹¹ Górski (2023) posits that we should not “change the anthropocentric mindset” of adjudication and that the fair trial principle itself implies the necessity of human judges.¹² Indeed, he argues that under present conditions replacing judges with AI “does not seem to be reconcilable” with the fairness component of the right to a fair trial. In short, current AI technology cannot replicate the moral agency, intuition, and accountability of a human judge.

Efficiency vs. Fairness—The Ongoing Debate: Proponents of “robot judges” often emphasize gains in speed and consistency. AI could reduce back-

¹⁰ M. Górski, *Why a Human...*, *ibid.*

¹¹ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, 1950), Article 6(1).

¹² *Ibid.*

logs and eliminate some randomness in human decisions. Tech optimists like Richard Susskind envision online courts and AI-driven processes that resolve disputes faster and at lower cost.¹³ In China, officials tout AI's ability to process millions of routine cases, relieving overburdened courts. These efficiency arguments carry weight—justice delayed is justice denied, after all—but critics counter that efficiency means little if the process is perceived as unfair or inhumane. As legal ethicist Tania Sourdin cautions, unchecked automation may “erod[e] the quality of justice” in pursuit of speed.¹⁴ The danger lies in the fact that the litigants are turned into cogs in a machine instead of being subject to a rational debate. Empirical evidence on procedural justice supports this concern: multiple studies have shown that individuals are highly interested in the manner in which decisions are made—that they are heard, are treated with respect and are judged by a person who listens and understands. Even an AI judge that is correct on a score would not score high on such metrics of procedural justice since it cannot actually listen and empathize. Završnik and Plesničar (2024) cautioned in a recent paper at a conference that automating judicial rulings poses the risk of undermining its empirical legitimacy through loss of transparency, consistency, and effective communication.¹⁵ People cannot believe that a complicated algorithm was able to listen to their own story. In particular in criminal justice, it has been observed that the absence of human-like characteristics in an AI such as compassion and moral judgment may compromise the rehabilitative goals and societal acceptability of sentencing. Overall, although AI may have the potential to enhance efficiency, it may affect the perceived fairness and legitimacy, which may be viewed by many people as a trade-off that is simply unacceptable.

Emerging Calls for a “Right to a Human Judge:” In light of these concerns, calls to safeguard human adjudication have grown explicit. The Council of Bars and Law Societies of Europe (CCBE), representing European lawyers, took a strong stance in 2021: it declared that “a judge should not be allowed to delegate all or part of his/her decision-making power to an AI tool,” urging that laws ensure “the entire decision-making process remains a human-driven activity” and that “a right to a human judge should be guaranteed at all stages of the proceedings.”¹⁶ In a 2023 statement, the CCBE reaffirmed that effective human oversight of AI is a “precondition” for a justice system under

¹³ R. Susskind, *Online Courts and the Future of Justice*, Oxford University Press: Oxford 2019.

¹⁴ T. Sourdin, *Judge v. Robot? Artificial Intelligence and Judicial Decision-Making*, ‘University of New South Wales Law Journal’ 2018, 41(4), pp. 1114–1134; See also: T. Sourdin, *Judges, Technology and Artificial Intelligence: The Artificial Judge*, Edward Elgar Publishing: Cheltenham 2021.

¹⁵ A. Završnik, M. M. Plesničar, *The Right...*, *ibid*.

¹⁶ Council of Bars and Law Societies of Europe (CCBE), CCBE Position Paper on the Proposal for a Regulation Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act), 8.10.2021; available at: https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/IT_LAW/ITL_Position_papers/EN_ITL_20211008_CCBE-position-paper-on-the-AIA.pdf [accessed: 28.03.2025].

the rule of law, stressing that human judges must retain full responsibility for decisions.¹⁷ In the CCBE's view, the right to a fair trial inherently includes the right to a human judge. Likewise, at the global level, the United Nations Special Rapporteur on the independence of judges and lawyers has recently affirmed this principle. In her 2023 report to the UN General Assembly, Special Rapporteur Margaret Satterthwaite stressed that the right to an independent and impartial tribunal "requires access to a human judge"¹⁸—effectively recognizing that a human decision-maker is an indispensable component of a fair trial. This high-level endorsement underscores that the international community is beginning to view human judges as essential in the age of AI.

These calls for a human judge are echoed by academics. For example, Górski's analysis in EUCRIM (2023) contends to the contrary, that the fair trial principle itself, properly understood, requires human adjudication. He said that "humankind at the centre of justice"—the anthropocentric orientation of law—needed to be preserved and that even the most advanced AI could not completely replace the human judge's role. Zou and Lefley (2025) go even further in developing a legal doctrine of a human-judge requirement in the ECHR framework, and base it upon human dignity. They suggest that respect for the human dignity in the court room implies respect for the intrinsic value of human judgement and human empathy and the importance of being heard by a human decision-maker—leading them to conclude that Article 6 ECHR read in this light "includes the right to a human judge."¹⁹ Interdisciplinary discourse is also taking place—legal theorists, computer scientists and ethicists are working together to consider how to design respecting AI systems. A recurring conclusion is that keeping a "human in the loop" is crucial. However, scholars like Binns (2022) caution that having a human nominally involved is not enough—the oversight must be meaningful, with the human judge truly able to override or question the AI's suggestions.²⁰ In other words, the human role cannot be a mere rubber stamp; it must be substantive and empowered.

Towards a Novel Framework: Thus, it can be seen that the literature shows an increase in the agreement according to which AI can be an effective instrument in a legal trial, but it must not replace the human judge. The discipline has transitioned to explicit disclosure: the concept of a right to a human judge is gaining prominence as one of the normative reactions to the two predica-

¹⁷ Council of Bars and Law Societies of Europe (CCBE), *CCBE Statement on the Use of AI in the Justice System and Law Enforcement*, 25.05.2023; available at: https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/Statements/2023/EN_ITL_20230525_CCBE-Statement-on-the-use-of-AI-in-the-justice-system-and-law-enforcement.pdf [accessed: 28.03.2025].

¹⁸ United Nations General Assembly, *Artificial Intelligence in Judicial Systems: Promises and Pitfalls*, Report of the Special Rapporteur on the Independence of Judges and Lawyers, 2023, A/80/169.

¹⁹ M. Zou, E. Lefley, *Generative...*, *ibid*.

²⁰ R. Binns, *Human Judgment in Algorithmic Loops: Individual Justice and Automated Decision-Making*, 'Regulation & Governance' 2022, 16(1), pp. 197–211, DOI: 10.1111/rego.12358 [accessed: 29.03.2025].

ments concerning the maintenance of the rights to a fair trial and the responsible use of the advantages of AI. What the current discourse does not contain, however, is a practical roadmap on how to entrench and bring this right into practice. The case for human judges has been made theoretically in earlier scholarship; this paper moves from principle to practice. The following section of this paper discusses how this conflict between AI and human supervision is already being played in various jurisdictions thus forming the basis of our suggested framework. And we suggest a systematic legal policy—a test or series of tests—to see that AI penetration of the judiciary does not in any way compromise the human essence of adjudication. That way, we will help to transform the newly formed consensus into practical rules to close the divide between the reasons that human judges are important and the methods to assurance in the age of AI.

Comparative Analysis: Jurisdictions Approaches to AI and Human Oversight

When considering how a right to a human judge can be justified and put into practice, it is educative to look at how various legal systems are struggling with AI in the courtroom. Part is a comparative analysis of the European Union (the human rights framework of the Council of Europe), United States and China. They all have their own variant: Europe is more inclined towards overt regulation and human-right orientation; the United States tries to resolve the problem on the basis of constitutional principles (due process and case-by-case jurisprudence); China is moving forward with the use of AI but under the slogan of efficiency and centralization, though with an insistence that the human element should be present somewhere. Despite their differences, all three jurisdictions reflect an implicit understanding that human oversight is crucial in judicial decision-making.

