

Insights from the *Human & Artificial Intelligence Systems Online Seminar* organised by the Academy of European Law (ERA)

Giorgia Spolverato¹

Abstract

The third edition of the Human Rights and Artificial Intelligent Systems organised by ERA took place this year from 29th to the 31st of March 2021. European functionaries, scholars, and professionals, in human rights and new technologies, discussed the functioning of AI systems, the challenges they pose to the protection of fundamental rights, as well as potential technical and legal solutions. The lack of transparency and accountability of automated decision-making systems and the biased outcomes they produce, which are among the main issues deriving from the use of AI-based systems, were largely tackled in the seminar. From the lively and fruitful discussions that characterised the seminar, it appears that stricter mandatory rules are needed to regulate this expanding field. Consequently, much hope is placed on the regulatory initiatives currently ongoing at the European Union and the Council of Europe.

1. Introduction

For the third consecutive year, the Academy of European Law (ERA) organised a seminar on Human Rights and Artificial Intelligent Systems. Launched in 1992, ERA is a German-

¹ Report drafted by Giorgia Spolverato. Research Fellow at the Max Planck Institute for International, European and Regulatory Procedural Law in Luxembourg and PhD candidate at the University of Luxembourg

based public foundation – supported, *inter alia*, by the European Commission. ERA aims at promoting awareness, understanding, and good practice, of European law. It attempts to do so through the organisation of conferences, seminars, language courses, and e-learning projects.¹ With the purpose of engaging human rights experts in debates regarding the functioning of Artificial Intelligence systems, the challenges they pose on human rights and potential solutions, the human rights lawyer, Sanja Jovičić, assisted by Laura König, planned this practical training.

The speakers and the public engaged in lively discussions on the most topical issues when it comes to automated decision-making systems. Specifically, this concerned the risk of producing discriminatory outcomes and difficulties related to the attribution of liability. This is due to the complexity, lack of transparency, and accountability of these systems. The forthcoming transnational frameworks under discussion at the European Union and the Council of Europe have also been the subjects of fruitful debates among lawyers, judges, academics, NGOs, and colleagues from international organisations and advisors participating in the forum.

2. Programme of the Seminar

The rich programme of the seminar unrolled over a period of three days.² For the first two days, daily sessions were divided into two main parts. The first one was dedicated to two individual presentations and respective discussions, and the second consisted of a panel per each day, set up to discuss the topics dealt with during the same day. Panelists were given a chance to re-elaborate and expand even further on those concepts through questions put forth by the moderators and the audience. Four comprehensive, stand-alone presentations concluded the event on the last day.

2.1 29 March 2021

The impression one might get is that the order of the speakers, panelists, and topics has been wisely planned to explain step-by-step the gradual development of AI systems to help the audience with better grasping the related functionalities and deriving concerns. The first day was indeed devoted to the descriptions of the functioning of automated decision-making systems, the main general issues they pose in terms of the design of the algorithm, and data collection and treatment (see the presentations held by Professor R. Chatila on “Understanding automated decision-making systems and their implications for human rights” and Mr. L. Kärkkäinen, Chief AI Expert at Huawei, “Due diligence and quality control of AI systems”). The two speakers, together with Ms. S. Alegre, international human rights barrister, and Mr. D. Reichel, Project Manager at the European Union Agency for Fundamental Rights, engaged in a roundtable revolving around possible ways of developing AI systems and conducting data processing that does not lead to discriminatory outcomes. Transparency and accountability, as well as human rights impact assessments,

emerged as oversight practices that should be further promoted in the drafting of new frameworks for AI regulation.

2.2. 30 March 2021

The second day of the event was animated by two prominent speakers involved in the supranational regulatory process of AI systems - Professor P. Valcke, vice-president of the Ad hoc Committee on Artificial Intelligence (CAHAI), and Paul Nemitz, Principal Adviser to Directorate-General for Justice and Consumers at the European Commission. Professor Valcke explored the cross-sectorial initiatives taking place at the Council of Europe in the attempt to ensure AI usage in compliance with the values of democracy, human rights, and the rule of law, being those the pillars on which the organisation is based. She also offered fresh news regarding the work of the CAHAI, explained the challenges of finding consensus among stakeholders on the nature of the future frameworks, and announced the opening of the consultation period to gather opinions on the elements of a legal framework on AI. Mr Nemitz enlightened the audience by illustrating the European Union's perspective towards the regulation of AI systems. He focused on the upcoming new rules for online platforms contained in the Digital Services Act.

The panel discussion of the second part of the day, in which Professor S. L. Shaelou was also actively involved, dealt with one of the most controversial aspects to be taken into account when envisaging legal frameworks for automated decision-making systems: liability. Concerns and questions around the liability of AI systems – such as the legal personality of machines, the demonstration of causality and burden of proof for damages caused by automated systems, as well as the person(s) to be held responsible – must be urgently tackled, the experts said.

2.3. 31 March 2021

The third and final day of the seminar was dedicated to more practical aspects of the discussion around the theme of human rights protection in the context of AI systems. Relevant case law of the Court of Justice of the European Union on AI systems has been brought to the attention by Mr R. Klages, lawyer at the European Court of Auditors. Even though there is little legislation on AI in Europe and actually no case law on AI as such, judgments related to the application of the GDPR, the gold standard of personal data protection, might be used as a breeding ground for jurisprudential developments in this sense. Secondly, Ms C. Garcia-van Hoogstraten, Consultant in Tech Policy & Law, offered insights on *ex ante* and *ex post* automated content moderation mechanisms to fight against online hate speech, as well as the benefits and limits they pose to freedom of expression, like overblocking,³ censorship, false negatives and false positives.

Following this, human rights lawyer S. Alegre warned against the threats to the freedom of thought deriving from data collection and AI techniques usage in the digital environment. Breaches to our hallowed “forum internum”⁴ are around the corner when AI is employed to draw inferences and make predictions about thoughts, personality, and emotive status of individuals in order to exercise behavioural micro-targeting with manipulative purposes.

Mr A. Basdevant, a tech lawyer based in Paris, held the last presentation of the event offering ten practical tips on how to interpret data protection policies, including the GDPR, when AI challenges data protection practices and on how data regulation, in turn, can be used to challenge AI systems.

3. Takeaways and conclusion

From all these brilliant talks, the many concerns regarding the protection of human rights arising from the implementation of AI technologies are evident. A shared solution to this seems to be the introduction of new regulatory frameworks. This is why the related ongoing initiatives at the Council of Europe and the European Union are under the spotlight of experts in this field. As emerged from one of the polls proposed by the organisers of the event, the audience of the seminar preferred new legal frameworks in the form of a convention, framework convention, multilateral treaty, rather than an instrument of *soft law*.

To conclude, a heartfelt thanks to the organisers and supporters of this event. Thank you for inviting such knowledgeable and charming speakers. We are looking forward to more inspiring discussions that surely will come along with the next edition of the “Human Rights and AI Systems” seminar.

¹ For more information: <https://www.era.int/cgi-bin/cms? SID=NEW& sprache=en& bereich=ansicht& aktion=detail&schluessel=era>

² For a more detailed view of the speakers and programme of the event <https://www.era.int/upload/dokumente/23400.pdf>

³ Intended as the excessive and unmoderated removal of online content.

⁴ Expression used by the speaker to indicate the right to have thoughts, to protect and not disclose them.