Europe: The ECHR and the EU's AI Act— Ensuring Human Judges Remain Central

Human Rights Framework (ECHR): European law provides strong fair trial guarantees via Article 6 ECHR, which applies to all Council of Europe member states. While Article 6 does not explicitly state “the judge must be human,” it speaks of “an independent and impartial tribunal” and the right to a fair and public hearing. European courts have not yet confronted an AI-judge scenario, but the spirit of Article 6 suggests a tribunal must operate in

a manner compatible with human justice. For instance, the ECtHR's jurisprudence that a court must genuinely hear and consider the parties' arguments (*the duty of careful examination*) would be difficult to satisfy with a non-human adjudicator.²¹ It is notable that the Convention was drafted in 1950, when the prospect of non-human judges was science fiction; thus, the requirement was assumed rather than spelled out.

If a member state were to introduce AI-rendered judicial decisions, it would likely face challenges in Strasbourg (the ECtHR) on multiple grounds. The "tribunal established by law" requirement might be invoked, questioning whether an AI system can qualify as a lawful tribunal. More fundamentally, the fairness of proceedings (Article 6[1]) and rights of defense (Article 6[3]) could be at risk. It is foreseeable that the ECtHR would approach such a case by examining whether the use of AI denied the applicant any of the participatory rights or procedural safeguards that a human judge would afford. Given the Court's emphasis on concepts like adversarial proceedings and equality of arms, a purely algorithmic judge—who cannot explain its reasoning in accessible human language or be subject to cross-examination—would raise red flags. Indeed, a recent scholarly analysis by Zou and Lefley posits that Article 6, interpreted in line with human dignity, encompasses a right to a human judge.²² They argue that the ECHR's guarantee of a fair trial implicitly values the human qualities of judgment and the interpersonal respect between judge and litigant, which would be lost if an AI assumed the role of judge.²³

At the level of principle, then, Europe's human rights framework is conducive to recognizing a right to a human judge. This is reinforced by soft-law instruments. The Council of Europe's Commission for the Efficiency of Justice (CEPEJ) adopted the European Ethical Charter on the Use of AI in Judicial Systems (2018), which sets out key principles for AI in courts. Among these is the principle of "user control," meaning that AI tools should not supplant the ultimate control of human judicial authorities.²⁴ The Charter insists that AI be used to augment, not replace, human decision-making in judicial processes, aligning with a precautionary approach that preserves human agency.

EU Artificial Intelligence Act: The European Union is currently implementing a set of laws on AI. The current Artificial Intelligence Act (AIA) specifically seeks to target the application of AI in justice. The draft, which is currently under contract, of the AIA (which is likely to be Regulation (EU) 2024/1689) catego-

²¹ Ibid.

²² M. Zou, E. Lefley, *Generative...*, *ibid.*

²³ Ibid.

²⁴ Adoption of a European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and Their Environment at the 31st Plenary Meeting of the CEPEJ in Strasbourg on 3 and 4 December 2018 (*International Union of Judicial Officers [UIHJ]*, 2018, Dec., 4); <https://www.uhj.com/2018/12/04/adoption-of-a-european-ethical-charter-on-the-use-of-artificial-intelligence-in-judicial-systems-and-their-environment-at-the-31st-plenary-meeting-of-the-cepej-in-strasbourg-on-3-and-4-december-2018/> [accessed: 28.03.2025].

rizes some AI systems in the operation of the justice system as being of high-risk and requires them to be put under stringent requirements.²⁵ Remarkably, the AIA Recital 61 emphasizes the idea that, although AI can assist in the process of judicial decision-making, the ultimate decision-making process should not be automated: it should be a human initiative.²⁶ This language, now formalized in EU law, effectively enshrines the rule that a human judge must make the final call. The Act thus embodies a *de facto* right to a human decision in the judicial context, by prohibiting fully automated adjudication in courts.

Under Annex III of the AI Act, “AI systems intended to be used by judicial authorities in applying the law to facts” are designated high-risk, meaning their deployment is legal only if they meet rigorous transparency, oversight, and quality criteria.²⁷ Among those criteria is likely the requirement of human oversight (consistent with Article 14 of the Act’s final version) and the availability of explanations for the AI’s suggestions. Moreover, the Act’s scope (Recital 61) clarifies that purely ancillary administrative AI tools (e.g., software to anonymize documents) are not the target—the concern is specifically AI that would influence judicial outcomes.²⁸ By drawing this line, the EU is taking a clear policy stance: AI may assist judges but may not become the judge.

European Institutional Positions: Key European legal institutions and professional bodies have reinforced this stance. The CCBE’s 2021 paper, as noted, urged that the AIA explicitly guarantee a right to a human judge.²⁹ In fact, the final text of the AI Act echoes much of what the CCBE advocated. For example, the CCBE wanted Annex III (which lists high-risk uses) and a Recital to clarify that AI must not effectively take over judicial decisions;³⁰ the inclusion of Recital 61 mentioned above achieves that clarification in substance. The European Court of Justice (CJEU), while not yet addressing AI in judging, has also indirectly supported human decision-making. In other domains, the CJEU has interpreted the right to an effective remedy (Article 47 of the EU Charter of Fundamental Rights, akin to Article 6 ECHR) as requiring that individuals have access to reasons and to a review by a competent tribunal. If an AI were to render a judgment without human endorsement, it would sit uneasily with those requirements. Indeed, one can analogize to the CJEU’s stance on automated administrative decisions: in December 2023, the CJEU held in *Schufa Holding AG* (C-634/21) that significant decisions made by automated profiling systems must be subject to human review and accompanied

²⁵ Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) [2024] OJ L1689.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ Council of Bars and Law Societies of Europe (CCBE), *CCBE Position Paper...*, *ibid.*

³⁰ *Ibid.*

by meaningful explanation, grounding this requirement in Article 22 GDPR and the principle of effective judicial protection.³¹ By extension, a fully automated court decision would likely be viewed as incompatible with EU fundamental rights law.

Thus, the Europe's approach combines a rights-based perspective (ECHR Article 6 as interpreted by doctrine) with regulatory action (the AI Act) to ensure that human judges remain at the helm. This creates a fertile environment for formally recognizing a procedural right to a human judge. If tested, it is plausible that European courts would read such a right into existing guarantees. And with legislation, the EU is preemptively codifying that AI cannot usurp the judge's role. The European experience thus strongly supports the notion that fair trial norms require human adjudication.

United States: Due Process and the Imperative of Human Judgment

The United States does not have an explicit "right to a human judge" in its Constitution; such a concept was implicitly assumed when the Due Process Clause and other judicial safeguards were framed. However, American law, through constitutional principles and case law, provides a framework to argue for the necessity of human judicial oversight.

Constitutional Due Process: The Fifth and Fourteenth Amendments guarantee that no person shall be deprived of life, liberty, or property without due process of law. At least, due process allows people to be noticed and given a chance to be heard by any impartial decision-maker. Conventionally, this impartial adjudicator is a human judge (or jury). In case a governmental agency tried to use an AI to adjudicate the rights of an individual, e.g., the decision of a prison term or a civil lawsuit exclusively on the basis of an algorithm, some serious due process concerns would be raised. Among them is the fact that you are able to defend and counter the evidence that goes against you. Provided the evidence or the judgment of a case is made by an algorithm, a defendant may raise the objection that he has a right to investigate how the algorithm arrived at his or her decision. The functioning of the algorithm in a way, turns into a witness of its own but one which cannot be cross-examined or perceived easily.

³¹ Case C-634/21 SCHUFA Holding AG v. Datenschutzbeauftragter des Landes Hessen (Schufa Holding) EU:C:2023:957, judgment of 7.12.2023; see also: S. J. Choi, K. Van Quathem and B. Van Vooren, CJEU Receives Questions on the AI Act Relating to Automated Decision Making, 'Inside Global Tech' 2025, Feb., 24; <https://www.insideglobaltech.com/2025/02/24/cjeu-receives-questions-on-the-ai-act-relating-to-automated-decision-making/> [accessed: 28.03.2025].

These concerns came to the fore in the landmark case *State v. Loomis* (2016) in Wisconsin. In *Loomis*, a criminal defendant challenged the use of COMPAS, a proprietary risk assessment algorithm, at his sentencing. He argued that because the algorithm's methodology was secret, its use violated his due process rights—he could not challenge the accuracy or relevance of the risk score it produced.^{32 33} The Wisconsin Supreme Court ultimately held that using the algorithm did not violate due process, but it imposed important limitations. The court reasoned that as long as the risk score was not the sole basis for the sentence and the defendant had an opportunity to respond to it (albeit without knowing the inner workings), due process was not offended.^{34 35} However, the court cautioned that COMPAS had to be used carefully—for example, authorities must acknowledge the tool's limitations (including potential racial bias in data) and never treat the algorithm's output as determinative.³⁶ In effect, even as the *Loomis* court allowed AI-assisted decision-making, it underscored the primacy of the human judge's independent judgment and the need for transparency.

The *Loomis* case illustrates the U.S. judiciary's instinct to ensure a human check on algorithmic tools. The judge in *Loomis* did not cede her decision to the machine; she considered the COMPAS score among many factors. Importantly, the decision suggests a due process baseline: if an algorithm is used, the defendant must have notice of its use and a chance (even a limited one) to contest or contextualize its output.³⁷ Since *Loomis*, similar issues have arisen across the country. Risk assessment algorithms are now common in bail decisions, parole, and even child protection decisions. Scholars like Danielle Citron have warned of “Technological Due Process” problems, where automated systems in government decision-making create opacity and errors that are hard for individuals to challenge. A consistent recommendation is to build in human review and explanation for any automated recommendation that significantly impacts individual rights.

³² *State v. Loomis* 881 NW 2d 749 (Wis 2016).

³³ K. Murray, *What the Legal Drama For the People Teaches Us About AI and Legal Ethics*, O'Hagan Meyer 2025, Feb. 6; <https://ohaganmeyer.com/2025/02/06/what-the-legal-drama-for-the-people-teaches-us-about-ai-and-legal-ethics/> [accessed: 29.03.2025].

³⁴ Ch. Engel, L. Linhardt and M. Schubert, *Code Is Law: How COMPAS Affects the Way the Judiciary Handles the Risk of Recidivism*, 'Artificial Intelligence and Law' 2024; <https://doi.org/10.1007/s10506-024-09389-8> [accessed: 29.03.2025].

³⁵ C. McKay, *Predicting Risk in Criminal Procedure: Actuarial Tools, Algorithms, AI and Judicial Decision-Making*, 'Sydney Law School Research Paper' 2019, 19(67); <https://ssrn.com/abstract=3498197> [accessed: 29.03.2025].

³⁶ I. de Miguel Beriain, *Does the Use of Risk Assessments in Sentences Respect the Right to Due Process? A Critical Analysis of the Wisconsin v. Loomis Ruling*, 'Law, Probability and Risk' 2018, 17, 1, pp. 45–53; <https://doi.org/10.1093/lpr/mgy001> [accessed: 29.03.2025].

³⁷ J. M. Payé Salazar, *Impact of Artificial Intelligence on Effective Judicial Protection*, *AfricLaw* 2023, Jun., 26; <https://africlaw.com/2023/06/26/impact-of-artificial-intelligence-on-effective-judicial-protection/> [accessed: 29.03.2025].

Jury Trial and Public Confidence: The U.S. also has the unique institution of jury trials (Sixth Amendment for criminal cases, Seventh Amendment for certain civil cases). While the right to a jury is distinct from the right to a judge, it underscores the deeply human character of American adjudication. No conceivable AI replacement for a jury has been proposed in serious terms, and any such idea would run headlong into constitutional amendments that explicitly require a jury of one's peers. This is relevant because it suggests a constitutional ethos that values lay human judgment as a component of justice (a "jury of peers"), further buttressing the argument that at least one human (whether judge or jury) must be the decision-maker in criminal guilt or major civil liability. An AI cannot be a "peer" of a human defendant in any meaningful sense.

Case Law on Mechanical Decision-Making: American jurisprudence has occasionally dealt with scenarios of overly mechanical justice (though not AI *per se*). For example, in the context of sentencing guidelines (which are formulaic but still applied by judges), the U.S. Supreme Court held in *United States v. Booker* (2005)³⁸ that mandatory sentencing rules violated the Sixth Amendment because they took away too much discretion from the judge and jury, effectively letting a formula dictate punishment. While not about AI, the underlying sentiment is that an individual has the right to a sentence determined through a deliberative process by human factfinders, not a rigid algorithm. If mandatory guidelines raise such concerns, *a fortiori* a literal algorithm imposing a sentence would be problematic.

Moreover, due process includes the concept of a neutral and detached adjudicator. If an AI system were developed by, say, the prosecution or police, one might question its neutrality. Human judges are oath-bound to be impartial and are subject to recusal if they have a conflict of interest. An algorithm's biases or origins might not be so easily discerned or vetted. Thus, we can see how due process and impartial tribunal principles in the U.S. constitutional context strongly imply a need for human involvement, or at least for any algorithm to be subordinate to a human judge's discernment.

Legislative and Policy Responses: While there is not yet federal legislation outright banning "AI judges," there are policy moves acknowledging the issue. At the federal level, the Administrative Procedure Act (APA) ensures that individuals can challenge agency decisions and obtain judicial review—if agencies start using AI to make initial determinations (for benefits, immigration, etc.), the right to a human judicial review is already built into law. Even certain states have initiated the legislation of algorithmic accountability. An example is Illinois, as well as other states, enacted legislation regarding algorithmic disclosure where an algorithm is used, such as hiring or insurance:

³⁸ 543 US 220 (2005).

in judicial practice, some jurisdictions have mandated the disclosure of risk assessment scores to a defendant or even barred the use of particular factors (such as race or gender) in an algorithm. Although they are piecemeal, they show an appreciation of the fact that human beings need to put a check on the algorithmic decisions.

Importantly, the public discourse in the U.S. often centers on the idea of “algorithmic bias” and “transparency.” Civil rights groups such as the ACLU and Electronic Frontier Foundation have argued that automated decision systems can perpetuate discrimination and should not be unchecked in criminal justice. Though typically framed as equal protection or due process issues, the underlying remedy is usually to demand human oversight or the ability to challenge the automated result. For example, if a predictive policing algorithm suggests a particular sentence, defense attorneys argue the judge must independently evaluate that suggestion and the defendant must be able to contest it—essentially asserting a right to a human judge’s independent assessment.

While the United States lacks a single instrument spelling out “the right to a human judge,” its constitutional framework (due process, the right to a jury, etc.) and burgeoning case law on algorithms in sentencing collectively support that notion. The American approach might be described as incremental and reactive—ensuring on a case-by-case basis that no one is condemned by a machine without a human safeguard. If ever a jurisdiction in the U.S. attempted to fully automate a court’s decision (for example, an “AI judge” for small claims), it would almost certainly be challenged, and the challenger would invoke due process and perhaps the right of access to the courts (which implies access to a judge). Therefore, the U.S. supports our thesis in a more implicit way: it shows the essentiality of human judges through the lens of constitutional rights, even if it hasn’t been labeled as a distinct right yet.

China: Smart Courts, Efficiency, and the Role of the Human Judge

China presents a compelling case study as a jurisdiction aggressively adopting AI in its judiciary, but within a legal-political system very different from Western democracies. The adoption of technology in the Chinese judiciary is also in line with a larger project of the so called Smart Courts that would see to the modernization of the court system, its ability to handle heavy caseload, and its ability to control the judges. The fact of the right to a human judge in China has to be interpreted in the context of an understanding of the priorities of China: efficiency, consistency, and state control instead of the rights of persons. However, even in China, there is a clear position that AI will sup-

port, but will not exclude, human judges—a position motivated probably by practical need, and by the issue of legitimacy.

The Smart Court Revolution: In 2017, China’s State Council published the Artificial Intelligence Development Plan (AIDP), a national strategy that charts China’s AI aspirations up to 2030.³⁹ Modernizing the judicial system was highlighted as a key goal: “Achieve the intelligentization of courts and trial systems and trial capacity.”⁴⁰ To that end, China’s Supreme People’s Court (SPC) has introduced technology into nearly every aspect of litigation. This includes online case filing, automated document generation, voice-to-text transcription in hearings, and decision-support systems that suggest relevant laws and past cases to judges. China has also established specialized Internet Courts (in Hangzhou, Beijing, and Guangzhou) to handle internet-related disputes almost entirely online. These courts are famous for using virtual courtrooms and even AI judge avatars. In a much-publicized example, the Hangzhou Internet Court introduced a virtual “AI judge”—essentially a screen with a realistic judge avatar that conducts certain procedural parts of a case.⁴¹ Litigants communicate with this AI judge via video interface, and it can ask routine questions and generate a proposed judgment. However, at least in theory, a human judge reviews and approves these judgments before they are finalized.⁴²

The efficiency gains in China have been significant. By one report, millions of cases were handled online within the first two years of the Internet Courts’ operation⁴³. Cases that used to require in-person hearings now conclude in weeks with a few clicks. The SPC has also deployed AI in criminal justice: for example, sentencing recommendation systems to promote uniformity, and a tool known as the “206 System” in criminal trials that guides evidence examination and checks procedural compliance. These AI systems act like ever-vigilant assistants, flagging discrepancies and suggesting outcomes.

Human Oversight and Official Assurances: Despite this heavy integration of AI, Chinese officials insist that humans remain firmly in control of judicial outcomes. Zhou Qiang, Chief Justice of the SPC, stated unequivocally that “AI will never replace human judges and can only serve as an assistant to judges.”⁴⁴ Indeed, current pilot programs of AI judges operate “under close human judge supervision, and no court decisions are implemented without human approval.”⁴⁵ This official position can be seen as a reassurance: even as software handles much of the work, a human judge (typically named as such in the case files) is accountable for the decision. In practice, one can question

³⁹ N. Wang, M. Y. Tian, “Intelligent Justice”..., *ibid.*

⁴⁰ *Ibid.*

⁴¹ T. Vasdani, Robot Justice..., *ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ N. Wang, M. Y. Tian, “Intelligent Justice”..., *ibid.*

⁴⁵ *Ibid.*

the depth of that human involvement—if the AI drafts a judgment and the human merely rubber-stamps it, the reality might be a de facto AI decision. But formally, the requirement of human sign-off preserves a semblance of the traditional model.

Even an authoritarian regime as China has, which, in theory, could enforce AI by decree, has opted to be more cautious. This is an indication of the realization that all-AI-based justice may not be widely accepted by the community or may not be trusted to be that reliable at the moment. The importance of AI has been a topic of debate among Chinese scholars and judges and some of them have accepted its limitations. As an illustration, according to Chinese scholarship as examined by Papagiannenas (2022), there is overall optimism regarding efficiency and consistency, but there is also an indication that there is concern regarding judicial fairness and transparency.⁴⁶ There is worry that judges might become over-reliant on AI recommendations, leading to a “rubber stamp” mentality.⁴⁷ The SPC is also concerned with maintaining control over local courts; interestingly, one reason for AI tools is to monitor and guide lower judges (preventing unapproved deviations). But that same central control logic means the SPC wants a human judge it can hold accountable if something goes wrong, rather than blame an algorithm.

Fair Trial in Chinese Context: China’s legal system does protect the right to a fair trial on paper (e.g., the Criminal Procedure Law provides for fair trials, and judicial interpretations emphasize fairness and impartiality). However, these rights are not judicially enforced against the state in the way they are in the ECHR system; rather, they are principles the judiciary itself says it upholds. Within that context, having a human judge is seen as part of ensuring “justice with temperature” (a phrase used in China to mean justice that isn’t purely mechanical). Chinese commentary often speaks of “intelligent courts” being “human-centered” despite their high-tech nature.⁴⁸ The idea is to use AI to improve accuracy and efficiency but to keep the human touch where it matters.

In practice, therefore, China’s approach aligns with a functional version of the right to a human judge, but for somewhat different reasons. It is less about individual autonomy or dignity, and more about system legitimacy and control. Nevertheless, the outcome is that in China today, no defendant is sentenced by a machine, and no final judgment is issued without a human judge’s involvement.

Examples and Limitations: A concrete example: In a private lending case in Hangzhou, the AI judge “Xiao Zhi” assisted by analyzing evidence and even

⁴⁶ S. Papagiannenas, *Towards Smarter and Fairer Justice? A Review of the Chinese Scholarship on Building Smart Courts and Automating Justice*, ‘Journal of Current Chinese Affairs’ 2022, 51(2), pp. 327–347; <https://doi.org/10.1177/18681026211021412> [accessed: 29.03.2025].

⁴⁷ N. Wang, M. Y. Tian, “Intelligent Justice”..., *ibid.*

⁴⁸ *Ibid.*

answering parties' questions, but a human judge was present to conclude the case.⁴⁹ The AI provided a recommended outcome, which reportedly helped the human judge finish the case in 30 minutes.⁵⁰ But critically, the final judgment was issued under the human judge's name. Similarly, the Internet Courts allow appeals to a traditional court if a party is dissatisfied—this ensures that ultimately a human panel of judges will review the matter *de novo*, thus acting as a safety net.⁵¹

There are, of course, concerns within China's experiment. One is that litigants, especially those without counsel, might not distinguish between the AI and a real judge and might effectively be having their first-instance trial entirely in front of a machine. Another issue is the quality of AI decisions: Chinese developers acknowledge that AI tools struggle with complex cases or those requiring subjective judgment (e.g., what is a "reasonable" outcome).⁵² This mirrors Górski's point in the European context that AI might handle straightforward cases (like undisputed payments) but falter on complicated ones requiring nuanced assessment.⁵³

Despite these challenges, China's continuing stance is to integrate AI heavily but keep a human in the loop. It might also be said that Chinese approach is pragmatic authoritarian: it uses technology to create maximum efficiency and control, but the unspoken rule admits that there is a threat that perceived fairness might be jeopardized in the event that human judges are completely displaced. We observe then that despite the liberal democratic models, the perceptions of the necessity of a human judge remain.

Comparative Insight: From Europe, the U.S., and China, a pattern emerges. All three jurisdictions—each in their own language and legal culture—converge on the idea that AI should assist, not replace, human judicial decision-making. Europe frames it as a matter of fundamental rights and has begun to codify it.⁵⁴ The U.S. frames it through due process and fairness, requiring human judgment behind any algorithmic tool.^{55 56} China frames it as maintaining control and trust in the courts, insisting a human judge has the final word.⁵⁷ This consensus across very different systems strongly supports the argument that a procedural right to a human judge is emerging as a general principle—one that transcends ideological boundaries, because it speaks to something common in the notion of justice.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ T. Vasdani, *Robot Justice...*, *ibid.*

⁵² N. Wang, M. Y. Tian, "Intelligent Justice"..., *ibid.*

⁵³ M. Górski, *Why a Human...*, *ibid.*

⁵⁴ Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) [2024] OJ L1689.

⁵⁵ *State v. Loomis* 881 NW 2d 749 (Wis 2016).

⁵⁶ J. M. Payé Salazar, *Impact...*, *ibid.*

⁵⁷ N. Wang, M. Y. Tian, "Intelligent Justice"..., *ibid.*

Having surveyed these approaches, we proceed to outline our proposed legal framework that consolidates and gives formal structure to the right to a human judge, ensuring it can be practically implemented as a safeguard for fair trials in the age of AI.

A Framework for a Procedural Right to a Human Judge

Having analyzed the landscape, this Part proposes a structured legal framework to recognize and operationalize a procedural right to a human judge. The framework is intended as a doctrinal tool and policy guideline to ensure that AI can be employed in court systems only in ways that do not undermine fair trial rights. It articulates the conditions under which AI assistance is permissible and where the line must be drawn to preserve the human judge's essential role. In effect, these conditions form a test that courts or legislators can use to evaluate whether a given use of AI in adjudication is compatible with the right to a fair trial. The framework is informed by the comparative insights above and existing human rights principles.

In the very foundations, we can state that any litigant to the legal process is entitled to insist that his/her case be left to be finally decided by a human judge (or a panel of judges). It, in line with this, bans the existence of systems where the binding judgments are made without any meaningful human input. The framework can be broken down into several key requirements or principles:

- 1. Human Oversight and Final Decision Authority:** The final decision in any judicial proceeding must be made or confirmed by a human judge. No AI system should be allowed to issue a judgment or verdict on its own. This principle aligns with the EU AI Act's mandate that "final decision-making must remain a human-driven activity"⁵⁸ and the CCBE's call that human judge be "required to take full responsibility for all decisions."⁵⁹ In practice, this means AI may draft recommendations or assist with analysis, but a human judge must review the AI's output, exercise independent judgment, and either accept, modify, or reject it. The human judge should be able to state that they are satisfied with the decision on their own reasoning. This requirement ensures that there is always a human mind applying the law to the facts, upholding the idea that adjudication is a fundamentally human act.
- 2. Transparency and Explainability:** The use of AI in a judicial process must be transparent to the parties, and the reasoning of any AI-assisted outcome must be explainable in human-intelligible terms. Litigants should be in-

⁵⁸ Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) [2024] OJ L1689.

⁵⁹ Council of Bars and Law Societies of Europe (CCBE), *CCBE Position Paper...*, *ibid*.

formed if an AI system was used in handling their case (for example, in predicting risk, suggesting a sentence, or even drafting a judgment). They should also have access to an explanation of how the AI contributed to the decision. This dovetails with due process rights to understand the basis of a decision and with emerging norms like Article 22 GDPR (the right to an explanation for automated decisions). If an AI system's workings are a "black box" such that neither the judge nor the parties can understand its reasoning, then that system should not be used in a manner affecting the outcome.⁶⁰ Indeed, the CCBE suggests that where an AI's output cannot be sufficiently explained, it "must not be taken into account" by the authorities.⁶¹ Therefore, an acceptable AI tool in court must either be inherently interpretable or come with mechanisms (such as reports or expert testimony) to translate its logic into the legal context.

3. **Contestability and the Right to a Human Review:** Parties must have the right to challenge and, if necessary, obtain a human re-examination of any AI-influenced decision. This means that if a litigant believes the AI's involvement led to error or bias, they can appeal or seek review before a human judge or panel that was not involved in the original AI-influenced decision. For instance, if an AI tool effectively decided an issue at trial, the defendant must have the opportunity to appeal to a higher court where judges will reconsider the matter without being bound by the AI's conclusion. This reflects the principle behind the GDPR's human review right and ensures that AI does not become an unappealable oracle. In the Bulgarian preliminary reference to the CJEU mentioned earlier, one question explicitly asked whether a person has the right to a human review of an automated decision and whether that human must be a judge in real proceedings.⁶² Our framework answers yes: a litigant can always seek recourse to a human judge. The availability of such a "human in the appeal loop" is a crucial safety valve.
4. **Legality and Accountability:** The use of AI must have a clear basis in law, and responsibility for the decision must be traceable to a human authority. This principle requires that any integration of AI into judicial decision-making be authorized by legislation or rules that set parameters, rather than done *ad hoc*. It also requires that from the litigant's perspective, they can identify who decided their case—which should be a human judge or judges, even if they used AI input. The judgment or verdict should be issued under the judge's name, and that judge should be accountable

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² S. J. Choi, K. Van Quathem, and B. Van Vooren, *CJEU Receives Questions...*, *ibid.*; <https://www.insideglobaltech.com/2025/02/24/cjeu-receives-questions-on-the-ai-act-relating-to-automated-decision-making/> [accessed: 29.03.2025].

(through appeals or disciplinary systems) for the outcome, just as they would be if no AI was involved. This prevents a governance gap where an AI makes a decision, and no one can be held responsible for errors. It ties into the idea of a tribunal “established by law”—a lawful court composed of judges cannot be replaced in substance by an algorithm that is not so established. Legal authorization is also important to satisfy the “prescribed by law” test under human rights law if any limitation of rights is involved.

5. **Reliability and Non-Discrimination:** Any AI applied to judicial decision-making should be of high accuracy and demonstrate that it does not cause impermissible biases or have dissimilar effects. Although this is on the quality of the AI and not the strictly procedural part, it is a necessary precaution. The right of a defendant to a fair trial would be infringed assuming that, say, an AI sentencing tool was systematically more severe to a given racial group. Therefore, the system demands a thorough testing and auditing of AI systems that are prone to bias and error rate before they are utilized in courts. Such a principle can be applied through certification (based on the ethical charter of the CEPEJ) or professional control. If an AI system cannot be audited or corrected for bias, relying on it may violate the equality of arms and nondiscrimination principles inherent in a fair trial. Under our framework, such a system should not be permitted until the issues are resolved.
6. **Proportional Use—Complementarity, Not Substitution:** The degree of AI involvement in a case should be proportional to the nature of the case, and AI should complement human judgment, not substitute for it. In minor, high-volume matters (e.g. small monetary claims or routine administrative hearings), more extensive AI assistance might be acceptable—perhaps even automated preliminary decisions—so long as a human review is available on request.⁶³ By contrast, in major criminal cases or other processes, where the basic rights of individuals are at risk, AI may only perform advisory roles, and the rest of the decisions must be made by the human judges sternly. Proportionality in this case acts as a counter to efficiency versus fairness: the higher the amount of harm the wrong decision might cause, the more we need to make sure that the conscience and thought process of a human being take center stage. This principle contains the possibility of innovation (such as ODR platforms in the case of small disputes on the basis of AI negotiation tools) without the right to appeal to a human judge being sacrificed.

All these six elements make the difference between a slogan and a working standard to which a right to a human judge belongs. They summarize these normative reasons that we desire human judges to concern themselves with—

⁶³ T. Vasdani, *Robot Justice...*, *ibid.*; <https://www.lexisnexis.ca/en-ca/ihc/2020-02/robot-justice-chinas-use-of-internet-courts.page> [accessed: 28.03.2025].

independence, reasoning, empathy, accountability—and convert them into operational standards. In the event that a new AI tool or procedure is introduced, we can enquire: Does it retain ultimate power in a human? Do the sides have an idea of what is going on and why? Is it possible to oblige and receive a decision of a human being instead? Is it legal and distinct who is in charge? Is it accurate and unbiased? Is it applied in a suitable manner regarding the case? The use of AI would only get through the test of this framework in case it has all the answers right.

It should be mentioned that this framework does not prohibit the use of all AI in the judicial practices. Rather, it creates a red line at the replacement of the judge. The AI is able to aid in repetitive work, large case databases, high point identification or even give a result based on the precedents—provided that the judge is critical of the result offered. Such use can improve consistency and efficiency while respecting rights. Our framework encourages “human-in-the-loop” models,⁶⁴ where technology is subordinate to human decision-making. It rejects “human-out-of-the-loop” adjudication where no person truly weighs the merits of the case.

This proposal could be implemented in various ways: as we will discuss, it might inform treaty interpretations, constitutional doctrines, or legislation. But as a normative contribution, the key point is that the right to a fair trial in the AI era should be understood to guarantee a human judge’s involvement as an element of due process. This transforms what has been an implicit assumption into an express legal safeguard.

Discussion: Implementation, Challenges, and Future Implications

Articulating a procedural right to a human judge is only the first step. For it to be effective, it must be recognized and implemented in legal systems. In this section, the pathways have been discussed to enshrine this right in law—from constitutional amendments and international treaties to court rules and ethics guidelines. It has been also considered potential challenges and counterarguments, examining how the framework can be defended and refined.

1. Enshrining the Right in International and Domestic Law: International human rights law is one method of entrenching the right to a human judge. The most obvious way would be an Additional Protocol to the ECHR or a like tool which makes it clear that the right to a fair trial would mean the right to have the case one is prosecuted in adjudicated by a human judge. Such an initiative

⁶⁴ I. Banks, *Operationalising...*, *ibid.*

could be led by the Council of Europe that has been active on AI ethics. It is true that the Council of Europe is already preparing a binding international treaty on AI and human rights; a clause regarding human oversight in court decisions would keep in line with Recital 61 of the EU AI Act and the principles of the CEPEJ. Similarly, the United Nations Human Rights Committee could address this issue in a General Comment on Article 14 of the ICCPR, or the Human Rights Council could pass a resolution highlighting the need for human judgment in judicial proceedings. For example, the UN High Commissioner for Human Rights has warned that certain uses of AI pose risks to the right to a fair trial.⁶⁵ Building on that, U.N. bodies could formally recognize that fully automated justice systems are incompatible with human rights. Such international statements or obligations would then guide national courts and legislatures.

At the domestic level, countries could amend their constitutions or legislation to affirm the right to a human judge. A constitutional amendment might be the strongest form—for instance, a constitution could state: “Every person has the right to have any charges or claims against them decided by an independent and impartial human judge.” This would put beyond doubt that no future government could quietly delegate judicial power to machines. Even absent new constitutions or amendments, statutes could codify the framework. For example, a country’s civil procedure code and criminal procedure code could be amended to explicitly prohibit judicial decisions without human approval. Legislatures might also enact an “AI in Courts Act” domestically, mirroring the EU’s approach, to regulate how AI may be used by the judiciary and to guarantee human final authority. These laws should incorporate the key principles this paper has outlined: requiring judges to personally sign off on decisions, mandating transparency to litigants, etc.

2. Judicial Adoption and Ethical Norms: Another avenue is through the judiciary’s own rule-making and ethical standards. Supreme courts or judicial councils often issue rules of procedure or codes of conduct for judges. These could be updated to address AI. For instance, a code of judicial ethics might say that a judge shall not delegate the substantive decision of a case to any other person or entity, including an AI system; or that a judge must ensure any AI tool used in decision-making is transparent and its use disclosed to parties. This would treat the right to a human judge as an aspect of judicial duty: it’s the judge’s duty not to abdicate their decision-making role. If judges abide by such rules, litigants are indirectly protected.

The right may also be reinforced by a series of cases in the courts. In cases where situations arise (e.g., a litigant claims the judge was unfair on a hearing because he or she depended on an algorithm blindly), the courts can directly

⁶⁵ S. Neuman, The U.N. Warns That AI Can Pose a Threat to Human Rights, National Public Radio 2021, Sep., 16; <https://www.npr.org/2021/09/16/1037902314/the-u-n-warns-that-ai-can-pose-a-threat-to-human-rights> [accessed: 29.03.2025].

declare that the right to due process or fair trial was abridged. These precedents will discourage over-use of AI. This is because in common law systems, particularly, a small number of vigorous decisions at the appellate level could create the principle without necessarily having to seek legislative action. To illustrate, in a situation where a higher court considered a fully automated procedure in small claims and determined that it was unconstitutional, then such a situation would necessitate that a human judge be inserted into said process later.

3. Model Legislation and Cross-Border Consensus: Model frameworks can assist jurisdictions in adopting best practices given that technology tends to outpace legal development. A model law or guidelines of “AI-Augmented Adjudication” based on our framework could be written by international bodies or NGOs. The existence of such a model (equivalent to the powerful Bangalore Principles of judicial conduct or UNCITRAL Model Laws in other areas) offers an example that can be emulated by countries. It also promotes a universal discussion in such a way that the standards are brought together. In the first place, we already observe convergence, as Europe, hard law, U.S. constitutional logic, and China all seem to be heading in the same direction. This could be crystallized through a formal articulation through a model document.

These actions have political viability that is worthy of consideration. It is probable that bipartisan or general consensus on the inadvisability of judicial replacement with machines exists in most countries. The safeguard in the form of a right to a human judge may not be subject to a strong opposition in terms of principle—who will openly contend that we should not have human judges? The primary opposition may be administrative efficiency proponents or revenue-starved judicial administrators considering automation as an answer to backlog. However, even they usually consider AI as an auxiliary, rather than a complete replacement (no one is ready to place their faith in an AI-only judge without a human involved at present, due to the level of technology development).

4. Addressing Counterarguments: When we are presenting a right to a human judge, we have to face a number of possible objections and future cases. To elucidate the range and durability of our proposal, this paper will discuss the most topical counterarguments in this direction:

- ◆ **“What if AI becomes better than human judges?”** It is possible to say that eventually AI might be more accurate, reliable, and unbiased than a human judge, thus the demand to have a human judge can be counterproductive when it comes to conducting a fair trial. This situation is not real; currently, AI systems are designed to mirror the information and goals provided to them and do not have an actual sense of morality or perception of the environment. Even when one thinks of a super-intelligent, unbiased AI, justice is

not determined by accuracy. It is the matter of process and perceived rightness as well. Studies of procedural justice have demonstrated that an ideal decision, which is correct by definition, might be turned down as unfair when the process used is remote or incomprehensible. The fairness of a trial includes the ability to make oneself heard by an objective human adjudicator—which an algorithm, no matter how sophisticated, cannot provide in real sense. In addition, we do not prohibit input of sophisticated AI in our system, just that a human judge be in final authority to authenticate results. When the reality has come one day when AI reasoning is as good as that of humans, the human review will be a very symbolic formality—but a significant one to ensure that citizens remain trusted and accountable. More importantly, AI competence would not be affected negatively by the presence of a human checkpoint even in the event of catastrophic failures and helping to avoid catastrophic failures in the few instances where an AI may be in error, that only a human conscience or common sense can detect. Concisely, even in the possibly super-human AI future, the watchful eye of a human judge will be an inexpensive way of protecting values such as empathy, mercy, and legitimacy which pure algorithms cannot so effectively represent. According to Zou and Lefley (2025), the idea of being judged by a human being is associated with human dignity—a concept that would not go away despite the high level of sophistication of machines.⁶⁶ Thus, our proposal would still be justified in a world of powerful AI: it ensures that *legal judgment* retains a human face and is ultimately grounded in human societal values.

- ◆ **“Humans are flawed too—why privilege human judgment?”** It is factual that human judges are not completely impartial, inconsistent and are in fact sometimes wrong. Indeed, one of the significant reasons why AI should be introduced to the adjudication process is to eliminate these human frailties. Nonetheless, the answer does not lie in the removal of humans in the process but in the enrichment and enhancement of human judgment with the help of AI. We give human judgment the privilege due to attributes that human beings only developed to date, namely compassion, intuitive moral reasoning, and discerning the nuance in relation to communal values. Such attributes encourage the people to accept the decisions of the courts. Human judges too work within regimes of responsibility—they have to give explanations why they have made a decision, are subject to questioning or appeal and may be dismissed or punished due to ill behavior. An AI can neither be cross-examined on its conscience nor can it be answerable at the ballot box or even via a professional disciplinary agency. Until we in some way endow machines with accountability, transparency and value-alignment comparable to human beings (which, like humans, is merely

⁶⁶ M. Zou, E. Lefley, *Generative...*, *ibid.*

a matter of theory), it is sensible to retain humans in the driver's seat of the process of judging. Practically, it can be interpreted as applying the AI to help judges make superior decisions—by processing information or implicating knowledge—though the final decision is still a human action. It is aimed at a mix of both that verifies and rectifies human weaknesses without discarding the incomparable merits of human adjudication.

- ◆ **“Parties might consent to an AI judge—should they be allowed to waive the right?”** This is a situation that is becoming more and more possible: assume that two parties in an issue of civil disagreement concur to send their case to an AI adjudicator, out of expediency, or reduced expense. Was it possible that the parties had the voluntary right to waive human judge? And on the one hand the legal regimes do not forbid parties to simply forego courts altogether in favor of personal arbitration—and in principle even an arbitrator can be a non-human process should both parties' consent. But there is a limit to the public policy. There are some basic characteristics of a fair trial, which cannot be contracted out in a way that interferes with the integrity of the justice. We hold that the right to a human judge in social judicial processes ought to be incalculable. This is comparable to the situation with a criminal suspect in that he cannot consent to have his trial decided by coin flip or trial by combat—even in the event both parties consented to it somehow—because these are core values of justice and confidence of the people in the courts. Similarly, a trial involving a completely AI-controlled court in a state court would not comply with the minimum provisions of the justice system operating according to the rule of law. On all process stages, as the CCBE has demanded, a human judge should be ensured. However, when it comes to the area of private dispute resolution, should fully informed parties really desire to work with an AI judge in the form of arbitration, the law may be diligently willing to allow it with multiple protective measures. As an example, the parties should not be denied the right to appeal to any real court. A human judge would be able to review or confirm an AI-based decision on arbitral awards before it can be declared as a judgment. As a matter of fact, whenever a court would want to enforce a decision that has been AI-rendered, it would be forced to subject it to scrutiny—possibly, the way an expert decision is treated—to make sure that it does not infringe on the policy of the people or fundamental rights. Concisely, a human being is free to test his or her AI adjudication, but the government has no obligation to sign an agreement where a human judge is completely absent. Procedural right of a human judge must be regarded as a guarantee of justice in which the legal system can provide even in the circumstances when parties will not require this right.

- ◆ **“Is this framework just Luddism? Shouldn't we focus on making AI judges fair, rather than blocking them?”** The position this paper takes is not anti-technology—it is pro-human-rights. This paper does not advocate aban-

doning AI in justice; rather, set boundaries for its use. Requiring human oversight and final authority is not about destroying the benefits of AI, but about channeling those benefits in a responsible way. History shows that clear rules and human-centered design often foster, rather than hinder, sustainable technological adoption. (For example, the introduction of safety regulations for automobiles didn't stop the development of cars—it made the public more confident in using them.) Likewise, establishing a human-judge requirement can ensure trust in the justice system as it innovates. By affirming that technology will serve as a tool for human judges—not a replacement for them—we maintain public trust and avoid the backlash that could occur if people felt “justice” had been reduced to a black-box algorithm. In the long run, this principled approach will actually enable courts to embrace helpful AI tools (for research, case management, decision support, etc.) without fear of undermining the fairness or legitimacy of the process. In sum, our framework doesn't block AI at all; it guides its integration so that efficiency and innovation can be achieved alongside the enduring values of a human-centric justice system.

5. Practical Implications for Courts and Stakeholders: Implementing this right will have practical consequences. Courts will need resources to verify AI tools' reliability (e.g., perhaps court-employed data scientists or certification bodies). Judges will need training to understand AI outputs and not over-defer to them—to avoid the “automation bias” where humans trust a computer blindly. Legal education may evolve to cover the interface of AI and judging, so new lawyers can navigate these issues. Litigants may, in the short term, gain new grounds of appeal or review (e.g., appealing that a judge relied too much on an algorithm). This is a necessary phase to set precedents on what acceptable use looks like.

Technology providers—the companies that build judicial AI systems—will also have to adjust. They will need to design systems that fit the human-in-charge paradigm. That could mean building better explanation features or shifting from autonomous decision-making to decision-support design. Interestingly, this could open up innovation: rather than trying to replace judges, companies will compete to better assist judges.

6. Long-Term Outlook: In the long run, if our framework is widely adopted, one can imagine it becoming a standard part of the concept of a fair trial globally. As routine as the right to counsel or the right to a public hearing, the “right to a human judge” could be cited in courtrooms from Strasbourg to San Francisco to Shanghai. It would function as a bulwark as AI becomes more pervasive. If truly revolutionary AI emerges (for instance, an AI that claims to have general intelligence or even consciousness), the right to a human judge will force a societal conversation and legal scrutiny before any handover of judicial power. It ensures that people remain the ultimate arbiters of justice,

at least until such time (if ever) that we collectively decide otherwise through democratic means.

Lastly, it is mentioned that the implementation of this right does not only have to do with the prevention of dystopia, but it also has to do with confirmation of what we appreciate in our justice system. Making judgment is a moral act, one on which we as a society leave to humans who may be merciful, who may perceive context, and who may represent the relationship of law to the community. In a time where machines are becoming more advanced, to create a border around the sacredness of the judicial position is similar to creation of a boundary around the human dignity of the judge and the judged. It conveys a message that technology is a servant of man rather than *vice versa*; more so in the courtroom.

Conclusion

With courts having gone artificial intelligence, we are at a crossroad of the future of fair trials. The paper has discussed that with the efficiencies and capabilities of AI, one of the principles that have to be preserved is the right to be judged by a human being. As revealed in this paper, this procedural right to a human judge is entrenched in the functions of the fair trial guarantees under international law despite the fact that it has only recently required the articulation. Looking at both the European, American, and Chinese solutions we have seen that there is an overlap in the preservation of a human element in the court ruling—meaning that our normative proposal is not an extreme ideal but a global legal introspection. I provided an exhaustive system of the steps to follow on embracing AI in the court of justice without infringing the right to a fair trial. The principles of the framework—human final authority, transparency, contestability, legality, non-discrimination, and proportional use gives a roadmap on which courts and legislatures should operate. The two of them make sure that although AI might have a part to play in the delivery of justice, it does not overthrow the important position of human judges. The application of the framework in the form of laws, judicial norms and possibly new commitments at the international level will be essential in the years to come. Positively, we find signs towards this direction: in the form of the pending EU AI Act that entrenches human decision making in legislation,⁶⁷ in cases like the Loomis decision, or in China, where its judges are insisting that their so-called smart courts be run by humans.⁶⁸

⁶⁷ Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) [2024] OJ L1689.

⁶⁸ N. Wang, M. Y. Tian, “Intelligent Justice”..., *ibid*.

Fair trial is one of the symbols of civilization, and its development should not forget about the human factor in it making it legitimate. In a world where algorithms are more and more becoming an aspect of governance, the demand to have a human judge is one of the demands of a bigger demand to have human justice. It recognizes that technology should not be used to substitute judgment of man, at least in law and rights. Decency in the court, responsibility of the judgment, and the law itself all require a human face and mind in the bench. Finally, it is important to realize that having a procedural right to a human judge is a protection and a compass. It is a protection against the erosion of fair trial rights by untested technology and is a means of creating AI systems that complement and not supplant human judgment. Tracing further, the right may become an important source of new standards and rules, through which our justice system is not only efficient and modern, but also essentially fair and human. The era of AI in the courts is here—provided we have an effective framework and belief in the essential values, we will be able to make sure that justice, at the last, will be served in the name of the people, and people.⁶⁹

Abstrakt

Wykorzystanie sztucznej inteligencji (AI) w systemach sądowych następuje coraz szybciej na całym świecie, budząc poważne wątpliwości co do przyszłości prawa do sprawiedliwego procesu sądowego. Niniejszy artykuł stanowi argument przemawiający za uznaniem prawa proceduralnego do sędziego-człowieka za fundament ochrony przed sztuczną inteligencją w XXI wieku. Uważam, że gwarancje rzetelnego procesu sądowego zawarte w obowiązującym prawie międzynarodowym – tj. w art. 6 europejskiej Konwencji praw człowieka i podstawowych wolności (EKPC) oraz art. 14 Międzynarodowego paktu praw obywatelskich i politycznych (MPPOiP) – w sposób dorozumiany wymagają orzekania przez człowieka. Należy to wyraźnie stwierdzić. Wyniki przeprowadzonego przeze mnie przeglądu literatury i obecnych praktyk sugerują, że sędziowie-ludzie oferują niekwestionowane cechy, takie jak zdolność osądu, empatia i odpowiedzialność, których brakuje sztucznej inteligencji w jej obecnej formie i których nigdy nie będzie ona w stanie w pełni odzwierciedlić. Podobieństwo doświadczeń europejskich, amerykańskich i chińskich w analizie porównawczej sugeruje ogólne zrozumienie konieczności ludzkiego nadzoru nad sądowymi systemami AI – co jednak opiera się na różnych zasadach prawnych. Na podstawie tych obserwacji w artykule nakreślono nowe ramy prawne, które uwzględniają prawo do sędziego-człowieka. Ramy te określają warunki, w jakich narzędzia sztucznej inteligencji mogą być wykorzystywane w sądzie bez naruszania podstawowych praw do rzetelnego procesu sądowego,

⁶⁹ Council of Bars and Law Societies of Europe (CCBE), CCBE Position Paper..., *ibid.*; CCBE *Flags Dangers of AI-Led Decision-Making*, 'Law Society of Ireland Gazette' 2023, May, 26; <https://www.lawsociety.ie/gazette/top-stories/2023/may/ccbe-flags-dangers-of-ai-led-decision-making/> [accessed: 28.03.2025].

kładąc główny nacisk na kontrolę przez człowieka, otwartość, możliwość zaskarżenia i odpowiedzialność. Wyjaśniam również sposoby egzekwowania tego prawa, w tym zapisanie go w traktatach dotyczących praw człowieka i konstytucjach, a także przyjęcie wzorcowych przepisów. Podsumowując: konieczna jest ochrona pozycji sędziego-człowieka w celu utrzymania sprawiedliwości i rzetelności wymiaru sprawiedliwości w erze coraz większej niezależności systemów opartych na AI.

Słowa kluczowe: prawa procesowe, sędzia-człowiek, rzetelny proces sądowy, sztuczna inteligencja (AI), nadzór sądowy, analiza porównawcza.

BIBLIOGRAPHY

Adoption of a European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and Their Environment at the 31st Plenary Meeting of the CEPEJ in Strasbourg on 3 and 4 December 2018, International Union of Judicial Officers (UIHJ) 2018, Dec., 4—available at: UIHJ website [accessed: 28.03.2025].

Artificial Intelligence in Judicial Systems: Promises and Pitfalls. Report of the Special Rapporteur on the Independence of Judges and Lawyers, United Nations General Assembly, UN Doc 2023, A/80/169.

Banks I., *Operationalising Human Oversight of AI-Supported Judicial Decision-Making: A Systemic Perspective*, 'Algorithms, Data and Society' 2023—available at: AlgoSoc [accessed: 28.03.2025].

Binns R., *Human Judgment in Algorithmic Loops: Individual Justice and Automated Decision-Making*, 'Regulation & Governance' 2022, 16(1)—available at: DOI: 10.1111/rego.12358 [accessed: 29.03.2025].

CCBE *Flags Dangers of AI-Led Decision-Making*, 'Law Society of Ireland Gazette' 2023, May, 26—available at: Law Society Gazette [accessed: 28.03.2025].

Choi S. J., Van Quathem K. and Van Vooren B., *CJEU Receives Questions on the AI Act Relating to Automated Decision Making*, 'Inside Global Tech' 2025, Feb., 24—available at: Inside Global Tech [accessed: 29.03.2025].

Convention for the Protection of Human Rights and Fundamental Freedoms, European Convention on Human Rights, 1950, Article 6(1).

Council of Bars and Law Societies of Europe (CCBE), *CCBE Position Paper on the Proposal for a Regulation Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act) 2021*, Oct., 8—available at: CCBE [accessed: 28.03.2025].

Council of Bars and Law Societies of Europe (CCBE), *CCBE Statement on the Use of AI in the Justice System and Law Enforcement 2023*, May, 25—available at: CCBE (Statements, 2023) [accessed: 28.03.2025].

De Miguel Beriain I., *Does the Use of Risk Assessments in Sentences Respect the Right to Due Process? A Critical Analysis of the Wisconsin v. Loomis Ruling Law*, 'Probability and Risk' 2018, 17(1)—available at: DOI: 10.1093/lpr/mgy001 [accessed: 29.03.2025].

Engel C., Linhardt L. and Schubert M., *Code Is Law: How COMPAS Affects the Way the Judiciary Handles the Risk of Recidivism*, 'Artificial Intelligence and Law' 2024—available at: DOI: 10.1007/s10506-024-09389-8 [accessed: 29.03.2025].

Górski M., *Why a Human Court? On the Right to a Human Judge in the Context of the Fair Trial Principle*, 'European Criminal Law Associations' Forum' 2023, 1—available at: Eucrim [accessed: 28 March 2025].

McKay C., *Predicting Risk in Criminal Procedure: Actuarial Tools, Algorithms, AI and Judicial Decision-Making*, 'Sydney Law School Research Paper' 2019, 19(67)—available at: SSRN [accessed: 29.03.2025].

Murray K., *What the Legal Drama For the People Teaches Us About AI and Legal Ethics*, O'Hagan Meyer 2025, Feb., 6—available at: O'Hagan Meyer [accessed: 29.03.2025].

Neuman S., *The U.N. Warns That AI Can Pose a Threat to Human Rights*, National Public Radio 2021, Sep., 16—available at: NPR [accessed: 29.03.2025].

Papagiannenas S., *Towards Smarter and Fairer Justice? A Review of the Chinese Scholarship on Building Smart Courts and Automating Justice*, 'Journal of Current Chinese Affairs' 2022, 51(2)—available at: DOI: 10.1177/18681026211021412 [accessed: 29.03.2025].

Payé Salazar J. M., *Impact of Artificial Intelligence on Effective Judicial Protection*, 'AfricLaw' 2023, June, 26—available at: AfricLaw [accessed: 29.03.2025].

Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) [2024] OJ L1689.

Sourdin T., *Judge v. Robot? Artificial Intelligence and Judicial Decision-Making* 'University of New South Wales Law Journal' 2018, 41(4).

Sourdin T., *Judges, Technology and Artificial Intelligence: The Artificial Judge*, Edward Elgar Publishing: Cheltenham 2021.

State v. Loomis 881 N.W.2d 749 (Wis. 2016).

Susskind R., *Online Courts and the Future of Justice*, Oxford University Press: Oxford 2019.

United States v. Booker 543 U.S. 220 (2005).

Vasdani T., *Robot Justice: China's Use of Internet Courts*, Toronto 2020, Feb.—available at: LexisNexis [accessed: 28.03.2025].

Wang N. and Tian M. Y., *Intelligent Justice: Human-Centered Considerations in China's Legal AI Transformation*, 'AI and Ethics' 2023, 3(2).

Završnik A., Plesničar M. M., *The Right to a Human Judge in Criminal Justice Settings* (paper presented at the American Society of Criminology 79th Annual Meeting, San Francisco, 15.11.2024)—available at: AllAcademic [accessed: 28.03.2025].

Zou M., Ebers M., Poncibò C. and Calo R. (eds.), *The Cambridge Handbook of Generative AI and the Law*, Cambridge University Press, 2025.